



BILLET D'ÉTAT

WEDNESDAY, 24th JUNE, 2015

XI
2015

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BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **24th JUNE, 2015** at **9.30 a.m.**, to consider the items contained in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

15th May 2015

THE REGULATION OF HEALTH PROFESSIONS (MEDICAL PRACTITIONERS) (GUERNSEY AND ALDERNEY) ORDINANCE, 2015

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled “The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 ”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012.

Part I requires medical practitioners practising in Guernsey or Alderney to be registered in a register to be kept by the Health and Social Services Department ("HSSD") under this Ordinance, to be registered in the register kept by the General Medical Council ("GMC") and licensed to practise under the Medical Act 1983. It also provides for applications for registration, classification of all registered practitioners (other than a responsible officer) and annual charges to be paid by registered practitioners.

Part II sets out duties and functions of HSSD in relation to keeping and maintaining the register of medical practitioners. It also requires registered practitioners to notify HSSD of any change to information kept in the local register and to verify information.

Part III establishes the office of responsible officer, and gives the responsible officer functions and powers to support re-validation of practitioners and to ensure their fitness to practise.

Part IV requires registered practitioners to co-operate with and provide information reasonably requested by the responsible officer, HSSD, the GMC and any non-Island responsible officer. It also requires designated bodies (bodies and individuals who employ practitioners or engage their services) to carry out duties relating to recruitment, monitoring and addressing conduct and performance of registered practitioners.

Part V sets out miscellaneous provisions such as those relating to confidentiality, offences and penalties, and exclusion of liability.

**THE ELECTRICITY (GUERNSEY) LAW 2001 (AMENDMENT) ORDINANCE,
2015**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Electricity (Guernsey) Law 2001 (Amendment) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Electricity (Guernsey) Law, 2001 by inserting or substituting provisions which:

- (a) set out the considerations that must be taken into account by a public electricity supply licensee (i.e. Guernsey Electricity Limited) when determining whether it is reasonable or not for it to be required to give a supply of electricity to any premises,
- (b) for the avoidance of doubt, where a person requires a supply of electricity, enable a public electricity supply licensee to require any expenses reasonably incurred on researching and investigating the feasibility and cost of provision of any electric line or electricity plant to be met by the person requiring the supply of electricity, and
- (c) for the avoidance of doubt, in cases where a special agreement with respect to supply is entered into, enable rights and liabilities under such an agreement to include rights and liabilities relating to expenses reasonably incurred on researching and investigating the feasibility and cost of provision of any supply to be made under such an agreement.

**THE CRIMINAL JUSTICE (SEX OFFENDERS AND MISCELLANEOUS
PROVISIONS) (BAILIWICK OF GUERNSEY) LAW, 2013
(COMMENCEMENT) (NO.2) ORDINANCE, 2015**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (Commencement) (No.2) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance brings into force, on 1st July, 2015, all those provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 ("the Law") which have not already been commenced by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (Commencement) Ordinance, 2015 (made by the States at their April meeting).

The remaining provisions of the Law which are brought into force by this Ordinance include:

- (a) Parts II and III, which relate to notification requirements (obliging specified persons to notify specified details to the police) and the review of notification requirements,
- (b) Part IV, which gives to the courts powers to make a range of civil preventative orders (comprising sexual offences prevention orders, foreign travel orders and risk of sexual harm orders),
- (c) Part VI, which provides for appeals, and
- (d) Part VII, which will place the multi-agency public protection arrangements on a statutory footing.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

THE INCOME TAX (APPROVED INTERNATIONAL AGREEMENTS) (IMPLEMENTATION) (UNITED KINGDOM AND UNITED STATES OF AMERICA) (AMENDMENT) REGULATIONS, 2015

In pursuance of Section 203 of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) (Amendment) Regulations, 2015", made by the Treasury and Resources Department on 31st March 2015, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Income Tax (Approved International Agreements) (Implementation) (United Kingdom and United States of America) Regulations, 2014, which implemented and enabled the administration and enforcement in domestic law of the approved international agreements providing for the obtaining, furnishing and exchanging of information in relation to tax made between the States of Guernsey and the Governments of the United Kingdom and the United States of America, by modifying certain technical provisions as to the carrying out of due diligence and reporting of specified low value accounts. These Regulations came into operation on 31st March 2015.

THE BOVINE SEMEN (IMPORTATION) ORDER, 2015

In pursuance of section 2A(2) of the Bovine Semen and Artificial Insemination Ordinance, 1957, as amended, “The Bovine Semen (Importation) Order, 2015”, made by the Commerce and Employment Department on 19th March, 2015, is laid before the States.

EXPLANATORY NOTE

This Order specifies the bovine breeds from which the Commerce and Employment Department can import, or cause the importation of, semen for the artificial insemination of cattle on the Island. Under section 2A(1) of the Bovine Semen and Artificial Insemination Ordinance, 1957, such semen can be imported from Great Britain.

This Order also revokes the Bovine Semen (Importation) Order, 2013, which listed the previous bovine breeds from which the Department could import, or cause the importation of, semen.

This Order came into force on the 1st April, 2015.

THE SHEEP AND GOATS (IDENTIFICATION AND NOTIFICATION) (AMENDMENT) ORDER, 2015

In pursuance of section 33(1)(c) of the Animal Health Ordinance, 1996, “The Sheep and Goats (Identification and Notification) (Amendment) Order, 2015”, made by the Commerce and Employment Department on 19th March, 2015, is laid before the States.

EXPLANATORY NOTE

This Order amends the Sheep and Goats (Identification and Notification) Order, 2013 ("the principal Order").

Article 2 of this Order amends the principal Order to clarify that a sheep or goat required to be marked and identified in accordance with article 3(1) of the principal Order is not required to be marked and identified in accordance with article 3(2) of the principal Order.

Article 3 of this Order amends the principal Order to clarify that a sheep or goat required to be marked and identified in accordance with article 3(1) or (2) of the principal Order is not required to be marked and identified in accordance with article 3(3) of the principal Order.

Article 4 of this Order substitutes article 4 of the principal Order. The new article 4 allows the owner of a sheep or goat that has been marked and identified in accordance with any provision of the principal Order, to re-mark and re-identify the animal using any approved method of identification, as long as the method of identification used complies with the applicable provision of the principal Order.

Article 5 of this Order amends the Schedule to the principal Order to allow a pastern tag to be used as an alternative to the ear tags currently approved as Method 2 and Method 3. However, this article also inserts a proviso in that Schedule to prevent pastern tags being used as an alternative where the animal is being exported from the Islands.

This Order came into force on the 1st April, 2015.

THE DATA PROTECTION (TRANSFER IN THE SUBSTANTIAL PUBLIC INTEREST) (AMENDMENT) ORDER, 2015

In pursuance of Section 66(4) of the Data Protection (Bailiwick of Guernsey) Law, 2001, "The Data Protection (Transfer in the Substantial Public Interest) (Amendment) Order, 2015", made by the Home Department on 13th April 2015, is laid before the States.

EXPLANATORY NOTE

This Order amends the definition of "the Stock Exchange" in the Data Protection (Transfer in the Substantial Public Interest) Order, 2002 to change the reference to the "Channel Islands Stock Exchange LGB" to the "Channel Islands Securities Exchange Authority Limited". This reflects the restructuring of the former Channel Islands Stock Exchange LGB into the Channel Islands Securities Exchange Limited and the Channel Islands Securities Exchange Authority Limited the latter of which is carrying out functions of a regulatory nature such as those set out in the 2002 Order.

This Order came into force on the 20th April, 2015.

THE IMMIGRATION (BAILIWICK OF GUERNSEY) (AMENDMENT) RULES, 2015

In pursuance of Section 3(2) of the Immigration Act 1971 as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993, “The Immigration (Bailiwick of Guernsey) (Amendment) Rules, 2015”, made by the Home Department on 30th March, 2015, are laid before the States.

EXPLANATORY NOTE

These Rules amend the Immigration (Bailiwick of Guernsey) Rules 2008, as amended by the Immigration (Bailiwick of Guernsey) (Amendment) Rules 2011 and the Immigration (Bailiwick of Guernsey) (Amendment) Rules 2013 ("the principal Rules").

These Rules will introduce a tuberculosis screening requirement for persons making applications for entry clearance exceeding 6 months from countries or territories designated as Tuberculosis Screening Specified Countries.

These Rules will also impose a re-entry ban where a person fails to depart within 90 days of expiry of the person's leave.

These Rules will introduce a new criminality threshold to replace references to spent convictions. These Rules will provide a consistent approach to applications for leave to enter or remain from persons whose period of leave has expired and a new provision will be introduced to allow the entry of a representative of a business based outside the Bailiwick of Guernsey to set up and run a subsidiary or branch of that business in the Bailiwick.

These rules also make amendments to visitor categories, clarify permitted absences for the purpose of calculating continuous residence for work permit settlement purposes, and provide a clear basis for considering family and private life cases in compliance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. These Rules make provision for settlement on the basis of private life in the Bailiwick of Guernsey in compliance with Article 8 of ECHR and remove the 14-year long residence concession for settlement for those in the Bailiwick of Guernsey lawfully or unlawfully.

These Rules also insert two appendices into the principal Rules, Appendix A and Appendix B. Appendix A sets out provisions concerning the grant of entry clearance, leave to enter, leave to remain or variation of leave as a spouse, fiancée or unmarried partner of a person who is present and settled in the Bailiwick of Guernsey. Appendix B sets out the requirements for proving certain matters in Appendix A and in the principal Rules.

Finally, these Rules also correct several typographical errors and minor anomalies. These Rules come into force on the 1st June, 2015.

COMMERCE AND EMPLOYMENT DEPARTMENT

APPOINTMENTS TO THE BOARD OF THE OFFICE OF THE FINANCIAL SERVICES OMBUDSMAN

In pursuance of paragraph 1(2) of Schedule 1 to the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014, the appointments of Miss. Deborah Guillou, Mr. John Curran and Mr. John Mills as ordinary Board members of the Office of the Financial Services Ombudsman with effect from 31st January, 2015, are laid before the States. The States of Deliberation have the power to annul the appointments.

The Office of the Financial Services Ombudsman was established by section 1 of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014. A recruitment exercise undertaken in conjunction with the States of Jersey and the Department concluded that Miss. Deborah Guillou, Mr. John Curran and Mr. John Mills are suitable to be ordinary members of the Board of the Office of the Financial Services Ombudsman and the Department has appointed them for three years with effect from 31st January 2015.

The appointment of Mr. David Thomas as Chairman of the Board of the Ombudsman has already been laid before the States.

Summaries of the curricula vitae of Miss. Deborah Guillou, Mr. John Curran and Mr. John Mills follow for information:

Miss Deborah Guillou

Miss. Deborah Guillou is a Fellow of the Chartered Institute of Management Accountants (CIMA) after qualifying in 1993.

She became:

- Finance Director at Guernsey Electricity Limited
- Head of Finance and then Chief Financial Officer at Generali Worldwide Insurance Company Ltd
- Head of Generali International

She is currently Chief Executive and a Director of The Medical Specialist Group.

Mr John Curran

Mr. John Curran has held senior positions in the Irish Civil Service and areas of regulation in the Channel Islands and internationally.

He has held previous roles:

- In the private office of three separate Ministers in the Irish government
- As a regulatory advisor in the Australian telecoms market

- As Deputy Director and then Director General of the Office of Utility Regulation in Guernsey
- As Chief Executive of the Channel Islands Competition and Regulatory Authorities

He now works as an independent consultant specialising in regulation and government policy and is Chairman of Guernsey Mind, a leading mental health charity.

Mr John Mills

Mr. John Mills' full time career was spent in the public sector where he held a number of senior roles. Since leaving the public sector in 2007 he has been involved in a number of other senior roles.

During his full time career in the public sector he became:

- Principal Secretary to a UK Minister
- Member of the Prime Minister's Policy Unit (leading on local government policy and finance)
- Director of Consumer Affairs at the Office of Fair Trading
- Chief Executive of Cornwall County Council
- Chief Executive of the States of Jersey
- Director of Rural Policy, DEFRA

From 2007 he has held a number of other positions including:

- Commissioner of the Jersey Financial Services Commission
- Board member of Ports of London Authority
- Deputy Chairman of Ports of Jersey Shadow Board

He is currently a member of the Shadow Board of the Ports of Jersey.

POLICY COUNCIL

POPULATION MANAGEMENT REGIME STATUTORY OFFICIAL AND APPEALS

1. Executive Summary

- 1.1 In June 2013 (Billet d'Etat XI), the States approved a number of principles in relation to managing the size and make-up of the Island's population and also noted the intention of the Policy Council to return to the States with further detailed recommendations as the new population management regime was developed.
- 1.2 At that time the States agreed that:
 - day to day administrative decisions would be the responsibility of a statutory body, and
 - the regime would include provision for appeals.
- 1.3 The Policy Council presents proposals for the establishment of the statutory office of "Administrator of Population Management" and for appeals to be heard by the Royal Court in this Report.
- 1.4 In addition, the Report fulfils the Policy Council's obligation to report back to the States regarding the resources needed, in both the short and longer terms in order to facilitate the transition from one system to another and the establishment of a Population Management Office.

2. Background

- 2.1 In June 2013, the States resolved, in relation to governance arrangements and responsibilities:

"37. To agree that under the political oversight of whichever department, committee or other similar body of the States to which the States of Deliberation resolve to delegate population management functions, a Statutory Body will be responsible for making day-to-day administrative decisions in accordance with policy directions from the States, the details of how such arrangements will work to be brought to the States for approval ahead of the new population management regime coming into force."

and in relation to appeals:

"41. To agree that the legislation will provide for an applicant to exercise a formal right of appeal against any decision taken under the Law."

- 2.2 Proposals in relation to governance and for the establishment of a statutory body are set out in section 3 and for appeals, in section 4.
- 2.3 As it is not yet known which body will have political oversight of Population Management functions, it has been assumed for the time being and for the purposes of this Report that such responsibility will rest with the Policy Council, albeit it is accepted that this is subject to change in light of the recommendations of the States Review Committee.

3. Governance and Statutory Body

Governance

- 3.1 In June 2013 the Policy Council advised that it was of the view that, as a matter of principle, the political focus in relation to population management should be on policy-making rather than the day-to-day decision making that would be required to implement the new regime.
- 3.2 In order to ensure coordination between different areas of States' policy which affect the management of the Island's population, the Policy Council proposed that political responsibility for overseeing the new population management regime should fall specifically within its own mandate. It would therefore be responsible for developing population management policies in accordance with the strategic objectives set by the States.
- 3.3 In 2013, the States accepted this principle and resolved:

“To agree that the Policy Council will be responsible for overseeing the development of population management policies in accordance with the strategic objectives of the States, and for monitoring and publishing regular information on the size and make-up of the Island's population arising from their implementation”.
- 3.4 This arrangement will mean that the new population management regime will be able to reflect the strategic policies and priorities agreed by the States each year in the States Strategic Plan and ensure that it is responsive to the Island's needs.
- 3.5 In 2013, the States also agreed the principle that there should be a clear and transparent separation between the routine administration of the population management regime and the process of making the policies that would underpin it. This would enable States Members freely to express their views on population management policies without any conflicts of interest with day-to-day decision making processes.

3.6 The States therefore resolved:

“To agree that under the political oversight of whichever department, committee or other similar body of the States to which the States of Deliberation resolve to delegate population management functions, a Statutory Body will be responsible for making day-to-day administrative decisions in accordance with policy directions from the States, the details of how such arrangements will work to be brought to the States for approval ahead of the new population management regime coming into force”.

- 3.7 The Policy Council acknowledges that the States has agreed a number of recommendations of the States’ Review Committee (in its first report on the organisation of States’ affairs (Billet XIV July 2014)) that might have a bearing on this issue. At the time of writing, the detailed recommendations that are necessary for the introduction of the new committee system set out in that Report have not been submitted to the States and pending such recommendations, the Policy Council assumes that it will have the oversight responsibility described above.

Options for a statutory body

- 3.8 Some of the various existing statutory roles are set out in Appendix 1. The Policy Council considers that they fall into three main groups:

- an independent organisation (such as the Guernsey Financial Services Commission),
- an independent official (such as the Director of Civil Aviation), and
- an official who is a civil servant (such as the Registrar of Companies).

- 3.9 The independence that exists in the first two groups above is considered necessary because the regulators or officials have a relationship with, and in some cases will be answerable to, a third party other than the States of Guernsey. For example, the Director of Civil Aviation will need to ensure that Civil Aviation Authority (CAA) rules and guidelines are implemented in a manner appropriate to Guernsey.

- 3.10 In such circumstances it is conceivable that conflict could arise with States’ policy, hence the need for an official or body one step removed from the States of Guernsey and empowered to act independently.

- 3.11 With regard to population management, the functions of a statutory body will principally be concerned with who is able to move to Guernsey, for what reason and for how long and to consider cases in which individual circumstances have changed or where a person applies to remain in Guernsey, notwithstanding the

expiry of a permit. Such decisions will be taken in the context of States' policy on population management.

3.12 The Policy Council considers that these functions are wholly administrative, as opposed to regulatory, and for this reason it believes that statutory independence is not necessary and consequently that the first two options are not appropriate in this circumstance.

3.13 It therefore believes that the function of a statutory body should be undertaken by an "Administrator of Population Management" who will be a civil servant appointed by the Policy Council. The post will be a public office (its functions will be specifically assigned by legislation and the holder will be remunerated by the States of Guernsey). In this respect, the function will operate in a very similar manner to the existing arrangements regarding the administration of the Housing Control Law, an arrangement that has worked well for many years. The main difference is that the role will be statutory rather than exercised under delegated authority from the political board.

3.14 Accordingly, the Policy Council recommends that:

- the statutory role of an "Administrator of Population Management" should be established;
- the duties and powers of the post holder should be defined in relevant legislation (those that are required to perform the functions set out in paragraph 3.11);
- the post holder should have a statutory duty to take account of population management policies set by the Policy Council in accordance with States' strategic guidance when carrying out his or her duties; and
- the post holder should report to the Policy Council.

3.15 The population management legislation will, in addition to providing for the appointment of the statutory official and defining his or her powers, also have to make provision in respect of certain matters that relate to his or her functions, including the appointment of a Deputy Administrator (by the Policy Council).

Discretionary powers

3.16 The Policy Council believes that the Administrator will have to have some discretionary powers. The population management Report in 2013 highlighted the fact that a permit holder could find that his or her circumstances had changed for unforeseen reasons which could include:

- the breakdown of a relationship;
- bereavement;
- serious illness or disability; and
- abuse in a relationship.

This list is not intended to be exhaustive, but illustrates the type of events that can lead to fundamental changes in the circumstance of an individual.

- 3.17 The Policy Council considers that it will be impossible to make provision for every eventuality in future population management policy or legislation and therefore that the Administrator will have to have some powers to deal with these cases on an individual basis as they arise, taking account of the obligations according to the Island's human rights legislation and by reference to the States' strategic population objectives and the Policy Council's population management policies.
- 3.18 If the Administrator finds that there are circumstances that occur on a regular basis which are not specifically provided for either in States' strategic population objectives, existing policies or relevant legislation, the Policy Council believes that the post holder should be able to seek direction from the Policy Council or to propose an amendment to the legislation (through the Policy Council) as he or she considers appropriate.

