



# BILLET D'ÉTAT

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**ENVIRONMENT DEPARTMENT**  
**COASTAL DEFENCE FLOOD STUDIES**

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

17<sup>th</sup> May 2013

Dear Sir

**1. Executive Summary**

- 1.1 This Report asks the States to approve a strategy for establishing priorities in meeting identified needs for developing Guernsey's coastal defences. It also seeks the support of the States for proposals designed to provide better data collection to inform improved decision making for coastal defence investment proposals. It does not, however, present a capital works programme.
- 1.2 Extensive flooding caused by tidal or storm surge is identified as a key corporate risk. The likelihood of that risk being realised is predicted to increase with the impacts of climate change leading to an increase in frequency and severity of storms. In recognition of this risk studies have been carried out by Haskoning into the condition of and flood risks presented by the Island's coastal defences.
- 1.3 Although it is generally known and accepted that sea levels are rising, the flooding risk does not result specifically from the change in sea levels. The flooding risk arises from storms where tidal surge, low pressure and wind direction coincide leading to significant over topping of flood defences. The severity of flooding depends on the severity of the storm. Haskoning mapped the extent of flooding resulting from the 1 in 10 years, 1 in 50 years, 1 in 100 years and 1 in 250 years storms. It is anticipated that one of the effects of Climate Change will be to increase the frequency of severe storms. Overtime the 1 in 100 years storm will become the 1 in 50 years storm.
- 1.4 Drawing upon the findings and recommendations within the two Haskoning Reports, adopting a planning horizon of 20 years and applying a no regrets approach (i.e whatever action is taken today will not prevent further action from being taken in the future and will act as a foundation for further action) an evaluation framework for assessing the impacts of coastal inundation has been derived and is presented.

- 1.5 To formulate this framework the Environment Department established the Coastal Defence Project Group (CDPG). The CDPG's overarching strategy is to reduce the risk of coastal flooding over the next 20 years for the areas identified at greatest risk. The strategy seeks to reduce the risk against a 1 in 100 year event through a combination of preparing for and adapting to flood events, and through improving and building new flood defences where appropriate. It is recommended that the strategy is reviewed after 10 years to take account of any changes that happen over time.
- 1.6 Extensive analysis of the two reports published by Haskoning UK Limited indicates that priority for capital works should be focussed on the St Sampson's Harbour area and that urgent consideration should also be given to the area bordering Belle Greve Bay. It is anticipated that capital works to a value of approximately £20 million will be required over the next five years to meet these needs and to begin a rolling programme of works to address requirements in other areas identified in this Report.
- 1.7 The Department has submitted a Capital bid in the sum of £20 million into the capital prioritisation process. That bid, if approved, would constitute the funds required to deliver the prioritised capital works identified in this report and that result from the adoption of the strategy proposed. The Haskoning Flood Studies Report 2012 estimates that £55 million will be required over the next 30 years to mitigate the current flood risks.
- 1.8 It has been ascertained that current expenditure for maintenance of the Island's built coastal defences is inadequate according to a reasonable assessment of needs and that a regimen for 4% annual maintenance renewal of the total structure is appropriate for ensuring its continued well-being.
- 1.9 It is noted that coastal flooding results primarily as a result of storm conditions in harmony with other factors (barometric pressure, wind direction, the tidal state, etc) and that it is not possible to construct sea defences that will be effective in preventing the consequences of all such occurrences. It is further noted that the Haskoning reports recommend that measures should be taken to enhance the Island's sea defences in anticipation of the projected effects of Climate Change.
- 1.10 Although the importance of improvements and developments in the primary structures of Guernsey's coastal defences is recognised, it is clear that the only opportunity for mitigating and minimising the impact of inundation after coastal defences have been breached is presented by individuals acting to protect their properties for just an hour or two when the tide is at its peak. Further, it cannot be assumed that the sole protection for individual properties will be the recognisable coastal defences; these may be overwhelmed or circumvented during extreme events. It is therefore considered essential that individual householders and business persons take measures to secure their premises.

- 1.11 Suggestions are put forward for how the States can assist householders and business persons in making their own arrangements for safeguarding property.
- 1.12 Haskoning have developed a model for assessing wave action and tidal impacts around the coastline of Guernsey and so far the model has been used on a static basis, relying upon historic collected and predicted data. There is a requirement for developing the collection system that informs this model to provide a more dynamic and focused output, enhancing our ability to issue meaningful public information and better managed flood warning advice.

## 2. **Background and Strategy Introduction**

- 2.1 A key responsibility of the Environment Department is the care and maintenance of Guernsey's infrastructure, in terms of the natural and built environments. This is evident in the Department's mandate, which reads as follows:

*To advise the States on matters relating to:*

*Environmental policy including transport, energy and waste policy and policy for the conservation, enhancement and sustainable development of the natural and physical environment of the Island in accordance with the strategic economic, fiscal, environmental and social policies of the States.*

- 2.2 The prospect of inundation from the sea is of real concern to a wide range of Guernsey's population, whether as homeowners, business proprietors or public servants tasked with maintaining the Island's infrastructure. Each of these groups, of course, must take responsibility both to prepare for eventualities and protect their interests and must ensure that all reasonable measures are in hand to deal with flooding when it comes.
- 2.3 If this wider role is to be responsibly exercised, with good decision making and careful use of public funds, then it is important that high quality and up to date information is available. Equally, it is important that far-reaching decisions are based upon sound reasoning and best evidence. It was with this in mind that the Environment Department commissioned Haskoning ("Haskoning") UK Limited to report on the state and condition of Guernsey's sea defences. This work culminated in the identification of seven areas vulnerable to coastal inundation on the Island. These seven areas are, in no particular order:

- Belle Greve Bay;
- St Sampson Harbour and the associated area of Le Grand Havre;
- Bordeaux Harbour;
- Rousse, Baie de Port Grat and Pequeries;
- Cobo Bay and Saline Bay;
- Rocquaine Bay and L'Éree Bay;
- Pembroke Bay.

- 2.4 For further details on the Haskoning studies (2007 and 2012), please see section 4.0 and Appendix 2.
- 2.5 Recommendations for works to strengthen and enhance the coastal defences for each of the areas in question are included in the Haskoning Flood Studies Report. These recommendations offer alternatives rather than specific ways forward, based simply on the number of residential units affected. In order to evaluate the priority areas and most suitable options, the Environment Department established (in July 2012), the Coastal Defence Project Group (CDPG). The CDPG comprised staff representatives from the Environment, the Public Services and Treasury and Resources Departments as well as two Members of the Environment Department Board.
- 2.6 Building upon the data contained in the Haskoning 2007 and the Haskoning 2012 Flood Studies Reports (see section 4.0), the Members of CDPG set out to evaluate the scale of the work required. The Group developed a robust methodology for the prioritisation and evaluation of the options presented for each of the areas under examination as it was evident that any resulting projects would need to be phased over a number of years. The CDPG's broad aim was set out in the following statement:

*To develop a flood risk management strategy that sets out how we should adapt, improve and generally prepare the Island for dealing with coastal flooding in the short term, medium term and long term.*

And it was with this in mind that it resolved to:

- Establish clear parameters for this and subsequent reviews;
- Establish criteria and a methodology for prioritisation of areas at risk;
- Rank the areas in question into an order of priority for actions to be recommended;
- Establish design criteria for the development of solutions;
- Explore other means for mitigating flood risks that might prove to be economical and effective;
- Identify further works which would contribute to improved decision making for future reviews.

- 2.7 These objectives are encapsulated in the Group's terms of reference.
- 2.8 The CDPG's overarching strategy is to reduce the risk of coastal flooding over the next 20 years for the areas identified at greatest risk. The strategy seeks to reduce the risk against a 1 in 100 year event through a combination of preparing for and adapting to flood events, and through improving and building new flood defences where appropriate.

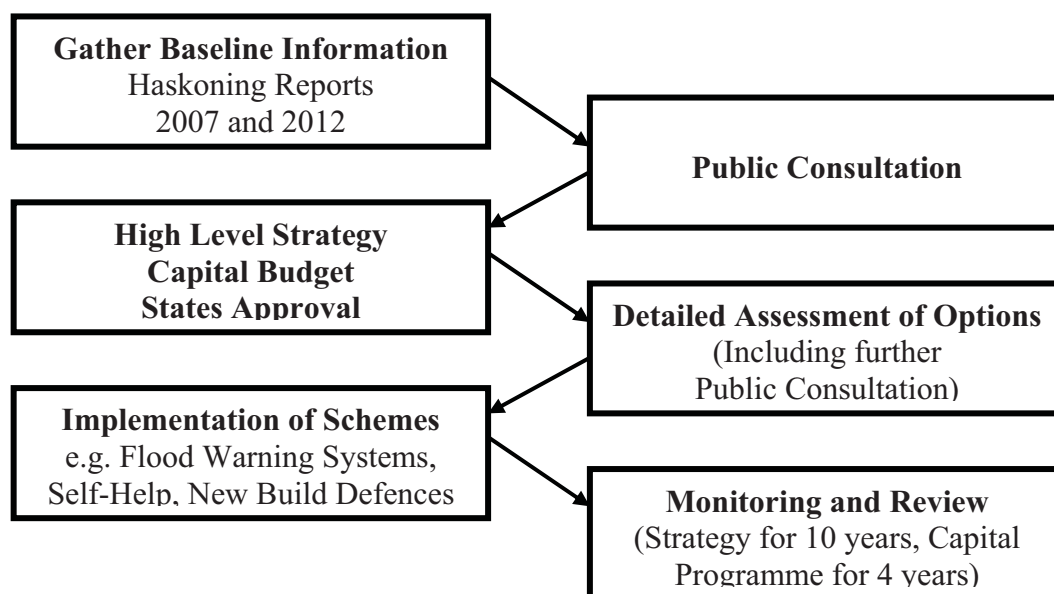
It is recommended that the strategy is reviewed after 10 years to take account of any changes that happen over time.

### 3. Approach to Developing a Strategy

3.1 In examining best practice from other jurisdictions, the following common set of principles applies to the development of flood management strategies:

- Risk based approach – deal with the areas of greatest risk first;
- Proportionate assessment – the time/resources spent gathering information on areas of greatest risk versus time/resources that could be spent on implementing action requires the level of information be appropriate to the level of decision making;
- Precautionary approach – given the serious consequences that can arise from flooding and levels of uncertainty in climate change predications, it is considered prudent to err on the side of caution;
- Flexibility – allow increase in understanding and information to come forward on climate change and react to it;
- Early and meaningful political and public consultation.

3.2 Taking these principles on board, the CDPG settled upon a programme for the delivery of this Report and the further actions that should be taken, based upon the following:



3.3 It soon became clear that political and public consultation on the flood studies report would be an important element in establishing a credible system of prioritisation and evaluation for any recommendations that may emerge from the Group's work.

3.4 Following publication in July 2012, the Environment Department:

- (a) Engaged a spokesperson from Royal Haskoning to present the findings of the Flood Studies Reports to an invited audience of the Island's elected

representatives and others with a direct interest in the well-being of the Island's coastal defences.

- (b) Set up a small exhibition of the contents of the report within St Sampson's High School and invited members of the public to view the displays, consult the report and discuss the contents with members of staff concerned with the maintenance of the coastal defences.
- (c) Commenced a period for feedback (from all interested parties and individuals) to last until 31<sup>st</sup> October 2012.

3.5 Both the closed and open presentations were well attended and attracted many comments and questions. These were generally answered within the forums by either the representative from Haskoning or employees of the States of Guernsey.

#### 4. **The Haskoning Report 2007 and the Haskoning Flood Studies Reports 2012**

4.1 All of the Island's coastal defences were inspected and evaluated between 1999 and 2007.

4.2 In March 2007 Haskoning report published an update on an earlier examination of coastal defences, undertaken by Posford Duvivier<sup>1</sup> and published in 1999. The Haskoning report drew on the results of biannual beach surveys produced since the Posford Duvivier study and included additional considerations such as the prospects for climate change and projected rising sea levels. The study covered the entire coastline and identified that no major works would be necessary in the next five years; however, several areas were singled out as requiring special attention due to flood risks and it was recommended that these areas be given priority for further investigation. It was in response to this recommendation that Flood Studies reports for seven particular zones were commissioned, developing the survey data collected by Haskoning into a flood mapping model. These were completed in March 2012 and the report published in July 2012.

4.3 In the reports, recommendations were provided in respect of each of the coastal units and for each of the areas examined in the flood studies reports 2012 Haskoning provided a table of the strategic options, setting out the benefits and disadvantages of the various suggested ways forward. Present value costs of the options are also provided. However only the economic impacts of flooding were assessed (see Appendix Two for details of Haskoning's findings). Additionally, a priority for action (on the scale of *Low, Medium, High*) was allotted for every identified issue.

4.4 Most of these repairs concerned extended maintenance or infrastructure upkeep and it followed that the Environment Department put in place urgent repairs for all the areas allotted a *high* priority for remediation.

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<sup>1</sup> Haskoning UK Limited formerly operated under the name of Posford Duvivier



- 4.5 In addition, options were presented for enhancing and improving the installations and natural features that form the Coastal Defence Units (DUs).
- 4.6 This information reinforces our knowledge and understanding of those areas of Guernsey most vulnerable to coastal flooding and, notwithstanding that it provides informed detail on the extent of any inundation, there is still a need to put in place a mechanism for making decisions on specific actions that might be taken. This is particularly the case in respect of the different scenarios that are presented to demonstrate *flood risk*.
- 4.7 Flood risk is a combination of the likelihood of flooding and the potential consequences arising. The likelihood of flooding is normally defined as ‘*return periods*<sup>2</sup>’ or the percentage probability of a flood of a given magnitude or severity occurring or being exceeded in any given year. For example, a 1% probability indicates the severity of a flood that is expected to be exceeded on average once in 100 years. This does not mean that if such a flood occurs it will not re-occur for another 100 years. It means that it has a 1% chance (1 in 100) of happening in any one year. The greater the number of years identified, the more intense the flood will be.
- 4.8 The return periods considered by Haskoning Reports are:
- 1 in 10 years
  - 1 in 50 years
  - 1 in 100 years
  - and
  - 1 in 250 years
- 4.9 Evidently, a 1 in 250 year event will wreak greater devastation than a 1 in 10 year event.
- 4.10 Using the land contours for areas that are prone to inundation, the flood studies report illustrates the extent to which flood waters might move inland on the basis of different events likely to take place at some time within the given return periods.
- 4.11 In line with best practice and for various reasons which are explained further in this Report (see part 6 – *Evaluation Criteria and Methodology*) the CDPG settled upon presenting proposals for action and priority using the 1 in 100 years scenario.
- 4.12 As has been mentioned, the flood studies reports take account of estimations for sea level rises as a result of climate change. These estimates are provided by the UN Intergovernmental Panel on Climate Change (IPCC Fourth Assessment Report: Climate Change 2007) and are separated into different *epochs*. This term is defined in the glossary (see Appendix One) as follows:

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<sup>2</sup> Return Period: an estimate of the likelihood of an event, it is the average recurrence interval over an extended period of time.

*Time periods used for assessment of risk due to climate change. In the Haskoning Report 2012 four epochs have been modelled – (in the) Present Day, (in) 20 years, 50 years and 100 years (time).*

For the purposes of this report estimations and calculations have been based upon the 20 year epoch (up to 2031), when there is a greater certainty of the predicted data and within a realistic horizon for any resultant projects before the next review of the Island's coastal defences.

## 5. **Flood Risk Areas**

### 5.1 *Flood Risk in Guernsey*

- 5.1.1 It should be made clear that coastal flooding has characteristics that demand different response mechanisms from those used in river or fluvial flooding situations. The following sets out some of the contrasting aspects between coastal and fluvial flooding:

#### 5.1.2

##### Coastal Flooding

Results from short periods linked to high tides

Subsides quickly

Usually depends upon a combination of factors

Can be forecast days in advance

Is indiscriminate to land formations predominantly flooding land in proximity to the sea, rather than just low lying areas

Is more amenable to permanent defences

Is often confined (due to the absence of a flood plain)

##### Fluvial (River) Flooding

Results from extended periods linked to precipitation

Remains in place for extended periods of time

Usually depends upon a single factor

May occur without advance notice resulting in flash flooding

Only affects areas liable to flooding

Is less amenable to permanent defences

Is often unconfined

- 5.1.3 It should be recognised that this report is concerned with coastal defences and their effectiveness in mitigating the potential effects of inundation from the sea. There may also be other issues for flooding in Guernsey, including the consequences of excessive rainfall, overflowing ditches and streams, overloaded sewage systems, etc. Measures to address these and other flooding issues are not dealt with in this report.

- 5.2 Responding to a flood risk can take various forms from do nothing (which, essentially, requires management of flooding as it takes place) to the construction of extensive works for the prevention and mitigation of the perceived risk. There are four broad aspects to managing flood risk as follows and each has been considered in formulating the recommendations in this Report:

- Make preparations, such as: install early warning systems, develop protection devices and temporarily move from the area at risk;
- Adapt the environment by the installation of flood resilience measures, modified construction methods and improved drainage systems, etc;
- Improve and develop existing defences such as flood protection walls, barriers, etc;
- Construct new defences.

- 5.3 In order to identify areas under threat of flooding in Guernsey, Haskoning took two broad variables. They estimated the volume of water resulting from different scenarios presented by the return periods (both in volume and flow) and then mapped this onto the land contours for areas adjacent to the identified coastal defences. The outcome maps have been very helpful for illustrating the immediate effects of inundation, but they do not tell the complete story.
- 5.4 For example, the maps give a clear view of which parts in the vicinity will be occupied by flood waters, but they do not give an indication of depth, damage potential, the quality of drainage and how the overall infrastructure will be affected. It may be, for example, that the wider impact of a 1 in 100 year event is all the more far-reaching because a vital utility, such as an electricity sub-station, is rendered inoperable leaving large numbers of people without power. Equally, a large area of agricultural land that is temporarily inundated is unlikely to have a direct effect upon the wider community and might be expected to recover naturally in a short period of time.
- 5.5 Clearly, it is not possible to assess all the impacts of a flood situation in terms of potential damage and costs; it would take a significant commitment to assess every economic factor relevant to Guernsey in order to produce a financial profile of flood damage for the Island and this is a study beyond the scope of this project. It became evident, therefore that the Group would have to devise a flood risk assessment scheme that would take account of potential damage and costs and, at the same time, answer the questions that are outstanding from the Haskoning findings.
- 5.6 Following further research the CDPG devised a scheme based upon land parcels as identified for the purposes of rating by the Cadastre. In essence, this involved identifying all land parcels (as designated by the Cadastre rating system) within the floodplains marked out by the Haskoning contour maps. These were then rated according to the perceived impact their loss would have on the Island community as a whole. For example, the impact on a school or hospital would be greater than that of an individual dwelling.

## 6. **Evaluation Criteria and Methodology**

### 6.1 *Return Periods*

- 6.1.1 As mentioned previously (see paragraph 4.7), the Flood Studies reports were compiled on the basis of a range of different *return periods*. An early task for

the CDPG was to establish which of the return periods should be used as the most appropriate for producing the damage assessment reports that would inform any recommendations for alterations to the existing sea defences.

- 6.1.2 It is evident that the bulk of Guernsey's purpose built sea defences were constructed in the nineteenth and early twentieth century. Some, such as the Town and St Sampson harbours, were put in place for commercial reasons relating to the on and off-loading of goods and passengers and were not designed specifically for protection against inundation. Others, including some works at Cobo Bay and Vazon Bay, and the anti-tank wall erected along the northern part of Pembroke Bay, were also never intended as sea defences. Over time however, it has become accepted that this is the purpose they serve and, for many people, it has become confirmed reasoning that the Island should continue to maintain them as barriers against inundation.
- 6.1.3 This poses a difficulty for any long term assessment of the Island's sea defences overall as account must be taken of the following factors:
- Many of the existing sea defences were not constructed for that specific purpose and, therefore, have not been designed with sea defence in mind;
  - Those permanent barriers that were erected for defence against inundation from the sea were built without access to modern computer models which can predict the likely actions of the sea and the changing nature of the threat it poses for flooding. There are questions, therefore, regarding the value of developing and maintaining structures that may not be sited in the optimum locations or best suited for purpose;
  - The latest scenarios for climate change and predictions for increases in sea levels;
  - Modern construction projects are subject to much greater scrutiny for their visual, environmental, economic and social impacts than was the case when Guernsey's sea defences were originally created;
  - The amenity and commercial access to the coastline.
- 6.1.4 Within the *Local Area Reports and Appendices* (the supplementary information to the Flood Studies reports), Haskoning present formulated details regarding the expectations for flooding across return periods for 1, 10, 50, 100 and 250 year periods. Tabulated information indicates the water volumes that are likely to result from single incidents within the given time parameters. The following is a reproduction of the table for St Sampson Harbour (it is listed as *Table 5.2* on page 10 of the study)<sup>3</sup>:

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<sup>3</sup> Note. Several tables are included in this report and are numbered for reference purposes. The two tables above and overleaf, taken from the Haskoning Report, are not numbered in the sequence of tables but are included as quoted elements within the paragraph 6.1.4.

**Table 5.2. Present Day Flows over the back of Saint Sampson Harbour.**

| Return Period (yrs)           | 1 | 10   | 50     | 100    | 250     |
|-------------------------------|---|------|--------|--------|---------|
| Volume (m <sup>3</sup> )      | 0 | 114  | 15,000 | 41,000 | 104,000 |
| Peak Flow (m <sup>3</sup> /s) | 0 | 0.17 | 9.98   | 17.03  | 26.55   |
| Duration (hrs)                | 0 | 0.3  | 0.75   | 1.7    | 2.2     |

Accompanying this, on page 11 of the study, is *Table 5.3*, as follows:

**Table 5.3. Properties currently predicted to be at risk of flooding for different return periods**

| Return Period (yrs) | Number of Properties At Flood Risk |
|---------------------|------------------------------------|
| 1 in 1              | 0                                  |
| 1 in 10             | 2                                  |
| 1 in 50             | 124                                |
| 1 in 100            | 246                                |
| 1 in 250            | 355                                |

Upon examination of these figures it is evident that there is little benefit to be gained from redevelopment of the defences at St Sampson's Harbour in order to protect against expected flooding from 1 in 1 and 1 in 10 year events. It is also apparent that the figures for 1 in 250 years are, by the terms of the report itself, extreme events which would not result solely in a flood problem for the Island and, should effort be put into erecting suitable defence mechanisms, would require a disproportionate level of funding compared with the probability of the event occurring. This leaves, therefore, the option to proceed on the basis of either the 1 in 50 year return period or the 1 in 100 year period.

- 6.1.5 When considering the appropriate choice of return period for the assessment of flood risk areas the CDPG adopted the industry standard of a 1:100 year event as a precautionary approach. The CDPG also considered the appropriate return period for the design of future coastal defence projects. Advice was taken from Haskoning that a 1:50 year return period would provide protection against a risk that the defence would probably be breached only once in a lifetime for the majority of the community. The majority of events would be resisted by the defences designed for a 1:50 year return period, so that the community protected by the defences appreciate the benefits, but remain aware of the risks, as the infrequent breach, more likely to cause damage to property rather than loss of life, reduces the temptation to develop properties in higher risk areas. The costs of designing to resist the more extreme events rise exponentially while providing a false sense of security, which is likely to result in greater loss when a breach does occur. Of course, once a breach has occurred, property owners must look to protect their own interests using localised temporary defences (see section 9.2) and taking other measures as appropriate.

- 6.1.6 For these reasons the CDPG agreed to use the 1 in 100 years return period as its yardstick for evaluation in regard to the prioritisation of the Island's defences and the 1 in 50 years return period for project design, taking a conservative and prudent approach, but not the most extreme scenario.

## 6.2 *Flood Risk Area Parameters*

- 6.2.1 DEFRA identifies a set of general principles within its guidance document Flood and Coastal Erosion Risk Management (FCERM) which are based upon the financial costs resulting from the *Economic, Social and Environmental* impacts of flooding. The CDPG has taken these principles and adapted them by the introduction of weighted analysis based upon spatial parameters; these are designed to reflect the relative impacts of economic, social and environmental factors in the Guernsey context.
- 6.2.2 In addition, the DEFRA guidance takes account of National, Regional and Local impacts resulting from flooding incidents. It has not been possible to assimilate these directly into the Guernsey context and, to provide a more viable alternative, the CDPG has assessed the consequences of flooding upon the operations of the utility services as a measure of the impact on the Island as a whole.
- 6.2.3 A major investment for the States of Guernsey in recent years has been the Digimap GIS facility that provides an extensive record of land utilisation in the Island. The CDPG have utilised this facility and the associated TRP (Tax on Real Property) data (see Appendix Four) to categorise the properties bounded by the flood areas generated from the Haskoning flood studies model.
- 6.2.4 By adapting the DEFRA methodology and developing an evaluation process utilising the spatial data on a weighted basis the CDPG has produced a balanced assessment of the areas under examination, affording the opportunity to make reasoned comparisons.
- 6.2.5 As mentioned previously (see 2.3 above) Haskoning 2012 identified areas subject to potential flooding; the report then evaluated the damages costs of the various scenarios based upon the number of affected residential units, giving a financial representation of flood impact. While this method provides a basis for comparison, it does not address the multiple factors employed by DEFRA and considered in the CDPG analysis.
- 6.2.6 To overcome this, the CDPG retained the use of the residential unit as a base counter (with a value of 1) in its spatial modelling and introduced a system of weighting factors for other property uses (see Table 1). This same basis has been considered as representative of a single family unit for social impact effects.



- 6.2.7 By applying these weightings the CDPG was able to create specific representations of land use (residential, commercial, agricultural, etc), community value and the number of family units within the areas identified by Haskoning as at risk to flooding. These calculations provide a measure of the social and economic impact on the affected areas once the TRP and weighting coefficients are applied.
- 6.2.8 In its assessment of the environmental criteria the CDPG considered habitats which are listed as very rare, rare or common. Then, within an Island context, whether those habitats are special or could be considered special, in order to generate high, medium and low priority categories. The Table in Appendix Five identifies which habitats are grouped in each category. Consideration is also given in the categorisation to the effects of flooding on the habitat. For example, while salt marshes are quite rare in Guernsey they might actually benefit from coastal flooding. Also, some areas of low grade grass land are likely to show little long term damage as a result of the short term flooding expected from any coastal inundation. As a consequence the weighting for this low priority habitat is taken as 0.1.
- 6.2.9 As well as the natural environment, protected buildings have been included in the Environmental criteria. Only the floor areas of the buildings have been evaluated so as to reflect any impact on the Island's cultural heritage should these buildings flood.
- 6.2.10 Environmental impact is evaluated in a similar way to the Social and Economic factors with weightings calculated on the basis of habitat priority, plus a separate factor for the presence of protected buildings. Readings for the different types of habitat are determined from the survey data sets compiled for the Environment Department's 2010 Habitats Survey<sup>4</sup> and are categorised according to Low, Medium and High priority; historic building data are updated as part of the day to day responsibilities of the Department.
- 6.2.11 Tables 1 and 2 illustrate the weightings:

**Table 1 – Social & Economic Property Weighting per sq m**

| Reference | Category                | Weighting | Impact Influence     |
|-----------|-------------------------|-----------|----------------------|
|           | Agricultural Land       | 0.1       | Economic only        |
|           | Residential             | 1.0       | Predominantly Social |
|           | Commercial / Industrial | 10.0      | Social and Economic  |
|           | Community               | 50.0      | Social               |
|           | Utility                 | 500.0     | Social and Economic  |

<sup>4</sup> The 2010 Habitats Survey was carried out on behalf of the Environment Department by Environment Guernsey Ltd.

**Table 2 - Environmental Weightings**

| <b>Reference</b>     | <b>Category</b>     | <b>Weighting</b> | <b>Impact Influence</b> |
|----------------------|---------------------|------------------|-------------------------|
| Habitat              | Low Priority        | 0.1              | Environment             |
|                      | Medium Priority     | 1                | Environment             |
|                      | High Priority       | 5                | Environment             |
| Historic Environment | Protected Buildings | 5                | Environment             |

- 6.2.12 The habitats were weighted according to importance and environmental significance in order to generate effective flooded areas which were then combined with the flood area data obtained from the Social and Economic analysis. When compared to the social and economic factors the environment weightings relate to the local area affected by flooding only, while the other factors are likely to impact on the community outside the flood risk area under consideration. As a consequence the social and economic factors are an order of magnitude greater to reflect this wider influence.
- 6.2.13 In order to establish that the adopted weightings had not unduly influenced the ranking process, and to ensure that emphasis was created in the model to reflect the likely impacts of individual building and land parcel uses, the CDPG undertook a sensitivity analysis.
- 6.2.14 Three weighting scenarios A, B and C were applied to the categories of areas within the flood risk area analysis, as set out in Table 3 below. Applying these weightings resulted in the individual indicators for particular flood risk areas to change rank order, which is to be expected. If an area has significantly more “environmental content” this will influence the rank order as the disparity in weightings increase. Evidently, the overall effective flood risk area scores increase as the weightings increase, but the overall ranking of the flood risk areas, as determined by the combined scores for each of the weighting scenarios, generates a similar rank order independent of weighting magnitude. Consequently, the CDPG was satisfied that no unintended bias had been created by the weighting factors and proposed using the **Scenario B** weightings for the evaluation model.



**Table 3 – Weighting Scenarios**

| Type of Indicator    |                                | Weighting Scenarios |     |      |
|----------------------|--------------------------------|---------------------|-----|------|
|                      |                                | A                   | B   | C    |
| <b>Economic</b>      |                                |                     |     |      |
| Agriculture          | Land                           | 0.1                 | 0.1 | 0.1  |
| Commercial           | Buildings                      | 5                   | 10  | 50   |
|                      | Land                           | 5                   | 10  | 50   |
| Utility              | Buildings                      | 25                  | 500 | 1000 |
|                      | Land                           | 25                  | 500 | 1000 |
| <b>Social</b>        |                                |                     |     |      |
| Residential          | Buildings                      | 1                   | 1   | 1    |
|                      | Land                           | 1                   | 1   | 1    |
| Community            | Buildings                      | 10                  | 50  | 100  |
|                      | Land                           | 10                  | 50  | 100  |
| <b>Environment</b>   |                                |                     |     |      |
| Habitat              | Low Priority                   | 0.1                 | 0.1 | 0.1  |
|                      | Medium Priority                | 0.5                 | 1   | 5    |
|                      | High Priority                  | 2.5                 | 5   | 10   |
| Historic Environment | Protected Buildings weightings | 2.5                 | 5   | 10   |

6.2.15 Table 4 sets out the overall scores and indicative rankings using **Scenario B**.

**Table 4 – Overall Scores and Indicative Rankings**

| Type of Indicator    |            |            |                 |         |                                 |          |               |          |
|----------------------|------------|------------|-----------------|---------|---------------------------------|----------|---------------|----------|
| Economic             |            | St Sampson | Belle Greve Bay | Cobo    | Baie de Port Grat and Pequeries | Bordeaux | Rocquaine Bay | Pembroke |
| Agriculture          | Land       | 633        | 490             | 83      | 137                             | 150      | 162           | 10       |
| Commercial           | Properties | 918,830    | 839,400         | 65,660  | 165,140                         | 72,810   | 39,210        | 320      |
|                      | Land       | 19,440     | 17,370          | 2,860   | 30,390                          | 0        | 660           | 0        |
| Utilities            | Buildings  | 8,425,500  | 2,518,500       | 54,000  | 0                               | 10,500   | 0             | 0        |
|                      | Land       | 252,500    | 303,000         | 2,500   | 0                               | 0        | 0             | 0        |
|                      | sub-total  | 9,616,903  | 3,678,760       | 125,103 | 195,667                         | 83,460   | 40,032        | 330      |
| Social               |            |            |                 |         |                                 |          |               |          |
| Residential          | Buildings  | 42,450     | 86,030          | 39,773  | 11,395                          | 7,271    | 10,193        | 0        |
|                      | Land       | 844        | 289             | 474     | 320                             | 196      | 226           | 0        |
| Community Facilities | Buildings  | 30,500     | 746,500         | 420,050 | 30,400                          | 5,800    | 13,100        | 0        |
|                      | Land       | 181,350    | 152,450         | 181,750 | 119,150                         | 68,050   | 21,050        | 15,700   |
|                      | sub-total  | 255,144    | 985,269         | 642,047 | 161,265                         | 81,317   | 44,569        | 15,700   |

| Environmental        |                     |            |           |         |         |         |         |        |  |
|----------------------|---------------------|------------|-----------|---------|---------|---------|---------|--------|--|
| Habitat              | Low Priority        | 6,649      | 11,525    | 7,741   | 4,678   | 6,169   | 6,118   | 59     |  |
|                      | Medium Priority     | 81,301     | 19,695    | 17,884  | 17,915  | 75,860  | 2,849   | 239    |  |
|                      | High Priority       | 141,075    | 215,090   | 72,565  | 118,736 | 100,016 | 172,976 | 421    |  |
| Historic Environment | Protected Buildings | 1,195      | 1,725     | 230     | 0       | 5,500   | 0       | 0      |  |
|                      | sub-total           | 230,220    | 248,035   | 98,420  | 141,329 | 187,545 | 181,943 | 719    |  |
|                      | Total               | 10,102,267 | 4,912,064 | 865,570 | 498,261 | 352,322 | 266,544 | 16,749 |  |
|                      | Indicative Ranking  | 1          | 2         | 3       | 4       | 5       | 6       | 7      |  |

6.2.16 In order to establish that the adopted weightings did not unduly influence the ranking process and to ensure that emphasis was created in the model to reflect the likely impacts on individual buildings and land parcel uses, the CDPG undertook a sensitivity analysis (see Table 5, below).

**Table 5 - Sensitivity Analysis Rankings for each Weighting Scenario**

| Area                            | Environmental Impact |   |   | Economic Impact |   |   | Social Impact |   |   | Total Impact |   |   |
|---------------------------------|----------------------|---|---|-----------------|---|---|---------------|---|---|--------------|---|---|
|                                 | A                    | B | C | A               | B | C | A             | B | C | A            | B | C |
| St Sampson                      | 2                    | 2 | 1 | 1               | 1 | 1 | 3             | 3 | 3 | 1            | 1 | 1 |
| Belle Greve Bay                 | 1                    | 1 | 3 | 2               | 2 | 2 | 1             | 1 | 1 | 2            | 2 | 2 |
| Cobo and Saline Bay             | 6                    | 6 | 6 | 4               | 4 | 4 | 2             | 2 | 2 | 3            | 3 | 4 |
| Baie de Port Grat and Pequeries | 5                    | 5 | 5 | 3               | 3 | 3 | 4             | 4 | 4 | 4            | 4 | 3 |
| Bordeaux Harbour                | 3                    | 3 | 2 | 5               | 5 | 5 | 5             | 5 | 5 | 5            | 5 | 5 |
| Rocquaine and L'Eree            | 4                    | 4 | 4 | 6               | 6 | 6 | 6             | 6 | 6 | 6            | 6 | 6 |
| Pembroke Bay                    | 7                    | 7 | 7 | 7               | 7 | 7 | 7             | 7 | 7 | 7            | 7 | 7 |

6.2.17 As is evident, the overall rankings do not alter greatly after the sensitivity analysis although Cobo/Saline Bay is ranked sixth in the Environmental factors but comes out third or fourth overall, alternating with Baie de Port Grat/Pequeries in the total impacts. This suggests that the weightings have not influenced the overall ranking significantly, but the middle order areas do reverse rank when the weighting differentials are increased significantly, although top and bottom ranked areas remain unchanged.

6.2.18 The diagrammatic representations of the flood risk areas (see accompanying pack) provide a visual representation of the number and type of buildings in each area and the land usages. The Project Group were satisfied that **Scenario B** gives sufficient

discrimination between factors to provide a robust evaluation model for both prioritisation of flood risk areas and project evaluation purposes.

### 6.3 *Flood Risk Area Analysis*

- 6.3.1 Each of the identified areas has an associated area of impact for storm events with a probability of 1:1, 1:10, 1:50, 1:100 and 1:250 year return periods. The CDPG has used the 1:100 year return period flood risk area for each of the seven areas combined with the property and environmental weightings to create a combined effective flooded area for comparison. The larger the effective flooded area the greater the impact of flooding in the area.
- 6.3.2 The use of spatial comparators facilitates a project level benefits analysis. Initially the evaluation provides a strategic prioritisation for the order in which the individual areas at risk are ranked for the development of projects to mitigate those risks. The effective parameters of the proposed projects are tested in the flood model to establish the extent of relief which an individual project can provide for that area. Issued with this report is a colour print pack of the Flood Risk Area maps.
- 6.3.3 The use of a robust and scalable evaluation process provides a consistent approach for the prioritisation of coastal defence projects over the longer term. It is recognised that major marine construction projects must be fully justified in the current economic environment.

## 7. **Appraisal and Analysis of Flood Risk Areas**

Based on the 1:100 year flood event the flood risk areas have been generated by the flood risk model developed by Haskoning especially for this project. The following paragraphs compare the assets at risk in the individual areas and the various impacts on the proximate communities.<sup>5</sup>

### 7.1 *St. Sampson's Area (CU18)*

- 7.1.1 Map FRA1 shows the estimated extent of flooding from a 1:100 year event in the St Sampson's Harbour area. This flood risk area covers approx 36 hectares of land and encompasses over 800 properties and includes 3 Protected Buildings.
- 7.1.2 Overall, the analysis shows a significant impact from flooding. The Project Group considers the potential impact is significant to critical infrastructure, specifically Guernsey Power Station, and a 1:100 year event would result in major disruption to the economy of the Island. It is also important to consider the potential effect upon

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<sup>5</sup> The maps referred to in this section are contained in a separate pack, a copy of which has been given to each States Member. Further copies are available from the Environment Department.

the key industrial area of the Saltpans and the major redevelopment area of Leale's Yard, planning permission having been granted for both developments. In terms of environmental effects, the analysis includes the impact on areas of saltmarsh, which can sometimes be beneficial and which are likely to recover quickly after any flood event.

- 7.1.3 The effective flood area follows the contours of the Braye du Val which has previously been drained and remains low lying. The flood area bisects the Island, affecting traffic flows across the Bridge and the Crossways junction of La Route Militaire and Braye Road; access to the north of the Island would be via La Route de L'Ancrese or Ville Baudu and traffic disruption could be significant.

## 7.2 *Belle Greve Bay Area (CU19)*

- 7.2.1 Map FRA2 shows the estimated extent of flooding from a 1:100 year event in the Belle Greve Bay area. This flood risk covers approximately 43 hectares of land and encompasses over 1,273 properties, five of which are Protected Buildings; it is the largest single area of all those examined to be affected by flooding.
- 7.2.2 Of note within the various factors, the Project Group considers the potential impact affects a significant number of residential properties and commercial facilities. In addition, within the area there is land designated as a strategic reserve for housing to be developed as and when required to meet the Island's future housing needs (a Housing Target Area). From an economic perspective, the impact on the inter-harbour route connecting the Island's two main ports is noteworthy, although alternative routes across the Island for transport links are well established. The impact on utilities within the area could cause significant disruption to the provision of several services. For example, the main electrical facilities for the cable link and the Island's primary sewage pump station are both located in this area together with associated distribution cables and pipe work; there is, therefore, the potential for much greater disruption than may be experienced by just the properties within the flood area. It is also noted that the flood area just reaches the Island gas distribution facility in Admiral Park. In environmental terms, the potential impact on high priority habitats around Belle Greve Bay is significant.

## 7.3 *Cobo and Saline Bay (CU 10)*

- 7.3.1 This flood risk area (see map FRA3) covers approximately 23 hectares of land and encompasses 563 properties, one of which is a Protected Building. This area has to deal with the highest volume of water passing across the defences for a 1:100 year event, due in part to the length of defence in this area, but mitigated by the sump provided by the playing fields.

- 7.3.2 The Project Group considers the potential impact is significant to residential and community property including affecting a school and playing fields. The Group recognises that this area is a popular destination for Islanders and tourists alike. From an environmental perspective, while a large area of land is affected, this mainly contains low priority habitats. The impact on transport is limited to a short length of the coast road from La Route de Cobo to La Route de Carteret although the most direct diversion via La Rue de Bouverie is also affected.

#### 7.4 *Baie de Port Grat and Pequeries (CU 11)*

- 7.4.1 This flood risk area (see map FRA4) covers approximately 13 hectares of land and encompasses 147 properties.
- 7.4.2 The Project Group considers the potential impact is significant to commercial property with close proximity to Les Vardes quarry. Much of the affected area is currently in agricultural or horticultural use, which primarily represents a risk to crops (should a flood event occur during the growing season). The impact on transport would be limited, forcing traffic onto inland roads for the period that La Route des Pecqueries is subject to flooding.

#### 7.5 *Bordeaux Harbour Analysis (CU17)*

- 7.5.1 Map FRA5 shows the estimated extent of flooding from a 1:100 year event in the Bordeaux Harbour area. This flood risk area covers approximately 6 hectares of land and encompasses 49 properties, 7 of which are Protected Buildings.
- 7.5.2 The Project Group considers the potential environmental impact is significant. There are habitats of high to medium priority for protection which would be affected by flooding in this area and it contains the highest number of Protected Buildings of all the seven areas that have been examined. The impact on the Island's transport infrastructure would be minimal other than in the local area.

#### 7.6 *Rocquaine and L'Eree Analysis (CU3)*

- 7.6.1 This flood risk area (see map FRA6) covers approximately 15 hectares of land and encompasses 118 properties, none of which are Protected Buildings.
- 7.6.2 The Project Group considers the potential environmental impact is significant. There are habitats of high to medium priority for protection that would be affected by flooding in this area. Inundation would impact most significantly on the low lying areas located behind the coast road (which is on higher ground). The impact on transport is likely to be limited to disruption during over topping, which is a frequent issue for local residents during high tides with south westerly winds, but in Island terms the disruption would be minimal.

## 7.7 *Pembroke Bay (CU 14)*

7.7.1 This flood risk area (see map FRA7) covers approximately 0.3 hectares of land and encompasses a single property.

7.7.2 In comparison to the other areas, the Project Group considers the potential impact in this area is not significant from either an environmental, social or economic perspective. Although the existing beach kiosk is not within the flood risk area identified, the Group does recognise the potential impacts on trade for this commercial enterprise as a result of flooding of the nearby beach. It is of interest that, despite views to the contrary, the risk of flooding in this area is minimal and limited to low lying areas of the coastal fringe.

## 8. **Priorities and Projects**

### 8.1 *Prioritisation of Flood Risk Areas*

8.1.1 This Report sets out to establish a robust method for the evaluation and prioritisation of the areas at risk of inundation from coastal flooding. It was evident during the consultation phase of this project that the majority of interested parties had concerns for the risk of flooding for their own property, rather than the impact on the community in general, which is the focus for the States of Guernsey. The evaluation process that has been used considers Environmental, Social and Economic factors in order to establish a broad and balanced view of the potential impact of flooding.

8.1.2 It is imperative that the evaluation process is well understood and accepted as a fair assessment of the potential risks. Wherever it is recommended that work is progressed as a priority there will be Islanders who are dissatisfied because their property is not covered by the proposed works. This is inevitable, but it is important that those areas identified as a priority are progressed with confidence in order to establish the best value solution for those areas identified as at greatest risk.

8.1.3 Coastal defence works are rarely “off the shelf” solutions for single, simple issues. There is often a number of options for the type of defence to address the complex nature of the problem, from hard structures to more extensive, but less intrusive offshore reefs or groin constructions. The most appropriate solution may require hydraulic modelling or even tank testing to refine and prove the design for any particular location. The cost of this work can only be justified if the project team has reasonable certainty that the area under consideration is the priority concern.



## 8.2 *Project Evaluation*

- 8.2.1 Once the flood risk area has been prioritised the options for mitigating the impact of future floods can commence. No flood defence will ever protect against all eventualities. A balance has to be achieved between the frequency for potential damage and impact of any solutions to mitigate that damage.
- 8.2.2 The design of coastal structures needs to follow a prudent design approach with the risk of breach of the structures once in a lifetime, i.e. a 1:50 year return period, if functional and financial considerations are to be optimised. The more extreme events associated with a 1:100 or 1:250 year return periods could result in loss of life if a breach occurs this infrequently, as the community is living with a false sense of security and would tend not to be prepared for this infrequent event. The relatively more frequent breaches associated with a 1:50 year return period design encourages the community to adopt strategies to mitigate the impact of flooding. The level of impact is more likely to be damage to property rather than loss of life. The Review of the Island's Development Plans, currently being undertaken by the Environment Department, will utilise the Flood Risk Area data to ensure that developments in areas at risk take account of the likely flood risks.
- 8.2.3 When the impact of climate change is introduced into the considerations it makes even greater sense to protect for likely events in the short term, with greater certainty of data projections, and accept that future maintenance and adaptation of defences will be required as our understanding of the impacts of any climate change is proven or not.
- 8.2.4 The flood risk model can be used to evaluate the benefits of individual projects proposed for a particular location. Simply by introducing the structures proposed into the model an alternative effective flood area can be generated and evaluated using the same criteria and weightings used to prioritise the flood risk areas. This will enable the Environment Department to compare the benefits of individual schemes against the likely impact of flooding which will occur.
- 8.2.5 As projects are developed the original effective flood risk areas will reduce and the focus for subsequent defences will be prioritised based on the evolving new flood risk areas. Almost certainly in the early phases of the programme of coastal defences this will result in proposals for projects in different flood risk areas.

## 9. **Monitoring, Maintenance and Adapting to Flooding**

### 9.1 *Monitoring*

- 9.1.1 A great deal of what is put forward in Haskoning 2007 and Haskoning 2012 comes from modelling the wave actions at different points around the Island's coastline. This information is combined with tidal data and evaluation of the coastal

infrastructure to identify points of vulnerability and the quality of the defences that stand to protect areas beyond the shoreline. Other, supplementary information is provided by outside agencies (such as the IPCC) and is concerned with associated factors such as climate change and rising sea levels.

- 9.1.2 It is this last element that is of most interest for the CDPG. If there is a severe storm with commensurate tidal and surge conditions then it might be expected that there will be overtopping of sea defences and flooding might result. It is unreasonable and impractical to put in place defence installations designed to meet every such occurrence; however, if there is a rise in sea levels that renders present structures inadequate to meet minimum requirements, then there is a case for re-construction.
- 9.1.3 While the flood studies evaluation has utilised a static model to predict the likely impact of flood events, future reports on the performance of coastal defences and indeed improved public warnings of extreme events will require a more dynamic model. The development of the dynamic model will require more reliable and extensive data collection around the Island, so that real time data can inform the model to predict where flooding is most likely, not simply the east or west coast dependent upon wind direction, as is currently the case. The dynamic model will combine meteorological, tidal and wave data to inform the risk status of defences and individual bays around the Island.
- 9.1.4 There is, therefore, a separate project for introducing a structured monitoring system around Guernsey's coastline. This involves the location of monitoring equipment, the collection and archiving of data and the production of output reports that can be used for assessing current and future needs for coastal defences.
- 9.1.5 It is anticipated that this project would require an initial input of approximately £200,000 and that revenue requirements in subsequent years would be in the order of £10,000 per annum. The initial capital sum has been included within the £20 million capital bid submitted as part of the capital prioritisation process. The small revenue cost will be met from the Department's revenue budget.

