BILLET D'ÉTAT

IV
2023

WEDNESDAY, 29th MARCH, 2023

ELECTIONS AND APPOINTMENTS

Appointment laid before the States

Appointment of an Ordinary Member of the Guernsey Competition & Regulatory Authority

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CONTINUED OVERLEAF

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APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION

APPOINTMENT OF AN ORDINARY MEMBER OF THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY

In accordance with section 1 (4A) of Schedule 1 to the Guernsey Competition and Regulatory Authority Ordinance, 2012, as amended, the following appointment by the Committee *for* Economic Development, to the Guernsey Competition and Regulatory Authority, is laid before the States of Deliberation:

- Dr. Philip Marsden as an ordinary member with effect from 12th January 2023.

Dr. Marsden has been appointed as an ordinary member until 31st December 2023.

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

The Committee *for* Economic Development has concluded that Dr. Marsden is suitable to be an ordinary member of the Guernsey Competition and Regulatory Authority.

A summarised version of the curricula vitae of Dr. Marsden is provided below.

Dr. Philip Marsden

Career:	**Position/company:**	**Dates:**
	Professor, College of Europe, Bruges.	2010-current
	Independent Counsel.	2002-current
	Senior Research Fellow, British Institute of International and Comparative Law, London.	2003-2014
	Co-founder, WTI Advisors.	2004-2010
	Senior lawyer, Linklaters.	1999-2002
	D.Phil, University of Oxford, Faculty of Law.	1996-1999
	Case Officer, Competition Bureau, Ottawa.	1994-1996
	Legal Consultant, Mori & Associates K.K, Tokyo.	1991-1994
	Solicitor, Osler Renault Ladner, Toronto.	1989-1991
Professional qualifications:	D.Phil, Faculty of Law, University of Oxford.	1999
	LL.M. Faculty of Law, Leicester University.	1995
	LL.B. Faculty of Law, University of Toronto.	1989
	B.A. (Hons), University of Toronto (English/Philosophy).	1986
Current Non-Executive Directorships	Deputy Chair, Enforcement Making Committee, Financial Conduct Authority.	2016-present

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THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

RE-APPOINTMENTS TO THE DATA PROTECTION AUTHORITY

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Re-appointments to the Data Protection Authority' dated 9th January 2023, they are of the opinion:-

1. To re-appoint with effect from 25th May 2023 Mr Richard Thomas CBE as the Chairman of the Data Protection Authority until 24th May 2027;

2. To re-appoint with effect from 25th May 2023 Mr John Curran as a voting member of the Data Protection Authority until 24th May 2027;

3. To re-appoint with effect from 25th May 2023 Mr Simon Entwistle as a voting member of the Data Protection Authority until 24th May 2027.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

RE-APPOINTMENTS TO THE DATA PROTECTION AUTHORITY

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

9th January 2023

Dear Sir

1 Executive Summary

1.1 The purpose of this Policy Letter is to re-appoint the Chairman and two voting members of the Data Protection Authority (''the Authority'') as established under the Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law").

1.2 There are currently six voting members of the Authority, including two whose terms of office expire on 24th May 2023. The Committee *for* Home Affairs (''the Committee'') is seeking the re-appointment of Mr Richard Thomas CBE as Chairman for a period of four years with effect from 25th May 2023. The Committee is also seeking the re-appointment of Mr John Curran and Mr Simon Entwistle for a period of four years with effect from 25th May 2023.

2 Background

2.1 Part XI of the Law establishes the Authority, with Schedule 6 to the Law setting out the constitution of the Authority. Schedule 6 provides that the Chairman and other voting members must be appointed by resolution of the States of Deliberation from individuals nominated by the Committee.

2.2 Schedule 6 to the Law states that the Authority comprises a Chairman and no fewer than four and no more than eight other voting members, with the exact number being determined by the Committee, and the Commissioner, as an *ex officio* and non-voting member.

2.3 In recommending the individuals to the States, pursuant to paragraph 1(3) of Schedule 6 to the Law, the Committee must have particular regard to the need to "ensure that voting members of the Authority –

(a) have the qualifications, experience and skills necessary to exercise and perform the functions of a member, in particular relating to the protection of personal data,

(b) have a strong sense of integrity, and

(c) are able to maintain confidentiality."

2.4 Each voting member is to be appointed for a term of not less than four, and not more than five, years as the Committee thinks fit in a particular case.

2.5 Paragraph 1(6) of Schedule 6 to the Law provides that:

> "Each voting member may be reappointed in accordance with this paragraph, but must not be appointed as a voting member for more than three terms aggregate (whether consecutive or not)."

2.6 The Committee is pleased to recommend the re-appointment of the Chairman and, with the support of the Chairman of the Authority, the following individuals for re-appointment to the Authority.

3. Re-appointment of Chairman to the Authority– 4 year appointment

3.1 Mr Richard Thomas CBE was the UK's Information Commissioner from 2002 to 2009, responsible for enforcement of the Data Protection and Freedom of Information Acts. He was subsequently the Chairman of the Administrative Justice and Tribunals Council and served as a Member of the Committee on Standards in Public Life from 2012 to 2017. In January 2018, he was appointed by the Prime Minister to the Advisory Committee on Business Appointments.

While Mr Thomas is based in the UK, this is not considered to be a barrier to his active participation as the Chairman of the Authority and his practical experience is an asset to the Authority.

3.2 Mr Thomas has advised the Committee of his intention to step down from the role before the end of the four year term

4. Re-appointment of Voting Members to the Authority– 4 year appointment

4.1 Mr John Curran is a former Chief Executive of the Channel Islands Competition and Regulatory Authorities (CICRA) and sat on the Board of the Channel Islands Financial Ombudsman and as a non-voting Member on the States of Guernsey

Transport Licensing Authority (TLA).

Mr Curran has experience acting within a regulatory model and proven experience in interpreting and applying complex legislation. Past roles have demonstrated the ability to balance the competing interests of stakeholders, asserting sound judgement and sensitivity.

4.2 Mr Simon Entwistle is a former Deputy Commissioner at the UK Information Commissioner's Office (ICO), a position he held for over 13 years. He has vast experience of data protection and the ICO management board.

Mr Entwistle has demonstrated a clear analytical mind and the ability to understand and effectively communicate complex legislative issues so as to be understood by all stakeholders. His previous roles have required the ability to react strategically, maintaining high standards and accuracy whilst dealing with competing priorities.

4.3 Both Mr Curran and Mr Entwistle have advised the Chairman of their intention to step down from their role before the end of their four year term.

5. Compliance with Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

5.2 In accordance with Rule 4(1):

a) the Propositions contribute to the States' objectives in that the re-appointment of the Chairman and two voting members to the Authority will ensure the Authority can appropriately discharge its statutory duties.

b) In preparing the propositions, consultation has been undertaken with the Chairman of the Authority.

c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no financial implications to the States of carrying the proposals into effect.

5.3 In accordance with Rule 4(2):

a) the Propositions relate to the duties of the Committee to advise the States

and to develop and implement policies on matters relating to its purpose including data protection.

b) The propositions have the unanimous support of the Committee.

Yours faithfully

R G Prow
President

S P J Vermeulen
Vice-President

S E Aldwell
L McKenna
A W Taylor

P A Harwood OBE
Non-States Member

P.2023/8

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

ELECTION OF ORDINARY MEMBERS OF THE GUERNSEY FINANCIAL SERVICES COMMISSION

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 30th January, 2023, of the Policy & Resources Committee, they are of the opinion:-

1. To appoint John Aspden as an ordinary member of the Guernsey Financial Services Commission for a three year term with effect from 3rd April 2023.

2. To appoint Philip Middleton as an ordinary member of the Guernsey Financial Services Commission for a three year term with effect from 3rd April 2023.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

ELECTION OF ORDINARY MEMBERS OF THE GUERNSEY FINANCIAL SERVICES COMMISSION

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

30th January, 2023

Dear Sir

1. Executive Summary

1.1 The terms of office for John Aspden and Philip Middleton as Commissioners of the Guernsey Financial Services Commission ('the GFSC') will end on 2nd April 2023.

1.2 In order to ensure continuity of experience, this Policy Letter proposes the election of John Aspden and Philip Middleton as ordinary members of the GFSC for a further three year term with effect from 3rd April 2023.

2. Report

John Aspden

2.1 John Aspden is a senior finance professional with significant experience in investment and banking supervision in both the public and private sectors.

2.2 From 1998 to 2015, Mr Aspden was Chief Executive of the Financial Supervision Commission in the Isle of Man, where he was responsible for the regulation and supervision of all banking, securities and funds, trusts and companies, and money transmission activities.

2.3 Prior to taking up his role at the Financial Supervision Commission in the Isle of Man, Mr. Aspden held roles in the private sector including Managing Director of Matheson InvestNet Ltd, at the time Hong Kong 's largest independent distributor of, and adviser on, collective investments for retail investors.

2.4 Mr. Aspden has also held the role of Deputy General Manager of the International Bank of Asia Ltd and has worked in banking supervision at the Bank of England and at the Office of the Commissioner of Banking in Hong Kong, now

HKMA. He is also Chairman of the Group of International Finance Centre Supervisors.

2.5 Mr Aspden has been a Commissioner of the GFSC since April 2017, and has made important contributions to the work of the GFSC in that time.

Philip Middleton

2.6 Philip Middleton is a senior financial services strategist with significant recent experience in advising government, central banks and financial institutions on crisis related issues.

2.7 Since 2014, Mr Middleton has carried out consulting and advisory work in central banking and financial services through Rifle House Capital Ltd. He is also Deputy Chairman of the Board of the Official Monetary and Financial Institutions Forum, a leading Central Banking think tank.

2.8 Mr Middleton has had significant experience in the private sector, holding various roles within KPMG LLP, including Partner and European Head of Financial Services Strategy, and within Ernst & Young LLP, including Partner and Head of Central Banking, EMEIA.

2.9 Mr Middleton has been a Commissioner of the GFSC since April 2017, and has made important contributions to the work of the GFSC in that time.

3. Conclusion

3.1 The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 specifies that ordinary members of the Commission should "be persons having knowledge, qualifications or experience appropriate to the development and supervision of finance business in the Bailiwick".

3.2 Based on their significant professional experience, the Policy & Resources Committee is of the opinion that John Aspden and Philip Middleton meet the criteria of the Law and is pleased to nominate them for re-appointment as ordinary members of the GFSC.

4. Recommendation

4.1 The States are asked to decide whether they are of the opinion:-

a) to appoint John Aspden as an ordinary member of the Guernsey Financial Services Commission for a three year term with effect from 3rd April 2023.

(b) to appoint Philip Middleton as an ordinary member of the Guernsey Financial

Services Commission for a three year term with effect from 3rd April 2023.

5. Compliance with Rule 4

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

5.2 In accordance with Rule 4(1)(a), the Proposition is in line with States' objectives and policy plans as set out in the Government Work Plan Priority 2–"Managing the Effects of Brexit; Meet international Standards"[1].

5.3 In accordance with Rule 4(1)(b), no consultation was undertaken with other Principal Committees, as under the legislation only the the Policy & Resources Committee can nominate Commissioners for the GFSC.

5.4 In accordance with Rule 4(1)(c), the Proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Proposition should not be put into effect.

5.5 In accordance with Rule 4(1)(d), there are no financial implications to the States for these proposals.

5.6 In accordance with Rule 4(2)(a), the Proposition relates to the power of the Policy & Resources Committee to nominate persons for election by the States as members of the GFSC under paragraph 1(2) of Schedule 1 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

5.7 In accordance with Rule 4(2)(b), it is confirmed that the Proposition has the unanimous support of the the Policy & Resources Committee.

Yours faithfully

Policy & Resources Committee

P T R Ferbrache
President

M A J Helyar
Vice-President

[1] Government Work Plan – Stage 2, Billet d'État XV of 2021 and Resolutions of 23rd July, 2021.

J P Le Tocq
D J Mahoney
R C Murray

P.2022/100

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Proposal for Provisions to Address Land Which is Affecting the Amenity of an Area" they are of the opinion:-

1. To agree to give the Development & Planning Authority a power to serve civil notices on owners and occupiers of land, requiring the owner and occupiers to take steps to remedy the condition of their land, other than in relation to certain redundant glasshouses and related structures, where the Authority considers the condition of that land is adversely affecting the amenity of the area; and to agree to make the following related provision for-

    a) appeals to the Planning Tribunal against the service of such a notice;

    b) offences in relation to a contravention of a requirement of such a notice;

    c) the Development & Planning Authority to have powers to enter land and to carry out required steps where a requirement of a notice is not met; and

    d) the Development & Planning Authority to have powers to recover costs and apply to the Royal Court for a charge over the land similar to those which currently apply in relation to compliance notices under planning legislation,

    as further detailed in section 5 of that Policy Letter and to provide for all necessary related provisions as set out in that section.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

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

18th October, 2022

Dear Sir

1 Executive Summary

1.1 Section 46 of the Land Planning and Development (Guernsey) Law, 2005 (the "2005 Law") provides that the States may provide by Ordinance for the control of the use of land or any activity or omission in relation to land where it considers it expedient to do so. This provision expressly includes a power to control matters connected with the impairment of amenity in any locality including land in an unsightly condition. "Land" includes buildings[1]. The Development & Planning Authority (D&PA) believes that it is expedient for the States to enact such an Ordinance now, to provide powers which are largely absent to enable the D&PA to tackle known eyesores in our urban centres and rural areas and thereby to support the Government Work Plan. Current available or proposed powers are focussed on other issues such as preserving protected buildings, illegal dumping of waste or housing standards which do not address many eyesore sites.

1.2 Examples of matters that could be addressed through powers provided by an Ordinance under section 46 include derelict premises in Town or unsightly redundant visitor accommodation establishments. Such powers would also play an important part in securing revitalisation and acting as a deterrent to prevent the future creation of eyesores through allowing dereliction and neglect.

1.3 The D&PA consulted with Island Douzaines in 2018 and the overall response was

[1] See the definition of "land" in the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

supportive, with several problem areas identified by Douzaines which could be tackled under the proposed Ordinance. Some Douzaines identified possible opportunity for involvement at a Parish level to assist with the removal or remediation of eyesores.

1.4 Further consultation with the Island's Douzaines was undertaken in September, 2022 on the draft proposals contained in this policy letter. The D&PA has consulted with the Policy & Resources Committee, and with the Committee *for the* Environment & Infrastructure in relation to matters relevant to appeal procedures and the relationship of the proposals with environmental health policy and legislation. In relation to the latter, the proposals have been shared with the Committee *for* Health & Social Care.

1.5 The main provisions of an Ordinance under section 46 would relate to:

- Powers for the D&PA to serve civil notices (similar to planning enforcement Compliance Notices) on the owner and occupier of land in circumstances where it appears to the D&PA that the amenity of the area is adversely affected by the condition of that land, and to require the carrying out of steps for remedying the condition of the land as specified in the notice and within a specified period;
- provision for an offence to be committed in the event of non-compliance with any requirement of the notice and related penalties and procedures;
- Provision for a right of appeal against a notice to the Planning Tribunal for the person on whom the notice is served, to be brought within 28 days of service of the notice, on specified grounds;
- Powers for the D&PA in the event of non-compliance with the notice, to enter the land and undertake the work specified in the notice, and to recover its reasonable costs in doing so from the owner of the land;
- Provision for a register of notices and appeals.

1.6 Similar powers to those proposed already exist in England and Wales under section 215 of the Town and Country Planning Act 1990, in Jersey under the Planning and Building (Jersey) Law 2002, and, within the Bailiwick, in sections 18 and 19 of the Building and Development Control (Alderney) Law, 2002; these include civil notice powers for the taking of action in relation to unsightly things on land or certain movable structures, such as caravans, and for the carrying out of works in respect of dangerous or derelict land or certain movable structures.

1.7 The D&PA believes that expenditure and ongoing resourcing requirements to operate the proposed system will be minimal in the context of the existing work of the D&PA and the Planning Panel, and that opportunities for savings benefits to the States exist through tackling eyesore cases early through the proposed powers. Although there could be costs to the States in the event of non-

compliance with a notice, it should be possible to minimise States' expenditure in the rare event that direct action is required to resolve a significant impairment of amenity, for example by using States' controlled labour, and using established cost-recovery mechanisms.

2 Background

2.1 Section 46 of the Land Planning and Development (Guernsey) Law, 2005 (the "2005 Law") states that the States may provide, by Ordinance, for the control of the use of land or any activity or omission in relation to land where it considers it expedient to do so. References to "land" under the 2005 Law include buildings[2]. This provision expressly includes a power to control matters connected with the impairment of amenity in any locality, including –

- the disposal of rubbish,
- the abandonment of any vehicle, substance or any other thing on any land,
- the presence of any dilapidated or ruinous buildings,
- land in an unsightly condition,
- the placing of caravans on land,
- the removal of turf, topsoil or sand from any agricultural land,
- the placing or removal of glasshouses on land and their use,
- the protection and preservation of cliff paths.

2.2 Amenity is understood as referring to the pleasantness of a place. The term is usually not defined in legislation as there is case law on its meaning. The Royal Court would have particular regard to any local case law and is likely to have regard to any English case law on similarly worded legislation. English case law has interpreted it as pleasant circumstances, features or advantages including appearance and layout. This meaning is reflected in the Island Development Plan where it means the "feel" of a place in terms of it being pleasant or agreeable including the visual pleasantness of a place or area (IDP Glossary, 2016).

2.3 The States approved the proposals of the former Island Development Committee (IDC) relating to review of the Island Development (Guernsey) Laws, 1966-90 in June 2002 (Billet d'État No. XI of 2002). The IDC's policy letter referred at paragraph 3.4.6 to Chapter 6: "Other Controls" of the proposed Land Planning and Development (Guernsey) Law, 2005 (the "2005 Law"), stating that:

"It is proposed to make provision for the IDC to control certain uses of land and activities that are the cause of nuisance or impairment of amenity. The detail of

[2] See the definition of "land" in the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

how these powers would be used would be dealt with by Ordinance. This Ordinance will not be brought forward as part of the current package." [This being the package of Ordinances that was required immediately for the bringing into effect of the 2005 Law which subsequently came into effect in 2009.]

2.4 In 2018, the D&PA expressed interest in introducing an Ordinance under section 46 of the 2005 Law. Consultation was undertaken with all the Island's Douzaines at that time, the responses to which indicated general support for the proposal. Further detail of the consultation undertaken is set out in paragraph 4.1 to this policy letter. Proposals were however not progressed to a conclusion at that time, due to other legislative and policy priorities for the D&PA.

3 The current position

3.1 In developing its current priorities having regard to the Government Work Plan, the D&PA believes that it is important to introduce an Ordinance under section 46 of the 2005 Law now. Spatial planning is a key enabler in implementation of the Government Work Plan, in terms of helping to deliver actions to support the States' priorities. Part of this role is in helping to make best and most efficient use of our existing Island resources, which includes the intrinsic attractiveness of our towns and countryside to Islanders, visitors and potential investors.

3.2 For example, Town regeneration and revitalisation is a key theme of the Government Work Plan. As well as having produced a Development Framework for three Regeneration Areas in St Peter Port, the D&PA is taking an active role in several initiatives designed to promote and facilitate regeneration of our Main Centres. In this context, introducing legislation to address untidy sites and derelict buildings will play an important part in securing revitalisation and disincentivising further dereliction of sites and buildings in our towns.

3.3 Likewise, outside of the Main Centres, an Ordinance under section 46 of the 2005 Law will also provide the D&PA with the tools necessary to tackle a number of eyesore sites which are a blot on an otherwise attractive rural landscape, such as derelict or dilapidated redundant visitor accommodation establishments or where land is in an unsightly state (e.g. due to the presence of large numbers of dilapidated vehicles on site). Such cases may be relatively limited, but they do have a disproportionately significant impact on the attractiveness, and ultimately the reputation, of our Island.

3.4 There are existing legislative provisions which deal with specific problems which can affect amenity or create an eyesore. However, none deal with unsightly land in a comprehensive way and they are primarily directed at issues other than amenity. A summary of relevant legislation is included in Appendix A to this policy letter. The D&PA currently has no comprehensive powers which can be used effectively to resolve such problems. It is therefore necessary for an

Ordinance to be introduced under section 46 to do so, as was envisaged when the 2005 Law was approved by the States in 2002.

3.5 For these reasons, the D&PA has agreed that it is a high priority to bring forward this policy letter for consideration by the States.

4 Consultation undertaken

4.1 As noted above, in 2018 during the last term of Government the D&PA undertook consultation with the Island's Douzaines on initial proposals for an Ordinance under section 46 of the 2005 Law. In the main, the responses received were positive and endorsed the principle of such an Ordinance. Several problem areas where amenity was being impaired were identified by Parish authorities which they considered could be addressed by the proposed Ordinance, most notably redundant hotel sites and abandoned vehicles. Some Douzaines also identified the possible opportunity for involvement at a Parish level to assist in the removal or remediation of the eyesore in question.

4.2 A media article was also published in June, 2018 concerning this matter. In response, two emails were received from members of the public. One correspondent expressed concern about the potential for "tidying" of sites which provide valuable ecological habitats, and suggested that the Ordinance should be worded to focus on "addressing instances in which man-made objects and derelict structures are on land in a state contrary to public amenity and the natural environment". The other representor was concerned that the proposed powers could be interpreted in a subjective and judgemental way by singling out particular sites, and that if applied to derelict greenhouses could remove opportunities for small-holding type growing and negatively impact wildlife.

4.3 Further consultation with the Island's Douzaines was undertaken in September, 2022 on the draft proposals contained in this policy letter. Responses were received from the Constables of the Vale, Castel, St Saviour and St Sampson. Copies of the letters received from these Parishes are included in Appendix B to this policy letter. The responses were generally supportive and included helpful comments concerning the scope of the proposals. All comments received have been considered carefully by the D&PA when bringing these proposals before the States.

4.4 The D&PA has consulted with the Policy & Resources Committee, and with the Committee *for the* Environment & Infrastructure in relation to matters relevant to appeal procedures and the relationship of the proposals with environmental health policy and legislation. In relation to the latter, the proposals have been shared with the Committee *for* Health & Social Care. Copies of the letters of response from the Policy & Resources Committee and the Committee *for the* Environment & Infrastructure are included in Appendix C to this policy letter. The

matters raised have been addressed by the D&PA within the proposals set out in this policy letter.

5 Key aspects of an Ordinance under section 46

5.1 Notwithstanding the intentionally relatively broad scope of section 46 of the 2005 Law, the D&PA proposes that an Ordinance under section 46 should be constructed to provide powers that will be effective in addressing known issues of blight on amenity such as those raised by the Island's Douzaines and arising from dereliction within areas of our Town; these would be exercised in a proportionate way addressing the particular circumstances of a site.

5.2 The D&PA also believes that the introduction of an Ordinance under section 46 of the 2005 Law would act as a deterrent to prevent the future creation of eyesores through dereliction and neglect. A similar powerful deterrent effect has been seen with the introduction of the High Hedges legislation in 2017.

5.3 The D&PA has decided not to include within this policy letter provisions specifically enabling application of the Ordinance powers to the remains of glasshouses and related structures situated on redundant glasshouse sites as defined in paragraph 3 of Supplementary Planning Guidance: Defining Redundant Glasshouse Sites, 2018 (the SPG). It is considered that it would be excessive and disproportionate to apply the notice powers to such glasshouse sites in view of other measures that exist under the Planning Law and the Island Development Plan to encourage removal of such redundant glasshouses and because issues connected with redundant glasshouse sites generally go well beyond the scope of spatial land use planning or effects on amenity. However, the Ordinance would enable redundant glasshouse sites to be tackled where they are being used for purposes other than agriculture and which detract from amenity, such as by disposing of items on site.

5.4 For the avoidance of doubt, and having regard to matters raised by Parish authorities through consultation, the proposed powers would not apply to the removal of turf from agricultural land.