Conclusions

- 3.19 The governance arrangements should be as follows:
- States of Deliberation determines strategic population objectives.
 - Policy Council makes population management policies in accordance with States strategic objectives.
 - Administrator implements the population management regime in accordance with strategic objectives and population management policies.
- 3.20 The separation of policy and administrative decision making will mean that there is clear and transparent separation between the routine administration of the population management regime and the political process of making the policies that will underpin it.

4. Appeals

2013 Report

- 4.1 In the 2013 report, the Policy Council indicated that the primary population management legislation would include provision for an applicant to exercise a right of appeal against any decision taken under that legislation and that, following further research, detailed proposals would be submitted to the States.

Current arrangements – Housing Control legislation

- 4.2 At present, an appeal can be made to the Royal Court against a decision made under Housing Control legislation on grounds established under either the Housing Control Law and/or the Human Rights Law. The number of appeals is currently low, up to three a year.
- 4.3 The experience of the Housing Department is that appeals are usually made on the grounds that a decision was unreasonable or an infringement of human rights or a combination of both.

Options for an appeal mechanism

- 4.4 The Policy Council has considered two options for dealing with appeals made under the new population management regime. These are for appeals to be made to either a tribunal/panel or to the Court.
- 4.5 An appeal to a tribunal or panel is usually regarded as providing a relatively quick and low cost (at least for the appellant) means by which an individual can have an appeal determined. Such a body also provides a less formal environment in which appellants can represent themselves if they choose to do so.
- 4.6 However it is necessary to populate a tribunal or panel with individuals with appropriate knowledge, training or experience. Appeals under the existing Housing Control Law not only engage matters relating to that Law, but also human rights arguments and, as such, the consideration of such appeals can be highly complex and require an assessment of detailed technical and legal submissions. The body that hears such appeals must therefore have a detailed working knowledge of the relevant legislation and relevant precedent.
- 4.7 A tribunal or panel would therefore have to be populated by people who have considerable knowledge of these complex issues and the Policy Council does not believe that individuals with all of the required knowledge and experience will be readily found in the community.
- 4.8 A tribunal will incur some costs, as a panel of members must be maintained in readiness to populate it, regardless of the number cases it actually deals with (by way of example, the 2015 budgeted cost of the Commerce and Employment

Department Employment and Discrimination Tribunal is £52,300 and the anticipated number of cases per year is between 15 and 18).

- 4.9 The alternative is for the Court to hear appeals, although this option is likely to be more expensive to an appellant and could take more time to conclude. It would also involve greater cost to the Court and increase demands on its time.
- 4.10 The States have agreed that the policies, processes and procedures that form part of the new population management regime will be transparent and they have also agreed that they must be published. Furthermore, the reasons for any decision that is made under the new system will have to be clearly explained (as is the case under the existing regime).
- 4.11 The Policy Council believes that all of these arrangements will mean that appeals under the new population management regime are likely to be made on similar grounds to the appeals that have been made under the Housing Control legislation and that the number will therefore be low (in the period 2005 to 2014, the Royal Court reached a judgement on 10 Housing Control appeals).
- 4.12 It also considers that if a decision of a tribunal or panel is subject to appeal, the circumstances that would have led a person to make an appeal in the first place would be of such great personal significance to the individual concerned (and could have repercussions for his or her immediate family members) that that person would likely exercise the right to make a further appeal to the Court in the event that the initial appeal was unsuccessful.
- 4.13 In the circumstances described above, there would effectively be a double appeal, thus extending the time for it to be determined and increasing the costs of all the parties involved.
- 4.14 The Policy Council therefore recommends that appeals under the new population management regime should be made to the Royal Court for the following reasons:
 - the Royal Court currently hears appeals made under the Housing Control legislation and thus it has relevant experience,
 - to avoid a “double appeal” described in paragraph 4.12, and
 - the number of appeals is likely to be low and the cost of setting up an appeals system based on a tribunal or panel is not justified.
- 4.15 Associated with this proposal the new population management legislation will include various provisions in relation to appeals, including the decisions against which an appeal can be made (such as the refusal to grant a permit or the revocation of a permit), and, the grounds of an appeal (such as a decision being ultra vires, unreasonable, in bad faith etc.).

5. Preparing for the New Regime

- 5.1 Commencing work on the preparation of a plan to transition from the Housing Control regime to the new population management scheme is a high priority. Such work will include a review of the administrative processes and assessment of the manpower, financial and other needs, (such as IT systems) that will be required by the new regime.
- 5.2 The Policy Council did not have the resources to undertake this work and consequently has appointed an Implementation Project Manager (on a two year contract) with appropriate project management skills who is responsible for assessing resource requirements, preparing and implementing a transition plan and preparing the business case described above. In particular the Implementation Project Manager is in the process of:
- reviewing all of the resource requirements, including staffing needs, of the new population management regime, taking into account the policy and legal framework that will define that regime;
 - reviewing the IT system currently used by Housing Control and assessing whether that system can be adapted to meet the requirements of the new regime or whether a new system is required;
 - reviewing the office requirements of the new regime, taking into account the need for public access, a public waiting area and the provision of facilities for private consultations;
 - preparing and implementing a communications plan so that the public can be informed as to how the new regime will affect them, taking account of individual circumstances; and
 - reviewing funding options for the new regime and producing a budget for the transition to the new regime and for the longer-term operation of that regime.
- 5.3 The Implementation Project Manager is producing regular progress reports to the Population Steering Group which has been established by the Policy Council to oversee the implementation of the population policies approved by the States.
- 5.4 The funding requirement over the two year period of the contract is £85,000 in 2015, £95,000 in 2016 and £20,000 in 2017. The majority of these costs will be salary, superannuation and social insurance costs, but they also include provision for other costs associated with the transition.
- 5.5 The Policy Council is aware that the new Population Management regime is of considerable interest to both the public and employers on the Island and in

particular they will want to understand what it will mean for them as individuals or businesses, both immediately and in the future.

- 5.6 The budgetary provision for “other” costs has therefore been included so that the Implementation Project Manager can develop a communications plan to ensure that the public and employers are kept informed about the transition to the new regime, not only in general terms, but also so that they can find out about how it will affect them, taking account of their individual circumstances. The Policy Council strongly believes that such a communications plan is essential and, as such, it needed to be developed at an early stage.
- 5.7 In January, the Policy Council approached the Treasury and Resources Department to explain the immediate need to appoint an Implementation Project Manager in order to ensure that:
- all of the administrative capacity required, and all of the facilities that are necessary, for the new regime to function effectively are in place when the population management legislation comes into effect; and
 - there is a smooth transition from the current regime to the new regime.
- 5.8 The Policy Council is grateful to the Treasury and Resources Department for making funds available for this appointment from the Budget Reserve.

6. Resource Implications

- 6.1 The 2013 States Report on managing the size and make-up of the Island’s population included the following statement:

“In respect of implementing the new regime, as noted in paragraph 19.4 it will be necessary to bring one or more further reports to the States which will focus on matters of detail. Developing this detail, and therefore included within these further reports, will include analysing the relevant business cases regarding any resource implications. Any long term ongoing resource requirements 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”.

Notwithstanding this, it is currently the aim and expectation that, once implemented, the total costs of running the new regime will be no more than the current costs of administering the Housing Control Law and therefore the appointment of a Statutory Official will not, of itself, result in additional expenditure. However, there is no intention to appoint a Statutory Official until funding has been identified within the overall budgetary arrangements for the new regime.

- 6.2 The Royal Court does not foresee any resource implications arising from the proposals in respect of appeals.

- 6.3 The Policy Council has also consulted the Guernsey Legal Aid Service regarding the recommended appeals mechanism.
- 6.4 Historically, the number of legal aid certificates issued in respect of the existing Housing Control regime is low and that situation could be carried forward into the new population management regime. However, the new regime may change the pool of eligible applicants, although, generally, the grant of legal aid is subject to a standard means and merits tests.
- 6.5 The introduction of any legislation that may give rise to appeals has the potential to have an impact on the call on legal aid, but it is difficult to predict the extent of that impact with any certainty until the new legislation is actually up and running. However, it is considered unlikely that any additional costs would be significant and, as set out at paragraph 6.1, it is anticipated that the total costs of the new regime will be no more than the current costs associated with the administration of the Housing Control Law.
- 6.6 In paragraph 5.2, the Policy Council indicates that an Implementation Project Manager will be responsible for preparing and implementing a communications plan.
- 6.7 The intention is that as much information as possible is made available to the public in order that individuals will be able to understand how the new population management regime will affect them, not only well before it comes into effect, but also once it is in place. The Policy Council believes that this action will help to minimise the number of appeals made under that new regime.

7. Consultation

- 7.1 The Policy Council can confirm that the Law Officers of the Crown have been consulted on the contents of this Report.
- 7.2 The Policy Council has consulted the Royal Court regarding appeals and it has no objection to the proposed arrangements.
- 7.3 As indicated above, the Policy Council has consulted the Guernsey Legal Aid Service regarding the recommended appeals mechanism.

8. Principles of Good Governance

- 8.1 The Policy Council 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).

9. Recommendations

9.1 The States is asked to:

- a) approve the proposals for the establishment of the statutory Office of the Administrator of Population Management as set out in section 3 of this report.
- b) approve the proposals for appeals as set out in section 4 of this Report.
- c) To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

J P Le Tocq
Chief Minister

13th April 2015

A H Langlois
Deputy Chief Minister

G A St Pier
Y Burford
D B Jones

P L Gillson
K A Stewart
M G O'Hara

R W Sillars
P A Luxon
S J Ogier

APPENDIX 1 STATUTORY ROLES

Independent Organisation

Financial Services Commission

Powers under: The Financial Services Commission (Bailiwick of Guernsey) Law, 1987

Independent Official

Data Protection Commissioner

Powers under: Data Protection (Bailiwick of Guernsey) Law, 2001.

Chief Executive, Channel Islands Competition and Regulatory Authority

Powers under: The Competition and Regulatory Authority Ordinance, 2012 combining the statutory offices created under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and the Competition (Enabling Provisions) (Guernsey) Law, 2009.

Director of Civil Aviation

Powers under: Aviation (Bailiwick of Guernsey) Law, 2008.

Public Trustee

Powers under: Public Trustee (Bailiwick of Guernsey) Law, 2002

Official who is a Civil Servant

Director of Income Tax

Powers under: Income Tax (Guernsey) Law, 1975.

Director of Public Health

Powers under: Loi relative à la Santé Publique, 1934, Ordonnance relative à la Santé Publique, 1936 and Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005.

Registrar of Companies

Powers under: Companies (Guernsey) Law, 2008.

Chief Health and Safety Officer

Powers under: Health and Safety at Work etc (Guernsey) Law, 1979, Poisonous Substances (Guernsey) Law, 1994, Food and Environment Protection Act 1985(a) as extended to the Bailiwick of Guernsey by the Food and Environment Protection Act 1985 (Guernsey) Order 1987, Loi relative aux Substances Explosives, 1939, the Safety of Employees (Miscellaneous Provisions) (Guernsey) Ordinance, 1952 and Loi relative aux Huiles ou Essences Minérales ou autres substances de la même nature, 1927.

Registrar of Intellectual Property

Powers under: Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey), 2004.

Administrator, Social Security Department

Powers under: Social Insurance (Guernsey) Law, 1978.

Office of the Financial Services Ombudsman

Powers under: Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014.

This list is not exhaustive.

(N.B. In respect of the proposal for the appointment of a Statutory Official, the Treasury and Resources Department notes that the Policy Council's aim and intention is that the total costs of running the new Population Management regime will be no more than the current costs of administering the Housing Control Law.

In February 2015, the Treasury and Resources Department considered an approach from the Policy Council for funding for an Implementation Project Manager and other costs (mainly communications) associated with transitioning from the Housing Control regime to the new population management regime. Members noted the urgency of this matter and the requirement for a Project Manager to be appointed without delay and therefore:

- Approved the transfer of £85,000 from the Budget Reserve to the 2015 revenue expenditure budget of the Policy Council; and**
- Agreed that it will include within the recommended 2016 and 2017 Cash Limits for the Policy Council, allowance of £95,000 and £20,000 respectively.**

It is noted that there may be transitional costs associated with moving from the existing Housing Control regime and that requests for funding any requirements will be included within future States Reports submitted by the Policy Council.)

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated 13th April, 2015, of the Policy Council, they are of the opinion:-

1. To approve the proposals for the establishment of the statutory Office of the Administrator of Population Management as set out in section 3 of that Report.
2. To approve the proposals for appeals as set out in section 4 of that Report.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

POLICY COUNCIL

REVIEW OF ADOPTION LAW

1. Executive Summary

- 1.1 There are a number of deficiencies in the current adoption legislation; namely, the Adoption (Guernsey) Law, 1960, (hereafter ‘the Law’) which has needed to be updated for a number of years.
- 1.2 The Health and Social Services Department is planning to carry out a full review of the Law but, in the meantime, there is one change that could be made to the Law that would tie in with the work of the Policy Council’s Social Policy Group.
- 1.3 The issue in question regards the inequality of unmarried and same sex couples in adoption legislation and processes and this Report recommends a change to the Law to address this issue. It also briefly touches on the scope of a full review of adoption legislation and services.
- 1.4 Further deficiencies in the legislation, to be included in a later full review of the Law by the Health and Social Services Department, are outlined in the Appendix to this report, and include the age requirements and gender restrictions for prospective adoptive carers; illegitimacy records on birth certificates; domicile requirements for prospective adopters; support services for adoptive families and birth parents; rights to access birth records; and the implementation of a new court order to authorise the States to place a child for adoption.

2. Background

- 2.1 Adoption is a way of providing a new family for children who cannot be brought up by their own parents. Adoption continues to provide an important service for children, offering a positive and beneficial outcome. Generally, adopted children make very good progress through their childhood and into adulthood compared with children that have remained in the care system.
- 2.2 There are a range of long-term care options which can give children security, stability, and love, through their childhood and beyond, but in many cases adoption is the best option, and gives vulnerable children, including many with complex needs and a history of ill treatment, a home with a permanent family.
- 2.3 Adoption was legalised in Guernsey on 22nd March 1939; however, there was no law in place until the Adoption (Guernsey) Law, 1960, was enacted. The Law applies to Guernsey, Herm and Jethou, while most of its provisions have been applied in Alderney, through the Alderney (Application of Legislation) (Adoption) Ordinance, 1974, and the Adoption (Alderney) Rules, 1974.
- 2.4 Although the Law has facilitated many successful adoptions over the years, it is becoming increasingly evident that it is no longer fit for purpose in the 21st

Century, as our way of life has changed a great deal since the introduction of the Law in 1960. It is now necessary to consider how to amend the Law in order better to reflect society's needs.

3. Introduction

- 3.1 An initial review of the Adoption Law took place in 2006 which sought to address some issues regarding practices, pending substantive reform of the current Law. This reform is still outstanding.
- 3.2 While it is normal practice for the Department responsible for the legislation involved, which in this case is Health and Social Services, to submit proposals for change to the States of Deliberation, there are occasions where it is appropriate for another Department to bring forward policy and legislative proposals. In this instance, this Report has been prepared by the Policy Council, as a consequence of the Social Policy Group's involvement in the Children and Young People's Plan. The Health and Social Services Department supports this approach.
- 3.3 Furthermore, under proposals for maternity leave and adoption leave (Billet d'État IV, February 2012, Volume 1), the Policy Council will shortly be seeking to amend the Employment Protection Law and the Sex Discrimination Ordinance to improve equality for same sex and unmarried couples. Therefore, it seems logical to address this issue in the Adoption Law.

4. Unmarried and same sex couples

- 4.1 Under the 1960 legislation, unmarried and same sex couples are unable to adopt jointly. Couples are currently able to be assessed and approved as permanent carers for a child, but only one of the couple will be able formally to adopt the child.
- 4.2 The introduction of the Children (Guernsey and Alderney) Law, 2008, provided the other carer with the option to obtain parental responsibility for the adopted child through an application to the Court for a Parental Responsibility Order. Although this allows both carers to have parental responsibility, this does not put them on an equal footing, as one carer will, by Law, be given a lesser status in relation to the adopted child. The Adoption Law currently means that only one of them will be treated as the parent, while the other carer does not appear on the child's new birth certificate, and can be at risk of losing the parental responsibility granted.
- 4.3 This restriction on unmarried and same sex couples does not fit with modern society, where a significant number of couples in settled and enduring relationships are not married, or recognised as married by the Adoption Law. This therefore potentially reduces the likelihood that some couples would apply to become adoptive carers for children in the Bailiwick, which is not in the best interests of those children.

- 4.4 In England and Wales, a child can legally be adopted by an unmarried couple of any gender. Couples who are not married, or in a civil partnership, must be considered to be in an ‘enduring family relationship’ in order to adopt jointly. Under Jersey legislation, cohabiting couples may not adopt jointly, while a single person, married couple, or civil partners, including same sex couples, may adopt a child with equal parental rights.
- 4.5 Unmarried and same sex couples who are domiciled and/or habitually resident in Guernsey can adopt a child through the courts in England and Wales, which will be recognised in Guernsey. That option is, however, subject to a number of practical and legal obstacles and is therefore not popular with potential adoptive couples.
- 4.6 The States are recommended to direct that the Adoption (Guernsey) Law, 1960, be amended to provide that a child may be adopted jointly by a couple who are:
- married (as currently); or
 - in a civil partnership; or
 - in another legally recognised relationship between two people; or
 - two people (whether of different sexes or the same sex) living as partners in an enduring family relationship;

with each adoptive carer having equal rights and parental responsibility. As currently, a single person would still be able to adopt.

- 4.7 This would not change the stringent requirements which currently apply for prospective adopters to undertake a preparation to adopt course, and to undergo a rigorous assessment process. A social worker is allocated to each prospective adopter to ensure that the needs of adopted children can be met, and that prospective adopters are fully prepared and able to meet those needs. Interviews are undertaken at home and sometimes in the adoption team’s offices and a home study report is completed. The Independently Chaired Adoption and Permanency Panel make recommendations to the Agency Decision Maker (the Chief Officer within the Health and Social Services Department) on the approval of prospective adopters and the matching of individual children with prospective adopters.

5. Review of the Adoption (Guernsey) Law, 1960

- 5.1 In order to address the deficiencies (see Appendix) with the current legislation and bring it up to date, it will be necessary to undertake a full review of adoption in Guernsey. The Health and Social Services Department has agreed to undertake this work in consultation with relevant stakeholders.

5.2 *Timeframe for review*

- 5.2.1 Work on the development of a new Adoption Law is likely to be resource intensive and require expert advice. Consideration will also need to be made throughout the review process of how the developments will fit with the Children (Guernsey and Alderney) Law, 2008, (hereafter the 'Children Law'). Consultation will also need to be undertaken on the review with people in Guernsey and Alderney, some businesses and the third sector, as well as other States Departments.
- 5.2.2 The Health and Social Services Department has advised that this work is of high priority, as it is important to overcome the deficiencies within the current legislation as soon as possible. It is understood that the Health and Social Services Department would hope to bring forward a States Report on wider reform of the Adoption Law for consideration within this term.

5.3 *Scope of the review*

- 5.3.1 Owing to the links with other legislation and policy requirements, further research into the practices of other jurisdictions, as well as stakeholder consultation, and research into the requirements of adoption legislation in Guernsey and Alderney, will need to take place to design a new fit for purpose strategy.
- 5.3.2 The key issues that the Department will address in its review of the Law are set out in the Appendix to this report.