## 9.2 *Preparing and Adapting to Flooding*

- 9.2.1 This report provides a structured examination of the options for the States of Guernsey as the central body with responsibility for the well-being of the Island's coastal defences. It has been compiled with a view to striking a careful balance between what can be done and what should be done to ensure that the threat of inundation from sea waters is managed as efficiently and effectively as possible.

- 9.2.2 It is understood that an important part of this balance is the extent to which the States of Guernsey are encouraged to dedicate scarce resources for addressing the issues that have been identified. Whatever course may be chosen, it will be a substantial draw on public finances.
- 9.2.3 This sobering assessment should serve to remind all Islanders that government expenditure on coastal defences can only be justified if there is a general benefit for the economic well-being of the Island and for significant numbers of the community, accepting all the time that certain individuals will gain a particular benefit from improvements and additions to Guernsey's sea defences.
- 9.2.4 This general benefit is observed in the retention of amenity value through the maintenance of a sound infrastructure that facilitates business, leisure and private activities, including transportation of people and goods.
- 9.2.5 The particular benefit arises when the government employs public funding to protect the private dwellings of those who live in proximity to vulnerable parts of the coastline. It is self-evident that this private benefit is paid for by all who contribute to the exchequer, including the majority who do not draw any part of that private benefit.
- 9.2.6 There is, therefore, a second balance to be struck – the extent to which government revenues are employed to protect the interests of the community as a whole and the interests of a section of the community. It has been a central task of the CDPG to weigh these competing interests in drawing its conclusions and making recommendations for this Report.
- 9.2.7 In its analysis of flood defences, how they operate and where they are effective, the CDPG ascertained that there are important characteristics that should be borne in mind when assessing which measures provide the greatest benefit. The following sets out some of these findings:
- Construction of large scale, monolithic sea defences will not protect against all contingencies. For example, a defence unit that has been built to withstand the effects of a 1:50 year occurrence may be breached in the event of a 1:100 year incident.
  - Large scale constructions often have “vulnerable areas”, such as access points, which, should they be left open or give way, could undermine the operational effectiveness of the defence as a whole.
  - It is not economically viable to construct monolithic defences on a scale to meet all contingencies.

- Over-built sea defences can result in considerable loss of amenity value by, for example, obstructing views, impeding free movement of people and restricting access. It is expedient, therefore, to build according to optimum rather than absolute requirements.

9.2.8 It is noteworthy, in this context, that once any breach of a defence occurs and there is a flooding incident, it is necessary to protect those buildings prone to inundation on an individual basis. In other words, once the monolithic defence has been overwhelmed, then only small scale bespoke measures remain to provide protection.

9.2.9 It is for this reason that the CDPG has concluded that small scale, privately managed measures could deliver significantly better value protection than large scale installations. As this report has made clear, flooding from the sea is both predictable (to a reasonable degree) and short term – it is principally governed by the times of the tides. In such situations, individuals are able to respond well in advance of an event, and more readily than the public services in meeting specific needs on the ground.

9.2.10 **It is clear that the only opportunity for mitigating and minimising the impact of inundation after coastal defences have been breached is presented by individuals acting to protect their properties for just an hour or two when the tide is at its peak. Further, it cannot be assumed that the sole protection for individual properties will be the recognisable coastal defences; these may be overwhelmed or circumvented during extreme events. It is therefore considered essential that individual householders and business persons take measures to secure their premises.**

9.2.11 This important point cannot be overstated and the CDPG has given considerable thought as to how the States can encourage and support the people of Guernsey to take simple measures for their own protection. In addressing this issue, extensive research was undertaken to ascertain the types of “self-help” flood protection devices that are available. There is an extensive market in these types of product, but they all perform more or less the same narrow range of functions; equipment exists to:

- Seal gateways, door ways and other entrances into property;
- Close off air bricks and ventilation pipes;
- Block upward movements through toilets, sinks, etc.

9.2.12 The project group will seek to put in place the necessary communication strategies and systems to support a policy of self-help and will provide guidance as to what measures the public can take to mitigate risks and safeguard their own interests as well as advice on where help and support can be obtained. This is an area where States Works status as a trading entity of the States of Guernsey can assist in the marketing, supply and installation of flood prevention measures to the general public and businesses within the Island. For example basic products such as flood gates and barriers, vent covers, non return valves for drainage systems and more specialist flood sensor, alarm and pump systems. These products can be brought in

to complement the current supply of sand bags and States Works post incident clean-up activities.

- 9.2.13 It could be that private providers will wish to supply these types of item and there is no reason to discourage them from doing so; however, it is important, at least in the first stages, that those inquiring about the potential risks to their properties are given free, informed advice in order that they can make reasoned decisions about their requirements. The Department will seek to make this advice available within its existing resources.

## 10. **Funding and Finance**

### 10.1 *The Nature of Guernsey's Coastal Defences*

- 10.1.1 Structures that act as coastal defences in Guernsey have been created in various ways over extended times. They have not always been built for the pure purposes of protection from an encroaching sea or as flood control mechanisms.

- 10.1.2 As well as masonry walls there are rock revetments, temporary storm boards, shingle banks, dunes and harbour facilities. All act, in one way or another, to keep back the tides and break the force of wave action. Interspersed with these are access points, slipways and piers which can also play a part in breaking wave patterns and tidal force. Equally, such structures may provide open channels allowing flood waters to bypass conventional defences.

- 10.1.3 Appendix Seven (A, B and C) sets out in summary form the various types of sea defence and their approximate lengths. In total there are almost 12 kms of built defences, just over five kilometres of boulder revetments and 2.7 kms of constructed piers and slipways. These figures do not include harbour facilities.

### 10.2 *Maintenance and Upkeep Costs*

- 10.2.1 Coastal defence installations do not provide any direct source of income and, therefore, all capital and maintenance costs must be borne from general taxation.<sup>6</sup>

- 10.2.2 In 2012 the Environment Department was only able to allocate a small budget of £55,000 (2013 - £73,000) for general maintenance repairs to the infrastructure of existing defences. As with all States expenditure, this budget must be rationed and

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<sup>6</sup> Extensive parts of the coastal defences of Guernsey comprise harbour facilities, both on a large scale (as in St Peter Port and St Sampson) and on a local level, as is the case with piers, quaysides and slipways. These functional constructions were built for various purposes concerning maritime activities but, for the requirements of this report, are considered in the broader context as sea defences. However, they also offer the potential for raising income (from those making direct use of them as maritime facilities), but it is not envisioned that any income from these sources would be diverted for the purpose of funding enhancements to general sea defences.

prioritised in order to meet the most urgent requirements for maintaining public safety and welfare.

10.2.3 The Department receives a small annual capital allocation to meet all capital project requirements, including traffic, parks and gardens, maintenance of cliff paths, coastal walking areas, SNCIs, etc.) as well as coastal defences. In 2012 this allocation was £50,000 and was insufficient to meet even a small part of identified needs. It is almost always the case that a breach or collapse of a sea defence, or a situation that will give rise to an imminent breach or collapse, will require the Environment Department to seek additional capital funding.

10.2.4 A regular inspection regime for coastal defences is conducted by engineers from within States Property Services; this work is supplemented by observations from employees of the Environment Department's Environmental Services Unit, Parish representatives and members of the public. By these means the Department is usually able to make reparations for existing and potential problems before they become exacerbated. It is accepted, of course, that sudden collapses (such as that occurring at L'Eree in 2008 and at Perelle in 2012) will inevitably happen from time to time. In such cases the Environment and States Property Services (together with other agencies as may be necessary) seek to make emergency repairs prior to reinstatement. It is usually the case that reconstruction of a collapsed defence requires an engineer's assessment and development of a design solution before works can commence and it is often some months before all can be returned to normal.

10.2.5 Coastal defence reparations that have involved capital expenditure in recent years include:

- Repairs to shore up the German Bunker (L'Estrainfer) at the south end of Cobo Bay (2009, £194,000);
- Under road reconstruction, infill and engineered protection at Albecq (2009, £152,000);
- Reinstatement of sea wall at L'Eree (2008, £188,000);
- Reinstatement of sea wall at Perelle (2012/2013, £550,000 estimated);
- Reinstatement of defence installations at Route de la Rocque (2011, £177,250);

These projects have been funded through the use of residual capital balances within the Department's own budget and additional funding from the Capital Reserve and Budget Reserve. The Haskoning Flood Studies Report 2012 estimates that £55million will be required over the next 30 years to mitigate the current flood risks.

- 10.2.6 Any additions to existing sea defences will evidently require continuing maintenance. Within Haskoning 2007 there is reference to maintenance for each of the coastal units that are examined; the following phrase (or close variations) is included in the analysis for each of the areas that have been investigated:

*. . . The continuing maintenance (of the seawall) would ensure its integrity for the life of the strategy and hence the assets it defends . . .*

reflecting the vital importance of continuous maintenance.

- 10.2.7 This repeated reference conveys the simple message that, without continued maintenance of the existing structures there is little point in considering additions or modifications to the Island's sea defences.
- 10.2.8 At the present time the revenue budget is allocated according to priorities for works that are identified by engineers within States Property Services or through other less formal means, as specified above (paragraph 10.2.4). As the limited available funds are insufficient to sustain any meaningful schedule of repairs and retain a reserve to respond to emergencies resulting from storm damage, it has been the case for many years that the allotted funds have always been insufficient to meet the requirements as set out by the Engineers and works have been "held over" until the funding becomes available.
- 10.2.9 As may be ascertained from the foregoing, there is no simple answer to the question *How much should we be spending on coastal defence maintenance?* Reasonable estimates may be equated to the spend per head and the spend per metre. Appendix Eight sets out some comparisons on these bases, but it is still difficult to establish a benchmark.
- 10.2.10 Based upon the analysis in Appendix Eight, if 2% of all built defences in Guernsey were to be re-pointed each year then individual parts of the structure would receive attention every fifty years. This seems, by any reasonable measure, to be insufficient. A 25 year cycle or 4% coverage would require an annual budget in the region of £220,000 plus £30,000 for expenditure on revetments, soft defences and piers and slipways – this would seem to be a more appropriate estimate of the funds required. This would equate to expenditure of £3.97 per capita per annum. The Department anticipates that this maintenance funding issue will be subject to consideration as part of the States Strategic Plan process, or whichever process for the reprioritisation of funding is in place at that time.



## 11. Conclusions

- 11.1 It was necessary to analyse the contents of Haskoning 2007 and the 2012 Flood Studies reports in order to ascertain a priority order for any coastal defence initiatives that the States of Guernsey may wish to take forward.
- 11.2 An adapted version of the DEFRA model, incorporating Economic, Social and Environmental factors, was considered to be appropriate for assessing priority needs in respect of the areas examined in the Flood Studies Report.
- 11.3 It was further determined that the CDPG should base recommendations for additional works to Guernsey's coastal defence system on projections for *epoch 1* (20 years) of the IPCC climate change forecasts with a selected return period of 1 in 100 years.
- 11.4 Weighting of contributory factors for the Economic, Social and Environmental impacts of inundation is appropriate with the base unit centred upon the individual household.
- 11.5 Sensitivity analysis indicates that the adopted weightings for non-household units do not place undue bias in the model and do not materially affect the priority ratings outcomes.
- 11.6 It is accepted that built defences cannot resist all the effects of all storm conditions. Their function is to provide protection against known tidal movements and limits and, in this context, they must be maintained in accordance with up-to-date, reliable data regarding changes in these movements and limits if they are to remain useful. With this in mind, and acknowledging the importance of the epoch 1 estimations and the flooding risks presented by the 1:100 year return period mapping, the CDPG concludes that it is prudent to design solutions for 1 in 50 years events.
- 11.7 As projects for meeting prioritised issues are put into place, the original data on effective flood risks will alter and it will be necessary to re-visit the model for re-setting the priority order for subsequent works.
- 11.8 For the continued maintenance of effective sea defences in Guernsey, it is important that reliable means for collecting, evaluating, ordering and storing information regarding tidal movements, heights and behaviours are put into place.
- 11.9 It is clear that the best opportunity for mitigating coastal inundation following a breach of coastal defences, is presented by individuals acting to protect their properties for just an hour or two when the tide is at its height.



- 11.10 Current spend on ongoing maintenance remains inadequate and should be addressed if funding can be released as part of the reprioritisation of revenue funding.

**12. Recommendations:**

- (i) The States are asked to:
- (ii) Approve the strategy of:
  - (a) The use of the 1:100 year return period as the risk assessment base;
  - (b) The adoption of epoch 1 (20 years to 2031) for climate change forecasts;
  - (c) The use of the 1:50 year return period parameter for sea defence construction projects;
  - (d) Using the weighting and analysis methodology for assessing priorities as set out in this Report;
  - (e) Note that subject to Capital funding being made available the intention to progress projects 1 and 2 in the priority listings (respectively, St Sampson Harbour and Belle Greve Bay).
- (iii) Subject to capital funding being made available, endorse the proposal for the introduction of a data collection/monitoring system to enable improved source information to guide future coastal defence works.

Yours faithfully

R Domaille  
Minister

A Spruce, Deputy Minister  
B J Paint  
B Brehaut  
Y Burford

### **The List of Appendices**

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## Appendix One

### Coastal Defence States Report - Glossary of Terms

| Abbreviation | Term                          | Definition  |
|--------------|-------------------------------|---|
|              | Climate Change                | Significant and lasting change in the statistical distribution of weather patterns over periods ranging from decades to millions of years. It may be a change in average weather conditions, or in the distribution of weather around the average conditions (i.e. more or fewer extreme weather events). |
| CDPG         | Coastal Defence Project Group | The group of staff and political members of the Environment Department, States Property Services and Public Services Department tasked with developing a coastal defence management strategy based on the Haskoning reports.  |
| DU           | Coastal Defence Units (DUs)   | Within Coastal Unit (see below). Identifiable construction, impediment, natural feature that acts to protect the coast against erosion and/or adjacent land from sea flooding.  |
|              | Coastal Defences              | General term used to encompass both coast protection against erosion and sea defence against flooding.  |
|              | Coastal flooding/ Inundation  | Occurs when normally dry, low-lying land and property by the coastline is flooded by sea water due to swell conditions during a storm or high tide causing a rise in sea level which exceeds the level of the land or overtops/breaches the existing natural or man-made barriers.                        |
|              | Coastal Plain                 | An area of flat, low-lying land adjacent to a seacoast and separated from the interior by other features.   |
| CU           | Coastal Units                 | Defined as a length of coastline with coherent properties in terms of both coastal processes and land use. Haskoning divided the Island into 23 units.  |

|       |   |   |
|-------|---|---|
| DEFRA | DEFRA   | Department for the Environment, Food and Rural Affairs.   |
|       | Effective Flooded Area                                | A theoretical area used to evaluate the impact of different flood events based on the actual area of properties and land in categories multiplied by a weighting.   |
|       | Epoch   | Time periods used for assessment of risk due to climate change. In the Haskoning Report 2012 four epochs have been modelled – (in the) Present Day, (in) 20 years, 50 years and 100 years (time).   |
|       | Environment Guernsey Ltd                              | The environmental consultancy company associated with La Société Guernseiaise.  |
| FCERM | Flood and Coastal Erosion Risk Management Flood Risks | The activity of understanding the probability and consequences of flooding, and seeking to modify these factors to reduce flood risk to people, property and the environment.<br>A combination of the probability and consequences of flooding.   |
|       | Geographic Information System                         | <a href="#"><u>A system designed to capture, store, manipulate, analyze, manage, and present all types of geographical data.</u></a>  |
|       | Highest Astronomical Tides                            | The highest level that can be predicted to occur under average meteorological conditions and under any combination of astronomical conditions.  |
| IPCC  | Intergovernmental Panel on Climate Change             | A scientific intergovernmental body, set up at the request of United Nations member governments. It was first established in 1988 by two UN organisations, the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP), and later endorsed by the United Nations General Assembly through Resolution 43/53. |
|       | Liming  | A process for removing algae growth from marine structures.   |

|      |                                      |  |
|------|--------------------------------------|--|
|      | Localised Temporary Defences         | Removable defences or barriers that are erected at the time of a flooding alert to protect property from a flood event. In the main these would be erected by individual property owners to seal access points to their own properties.  |
|      | Ordnance Datum                       | Standard reference level used by the Ordnance Survey for land surveys in the UK. Usually based on mean sea level at Newlyn, Cornwall, although Guernsey and Herm have a local datum.   |
|      | Re-pointing                          | Re-pointing will be necessary when the bedding or jointing mortar becomes washed out from the wall and the stones start to become loose and risk falling out of place.   |
|      | Return Periods                       | Average time period between occurrences of a given event.  |
|      | Rising Sea Levels                    | The long-term upward trend in mean sea level resulting from a combination of local or regional geological movements and global climate change.   |
|      | Rock Revetments                      | General term for sloping, often permeable structures, providing flood or erosion protection to the backshore. May be constructed from rock, concrete or other material. Often a layer (or layers) used to protect the sloping face of an embankment, natural coast or shoreline. |
| SNCI | Site of Nature Conservation Interest | <a href="#"><u>Used by local authorities for sites of substantive local nature conservation and geological value.</u></a>  |
|      | Spatial Parameters                   | Formal techniques which study entities using their topological, geometric, or geographic properties.   |
|      | Storm Boards                         | Boards installed across slipways on high spring tides to reduce the effect of wave action up the slipway and the volume of water flooding the land side.   |
|      | TRP Property Data                    | A basic description of the Property, its category, approximate area and Tax on Real Property (TRP).  |

|               |  |
|---------------|--|
| Wave Action   | The size of a wave depends on its fetch. The fetch is the distance a wave travels. The greater the fetch, the larger the wave. Wind also has a significant effect on the size of waves. The stronger the wind the larger the wave.   |
| Wave Patterns | Waves are the forward movement of the ocean's water due to the oscillation of water particles by the frictional drag of wind over the water's surface. Waves have crests (the peak of the wave) and troughs (the lowest point on the wave). The wavelength, or horizontal size of the wave, is determined by the horizontal distance between two crests or two troughs. The vertical size of the wave is determined by the vertical distance between the two. Waves travel in groups called wave trains. |
| Weighting     | Emphasising the contribution of some aspects of a phenomenon (or of a set of data) to a final effect or result, giving them more weight in the analysis.   |

## Appendix Two

| BELLE GREVE BAY CUI9   |  |   |
|--|--|---|
| Priority Actions:  | Present Risk   | Long Term Risk with sea level rise (epoch 2 and 3)  |
| Risk:<br><br>High frequency events:<br>1:1 to 1:20 year return period                      | Potentially high consequence of risk to the main coastal road and important development area from overtopping of DU8 and 9.  | Significantly increased risk of flooding over DU7, 8 and 0, affecting the main development area, increasing from the end of epoch 1.  |
|  | Medium risk to properties due to overtopping of low levels of the DU4 embankment.  | Regular flooding likely from overtopping of lengths of the DU4 embankment and along DU5.  |
|  | Medium risk locally due to overtopping along the northern section of DU6 and DU5 primarily associated with local wave interaction.   | Medium risk of local flooding to DU3.   |
| Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | Severe risk of flooding along DU8 and 9, potentially along sections of DU7 on higher events. Potential for wider flooding through to the hinterland.   | High levels of overtopping along all frontages from the end of epoch 1.<br>Potential still water level flooding along DU9.  |
|  | High risk of flooding under high water levels along DU4, linked to overtopping of DU5.   |   |
|  |  | Low risk locally to properties behind DU3.  |
| Actions  |  |   |
| Short term (see action plan):  | <ul style="list-style-type: none"><li>Works to locally raise defences along DU8 and 9, providing an initial standard of defence to a 1:50 year standard providing additional security while undertaking consultation on longer term approach. <b>High Priority</b></li><li>Works to raise DU4 embankment locally to provide a more coherent defence standard to a 1:100 year level. <b>Quick win, high priority</b></li><li>Local raising of defence along DU 5 with the possible inclusion of improvement to wave interaction along DU6. <b>Medium priority</b></li></ul> |   |
|  | Medium Term Planning (20 years)  | <ul style="list-style-type: none"><li>Develop through consultation longer term approach to defence along DU7, 8 and 9. Potential option for advancing the line in conjunction with works to enhance the sea front. <b>High Priority</b> due to potential lead in time.</li><li>Comprehensive raising of DU4 embankment coupled with improvement to reduce risk along DU5. <b>Medium Priority</b> assuming short term measures have been undertaken.</li></ul> |
| Long Term Planning   | <ul style="list-style-type: none"><li>Planning control within low lying hinterland area.</li><li>Ensure appropriate levels for future development along the sea front taking account of anticipated sea level rise.</li></ul>  |   |

| ST SAMPSON CU18  |   |  |
|--|---|--|
| Priority Actions:  | Present Risk  | Long Term Risk with sea level rise (epoch 2 and 3)   |
| <b>Risk:</b><br><br>High frequency events:<br>1:1 to 1:20 year return period<br><br>Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | Severe risk of still water level overflowing the Bridge with severe local disruption and flooding to properties.  | Severe risk of still water level overflowing the Bridge with severe widespread disruption within the hinterland and flooding to properties |
|  | Medium risk of flooding to general harbour area.  | Regular flooding initially to harbour area with increasing risk of flooding to wider area.   |
|  | Very low risk of flooding from the direction of Le Grande Havre.  | Medium risk of local flooding to hinterland from the direction of Le Grande Havre.   |
|  | Severe risk of still water level overflowing the Bridge with severe widespread disruption within hinterland and flooding to properties.   | Regular overflow of Bridge with severe risk both locally and to hinterland.  |
|  | High risk of local flooding to general harbour area with potential to flood broader areas, particularly to northern side.   | High risk of flooding to general harbour area with flooding to general hinterland areas.   |
| <b>Actions</b>   | Medium risk (1:100) of overtopping at Le Grande Havre affecting general hinterland areas.   | High risk of overtopping at Le Grande Havre causing significant disruption to hinterland area and risk to property.                        |
|  |   | 100 year risk of flooding from other areas (Bordeaux Harbour and local areas of Le Grande Havre).  |
| <b>Actions</b>   |   |  |
| Short term (see action plan):  | <ul style="list-style-type: none"> <li>Works to address overtopping at the Bridge. Works potentially incorporated within redevelopment plans for the area. <b>High Priority</b></li> <li>Examine opportunity for undertaking more general improved flood risk management to harbour area in association with these works. <b>Medium priority</b></li> <li>Examine in discussion with Harbour users opportunity for harbour barrage. <b>Low Priority</b> subject to plan for the Harbour.</li> </ul> |  |
| Medium Term Planning (20 years)  | <ul style="list-style-type: none"> <li>Improvement to flood risk management generally to harbour area, if not included with the above. <b>High Priority</b> to north.</li> <li>Local raising of embankment to the southeast corner of Le Grande Havre. Examine opportunity to raise defences more generally within Le Grande Havre area in association with these works. <b>Medium Priority</b></li> </ul>  |  |
| Long Term Planning   | <ul style="list-style-type: none"> <li>Avoid development of critical infrastructure within hinterland area.</li> <li>Review defence requirement to the Power Station.</li> <li>Review pumping arrangements of the hinterland area.</li> <li>Review need for additional works within Le Grande Havre if not included above.</li> <li>Review need for flood defence to exclude risk from Bordeaux Harbour Area.</li> </ul>  |  |



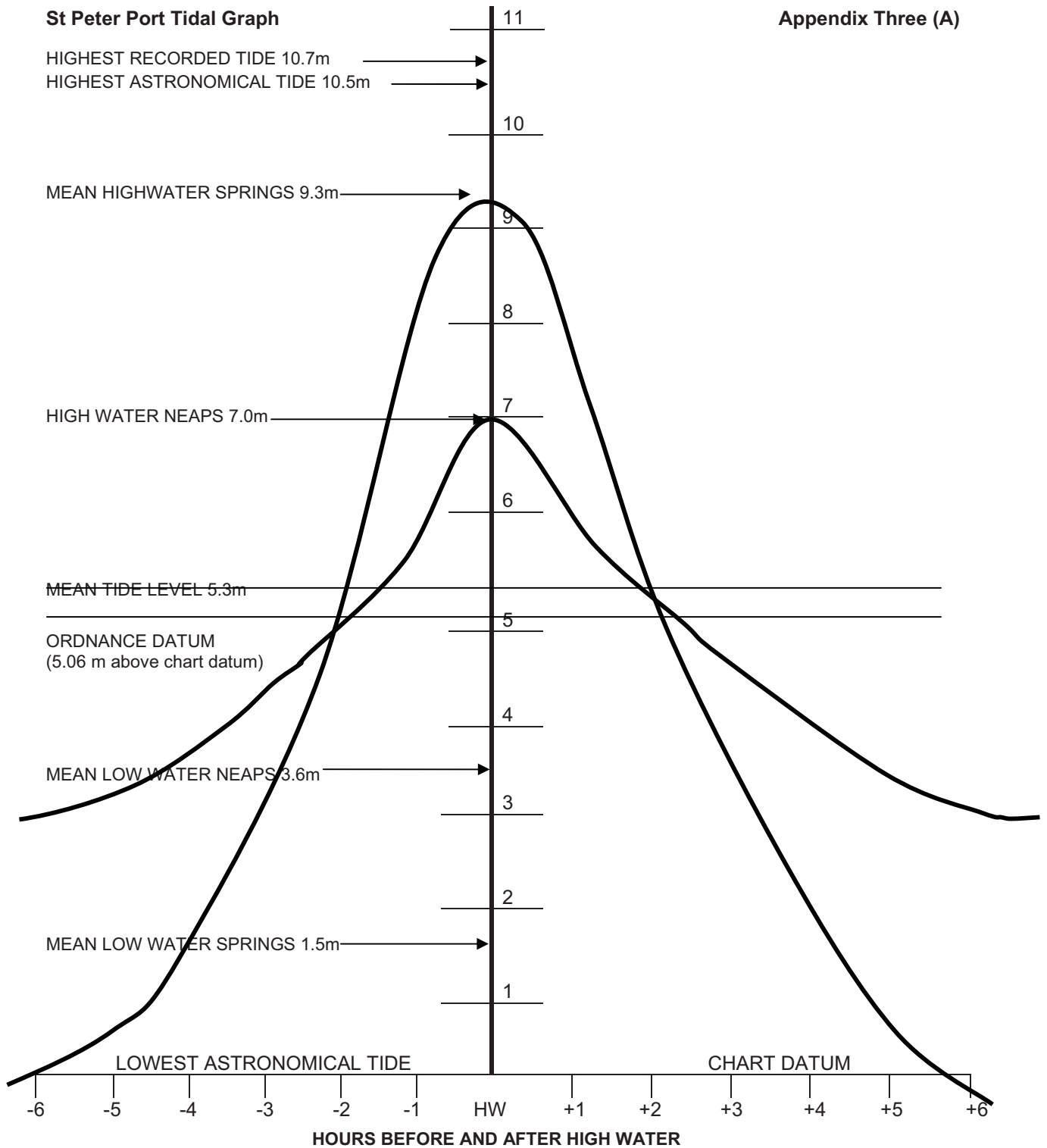
| BORDEAUX HARBOUR CUI7  |  |  |
|--|--|--|
| Priority Actions:  | Present Risk   | Long Term Risk with sea level rise (epoch 2 and 3)   |
| Risk:<br><br>High frequency events:<br>1:1 to 1:20 year return period                      | Medium risk to properties and road on events of 1:10 to 1:20 due to overtopping of DU4.  | Severe risk of still water level overflowing DU4 and overtopping DU2 with more extensive flooding to the general area.         |
|  | Medium risk of damage to DU2.  | Medium risk of flooding from DU5 and DU3 contributing to general flooding of the area.   |
|  | Low risk of flooding from DU5.   |  |
| Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | Severe risk of still water level overflowing DU4 with significant consequence to property and transport system on higher events.   | Severe risk of still water level overflowing DU4 and overtopping DU2 and DU3 with more extensive flooding to the general area. |
|  | High risk of flooding from DU2 contributing to general flooding.   | Increased flood risk from DU5, significantly contributing to general flooding of the area.                                     |
|  | Medium risk (1:100) of overtopping of DU5 and DU3 contributing to general flooding of the area.  |  |
| Actions  |  |  |
| Short term (see action plan):  | <ul style="list-style-type: none"><li>• Maintain DU4 and improve the condition of defence along DU2 and DU3. <b>High Priority</b></li><li>• Discussion and raise awareness of flood risk within the local community, develop flood warning system. <b>High Priority</b></li><li>• Develop long term plan for set back defence to limit flood risk. <b>High Priority</b></li><li>• Undertake construction of set back embankment to limit extent of flooding. <b>Medium Priority</b></li><li>• Potential for reducing wave action along DU4. <b>Low Priority.</b></li></ul> |  |
| Medium Term Planning (20 years)  | <ul style="list-style-type: none"><li>• Develop flood warning and evacuation planning for properties remaining at high flood risk. <b>High Priority</b></li></ul>  |  |
| Long Term Planning   | <ul style="list-style-type: none"><li>• Avoid development within high flood risk area.</li><li>• Review Relocation of transport routes.</li></ul>  |  |

| Priority Actions:  | ROUSSE HEADLAND AND BAIE DE PORT GRAT CU11 AND 12   |  |
|--|---|--|
| Risk:  | Present Risk  | Long Term Risk with sea level rise (epoch 2 and 3)                       |
| High frequency events:<br>1:1 to 1:20 year return period                                   | <b>High risk</b> of failure of revetment to north of headland.  | <b>High risk</b> of flooding to north of headland risk.                  |
|  | <b>Low risk</b> of local flooding from within Le Grande Havre (Dicqs Road).   | <b>Medium risk</b> of flooding from within Le Grande Harve (Dicqs Road). |
| Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | <b>High risk</b> of sudden failure and flooding from both north and south. Potential risk to life.  | <b>Very high risk</b> of flooding to area.                               |
| Actions  |   |  |
| Short term (see action plan):  | <ul style="list-style-type: none"><li>● Improve condition of rock revetment. <b>High Priority</b></li><li>● Construct set back embankment to north. <b>Low Priority</b></li><li>● Improve condition of bank to south of the area. <b>High Priority</b></li><li>● Develop flood awareness and flood warning procedures. <b>High Priority</b></li></ul> |  |
| Medium Term Planning (20 years)  | <ul style="list-style-type: none"><li>● Improvement defences along Dicqs Road. <b>High Priority</b></li><li>● Construct embankment to north (if not already undertaken). <b>High Priority.</b></li><li>● Maintain and improve erosion protection to the main Baie de port Grat frontage. <b>High Priority</b></li></ul>                               |  |
| Long Term Planning   | <ul style="list-style-type: none"><li>● Develop long term planning policy for the area. <b>High Priority</b></li></ul>  |  |

| Priority Actions:  |  | PEQUERIES CU11   |  |
|--|--|--|--|
| Risk:  | Present Risk   | Long Term Risk with sea level rise (epoch 2 and 3)                         |  |
| High frequency events:<br>1:1 to 1:20 year return period                                   | Low risk to properties form flooding to main bay.  | High risk to properties from flooding to main bay and from the north.      |  |
|  | Low risk of flooding from the north.   | Medium risk of flooding from Portinfer.                                    |  |
|  | High risk to properties from flooding to main bay.   | Very high risk to properties from flooding to main bay and from the north. |  |
| Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | High risk of flooding from the north.  | High risk of flooding from Portinfer.                                      |  |
|  | Medium risk of flooding from Portinfer.  |  |  |
| Actions  |  |  |  |
| Short term (see action plan):  | <ul style="list-style-type: none"> <li>Improve rock revetment to main bay. <b>Medium Priority</b></li> <li>Construct set back revetment to the north of the village. <b>Medium Priority</b></li> <li>Develop flood warning system. <b>High Priority</b></li> </ul>   |  |  |
| Medium Term Planning (20 years)  | <ul style="list-style-type: none"> <li>Improve rock revetment to main bay. <b>High Priority</b> if not already undertaken.</li> <li>Construct set back revetment to the north of the village. <b>High Priority</b> if not already undertaken.</li> <li>Improve embankment to Portinfer. <b>Low Priority</b></li> </ul> |  |  |
| Long Term Planning   | <ul style="list-style-type: none"> <li>Develop long term planning policy for the area. <b>Medium Priority</b></li> <li>Planning control on development. <b>High Priority</b></li> </ul>  |  |  |

| Priority Actions:  | COBO AND SALINE BAYS CU10  |   |
|--|--|---|
| Risk:  | Present Risk   | Long Term Risk with sea level rise (epoch 2 and 3)                                  |
| High frequency events:<br>1:1 to 1:20 year return period<br><br>Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | High risk of disruption to main coastal road.  | High risk of flooding to properties along sea front and within low lying land.      |
|  | Low risk of flooding to properties.  | Increased risk to integrity of defences due to erosion.                             |
|  | Very high risk of disruption to main coastal road and risk to sea front.   | Very high risk of flooding to properties along sea front and within low lying land. |
|  | High risk of flooding to properties within low lying land.   | High risk of damage to defences.  |
|  | Medium risk to sea walls due to beach draw down.   |   |
| Actions  |  |   |
| Short term (see action plan):  | <ul style="list-style-type: none"><li>● Improve flood warning to area. <b>High Priority</b></li><li>● Investigate integrity of local defences through built up area behind DU2. <b>Medium Priority</b></li><li>● Local raising to DU2. <b>Medium Priority</b></li><li>● Consult on options for defence improvement. <b>Medium Priority</b></li></ul> |   |
|  | <ul style="list-style-type: none"><li>● Undertake improvement to defences with construction of breakwaters. <b>High Priority</b></li></ul>   |   |
| Medium Term Planning (20 years)  |  |   |
| Long Term Planning   | <ul style="list-style-type: none"><li>● Avoid development within high flood risk area. <b>High Priority</b></li><li>● Develop long term planning policy for the area. <b>Medium Priority</b></li></ul>   |   |

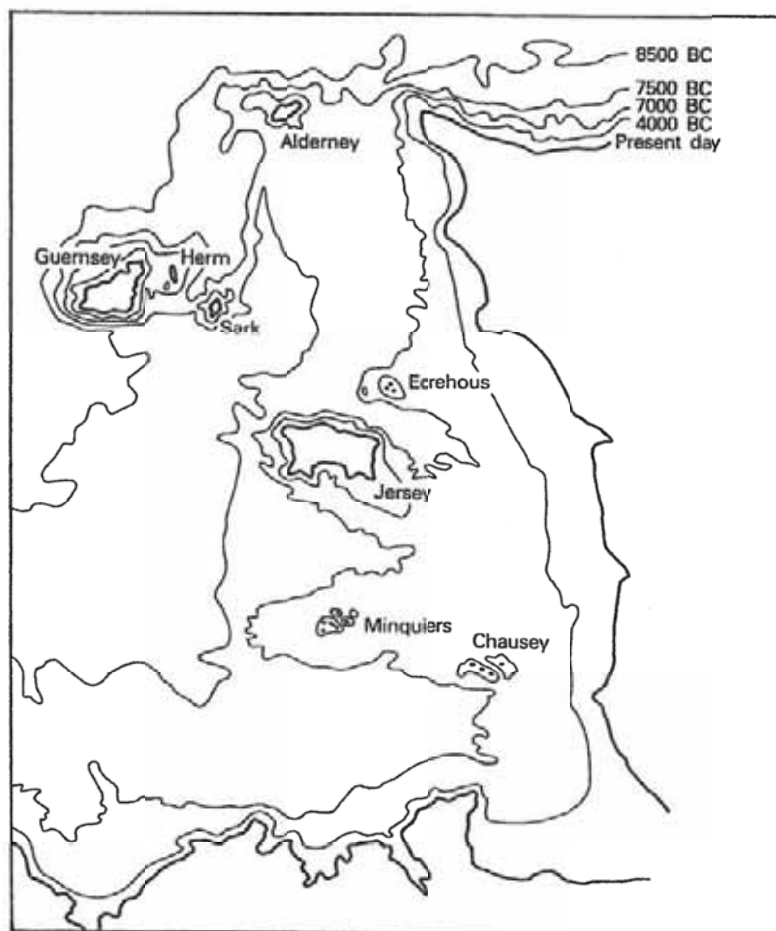
| ROCQUAINE AND L'ERÉE BAY CU3   |   |  |
|--|---|--|
| Priority Actions:  | Present Risk  | Long Term Risk with sea level rise (epoch 2 and 3)               |
| High frequency events:<br>1:1 to 1:20 year return period                                   | High risk of failure of sea wall along DU3 and 4.   | High risk of flooding to low lying valley behind DU3 and 4.      |
|  | High risk of flooding to low lying valley behind DU3 and 4.   | High risk of flooding to properties at L'Erée Bay.               |
|  | Medium risk of flooding to properties at L'Erée Bay.  | High risk of flooding behind DU1.                                |
|  | High risk of flooding to low lying valley behind DU3 and 4.   | Increased pressure on defences DU1 and DU5.                      |
| Low frequency events:<br>Less frequent than 1:20 year return period (1:50 year or greater) | High risk of flooding to low lying valley behind DU3 and 4.   | Very high risk of flooding to low lying valley behind DU3 and 4. |
|  | High risk of flooding to properties at L'Erée Bay.  | High risk of flooding behind DU1.                                |
|  | Medium risk of flooding to road behind DU1.   |  |
| Actions  |   |  |
| Short term (see action plan):  | <ul style="list-style-type: none"><li>Develop detailed design for improvement to DU3 and 4. <b>High Priority</b></li><li>Continued monitoring of DU5 and regular inspection of DU3 and 4. <b>High Priority</b></li><li>Consult on options for defence improvement for DU5. <b>Medium Priority</b></li><li>Potential improved defence to DU5 through landscaping. <b>Medium Priority</b></li><li>Local improvement to road behind DU2. <b>Low Priority</b></li></ul> |  |
| Medium Term Planning (20 years)  | <ul style="list-style-type: none"><li>Develop and undertake improvement to defence along DU5. <b>Medium Priority</b></li><li>Examine and undertake additional protection to DU1. <b>Medium Priority</b></li></ul>   |  |
| Long Term Planning   | <ul style="list-style-type: none"><li>Avoid development within high flood risk area. <b>High Priority</b></li><li>Develop long term planning policy for the area. <b>Medium Priority</b></li></ul>  |  |

**St Peter Port Tidal Graph****Appendix Three (A)**

Abstracted from Admiralty Chartlet NP 192/93

## Appendix Three (B)

## GUERNSEY IN HISTORY CHART



*The Channel Islands: shorelines (after J. Ranouf).*

**TRP (Tax on Real Property) Categories and Designations**
**Appendix Four**

| <b>Code</b> | <b>Category Description – Buildings</b>                               | <b>Flood Evaluation Use Category</b> |
|-------------|---|--------------------------------------|
| B1.1        | Domestic (whole unit) Local Market                                    | Residential                          |
| B1.2        | Domestic (flat) Local Market  | Residential                          |
| B1.3        | Domestic (glasshouse) Local Market                                    | Residential                          |
| B1.4        | Domestic (outbuildings) Local Market                                  | Residential                          |
| B1.5        | Domestic (garaging and parking) (non-owner-occupied) Local Market     | Residential                          |
| B2.1        | Domestic (whole unit) Open Market                                     | Residential                          |
| B2.2        | Domestic (flat) Open Market   | Residential                          |
| B2.3        | Domestic (glasshouse) Open Market                                     | Residential                          |
| B2.4        | Domestic (outbuildings) Open Market                                   | Residential                          |
| B2.5        | Domestic (garaging and parking) (non-owner-occupied) Open Market      | Residential                          |
| B3.1        | Domestic (whole unit) Social Housing                                  | Residential                          |
| B3.2        | Domestic (flat) Social Housing  | Residential                          |
| B3.3        | Domestic (glasshouse) Social Housing                                  | Residential                          |
| B3.4        | Domestic (outbuildings) Social Housing                                | Residential                          |
| B3.5        | Domestic (garaging and parking) (non-owner-occupied) Social Housing   | Residential                          |
| B4.1        | Hostelry and Food outlets   | Commercial                           |
| B4.2        | Self-catering accommodation   | Commercial                           |
| B4.3        | Motor and Marine trades   | Commercial                           |
| B4.4        | Retail (goods and services)   | Commercial                           |
| B4.5        | Warehousing, Storage facilities and Hangaring                         | Commercial                           |
| B4.6        | Industrial and Workshops  | Commercial                           |
| B4.7        | Recreational and Sporting premises                                    | Community                            |
| B4.8        | Garaging and Parking (non-domestic)                                   | Commercial                           |
| B5.1        | Utilities providers   | Utilities                            |
| B6.1        | Office and ancillary accommodation (regulated finance industries)     | Commercial                           |
| B6.2        | Office and ancillary accommodation (non-regulated finance industries) | Commercial                           |
| B7.1        | Horticulture (buildings other than glasshouse)                        | Commercial                           |
| B8.1        | Horticulture (glasshouse)   | Commercial                           |
| B9.1        | Agriculture   | Commercial                           |



|       |   |             |
|-------|---|-------------|
| B10.1 | Publicly Owned Non-domestic   | Community   |
| B11.1 | Exempt (buildings)  |             |
| B12.1 | Buildings – Penal rate  |             |
| B13.1 | Development Buildings (domestic)                                      | Residential |
| B13.2 | Development Buildings (non-domestic)                                  | Commercial  |
| L1.1  | Communal (flat) Local Market  | Residential |
| L1.2  | Communal (flat) Open Market   | Residential |
| L1.3  | Hostelry and Food outlets   | Commercial  |
| L1.4  | Self-catering accommodation   | Commercial  |
| L1.5  | Motoring and Marine trades  | Commercial  |
| L1.6  | Retail (goods and services)   | Commercial  |
| L1.7  | Warehousing, Storage facilities and Hangaring                         | Commercial  |
| L1.8  | Industrial and Workshops  | Commercial  |
| L1.9  | Recreational and Sporting premises                                    | Community   |
| L1.10 | Office and ancillary accommodation (regulated finance industries)     | Commercial  |
| L1.11 | Office and ancillary accommodation (non-regulated finance industries) | Commercial  |
| L1.12 | Utilities providers   | Utilities   |
| L2.1  | Approved Development Sites  |             |
| L3.1  | Domestic Local Market   | Residential |
| L3.2  | Domestic Open Market  | Residential |
| L3.3  | Horticulture  | Agriculture |
| L3.4  | Agriculture   | Agriculture |
| L3.5  | Domestic Social Housing   | Residential |
| L3.6  | Publicly Owned Non –domestic  | Community   |
| L4.1  | Exempt (land)   |             |
| L5.1  | Land – penal rate   |             |
| L6.1  | Garaging and parking (non domestic)                                   | Commercial  |

## Appendix Five

### Evaluation Criteria for Environmental Factors

#### Approach

We proposed using the impact on different habitats and protected buildings to reflect the impact of flooding on the environmental factors.

#### Impact on Habitats

From the information contained with the Habitat Survey 2011, we asked Jane Gilmore of Environmental Guernsey to group habitats into three categories: common, special and rare.

| Status  | % of land    |
|---------|--------------|
| V. rare | <1%          |
| Rare    | >1% and <10% |
| Common  | >10%         |

The 'specialness' of the habitats were then considered against these criteria to give an order of priority for protection of High, Medium and Low:

| Status  | Special habitats          | Level of priority for protection |
|---------|---------------------------|----------------------------------|
| V. rare | Special                   | High Priority                    |
| V. rare | Can be considered special | High Priority                    |
| V. rare | Not considered special    | Low Priority                     |
| Rare    | Special                   | High Priority                    |
| Rare    | Can be considered special | Medium Priority                  |
| Rare    | Not considered special    | Low Priority                     |
| Common  | Special                   | Medium Priority                  |
| Common  | Can be considered special | Low Priority                     |
| Common  | Not considered special    | Low Priority                     |

A weighting system based on the level of priority for protection is proposed as follows:

| Level of Protection | Weighting |
|---------------------|-----------|
| High Priority       | 5         |
| Medium Priority     | 1         |
| Low Priority        | 0.1       |

Using this analysis, produces the following classification table:

| Habitat description                      | Rarity  | Value of Habitats         | Level of Protection |
|--|---------|---------------------------|---------------------|
| Bare Ground                              | V. rare | Special                   | High                |
| Brackish pool                            | V. rare | Special                   | High                |
| Coastal Grassland                        | Rare    | Special                   | High                |
| Coastal Heathland                        | V. rare | Special                   | High                |
| Dune Grassland                           | Rare    | Special                   | High                |
| Dune Heath                               | V. rare | Special                   | High                |
| Hard Cliff                               | V. rare | Special                   | High                |
| Marshy Grassland                         | V. rare | Special                   | High                |
| Marginal Vegetation                      | V. rare | Special                   | High                |
| Open Dune                                | V. rare | Special                   | High                |
| Saltmarsh                                | V. rare | Special                   | High                |
| Semi-improved Grassland                  | Rare    | Special                   | High                |
| Soft Cliff                               | V. rare | Special                   | High                |
| Standing Water                           | V. rare | Special                   | High                |
| Swamp                                    | V. rare | Special                   | High                |
| Unimproved Grassland                     | V. rare | Special                   | High                |
| Dense Scrub                              | Rare    | Can be considered special | Medium              |
| Intertidal rock, sand and shingle        | Common  | Special                   | Medium              |
| Planted Broadleaved Woodland (+Orchards) | Rare    | Can be considered special | Medium              |
| Semi-Natural Broadleaved Woodland        | Rare    | Can be considered special | Medium              |
| Amenity Grassland                        | Common  | Not considered special    | Low                 |
| Arable Land (+ley)                       | Common  | Not considered special    | Low                 |
| Brownfield                               | V. rare | Not considered special    | Low                 |
| Continuous Bracken                       | Rare    | Not considered special    | Low                 |
| Dune Scrub                               | V. rare | Not considered special    | Low                 |
| Hottentot Fig                            | V. rare | Not considered special    | Low                 |
| Improved grassland                       | Common  | Not considered special    | Low                 |

|                        |         |                        |     |
|------------------------|---------|------------------------|-----|
| Parkland               | V. rare | Not considered special | Low |
| Planted Coniferous     | V. rare | Not considered special | Low |
| Planted Mixed Woodland | V. rare | Not considered special | Low |
| Quarry                 | V. rare | Not considered special | Low |
| Rock                   | V. rare | Not considered special | Low |
| Sand / Mud             | V. rare | Not considered special | Low |
| Tall Ruderal           | V. rare | Not considered special | Low |

\*Any specific area classified above that is designated as a SSS , Ramsar site or any other international designation will be afforded High protection status.

#### Impacts on Protected Buildings

The floor area only of Protected buildings is proposed to be considered and universal weighting of 5 units to reflect the impact on cultural heritage. It is not proposed to include the land surrounding Protected Buildings.