5.5 To avoid an undesirable situation occurring where one States' Committee is issuing a civil notice against another, the D&PA proposes to include within the Ordinance an exemption from the provisions being used against the States themselves or individual Committees in respect of States' owned or occupied land. However, the option of acting against tenants of States land would remain. In proposing such an exemption, and having regard to matters raised by Parish authorities through consultation, the D&PA believes that it is incumbent on the States to maintain its land in a suitable manner that would not otherwise give rise to action under the proposed Ordinance. This approach would also be consistent with the current situation for land planning compliance notices as the

enforcement part of the 2005 Law does not apply to the States and States' Committees.

5.6 Consequently, the D&PA proposes that an Ordinance under section 46 should include the following main provisions which are similar to those in section 215 of the Town and Country Planning Act 1990 in England and Wales:

- Powers for the D&PA to serve civil notices (similar to planning enforcement Compliance Notices) on the owner and occupier of land in circumstances where it appears to the D&PA that the amenity of the area is adversely affected by the condition of that land;
- Powers to require within the notice the carrying out of such steps for remedying the condition of the land as may be specified in the notice and the period for taking those steps;
- Confirmation that the notice would take effect at the end of a period to be specified in the notice, this being not less than 28 days after the service of the notice;
- Provision for an offence to be committed, in the event of non-compliance, by any owner or occupier on whom the notice was served and by every person who is the owner of the land after the expiry of the compliance period and whilst the non-compliance continues, and related penalties and procedures. The intention is to have similar offence provisions to those in comparable UK legislation but adapted to correspond to existing Guernsey planning enforcement provisions;
- Provision for a right of appeal against a notice to the Planning Tribunal, for the person on whom the notice is served, to be brought within 28 days of service of the notice, on specified grounds including that: –
    - the condition of the land does not adversely affect the amenity of the area,
    - the condition of the land is attributable to and results in the ordinary course of events from the carrying out of lawful operations on the land which are not a breach of planning control; the intention is that this ground would not cover a situation where the unsightly state of the land was not the ordinary result of a lawful use,
    - the requirements of the notice are excessive,
    - the period specified is unreasonable,
    - the issue of the notice is (for any other reason) ultra vires or unreasonable;
- Powers for the D&PA in the event of non-compliance with the notice, to enter the land and undertake the work specified in the notice, and to recover its reasonable costs in doing so from the owner of the land, including, on application to the Royal Court, via a statutory charge on the land and/or through the sale of any items of value recovered from the land similar to the current provisions in sections 50 and 55 of the 2005 Law;

- Provision for a register of notices and appeals. Notices would be disclosed on responding to an application for an Immunity Certificate.

5.7 The Ordinance may provide for details of the above provisions to be contained in Regulations.

5.8 Examples of where the proposed powers under section 46 might be used, proportionately, by the D&PA include the following:

- A requirement to maintain, refurbish or rebuild derelict premises in Town, to improve the appearance of the site such that it no longer adversely affects the amenity of the street concerned;
- Similarly, a requirement to undertake works to improve the appearance of a visitor accommodation establishment which is derelict having been unused for several years. Such works could include demolition of derelict structures;
- A requirement to remove a large number of unsightly, dilapidated, vehicles from private land.

5.9 The process under the proposed Ordinance would generally commence by notifying the site owner and/or occupier that the D&PA was contemplating service of a Notice and inviting them to undertake the necessary works. If this informal approach was not successful, then a formal Notice could be served, specifying the works required and a timescale for completing them. This would be similar to a Compliance Notice or a Preservation Notice, both of which are currently used by the D&PA under legal powers contained within Part V of the 2005 Law and section 7 of the Land Planning and Development (Special Controls) Ordinance, 2007 respectively.

5.10 Within the Planning Compliance process, most cases are resolved through informal means whereby owners comply voluntarily with initial informal written approaches. Where this is not achieved, and cases proceed to service of Compliance Notice, most notices are complied with. Very few notices are appealed (three in 2018, three in 2019 and one in 2020) and even fewer cases proceed to prosecution (one in 2018, one in 2019 and four in 2020). No compliance cases to date have resulted in direct action by the D&PA to undertake the work itself.

5.11 In exercising the proposed powers, care would be taken by the D&PA to ensure that it did so in an objective and consistent way, but having regard to the particular facts of the case, and that any relevant issues were considered including relating to impact on ecology or wildlife. Consideration would also be given to circumstances where Building Control approval or planning permission might be required for remedial or maintenance works.

6 Existing similar legislation elsewhere

6.1 Similar powers to those described in section 46 of the 2005 Law exist in England and Wales under section 215 of the Town and Country Planning Act, 1990 (Power to require proper maintenance of land). This section gives English and Welsh Local Planning Authorities a power to serve a notice on an owner and occupier of land, requiring steps to be taken for remedying the condition, if it appears to it that the amenity of a part of their area, is adversely affected by the condition of land; an equivalent section has been in place in England and Wales since 1971 although the original section was narrower in scope. There are also broadly similar provisions in the Planning and Building (Jersey) Law, 2002, in particular in Part 6, chapter 6 of that Law. Within the Bailiwick, the Building and Development Control (Alderney) Law, 2002 includes civil notice powers in sections 18 and 19 for the taking of action in relation to unsightly things on land or certain movable structures, such as caravans, and the carrying out of works in respect of dangerous or derelict land or certain movable structures.

6.2 In relation to the practical application of the proposed powers, the 2005 guidance from the former UK Office of the Deputy Prime Minister entitled "Town and Country Planning Act 1990 Section 215 – Best Practice Guidance", contained in Appendix D to this policy letter, is helpful in illustrating how the proposed powers, which will be very similar to those under section 215 of the Town and Country Planning Act in England and Wales, may be used and the benefits that they can bring in terms of environmental enhancement and regeneration.

7 Resource implications

7.1 It is recognised that there will be a resource requirement for the D&PA and the Planning Panel in adding further, different civil notice powers and appeals provisions on amenity issues. Administering even a relatively restricted regime applying only to a few cases a year will require input of time and resources especially to implement the new provisions.

7.2 However, the D&PA believes that expenditure and ongoing resourcing requirements to operate the proposed system will be minimal in the context of the existing work of the D&PA and the Planning Panel and so can be met from its existing budget. The D&PA also believes that savings benefits will accrue from the ability to act through the service of a notice at an early stage, and from the deterrent effect which should prevent future cases.

7.3 In the event of non-compliance with the civil notice, powers are proposed to enter the land and undertake the works, which would also introduce costs for the States that could be significant. However, powers are also proposed to recover those costs. Furthermore, it should be possible to minimise States' expenditure in the rare event that direct action is required to resolve a significant

impairment of amenity, for example by using States' controlled labour, and using established cost-recovery mechanisms.

8 Conclusion

8.1 The D&PA believes that the introduction of an Ordinance under section 46 is important currently to support the Government Work Plan, particularly in respect of enabling opportunities for regeneration and revitalisation of the Regeneration Areas in St Peter Port, and to provide powers which are currently absent in order to enable the States to tackle eyesores in our urban and rural areas. Such powers will play an important part in securing revitalisation and acting as a deterrent to prevent the creation of future eyesores.

9 Compliance with Rule 4

9.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

9.2 In accordance with Rule 4(1)(a), the Propositions above contribute to the States' objectives within the Government Work Plan 2021-2025 by assisting regeneration and supporting environmental enhancement which in turn will assist the Island's economy.

9.3 In accordance with Rule 4(1)(b), consultation with other Committees and relevant stakeholders has been carried out as described in section 4 to this Policy Letter.

9.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

9.5 In accordance with Rule 4(1)(d), the Propositions would of themselves have no direct financial implications to the States. The costs of administration of the proposed Ordinance would be minimal and would be met by the D&PA within its existing budget. In the event of non-compliance with a notice under the Ordinance, which would be a criminal offence, the D&PA would carefully consider the costs and benefits of entering the land and undertaking the work specified in the notice, and would be able to recover its reasonable costs in doing so from the owner or occupier of the land, including via a statutory charge on the land and/or through the sale of any items of value recovered from the land.

9.6 In accordance with Rule 4(2)(a), the Propositions are relevant to the duties of the D&PA in respect of land use and planning, and its duties under the Land Planning and Development (Guernsey) Law, 2005, as amended.

9.7 In accordance with Rule 4(2)(b), it is confirmed that the propositions above have the majority support of the D&PA. Please note that Deputy Taylor does not support the propositions.

Yours faithfully

V S Oliver
President

A W Taylor
Vice-President

J F Dyke
A Kazantseva-Miller
R C Murray

APPENDIX A
List of Related Legislation

a. **Preservation notices under section 7 of the Land Planning and Development (Special Controls) Ordinance, 2007** - to preserve or protect or prevent the deterioration of a protected building;

b. **Litter and waste licensing legislation where eyesore is caused by litter/dumping -** dropping of litter on land in the open air and available for public use where not done with authority of occupier/other person having control of site and wrongful use of litter bins - offences under sections 2 and 3 of the Refuse Disposal Ordinance, 1959;

c. **Loi relative a la Sante Publique, 1934 and Public Health Ordinance under it -** the definition of nuisance includes "premises in such a state as to be either a nuisance or prejudicial to health or any accumulation or deposit which is either a nuisance or prejudicial to health";

d. **Prohibitions relating to unlicensed deposit of waste on land, other than household waste disposed of within curtilage of dwelling in which it was produced, under section 21 of the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010** - this is the main fly-tipping offence so is only relevant to unsightly land;

e. **Loi ayant rapport à la Réparation ou la Démolition de Murs, Fossés, Maisons et Bâtiments qui sont dans un état dangereux of 1919** - gives powers to the Douzaines and Constables of a Parish in relation to buildings which are a danger to persons in the vicinity; the owner can be required to return the property to a safe state and the Parish can apply to the Royal Court to demolish the building;

f. **The Clearance of Ruins (Guernsey) Law, 1957 -** the D&PA can require the demolition of a building in a ruinous condition and clearance of the land; and

g. **The Housing (Standards and Regulation) (Enabling Provisions) (Guernsey) Law, 2021** - This is an enabling Law to address poor quality housing, approved by the States on 13th October, 2021 and which received Royal Assent in July, 2022 but which is not yet in force; it makes provision for minimum habitable standards, primarily through the regulation of the private rented sector.

APPENDIX B

Copy of letters received from the Constables of the Vale, Castel, St Saviour and St Sampson Parishes

Constables of the Vale

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Vale, Guernsey,
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PLANNING SERVICE
05 SEP 2022

Deputy V Oliver
Development and Planning Authority
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey GY1 1FH

2nd September 2022

Dear Deputy Oliver,

Thank you for giving the Constables and Douzaine the opportunity to comment on the "proposal for provision to address land which is affecting the amenity of the area".

The Constables and Douzaine of the Vale are fully supportive of this proposal which is much needed concerning fly tipping and abandoned vehicles.

The above mentioned sincerely hope that these proposals will include all land owned under the control of the various States committees. In the experience of the Constables of the Vale all of the reports and complaints regarding fly tipping and abandoned vehicles take place on land deemed to be public and therefore under the direct control of a States Committee. The truck in the Vale Castel car park being a case in point, where neither the Police nor Crown Officers are willing to act under existing legislation.

Therefore, introducing additional legislation is in the Constables and Douzaine of the Vale's view necessary to curb and prevent these sorts of incidents. When people see rubbish piling up, they are more than happy to, it appears, add to it without fear of prosecution.

The section re dwellings being allowed to go to wrack and ruin is also most welcome as the parish has numerous properties that this applies to and despite our best efforts over the years, we have been unable to resolve these incidents.

Therefore, the Constables and Douzaine of the Vale have no hesitation in supporting the Development and Planning Authority's proposals.

Yours sincerely,

Richard Leale

Richard Leale
Senior Constable.

PAROISSE DU CASTEL

PLANNING SERVICE

13 SEP 2022

Deputy Victoria Oliver
President
Development & Planning Authority
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1 FH

9th September 2022

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

Dear Victoria

The Castel Douzaine are grateful to have been invited to comment on the DPA's proposal to tackle known eyesores in various areas of the island and are in broad agreement with the detail contained in the Policy.

The tools to deal with land that affects the amenity of the area are paramount and to be applauded. However, we note that certain redundant glasshouse sites are to be excluded from the Ordinance on the basis that existing powers exist that should suffice to deal with such problems. We would therefore ask the following:

a) what constitutes these 'certain glasshouses'?
b) who decides on the classification?
c) how many actions have been instituted under the existing powers alluded to in 5.3

We would also refer to condition 2.1 where mention is made of the removal of turf from any agricultural land. Whilst we understand that it is not desirable to continually remove turf from land as eventually the top-soil would be depleted, with the land then lost to agriculture. We would suggest that provision be made for turf to be considered a crop, and provided the producer replaced the loamy top layer taken with the turf, no problem should exist. We raise this point because it would be beneficial for a local producer of turf to provide this commodity, reducing the need to import.

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We fully support the aim of regeneration and environmental enhancement both in our parish and other parts of our island, we are also encouraged that if the Policy Letter is approved, the DPA will have the power to serve civil notices to landowners where amenities are adversely affected by the condition of their land.

Yours sincerely

David Ozanne
Dean of the Douzaine

PAROISSE DE SAINT SAUVEUR

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Deputy Victoria Oliver
President, Development and Planning Authority
States of Guernsey Planning Service
Sir Charles Frossard House
St Peter Port
Guernsey, GY1 FH

PLANNING SERVICE
22 SEP 2022

20TH September 2022

Dear Deputy Oliver

Proposal for provisions to address land which is affecting the amenity of an area

Thank you for your letter dated 18th August 2022 concerning the above. We would firstly like to thank you for the opportunity to express our views on the proposal.

Having read through the draft policy letter please see below our views:

1. The Douzaine would like to be approached PRIOR to civil notices being served on owners and occupiers of land within our parish in areas which have been identified. We would also like to have a continuous involvement in each case.
2. It is noted that redundant glasshouses and relevant structures are not covered by this proposal as they are covered under their own legislation. However, it is felt that this current legislation concerning glasshouses has not been used to eradicate the various eyesores around the island so therefore is it necessary to exclude from the new proposal?
3. In respect to abandoned vehicles, when this takes place on private land it is difficult for the landowner to contact the registered owner due to data protection. Has consideration been given to how information may be shared to enable the process of removal of abandoned vehicles from private land easier and at no cost to the landowner?
4. The Douzaine is concerned that in some cases the landowner may not have the means and circumstances to carry out steps for remedying the condition of the land as would be specified in the notice and within the specified time period. Has the States considered giving financial support, if necessary, in these cases? We are also concerned that a charge may be taken over the land to recover any expenditure incurred to clear the area. It is therefore important that Point 1 is put in place as the procedure outlined in 5.4 could cause unnecessary stress to parishioners if they do not have the means to sort the areas which are identified.

Yours sincerely

Paul Connolly
Constable

The Constables of St. Sampson
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PLANNING SERVICE
-6 OCT 2022

Deputy V Oliver
President
Development & Planning Authority
The Planning Service
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GY1 1FH

BY POST & EMAIL: planning@gov.gg

3 October 2022

Dear Deputy Oliver

Re: Proposal to address land which is affecting the amenity of an area

St Sampson Douzaine thank you for the opportunity to comment on the above proposal.

The general view was that it is a move in the right direction and to be welcomed but we do have certain reservations.

1. Why are vineries not included, which are much of what one might call the ugly side of the island and impose many dangers? These can be separated into four main areas:

   a) The structural dangers, as many properties appear to be held up by the brambles and other vegetation plus old machinery, boilers and vehicles left within the property.

   b) The danger of glass collapsing and injuring people, especially children, if people illegally enter the properties.

   c) The vermin which inhabit the properties, especially when the space is filled with brambles and other growth. These can be a nuisance to neighbours and spread disease.

   d) The dangers of land contamination and human health from asbestos insulation to piping and old boilers plus the lead paint and preservatives that many of the older wooden framed buildings would have been treated with.

   Glasshouses and vineries are a major issue and although we appreciate that costs to demolish might be significant that should not be an excuse to ignore the eyesores that they are or the significant dangers they can pose.

2. Will the Crown and States of Guernsey be covered by the same rules and regulations? An example is that currently land owned or managed by the States, are major areas of concern regarding obnoxious plants, especially Japanese knotweed and ragwort. Both are not being

currently dealt with in a timely manner and are slowly spreading throughout the Island. Why should other landowners suffer because the States will not control a plant that should be by current legislation?

3. How will the Development & Planning Authority police the new proposal and ensure that it is applied fairly and consistently? We are concerned that having an abandoned car removed is not the same as having a building/land being made presentable, whatever presentable might mean.

4. If an islander claims that they cannot afford to undertake what is requested, what will happen, does the States of Guernsey go to court to recover monies spent for undertaking the works themselves? For a car perhaps not too greater cost but making a building 'presentable' could leave the States (taxpayer) with a sizable bill which the offender will not be able to pay.

We hope that you find our comments constructive and will take due regard of them.

Yours sincerely

P.R. Le Pelley

P R Le Pelley

L A Le Tissier

L A Le Tissier
Constables of St Sampson

APPENDIX C

Copy of letters received from the Policy & Resources Committee and the Committee *for the* Environment & Infrastructure

Policy & Resources Committee

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Deputy V Oliver
President
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By email

9 August 2022

Dear Deputy Oliver

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

Thank you for your letter of 12th July inviting the Committee to consider the draft Propositions and supporting policy letter setting out recommendations for new land planning legislation to tackle known eyesores in the Island's urban centres and rural areas.

In considering the policy proposals, the Committee has been furnished with supplementary best practice guidance from the UK Office of the Deputy Prime Minister entitled *Town and & Country Planning Act 1990 Section 215 – Best Practice Guidance.* It was helpful in illustrating in a practical way how the proposed powers may be used, which the Committee has been advised will be very similar to those under section 215 of the Town and & Country Planning Act in the UK, and in particular the contribution that they can make to regeneration and environmental enhancement. As is generally the case with planning matters, it is presumed that similar Guernsey Planning Guidance will be available for Islanders.

The Committee was interested to understand the potential impact and risks for government assets and understands from officer discussions that the Authority's legal adviser is of the view that consistent with section 76 of the 2005 Law, and to avoid a situation where one States' Committee is issuing a civil notice against another, the policy and resulting provisions for the new amenity civil notices should provide for an exemption/disapplication/modification against the States themselves/individual committees in respect of States' owned or occupied land.

There are, it is understood, relevant powers in sections 46(2), 76(5) and 89 of the 2005 Law that would allow an appropriate exemption to be made which the Committee would ask that the Authority acts on positively in this policy letter in order to bring the situation beyond doubt.

In summary, and subject to the express exception with respect to the States of Guernsey, the Committee welcomes the introduction of powers that it understands are not uncommon in many jurisdictions. It is confident that the community will welcome action with respect to derelict premises in Town or unsightly redundant visitor accommodation and establishments. Such powers, effectively directed, should play an important part in securing the revitalisation and regeneration that the Government Work Plan envisages, just as the Authority has set out in its policy letter.

Yours sincerely

P Ferbrache

Deputy Peter Ferbrache
President

Committee *for the*
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2 September 2022

Dear Deputy Oliver

PROPOSAL FOR PROVISIONS TO ADDRESS LAND WHICH IS AFFECTING THE AMENITY OF AN AREA

Thank you for the opportunity to comment on your proposed Policy Letter regarding the above.

As you kindly pointed out in your letter of July 12 this has impact relating to the Committee's areas of mandate in Environmental Health and in the administration of the Planning Panel.

As such I have sought advice from officers working in those areas.

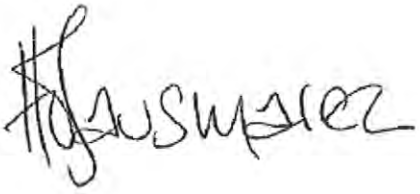
The Secretary of the Planning Panel has noted that resourcing implications are considered in the draft Policy Letter and has added one further comment in relation to section 5.4 (list of grounds of appeal) which I would like to bring to your attention. She said "It has recently been noted by the Planning Panel that a ground which appears in most other relevant legislation is missing from the High Hedge legislation ["the issue of the notice was (for any other reason) ultra vires or unreasonable"] and this has impacted on a recent case."

In terms of Environmental Health, the Director of Environmental Health and Pollution Regulation is supportive of the propositions. As noted in the Policy Letter, there is potentially some cross-over in relation to Public Health, waste and housing legislation but this is seen as an additional tool to address the problem rather than a duplication of legislation, especially as the scope of the proposed legislation goes beyond existing powers. From an operational perspective, the Committee would need to ensure that there is not duplication of actions or conflicting instructions on a land owner but this is not

different to other existing situations and can be managed through basic officer communication.

In terms of abandoned vehicles, the Committee would like further clarification on what definition the Authority intends to use; a clear definition at this stage could prevent future ambiguity impacting the effectiveness of the proposed legislation.

Yours sincerely



Deputy Lindsay De Sausmarez
President
Committee *for the* Environment & Infrastructure

APPENDIX D

Copy of Office of the Deputy Prime Minister publication – Town & Country Planning Act 1990 Section 215 – Best Practice Guidance

Office of the
Deputy Prime Minister
Creating sustainable communities

Town and Country Planning Act 1990 Section 215

Best Practice Guidance

Office of the
Deputy Prime Minister
Creating sustainable communities

Town and Country Planning Act 1990 Section 215

Best Practice Guidance

January 2005

Office of the Deputy Prime Minister: London

Following the reorganisation of the government in May 2002, the responsibilities of the former Department of the Environment, Transport and the Regions (DETR) and latterly Department for Transport, Local Government and the Regions (DTLR) in this area were transferred to the Office of the Deputy Prime Minister.

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or online via www.odpm.gov.uk

Printed in Great Britain on paper comprising 75% post-consumer waste and 25% ECF pulp.

Product code 04 PD 02843

January 2005

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Introduction

Section 215 (s215) of the Town & Country Planning Act 1990 (the Act) provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. LPAs also have powers under s219 to undertake the clean up works themselves and to recover the costs from the landowner.

The use of s215 by LPAs is discretionary and it is therefore up to the LPA to decide whether a notice under these provisions would be appropriate in a particular case, taking into account all the local circumstances. LPAs will need to consider, for example, the condition of the site, the impact on the surrounding area and the scope of their powers. In some circumstances s215 notices may be used in conjunction with other powers, for example, repair notices in respect of listed buildings or dangerous structure notices.

The most important message that LPAs should be aware of is that s215 action can be taken against land *and* buildings – in s336 of the Act the definition of 'land' includes a building.

The planning research report *Derelict Land and Section 215 Powers*, commissioned by the Department of the Environment, Transport and the Regions (DETR), published in September 2000, concluded that there are no fundamental problems with existing legislation. Section 215 and associated powers provide an effective mechanism for tackling unsightly land, both as a 'threat' and through the formal serving of a notice and through work in default. However the report concluded that practical examples in the imaginative and effective use of s215 needed to be disseminated to LPAs to encourage greater use of the power. Difficulties in the use of the power seem to arise from infrequent use and lack of experience rather than complexity or lack of scope of the legislation.

Successful s215 action has been both complaint-driven and proactive. It is one of a number of provisions available to LPAs for maintaining and improving the quality of the environment, assisting in tackling dereliction and retaining land in productive use. As such, it can be carried out as a stand-alone process or in partnership with other agencies. Wherever possible, however, action using s215 needs to be combined with proactive measures such as empty homes strategies, development briefs and public/private funding programmes, as well as other reactive enforcement and development control tools (including conditions and legal agreements on planning permission). Through the planning application process and the use of conditions, local authorities can encourage 'the creation and maintenance of attractive, successful places in which people are happy to live, work and take their leisure.'[1]

[1] DETR, *Places, Streets and Movement: A companion guide to Design Bulletin 32 Residential Roads and Footpaths* (1998)

Section 215 is a relatively straightforward power that can deliver important, tangible and lasting improvements to amenity. For example, in one LPA 157 former eyesores were improved as a result of the direct use or threat of s215 action between April 2000 and April 2004. Section 215 has the potential to contribute to wider regeneration and urban quality objectives and is an important part of the Government's sustainable development strategy. The Urban Task Force (1999) found that 'there is little incentive for private property owners to invest in the quality of their property if they are situated within an urban environment which is of such low quality that it simply sucks value out of their property'.