6. Consultations

- 6.1 The States of Alderney, the Legal Aid Service and Liberate (a Guernsey charity representing the interests of the Lesbian, Gay, Bisexual, Transgender and Questioning community) have all been consulted on the contents of this Report.

7. Resource Implications

- 7.1 It is not anticipated that there will be any resource implications arising from this Report.

8. Consultations with the Law Officers

- 8.1 The Law Officers have been consulted in the preparation of this Report.

9. Principles of Good Governance

- 9.1 The Principles of Good Governance have been followed in the preparation of this Report.

10. Conclusion

- 10.1 There are a number of fundamental issues that need to be addressed through a review of current adoption legislation and services, in order to modernise the legislation and make it fit for the islands' children in the 21st Century. These issues are outlined in the Appendix to this Report, and are to be investigated by the Health and Social Services Department as a matter of priority.
- 10.2 However, the Policy Council is now seeking the States' agreement for a legislative change to enable unmarried and same sex couples to be formally considered as adoptive parents, as a first step in the review of the Law that will also ensure consistency with forthcoming amendments to legislation relating to maternity and adoption leave.

11. Recommendations

- 11.1 The Policy Council recommends the States to direct that the Adoption (Guernsey) Law, 1960, be amended, so that in addition to single people and married couples, it provides that a child may be adopted jointly by a couple who are:

- in a civil partnership; or
- in another legally recognised relationship between two people; or
- two people (whether of different sexes or the same sex) living as partners in an enduring family relationship

with each adoptive carer having equal rights and parental responsibility.

J P Le Tocq
Chief Minister

27th April 2015

A H Langlois
Deputy Chief Minister

G A St Pier
Y Burford
D B Jones

P L Gillson
K A Stewart
M G O'Hara

R W Sillars
P A Luxon
S J Ogier

Appendix - Deficiencies with the current Adoption (Guernsey) Law, 1960

The existing Adoption Law is more than fifty years old and is no longer compatible with modern day adoption practice or the evolution of the family unit over the past five decades. As a result, there are a number of deficiencies with the current system, which are outlined in this Appendix.

Age requirement

Within current legislation there is a minimum age requirement of 25 years for non-relative adoption, and 20 years for relatives of the child. While the minimum age remains at 25 years in Jersey, it is 21 years in England and Wales. None of these jurisdictions has an upper age limit, although potential adoptive carers must demonstrate that they would be likely to have the ability to raise a child to adulthood; and adoption agencies will not usually place a child with adopters where the age gap between the child and the adopters is more than 45 years unless the child has special needs.

The exception to the age limit is when a prospective adopter is the spouse of the birth parent. They must be 21 years of age to adopt their spouse's child, and the birth parent must have reached 18 years of age.

Gender restrictions

There is currently a restriction on a sole male applicant adopting a female child, except in 'special circumstances' that justify the making of an adoption order as an 'exceptional measure'. While this restriction also applies in Jersey under the Adoption (Jersey) Law, 1961, the UK does not impose any restrictions on the adoption of male or female children by applicants of any gender.

Domicile requirements

The Law currently limits applications to persons domiciled in the Island. The requirement of local domicile potentially excludes many suitable carers who reside in Guernsey but retain a domicile of origin in another jurisdiction, thereby reducing the pool of potential adoptive carers. . In England and Wales, the requirement is of domicile or habitual resident for a period of not less than one year in a part of the British Isles, which provides for a much wider pool of potential applicants.

Support services

It is generally acknowledged that the trauma children can suffer in very early childhood can impact on them throughout their lives, and can result in adopted children, as well as many other looked after children, having significant needs that are beyond what is expected for the wider population of children. Throughout the UK it is now common practice that post-adoption support is available for families to access; however, there is currently no such requirement within Guernsey legislation.

It is considered that this is a potential barrier to those considering adopting a child, who will understandably be apprehensive about the process, and anxious to make a success of the adoption for the sake of all parties involved. A good post-adoption support service would be advantageous for adoptive parents, adoptive children, and birth parents.

Placement Orders

Many children placed for adoption have been subject to previous court proceedings, typically an application for a Community Parenting Order (CPO). In Jersey, they have a 'freeing order' which removes parental responsibility in advance of the adoption proceedings. In England and Wales, the court can make a Placement Order at the same time as it makes a Care Order, which is broadly equivalent to the CPO. This is an order that effectively authorises a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority and deals with parental consent to adoption at an early stage, avoiding the need for that issue to be re-litigated within the subsequent adoption proceedings.

The current Guernsey legislation does not have provision for either Freeing Orders or Placement Orders, and the introduction of Placement Orders would speed up the adoption process.

International Conventions and Inter-Country Adoptions

In October 2005, the States of Deliberation resolved that the Policy Council should request Her Majesty's Government to seek the extension, in respect of Guernsey, of the Government's ratification of the provisions of a number of international conventions relating to children. This included the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption (1993). Subsequently, the Ministry of Justice has invited Guernsey to consider extension of the European Convention on the Adoption of Children (Revised). To date, the view has been taken that reform of the domestic law on adoption is required before seeking extension of these Conventions. Reform of the Adoption Law is key to extending these conventions and bringing Guernsey into line with its neighbouring jurisdictions.

There is limited legislation in place to recognise automatically adoptions made in certain other jurisdictions. However, at present, there is currently no overarching legal framework dealing with inter-country adoption to ensure that inter-country adoption takes place in the best interests of the child and puts in place a system of co-operation between member states.

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

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 27th April, 2015, of the Policy Council, they are of the opinion:-

1. To direct that the Adoption (Guernsey) Law, 1960, be amended, so that in addition to single people and married couples, it provides that a child may be adopted jointly by a couple who are:
 - a) in a civil partnership; or
 - b) in another legally recognised relationship between two people; or
 - c) two people (whether of different sexes or the same sex) living as partners in an enduring family relationshipwith each adoptive carer having equal rights and parental responsibility.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HOME DEPARTMENT**FUTURE OF LAW ENFORCEMENT: PROPOSAL TO RESCIND RESOLUTIONS
RELATING TO A LAW ENFORCEMENT COMMISSION AND TO ADOPT
ALTERNATIVE ARRANGEMENTS**

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

13th April 2015

Dear Sir

1. EXECUTIVE SUMMARY

- 1.1 In September 2008, the States of Deliberation resolved to create a Law Enforcement Commission ('the Commission') as a mechanism by which to ensure the accountability of local Law Enforcement agencies to both government and the public for delivering strategic objectives associated with the protection of Islanders and their interests.
- 1.2 The Department returned to the States in November 2010 with a further States' Report directing the preparation of legislation to establish the Commission on a statutory basis. It is relevant to note that whilst the Department's proposals obtained the support of the majority of the States of Deliberation, a number of reservations were expressed at the time in relation to what was seen as a potential abdication of responsibility by the Department through the creation of the Commission and concerns in relation to unnecessary layers of bureaucracy and cost. The resultant enabling legislation, the Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011 was approved by the States in February 2011, also after significant political debate, but has not been brought into force.
- 1.3 Since 2011, the Department has made significant changes to the structure and accountability of the Police and Guernsey Border Agency by establishing a single Head of Law Enforcement. This has enabled Law Enforcement practices to be evolved locally without the need for a Commission, ensuring that services are delivered as effectively and efficiently as possible, demonstrating both accountability and operational independence. Improvements to performance management, accountability and increased community liaison have also been introduced which has led the Department to reassess the merits of a Commission in achieving its initial aims.

- 1.4 The Department has concluded that the requirement for a Commission has been superseded by more recent developments in service delivery and accountability. The Department instead recommends that the existing arrangements and practices be formally enshrined in legislation, clarifying the lines of accountability, publication of its Delivery Plan and Annual Report and a formal mechanism for community engagement in order to demonstrate accountability and transparency with Law Enforcement.
- 1.5 Subject to the States' approval of this Report, the Department will report back to the Assembly with the detailed proposals, outlining the responsibilities and interrelationships to be incorporated in new legislation during the course of 2016.

PART I- REVIEWING THE STATES' DECISION OF 2008 TO INTRODUCE A LAW ENFORCEMENT COMMISSION

The Home Department has taken opportunity to reassess the decision to introduce a Law Enforcement Commission in light of:-

- **The appointment of a single Head of Law Enforcement, enabling greater partnership working between the Guernsey Police and Guernsey Border Agency;**
- **Consistent and coordinated strategic leadership and direction aligned with the Department and in turn the States of Deliberation;**
- **Greater accountability between the Head of Law Enforcement and the Department, ensuring that political direction is incorporated into Law Enforcement practices whilst not fettering operational independence;**
- **The strengthening of relationships between the community and Law Enforcement, such as initiatives with the Douzaines;**
- **Strengthening the existing independent oversight of Law Enforcement practice through independent panels such as the Independent Custody Visitors and the Police Complaints Commission;**
- **The need to responsibly account for the management and safeguarding of public funds.**

2. BACKGROUND

- 2.1 The 2004 Machinery of Government changes brought together, for the first time, the Guernsey Police and the then Customs and Immigration Service under a single political committee and single Chief Officer. This brought with it considerable opportunity for closer working practices and the Department commenced a comprehensive programme, "The Future of Law Enforcement", designed to modernise the working practices, facilitate joint working and ensuring accountability and transparency.

- 2.2 As part of this programme, in September 2008 (Billet d'Etat XII) the Department took a report to the States in which it concluded that, in order to assist Law Enforcement in addressing the challenges of the future, there was a need for a greater degree of demonstrable operational independence, ensuring that decisions could be made appropriately and expediently by specialists with the requisite knowledge and trained professional judgment. Acknowledging the enormous public trust in, and reliance upon, Law Enforcement, the Department recommended that any move to a greater degree of operational independence be balanced with appropriately strengthened mechanisms to ensure accountability. The Department's proposals regarding the future of Law Enforcement were therefore that:
- *“a Law Enforcement Commission be established which would be responsible to the Department [and take] strategic direction from the States through the [Home] Department. The Commission would also have independent responsibility for operational oversight of the Police and Customs services to ensure that both services operated together efficiently;*
 - *the Customs & Immigration Service should become a statutory cross border crime agency; and*
 - *both Police and Customs legislation should be replaced with modern laws”.*
- 2.3 In recommending the establishment of the Commission, the 2008 Report also acknowledged that Law Enforcement, like the judiciary, is expected to remain politically neutral and uphold the law without bias or political interference. One of the principles of the Commission was to promote public confidence by demonstrating appropriate distance between Law Enforcement and the political infrastructure.
- 2.4 Following approval of the 2008 Report, the Department has made progress in the transformation of the Customs & Excise and Immigration & Nationality Services into the Guernsey Border Agency, and continues to progress proposals for the modernisation of both Police and Customs legislation.
- 2.5 At the same time, the Department has continued its research in respect of how a Commission may be designed best to meet the needs of the local community. In November 2010 it returned to the States of Deliberation with a report entitled “The Future of Law Enforcement: Establishment of a Law Enforcement Commission” (Billet d'État XXIII 2010) (‘the 2010 Report’) in which it restated its strategic case for the establishment of a Commission and provided further detail in respect of how such a Commission would operate. In doing so, the 2010 Report sought authority from the States of Deliberation for the drafting of primary legislation to establish a Commission and the Department's proposals were approved at that time by a majority of States' Members.
- 2.6 Subsequent to the 2010 Report, the Department accordingly progressed the drafting of “The Law Enforcement Commission (Bailiwick of Guernsey) Law,

2011” (‘the Law’) in conjunction with the Law Officers of the Crown. This Law was approved by the Privy Council on 30th May 2012 but has yet to be brought into force.

3. CURRENT CONSIDERATIONS

3.1 The requirement for suitably robust mechanisms to hold Law Enforcement to account remains a primary consideration for the Department. Research has indicated that whilst there is not a single acceptable system, accountability is generally characterised by multiple levels of oversight that commonly come from three sources:

- **Government/state control:** This refers to the legislative, judicial and executive (including budgetary) functions of government;
- **Internal or Departmental control:** This refers to the management and disciplinary systems that operate within Law Enforcement organisations;
- **Social control:** This refers to society’s contribution to ongoing oversight of Law Enforcement activity, and includes the role of the media and also individuals who have recourse to a complaints system. There are additional mechanisms that can be added under “social control” in the form of civilian oversight panels.

3.2 Different jurisdictions must necessarily generate their own solutions that can be sustained within their unique socio-political and economic climates. Since 2007 the Home Department has considered with interest the solutions generated by other jurisdictions and, in the interests of completeness of this report, includes a summary overview of some of these at Appendix I.

3.3 Current mechanisms for ensuring accountability adopted locally at this time include:-

3.4 **Government control: Business Planning & Monitoring (including Risk Register), Her Majesty’s Inspectorate of Constabulary**

The States of Deliberation formulates strategic direction for Guernsey by way of consensus agreement of aims and publishes this vision within the States’ Strategic Plan. Since 2011, the Home Department has published a delivery plan that is reviewed and refreshed appropriately on an annual basis. This plan provides a framework within which the Department’s priorities are identified in the context of wider government strategic aims.

The Home Department itself is comprised of seven operational service areas¹, each of which is led by a Head of Operational Service. The Chief Officer of the Home Department has responsibility for ensuring delivery of the Department’s political direction across the operational services. In support of the Department’s Delivery Plan, the Department has refined its business planning and monitoring

¹ Comprising: Guernsey Prison, Guernsey Probation Service, Safeguarder Services, Guernsey Fire & Rescue Service, Guernsey Police, Guernsey Border Agency, and Central Services.

arrangements by means of quarterly Business Monitoring meetings at which all Heads of Operational Services are required to apprise Members of service-developments, analyse risks and provide an update on performance against business objectives. These business monitoring meetings are supplementary to the standard fortnightly reporting to political members that is otherwise required of Heads of Operational Services as part of ordinary Department meetings.

The Department has also had a Risk Register in place for some time and is confident of its value in assessing organisational risk against set objectives and including information such as risk probability, impact, and counter-measures.

Through these mechanisms, the Department is confident that it is taking appropriate steps to ensure that sustainable structures exist to transform strategic direction into front-line delivery of services. It is considered that these mechanisms can only grow in sophistication as time goes on.

Her Majesty's Inspectorate of Constabulary (HMIC) independently inspects, monitors and advises the 43 territorial Police Forces across England and Wales to promote and advance improvements in the efficiency and effectiveness of policing. HMIC may, by invitation, undertake inspections locally of the Guernsey Police Force and has done so routinely in the past. The Department recognises the distinct benefits of such independent professional reviews and will seek to maintain an inspection process moving forward.

3.5 Internal/Departmental Control: Performance Management Framework

The Department is also developing a robust performance management framework by which to track the performance of all of its Operational Services against their service-specific business objectives and other 'core business objectives' that the Department has set and which are applicable to each Operational Service.

The Department considers that it should be judged on its ability to achieve its stated outcomes for the local community. The outcomes against performance indicators will also be benchmarked with other similar jurisdictions where appropriate. The Department will publish these figures annually as part of its Delivery Plan.

3.6 Social control: Police Complaints Commission, Independent Custody Visitor Scheme, active liaison with the Douzaines

In 2005, the States of Deliberation agreed that legislation be introduced to establish a Police Complaints Commission (Billet d'État I, 2005) which would provide independent oversight into the investigation of complaints made against the Police with the aim of increasing public confidence and trust in the Police and complaints system. The Department, in conjunction with the Law Officers of the Crown, has since progressed this complex body of work and the Police Complaints (Guernsey) Law, 2008 accordingly came into effect on 1st July 2011.

Whilst the Police Complaints Commission was initiated outside of the Future of Law Enforcement programme, the Department acknowledges its merit in ensuring the accountability of Law Enforcement by enabling independent scrutiny of the internal complaint procedures. It was never the intention that the Law Enforcement Commission would assume responsibility for the supervision of complaints and work is ongoing to ensure greater parity between the complaints processes of the two Law Enforcement agencies.

Independent Custody Visitors ('ICVs') are volunteers appointed from the local community by the Department to make unannounced visits to the Police and Guernsey Border Agency custody suites. Following these visits, they write a brief report about their visit, including the conditions of detention and operation of the custody suite.

The reports generated by the ICVs provide an insight into the running of the custody area and provide a vital source of information on the environmental and welfare conditions in which detainees are held. The Scheme functions independently and ICVs schedule their own unannounced visits to the custody suites. Their reports are submitted to the Home Department, Central Services and the Senior Management Teams of the operational services.

Law Enforcement has additionally sought to engage with the parishes in order to respond to the need and priorities of particular communities. This open dialogue between Law Enforcement and the community seeks to assist in the development and targeting of service provision.

- 3.7 The Home Department's primary concern remains that of ensuring that Law Enforcement agencies are able to be effective whilst ensuring that they remain accountable to government for delivery of the States of Deliberation's strategic direction and accountable to the public for the standards of the services that they provide.
- 3.8 One development of particular note is the revision of Law Enforcement leadership structures to unite two positions into one single Head of Law Enforcement role. Whilst it was always a Department objective to maximise joint-working and the avoidance of duplication across the two Law Enforcement organisations, the delivery of sustainable savings through this transformational change motivated the Department to consider the benefits of rationalisation across the two Law Enforcement organisations, including the rationalisation of lines of accountability. The position of Head of Law Enforcement took effect from 1st January 2013. It is arguable that this development in itself makes a reasonable case for ensuring mechanisms to provide greater accountability.
- 3.9 Whilst the Department's decision not to pursue the introduction of a Commission has not been based on the financial argument, the Department notes that the establishment of a full Commission model as envisaged in 2008 would, based on current estimates, cost approximately £170,000 per annum. In light of

the current financial position of the States consideration needs to be paid as to whether this is the most appropriate use of States' funding.

- 3.10 **In short, the Department is in a very different place to that in which it made its original recommendations to establish a Commission and has therefore sought to review the validity of its commitment in a changed climate and give consideration as to how to achieve the same outcomes in an alternative and proportionate way. With this in mind, the Department is not able to support the introduction of a Commission at this time.**

PART II- PROPOSALS FOR THE FUTURE

The Home Department recommends that the current existing good practice in terms of accountability should be enshrined within new law enforcement legislation.

- 4.1 As outlined in Part I of this Report, there is already a set of structures that contribute to the Department's aim of ensuring accountability within Law Enforcement. In a comprehensive options appraisal, the details of which are appended to the Report, the Department considered and rejected a number of options in relation to promoting greater accountability within Law Enforcement including:-
- Maintaining the status quo and not introducing a Commission or any other mechanism of formal accountability;
 - Introduction of a full Law Enforcement Commission;
 - Introduction of a single-member Law Enforcement Commission;
 - The use of the non-voting States' Member for Law Enforcement purposes
 - Establishment of a Sub-Committee with delegated responsibility for Law Enforcement;
 - Establishment of a States' Committee focusing on Law Enforcement.
- 4.2 The Department is, as a result of the work undertaken over the last few years, recommending that the relationship between Law Enforcement and the Department be formalised within new Law Enforcement legislation. The Department believes that this will serve the dual purpose of:-
- (i) appropriately separating and defining operational and political oversight so as to promote public confidence that both Law Enforcement and the political infrastructure have appropriate distance from one another and that Law Enforcement is politically neutral; and
 - (ii) assuring the public that Law Enforcement is appropriately overseen.