## Appendix Six

**Results of analysis for Study Areas**  
**Table FRA1: St Sampsons Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 6,338         | 0.1                       | 633               |
| Commercial           | Properties          | 91,883        | 10                        | 918,830           |
|                      | Land                | 1,944         | 10                        | 19,440            |
| Utilities            | Buildings           | 16,851        | 500                       | 8,425,500         |
|                      | Land                | 505           | 500                       | 252,500           |
|                      |                     |               | <b>sub-total</b>          | <b>9,616,903</b>  |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 42,450        | 1                         | 42,450            |
|                      | Land                | 844           | 1                         | 844               |
| Community facilities | Buildings           | 610           | 50                        | 30,500            |
|                      | Land                | 3,627         | 50                        | 181,350           |
|                      |                     |               | <b>sub-total</b>          | <b>255,144</b>    |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 66,497        | 0.1                       | 6,649             |
|                      | Medium Priority     | 81,301        | 1                         | 81,301            |
|                      | High Priority       | 28,215        | 5                         | 141,075           |
| Historic Environment | Protected Buildings | 239           | 5                         | 1,195             |
|                      |                     |               | <b>sub-total</b>          | <b>230,220</b>    |
|                      |                     |               | <b>Total</b>              | <b>10,102,267</b> |
|                      |                     |               | <b>Indicative Ranking</b> | <b>1</b>          |

**Belle Greve Bay Area (CU19)****Table FRA2: Belle Greve Bay Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 4,905         | 0.1                       | 490               |
| Commercial           | Properties          | 83,940        | 10                        | 839,400           |
|                      | Land                | 1,737         | 10                        | 17,370            |
| Utilities            | Buildings           | 5,037         | 500                       | 2,518,500         |
|                      | Land                | 606           | 500                       | 303,000           |
|                      |                     |               | <b>sub-total</b>          | <b>3,678,760</b>  |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 86,030        | 1                         | 86,030            |
|                      | Land                | 289           | 1                         | 289               |
| Community facilities | Buildings           | 14,930        | 50                        | 746,500           |
|                      | Land                | 3,049         | 50                        | 152,450           |
|                      |                     |               | <b>sub-total</b>          | <b>985,269</b>    |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 115,255       | 0.1                       | 11,525            |
|                      | Medium Priority     | 19,695        | 1                         | 19,695            |
|                      | High Priority       | 43,018        | 5                         | 215,090           |
| Historic Environment | Protected Buildings | 345           | 5                         | 1,725             |
|                      |                     |               | <b>sub-total</b>          | <b>248,035</b>    |
|                      |                     |               | <b>Total</b>              | <b>4,912,064</b>  |
|                      |                     |               | <b>Indicative Ranking</b> | <b>2</b>          |

### Bordeaux Harbour Analysis (CU17)

**Table FRA3: Bordeaux Harbour Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 1,503         | 0.1                       | 150               |
| Commercial           | Properties          | 7,281         | 10                        | 72,810            |
|                      | Land                | 0             | 10                        | 0                 |
| Utilities            | Buildings           | 21            | 500                       | 10,500            |
|                      | Land                | 0             | 500                       | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>83,460</b>     |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 7,271         | 1                         | 7,271             |
|                      | Land                | 196           | 1                         | 196               |
| Community facilities | Buildings           | 116           | 50                        | 5,800             |
|                      | Land                | 1,361         | 50                        | 68,050            |
|                      |                     |               | <b>sub-total</b>          | <b>81,317</b>     |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 61,696        | 0.1                       | 6,169             |
|                      | Medium Priority     | 75,861        | 1                         | 75,860            |
|                      | High Priority       | 20,003        | 5                         | 100,016           |
| Historic Environment | Protected Buildings | 1,100         | 5                         | 5,500             |
|                      |                     |               | <b>sub-total</b>          | <b>187,545</b>    |
|                      |                     |               | <b>Total</b>              | <b>352,322</b>    |
|                      |                     |               | <b>Indicative Ranking</b> | <b>5</b>          |

## Rocquaine & L'Eree Analysis

**Table FRA4: Rocquaine & L'Eree Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 1,625         | 0.1                       | 162               |
| Commercial           | Properties          | 3,921         | 10                        | 39,210            |
|                      | Land                | 66            | 10                        | 660               |
| Utilities            | Buildings           | 0             | 500                       | 0                 |
|                      | Land                | 0             | 500                       | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>40,032</b>     |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 10,193        | 1                         | 10,193            |
|                      | Land                | 226           | 1                         | 226               |
| Community facilities | Buildings           | 262           | 50                        | 13,100            |
|                      | Land                | 421           | 50                        | 21,050            |
|                      |                     |               | <b>sub-total</b>          | <b>44,569</b>     |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 61,182        | 0.1                       | 6,118             |
|                      | Medium Priority     | 2,849         | 1                         | 2,849             |
|                      | High Priority       | 34,595        | 5                         | 172,976           |
| Historic Environment | Protected Buildings | 0             | 5                         | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>181,943</b>    |
|                      |                     |               | <b>Total</b>              | <b>266,544</b>    |
|                      |                     |               | <b>Indicative Ranking</b> | <b>6</b>          |



### Rousse Headland, Baie de Port Grat & Pequeries

**Table FRA5: Rousse Headland, Baie de Port Grat & Pequeries Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 1,379         | 0.1                       | 137               |
| Commercial           | Properties          | 16,514        | 10                        | 165,140           |
|                      | Land                | 3,039         | 10                        | 30,390            |
| Utilities            | Buildings           | 0             | 500                       | 0                 |
|                      | Land                | 0             | 500                       | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>195,667</b>    |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 11,395        | 1                         | 11,395            |
|                      | Land                | 320           | 1                         | 320               |
| Community facilities | Buildings           | 608           | 50                        | 30,400            |
|                      | Land                | 2,383         | 50                        | 119,150           |
|                      |                     |               | <b>sub-total</b>          | <b>161,265</b>    |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 46,785        | 0.1                       | 4,678             |
|                      | Medium Priority     | 17,915        | 1                         | 17,915            |
|                      | High Priority       | 23,747        | 5                         | 118,736           |
| Historic Environment | Protected Buildings | 0             | 5                         | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>141,329</b>    |
|                      |                     |               | <b>Total</b>              | <b>498,261</b>    |
|                      |                     |               | <b>Indicative Ranking</b> | <b>4</b>          |

**Cobo & Saline Bay****Table FRA6: Cobo & Saline Bay Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 838           | 0.1                       | 83                |
| Commercial           | Properties          | 6,566         | 10                        | 65,660            |
|                      | Land                | 286           | 10                        | 2,860             |
| Utilities            | Buildings           | 108           | 500                       | 54,000            |
|                      | Land                | 5             | 500                       | 2,500             |
|                      |                     |               | <b>sub-total</b>          | <b>125,103</b>    |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 39,773        | 1                         | 39,773            |
|                      | Land                | 474           | 1                         | 474               |
| Community facilities | Buildings           | 8,401         | 50                        | 420,050           |
|                      | Land                | 3,635         | 50                        | 181,750           |
|                      |                     |               | <b>sub-total</b>          | <b>642,047</b>    |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 77,416        | 0.1                       | 7,741             |
|                      | Medium Priority     | 17,884        | 1                         | 17,884            |
|                      | High Priority       | 14,513        | 5                         | 72,565            |
| Historic Environment | Protected Buildings | 46            | 5                         | 230               |
|                      |                     |               | <b>sub-total</b>          | <b>98,420</b>     |
|                      |                     |               | <b>Total</b>              | <b>865,570</b>    |
|                      |                     |               | <b>Indicative Ranking</b> | <b>3</b>          |

## Pembroke Bay

**Table FRA7: Pembroke Bay Analysis**

| Type of Indicator    |                     | Impact        |                           |                   |
|----------------------|---------------------|---------------|---------------------------|-------------------|
|                      |                     | Area Affected | Weighting                 | Flood Impact Area |
| <b>Economic</b>      |                     |               |                           |                   |
| Agriculture          | Land                | 102           | 0.1                       | 10                |
| Commercial           | Properties          | 32            | 10                        | 320               |
|                      | Land                | 0             | 10                        | 0                 |
| Utilities            | Buildings           | 0             | 500                       | 0                 |
|                      | Land                | 0             | 500                       | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>330</b>        |
| <b>Social</b>        |                     |               |                           |                   |
| Residential          | Buildings           | 0             | 1                         | 0                 |
|                      | Land                | 0             | 1                         | 0                 |
| Community facilities | Buildings           | 0             | 50                        | 0                 |
|                      | Land                | 314           | 50                        | 15,700            |
|                      |                     |               | <b>sub-total</b>          | <b>15,700</b>     |
| <b>Environmental</b> |                     |               |                           |                   |
| Habitat              | Low Priority        | 590           | 0.1                       | 59                |
|                      | Medium Priority     | 239           | 1                         | 239               |
|                      | High Priority       | 84            | 5                         | 421               |
| Historic Environment | Protected Buildings | 0             | 5                         | 0                 |
|                      |                     |               | <b>sub-total</b>          | <b>719</b>        |
|                      |                     |               | <b>Total</b>              | <b>16,749</b>     |
|                      |                     |               | <b>Indicative Ranking</b> | <b>7</b>          |

## Appendix Seven A

**SEAWALL LENGTHS (EXCLUDING HARBOURS) – All figures in metres**  
 Nb There is a number of short walls around the Island that are not recorded in this list

| Location                            | Approx Length | Comments     | Approx Avg Height (where known) |          |
|-------------------------------------|---------------|--------------|---------------------------------|----------|
|                                     |               |              | Seaward                         | Roadside |
| Fermain                             | 227           |              |                                 |          |
| Petit Bôt                           | 13            |              |                                 |          |
| Pleinmont (area)                    | 46            |              | 1.10                            |          |
|                                     | 20            |              | 2.00                            |          |
|                                     | 20            |              | 1.10                            |          |
|                                     | 28            |              | 1.10                            |          |
| Portelet                            | 12            |              | 3.50                            |          |
|                                     | 28            |              | 1.10                            |          |
|                                     | 52            |              | 1.10                            |          |
|                                     | 20            | Slipway wall |                                 |          |
| ROCQUAINE                           |               |              |                                 |          |
| Imperial to Fort Grey               | 151           |              |                                 |          |
|                                     | 163           |              |                                 |          |
|                                     | 135           |              |                                 |          |
|                                     | 125           |              | 5.                              | 0.70     |
|                                     | 103           |              | 75                              |          |
|                                     | 97            |              |                                 |          |
|                                     | 125           |              |                                 |          |
| Fort Grey walkway                   | 55            |              |                                 |          |
| Fort Grey to Route des Issues       | 265           |              |                                 |          |
| Route des Issues to Douit de Moulin | 190           |              | 5.                              | 0.85     |
| Douit de Moulin to L'Eree           | 601           |              | 00                              |          |
| L'Eree                              | 570           | 353 concrete |                                 |          |
| Catioroc East                       | 173           |              |                                 |          |
| Catioroc West                       | 275           |              |                                 |          |
| PERELLE                             |               |              |                                 |          |
| Catioroc to Perelle Garage          | 525           |              | 3.                              | 1.20     |
| Perelle Garage to Fort Richmond     | 590           |              | 50                              |          |
| VAZON                               | 2,254         | 220 concrete | 5.50                            | 1.10     |
| Albecq                              | 148           |              |                                 |          |
|                                     | 43            |              |                                 |          |
|                                     | 27            |              |                                 |          |
|                                     | 60            |              |                                 |          |
| COBO                                |               |              |                                 |          |
| Guet                                | 24            |              |                                 |          |

|                                    |                 |                   |
|------------------------------------|-----------------|-------------------|
| Guet to slipway                    | 132             |                   |
| Slipway to Bunker                  | 40              |                   |
| Bunker to Route de Cobo            | 138             |                   |
| Route de Cobo to Route de Carteret | 277             |                   |
| Route de Carteret to Saline        | 368             |                   |
| L'ANCRESSE                         |                 |                   |
| West to slipway                    | 252             | } Mostly concrete |
| Slipway to East End                | 670             |                   |
| Bordeaux                           | 220             |                   |
| Vale Castle (area)                 | 270             |                   |
| Bulwer Avenue                      | 270             |                   |
| BELLE GREVE                        |                 |                   |
| Le Bas Courtils                    | 205             |                   |
| Les Banques to Red Lion            | 152             |                   |
| Red Lion to Bunker                 | 156             |                   |
| Bunker                             | 50              |                   |
| Bunker to slipway                  | 114             |                   |
| Admiral Park                       | 289             |                   |
| Admiral Park to Longstore          | 123             |                   |
| Longstore to Salerie               | 455             |                   |
| Havelet                            | 257             |                   |
| Halfmoon                           | 137             |                   |
| Valette                            | 213             |                   |
| <b>TOTAL</b>                       | <b>11,953 m</b> |                   |

**The total area under management is estimated to be 48,691 m<sup>2</sup>. Where a seaward/roadside height figure is not available the number 1 has been assigned for calculation purposes (this figure, therefore, is certainly an understatement) and a given width of 1m has been used in all cases.**

**BOULDER REVETMENTS (Excluding Harbour Areas) – All figures in metres**

| <b>Area</b>      | <b>Approximate Length</b> |
|------------------|---------------------------|
| Fort Saumarez    | 20                        |
|                  | 105                       |
| Catioroc West    | 90                        |
| Catioroc East    | 100                       |
| Fort Richmond    | 50                        |
| Fort Hommet      | 25                        |
| Albecq           | 18                        |
| Guet             | 25                        |
|                  | 35                        |
| Saline West      | 303                       |
| Saline North     | 120                       |
| Port Soif        | 190                       |
|                  | 117                       |
|                  | 80                        |
| Portinfer        | 113                       |
|                  | 20                        |
|                  | 40                        |
|                  | 315                       |
|                  | 392                       |
| Port Grat        | 155                       |
|                  | 500                       |
| Rousse           | 136                       |
|                  | 34                        |
| Grande Havre     | 70                        |
|                  | 24                        |
| Les Ammarreurs   | 200                       |
| Ladies Bay       | 300                       |
| Chouet           | 100                       |
|                  | 100                       |
|                  | 160                       |
| Jaonneuse        | 100                       |
| Pembroke         | 35                        |
|                  | 8                         |
|                  | 40                        |
| Fort Le Marchant | 30                        |
|                  | 46                        |
| Beaucette        | 111                       |
| Les Miellette    | 100                       |
| Fishing Farm     | 50                        |
| Bordeaux         | 247                       |
|                  | 150                       |
|                  | 105                       |
| Vale Castle      | 60                        |
| Bulwer Avenue    | 95                        |
| <b>TOTAL</b>     | <b>5,114</b>              |

## Appendix Seven C

**PIERS, SLIPWAYS, ETC. – All figures in metres**

| <b><u>Piers</u></b> | <b><u>Description</u></b> | <b><u>Approximate Length (m)</u></b> |
|---------------------|---------------------------|--------------------------------------|
| Portelet            | Outer                     | 110                                  |
|                     | Inner                     | 142                                  |
| Grand Port          |                           | 80                                   |
| Perelle             |                           | 48                                   |
| Port Grat           |                           | 112                                  |
| Rousse              |                           | 112                                  |
| Les Amarreurs       | Outer                     | 49                                   |
|                     | Inner                     | 80                                   |
| Bordeaux            |                           | 116                                  |
| Halfway             |                           | 88                                   |
| Salerie             | Outer                     | 24                                   |
|                     | Inner (including sides)   | 62                                   |

| <b><u>Slipways</u></b> | <b><u>Description</u></b>   | <b><u>Approximate Length (m)</u></b> |
|------------------------|-----------------------------|--------------------------------------|
| Pleinmont              | Fairy Ring                  | 25                                   |
|                        | Fort Pezeries (Double Slip) | 63                                   |
|                        | La Varde                    | 9                                    |
| Portelet               |                             | 25                                   |
| Imperial               |                             | 45                                   |
| Fort Grey              | North                       | 47                                   |
|                        | South                       | 38                                   |
| Rocquaine              | Douit du Moulin             | 60                                   |
| L'Eree                 | North                       | 43                                   |
|                        | South                       | 66 (33 each leg)                     |
| Lihou                  |                             | 78                                   |
| Fort Saumarez          |                             | 87                                   |
| Perelle                | Along Rue de Catioroc       | 38                                   |
|                        | By Perelle Garage           | 48                                   |
|                        | Fort Richmond end           | 29                                   |
| Fort Richmond Headland | North                       | 27                                   |
|                        | South                       | 70                                   |
| Vazon                  | West end by Rue du Crocq    | 20                                   |
|                        | La Rocquette                | 34                                   |
| Cobo                   | By Rue des Corneille        | 26                                   |
|                        | By Route de Carteret        | 46                                   |
|                        | Grandes Rocques to Cobo     | 14                                   |
|                        | Saline walkway slip         | 17                                   |
| Port Grat              | Concrete walkway            | 20                                   |
|                        | Route de Port Grat          | 24                                   |
| Rousse                 | Concrete on main pier       | 69                                   |
|                        | Le Houmet                   | 28                                   |

| <u>Slipway</u> | <u>Description</u>      | <u>Approximate Length (m)</u> |
|----------------|-------------------------|-------------------------------|
| Les Amarreurs  |                         | 17                            |
| Ladies Bay     |                         | 15                            |
| Chouet         |                         | 35                            |
| Pembroke       |                         | 18                            |
| L'Ancrese Bay  | East                    | 13                            |
|                | West                    | 23                            |
| Bordeaux       | From Road               | 20                            |
|                | By pier                 | 58                            |
| Bellegreve Bay | Richmond                | 22                            |
|                | Near Red Lion           | 9                             |
|                | Near Admiral Park       | 16                            |
|                | Longstore               | 33                            |
|                | Salerie Corner          | 38                            |
| Havelet        | North by Castle         | 55                            |
|                | South by Half Moon Café | 48                            |
| Valette        | Aquarium side           | 35                            |
|                | By children's pool      | 50                            |
| Fermain        |                         | 17                            |
| Saints Bay     |                         | 24                            |
| Saints Harbour |                         | 35                            |
| Petit Bôt      |                         | 8                             |

#### Other Structures

|                         |                 |
|-------------------------|-----------------|
| Access steps to beaches |                 |
| Fermain Moorings        |                 |
| Gouffre Harbour         |                 |
| Saints Harbour          |                 |
| Ozanne Steps            |                 |
| Moulin Huet             | Slips and Steps |
| Aprons                  |                 |



## Appendix Eight

### Some Analysis of Other Jurisdictions' Expenditure on Sea Defence Maintenance

1. It is difficult to make comparisons on coastal defence expenditure for maintenance purposes because each jurisdiction must respond to a unique situation employing its own approach. For example, the UK has extensive coastal defence systems and dedicates resources to their upkeep and maintenance. However, it must be recognised that any incidence of coastal flooding on a small island such as Guernsey will always be more far-reaching as a proportionately greater part of the population, business premises and public utilities is located in proximity to the coastline. Guernsey has an extensive sea defence system and any incident may give rise to far-reaching consequences. Further, there is much less of a coastal plain available for absorbing the impact of any incident and there is a large area of land in the north and east of the Island that is below sea level.
2. The following statement is included in the States of Jersey 2012 / 2013 expenditure proposals (Budget Statement 2011):

*The assets replacement information held in the JD Edwards financial system was used to identify assets that will reach the end of their expected useful life in the period 2011 - 2013. The data was critically reviewed by departments to produce a prioritised replacement programme based on specific asset replacements. An assessment was made by the Transport and Technical Services Department that a minimum sum of around £7 million is required annually, on average, to maintain a 'steady state', broadly split between:*

- Highways £4 million
- Sewers £2 million
- Sea Defences £1 million

3. This indicates a spend of approximately £10.20 per head of population (Jersey States Statistics Unit estimate the Island's population for December 2011 at 98,000).
4. UK statistics are more difficult to come by, but the *Charting Progress* document, issued by Defra in 2009 (section 3.2.3.2), states as follows:  
  
*If it is assumed (as above for the value of Principal Activities) that half of the capital works related to flood defences (see note in Table 3.12) are marine, then the total for England and Wales for 2007/08 is approximately £60 million.*
5. This is a revenue figure estimated as the maintenance costs for all coastal defence installations in England and Wales; it does not include a figure of £11m applied to beach nourishment.
6. The 2011 census gives an unrounded figure for the population of England and Wales as 56.1 million, indicating expenditure of approximately £1.07p per head.
7. In March 2011 the population of Guernsey was given as 62,915 (Policy Council, Guernsey Facts and Figures, 2012). Maintenance expenditure on coastal defence installations for 2011 was £55,000. This gives a per capita maintenance spend of approximately £0.87p. In 2013 expenditure is scheduled to be £73,000 which, using the same population figure, would give a per capita spend of £1.16p.

8. Of course, it is necessary to recognise that coastal defences come in many different forms. As mentioned previously in this Report, a number of installations were constructed other than for defence from the sea, but have come to be viewed as purposeful in this regard. There are also many “soft” defences, such as shingle banks and sand dunes that also play an important part in guarding against erosion of the coastal lands. Consequently, maintenance requirements are varied, both in terms of work routines and costs.
9. Appendix Four A indicates that there are just less than 12,000 metres of masonry sea defence walls in the Island. Unfortunately, there are not complete figures for the depth of the various lengths of sea wall so it is not possible to calculate a total for square / cubic metres under maintenance. Taking what figures are available and assigning a notional value of 1 to those for which the information is not obtainable gives a total of 44,860 m<sup>2</sup> of built sea wall under management. This is certainly an underestimate, given the use of the uniform figure for the unknown height of substantial lengths of the defences and given that no account has been taken for foundation works.
10. Re-pointing costs of £172.00 per square metre for roadside works and £100.00 per square metre for seaward side works have been provided by the Public Services Department. The discrepancy arises because generally larger blocks and boulders are used on walls facing the oncoming tides and the work is, therefore, less “fiddly”. Certain stretches of sea wall are constructed from reinforced concrete rather than granite (see Appendix Four A for details); these too require maintenance from time to time, but it is not possible to provide a meaningful cost measure on a metre for metre basis.
11. Using a general width of 1 metre and the figures given for seaward and roadside depths (with a presumption of 1m height where none is given), there is estimated to be a total area of built sea wall in the region of 48,700 m<sup>2</sup>. Re-pointing for this entire area (at £100 per metre) would cost in the region of £5,000,000.
12. Appendix Four B sets out similar figures for rock revetments. It is usually the case that reparations to these are necessary following disruption caused by heavy seas and storm conditions. Regular maintenance is also required to ensure that dislodgement is minimised, thus reducing liability to higher costs for storm damage.
13. Piers and slipways present different issues again from those presented by rock revetments and built defences. Whilst they require general maintenance (stone replacement, pointing, etc.) in the same way as built defences, it is also necessary to keep them free of weed and algae growth, necessitating regular liming (the costs of liming are met from a separate budget). Repairs to slipped stones, anchor points, etc. tend to take place as a result of inspection reports and can be very costly, particularly for replacement of stainless steel ladders, repairs to steps, etc.
14. Soft sea defences in Guernsey comprise shingle banks and dunes. Re-profiling of shingle banks is necessary from time to time as wave action tends to erode the bank which requires the material drawn down the beach to be pushed back up to recreate the bank profile. Dunes are effective in ameliorating wave action, but are not stable and require regular attention. Much of this is carried out through the Department’s contract with Environment Guernsey, which comes under a separate budget heading.

**(NB The Treasury and Resources Department supports this States Report which clearly sets out the requirement for a rational, risk based strategy for the evaluation of the probability and impact of flood events and to prioritise works to protect the areas at risk. The level of protection recommended in the Report appears to be a sensible balance between cost and benefit.**

**In respect of the resource implications, as is clearly set out in the Report, the provision of both capital and revenue funding for progressing coastal defence works will be subject to the States prioritisation processes.)**

**(NB The Policy Council supports the Report.)**

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 17<sup>th</sup> May, 2013, of the Environment Department, they are of the opinion:-

1. To approve the strategy of:
  - the use of the 1:100 year return period as the risk assessment base;
  - the adoption of epoch 1 (20 years to 2031) for climate change forecasts;
  - the use of the 1:50 year return period parameter for sea defence construction projects;
  - using the weighting and analysis methodology for assessing priorities as set out in this Report;
  - the intention to progress projects 1 and 2 in the priority listings (respectively, St Sampson Harbour and Belle Greve Bay) subject to Capital funding being made available.
2. To endorse, subject to capital funding being made available, the proposal for the introduction of a data collection/monitoring system to enable improved source information to guide future coastal defence works.

## HOME DEPARTMENT

### CRIMINAL JUSTICE LEGISLATION INTERNATIONAL CRIMINAL COURT

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

15<sup>th</sup> April 2013

Dear Sir

#### 1. **Executive Summary**

The purpose of this report is to recommend the introduction of Bailiwick legislation that is similar to the United Kingdom's International Criminal Court Act 2001. This would enable the Bailiwick authorities to give effect to requests for assistance from the International Criminal Court and also to ratify the Rome Statute which established it.

#### 2. **Advice from Her Majesty's Procureur**

Her Majesty's Procureur has advised in the following terms:

*"The International Criminal Court ("ICC") is a permanent supranational court based in The Hague, which tries individuals for genocide, crimes against humanity and war crimes. Historically such crimes were dealt with by a series of temporary tribunals set up by the international community, for example at Nuremburg in 1945 and more recently in response to events in the Balkans and Africa. At a United Nations conference in Rome in 1998, a statute creating an international court was approved ("the Rome Statute"). The ICC was established with the coming into force of the Rome Statute on 1<sup>st</sup> July 2002. It exists to create a powerful deterrent to potential perpetrators of atrocities, to end accusations of selective justice, and to ensure a swift response to alleged crimes by removing the need to establish a new tribunal every time a court hearing is required.*

*The ICC is intended to be complementary to national courts. Under the terms of the Rome Statute, if States have jurisdiction in respect of particular crimes under their domestic laws, they will retain such jurisdiction unless they are unable or unwilling genuinely to investigate and prosecute those crimes.*

*The ICC has its own Judges, permanent Prosecutor's office and support staff. There are three ways in which it may become involved in a case. These are following a reference of alleged crimes by the United Nations Security Council to the ICC, following a reference of alleged crimes by a State Party to the ICC Prosecutor, and the initiation of an investigation by the Prosecutor of his own motion. In the latter two circumstances, if the Prosecutor determines that there is a reasonable basis to commence an investigation he must inform the relevant authorities that has jurisdiction over the alleged crime. That jurisdiction then has a month in which to inform the ICC that it is investigating or has investigated the alleged crime. The Prosecutor must defer to that investigation unless the ICC determines that the jurisdiction in question is unwilling or unable genuinely to carry out the investigation.*

*The ICC is currently in session dealing with crimes alleged to have been committed in the Ivory Coast. It has opened an investigation into recent allegations of war crimes in Libya, and an investigation in respect of post-election violence in Kenya in 2007 and 2008 is ongoing.*

*Increasingly the ICC's work involves the tracing and repatriation of assets. It is reliant upon the assistance and co-operation of the ratifying States who are obliged, among other things, to gather evidence and arrest suspects as and when required.*

*The United Kingdom, which strongly supported the creation of the ICC, enacted the International Criminal Court Act 2001 ("the Act") to implement the provisions of the Rome Statute into its domestic law. Corresponding legislation was introduced in the Isle of Man in 2003, and I understand that Jersey aims to enact similar legislation shortly. There is currently no legislation in place to implement the Rome Statute in the Bailiwick. While most of the aspects of assistance which the ICC might request, and in particular the collection of evidence and freezing of assets, are consistent with the assistance that the Bailiwick authorities regularly provide to foreign jurisdictions under its existing mutual legal assistance regime, this regime does not apply to supranational bodies so could not be relied upon to provide assistance in the event of a request from the ICC.*

*In order to avoid a situation where the Bailiwick would be unable to assist the ICC by, for example, providing evidence of assets located here, and in line with the Bailiwick's ongoing commitment to the international fight against crime and terrorism, I recommend that Bailiwick legislation similar to the Act be enacted to implement the Rome Statute. This will enable the Bailiwick authorities to assist and support the work of the ICC, and will also permit ratification of the Rome Statute on behalf of the Bailiwick by the United Kingdom.*

*In order to give effect to the Rome Statute, it is necessary to make provision for the following matters:*

- *the incorporation into domestic law of the offences of genocide, crimes against humanity and war crimes, and offences against the administration of justice of the ICC;*

- *the arrest and delivery of persons wanted by the ICC (including, in appropriate cases, the return of such persons to a place of custody designated by the ICC) and associated court procedures and safeguards;*
- *the right for a suspect to volunteer to be delivered to the ICC;*
- *the detention and removal of a person in transit from another jurisdiction to the ICC;*
- *the collection of evidence locally including the questioning of witnesses, the provision of records and documents, the entry and search of premises, the freezing of assets that may be liable to forfeiture by the ICC, the taking of fingerprints and non-intimate samples, and the transfer of prisoners to give evidence in The Hague or to assist an investigation;*
- *sittings of the ICC to take place in the Bailiwick, if necessary, and the recognition of the ICC's legal capacity, privileges and immunities of persons connected with it, its rules or procedure, and its evidence provisions; and*
- *acceptance of the authenticity of any orders made by the ICC including enforcement of fines, forfeitures and reparations.*

*These proposals are unlikely to give rise to any significant resource issues, either in respect of drafting time or in relation to the involvement of the Law Officers and the Courts in the implementation of the relevant legislation once enacted."*

### **3. Resources**

The Department does not consider there to be any resource implications associated with these proposals.

### **4. Consultation**

The Royal Court, Greffier of the Court of Alderney, the Seneschal of Sark and the Head of Law Enforcement have been consulted and are supportive of the proposals.

The External Relations Group, by majority support the proposal to legislate for the International Criminal Court and extend the Rome Statute.

As indicated above, the proposals set out in this Report are based on the recommendation of Her Majesty's Procureur, who does not foresee any significant resource issues for the Law Officers' Chambers or the courts.

## **5. Principles of Good Governance**

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

## **6. Recommendations**

For the reasons set out above, the Home Department recommends the States be asked to approve the drafting of legislation to implement the Rome Statute in the Bailiwick.

Yours faithfully

J P Le Tocq  
Minister

F W Quin, Deputy Minister  
M K Le Clerc  
M M Lowe  
A M Wilkie

A L Ozanne, non-States Member

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

**(NB The Policy Council supports the Report.)**

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 15<sup>th</sup> April, 2013, of the Home Department, they are of the opinion:-

1. To approve the drafting of legislation to implement the Rome Statute, as described in paragraph 2 of that Report, in the Bailiwick.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.



**COMMERCE AND EMPLOYMENT DEPARTMENT**

AMENDMENT TO THE COPYRIGHT (BAILIWICK OF GUERNSEY  
ORDINANCE, 2005 AND THE PERFORMERS' RIGHTS (BAILIWICK OF  
GUERNSEY) ORDINANCE, 2005

REMOVAL OF EXEMPTION FOR CHARITIES AND NON PROFIT  
ORGANISATIONS IN RELATION TO SOUND RECORDINGS

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

7<sup>th</sup> May 2013

Dear Sir

**1. Executive Summary**

- 1.1 The management of intellectual property is a global business which operates across international boundaries. The international conventions provide the minimum standards that jurisdictions must reach for the protection of intellectual property rights in jurisdictions that are party to the convention.
- 1.2 The Berne Convention is the international agreement governing copyright which provides protection covering fields of commercial activity and artistic expression for literary, scientific and artistic works across all convention countries.
- 1.3 The extension of the full provisions of the Berne Convention to the Bailiwick will be a benefit to the Islands economies and international standing. This will further benefit the developing IP sector and encourage enterprise, successful businesses and innovative entrepreneurship. In addition it will enhance the Bailiwick's standing with the UK and in the international community.
- 1.4 In order to facilitate the extension of the Berne Convention, the Bailiwick must provide for a balance between the interests of rights holders and the users in a way which is consistent with the relevant international law.
- 1.5 Amendments are therefore proposed to remove certain exemptions which apply to charities and non profit organisations (NPOs) when playing sound recordings and music contained in broadcasts. They will then need to obtain or purchase a licence which is currently not required under the exemptions.

- 1.6 The Department's consultation received strong support for the removal of the exemptions from the commercial sector, but concerns were raised by charities and NPOs. The research carried out by the Department indicates that for many of the charitable premises and activities where an additional licence will be required, the extra fee will be less than £100 per annum.
- 1.7 To address concerns regarding costs, the Department proposes initially to establish a Subsidy Scheme (to be reviewed after the first year) capped at £3,000 per annum which will be financed from within the Department's existing budgetary provision. The Department has also reached agreement with the licensing bodies concerning the implementation of the licensing schemes that will apply to charities and NPOs.
- 1.8 The proposed amendments to the Bailiwick's intellectual property legislation are aligned with the States strategic and corporate objectives for enhancing international presence and promoting economic development.
- 1.9 The Department therefore recommends that minor amendments are made to the Copyright (Bailiwick of Guernsey) Ordinance, 2005 and the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005 which remove these exemptions.

## **2. Background and International Context**

- 2.1 Intellectual Property (IP) laws are jurisdictional and apply to a particular country or territory. However, IP trade is global and highly mobile. To ensure a "level playing field" in such trade and to agree common principles of protection, international agreements have been established which are governed through the international bodies of the World Trade Organisation (WTO) and the World Intellectual Property Organisation (WIPO). The extension to the Bailiwick of the IP international agreements is key to gaining international recognition for the Bailiwick, its individuals and businesses.
- 2.2 In November 2002, the States resolved to create an IP environment which met the international standard under TRIPS (Trade Related Intellectual Property Rights) and through which the other international agreements could be extended (Billet d'État No. XXIII of 2002).
- 2.3 To satisfy this process the legislation must meet the relevant international standards.
- 2.4 The Berne Convention of the 9<sup>th</sup> September, 1886, as subsequently revised by international agreement, protects the rights of authors in their literary, scientific and artistic works (which includes music, songs and their recordings) across the countries that are signatories to the convention. There are now one hundred and sixty-six countries signed up to this Convention (attached as the Appendix) which covers all of the main global economies.

- 2.5 The Berne Convention of 1886 was extended to Guernsey in its original form during Queen Victoria's reign. In 1913 the Copyright Act of 1911 was registered in Guernsey giving effect to the provisions of the Berne Convention at that time within the Island. However Guernsey's copyright legislation was not subsequently revised and remained substantially un-amended until replaced by the Copyright (Bailiwick of Guernsey) Ordinance, 2005. In the meantime the Berne Convention has undergone several revisions and amendments. However these changes have not been extended to the Bailiwick. The Bailiwick's modernised Copyright Legislation, together with the amendments proposed in this report, will facilitate the extension of the full provisions (i.e. all of the revisions and amendments) of the Berne Convention to the Bailiwick.

### **3. Benefits Derived from Extending the Berne Convention**

- 3.1 The Berne Convention provides protection for a broad field of economic activity and cultural entertainment, including lectures, musical compositions, dramatic works, cinematographic works, maps, plans and works of art. It should also be noted that the program codes in software for applications and computers is a literary work within copyright law. The Berne Convention provides protection for such works in the countries signed up to the Convention.

- 3.2 It is necessary for the Bailiwick to achieve an extension of the Berne Convention, not just for the developing IP sector within the Bailiwick, but also for the broader international business community. For example the extension of the Berne Convention will provide protection in the Convention countries for:

- A composer who would receive copyright protection for his musical works.
- An architect who would receive copyright protection for his design plans and architectural drawings.
- An applications code writer who would receive copyright protection for the software code.
- A marketing agency who would receive protection for the copyright in their marketing material.
- A business services agency which would receive protection for any copyright in their business / financial services designs, and

all of the above protections would apply in each of the one hundred and sixty-six Convention countries in which the product / service of the works is licensed or marketed.

- 3.3 The full extension of the Berne Convention to the Bailiwick will be a specific benefit to the Bailiwick's developing IP sector which will encourage enterprise and successful Guernsey business. In addition it will enhance the Bailiwick's standing with the UK and in the international community relating to these valuable rights.

#### **4. UK Position**

- 4.1 In January 2011, the UK's Copyright, Designs and Patents Act 1988 (Amendment) Regulations 2010, repealed the UK's exemptions in relation to sound recordings (i.e. recorded music and songs) which previously applied to charitable groups and NPOs as set out in sections 67 and 72(1B)(a) (and related exemptions in paragraphs 15 and 18(1A)(a) of Schedule 2) of the Copyright, Designs and Patents Act, 1988.
- 4.2 The UK took their decision in order to achieve a proper balance between the interests of rights holders and users in a way which is consistent with the relevant EU and international law.
- 4.3 The States of Guernsey, through the External Relations Group in consultation with the Commerce & Employment Department, has formally requested that the UK extend the Berne Convention to the Bailiwick. In order to ensure that international obligations are complied with, Bailiwick legislation needs to be aligned with the relevant international law. Once this is achieved, then the UK will be in a position to extend the Berne Convention to the Bailiwick.

#### **5. Amendments to the Bailiwick's Copyright and Performers' Rights Ordinances**

- 5.1 The Copyright (Bailiwick of Guernsey) Ordinance, 2005 (the Copyright Ordinance) provides copyright protection within the Bailiwick for numerous works including sound recordings. The Copyright Ordinance applies to all Bailiwick organisations, including charities and NPOs.
- 5.2 Section 88 of the Bailiwick's Copyright Ordinance provides that it is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society, or other organisation if the main objects of the organisation are charitable or are otherwise concerned with the advancement of religion, education or social welfare. This provision is equivalent to section 67 of the UK's Copyright, Designs and Patents Act 1988 which the UK has now repealed (see paragraph 4).
- 5.3 There is a similar provision under section 93(3)(a) of the Bailiwick's Copyright Ordinance whereby an exception is permitted for the free public showing or playing in public of certain sound recordings (referred to as "excepted sound recordings" in the legislation) that form part of the activities of an organisation that is not established or conducted for profit. This provision is equivalent to section 72(1B)(a) of the UK's Copyright, Designs and Patents Act 1988 which the UK has now repealed (see paragraph 4).
- 5.4 Related exemption provisions to those detailed above in the Bailiwick's Copyright Ordinance are also found in paragraphs 19 and 24(2)(a) of Schedule 1 to the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005 (the

Performers' Rights Ordinance). These provisions are equivalent to paragraphs 15 and 18(1A)(a) of Schedule 2 of the UK's Copyright, Designs and Patents Act, 1988 which have now been repealed (see paragraph 4).

- 5.5 The Department considers that the proposed amendment is necessary in order to facilitate the extension of the full provisions of the Berne Convention to the Bailiwick and achieve a proper balance between the interests of right holders and users in a way which is consistent with the relevant international law. This will entail the repeal of sections 88, 93(3)(a) of the Bailiwick's Copyright Ordinance and the related exemptions in paragraphs 19 and 24(2)(a) of Schedule 1 to the Bailiwick's Performers' Rights Ordinance. (NPO exemptions).
- 5.6 The removal of the charities and NPO exemptions will in practice mean that those currently enjoying the benefit of these exemptions will, in future, need to obtain licences authorising the playing or broadcasting of sound recordings which are subject to copyright. However, the Department is of the firm belief that this proposed amendment to our legislation is in the Bailiwick's overall corporate and strategic interest.

## **6. Consultation with Charities and Industry**

- 6.1 In November, 2011, a consultation was undertaken with industry, charities, NPOs and the general public in the Bailiwick in order to consider the repeal of the charities and NPO exemptions. There was a high level of response to the consultation.
- 6.2 Industry strongly supported the removal of the charity and NPO exemptions as they believe there is benefit to Bailiwick businesses and individuals from the full extension of the Berne Convention to the Bailiwick and developing the Bailiwick's IP environment.
- 6.3 Charities and NPOs expressed concerns about the proposed repeal of the exemptions. These concerns included cost, potential complications in arranging events, together with a concern for clear communication and understanding with the bodies that collect fees on behalf of authors and performers and recording companies. Several charities were not aware of the existing licence requirements with regard to music rights and charitable events.
- 6.4 Particular concerns were expressed in relation to music for medical purposes such as therapy sessions provided by the Bailiwick of Guernsey Alzheimer's Society and the need for clarity regarding the position of music used in the context of religious services.
- 6.5 The Department was grateful to receive these responses and has been careful to consider the particular needs of charities and NPOs in bringing forward this report.

## **7. Licensing Bodies for Music**

- 7.1 Businesses and organisations that play music in public will often require a licence from the Performing Rights Society (PRS for Music) and Phonographic Performance Limited (PPL). PRS for Music collects and distributes fees for musical compositions on behalf of songwriters, composers and music publishers. PPL collects and distributes fees for the use of recorded music on behalf of record companies and performers. Currently, charities and NPOs are exempt from the need for a licence from PPL for the playing or broadcasting of sound recordings where they fall under the criteria set out in the NPO exemptions. Licences are however required by charities and NPOs from PRS for Music for the public performance of music. Generally there is a payment required in order to be granted this licence.
- 7.2 Local musicians and songwriters benefit from the services of PPL and PRS for Music in the collection of music fees and royalties. The music industry is of the opinion that removing the NPO exemptions provides a fair and equitable basis on which to charge the users and distribute the revenues to the music creators.
- 7.3 Further information about PRS for Music and PPL is available online at:
- <http://www.prsformusic.com/aboutus>
  - <http://www.ppluk.com>

## **8. Agreement with the Licensing Bodies for Music**

- 8.1 The Department has consulted with the licensing bodies and has reached an agreement regarding the way in which music licences for charities and NPOs would be implemented if the States agree to the removal of these exemptions.

This includes:-

- PPL has confirmed that it will offer a “grace period” of not less than 12 months from the date of the removal of the NPO exemptions to the implementation of a licensing regime by the licensing bodies.
- The grace period will help those organisations to adjust to the change in the law and enable PRS for Music and PPL to prepare and distribute communication material to affected organisations, and for those organisations to understand, discuss and respond as appropriate.
- PRS for Music and PPL have provided clarification of their operating procedure for licensing the equivalent music users in the United Kingdom, following the removal of similar exemptions in UK law.
- PRS for Music and PPL issue a joint licence to community buildings, through PRS for Music as the single point of contact for the music user.



This has simplified and clarified the licensing arrangements. Details can be found here:- <http://www.prsformusic.com/Pages/ppljointlicence.aspx>

- PRS for Music and PPL are currently working together with the aim of identifying and implementing further joint working activities. Examples include planned joint licences for Amateur Sports Clubs, and for Small Workplaces (where music is only audible to four or fewer employees). These arrangements will, once implemented, extend to the Bailiwick of Guernsey.
- PRS for Music and PPL currently operate discretionary charging policies whereby they do not make a charge for the use of music in religious services and in medical therapy. These are already applicable in Guernsey and will cover any organisations which require licences following the removal of the charities and NPO exemptions.
- Both PRS for Music and PPL now have Codes of Conduct for licensees. These include complaints procedures, culminating in the facility of an independent UK Ombudsman service for the resolution of complaints regarding the conduct of the societies (as set out in their Codes of Conduct). These Codes of Conduct already extend to licensees and prospective licensees in Guernsey, and will therefore cover any organisations which require licences following the removal of the charity and NPO exemptions.
- PRS for Music do not currently charge any back-dated licence fees due or apply their higher rate charge (+50%) in the first year of the licence when community and charity sector organisations have not obtained their licence in advance of using music.

## **9. Indicative Costs to Guernsey Charities and NPOs**

- 9.1 The licence fees applicable to charities and NPOs vary with the type of organisation and tariff parameters such as the level of attributable income and frequency of use. It should be noted that many charities and NPOs do not play recorded music at their events. Therefore these do not require a licence, and no additional costs will be incurred.
- 9.2 In broad terms, the licence and associated fee provisions can be broken down into 3 main areas:-
1. Community Buildings
  2. Members' Clubs and Sports Clubs
  3. Charity Shops

### Community Buildings

The indicative rate for community buildings, based on the tariff currently applied in the UK, is as follows:-

- PRS for Music charges 1% of “defined income” for a community building, with a minimum charge of £44.50.
- PPL charges a flat fee of £44.50 to community buildings with a defined income of up to and including £10,000 per annum. For community buildings with a defined income of over £10,000 per annum, the PPL fee is 1% of that defined income.

As the licensed use of a community building covers a whole year, where several charities and NPOs use that building, they will each pay only a proportion of the fixed charge in relation to their use, where this charge is passed on by the proprietors of the community building.

A one off fee per event is also available as an option from PRS for Music and PPL (the cost starting at £15.50 per society).

#### Members’ Clubs

PRS for Music licenses Members’ Clubs which are NPOs and run by Committees using their “Tariff JMC” which was set by the UK Copyright Tribunal in 1987. PRS for Music licence fees start from £93.06 per annum.

PPL licenses the playing of recorded music as background music in registered members’ clubs holding a Club Premises Certificate under the UK’s Licensing Act legislation. The tariff is a flat fee per annum of £112.86.

#### Sports Clubs

Amateur sports clubs are currently licensed under the PRS for Music tariff for Members’ Clubs (above). As noted above, PRS for Music and PPL are working together to develop a joint licensing solution for amateur sports clubs under a separate tariff being negotiated with the Sport and Recreation Alliance. The licence fees for an amateur sports club under the new tariff will be lower than the equivalent fees under the Members’ Clubs tariff.

#### Charity shops

Charity Shops are charged at the same rate as commercial shops by PRS for Music. The PRS for Music rate is based on the square footage of relevant floor area, starting with a rate of £141.16 for sales space up to 100m<sup>2</sup>; a reduced charge is available for premises using only a single portable radio or up to 26 inch TV.

The licence fee under the standard PPL tariff for shops and stores starts at £122.64 per annum for premises where the area in which the recorded music is audible is 600m<sup>2</sup> or less. However there is a concessionary rate of £61.32 per annum for premises falling into the lowest band of the tariff and only playing “traditional” TV or radio broadcasts.



Other

There are also separate charges for religious buildings (for use other than the religious services), colleges and schools. Events run by a charity or community group which are not in fixed premises, for example in a park or on a beach, or a street event will in most cases involve a charity/community group arranging for the license where music is used. There is a discount scheme available from PRS for Music for such events allowing organisers of charitable events to apply for a discount from the standard commercial tariffs.

More information

Tailored information for the Community Buildings Joint Licence (PRS for Music and PPL) is available at:

<http://www.prsformusic.com/Pages/ppljointlicence.aspx>

Further charging information can be found at:-

**All PPL public performance tariffs:**

<http://www.ppluk.com/I-Play-Music/Businesses/How-much-does-a-licence-cost/>

**All PRS for Music public performance tariffs:**

<http://www.prsformusic.com/users/businessesandliveevents/musicforbusinesses/Pages/default.aspx>

**PRS for Music Charity and Community Event Discount Scheme:**

<http://www.prsformusic.com/users/businessesandliveevents/musicforbusinesses/charityandcommunity/Pages/default.aspx>

**10. Proposed Funding Provision**

- 10.1 To mitigate the impact of any additional charges on the charities and NPOs, in consequence of the removal of the exemptions, the Department proposes initially to establish a Subsidy Scheme (to be reviewed after the first year) capped at £3,000 per annum which will be financed from within the Department's existing budgetary provision.
- 10.2 The Subsidy Scheme will be made available to charities registered within the Bailiwick and in accordance with:-

The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008  
 The Charities and Non Profit Organisations (Registration) (Sark) Law, 2010, and  
 The Charities and Non Profit Organisations (Registration) (Guernsey and Alderney) (Amendment) Law, 2010

- 10.3 Reimbursement of licence fees paid will be made following submission of a receipted invoice from PRS for Music. The Subsidy Scheme will run for one year initially and will be reviewed annually.
- 10.4 It is proposed that a Bailiwick charity or NPO will be able to apply to offset their licence fees to a level of up to £100 per organisation. This will be distributed pro-rata to all who apply and qualify, and is subject to a maximum total of £3,000 per annum. It is proposed that fees will be paid in advance by the charity or NPO and these can then make an application to reclaim the fees, or a portion of the fees, as the case may be, in respect of each financial year.