ODPM recognises that there are many LPAs who are successfully using s215 as a regenerative tool (Doncaster Metropolitan Borough Council and Hastings Borough Council are leading examples) and believe that problems in the use of s215, particularly definitions, would be best addressed through the 'informal' dissemination of information. By issuing Best Practice Guidance, ODPM hopes to encourage closer working and the sharing of experience between LPAs.

RESEARCH FINDINGS

The research commissioned by DETR in 1999 into the use of s215 drew a number of key conclusions and observations:

- Section 215 powers are effective as a threat or informal mechanism for cleaning up sites, around 20% of notices approved in 1998/99 were not served, implying that action was taken by the landowners in the face of the 'threat' of a s215 notice being served.

- Section 215 notices are effective in terms of securing compliance, for example 80% of notices served in 1998/99 resulted in compliance and only 6% were appealed. Only 6-8% of notices resulted in works in default by the authority.

- Experience has shown that authorities that interpret the scope of s215 widely also tend to be more proactive and successful at using the powers to achieve wider regeneration objectives.

- Successful use of s215 for regeneration purposes also coincides with close working arrangements with partner organisations, for example New Deal and urban regeneration bodies, and regular monitoring of the quality of the environment.

REGENERATION

Section 215 powers have a role to play in LPAs' response to the Government's sustainable regeneration agenda. Indeed, several LPAs have successfully demonstrated how s215 action can be used as an integral part of regeneration and built environment improvement programmes. LPAs should not sit back and wait for complaints however. Rather they should be proactive in identifying and taking action against buildings and land, the condition of which are regarded as unsatisfactory. It is also important that LPAs share information and work in co-operation with regeneration, economic development, housing departments and other regeneration agencies as part of a wider strategy of local environment improvement and regeneration.

Section 215 powers are just one of the tools available to LPAs within a package of other measures to be used in conjunction with regeneration initiatives.

SCOPE OF POWER

Section 215 has been effectively used on large vacant industrial sites, town centre street frontages, rural sites, derelict buildings, and semi-complete development as well as the more typical rundown residential properties and overgrown gardens. In certain circumstances, early consideration of the use of s215 could prevent a need for use of s54 of the Planning (Listed Buildings & Conservation Areas) Act 1990 (Urgent Works Notice). LPAs should use s215 powers proactively; they should not just be complaint-led.

LPAs should certainly not be afraid of using s215 powers. LPAs have reported that it is a relatively straightforward power to use and that it can deliver extremely good results. For example in one LPA, of 130 s215 notices served between April 2000 and April 2004 the vast majority resulted in a very high standard of remedial works with prosecution and/or direct action for non-compliance only being required in less than 10% of cases.

Subdivision of fields and woods into small plots for sale, usually over the internet, can lead to unsightly consequences. The buyers may be misled into confidence that, one day, they will be able to carry out works on their 'investment' plots, or change the land-use. Neglect or unlawful works may occur. If this is damaging the landscape or other countryside amenity, action under s215 could be considered.

Another context in which s215 notices may be used successfully is in relation to listed buildings and their setting, and in the enhancement of conservation areas. In one LPA, for instance, s215 action has resulted in improvements being carried out to 41 listed buildings and 104 premises in conservation areas.

The scope of works that can be required in s215 notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting. In preparing notices it is critical that LPAs ensure that the works specified by a notice do not themselves result in a breach of planning control eg unlawful works to a listed building, or material alterations to premises for which planning permission should be sought.

Potential sites can sometimes go beyond the remit of a s215 notice so there may be other more appropriate powers that an LPA can rely upon in order to effect a remedy, for example:

- ss76-79 of the Building Act for defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites;
- s29 of the Local Government (Miscellaneous Provisions) Act 1982 for works on unoccupied buildings;
- ss79-82 of the Environmental Protection Act for abatement or prohibition of a nuisance;

- Listed building legislation such as Repairs and Urgent Works Notices;
- Completion Notices; and
- Compulsory Purchase Orders.

There are many issues associated with buildings and land in disrepair. LPAs are encouraged to work with parties across their council, for example empty homes, environmental health and grant providers, such as town centre management or New Deal bodies.

DEFINITION OF 'AMENITY'

'Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, ie it is a matter of fact and degree and, certainly common sense. Each case will be different and what would not be considered amenity in one part of an LPA's area might well be considered so in another. LPAs will therefore need to consider the condition of the site, the impact on the surrounding area and the scope of their powers in tackling the problem before they decide to issue a notice. LPAs should not be excessively concerned with producing an overly technical definition of 'amenity' though. Experience has shown that where a notice is appealed or a prosecution is pursued, a clear and well-presented case will usually be sufficient to ensure that the appeal is refused.

PRE-NOTICE DISCUSSION AND ENSUING TIMESCALES

Pre-notice discussion can be an invaluable tool in terms of yielding positive results and is to be encouraged. That said any discussions should not be allowed to result in undue delay in terms of yielding results. The timescale between complaint and compliance can appear protracted (see flowchart at Annex A) but generally most time is taken up in pre-notice discussion with landowners. The mutual benefit of communication between LPA and landowner cannot be overstated. In many instances, issue of a s215 notice has been avoided, and an eyesore remedied, due merely to talking with a landowner. Experience has shown that landowners are usually quick to take action once the warning of a s215 notice has been sent, and more so once a s215 notice has been issued. Example 'first warning' letters upon which LPAs may wish to base their own letters are shown at Annex B. **However it must be stressed that LPAs should take their own legal advice as to the exact wording of each letter they use, as each case will be unique**.

A s330 notice requires the recipient to provide information about the ownership of the property and of any other person who may have an interest in it. Experience has shown that the inclusion of a s330 notice with the first warning letter encourages co-operation (an example s330 notice and accompanying guidance is attached at Annex C). Failure to respond to one of these notices is a criminal offence punishable in the Magistrates' Court with a fine of up to £1,000. A false statement given in response to the notice is punishable, upon conviction in the Magistrates' Court, with a fine of up to £5,000 or in the Crown Court, with a fine, imprisonment, or both.

LPAs may also wish to consider the matter of lawful use and whether or not a Planning Contravention Notice should be served in order to obtain information relating to the lawful use of the land being investigated.

There are several other options to help in tracing the owner or occupier of a potential s215 site, for example by:

- Land Registry search;
- Companies House search;
- internet search;
- private investigators; and
- information gathering notices.

All have been widely and successfully used by LPAs.

Whilst negotiation is undeniably a valuable tool, it must be stressed that in order to produce prompt, tangible and good quality results, a hardline approach intolerant of delay should be adopted. Furthermore, the best results depend on utilising the powers available to the maximum potential and courting publicity wherever possible.

PUBLICITY AND THE 'RIPPLE' EFFECT

One benefit of the successful use of s215 notices is the 'ripple' effect it generates, especially in residential areas. LPAs have reported that often once a notice has been issued and work begun, work on neighbouring properties has also commenced, resulting in improved standards and conditions over a wide area. LPA experience has shown that often the mere 'threat' of a s215 notice elicits a similar response. Publicity, whether via local media or merely word of mouth, of an LPA's willingness to use initiatives such as s215 notices and actively pursue landowners in an effort to improve and regenerate their areas is also an incredibly strong tool.

Public perception of this kind of enforcement action has proven extremely popular. The issue of eyesores is clearly one that is close to people's hearts and confronting the problem head on using s215 powers could potentially show the LPA in a positive light. Run-down and derelict buildings convey all sorts of negative impressions. If an LPA combats them with comprehensive remedial action, people will feel better about the area, whether they are residents, businesses or tourists. There is an important economic issue in favour of comprehensive s215 action: if a town is presentable, people will want to visit or live there, and businesses will want to locate there.

ISSUING A S215 NOTICE

LPAs would be well advised to ensure that the notices they issue are clear, precise and unambiguous. The letters should aim to achieve a good quality, lasting solution. Where necessary, specialist input should be sought at an early stage, for example

from the LPA's Conservation or Building Control Officers, or independent engineers with expertise. It would be prudent for all letters to be subject to scrutiny by the LPA's legal advisers.

Provided the notice is skillfully composed, the requirements are absolutely clear, and the LPA has a precise timescale then, if anything goes awry, the LPA has certain formal remedies provided within law to which it can resort.

Section 215 action should not be taken against land the poor condition of which is attributable in some way to the carrying out of operations or a use of land in accordance with Part III of the Town & Country Planning Act 1990.

APPEALS

Unlike s172 enforcement notices, appeal against the s215 notice is to the Magistrates Court. The grounds of appeal against the s215 notice are set out in ss217-218 of the Act (see Annex D). In reality, they are relatively limited and a carefully thought out, reasonable and skillfully composed notice should tend to reduce the chances of an appeal being successful.

Very few s215 notices are actually appealed and of those that are only a small proportion are upheld. A clear and well-presented case that stresses the adverse impact of the site on the local streetscene has proven more effective than an overly technical presentation regarding the definition of 'loss of amenity'. The use of site visits and photographic evidence can carry a lot of weight in presenting the LPA's case to magistrates.

Where LPAs have made a well-presented case, appeals have rarely been successful. LPAs would be well-advised to operate with a prosecution in mind and train officers to carry out investigations to the standards contained within the Police and Criminal Evidence Act 1994, preparing prosecution/appeal files according to the Criminal Procedure and Investigation Act 1996.

Section 215 allows an LPA to take positive action and unlike, for example, stop notices or Article 4 directions, would not place any prohibition or restriction upon the land. Loss or injury attributable to the imposition of the notice would be at best minimal and it would be unlikely therefore that an LPA would be liable for compensation should the s215 notice not be upheld.

An example of a letter, including information on making an appeal, which could be issued to the recipient of a s215 notice is at Annex D.

HUMAN RIGHTS ACT

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, the wider impact of the appearance of the land overrules the owner's right to the peaceful enjoyment of his property.

PROSECUTION VERSUS DIRECT ACTION WORKS IN DEFAULT

Some LPAs prefer to deal with the majority of their s215 non-compliance cases by direct action, ie by carrying out the works themselves, whilst some prefer to prosecute for non-compliance, for example where they do not have a direct labour organisation. Experience has shown that each route is equally as successful as the other in terms of outcome. It is for the LPA to decide which is the most appropriate action to take, taking into consideration the details of each individual case. Indeed, in some cases LPAs may take the view that both courses should be pursued together. The majority of s215 cases are resolved before these stages need to be considered. That said, cases should always be conducted from the outset with these eventualities in mind.

Whilst the level of fine for a successful conviction is relatively limited to one not exceeding level three (at the time of publication up to £1,000) this should not dissuade LPAs from considering prosecution. The prospect of conviction and having a criminal record has a salutary effect and can produce the desired outcome. Many apparently intractable cases have been solved at the last minute under threat of prosecution.

Where direct action is to be taken, prior warning should be given by letter that the Council and its appointed contractors intend to carry out the steps required by the notice. It is recommended that this be backed up by the display of a suitable notice of intent on the site carrying the same information. Prior warning of intended prosecution should also be given by letter. Examples of both letters are at Annex E.

When taking the direct action approach it may be advisable to exercise some caution. Understandably, some owners or occupiers do not welcome Council employees or contractors with open arms! It is good practice to notify the Police of any direct action taking place, as it has been known for owners or occupiers to react in such a way that their actions result in them being arrested for a breach of the peace.

COST RECOVERY

An LPA budget is not normally needed for direct action works to be carried out in default, as costs are normally met from revenue, not capital. Authorities that have undertaken works themselves have not experienced great difficulties in recovering costs. Where costs cannot be immediately recovered LPAs have the option of registering a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest. There is also provision within the Land Charges Act for the interim procedure of placing an estimate of the charge that will become due on the property. This effectively ensures the land or property cannot be sold without a charge being shown on the land.

County or High Court bailiffs have also been successfully used to recover monies owed.

FURTHER INFORMATION

Copies of the research report *Derelict Land and Section 215 Powers* can be obtained by calling ODPM's Publication Sales Centre on 0870 1226 236 or from the internet at: www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=2497&l=3
Additional guidance/information can also be found in the following documents:

Town and Country Planning Act 1990 (Section 215) (1990)
Derelict Land Prevention and the Planning System (1995)
DETR Circular 2/98 Prevention of Dereliction through the Planning System (1998)
Urban White Paper (2000)
Listed Buildings, Conservation Areas & Monuments (Third Edition) – Charles Mynors (Section 6.13.1-8, pages 138-143)

ACKNOWLEDGEMENTS

ODPM wishes to acknowledge the help given by the officers at Oadby & Wigston Borough Council, Doncaster Metropolitan Borough Council, Hastings Borough Council, Walsall Borough Council and King's Lynn & West Norfolk Borough Council who have shared their positive and practical experiences of the use of s215, and for the use of images supplied by them.

Case Studies

CASE STUDY

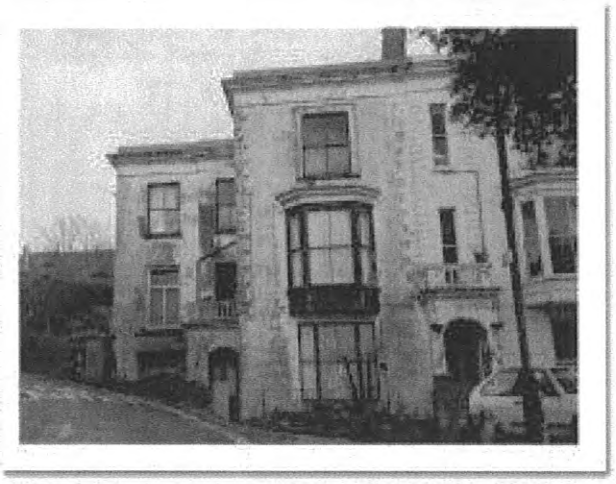
Residential

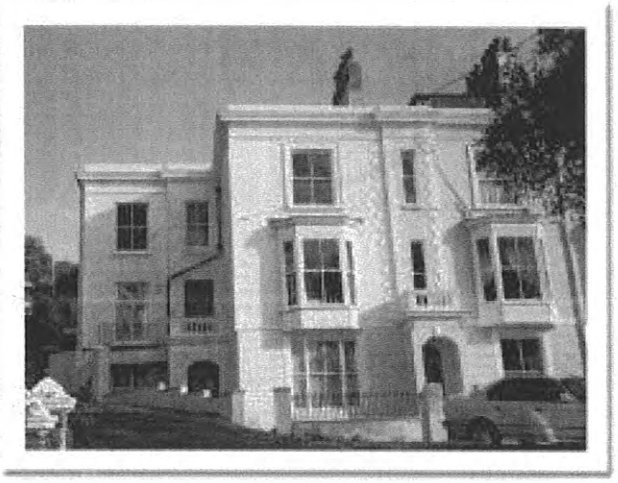
Date of complaint: August 2003
Date of 1st warning: 5 September 2003 (with s330 notice)
Date of 2nd warning: 18 November 2003
Date of notice: 18 November 2003
Date of appeal: None
Date of compliance: 18 December 2003
Outcome: Site cleared by direct action 11 February 2004
Recovery of costs by way of registering a Land Charge

CASE STUDY

Derelict Hotel

Date of complaint: Series of complaints from approx 1990 to Building Control and Environmental Health
Date of 1st warning: March 1999
Date of 2nd warning: none
Date of notice: none served
Date of appeal: none
Date of compliance/outcome: With co-operation of Local Planning Authority property sold to developer. Converted to 20 luxury apartments 2000

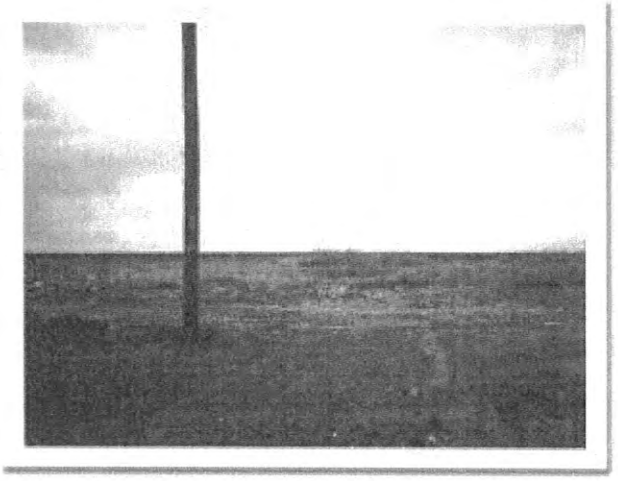




CASE STUDY

Residential flat in conservation area

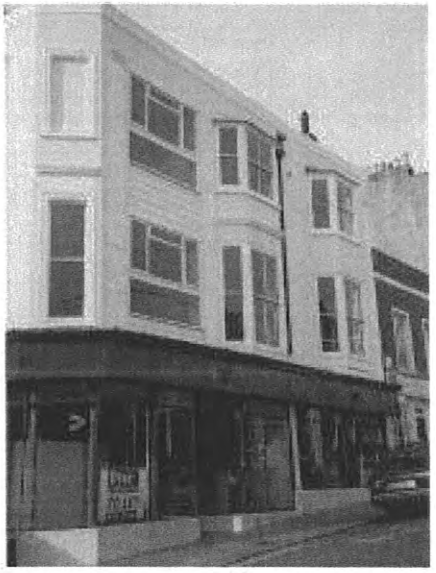
Date of complaint: end of 1999
Date of 1st warning: 26 January 2000 (with s330 notice)
Date of 2nd warning: 17 February 2002
Date of notice: 11 December 2000
Date of appeal: None
Date of compliance: 18 August 2001
Outcome: full compliance with s215 notice



CASE STUDY

Derelict residential

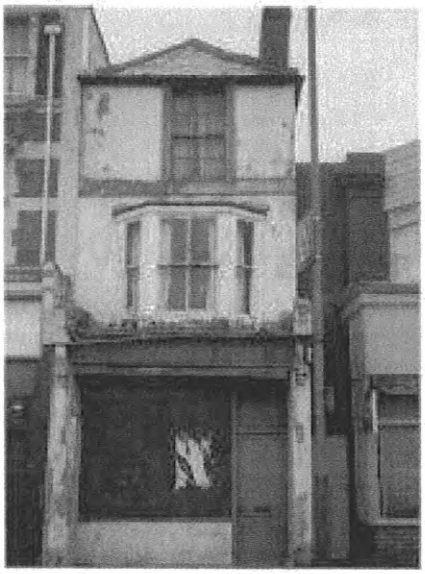
Date of complaint: series of complaints from around 1990
Date of 1st warning: October 1997
Date of 2nd warning: none
Date of notice: January 1998
Date of appeal: none
Date of compliance: February 1998
Outcome: site cleared by owners

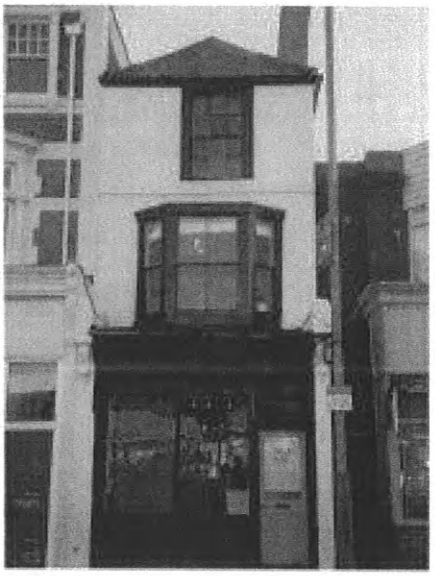


CASE STUDY

Property in A1 use, town centre location on corner of main road

Date of complaint: pro-actively targeted by lpa officers
Date of 1st warning: 9 August 2001 (with s330 notice)
Date of 2nd warning: 20 September 2001
Date of notice: 1 October 2001
Date of appeal: none
Date of compliance: August 2002
Outcome: Summons issued by work commenced and completed to very high standard so prosecution dropped

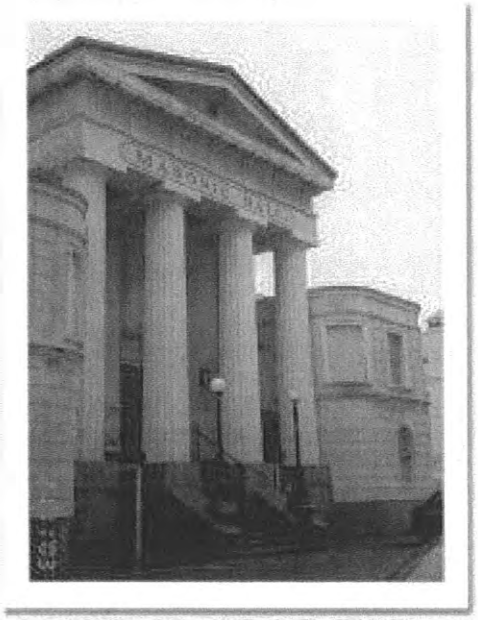


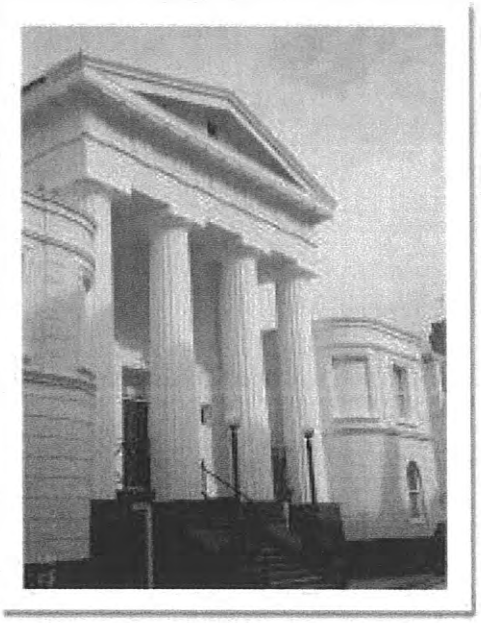


CASE STUDY

Former shop with residential over, just outside town centre on key arterial route

Date of complaint: pro-actively targeted by lpa officers
Date of 1st warning: 27 February 2002
Date of 2nd warning: 6 March 2002
Date of notice: 2 May 2002
Date of appeal: none
Date of compliance: works completed early 2003
Outcome: full compliance with s215 notice





CASE STUDY

Grade II listed building, predominantly residential conservation area

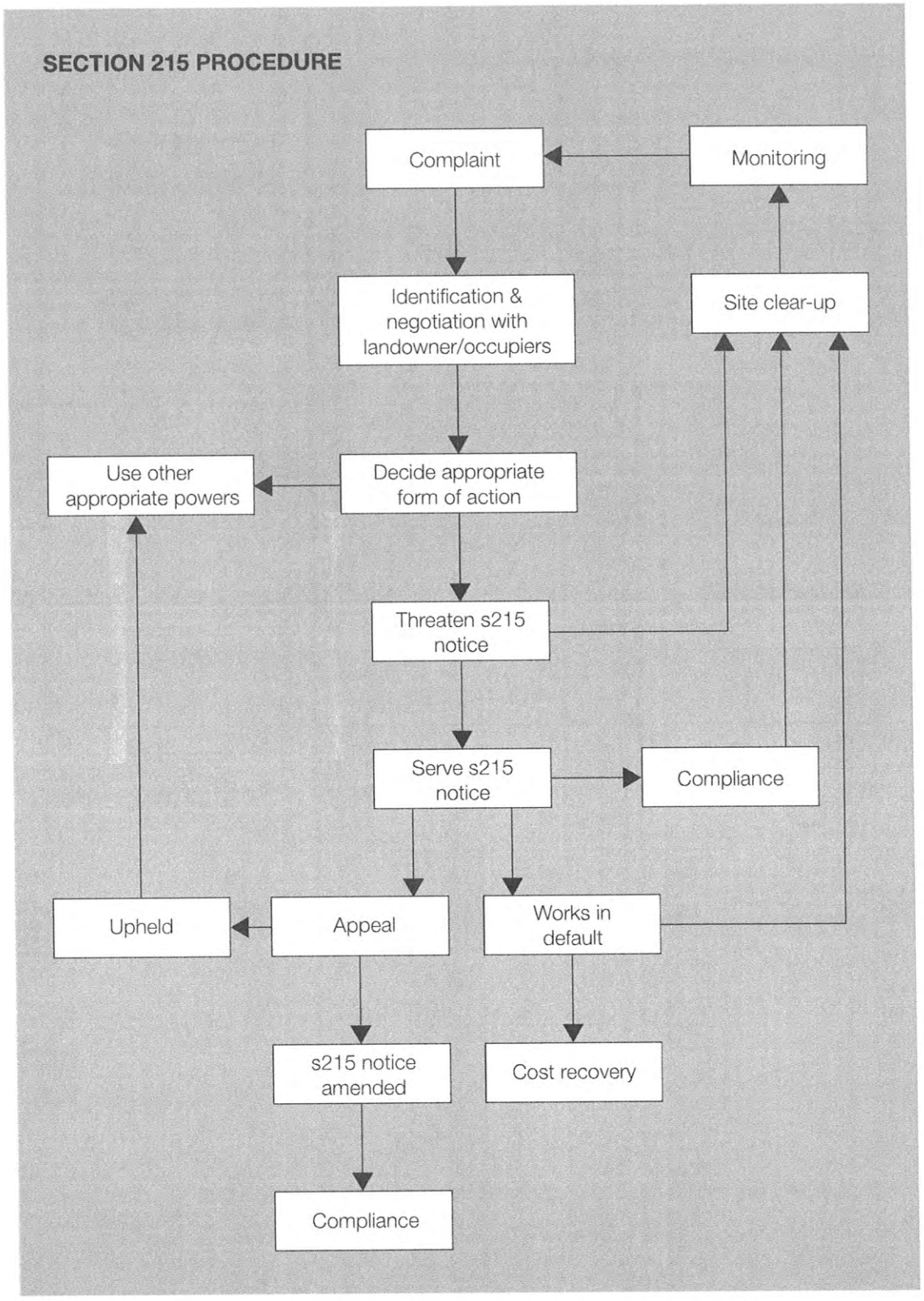
Date of complaint: pro-actively targeted by lpa officers
Date of 1st warning: 25 February 2003
Date of 2nd warning: none
Date of notice: 25 November 2003
Date of appeal: none
Date of compliance: August 2004
Outcome: full compliance with s215 notice

CASE STUDY

Old garage site with demolition material left in situ

Date of complaint: early 2003
Date of 1st warning: difficulty encountered in tracing owners whose agent was convicted of failing to comply with s330 notice and fined £2500 plus costs.
Date of 2nd warning: none
Date of notice: 4 December 2003
Date of appeal: none
Date of compliance: mid-March 2004
Outcome: full compliance achieved with the removal of several thousand tonnes of material and the securing of the site to deter unauthorised access

Annex A


SECTION 215 PROCEDURE
Complaint
Monitoring
Identification & negotiation with landowner/occupiers
Site clear-up
Use other appropriate powers
Decide appropriate form of action
Threaten s215 notice
Serve s215 notice
Compliance
Upheld
Appeal
Works in default
s215 notice amended
Cost recovery
Compliance

Annex B

EXAMPLE: FIRST WARNING LETTER – BUILDING IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

As you may know, [Council name] is committed to ensuring that improvements are carried out to buildings in [eg general/specific area] whose external condition has deteriorated. Improving such buildings has been identified by local people as a key priority for the Council and as a result of this a number of buildings across the [Council area] have been brought to a satisfactory condition.