- 4.3 The mandate, duties and functions of the Police are set out in existing legislation from 1920 (Loi ayant rapport à la police salariée pour l'île entière). This Law presently allows for the provision of a salaried Police Force, at a cost to the States, to deal with crime, the maintenance of peace and good order and the delivery of other functions. The mandate, powers and functions of the Customs and Immigration Service are set out in more recent legislation, the Customs & Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended, Drug Trafficking and Financial Crime legislation (1999 – 2008), and various extended Immigration Acts (1971 – 1999). Some of these provide similar powers to those of the Police in relation to Law Enforcement activities.
- 4.4 It was acknowledged in the 2008 Report that these pieces of legislation will need to be modernised and that detailed proposals for new police and customs legislation would be the subject of a further report from the Department (2008 Report, para 5.5). The Department accordingly has an existing commitment, by Resolution of the States of Deliberation (Billet d'État XII 2008), to submit a report to the States.
- 4.5 It is considered that the existing commitment to modify the aforementioned legislation could afford opportunity to enshrine in law the relationship of Law Enforcement agencies with both the Department and the States of Deliberation. Such a step would ensure that there is clear and demonstrable evidence of the separation of powers and a statutory chain of accountability.
- 4.6 It is proposed that provisions within the new legislation would be similar to those included in the new States of Jersey Police Force Law 2012. Whilst the primary purpose of this Law is to establish the Jersey Police Authority as an independent body tasked with scrutiny of Law Enforcement, the Law also clearly sets out the relationship between the Police and the body politic and the roles and responsibilities of both. It is these parts of the Law that would provide helpful guidance in the drafting of local legislation.
- 4.7 The development of new Law Enforcement legislation is a significant work stream and subject to the States' approval of this Report, the Department aims to report back to the Assembly with detailed proposals, outlining the responsibilities and interrelationships, during the course of 2016. It is envisaged that this Report will recommend new primary legislation setting out the functions and powers of the Department, its Chief Officer and the Head of Law Enforcement, including:-
- The appointment of the Head of Law Enforcement, Police and GBA Officers and personnel;
 - The governance and administration of Law Enforcement through the Chief Officer;
 - The specific functions of the Head of Law Enforcement in respect of the command, direction and control of the Law Enforcement;
 - The duties and powers of Law Enforcement legislation.

Appendix 3 of this Report contains extracts from both Jersey and United Kingdom legislation which illustrate areas that the Department will consider before returning to the States.

- 4.8 The Department also considers it appropriate to incorporate on a statutory basis a requirement for the Head of Law Enforcement to publish a Delivery Plan and Annual Report, thereby formalising existing good practice, and to reconstitute the former Police Consultative Group as a Law Enforcement Consultative Forum. The Forum will provide clear opportunity for public engagement within Law Enforcement, with the expectation that the Forum would be actively consulted in respect of the preparation of the Head of Law Enforcement's Delivery Plan.
- 4.9 The Department considers that a Law Enforcement Consultative Forum should be enshrined in legislation, building upon the existing positive working relationships between Law Enforcement and the Douzaines. This will provide an efficient and effective avenue for public consultation and engagement. It considers that in order to ensure representation from across the Island, Douzaine representatives should sit on the Group.
- 4.10 Whilst not adopting the specific governance structure used in the UK, sections of the Police Reform and Social Responsibility Act, 2011 provide a useful starting point on how to distinguish between, and articulate, the relevant functions of responsibility within Law Enforcement in order to ensure demonstrable accountability. Within the UK, for example, the Secretary of State must issue, after relevant consultation, a Strategic Policing Requirement which sets out the Home Secretary's views of the national threats and the appropriate national policing capabilities required to counter those threats. Police and Crime Commissioners are required to have regard to this document when preparing their police and crime plans for their area and then Chief Constables must have regard to both the police and crime plan and the Strategic Policing Requirement when exercising their functions.
- 4.11 The above process demonstrates one way in which strategic direction can be cascaded and disseminated without compromising the operational independence of the Police. Consideration would need to be given into how best to incorporate proposals within the local framework. However, practically an arrangement whereby the Department establishes strategic direction for Law Enforcement with management structures within the Department used to hold the Head of Law Enforcement to account would appear to be a proportionate mechanism.
- 4.12 The Department believes that enshrining good practice in legislation is the most pragmatic and appropriate option available at this time, enabling the Department to build upon the good practice already in place whilst ensuring that the Department is able to demonstrate the strong governance that exists locally. Through these steps, the Department believes that the aims and objectives of the 2008 and 2010 Reports of ensuring clear accountability within Law Enforcement can be achieved in a cost effective and efficient manner.

- 4.13 Subject to States' approval of this Report, the Department envisages a secondary States' Report containing the required detail and drafting instructions to be submitted to the States during 2016.

5. CONSULTATION

- 5.1 In preparing this Report, the Department has consulted with the Head of Law Enforcement, the Law Officers' Chambers and the parochial officials in relation to the proposals.

6. RESOURCES

- 6.1 As highlighted within this Report, to proceed with the 2008 Resolutions and establish a Commission, as envisaged at that time, would cost in the region of £170,000 per annum. In the absence of additional funding in order to meet this specific need, the Department would have to find additional funds through the reprioritisation of its existing cash limits. At this time, the Department is not confident that it would be in a position, considering the process of prioritisation and evaluation already undertaken under the Financial Transformation Programme, to identify sufficient savings without adversely impacting on core service delivery.
- 6.2 Whilst the proposals within this report seek mainly to formalise on a statutory basis current good working practices, there may be additional costs incurred by the Department in relation to further developing and maintaining internal governance procedures and supporting the reconstituted Law Enforcement Consultative Forum. These costs however would be significantly less than those incurred should the full Commission model be adopted. At this stage, should additional resources be required, it is likely to equate to a part time administrative staff member at approximately £30,000 to facilitate the practical operation of the proposals. It is hoped that this could be met from within the Department's existing resources; however this will be kept under review as the more practical details of the proposals are developed during 2016. If through this work it becomes apparent that it will not be possible for the Department to support the arrangements within its existing cash limits, the Department will report back to the States accordingly in the secondary States Report, prior to implementation.

7. CONCLUSION

- 7.1 The need for ensuring accountability within Law Enforcement remains just as important as when the Department previously reported to the States in 2008 and 2010. However, the backdrop against which the proposals are being made has changed significantly. In light of these evolving circumstances, the Department no longer believes that the creation of a Law Enforcement Commission is the most appropriate mechanism by which to demonstrate this accountability.
- 7.2 In considering the best approach for ensuring accountability locally the Department, whilst considering approaches in other jurisdictions, has been mindful of the economies of scale locally and the need to ensure that any

solution is pragmatic, appropriate and proportionate for the local context. Following a comprehensive options-appraisal of the various mechanisms which could be adopted locally, the Department recommends that the original aims and objectives of the 2008 Report are best discharged by enshrining within legislation the duties and functions of, and relationships between, the States of Guernsey, its officers, the Head of Law Enforcement and Law Enforcement officers. This statutory clarification of the separation of powers and the lines of accountability will formalise current working practices and provide demonstrable evidence of the good governance which already exists locally in a cost effective and efficient manner.

- 7.3 The Department will report back to the States during the course of 2016 with detailed proposals, outlining the respective responsibilities of the States, the Home Department, the Head of Law Enforcement and Law Enforcement Officers, including their interrelationships and incorporating this into new Law Enforcement legislation. The Report will also include proposals in respect of modernising legislation in respect of Law Enforcement more generally to ensure that it remains fit for purpose in the twenty first century.

8. RECOMMENDATIONS

The Home Department recommends the States of Deliberation to agree to:-

- 1) Rescind Resolution 1, Article XII, Billet d'Etat No XII of 2008, namely; *"To approve the creation of a statutory Law Enforcement Commission in accordance with section 4 of that Report."*
- 2) Note that "The Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011" approved by the States on 23rd February 2011, will not be brought into force.
- 3) Agree, in principle, that new law enforcement legislation should be taken forward as proposed in paragraph 4 of this Report;
- 4) Note the Department's intention to return to the States of Deliberation with a further States Report with detailed proposals to give effect to the above recommendations by December 2016.

Yours faithfully

P L Gillson
Minister

F W Quin
Deputy Minister

M J Fallaize
M M Lowe
A M Wilkie

Mr A L Ozanne
Non-States Member

Appendix 1 Summary overview of accountability mechanisms in other jurisdictions

A.1 England & Wales

- A.1.1 Across England and Wales, the role of Police and Crime Commissioner was created with effect from November 2012 to replace Police Authorities that had previously operated since 1964. Under the current system, individual Commissioners are elected by the public to hold the Chief Constable to account for the delivery of the police and crime plan. The plan itself is produced by the Commissioner and must include his or her objectives for policing, what resources will be provided to the Chief Constable and how performance will be measured. Both the Commissioner and the Chief Constable must have regard to the plan in the exercise of their duties. The Commissioner is otherwise required to produce an annual report to the public on progress in policing.
- A.1.2 The Commissioner holds the 'police fund' from which all policing is financed. Whilst the majority of funding comes from the Home Office as an annual grant, Commissioners may also raise additional funds through Council Tax. Further developments of the system will make it the Commissioner's responsibility to set the budget for the force area.
- A.1.3 The Police Reform and Social Responsibility Act 2011 established Police & Crime Panels within each force area. The role of the panel is to scrutinise Commissioners' decision-making and ensure that this information is available to the public. The Panel review the draft police and crime plan and draft annual report before publication, and the Commissioner must give the Panel's comments due consideration.
- A.1.4 Whilst it is a requirement of the system that each Commissioner swears an oath of impartiality, or its variant, before taking office, this system has come under criticism for failing to fully separate political and operational decision-making and also for generating the risk that police activity will be too much guided by Commissioners.

A.2 Jersey

- A.2.1 In November 2012 the States of Jersey Home Affairs Department publicly announced its plans to introduce a Jersey Police Authority ('the JPA') with legislation to support its operation from 2013 onwards. The role of the JPA is to act independently of the political body and ensure that police officers are fair, efficient and effective. Ultimately the JPA will separate politics from policing and ensure that the force is not too dependent on the Home Affairs Minister.

A.3 Scotland

- A.3.1 The Scottish Police Authority ('the SPA') was established under the Police and Fire Reform (Scotland) Act 2012 to maintain policing, promote policing principles and continuous improvement of policing, and to hold the Chief Constable to account. The SPA Board was appointed in October 2012 and has

delegated responsibility to the Scottish Police Authority Chief Executive to provide support and advice to the board on strategic decisions regarding finance, human resource and any other area required.

A.4 Northern Ireland

- A.4.1 The Police (Northern Ireland) Act 2000 set up the Police Board, an independent public body with a comprehensive charter to perform a very active management and oversight role. The Board monitors police performance not only for ensuring the efficiency and effectiveness of the organisation but also to see that the police do not violate the human rights of citizens.

A.5 Isle of Man

- A.5.1 The Manx Department for Home Affairs has established the Police Advisory Group for the purposes of advising the Department on maintaining and improving the efficiency and effectiveness of the police force. The group is not an executive body but it acts in an advisory capacity and it is tasked to undertake such functions by the Minister for the Department of Home Affairs.

Every year the Department is required to lay before Tynwald a Policing Plan which contains the policies, objectives and priorities of the police service and the means by which it is intended that they be achieved. This is done after consultation with the Chief Constable, Police Consultative Forum and the Police Advisory Group who give direction and advice to the Department.

The Police Advisory Group is responsible for examining policing policies and initiatives, evaluating the progress of the police in complying with the Policing Plan, evaluating the Chief Constable's Annual Report, reporting on crime and detection statistics and for providing advice and recommendations in relation to policing and crime prevention.

Where the group requires information from Island residents they would make a request to the Police Consultative Forum to consult accordingly.

Members of the Police Advisory Group are appointed by the Council of Ministers after consultation with the Department and would normally consist of up to 12 representatives being:

- 1 member of the Department of Home Affairs
- Members of Tynwald (representation from around the Isle of Man)
- representatives from the community to represent appropriate organisations

Membership takes into account the areas which the political Members represent to ensure Tynwald Members nominated allow for representation from the whole Island. In addition the Department recommends non Tynwald members from crime reducing groups, such as Crimestoppers and Victim Support. The group is chaired by a Member of the Department and meets normally every 2 months to consider the findings, reports and review objectives.

Appendix 2 Options Appraisal

A Do not introduce a Commission or any other mechanism of formal accountability

- A.1 The Home Department's Future of Law Enforcement programme is designed to best equip local Law Enforcement agencies – Guernsey Police and the Guernsey Border Agency – to address the challenges of the future by creating a greater degree of operational independence so that decisions relating to the security and safety of Islanders and the Bailiwick's reputational interests can be made appropriately and expediently by specialists with the requisite knowledge and trained professional judgement. The Department recognises that Law Enforcement is a profession in which the public places enormous trust, and that any amendment to the governance structure must incorporate mechanisms to ensure appropriate accountability of Law Enforcement, including an assurance that, first and foremost, it protects and serves Islanders' interests and uses government resources to do so in line with the strategic direction set by the States of Deliberation.
- A.2 Additionally, and as the Bailiwick continues to take a role in the international arena it is the Department's view that it remains important to "remove any possible external perception that there is even potential for risk of political interference in the operational aspects of Law Enforcement" (2010 Report, pg. 1706). This is particularly pertinent at a local level where the system of government is comprised of 45 People's Deputies and two Alderney Representatives who each represent their own mandate as any perception that Law Enforcement can be instructed and directed by an *individual* for any gain other than the security of the safety of the public that Law Enforcement agencies serve fundamentally undermines the entire system of government. Whilst the Department's existing mechanisms go some way to satisfying the assurance that Law Enforcement is accountable to government as a whole for its activities—and the public in the matter of complaints-handling through a Police Complaints Commission—the Department considers that an additional measure that enhances the accountability of Law Enforcement to the public remains valid. The Department does not, therefore, consider "do nothing" to be advisable.

B Introduction of a full Law Enforcement Commission

- B.1 As per the Department's original recommendation, a full Commission² would function and be supported in the same way as other Department-supported Independent Panels, such as the Police Complaints Commission or Parole Review Committee. However, the Department believes that the work associated with supporting a Law Enforcement Commission would be significantly greater than these existing Panels and the costs of funding the Commission itself, along with ensuring adequate secretarial and professional support would be in the region of £170,000 per annum. The Department is conscious that in order to

² Under the Law, the Commission would consist of either three or four members who are paid attendance fees in accordance with States of Guernsey guidelines.

discharge its functions appropriately, the Commission would require staffing support of appropriate seniority and experience in order to able to provide the requisite expertise. In addition, part time administrative support would also be required to assist in the Commission's clerical needs. In order to ensure appropriate separation and transparency between the Commission and the Department, it would not be possible or appropriate for existing Home Department staff to undertake these functions or for existing Home Department locations to be used to house the Commission. Accordingly the costs of administering a Commission locally appear to be disproportionate.

Cost of a Law Enforcement Commission	£
Senior Officer staff post	71615
Part time administrative staffing	19997
Professional and legal support	20000
Room hire	2000
Attendance allowance (12 meetings per year, 4 members payable at £165 per half day)	7920
Chairman/ members additional attendance	9900
Training/ travel budget	5000
Administrative sundries/ office costs etc	37500
TOTAL	173,932

- B.2 It was intended that the Commission would report annually to the Department's political members on Law Enforcement's efforts to meet the strategic direction set by the States of Deliberation. On an ongoing basis, the Commission would otherwise have privileged insight into how Law Enforcement was, at an operational level, directing the resources made available to it, with the intention that the Commission could offer entirely objective reports to the Department, and by extension the States of Deliberation, on Law Enforcement activity. Such independent and objective reports could then be used by the Department to justify, or not justify as the case may be, any future cases which, for example, requested an increase in budget allocation. Since the 2008 Report, the Department has introduced business monitoring meetings and monthly performance reviews (as detailed in 3.4 and 3.5) through which Head of Law Enforcement provides the Department with detailed information. The Department believes that the establishment of a Commission would do little to enhance this current mechanism.

- B.3 The requisite legislation is in place and could be brought into force by way of enactment of a Commencement Ordinance. Upon enactment of such an Ordinance, the Commission would be established and, subject to identification and appointment of individual members (there must be at least 3 under the current provisions of the Law), could commence its work immediately. Whilst recent recruitment campaigns to attract individuals to independent positions falling under the Department's mandate has been positive, the Department is mindful that in the past recruitment has proved challenging.
- B.4 The Department acknowledges that the ongoing anticipated costs associated with commencing the Law and establishing the Commission at a practical level are arguably disproportionately high. On that basis the Department is of the view that it would be more appropriate to consider alternative mechanisms.

C Introduction of a single-member Law Enforcement Commission

- C.1 As opposed to the introduction of a full Panel Commission, the introduction of a single-member Commission could provide opportunity to uphold the Department's original proposals without the creation of a full Commission. In many ways, this approach would mirror the English and Welsh Police and Crime Commissioner model adopted in 2012 with the exception that the Commissioner would be appointed by the States, rather than through public ballot.
- C.2 Following consultation with the Law Officers of the Crown, the Department acknowledges that such an approach would necessitate new primary legislation, which would, correctly, need to be made part of the Prioritisation of Legislation programme. The Department itself has a number of significant pieces of legislation that it is otherwise progressing and is aware of other Departments' shared priorities with the limited drafting resources based at the Law Officers' Chambers. The Department therefore considers that the length of time that this course of action would take to implement is detrimental to the spirit of what it is trying to achieve.
- C.3 On a practical level, there are concerns that a single-member Commission would lead to potential resilience problems and that such a model may attract criticism for concentrating too much responsibility on a single individual. Additionally, and considering the far greater level of personal responsibility that a single Commissioner would have, it may be necessary to pay a rate higher than the nominal attendance allowance paid to Non-States Members in order to attract an individual with appropriate experience. It may be interesting to note that Police and Crime Commissioners in the UK are paid between £65,000 and £100,000 dependent upon the policing area. The staffing costs of administering the Commission would remain high.
- C.4 Whilst Police and Crime Commissioners within the UK are relatively new, there has been criticism of the system including:-
- Low voter participation in initial PCC elections, potentially demonstrating public disengagement in respect of this particular model. This was further

demonstrated by a 2013 survey by the Electoral Reform Society which indicated that only 11% of respondents could name their PCC;

- Limited diversity in respect of the elected PCC's have identified a structural limitations of a single individual model of accountability in representing the breadth of their local community;
- Acknowledgement that whilst Commissioners and Police forces now have greater flexibility to set and respond to local objective, this brings risks as well as opportunities;
- A lack of check and balances on individual Commissioners as Police and Crime Panels have limited powers to act on the information that they receive.

C.5 Whilst the Department recognises that there would be opportunity to learn from the English and Welsh experience, the Department does not consider a single-member Law Enforcement Commission model to be appropriate as it would concentrate too great a level of responsibility on a single individual. For this reason, the Department does not consider this to be a suitable alternative.

D Non-voting States Member

D.1 Under Section 4 of the Rules relating to the Constitution and Operation of States' Departments and Committees *"any Department may nominate up to two non-voting members, who shall not be sitting Members of the States, and whose appointments shall expire at the same time as the terms of office of the four sitting Members of the States. No other nomination may be made. Such Members shall have the same rights and duties as ordinary Members (other than the right to vote)."*

D.2 Many Departments choose to nominate non-voting members for the value that it provides political decision-making in terms of offering an apolitical, or community-based, perspective and, in some cases, industry-awareness and expertise. The Department itself is, at present, supported by a single non-voting member on all department business. The Department has considered the utilisation of its vacancy for a second non-voting member for Law Enforcement purposes to be a viable and minimal cost option.