## **11. Advice and Information Provision to Guernsey Charities**

- 11.1 In addition to the information available from PRS for Music and PPL, the IP Office will prepare guidance notes and make these available on its website to assist charities and NPOs in understanding their obligations should the States decide to remove the exemptions.
- 11.2 The IP Office will also work with the appropriate organisations to inform them of the provisions and requirements as appropriate to the licensing requirements for charities and NPOs.
- 11.3 Some members of the Guernsey Commercial Bar have agreed to provide free legal advice for Guernsey charities and NPOs in relation to music licenses and related fees. A register of such practitioners will also be available on the Registry website.

## **12. Consultation with Alderney and Sark**

- 12.1 The Copyright Ordinance and the Performers' Rights Ordinance are both Bailiwick Ordinances. Accordingly both the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney (known as the Policy Committee) have been consulted in relation to the terms of the proposed Amendment Ordinance as per section 3(4) of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.
- 12.2 The Policy Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark both support this States Report.

## **13. Consultation with Treasury and Resources Department**

- 13.1 The Department has consulted with the Treasury & Resources Department and notes that the Treasury & Resources Department shall append its comments to this States Report.

#### **14. Consultation with the Law Officers of the Crown**

- 14.1 The Law Officers of the Crown have been consulted and have identified no legal difficulties to the proposals to remove the NPO exemptions as described in this Report.

#### **15. Policy Impact for the States**

- 15.1 **Staffing** - There are no additional staffing requirements. The administration of the support will be carried out by existing Guernsey Registry staff during a period where the additional workload will not impact on their other duties.
- 15.2 **Legal Resources** – Subject to States decision, the Amendment Ordinance required in order to repeal the NPO exemptions, and thus amend the Copyright Ordinance and the Performers' Rights Ordinance will be considered by the States at its September meeting. The drafting time required to make this amendment is not extensive.
- 15.3 **Funding** – Up to £3,000 per annum will be available to reimburse charities and NPOs. This will be financed from within the Department's existing budgetary provision.
- 15.4 **Corporate Governance** – The Department believes that it has fully complied with the six principles of good governance in the public services in the preparation of this Report (set out in Billet D'État IV, 2011 and approved by the States). The Department has carried out engagement and consultation with interested parties and stakeholders when considering the proposal to repeal the NPO exemptions.
- 15.5 **International Presence** – The repeal of the NPO exemptions will enable the Bailiwick to demonstrate that it provides the correct balance between the interests of rights holders and users in a way which is consistent with the relevant international law. This will facilitate the Bailiwick's application to the UK for the full extension of the Berne Convention.
- 15.6 **Fulfilment of States Policy and Strategy** - The recommendations in this report are brought in support of the Island's economic future through the fulfilment of the requirement to:-
- Maintain and enhance Guernsey's standing in the global community.
  - Provide conditions that encourage enterprise and successful Guernsey business.

#### **16. Conclusions**

- 16.1 Both the Copyright Ordinance and the Performers' Rights Ordinance need to be amended in order to remove the charities and NPO exemptions, as this is in the Bailiwick's corporate policy and strategic interest. It will facilitate the full

extension of the Berne Convention to the Bailiwick, which will in turn enhance the Bailiwick's presence in the global IP community. This will provide new opportunities to encourage local enterprise, successful businesses and innovative entrepreneurship.

- 16.2 It is recognised by the Department that there will be a cost to some charities and NPOs associated with the removal of the exemptions. The Department has been careful to consider and take on board these concerns. Through the provision of a fund any additional costs (or a proportion of the costs) for the majority of charities and NPOs can be met. There has also been an agreement reached with the licensing bodies for a grace period of not less than twelve months. This will provide an opportunity for communication and engagement with this sector to ensure that charitable activities are not compromised and the generosity of the Islanders in supporting charities and NPOs remains strong.

## **17. Recommendations**

- 17.1 The Department recommends that the States:

1. Approves the repeal of sections 88 and 93(3) of The Copyright (Bailiwick of Guernsey) Ordinance, 2005 and paragraphs 19 and 24(2) of Schedule 1 to the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005, and directs the drafting of such legislation as may be necessary to give effect to the aforementioned decisions.
2. Approves the establishment of a Subsidy Scheme set at £3,000 per annum to be reviewed annually, which will be financed from within the Department's existing budgetary provision for the reimbursement in whole or in part of music licence fees for charities and NPOs in accordance with section 10 of this Report.

Yours faithfully

K A Stewart  
Minister

A H Brouard  
Deputy Minister

D de G De Lisle  
L B Queripel  
H J R Soulsby

## Appendix – Signatories to the Berne Convention

| Contracting Party                | Original Signatories | Instrument  | In Force          |
|----------------------------------|----------------------|---|-------------------|
| Albania                          |                      | Accession: December 2, 1993                           | March 6, 1994     |
| Algeria                          |                      | Accession: January 19, 1998                           | April 19, 1998    |
| Andorra                          |                      | Accession: March 2, 2004                              | June 2, 2004      |
| Antigua and Barbuda              |                      | Accession: December 17, 1999                          | March 17, 2000    |
| Argentina                        |                      | Accession: May 5, 1967                                | June 10, 1967     |
| Armenia                          |                      | Accession: July 19, 2000                              | October 19, 2000  |
| Australia                        |                      | Declaration of Continued Application: April 14, 1928  | April 14, 1928    |
| Austria                          |                      | Accession: September 11, 1920                         | October 1, 1920   |
| Azerbaijan                       |                      | Accession: March 4, 1999                              | June 4, 1999      |
| Bahamas                          |                      | Declaration of Continued Application: July 5, 1976    | July 10, 1973     |
| Bahrain                          |                      | Accession: November 29, 1996                          | March 2, 1997     |
| Bangladesh                       |                      | Accession: February 4, 1999                           | May 4, 1999       |
| Barbados                         |                      | Accession: March 16, 1983                             | July 30, 1983     |
| Belarus                          |                      | Accession: September 12, 1997                         | December 12, 1997 |
| Belgium                          | September 9, 1886    | Ratification: September 5, 1887                       | December 5, 1887  |
| Belize                           |                      | Accession: March 17, 2000                             | June 17, 2000     |
| Benin                            |                      | Declaration of Continued Application: January 3, 1961 | August 1, 1960    |
| Bhutan                           |                      | Accession: August 25, 2004                            | November 25, 2004 |
| Bolivia (Plurinational State of) |                      | Accession: August 4, 1993                             | November 4, 1993  |
| Bosnia and Herzegovina           |                      | Declaration of Continued Application: June 2, 1993    | March 1, 1992     |
| Botswana                         |                      | Accession: January 15, 1998                           | April 15, 1998    |
| Brazil                           |                      | Accession: February 6, 1922                           | February 9, 1922  |
| Brunei Darussalam                |                      | Accession: May 30, 2006                               | August 30, 2006   |
| Bulgaria                         |                      | Accession: December 5, 1921                           | December 5, 1921  |
| Burkina Faso                     |                      | Accession: April 26, 1963                             | August 19, 1963   |
| Cameroon                         |                      | Declaration of Continued Application:                 | January 1, 1960   |

|                                       |                             | September 21, 1964                                      |                   |
|---------------------------------------|-----------------------------|---|-------------------|
| <b>Contracting Party</b>              | <b>Original Signatories</b> | <b>Instrument</b>                                       | <b>In Force</b>   |
| Canada                                |                             | Declaration of Continued Application: April 10, 1928    | April 10, 1928    |
| Cape Verde                            |                             | Accession: April 7, 1997                                | July 7, 1997      |
| Central African Republic              |                             | Accession: May 31, 1977                                 | September 3, 1977 |
| Chad                                  |                             | Accession: August 4, 1971                               | November 25, 1971 |
| Chile                                 |                             | Accession: April 9, 1970                                | June 5, 1970      |
| China                                 |                             | Accession: July 10, 1992                                | October 15, 1992  |
| Colombia                              |                             | Accession: December 4, 1987                             | March 7, 1988     |
| Comoros                               |                             | Accession: January 17, 2005                             | April 17, 2005    |
| Congo                                 |                             | Declaration of Continued Application: May 8, 1962       | August 15, 1960   |
| Costa Rica                            |                             | Accession: March 3, 1978                                | June 10, 1978     |
| Côte d'Ivoire                         |                             | Accession: July 8, 1961                                 | January 1, 1962   |
| Croatia                               |                             | Declaration / Notification of Succession: July 28, 1992 | October 8, 1991   |
| Cuba                                  |                             | Accession: November 20, 1996                            | February 20, 1997 |
| Cyprus                                |                             | Declaration of Continued Application: February 24, 1964 | August 16, 1960   |
| Czech Republic                        |                             | Declaration of Continued Application: December 18, 1992 | January 1, 1993   |
| Democratic People's Republic of Korea |                             | Accession: January 28, 2003                             | April 28, 2003    |
| Democratic Republic of the Congo      |                             | Declaration of Continued Application: October 8, 1963   | June 30, 1960     |
| Denmark                               |                             | Accession: June 13, 1903                                | July 1, 1903      |
| Djibouti                              |                             | Accession: February 13, 2002                            | May 13, 2002      |
| Dominica                              |                             | Accession: May 7, 1999                                  | August 7, 1999    |
| Dominican Republic                    |                             | Accession: September 24, 1997                           | December 24, 1997 |
| Ecuador                               |                             | Accession: July 8, 1991                                 | October 9, 1991   |
| Egypt                                 |                             | Accession: March 2, 1977                                | June 7, 1977      |
| El Salvador                           |                             | Accession: November 18, 1993                            | February 19, 1994 |
| Equatorial Guinea                     |                             | Accession: March 26, 1997                               | June 26, 1997     |
| Estonia                               |                             | Accession: July 26, 1994                                | October 26, 1994  |
| Fiji                                  |                             | Declaration of Continued Application: December 1, 1971  | October 10, 1970  |
| Finland                               |                             | Accession: March 23, 1928                               | April 1, 1928     |
| France                                | September 9, 1886           | Ratification: September                                 | December 5, 1887  |

|                                  |                             | 5, 1887  |                    |
|----------------------------------|-----------------------------|--|--------------------|
| <b>Contracting Party</b>         | <b>Original Signatories</b> | <b>Instrument</b>                                    | <b>In Force</b>    |
|                                  |                             |  |                    |
| Gabon                            |                             | Accession: December 19, 1961                         | March 26, 1962     |
| Gambia                           |                             | Accession: December 7, 1992                          | March 7, 1993      |
| Georgia                          |                             | Accession: February 16, 1995                         | May 16, 1995       |
| Germany                          | September 9, 1886           | Ratification: September 5, 1887                      | December 5, 1887   |
| Ghana                            |                             | Accession: July 11, 1991                             | October 11, 1991   |
| Greece                           |                             | Accession: November 9, 1920                          | November 9, 1920   |
| Grenada                          |                             | Accession: June 22, 1998                             | September 22, 1998 |
| Guatemala                        |                             | Accession: April 28, 1997                            | July 28, 1997      |
| Guinea                           |                             | Accession: August 13, 1980                           | November 20, 1980  |
| Guinea-Bissau                    |                             | Accession: April 18, 1991                            | July 22, 1991      |
| Guyana                           |                             | Accession: July 25, 1994                             | October 25, 1994   |
| Haiti                            |                             | Accession: October 11, 1995                          | January 11, 1996   |
| Holy See                         |                             | Accession: July 19, 1935                             | September 12, 1935 |
| Honduras                         |                             | Accession: October 24, 1989                          | January 25, 1990   |
| Hungary                          |                             | Accession: February 14, 1922                         | February 14, 1922  |
| Iceland                          |                             | Accession: June 30, 1947                             | September 7, 1947  |
| India                            |                             | Declaration of Continued Application: April 23, 1928 | April 1, 1928      |
| Indonesia                        |                             | Accession: June 5, 1997                              | September 5, 1997  |
| Ireland                          |                             | Accession: October 5, 1927                           | October 5, 1927    |
| Israel                           |                             | Accession: December 14, 1949                         | March 24, 1950     |
| Italy                            | September 9, 1886           | Ratification: September 5, 1887                      | December 5, 1887   |
| Jamaica                          |                             | Accession: September 28, 1993                        | January 1, 1994    |
| Japan                            |                             | Accession: April 18, 1899                            | July 15, 1899      |
| Jordan                           |                             | Accession: April 28, 1999                            | July 28, 1999      |
| Kazakhstan                       |                             | Accession: January 12, 1999                          | April 12, 1999     |
| Kenya                            |                             | Accession: March 11, 1993                            | June 11, 1993      |
| Kyrgyzstan                       |                             | Accession: April 8, 1999                             | July 8, 1999       |
| Lao People's Democratic Republic |                             | Accession: December 14, 2011                         | March 14, 2012     |
| Latvia                           |                             | Accession: May 11, 1995                              | August 11, 1995    |
| Lebanon                          |                             | Accession: February 19, 1946                         | September 30, 1947 |

| Contracting Party                | Original Signatories | Instrument   | In Force           |
|----------------------------------|----------------------|--|--------------------|
| Lesotho                          |                      | Accession: June 27, 1989                                 | September 28, 1989 |
| Liberia                          |                      | Accession: December 8, 1988                              | March 8, 1989      |
| Libya                            |                      | Accession: June 28, 1976                                 | September 28, 1976 |
| Liechtenstein                    |                      | Accession: July 20, 1931                                 | July 30, 1931      |
| Lithuania                        |                      | Accession: September 14, 1994                            | December 14, 1994  |
| Luxembourg                       |                      | Accession: June 20, 1888                                 | June 20, 1888      |
| Madagascar                       |                      | Declaration of Continued Application: February 11, 1966  | January 1, 1966    |
| Malawi                           |                      | Accession: July 12, 1991                                 | October 12, 1991   |
| Malaysia                         |                      | Accession: June 28, 1990                                 | October 1, 1990    |
| Mali                             |                      | Declaration of Continued Application: March 19, 1962     | April 4, 1960      |
| Malta                            |                      | Declaration of Continued Application: May 29, 1968       | September 21, 1964 |
| Mauritania                       |                      | Accession: October 16, 1972                              | February 6, 1973   |
| Mauritius                        |                      | Accession: February 9, 1989                              | May 10, 1989       |
| Mexico                           |                      | Accession: May 9, 1967                                   | June 11, 1967      |
| Micronesia (Federated States of) |                      | Accession: July 7, 2003                                  | October 7, 2003    |
| Monaco                           |                      | Accession: May 30, 1889                                  | May 30, 1889       |
| Mongolia                         |                      | Accession: December 12, 1997                             | March 12, 1998     |
| Montenegro                       |                      | Declaration of Continued Application: December 4, 2006   | June 3, 2006       |
| Morocco                          |                      | Accession: June 16, 1917                                 | June 16, 1917      |
| Namibia                          |                      | Declaration of Continued Application: September 21, 1993 | March 21, 1990     |
| Nepal                            |                      | Accession: October 11, 2005                              | January 11, 2006   |
| Netherlands                      |                      | Accession: October 9, 1912                               | November 1, 1912   |
| New Zealand                      |                      | Declaration of Continued Application: April 26, 1928     | April 24, 1928     |
| Nicaragua                        |                      | Accession: May 23, 2000                                  | August 23, 2000    |
| Niger                            |                      | Declaration of Continued Application: May 2, 1962        | August 3, 1960     |
| Nigeria                          |                      | Accession: June 10, 1993                                 | September 14, 1993 |
| Norway                           |                      | Accession: April 13, 1896                                | April 13, 1896     |



| Contracting Party                | Original Signatories | Instrument   | In Force          |
|----------------------------------|----------------------|--|-------------------|
| Oman                             |                      | Accession: April 14, 1999                                | July 14, 1999     |
| Pakistan                         |                      | Accession: June 4, 1948                                  | July 5, 1948      |
| Panama                           |                      | Accession: March 8, 1996                                 | June 8, 1996      |
| Paraguay                         |                      | Accession: September 9, 1991                             | January 2, 1992   |
| Peru                             |                      | Accession: May 20, 1988                                  | August 20, 1988   |
| Philippines                      |                      | Accession: June 29, 1950                                 | August 1, 1951    |
| Poland                           |                      | Accession: January 28, 1920                              | January 28, 1920  |
| Portugal                         |                      | Accession: March 29, 1911                                | March 29, 1911    |
| Qatar                            |                      | Accession: April 5, 2000                                 | July 5, 2000      |
| Republic of Korea                |                      | Accession: May 21, 1996                                  | August 21, 1996   |
| Republic of Moldova              |                      | Accession: August 1, 1995                                | November 2, 1995  |
| Romania                          |                      | Accession: August 28, 1926                               | January 1, 1927   |
| Russian Federation               |                      | Accession: December 9, 1994                              | March 13, 1995    |
| Rwanda                           |                      | Accession: November 3, 1983                              | March 1, 1984     |
| Saint Kitts and Nevis            |                      | Accession: January 3, 1995                               | April 9, 1995     |
| Saint Lucia                      |                      | Accession: May 21, 1993                                  | August 24, 1993   |
| Saint Vincent and the Grenadines |                      | Accession: May 29, 1995                                  | August 29, 1995   |
| Samoa                            |                      | Accession: April 21, 2006                                | July 21, 2006     |
| Saudi Arabia                     |                      | Accession: December 11, 2003                             | March 11, 2004    |
| Senegal                          |                      | Accession: June 30, 1962                                 | August 25, 1962   |
| Serbia                           |                      | Declaration of Continued Application: September 19, 2006 | April 27, 1992    |
| Singapore                        |                      | Accession: September 21, 1998                            | December 21, 1998 |
| Slovakia                         |                      | Declaration of Continued Application: December 30, 1992  | January 1, 1993   |
| Slovenia                         |                      | Declaration of Continued Application: June 12, 1992      | June 25, 1991     |
| South Africa                     |                      | Declaration of Continued Application: October 3, 1928    | October 3, 1928   |
| Spain                            | September 9, 1886    | Ratification: September 5, 1887                          | December 5, 1887  |
| Sri Lanka                        |                      | Declaration of Continued Application: July 20, 1959      | February 4, 1948  |
| Sudan                            |                      | Accession: September 28, 2000                            | December 28, 2000 |
| Suriname                         |                      | Accession: November 16, 1976                             | February 23, 1977 |

| Contracting Party                         | Original Signatories | Instrument   | In Force          |
|---|----------------------|--|-------------------|
| Swaziland                                 |                      | Accession: September 14, 1998                                | December 14, 1998 |
| Sweden                                    |                      | Accession: July 8, 1904                                      | August 1, 1904    |
| Switzerland                               | September 9, 1886    | Ratification: September 5, 1887                              | December 5, 1887  |
| Syrian Arab Republic                      |                      | Accession: March 11, 2004                                    | June 11, 2004     |
| Tajikistan                                |                      | Accession: December 9, 1999                                  | March 9, 2000     |
| Thailand                                  |                      | Accession: June 17, 1931                                     | July 17, 1931     |
| the former Yugoslav Republic of Macedonia |                      | Declaration / Notification of Succession: July 23, 1993      | September 8, 1991 |
| Togo                                      |                      | Accession: January 28, 1975                                  | April 30, 1975    |
| Tonga                                     |                      | Accession: March 14, 2001                                    | June 14, 2001     |
| Trinidad and Tobago                       |                      | Accession: May 16, 1988                                      | August 16, 1988   |
| Tunisia                                   | September 9, 1886    | Ratification: September 5, 1887                              | December 5, 1887  |
| Turkey                                    |                      | Accession: October 27, 1951                                  | January 1, 1952   |
| Ukraine                                   |                      | Accession: July 25, 1995                                     | October 25, 1995  |
| United Arab Emirates                      |                      | Accession: April 14, 2004                                    | July 14, 2004     |
| United Kingdom                            | September 9, 1886    | Ratification: September 5, 1887                              | December 5, 1887  |
| United Republic of Tanzania               |                      | Accession: April 25, 1994                                    | July 25, 1994     |
| United States of America                  |                      | Accession: November 16, 1988                                 | March 1, 1989     |
| Uruguay                                   |                      | Accession: June 7, 1967                                      | July 10, 1967     |
| Uzbekistan                                |                      | Accession: January 19, 2005                                  | April 19, 2005    |
| Vanuatu                                   |                      | Accession: September 27, 2012                                | December 27, 2012 |
| Venezuela (Bolivarian Republic of)        |                      | Accession: September 20, 1982                                | December 30, 1982 |
| Viet Nam                                  |                      | Accession: July 26, 2004                                     | October 26, 2004  |
| Yemen                                     |                      | Accession: April 14, 2008                                    | July 14, 2008     |
| Zambia                                    |                      | Accession: September 13, 1991                                | January 2, 1992   |
| Zimbabwe                                  |                      | Declaration / Notification of Succession: September 18, 1981 | April 18, 1980    |

**(NB The Treasury and Resources Department supports this States Report and recognises the wider benefits that it is hoped will be obtained if the Berne Convention is extended to the Bailiwick. Therefore, in accordance with its mandate, the Treasury and Resources Department authorises the Commerce and Employment Department to establish the subsidy scheme set out in the States Report.)**

**(NB The Policy Council supports the Report.)**

The States are asked to decide:-

XIII.- Whether, after consideration of the Report dated 7<sup>th</sup> May, 2013, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the repeal of sections 88 and 93(3) of The Copyright (Bailiwick of Guernsey) Ordinance, 2005 and paragraphs 19 and 24(2) of Schedule 1 to the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005, and direct the drafting of such legislation as may be necessary to give effect to the aforementioned decisions.
2. To approve the establishment of a Subsidy Scheme set at £3,000 per annum to be reviewed annually, which will be financed from within the Commerce and Employment Department's existing budgetary provision for the reimbursement in whole or in part of music licence fees for charities and NPOs in accordance with section 10 of that Report.

## STATES HOUSING DEPARTMENT

### HOUSING (CONTROL OF OCCUPATION) (GUERNSEY) LAW, 1994 VARIATION TO THE HOUSING REGISTER

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

10<sup>th</sup> May 2013

Dear Sir

#### 1. Executive Summary

The purpose of this report is to seek approval for the preparation of an Ordinance (under section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994) to amend the Housing Register to facilitate the inscription of three dwellings to be created on the site of the former Hotel Les Carterets at Rue De La Saline, Castel, in Part A of the Housing Register (i.e. onto the 'Open Market').

#### 2. Background

On 14 March 2001, the States approved proposals from the then Housing Authority for the inclusion of Open Market accommodation in prestigious or important developments<sup>1</sup>.

The proposals were summarised in that States Report as follows:

1. *The policy would not apply to small one-off sites or single dwellings.*
2. *It can apply to sites:*
  - *which are part of a Mixed Use Redevelopment Area (MURA) and where the overall number of new dwellings in the MURA is likely to be in excess of 100; and/or*
  - *where there are other strategic issues.*

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<sup>1</sup> Billet d'Etat III 2001 page 188 refers.

3. *In return for each dwelling to be inscribed, one existing dwelling must be deleted from Part A of the Housing Register.*
4. *Neither the dwelling to be deleted nor that to be inscribed will have to meet any specific size or rateable value criteria. It will simply be a numerical exchange, albeit that the Authority will have to approve the specific dwelling which is to be inscribed or deleted.*
5. *The dwelling to be deleted must be unoccupied, or occupied by an unrestricted qualified resident, at the time of the application to delete the inscription. The fact that the dwelling is the subject of an application for the deletion of the inscription from the Housing Register under this policy would not be regarded as a reason which, of itself, would justify the grant of a housing licence to an occupier or former occupier.*
6. *The number of dwellings which can be inscribed on a one to one exchange basis will be limited to one third of the total number of dwellings in the development or a maximum of eight dwellings whichever is the lesser.*

*Note: for the purposes of the above policy statement the words 'site' in number 2 and 'development' in number 6, mean that an owner will only be eligible for one such concession in respect of parcels of adjacent land in his ownership in the MURA. The owner would not be able to increase the number of dwellings beyond the eight or one-third mentioned in number 6 by phasing the site development or by transferring land to an associate company.*

### **3. The former Les Carterets Hotel site, Rue de la Saline, Castel**

Carterets Development Limited has been given planning permission by the Environment Department<sup>2</sup> to provide twelve residential units on the site of the former Les Carterets Hotel at Rue de la Saline, Castel. The Hotel Les Carterets was previously capable of being inscribed in Part A of the Housing Register and Section 31 of the Law provides that, in the case of a demolition and re-build, one of the resultant new dwellings can be inscribed in Part A of the Housing Register by utilising the original inscription.

In addition, section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, provides that the States may, by Ordinance, permit the Department to inscribe any dwelling in Part A or Part B of the Housing Register. Accordingly, Carterets Development Limited is seeking the 'transfer' of a further three Open Market inscriptions in order that a total of four of the twelve new apartments can be inscribed in Part A of the Housing Register under the terms of the policy referred to above (hereafter referred to as 'the Policy').

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<sup>2</sup> Environment Department Planning Permission reference FULL/2012/0446 refers.

As the site in question is not situated within a MURA development, the Housing Department has required the developer to set out, in accordance with the second part of point 2 of the policy, the ‘strategic issues’ associated with the development of this site.

In this regard, the developer has confirmed that of the twelve dwellings to be created on the site, four will have three bedrooms and it is these apartments that the developer has indicated it intends to inscribe on the Register. The other eight apartments will have two bedrooms and will be controlled units of Local Market accommodation.

The 2011 States of Guernsey Housing Needs Survey<sup>3</sup>, which is the third survey of its kind, the first having been conducted in 2001, highlighted the fact that there remains a very significant shortage of housing in the Island to meet the needs of its residents. The 2011 Survey confirmed that the shortage was most acute in the areas of 1- and 2-bedroom dwellings and, as such, this development represents an opportunity to provide housing in an attractive part of the Island to alleviate some of the pressure identified by the Survey.

It is also the Department’s opinion that the redevelopment of this site represents an opportunity to create Open Market dwellings suitable, perhaps, for those Open Market residents looking to downsize from larger Open Market homes and so adds to – and enhances – the range of Open Market dwellings in the Island to meet the needs of residents in this sector.

In addition the Developer asserts that this development will serve to enhance this coastal area of the Island and that, as a result, public parking in this area will be maintained and improved.

It should also be remembered that, as per point 3 of the Policy, for each dwelling to be added to the Housing Register, an Open Market dwelling elsewhere in the Island must be deleted from the Housing Register. As such, the Local Market will gain eleven new dwellings overall, with eight of those dwellings being on this site, and three being Open Market dwellings elsewhere in the Island that are deleted from the Housing Register and thus returned to the Local Market housing stock<sup>4</sup>. The three properties to be deleted from the Housing Register are likely to be: a 2-bedroom unit of accommodation in Castel, and two 3-bedroom houses in St Peter Port. The re-introduction of these dwellings to the Local Market housing stock will also serve to relieve pressure on the housing market.

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<sup>3</sup> See [www.gov.gg/housingneedssurvey](http://www.gov.gg/housingneedssurvey)

<sup>4</sup> It should be noted that, under the provisions of section 33 of the Housing (Control of Occupation) (Guernsey) Law, 1994, any dwelling which is deleted from the Register at the request of the owner cannot thereafter be re-inscribed in the Housing Register. Such a dwelling therefore becomes a permanent ‘Local Market’ dwelling.

Given these ‘strategic issues’, it is the opinion of the Housing Department that the proposed development of the former Les Carterets Hotel site meets the criteria of point 2 of the Policy such that, in exchange for the deletion from Part A of the Housing Register of three Open Market dwellings, three of the twelve new dwellings in the development should be made eligible for inscription in the Housing Register under the Policy.

#### **4. Conclusions**

The Housing Department has been notified that the necessary planning permissions relating to this site have been granted by the Environment Department so that, in total, twelve new dwellings will be created.

Although it is not in a MURA development, the developer of the former Hotel Les Carterets site has satisfied the Housing Department that there are ‘strategic issues’ associated with its development such that the transfer of three additional inscriptions to create a total of four Open Market dwellings this site (given that the former Hotel’s inscription can be re-used as described earlier) is justified under the wider terms of section 2 of the Policy.

In particular, the Housing Department was of the view that its early commitment to recommend these proposals to the States was instrumental in the redevelopment of this rundown property progressing, and that without such a commitment the site might have remained undeveloped and the benefits to the Local Market housing stock would not have been forthcoming.

The ratio of Open Market dwellings to Local Market dwellings proposed for this site is also within the parameters set out at point 6 of the Policy (i.e. it does not exceed either: (i) one third of the dwellings proposed for the site; or (ii) the maximum permitted eight Open Market dwellings.)

#### **5. Consultation with the Law Officers of the Crown**

The contents of this report have been discussed with the Law Officers of the Crown.

#### **6. 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, to the extent to which those principles apply to its contents, this Report complies with those principles.

## **7. Drafting of legislation**

Assuming that the States of Deliberation resolves to permit the dwellings that are the subject of this report to be inscribed in the Housing Register, there will be a requirement to prepare an Ordinance as this is the only mechanism via which to achieve the necessary variation to the Housing Register.

The Ordinance is sufficiently standard that, if necessary, it can readily be drafted by the Housing Department and then forwarded to the Law Officers of the Crown for checking and progressing. If the Ordinance is not prepared in line with the recommendations contained in this Report, it will not be possible to inscribe the dwellings on the Housing Register.

It should further be noted that it is not possible to inscribe a dwelling on the Housing Register until it is capable of being used for the purposes of human habitation. As such, should the States be minded to agree the recommendations contained herein, it will not be possible for the resultant Ordinance to be returned to the States for enactment until at a later stage of the redevelopment of this site.

## **8. Recommendation**

The Housing Department recommends that the States agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe individually in Part A of the Housing Register three apartments on the former Hotel Les Carterets site, subject to: (a) application being made by the owners within 6 months from the commencement date of the Ordinance; and (b) three Open Market Part A dwellings located elsewhere in the Island first being deleted from Part A of the Housing Register at the request of the owner of each of those dwellings.

Yours faithfully

D B Jones  
Minister

M P J Hadley  
Deputy Minister

M J Storey  
B J E Paint  
P R Le Pelley

D Jehan  
Non States Member



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

**(NB The Policy Council has no comments on the proposals.)**

The States are asked to decide:-

XIV.- Whether, after consideration of the Report dated 10<sup>th</sup> May, 2013, of the Housing Department, they are of the opinion:-

1. To agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe individually in Part A of the Housing Register three apartments on the former Hotel Les Carterets site, subject to: (a) application being made by the owners within 6 months from the commencement date of the Ordinance; and (b) three Open Market Part A dwellings located elsewhere in the Island first being deleted from Part A of the Housing Register at the request of the owner of each of those dwellings.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

## STATES ASSEMBLY AND CONSTITUTION COMMITTEE

### AMENDMENTS TO THE RULES OF PROCEDURE OF THE STATES OF DELIBERATION THE RULES RELATING TO THE CONSTITUTION AND OPERATION OF STATES DEPARTMENTS AND COMMITTEES THE CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION

The Presiding Officer  
The States of Deliberation  
Royal Court House  
St. Peter Port

28<sup>th</sup> May 2013

Dear Sir

#### **EXECUTIVE SUMMARY**

The States Assembly and Constitution Committee intends to maintain the practice of its predecessors of submitting to the States of Deliberation more or less annually a States Report containing any proposals for reform which, based on experience of events over the previous 12 months or so, it appears to the Committee would benefit the functioning of the States as a democratic parliament and government. This is the first such report produced by the States Assembly and Constitution Committee elected by the States of Deliberation in May, 2012.

This report proposes amendments to:

- ❖ the Rules of Procedure of the States of Deliberation
  - Rule 1: Amendment regarding the definition of ‘a meeting’;
  - Rule 2: Inclusion of explanatory memoranda to accompany propositions for the approval of legislation;
  - Rule 2: Introduction of a definition of ‘The States’ in propositions;
  - Rule 2: Introduction of provisions relating to minority reports;
  - Rule 5: Introduction of a latest time for furnishing questions for oral answer and a requirement to declare an interest when asking a question;
  - Rule 9: Introduction of a distinction between different types of business;
  - Rule 9: Clarification of the term ‘Elections’;

- Rule 13: Change to the notice required for lodging amendments and sursis and the distribution thereof by the Greffier;
  - Rule 13: Change to the rules regarding amendments which go further than the propositions;
  - Rule 13: Introduction of provisions relating to the withdrawal of reports;
  - Rule 17: Introduction of a rule limiting the number of signatories to a requête;
  - Rule 20: Repeal of *appel nominal* in elections for Chief Minister;
  - Rule 20: Provision that the requirement to publish votes cast in quadrennial elections be extended to all elections in the intervening years;
  - Rule 20: Amendment to the provision of speeches and the introduction of a period of questions to candidates in elections for the offices of Chief Minister, Deputy Chief Minister, Minister and Chairman;
  - Rule 23: Amendment to the period in which Members must lodge a declaration of interests in the period following a General Election or a By-Election;
  - Rule 24: Introduction of a definition of ‘sursis’ and ‘sursis motivé’;
  - New Rule: Introduction of a ‘Give Way’ provision;
  - New Rule: Introduction of a ‘Motion of Censure’ provision;
- ❖ the Rules relating to the Constitution and Operation of States Departments and Committees
- Rule 7: Repeal of provision which allows a resignation to be debated;
  - Rule 15: Clarification of the application of the Rule to the Policy Council and the circumstances in which declarations must be made;
- ❖ the Code of Conduct for Members of the States of Deliberation
- Para. 51: Clarification that the Code of Conduct applies to electronic communications.

## REPORT

### THE RULES OF PROCEDURE OF THE STATES OF DELIBERATION

#### *Rule 1 – Convening of Meetings*

1. This Rule provides that a Billet d’État shall normally be issued not less than five weeks before the date of the meeting to which it relates except in the case of a meeting:
  - (a) for the consideration of the Annual Budget or Annual Accounts of the States, in which case the period is not less than three weeks; and
  - (b) at which the only business is an election, in which case the period is not less than two weeks.
2. The effect of the 2011<sup>1</sup> amendments to Rule 9 (which prescribes the order of business) was to determine that the business which comprises ‘a meeting’ may be contained in more than one Billet d’État. Prior to that change each Billet d’État theoretically comprised a separate meeting. However, consequential amendments to Rule 1 were not made.
3. There is, therefore, an inconsistency between Rule 1 and Rule 9. In the case of (b) above, the strict effect of the Rule is that a Billet d’État cannot be issued with only two weeks’ notice if the meeting is to include any business other than an election, notwithstanding that the only article in that particular Billet d’État is an election. The inconsistency can be remedied by amending the criterion from the concept of ‘business at meeting’ to ‘business set out in the Billet d’État’. The precise wording is set out in extenso in paragraph 103.1 (a) and (b).

#### *Rule 2 – Reports etc. in Billets d’État – Legislation: explanatory memoranda*

4. Following the debate on the report entitled Improving Governance in the States of Guernsey<sup>2</sup> (“the Governance Report”) the States of Deliberation resolved, inter alia:
 

*“The States Assembly and Constitution Committee should propose amendments to the Rules of Procedure of the States of Deliberation to provide that proposals to enact, amend or repeal legislation which are put before the States of Deliberation should be accompanied by an explanatory memorandum which sets out in clear and simple terms the effect of the legislation”.*
5. One of the principal functions of a legislature is to debate legislation. In reality, however, the States of Deliberation devote only a very small amount

<sup>1</sup> Article 10 of Billet d’État VIII of 2011: resolution of 27<sup>th</sup> May 2011

<sup>2</sup> Article 16 of Billet d’État V of 2012: resolution 1 (mm) of 8<sup>th</sup> March 2012  
 Joint Report of the Public Accounts Committee, Scrutiny Committee and States Assembly and Constitution Committee entitled “Improving Governance in the States of Guernsey”

of time to the consideration of legislation. To put the matter into perspective, in the years 2010, 2011 and 2012 legislation absorbed just 1.85%, 4.86% and 1.67% respectively of the total sitting time of the States of Deliberation.

6. The States of Deliberation also differs from most other parliaments in that legislation is often not debated by the Assembly which directed its drafting. Legislation may take some years to draft during which time the membership of the States of Deliberation may have changed significantly.
7. The time taken to draft legislation is not, however, the only issue. A *Projet de Loi* or Ordinance which is amending an earlier enactment can be almost impossible to understand without some form of elucidation. For example, such legislation may simply state that a certain section of the principal law is repealed but no indication is given in the legislation as to the effect of that repeal.
8. Statutory Instruments laid before the States of Deliberation are invariably accompanied by an explanatory memorandum which sets out in one or two paragraphs and usually in simple terms the general purport of the Statutory Instrument. The Committee believes that a similar statement should accompany all *Projets de Loi* and Ordinances put to the States of Deliberation for approval. Consequently the Committee is proposing an amendment to Rule 2 which will require an explanatory memorandum to be included with all future legislation. The Legislation Select Committee has indicated its support for this amendment to the Rules of Procedure. The precise wording is set out in extenso in paragraph 103.1 (c).

### ***Rule 2 – Propositions – interpretation of “The States”***

9. In April 2009 the States of Deliberation debated a report of the Policy Council entitled *Fiscal Policy Framework*<sup>3</sup> and resolved, *inter alia*:  
*“To provide credibility to this framework, and a degree of objectivity in the likely path of States finances, each year the Policy Council will publish a report to the States separate to Treasury and Resources annual budgetary process, to provide an objective analysis on the conduct of fiscal policy”.*
10. On the 1<sup>st</sup> October 2012 the Chief Minister responded to a question<sup>4</sup> in which he stated:  
*“In the absence of any detailed rules relating to reports presented to the States, I do not agree with your interpretation that the only way of reporting to the States is by way of a Billet d’État. I have sought advice on this issue from the Law Officers Chambers and they agree that the position is open to interpretation and that, given the circumstances of this report, there is no*

<sup>3</sup> Article 7 of Billet d’État XI of 2009

<sup>4</sup> Question pursuant to Rule 6 of the Rules of Procedure: No. 2012/03

*reason why it cannot continue to be published in the same manner as previously.*

*This will be the third year in which the report will be published and the Policy Council see no compelling reason to change the current practice.”.*

11. Notwithstanding the view expressed by the Chief Minister, the Committee is of the opinion that the phrase “*will publish a report to the States*” does imply that a report will be laid before the States of Deliberation by way of a Billet d’État, either for debate or as an appendix. The Committee considers that this matter, which the Chief Minister stated was “*open to interpretation*”, should be put beyond doubt.
12. The Committee is therefore proposing that Rule 2 be extended by the addition of a paragraph which defines the words “The States” as meaning “The States of Deliberation” when used in a proposition. The precise wording is set out in extenso in paragraph 103.1 (d).

#### ***Rule 2 – Introduction of provisions relating to Minority Reports***

13. From time to time a member of a department or committee does not agree, either in whole or part, with a States Report and recommendations approved by a majority of that department or committee and consequently wishes to present the States of Deliberation with alternative arguments set out in a minority report. Often a minority report will state that the author thereof will move an amendment to the propositions in order to ameliorate the perceived failings of the principal report.
14. Occasionally a minority report is submitted jointly by more than one member. Less frequently two or more members may each submit separate minority reports. On at least one occasion<sup>5</sup> three minority reports have been submitted. Despite there being clear precedence for minority reports to be submitted, the Rules make no provision in this regard. The Committee is of the opinion that the Rules should be amended to put it beyond doubt that members of a department or committee may submit minority reports and that appropriate conditions be set out in connection therewith.
15. It is therefore proposed that a States member of a department or committee wishing to submit a minority report shall deliver it to the department or committee concerned for inclusion as an annexe to the principal report. The precise wording is set out in extenso in paragraph 103.1 (e).

<sup>5</sup> Billet d’État VII of 2002: Joint Report of the States Advisory and Finance Committee and the States Procedures and Constitution Committee entitled “The Machinery of Government of Guernsey” to which Deputies P. J. R. Roffey, B. M. Flouquet and F. J. Roper each submitted a minority report.

***Rule 5 – Question time – Latest time for submission of questions***

16. Rule 5 requires a Member who wishes to ask a question for answer in the States of Deliberation to furnish the question to the person to whom it is addressed, the Presiding Officer and H. M. Procureur “*not less than 5 clear days before the day of the Meeting, excluding Saturdays, Sundays and Public Holidays*”.
17. There is uncertainty as to the precise closing time for the lodging of questions on the day prior to the 5<sup>th</sup> clear day before the Meeting. Possibilities include: 16.00 (statutory closing time of the Greffe), 17.00 (normal closing of offices) or 23.59 (i.e. the final minute). The Committee considers that a time should be prescribed and is therefore recommending that questions should in future be furnished not later than 15.00 on the day preceding the 5<sup>th</sup> clear day before the day of the meeting, excluding Saturdays, Sundays and Public Holidays. This time is consistent with that which is being proposed for the lodging of amendments pursuant to Rule 13(2). The precise wording is set out in extenso in paragraph 103.1 (f).

***Rule 5 – Question time – Declaration of Interests***

18. Rule 12(8) requires Members who have a direct or special interest in the subject matter of a proposition to declare that interest either before speaking or, if they do not speak, before a vote is taken on the proposition. There is currently no similar requirement in respect of interests which Members may have in the subject matter of a question. The Committee is of the opinion that such interests should be declared before a Member places a question or supplementary question and is therefore proposing an amendment to Rule 5. The precise wording is set out in extenso in paragraph 103.1 (g) and (h).

***Rule 9 – The Business of the Meeting – Distinction between types of business***

19. On the 8<sup>th</sup> March 2012 the States of Deliberation resolved<sup>6</sup>, inter alia: “*The States Assembly and Constitution Committee should propose amendments to Rule 9 of the Rules of Procedure of the States of Deliberation to provide for a clearer distinction in Billets d’État and at meetings of the States of Deliberation between the functions of the States of Deliberation as parliament, legislature and overarching executive*”.
20. On the face of it, that resolution seeks to distinguish between three categories of business, i.e. ‘parliament’, ‘legislature’ and ‘executive’. In reality, however, the States of Deliberation is the parliament which functions both as a legislature and as an executive. That being so, the Committee has

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<sup>6</sup> Article 16 of Billet d’État V of 2012: resolution 1(d) of 8<sup>th</sup> March 2012 (see footnote 5)



concluded that only a minor amendment to Rule 9 is necessary to comply with the intention of the resolution.

21. Items (a) to (c) which relate to communications by the Presiding Officer, Statements and Questions are taken usually at the start of proceedings in many parliaments. Items (e) to (i) all relate to legislative matters and the following items (j) to (t) relate to other parliamentary business, including the executive functions of the States of Deliberation. That leaves item (d) – motions to debate an appendix report (1<sup>st</sup> stage) – inappropriately placed before legislative matters. The Committee is therefore proposing that item (d) be moved to follow existing item (i) and that two sub-headings be added: “Legislative Business” immediately after existing item (c) and “All other Parliamentary Business” immediately after item (h). The precise wording is set out in extenso in paragraph 103.1 (i).
22. The Committee considers that it would be of assistance to Members if Billets d’État were set out in the same order as the order of business prescribed in Rule 9. In practice this means that Ordinances and Statutory Instruments laid before the States of Deliberation would be moved forward from their current position so as to follow legislation listed for debate. It is also proposed that the headings “Legislative Business” and “All other Parliamentary Business” be included in the index printed on the front page of each Billet d’État. The precise wording is set out in extenso in paragraph 103.4.

***Rule 9 – The Business of the Meeting – Clarification of the term ‘Elections’***

23. Item (j) of Rule 9 is specified as “Elections”. The practice of Presiding Officers has been to include appointments in that section of business. The Committee is of the opinion that it is appropriate for appointments to be dealt with at the same time as elections and therefore proposes that item (j) be redefined as “Elections and Appointments”.

***Rule 13 (6) – Amendments and sursis – Timings and Distribution by the Greffier***

24. The majority of amendments do not require advance notice. However certain amendments, because of the subject matter, must be furnished in advance of the meeting to enable departments and committees to establish the impact thereof. Rule 13 (3) prescribes the latest time for furnishing such amendments. The effect is that amendments to
  - A.
    - ~ a proposition to approve a States Strategic Plan; or
    - ~ a proposition to which Rule 15(2) applies; or



- ~ a draft Strategic Land Use Plan, or any amendment to such a Plan, which is laid before the States of Deliberation pursuant to section 5 (3) of the Land Planning and Development (Guernsey) Law, 2005; or
  - ~ any proposals for a Development Plan, Subject Plan or Local Planning Brief or any amendment to such a Plan or Brief, which is laid before the States of Deliberation pursuant to section 9 (4) of the Land Planning and Development (Plans) Ordinance, 2007
- must (subject to Rule 13(9)) be furnished not later than 12 clear days before the meeting; and

## B.

amendments to

- ~ a Projet de Loi or draft Ordinance;
  - ~ a proposition relating to expenditure which may have the effect of
    - (i) increasing expenditure; or
    - (ii) substituting another contractor; or
    - (iii) altering the timing of any works;
  - ~ the Annual Budget;
  - ~ a proposition relating to taxation, fees or other charges bearing on the revenues of the States;
- must be furnished not later than 7 clear days excluding Saturdays, Sundays and Public Holidays.

25. The Committee believes that confusion arises by the use of two different terms in the same Rule: i.e. ‘clear days’ and ‘clear days excluding Saturdays, Sundays and Public Holidays’. The following two examples illustrate the confusion.

*YEAR ‘Z’ – STATES OF DELIBERATION ON WEDNESDAY 30<sup>TH</sup>*

- ~ 12 clear days before the meeting is Thursday 17<sup>th</sup>.
- ~ 7 clear days excluding Saturdays, Sundays and Public Holidays before the meeting is Friday 18<sup>th</sup>

*YEAR ‘Y’ – STATES OF DELIBERATION ON WEDNESDAY 30<sup>TH</sup> BUT EASTER DAY IS ON THE 27<sup>TH</sup>*

- ~ 12 clear days before the meeting is Thursday 17<sup>th</sup>.
- ~ 7 clear days excluding Saturdays, Sundays and Public Holidays before the meeting is Wednesday 16<sup>th</sup>

26. Except when Easter intervenes, there is currently only one day’s difference between the period specified for lodging amendments in the two categories. It is therefore proposed to simplify this Rule so that the period for lodging amendments in either category will be 7 clear days excluding Saturdays, Sundays and Public Holidays.
27. Rule 13 (2) provides that “*immediately after the closing date for receipt of... proposed amendments or sursis the Greffier shall cause a copy thereof to be delivered to every Member.*”. The effect of that wording requires the

Greffier to circulate only those amendments which are subject to Rule 13(2), however current practice is for the Greffier to circulate all amendments or sursis received by the aforementioned deadline. The proposed change to Rule 13(1) formalises this into a requirement for the Greffier to circulate all amendments and sursis received by 15.00. The specification 15.00 is to ensure circulation to Members in that day's post or electronically. The precise wording is set out in extenso in paragraph 103.1 (j), (k) and (l).