The external appearance of the above mentioned premises is a source of concern primarily because of [the condition of render, external metalwork, paintwork, windows, grilles, doors]. The Council is writing to you today as the proprietor of the above mentioned premises as identified by the Land Registry. Its purpose is to respectfully request that works be carried out to remedy the poor external condition of the building in the near future, and to ascertain whether you have any plans in this regard. I would emphasise that your property is not being treated in isolation. The owners of other premises in the vicinity are being similarly contacted.

I advise that if prompt progress is not made in terms of remedying the poor external condition of the premises and a guarantee given to the Council by you that such works will be undertaken, the Council has the option to take enforcement action under Section 215 of the Town and Country Planning Act 1990. This is a course that the Council would wish to avoid if at all possible. It is hoped, therefore, that your co-operation can be relied upon in terms of improving the building in the near future and giving a guarantee to that effect.

EXAMPLE: FIRST WARNING LETTER – BUILDING & LAND IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

I have received a complaint in respect of the condition of your property at the above address. A recent visit by a Council officer has confirmed that its condition is unsatisfactory and is causing concern.

In these circumstances I must ask you to undertake the following works within 21 days from the date of this letter, to abate the nuisance and bring the property back to an acceptable standard:

[1. ...]

I advise that failure to comply with this request will leave the Council with no option but to consider action pursuant to Sections 215-219 of the Town & Country Planning Act 1990 (as amended). This could include formal action by way of service of a Notice, which will legally require you to undertake the work set out above. This is a course of action the Council would rather avoid and I seek your co-operation by carrying out these works. Such works will contribute towards achieving an [urban renaissance in [area]].

I enclose with this letter a Notice pursuant to Section 330 of the Town and Country Planning Act 1990 (as amended), which requires you to provide information about the ownership of the property and of any other person who may have an interest in it.

WARNING – Failure to respond to the enclosed Notice is a criminal offence punishable in the Magistrates Court with a fine of up to £1,000. It is also a criminal office to make a false statement in response to this Notice. On conviction in the Magistrates Court this offence is punishable with a fine of up to £5,000 or in the Crown Court which a fine, imprisonment, or both. The Local Authority may prosecute this matter in the Courts should there be a breach of this or any subsequent Notice.

Please complete in full the Notice reply form and return to me [using the enclosed stamped addressed envelope] **within 21 days of the date of this letter**.

Should you wish to discuss any of the above in detail, you can contact the officer named above on the number given, who will be pleased to assist you. It is my hope that this matter can be resolved in a spirit of mutual co-operation.

EXAMPLE: SECOND WARNING LETTER – BUILDING IN DISREPAIR

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

The Council last wrote to you about this matter on … A copy of that letter is attached for your information. The Council has not received a response from you.

I advise you that, unless the Council hears from you within five working days of the date of this letter, outlining the steps you are going to undertake to remedy the external condition of the premises, then it will take enforcement action under Section 215 of the Town and Country Planning Act 1990. This enforcement action will require the improvements to be carried out. As you can appreciate this is a course that the Council would wish to avoid. The matter however now rests with you.

Annex C

EXAMPLE: S330 NOTICE

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

[lpa name]
TOWN AND COUNTRY PLANNING ACT 1990
NOTICE UNDER SECTION 330(1)

To:

[name & address]

TAKE NOTICE that the [lpa name] in exercise of its powers under Section 330(1) of the Town and Country Planning Act 1990 does hereby require you to provide to it in writing, the following particulars affecting land situated and known as [address] in the [lpa area] as shown edged red on the attached plan (hereinafter referred to as "the Premises") within **twenty-one days** after the date on which the Notice is served:

A. As to interest in the premises:

i. The nature of your own interest in the premises.

ii. The name and address of any other persons known to you as having an interest in the premises whether as freeholder, mortgagee, lessee or otherwise.

B. As to the use of the premises:

i. The purpose for which the premises are used.

ii. The time when that use began.

iii. The name and address of any person known to you as having carried on that use.

iv. The time when any activities being carried out on the premises began.

Section 330(4) of the Town and Country Planning Act 1990, states that any person who without reasonable excuse fails to comply with a Notice served on him under Section 330(1) shall be guilty of an offence and liable to summary conviction to a fine not exceeding £1,000.

Section 330(5) of the Town and Country Planning Act 1990, states that any person who having been required by a Notice served on him under Section 330(1) to give any information knowingly makes any mis-statement in respect thereof shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or both.

EXAMPLE: GUIDANCE ON COMPLETING SECTION 330 FORM

This form is supplied to assist you in providing the information required by my Notice dated the xxth day of xxxx, 200x served under the provisions of Section 330(1) of the Town and Country Planning Act 1990.

Please answer the following questions and complete the declaration at the end of the questions. If a question is not applicable, please state that this is the case.

A. As to interests in the premises:

i. What is the nature of your interest in the premises?

.....

.....

ii. What is the FULL NAME AND ADDRESS of:-

a. The occupier of the premises?

.....

.....

b. The freeholder of the premises?

.....

.....

c. The lessee of the premises?

.....

.....

d. The mortgagee of the premises?

.....

.....

e. Any other person with an interest in the premises?

.....

.....

Nature of interest?

.....

.....

B. As to the use of the premises:-

i. For what purposes are the premises being used?

.....

ii. When did that use begin?

.....

iii. What are the full names and addresses of persons known to you as having used the premises for that purpose?

.....

iv. When did any activities being carried out on the premises begin?

.....

I [name] . . . . . hereby declare that the answers to the above questions comprise a true and correct statement of all the information required by the said Notice, so far as the same is within my knowledge.

Date: .....

Signed: .....

Address: .....

.....

.....

.....

Annex D

EXAMPLE: LETTER TO ACCOMPANY S215 NOTICE AND GUIDANCE TO MAKING AN APPEAL AGAINST S215 NOTICE

Dear Sir/Madam

PROPERTY ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD [AREA/AREA]

I wrote to you on [date] concerning the above and seeking your co-operation in improving the condition of your property. You were invited to discuss this matter with my Officer if you wished.

A further inspection has been conducted and revealed that there has been no significant improvement in the condition of the property since I last wrote to you. [I note that you have failed to return the Section 330 Notice as required within the period stated. I remind you that failure to complete the Notice is a criminal offence and can give rise to prosecution.]

Consequently, you will now find enclosed with this letter a formal Notice pursuant to Section 215 of the Town and Country Planning Act 1990 (as amended), together with information concerning your right of appeal to the Magistrates Court. The Notice details the list of requirements that I consider are the minimum works required to bring the property back to a reasonable standard and which will rectify the adverse effects your property is having on the amenity of the neighbourhood.

I would still urge you, even at this late stage, to take the required action to resolve this matter as detailed in the Notice, within the next **28 days** from the date of this letter.

Your failure to comply with this Notice will leave me with several courses of action. Either or all of these actions may be pursued as follows:

1. A prosecution in the Magistrates Court for non-compliance with the s215 Notice – which could result in a substantial fine if found guilty of an offence.

2. The Council carrying out the works required by the Notice followed by action in the County Court to recover, from you, all expenses and costs reasonably incurred by such action.

3. Registration with HM Land Registry of a charge on your property, recoverable should your property be sold.

You may consider that these actions are radical steps that should be avoided. But I must make clear that, unless the requirements of the Notice are complied with in full, and within the specified period, I will proceed with a course of action described above.

RIGHT OF APPEAL AGAINST SECTION 215 NOTICE
SECTIONS 217-218 OF THE TOWN AND COUNTRY PLANNING ACT 1990

217—(1) A person on whom a notice under Section 215 is served, or any other person having an interest in the land to which the notice relates, may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal against the notice on any of the following grounds:

(a) that the condition of the land to which the notice relates does not adversely affect the amenity of any part of the area of the local planning authority who served the notice, or of any adjoining area;

(b) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from the carrying on of operations or a use of land which is not in contravention of Part III;

(c) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority, who served the notice, or of any adjoining area;

(d) that the period specified in the notice as the period in within which any steps required by the notice are to be taken falls short of what should reasonably be allowed.

(2) Any appeal under this section shall be made to the Magistrates Court acting for the petty sessions in which the land in question is situated.

(3) Where such an appeal is brought, the notice to which it relates shall be of no effect pending the final determination or withdrawal of the appeal.

(4) On such an appeal the Magistrates Court may correct any informality, defect or error in the notice if satisfied that the informality, defect or error is not material.

(5) On the determination of such an appeal the Magistrates Court shall give directions for giving effect to their determination, including, where appropriate, directions for quashing the notice or for varying the terms of the notice in favour of the appellant.

(6) Where any person has appealed to a Magistrates Court under this section against a notice, neither that person nor any other shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

218 —Where an appeal has been brought under section 217, an appeal against the decision of the Magistrates Court on that appeal may be brought to the Crown Court by the appellant or by the local planning authority who served the notice in question under section 215.

Annex E

EXAMPLE: WARNING OF DIRECT ACTION BY LPA AFTER S215 NOTICE HAS BEEN ISSUED

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir

RE: TOWN AND COUNTRY PLANNING ACT 1990: SECTION 215: ENFORCEMENT NOTICE SERVED REGARDING THE POOR CONDITION OF LAND AT ...

You are advised to read this letter very carefully and contact the Council ***immediately*** at the address or phone numbers given above if you have any queries.

On [specify date] you were served with a formal notice under Section 215 of the Town and Country Planning Act 1990 requiring you to take steps to remedy the condition of land at the above mentioned site. That Notice should have been complied with by [specify date]. It has not been.

The purpose of this letter is to inform you that ***the Council now intends to carry out the steps required*** in accordance with Section 219 of the Town and Country Planning Act 1990. ***Contractors appointed by the Council will start those works on [specify date]***. Upon completion of those works, the Council will actively recoup its costs from you by placing a charge on your property.

Failure to comply with a Section 215 Notice is an offence under Section 216 of the Town and Country Planning Act 1990. Accordingly, I must advise you that the Council now intends to pursue a prosecution with immediate effect. Because an offence has been committed I must advise you that you should contact the Council about this matter and you are hereby cautioned that anything you do say can be given in evidence. It may also harm your defence if you do not mention something which you later rely on in court.

EXAMPLE: WARNING OF PROSECUTION BY LPA AFTER S215 NOTICE HAS BEEN ISSUED

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

Dear Sir

RE: TOWN AND COUNTRY PLANNING ACT 1990: SECTION 216: OFFENCE OF FAILURE TO COMPLY WITH NOTICE SERVED UNDER SECTION 215: EXTERNAL CONDITION OF ...

The Council has received no correspondence or undertakings from you in respect of the above mentioned premises despite its letter and the enforcement notices served upon you dated [specify dates] under Section 215 of the Town and Country Planning Act 1990 (copies attached for information). The time period for compliance with the notices expired on [specify date]. Failure to comply with it is an offence. In the absence of the required works having been carried out, I have to advise you that the Council is left with no alternative but to commence legal proceedings with immediate effect. Clearly, the Council would wish to avoid such a course and if the required works now start and are brought to a swift and satisfactory conclusion then the situation will be reviewed. In the meantime, because an offence has been committed I must advise you that you should contact the Council about this matter and you are hereby cautioned that anything you do say can be given in evidence. It may also harm your defence if you do not mention something which you later rely on in court.

Annex F

EXAMPLE: SECTION 215 NOTICE
(served in respect of a former shop with residential above)

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

SECTION 215 NOTICE

SERVED BY: [council name]

To: ....

1. THE NOTICE
This Notice is served by the Council under Section 215 of the above Act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2. THE LAND TO WHICH THE NOTICE RELATES
The land known as ... shown edged red on the attached plan.

3. WHAT YOU ARE REQUIRED TO DO
The Council requires the following steps to be taken for remedying the condition of the land:

(i) Hack off any perished, unkeyed and cracked render/stucco. Replace render/stucco so removed using suitable materials to match the existing render/stucco mix and finish.

(ii) Prior to repainting, clean and prepare all render/stucco, removing in the process any flaking paint, so as to ensure all external render/stucco is in an appropriate condition for repainting.

(iii) Prior to repainting, clean and prepare all external timbers, removing in the process any flaking paint and replacing any rotten or perished timbers with replacement woodwork which is an accurate replica of the original design in terms of pattern, detail and profile, so as to ensure that all external timbers are in an appropriate condition for repainting.

(iv) On completion of steps (i) and (ii) above, repaint in cream or white all render/stucco with a minimum of two coats of exterior paint.

(v) On completion of step (iii) above, repaint all external timbers in cream or white with primer, undercoat and gloss.

(vi) Permanently remove all boarding from the shopfront, replacing any broken glazing with new glass to the appropriate specifications.

4. TIME FOR COMPLIANCE

Steps (i) to (iv) above to be complied with in full within three months of the date on which this Notice takes effect.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on [specify date]

Dated: Signed:

EXAMPLE: SECTION 215 NOTICE
(served in respect of a Doric style Grade II Listed Building)

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

SECTION 215 NOTICE

SERVED BY: [council name]

To: ....

1. THE NOTICE
This Notice is served by the Council under Section 215 of the above Act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2. THE LAND TO WHICH THE NOTICE RELATES
The land known as ... shown edged red on the attached plan.

3. WHAT YOU ARE REQUIRED TO DO
The Council requires the following steps to be taken for remedying the condition of the land:

(i) Hack off any perished, unkeyed and cracked render/stucco. Replace render/stucco so removed using suitable materials to match the existing.

(ii) Prior to repainting, clean and prepare all render/stucco, removing in the process any flaking paint, so as to ensure all external render/stucco is in an appropriate condition for repainting.

(iii) Prior to repainting, clean and prepare all external joinery, removing in the process any flaking paint, replacing any rotten or perished timbers with replacement woodwork to match the existing and renewing putty/joinery surrounds so as to ensure all external joinery is in an appropriate condition for repainting.

(iv) Prior to repainting, clean and prepare all external metalwork, removing in the process any rust and flaking paint, so as to ensure all external metalwork is in an appropriate condition for repainting.

(v) On completion of steps (i) to (ii) above, repaint all external render/stucco with a minimum of two coats of exterior masonry paint, the finished colour to be cream.

(vi) On completion of step (iii) above, repaint all external joinery with exterior wood primer, exterior undercoat and exterior wood gloss, the finished colour to be white or cream.

(vii) On completion of step (iv) above, repaint all exterior metalwork with exterior metal primer, exterior undercoat and exterior metal gloss, the finished colour to be white, cream or black.

4. TIME FOR COMPLIANCE

Steps (i) to (vii) above to be complied with in full within four months of the date on which this Notice takes effect.

5. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on [specify date]

Dated: Signed:

EXAMPLE: SECTION 215 NOTICE
(served to clear demolition material from a large former garage site)

IMPORTANT THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

SECTION 215 NOTICE

SERVED BY: [council name]

To: ....

1. THE NOTICE
This Notice is served by the Council under Section 215 of the above Act because it appears to them that the amenity of a part of their area is adversely affected by the condition of the land described below.

2. THE LAND TO WHICH THE NOTICE RELATES
Land at ... shown edged red on the attached plan.

3. WHAT YOU ARE REQUIRED TO DO
The Council requires the following steps to be taken for remedying the condition of the land:

(i) Remove from the site, to an authorised place of disposal, all hardcore, waste and demolition materials. Materials to be removed will include bricks, concrete, reinforced concrete, metal, timber, plastic, tyres and fabrics.

Informative
Upon completion of step (i) above, the owner and any occupier of the site are strongly advised to secure the site perimeter by means of an earth bound or site fencing the height of which should not exceed one metre unless specific planning permission has been granted beforehand for a higher bund or fence.

4. TIME FOR COMPLIANCE
Step (i) above to be complied with in full within one month of the date on which this Notice takes effect.

5. WHEN THIS NOTICE TAKES EFFECT
This Notice takes effect on [specify date]

Dated: Signed:

P.2022/107

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' TRADING SUPERVISORY BOARD

GUERNSEY POST LIMITED – ANNUAL REPORT AND ACCOUNTS

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Guernsey Post Limited – Annual Report and Accounts' dated 6th October, 2022, they are of the opinion:-

1. To note the Annual Report and Accounts of Guernsey Post Limited for the year ended 31st March 2022.

The above Proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' TRADING SUPERVISORY BOARD

GUERNSEY POST LIMITED – ANNUAL REPORT AND ACCOUNTS

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

6th October, 2022

Dear Sir

1 Executive Summary

1.1 The Annual Report and Accounts of Guernsey Post Limited are hereby presented to the States.

2 Guernsey Post – Annual Report and Accounts

2.1 Under the terms of Section 8 of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, the States' Trading Supervisory Board (STSB) is required to submit Guernsey Post's Annual Report and Accounts to the States for their consideration.

2.2 Guernsey Post's Annual Report and Accounts for the year ended 31st March, 2022, are therefore appended to the policy letter.

2.3 The Company made an operating profit of £1,591,000 for the financial year ended 31st March, 2022, compared to £2,787,000 for the previous year.

3 Compliance with Rule 4

3.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

3.2 In accordance with Rule 4(1):

a) The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001 (as amended) requires the Proposition to be put to the States;
b) The Annual Report and Accounts have been submitted by Guernsey Post Limited;
c) The Proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications;
d) There will be no additional financial implications to the States of Guernsey of carrying the proposal into effect.

3.3 In accordance with Rule 4(2):

a) The Proposition relates to the duties of the STSB to carry out the States' role as shareholder of any incorporated companies which are owned by the States and which the States have resolved to include in the mandate of the Board;
b) The Proposition above has the unanimous support of the Board.

Yours faithfully

P J Roffey
President

C N K Parkinson
Vice-President

N G Moakes
Member

S J Falla CBE
Non-States Member

S J Thornton
Non-States Member

Consolidated Annual Report

2022

and Financial Statements
for the year ended 31 March 2022

GUERNSEY
POST

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GUERNSEY POST

Directors:	Richard Digard (Chairman) Simon Milsted (resigned 27 September 2021) Boley Smillie (Chief Executive) Steve Sheridan (Finance) Jill Thomas (Commercial) (resigned 31 March 2022) Peter Shaefer (Non-Executive) Mark Dunster (Non-Executive) Paula Williams (Non-Executive) Rick Denton (Non-Executive) (appointed 16 December 2021)
Auditor:	Deloitte LLP Regency Court Glategny Esplanade St Peter Port GUERNSEY GY1 3HW
Registered office:	Envoy House La Vrangue St Peter Port GUERNSEY GY1 1AA
Company Number:	38693

CHAIRMAN'S STATEMENT

At the outset and on behalf of the Board, I wish to express my gratitude and sincere thanks to my predecessor, Simon Milsted, who retired as Chairman in September 2021. Simon joined the Board as a Non-Executive Director in May 2011 and was then appointed Chairman in 2018.

During Simon's tenure, the Company successfully responded to a variety of significant and business defining challenges, including the loss of low value consignment relief, the reform of the Company's pension scheme and most recently, the impact of COVID-19. It is a tribute to Simon's leadership that the Company has been able to navigate through this period while also continuing to deliver consistently positive financial results.

RETURNING TO THE NEW NORMAL

As the Company continues to emerge from the impact of COVID-19 restrictions, it has been presented with a markedly different operating landscape to which it is having to adapt to more swiftly.

Consumer behaviour experienced a significant change during lockdown restrictions, with an uplift in internet shopping and returns contributing to 11% growth seen in parcels delivered into the Bailiwick over the past 12 months. However, current trends, almost certainly impacted by the "cost of living" crisis, are indicating a downturn on our projection for the rate of continued growth this year, on which our Board is keeping a watching brief because the economic climate continues to present a high level of uncertainty.

The rate of decline in core letter volumes continued to be substantial last year, with a further double digit erosion. This underpins our view that the accelerated decline in volumes during lockdown restrictions have in the most part been permanent and irreversible.

As such, Guernsey Post, and therefore its delivery model, is now in a period of planned transition as it continues to evolve from a letters to a parcel delivery and fulfilment business, which is illustrated by letter volumes delivered on island now being broadly consistent with the number of packets and parcels being handled.

With this transition comes a need for significant investment and change. Throughout the remainder of this year and into early next year, our Envoy House head office site will undergo construction works to create additional operating floor space to meet these changing needs. Furthermore, the Company is also in advanced stages of finalising a contract for the procurement of a parcel sortation machine which is currently scheduled to be fully operational by August 2023.

These investments will be key enablers to adapt to the changing landscape and build capacity in our delivery model over the coming years. Furthermore, these investments will drive further operational efficiencies to ensure we remain relevant in what is becoming an increasingly price sensitive and fiercely competitive sector.

DIVIDEND

In the context of the overall financial position of the Company, combined with strong underlying operational performance, the Board is pleased to propose an ordinary dividend in respect of the year ended 31 March 2022 of £0.5m (2021: £1.3m).

The Board also keeps under constant review the health of the Company's Balance Sheet in the context of our Universal Service Obligations, the inherent commercial risks within our industry and the future demands of our strategy.

Such factors require that the Board seeks to maintain a disciplined capital investment policy and an appropriate level of liquidity.