D.3 The additional non-voting member, through their special responsibility for Law Enforcement, would address Department meeting items relating to Law Enforcement matters and ensure, as far as possible, that engagement between the political members and the Head of Law Enforcement remains uncompromised. The member would have mandated authority to liaise directly with Law Enforcement organisations and to request information in order to satisfy any enquiry he or she wishes to make with regards to how Law Enforcement is discharging its duties and making decisions in line with the delivery of strategic political objectives. The member would be required to submit reports to the Department and the public on an annual basis. For clarity, the non-voting member would not have the power of involvement in any investigations that are conducted by Law Enforcement into criminal activity as these are operationally-privileged matters for the Head of Law Enforcement who has legal independence in this regard.

- D.4 The Department recognises that under the Rules a non-voting member has, with the exception of voting, the same rights and duties as ordinary Members and therefore the Rules, as currently drafted, would not readily enable a non-voting member to be appointed specifically for one function. The Department believes that, whilst far from desirable, it may be possible to work around this through the establishment of appropriate protocols and guidance so as to preserve the integrity of this vitally important and sensitive area; however the Department is very mindful that this would potentially go against the spirit in which States' members generally appoint non-voting members.
- D.5 Additionally, the Department, whilst mindful of the States' Review Committee's early indication in their "Organisation of States' Affairs First Report" (Billet d'État XIV 2014) that the Committee sees "*no reason to propose changing the present arrangements*" in respect of non-voting members, is conscious that should either the Committee, within its second States' Report, or a subsequent amendment propose changes to the current arrangements for non-voting members, this particular option for Law Enforcement may not be available.
- D.6 Whilst the Department considers that it may be possible through the establishment of appropriate protocols to use a non-voting member to meet some of the objectives of the 2008 Report, the Department believes that, at a practical level, questions remain over whether the use of a non-voting member in this way is in keeping with spirit of the Rules relating to the Constitution and Operation of States' Departments and Committees. The Department is also concerned that by adopting such a model, future Departments would be effectively bound to have at least one non-voting member at all times. As such, the Department does not recommend that this option be progressed at this time.

E Establishment of a Sub-Committee with Delegated Responsibility

- E.1 Under Section 16 of Rules relating to the Constitution and Operation of States' Departments and Committees, any Department may, by resolution, "*constitute such sub-Committees as it deems appropriate, and for such purposes as shall be specified in the said resolution, provided that the [...] Department [...] remains responsible for any act done.*"
- E.2 Under this mechanism, the Department could establish a Sub-Committee with specific responsibility for providing oversight of Law Enforcement. In accordance with the Rules, the membership of the Sub-Committee would be determined by Resolution of the Department, and could consist of a combination of Department Members and non-Members in an advisory capacity.
- E.3 Whilst the Department recognises the benefits of sub-committees in order to progress certain work streams or to liaise with specific stakeholders, the Department is not convinced that such a model is entirely appropriate as a mechanism to ensure accountability within Law Enforcement. Whilst as a formulated subgroup it would have delegated responsibility in respect of Law Enforcement, by virtue of its status as a subgroup, it may be perceived as simply adding an additional layer of bureaucracy to the existing structure without first

clarifying the political and operational relationships. As such the Department does not recommend that this option be progressed at this time.

F Establishment of a States' Committee focusing on Law Enforcement

- F.1 In order to address some of the concerns expressed above in relation to the limitations of a subgroup, the States could resolve to establish a States' Committee which could operate in a similar way to the intended Commission, holding Law Enforcement to account in accordance with the Department's strategic objectives and priorities. This would allow demonstrable separation between the Department setting the policy and the Committee holding Law Enforcement to account against this policy. The Committee could consist of a mixture of States' Members and members of the public.
- F.2 Whilst the Department believes that this model is an improvement on a subgroup, it remains concerned that should responsibility for holding Law Enforcement to account continue to rest with politicians not operating within a clearly defined legislative framework this by itself this would not address the more underlying uncertainty in respect of the political and operational separation.
- F.3 The Department is additionally concerned not only of the potentially increased bureaucracy but, on a practical level, of the potential conflict and difficulties should the Head of Law Enforcement be required to report to two distinct political groups, each with their own priorities and commitments. As such the Department does not recommend that this option be progressed at this time.

Appendix 3- Legislative Provisions from other jurisdictions

In providing the legislative excerpts below, the Department is seeking to provide an indication of the type of areas which it will review and consider in preparing a secondary States Report proposing new Law Enforcement legislation. It should be made clear that the Department is in no way seeking to follow the Jersey model of a Police Authority for the reasons set out in the body of this Report, rather its inclusion is to indicate the key principles which merit consideration in respect of Law Enforcement governance and accountability. Similarly, the Department recognises that the Jersey legislation is reflective of their Ministerial style of government and would not be transferable to Guernsey in this manner.

States of Jersey Police Force Law 2012- Excerpts

3 Functions of Minister

- (1) *The Minister has overall and ultimate responsibility for the functioning of the States Police Force.*
- (2) *.....*
- (3) *The Minister, after consulting the Police Authority and the Chief Officer –*
 - (a) *must set policies in relation to the key aims and objectives of the States Police Force;*
 - (b) *may set management policies of the States Police Force in areas which may impact on the Force's reputation or image or on the reputation of Jersey and its people.*
- (4) *The Minister must, after consulting the Chief Officer, determine –*
 - (a) *the ranks in the States Police Force; and*
 - (b) *the number of police officers that may be appointed to each rank.*
- (5) *Articles 18(6), 19(3), 20(3) and 26(5) set out the other duties of the Minister in this Law.*

Terms and conditions of appointment of police officers

8 Chief Officer and Deputy Chief Officer

- (1) *The States Police Force shall have a Chief Officer and a Deputy Chief Officer.*
- (2) *The Deputy Chief Officer must carry out the functions of the office of Chief Officer if –*
 - (a) *the office of Chief Officer is vacant; or*
 - (b) *the Chief Officer is unable to do so.*

- (3) *The Minister may, after consultation with the Chief Officer where possible, appoint a person to carry out the functions of the office of Deputy Chief Officer whilst –*
 - (a) *the office is vacant; or*
 - (b) *the holder of the office is unable to perform the functions of the office.*
- (4) *References in this Law to the “Chief Officer” or to the “Deputy Chief Officer” shall be to the person who is, for the time being, carrying out the functions of Chief Officer or the Deputy Chief Officer, as the case may be, under this Article.*

9 Appointment of Chief Officer and Deputy Chief Officer

- (1) *The States may make Regulations prescribing the manner in which persons may be appointed to the office of –*
 - (a) *the Chief Officer; and*
 - (b) *the Deputy Chief Officer.*
- (2) *The Regulations may, in particular, prescribe –*
 - (a) *who may make the appointments;*
 - (b) *who may determine the periods of the appointments and the way in which they may be extended;*
 - (c) *who may determine the terms and conditions of the appointments;*
 - (d) *the circumstances in which and the manner in which a person may be suspended from office and by whom;*
 - (e) *the circumstances in which and the manner in which a person may be dismissed from office and by whom;*
 - (f) *disciplinary arrangements generally and matters related to the handling of complaints.*
- (3) *Regulations made under this Article may impose functions and confer powers on –*
 - (a) *the Royal Court;*
 - (b) *the Minister;*
 - (c) *the States Assembly;*
 - (d) *the States Employment Board;*
 - (e) *the Appointments Commission;*
 - (f) *the Police Authority;*
 - (g) *the Police Complaints Authority established under Article 2 of the Police (Complaints and Discipline) (Jersey) Law 1999^[5]; and*
 - (h) *any other body constituted for the purposes of conducting or reviewing disciplinary proceedings or any other individual whose functions include conducting or reviewing such proceedings.*

- (4) *Regulations made under this Article may –*
 - (a) *include provision for the application of any provision made by or under the Police (Complaints and Discipline) (Jersey) Law 1999 with such modifications as may be considered necessary or expedient; and*
 - (b) *provide for the services of any other police force in the British Islands, and of any of its officers, to be sought and used for the purpose of investigating complaints.*
- (5) *Regulations under paragraph (3)(c) may make provision for the States Assembly to sit in camera.*

10 Appointments of other police officers

- (1) *This Article applies to police officers other than the Chief Officer and the Deputy Chief Officer.*
- (2) *The Minister may, by Order, after consulting the States Employment Board and the Police Authority, provide for –*
 - (a) *the appointment of persons to be police officers; and*
 - (b) *the promotion of police officers.*
- (3) *An Order made under this Article may confer functions on –*
 - (a) *the States Employment Board;*
 - (b) *the Appointments Commission; and*
 - (c) *the Police Authority.*

11 Terms and conditions of appointment of other police officers

- (1) *This Article applies to police officers other than the Chief Officer and the Deputy Chief Officer.*
- (2) *The States Employment Board must –*
 - (a) *determine the terms and conditions of appointment of police officers; and*
 - (b) *as soon as practicable, make any such determination known to those affected by the determination.*
- (3) *The States may, by Regulations, designate such body as the States think fit to carry out the functions described in paragraph (4) and may make Regulations prescribing the constitution of such a body and the way in which it must carry out its functions.*
- (4) *The functions referred to in paragraph (3) are to –*
 - (a) *negotiate with the States Employment Board; and*
 - (b) *make non-binding recommendations to the States Employment Board, on the terms and conditions of appointment of police officers.*

- (5) *The body designated under paragraph (3) shall have such other functions as are conferred on it by any other enactment.*

12 Association of police officers

- (1) *Police officers may establish an association to represent them in matters affecting their welfare and efficiency.*
- (2) *A police officer may not otherwise be a member of –*
- (a) *a trade union; or*
 - (b) *an association,*
- that has, as a stated objective, an intention to seek to influence the terms and conditions of appointment of police officers.*
- (3) *Nothing in paragraph (2) prevents a police officer who is a member of an association established under paragraph (1) from being a member of, or appointed to, a body designated under Article 11(3).*
- (4) *An association mentioned in paragraph (1) has no power –*
- (a) *to recommend or engage in industrial action; or*
 - (b) *to represent an individual police officer on a question of promotion.*

13 General Orders

- (1) *The Minister may by Order after consulting –*
- (a) *the Chief Officer; and*
 - (b) *the association of police officers mentioned in Article 12; and*
 - (c) *the Police Authority,*
- provide for the governance and administration of the States Police Force.*
- (2) *Such an Order may, in particular, provide for –*
- (a) *the conduct of police officers;*
 - (b) *the duties of police officers;*
 - (c) *the standard of performance required of police officers and the evaluation of that performance including procedures and measures for dealing with performance that fails to meet the required standard, including –*
 - (i) *caution,*
 - (ii) *reprimand,*
 - (iii) *fine,*
 - (iv) *reduction in rate of pay,*
 - (v) *reduction in rank,*
 - (vi) *requirement to resign, and*

- (vii) *dismissal from the Force;*
- (d) *the issue, use and return of clothing, personal equipment and accoutrements;*
- (e) *the use of equipment, including information equipment and information technology systems.*^[6]
- (3) *An Order made for the purposes of this Article may provide that anything required to be done under the Order must be done in accordance with the directions of the Chief Officer.*

Functions of police officers

16 Duties and powers of police officers

- (1) *A police officer must, to the best of his or her ability –*
 - (a) *cause the peace to be kept and preserved;*
 - (b) *prevent offences, whether under customary or statutory law, against persons and property; and*
 - (c) *take such lawful measures as are appropriate to bring offenders to justice with due speed.*
- (2) *A police officer may arrest a person the police officer has reasonable cause to suspect has committed, is committing or is about to commit, an offence.*
- (3) *A police officer has the powers and privileges relating to policing which a Centenier has under customary law or any enactment except –*
 - (a) *the power formally to charge any person with an offence;*
 - (b) *the powers to conduct and decide a parish hall inquiry into an allegation that an offence has been committed; and*
 - (c) *the power to present a person charged with an offence before a court.*

17 Functions and status of Chief Officer

- (1) *The Chief Officer has the command, direction and control of the States Police Force and of each of its police officers.*
- (2) *The Chief Officer in carrying out his or her functions must, in so far as circumstances permit, give effect to –*
 - (a) *the policies referred to in Article 3(3); and*
 - (b) *the Annual Policing Plan.*
- (3) *The office of Chief Officer shall be a corporation sole.*
- (4) *The Chief Officer may, in the name of his or her office –*
 - (a) *enter into agreements for any purpose of the office;*
 - (b) *acquire, hold and dispose of property;*

- (c) *sue and be sued in civil proceedings; and*
- (d) *be charged with an offence and defend criminal proceedings.*
- (5) *The Chief Officer, or any person carrying out the functions of the Chief Officer under Article 8, shall be the sole accounting officer of the States Police Force for the purposes of the Public Finances (Jersey) Law 2005^{[\[8\]](#)}, notwithstanding anything in Article 37 of that Law to the contrary.*

18 Accountability of Chief Officer

- (1) *The Chief Officer is accountable to the Minister for carrying out his or her functions under Article 17(2).*
- (2) *The Chief Officer is accountable to the Police Authority for –*
 - (a) *the general administration, governance and business of the States Police Force;*
 - (b) *the discipline and organisation of its officers; and*
 - (c) *the training of its officers to ensure that succession planning for officers is both appropriate and effectively implemented.*
- (3) *Accordingly the Chief Officer, if required to do so by the Police Authority or the Minister, must advise or provide a written report on any policing matter.*
- (4) *In particular the Chief Officer may, under paragraph (3), be required to advise or to provide a written report on –*
 - (a) *an event arising out of a matter specified in the Annual Policing Plan;*
 - (b) *an event arising out of the direction, governance or control of the States Police Force; or*
 - (c) *any deployment of police officers.*
- (5) *In addition the Chief Officer may be required to provide a factual assessment on any policing matter.*
- (6) *In carrying out their functions under this Law the Minister and the Police Authority must have due regard to the need to respect the operational independence of the States Police Force.*

Administration of States Police Force

19 Annual Policing Plan

- (1) *The Police Authority must, after consultation with the Chief Officer, before 1st December each year –*
 - (a) *prepare an Annual Policing Plan for the Force for the following financial year; and*
 - (b) *present it to the Minister.*

- (2) *The Minister may, after consulting the Police Authority and the Chief Officer, amend the Annual Policing Plan.*
- (3) *When the Minister has approved an Annual Policing Plan (whether or not with amendments), the Minister must lay it before the States Assembly at the first reasonable opportunity.*

20 Annual Policing Report

- (1) *The Police Authority must, within 3 months after the end of each financial year, prepare and submit to the Minister an Annual Policing Report.*
- (2) *The Annual Policing Report must provide a review of –*
 - (a) *the manner in which the provisions of the Annual Policing Plan, for the financial year have been addressed; and*
 - (b) *the performance of the States Police Force generally.*
- (3) *The Minister must lay the Annual Policing Report before the States Assembly at the first reasonable opportunity.*

- (N.B. The Treasury and Resources Department commends the Home Department for reviewing the previously agreed model for ensuring the accountability and transparency of local Law Enforcement agencies in order to identify a lower cost mechanism.**

It is noted that the Home Department hopes that the cost of an additional part-time staff resource to implement the new arrangements (if required) could be met from within existing resources. It is noted that the Home Department intends to report back to the States during the course of 2016 with detailed proposals, outlining the responsibilities and interrelationships to be incorporated in new legislation. This States Report will include any resource implications; any request for additional resources would be subject to consideration as part of whatever process for the reprioritisation of funding is in place at that time.)

- (N.B. The Policy Council believes that the Home Department, in this report, is proposing a sensible, proportionate mechanism for achieving the objective of ensuring the accountability of local Law Enforcement Agencies for delivering strategic objectives associated with the protection of Islanders and the interests, to both government and the public.**

The fact that it achieves this without the need to establish a Law Enforcement Commission at an annual cost of £170,000, reflects both the evolving circumstances of how law enforcement is delivered in Guernsey and the new fiscal realities of the need to spend public monies in the most efficient and effective manner possible.

The Policy Council supports the report and recommends the States to approve its recommendations.)

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 13th April, 2015, of the Home Department, they are of the opinion:-

1. To rescind Resolution 1, Article XII, Billet d'Etat No XII of 2008, namely; *"To approve the creation of a statutory Law Enforcement Commission in accordance with section 4 of that Report"*.
2. To note that "The Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011" approved by the States on 23rd February 2011, will not be brought into force.
3. To agree, in principle, that new law enforcement legislation should be taken forward as proposed in section 4 of that Report.
4. To note the Home Department's intention to return to the States of Deliberation with a further States Report with detailed proposals to give effect to that Report's recommendations by December 2016.

COMMERCE AND EMPLOYMENT DEPARTMENT

SINGLE EURO PAYMENTS AREA – LEGISLATION IMPLEMENTING ASPECTS OF EU PAYMENT SERVICES LEGISLATION

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

15th April 2015

Dear Sir

1. Executive Summary

- 1.1 The Single Euro Payments Area ('SEPA') is an initiative of the European Union and the European Payments Council ('EPC') which aims to provide a harmonised common market for processing payments in euro within Europe.
- 1.2 The Commerce and Employment Department believes that Guernsey may be placed at a competitive disadvantage if it is not included in the geographic scope of SEPA in the future. Therefore, it is preparing to submit an application to the EPC, the decision making and coordination body for the development of SEPA, for Guernsey to be included within the geographic scope of SEPA.
- 1.3 In order to be included within the geographic scope of SEPA, the Department must demonstrate that Guernsey meets an extensive range of criteria. A gap analysis has been undertaken and a gap has been identified in that it is necessary for certain provisions of the European Union payment services legislation to be binding on those providers making payments in euro through the SEPA payment schemes. This report recommends the introduction of legislation to comply with that requirement.

2. Background

- 2.1 SEPA allows payments in euro to be made and received by all participants under the same basic conditions, rights and obligations. Such harmonisation improves the efficiencies of cross-border payments and enhances competition, leading to cheaper payment processing, to the benefit of both business and consumers.
- 2.2 Participation in SEPA by an individual corporate provider of payment services first requires that the jurisdiction in which the provider is located has been accepted by the EPC for inclusion in the geographic scope of SEPA. It is then a matter for individual providers as to whether they wish to apply to be

contractually bound by the SEPA rulebook to be able to participate in the SEPA payment schemes.

- 2.3 The current geographic scope of SEPA comprises all 28 EU member states, all 3 EEA member states, Switzerland, Monaco and San Marino. Revised criteria for third country participation were published in 2014. SEPA should not be confused with the euro area (or the Eurozone), which is the monetary union of 19 EU member states that have adopted the euro as their currency – SEPA is wider in scope than those countries which are members of the euro area.
- 2.4 Staff from the Commerce and Employment Department, the Policy Council and the Guernsey Financial Services Commission ('GFSC') have worked with colleagues from the Channel Islands Brussels Office and industry representatives over the possibility of Guernsey applying to participate in SEPA. This work has been undertaken in collaboration with representatives of the other Crown Dependencies, who intend to submit applications to participate in SEPA later this year. The Association of Guernsey Banks ('AGB') and the Guernsey International Business Association ('GIBA') have confirmed their support for the initiative and a working group has been established comprising representatives of government, industry, the GFSC and the Law Officers Chambers.
- 2.5 The Department's view, shared by industry, is that over time Guernsey may be less competitive if our banking sector is not able to process payments through the SEPA schemes, as non-SEPA payments in euro will be more expensive. The Department also considers that being within the scope of SEPA will enhance Guernsey's reputation as an international finance centre.