***Rule 13 – Amendments and sursis – Amendments which go further than propositions***

28. This Rule provides that the States of Deliberation may decide that an amendment which goes further than the proposition either not be debated or that debate thereon be postponed. A proposition not to debate or to postpone takes effect if supported by not less than one-third of the Members voting.
29. The key objective of this Rule is to prevent decisions being taken when Members consider that insufficient information is before the States of Deliberation and which may result in the States making unsafe or unreasonable resolutions in the absence of having considered a matter with sufficient rigour and thoroughness. However, the Committee believes that it is inconsistent with democratic principles for a mechanism to exist whereby one-third of Members can block debate, let alone blocking a vote, on a matter which the majority, and indeed up to two-thirds, of Members wish to debate.
30. It is apparent that this Rule is often applied in circumstances for which it was not intended and in ways which conflict with, rather than support, the principles of good governance. In other words, the Rule could be invoked in respect of amendments which were obviously perfectly safe and reasonable for the States of Deliberation to debate and resolve upon. It could also be used by Members who are opposed to an amendment as a means of defeating it without a debate irrespective of whether such a debate would, or would not, have been unsafe or unreasonable and regardless of whether it might have been supported by more than one half of the Members.
31. The Committee believes that there is a way forward which would strike a better balance between the democratic openness and credibility of the States of Deliberation and the reasonable desire to safeguard against the taking of uninformed and rash decisions, and which as a consequence would better support, rather than conflict with, principles of good governance. In any event, it occurs to the Committee that the Rules of Procedure should be framed with the presumption that ultimately the parliament will not reach wholly unsafe or uninformed decisions and not be framed so as to frustrate the judgements and objectives of a majority of elected Members.

32. It is therefore proposing that Rule 13(6) be amended to the effect that a motion that an amendment be not debated and no vote taken thereon or that debate on the amendment be postponed shall have effect if supported by a simple majority of the Members voting thereon. The precise wording is set out in extenso in paragraph 103.1 (m).

***Rule 13 – Reports etc. in Billets d’État – Withdrawal of Reports***

33. No provision is made in the Rules for the withdrawal of a States Report published in a Billet d’État. Notwithstanding the absence of a rule, whole articles or individual propositions are occasionally withdrawn by the use of a simple procedural motion although there is no consistency in the wording of the proposition. Three recent occasions when the States have been requested so to resolve are as follows:
- (a) Environment Department – Report entitled “Towards a New Integrated Transport Strategy”,<sup>7</sup>  
The States resolved “to defer debate” (in this case the then Minister had in his speech stated that it was the Department’s intention to bring the report back to the States of Deliberation at a future date);
  - (b) Motion of No Confidence in the Minister and Members of the Health and Social Services Department<sup>8</sup>  
The States of Deliberation resolved “that the proposition ... be withdrawn”;
  - (c) Home Department – Speed Limits for Emergency Services Vehicles etc.<sup>9</sup>  
The States of Deliberation resolved “that the report ... be withdrawn”.
34. In the case of (a) and (c) the motion was proposed by the Minister of the Department concerned; with regard to (b) the motion was proposed by the leading requérant. With regard to (c) the Committee understands that not every member of the Department was consulted before the motion to withdraw was put on behalf of the Department. Procedural motions are put to the States of Deliberation on the proposition of the Presiding Officer at the request of a single Member: no seconder is required. A further consequence of dealing with this matter by way of a procedural motion is that no debate is permitted on such motions.
35. The withdrawal of a report or a proposition may have important consequences and deserves proper consideration by the States of

<sup>7</sup> Article 15 of Billet d’État XIX of 2011: resolution of 1<sup>st</sup> December 2011

<sup>8</sup> Article 1 of Billet d’État XXVIII of 2012: resolution of 14<sup>th</sup> December 2012

<sup>9</sup> Article 13 of Billet d’État I of 2013: resolution of 1<sup>st</sup> February 2013

Deliberation. It is of far greater significance than, for example, a procedural motion to reduce the luncheon adjournment by 30 minutes. That being so the Committee is of the opinion that when a Department or Committee (or in the case of a requête, the requérants) have resolved to request that an article or proposition be withdrawn, a motion to withdraw the article or proposition should be duly proposed and seconded and that the motion be open to debate.

36. In effect such a motion would be treated in a similar manner to a sursis. Rule 13(5) states: *“when a sursis of a matter has been proposed and seconded debate shall be limited strictly to the sursis, and no other issues relating to that matter (including proposed amendments) shall be debated until the sursis has been voted upon.”*
37. The Committee is therefore proposing an extension of Rule 2 to provide that motions to withdraw an article or proposition shall require a proposer and seconder and that such a motion shall be subject to a discrete debate on the lines set out in Rule 13(5). The precise wording is set out in extenso in paragraph 103.1 (n).

#### ***Rule 17 – Requetes – Limitation on number of signatories***

38. In the course of a States debate<sup>10</sup> in 2011 a Member intimated that, whilst he did not necessarily support the prayer of the Requête in its entirety, he had signed it to ensure that the matter was debated in the States of Deliberation. Subsequently another Member referred to a former practice by which Members appended an asterisk against their name in such circumstances, and requested that consideration be given to restricting the number of signatories to a requête.
39. The use of an asterisk was never acknowledged formally in the Rules of Procedure. Indeed, the contrary may be true in that the advice given by the Law Officers was that it was not an appropriate procedure. The reason why it was considered to be bad practice is that in signing a requête a Member is, firstly, setting out a petition which (s)he believes to be true and, secondly, praying the States of Deliberation to resolve to take a particular course of action. Thus if a Member signs a requête and either believes that the petition is not true or does not support the matter prayed for, (s)he is effectively misleading the States of Deliberation.
40. A trend has developed in which a ‘popular’ requête may attract 20 or more signatures – any requête with 24 signatories is virtually guaranteed to succeed. However, it must be acknowledged that when seeking signatures

<sup>10</sup> 30<sup>th</sup> June 2011 - Article 5 of Billet d’État XI of 2011  
(Abolition of Widow’s Pension – Compensation Scheme)

the leading requérant may be inclined to emphasize the positive aspects of what (s)he seeks to achieve but overlook the negative aspect which may emerge only when the respondent department/committee is consulted as required by the Rules. Many Members would find it difficult to vote against a requête to which they were a signatory, despite a sound case having been made against the prayer of the requête by the department/committee.

41. The Committee has concluded that there is merit in restricting the number of signatories on a requête to seven in the interests of good government and therefore proposes that Rule 17 be amended accordingly. Consequential amendments will also be required to Rules 18 and 19 which relate to Motions of No Confidence in a Department or Committee and in the Chief Minister or Deputy Chief Minister. Of course there is precedent for restricting the number of signatures on a motion before the States of Deliberation: all amendments laid before the Assembly are restricted to two signatures only. The precise wording is set out in extenso in paragraph 103.1 (o).

***Rule 20 – Elections – Repeal of appel nominal in elections of Chief Minister***

42. On the 1<sup>st</sup> May 2012 the States of Deliberation resolved<sup>11</sup> to amend Rule 20 by inserting the words “*except that for the purpose of the election of a Chief Minister voting shall be by appel nominal*”. Uniquely for an election in the States of Deliberation, voting for the office of Chief Minister took place by each Member calling out the surname of his or her preferred candidate.
43. On the 8<sup>th</sup> May 2012 the States of Deliberation resolved<sup>12</sup> to amend Rule 20 further by making provision for the votes cast by secret ballot in the elections of Ministers, Deputy Chief Minister and Chairmen to be published by the Greffier following the conclusion of the election of members of departments and committees.
44. On the 11<sup>th</sup> May 2012 the States of Deliberation resolved<sup>13</sup> to amend Rule 20 again by prescribing that the votes cast by secret ballot in the elections of members of departments and committees also be published by the Greffier following the conclusion of the election of members of departments and committees.
45. Whilst the system used in the election of the Chief Minister was clearly transparent, the Committee believes that the provisions outlined in the two preceding paragraphs are more appropriate for a parliament. The Committee therefore recommends that future elections for the office of Chief Minister

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<sup>11</sup> Billet d’État XIV of 2012 (Qualification for the Office of Chief Minister)

<sup>12</sup> Billet d’État IX of 2012 (Election of Ministers, Deputy Chief Minister and Committee Chairmen)

<sup>13</sup> Billet d’État X of 2012 (Election of Members of Departments and Committees)

be carried out in the same manner as that prescribed for the other elections. The precise wording is set out in extenso in paragraph 103.1 (p).

***Rule 20 – Elections – Votes cast to be published in all elections***

46. The strict interpretation of the aforesaid resolutions of the 8<sup>th</sup> and 11<sup>th</sup> May 2012<sup>12 & 13</sup> is that the publication of the voting in elections conducted by secret ballot is applicable only in respect of the quadrennial elections held after each General Election. However, since the quadrennial elections held in May 2012 there have been a number of by-elections conducted by secret ballot and in each case the Greffier has subsequently published the voting record.
47. The Committee believes that the publication of those voting records conforms with the spirit of the States resolutions of May 2012 but recommends that the position should be formalised by an appropriate amendment to Rule 20(2). The precise wording is set out in extenso in paragraph 103.1 (p).

***Rule 20 – Elections – Amendment to the provision regarding Speeches; Questions to candidates for offices of Chief Minister, Minister and Chairman***

48. Rule 20(3)(d) provides that on a proposition to elect a Chief Minister the Presiding Officer shall, whether or not there is more than one candidate, invite the proposer(s) and the candidate(s) each to speak for not more than five minutes.
49. Rule 20(4) provides that on a proposition to elect a Minister or Deputy Chief Minister, the Presiding Officer shall, if there is more than one candidate, invite the proposers and the candidates each to speak for not more than five minutes. Similar provision is made in Rule 20(5) in respect of the elections of Chairmen of Committees and Non-Governmental Bodies.
50. The effect of those Rules is that the proposers of candidates for the offices mentioned are given five minutes in which to set out the attributes of the candidates whom they are proposing. Such speeches are, by their nature, rather one-sided in that the speakers are unlikely to identify any weakness in the candidates. In addition, the candidates themselves also have five minutes in which to address the States of Deliberation, invariably also to emphasize only any strengths of the candidate.
51. The Committee has reached the conclusion that there is little merit in candidates *and* proposers making speeches for elections to the office of Chief Minister, Deputy Chief Minister, Ministers and Chairmen. It is for the candidates themselves to set out why they believe they are suitable persons



to hold the contested office. It is therefore proposed that in elections for those offices the only Member to speak to a candidature should be the candidate him/herself, and that speech should, as at present, be limited to not more than five minutes.

52. When there is only one candidate for an office (other than for the office of Chief Minister) there are no speeches, but nonetheless a vote is taken, *vive voix*. Given that the States have the opportunity of electing or rejecting a sole candidate the Committee has concluded that candidates in all elections for the office of Chief Minister, Deputy Chief Minister, Ministers and Chairmen should be afforded the opportunity to make a speech.
53. The Committee is of the opinion that Members should be afforded an opportunity to question candidates on relevant issues which the candidates may not have the time or inclination to address in their speeches. The period of questions should help Members to understand more fully the views the candidate holds in respect of both the policy areas included in the mandate of the department or committee which (s)he is seeking to lead and, in the case of ministerial candidates, the policy areas included in the mandate of the Policy Council.
54. Guernsey has a committee, rather than a cabinet or ministerial, system of government. However, the Committee believes that the skills and political views of a Minister or Chairman have a considerable bearing on the approach, political direction and membership of the department or committee.
55. For example, the influence of a Minister or Chairman on the political composition of the department or committee was emphasised during the internal election process in 2012 when all of the candidates nominated by the Ministers and Chairmen were elected. In 2008, 56 (87.5%) of the 64 seats for members of departments and committees were populated by candidates nominated by the Minister or Chairman.
56. It is the view of the Committee that questions – and indeed answers – should be focussed. Consideration was given as to whether there should be fixed time limits for each question/answer or simply an overall time period accompanied by some guidance counselling brief and succinct questions and answers. The Committee believes that simply having an overall time period may be open to abuse and challenges: it therefore proposes that:
  - no Member be entitled initially to ask more than one question of each candidate but further questions will be permitted after all Members have had the opportunity of asking a question;
  - questions be restricted to no more than 30 seconds in length;
  - answers be restricted to no more than 1 minute in length; and
  - the question time period be limited to 30 minutes per candidate (i.e. with three candidates a period of 1½ hours would be allowed).

57. The Committee recognises that such a period would not allow every Member to ask a question. However, the time proposed is sufficient to enable a selection of topics to be explored. Further, the likelihood is that not all Members will seek to place a question. It should also be recognised that it would be perfectly legitimate for a group of Members wishing to explore the same topic to work together and for perhaps one or two of their number to ask questions of the candidate(s); indeed, the provisions proposed may encourage such healthy political collaboration.
58. However, the new procedure, with strict time limits, will need to be rigorously enforced by the Presiding Officer – even if a questioner or candidate is in mid-sentence in asking the question or providing the answer. It follows that Members will have to be focussed, be succinct and ready to accept the Presiding Officer’s ruling when the time limit has been reached.
59. There are two possible ways in which the questioning can be carried out. Either the candidates can take part in a hustings in which all candidates answer the same question in rotation or else each candidate is questioned separately. The Committee is mindful that when this matter was put to the States of Deliberation in 2011<sup>14</sup> it was subject to an amendment<sup>15</sup>. The debate appeared to indicate support for the concept among a majority of Members, but that support was split between two competing propositions, as a consequence of which both were lost and the status quo was maintained – like its predecessor Committee, the Committee considers the present arrangements inadequate. On this occasion, therefore, propositions will be put in the alternative to allow the States of Deliberation a choice between the two schemes.
60. The Committee favours the option in which the questioning would take place in the context of a hustings. All candidates would be present for the entire proceedings and each candidate would be given an opportunity to answer every question. In other words, all candidates would be asked the same questions irrespective of the candidates’ different backgrounds, skills and political views. Whilst the Committee recognises the case for a non-hustings format it believes on balance that it is preferable that all candidates be asked to address the same questions and that they all remain present in the Assembly whilst other candidates are being questioned.
61. The alternative scheme, which the Committee does not put forward as a first choice, but still would much prefer to the inadequate status quo, is that other candidates for the same office must withdraw from the Chamber to a place where they cannot hear the proceedings whilst a candidate is speaking or being questioned. There are similar arrangements in place in some other

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<sup>14</sup> Article 6 of Billet d’État XXI of 2011: resolution 15<sup>th</sup> December 2011 (*proposition lost 20:26*)  
<sup>15</sup> Amendment proposed by Deputy M. H. Dorey, seconded by Deputy B. M. Flouquet (*lost 21:25*)



jurisdictions which provide for questioning of candidates and the Committee believes that it is a fair procedure to adopt.

62. This option affords the States of Deliberation the opportunity to ask different questions of different candidates because candidates inevitably differ in their background, skills, experience and political views and because it would likely make the question and answer period more dynamic and relevant.
63. The Committee acknowledges that candidates who are excluded in an early round of voting will be placed in a position of then having to take part in subsequent votes, not having had the opportunity of hearing the speeches and questioning of the remaining candidates. However, such circumstances would arise only where more than two candidates contested the same office and recent history suggests that such occasions are infrequent.
64. Previous experience indicates that, allowing time for vote counting etc., it would be possible to complete the election of a Chief Minister in one day and the elections of Ministers, Deputy Chief Minister and Chairmen in two to three days. The Committee believes that it is quite reasonable for the States of Deliberation to allocate such a period of time given the importance of the internal election process.
65. Rule 19 of the Rules relating to the Constitution and Operation of States Departments and Committees defines Non-Governmental Bodies as being:
  - (a) Ladies' College Board of Governors;
  - (b) Parochial Outdoor Assistance Boards (*these no longer exist*);
  - (c) Prialux Library Council;
  - (d) Elizabeth College Board of Directors.

Of the above bodies the only one of which the Chairman must be a Member of the States of Deliberation is the Ladies' College Board of Governors. The Committee<sup>16</sup> is of the opinion that the Non-Governmental Bodies are essentially apolitical and therefore sees no reason why candidates for the office of Chairman of those bodies should be included in the proposed provisions set out earlier in this report. Consequently the Committee proposes minor changes to Rules 20(5) and 20(7) to remove the Non-Governmental Bodies from that process.
66. The Committee considers that the Rules of Procedure should be amended to provide a period in which Members can address questions to candidates for the offices of Chief Minister, Deputy Chief Minister, Minister and Chairman (other than the Chairman of a Non-Governmental Body). The precise wording is set out in extenso in paragraph 103.1 (q), (r) and (s).

<sup>16</sup>

Deputy P. L. Gillson, Chairman of the Ladies' College Board of Governors, and Deputy A. H. Adam, member of the Prialux Library Council, declared an interest in the matter, withdrew from the meeting and took no part in the discussion or voting on this matter in accordance with Rule 15(1) of the Rules relating to the Constitution and Operation of States Departments and Committees.

***Rule 23 – Register of Members’ Interests – Period for lodging declarations***

67. Rule 23(3) states: “*All Members shall ... during the month of May annually make and lodge with the Greffier a Declaration of Interest.*”. That timing was prescribed to allow Members newly-elected in a General Election a period of one month from taking up office in which to make a declaration.
68. There is, however, a flaw in this timetable in that the quadrennial elections of Chief Minister, Ministers, Chairmen and ordinary members of departments and committees all take place in the first fortnight of May. The consequence of this is that the majority of declarations have not been made before the elections are held and Members of the States of Deliberation are therefore not aware of other Members’ interests which may, in turn, have a bearing on the selection of appropriate candidates for each post.
69. The Committee considers that the timetable can be foreshortened without adversely impacting on Members and is therefore proposing that all Members elected in either a General Election or a By-Election shall make a declaration of interests within one week of the date of the election. Sitting Members seeking re-election will have made declarations previously and it will be a relatively simple task to revise the existing declaration. Newly-elected Members will be made aware, when lodging their nominations forms, that if successful they will need to make a declaration. They will, therefore, have about six weeks’ notice. The form of declaration will be placed in the candidates’ briefing packs which are distributed when nominations are lodged with the Presiding Officer. The precise wording is set out in extenso in paragraph 103.1 (t).

***Rule 24 – Interpretation – Definition of sursis and sursis motivé***

70. The present Rules contain no definition of the word *sursis*. It is therefore proposed to include a definition in the Interpretation section of the Rules.
71. The word *sursis* is the noun which derives from the verb *surseoir*<sup>17</sup>, which means to postpone or to defer. Thus a *sursis* is a motion to defer debate. The term *sursis motivé* is also used. *Motivé* in this context means something similar to “for a specified purpose”. A *sursis motivé* therefore is a motion to defer debate but which includes a provision directing a course of action during the period of deferral. The precise wording is set out in extenso in paragraph 103.1 (u).

<sup>17</sup>

Larousse, Unabridged French Dictionary 2010, p.955

***New Rule – Introduction of a ‘Give Way’ provision and Rule 12(6) – Points of Order, etc.***

72. The United Kingdom Parliament website has the following entry under the heading of “Give Way”:

*“To ‘give way’ or ‘giving way’ are the terms used by MPs who want to interrupt an MP who is speaking in the House of Commons. An MP cannot intervene when another MP is speaking to the House unless that MP allows it by giving way. There is no equivalent phrase in the House of Lords although some former MPs occasionally still use the term.”.*

73. Erskine May<sup>18</sup> adds little to the above, save for stating that:
- Maiden speakers are usually heard without interruption;
  - Interventions in interventions are not allowed;
  - Interventions should not be excessively long;
  - It is not permitted to subject personal statements to intervention.

74. The Jersey Standing Orders<sup>19</sup> state:

*“Interruptions*

- (1) A member of the States may only interrupt the member speaking –*

*(a) ...*

*(b) ...*

- (c) if the member speaking agrees to give way –*

*(i) in order to explain any material part of his or her own speech, or*

*(ii) in order to ask the member speaking to elucidate a matter raised in his or her speech.*

- (2) ...”.*

75. Recently the Committee has noted that two Members of the present States of Deliberation in particular – one an experienced Minister and one with experience as a Deputy Minister – have suggested that the Rules of Procedure should make provision for Members to ‘give way’ in debate in the Assembly. Having reflected on the suggestion, the Committee agrees with it.

76. The benefit of a ‘give way’ motion is that it permits interaction between the Member speaking and other Members. Used sparingly it can stimulate debate and assist Members in focussing their speeches on issues relevant to the debate. A Member may interrupt another Member’s speech with a question or comment relevant to the point being made by the Member speaking. That Member may give way and resume his or her seat temporarily so that the question can be asked or the comment made. Equally the Member may refuse to give way. It is important to emphasise that the

<sup>18</sup> Erskine May, Parliamentary Practice – 24<sup>th</sup> edition, p.436

<sup>19</sup> No. 101 of the Standing Orders of the States of Jersey Assembly (*consolidated to 30<sup>th</sup> May 2012*)

Member whom the Presiding Officer has called to speak always has the floor – and a decision about whether or not to ‘give way’ is always at his or her discretion.

77. If a member does give way to another, this can only be for the purpose of allowing the other to refer to matters raised by the member speaking. Giving way is a means of making an interjection, not a speech. It should only be for a brief period, after which the Member called to speak resumes speaking. Giving way is not a means of developing a subject at length nor is it intended to replace the provisions of Rule 12(6) – thus a Member who wishes to make a point of order or correct an inaccurate or misleading statement will continue to do so under the provisions of that Rule. It is proposed however that the provision which allows a Member to explain a statement previously made which is being misconstrued be moved from Rule 12(6)(c) to Rule 12 (3). The effect of this is that a Member wishing to make such an explanation will be able to do so only after the other Member has finished speaking rather than as an interruption to that speech..
78. In practical terms it is proposed that Members who wishes to invoke the ‘give way’ provision will simply stand in their place until such time as the Member speaking either gives way or states that he or she is not prepared to give way. The present practice is that Members wishing to raise a point of order/correction stand in their place until called by the Presiding Officer. The Committee acknowledges that this would cause difficulties for the Presiding Officer as he would not know whether a Member was standing to raise a point of order/correction or invoking the ‘give way’ provision. That being so it is proposed that the Rules be amended to the effect that Members seeking to raise a point of order or correction shall stand in their places and say “*Point of Order [or Correction]*” whereupon the Member speaking shall defer to the Presiding Officer. Furthermore, in order to make absolutely clear the procedure for speaking in the Assembly in different circumstances, the Committee proposes adding to the Rules of Procedure words which establish that when a member wishes to be called to speak next in the course of ordinary debate the proper way to catch the attention of the Presiding Officer is for the member to stand in his or her place and wait to be called to speak.
79. What is proposed by the Committee should help to ensure that Rule 12(6) is restricted strictly to its proper usage, which is perhaps not always the case at present. The new provision would be in order for a Member who wished to ask the Member speaking to elucidate a matter raised in his or her speech to do so by way of the ‘give way’ procedure. The ‘give way’ procedure will be available only in the course of debates: it will not be used at other times, for example during statements or question time.
80. Whilst the Committee accepts that introduction of a ‘give way’ procedure is an innovation in the manner in which debates take place in the States of

Deliberation it does, nonetheless, believe that it should be introduced. The Committee wishes to emphasise that in proposing this new provision it has been careful in the precise wording of the proposed rule to strike an appropriate balance between the potential benefit of lubricating debate on a States report or a requête and the need to make the provision to ‘give way’ subject to sufficient qualifications in order to militate against it being overused or misused. Furthermore, the Committee will carefully monitor the innovation and will not hesitate to return to the States of Deliberation should a consensus emerge among Members that the provision was being misused or abused. The precise wording regarding this new procedure and the clarifications of the procedure for speaking are set out in extenso in paragraph 103.1 (v).

### ***New Rule – Introduction of a Motion of Censure provision***

81. The genesis of the present Rules 18 and 19 relating to Motions of No Confidence in a department, committee, Chief Minister or Deputy Chief Minister is a resolution of the States of the 28<sup>th</sup> January 1993<sup>20</sup>. The States report preceding that resolution stated:

*“The Committee is convinced that a clear distinction needs to be drawn between (i) a motion of censure, that is to say a motion critical of the performance of a committee which falls short of calling for its resignation; and (ii) a motion of no confidence, that is to say a motion which, if carried, would remove from office the committee concerned. It is important that the States, and the committee, be in no doubt as to the intended effect of the motion under debate.”.*

82. That report is interesting in that, in the first few paragraphs, it mentions Motions of Censure, and clearly draws a distinction between such a motion and a Motion of No Confidence. There is an expectation that the propositions might recommend both types of motion, but without explanation the concept of a motion of censure lapses.
83. Research indicates that many parliaments have a means of reprimand which is less severe than a ‘No Confidence’ motion. In Jersey Motions of Censure average approximately one per annum. A vote of censure is regarded in Jersey as a parliamentary slap on the wrist and there are no procedural consequences if one is approved. It is generally regarded as the middle route between doing nothing and a vote of no confidence. In the United States of America the President, Members of the Senate and Members of the House of Representatives can all be censured. Demeter’s Manual of Parliamentary

<sup>20</sup>

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Article 19 of Billet d’État I of 1993, p. 105: States Rules of Procedure Committee – Fourth Report: Declaration of Members’ Interests, Motions of Censure or of No Confidence and Questions for Written Reply under Rule 23.

Law and Procedure<sup>21</sup> defines a Motion to Censure as being “*a reprimand, aimed at reformation of the person and prevention of further offending acts.*”.

84. At present there is no mechanism for expressing dissatisfaction in a States department, committee, the Chief Minister or Deputy Chief Minister other than the ultimate sanction of a Motion of No Confidence. This is unsatisfactory when shortcomings have been identified which merit an expression of disapproval by the States of Deliberation but which fall short of warranting removal from office. The Committee is therefore proposing that the Rules be amended to provide for this additional means of censure.
85. In a Motion of No Confidence brought pursuant to either Rule 18 or 19, the petitioners are required to “*set out the full details of the basis on which [they] propose the motion*”. The Committee is of the opinion that this condition should apply in respect of Motions of Censure. The precise wording is set out in extenso in paragraph 103.1 (x).

#### **THE RULES RELATING TO THE CONSTITUTION AND OPERATION OF STATES DEPARTMENTS AND COMMITTEES**

##### ***Rule 7 – Term of Office - Resignations***

86. Rule 7(3) states:  
*“If the Chief Minister, the Deputy Chief Minister, a Minister of a Department or the Chairman of a Committee tenders his resignation from that office in a letter to the Presiding Officer, and does not include in that letter a request that the matter be debated by the States, his resignation shall automatically take effect on the election by the States of his successor.”.*
87. Rule 7(7) makes similar provision in respect of resignations by members of departments and committees, save that in such cases the letter of resignation is tendered to the Minister or Chairman rather than to the Presiding Officer.
88. Collectively and individually Members of departments and committees draw their legitimacy from having been elected to their offices by the States of Deliberation and must logically operate under the assumption that they maintain the confidence of their peers unless and until the Assembly carries a motion to the contrary (i.e. a Motion of No Confidence). This important principle is undermined when members of departments or committees submit a resignation, request that it be debated and then use the debate to appeal for the States of Deliberation to reject their resignation, in effect provoking the reverse of a Motion of No Confidence – it becomes a motion of confidence in the Member(s) from whom the proposal has originated. The Committee is concerned about the potential for the present Rules

<sup>21</sup>

An American parliamentary manual.



relating to resignations to be misused in this way and, furthermore, notes that such debates are almost always unedifying spectacles which are more likely than not to reflect poorly on the States of Deliberation.

89. Of course a member or members of a department or committee who wish to seek a fresh mandate from the States of Deliberation are perfectly at liberty to resign their office and then seek re-election, which in any event would probably secure a more powerful endorsement than narrowly surviving a vote of confidence or no confidence.
90. In summary, the Committee is of the opinion that resignation should mean resignation.
91. The Committee does accept, however, that a member having tendered his or her resignation may wish to make some explanation as to the reason therefor. Rule 8(a) of the Rules of Procedure allows any Member who has obtained permission from the Presiding Officer to make a statement on a matter of a personal nature. Whilst it is unlikely that a Presiding Officer would withhold permission for a personal statement to be made in such circumstances, the Committee proposes that Rule 8 be amended to give an explicit right for a Member to make a personal statement following the tendering of a resignation.
92. Whilst resignations of the Chief Minister, Deputy Chief Minister, Minister and Chairmen are submitted to the Presiding Officer, resignations of ordinary members of departments and committees are submitted to the Minister or Chairman. The Committee considers that it would be preferable for all resignations to be submitted to the Presiding Officer and recommends that aspect of Rule 7(7) be amended accordingly. The precise wording of the proposed amendments to that Rule and to Rule 8 of the Rules of Procedure is set out in extenso in paragraph 103.1 (w) and 103.2 (a) and (b).

#### ***Rule 15(1) – Declarations of Interest at Department and Committee Meetings***

93. Rule 15(1) states:  
*“A Member of a Department ... who ... has a direct or special interest in the business under consideration by the Department ... shall, as soon as practicable, declare his interest and withdraw from the meeting during the consideration of and voting on the matter concerned.”.*
94. In Rule 2, the expression “Department” is defined as meaning *“a body of the States constituted by Resolution whose chairman is styled Minister, and, where the context so permits, includes the Policy Council.”.*
95. Until recently the phrase *“during the consideration of and voting on the matter”* had been taken as meaning **either** *“consideration of”* **or** *“voting on”* and it had also been taken that Rule 15, when considered in conjunction

with Rule 2, applied to the Policy Council. In the autumn of 2012, however, the Law Officers, in response to an enquiry from the Policy Council, gave advice which raises doubt as to whether –

- (a) Rule 15 applies to the Policy Council in all circumstances;
- (b) Declarations are only required when both “*consideration of*” **and** “*voting on*” a matter take place.

96. With regard to point (a), the Committee is certain that it was the intention of the States of Deliberation that Rule 15 should apply in its entirety to the Policy Council in all circumstances.
97. Similarly, the Committee believes that it was the intention of the States of Deliberation that declarations of interest are required when matters are **either** discussed **or** voted upon and consequently that both elements are not needed to require a declaration to be made. The Committee is fortified in that view by reference to the 2002 report of the States Procedures and Constitution Committee<sup>22</sup> and in particular to the following extract:

*“In the absence of defined rules many members of committees have voluntarily declared interests to fellow members. Having done so, some have chosen to leave the room whilst the discussion proceeded, others remain in the room but take no part in the discussion whilst some will contribute to the discussion on the understanding that the other members have been made aware of the interest.*

*The States Procedures and Constitution Committee considers that the members of committees and sub-committees should be required to declare financial interests related to the business of the committee and sub-committees concerned and, having declared that interest, **should withdraw from the meeting whilst the matter is being discussed.** To avoid any subsequent difficulties it is also proposed that a members’ declaration of interest and withdrawal from the meeting be recorded in the minutes.”*

98. The Committee proposes an amendment to Rule 15 which will put it beyond doubt that the Rule applies to the Policy Council in all circumstances and that declarations must be made when a matter is either being discussed or voted upon. In making these proposals, the Committee is especially mindful that where Members’ interests are concerned, there should always be a presumption in favour of transparency and probity in order to guard against perceived as well as actual conflicts of interest and, moreover, to maintain confidence in the integrity and objectivity of decision-making in government. The precise wording is set out in extenso in paragraph 103.2 (c) and (d).

<sup>22</sup>

Article 9 of Billet d’État I of 2002, p.19



## **CODE OF CONDUCT FOR MEMBERS OF THE STATES OF DELIBERATION**

### ***Paragraph 51 – Applicability of Code to Electronic Communications***

99. The Code of Conduct requires Members of the States of Deliberation to conduct themselves at all times in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Deliberation. In the Committee's view the good conduct of Members applies in behaviour, in speech and in written communications – whether in writing or electronically.
100. The vast majority of Members observe the Code in full measure. However, the Committee has received representations from some Members who are of the opinion that observance of the Code could be improved in respect of electronic communications – when using, for example, email, text or social media sites. The Committee believes that it would be helpful for Paragraph 51 of the Code to make explicit reference to electronic communications. The precise wording is set out in extenso in paragraph 103.3.

## **CONSULTATION / RESOURCES / NEED FOR LEGISLATION**

101. The Presiding Officer and H. M. Greffier have been consulted pursuant to Rule 14(6) of the Rules relating to the Constitution and Operation of States Departments and Committees. The Law Officers have not identified any reason in law why the proposals set out in this Report cannot be implemented.
102. The approval of the recommendations would have no implications for the manpower resources or revenue expenditure of the States nor do they require any legislation.

## **RECOMMENDATIONS**

103. The States Assembly and Constitution Committee recommends the States of Deliberation to resolve:
  1. that the Rules of Procedure of the States of Deliberation shall be amended with immediate effect as follows:
    - (a) in Rule 1(3)(a) delete the words “meeting for the consideration of” and substitute therefor: “Billet d’État in which the only business is”;
    - (b) in Rule 1(3)(b) delete the words “Meeting at” and substitute therefor: “Billet d’État in”;
    - (c) in Rule 2 after paragraph (1) insert:

- “(1A) Every proposition for the approval of a Projet de Loi or an Ordinance, and every Ordinance or Statutory Instrument laid before the States, shall be accompanied by a brief explanatory memorandum approved by Her Majesty’s Procureur.”;
- (d) In Rule 2 after paragraph (2) insert:  
 “(2A) A proposition which contains the words “the States” shall be construed (unless defined to the contrary) as meaning the States of Deliberation.”;
- (e) in Rule 2 after paragraph (3) insert:  
 “(4) Any States member of a Department or Committee who dissents from all or some of the recommendations contained in a States report may deliver to the Department or Committee a minority report which shall be published as an annexe to the States report.”;
- (f) in Rule 5,  
 delete “not less than 5 clear days” and substitute “not later than 15.00 on the day preceding the fifth clear day”;
- (g) in Rule 5,  
 insert a new paragraph as follows at the end of the Rule numbered either “(7)” if proposition 1 of Article 10 of Billet d’État VIII was carried, or “(5)” if the said proposition was not carried –  
 “A Member asking a question or a supplementary question who  
 (a) has a direct or special interest in the subject matter of the question, or  
 (b) is aware that the Member’s spouse, co-habiting partner, infant child or any company in which the Member has a controlling interest on the Member’s or their behalf has such an interest  
 shall, without prejudice to the requirements of Rule 23, before they ask the question declare the said interest by disclosing it to the Meeting.”;
- (h) in Rule 5,  
 if proposition 2 of Article 10 of Billet d’État VIII was carried, in Rule 5A insert a new paragraph as follows at the end of the Rule –  
 “(7) Paragraph (7) of Rule 5 shall apply to questions asked pursuant to this Rule.”;
- (i) in Rule 9, delete lines (d) to (j) and substitute therefor:  
 “*Legislative Business*  
 (d) Motions to approve Projets de Loi

- (e) Motions to approve draft Ordinances
  - (f) Laying of Ordinances
  - (g) Laying of Statutory Instruments
  - (h) Motions to annul a Statutory Instrument or Ordinance
  - All other Parliamentary Business*
  - (i) Elections and Appointments
  - (j) Motions to debate an appendix report (1<sup>st</sup> stage)”;
- (j) in Rule 13(1) after the full stop add “The Greffier shall circulate to Members all amendments and sursis delivered to him by 15.00 on the day preceding the seventh clear day before the meeting excluding Saturdays, Sundays and Public Holidays.”;
  - (k) in Rule 13(2) delete all the words from “the time specified in paragraph (3)” to the end of the paragraph and substitute therefor “15.00 on the day preceding the seventh clear day before the meeting excluding Saturdays, Sundays and Public Holidays”;
  - (l) in Rule 13 delete paragraph (3);
  - (m) in Rule 13(6) delete the words “not less than one third” and substitute therefor “a majority”;
  - (n) in Rule 13,
    - (a) delete the heading and substitute therefor “Amendments, sursis and motions to withdraw”;
    - (b) after paragraph (10) insert:
      - “(11) (i) Where a Department or Committee (or in the case of a requête, the requérants) has resolved to request that an article or proposition be withdrawn, a motion to withdraw the said article or proposition shall be in writing, and must state the names of its proposer and seconder.
      - (ii) Debate on such a motion shall be limited strictly thereto and no other issues relating to the article or proposition shall be debated until the motion to withdraw has been voted upon.”;
  - (o)
    - (a) in Rule 17(1) delete the words “If any 7 or more Members” and substitute therefor “If any 7 Members (but not more than 7)”;
    - (b) in Rule 18(1) delete the words “If any 7 or more Members” and substitute therefor “If any 7 Members (but not more than 7)”;

- (c) in Rule 19(1) delete the words “If any 7 or more Members” and substitute therefor “If any 7 Members (but not more than 7)”;
- (p) in Rule 20(2) delete sub-paragraph (a) and substitute therefor:
  - “(a) voting shall be carried out by secret ballot, except that
    - (i) As soon as possible after the conclusion of the series of meetings for the election of a Chief Minister, Deputy Chief Minister, Ministers, Chairmen and Members of Departments and Committees held in May 2016 and quadrennially thereafter,
    - (ii) in all other elections, as soon as possible after the conclusion of the meeting at which the elections are held,
 the Greffier shall publish a list detailing the vote cast by each Member of the States in respect of each election.”;

**EITHER:**

- (q) in Rule 20
  - A. delete sub-paragraph (3)(d) and substitute:
    - “(d) at the election meeting, before voting takes place the Presiding Officer shall –
      - (i) invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates:
      - (ii) allow Members to question the candidates, provided that
        - (1) the question shall relate to areas of policy included in the mandate of the Policy Council;
        - (2) no Member may ask more than one question, save that if before the expiration of the period prescribed in sub-paragraph 6 there are no further questions, Members who have already asked a question may be permitted to ask further questions;
        - (3) the questioner may not speak for more than 30 seconds;
        - (4) each candidate shall be entitled to respond to each question, but no response shall exceed 1 minute;
        - (5) candidates shall answer the first question in the order in which they are nominated and thereafter the order of answering the questions shall, after each question has been

answered by the candidates, be rotated by moving the name of the candidate at the top of the list to the bottom of that list;

- (6) the session shall conclude at the expiration of the period calculated by multiplying 30 minutes by the number of candidates; and
- (7) no Member shall be entitled to speak other than in accordance with the provisions of this sub-paragraph.”.

B. delete paragraph (4) and substitute:

“On a proposition to elect a Minister or a Deputy Chief Minister:

(a) the Presiding Officer

(i) shall first invite the Chief Minister, and thereafter other Members, to propose eligible candidates. Nobody shall speak about a candidate at that stage;

(ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates:

(b) allow Members to question the candidates, provided that

(1) (a) in elections for the office of Minister, the question shall relate to areas of policy included in the mandates of the Policy Council or the department concerned;

(b) in elections for the office of Deputy Chief Minister, the question shall relate to areas of policy included in the mandate of the Policy Council;

(2) no Member may ask more than one question, save that if before the expiration of the period prescribed in sub-paragraph (6) there are no further questions, Members who have already asked a question may be permitted to ask further questions;

(3) the questioner may not speak for more than 30 seconds;

(4) each candidate shall be entitled to respond to each question, but no response shall exceed 1 minute;

(5) candidates shall answer the first question in the order in which they are nominated and thereafter the order of answering the

questions shall, after each question has been answered by the candidates, be rotated by moving the name of the candidate at the top of the list to the bottom of that list;

- (6) the session shall conclude at the expiration of the period calculated by multiplying 30 minutes by the number of candidates; and
- (7) no Member shall be entitled to speak other than in accordance with the provisions of this sub-paragraph.”.

C. Delete paragraph (5) and substitute:

“On a proposition to elect a Chairman of a Committee:

(a) the Presiding Officer

(i) shall first invite Members to propose eligible candidates. Nobody shall speak about a candidate at that stage;

(ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates:

(b) allow Members to question the candidates, provided that

(1) the question shall relate to areas of policy included in the mandate of the committee concerned;

(2) no Member may ask more than one question, save that if before the expiration of the period prescribed in sub-paragraph 6 there are no further questions, Members who have already asked a question may be permitted to ask further questions;

(3) the questioner may not speak for more than 30 seconds;

(4) each candidate shall be entitled to respond to each question, but no response shall exceed 1 minute;

(5) candidates shall answer the first question in the order in which they are nominated and thereafter the order of answering the questions shall be rotated by moving the name of the candidate at the top of the list to the bottom of that list;

(6) the session shall conclude at the expiration of the period calculated by multiplying 30 minutes by the number of candidates; and

- (7) no Member shall be entitled to speak other than in accordance with the provisions of this sub-paragraph.”.

**OR, IF RECOMMENDATION (q) FAILS:**

(r) in Rule 20:

A. delete sub-paragraph (3)(d) and add:

“(d) at the election meeting, before voting takes place the Presiding Officer shall -

(i) invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates:

(ii) allow Members to question each candidate for a period not exceeding 30 minutes, provided that

(1) the question shall relate to areas of policy included in the mandate of the Policy Council;

(2) no Member may ask more than one question, save that if before the expiration of the said period of 30 minutes there are no further questions, Members who have already asked a question may be permitted to ask further questions;

(3) the questioner may not speak for more than 30 seconds;

(4) the candidate may not speak for more than 1 minute in response to each question;

(e) whilst a candidate is speaking or being questioned in accordance with the provisions of the preceding sub-paragraph, other candidates must withdraw to a place where they cannot hear the proceedings in the Assembly. No Member shall be entitled to speak other than in accordance with the provisions of the preceding sub-paragraph.”;

B. delete paragraph (4) and substitute:

“On a proposition to elect a Minister or Deputy Chief Minister:

(a) the Presiding Officer

(i) shall first invite the Chief Minister, and thereafter other Members, to propose eligible candidates. Nobody shall speak about a candidate at that stage;

(ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are

two or more candidates allow Members to question each candidate for a period not exceeding 30 minutes, provided that

- (1) (a) in elections for the office of Minister, the question shall relate to areas of policy included in the mandates of the Policy Council or the department concerned;
- (b) in elections for the office of Deputy Chief Minister, the question shall relate to areas of policy included in the mandate of the Policy Council;
- (2) no Member may ask more than one question save that if before the expiration of the said period of 30 minutes there are no further questions, Members who have already asked a question may be permitted to ask further questions;
- (3) the questioner may not speak for more than 30 seconds;
- (4) the candidate may not speak for more than 1 minute in response to each question;
- (b) whilst a candidate is speaking or being questioned in accordance with the provisions of the preceding sub-paragraph, other candidates must withdraw to a place where they cannot hear the proceedings in the Assembly. No Member shall be entitled to speak other than in accordance with the provisions of the preceding sub-paragraph.”;

C. delete paragraph (5) and substitute:

“On a proposition to elect a Chairman of a Committee:

- (a) the Presiding Officer
  - (i) shall first invite Members to propose eligible candidates. Nobody shall speak about a candidate at that stage;
  - (ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates allow Members to question each candidate for a period not exceeding 30 minutes, provided that
    - (1) the question shall relate to areas of policy included in the mandate of the committee concerned;
    - (2) no Member may ask more than one question save that if before the expiration of



- the said period of 30 minutes there are no further questions, Members who have already asked a question may be permitted to ask further questions;
- (3) the questioner may not speak for more than 30 seconds;
  - (4) the candidate may not speak for more than 1 minute in response to each question;
- (b) whilst a candidate is speaking or being questioned in accordance with the provisions of the preceding sub-paragraph, other candidates must withdraw to a place where they cannot hear the proceedings in the Assembly. No Member shall be entitled to speak other than in accordance with the provisions of the preceding sub-paragraph.”;
- (s) in Rule 20(7) delete the first sentence and substitute therefor:  
“On a proposition to elect a Chairman or members of a Non-Governmental Body, the Presiding Officer shall invite Members to propose eligible candidates.”;
- (t) delete Rule 23(3) and substitute therefor:  
“All persons elected shall
- (a) within seven days of being elected or re-elected;
- and
- (c) subsequently during the month of May annually; make and lodge with the Greffier a Declaration of Interest.”;
- (u) in Rule 24 immediately after the definition of “requête” insert:  
““**sursis**” means a motion the effect of which is to defer debate on an article or proposition and includes a “sursis motivé” which has the same effect but which also directs a course of action during the period of deferral.”;
- (v) in Rule 12, delete Rule 12(6) and substitute therefor:  
“(6) A Member may interrupt another Member who is addressing a Meeting:-
- (a) on a point of order;
  - (b) on a point of correction, in respect of an inaccurate or misleading statement made by that other Member;
- and shall do so by standing and calling “Point of Order” or “Point of Correction”, as the case may be, and waiting to be invited to speak further by the Presiding Officer;
- (6A) A Member who wishes to make an interjection relevant to the point being made by the Member speaking may

do so if the Member speaking agrees to give way. The Member speaking may, in his or her discretion, refuse to give way. A Member wishing to make the interjection shall so signify by standing and remaining silent until the Member speaking either gives way or refuses to give way. When a request to give way has been refused the Member standing shall resume his or her seat immediately.”;

and delete all the words occurring before the proviso in Rule 12(3) and substitute therefor:

“(3) Other than in the specific circumstances prescribed elsewhere in these Rules, no Member may speak more than once on the same motion without the leave of the Presiding Officer.”;

and in Rule 12(2) before “Debate” insert:

“ When a Member wishes to be called to speak in the course of ordinary debate the Member shall stand in his or her place and wait to be called to speak by the Presiding Officer.”

(w) in Rule 8 re-designate paragraph (b) as (c) and insert the following after paragraph (a):

“(b) Any Member holding the office of Chief Minister, Deputy Chief Minister, Minister or Member of a Department, or Chairman or Member of a Committee who has tendered a resignation from that office who wishes to make a statement regarding that resignation may do so during the meeting at which a successor to the vacated office is to be elected

(i) at the time prescribed in Rule 9, or

(ii) at such time as the Presiding Officer may direct.”;

(x) after Rule 19 add two new Rules:

*“Motions of Censure of a Department or Committee.*

“19A. (1) If any 7 Members (but not more than 7) address a request in writing to the Policy Council that a Motion of Censure of a Department or Committee be laid before the States, the Policy Council shall, notwithstanding Rule 2 (1) include that request in a Billet d’État as soon as reasonably practicable.

(2) A Motion of Censure shall include within its petition a statement that it is a Motion of Censure for the purposes of this Rule, and shall set out full details of the basis on which the petitioners propose the Motion of Censure.