MANAGEMENT CHANGES

During the year we saw several changes to the senior leadership team of Guernsey Post, with Commercial Director Jill Thomas stepping down from her role. I wish to extend my sincerest gratitude to Jill for her commitment, expertise, and leadership provided to the business during her tenure.

I am also pleased to welcome Rick Denton to the Board as a Non-Executive Director, who brings with him significant leadership experience. Rick leads his own consultancy business and provides guidance to several commercial Boards as a Non-Executive Director and will prove to be a valuable addition to the Guernsey Post Board.

New solar mats on larger fleet vehicles.

ENVIRONMENTAL

Guernsey Post remains committed to building a sustainable business and recognises the importance of this more than ever, against the backdrop of the ongoing impact that global climate change is having on our environment.

This year, we have continued with efforts to reduce the impact of our operation on the environment through several initiatives. One of note, is a business partnership we have established with a UK manufacturer to supply and install an innovative and ultra-thin solar matting to the roof area of some of our larger fleet vehicles.

This solution is helping us to make notable reductions in carbon emissions, and associated costs, by using the electricity generated by the mats to help run various on-board activities such as air conditioning and tail lifts. The results of the initiative have exceeded our expectations and as a result we are now rolling the solution out across our entire large vehicle fleet.

> ***"Guernsey Post remains committed to building a sustainable business and recognises the importance of this more than ever, against the backdrop of the ongoing impact that global climate change is having on our environment."***

COMMUNITY INITIATIVES AND RECOGNITION

We are pleased to continue our association in supporting local causes that can benefit the whole community. This year we provided additional support to the Saffrey Rotary Round the Island Walk Committee by loaning them several electric vans, helping them reduce the carbon footprint of the necessary logistics required to make the walk a success. We have also continued to support Alderney's local radio station, The Guernsey Literary Festival, the St Peter Port Christmas Lights Charity, St James Concert Hall, the 77th Liberation Day celebrations and the Guernsey Welfare Service Foodbank.

We have provided hands-on support to locally based Ukraine nationals to ship humanitarian aid to specific locations and we will continue to provide free postage for humanitarian aid packages to Ukraine for as long as is necessary.

We also worked closely with Guernsey Electricity Limited to run the Bailiwick School EcoChallenge for the second time. The competition challenges students to think of innovative ideas to improve the sustainability of their school. It has proved to be a popular initiative for Bailiwick students with them winning prize money for their school to implement some of their sustainability ideas.

I am also delighted to announce that this year, Guernsey Post has once again been ranked the most recommended brand in Guernsey, out of a total of 75 organisations with a strong local presence. The overall ranking considered brand impression, perceived values, and contribution to the local community. This award is a testament to the outstanding service each one of our employees provides to our customers every day.

I am also pleased to report that our Philatelic Customer Service team have this year achieved the UK Customer Service Excellence accolade for the fourth year running, demonstrating innovation, and delivering a service to our Philatelic customers that is over and above their expectations.

HR AIR

On 19 March 2021, Guernsey Post acquired HR Air Limited, and as such, this is the first set of financial statements showing the full year results of this Company, which I am pleased to report is performing in line with expectations.

HR Air operates in Guernsey, Jersey and Heathrow providing services to global freight and logistics companies, including air and sea freight, consignment collection services and distribution and delivery services, with the acquisition proving to be a key enabler in the achievement of our wider strategic objectives.

OUTLOOK

Despite another set of positive results this year, the outlook for the next 18 months is one in which the Company will face considerable challenges.

Significant pricing changes to our contract rates with Royal Mail is already having a profound impact on performance, resulting in a material erosion of our revenue base, even after measures that we have been able to reasonably take on our own business and retail tariffs.

More broadly, the wider economic climate and increased cost of living is now also introducing a large degree of uncertainty in regard to our business model, with early evidence indicating a slowdown in consumer purchasing habits across some of our revenue generating business units.

These challenges will almost certainly result in the Company reporting an operating loss next year for the first time since 2011. However, our Board remains totally committed to the strategy it has in place to address these challenges.

With the support of each and every one of our employees who continue to play a pivotal part in achieving our strategic aims, we remain confident of returning the Company back to an operating profit in the short term, while never compromising the Company's standing as a premier postal service providing a best-in-class service to the community.

R Digard, ***Chairman***
21 September 2022

Business Review for the Year

OUR RESULTS

Guernsey Post Limited is pleased to report an operating profit of £1.6m for the year ended 31 March 2022, which is a decrease of £1.2m from the prior year operating profit performance.

CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

Turnover for the year was £42.8m, an increase of £1.3m (3%) in the year. The Group recorded strong performance in all business areas, particularly bulk customer business and parcel revenues.

Expenditure for the year was £41.2m, an increase of £2.5m (6%) on the prior year.

Direct costs of £20.9m, associated with servicing revenues increased by £0.1m (0.3%) in the year, the increase being primarily attributable to contractual and conveyance costs.

Total staff related expenditure for the year was £16.1m, an increase of £2.0m (14%). The number of reported full-time equivalent employees being at 288.

Depreciation costs at £0.9m increased slightly in the period. Amortisation of goodwill in the year of £0.3m related to Shoal Bay Holdings Limited and its underlying subsidiary HR Air Ltd.

Profit on ordinary activities before Taxation for the year was £2m, a decrease of £2.3m when compared to the prior year. The current year performance includes the first full year consolidation for Shoal Bay Ltd and its subsidiary HR Air Ltd, which were acquired on 19 March 2021. In addition to the movements highlighted above, this decrease in profit before tax is partially (£1.2m) due to a reduced return on funds invested by the States Treasury on the Group's behalf.

CONSOLIDATED STATEMENT OF FINANCIAL POSITION

The Group continues to operate profitably with a strong Balance Sheet and a healthy liquidity position. Shareholders' funds were £27.3m, an increase of £0.5m in the year.

At the year end, the Group reported a cash balance of £3.6m (2021: £2.8m), alongside separate short-term investment balances held with States Treasury of £7.7m (2021: £8.3m) and £16.5m (2021: £16.3m) of current assets, supported by a £14.5m (2021: £14.9m) fixed assets base.

Reported current liabilities and provisions were £3.3m (2021: £4.3m).

CONSOLIDATED STATEMENT OF CASH FLOWS

The Group had net inward cash movements of £0.2m during the year (2021: cash inflow of £0.2m), with net cash generated from operations contributing £2.2m (2021: £4.0m) in the year.

The primary cash flow adjustments related to £1.3m paid out in dividends during the year (2021:£1.4m) and £0.3m investment returns (2021: £1.5m investment return).

Capital spend in the year was £1m (2021: £0.6m), the primary investment being £0.7m in the replacement of the vehicle fleet.

OPERATIONAL SUMMARY

The total number of mail items handled during the year was approximately 44.5m, which was a decrease of 4.5m items (11%) on the prior year which saw unprecedented volumes as a result of COVID-19 and associated lockdown restrictions. Notwithstanding this overall decline, inward parcel volumes continued to grow with an increase of 11% compared to prior year, whilst inward letters were down 7%.

Total outward mail was down 15% on prior year, primarily due to a decrease in outward bulk mail volumes which experienced significant demand in the prior year as COVID-19 impacted Bulk Customer business.

Except for mail posted in the UK but delivered in Guernsey, and mail delivered from Guernsey to Jersey via UK, elements of which were outside of our control, quality of service performance results for the year have exceeded the set targets and continue to be a demonstration of our commitment in ensuring a timely delivery of mail across our network.

> ***... quality of service performance results for the year have exceeded the set targets and continue to be a demonstration of our commitment in ensuring a timely delivery of mail across our network.***

> *Notwithstanding this overall decline, inward parcel volumes continued to grow with an increase of 11% compared to prior year, whilst inward letters were down 7%.*

BOARD PROFILE

Richard Digard
CHAIRMAN

Richard Digard is a career journalist, editor and newspaper management specialist who has extensive experience at director level of running the Channel Islands' two daily newspapers plus other titles and digital publications.

Locally born and educated at Elizabeth College and Coventry University, Richard became the first news editor of the Guernsey Press and Star in 1987. He was appointed Marketing Manager at Sun Alliance International Life in 1994, where he ran its marketing division, serving teams in the UK, Europe, Africa, and the Far East.

He returned to the Guernsey Press and Star in 1997 and was appointed Editor in 2000. He subsequently joined the Board of the Guernsey Press Co. Ltd and then Guiton Publishing, a group board committee responsible for the strategic direction and performance of its two Channel Islands newspapers.

These experiences include a strong trading background with a hands-on approach to the challenges and opportunities created for established industries by new technology.

Since retirement in 2014, he has been a member of the Independent Review Panel appointed by the States to consider States Members' remuneration and served as a Member of the States Scrutiny Management Committee until early 2017. Richard is also a Non-Executive Director of company acting as trustees of a Guernsey-based pension scheme and with delegated responsibilities for a Jersey-based scheme. He has also been a Douzenier of the Vale Parish since 2016.

Boley Smillie
CHIEF EXECUTIVE

Born and raised in Guernsey, Boley Smillie joined Guernsey Post Limited in 1991 from his secondary education at La Mare de Carteret School. The subsequent years saw him gain a wide range of experience in different roles, rising through the ranks of the Company. Boley became Operations Director in 2007 and was appointed as an Executive Director in April 2010. In September 2010, Boley was promoted to the role of Chief Executive.

During his time as Chief Executive, Boley has successfully led the company though a number of significant challenges, ranging from the consequential impact of the abolition of low value consignment relief, to the restructuring of the business designed to maximise the growth opportunities in e-commerce. Boley has added to his hands-on experience by undertaking a number of professional qualifications in marketing, business and finance.

In 2021, Boley led negotiations on the acquisition of the freight and logistics business, HR Air Ltd, a significant milestone in Guernsey Post Limited's diversification strategy. Boley was subsequently appointed as a Director of the Company.

Boley is also the Non-Executive Chairman of Guernsey Mind, an advisor on the Guernsey Ports Board and is Deputy Industrial Disputes Officer.

Steve Sheridan
FINANCE DIRECTOR

Steve Sheridan was born and educated in Nottingham before work opportunities brought him to Guernsey in 1993.

Steve has over 25 years' experience in accountancy and financial control roles, having held a number of senior positions within the insurance, fiduciary, banking and commercial sectors. On qualification as an Accountant in 2004, Steve joined a Channel Island based retail business as their Financial Controller and General Manager. During his time in this role, he was successful in developing an effective management reporting structure, helping to drive business performance and associated rationalisation and restructuring initiatives.

Steve also spent a number of years working for Credit Suisse (Guernsey) Limited in a variety of financial accounting and project roles, one of which included being part of a project team tasked with the full deployment of its local financial accounting function to India. More latterly, Steve was employed within the Private Banking and Asset Management Division, where he held the position of Head of Financial Management for the Channel Islands.

Steve was appointed Finance Director with Guernsey Post Limited in early 2014 and holds the Institute of Directors Diploma in Company Direction.

Steve was appointed as a Director of HR Air Limited in March 2021.

Peter Shaefer
NON-EXECUTIVE

Although born and raised in the North West of England, Peter has worked and lived in many countries including Holland, Switzerland, France and now Guernsey. He is a Member of the Chartered Institute of Public Finance and Accountancy and the Institute of Directors and holds a degree in Geology with Industrial Management from the University of Liverpool. He currently holds a number of executive and non-executive positions, including Director of La Perla Beauty UK Ltd (global beauty business) and is a Non-Executive Director of Guernsey Electricity Limited.

Peter has had enjoyed a varied career, including:

- The global beauty company, Coty Inc, which he joined in 2000 and culminated in his appointment as Senior Vice President of Business Transformation in 2014 with responsibility for overseeing a company-wide reorganisation and restructuring programme. His previous roles with Coty Inc included CFO Europe and Asia and Senior Vice President, Business Development, with responsibility for Mergers & Acquisitions and accelerating international development.
- Japan Tobacco International, undertaking a number of roles across the globe, including General Auditor and Senior Finance Director;
- The oil industry, working in a variety of finance and audit roles;
- The Audit Commission, where he qualified as a Chartered Accountant.

Peter's skills include managing strategic change and international development, project management, corporate governance and risk management, developing business and financial strategy and financial planning and analysis.

Mark Dunster
NON-EXECUTIVE

Advocate Dunster is a partner at Carey Olsen specialising in litigation, compliance and financial regulatory matters. He undertakes a wide variety of commercial and civil litigation work and advises institutions on regulatory matters, including anti-money laundering, data protection, employment law, e-Gambling and renewable energy.

In 1994, Mark was called as a barrister and practised in London before returning to his native Guernsey, where he qualified as an advocate in 1997. He has been a partner at Carey Olsen since 2001 and became a Notary Public in 2006.

Mark acts as both an executive and non-executive director on a number of Guernsey (and non-Guernsey) companies in sectors as wide as trust and fiduciary services, electronic gaming, credit card payment processing, commercial real estate and investment holding.

Mark is the past Chairman of the Guernsey Association of Compliance Officers and the former Chairman of the Guernsey Bar Association.

Between 2004 and 2008, Mark was a member of Guernsey's Health and Social Services Department. He was formally Connétable of St Pierre du Bois and is now a Douzenier for that Parish.

Mark has a breadth of commercial experience with some very large and complex organisations. This experience includes reviews of corporate governance structures, developing strategy and evaluating the deployment of capital and resources between competing opportunities. He holds the Institute of Directors Chartered Director status.

Paula Williams
NON-EXECUTIVE

Originally from New Zealand, Paula and her family moved to Guernsey in 2012. As an experienced Management Consultant, Paula has over 20 years of experience in business transformation in London, Australia, New Zealand and Guernsey. Paula has an MBA in Strategic Management from Henley Business School, the Institute of Directors Diploma in Company Direction and experience working with businesses to improve company performance.

Paula has been a Non-Executive Director for 5 years for the Channel Islands Co-operative Society and President for 18 months. As Managing Director for Island Consortium, Paula is actively involved in working with other businesses to meet their regulatory training requirements. In her spare time, Paula is also Chair of the Bailiwick of Guernsey Scout Association, which won the Queens Award for Voluntary Service in 2019.

Rick Denton
NON-EXECUTIVE

Rick has 30 years' experience of leading UK and International subsidiaries of four major banking groups. Subsequently, he became CEO of a specialist family office business, managing property developments and acquiring companies. Rick now leads his own consultancy and has a range of International Non-Executive Director positions.

Locally he chairs the Guernsey Banking Deposit Compensation Scheme and is a Non-Executive Director of Guernsey Electricity. He is a National Council Member for the Institute of Directors, representing the international branches.

Rick holds an MBA with distinction from Warwick University; is an Associate of the Chartered Institute of Bankers; a Chartered Member of the Institute of Securities and Investments and a Member of the Society of Trust and Estate Practitioners. He has also recently achieved the Henley Certificate in Executive Coaching and the Institute of Directors' Diploma in Company Direction.

Corporate Governance Report

COMPLIANCE

Guernsey Post Limited's corporate governance arrangements are based on the proportionate application of good practice principles in corporate governance, predominantly those contained within the UK Corporate Governance Code published in July 2018 ('the Code'), where relevant. Guernsey Post Limited is committed to the development of a sustainable and profitable business that benefits all stakeholders, which includes achieving the highest standards of corporate governance for our Shareholder, the States of Guernsey.

Guernsey Post Limited has signed a Memorandum of Understanding with the States' Trading Supervisory Board that sets out the rights, expectations and duties of both parties and includes the requirement to comply with best practice on corporate governance. Guernsey Post Limited has continued to work on its corporate governance programme during the financial year ended 31 March 2022, and the achievements are summarised in this report.

THE BOARD

DIRECTORS

The Board's role is to provide entrepreneurial leadership of the Group within a prudent and effective framework of risk management and internal control. The Board is responsible for setting and implementing strategy, allocating the necessary human and financial resources to meet the Group's objectives and monitoring the performance of management against those objectives. The Board is collectively accountable for the success of the Group, sets its values and standards and takes decisions objectively in the interests of the Group, its Shareholder and other stakeholders.

Non-Executive Directors help to develop and challenge the Group's strategy. They evaluate the performance of management and monitor the reporting of performance. They consider the integrity of financial information and the strength of financial controls and risk management systems. They oversee executive remuneration and play the main role in the appointment, removal and succession planning for Executive Directors.

Matters referred to the Board are governed by a scheme of delegated authorities that provides the framework for the decisions to be taken by the Board, those which must be referred to our Shareholder and those which can be delegated to Committees of the Board, or senior management.

There were six board meetings held during 2021/22. If a Board member cannot attend a meeting, he or she receives a copy of the agenda and the accompanying papers in advance of the meeting and is invited to comment on the matters to be discussed.

The names of the members of the Board Committees are set out on pages 8-9 (8-11*), together with details of their background. The Board Committees have authority to make decisions according to their terms of reference.

CHAIRMAN AND CHIEF EXECUTIVE

Guernsey Post Limited has a Non-Executive Chairman and a Chief Executive. There is a clear division of responsibility between these two positions. Richard Digard, the Non-Executive Chairman, is responsible for the running of the Board and Boley Smillie, the Chief Executive, is responsible for the running of the Group's business.

Richard Digard spends, on average, one day per week in his role as Chairman. He holds a number of other external Directorships, but the Board considers that his external Directorships do not make conflicting demands on his time as Chairman.

Peter Shaefer is the Senior Independent Director and is also available to talk to our Shareholder, if it has any issues or concerns.

BOARD BALANCE AND INDEPENDENCE

Throughout the year, the Group has had a balance of independent Non-Executive Directors on the Board, who ensure that no one person has disproportionate influence. All the Non-Executive Directors bring with them significant commercial experience from different industries, which ensures that there is an appropriate balance of skills on the Board.

There are currently five Non-Executive Directors and two Executive Directors on the Board.

APPOINTMENTS TO THE BOARD

Recommendations for appointments to the Board are the responsibility of the Nominations Committee. The appointment of Non-Executive Directors must be ratified by the States of Guernsey.

The Nominations Committee meets 1-3 times a year to consider the balance of the Board, job descriptions and objective criteria for Board appointments and succession planning.

INFORMATION AND PROFESSIONAL DEVELOPMENT

For each scheduled Board meeting, the Chairman and the Company Secretary ensure that, during the week before the meeting, the Directors receive a copy of the agenda for the meeting, financial, strategic, and operating information and information on any other matter which is to be referred to the Board for consideration. The Directors also have access to the Company Secretary for any further information they require. In the months where there is no scheduled Board meeting, the Directors receive the prior month and cumulative Group financial and operating information.

The Company Secretary gives guidance on Board procedures and corporate governance.

The Company Secretary, who is appointed by the Board and is also the Finance Director and an Executive Director, is responsible for ensuring compliance with Board procedures. This includes recording any concerns relating to the running of the Group, or proposed actions arising therefrom, that are expressed by a Director in a Board meeting. The Company Secretary is also Secretary to the Remuneration and Nomination Committees. The Company Secretary is available to give ongoing advice to all Directors on Board procedures, corporate governance, and regulatory compliance

*These page numbers refer to the annual financial statements document approved by the auditors.

ATTENDANCE AT BOARD AND BOARD COMMITTEE MEETINGS

Attendance during the year for all Board and Board Committee meetings is given in the table below:

ATTENDANCE AT BOARD COMMITTEE MEETINGS (A)				
	Board	Audit & Risk Management Committee	Nominations Committee	Remuneration Committee
Boley Smillie	6/6			
Steve Sheridan	6/6			
Simon Milsted (Resigned 27/09/2021)	3/3			
Richard Digard	6/6	2/2		
Jill Thomas (Resigned 31/03/2022)	5/6			
Peter Shaefer	6/6	2/2		
Mark Dunster	4/6		3/3	3/3
Paula Williams	6/6		3/3	3/3
Rick Denton (Appointed 16/12/2021)	2/2			

(A) The first figure represents attendance and the second figure the possible number of meetings e.g., 9/10 represents attendance at 9 out of a possible 10 meetings. Where a Director stepped down from the Board, or a Board Committee, during the year, or was appointed during the year, only meetings before stepping down, or after the date of appointment, are shown.

During the transitional period from Non-Executive Directors retiring from the Board and their successors being appointed, if any sub-committee of the Board found itself inquorate, any decisions proposed by such sub-committees would be referred to the main Board meeting for ratification.

PERFORMANCE EVALUATION

The Board undergoes a regular evaluation of its performance. The evaluation consists of a confidential questionnaire, which is assessed by the Board, followed by an open discussion facilitated by the Chairman.

ELECTION AND RE-ELECTION OF DIRECTORS

Guernsey Post Limited's Articles of Association state that a Non-Executive Director should be proposed for re-election if he, or she, has been appointed to the Board since the date of the last Annual General Meeting ('AGM'), or proposed for re-election, if he or she has held office for more than three years at the date of the notice convening the next AGM. The Board ensures that each Non-Executive Director submits himself, or herself, for re-election by the Shareholder at least every three years.

Non-Executive Directors serve the Group under letters of appointment, which are generally for an initial three-year term. Their appointment is also ratified by the States of Guernsey.

In accordance with the Articles of Association, Paula Williams is due to retire by rotation. Paula Williams, being eligible, has offered herself up for re-election at the forthcoming Annual General Meeting.

REMUNERATION

The Board recognises the importance of Executive Directors' remuneration in recruiting, retaining, and motivating the individuals concerned. Executive Directors' remuneration consists of basic salary, benefits in kind, bonus, and retirement benefits. Fees for the Chairman and Non-Executive Directors are determined by the States' Trading Supervisory Board.

The Remuneration Committee, which is chaired by Mark Dunster, consists of two Non-Executive Directors, and determines remuneration levels and specific packages appropriate for each Executive Director, taking into account the Group's annual salary negotiations. No Director is permitted to be present when his, or her, own remuneration is being discussed, or to vote on his, or her, own remuneration. The Remuneration Committee considers that the procedures in place provide a level of remuneration for the Directors, which is both appropriate for the individuals concerned and in the best interests of the Shareholder.

ACCOUNTABILITY AND AUDIT

FINANCIAL REPORTING

The intention of the Consolidated Annual Report is to provide a clear assessment of the performance and financial position of Guernsey Post Limited. The Group has a comprehensive system for reporting financial results to the Board. An annual budget is prepared and presented to the Board for approval. During the year, monthly management accounts, including the Consolidated Statement of Financial Position, Consolidated Statement of Cash Flows and capital expenditure reporting, are prepared with a comparison against budget and prior year. Forecasts are revised half yearly considering this comparison and are also reviewed by the Board.

INTERNAL CONTROL AND RISK MANAGEMENT

All Directors are responsible for establishing and maintaining an effective system of internal control. Whilst all elements of risk cannot be eliminated, the system aims to identify, assess, prioritise and, where possible, mitigate the Group's risks. Although no system of internal control can provide absolute assurance against material misstatement or loss, the Group's systems are designed to provide the Board with reasonable assurance that assets are safeguarded, transactions are properly authorised and recorded and that material errors and irregularities are either prevented, or detected, within a timely period.

The Audit & Risk Management Committee has previously considered the need for an internal audit function and concluded that the financial position, size, and complexity of the Group could not justify the expense, which the Board ratified. The Board is happy to continue relying on the strength of the internal control environment through updates on risk management and internal control, health and safety reports, AML and CFT compliance,

monthly management information and representations from the Executive Team, supported by the engagement of third-party compliance consultants. This approach is further complimented by external third-party assurance reviews where and when appropriate.

AUDIT & RISK MANAGEMENT COMMITTEE AND AUDITOR

The Board has delegated responsibility to the Audit & Risk Management Committee for reviewing an effective system of internal control and compliance, accurate external financial reporting, fulfilling its obligations under the law, and managing the Group's relationship with the Group's external auditor. The Committee members comprise independent Non-Executive Directors. Peter Shaefer, who is a qualified accountant, is the Chairman of the Audit & Risk Management Committee and the Board is satisfied that Peter has recent and relevant financial experience to enable the duties of the Committee to be fully discharged. Rick Denton is the other member of the Audit & Risk Management Committee.

The Committee meets at least once a year with representatives of the Group's external auditor, and the Chief Executive and the Finance Director also attend the meetings.