3. Criteria for participation

- 3.1 The third country criteria for participation are extensive and require Guernsey to demonstrate the strength of its relationship with the EU, a level playing field with other SEPA scheme participants, and compliance with a range of legal, regulatory, market and operational criteria. There are also additional criteria to preserve the integrity of the SEPA schemes.
- 3.2 A gap analysis suggests that Guernsey is well placed to meet all of the necessary criteria, with the exception of those requiring that the provisions of EU/EEA legislation affecting payment services in euro are effectively represented in law or equally binding practice for payments in euro in the context of SEPA payments where there are some gaps.
- 3.3 In particular, the criteria require that provisions substantially equivalent to Titles III and IV of the Payment Services Directive 2007/64 (as and if amended) as well as those of Regulation (EC) 1781/2006 (as and if amended) on Information on the Payer Accompanying Transfers of Funds, and those of article 5 and the Annex of Regulation (EU) 260/2012 establishing technical and business

requirements for credit transfers and direct debits in euro (as amended by Regulation (EU) 248/2104) are represented in law or in equally binding practice applicable to the Applicant for SEPA payments in euro.

3.4 These provisions relate to requirements for:

- transparency of conditions and information requirements for payment services;
- rights and obligations in relation to the provision and use of payment services;
- technical and business requirements for credit transfers and direct debits in euros.

3.5 The view of the Department is that the most appropriate and legally certain way in which gaps can be adequately addressed is through the introduction of domestic legislation. Where there are gaps, the legislation would implement the relevant provisions of the EU legislation referred to at 3.3 above in respect of those payments in euro made by individual SEPA participants who have chosen to be bound by the SEPA rulebook and to participate in the SEPA payment mechanisms.

3.6 These technical requirements will be implemented in such a manner so as to apply only to payments made in euro by providers of payment services who have chosen to participate in SEPA and agreed to be contractually bound by the SEPA rulebook, where both provider of payee and payer are in Guernsey, Jersey, the Isle of Man, the UK or the EEA. They would not therefore apply to other payments, for example payments in other currencies or payments in euro to those outside the Crown Dependencies, the UK and the EEA, or where a provider has chosen not to participate in SEPA.

3.7 It should be noted that, as part of a range of potential developments in the area of digital finance, the Commerce and Employment Department is developing proposals for a regulatory framework for non-bank payment service providers. It is recommended that the legislation proposed in this Report should ensure that there is a mechanism for the requirements to apply in future to providers licensed under such a regulatory framework, should they wish to participate in SEPA.

4. Legislation

4.1 The most appropriate mechanism for implementing the necessary provisions of EU/EEA legislation is an Ordinance under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994. The law allows the States of Deliberation by Ordinance to make such provision as they may consider necessary or expedient for the purpose of the implementation of any Community provision.

5. Good Governance and Consultation

- 5.1 The Department believes that it has 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).
- 5.2 The Department has received support for these proposals from the AGB, GIBA and the GFSC.
- 5.3 The Law Officers have been consulted regarding these proposals.
- 5.4 The Department has liaised with Alderney and Sark to advise how the proposals will impact those islands.

6. Resources

- 6.1 There are no resource implications for the States of implementing the legislation proposed in this report.

7. Recommendations

- 7.1 The Commerce and Employment Department recommends the States resolve:
 - (a) to approve the proposals to introduce legislation to give effect to the necessary provisions of EU/EEA legislation (as outlined in paragraph 3 of this Report) to enable Guernsey to meet the requirements for third country participation in the Single Euro Payments Area; and
 - (b) to direct the preparation of land Ordinance pursuant to the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 to give effect to the proposals.

Yours faithfully

K A Stewart
Minister

A H Brouard
Deputy Minister

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

Advocate T Carey
Non-States Member

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

(N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 15th April, 2015, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals to introduce legislation to give effect to the necessary provisions of EU/EEA legislation (as outlined in paragraph 3 of that Report) to enable Guernsey to meet the requirements for third country participation in the Single Euro Payments Area.
2. To direct the preparation of an Ordinance pursuant to the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 to give effect to the proposals.

HOME DEPARTMENT

THE PROBATION SERVICE AND ASSOCIATED ORDERS

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

13th April 2015

Dear Sir

1. **Executive Summary**

- 1.1 The Loi relative à la Probation de Délinquants, 1929 ("the 1929 Law") is the current legislation concerning:
- i. the appointment and regulation of Probation Officers
 - ii. the making of probation orders, and
 - iii. the making of absolute and conditional discharges.
- 1.2 Although the provisions of the 1929 Law have been in regular use for some eight decades, many important changes have occurred since the early twentieth century. Accordingly, it is now proposed that the 1929 Law be repealed and replaced by new legislation which, whilst maintaining the spirit of the 1929 Law where appropriate, reflects current thinking on the sentencing and management of offenders, and established Civil Service practice.

2. **Background**

- 2.1 The States approved proposals in July 1929 to introduce legislation in respect of the probation of offenders. The legislation reflected changes in UK practice and was designed to enable the supervision of offenders, benefiting both the offender and the greater community.

Probation Officers

- 2.2 Under Article 3(1) of the 1929 Law, the Royal Court was given the power to appoint probation officers, who would be "*subject to the control of the Court*" when acting under a probation order. The Court was also given the power to relieve officers of their duties at any time in Article 3(3) of that Law.
- 2.3 Prior to 1st May 2004, the Probation Service was overseen by the Probation Service Committee; however, following the Machinery of Government changes,

the Probation Service became a constituent part of the Home Department. Probation Service staff (including Probation Officers) are accordingly employed by the States of Guernsey under the terms and conditions of the Civil Service.

Probation Orders & Absolute/Conditional Discharges

- 2.4 According to Article 1(1) of the 1929 Law, where a Court trying an offender summarily¹ thinks that, although the charge is proved, it would be inexpedient to impose punishment on the offender, the Court may, "without proceeding to conviction":
 - i. dismiss the charge, whereby no further action is taken, or
 - ii. discharge the offender conditionally to be of good behaviour for a period not exceeding three years; no further action is taken unless they commit a further offence within this time limit.
- 2.5 According to Article 1(2) of the 1929 Law, where the Royal Court has convicted an offender on indictment but it thinks that it would be inexpedient to impose punishment on the offender, the Court may discharge the offender conditionally to be of good behaviour for a period not exceeding three years in a similar way to ii. above.
- 2.6 In either case, the offence is recorded on the offender's criminal record and must be disclosed for a period of up to 6 months (where the charge is dismissed) or 1 year (where the offender is conditionally discharged).
- 2.7 Article 2(1) gives the Court power, in addition to making a conditional discharge, to make a probation order so that the offender is under supervision for a time.
- 2.8 The need to update the 1929 Law in regard to sentencing was identified in "The Report of the Criminal Justice Policy Working Group" (Billet d'Etat XIV, 2005, Appendix 4). This Report identified community service and enhanced community supervision as effective methods of rehabilitating offenders whilst allowing them to make reparation for their offences. A community service order is generally made as an alternative to a custodial sentence and requires a convicted offender to do unpaid work for the benefit of the community. In November 2005 (Billet d'Etat XX, 2005, Article XII), the States approved a three year Community Service pilot scheme and consequently, the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006 ("the 2006 Law") was enacted. In November 2009 (Billet d'Etat XXXI, 2009, Article

¹ Summary offences can only be heard in the Magistrate's Court and tend to be the less serious offences. Indictable only offences are more serious and may only be heard in the Royal Court. Either way cases may be heard in either the Magistrate's or the Royal Court depending on the appropriate level of sentence which may be required or election by either party.

XV), the States approved the continuation of the Scheme and Community Service was established on a permanent basis.

- 2.9 A probation order requires an offender to be under the supervision of a qualified Probation Officer for a period of time in order to reduce the risk of further offending. In addition to supervision, the court may add additional requirements/conditions that the offender must abide by, such as specific offending behaviour courses or substance testing. Should an offender breach either a probation order or a community service order, they may be returned to court for resentencing.
- 2.10 It remains the case that community supervision is suitable for offenders who, because of their personal circumstances and lifestyle, are likely to re-offend if their behaviour and attitudes remain unchanged. In addition, the Royal Court has asked the Home Department to give consideration to the possibility of extending sentencing options whereby an offender could be sentenced to a combination of a probation order and a community service order. Such an option would be a robust method of dealing with offenders who require both punishment and Probation intervention, rather than simply sentencing offenders to short sentences of imprisonment.

3. **Proposals for a new Probation Law**

Probation Service

- 3.1 It is proposed that the function of the Probation Service be defined in terms of public protection, rehabilitation and reduction of reoffending with powers to designate operational responsibilities by Ordinance.
- 3.2 To reflect the spirit of the 1929 Law, it is proposed that an oath or affirmation be taken before the Royal Court by Probation Officers employed by the Home Department. The purpose of this would be to underline their primary duty to the Court rather than any client with whom they are working. It is also proposed that persons designated by the Chief Probation Officer should be able to perform the functions of a probation officer when required to do so. At present, "designated persons" may only perform those functions for the purposes of community service orders but it is suggested that they should be capable of doing so more generally. Such persons would have the same primary duty to the Court as Probation Officers. This power to designate would enable temporary staff and trainee Probation Officers to carry out probation tasks as appropriate.

Probation Orders

- 3.3 It is proposed that courts should in future be permitted to sentence an offender to a probation order upon conviction of an imprisonable offence. Furthermore, the purpose of a probation order should be defined in terms of public protection, rehabilitation and prevention of further offending. The purpose of supervision by the Probation Service has not previously been specified and it is important to reflect current thinking on the effective management of offenders, and the

primary aim of rehabilitation and safe reintegration into the community against which they have offended.

- 3.4 It is also proposed that the procedure by which a probation order is made will be broadly similar to that for a community service order. Thus, a written or verbal report would be obtained by the court prior to sentencing the offender and this would include an assessment of the suitability of the offender for the available interventions. The offender would be supervised by a Probation Officer or other person (e.g. a psychiatrist) appointed by the court. A maximum period for a probation order of three years is also proposed.
- 3.5 It is suggested that the three core requirements of a probation order would be:
 - i. to keep in contact as instructed,
 - ii. to notify any change of circumstances, and
 - iii. to be of good behaviour.
- 3.6 In addition to the conditions listed above, further requirements could be made in individual cases in order to ensure compliance with specific offending behaviour programmes and to manage risk.
- 3.7 For the purposes of clarity and efficiency, new variation and breach procedures consistent with those found in the 2006 Law are proposed. Thus in future, a failure to comply with a requirement of a probation order could be dealt with by continuing the order, with or without a fine, varying the requirements of the order, or by revoking the order and resentencing the offender for the original offence. The powers on further conviction in the different sentencing courts will also be harmonised with those applicable in respect of community service orders.
- 3.8 In line with the suggestion made by the Royal Court, it is also proposed that a court should be able to sentence an offender to a probation order and a community service order for the same offence, but only where the community service order is made as an alternative to custody, pursuant to s.2(4) of the 2006 Law. The 2006 Law will therefore require a minor amendment to permit this. In addition, it is recommended that a court should be able to make a probation order at the same time as sentencing an offender to pay a fine.

Absolute and Conditional Discharges

- 3.9 In other jurisdictions, absolute or conditional discharges are regularly used to deal with offences where the court is of the opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it would be inexpedient to inflict punishment. A conditional discharge allows a court to discharge the offender subject to a condition that the offender does not commit an offence for a period not exceeding three years; conversely, an absolute discharge does not import any condition at all. Where a discharge of either sort is ordered, a court may still make any order that it could have made

had it sentenced the offender to a punishment such as a community service order, for example a disqualification or a compensation order. If an offender re-offends anywhere in the British Islands during the period of a conditional discharge, a court may deal with the offender for the original offence as if he had just been convicted by it. It is proposed to follow the same model in the Bailiwick.

- 3.10 It should be noted that where an offence is dealt with by way of a discharge, the conviction is deemed not to be a conviction for any purposes other than the proceedings in question.

Miscellaneous

- 3.11 If the foregoing proposals are adopted, the 1929 Law can be repealed and appropriate consequential amendments to other legislation would be required.

4. Consultation

- 4.1 These proposals have been developed in conjunction with the Law Officers following the recommendation from the Criminal Justice Policy Working Group Review and a subsequent request on behalf of the Royal Court. The Bailiff and Judiciary have been consulted.
- 4.2 Although the 1929 Law applies solely to Guernsey, the 2006 Law is Bailiwick wide and has been utilised by the Court of Alderney. Both Alderney and Sark have been consulted in relation to these proposals and are supportive of the recommendations.

5. Resources

- 5.1 The workload of the Probation Service is in direct correlation to the level of criminality within the Bailiwick and the apprehension and processing of criminals through the court system. Accordingly the demand-led nature of the service provision makes it difficult to accurately predict future demand for resources. In that the proposals introduce a new community sentencing option for the criminal courts to make combination orders comprising Probation Supervision and Community Service, it is possible that the workload of the Service may increase. It is envisaged that any increase will be met within existing resources, however this will be kept under review.

6. Recommendations

- 6.1 The Home Department recommends the States to direct the preparation of the legislation necessary to give effect to the proposals within this report, specifically to:-
- a) Define the function of the Probation Service in terms of public protection, rehabilitation and reduction of reoffending;

- b) Specify the primary duty of Probation Officers to the Court and the power of the Chief Probation Officer to designate persons to perform probation functions;
- c) Make a probation order a sentence of the court on conviction of an imprisonable offence with the purpose of public protection, rehabilitation and prevention of further offending;
- d) Specify the process of making of a probation order, requirements which can be attached and the ability to make a probation order in conjunction with a community service order;
- e) Bring variation and breach procedures in line with those found in the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006 Law;
- f) Introduce Absolute and Conditional discharges;
- g) Repeal the Loi relative à la Probation de Délinquants, 1929.

Yours faithfully

P L Gillson
Minister

F W Quin
Deputy Minister

M J Fallaize
M M Lowe
A M Wilkie

Mr A L Ozanne, Non-States Member

(N.B. The Treasury and Resources Department notes that the Home Department envisages that any increase in workload for the Probation Service arising from the introduction of combination orders comprising Probation Supervision and Community Service would be met within existing resources.)

(N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 13th April, 2015, of the Home Department, they are of the opinion:-

1. To direct the preparation of such legislation as may be necessary to give effect to the proposals within that Report, specifically to:-
 - a) define the function of the Probation Service in terms of public protection, rehabilitation and reduction of reoffending;
 - b) specify the primary duty of Probation Officers to the Court and the power of the Chief Probation Officer to designate persons to perform probation functions;
 - c) make a probation order a sentence of the court on conviction of an imprisonable offence with the purpose of public protection, rehabilitation and prevention of further offending;
 - d) specify the process of making of a probation order, requirements which can be attached and the ability to make a probation order in conjunction with a community service order;
 - e) bring variation and breach procedures in line with those found in the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006 Law;
 - f) introduce Absolute and Conditional discharges;
 - g) repeal the Loi relative à la Probation de Délinquants, 1929.

HOME DEPARTMENT

POLICE COMPLAINTS COMMISSION: REAPPOINTMENT OF MEMBERS

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

13th April 2015

Dear Sir

1. Executive Summary

- 1.1 The purpose of this report is to propose the reappointment of Mr Stewart Chisholm as Chairman and Mr Nigel Ward as an ordinary member of the Police Complaints Commission ('the Commission').

2. Background

- 2.1 In 2005, the States of Deliberation approved the Department's recommendation that legislation be introduced to establish a Police Complaints Commission at a local level (Billet d'État I, 2005). The Police Complaints (Guernsey) Law, 2008 ('the Law') accordingly came into effect on 1st July 2011 and creates the Commission as an independent panel to maintain oversight of how complaints against the police are handled.
- 2.2 The Schedule to the Law sets out the composition of, and appointment process to, the Commission, including:-
- the Commission shall consist of a Chairman and five ordinary members;
 - the Chairman and ordinary members shall be appointed for a term of four years by the States of Deliberation upon the recommendation of the Home Department;
 - the Commission may be reappointed.

3. Reappointment of Members

- 3.1 Stewart Chisholm and Nigel Ward have both served as Commissioners since the commencement of the Law on 1st July 2011, meaning that their term of office comes to an end on 1st July 2015.

- 3.2 The Department is satisfied that Mr Chisholm and Mr Ward meet all the prescribed criteria set out in Law to satisfy the Department of their suitability for reappointment and have, over the last four years, discharged their duties with professionalism and integrity. The Department is therefore pleased to confirm that they have indicated their wish to stand for reappointment.

4. Recommendation

- 4.1 The Home Department recommends the States of Deliberation to:

- (a) Approve the reappointment of Mr Stewart Chisholm as Chairman of the Police Complaints Commission for four years, with effect from 1st July 2015;
- (b) Approve the reappointment of Mr Nigel Ward as an ordinary member of the Police Complaints Commission for four years, with effect from 1st July 2015.

Yours faithfully

P L Gillson
Minister

F W Quin
Deputy Minister

M J Fallaize
M M Lowe
A M Wilkie

Mr A L Ozanne
Non-States Member

Appendix 1 – Members’ Profiles**Mr Stewart Chisholm**

Mr Chisholm trained as a psychologist and before retirement worked for the Child and Adolescent Mental Health Service (CAMHS). His employment provided him significant experience of dealing with a wide range of people and required him to demonstrate an objective approach to difficult situations along with an ability to understand lengthy and complex documents. Along with previous experience in setting up and chairing working groups, Mr Chisholm has during his time on the Commission demonstrated his ability to chair and lead both meetings and the Commission’s work more generally.

Mr Nigel Ward

Mr Ward has extensive experience working in the private sector managing a variety of teams. He has experience of working with legislation and complex reports which often contain confidential and sensitive information. He is able to interpret and apply relevant legislation and works well under pressure. He has a proven ability to provide key recommendations while remaining objective.

Both of the above candidates greatly exceeds the required criteria and it is believed that they will collectively continue to form an efficient and effective Commission.

(N.B. As there are no resource implications in this Report, the Treasury and Resources Department has no comments to make.)

(N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 13th April, 2015, of the Home Department, they are of the opinion:-

1. To approve the reappointment of Mr Stewart Chisholm as Chairman of the Police Complaints Commission for four years, with effect from 1st July, 2015.
2. To approve the reappointment of Mr Nigel Ward as an ordinary member of the Police Complaints Commission for four years, with effect from 1st July, 2015.

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

GENERAL ELECTION 2016

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

27th April 2015

Dear Sir,

1. Executive Summary

1.1 This policy letter proposes that:

- A General Election be held on 20th April 2016;
- The hours of polling in the districts of the Castel, the West and the South-East be extended by bringing forward the opening of their polling stations to 8 a.m.;
- The two polling stations in the parish of St Saviour be moved to new locations;
- The present grant to assist candidates with the costs associated with the production and distribution of manifestos be increased to a maximum of £600 per candidate; and
- The present maximum sum for electoral expenditure in elections for the office of People's Deputy be increased to £2,300 per candidate.