- (3) A Motion of Censure which does not comply with paragraph (2) shall fall to be dealt with as a requête in accordance with Rule 17.”;

*“Motions of Censure of Chief Minister or Deputy Chief Minister.*

- “19B. (1) If any 7 Members (but not more than 7) address a request in writing to the Presiding Officer that a Motion of Censure of the Chief Minister or Deputy Chief Minister be laid before the States, the Presiding Officer shall, notwithstanding Rule 2 (1) include that request in a Billet d’État as soon as reasonably practicable.
- (2) A Motion of Censure shall include within its petition a statement that it is a Motion of Censure for the purposes of this Rule, and shall set out full details of the basis on which the petitioners propose the Motion of Censure.
- (3) A Motion of censure which does not comply with paragraph (2) shall fall to be dealt with as a requête in accordance with Rule 17.”;

- 2. that the Rules relating to the Constitution and Operation of States Departments and Committees shall be amended with immediate effect as follows:

- (a) delete Rule 7(3) and substitute therefor:  
“ (3) If the Chief Minister, the Deputy Chief Minister, the Minister or a Member of a Department, the Chairman or a Member of a Committee resigns from that office in a letter to the Presiding Officer, the resignation shall take effect automatically on the election by the States of a successor to the office vacated. No debate shall be held on the matter of the resignation.”;
- (b) delete Rule 7(7);
- (c) in Rule 15(1) delete all the words from “shall, as soon as practicable” and substitute therefor “ must not participate in either discussion or voting thereon and must immediately declare his interest and withdraw from the meeting during the discussion and voting on the matter concerned.”;
- (d) at the end of Rule 15, insert the following  
“(5) For the purpose of clarification but without prejudice to the generality of the definition in Rule 2, this Rule applies in like manner to the Policy Council as to Departments and Committees.”;

3. that paragraph 51 of the Code of Conduct for Members of the States of Deliberation shall be amended by inserting the following after the last bullet point: “
  - the disciplines and standards of behaviour prescribed are also applicable in the context of electronic communications.”;
4. that the titles of Ordinances laid before the States and Statutory Instruments laid before the States and the explanatory memoranda relating thereto shall be printed in Billets d’État immediately following Projets de Loi and Ordinances, and that the headings “Legislative Business” and “All other Parliamentary Business” be included in the index printed on the cover of each Billet d’État.

Yours faithfully

M. J. FALLAIZE

Chairman  
States Assembly and Constitution Committee

Members of the Committee are

Deputy M. J. Fallaize (Chairman)  
Deputy P. L. Gillson (Vice-Chairman)  
Deputy E. G. Bebb  
Deputy R. Conder  
Deputy A. H. Adam

The States are asked to decide:-

XV.- Whether, after consideration of the Report dated 13<sup>th</sup> May, 2013, of the States Assembly and Constitution Committee, they are of the opinion:-

1. That the Rules of Procedure of the States of Deliberation shall be amended with immediate effect as follows:

- (a) in Rule 1(3)(a) delete the words “meeting for the consideration of” and substitute therefor: “Billet d’État in which the only business is”;
- (b) in Rule 1(3)(b) delete the words “Meeting at” and substitute therefor: “Billet d’État in”;
- (c) in Rule 2 after paragraph (1) insert:  
“(1A) Every proposition for the approval of a Projet de Loi or an Ordinance, and every Ordinance or Statutory Instrument laid before the States, shall be accompanied by a brief explanatory memorandum approved by Her Majesty’s Procureur.”;
- (d) In Rule 2 after paragraph (2) insert:  
“(2A) A proposition which contains the words “the States” shall be construed (unless defined to the contrary) as meaning the States of Deliberation.”;
- (e) in Rule 2 after paragraph (3) insert:  
“(4) Any States member of a Department or Committee who dissents from all or some of the recommendations contained in a States report may deliver to the Department or Committee a minority report which shall be published as an annexe to the States report.”;
- (f) in Rule 5,  
delete “not less than 5 clear days” and substitute “not later than 15.00 on the day preceding the fifth clear day”;
- (g) in Rule 5,  
insert a new paragraph as follows at the end of the Rule numbered either “(7)” if proposition 1 of Article 10 of Billet d’État VIII was carried, or “(5)” if the said proposition was not carried –  
“A Member asking a question or a supplementary question who  
(a) has a direct or special interest in the subject matter of the question, or

- (b) is aware that the Member's spouse, co-habiting partner, infant child or any company in which the Member has a controlling interest on the Member's or their behalf has such an interest

shall, without prejudice to the requirements of Rule 23, before they ask the question declare the said interest by disclosing it to the Meeting.”;

- (h) in Rule 5,  
if proposition 2 of Article 10 of Billet d'État VIII was carried,  
in Rule 5A insert a new paragraph as follows at the end of the Rule –  
“(7) Paragraph (7) of Rule 5 shall apply to questions asked pursuant to this Rule.”;
- (i) in Rule 9, delete lines (d) to (j) and substitute therefor:  
“Legislative Business  
(d) Motions to approve Projets de Loi  
(e) Motions to approve draft Ordinances  
(f) Laying of Ordinances  
(g) Laying of Statutory Instruments  
(h) Motions to annul a Statutory Instrument or Ordinance  
*All other Parliamentary Business*  
(i) Elections and Appointments  
(j) Motions to debate an appendix report (1<sup>st</sup> stage)”;
- (j) in Rule 13(1) after the full stop add “The Greffier shall circulate to Members all amendments and sursis delivered to him by 15.00 on the day preceding the seventh clear day before the meeting excluding Saturdays, Sundays and Public Holidays.”;
- (k) in Rule 13(2) delete all the words from “the time specified in paragraph (3)” to the end of the paragraph and substitute therefor “15.00 on the day preceding the seventh clear day before the meeting excluding Saturdays, Sundays and Public Holidays”;
- (l) in Rule 13 delete paragraph (3);
- (m) in Rule 13(6) delete the words “not less than one third” and substitute therefor “a majority”;

- (n) in Rule 13,
  - (a) delete the heading and substitute therefor “Amendments, sursis and motions to withdraw”;
  - (b) after paragraph (10) insert:
    - “(11) (i) Where a Department or Committee (or in the case of a requête, the requérants) has resolved to request that an article or proposition be withdrawn, a motion to withdraw the said article or proposition shall be in writing, and must state the names of its proposer and seconder.
    - (ii) Debate on such a motion shall be limited Strictly thereto and no other issues relating to the article or proposition shall be debated until the motion to withdraw has been voted upon.”;
- (o) (a) in Rule 17(1) delete the words “If any 7 or more Members” and substitute therefor “If any 7 Members (but not more than 7)”;
- (b) in Rule 18(1) delete the words “If any 7 or more Members” and substitute therefor “If any 7 Members (but not more than 7)”;
- (c) in Rule 19(1) delete the words “If any 7 or more Members” and substitute therefor “If any 7 Members (but not more than 7)”;
- (p) in Rule 20(2) delete sub-paragraph (a) and substitute therefor:
  - “(a) voting shall be carried out by secret ballot, except that
    - (i) As soon as possible after the conclusion of the series of meetings for the election of a Chief Minister, Deputy Chief Minister, Ministers, Chairmen and Members of Departments and Committees held in May 2016 and quadrennially thereafter,
    - (ii) in all other elections, as soon as possible after the conclusion of the meeting at which the elections are held,
 the Greffier shall publish a list detailing the vote cast by each Member of the States in respect of each election.”;

**EITHER:**

- (q) in Rule 20
  - A. delete sub-paragraph (3)(d) and substitute:

“(d) at the election meeting, before voting takes place the Presiding Officer shall –

- (i) invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates;
- (ii) allow Members to question the candidates, provided that
  - (1) the question shall relate to areas of policy included in the mandate of the Policy Council;
  - (2) no Member may ask more than one question, save that if before the expiration of the period prescribed in sub-paragraph 6 there are no further questions, Members who have already asked a question may be permitted to ask further questions;
  - (3) the questioner may not speak for more than 30 seconds;
  - (4) each candidate shall be entitled to respond to each question, but no response shall exceed 1 minute;
  - (5) candidates shall answer the first question in the order in which they are nominated and thereafter the order of answering the questions shall, after each question has been answered by the candidates, be rotated by moving the name of the candidate at the top of the list to the bottom of that list;
  - (6) the session shall conclude at the expiration of the period calculated by multiplying 30 minutes by the number of candidates; and
  - (7) no Member shall be entitled to speak other than in accordance with the provisions of this sub-paragraph.”.

B. delete paragraph (4) and substitute:

“On a proposition to elect a Minister or a Deputy Chief Minister:

- (a) the Presiding Officer
  - (i) shall first invite the Chief Minister, and thereafter other Members, to propose eligible candidates. Nobody shall speak about a candidate at that stage;
  - (ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5



minutes and thereafter, if there are two or more candidates:

(b) allow Members to question the candidates, provided that

- (1)(a) in elections for the office of Minister, the question shall relate to areas of policy included in the mandates of the Policy Council or the department concerned;
- (b) in elections for the office of Deputy Chief Minister, the question shall relate to areas of policy included in the mandate of the Policy Council;
- (2) no Member may ask more than one question, save that if before the expiration of the period prescribed in sub-paragraph (6) there are no further questions, Members who have already asked a question may be permitted to ask further questions;
- (3) the questioner may not speak for more than 30 seconds;
- (4) each candidate shall be entitled to respond to each question, but no response shall exceed 1 minute;
- (5) candidates shall answer the first question in the order in which they are nominated and thereafter the order of answering the questions shall, after each question has been answered by the candidates, be rotated by moving the name of the candidate at the top of the list to the bottom of that list;
- (6) the session shall conclude at the expiration of the period calculated by multiplying 30 minutes by the number of candidates; and
- (7) no Member shall be entitled to speak other than in accordance with the provisions of this sub-paragraph.”.

C. Delete paragraph (5) and substitute:

“On a proposition to elect a Chairman of a Committee:

(a) the Presiding Officer

- (i) shall first invite Members to propose eligible candidates. Nobody shall speak about a candidate at that stage;
- (ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5

minutes and thereafter, if there are two or more candidates:

- (b) allow Members to question the candidates, provided that
  - (1) the question shall relate to areas of policy included in the mandate of the committee concerned;
  - (2) no Member may ask more than one question, save that if before the expiration of the period prescribed in sub-paragraph 6 there are no further questions, Members who have already asked a question may be permitted to ask further questions;
  - (3) the questioner may not speak for more than 30 seconds;
  - (4) each candidate shall be entitled to respond to each question, but no response shall exceed 1 minute;
  - (5) candidates shall answer the first question in the order in which they are nominated and thereafter the order of answering the questions shall be rotated by moving the name of the candidate at the top of the list to the bottom of that list;
  - (6) the session shall conclude at the expiration of the period calculated by multiplying 30 minutes by the number of candidates; and
  - (7) no Member shall be entitled to speak other than in accordance with the provisions of this sub-paragraph.”.

**OR, IF RECOMMENDATION (q) FAILS:**

- (r) in Rule 20:
  - A. delete sub-paragraph (3)(d) and add:
    - “(d) at the election meeting, before voting takes place the Presiding Officer shall -
      - (i) invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates;
      - ii) allow Members to question each candidate for a period not exceeding 30 minutes, provided that
        - (1) the question shall relate to areas of policy included in the mandate of the Policy Council;

- (2) no Member may ask more than one question, save that if before the expiration of the said period of 30 minutes there are no further questions, Members who have already asked a question may be permitted to ask further questions;
  - (3) the questioner may not speak for more than 30 seconds;
  - (4) the candidate may not speak for more than 1 minute in response to each question;
- (e) whilst a candidate is speaking or being questioned in accordance with the provisions of the preceding sub-paragraph, other candidates must withdraw to a place where they cannot hear the proceedings in the Assembly. No Member shall be entitled to speak other than in accordance with the provisions of the preceding sub-paragraph.”;

B. delete paragraph (4) and substitute:  
 “On a proposition to elect a Minister or Deputy Chief Minister:

- (a) the Presiding Officer
  - (i) shall first invite the Chief Minister, and thereafter other Members, to propose eligible candidates. Nobody shall speak about a candidate at that stage;
  - (ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates allow Members to question each candidate for a period not exceeding 30 minutes, provided that
    - (1) (a) in elections for the office of Minister, the question shall relate to areas of policy included in the mandates of the Policy Council or the department concerned;
    - (b) in elections for the office of Deputy Chief Minister, the question shall relate to areas of policy included in the mandate of the Policy Council;
  - (2) no Member may ask more than one question save that if before the expiration of the said period of 30 minutes there are no further questions, Members who have already asked a question may be permitted to ask further questions;

- (3) the questioner may not speak for more than 30 seconds;
  - (4) the candidate may not speak for more than 1 minute in response to each question;
- (b) whilst a candidate is speaking or being questioned in accordance with the provisions of the preceding sub-paragraph, other candidates must withdraw to a place where they cannot hear the proceedings in the Assembly. No Member shall be entitled to speak other than in accordance with the provisions of the preceding sub-paragraph.”;

C. delete paragraph (5) and substitute:

“On a proposition to elect a Chairman of a Committee:

- (a) the Presiding Officer
  - (i) shall first invite Members to propose eligible candidates. Nobody shall speak about a candidate at that stage;
  - (ii) shall then invite each candidate (or the candidate if there is only one) to speak for not more than 5 minutes and thereafter, if there are two or more candidates allow Members to question each candidate for a period not exceeding 30 minutes, provided that
    - (1) the question shall relate to areas of policy included in the mandate of the committee concerned;
    - (2) no Member may ask more than one question save that if before the expiration of the said period of 30 minutes there are no further questions, Members who have already asked a question may be permitted to ask further questions;
    - (3) the questioner may not speak for more than 30 seconds;
    - (4) the candidate may not speak for more than 1 minute in response to each question;
- (b) whilst a candidate is speaking or being questioned in accordance with the provisions of the preceding sub-paragraph, other candidates must withdraw to a place where they cannot hear the proceedings in the Assembly. No Member shall be entitled to speak other than in accordance with the provisions of the preceding sub-paragraph.”;

- (s) in Rule 20(7) delete the first sentence and substitute therefor:  
“On a proposition to elect a Chairman or members of a Non-Governmental Body, the Presiding Officer shall invite Members to propose eligible candidates.”;
  - (t) delete Rule 23(3) and substitute therefor:  
“All persons elected shall
    - (a) within seven days of being elected or re-elected;
    - and
    - (c) subsequently during the month of May annually;
 make and lodge with the Greffier a Declaration of Interest.”;
  - (u) in Rule 24  
immediately after the definition of “requête” insert:  
““**sursis**” means a motion the effect of which is to defer debate on an article or proposition and includes a “sursis motivé” which has the same effect but which also directs a course of action during the period of deferral.”;
  - (v) in Rule 12, delete Rule 12(6) and substitute therefor:  
“(6) A Member may interrupt another Member who is addressing a Meeting:-
    - (a) on a point of order;
    - (b) on a point of correction, in respect of an inaccurate or misleading statement made by that other Member;
 and shall do so by standing and calling “Point of Order” or “Point of Correction”, as the case may be, and waiting to be invited to speak further by the Presiding Officer;
- (6A) A Member who wishes to make an interjection relevant to the point being made by the Member speaking may do so if the Member speaking agrees to give way. The Member speaking may, in his or her discretion, refuse to give way. A Member wishing to make the interjection shall so signify by standing and remaining silent until the Member speaking either gives way or refuses to give way. When a request to give way has been refused the Member standing shall resume his or her seat immediately.”;

and delete all the words occurring before the proviso in Rule 12(3) and substitute therefor:

- “(3) Other than in the specific circumstances prescribed elsewhere in these Rules, no Member may speak more

than once on the same motion without the leave of the Presiding Officer.”;

and in Rule 12(2) before “Debate” insert:

“ When a Member wishes to be called to speak in the course of ordinary debate the Member shall stand in his or her place and wait to be called to speak by the Presiding Officer.”

- (w) in Rule 8 re-designate paragraph (b) as (c) and insert the following after paragraph (a):

“(b) Any Member holding the office of Chief Minister, Deputy Chief Minister, Minister or Member of a Department, or Chairman or Member of a Committee who has tendered a resignation from that office who wishes to make a statement regarding that resignation may do so during the meeting at which a successor to the vacated office is to be elected  
 (i) at the time prescribed in Rule 9, or  
 (ii) at such time as the Presiding Officer may direct.”;

- (x) after Rule 19 add two new Rules:

“Motions of Censure of a Department or Committee.

“19A.(1) If any 7 Members (but not more than 7) address a request in writing to the Policy Council that a Motion of Censure of a Department or Committee be laid before the States, the Policy Council shall, notwithstanding Rule 2 (1) include that request in a Billet d’État as soon as reasonably practicable.

(2) A Motion of Censure shall include within its petition a statement that it is a Motion of Censure for the purposes of this Rule, and shall set out full details of the basis on which the petitioners propose the Motion of Censure.

(3) A Motion of Censure which does not comply with paragraph (2) shall fall to be dealt with as a requête in accordance with Rule 17.”;

“Motions of Censure of Chief Minister or Deputy Chief Minister.

“19B. (1) If any 7 Members (but not more than 7) address a request in writing to the Presiding Officer that a Motion of Censure of the Chief Minister or Deputy Chief Minister be laid before the States, the Presiding Officer shall, notwithstanding Rule 2 (1) include that request in a Billet d’État as soon as reasonably practicable.

- (2) A Motion of Censure shall include within its petition a statement that it is a Motion of Censure for the purposes of this Rule, and shall set out full details of the basis on which the petitioners propose the Motion of Censure.
  - (3) A Motion of censure which does not comply with paragraph (2) shall fall to be dealt with as a requête in accordance with Rule 17.”;
2. That the Rules relating to the Constitution and Operation of States Departments and Committees shall be amended with immediate effect as follows:
  - (a) delete Rule 7(3) and substitute therefor:
 

“(3) If the Chief Minister, the Deputy Chief Minister, the Minister or a Member of a Department, the Chairman or a Member of a Committee resigns from that office in a letter to the Presiding Officer, the resignation shall take effect automatically on the election by the States of a successor to the office vacated. No debate shall be held on the matter of the resignation.”;
  - (b) delete Rule 7(7);
  - (c) in Rule 15(1) delete all the words from “shall, as soon as practicable” and substitute therefor “ must not participate in either discussion or voting thereon and must immediately declare his interest and withdraw from the meeting during the discussion and voting on the matter concerned.”;
  - (d) at the end of Rule 15, insert the following
 

“(5) For the purpose of clarification but without prejudice to the generality of the definition in Rule 2, this Rule applies in like manner to the Policy Council as to Departments and Committees.”;
3. That paragraph 51 of the Code of Conduct for Members of the States of Deliberation shall be amended by inserting the following after the last bullet point: “
  - the disciplines and standards of behaviour prescribed are also applicable in the context of electronic communications.”;
4. That the titles of Ordinances laid before the States and Statutory Instruments laid before the States and the explanatory memoranda relating thereto shall be printed in Billets d’État immediately following Projets de Loi and Ordinances, and that the headings “Legislative Business” and “All other Parliamentary Business” be included in the index printed on the cover of each Billet d’État.

## REQUÊTE

### Clarification of the responsibility and accountability of the Civil Service to the Political Boards and Committees.

The humble petition of the undersigned members of the States of Deliberation sheweth that:

1. The origins of the modern civil service can be traced back to Imperial China where individuals were selected for service based on an imperial exam.
2. The first European power to successfully implement a meritocratic civil service based on the Chinese model was the British Empire, having been advocated by British Colonial Administrators in China.
3. The British adopted the meritocratic model of civil service in 1853 following the Northcote – Trevelyan Report .
4. The words “Civil Service” have their origin in Latin “Civilis”, concerning a citizen and old French “Servise”, to provide something desirable on behalf of another entity or person.
5. The Civil Service in Guernsey provides the people of Guernsey with a number of essential and important services as directed by the States of Deliberation.
6. The Civil Service in Guernsey has evolved over time with some decisions being made in the political arena and others having been made within the civil service and known generally as operational matters of reorganisation. The most evident examples being the changes that were necessary following the Review of the Machinery of Government report (commonly known as the Harwood Report) in 2000, imposed by political decision and on the other hand the recent introduction of the Executive Leadership Team, primarily created to implement the Financial Transformation Programme, but being seen as an internal reorganisation of the Civil Service with no political decision apparently having been taken to support or suggest such internal reorganisation.
7. Some of the changes within the civil service have been organic whilst others have been planned, but on all occasions, there is a resultant political effect due to the perceived changes in responsibility and accountability these changes have entailed.
8. The second principle of good governance as defined in the Wales Audit Office Review of Good Governance states “Good governance means performing effectively in clearly defined functions and roles”.
9. During the current economic climate and with the States of Deliberation’s resolutions on the Financial Transformation Programme, dated 31<sup>st</sup> January



2013, there is an ever greater need to clarify the lines of accountability and responsibility between the Civil Service and the political boards and committees. This was highlighted with the Fallaize, Soulsby amendment of Billet d'État No. I, Article 8, 30<sup>th</sup> January 2013, Amendment 6 that reads:-

*To delete the full stop and add the following words at the end of proposition 4: “, and to clarify that as part of that governance structure political accountability to the States of Deliberation for the Financial Transformation Programme is as follows: the Policy Council is accountable to the States of Deliberation for changes of policy, new policy initiatives and operational changes which fall within the council’s mandate; States Departments are accountable to the States of Deliberation for changes of policy, new policy initiatives and operational changes which fall within their mandates; and the Policy Council and States Departments are jointly accountable to the States of Deliberation for changes of policy, new policy initiatives and operational changes which fall partly but not wholly within their mandates; and also to clarify that a States Resolution shall be required to effect any adjustments to these arrangements of political accountability for the Financial Transformation Programme.”*

10. The States of Guernsey is a government. It is not a corporation to be run with corporate values at its core and company or corporate structures for delivery, but a government constantly evolving to accommodate the majority view of its elected representatives that will require unique employees to deliver its unique services.
11. At this point in time there is a lack of clear reporting and accountability to the departmental boards. Chief officers are increasingly expected to deliver services and the decisions of the political board but are having their ability to do so curtailed from a centrist corporate view with competing priorities.
12. Much of the recent decision making within the civil service of the States of Guernsey has been centrally driven with the departments having to allocate scant resources, resolve large and detrimental problems and manage large time wastage as a result of poor implementation of central projects.
13. There seems to be little regard of the problems created from these centrist approaches. No responsibility is taken by the central teams for the problems created within departments due to poor implementation of cross departmental projects.
14. Department political members are left having to take responsibility for actions that they have little to do with, little influence over and no means of resolving.
15. The continuing move to a centralised running of the States of Guernsey is incompatible with the form of consensus government that is currently in place.

16. It is your petitioners' belief that the civil service should be modelled on the political structure so as to clarify political accountability and responsibility. This would also clarify reporting lines for the delivery of services.

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

17. To direct the Chief Officer of each department should be allowed the freedom to run the operations of their department within the rules of the States of Guernsey including, but not limited to, the ability to employ or dismiss all civil servants reporting to them
18. To direct that all matters of the Chief Officer's employment, such as appraisals and performance reviews, should be between the political board and the Chief Officer as it is further believed that the Chief Officer's responsibility and accountability should be primarily to the political board.
19. To direct that competing priorities for cross departmental initiatives must be resolved by both the Minister and Chief Officer of the Department, thus placing the responsibility and accountability firmly with the Policy Council for such initiatives. As such, the Chief Executive and Chief Minister must liaise directly with the Chief Officer and Minister on cross-departmental issues.
20. To direct that any change to the overall structure of the civil service resulting in a change to inter departmental relationships would have a political effect and as such, should be subject to a states report and appropriate resolution by the States of Deliberation.
21. To direct that, when services are devolved from departments a strong Service Level Agreement shall be in place to ensure clear lines of accountability. Failure to meet the SLA would assist in indicating which party is accountable and responsible.
22. To direct the States Review Committee that any proposals they are considering making which will involve a change in the machinery of government should incorporate a proposal for the most appropriate model for the civil service to adopt, so as to give clear lines of service, responsibility and accountability.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 14<sup>th</sup> day of May 2013

Deputy Elis Bebb  
Deputy Christopher Green  
Deputy Peter Sherbourne

Deputy Laurie Queripel  
 Deputy Arrun Wilkie  
 Deputy Peter Gillson  
 Deputy Heidi Soulsby  
 Deputy Sandra James  
 Deputy Michelle Le Clerc

**(NB In pursuance of Rule 17(2) (a) of the Rules of Procedure of the States of Deliberation, the views received from Departments and Committees consulted by the Policy Council, as appearing to have a particular interest in the subject matter of the Requête, are set out below.)**

### **TREASURY AND RESOURCES DEPARTMENT**

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

28<sup>th</sup> May, 2013

Dear Chief Minister

#### **Deputy Bebb – Requete – Clarification of the Responsibility and Accountability of the Civil Service to Political Boards and Committees**

I refer to the aforementioned requete that has been submitted by Deputy Bebb, which the Treasury and Resources Board has now had the opportunity to consider.

The Board has a number of concerns about the potential impact of the Requete. These centre around, firstly, the challenge that the Requete effectively represents to the Department's mandate and, secondly, the potential resource implications.

You will be aware that the mandate of the Treasury and Resources Department is, inter alia:

To advise the States on matters relating to the allocation and administration of all States resources;

To be responsible for financial and related functions, including the States payroll and the provision of advice and corporate services to Departments;

To be responsible for the internal audit, risk management and insurance of States activities and resources

To provide advice and corporate services to Departments on matters to procurement, property and information technology; and

To develop and, where necessary, present to the States policies on the above matters which contribute to the achievement of strategic and corporate objectives.

The requete proposes that the Chief Officer of each Department should be allowed the freedom to run the operations of their department. The Board is concerned that this would effectively transfer elements of its own mandate relating to finance, procurement, property and IT to operational Departments. This will present a number of significant risks:

If Chief Officers have complete freedom to operate their Departments, the States would not be able to benefit from corporate ways of working in order to facilitate the achievement of its corporate objectives. It appears that the requete would offer Chief Officers the freedom to opt in or out of corporate initiatives and services. By way of example, this would compromise the ability of the States to deliver improved value for money and ensure the future sustainability of services through the Financial Transformation Programme;

Departments would be able to develop their own policies and procedures in those “corporate” areas for which the Treasury and Resources Department is responsible (finance, procurement, property, IT). The Department is most concerned that this will result in the duplication of effort and lead to inconsistencies across the States in these areas. Such inconsistencies will compromise the States’ ability to assure itself that effective controls are being exercised at departmental level and risks are being properly managed;

The devolution of responsibility for the aforementioned corporate services to operational Departments would eliminate the efficiencies that are achieved by delivering these centrally at the present time and would inevitably require the provision of additional financial and other resources.

Within the context of rule 15(2) of the Rules of Procedure, the Department is concerned that the requete would have significant resource implications for the States that have not been identified.

Against the above background, the Department has grave concerns about the implications of the requete and is opposed to it.

Yours sincerely

Gavin St Pier  
Minister

## STATES REVIEW COMMITTEE

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

24<sup>th</sup> May 2013

Dear Chief Minister,

**Re: Requête – Deputy Bebb – “Clarification of the responsibility and accountability of the Civil Service to the Political Boards and Committees”**

I refer to the email dated 15<sup>th</sup> May inviting the States Review Committee to set out its views in respect of the Requête entitled *Clarification of the Responsibility and Accountability of the Civil Service to the Political Boards and Committees*, which has been submitted for debate by Deputy E G Bebb and seven other members of the States of Deliberation.

The Committee notes that paragraph 22 of the Requête reads:

“To direct the States Review Committee that any proposal they are considering making which will involve a change in the machinery of government should incorporate a proposal for the most appropriate model for the civil service to adopt, so as to give clear lines of service, responsibility and accountability.”

The Committee would not in any event be able to fulfil its current terms of reference vis-à-vis the structure and functions of the government and legislature in Guernsey without giving consideration to the way in which the civil service is organised today and might be in the future. In that sense, therefore, paragraph 22 of the Requête adds nothing to the current review process. However, it may be of some comfort to the requérants to know that some of the evidence presented to the Committee has demonstrated that increasingly there is tension between the political structure of the States of Guernsey and the way in which the administration of the States of Guernsey is organised. Plainly the way in which the administration is organised must be capable of supporting the political structure – and not the other way around - and the Committee intends to take this into account fully when presenting proposals to the States of Deliberation in 2013 and 2014.

In view of the Committee's commitment to addressing the subject matter of paragraph 22 of the Requête with or without having it expressed in a further States Resolution, it must logically follow that paragraph 22, if approved in isolation, would not disrupt the work of the Committee. Similarly, the proposals in the Requête which provide for more immediate action to revise the structure of the civil service – that is to say paragraphs 17 to 21 – would not adversely impact upon the work of the Committee. The other two paragraphs of the prayer of the Requête – 19 and 20 – barely, if at all, engage the mandate of the Committee.

However, the Committee wishes to make some broad observations in order that the States of Deliberation has at its disposal as much information as possible in advance of debating the Requête.

Having spent the past year immersed in matters relating to the machinery of government, the Committee would caution the States against resolving upon a particular set of solutions without first reflecting very carefully upon the causes and effects of the problems which those solutions hope to address and upon their likely risks and consequences.

Members of the States may wish to bear in mind that it may become necessary to make changes to the way in which the administration of government is organised in the event that they resolve to make changes to the political structure of the island upon consideration of the Committee's reports in 2013 and 2014. Making changes today may therefore be premature; and then a further set of changes pursuant to the Committee's work may not be a terribly efficient use of resources.

In taking evidence from members of the States past and present and others with strong connections to the States, the Committee has been presented with vastly different interpretations – not to mention more than a little confusion – about how the current system of government is meant to operate and actually operates in practice.

The Requête submitted by Deputy E G Bebb and seven other members of the States reflects that confusion.

At paragraph 14 the requérants state: "Department political members are left having to take responsibility for actions that they have little to do with, little influence over and no means of resolving." It is difficult to reconcile that view with Guernsey's existing political structure in which all members of the States, and therefore all political members of Departments, are members of government and have available to them very considerable opportunities to influence the actions of government.

Paragraph 19 attributes to Ministers, and by extension to the Policy Council, a degree of authority which is not compatible with the committee-based system of government nor the rules relating to the Constitution and Operation of States Departments and Committees.

Paragraph 18 of the Requête refers to ‘political boards’ when there is no such thing. This is more than an error of nomenclature: it implies a distinction between the political members of a Department and the bureaucracy of that Department when constitutionally there is no such distinction: the rules relating to the Constitution and Operation of States Departments and Committees state that: “All Departments shall consist of a Minister [and] four sitting members of the States, of whom not more than one shall be a Minister of another Department.”

Some of what is proposed in the Requête does not seek so much to reverse recent changes to the structure of the civil service but rather substitute an altogether different set of arrangements which hitherto have not existed. For example, paragraphs 17 and 18 of the Requête envisage Chief Officers being primarily, or potentially wholly, responsible to their Departments. It should be noted that even prior to the reforms to government which occurred in 2004 the various Authorities, Councils and Committees which were the forerunners of Departments were not responsible for the recruitment and performance of their senior-most members of staff. It should also be noted that the proposal in the Requête to make Chief Officers responsible to their Departments may in practice have the effect of turning senior civil servants into political appointments, which is not consistent with the model of an apolitical civil service upon which, in the judgement of the Committee, good governance in the public sector is reliant. Neither would it be consistent with the obligation of States Members to uphold the impartiality of the Civil Service in accordance with Section 10 of Part 1 of the Code of Conduct for Members of the States of Deliberation, which states that: “*Members shall uphold the political impartiality of the Civil Service....*”

In closing, the Requête concerns matters which have been prominent in the Committee's deliberations thus far. The Committee looks forward to hearing the views of States members when the Requête is debated and hopes that its comments will help inform that debate.

Yours sincerely

Matt Fallaize  
Vice-Chairman

**ENVIRONMENT DEPARTMENT**

Deputy P A Harwood  
Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH

20<sup>th</sup> May 2013

Dear Deputy Harwood

**Re: Requête – Deputy Bebb – “Clarification of the responsibility and accountability of the Civil Service to the Political Boards and Committees”**

Thank you for seeking the Environment Department’s views on the above Requete. The Department considers that this is a matter for individual deputies and hence whilst supporting a debate on the subject has no comments to make in respect of the specific elements of the Requete.

Yours sincerely

Deputy Roger Domaille  
Minister, Environment Department

**HOUSING DEPARTMENT**

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

20 May 2013

Dear Deputy Harwood

**CLARIFICATION OF THE RESPONSIBILITY AND ACCOUNTABILITY OF THE CIVIL SERVICE TO THE POLITICAL BOARDS AND COMMITTEES**

I refer to the above-named Requete, signed by Deputy Bebb and eight other Deputies: this was considered by the Housing board at its meeting held on 16 May 2013.



Board Members had some sympathy for the points made – albeit they did not feel that the work of the Housing Department was being adversely impacted - and will make their views known individually when the Requete is debated.

However, the board's general feeling was the propositions went much further than the concerns highlighted, and raised many fundamental and far-reaching matters that, in the interests of good governance, could not be decided upon without proper consideration of the implications. In the board's view, the appropriate course of action would have been for the petitioners to request an investigation and a report into their concerns, rather than to make definitive proposals with no regard to their feasibility or legality.

Furthermore, the board was surprised that these matters were being raised at this time, given that these are issues that fall within the current review of the machinery of government.

Yours sincerely

D Jones  
Minister

## CULTURE AND LEISURE DEPARTMENT

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

22 May 2013

Dear Chief Minister

### **Requête - Deputy Bebb- 'Clarification of the responsibility and accountability of the Civil Service to Political Boards and Committees'**

I write with reference to the above matter which was considered by the Culture and Leisure Board at its meeting of 21 May.

Whilst the Board expressed sympathy for some of the arguments in the requête, it was generally considered that it was really a matter for individual States members to decide whether they wished to support the proposals rather than something to be considered by each political board.

Members did however express surprise that this matter was being brought to the States at this time given the review of machinery of government which is taking place.

Yours sincerely

Deputy David Inglis  
Deputy Minister

**EDUCATION DEPARTMENT**

28<sup>th</sup> May, 2013

The Chief Minister,  
Policy Council,  
PO Box 43,  
Sir Charles Frossard House,  
La Charroterie,  
ST. PETER PORT.  
GY1 1FH

Dear Deputy Harwood,

**Re: Requête – Deputy Bebb – “Clarification of the Responsibility and Accountability of the Civil Service to the Political Boards and Committees”**

At the Education Board meeting held on 23<sup>rd</sup> May, 2013 members felt that as two of the Board members had signed the Requête and a third was a member of the States Review Committee it should be left to each individual to speak as they wished during the States debate.

Yours sincerely,

Deputy R. W. Sillars  
Minister

**HEALTH AND SOCIAL SERVICES DEPARTMENT**

Deputy P Harwood  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH

28 May 2013

Dear Deputy Harwood

**Re: Requête – Deputy Bebb – “Clarification of the responsibility and accountability of the Civil Service to the Political Boards and Committees”**

While the Board of the Health and Social Services Department welcomes the opportunity to debate this matter, it has no collective view on the content of the Requete, It will therefore be for individual Deputies to make their views known during the debate.

Yours sincerely

M H Dorey  
Health and Social Services Minister

**COMMERCE AND EMPLOYMENT DEPARTMENT**

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

21 May 2013

Dear Sir

**Requete “Clarification of the responsibility and accountability of the Civil Service to the Political Board and Committees” submitted by Deputy Bebb**

In accordance with Rule 17 (2) of the Rules of Procedure of the States of Deliberation, the Chief Minister has requested any views, of Commerce and Employment Department, on the subject matter of this Requête.

The members of the Board have reserved the right to reply on an individual basis and as a Board they have given the following response:

The Board indicated that they felt that these matters were within the remit of SACC / Policy Council and should be dealt with at by them, as fundamentally the issues are of operational conduct.

Yours sincerely

Kevin A Stewart  
Minister

**(NB The following Departments and Committees also wish to make no collective comment on the Requête: Social Security Department, Home Department, Public Services Department, States Assembly and Constitution Committee, Scrutiny Committee. However, Members may wish to give their personal views in debate.)**

**(NB The Policy Council comments as follows: The States of Guernsey is currently in the middle of an intense period of unprecedented organisational change. Initiated with the introduction of the new Machinery of Government structure in 2004, accelerated by the drop in revenues following the introduction of the zero/10 tax regime and the global economic crisis, it is a programme of change out of necessity not of choice.**

**Change can be a challenging and painful process requiring people to think differently, to act differently and to stop doing the familiar and comfortable and embrace the new and uncertain. Nor does it confine itself to the organisation, rather it provokes adverse reactions from the public and customers who are comfortable with the way in which services have been provided historically and either cannot or do not wish to comprehend why there should be any change. It is at this point that States Members are then called upon to justify such changes.**

**Against this background it is hardly surprising that a world in which Departments could turn away from the overall objectives of government and focus primarily on delivering mandated services, where they could opt out of corporate change at their will, where to all intents and purposes they could exercise direct control over their destiny – seems, superficially at least, to be an attractive option. The Policy Council believes that such an approach, attractive though it may seem, represents fundamental change in the current direction of the States which has been determined by a succession of clear States directions following debates in the Assembly. Furthermore, the effect of the prayer of the Requête, if approved, would go considerably further than responsibility for, and accountability of, civil servants, rather it would;**

- Alter the fundamental mechanisms of our government by effectively transferring elements of the Policy Council and Treasury and Resources Department mandates to operational States Departments.**
- Raise a number of significant legal issues.**
- Require extensive renegotiation of employee and some commercial contracts and**
- Have major cost and resource implications.**

### **Consultation with States Departments**

In accordance with Rule 17(2) of the Rules of Procedure, the Policy Council has consulted all Departments and Committees on this matter and it agrees with and wishes to draw particular attention to the comments made by the Treasury and Resources Department and the States Review Committee.

### **Leadership, Responsibility and Accountability in the States of Guernsey**

The prayer of the Requête gives the impression that the Civil Service is in some way pursuing its own agenda for change far removed from any direction by the States. It paints a picture of some form of detached “centrist” views intruding into the day to day business of Departments and cutting across the wishes of Departmental Boards. This picture is far from reality.

The change agenda and the major corporate initiatives and structural changes to which the Requête refers have been set by, and delivered under the authority of, the States of Deliberation. Either by formal approval of specific initiatives by the Assembly or through the Policy Council acting in its role as “employer” or in its role as the designated lead for the Financial Transformation Programme.

The Requête opens with a brief history of the development of the Civil Service but omits to mention that in the hundred and sixty years since the introduction of the meritocratic model of the Civil Service that model has undergone major changes and indeed within the last decade massive Civil Service reforms have taken place all over the world. In the UK those reforms have focused on leadership, performance, good governance and accountability and independence from the body politic. In Guernsey reforms have had the same objective but have been implemented according to local needs and circumstances and have been shaped by the States acceptance of advice tendered by the Wales Audit Office in its report of September 2009 which had been commissioned by the Public Accounts Committee. The full extract of the relevant sections of the Report are set out in Appendix 2 but are summarised below and, in the view of the Policy Council, provide both an accurate assessment of the challenges in governance faced by the States and a framework for change which has since been carried forward.

Amongst other things the WAO concluded that:

- If the States continues to operate as though it was several independent identities, it will not be able to benefit from corporate ways of working in order to facilitate the achievement of its strategic objectives.
- Such a handicap would compromise the ability of the States to deliver improved value for money and ensure future sustainability of services and would effectively undermine delivery of the FTP.

- **Authoritative and decisive leadership is an essential element of good governance within the public service where it was necessary to provide vision and direction and ensure that things get done.**
- **Without such leadership the impression can be created that the public body is drifting without direction and purpose and failing to deliver value in its use of public resources.**

The report went on to accurately describe what had happened in the absence of centralised authority where Departments were operating as semi autonomous administrations. They correctly identified that each Department had developed its own:

- **Human Resource policies and procedures.**
- **Financial control mechanisms including budgeting systems.**
- **Risk management arrangements.**
- **Complaints, public engagement processes and performance management systems.**

They came to the firm conclusion that this was unnecessarily bureaucratic, did not facilitate the provision of value for money, duplicated effort, led to inconsistencies and meant that it was very difficult for the States to obtain corporate assurance that effective control is being exercised at Departmental level or that risk was properly managed.

The WAO also acknowledged that this approach had consequences for the relationship between Politicians and Civil Servants. It recognised that in some cases Departmental Boards had become both political and administrative master dealing with the development of policy and engaging in operational management. Furthermore, it saw the lack of an effective mechanism to implement policies and procedure across the States as a significant weakness.

It had a recipe for change in the form of separation of political and administrative accountability which would require a well defined chain of command led by a Chief Executive who would need the authority to implement corporate imperatives and hold Civil Servants accountable for their actions.

Finally, they identified that there was a cost to this approach stating

*“lack of clear leadership of, and accountability within the civil service has a price. Inability to implement States-wide policies and procedures and ensure that there are consistent approaches to the way the States does business is exposing the States to financial and reputational risk. Furthermore, it is perpetuating inefficiencies and duplication, thus providing a barrier to improvement and the introduction of good practice at economic cost”.*

Recent changes in the Civil Service have all been implemented with the aim of overcoming the structural weaknesses identified above and accepted by the States. *The Policy Council believes that the Requête if successful would not just reverse the recent changes in accountability but rather ‘hard wire’ into the structure of our government for the first time the inherent weaknesses in governance that the WAO and other independent reports have identified.*

### The “centrist” approach

The Policy Council acknowledges the petitioners assertion in paragraph 10 of the Requête that the States is a government not a corporation. However, the statement implies that core values and corporate structures are somehow inappropriate for the States and further our unique characteristics have been ignored in approaching change.

The Policy Council’s view is that this not the case in that all of the changes contemplated in order to address the governance challenge correctly identified by the WAO have had regard to the particular nature of government in Guernsey. While acknowledging that the States of Guernsey is not a corporation nevertheless when approving major reports on policy and strategy the States has effectively signed up to certain values. Some of those values are enshrined in the Rules of Procedure and the Code of Conduct for States Members, while corporate strategic goals are enshrined in the States Strategic Plan. Indeed, at the heart of the proposals to develop a Government Service Plan is a mechanism designed to link strategy, policy, operational activities and the budgetary process. This can only be described as a corporate approach.

Specific projects designed to ensure a more cost effective approach to delivering public services whether the creation of the Shared Transaction Services Centre (The HUB), the adoption of SAP, the development of a Risk Management Framework for the States, the adoption of a corporate approach to Health and Safety, co-ordinating of HR activity across the organisation and a number of other initiatives have all been agreed and resourced by the States. They have not simply been introduced by some form of “centrist” agenda detached from the body politic.

The Requête also seems to overlook the fact that the Policy Council which leads on the FTP and acts on employment matters and holds the Chief Executive to account – consists of the Ministers of the very Departments which will be subject to the pressures that the Requête seeks to describe. In practice, the Policy Council meetings provide a constructive forum for resolving any such conflict of priorities.

As has been already acknowledged, Departments and their staff are under considerable pressure to implement change through cross cutting initiatives, to maintain business as usual and to do all this within an environment of reducing funds. As such pressure builds and choices have to be made about the use of scarce resources it is understandable and perhaps inevitable that those Boards and their staff are likely to favour the delivery of services for which they are directly



accountable ie. “what “we” are here to do”, over new approaches designed to improve change across the organisation ie. “what “they” are imposing on us”. What such a simplistic approach overlooks is that States wide initiatives have been sanctioned by the States, that there is the expectation of a partnership rather than a them and us approach.

### Devolving power to Chief Officers

The proposition contained in Section 17 of the Requête seeks to direct that the Chief Officer of each Department should be allowed the freedom to run the operations of their Department within the rules of the States of Guernsey including, but not limited to, the ability to employ or dismiss all civil servants reporting to them.

HM Comptroller has advised that *“Chief Officers would not have the necessary legal powers as the Department and Chief Officers do not have legal capacity to enter into contracts themselves”*. Not only would this be totally impractical moreover the additional resources that a Department would need to fulfil such an ambition simply do not exist. It is suggested, again as identified by the WAO, that inconsistency would be rife and in any event the States are unable to amend contracts of employment in this way.

The proposal contained in paragraph 18 attempts to build on this recommending that

*“all matters of the Chief Officers employment, such as appraisals and performance reviews, should be between the political board and the Chief Officer as it is further believed that the Chief Officer’s responsibility and accountability should be primarily to the political board”*.

This would totally undermine the long established concept of an impartial Civil Service and would inevitably result in a politicised Civil Service. In this regard States Members are obliged to uphold the impartiality of the Civil Service in accordance with Section 10 of Part 1 of the Code of Conduct for Members of the States of Deliberation which states ..

*“10. Members shall uphold the political impartiality of the civil service and shall not ask civil servants to act in a manner which will conflict with the Civil Service Code. Members should familiarise themselves with the contents of that Code. Reaching decisions that they shall give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice from other persons”*.

HM Comptroller has advised that

*“the Civil Service prides itself on its impartiality. If this were to be effected this would affect the validity of the Civil Service Code and accordingly every contract of*



*employment which this Code forms part of. There are therefore both policy and legal consequences to consider in this regard”.*

The Policy Council is not clear what recommendation 19 seeks to achieve but it is clear that recommendation 20, suggesting that any change to the overall structure of the Civil Service resulting in a change to inter-departmental relationships should be subject to States debate, would appear to remove from the Policy Council its mandate to act as employer and require the Island’s Parliament to micromanage Departmental affairs which it simply does not believe is either desirable or practical. Likewise recommendation 21, which talks about service level agreements, seems to give Departments the option of whether or not to utilise common services that are provided under the authority of the States of Deliberation to ensure taxpayer value for money and provide consistency. Again such an optional approach will undermine good governance principles.

Finally, HM Comptroller has confirmed that if the propositions set out in the Requête are approved and subsequent changes made to the delivery of certain cross cutting initiatives which are the subject of commercial contracts, then there could be legal and financial implications from such change.

### **Conclusion**

The Policy Council believes that the proposals set out in the Requête which seek a fundamental change in the relationship between Politicians and Civil Servants are neither practical nor desirable and will in effect “hardwire” into this Government the inherent weaknesses that have been identified by a number of external observers and which the States approved agenda for change is seeking to overcome. The approach envisaged by the Requête will require a larger public service, will encourage inconsistency and inefficiency and will increase costs.

The Policy Council is unanimously opposed to all but the last proposition (paragraph no. 22) of the Requête and in this respect the majority of the Policy Council note that such matters will be appropriately addressed by the States Review Committee without the need for such a States Resolution, although one Member of the Policy Council is content to vote in favour of this last proposition. A majority of the Policy Council recommends the States to reject all of the proposals in this Requête.)

The States are asked to decide:-

XVI:- Whether, after consideration of the Requête dated 14<sup>th</sup> May, 2013 signed by Deputy E G Bebb and eight other Members of the States, they are of the opinion:-

1. To direct the Chief Officer of each department shall be allowed the freedom to run the operations of their department within the rules of the States of Guernsey

including, but not limited to, the ability to employ or dismiss all civil servants reporting to them.