AUDIT & RISK MANAGEMENT COMMITTEE REPORT

The Committee considers that it has acted in accordance with its term of reference, ensuring:

- The independence, objectivity, and effectiveness of external auditors.
- The Group has appropriate controls and measures in place to mitigate against material risks to its business.
- The integrity of the financial statements. Reviewing significant financial reporting issues and judgements they contain.
- Whistle blowing arrangements are in place.
- Going concern of the Group.
- Recommended distribution of profits appropriately reflects the solvency of the Group.

The Committee recommends that the Board approve the Group's financial statements for the 12 month period ended 31 March 2022, including the independent auditors report and unqualified opinion of Deloitte LLP to these financial statements.

SHAREHOLDER RELATIONS

The Board believes that good communication with the Shareholder is a priority. There have been regular quarterly meetings between the Chairman, Chief Executive and Finance Director of Guernsey Post Limited, and senior staff of the States' Trading Supervisory Board. The Group presents its strategic plan to our Shareholder for approval every year.

The Chairman and Senior Independent Director are available to meet with our Shareholder should there be unresolved matters that our Shareholder believes should be brought to its attention. The Executive Team and the Non-Executive Directors meet with our Shareholder at the Annual General Meeting ('AGM').

The date of the AGM is agreed with our Shareholder and notice of ten working days is given. The AGM is chaired by Guernsey Post Limited, with presentations made by the Executive Team to facilitate awareness of the Group's activities and its financial performance. Our Shareholder is given the opportunity to ask questions of the Board and the Chairman of each Board committee during the AGM.

COMMITTEES OF THE BOARD AND MAIN TERMS OF REFERENCE

In addition to regular scheduled Board meetings, the Group operates through various Board Committees, of which the membership and main terms of reference are set out below (except the Audit & Risk Management Committee, which is outlined above).

Mark Dunster is the Chairman of the Nominations Committee, supported by Paula Williams. The main terms of reference of this Committee are to regularly review the structure, size, and composition of the Board and to make recommendations on the role and nomination of Directors for appointment to the Board, Board Committees and as holders of any executive office, as well as ensuring that appropriate succession plans are in place for the Board and the Executive Team. When considering future Board appointments, the Nominations Committee pays due regard to issues of diversity, including gender. The Committee met three times in 2021/22.

Mark Dunster is also the Chairman of the Remuneration Committee, supported by Paula Williams. The main terms of reference of this Committee are to determine and agree with the Board the remuneration policy for the Group's Executive Team, to approve the design of, and determine targets for, any performance related pay schemes operated by the Group and to determine the policy for, and scope of, pension arrangements for each Executive Director. The Committee met three times in 2021/22.

DIRECTORS' REPORT

The Directors present their Consolidated annual report, together with the financial statements, for the year ended 31 March 2022.

PRINCIPAL ACTIVITIES

The Group's principal activities are the provision of a postal service for the Bailiwick of Guernsey through a postal network and retail counter operation in accordance with the license awarded to it by the Guernsey Competition and Regulatory Authority ('GCRA') and the marketing of its postage stamps and other philatelic products to stamp collectors worldwide.

Through the Company's subsidiaries Shoal Bay Holdings Limited and HR Air Ltd, the Group also provides freight and courier services between Guernsey, Jersey and the UK, as well as warehousing and distribution services.

SIGNIFICANT EVENTS

The impact of COVID-19 on Guernsey Post Limited continued to influence operations and services in the year, albeit to a lesser extent than previously experienced.

As COVID-19 related restrictions were gradually lifted both in Guernsey and further afield, Guernsey Post reinstated non-core services such as foreign currency sales and on island marketing initiatives.

Core mail volume decline continued in the year in line with pre-pandemic trends. Once again this has been offset by parcel and packet growth, which continues to increase.

To enable Guernsey Post to efficiently handle the increased volumes of inbound packets and parcels, the Company entered a lease on a secondary location, providing a significant increase in operational workspace.

RESULTS

The results for the year are shown in the Consolidated Statement of Comprehensive Income on page 16 (25*).

DIVIDEND

The Directors recommend a dividend of £0.5m based upon the profits for the year ended 31 March 2022 (2021: £1.3m).

FIXED ASSETS

Fixed asset movements for the year are disclosed in note 6 to the financial statements.

DIRECTORS

The Directors of the Group, who served throughout the year and at the date of this report, were as follows:

Simon Milsted
(resigned 27 December 2021)

Richard Digard

Boley Smillie

Peter Shaefer

Steve Sheridan

Mark Dunster

Jill Thomas
(resigned 31 March 2022)

Paula Williams

Rick Denton
(appointed 16 December 2021)

No Director has an interest, either beneficially or non-beneficially, in any shares of the Group (2021: no interest beneficially, or non-beneficially).

In accordance with the Articles of Association, Paula Williams is due to retire by rotation. Paula Williams, being eligible, has offered herself up for re-election at the forthcoming Annual General Meeting.

STATEMENT OF DIRECTORS' RESPONSIBILITIES

The Directors are responsible for preparing the annual report and the financial statements in accordance with applicable law and regulations.

The Companies (Guernsey) Law, 2008 requires the Directors to prepare financial statements for each financial year. Under that law, the Directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). Under Company Law, the Directors must not approve the financial statements unless they are satisfied that they give a true and fair view of the state of affairs of the Group and of the profit or loss of the Group for that period. In preparing these financial statements, the Directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgments and accounting estimates that are reasonable and prudent;
- state whether applicable UK Accounting Standards have been followed, subject to any material departures disclosed and explained in the financial statements; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Group will continue in business.

The Directors are responsible for keeping proper accounting records that are sufficient to show and explain the Group's transactions and disclose, with reasonable accuracy at any time, the financial position of the Group and enable them to ensure that the financial statements comply with the Companies (Guernsey) Law, 2008. They are also responsible for safeguarding the assets of the Group and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The Directors are responsible for the maintenance and integrity of the corporate and financial information included on the Group's website. Legislation in Guernsey governing the preparation and dissemination of financial statements may differ from legislation in other jurisdictions.

DISCLOSURE OF INFORMATION TO AUDITORS

The Directors who held office at the date of approval of this Directors' Report confirm that, so far as they are each aware, there is no relevant information of which the Group's auditors are unaware; and each Director has taken all the steps that he ought to have taken as a Director to make himself, or herself, aware of any relevant audit information and to establish that the Group's auditors are aware of that information.

AUDITORS

Deloitte have expressed their willingness to continue in office as auditors and a resolution to reappoint them will be proposed at the forthcoming Annual General Meeting.

B Smillie
Chief Executive

R Digard
Chairman

*These page numbers refer to the annual financial statements document approved by the auditors.

INDEPENDENT AUDITOR'S REPORT TO THE MEMBERS OF GUERNSEY POST LIMITED

REPORT ON THE AUDIT OF THE CONSOLIDATED FINANCIAL STATEMENTS

OPINION

In our opinion the consolidated financial statements of Guernsey Post Limited and its subsidiaries (the 'group'):

- give a true and fair view of the state of the group's affairs as at 31 March 2022 and of its profit for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland"; and
- have been prepared in accordance with the requirements of the Companies (Guernsey) Law, 2008.

We have audited the consolidated financial statements which comprise:

- the consolidated statement of comprehensive income;
- the consolidated statement of financial position;
- the consolidated statement of changes in equity;
- the consolidated cash flow statement; and
- the related notes

The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 "The Financial Reporting Standard applicable in the UK and Republic of Ireland" (United Kingdom Generally Accepted Accounting Practice).

BASIS FOR OPINION

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report.

We are independent of the group in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (the 'FRC's') Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

CONCLUSIONS RELATING TO GOING CONCERN

In auditing the financial statements, we have concluded that the directors' use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work we have performed, we have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the group's ability to continue as a going concern for a period of at least twelve months from when the financial statements are authorised for issue.

Our responsibilities and the responsibilities of the directors with respect to going concern are described in the relevant sections of this report.

OTHER INFORMATION

The other information comprises the information included in the annual report, other than the financial statements and our auditor's report thereon. The directors are responsible for the other information contained within the annual report. Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

Our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the course of the audit, or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in this regard.

RESPONSIBILITIES OF DIRECTORS

As explained more fully in the directors' responsibilities statement, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the directors are responsible for assessing the group's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the group or to cease operations, or have no realistic alternative but to do so.

AUDITOR'S RESPONSIBILITIES FOR THE AUDIT OF THE FINANCIAL STATEMENTS

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the FRC's website at: *www.frc.org.uk/auditorsresponsibilities*. This description forms part of our auditor's report.

*These page numbers refer to the annual financial statements document approved by the auditors.

EXTENT TO WHICH THE AUDIT WAS CONSIDERED CAPABLE OF DETECTING IRREGULARITIES, INCLUDING FRAUD

Irregularities, including fraud, are instances of non-compliance with laws and regulations. We design procedures in line with our responsibilities, outlined above, to detect material misstatements in respect of irregularities, including fraud. The extent to which our procedures are capable of detecting irregularities, including fraud is detailed below.

We considered the nature of the group's industry and its control environment, and reviewed the group's documentation of their policies and procedures relating to fraud and compliance with laws and regulations. We also enquired of management about their own identification and assessment of the risks of irregularities.

We obtained an understanding of the legal and regulatory framework that the group operates in, and identified the key laws and regulations that:

- had a direct effect on the determination of material amounts and disclosures in the financial statements. These included the Companies (Guernsey) Law, 2008 and relevant tax legislation; and
- do not have a direct effect on the financial statements but compliance with which may be fundamental to the group's ability to operate or to avoid a material penalty.

We discussed among the audit engagement team regarding the opportunities and incentives that may exist within the organisation for fraud and how and where fraud might occur in the financial statements.

As a result of performing the above, we identified the greatest potential for fraud in the revenue recognition of Bulk and Southbound customers, and our specific procedures performed to address it included are described below:

- assessing the design and implementation of key controls identified around bulk revenue and southbound revenue process;
- obtaining independent third-party confirmation from Royal Mail (with respect to southbound revenue) and a sample of the largest bulk customers;
- agreeing revenue to invoices and bank statements on sample basis for the remaining bulk population;
- inspecting a sample of receipts as per the bank statements and tracing these to supporting documentation and the general ledger for the remaining bulk population to ensure that revenue recorded is complete; and
- obtaining a month-on-month breakdown of southbound and bulk revenue streams and undertaking graphical analysis to analyse the trends to ensure they are in line with our expectations and understanding of the business.

In common with all audits under ISAs (UK), we are also required to perform specific procedures to respond to the risk of management override. In addressing the risk of fraud through management override of controls, we tested the appropriateness of journal entries and other adjustments; assessed whether the judgements made in making accounting estimates are indicative of a potential bias; and evaluated the business rationale of any significant transactions that are unusual or outside the normal course of business.

In addition to the above, our procedures to respond to the risks identified included the following:

- reviewing financial statement disclosures by testing to supporting documentation to assess compliance with provisions of relevant laws and regulations described as having a direct effect on the financial statements;
- performing analytical procedures to identify any unusual or unexpected relationships that may indicate risks of material misstatement due to fraud;
- enquiring of management concerning actual and potential litigation and claims and instances of non-compliance with laws and regulations; and
- reading minutes of meetings of those charged with governance.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

MATTERS ON WHICH WE ARE REQUIRED TO REPORT BY EXCEPTION

Under the Companies (Guernsey) Law, 2008 we are required to report in respect of the following matters if, in our opinion:

- proper accounting records have not been kept; or
- the financial statements are not in agreement with the accounting records; or
- we have not received all the information and explanations we require for our audit.

We have nothing to report in respect of these matters.

USE OF OUR REPORT

This report is made solely to the group's members, as a body, in accordance with Section 262 of the Companies (Guernsey) Law, 2008. Our audit work has been undertaken so that we might state to the group's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the group and the group's members as a body, for our audit work, for this report, or for the opinions we have formed.

Deloitte LLP,

St Peter Port, Guernsey

21 September 2022

CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME

For the year ended 31 March 2022

	Notes	**31 March 2022 Consolidated £'000**	31 March 2021 Consolidated £'000
Turnover	1	**42,782**	41,494
Expenses	2	**(41,191)**	(38,707)
Operating Profit		**1,591**	2,787
Other income/(losses)			
Investment returns		**307**	1,522
Rental income		**78**	97
Revaluation of Investment Property	7	**20**	(100)
Profit on ordinary activities before taxation		**1,996**	4,306
Tax (charge)/credit on profit on ordinary activities	3	**(240)**	31
Profit for the financial year		**1,756**	4,337

All activities derive from continuing operations.

The notes on pages 20 to 29 (*29 - 45) form an integral part of these financial statements.

**These page numbers refer to the original Financial Statements document approved by the auditors.*

CONSOLIDATED STATEMENT OF FINANCIAL POSITION

As at 31 March 2022

	Notes	**31 March 2022 Consolidated £'000**	31 March 2021 Consolidated £'000
Non-current assets			
Tangible fixed assets	6	**10,287**	10,358
Goodwill	5	**3,054**	3,396
Investment property	7	**880**	860
Deferred tax	9	**-**	240
		14,221	14,854
Current assets			
Cash at bank and in hand	1	**3,647**	2,843
Balances with States Treasury	10, 14	**7,746**	8,338
Debtors	8	**4,753**	4,907
Stock		**308**	263
		16,454	16,351
Creditors: Amounts falling due within one year	11	**(3,357)**	(4,343)
Net current assets		**13,097**	12,008
Total assets less current liabilities		**27,318**	26,862
Provisions greater than one year	15	**-**	-
Net assets		**27,318**	26,862
Capital and reserves			
Shareholders' capital	12	**7,886**	7,886
Retained earnings		**19,432**	18,976
		27,318	26,862

The consolidated financial statements were approved by the Board of Directors and authorised for issue on 21 September 2022. They were signed on its behalf by:

B Smillie
Chief Executive

R Digard
Chairman

The notes on pages 20 to 29 (*29 - 45) form an integral part of these financial statements.

**These page numbers refer to the original Financial Statements document approved by the auditors*.

CONSOLIDATED STATEMENT OF CHANGES IN EQUITY

For the year ended 31 March 2022

	Shareholder's Capital	Retained Earnings	Total Equity
	£,000	£'000	**£'000**
Balance as at 1 April 2020	7,886	16,083	**23,969**
Profit for the financial year	-	4,337	**4,337**
Dividends	-	(1,444)	**(1,444)**
Total contributions by and distributions to owners	**-**	(1,444)	**(1,444)**
Balance as at 31 March 2021	7,886	18,976	**26,862**
Balance as at 1 April 2021	7,886	18,976	**26,862**
Profit for the financial year	-	1,756	**1,756**
Dividends	-	(1,300)	**(1,300)**
Total contributions by and distributions to owners	**-**	(1,300)	**(1,300)**
Balance as at 31 March 2022	7,886	19,432	**27,318**

The notes on pages 20 to 29 (*29 - 45) form an integral part of these financial statements.

**These page numbers refer to the original Financial Statements document approved by the auditors.*

CONSOLIDATED CASH FLOW STATEMENT

For the year ended 31 March 2022

	Notes		2022 Consolidated £'000		2021 Consolidated £'000
Operating activities					
Profit or loss for the financial year			**1,756**		4,337
Adjustments for:					
Depreciation and amortisation			**1,290**		932
Profit on sale of tangible fixed assets			**(105)**		(13)
Rental income			**(78)**		(97)
Interest and similar (income)			**(307)**		(1,522)
Revaluation of investment property			**(20)**		100
Taxation			**240**		(31)
(Increase) in stocks			**(45)**		(50)
Decrease / (increase) in debtors			**394**		(388)
(Decrease) / increase in creditors			**(736)**		620
Net cash generated from operations			**2,389**		3,888
Rent received		**78**		97	
Tax received		**(240)**		31	
Net cash inflow from operating activities			**2,227**		4,016
Investing activities					
Purchase of tangible fixed assets		**(1,008)**		(619)	
Investment return		**307**		1,522	
Acquisition of Subsidiary	1	**(250)**		(3,432)	
Proceeds from sale of tangible fixed assets		**236**		162	
Net cash outflow from investing activities			**(715)**		(2,367)
Cash flows from financing activities					
Dividend paid	4	**(1,300)**		(1,444)	
Net cash outflow from financing activities			**(1,300)**		(1,444)
Net increase in cash and cash equivalents			**212**		205
Increase in cash balances			**212**		205
Cash and cash equivalents at 1 April			**11,181**		10,976
Cash at bank and investments held as at 31 March			**11,393**		11,181
Represented by:					
Balances with States Treasury			**7,746**		8,338
Cash			**3,647**		2,843
			11,393		11,181

The notes on pages 20 to 29 (*29 - 45) form an integral part of these financial statements.

**These page numbers refer to the original Financial Statements document approved by the auditors.*

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

1. Significant accounting policies

Reporting entity

Guernsey Post Limited (the "Company") commenced trading on 1 October 2001 and is registered in Guernsey. The Company's registered address is Envoy House, La Vrangue, St Peter Port, Guernsey, GY1 1AA. The Company is governed by the provision of the Companies (Guernsey) Law, 2008. The principal activity of the Company is the provision of Postal Services throughout the Bailiwick.

Basis of consolidation

On 19 March 2021, Guernsey Post Limited acquired 100% of the ordinary share capital of Shoal Bay Holdings Limited and its subsidiary HR Air Ltd. ("the Subsidiaries" and all together "the Group").

These Group financial statements consolidate the financial statements of the Company and the Subsidiaries up to 31 March 2022. The results of the Subsidaries acquired are consolidated for the periods from, or to the date, on which control passed to Guernsey Post Limited.

Where necessary adjustments are made to the financial statements of the Subsidiaries to bring them in line with the policies used by Guernsey Post Limited, all intra-group transactions, balances, income and expenses are eliminated on consolidation.

Basis of accounting

The financial statements give a true and fair view, comply with the Companies (Guernsey) Law, 2008 and were prepared in compliance with the UK Accounting Standards, including FRS 102 - The Financial Reporting Standard applicable in the UK and Ireland. The presentation currency of these financial statements is sterling. All amounts in the financial statements have been rounded to the nearest £1,000 unless otherwise stated.

Going concern

These financial statements are prepared on a going concern basis.

After making enquiries and reviewing the Group's forecasts and projections, taking account of reasonably possible changes in trading performance in light of current economic conditions which may have an impact the volume of mail handled by the Group, the Directors have a reasonable expectation that the Group has adequate resources to continue in operational existence for the foreseeable future.

The Group, therefore, continues to adopt the going concern basis in preparing its financial statements.

Use of judgements and estimates

In preparing these financial statements, management has made judgements, estimates and assumptions that affect the application of the Group's accounting policies and the reported amount of assets, liabilities, income and expenses. Actual results may differ from these estimates.

Estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to estimates are recognised prospectively.

a. Judgements

Information about judgements made in applying accounting policies that have the most significant effects on the amounts recognised in the financial statements is included in the following notes:-

- Note 1 - Business combinations - Basis for determining the value and recoverability of goodwill, amortisation period and the basis for consolidation

- Note 1 - Business combinations - determination of the amortisation period of goodwill

- Note 3 – Taxation - Basis for determining classification of regulated and non-regulated profits

- Note 15 - Provisions - dilapidations

b. Assumptions and estimation uncertainties

Information about assumptions and estimation uncertainties that have a significant risk of resulting in a material adjustment to amounts reported in the financial statements for the year ended 31 March 2022 is included in the following notes:-

- Note 1 - Tangible Fixed Assets - determination of useful economic life of fixed assets

- Note 7 - Investment Property - determination of fair value of investment property

- Note 9 – Deferred Tax – recognition of deferred tax assets: availability of future taxable profit against which tax losses carried forward can be used

Basis of measurement

The financial statements have been prepared under the historical cost convention, modified to include the revaluation of certain assets.

The Group has consistently applied the following accounting policies to all periods presented in these financial statements.

Turnover

Sales of stamps are accounted for on a receipt of funds basis and no provision is made for postal services expected to be provided for stamps in circulation, as the Directors deem this to be immaterial. All other income from goods and services supplied are accounted for on an accruals basis.

Other income

Rental income is recognised on a straight line basis over the term of the lease. Interest and investment income is recognised in the Consolidated Statement of Comprehensive Income on an accruals basis.

Expenses

Postal operations expenses are charged as incurred. No provision is made for any charges which may be incurred in handling, or delivering, mail in respect of stamps sold but unused at the Balance Sheet date.

Taxation

Income tax expense computations are based on the jurisdictions in which profits were earned at the prevailing rates of tax in the respective jurisdictions. The majority of the Group's profits are reported by Guernsey Post Limited (the "Company").

The Company, as a Guernsey Utility Company regulated by the Guernsey Competition and Regulatory Authority ('GCRA'), is subject to the higher rate of income tax of 20% on its regulated income and 0% on its non-regulated income. The basis of assessment to Guernsey tax continues to be on an actual current year basis. Income from Guernsey land is also subject to the higher rate of income tax of 20%.

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

1. Significant accounting policies - continued

Deferred Taxation

Provision for deferred taxation is made in full on timing differences which result in an obligation at the Balance Sheet date to pay tax at a future date, at rates expected to apply when they crystallise based on current tax rates and laws. Deferred tax assets are only recognised to the extent that it is regarded as more likely than not that they will be recovered. Deferred tax assets and liabilities are not discounted.

Dividends

Dividends paid are recognised when the obligation to pay has been established and once approved by the Board.

De-recognition of assets

Non-financial assets are removed from the Balance Sheet, either on disposal, or when they are withdrawn from use and no future economic benefits are expected from their use. In this event, any carrying amount is written off to the Consolidated Statement of Comprehensive Income.

Provisions

Provisions are recognised when the Group has a present legal or constructive obligation as a result of past events, where it is more likely than not that an outflow of resources will be required to settle the obligations and the amount has been readily estimated. Changes in the estimated timing or amount of the expenditure are recognised in the Consolidated Statement of Comprehensive Income when the changes arise.

Impairment of non-financial assets

At each reporting date, non-financial assets are reviewed to determine whether there is any indication that those assets have suffered an impairment loss. In the event that there is an indication of possible impairment, the recoverable amount of any affected asset is estimated and compared with its carrying amount. If the estimated recoverable amount is lower, the carrying amount is reduced to its estimated recoverable amount, and an impairment loss is recognised immediately in the Consolidated Statement of Comprehensive Income.

If an impairment loss subsequently reverses, the carrying amount of the asset is increased to the revised estimate of its recoverable amount, but not in excess of the amount that would have been determined had no impairment loss been recognised for the asset in prior years. A reversal of an impairment loss is recognised immediately in the Consolidated Statement of Comprehensive Income.

Stock

The cost of definitive stamps, including the non-value indicator self-stick range, is written off over the expected sales life of each type of stamp, which is unlikely to exceed three years. The costs of commemorative stamps, which are only available for one year, are fully written off in the year of issue.

Other stocks are valued at the lower of cost and net realisable value.

Tangible fixed assets

Tangible fixed assets are stated at cost less accumulated depreciation and any impairment losses. Depreciation is provided on all tangible fixed assets, other than freehold land, at rates calculated to write off the cost of each asset on a straight-line basis over its expected useful economic life. A full year's depreciation is charged in the year of acquisition, whilst none is charged in the year of disposal.

There are periodic reviews of fixed assets and any adjustments required will be recognised in the Consolidated Statement of Comprehensive Income, as and when identified.

	Estimated useful life in years	Depreciation %per annum
Freehold land	N/A	Nil
Buildings	18 - 50	2 - 12.5
Plant and equipment	15	6.67
Furniture & Fittings	3 -13	7.7 - 33.3
Postal Machinery	8 -15	6.67 - 12.5
Motor Vehicles	5 - 10	10 - 20

Goodwill

Goodwill recognised represents the excess of the fair value and directly attributable costs of the purchase consideration over the fair values to the Company's interest in the identifiable net assets, liabilities and contingent liabilities acquired.

Goodwill is amortised over its expected useful life. Where the Company is unable to make a reliable estimate of useful life, goodwill is amortised over a period not exceeding 10 years. Goodwill is assessed for impairment when there are indicators of impairment and any impairment is recognised in impairment of intangible fixed assets in the Consolidated Statement of Comprehensive Income.