1.2 In addition, this policy letter proposes several changes to The Reform (Guernsey) Law, 1948, as amended:

- To abolish the "legal disability" which bars certain categories of people from being able to be inscribed on the Electoral Roll or holding the office of People's Deputy;
- To extend the term of the next States by two months in order that future States' terms begin on the 1st July.

1.3 The policy letter also considers the arguments for and against altering the rules governing criminal convictions of candidates and concludes that the present provisions should not be altered.

2. Interpretation

2.1 In this policy letter references to Articles relate to The Reform (Guernsey) Law, 1948, as amended.

Report

Administrative matters

3. Day and Date of Election

- 3.1 Article 29(3) states that the date for the holding of any election shall be appointed by Ordinance and Article 29(1) provides that General Elections shall be held in the month of April.
- 3.2 Traditionally General Elections of People's Deputies have been held on Wednesdays. In the past the Committee's predecessors have considered whether moving Election Day from a Wednesday to a Saturday would make it easier for the parishes to obtain scrutineers to staff the polling stations and also whether such a change would increase voter turnout. At the time the douzaines expressed no clear view in favour of such a change and the evidence from other jurisdictions was inconclusive. The Committee makes no recommendation in that regard.
- 3.3 For many years the General Election has been held on the third Wednesday in April. In 2016 Easter Day is the 27th March. As it is early, on this occasion the Easter weekend will be within the school term. The school holidays will be from the 9th to the 25th April inclusive, which includes the third Wednesday, the 20th April.
- 3.4 The Committee believes that it would be better not to hold the Election in the school holidays as many voters will be absent on holiday and may miss canvassing, hustings meetings and Election Day, albeit that there is a system which enables electors to cast votes while absent from the island. Postal voting does have resource implications for the Registrar-General of Electors in terms of staffing and administrative costs.
- 3.5 The alternative considered by the Committee was to hold the Election on the 27th April. While that avoids the school holidays it does present difficulties of its own. The Reform Law provides that an unsuccessful candidate who polls within 2% of the votes of a successful candidate can demand a recount within 24 hours of the public declaration of the poll. As some declarations are not until the early hours of the Thursday, such recounts normally take place the next day, the Friday. Theoretically there could be a recount for every district and often there are recounts in more than one district. If the Election were on the 27th any recounts would be carried out on Friday the 29th. The resource requirements mean that it is difficult to run more than two recounts simultaneously. The final composition of the States might not be known until late on the 29th April or even the 30th, possibly fewer than 24 hours before the present States' Members cease to hold office and the new Members take office.
- 3.6 The States may also decide that, as at present, nominations for the most senior office – which the States have resolved will be the President of the Policy &

Resources Committee – must be made in advance of the election to fill that post. If the final composition of the States is not known until the end of the 29th April and sufficient days are to be given for those nominations, it makes it difficult to hold that election in the first few days of May. However, the advice from the Law Officers is that there should be as little delay as possible in filling that position.

- 3.7 Holding the Election on the 20th April will also enable the induction process for new Members to begin and Members to be sworn in before the 1st May 2016, which is a Sunday, when they assume office.
- 3.8 On balance, although it will mean that more voters may need to apply to be absent voters, the Committee has decided that the next General Election should be held on the 20th April 2016 and that is what it proposes at Recommendation 1.

4. Hours of polling

- 4.1 At present, the polling stations are open at the following times: in the two St Peter Port districts from 8 am until 8 pm and in all other districts from 10 am until 8 pm.
- 4.2 The Committee believes that it would be more equitable and assist electors if all polling stations had the same, longer hours as those which have applied for some years in St Peter Port. Its Principal Officer wrote to the parish douzaines in January to propose that all districts move to 8 am until 8 pm. The douzaines in the Castel, all four parishes in the West district and both parishes in the South-East kindly agreed that they would be prepared to open their polling stations for the longer hours. The douzaines of St Sampson and the Vale felt unable to provide such an undertaking and wished to retain the present hours. Although the Committee would like to see the polling stations in all districts open for the same extended hours, it does not intend to force that on those parishes which did not wish to make that change at this time. The Committee acknowledges that the douzaines play a substantial rôle in running elections in Guernsey, much of it on a voluntary basis. The Committee hopes that in future years the opening hours of polling stations will be the same throughout the Island.
- 4.3 On this occasion the Committee recommends that the States agree to the preparation of an Elections Ordinance to alter the hours of the various polling stations to 8 am until 8 pm in the districts of St Peter Port South, St Peter Port North, the Castel, the West and the South-East. The hours will remain as 10 am until 8 pm in the districts of St Sampson and the Vale. This proposal is set out in Recommendation 2.

5. Polling stations – St Saviour

- 5.1 For some years, the polling stations in St Saviour in the West district have been at the douzaine room in La Grande Rue and the Church Hall at Le Neuf Chemin. However, the douzaine room has recently moved to the new Community Centre at Le Neuf Chemin and the former douzaine room is being sold. The new douzaine room is a short distance only from the Church Hall.
- 5.2 The Constables have therefore proposed that with effect from the 2016 General Election the polling stations operated by them within the West electoral district should be at new locations: one at the new St Saviour's Community Centre and the other at the Evangelical Church School Hall in Longue Rue, which is near the former douzaine room. There would, therefore, continue to be one in each of the upper and lower parts of the parish. The Committee is prepared to acquiesce to the Constables' proposal and recommends those changes to the States at Recommendation 3.

6. Grants to candidates

- 6.1 In the 2004 and 2008 General Elections the States defrayed 50% of the cost of postage at the minimum local postage rate for each candidate who wished to send, on one occasion only, letters, manifestos and/or other communications through the post to each elector in the electoral district where that candidate was standing, subject to certain provisos.
- 6.2 In respect of the 2012 General Election the States decided instead to allow candidates to claim up to £500 of receipted expenditure. In 2012 all candidates claimed the full £500, except for three who claimed less than £500 and three who chose not to claim anything. The total cost to the States was £37,100. The Committee believes that providing grants to candidates is a fairer method as it gives candidates more choice as to what type of campaigning they carry out, especially as some candidates rely increasingly on electronic means of publicising themselves.
- 6.3 The States have directed the Treasury and Resources Department to take account of the costs of compiling the new Electoral Roll and managing the election process when recommending the 2016 Cash Limit for the Home Department¹. The breakdown of the estimated total costs of £162,000 included a provision of £50,000 in respect of grants to candidates. In the last three General Elections the numbers of candidates were 82, 88 and 78 respectively. The Committee suggests that the level be set at £50,000 divided by the average number of candidates and then rounded down slightly, which is £600. This is a slightly higher figure than simply increasing £500 to take into account price inflation in the interim. The Committee acknowledges that this would lead to expenditure of £2,800 above that which has already been agreed if the number of candidates at the Election equalled the highest number out of the last three elections and if

¹ Billet d'État XXIV of 2014, Article 16, Home Department – Preparation of a New Electoral Roll

every one of those candidates claimed the full value of the grant. Equally, the Committee acknowledges that if the number of candidates at the Election equalled the number at the last Election and, as at the last Election, three candidates do not claim any grant, expenditure by the States would be £5,000 below that which has already been agreed. However, it believes that no one should feel unable to stand on the grounds of the expense necessary to be a credible candidate. Nor does it wish to commit the States to a substantial increase in expenditure in this area. The Committee believes that £600 is a good compromise and is what is proposed at Recommendation 4.

- 6.4 In the longer term the Committee hopes its successors will propose modest but above-inflation increases in the sum which candidates can reclaim from the States in order to minimise the number of people who might feel unable to stand on the grounds of the expense necessary to be a credible candidate. The Committee accepts that any such proposals would, of course, need to have regard to the prevailing condition of public finances.

7. Candidates' expenditure

- 7.1 Article 44(1) of the Reform Law provides that no candidate in any election shall in respect of such election expend any sum of money or give any value in money's worth otherwise than in accordance with such provisions as shall, from time to time, be prescribed by Ordinance.
- 7.2 The maximum prescribed in The Elections Ordinance, 2011 for People's Deputies is £2,100, which includes the amount which could be reclaimed from the States.
- 7.3 A balance has to be maintained in determining the appropriate level at which electoral expenditure is capped. On the one hand it should be high enough to allow a candidate a reasonable chance of carrying out a campaign in which he or she can, by various means, get his or her views over to all of the electorate in the District. On the other hand it should not be so high as to give a wealthy candidate an unreasonable and unfair advantage over a candidate of more modest means.
- 7.4 The total amounts spent by candidates in the 2012 election, including the amount they subsequently reclaimed from the States, were as follows:

<i>Amount spent £</i>	<i>Nº. of Candidates</i>
0- 300	2
301- 600	3
601- 900	13
901-1,200	14
1,201-1,500	20
1,501-1,800	13
1,801-2,100	13

The average amount spent was £1,268, the minimum £40 and the maximum £2,082.

- 7.5 The Committee believes that the overall base-line set for the 2012 elections was reasonable and proposes that the maximum then specified be increased in line with the change in RPIX - that is to £2,300.
- 7.6 The Committee proposes that the maximum total amount which a candidate can spend on his or her election campaign shall be £2,300, of which up to £600 can be reclaimed as a grant as described in the previous section. That limit is set out in Recommendation 5.

Legislative changes

The proposals above must be determined in order for there to be a General Election in 2016 as required in law.

The changes proposed below are “optional” in that their rejection would not prevent the Election from happening. Nevertheless the Committee believes that they should be approved by the States for the reasons set out in each case, except in the case of section 11 where the Committee believes that the status quo should prevail.

8. Legal disability of electors

- 8.1 At present (by virtue of Articles 27 and 49 of the Reform Law, as amended), persons who are certified as being of unsound mind; subject to guardianship; or detained in an institution as persons in need of treatment for a mental ailment are not entitled to vote. These restrictions also apply to candidates (see next section).
- 8.2 The Guernsey Disability Alliance understandably took issue with the words on the electoral roll registration form stating that such people are not entitled to vote. It objected to the words and their incompatibility with States’ policy. However, while that legal ban continues to apply it is necessary for the application form to state the conditions which must be fulfilled to be eligible for inscription on the Electoral Roll in order that people are not misled into registering contrary to the law.
- 8.3 The issue is whether it remains appropriate for those categories of person not to be entitled to be inscribed on the Electoral Roll.
- 8.4 There are still countries where there is a legal bar on voting similar to Guernsey. However, Guernsey is now alone in the British Isles in preventing those people who are incapable of managing their own affairs from voting.

- 8.5 Article 3 of the First Protocol to the European Convention on Human Rights enshrines the right to free elections. The more restrictions there are on who can vote the less free those elections will be and in extremis the United Kingdom would be in breach of its Convention obligations in respect of Guernsey.
- 8.6 The ban is contrary to the States' disability strategy.
- 8.7 In their circumstances many of the people to whom the current ban applies may not actually vote. Nevertheless the potential stigma would have been removed and it would then be their choice. A person who was a detained patient might be granted leave of absence if deemed not to be a risk to the public or himself or that person could register as an absent voter.
- 8.8 The Committee is therefore proposing that the current legal disabilities which disenfranchise some of the populace be removed and that is set out in Recommendation 6. The other criteria (age, period of residence, etc.) which a person must fulfil in order to be entitled to enrol would remain.

9. Legal disability of candidates

- 9.1 At present (by virtue of Articles 8 and 49 of the Reform Law, as amended), persons who are certified as being of unsound mind; subject to guardianship; or detained in an institution as persons in need of treatment for a mental ailment are not eligible to hold the office of People's Deputy.
- 9.2 The arguments set out above for the removal of the ban also apply to candidates. Although there is a difference between having the right to vote and representing the electorate as part of the States the Committee believes that it is no longer appropriate to exclude people from holding office on those grounds.
- 9.3 The Committee is therefore proposing that the current legal disabilities which prevent some of the populace from holding the office of People's Deputy should be removed and that is also set out in Recommendation 6. The other criteria (age, period of residence, etc.) which a person must fulfil in order to be entitled to hold the office of People's Deputy would remain.
- 9.4 Recommendation 6 also includes a proposal to abolish the Register of persons under disability and repeal the definition on "legal disability" as there will be no need for a register and the definition will be redundant.

10. End date of States' term

- 10.1 At present, the term of each States ends at midnight on the 30th April and the new States take office on the 1st May. That means, as set out above, that the elections hustings period is in March and April. Although the weather then is generally more clement and the days longer than in January or February, for example, the Committee believes that late spring / early summer would be even

more conducive to the election process. The days would be even longer. This would be particularly helpful to candidates who could canvass easily only in the evenings such as those with full-time responsibilities including care of children. The weather should also be better.

- 10.2 In addition, the Committee believes that there are advantages because of the calendar. Easter will always be around the time of the canvassing period when the Election is in April. That time will, therefore, always also coincide with the school Easter holidays. There are two public holidays in Guernsey in the first nine days of May which, as is the case in 2016, also make scheduling States' Meetings more difficult.
- 10.3 The Committee, therefore, believes it would be better if the entire process was moved to two months later in the year.
- 10.4 If the States' term ended on the 30th June the following advantages would obtain. Canvassing and electioneering would be in late May and early June with consequently longer days and probably better weather. Election Day would be in the second half of June and would also benefit from long daylight hours and probably good weather. The end of May public holiday and school half-term would be of less consequence than the Easter holidays because they are shorter and would be a longer time before Election Day. The later start for the States' term would also fit in better with the States' calendar. Committee positions would be filled in early July and then Members would have the summer when the States of Deliberation do not meet to become acquainted with their new duties and committee responsibilities.
- 10.5 Since the Second World War the date has been changed on several occasions. Guernsey used to go to the polls in December, then March and now, since 1994, in April.
- 10.6 The Committee believes that the terms of office of States' Members who are currently in post should still expire on the 30th April 2016 because it would be inappropriate for Members to extend their own terms of office without a mandate from the electorate. The Committee therefore recommends that the term of the next States begins, as at present, on the 1st May 2016 but does not end until the 30th June 2020 to achieve the change to summer elections. States' terms would then revert to four years' duration from 2020. This proposal is set out in Recommendation 7.

11. Criminal convictions of candidates

- 11.1 A Member of the States wrote to the previous Chairman of the Committee in April 2012 asking the Committee to propose a new Rule to require all nominees for Deputy to undergo a criminal record check in the time between being nominated and the election. The Committee gave a commitment that it would consider the matter.

- 11.2 If such a proposal were approved then the States would need to decide which convictions were relevant and from how long ago. They would also need to decide how to treat “spent” convictions, which might require overruling some of the principles of the Rehabilitation of Offenders legislation in respect of candidates. If the criminal record checks were carried out during the nomination period then there would be a limited time in which to do them and to be equitable it would be best if all the results were available simultaneously. However, if the checks had to be done before a nomination could be accepted then prospective candidates would need to have decided some time before nominations opened whether or not they would stand. Human rights issues would also need to be considered.
- 11.3 At present a person is ineligible to be a Deputy if he has been sentenced at any time during the five years immediately preceding the date of the election for an offence by a court in the United Kingdom or Channel Islands or the Isle of Man to imprisonment for a period of six months or more (whether suspended or not) without the option of a fine, unless that sentence has been quashed or reduced to less than six months on appeal. These restrictions are broadly in line with the other Crown Dependencies.
- 11.4 The Committee has considered the correspondence from the Member of the States and other possible options relating to criminal convictions of candidates, including making the eligibility criteria stricter or more lenient and requiring public declarations by candidates of any criminal record.
- 11.5 On balance the Committee decided against making any recommendations to change the present arrangements.
- 11.6 The Committee believes that the present restrictions strike the right balance between ensuring that those who in the recent past have committed serious crimes are excluded from the States and allowing the electorate a free choice of who should represent them. The Committee therefore makes no recommendations for changes to the Law in this area.
- 11.7 Despite making no recommendations for change in this regard, the Committee has included its assessment of the matter in the policy letter in acknowledgement of the possibility that the Member who wrote to the Committee to propose change may wish to lay an amendment.

12. Consultation / Resources / Legislative Requirements

- 12.1 The Law Officers can see no reason in law why the proposals in this policy letter cannot be implemented.
- 12.2 The Bailiff has been consulted regarding the recommendations in this policy letter.

- 12.3 The approval of the recommendations would have no implications for the manpower resources of the States.

13. Recommendations

The States' Assembly & Constitution Committee recommends the States to:

1. agree that a General Election of People's Deputies be held on Wednesday, 20th April 2016;
2. set the opening hours of all polling stations in the districts of St Peter Port South, St Peter Port North, the Castel, the West and the South-East at 8 a.m. until 8 p.m. and those in the districts of St Sampson and the Vale at 10 a.m. until 8 p.m.;
3. establish the polling stations for St Saviour (West district) at the new St Saviour's Community Centre, Le Neuf Chemin and at the Evangelical Church School Hall in Longue Rue;
4. agree that each candidate in the General Election of People's Deputies to be held in 2016 shall be entitled to claim from the Registrar-General of Electors a grant not exceeding £600 towards the costs associated with the production and distribution of manifestos in accordance with such administrative arrangements as shall be determined by the Registrar-General of Electors;
5. agree that the maximum for electoral expenditure shall be prescribed as £2,300 per candidate in elections for the office of People's Deputy;
6. agree to delete Article 8(b) of the Reform (Guernsey) Law, 1948, as amended and renumber sub-paragraphs (c), (d) and (e) as (a), (b) and (c) respectively; and delete Article 27(1)(b) of the Reform (Guernsey) Law, 1948, as amended and renumber sub-paragraphs (c), (d) and (e) as (b), (c) and (d) respectively; repeal Article 42 of the Reform (Guernsey) Law, 1948, as amended; and repeal the definition of "legal disability" in Article 49 of Reform (Guernsey) Law, 1948, as amended;
7. agree that the term of office of those People's Deputies elected in April 2016 shall expire on the 30th June 2020 and that thereafter the term of office shall revert to four years;
8. direct the preparation of such legislation as may be necessary to give effect to their above recommendations.

Yours faithfully,

Deputy M. J. Fallaize
Chairman

The other Members of the States' Assembly & Constitution Committee are:

Deputy R Conder (Vice-Chairman) Deputy E G Bebb Deputy A H Adam
Deputy P A Harwood

(N.B. The Treasury and Resources Department notes that the States Assembly and Constitution Committee is recommending an increase in the maximum grant to candidates which is significantly in excess of inflation. As such, there is a possibility that this may, inter alia, mean that expenditure on grants to candidates will exceed the £50,000 allowance within the 2016 budget for election expenditure to be allocated to the Home Department. It is expected that any additional expenditure should, if at all possible, be accommodated within the overall election budget.

However, in the event that this cannot be accommodated firstly within the £162,000 election budget or the overall Home Department budget, the Treasury and Resources Department will make funding available from the Budget Reserve.)