2. To direct that all matters of the Chief Officer's employment, such as appraisals and performance reviews, shall be between the political board and the Chief Officer as it is further believed that the Chief Officer's responsibility and accountability should be primarily to the political board.
3. To direct that competing priorities for cross departmental initiatives must be resolved by both the Minister and Chief Officer of the Department, thus placing the responsibility and accountability firmly with the Policy Council for such initiatives. As such, the Chief Executive and Chief Minister must liaise directly with the Chief Officer and Minister on cross-departmental issues.
4. To direct that any change to the overall structure of the civil service resulting in a change to inter departmental relationships would have a political effect and as such, should be subject to a States report and appropriate resolution by the States of Deliberation.
5. To direct that, when services are devolved from departments a strong Service Level Agreement shall be in place to ensure clear lines of accountability. Failure to meet the SLA would assist in indicating which party is accountable and responsible.
6. To direct the States Review Committee that any proposals they are considering making which will involve a change in the machinery of government should incorporate a proposal for the most appropriate model for the civil service to adopt, so as to give clear lines of service, responsibility and accountability.

## REQUÊTE

### SCRUTINY URGENT BUSINESS REVIEW INTO THE NON-DISCLOSURE OF INFORMATION RELATING TO THE NEGOTIATED SETTLEMENT WITH AFR ADVOCATES

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

1. At its meeting on 22 February 2013, the Scrutiny Committee agreed to carry out an ‘urgent business’ Scrutiny Review into the non-disclosure of information relating to the negotiated settlement with AFR Advocates. The Committee appointed a Panel to carry out the review, chaired by Scrutiny Committee Chairman Alderney Representative Paul Arditti, and comprising Committee Members Deputies Robert Jones, Peter Gillson, and Paul Le Pelley.
2. The Panel invited the Minister for the Home Department, Deputy Jonathan Le Tocq, to provide evidence at a public hearing accompanied by advisers who would be able to assist the Minister in answering the Panel’s questions.
3. The Panel held its public hearing on Thursday 21 March 2013 in Room 6 of the Royal Court.
4. The Summary report of the Scrutiny Committee’s Review Panel and an uncorrected transcription of the aforementioned public hearing was published on Wednesday 27 March 2013.
5. The corrected version of the Hansard transcript was published on 5 April 2013.
6. During a meeting of the Scrutiny committee held on 12 April, 2013 the Committee decided not to submit the Summary Report to the States of Deliberation as either a Report for debate or as an appendix to a Billet.
7. Your petitioners believe that Parliamentary Committees should report to Parliament and that there is merit and benefits to be gained from the States of Deliberation debating the Summary Report and being transparent with the amount of the settlement is in the public interest.

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

1. To note the contents of the Summary Report of the Scrutiny Committee's Review Panel and transcription of the public hearing held on Thursday 21 March 2013 into the non-disclosure of information relating to the negotiated settlement with AFR Advocates, which was published on 27 March, 2013,

2. In order to assist the Policy Council in its formulation of a policy on the use of non-disclosure agreements to instruct the Scrutiny Committee, based on its experience investigating the Home Department / AFR issue, to provide the Policy Council with recommendations relating to the circumstances when it is appropriate to agree the use of a non-disclosure agreement,
3. To instruct the Home Department to enter into discussions with the signatories to the non-disclosure agreement with the objective of obtaining agreement for the amount of the settlement paid to AFR Advocates to be made public and report to the States of Deliberation no later than February 2014.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 14th day of May 2013

Deputy John Gollop  
 Deputy Barry Brehaut  
 Deputy Peter Gilson  
 Deputy Laurie Queripel  
 Deputy Mary Lowe  
 Deputy Mike Hadley  
 Deputy Garry Collins  
 Deputy Elis Bebb  
 Deputy Andrew Le Lievre  
 Deputy Matt Fallaize



# SCRUTINY COMMITTEE

THE STATES OF GUERNSEY

## URGENT BUSINESS SCRUTINY REVIEW

Into the

### NON-DISCLOSURE OF INFORMATION RELATING TO THE NEGOTIATED SETTLEMENT WITH AFR ADVOCATES

Summary report of the Scrutiny Committee's Review Panel and  
transcription of the public hearing held on Thursday 21 March 2013  
in Room 6, Royal Court Buildings, Guernsey.

**Published on  
Wednesday 27 March 2013<sup>†</sup>**

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<sup>†</sup> Republished on Friday 5 April 2013 with corrected Hansard transcript appended – see Addendum on p1.

## SCRUTINY COMMITTEE

### REVIEW PANEL'S SUMMARY REPORT

#### 1. Introduction and Background

- 1.1. At its meeting on 22 February 2013, the Scrutiny Committee agreed to carry out an 'urgent business' Scrutiny Review into the non-disclosure of information relating to the negotiated settlement with AFR Advocates. The Committee appointed a Panel to carry out the review, chaired by Scrutiny Committee Chairman Alderney Representative Paul Arditti, and comprising Committee Members Deputies Robert Jones, Peter Gillson, and Paul Le Pelley. The Review Panel published its Terms of Reference on 8 March 2013. A copy of the Terms of Reference is appended to this document.
- 1.2. The Panel invited the Minister for the Home Department, Deputy Jonathan Le Tocq, to provide evidence at a public hearing accompanied by advisers who would be able to assist the Minister in answering the Panel's questions. The Panel<sup>1</sup> held its public hearing on Thursday 21 March 2013 in Room 6 of the Royal Court. The proceedings were recorded and a copy of the corrected transcript is appended – see addendum below<sup>2</sup>.

#### 2. Observations:

- 2.1. Based upon the evidence gathered at its public hearing on 21 March 2013, the Panel has made the following observations:
- 2.1.1. No substantive, overriding reason was established for non-disclosure of information relating to the negotiated settlement with AFR Advocates. The Panel is not clear what the **overriding** reason was for non-disclosure of the cost of the settlement.
- 2.1.2. The Chief of Police was authorised to use public money to negotiate the settlement with AFR. However, at the point where the 'AFR issue' ceased to be a police operational matter and instead became a matter of negotiating civil proceedings with taxpayers' money, the Home Department should have insisted upon establishing political oversight of the matter. In failing to do so, the Home Department exposed the Chief of Police to political criticism, which whilst acceptable for elected members of government should not be the case for a statutory official. The Panel emphasises that on the evidence gathered, it would appear that this was a failure not of the Chief of Police but of the Home Department.
- 2.1.3. The issue highlighted a potential contradiction in the roles undertaken by St James' Chambers. The Panel was unable to establish any imperative or impediment of a legal nature which might have impinged upon the political oversight required to be provided by the Department.

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<sup>1</sup> Deputy Heidi Soulsby was also in attendance at the public hearing on Thursday 21 March 2013, to ensure that a quorum of Scrutiny Committee Members was present throughout the proceedings.

<sup>2</sup> **Addendum:** the Home Department was given an opportunity to request corrections to the transcript. The corrected version of the Hansard transcript, appended to this summary report, was published on 5 April 2013.

- 2.1.4. The evidence heard by the Panel was suggestive of a belated and somewhat limited evaluation by the Home Department of the reasons to not disclose rather than the reasons to disclose. The Department may have been influenced by previous practice relating to the use of confidentiality agreements in their own and other departments. This serves to reinforce the view of a continuing culture of non disclosure amongst the Home Department and their advisers, despite the presumption of disclosure.
- 2.1.5. Despite criticism of the way in which it handled the issue, the Home Department concluded that it would do nothing differently and has learnt no lessons from the 'AFR issue'.

### **3. Conclusions**

- 3.1. After consideration of the evidence provided by the Minister for the Home Department and his advisers at the Review Panel's public hearing, the Panel concludes that there were insufficient grounds for the Home Department to justify its decision not to disclose information relating to the cost of the settlement with AFR Advocates. The Panel also concluded that, at the point where the negotiation of the settlement ceased to be a matter to be resolved amongst individual parties and became a matter of spending public money on behalf of the individuals concerned, the Home Department abrogated political oversight of the process by failing to support the Chief of Police in his negotiations by providing the necessary political safeguards to ensure that it was the Department and not the Chief of Police that was responsible for exercising political judgement on this matter.

Alderney Representative P Arditti  
Chairman  
Scrutiny Committee

27 March 2013

### **Appendices:**

- Hansard [corrected version] transcript of the Review Panel's public hearing on Thursday 21 March 2013
- Terms of Reference of the Review published on 8 March 2013



# SCRUTINY COMMITTEE

THE STATES OF GUERNSEY

## PROCEEDINGS OF THE SCRUTINY COMMITTEE REVIEW PANEL

STATES OF GUERNSEY

**Non-disclosure of information relating to  
the negotiated settlement with AFR Advocates**

**HANSARD**  
[Corrected Evidence]

**Royal Court House, Guernsey, Thursday, 21st March 2013**

*All published Official Reports can be found on the  
official States of Guernsey website [www.gov.gg](http://www.gov.gg)*



**Scrutiny Committee Review Panel**  
**Members Present:**

*Chairman:* Alderney Representative E. P. Arditti  
 Deputy P. L. Gillson  
 Deputy P. R. Le Pelley  
 Deputy R. A. Jones

*In attendance:*  
 Mr M. Huntington (*Principal Scrutiny Officer*)

**Business Transacted**

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| <b>Evidence of the Minister for the Home Department (Deputy Le Tocq), accompanied<br/>by the Chief Officer (Mr P. Whitfield) and the Chief of Police (Mr P. Rice).....</b> | <b>4</b>    |

*The Committee adjourned at 11.47 a.m.*

## Scrutiny Committee Review Panel

### Non-disclosure of information relating to the negotiated settlement with AFR Advocates

*The Scrutiny Committee Review Panel sat in public at 9.30 a.m.  
in Room No. 6, The Royal Court House, Guernsey*

[ALDERNEY REPRESENTATIVE ARDITTI *in the Chair*]

#### Procedural

**The Chairman (Alderney Representative Arditti):** Good morning.

This is a public hearing of the Scrutiny Committee of the States of Guernsey convened to review actions taken by the Home Department. The Department is represented by the Minister, Deputy Jonathan Le Tocq. I see that the Minister is accompanied by H M Comptroller and by Chief Officer, Paul Whitfield, and by Mr Rice and I confirm that the Panel will hear their evidence also if it is felt that they can shed any light on our enquiries.

These proceedings are being recorded and a *Hansard* transcript will be produced and published.

There are a number of questions arising out of what has come to be known as the 'AFR affair' to which the public and the Assembly have not had clear and complete answers. Regrettably, the limited resources of this Committee do not enable us to tackle *all* the outstanding questions at this hearing. In order to provide complete clarity from the outset, today we shall not review the unlawful raid on the offices of AFR's or the legal advice given by St James's Chambers. These questions are not the focus of this hearing. Our focus today is upon good governance and the requirement for transparency, more particularly the non-disclosure of information at various times by the Home Department relating to the settlement of the proceedings brought by AFR Advocates in the aftermath of the police raid on their premises.

Today the Review Panel will restrict itself to addressing specific aspects of this non-disclosure, namely the reasons behind the decisions taken by the Home Department to not disclose information relating to the settlement with AFR Advocates; the extent to which the Home Department gave consideration to the principles of good governance, particularly in relation to transparency, in its decisions not to disclose information relating to the settlement; the extent to which the Home Department's decisions not to disclose information relating to the settlement was in the public interest; why the full expense to the taxpayer was not disclosed after the settlement agreement had been finalized. For the avoidance of doubt, the Committee is not suggesting that the police officers involved in the raid acted in bad faith and is not objecting to these officers being reimbursed out of public funds for the expense that they incurred as a result of conducting a raid, which they believed to be lawful.

This is an urgent business Scrutiny hearing initiated following the February meeting of the States of Deliberation and convened in time for the March meeting. As I have already said, a *Hansard* transcript of today's proceedings will be published and it is the Panel's hope, albeit an ambitious one, that those involved in producing the transcript will succeed in doing so in time for this month's States meeting. The Panel also hopes to produce a short summary of the evidence to accompany the transcript.

It will then be a matter for the public and the Assembly to form their own views, based on today's evidence, about the decisions made by the Home Department concerning the governance requirements of transparency.

Rather than any opening statement from you, Minister, we intend the session to be structured

40 around our questions and your responses to them. If, at the end, you feel that there are matters which are relevant, but which you have not been able to cover, then we will, of course, give you the opportunity to make a closing statement.

Today's Review Panel comprises Deputies Peter Gillson, Robert Jones, Paul Le Pelley and myself, Alderney Representative, Paul Arditti.

45 I now ask Deputy Jones to begin.

50 **EVIDENCE OF THE MINISTER OF THE HOME DEPARTMENT  
(DEPUTY LE TOCQ), ACCOMPANIED BY THE CHIEF OFFICER  
(MR P. WHITFIELD) AND THE CHIEF OF POLICE (MR P. RICE)**

**Deputy Robert Jones:** Good morning and good morning, Minister.

I would just like to start by taking us to the point in time where it became apparent that a negotiated settlement with AFR was the likely course of action.

55 The first question I have got is how did the Chief of Police come to negotiate what we call the AFR settlement?

60 **Deputy Le Tocq:** My understanding is that the Chief of Police was involved in this matter over a number of years. I was first informed of it by the Chief on 7th November. He gave me a verbal briefing – and the Chief Officer was present – that an agreement had been reached on a longstanding matter and it was within his power and authority to negotiate that agreement because it was an operational issue.

65 **Deputy Robert Jones:** I think my colleagues will come to the issue of whether the matter was actually a police matter.

In what capacity, and on whose behalf, did the Chief of Police negotiate the settlement?

70 **Deputy Le Tocq:** He acted in his own capacity, which he is entitled to under Police law. Again, my understanding is that the AFR case, if I can use those terms, the pleading changed during the course of the couple of years that that had transpired and, in terms of the negotiated settlement in which the Police were an interested party...

75 **Deputy Robert Jones:** The AFR action was being taken against, I believe, the police officers and the judge involved. We had a judgment which stated that the States of Guernsey and the Chief of Police were, in fact, vicariously liable in respect of the actions of those particular police officers. So we have a position where taxpayers' money was being used to negotiate this settlement on behalf of those parties. Was the Chief of Police acting on behalf of those individuals or was he acting on behalf of the States, since we have taxpayers' money in play at this point?

80 **Deputy Le Tocq:** Could you please rephrase that question so that I can understand it better.

**Deputy Robert Jones:** Certainly.

85 It goes back to the question of what capacity: you are saying he was acting in his own capacity, to begin with. We then have the Court of Appeal case, which highlighted the issue of vicarious liability, so we have an action against individual officers and a judge, which is now being negotiated with the use of taxpayers' money. Did, at any point, the Chief of Police act in a capacity on behalf of the States, as opposed to acting on behalf of those particular individuals to whom the case was being brought?

90 **Deputy Le Tocq:** The Chief of Police has delegated authority and a delegated budget which he is responsible for. Our understanding is this was a complex case because the pleadings changed. It was certainly within his capacity to negotiate a settlement that was in the best public interest and that is what we believe he did.

95 **Deputy Robert Jones:** Was this agreement being negotiated without direct representation from the Home Department?

**Deputy Le Tocq:** Yes, because it was an operational matter and my understanding is neither the States of Guernsey nor the Home Department were named parties.



100

**The Chairman:** Deputy Jones, I think it might be useful if we clarified, at this stage, what the Minister means by an 'operational matter'.

105

Minister, one can understand, for example, that the raid on these offices was an 'operation' – a police operation – how is it that your Department says that the defence and settlement of civil proceedings is a police 'operation'?

**Deputy Le Tocq:** Will you just give me a moment to reflect?

110

**The Chairman:** Yes, certainly.  
By all means discuss with your Chief Officer.

*There was a short pause*

115

**Deputy Le Tocq:** Under Principle Two of the principles of good governance, it states,

'good governance means performing effectively in clearly defined functions and roles.'

120

The office of the Chief of Police is a very clearly defined function and role. It is not appropriate or right for politicians to get involved in police matters. The Board, in licence of its role as an arm of Government but, equally, understanding that, the Police are legally constituted as an entity under Guernsey law, with its own powers and authorities and, as such, the Board provides a function as an accountable employer and accountable body and that is why I believe the Chief of Police acted correctly within that role in informing us of what he had done within his delegated powers of authority.

125

**The Chairman:** Minister, do you believe the Police have training for the defence and settlement of civil proceedings?

130

**Deputy Le Tocq:** I believe the Chief of Police acts in accordance with that role. The office of the Chief of Police certainly would seek all the advice that he needed, where necessary, to outwork those responsibilities.

135

**The Chairman:** Whose budget was going to be used to reimburse these officers for the compensation and legal costs that they were going to incur?

**Deputy Le Tocq:** As I mentioned earlier, it was within the Chief of Police's own budget.

**The Chairman:** Is that the budget out of which the settlement has actually been paid?

140

**Deputy Le Tocq:** The States' insurers were involved as well. There are elements of the costs and settlement paid by the insurers and other elements were met out of the Police budget.

145

**The Chairman:** And the uninsured elements, the money that has actually been... the net cost to the taxpayer, has that come out of the Home Department or the Police budget?

**Deputy Le Tocq:** It has come out of the Police budget.

150

**The Chairman:** Out of the Police budget.  
Thank you.

155

**Deputy Robert Jones:** Just to clarify, then. The question I asked before: this has been negotiated without any direct representation, other than the Chief of Police – and you still think that was an appropriate course of action, even though, for all intents and purposes, taxpayers' money was being used voluntarily to settle this matter?

160

**Deputy Le Tocq:** In a sense, it is not appropriate, or what we think is appropriate... it is not a question of whether it is, or we think it is appropriate. The Chief of Police was acting, and had been doing so in his own capacity for some time, when the settlement was finally negotiated and agreement out of court was negotiated by him.

**Deputy Robert Jones:** Okay, so given that there is no direct representation from the Home Department, what direction, if any, did the Home Department give to the Chief of Police before, in the course of, and at the conclusion of, negotiating the settlement?

165 **Deputy Le Tocq:** The Home Department did not given any direction to the Chief of Police before the settlement was concluded, because it was not involved in negotiations.

**Deputy Robert Jones:** And would that be the case, then, throughout the course of the negotiations as well? So, beforehand, no direction: during the course of negotiations was the Chief of Police in liaison with the Home Department as those negotiations progressed, or was he on his own, so to speak?

170 **Deputy Le Tocq:** The first the Home Department were made aware – certainly, when I was aware of, as Minister – was the briefing that I had informally from the Chief of Police on 7th November.

**Deputy Robert Jones:** So there were no verbal or tabled updates at regular Home Department Board meetings prior to that?

180 **Deputy Le Tocq:** My understanding now is that this matter had been going on for some time and the opportunity to settle was within the powers of the Chief of Police and he took that opportunity.

**Deputy Robert Jones:** Thank you.  
185 Who made the decisions, firstly, to include a confidentiality clause in the settlement and, secondly, to maintain a policy of non-disclosure in the circumstances?

**Deputy Le Tocq:** My understanding is that, during the negotiations which the Chief of Police had with AFR, certain parts of that negotiation were asked to be *in camera* and the request for that came from AFR. The Chief of Police just continued in that capacity.

**Deputy Robert Jones:** Sorry, what came from AFR?

195 **Deputy Le Tocq:** You could ask the Chief of Police to assist with that because he was the one...

**Deputy Robert Jones:** Yes, of course.

**Deputy Robert Jones:** Okay. I will re-ask the question.  
200 Who made the decisions, firstly, to include the confidentiality clause in the settlement and, secondly, who made the decision to maintain a policy of non-disclosure in the circumstances.

**The Chief of Police (Mr P. Rice):** In the first element, having been involved in previous negotiations of this nature before, the normal process in which you undertake those is through confidentiality, for the reasons of allowing people to get their views on the table, to have a frank exchange to enable you to facilitate an early resolution.

The second element of it was I felt obliged to continue with that element of confidentiality because at least one of the hearings was held *in camera* and that was at the request of AFR so I felt obliged to continue that element of confidentiality.

210 **Deputy Robert Jones:** At that point?

**The Chief of Police:** Right throughout the hearings.

215 **Deputy Robert Jones:** That probably answers one of the next questions I was going to ask. You clearly deemed it appropriate, firstly, to include it and, secondly, to maintain it, but subsequently we have heard that, whilst AFR insisted on it at *that* particular point in time and for that particular hearing which was *in camera*, we have the impression that AFR had an indifference to whether we retain this clause. Given the backdrop of AFR's indifference, do you still feel that it is appropriate to maintain, or that it was appropriate to maintain it, aside from that particular hearing that you had *in camera*?



225 **The Chief of Police:** You cannot cherry pick a confidential agreement. It is either all in, or it is all out, in my view. On 21st December, I gave instructions to law officers to remind AFR that these negotiations were conducted on a confidential basis and that they should remain so.

**Deputy Robert Jones:** Thank you.

230 The next question I have, I think the Minister could answer this one. How does the Home Department consider its actions appropriate when placed in the context of the States commitment to transparency, as set out in the Core Principles of Governance, one of which you have already mentioned?

235 **Deputy Le Tocq:** The Home Department did understand that this was both a complex situation, an unusual situation and to a certain degree we were damned if we did and damned if we did not. But we sought under the principles of good governance and I think the core principle of governance

– ‘Focusing on the organisation’s purpose and on outcomes for citizens and service users’ –

240 that was very much in our mind and then, secondly, we had Core Principle 4: good governance means

– ‘Taking [...] transparent decisions and managing risks.’

245 Bearing in mind the appropriateness and inappropriateness of us getting involved in a matter that had been negotiated quite properly and legally, as far as we understand it, by the Chief of Police and, to his credit, a matter that he had taken up, on office, that he was not involved in initially, that he had resolved that at a minimal cost to the taxpayer, we felt our duty was to try and be as transparent as possible with the costs to the taxpayer.

250 We have sought to do that to the best of our ability, bearing in mind the constraints involved. So we gave instructions that, as costs came to light – and they were all minimal costs – the actual amounts that did not form part of the confidential agreement that there were costs to the taxpayer, legal costs and otherwise, were made known and that has been the case.

255 **Deputy Robert Jones:** The concern... I won’t say I have a concern, but maybe I do. We have been told that there was no direct representation from the Home Department. We have a scenario where taxpayers’ money has been used, we have been told that you had one verbal update on the 7th November. Could you explain how the political oversight, in practice, occurred in order for you to be content that the core principles of good governance were being carried out, since you do tell me that your involvement, as a Department, was minimal?

260 **Deputy Le Tocq:** I would not say our involvement is minimal: we are the responsible authority and accountable authority. In terms of transparency, our fundamental, underlying objective was transparency.

265 That was a given, but we were working within constraints; first of all, that the States overall has not yet got a policy on information disclosure. Had that been in place, it might be a different situation here. Appropriately, it was not an opportunity to start inventing policies that would affect other Departments of the States and taxpayers’ money overall in this instance.

270 We were also aware that, because of the complexities of the case, there were other parties involved, and bearing in mind, as I stated in the Assembly, that the overall costs to the taxpayer were minimal we felt the responsibility of the Chief of Police, in informing us as the Home Department Board of those costs and the reasons behind it, were reasons enough for us to understand that the best resolution had happened under the circumstances. *(pause)*

275 If you want, my Chief Officer might be able to help a little bit more, bearing in mind –

**Deputy Robert Jones:** Yes, I think... just to clarify that the concern I have is that we have been told that there was no direction given by the Home Department from the outset.

280 We have the Chief of Police acting in an environment where we have no set guidelines, yet we have a Department that is committed to transparency. It seems to me that we do not have any political oversight during the negotiation period, either through directions or regular feedback.

**The Chief Officer (Mr P. Whitfield):** I think the explanation of how and why the Chief



285 Officer of Police was operating in the negotiating has been well made. He was acting under his powers of authority and operating as a legal entity as the Chief Officer of Police. That is quite proper. We have described the functions and the roles are acknowledged, so there you return to where the Home Department engages in, and its appropriate level of accountability and looking after, which is the point we return to about public spending.

290 For clarity, as Chief Officer of the Home Department, I also have scheduled meetings with the Chief Officer of Police, which is also shared in reporting to the Home Department Board in regard to finances because that is where we are directly accountable.

295 The Chief Office of Police, on putting the Chief Minister on notice was very clear and, so was I, that we were talking figures *well* within the budget authorisation of the Chief of Police. We are talking about incredibly small amounts of money. That was reported and looked at between myself and reported and briefed to the Chief Minister of the Department to provide that confidence and assurance on that element. At no time was this a complete separation where we were not cited.

**Deputy Le Tocq:** Can I also ask the Chief of Police to come in here because, again, of his involvement in the issue

300 **The Chief of Police:** The settlement was not undertaken lightly in negotiations. I took legal advice, as I have explained previously. The legal advice was around the potential merits of our case, should we consider fighting judicial review, and I accepted that there were technical breaches of the warrant.

305 In addition to that, the legal advice was also about advising me about what my quantum would be for damages so I *knew* what I could expect to pay when I went into the negotiations, and I think it is important, in the context of this, that the Home Department have a disciplinary authority to consider here so that the reason why there was a separation from the Home Department and myself in negotiations is because they might have to sit down in judgement on the actions of officers who exercise their powers, so that is important to have that separation. In addition to that, 310 whilst the States have no firm policy of what information will be disclosed, what I did apply was professional judgement, professional experience and leading advice from previous occasions that I have been involved in.

315 If you then look at the Freedom of Information Act and other such regimes, if you take a clear exemption around anything that is likely to, or would, cause commercial prejudice to the public authority... so it was on that basis that I took that course of action. The course of action I took, I have got to say, is not inconsistent with the policies laid down in the guidelines and disclosure and protection of information in the Scrutiny and Public Accounts Committee notes: paragraph 5.2 I specifically refer to.

320 So the decisions I took and the course of conduct I took – and I applied the public interest test – are not only consistent with best practice elsewhere, they are also consistent with your own guidelines.

325 **The Chairman:** Deputy Jones, I think if we could... It might be useful at this stage just to recap to make sure that we have clearly understood the answers that we have had so far.

We have great difficulty with the concept that there was anything 'operational' in the terms of police operation about the defence and settlement of proceedings, such as would require the independence of the police to be maintained. Is it the Home Department's position that *anything* that the Police do is an operational matter, requiring independence of the Police to be preserved?

330 **Deputy Le Tocq:** I am not sure I can answer that precisely without seeing my Board and asking them, but I will give you my own view: that is, no it is not. But, under the law, there is appropriate authority delegated to the Police and it is an appropriate responsibility for the Board and for the Home Department.

335 One area of that responsibility of the Chief of Police is referred to and that is disciplinary matters, so it is only appropriate that we do not get involved in certain aspects of policing. I would further say, and this probably applies wider than just to policing, that the States takes very seriously the appointment of officials, statutory officials particularly, and delegates authority to them to operate: otherwise, politicians should not micro-manage Departments.

340 There needs to be proper delegation. In this instance, the Chief of Police acted within his delegated authority. Had the settlement not been possible, then it might have been different and he might have had to refer to us on a number of issues. That was not the case.

There is, of course... we are operating somewhere in a vacuum. There is no policy, currently, across the States on such arrangements. The States instructs the Chief of Police, through the Home

345 Department, to be accountable for his actions – which he was – bearing in mind that he is appointed on the basis of his judgement, his experience and his practice elsewhere, so we have full trust in him to do so.

**The Chairman:** The policy across the States is irrelevant; it is the Home Department's policy that we are interested in.

350 Would a discrimination case brought in consequence of behaviour on a police operation be an operational matter?

**Deputy Le Tocq:** Sir, could I just have that question again, please?

355 **The Chairman:** Would a discrimination case brought in consequence of behaviour on a police operation, be an operational matter?

360 **Deputy Le Tocq:** It would depend on the circumstances and whether procedures... we have got set procedures where the Home Department does get involved in disciplinary issues.

**The Chairman:** You see, Minister, if the Home Department are wrong about whether the defence and settlement of these proceedings was a 'police operation', if they were wrong about that, then most of what followed was inevitably going to be wrong.

365 What we would like to know is when was the decision made that this was a police operation, that the defence and settlement of the proceedings was a police operation and when was that decision reviewed?

**Deputy Le Tocq:** This was a matter that had been dragging on for a number of years. The first that I became aware of it, and of the Board's involvement with it, was on 7th November.

370 I would just take issue with one comment that you made earlier. I do believe that the way in which the Home Department operates could reflect upon the whole of the States and could determine policy by precedent. Therefore, with regard to issues such as this, it is important that the States takes the time, outside of the issues themselves, to look properly at protocols and policies for disclosure of information, which I am totally in favour of.

375

**The Chairman:** Minister, could you explain to me how a precedent formed by the Home Department in relation to what is, or is not, a police operation could possibly have an effect on other Departments of the States?

380 **Deputy Le Tocq:** A police operation is not the same as an operational matter and this... I think that impinges on the area you are trying to deal with. We delegate and we have authority and responsibility, within certain guidelines – budgets are one, and that has been mentioned – and that is appropriate.

385 It is not appropriate for politicians to get involved in micro-managing and dealing with issues which, to be honest, neither have we got the time nor is it *proper* to deal with and that applies to many areas of the States. We delegate that and we remunerate people to do that: we are very careful about how we do that.

390 With regard to the police, of course there are specific laws regulating how they operate and how they function and, under those laws, the Chief of Police was, in this instance, functioning appropriately, we believe.

**The Chairman:** Deputy Jones.

395 **Deputy Robert Jones:** Yes, well, having made that decision – quite clearly, you have made that decision – what I wanted to just clarify was that we are not talking about micro-managing, we are also sending a Chief Officer into negotiations and, to his credit, from what he said. We are not here to question his integrity in relation to how he conducted it, but what I am trying to get at is that there was no direction whatsoever from the Home Department in guiding him to the use of either the confidentiality clauses or non-disclosure.

400 The Chief of Police himself has said he used his own initiative, based on his experience, so the concern I have is that we have had no political oversight or input into the direction which the Chief of Police, having made your decision that it was an operational matter, was sent off into the field to negotiate. That is the point that I wanted to clarify.



405 **Deputy Le Tocq:** That is not quite correct.

The Chief of Police operates within a mandate and this was clearly within his mandate and he did so correctly and it would be inappropriate, certainly in this instance, for the Home Department to get involved at that level because, at the time when it was, when he saw it was possible to have a negotiated settlement, he had been involved all along up to that point: we had not. When you are in that environment – and I have been involved in negotiations – obviously if a deal is possible to be made, that a compromise agreement can be made, you take that opportunity to do so, if it is deemed right that we have the powers to do so. He did.

415 **The Chairman:** Deputy Jones, I think we have established that a decision was made by the Home Department that this was an operational matter and that the Police were to deal with it independently. Was that decision reviewed at any time by the Home Department?

**Deputy Le Tocq:** As I stated, the Chief of Police initially briefed me and informed me on the 7th November that an agreement had been reached on this long standing issue. In due course, he briefed the Board so that we were aware of that degree of accountability that he has with his budget and bearing in mind that this was something that had dragged on for some time.

I believe, until the Home Department became engaged in that process, that the answer to your question is no.

425 **The Chairman:** So, just to be clear, at no time has the Home Department reviewed that decision.

Can I then ask you this: without a policy on information disclosure of the Home Department, do not, then, the Principles of Governance require the default position to be openness?

430 **Deputy Le Tocq:** I think the default position on our part *was* openness and, to begin with, when we considered in January the issues surrounding it, the majority of the Board were in favour of being open until we had –

435 **The Chairman:** I am sorry to interrupt you, Minister. At which time are we talking –

**Deputy Le Tocq:** We are dealing with – In fact, the Board were briefed, first of all, initially on 21st January and subsequently –

440 **The Chairman:** This year?

**Deputy Le Tocq:** Yes.

That was a time when the Chief of Police could brief the Board on the agreement that had been made. Subsequent to that, at the meetings of the Board in February, we reviewed the situation and we received advice. Now, as I mentioned before, the majority of the Board, probably at that point – whilst we did not take the vote on it at that time, but I certainly was one – would have been in favour of disclosing the full facts and figures. Once we had received legal advice, we had listened to the advice of our own officers and we heard the full briefing that the Chief of Police gave us, the majority of us changed our minds on that. To be doubly certain and because there were a number of the Policy Council who were also concerned about this, the Policy Council were also briefed in a similar manner and, again, those who were concerned changed their mind on the basis of the advice given that we received, as the Home Department, as well.

455 **The Chairman:** Deputy Le Pelley, a little later, will be asking you about the reasons that bore upon those deliberations by the Home Department but, Mr Rice, you mentioned that one of the hearings had been *in camera* and this was the reason you felt why, despite the willingness of AFR, you were not prepared to sanction the settlement amounts being made public. Could you explain how a hearing being *in camera* could impinge upon a decision to make public the cost to the taxpayer of the settlement?

460 **Deputy Le Tocq:** With respect, Mr Chairman, I think that is outside the scope of your review, where you said we would review the reasons behind the Home Department taking the decision not to disclose, so I think it would be inappropriate to delve into those issues.

465 **The Chairman:** Well, then you have to explain to me why was it appropriate for Mr Rice to give the answer to this hearing that he did. I am afraid it is a supplemental question to a part of the

evidence that you allowed Mr Rice to give the hearing.

**Deputy Le Tocq:** I think the Home Department is the appropriate authority to receive briefings and to be accountable for the Chief of Police, who is our appointment and, in that respect, as I have said before, we had full confidence, once we had been briefed by him.

As this hearing today is looking at *our* reasons for doing so, our reasons are because we have listened to the advice, as I mentioned before, given by the Chief of Police. We reviewed that in an open and transparent way. Many of us have changed our views on that as a result of that and decided that it was not appropriate for us to disclose the amount that was under a confidential agreement.

**The Chairman:** Well, rather than waste time arguing with you, Minister, I can get at this quite simply. The Home Department is responsible for the Police, the Police have said, just a few minutes ago, that because a hearing was held *in camera* he felt unwilling to waive the confidentiality on the settled amounts which were introduced at his behest: *you* answer the question, Minister, how is it that that hearing *in camera* could affect the ability to disclose the amounts?

**Deputy Le Tocq:** I think, first of all, the Chief of Police has given a response to a previous question on this matter. It is not appropriate for us, as the Home Department, when we were not present during either of the hearings and were not involved in that matter or, indeed, the out-of-court settlement, that we should give a response. We have our reasons for doing so. No other party has agreed to disclose *how* that settlement was reached: it was obviously reached because of the information and details regarding the hearings, because it became an out-of-court settlement. On that basis, I cannot provide any other information to the Panel, I am afraid.

**The Chairman:** Minister, are you telling me that you do not *know* the answer to my question?

**Deputy Le Tocq:** I am telling you it is not appropriate for us, as the Home Department, to know all the details that went on in those hearings or, indeed, in negotiations and subsequently agreed settlement.

**The Chairman:** Minister, do you know the answer to my question?

**Deputy Le Tocq:** I am not prepared to answer that.

**The Chairman:** Fine.

Now, Mr Rice has opened up a new line of enquiry which I will now make another attempt at following. Could you explain, Mr Rice, how it is that the fact that a hearing *in camera* that took place affects the release of information about the amount of the settlement agreement?

**The Chief of Police:** It is a legal matter, Mr Arditti, and I am not prepared to waive my legal privilege.

**The Chairman:** Well, can you explain to me why it is a legal matter?

**The Chief of Police:** I am not prepared to waive my legal privilege, Mr Arditti.

**The Chairman:** Could you explain to me how it is a legal matter?

**Chief of Police:** It was legal advice, Mr Arditti, and I am not prepared to waive my right to legal advice.

**The Chairman:** Do you have this privilege?

**Chief of Police:** It was conversations between myself and my legal adviser.

**The Chairman:** I am not asking you about those conversations.

**Chief of Police:** I do have legal privilege, Mr Arditti.



**The Chairman:** Pardon?

530 **Chief of Police:** I do have legal privilege, Mr Arditti.

**The Chairman:** And explain to me how that legal privilege arises?

*There was no reply*

535 **The Chairman:** Do you know how that legal privilege arises?

**Chief of Police:** Mr Arditti, can I refer you to the terms of reference in the Mandate of Scrutiny. That is all I have got to say on the matter.

540 **The Chairman:** You have opened up a new line of enquiry which we are following.

**Chief of Police:** With respect, Mr Arditti, I have answered your question.

545 **The Chairman:** I think we will rise for ten minutes.

*The Committee adjourned at 10.16 a.m.  
and resumed its hearing at 10.32 a.m.*

550 **The Chairman:** Since we do not know what the legal advice is, we do not know whether it was indeed legal advice or merely advice received from a lawyer. I hope this is not going to arise in relation to any future questions today. Also if a witness opens up a line of enquiry, as Mr Rice did, in relation to the hearing *in camera* being a reason for not disclosing the settlement amount, that witness must be ready to answer questions about it. The panel will decide the questions that it will or will not pursue.

In relation to that question, your refusal is clear and others will make judgement about it, so we will move on.

560 Deputy Jones.

**Deputy Robert Jones:** I think I will sum up my area of questioning. Would the Minister agree with my understanding that, at the outset of negotiations, without firm policies in place in terms of the use of confidentiality and non-disclosure clauses, the Home Department, despite their commitment to transparency and the core principles, put all their faith in the Chief of Police to formulate policies in their absence and that we have, in effect, no political oversight of this process at Board level at least, from the election to what we believe to be 7th November.

**Deputy Le Tocq:** No, I do not agree with that at all.  
570 First of all, confidentiality agreements occur regularly and currently throughout the States on all sorts of different levels and whether or not that should continue, or guidelines for that, whether or not they exist at the moment, and it is my understanding that they do not exist, then in due course, obviously, that could influence things like this, but the Chief of Police was certainly not asked to form policy and I do not believe it was his view that, in doing so, that he was doing anything different than what has been commonplace in the States as a whole for some time now on  
575 all sorts of different levels in terms of those sorts of agreements that have confidentiality.

As to whether that should continue in the future, I believe that this process of scrutiny could be a real help in determining what is appropriate or not in the future but, in terms of oversight by the Home Department of what the Chief of Police is doing, we are involved in all sorts of levels and he is regularly briefing us on a number of different issues, but there are, as with any responsibility  
580 in the States – the Chief Officer is an example – there are matters that are of an operational nature, where budgets are concerned and money is spent, and those continue to recur. He is well within his rights to come to an agreement within the budget that is delegated to be his.

**Deputy Robert Jones:** Thank you.

585 Can you confirm whether the Board were briefed at regular intervals between, obviously, the new Board coming in in May and 7th November?

590 **Deputy Le Tocq:** No. As I stated before, this matter had predated the Board coming in and my understanding is that it was complex because of the changing pleadings and things but when the Chief of Police was able to negotiate an out-of-Court settlement, soon after that was the first time that I was made aware of the matter.

**Deputy Robert Jones:** And you are content that the Board were not involved?

595 **Deputy Le Tocq:** Yes. But it is really appropriate that we were not involved at that stage.

**The Chairman:** Minister, you mentioned just now confidentiality agreements occur regularly throughout the States. How does this impinge upon your Department's policy, particularly post the resolution by the States adopting the principles of good governance and the acceptance by all, particularly the Policy Council, that the default position must be openness and there needs to be an overriding reason to suspend transparency?

600 **Deputy Le Tocq:** I believe – this is, again, my personal view but I believe that the majority of the Board, if not all the Board, will agree with this – that, in terms of our fundamental understanding, transparency and openness should be the accepted basic premise that we work to, but, as is the case, there are exceptions to that rule and, for example, I think in your own Scrutiny guidelines on disclosure, it states there that

605 'there are times when it is not in the public interest that information should be given...'

610 and it lists the types of information and I would just quote that, in terms of 5.2, in the guidelines, it is:

615 'any risk or harm or damage that could be avoided or reduced by non-publication,'

which then qualifies 'harmful damage' to include things such as:

620 '...damage to the Island or Bailiwick security, international relations, damage to the Island or Bailiwick's economic interests and damage caused by disclosure of commercially sensitive information.'

**The Chairman:** Now, Minister I wonder if you could answer my question?

625 My question was how does the fact that confidentiality agreements occur regularly throughout the States impinge upon Home Department policy with regard to the default position of transparency?

**Deputy Le Tocq:** I think the Wales Audit Office Report states that the States, as politicians, are not best placed to make operational decisions fairly and, as such, it is far better that it operates with regard to roles and functions, as demonstrated by Principle 2 of the good governance guidelines.

630 **The Chairman:** Well, I will give you one third chance to answer the question: so far, you have not answered the question twice. How does confidentiality agreements occurring throughout the States impinge upon Home Department policy, following the decision of the Assembly that there would be a default position of openness?

635 **Deputy Le Tocq:** If I understand your question correctly, the fact that the Policy Council has determined there is a lack of policy on States-wide protocol on declaring information... There is at the moment, certainly... we are operating under a certain degree of vacuum with regard to information disclosure and confidentiality agreement.

640 **The Chairman:** Well, I am sure that we will be coming back to what you just termed as the absence of a code of conduct more than once during this hearing. I will not ask you questions about that.

645 If you feel you have answered my question, it has to be time to move on, and I will now ask Deputy Le Pelley to ask you some questions.

**Deputy Le Pelley:** What was the Home Department's decision-making process when you decided not to make public the cost to the taxpayer on the settlement, despite the States commitment to transparency, as set out in Core Principles of Good Governance.



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**Deputy Le Tocq:** The process was to listen to the briefing that was given to us by the Chief of Police, to gain advice from our officers, to obtain our own independent legal advice – and we understand the Chief of Police had his prior to that. We discussed the matter at Board meetings and at a specially convened meeting, as well, to particularly discuss this matter because – and I have said it before – during the course of those discussions, those briefings and the advice that was given, a number of us changed our mind on whether we should break the confidentiality agreement that had been negotiated by the Chief of Police or not. Subsequent to that, we also gained the support of the Policy Council, as it was felt appropriate – there were certain Ministers there who also had questions to ask – and so a similar briefing was given to the Policy Council meeting and again unanimously they supported the decision that we made. Those were the processes that we went through. Having said that, we wanted to be – and I reiterate what I said before – as transparent as we possibly could. That is why we did our utmost to inform States Members as a whole, appropriate under the code of conduct that we all operate under, as States members, details of what the taxpayer had to pay and the other details of that agreement. We also instructed the Chief of Police to reveal the details of his budget that had been used to pay for the legal costs and other costs involved.

That was the process.

670

**Deputy Le Pelley:** Thank you.

Could you be a bit more specific and explain in more detail how you came to change your minds?

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**Deputy Le Tocq:** I think when we were mandated as Home Department Board to deal with a number of different issues and to receive advice and guidance from officers and staff, we also sought legal advice and that raised a number of issues that had not been thought of by members of the Board. We thought there is always an element of risk either way... It was our decision and we decided that the risks were too great on the side of disclosure, on the basis of [*Inaudible*].

680

**Deputy Le Pelley:** Thank you.

Could you go into a bit more detail about the issues that were raised?

685

**Deputy Le Tocq:** I can mention a few things but some of it were legal advice that I am not prepared to go into here.

I think matters I *will* raise are that bearing in mind that this negotiation had taken place and we were not party, as the Board, to that negotiation politically, or named within the matter itself, we felt it was inappropriate for us to put public finances further at risk by disclosing what was in the confidential agreement negotiated by the Chief of Police.

690

**Deputy Le Pelley:** Could you be a little bit more specific about the sensitivity. You mentioned that there was sensitivity involved.

**Deputy Le Tocq:** I cannot, I am afraid, sir.

695

**Deputy Le Pelley:** Is there likely to be a point when you can?

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**Deputy Le Tocq:** Well, like with all disclosure of information, I think it has been mentioned that such matters elsewhere, even if we had a policy for such information, that this sort of thing may well still not be made public. But my understanding is that the operations of the Freedom of Information Act and other issues in the UK, for example, means that in decades to come some information does come out. There is a time that is appropriate for everything.

It is certainly the Board's majority view that the risks outweigh the benefits in this particular thing and we realise that is not a popular decision but we made that decision. And I think the process was as thorough as it could possibly be in the circumstances.

705

**Deputy Le Pelley:** Thank you.

So what is your commitment, as a Minister, to the application of the six core principles of good governance which were adopted by the States in 2011?

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**Deputy Le Tocq:** Well, first of all, I completely subscribe to the Home Department which, in its Business Plan at political level, acknowledges that all our decisions should be made with that in

mind. That is why I think you can see we took this matter very seriously and why some of us, knowing that it would be not a popular decision we made, we changed our minds but were firm in doing so...

715 The presumption is always for transparency and there needs to be, as I have stated elsewhere, certainly an improvement in no transparency with the perception of transparency for the States of Guernsey. Unfortunately, this case we did not feel was one we could start with, bearing in mind all the information that we had and the briefings we had. That was a decision we made politically, but we recognise that, at a political level, those principles of good governance, including that openness and transparency, should be our presumption and we need to move in that direction.

720

**Deputy Le Pelley:** Thank you.

The public has received partial information about the costs involved in the settlement from a number of sources. Why has this information found its way into the public domain in this way? And how does the partial and staggered release of information relating to the AFR settlement fit with the application of the Core Principles of Good Governance?

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**Deputy Le Tocq:** We were keen, bearing in mind the intensive media pressure – and I have to emphasise that – as opposed to personal public pressure, to disclose as much information as we could. It was not easy to come across some of this information because we were dealing with matters that occurred over a number of years and, in some cases, quite small matters, but we did so to the best of our ability and to be as open as we could under our current procedures and arrangements. It is unfortunate in the way the information seemed to come out but our intention was always to disclose to the public, to the taxpayers, what the costs were for them.

730

735 **The Chairman:** Minister, you have mentioned both to Deputy Le Pelley and Deputy Jones previously, on several occasions, the inability to answer a question ‘because of legal advice’. Can you try to clarify the parameters of legal advice. We wish to be clear that political, or policy, advice on reputational risk, for example, is not being described as legal advice merely because the advice happened to come from lawyers.

740

**Deputy Le Tocq:** Sir, can you explain that again?

**The Chairman:** Yes, can you try to clarify the parameters of ‘legal advice’: this is something that you have said more than once. The Panel wishes to be clear that political or policy advice on reputational risk, for example, is not being described as legal advice merely because the advice happened to come from lawyers.

745

**Deputy Le Tocq:** Thank you.

I understand the question. However, I do believe that is a matter of law and not for us to answer here.

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**The Chairman:** Do you want to reconsider your answer to that question, Minister?

**Deputy Le Tocq:** I might later on, if you could give me some time near the end, but not –

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**The Chairman:** Do you want to consult? We will wait.

**Deputy Le Tocq:** Not at this juncture.

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**The Chairman:** Very well, I will ask the question again a little later.

What about sensitivity? That is another one that you have just mentioned to Deputy Le Pelley? Are you able to describe the nature of this ‘sensitivity’? We do not need to know what the sensitivity was but what is the problem about describing the nature of it?

765

**Deputy Le Tocq:** Well, one thing I will say certainly: we were aware of commercially sensitive information, and that is something that the States needs to recognise regularly and does so, in fact, in the formation of all sorts of confidential agreements. And those sorts of... that information certainly would qualify under the terms you state.

770

**The Chairman:** The only commercial sensitivity that anyone could possibly think of, without further elucidation from you, is the suggestion that we read from one of your legal advisers that



English barristers are sensitive about their fees.

775 **Deputy Le Tocq:** I do not believe that would be the only one, but I am not prepared, because of the nature of it, to go into any greater detail. Certainly, there were several other parties involved in this, including States insurers, for example. So there are commercial sensitivities that I think most people could understand.