Amortisation

Goodwill was acquired as part of the acquisition of Shoal Bay Holdings Limited on the 19 March 2021 (see Note 1 - Business Combinations for more information). Amortisation is being applied on a straight line basis of 10 years.

Basic Financial Instruments

Cash at banks and investment comprises of cash balances, call deposits and short term investments held with the States of Guernsey Treasury.

Debtors are initially recognised at transaction price less attributable transaction costs. Doubtful debts are recognised when collection of the full amount is no longer probable, with the amount of the expected loss recognised in the Consolidated Statement of Comprehensive Income. These are monitored on an ongoing basis.

Creditors are initially recognised at transaction price. Debtors and creditors due within one year continue to be measured after their initial recognition at the undiscounted amount of cash or other consideration expected to be paid or received.

Foreign currency

Foreign currency held in any bank account is translated at the exchange rate prevailing at the Balance Sheet date. In the event of any gains or losses arising, these are taken to the Consolidated Statement of Comprehensive Income at the time of translation. All foreign trading transactions are translated into sterling using the prevailing rate on the date of the transaction.

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

1. Significant accounting policies - continued

Pension costs

Guernsey Post Limited has an established defined contribution pension scheme, for which all eligible staff are required to join. Both Guernsey Post Limited and its employees pay contributions into this independently administered fund. The cost of providing these benefits is recognised within the Consolidated Statement of Comprehensive Income, and comprise both the amount of contributions payable to the scheme and associated scheme administration costs for the year.

Investment properties

Investment property is initially measured at cost and subsequently at fair value with any change therein recognised in the Consolidated Statement of Comprehensive Income.

Business combinations

Acquisitions of subsidiaries and businesses are accounted for using the purchase method. The cost of the business combination is measured at the aggregate of the fair values (at the date of exchange) of assets given, liabilities incurred or assumed, and equity instruments issued by the group in exchange for control of the acquiree plus costs directly attributable to the business combination.

Any excess of the cost of the business combination over the acquirer's interest in the net fair value of the identifiable assets and liabilities is recognised as goodwill. If the net fair value of the identifiable assets and liabilities exceeds the cost of the business combination, the excess is recognised separately on the face of the Consolidated Statement of Comprehensive Income and the Consolidated Statement of Financial Position immediately below goodwill.

On 19 March 2021, Guernsey Post Limited acquired 100% of the ordinary share capital of Shoal Bay Holdings Limited for a total consideration of £4.9m paid in cash.

Shoal Bay Holdings Limited (Incorporated in Jersey) acts as a holding Company to HR Air Ltd (incorporated in Jersey), owning 100% of the ordinary share capital of HR Air Ltd.

The principal activity of HR Air Ltd is to provide courier, freight, warehousing and distribution services from sites in Guernsey, Jersey and the UK.

HR Air Ltd. provides complimentary services to Guernsey Post Limited and is a well established business with strong customer relations, an experienced workforce and the acquisition provides the opportunity to establish synergies and economies of scale through the business combination.

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

2. Expenses

	31 March 2022 £'000	31 March 2021 £'000
Direct costs	**20,878**	20,807
Staff costs	**14,508**	12,713
Directors' remuneration	**649**	855
Other staff expenditure	**926**	556
Support costs	**2,670**	2,648
Operating Lease payments	**270**	196
Depreciation	**948**	903
Amortisation of goodwill	**342**	29
Total	**41,191**	38,707

Pension scheme payments made into the defined contribution scheme, included within the staff costs heading, were £1,351k (2021: £1,140k).

Average full time equivalent employee numbers for the period were as follows:

	31 March 2022	31 March 2021
Operational staff, including postal workers, post office counter staff and philatelic production staff	**201**	184
All other staff	**87**	85
Total	**288**	269

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

3. Taxation

	Note	**31 March 2022 £'000**	31 March 2021 £'000
Current year tax		**-**	-
Prior year tax		**-**	-
Deferred tax credit in relation to capital allowances	9	**-**	31
De-recognised deferred tax assets	9	**(240)**	-
		(240)	31

Guernsey Post Limited, as a Guernsey Utility Company regulated by the Guernsey Competition and Regulatory Authority ('GCRA'), is subject to the higher rate of income tax of 20% on its regulated income and 0% on its non-regulated income. The basis of assessment to Guernsey tax continues to be on an actual current year basis.

Income from Guernsey land is also subject to the higher rate of income tax of 20%.

The actual tax credit differs from the expected tax charge computed by applying the higher rate of Guernsey income tax of 20% as follows:

	31 March 2022 £'000	31 March 2021 £'000
Profit on ordinary activities before taxation	**1,996**	4,306
Tax at 20%	**399**	861
Effects of adjusting items:		
Timing differences	**33**	36
Disallowed items	**43**	23
Rate differences on current tax	**(1,013)**	(1,189)
Non-utilised losses	**538**	269
Current tax credit	**-**	-
Deferred tax - timing adjustments	**(240)**	31
Profit and loss taxation adjustments	**(240)**	31

4. Dividends on equity shares

Amounts recognised as distribution to equity holders in the period.

	31 March 2022 £'000	31 March 2021 £'000
Final dividend of 16.5p per share paid in this financial year in respect of the year ended 31 March 2021	**1,300**	1,444

Final dividend paid last year in respect of the year ended 31 March 2020: 18.3p per share.

The Board is proposing a final dividend of £0.5m in respect of the year ended 31 March 2022 (2021: £1.3m).

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

5. Goodwill

	Total Goodwill £'000
As at 1 April 2021	**3,425**
Acquisitions through business combinations	**-**
As at 31 March 2022	**3,425**
Accumulated amortisation and impairment	
As at 1 April 2021	**(29)**
Amortisation charge for the year	**(342)**
As at 31 March 2022	**(371)**
Carrying amount	
As at 31 March 2021	**3,396**
As at 31 March 2022	**3,054**

The goodwill was recognized as part of the acquisition of Shoal Bay Holdings Limited on 19 March 2021.

6. Tangible fixed assets

	Motor Vehicles £'000	Land & Buildings £'000	Plant & Equipment £'000	Postal Machinery £'000	Furniture & Fittings £'000	**Total £'000**
Opening cost as at 1 April 2021	2,663	12,023	2,662	2,318	2,594	**22,260**
Opening accumulated depreciation as at 1 April 2021	(1,572)	(3,763)	(2,662)	(1,830)	(2,075)	**(11,902)**
Opening Carrying amount as at 1 April 2021	1,091	8,260	-	488	519	**10,358**
Additions	707	66	-	77	158	**1,008**
Depreciation	(409)	(197)	-	(184)	(158)	**(948)**
Disposals - Cost	(268)	(515)	-	-	(1)	**(784)**
Disposals - Accumulated Depreciation	137	515	-	-	1	**653**
Closing carrying amount as at 31 March 2022	1,258	8,129	-	381	519	**10,287**
Represented by:						
Closing cost as at 31 March 2022	3,026	11,575	2,662	2,395	2,668	**22,326**
Closing accumulated depreciation as at 31 March 2022	(1,768)	(3,446)	(2,662)	(2,014)	(2,149)	**(12,039)**
	1,258	8,129	-	381	519	**10,287**

Freehold land with a cost of £2,505,000 (2021: £2,505,000) is not depreciated.

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

7. Investment property

Reconciliation of carrying amount	**Market Value 31 March 2022 £'000**	Market Value 31 March 2021 £'000
Balance at 1 April	**860**	960
Change in fair value	**20**	(100)
Balance at 31 March	**880**	860

Investment property comprises a single property, which is leased to tenants, comprising part residential and part commercial occupancy. Leases for the residential tenants are reviewed annually, whereas the commercial tenant is subject to a 20 year lease with triennial reviews.

Changes in fair value are recognised as either a gain or a loss in the Consolidated Statement of Comprehensive Income within 'Other Income/(Losses)'. All gains or losses are unrealised.

The fair value of the investment property was determined by an external independent property valuer with recognised professional qualifications and recent experience in the location and category of the property being valued on 31 March 2022. The valuation was undertaken by Wing Lai, MRICS, and Joanna Watts, MRICS, from Watts Property Consultants Limited.

8. Debtors

	31 March 2022 £'000	31 March 2021 £'000
Trade debtors	**4,096**	4,443
Less: Provision for bad debt	**(7)**	-
Other debtors	**215**	14
Prepayment and accrued income	**313**	314
Tax debtors	**136**	136
Total	**4,753**	4,907

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

9. Deferred Tax

	Deferred taxation - Accelerated Capital Allowances	Total
	£'000	**£'000**
At 1 April 2021	240	**240**
Deferred tax credit in relation to capital allowances	-	**-**
De-recognised deferred tax assets	(240)	**(240)**
At 31 March 2022	-	**-**

Deferred tax in the financial statements is measured at the actual tax rates that are expected to apply to the income in the periods in which the timing differences are expected to reverse. As a Guernsey Utility Company regulated by GCRA, Guernsey Post Limited is subject to tax at 20% on its regulated income and 0% on its non-regulated income. Income from Guernsey land is also subject to the higher rate of income tax of 20%.

De-recognised deferred tax assets
Deferred tax assets have not been recognised as it is not probable that future taxable profit will be available against which the Group can use the benefits therefrom.

10. Balances with States Treasury

The Treasury Department of the States of Guernsey is engaged to invest the Group's liquid funds in excess of its daily requirements and uses a broad range of investments in which to do so. The investment fund retains a proportion of liquid assets which are made available on call. Variable returns are allocated to the fund dependent upon investment performance.

11. Creditors

	31 March 2022	31 March 2021
	£'000	£'000
Amounts falling due within one year		
Trade creditors	**973**	1,499
Other creditors	**1,045**	1,057
Provisions (see Note 15)	**-**	299
Accruals and deferred income	**1,325**	1,474
Rental income paid in advance	**14**	14
Total	**3,357**	4,343

Of the £973k of Trade Creditors, £260k is owed to Royal Mail as part of our ongoing contractual arrangements with them (2021: £790k).

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

12. Shareholder's capital

	31 March 2022 £'000	31 March 2021 £'000
Authorised		
40,000,000 ordinary shares of £1 each	**40,000**	40,000

	No of shares	£'000
Allotted and fully-paid	7,886,258	7,886
Opening share capital at 01 April 2021	7,886,258	7,886
As at 31 March 2022	7,886,258	7,886

100% of the shares of the Company are owned beneficially by the States of Guernsey.

Shareholder's capital - represents the nominal value of shares that have been issued.

13. Operating Leases

Non-cancellable operating lease rentals are payable as follows:

	Land and buildings	Land and buildings
	31 March 2022 £'000	31 March 2021 £'000
Less than one year	**257**	172
Between one and five years	**534**	476
More than five years	**1,506**	1,531
	2,297	2,179

Leases of land and buildings are subject to rent reviews at specified intervals, typically annually, and provide for the lessee to pay all insurance, maintenance and repair costs.

The Group leases one property in St Peter Port; 'North Plantation' to run its Business Hub. The group took out a new lease at Bulwer Avenue starting on 12 January 2022 to assist with its operations. In addition, the Group leases property to fulfil its postal operation in Alderney and warehouse spaces in Jersey and Guernsey for the use of HR Air Ltd.

The lease on the Smith Street property expired at the end of June 2021, at which stage the property was returned to the landlord. Two short term leases, originally taken out as a result of the pandemic, also expired during the financial year at the end of June 2021 and August 2021.

NOTES TO THE FINANCIAL STATEMENTS year ended 31 March 2022

14. Related party transactions

The Group is wholly owned and ultimately controlled by the States of Guernsey.

Through the normal course of its business activity, the Group makes both purchases from and provides services to its Shareholder, or entities, under the controlling influence of the Shareholder body. These entities include States Trading Companies, companies whose equity is wholly owned by the States, States Departments and Committees operated by the States. All such transactions have been on an arm's length basis. The total value of the sales for the year ended 31 March 2022 amount to £1,064,463, or 2.5% of total turnover (2021: £1,031,797, or 2.5%). The total value of purchases for the year amounted to £3,334,932, or 8.1% of total expenses (2020: £3,241,359, or 8.4%).

The States also provides, through its Policy & Resources Department, management of the Group's liquid funds in excess of short term needs. At 31 March 2022, the balance held was £7,745,611 (2021: £8,337,850). The investment return for the financial year ending 31 March 2022 was £307,495 (2021: £1,522,329).

Director's remuneration is shown in note 2.

15. Provisions

	Dilapidations £'000	Deferred Considerations £'000	Total £'000
Balance at 1 April 2021	**49**	250	**299**
Provision (released)/made during the year	(49)	(250)	(299)
Balance at 31 March 2022	**-**	-	-
Non-current	-	-	-
Current	-	-	-
	-	-	-

Dilapidations

This provision is in respect of the reinstatement obligations related to the Smith Street leasehold property. The lease on this property terminated in June 2021.

Deferred Considerations

The purchase of Shoal Bay Holdings Limited on 19 March 2021 included £250,000 of deferred consideration which was paid on 19 September 2021.

Contingent obligations - Financial Guarantee Contracts

Guernsey Post Limited has financial guarantee contracts in place with the States of Guernsey Customs and Excise and HM Revenue and Customs for £20,000 and £100,000, respectively. In addition, HR Air Ltd has financial guarantee contracts in place with HM Revenue and Customs for £30,000 and Customs and Immigration Services for £1,000. These contingent obligations are in place to provide security in the event that import and export duties paid to Guernsey Post Limited and HR Air Ltd from their customers are not subsequently paid on to the respective authorities. The Group does not carry any liability to either the States of Guernsey Customs and Excise, HM Revenue and Customs or Customs and Immigration, in the event that customers directly withhold payment of import and export duties to Guernsey Post Limited.

16. Subsequent events

There have been no significant events between the year-end and the date of approval of these financial statements, which would require a change to, or disclosure in, the financial statements.

GUERNSEY
POST

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INVESTOR IN PEOPLE

P.2022/109

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

REVOCATION OF ALL EXISTING APPROVALS OF PLANT PROTECTION PRODUCTS (PESTICIDES) CONTAINING THE ACTIVE SUBSTANCE GLYPHOSATE

The States are asked to decide:-

Whether, after consideration of the Requête entitled "Revocation of all existing approvals of plant protection products (pesticides) containing the active substance Glyphosate" dated 16th November, 2022, they are of the opinion:-

1. To agree that action should be taken in Guernsey to eradicate the threat to its inhabitants and its eco-structure posed by the continued use of Glyphosate on the island.

2. To direct the Committee *for* Employment & Social Security, by the end of the year 2023, in exercise of its powers under Regulation 11(8) of the Control of Poisonous Substances (Guernsey) Regulations, 2014, as amended, to revoke all existing approvals of plant protection products (pesticides) containing the active substance Glyphosate (CAS No.1071-83-6, EU No. 213-997-4), including those authorising the use, importation and sale to professional users.

Rule 4(1) Information

a) The propositions contribute to the States' objectives and policy plans by seeking to ensure that plant protection products containing Glyphosate will (by the end of 2023) no longer be approved under the Poisonous Substances (Guernsey) Law, 1994, thus prohibiting their use, importation and sale, which will help keep the island safe and secure, support healthy living and maximise the sustainable social and economic use of the island and marine environment.

b) In preparing the propositions, consultation has been undertaken with the Committee *for* Employment & Social Security (ESS), the Health and Safety Executive, Guernsey Water and the Committee *for* Health & Social Care (CfHSC).

c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no apparent financial implications to the States of carrying the proposal into effect.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

REVOCATION OF ALL EXISTING APPROVALS OF PLANT PROTECTION PRODUCTS (PESTICIDES) CONTAINING THE ACTIVE SUBSTANCE GLYPHOSATE

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

1. The chemical Glyphosate (commonly known as Roundup) is being used extensively as a weed killer in Guernsey.

2. Glyphosate is the most utilised herbicide in agriculture, although its widespread use is generating controversy in the scientific world because of its probable carcinogenic effect on human cells. Your petitioners are aware that in 2015, the World Health Organization warned about the potential negative health effects of glyphosate, including the risk of cancer development based on experimental research results, and reclassified glyphosate as probably carcinogenic to humans. Glyphosate has been identified as a Group 2A carcinogen (probably carcinogenic in humans) by the World Health Organisation (WHO) international agency for research on cancer. It has been found to be bio-accumulative in human bodies over time.

3. There have been hundreds of scientific peer reviewed articles published in scientific and medical journals on the link between glyphosate and autoimmune and neurological conditions and diseases (including Alzheimer's, Dementia, Parkinson's, Gastrointestinal disorders, Obesity, Diabetes, Heart Disease, Multiple Sclerosis, Autism and Cancer).

4. Your petitioners note that Glyphosate has been linked to pollution of water and land sources, with residues in food supplies, and remains in the soil for long after it has been applied. Scientific research has revealed that glyphosate cause structural changes in the microbial population of soils and ecosystems. The herbicide not only destroys the plant cells of plants but also destroys the microbiomes in the soil and human gut microbes influencing adverse health outcomes.

5. Due to the public health risks around glyphosate several countries (including Austria, Belgium, Netherlands, and Germany) and more than 40 councils in the UK have banned or partially banned its use.

6. Glyphosate has now been officially linked to cancer in court decisions in the USA. A recent case ended with $2 billion being awarded in damages to individuals who claimed they were diagnosed with cancer after years of using Roundup. Several thousands of other lawsuits are understood by your petitioners currently to be pending against the manufacturers of Roundup regarding the product and its side effects, including a cohort of more than 300 farmers, alleging that working with the chemical has given them cancer.

7. This has led to the manufacturer of glyphosate, Bayer (formerly Monsanto), setting aside billions of dollars for settlements and litigation claims. Among measures to contain the legal damage as of June 2020 Bayer set aside $11.6 billion for settlements and litigation claims linked to glyphosate. In 2021 Bayer placed an additional litigation provision of $4.5 billion to brace for further unfavourable rulings by the U.S. Supreme Court.

8. Further, Bayer plans to replace glyphosate in weed killers by January 2023 for the United States residential market with other active ingredients in order to help manage litigation risk from unresolved cancer and public health lawsuits. Your petitioners believe this is already being instigated in Guernsey.

9. As part of the Biodiversity strategy the States of Guernsey are working to reduce the use of Pesticides and Herbicides to a minimum.

10. States Works have reassessed the situation recently and took the decision to withdraw the use of Glyphosate at the end of 2020 due to the effect that it was having on the environment and biodiversity and the increase of the chemical in raw water. States Works have switched over to manual control, use of acetic acid on paths and using electricity to kill noxious weeds. However, private contractors and farmers are still applying glyphosate not just for weed control but to accelerate crop dieback.

11. Amongst alternatives to glyphosate, Rootwave uses electricity to kill weeds without using chemical herbicides. Rootwave is becoming increasingly popular for treating invasive weed species such as Japanese Knotweed. It

effectively tackles Japanese knotweed and clears it by attacking the root and foliage allowing nature, plants and wildlife to thrive. Once treatment is finished, the public and local wildlife can enjoy the area immediately without the presence of chemical herbicide residues.

12. Guernsey Water reported in their Glyphosate Herbicide Risk Report 2020 that 'Amongst the many compounds that are regularly tested it is glyphosate that is now found in greatest concentration in our stored water reservoirs' and 'Although nearly ubiquitous the presence of Glyphosate concentrations is of most concern in the northern (largely urbanised) catchments, as it is in these areas that Glyphosate presently dominates'.

13. The Vale Pond stream transfer station was switched off due to an excessive concentration of Glyphosate following stream sample results in June 2019 of 3.01 ug/l (30 x MAC) and again in October 2021 of 3.66 ug/l. The Marais Stream exhibited similar raised concentrations of 2.54 ug/l (25 x MAC). The UK maximum admissible concentration (MAC) for individual herbicides of 0.1 ug/l (micrograms/litre) in treated water. Combined these two sources represent critical water resources for the north of the island. These waters are transferred to Juas and Longue Hougue reservoirs. The flushing of Glyphosate residues into stream systems following rainfall has become a concern island wide.

14. Guernsey Water indicates 'the potential consequences of further increases in glyphosate levels in streams are:

- The potential loss of an additional three catchment resources in the north and west of Guernsey due to glyphosate pollution, these together with the Vale Pond and Marais streams contribute the largest portion of supply to northern reservoirs.
- The increased risk of glyphosate exceedances in the treated drinking water supply.
- The requirement to invest in glyphosate treatment resulting in significant cost to Guernsey Water customers and increased carbon emissions'.

15 The States of Guernsey Health and Safety Executive have recognised Glyphosate as a poisonous substance and withdrawn all 152 products containing Glyphosate for use in the garden or as an amateur product. This is regarded by the petitioners as a half measure. Glyphosate will still be available to professional users. The islands hundred or so farmers, growers,

landscape gardeners and the States itself will be able to continue using it for weed control provided they hold the NPTC certificate of competence.

16 Given:

The increasing number of legal claims world-wide concerning Glyphosate;

The number of jurisdictions acting to ban altogether or reduce the use and sale of Glyphosate;

The concerns and action being taken by States bodies to stop the use of Glyphosate;

The serious health implications and the damaging environmental and biodiversity effects of the chemical Glyphosate;

The need for public responsibility for safe practice;

The fact that there are alternatives to its use;

The rising levels of contamination of Glyphosate in Guernsey's water supply; and

The dependency of the island on its streams and stored open waters and

The historical precedence in requesting control of chemicals considered a risk to treated water supplies with restrictions placed on the use of several compounds (including Atrazine, Simazine, Chlorthal and Metaldehyde) in the past.

Your Petitioners are of the view that action should be taken in Guernsey to eradicate the threat to its inhabitants and its eco-structure posed by the continued use of Glyphosate on the island.

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

1. To agree that action should be taken in Guernsey to eradicate the threat to its inhabitants and its eco-structure posed by the continued use of Glyphosate on the island.

2. To direct the Committee *for* Employment & Social Security, by the end of the year 2023, in exercise of its powers under Regulation 11(8) of the Control of Poisonous Substances (Guernsey) Regulations, 2014, as amended, to revoke all existing approvals of plant protection products (pesticides) containing the active substance Glyphosate (CAS No.1071-83-6, EU No. 213-997-4), including those authorising the use, importation and sale to professional users.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 16th day of November 2022

Deputy D.de Garis De Lisle

Deputy R G Prow

Deputy M A J Helyar

Deputy A C Dudley Owen

Deputy D J Mahoney

Deputy S E Aldwell

Deputy L C Queripel

The original signed Requete is held by the States' Greffier

P.2023/3

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE

THE STATES STRATEGIC HOUSING INDICATOR, 2023-2027

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'The States Strategic Housing Indicator, 2023-2027' dated 05 January 2023, they are of the opinion:-

1. To agree the States Strategic Housing Indicator be set at creating 1,565 new units of accommodation between 2023 and 2027, with a plus or minus variance of 157 new units (10%) to give the flexibility to react to market changes, equating to an annual average of 313 additional units of accommodation; the total SSHI being made up of:

    a. a Private Market Housing Indicator set at creating 844 units of private market accommodation over the next 5 years, with a plus or minus variance of 84 new units, equating to an annual average of 169 additional units of accommodation; and

    b. an Affordable Housing Indicator set at creating 721 units of Affordable Housing over the next 5 years, comprising 473 in the Social Rental Housing tenure and 248 in the Partial Ownership Housing tenure, with a plus or minus variance of 72 new units, equating to an annual average of 144 units;

2. To agree that the indicators for property size within the Private Market Indicator be established based on a percentage split of bedroom requirements of 85% current profile, 10% maximum profile and 5% intermediate profile;

3. To agree that the property size indicators within the Social Rental Housing tenure be based on a percentage split of bedroom requirements of 90% minimum profile and 10% maximum profile;

4. To agree that the property size indicators within the Partial Ownership Housing tenure be established based on a percentage split of bedroom requirements of 70% intermediate profile and 30% maximum profile;

5. To agree that the housing needs model be run every year for monitoring

purposes, unless required sooner, and that these findings be published;

6. To agree that, should the Island's modelled housing needs change to such an extent that they go beyond the tolerances set out in Proposition 1, they will be returned to the States of Deliberation for endorsement of a revised States Strategic Housing Indicator;

7. To agree that, unless a reason is identified for reporting sooner by either the States of Deliberation or the Committee *for the* Environment & Infrastructure, the next formal States Strategic Housing Indicator update to the States of Deliberation will be during 2027 to set an Indicator for the period 2028-2032;

8. To direct that all Committees of the States of Deliberation when laying policy letters before the Assembly, if relevant, should consult with the relevant housing or analysis teams to assess therein any consequential impact on the Island's housing need together with, where appropriate, proposing adaptation and mitigation actions;

9. To direct the Development & Planning Authority to take into account the indicators in Proposition 1 in the review of the housing land supply and to give consideration to how planning policies will be used to actively encourage housing developments to use land as efficiently as possible; and

10. To direct the Committee *for* Employment & Social Security, in its planning of the Affordable Housing Development Programme, to take account of the projected unit profile required for both the Social Rental and Partial Ownership tenures.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

THE STATES STRATEGIC HOUSING INDICATOR, 2023-2027

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

05 January 2023

Dear Sir

1 Executive Summary

1.1 The States Strategic Housing Indicator ("SSHI") is a States-agreed figure which sets out the total number of additional accommodation units that should be created each year if Guernsey is to meet its housing need. It describes the accommodation units required to appropriately house newly forming households and meet the needs of already established households currently without appropriate housing[1]. The SSHI and other key terms are defined in a Glossary of Terms in Appendix I.