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 27th April, 2015, of the States Assembly and Constitution Committee, they are of the opinion:-

1. To agree that a General Election of People's Deputies be held on Wednesday, 20th April 2016.
2. To set the opening hours of all polling stations in the districts of St Peter Port South, St Peter Port North, the Castel, the West and the South-East at 8 a.m. until 8 p.m. and those in the districts of St Sampson and the Vale at 10 a.m. until 8 p.m.
3. To establish the polling stations for St Saviour (West district) at the new St Saviour's Community Centre, Le Neuf Chemin and at the Evangelical Church School Hall in Longue Rue.
4. To agree that each candidate in the General Election of People's Deputies to be held in 2016 shall be entitled to claim from the Registrar-General of Electors a grant not exceeding £600 towards the costs associated with the production and distribution of manifestos in accordance with such administrative arrangements as shall be determined by the Registrar-General of Electors.
5. To agree that the maximum for electoral expenditure shall be prescribed as £2,300 per candidate in elections for the office of People's Deputy.
6. To agree to delete Article 8(b) of the Reform (Guernsey) Law, 1948, as amended and renumber sub-paragraphs (c), (d) and (e) as (a), (b) and (c) respectively; and delete Article 27(1)(b) of the Reform (Guernsey) Law, 1948, as amended and renumber sub-paragraphs (c), (d) and (e) as (b), (c) and (d) respectively; repeal Article 42 of the Reform (Guernsey) Law, 1948, as amended; and repeal the definition of "legal disability" in Article 49 of Reform (Guernsey) Law, 1948, as amended.

7. To agree that the term of office of those People's Deputies elected in April 2016 shall expire on the 30th June 2020 and that thereafter the term of office shall revert to four years.
8. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

PANEL OF MEMBERS

(Constituted by the Administrative Decisions (Review) (Guernsey) Laws, 1986-1993)

REPORT OF THE REVIEW BOARD FOR 2014

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

16th April 2015

Dear Sir

1. Executive Summary

- 1.1 In accordance with the provisions of Section 8 of the Administrative Decisions (Review) (Guernsey) Laws, 1986-1993 (“the Law”), I hereby submit, on behalf of the Panel of Members (“the Panel”), a report on the complaints received by the Chief Executive of the States of Guernsey and Her Majesty’s Greffier during the period 1st January 2014 to 31st December 2014.
- 1.2 Section 1 of the Law provides that all applications for a matter to be reviewed by a Review Board shall be made to the Chief Executive of the States, except where the matter complained of relates to the Policy Council and its staff, in which case application is made to HM Greffier.

2. Complaints and Enquiries received during the Period

- 2.1 The Panel noted that during 2014, the Chief Executive received eight complaints in total, two of which were referred to HM Greffier. A brief synopsis of the 2014 complaints is set out in the appendix to this report.
- 2.2 Over the course of the year, the Chief Executive and HM Greffier have also received, as have I as the Chairman, several general enquiries from members of the public about the Law.
- 2.3 No complaints were referred to the Panel during 2014. The Panel understands that the Chief Executive and HM Greffier ensure that section 3 of the Law, which sets out the grounds upon which they are able to refer a complaint to me as Chairman, is adhered to carefully.
- 2.4 In addition, in cases where the complainant has not commenced or not exhausted a department’s complaint procedures, the Chief Executive encourages complainants to seek resolution of the complaint with the department first and he has the Panel’s full support in doing so.

3. Reform of the Law

- 3.1 As part of the Panel's presentation of its 2012-2013 Annual Report to the States, I highlighted the proposals that it intended to bring before the Policy Council to address certain weaknesses in the Law. The Deputy Chairman and I have had the opportunity of sitting as members of Review Boards and as Panel Members in recent years. In that time, we have gained an understanding of the process and the Law, with invaluable experience of each.
- 3.2 The Panel is of the view that in the absence of any other non-legal, independent and impartial means by which a member of the public can challenge the administrative decisions of States' committees and their officers on grounds of reasonableness and fairness, the proposals for reform in paragraph 3.5 would considerably improve the existing review framework. This would be at no additional cost to the States at a time of fiscal constraint.
- 3.3 The Policy Council has recently considered the proposals of the Panel and others and has kindly agreed to support changes to the Law.
- 3.4 It is not for the Panel's report to detail the proposals in advance of them being laid before the States by the Policy Council. However, the Panel believes it appropriate to highlight the key areas of the Law which it has informed the Policy Council are in need of amendment, including:
- (i) ***Introducing more independence and strength to the process through the establishment of a panel of persons independent of the States, chaired by an independent person elected by the States, to consider all applications for review, i.e. to replace the role of the Chief Executive/HM Greffier as 'gatekeeper' in the Law.*** Although the Panel has no doubt that the Chief Executive/ HM Greffier and their advisors deal with these matters with absolute integrity, setting up the head of the civil service as 'gatekeeper' under the Law may allow for perceptions of bias, not least because all chief officers report to the Chief Executive.
 - (ii) ***Providing adequate protection for members of a Review Board against legal proceedings.***
 - (iii) ***Making the constitution of a Review Board more balanced and representative by increasing its size from three persons to four and making the fourth person a member of the public.***
 - (iv) ***Empowering the Panel, in specific circumstances only, to determine whether to waive the 12 month time limit within which the complainant has to submit a complaint under the Law.***

- 3.5 The Panel would like to record its thanks to the Policy Council for supporting these changes and notes that the Policy Council intends to lay proposals before the States no later than Autumn 2015. Subject to States' approval of the proposals, the Panel also notes that the Policy Council intends to prioritise the drafting of the consequential legislation.

4. Recommendation

- 4.1 Sir, I should be grateful if the States of Deliberation were of the opinion to note the content of this report.

Yours faithfully

Deputy M J Fallaize,
Chairman of the Panel of Members

APPENDIX

REPORT OF COMPLAINTS RECEIVED BY THE CHIEF EXECUTIVE OF THE STATES BETWEEN 1ST JANUARY 2014 TO 31ST DECEMBER 2014, BY DEPARTMENT

1. X v Health and Social Services Department and Education Department

A complaint against a decision of the Health and Social Services Department and Education Department regarding health and educational provision for a minor.

The Chief Executive has placed this matter on hold whilst the complainant exhausts the Health and Social Services Department's complaints procedure.

2. X v Housing Department

A complaint against a decision of the Housing Department under The Housing (Control of Occupation) (Guernsey) Law, 1994 in respect of a non-employment-related housing licence on compassionate grounds.

The Chief Executive did not refer the matter to the Chairman of the Panel as the complainant had a right of appeal in a court of law in relation to the matter from which the complaint arose.

3. X v Environment Department

A complaint against a decision of the Environment Department under the Land Planning and Development (Guernsey) Law, 2005 and The Land Planning and Development (Enforcement) Ordinance, 2007 in respect of the use of a glass house.

The Chief Executive did not refer the matter to the Chairman of the Panel as the complainant had a right of appeal before the Planning Tribunal.

4. X v Environment Department

A complaint against a decision of the Environment Department in respect of change of use of retail premises and parking.

The Chief Executive did not refer the matter to the Chairman of the Panel as the complainant did not pursue this complaint after initial correspondence.

5. X v Treasury and Resources Department

A complaint relating to the potential purchase, acquisition or development of land or interest in land.

The Chief Executive referred the matter to HM Greffier under section 1(b) of the Law, as the matter involved staff of the Policy Council. HM Greffier subsequently found that the complaint did not fall within the jurisdiction of the Review Board.

6. X v Policy Council

A complaint relating to pension arrangements.

The Chief Executive has referred the matter to HM Greffier under section 1(b) of the Law, as the matter involves staff of the Policy Council. H.M Greffier is currently investigating the complaint.

7. X v The Social Security Department

A complaint relating to the Department's decision not to reimburse the Complainant for private medical fees.

The Chief Executive has placed this matter on hold whilst the complainant exhausts the Department's complaints procedure and/or appeals to the Social Insurance Tribunal.

8. X v The Social Security Department

A complaint relating to the Department's decision relating to pension provisions/ Married Women's Contributions

The Chief Executive is currently investigating the complaint.

(N.B. As there are no resource implications in this Report, the Treasury and Resources Department has no comments to make.)

(N.B. The Policy Council supports the proposals relating to reform of the Administrative Decisions (Review) (Guernsey) Laws, 1986–1993, as highlighted in paragraph 3 of this Report.)

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 16th April, 2015, of the Panel of Members (constituted by the Administrative Decisions (Review) (Guernsey) Laws, 1986-1993), they are of the opinion to note the contents of the Report.

APPENDIX

COMMERCE AND EMPLOYMENT DEPARTMENT

ANNUAL REPORT OF THE DIRECTOR OF CIVIL AVIATION

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

19th March 2015

Dear Sir

The Aviation (Bailiwick of Guernsey) Law, 2008 provides, in section 10, that the Commerce and Employment Department is required to submit the Annual Report of the Director of Civil Aviation to the States of Guernsey.

I am pleased to enclose a copy of his report for the period 1st January to 31st December 2014.

The Department has no further comment to make on the report by the Director of Civil Aviation.

I would be grateful if you would arrange to publish this submission as an Appendix to the next available Billet.

Yours faithfully

K A Stewart
Minister

Director of Civil Aviation Annual Report 2014

March 11th 2015

Executive Summary

After major projects over the last eighteen months to rehabilitate Guernsey Airport and reclassify the Channel Islands Control Zone, 2014 has been a relatively quiet year. We have seen the first full year of operations of the Channel Islands Aircraft Registry known as 2-REG, the Channel Islands gaining approved third-country status from the European Commission in aviation security, continued close co-operation between Jersey and Guernsey in aviation regulation and the handover to a new DCA. We have also had to deal with a rapid growth in the availability of low-cost “drones”, the entry into force across Europe of the Single European Rules of the Air, and publication of the report into the Air Search accident in 2013.

Principal Responsibilities of the DCA

The reports for 2012 and 2013 contained a detailed description of the role of the DCA and explained the responsibility to ensure compliance with international standards set out under the Chicago Convention of 1944 and its associated annexes, so for brevity this is not repeated here. Likewise there has been no change during 2014 to the State Safety Programme or State Safety Plan so these are not included and readers are directed to last year’s report¹.

An emerging area for the DCA is Europe. Across Europe almost every aspect of aviation regulation is being integrated at an EU level under the European Aviation Safety Agency (EASA) and whilst the Channel Islands are not obliged to implement EASA rules there are a number of areas where industry stakeholders have indicated that it would be prudent to do so. Ensuring that we make the EASA standards work for us and that where appropriate we choose our own path has become an important – and growing – element of the DCA’s function.

The DCA is also the statutory registrar for the aircraft registry in Guernsey and has accountability for aviation security across the Channel Islands.

Routine Oversight Activities

There were a number of routine oversight audits undertaken during 2014 by the UK Civil Aviation Authority (across the Channel Islands) on behalf of the DCA. In Guernsey there was an audit of air traffic services in the autumn that resulted in no major issues, although the inspectors did discuss with the PSD management team an outstanding finding from a previous audit regarding controller fatigue and rostering at Alderney Airport. This has subsequently been resolved to the satisfaction of

¹ Available from the DCA – shortly to be posted to the DCA website at www.gov.gg/dca

the DCA and a pragmatic solution put in place. The airports continue to perform well and demonstrate a high level of compliance with international standards.

The next major audit will be undertaken during March 2015 to cover aerodrome licensing and will cover Guernsey and Alderney Airports. Following discussion with the airline's management, the UK CAA and Officers at Treasury and Resources, the DCA will also have observer status in Aurigny's flight operations audit in April 2015. This will allow the DCA to better understand Aurigny's regulatory oversight and provide a local voice and assistance where appropriate. It is envisaged that this will be extended to other Channel Islands operators in due course.

Handover of the DCA Role

Fergus Woods retired from the DCA role at the end of July 2014 after completing a detailed handover to Gus Paterson. Fergus had spent some six years establishing then consolidating the Office of the Director of Civil Aviation and has left the Channel Islands with a strong independent statutory regulator. The new DCA has completed the UK DfT Aviation Security Manager course since starting in post.

Co-operation with Jersey

The shared DCA role continues to prove successful and resilient. During 2014 work has centred on agreeing the Channel Islands Civil Aviation Security Programme (as described below) and the handover to the new DCA (as above). We have also brought into place parallel legislation in both Bailiwicks dealing with Small Unmanned Aircraft (below).

In December 2014 Jersey passed the new consolidated *Air Navigation (Jersey) Law 2014*² that brought the two Bailiwicks closer together in terms of their aviation legislation. The DCA is also working closely with Jersey on the proposed implementation of the Single European Rules of the Air (SERA)³; consultation started towards the end of 2014 and will continue into 2015 before a final decision is made in this area.

Small Unmanned Aircraft ("Drones")

In both Jersey⁴ and Guernsey⁵ the DCA has established a proactive regulatory regime for dealing with Small Unmanned Aircraft (SUAs). Such vehicles are known by a number of industry and colloquial names including "remotely piloted vehicle", "remotely piloted aerial system" and – most commonly – "drones". Broadly in line with the UK, simple rules are in place for the recreational use of SUAs with a permit system for commercial use that is broadly analogous to that for other aerial work. At present there are less than five licensed commercial operators but this number is expected

² See <http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce\htm\LawFiles\2014%2fL-24-2014.htm>

³ The full text of SERA is published in Commission Implementing Regulation (EU) 923/2012 at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:281:0001:0066:EN:PDF>

⁴ See hyperlink at 2 above – s52

⁵ In Guernsey two laws apply. See *The Air Navigation (Restriction of Flying) (Small Aircraft) Regulations 2014* at <http://www.guernseylegalresources.gg/article/113959/No-53---The-Air-Navigation-Bailiwick-of-Guernsey-Restriction-of-Flying-Small-Aircraft-Regulations-2014> and s37 of the Air Navigation (Guernsey) Law 2012 at <http://www.guernseylegalresources.gg/article/109460/Air-Navigation-Bailiwick-of-Guernsey-Law-2012-Consolidated-text>

to grow quickly as the devices gain acceptance. The DCA has been working with Ports of Jersey and the Guernsey Public Services department (operator of both Guernsey and Alderney airports) to raise awareness of the potential hazards to aviation and to ensure that the new rules are accessible and properly understood. It is worth noting that all general provisions of the respective aviation laws in both Bailiwicks apply to SUAs in the same manner as other aircraft.

The DCA has also been in dialogue with Chief Pleas to determine the policy on SUA access to the Sark restricted area (known as “R095”)⁶. The DCA remains the appropriate authority for authorizing access to this airspace and works closely with the insular authorities in this respect. Following legal advice and discussion with the General Purposes and Advisory Committee it has been decided to treat SUAs in the same manner as all other aircraft in the vicinity of Sark to ensure consistency.⁷

Channel Islands Aircraft Registry (2-REG)

The aircraft registry project has now reached a mature stage and is progressing well. Our strategic partner – SGI – has refocused on the aircraft leasing market in order to offset an initial slow uptake of the business jet proposition. There continues to be strong competition in the business jet segment – particularly from the Isle of Man – and the new focus has been successful in maintaining a steady stream of business for 2-REG. It is always worth noting that one Airbus A320 is worth more in revenue terms than several smaller business jets (or two larger Gulfstream G650s) when comparing raw numbers of targeted registrations. The largest aircraft handled so far has been an Airbus A330 (a long-range wide body airliner) that was placed on the 2-REG for redelivery from a Chinese carrier to a Brazilian airline via a refurbishment in the United States. This type of complex international transaction is typical of the registry’s current work. During the second half of 2014 SGI made a number of changes to their processes and resources to further streamline the registry.

Further developments are planned for 2015 with an informal project underway to establish the requirements to permit commercial operations for aircraft on the registry. Commercial operations require a higher level of oversight and will require some investment from SGI but will not draw upon additional States resources. Having received a large number of enquiries during 2014 from potential clients there is clearly a market here; we believe that the initial interest will be from business jet charter or fractional ownership organizations but there is potential in time to develop our offering to the high standards required by airline operators.

In parallel we will continue to develop our business aircraft proposition by working with stakeholders both within the Channel Islands and further afield. We will be attending the EBACE trade show in Geneva in May 2015.

Miscellaneous Activities

Both Jersey and Guernsey are now included in the state of registry insurance policy led by the Cayman Islands. This provides liability cover for the Bailiwicks should a locally registered aircraft be lost on the high seas where there is no “state of occurrence”. Such co-operation allows us to benefit from the considerable scale of the Caymans’ operation and the keep the costs at a manageable level.

⁶ Formally notified in the UK Aeronautical Information Publication at ENR 5.1-28; see http://www.nats-uk.ead-it.com/public/index.php%3Foption=com_content&task=blogcategory&id=4&Itemid=11.html

⁷ Notice published at http://gov.sark.gg/Public_Notices.html

Following publication of the UK Air Accident Investigation Branch (AAIB) report⁸ in to the crash of the Channel Islands Air Search aircraft at Devil's Hole, Jersey on November 3rd 2013, the DCA worked closely with Air Search to assist in returning the service to interim operating capability in October 2014. Air Search has implemented a number of improvements to operating practices and has introduced a safety management system and minimum equipment list. Close dialogue continues with a further review scheduled for spring 2015 ahead of agreeing more permanent oversight arrangements.

Towards the close of 2014 we have been exploring the feasibility of developing a stand-alone identity for the DCA in a similar style to other pan-islands agencies. This would allow for a clearer distinction between the aircraft registries and the regulator – a concern for when the Jersey Aircraft Registry launches mid-2015. A decision will be made during 2015 with potential additional cost being the major consideration, although initial work suggests that this may not be significant.

Throughout the year the routine work of the DCA continued. On a day-to-day basis requests are made by operators wishing to conduct aerial work, photography and survey flights, all of which require a permit from the DCA. For 2015 a simplified permit style has been developed that enables a single document to be used for operators wishing to conduct activities in both Bailiwicks. The DCA is also involved in the planning for events such as Liberation Day and the annual Air Show.

Aviation Security

Perhaps the most important achievement of 2014 has been the formal recognition by the EU of both Guernsey and Jersey applying aviation security measures equivalent to the EU common basic standards. This has been a complicated and detailed project which has benefited from the ongoing standardised approach to aviation security by both islands.

The result of this work is that flights from the Channel Islands into the EU are treated as domestic flights for security purposes – enabling passengers to make direct connections through European hubs in the same way that they do through UK airports. We have also maintained our UK domestic status and comply voluntarily with the more stringent security measures in force there.

The year has seen further work establishing the Channel Islands Aviation Security Quality Control Programme and a number of operational audits at the airport have been carried out by the Deputy DCA to verify the security measures are effective and properly implemented in accordance with the provision of all relevant security legislation.

The transfer of compliance oversight in the UK for aviation security from the Department for Transport (DfT) to the Civil Aviation Authority (CAA) is complete and the work to incorporate this new arrangement in the UK to the Channel Islands is now in the final stages and should be finalised in the first half of 2015. This will facilitate the oversight of security measures required by the UK and EU.

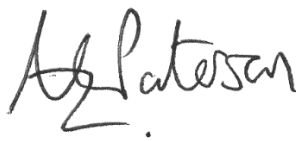
⁸ Published in the AAIB October 2014 Bulletin, at p87:
http://www.aaib.gov.uk/cms_resources/AAIB%20Bulletin%2010%2D2014%2Epdf

The *Aviation Security (Guernsey) Direction 2012*⁹ was again amended in 2014. As previously advised this is likely to be updated on an annual basis to keep up to date with the latest developments and threats. The parallel document was also amended in Jersey to maintain equivalent measures.

The security environment is continually evolving and we work closely with the UK DfT and CAA in our oversight of local arrangements to ensure that passengers and airlines encounter a standardised approach to aviation security.

DCA

If you have any questions about anything contained in this report or any other aspect of aviation in the Channel Islands, please contact me.



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⁹ Available at <http://www.guernseylegalresources.gg/article/113958/No-52---The-Aviation-Security-Bailiwick-of-Guernsey-Amendment-Direction-2014> but note that Appendices C and D are restricted