780 **The Chairman:** Did the Home Department have correspondence with the States Insurers about how they could satisfy their obligations of transparency?

**Deputy Le Tocq:** We did and my understanding is that the States insurers were not keen that matters be discussed.

785 **The Chairman:** And when was this correspondence? When did it start?

**Deputy Le Tocq:** I would have to consult...

790 **The Chairman:** Do, please.

*There was a brief pause for consultation*

795 **Deputy Le Tocq:** Okay. Yes, it was after the first media questions that we had on this issue, where we realised that there was pressure to disclose. We knew the States insurers had been involved and, at that time, we obtained that.

800 **The Chairman:** You may want to take advice on this question, but they were not consulted at the time that the Assembly passed the resolution in instituting the default position of openness? I think you will need to consult because you were not Home Department Minister...

**Deputy Le Tocq:** I was not in the Assembly at the time and my officers cannot advise me as to whether that was the case or not, so I am sorry.

805 **The Chairman:** Deputy Le Pelley.

**Deputy Le Pelley:** Thank you.

810 Minister, we have compiled a list of the overriding reasons that you have given, or have been given, on behalf of your Department for the non-disclosure of the AFR settlement costs. I will list them for you and I will then ask you if you can expand on them and I will repeat them one by one, if I may.

815 So the list is as follows: The settlement is confidential; disclosure is not in the public interest; the operational independence of the Police; disclosure would set precedent, the going rate etc; the settlement is complex and involves a number of parties; there are limits imposed by the current system; no code of practice currently exists and insurer's delays in receiving or producing information.

Could you expand upon how the disclosure of information relating to the settlement of AFR was specifically not in the public interest in relation to those eight items – and I will repeat them one by one, if I may.

820 The settlement is confidential. *(Interjections)* I was going to go one at a time

**Deputy Le Tocq:** Okay, can you just repeat the question again?

825 **Deputy Le Pelley:** We compiled a list of the overriding reasons which you have given, or have been given, on behalf of your Department to date for the non-disclosure of the AFR Settlement costs, and the eight things that we extrapolated from the media and from the *Press* and from statements that you have made in and out of House are as follows.

I will take them one at a time. The first one is the settlement is confidential.

830 **Deputy Le Tocq:** If we had a policy in place that instructed the States overall and their officers generally when negotiating such deals, such settlements, as to when confidentiality could be a tool in the box or not a tool in the box, as I said before, we might be in a different situation. However, it has to be borne in mind that sometimes the States is the *recipient* of funds, of



835 payments, in such agreements and, on such occasions, at the very least, confidentiality is of great benefit to the States to get the best deal possible. So it would seem to me that, even if a policy existed that could be fair and transparent right across the States as a body, there would still be times when confidentiality would be accepted. This, in my opinion, would still be such an occasion.

840 **Deputy Le Pelley:** The second one states the disclosure is not in the public interest. Could you expand on that?

845 **Deputy Le Tocq:** I think it has to be said that if the people of Guernsey elect representatives to undertake responsibility politically on their behalf and to get involved in matters that they themselves do not have the time, or sometimes the inclination, to get involved in, it is very difficult particularly in this media-led world today, when information is – and there has been wrong information, unfortunately – given in the media, to...

850 I think you can sympathise with members of the public but, nevertheless, those more astute amongst us realise that, sometimes, they do not know the context or the whole details and that is why we have the political system as we do and, as a result of that, there are going to be times when what the public are interested in is not in the public interest, if I can put it that way.

**The Chairman:** Deputy Le Pelley.

855 Minister, trustworthy people tend not to ask people to trust them. Surely, the point is this: there has to be an overriding reason for a Department to suspend transparency. That is what Deputy Le Pelley is trying to get to. This hearing seeks to understand the *political* judgement, if any, exercised by your Department. Surely, an overriding reason is like the proverbial elephant: you know one when you see one.

Now, could you ask answer Deputy Le Pelley's question, please.

860 **Deputy Le Tocq:** In terms of overriding reasons, I really view that, sometimes, that overriding reason is a combination of a number of reasons. One I will give you, certainly from my own perspective, and that did affect me, is that in this whole process – bearing in mind that this was a case that had changed its complexity a number of times while hanging over the States of Guernsey – the Chief of Police had, as mentioned before, in his own right and capacity negotiated a deal that was definitely, by all perspectives, a good deal for the taxpayer. If it continued to court, judicial review, the costs without a doubt would have been much, much more. Bearing in mind that that deal had been done and bearing in mind our confidence in the post and the office of the Chief of Police, on this occasion that was one of the several but, to my mind, main reasons why it was not advisable to go back on that decision.

870 **The Chairman:** Deputy Le Pelley.

**Deputy Le Pelley:** Thank you.

875 The third reason: operational independence of the Police. Can you expand on that, please?

880 **Deputy Le Tocq:** Yes. I think it is right and proper that, in terms of operation... First of all that the police are a unique body of law enforcement and there are very strong levels of accountability... [*Inaudible*] issues where the Board takes its role very seriously in matters of law but, at the same time, the Chief of Police has a statutory official... and the Police themselves operate under their own independent law. It is appropriate that that is that degree of independence, for all sorts of reasons.

885 Having said that, every Department has agencies in other parts of that Department which will have delegated authority and powers. Whilst I have said it is a complex case, in terms of the inevitable agreement that it came to out of court, that was actually, in a sense, in the end, quite a simple matter. It might not have been so but, bearing in mind that an opportunity came to resolve it very simply, we have great confidence in the Chief of Police and what he was able to do.

Finally, I would say this is basic common practice right the way across the public sector and, indeed, outside.

890 **Deputy Le Pelley:** The next one is: disclosure would set a precedent and I think we were talking about the going rates for such settlements.

**Deputy Le Tocq:** I cannot speak specifically in this instance but there is a danger of, first of

895 all, vexatious claims. We live in a small Island and we look seriously at the issues from elsewhere in such circumstances, where disclosure of full details at the time would have resulted in such things – and that was a risk to the public purse. One would not want that to be the case. It is all too easy that the precedent, in terms of disclosure, as well, in terms of having a policy by the back door, that would have been then set by the Chief of Police, we did not feel it was appropriate in terms of disclosure.

900 We look forward to, and support, the Policy Council coming forward with clear guidelines on information disclosure. We did not feel that this was the time to influence that.

**Deputy Le Pelley:** There are no other similar things in the pipeline, I take it?

905 **Deputy Le Tocq:** I could not possibly comment on that.

**Deputy Le Pelley:** The settlement is complex and involves a number of parties. Could you just expand on that, please?

910 **Deputy Le Tocq:** I think any settlement, where it is reached out of court, is negotiated by all the parties around the table. A settlement figure is based on other information regarding the case involved and it is very difficult, therefore, to negotiate – sorry, to disclose – something without disclosing other elements and could be even subject to speculation. There is a risk there and, really, only those around the table at the time – for example, I have been involved in pay negotiations – can know and are able to make that decision as to whether this is a good offer, a good deal, a good settlement.

**Deputy Le Pelley:** Just a point: the risk of speculation is valid, whether you say something or not.

920 You say that there are limits imposed by the current system. Can you expand on that?

**Deputy Le Tocq:** I think that the limits in terms of transparency and disclosure are, first of all, with regard to the Chief of Police and his operational independence. In making an agreement of such that this was the case, it is certainly a judgement call for those parties involved around the table. All I can say, coming back to what I said earlier on, we were confident that the agreement that was reached in this instance was definitely in the public interest and definitely to the benefit of the taxpayer.

**Deputy Le Pelley:** The seventh one was that there was no code of practice. Are there any rules of engagement, so to speak?

**Deputy Le Tocq:** I think that, while there is not a code, there is a common practice. I have already hinted at that and I think the Chief of Police also alluded to the fact that this happens elsewhere and officers would engage in this sort of thing very regularly. So, in terms of the nuts and bolts of settlements such as this, there is a practice that exists. As to whether that should change in the future, that is, in a sense, what we welcome because it may help us. It may not, but it may help us, if we had some form of agreement right across the States.

935 Having said that, it is different to other agreements, where the States of Guernsey are named, for example as a party. In a way, it might be more appropriate to do that. That is not the case here but, obviously, with regard to the Chief of Police, the Board recognises his judgement, his knowledge, his experience elsewhere and, in terms of our responsibility, as a Board, coming to our decision, which, again, I reiterate, we did not come to without taking and looking into consideration and with proper deliberation, did not rush to a decision, despite the fact that there was a lot of media pressure upon us. We took it very seriously. We had power and authority and, therefore, trust and confidence in the Chief of Police on the basis of the briefing we had.

**Deputy Le Pelley:** Did you experience any difficulties in the fact that there was no code of practice and are you, going forward, likely to put some kind of code of practice into place?

950 **Deputy Le Tocq:** The Policy Council have declared that they will come forward with a policy for the States to approve and I, for one, certainly will welcome that because this could be looked at in that light at the moment. We are looking at it rather in a lack of light, except common practice which has existed. As to whether that practice should continue or not, that is a matter for the States to decide.



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**Deputy Le Pelley:** And the last point was: did insurer's delays in producing information cause some difficulty? Can you talk us through the actual delays and why they were, and how complex they were?

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**Deputy Le Tocq:** Yes, I have to say there was a frustration but, at the same time, the States has a responsibility and it is not the Home Department's responsibility in terms of negotiating with insurers. We tried our best to get as much information as we could. There was some difficulty in obtaining it in time and the right sort of information, for all sorts of reasons.

965

Bear in mind this is something that pre-dated us, even pre-dated the Chief of Police, a matter that, unfortunately, has not been helped by the media speculation. Over two years it has taken some time to get that information. I can say, for one, it has been very frustrating, from my point of view, in our attempt to be as transparent as we felt possible.

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**Deputy Le Pelley:** Because there is no possessive apostrophe in the insurers, I am not sure if there is one insurance company or more than one. Can you tell us if –

**Deputy Le Tocq:** Just one.

975

**Deputy Le Pelley:** Just one. Thank you very much indeed.

**The Chairman:** Which of these eight reasons, Minister, informed the Home Department's thinking about overriding reasons and the suspension of openness *at the time*, and which are reasons that have been thought up after the event?

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**Deputy Le Tocq:** I do not think any of them were thought up after the event. I think we discussed all these issues at a number of Board Meetings and, as I said, a number of us changed our views on the basis of that deliberation.

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**The Chairman:** It is just... number eight, if you remember, was insurer's delays in producing the information (**Deputy Le Tocq:** Yes.) and number one was that the settlement is confidential. One would appear at face value to have been something that would have impinged upon your thinking at the time, whereas the other, I would have thought, would have arisen within the past few weeks.

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**Deputy Le Tocq:** Well, in a sense, it is only the past few weeks. We are talking from January onwards where this took place, so –

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**The Chairman:** Well, no, I do not want to go backwards but, really, Minister, you have already been questioned by Deputy Jones as to the situation that the Department found itself in with the confidentiality clause, so it goes back much earlier than –

**Deputy Le Tocq:** No, the first time that the Department were able to have a briefing as a full Board was this year, a few weeks ago, as I said.

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**The Chairman:** Well, if that is your answer, then I will move on.

Code of Practice: if I could just press you a little further on the Code of Practice point you make. What code of conduct could possibly replace a Department's *political* judgement? That is what we are here to explore, your Department's political judgement. What code of conduct could possibly replace a Department's political judgement about an overriding reason for suspending transparency in a case of *this* type?

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**Deputy Le Tocq:** Sorry, you are going to have to explain that question again. I missed the first part of it.

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**The Chairman:** Well let me try and use an analogy. The trouble is no analogies are ever perfect, but what code of conduct could possibly inform you about a decision whether you are going to break the 30 mile an hour speed limit or not? It is either a matter of life and death, or it is not.

1015

**Deputy Le Tocq:** Are you talking about code of conduct or practice?

**The Chairman:** Well, Code of Conduct, Code of Practice – I have seen it reported using both phrases. There is a suggestion from you and others that the Policy Council is going to prepare some sort of Code of... what shall we call it, Practice?

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**Deputy Le Tocq:** Protocol, sir.

**The Chairman:** Some sort of protocol and that, in some way, you were hindered in your decision-making about whether to suspend openness because of the *absence* of this protocol and I find it... What I am asking you is – your Department had to make a political judgement – how would this protocol possibly assist?

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**Deputy Le Tocq:** Well, to be fair, I did not say we were hindered by it, I said that could ‘inform’ it if it happened in the future. That is slightly different.

1030

**The Chairman:** Thank you.  
Deputy.

**Deputy Le Pelley:** Thank you.

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Minister, did the size of the sums involved in the settlement influence the decision not to disclose the full costs of the AFR settlement?

**Deputy Le Tocq:** Did the size of the sum? Sorry, could you repeat that, please.

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**Deputy Le Pelley:** Yes, did the size of the sums involved in the settlement influence the decision not to disclose the full costs of the AFR settlement?

**Deputy Le Tocq:** No, they did not. I stated in the Assembly it was ‘minimal costs’ and, in that sense, it was a frustration *not* to disclose from our point of view.

1045

**Deputy Le Pelley:** Were there any other reasons why this settlement was not disclosed?

**Deputy Le Tocq:** I think I have reiterated them and, yes, the decision was made by parties around the table. It was made confidential and that was a means of reaching a settlement. Confidentiality clearly played its part in that. We were not party to it.

1050

**The Chairman:** I think, at this juncture, it falls upon me to make one thing clear about the Committee’s guidelines.

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The Committee’s guidelines are not the same as the Committee’s mandate. The guidelines are written by the Committee itself. They are the property of the Committee and, as such, can be interpreted, or dispensed with, by the Committee as it sees fit.

Deputy Gillson, thank you.

1060

**Deputy Gillson:** Given that AFR have indicated a willingness to consider removing the confidentiality provisions, what steps has the Home Department taken to negotiate away the confidentiality provisions from the settlements with AFR?

**Deputy Le Tocq:** The Home Department took this very seriously, partly because it was not informed directly by AFR, it was through the media. In coming to the agreement, clearly the amount involved and how you come to that agreement, actually are affected by the terms of the discussions around the negotiating table. We were not privy to that and, therefore, we felt that there was a significant risk that, should the amount be given, other matters would inevitably be questioned or come out in the public domain which could then put the States, in terms of its reputation, at risk.

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**Deputy Gillson:** Given the interest in this, have you approached AFR to try to negotiate out of these provisions?

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**Deputy Le Tocq:** The Board came to the conclusion that if one party – and bearing in mind it was not one of those parties – was not happy with that information being made public, that it



should not break that agreement.

1080 **Deputy Gillson:** I did not ask whether you were willing to break the agreement, I asked have you contacted AFR to try and negotiate out those provisions?

**Deputy Le Tocq:** No, because we were aware that at least one party was not prepared to do so.

1085 **Deputy Gillson:** Have you approached that party to try to determine why they are not happy for the provisions to be negotiated out?

1090 **Deputy Le Tocq:** It is for, I believe, all parties if they were willing to do so to get around the table and to negotiate so, if they want to do so. It is not really for AFR to say, if allegedly they have done so, that that they are *only* willing to disclose the amounts paid without going back to the negotiating environment that they were in before.

1095 **Deputy Gillson:** Given that you have stated, on more than one occasion, a commitment to transparency, why have you not initiated this getting the parties around the table to consider negotiating out of that NDA.

1100 **Deputy Le Tocq:** The Home Department concluded that it was not in our remit to do so. This is one of the frustrations of the case as it exists. It is down to the Chief of Police to do so in his capacity and which he negotiated.

**Deputy Gillson:** Have you discussed this with the Chief of Police?

**Deputy Le Tocq:** We have and he has given us his opinion.

1105 **Deputy Gillson:** Which is?

**Deputy Le Tocq:** That we do not disclose.

1110 **Deputy Gillson:** Again, I am not asking whether you breached the disclosure agreement, I am asking about whether consideration or any action has been taken to negotiate away the clause?

**Deputy Le Tocq:** It is the same thing. He does not believe that is in the public interest.

1115 **Deputy Gillson:** Why was it not to be in the public interest?

**Deputy Le Tocq:** The settlement has been concluded and that is the long and short of it. It is a concluded settlement and we need to move on.

1120 **Deputy Gillson:** And if you have heard, as we have indicated through the media, that a party to the settlement would be willing to consider changing it, why not approach that party to find out whether their terms for changing would be acceptable?

1125 **Deputy Le Tocq:** I do not believe that would be in the overall public interest because the cases are closed and AFR apparently only said they are willing to disclose the amount of the *settlement*.

**Deputy Gillson:** What makes you believe that, if you have not contacted AFR?

1130 **Deputy Le Tocq:** I do not think it is for us to get involved in that. It is down to the parties round the table, of which AFR were one: the Home Department were not.

**Deputy Gillson:** But it is Home Department funds that have been expended on this.

1135 **Deputy Le Tocq:** To be specific, it is the Police funds and the Chief of Police has our confidence in what he was able to do and his reasons for doing so when he negotiated that settlement.

**Deputy Gillson:** So, in summary, nobody from the Home Department or the Police has

attempted to contact AFR to determine what terms they would be willing to release this information under.

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**Deputy Le Tocq:** Not to my knowledge.

**Deputy Gillson:** Do you not think that, given public interest, that would have been a good thing to do?

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**Deputy Le Tocq:** We believe that that would have opened up other issues which we do not want to open up at this moment, and which are within the remit of the Chief of Police acting in accordance with the law when he negotiated that agreement. That is normally the nature of agreements.

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I also believe it would not look good, in a reputational case, for us to go back on such agreements. Again, it would be policy making on the hoof. Bearing in mind, as I have stated, that on occasion the States is a recipient of payments in such circumstances and there really does need to be a policy on this before we start unpicking something that was already done and dusted.

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**Deputy Gillson:** You have said that it would not be good to open up various issues which you may not want to open up. How would just approaching AFR to determine whether they would be willing to discuss any parameters under which they discuss things, just a general approach, open anything up?

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**Deputy Le Tocq:** I think, using mediation as an example, the only reason to go over a decision that was agreed upon by all parties would be if there were unresolved issues or it did not have an effect more widely than that particular decision. There are risks involved, as I said before, both ways and the Home Department weighed up those risks.

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The only reason, in this instance, would be media pressure which was put upon us to disclose in what I would term an inappropriate way, bearing in mind that a settlement had been negotiated with other details that we are not party to or privy to.

**Deputy Gillson:** How could coming to an agreement with other parties be in any way inappropriate?

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**Deputy Le Tocq:** I am not sure I understand the question.

**Deputy Gillson:** You say it would be inappropriate to release information, but if all parties to the agreement agreed that it should be renegotiated, how can that be inappropriate?

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**Deputy Le Tocq:** Because the agreement of a sum, a settlement sum, is not taken in isolation. There are reasons for that and there are other aspects to the negotiations. The sum is just an amount, the settlement. But behind it can be other reasons, and that is why the Home Department feel, at this juncture, it is not appropriate to disclose that sum or to approach them again to try and re-negotiate an agreement that had already been done.

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**Deputy Gillson:** But is it not entirely possible that AFR would be happy to release nothing but the sum information, without negotiating any other change to any other condition of the agreement.

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**Deputy Le Tocq:** They may well be but, remember, that there were six other officers. There were other parties involved in this, as well, and if any one of those felt, after legal advice, that it was inappropriate to do so, the Chief of Police would take that into consideration. He has his role to play, as the Chief of Police of those officers, and we believe he undertook that properly at that time.

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**Deputy Gillson:** But it is my understanding that you said nobody has approached any of the other parties to determine whether they would be willing to agree to changing the settlement.

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**Deputy Le Tocq:** We have a Chief of Police, who was acting as an interested party and was responsible in that respect, so *his* opinion does count.

**Deputy Gillson:** Yes, we know, but you have said that we need agreement to all parties and I



1200 am asking, just confirming my understanding, from your answers, that nobody has approached those other parties to see if they are willing to re-negotiate the clause?

1205 **Deputy Le Tocq:** If the Chief of Police, acting in the capacity that he did, was not happy for that settlement sum to be released – for good reason – then the Home Department is confident that there is at least one party who is not.

**Deputy Gillson:** Okay, can I just ask you, you have said this number of ‘parties’... Am I right in thinking that there was only one party who was recipient of public monies, which was AFR, in the settlement?

1210 **Deputy Le Tocq:** To be specific, AFR were not in receipt of any public monies. It was the States Insurer who paid that settlement.

1215 **Deputy Gillson:** On previous occasions you have said the settlement was below the *de minimis*.

**Deputy Le Tocq:** Again, this comes back to the point where we were not certain of the information that was given from the insurers and we now understand that, actually, the amount was paid for by the States insurance.

1220 **Deputy Gillson:** Are you happy with your Department’s financial controls if, one minute, you are saying it is from *de minimis* and, next week, it is from the insurance.

1225 **Deputy Le Tocq:** I gave my opinion at the time. I am completely happy with our Department’s financial controls but, unfortunately, this was outside of our knowledge. It did not come through our accounts, and our information only came afterwards.

1230 I did the best that I could possibly do with the information that was available to us at the time. I reiterate that Board members were frustrated at the, sometimes, lack of, or confusing, information that we had of who paid what. But they were very small amounts and, in the end, we do know that the costs were borne by the States insurer and other costs of the settlement were the legal costs and other ancillary costs, which amounted to a little over £10,000 and were borne by the taxpayer and the Police budget.

**Deputy Gillson:** So can I just reiterate: who paid the settlement costs to AFR?

1235 **Deputy Le Tocq:** The insurance.

**Deputy Gillson:** The insurance, despite having been told previously that it was below the insurance *de minimis*.

1240 **Deputy Le Tocq:** I did not say that. I said that, at the time, I was not sure how the States insurer had been involved, but we now know, without a doubt, that they paid it. As a result, it did not come through Home Department accounts, so we were not aware of the detail of that.

1245 **Deputy Gillson:** So, I am digressing slightly, I promise Chairman. So you are content that the Home Department financial controllers were expecting a payment to have to be made and it never came through and they... *(Interjection)* It seems financial controls are lacking.

1250 **Deputy Le Tocq:** The claims were very small and the payments that were made I have made clear and my Chief Officer could make it a bit clearer, if you want?

**The Chief Officer :** I do not know how much clearer we need to be on this matter but, for clarity, there are two parcels here.

There is what was paid as settlement to AFR: that was met and paid in full by the insurer.

1255 The costs incurred by the Chief of Police in dealing with the matter were paid by the Home Department from the budget of the Police, for which we know what those figures are.

There were some discrepancies in terms – and we are talking incredibly small amounts – where, for example, these were paid and invoiced from different parties at different times over a two year period so, therefore, it was difficult to establish some elements of those. That is what we worked on but we are really talking about only small monetary adjustments. We know what those



1260 costs are, so the costs were met by the Home Department through the Police's budget: those are costs that were incurred by the Chief of Police in dealing with this matter. The full settlement was paid out by the States insurance.

1265 **The Chairman:** Chief Officer, you are quite right. We do not need to explore this any further. The point about this which does interest the Panel is does transparency really depend on whether the States insurer is going to pay or not?

1270 **Deputy Le Tocq:** I think that is a bigger question than under our terms of reference here. That is a question that could be addressed to other Departments and the States as a whole, where the States insurer is involved and, obviously, the States insurer is involved with many issues right across the States. The responsibility for negotiating how that operates rests with Treasury and Resources but, in this instance, the important thing that we discovered and we wanted the public to know were the settlement sums that were paid out of taxpayers' money from the Chief of Police's budget.

1275 **The Chairman:** Let us be clear. Our terms of reference are transparency and it is the Home Department's decisions and political judgements that we are exploring. So far as the Home Department is concerned, does it really affect the good governance requirement of transparency whether or not the insurer is going to pay?

1280 **Deputy Le Tocq:** I think, if it is a commercial issue – it is – and the insurers stated to us that they were not in favour of this information on funds that they paid being released then, yes, it is a matter that we should be concerned with and we were.

1285 **The Chairman:** As far as if you had a situation where the insurers were in line – because, certainly in other jurisdictions, transparency survives the terms of the insurance policy, but let us not go into that – it is the cost: you seem to be saying that your political judgement is influenced by whether the net cost to the taxpayer is going to be lower because someone else might pay. Surely, transparency... my question is based on the premise that, surely, transparency depend  
1290 upon some overriding reason, not the net cost to the taxpayer, particularly as, with an insurance, the premiums go up. If you call on the insurance, then the taxpayer pays, one way or the other, in the end.

1295 **Deputy Le Tocq:** We were aware of advice that if we did make public this information, the premiums could be affected by it and I think any responsible politician would take that very seriously.

**The Chairman:** Right.

1300 **Deputy Gillson:** Yes, thank you.  
One of the points you said for not trying to re-negotiate the provision out was it would not 'look good'. Could you expand on that, please?

1305 **Deputy Le Tocq:** Sorry, you are going to have to just repeat that again.

**Deputy Gillson:** One of the reasons you said for not trying approaching AFR to re-negotiate the clause would be to re-negotiate an agreement would not look good?

1310 **Deputy Le Tocq:** Yes, it would set a precedent, I think, which could impinge – there is a risk – on other confidential agreements that the States may want to get involved in in the future, if it is thought that they may be unpicked in future. As I say, if we had some clear protocol guidelines, that may be addressed. At the moment, we operate in common practice over a number of years, and that is how the Police operated here. It is not uncommon, the sort of operation that we undertook.

1315 **Deputy Gillson:** But since we are not talking about a unilateral breaking of an agreement, merely an attempt to unpick by negotiation, how can that affect any future negotiations with any other third parties?

1320 **Deputy Le Tocq:** I think that you have to accept that there is a risk there, and the Home

Department took those risks seriously on hearing advice and deliberating over themselves. I mean, at the very least, we do have the issue of the States insurer's involvement in paying and their response to us that they would not be happy that this sum was disclosed.

1325 **Deputy Gillson:** Okay, you mentioned about the States Insurers and premiums increasing. If the amount is so low, surely it will not affect the premium significantly and therefore there is not that great a risk?

1330 **Deputy Le Tocq:** I cannot possibly comment on that but I did say the amount was minimal and it was.

**Deputy Gillson:** Let us just go back to the Code of Conduct. How does *not* having a Code of Conduct restrict you from approaching AFR when it would clearly be in the public interest because this is a matter of great public interest?

1335 **Deputy Le Tocq:** It is not so much about whether AFR, in this instance, would agree or not to disclose evidence of the confidential agreement. It is about what signal would be sent for the future and that is where that element of risk was taken very seriously by the Home Department. We do not want to set a precedent, where the perception is given that the States are happy to go back on confidential agreements.

1340 As to the way in which they should be formed in the future or not, that is a separate matter, but to go back on it we did not feel was an appropriate signal to send out.

1345 **Deputy Gillson:** Surely, approaching somebody to renegotiate is not really going *back*, it is just an approach to renegotiating?

**Deputy Le Tocq:** The negotiations were completed, so if we were renegotiating that would be going back and that would be a bad precedent to set.

1350 **Deputy Gillson:** Why would it be a bad precedent, when this is a public interest matter?

**Deputy Le Tocq:** Because it would cost the public more money in the future, potentially. That is the risk.

1355 **Deputy Gillson:** Why would it cost the public more money in the future?

**Deputy Le Tocq:** Because of the perceptions in terms of reputation and reliability of the States in such circumstances.

1360 As I have said, the States... this is not something that is unusual, in the sense of confidentiality: that happens in all sorts of cases and I know there is an argument to be said regarding employment cases, where there is confidentiality, that it should not be confidential. There is mention of that in the UK at the moment, but that is a separate debate.

1365 At the moment we have a reputation and we have a practice that is common. The Chief of Police acted in accordance with that common practice that he had operated elsewhere, not just in Guernsey, but it is common across the States that confidentiality enables the parties concerned to have a degree of trust when they talk about the plethora of different issues involved in coming to an agreement and then a settlement sum. So what I am saying is we believe – the Board – that it was difficult and unwise to unpick that because, at the end of the day, it was not really about the costs, it was about the fact that the Chief of Police had resolved a case that had pre-dated him or the Board and could drag on, costing the taxpayers much, much more money, and he was able to negotiate that far more swiftly than any of us thought.

1370 Confidentiality was part of that and so we took the decision, amongst other influences, that that was a wise move to take, even though it meant, for us, a degree of unpopularity because that enabled that to take place at that time for the reasons that I have given.

1375 **Deputy Gillson:** Just to follow up on a point, how can agreeing a confidentiality agreement, which we know can be entirely appropriate, adhering to that agreement, not breaching that agreement, but then approaching, in a fair way, parties to the agreement to renegotiate it, create a reputational risk?

1380 **Deputy Le Tocq:** Legally, it could and we certainly have been given advice that it could and



we certainly think it could affect other confidential agreements that are either being negotiated or may be negotiated in the future.

1385 As to whether a future policy would give more direction as to when and when not confidentiality should take place, then that is a matter that should be decided and debated properly by the States as a whole.

1390 **Deputy Gillson:** So if I can just sum up my understanding from your answers, we are aware that the recipient of the monies is at least willing to negotiate or discuss the renegotiation of the agreement to releasing amounts; nobody from the Home Department or the Police have, in any way, approached that party to determine any terms, conditions or consequences of releasing, of negotiating a release of that clause. You have merely assumed that it would not be a good thing to do.

1395 **Deputy Le Tocq:** Well, there are two things here. You may be aware that other parties are happy for things to be released or not. All we know is that they have contacted the media to say that. They have not contacted us to be specific about what they would be happy or not to disclose and, on that basis, I do not think it is fair to do that sort of negotiation via the media.

1400 That is one issue. The second issue, I think, has already been dealt with by the Chief of Police: that is that he is not happy to go back on a negotiation that he negotiated for all good reasons and came to a conclusion that, politically, we are very happy with.

1405 **Deputy Gillson:** But it is right that nobody has actually approached AFR. Do you not think that a proactive, positive Government would make the approach, rather than wait? You said you have not done it because they have not approached you, but is that not a very passive approach for a Government to take?

1410 **Deputy Le Tocq:** All parties would have to agree if that was the route to take. We already have a Chief of Police who has said he is not happy, in representing his officers and taking their views into consideration, that information is disclosed. So we are not in that position.

**The Chairman:** Thank you, Deputy Gillson.  
Yes, but the stumbling block is the Chief of Police, not AFR.

1415 **Deputy Le Tocq:** I am not sure what you are getting at by that.

**The Chairman:** I find it difficult to understand the answer to the question that Deputy Gillson has posed. AFR is not the stumbling block, the Chief of Police—

1420 **Deputy Le Tocq:** Okay. Well, I understand the question. I think it is appropriate for the Chief of Police to explain why he is not comfortable for—

**The Chairman:** I thought he already had.

1425 **Deputy Le Tocq:** Well, he can do it again.

**The Chairman:** Well, I do not think we need to hear anything again.

1430 **Deputy Le Tocq:** Can he answer the question? I think it is appropriate that he does.

**The Chairman:** Mr Rice, is there something that you have not had an opportunity to explain?

1435 **The Chief of Police:** I think what I would reinforce is the fact that is on a commercial basis, protecting the public purse, that I will not disclose the settlement that was reach with AFR because it could open the door up for vexatious litigation. Others may have a different view but that is my view and I maintain that view, Chair.

1440 **The Chairman:** You have already made that entirely clear, hence the question I just asked. Right, Minister, with the benefit of hindsight, does your Department have any regrets? Is there anything that the Department would have done differently?

**Deputy Le Tocq:** Hindsight is a wonderful thing. We certainly would much rather have been

1445 dealing with this case with clear guidelines that could have said either our views that we have come to are correct, or they are not. Therefore, we had to make that decision based on the good practice that existed already and supporting the Chief of Police in his mandated and delegated authority.

I think, as a Board, probably unanimously, we regret that we had to make what seems to be, in public perception, a very unpopular decision and we would not like to be in that position again. Having said that, I believe, politically, there always will come a time where someone has to make the unpopular decisions, with the best public interests. Certainly, we have not made that lightly. The important factor is that we tried, within those constraints, to indicate as strongly as possible and to make opportunities available for the whole of the Assembly, as the executive, to be aware that these were minimal amounts and that the agreement that was negotiated by the Chief of Police was actually a very good one, which ended a case that could have cost the taxpayer a huge amount more and we believe that was the right thing to do.

1455 With hindsight, coming back to your question, had we had a protocol in place which we could have referred to, and which the Chief of Police could have operated under, it may have directed us one way or the other. Either the confidentiality could not have been included for the amounts involved etc. or it would have confirmed that, in these sorts of instances, confidentiality is appropriate. My own personal view, now, is that it was appropriate and I do not believe that a protocol would have changed that, except to support what the Board decided to do.

**The Chairman:** I think that is a no; there is nothing you would have done differently.

1465 There is a view that your Department's non-disclosure in the AFR case shows that nothing has changed, that despite the States signing up to the Principles of Good Governance, the public is no better off. What do you think your Department has learned from the issues arising from the non-disclosure in relation to this settlement and are there any lessons that can be learnt for other Government Departments?

1470 **Deputy Le Tocq:** It is a very good question but I do not think the beginning premise is true. We have tried to the best of our ability – and we may have failed in doing so – to inform the public and to inform States Members in an appropriate way of the cost to the taxpayer. It has not been easy to ascertain those figures for the reasons given before: one is that this matter has been going on for over two years; secondly, a lot of the expenses to the taxpayer were very small indeed – the total cost to the taxpayer being only a little, we know now, over £10,000 total cost.

1475 We have done our utmost to explain that the other costs were also minimal, considering what they might have been, had this not been an out-of-court settlement with a confidentiality agreement, *and* that they were negotiated by the Chief of Police, who has our full confidence that he acted in accordance with his mandate to do so...

1480 I hope that answers the question.

**The Chairman:** Well, not really.

How did the presentation delivered to States Members on terms of confidentiality, how did that help to inform the public?

1485 **Deputy Le Tocq:** States Members are elected public representatives and give the public... *ipso facto* put an element of trust in and there is an expectation accredited to that, who operate under a code of conduct.

1490 We felt, as a Board, that it was appropriate that we should provide an opportunity, which could not be provided in the Assembly for further questions and for the Chief of Police to be present to inform States Members of the reasons for coming to the agreement that was achieved.

**The Chairman:** Now, Minister, is there anything you feel you have not had an opportunity to explain?

1495 **Deputy Le Tocq:** I think that there are probably quite a number of different things!

**The Chairman:** Remember the terms of reference are the transparency and your policy judgement in relation to transparency.

1500 **Deputy Le Tocq:** Could we have... if you are asking me to make a sort of final comment, could we have an adjournment.



1505       **The Chairman:** I am not asking you to make a final comment, Minister. Please listen to the question on this occasion.

Is there anything that you feel that you have not had the opportunity to explain to the public and the Assembly?

1510       **Deputy Le Tocq:** I will make an initial response to that.

I think the perceptions one (1) which was given through the media particularly with regard to the responsibility of the Chief of Police in this, were unhelpful for the public and it was very difficult to communicate effectively, given that sort of pressure. For example, there was no attempt it would seem, by certain elements of the media, to make clear the fact that our Chief of Police, current Chief of Police, was not in post at the time when this occurred and he picked this up and therefore that is one aspect that I think was unhelpful. That is my own personal feeling. I think there was a stirring up of public unrest over it and interest in it that actually was unhelpful because of that.

1520       **The Chairman:** Well, then, Minister, I must ask you to explain how did the media, and whatever they did or did not do, constitute an overriding reason for the Home Department's non-disclosure?

**Deputy Le Tocq:** [*Inaudible*]. I did not say that.

1525       **The Chairman:** Well, I will remind you, what we are seeking to understand here today are the overriding reasons which resulted in a political judgement by your Department to suspend transparency. Is there anything that you have not had an opportunity to explain today?

1530       **Deputy Le Tocq:** That is what I was trying to do before. I do not think anything else needs explaining. We have done our best to answer your questions, as far as we can, and that is the best we can do.

1535       **The Chairman:** Minister in your statement to the States of Deliberation on 27th February, you referred to a presumption of disclosure, the push rather than the pull of information. Anyone following this saga might think that getting information has been like pulling teeth. Let us hope that this incident marks a watershed in the States approach to transparency on these matters.

Thank you, Minister. The hearing is now closed.

*The Committee adjourned at 11.47 a.m.*



# SCRUTINY COMMITTEE

## THE STATES OF GUERNSEY

### SCRUTINY COMMITTEE REVIEW

#### NON-DISCLOSURE OF INFORMATION BY THE HOME DEPARTMENT RELATING TO THE SETTLEMENT WITH AFR ADVOCATES

### TERMS OF REFERENCE

#### **Background**

The Scrutiny Committee will consider the decisions made by the Home Department to not disclose information relating to the settlement with AFR Advocates.

#### **Review scope**

The Panel will specifically consider the following areas, as part of its review:

- The reasons behind the decisions taken by the Home Department to not disclose information relating to the settlement with AFR Advocates.
- The extent to which the Home Department gave consideration to the principles of good governance, particularly in relation to transparency, in its decisions not to disclose information relating to the settlement with AFR Advocates.
- The extent to which the Home Department's decisions to not disclose information relating to the settlement with AFR Advocates was in the public interest.

To this end, the Scrutiny Committee has written to the Minister of the Home Department with an invitation to attend a public hearing to answer questions on this topic.

#### **Date issued:**

08 March 2013



**(NB In pursuance of Rule 17(2) (a) of the Rules of Procedure of the States of Deliberation, the views received from Departments and Committees consulted by the Policy Council, as appearing to have a particular interest in the subject matter of the Requête, are set out below.)**

## **HOME DEPARTMENT**

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

24<sup>th</sup> May 2013

Dear Chief Minister

### **REQUÊTE**

#### **Scrutiny Committee Review – Non-disclosure of information relating to the negotiated settlement with AFR Advocates**

I refer to the above Requête submitted by Deputy Gollop which was discussed by the Home Department Board at a meeting on Friday 17<sup>th</sup> May 2013.

The Home Department's view, by a majority, remains that the decision not to disclose the settlement amount in the AFR matter is correct. The Department does however welcome the formulation of a policy for use by all departments in the use of non-disclosure agreements in the future.

With regard to the role of the Scrutiny Committee in its review and the process it chose to use I would refer to the relevant comments made by myself as Minister in my personal response with which the Board is in general agreement.

Yours sincerely

Deputy J P Le Tocq  
Minister  
Home Department

## SCRUTINY COMMITTEE

Deputy P A Harwood  
 Chief Minister  
 Policy Council  
 Sir Charles Frossard House  
 La Charroterie  
 St Peter Port  
 Guernsey  
 GY1 1FH

24 May 2013

Dear Deputy Harwood,

**Requête – Deputy Gollop – “Scrutiny Urgent Business Review into the non-disclosure of information relating to the negotiated settlement with AFR Advocates”**

I am grateful for the opportunity to provide the Policy Council with the Scrutiny Committee’s views on the subject matter of this Requête. The Committee considered the Requête at its meeting on 17 May 2013 and wishes to put forward the comments below. The Committee also intends, at the appropriate time, to make a request to the Presiding Officer that the three Propositions are put to the Assembly separately.

Proposition 1: *“To note the content of the Summary Report of the Scrutiny Committee’s Review and transcription of the public hearing held on Thursday 21 March 2013 into the non-disclosure of information relating to the negotiated settlement with AFR Advocates, which was published on 27 March 2013”.*

The Committee welcomes the proposed debate by the States of Deliberation to note the content of the transcript of the public hearing and the Review Panel’s Summary Report which, as stated at the April 2013 meeting of the States, with hindsight may have been more appropriately termed an accompanying Panel commentary. The Committee does not seek to inhibit debate on the matter by the States; indeed, its Review Panel worked hard to place these materials into the public domain as soon as possible after the public hearing to enable States Members to initiate a debate at the States meeting in April, although this course of action was not pursued by Deputies at that time and it transpired that the focus of the debate in April was directed on matters of process.

It may be useful for you and the States to know that, as indicated at the April States meeting, the Committee is preparing guidance for undertaking future Urgent Business Reviews and agreed at its last meeting that Urgent Business Review work conducted during the course of the year will be published in an Annual Report to be submitted to the States as a Billet D’État, with the leave of the Presiding Officer. This guidance is now being finalised for Committee approval.

Proposition 2: *“In order to assist the Policy Council in its formulation of a policy on the use of non-disclosure agreements to instruct the Scrutiny Committee, based on its experience investigating the Home Department / AFR issue, to provide the Policy Council with recommendations relating to the circumstances when it is appropriate to agree the use of a non-disclosure agreement”.*

The argument for maintaining the independence of the Scrutiny Committee is now well-rehearsed, as is the argument against the Committee acting as a quasi policy-making entity. While States Members have the ability, in sufficient number, to issue directions to the Committee based solely on their political wishes it is widely accepted that it is in the States’ and the public’s best interests to use its power sparingly in exceptional cases. At the same time it is equally well known and accepted in the Assembly that the Committee must guard jealously its very limited resources.

Beyond the wording of this Proposition are consequences that will directly affect the Committee’s ability to undertake its ongoing work programme. The Committee undertook the Urgent Business Review of its own volition, accepting that in doing so it was putting on hold its planned reviews into the ‘*Security of Guernsey’s Electricity Supply*’ and ‘*Who “Regulates” the Financial Services Regulator?*’ The Urgent Business Review has now been concluded to the Committee’s satisfaction, and the Committee has publicly stated its intention to draw a line under the matter in order to focus the attention of its limited resources back onto the completion of its planned reviews. However, the Committee finds itself in the unfortunate position of redirecting its limited resources to a matter it considers closed, in order to deal with a Proposition that seeks to instruct the Committee and its officers.

Furthermore, the proposition is based on the false premise that the Committee and/or its Review Panel have some special experience or expertise to offer; the Requête reads “based on its experience”. This is simply not true. Neither the Committee nor the Panel has any greater experience or expertise to offer than any other Deputy. Everything has been placed in the public domain and as a result the signatories to the Requête know as much as the Review Panel knows.

In short, the Committee does not have the time, resources, or particular expertise to undertake the work necessary to meet the requirements of this Proposition.

Proposition 3: *“To instruct the Home Department to enter into discussions with the signatories to the non-disclosure agreement with the objective of obtaining agreement for the amount of the settlement paid to AFR Advocates to be made public and report to the States of Deliberation no later than February 2014”.*

The subject of this Proposition is clearly a matter for the Home Department. The Committee therefore has no further comment to make.

Yours sincerely

Alderney Representative P Arditti, Chairman

(NB On 3 June 2013, the Policy Council considered the Propositions contained in the Requête entitled “Scrutiny urgent business review into the non-disclosure of information relating to negotiated settlement with AFR Advocates”. Prior to such consideration it had obtained the views of the Home Department and Scrutiny Committee in accordance with Rule 17(2) of the Rules of Procedure.

**Proposition 1:**

The Policy Council has noted the Summary Report of the Scrutiny Committee’s Review Panel and the associated transcript of the public hearing. The Policy Council note that no recommendations are contained within the report.

**Proposition 2:**

The petitioners of the Requête will be unaware that the Policy Council had been working on policy proposals following its agreement of the core principles of Access to Public Information in June 2012 (‘the API Policy’). This overarching policy includes a ‘Code of Practice’ and a policy on the use of confidentiality clauses. Proposals were finalised in April 2013 and are due to be laid before the States of Deliberation at its meeting held in July 2013. The referral of this matter to the Scrutiny Committee to develop recommendations for the use of confidentiality clauses could delay the implementation of the API Policy and Code of Practice for an indeterminate period.

The Policy Council is of the view that directing the Scrutiny Committee to put forward recommendations would be a modification of its mandate into the development of new policy rather than the identification of new areas of policy. Indeed, no recommendations were made in the Summary Report of the Scrutiny Committee’s Review Panel. Pursuant to its mandate, it would be more appropriate for the Scrutiny Committee to review the effectiveness and implementation of the proposed API Policy, Code of Practice and policy on the use of confidentiality clauses, in due course.

**Proposition 3:**

The petitioners of the Requête will not yet be aware of the Code of Practice and policy on the use of confidentiality clauses that is contained within the API Policy States Report. The Policy Council is of the view that the Code of Practice and policy on the use of confidentiality clauses should be applied in this instance. The policy establishes a framework where it is within the discretion of individual Departments and Committees to expressly agree when conditions relating to the confidentiality undertakings can be made. These decisions must be made taking into account the Code of Practice. The policy intention is to ensure that decisions are made by the Department or Committee that is in possession of the full facts and able to determine the impact both on the States’ finances and reputation whilst taking into account the balance of the public interest. Directing the Home Department in the absence of this information and at a time when the API Policy may already be in place would immediately work contrary to that policy. This would undermine the API Policy whilst it is still being rolled out and will

**negatively impact how it will be implemented in Departments and Committees and how the API Policy is understood by the public.**

**Furthermore, the Policy Council is of the view that if any direction is made by the States in relation to the disclosure of this information it should take into account the balance of the costs of renegotiating the undertaking of confidentiality against the amount paid in settlement of the claim against the States by AFR Advocates.**

**Against this background the Policy Council does not support propositions 2 and 3 of the Requête.)**

The States are asked to decide:-

XVII.- Whether, after consideration of the Requête dated 14<sup>th</sup> May, 2013 signed by Deputy J A B Gollop and nine other Members of the States, they are of the opinion:-

1. To note the contents of the Summary Report of the Scrutiny Committee's Review Panel and transcription of the public hearing held on Thursday 21 March 2013 into the non-disclosure of information relating to the negotiated settlement with AFR Advocates, which was published on 27 March, 2013, as appended to that Requête.
2. To instruct the Scrutiny Committee, in order to assist the Policy Council in its formulation of a policy on the use of non-disclosure agreements and based on its experience investigating the Home Department / AFR issue, to provide the Policy Council with recommendations relating to the circumstances when it is appropriate to agree the use of a non-disclosure agreement.
3. To instruct the Home Department to enter into discussions with the signatories to the non-disclosure agreement with the objective of obtaining agreement for the amount of the settlement paid to AFR Advocates to be made public and report to the States of Deliberation no later than February 2014.

***ORDINANCES LAID BEFORE THE STATES***

**THE FOREIGN TAX (RETENTION ARRANGEMENTS) (GUERNSEY AND  
ALDERNEY) (AMENDMENT) ORDINANCE, 2013**

In pursuance to the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Foreign Tax (Retention Arrangements) (Guernsey and Alderney) (Amendment) Ordinance, 2013, made by the Legislation Select Committee on the 20<sup>th</sup> May, 2013, is laid before the States.

**THE MYANMAR / BURMA (RESTRICTIVE MEASURES) (GUERNSEY)  
ORDINANCE, 2013**

In pursuance to the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Myanmar / Burma (Restrictive Measures) (Guernsey) Ordinance, 2013, made by the Legislation Select Committee on the 20<sup>th</sup> May, 2013, is laid before the States.

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

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL  
BENEFIT) (AMENDMENT) (No.2) REGULATIONS, 2013**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) (No.2) Regulations, 2013 made by the Social Security Department on 7 May 2013, are laid before the States

**EXPLANATORY NOTE**

These Regulations add to the limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners. These Regulations came into operation on 7 May 2013.