1.2 The SSHI informs fundamental elements of the States of Guernsey's infrastructure, housing and planning policies, particularly policies relating to land supply for domestic property and the development of additional Affordable Housing units. The current SSHI was agreed by the States of Deliberation in July 2018, as part of the debate on the Local Market Housing Review and the development of a future housing strategy[2]. The SSHI was set at an annual average of only 127 new units a year.

1.3 To ensure the SSHI remains an effective foundation for States policy, it needs to be updated to reflect the latest population and household data. The Committee *for the* Environment & Infrastructure has led an evidence-based assessment of the Island's housing need to inform the proposal of a new SSHI. For the first time, the assessment has used an in-house housing needs model developed for use in the Guernsey context. The model has been used to project accommodation

[1] Appropriate housing is accommodation that is affordable, secure, and adequate for the residing household.
[2] Billet d'État XIX of 2018 and Resolutions.

requirements by tenure (private market or Affordable Housing) and by property size (in terms of the number of bedrooms needed) based on the proposed bedroom allocation policies for each tenure.

1.4 The model was designed to focus on 'housing need' rather than 'housing demand'. In the context of this Policy Letter, 'housing need' refers to the overall accommodation shortfall generated by households currently without appropriate housing or which are projected to be without appropriate housing in the future. 'Housing demand', however, represents a measure of market activity alone. It is the type and size of housing wanted by, and affordable to, households seeking new accommodation. It does not necessarily reflect all the need in the population or correlate with households' requirements to be considered appropriately housed.

1.5 The limited land and building resources in Guernsey necessitate efficient use of space and existing housing. Housing need, therefore, forms the foundation of the proposed SSHI, helping to ensure that there is capacity to meet the basic housing needs of all households. The Committee *for the* Environment & Infrastructure, however, recognises that housing demand is an important market force and, should a degree of demand not be met, Guernsey may not be a desirable place to live. Demand is incorporated into the SSHI by using current housing behaviours to inform the distribution of property sizes in the Indicator and reflected in the flexible approach to the SSHI application. The total SSHI and the property size distribution will be used to inform rather than dictate development, to allow developers to respond to market conditions and enable development to support households which have more complex or exceptional needs.

1.6 The housing needs model projects that 1,565 additional accommodation units will be required between now and the end of 2027, based on a fertility rate of 1.5 and a net annual migration rate of +300. This equates to an annual housing need of 313 units each year over the next five years. When a range of plus and minus 10% is included to support the flexibility needed to react to market changes, the recommended SSHI is 1,409-1,722 new housing units between 2023 and 2027.

1.7 The proposed SSHI is 186 units per year higher than the current SSHI. By setting the SSHI at this level, it will support efforts to increase housing supply and help to address the housing issues being experienced across the housing market.

1.8 Increasing housing supply also provides an opportunity to deliver the size of property needed to encourage right-sizing and open up currently underoccupied houses (houses with more bedrooms than the household requires) for new or

growing families. It also provides the opportunity to increase the supply of houses at a size required for first time buyers.

1.9 Within this headline SSHI of 1,565 additional units, the recommended Private Market Indicator is 844 units of private market accommodation over the next five years, with a plus or minus variance of 84 new units, equating to an annual average of 169 additional units.

1.10 Property size in the SSHI has been estimated based on the number of bedrooms. When calculating bedroom numbers needed in the private market, the model has applied a mixed bedroom allocation policy. 85% of households have had bedrooms allocated based on the current behaviour profile (this profile is based on the population's current housing behaviours, incorporating the present demand patterns for homes with greater numbers of bedrooms), 10% of households have had bedrooms allocated based on the maximum profile (households are allocated a bedroom per person/couple and a spare bedroom) and 5% was based on the intermediate profile (households are allocated a bedroom per person/couple but no spare bedroom).

1.11 This has resulted in a projected requirement for 62 one-bedroom properties, 716 two-bedroom properties, 53 three-bedroom properties and 13 four-bedroom properties.

1.12 The selection of the profile mix to apply for the Private Market Indicator has required detailed consideration due to the sensitivity needed to balance the free market behaviours of private market owners and renters (represented in the current profile), the viability of developments for developers, and the efficiency of land use for housing development on the Island.

1.13 The housing market assessment that has been undertaken as part of this modelling process has highlighted the mismatch of property sizes in the private market compared to the actual household sizes living in them. The private market shows a significant degree of underoccupancy, particularly in larger properties and amongst pensioner households. In many cases this will reflect the demand of the residents; however, it has a knock-on impact on the rest of the private housing market by preventing some households in need of three/four-bed properties from being able to access suitable accommodation because it is already occupied by current under-occupying residents.

1.14 The mismatch issue has to be balanced against people's demands and personal choice. For a variety of reasons, households in the private market want to live, or continue to live, in properties that are larger than their assessed housing need. This is not, however, the case for all and a lack of suitably sized properties

prevents market movement which would more efficiently utilise the Island's private market housing stock.

1.15 If 100% of the current profile was to be applied for the Private Market Indicator, it would maintain the current pattern of significant underoccupancy and would continue to restrict the ability of some Islanders to meet their housing need. This is likely to lead to further strategic housing problems in the future, with land supply depleted because, in general terms, underoccupied homes require much more land to house a given population, and the Island's private housing stock would continue to be dissociated from its housing need requirements.

1.16 To make a small step towards a more efficient use of land and encouraging the development of properties that more closely match private households' housing need in the private market, the Committee is not recommending adopting a 100% current profile bedroom allocation policy within the private housing market. Instead, it is seeking to encourage the start of a shift in behaviour by recommending a small percentage of private housing provision be based on 10% maximum profile (households are allocated a bedroom per person/couple and a spare bedroom) and 5% intermediate profile (households are allocated a bedroom per person/couple but no spare bedroom). This is designed to enable and encourage households to right-size where desired, encouraging more efficient use of the Island's housing stock, without pushing for an unrealistic degree of behavioural change.

1.17 In setting this move away from 100% current profile, the Committee acknowledges that any shift to right-size is reliant on a change in behaviour and also on developers deciding that these unit sizes are viable enough to develop. So, while this profile split for the private housing market seeks to encourage some change, the Committee acknowledges that market forces and developers' decision-making continue to play a significant role.

1.18 Affordable Housing exists outside of the private market and is reserved for people who cannot meet their accommodation needs without a form of subsidy. The Affordable Housing Indicator, currently consisting of the accommodation needed in the Social Rental Housing and Partial Ownership Housing tenures, is recommended to be set at 721 units between 2023 and 2027, with a plus or minus variance of 72 new units. This equates to an annual average of 144 units over the 5 year period. The Indicator comprises 473 in the Social Rental Housing tenure and 248 in the Partial Ownership Housing tenure.

1.19 The property size distribution for Social Rental Housing, which is housing rented below market rates to households on low incomes or with other needs defined by the Committee *for* Employment & Social Security, has been established based on a bedroom allocation policy where 90% of households are allocated

bedrooms based on the minimum bedroom profile (which includes shared bedrooms for children of certain ages/gender and no spare bedrooms) and 10% at the maximum profile. This profile split supports the efficient housing use required by the Affordable Housing Eligibility and Allocations Policy[3] whilst providing the flexibility to cater for households with more complex living arrangements which require a spare bedroom, such as those in need of sleep-in carers or with shared custody arrangements. The split was based on an assessment of current Social Rental applicants with additional accommodation needs.

1.20 The proposed property sizes for Partial Ownership Housing, (housing sold on a part-ownership basis to households which would not be able to afford the full cost of home ownership in the private market), have been established based on a percentage split of 70% of households having bedrooms allocated under the intermediate profile and 30% under the maximum profile. By using a combination of intermediate and maximum profiles, the property size distribution reflects the more aspirational nature of Partial Ownership Housing whilst still representing a more efficient use of housing stock than seen in the private market.

1.21 At this stage, the model's output does not include the specific requirements for Key Worker Housing (housing reserved for off-island recruited essential public workers) or Specialised Housing (housing where a degree of support or care is provided to allow residents to live as independently as possible). Detailed modelling will take place for these tenures at a later date, informed by the States' decisions on key worker, market intervention and elderly tenure strategies and policies[4]. Without a confirmed policy position, a specific indicator for these areas would risk ill-informed and unsuitable development in what are relatively small tenures.

1.22 It is important to emphasise that the SSHI figures proposed for each tenure are not a government 'target'. Government can strongly influence the delivery of the Affordable Housing Indicator through allocating funding for the Affordable Housing Development Programme and the management of the delivery of these units through its work with the Guernsey Housing Association. However, delivery of the required number of units in the private market is influenced by factors outside of government's control: the States cannot control the implementation of planning permissions in the private market or control what planning applications are made. Developers' decisions, and the viability of individual proposals, are generally influenced by specific site conditions and external matters such as finance availability and conditions, the capacity of the construction industry, site specifics and personal choice. The application of the

[3] Social Housing - Allocations and Eligibility Policy

[4] Prioritised as part of the Government Work Plan 2022, Billet d'État X, 2022

SSHI, therefore, has to be flexible to allow developers to respond to the opportunities available.

1.23 Should circumstances change significantly, the SSHI itself will need to respond. The housing needs model has been designed to enable a consistent and replicable assessment of housing need. It can be easily amended in-house to reflect different development timelines or assumptions and can be used to monitor the SSHI and test its ongoing relevance. Given the current pressures on local housing, the model will continue to have a role beyond setting the SSHI. It will enable the States to assess the impact of different policy options on the Island's housing needs and plan appropriate adaptation and mitigation options.

1.24 It is proposed that the housing needs model be used as the basis for the next five-year SSHI review and to inform a light-touch review of the SSHI figures each year. This will ensure the States has an ongoing understanding of housing need. The operation of the model will require the involvement of appropriately skilled resource; however, it is anticipated that this can be delivered using current staff and budgets and this Policy Letter does not seek any additional funding.

2 Introduction – What is the States Strategic Housing Indicator?

2.1 Land is a scarce and finite resource in Guernsey. If the Island is to develop in a sustainable way, housing development must be targeted towards the population's housing need.

2.2 The SSHI is a tool through which the States understands and defines the Island's housing need. It is a States-agreed figure that sets out the total number of additional accommodation units that should be created each year if Guernsey's residents are all to be appropriately housed.

Housing Need vs Housing Demand

2.3 At this point, it is important to distinguish the difference between 'housing need' and 'housing demand'[5], and how this relates to the SSHI.

2.4 In this context, 'housing need' is based on the cumulative housing requirement of all the households which are currently without appropriate accommodation (housing which is affordable, adequate, and secure) or which will be without appropriate accommodation in the future (i.e. newly arising households such as those created through population increase, newly forming couples and the

[5] Whilst there is no set definition of housing need and housing demand, the description adopted in this Policy Letter is consistent with that used by the UK Government.

division of existing family groups). Housing need is therefore the shortfall in housing units required for all households to live in accommodation that meets their essential needs.

2.5 'Housing demand' is critically different to housing need and represents the type and size of housing being sought in the market. It describes what households will choose to occupy based on preference and ability to pay and does not necessarily correlate with households' essential requirements. It places a greater emphasis on preference (and ability to buy) than necessity. Many households will take up more housing space than they 'need', if they can afford to, for example, by living in a house with multiple spare bedrooms or buying a second home.

2.6 The States establishes an SSHI to inform housing, land and planning policy. It has to reflect the requirements of all Guernsey's households and support efficient and sustainable land use. As such, the SSHI focuses on housing need.

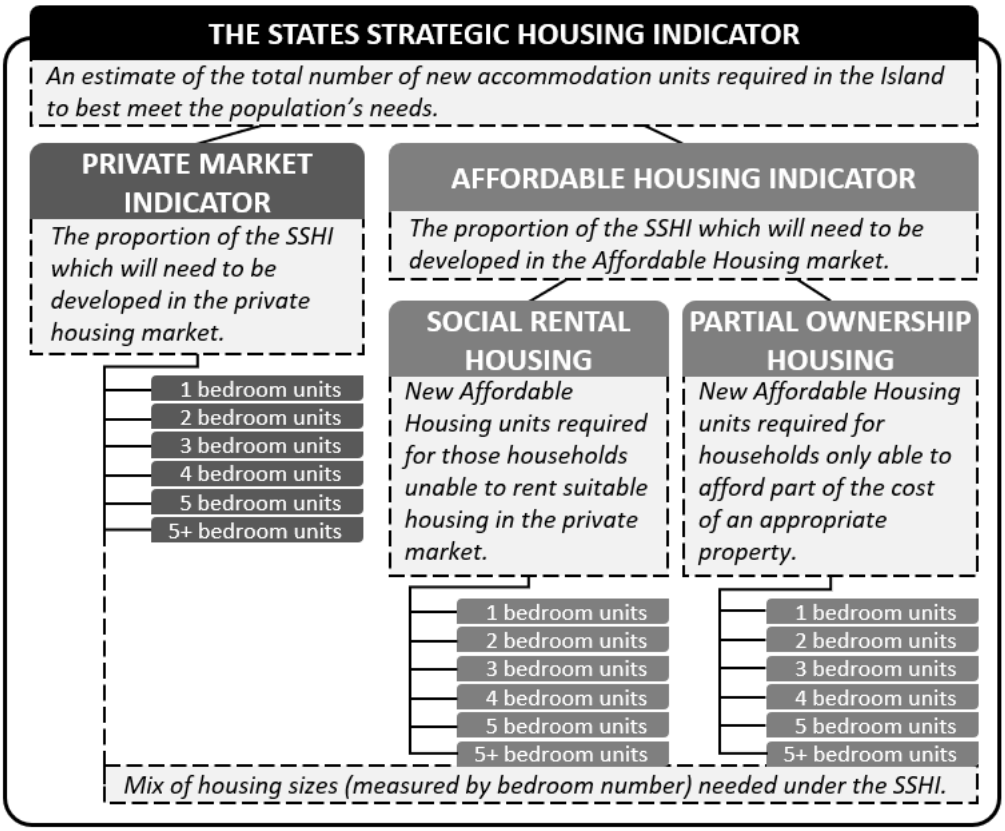
2.7 The Committee *for the* Environment & Infrastructure, however, recognises that housing demand is an important market force and, should demand not be considered, Guernsey may not be a desirable place to live. Demand is incorporated into the SSHI through the use of current housing behaviours to inform the required distribution of property sizes. Demand also informs the application of the SSHI, which will be flexible enough to allow developers to respond to market conditions.

The Components of the SSHI

2.8 As demonstrated in Figure 2.1, the SSHI can be broken down by tenure and by property size. The headline SSHI figure is subdivided into a Private Market Indicator and an Affordable Housing Indicator, with the Affordable Housing Indicator further categorised into Social Rental Housing and Partial Ownership Housing[6]. Each tenure can also be split by the projected number of bedrooms needed per unit of accommodation.

[6] The separation of the SSHI into two sub-components was first done in 2018 - Local Market Housing Review and Development of Future Housing Strategy, Billet d'État XIX, 2018

2.9 Figure 2.1: SSHI Components



2.10 The private market comprises owner-occupied and private rented accommodation. The Private Market Indicator includes the number of units needed for both accommodation types.

2.11 The legal definition of 'Affordable Housing'[7] defines it as specific accommodation owned and/or managed by the States of Guernsey or the Guernsey Housing Association ("GHA") reserved for people who cannot meet their needs in the private market. The proposed Affordable Housing Indicator comprises 'Social Rental Housing' which is allocated to households on low incomes (or with other needs identified by the Committee *for* Employment & Social Security) and 'Partial Ownership Housing' which is offered on a part-ownership basis to buyers who are able to contribute some of the funding required to purchase a property but would not be able to afford the cost of purchasing an appropriate house outright on the private market without such subsidy.

2.12 Affordable Housing also includes 'Key Worker Housing', which is reserved for essential public sector staff recruited from off-island, and 'Specialised Housing', which is housing where support and/or care services are provided to help residents to live as independently as possible. The housing needs for Key Worker

[7] Guernsey's Land Planning and Development (Planning Covenants) Ordinance, 2011

Housing and Specialised Housing were not included in the 2018 Affordable Housing Indicator and have not yet been developed sufficiently to be included as an individual category in the breakdown of the Affordable Housing Indicator presented in this report. The modelling of the SSHI has excluded households that have been identified as residing in units of Key Worker accommodation[8] and Specialised Housing properties. Once these dedicated tenures are included in the model, there is the potential for the overall SSHI to increase, which will be represented through an increase to the Affordable Housing Indicator component of the SSHI. Although this is expected to be minimal due to the number of households involved, they will each form an important sub-category tenure of the Affordable Housing Indicator alongside the individualised social rental and partial ownership tenure requirements.

The Use of the SSHI

2.13 The States uses the SSHI and its component indicators as a guide to the volume and type of housing development needed in the Island, not as a performance target.

2.14 Under current legislation and policy, Government cannot compel private market development proposals to come forward or, once planning permission is granted, specify which sites developers choose to progress and when. The SSHI is designed to inform developers, not constrain them. Developers will still have freedom to determine when a site is to be developed and, crucially, will only do that when they determine the site to be suitably viable.

2.15 In contrast, Government has more control over the delivery of the projected Affordable Housing units needed. It has control over funding allocations to support the site acquisition and development costs of the Affordable Housing Development Programme currently delivered by the Guernsey Housing Association. As a result, Government is significantly more accountable for the delivery of this component of the overall SSHI.

2.16 Various States bodies draw on the SSHI to understand housing need, to inform spatial planning and population policy and to help determine housing land supply requirements. It is an evidence-based information tool on the Island's projected housing needs and helps establish an environment for housing development to be aligned with the population's housing need, but with the flexibility to respond to changes in market conditions.

[8] This is a mix of States of Guernsey owned staff accommodation, GHA owned dedicated key worker accommodation and some private rental units used by the Key Worker Accommodation Team to house off-island recruited key workers.

2.17 Presently, the SSHI is set at creating 635 new units of accommodation between 2017 and 2021, plus or minus 149 units. This equates to an annual average of 127 new units a year (+/- 30 units). As part of the current SSHI, the Private Market Indicator is set at requiring 91 units of accommodation per year and the Affordable Housing Indicator at 36 units per year.

2.18 The current SSHI is based on data from a housing needs study finalised in 2017. If the SSHI is to continue to provide an effective foundation for States policy, it needs to be updated to reflect the latest population data, more recent decisions of the States Assembly, and the position of today's housing market and housing needs.

2.19 To update the SSHI, the Committee *for the* Environment & Infrastructure established the 'States Strategic Housing Indicator Project' ("the SSHI Project"), which was subsequently prioritised for completion in 2022 as part of the Government Work Plan[9]. The SSHI Project was launched with three key aims:

1) Design a robust modelling process for projecting housing need in Guernsey,
2) Model the Island's housing need for the period 2022-2026[10], and
3) Use the projected housing need estimates to recommend a realistic SSHI for the Island.

2.20 The remainder of this Policy Letter presents the results of the SSHI Project and the next steps needed. It seeks the States' endorsement for the recommended headline SSHI and SSHI components, as well as for the resources necessary to monitor the Indicator going forward to ensure it can respond to changes in population need or circumstance.

3 Design of the Modelling Process – How has housing need been identified?

Past Studies of Housing Need

3.1 The first States Strategic Housing Target (the predecessor to the SSHI) was established in 2002. Since then, the States has been under Resolution[11] to undertake a form of housing needs study at least every 5 years. This comprehensive assessment of housing need has been used to inform and make recommendations to the States of Deliberation on the SSHI. Figure 3.1 sets out the results of previous housing needs studies and the respective indicators agreed by the States.

[9] Government Work Plan 2022, Billet d'État X, 2022
[10] This has since been adjusted to 2023 – 2027, so the most up to date data can be modelled.
[11] States Housing Authority *"Survey of Guernsey's Housing Needs"*, Billet d'État IX, 2002

3.2 Figure 3.1: States Strategic Housing Indicators Set Since 2002

		States Decision:
2000	*The States agreed to conduct the first study of housing need*	
2001 2002	An external consultant assessed housing need using a survey issued to all Guernsey households. The survey explored each household's current housing situation and the requirements of anyone planning to change their housing. **The assessment estimated a requirement of 179 units a year.** The States were **recommended to adopt an indicator of 300 units a year** to address existing mismatches.	300 units a year
2006 2007	Housing need was again assessed by an external consultant, this time based on interviews conducted with a sample of the population. **The assessment estimated a requirement of 340 units a year.** The States were **recommended to maintain the existing 300 units a year indicator.**	300 units a year
2011	Housing need was assessed via a 'Housing Market Model' which compared the number of homes available to the number of households looking for somewhere to live. **The assessment estimated a requirement of 451 units a year.**	
2015	**The States were recommended to maintain the 300 units a year indicator** based on the 2011 assessment. **The States rejected the recommendation** and the Housing Department were directed to undertake a further objective assessment.	Rejected
2016	KPMG was commissioned to model housing requirements. They took the number of local market homes in 2014 from the 2014 census data and considered the impact of population change, demographics and migration. The SSHI was split into a private market housing requirement and an Affordable Housing requirement. It was **recommended that the SSHI be set at 139-199 units a year.**	
2018	It was agreed that the SSHI be based on the recommendations of KPMG but expressed as a median requirement with a plus or minus variance to allow the SSHI to react to market changes. An Affordable Housing Indicator and Private Market Indicator were also agreed.	127 (+/- 30) units a year.

3.3 As can be seen in Figure 3.1, a range of different processes have been used to help assess Guernsey's housing need, from whole-population surveys to census-based modelling. As a result, the approach to date has lacked consistency. Furthermore, each past study has been designed as a one-off evaluation, with no plans for monitoring or replicating the assessment to ensure that the SSHI remains relevant throughout the five-year timeframe or to inform a future SSHI.

3.4 Without the capacity for ongoing review, previous indicators have risked becoming misaligned from population needs over the five-year period in which they apply. The indicators have not been able to incorporate any policy changes introduced by the States, nor have they had the capacity to be updated to reflect

the most recent population data outside of the usual five-year review cycle.

3.5 The one-off approach to the SSHI has primarily come about as a consequence of relying on external consultants to produce each housing need assessment. As well as preventing rolling review and update, this approach has limited how thoroughly the States has been able to explore and interrogate the results and has come at a relatively high cost to the organisation.

3.6 The use of external consultants also divorced the modelling process from the development of the SSHI recommendation, for which there is no particular methodology. The responsible States Committee (presently the Committee *for the* Environment & Infrastructure, previously the Housing Department) considered broader elements, such as the availability of finance, capacity of the building trade and the Island's economy, following the housing needs study to convert the modelled housing requirements into a realistic recommendation. This has often resulted in differences between the assessment results and the final SSHI agreed by the States, based on no set adjustment methodology.

3.7 Some previous housing assessments have also struggled to differentiate between housing need and housing demand, particularly where the study has incorporated public surveys or interviews as part of its methodology. If not considered carefully, the inclusion of wider housing demand can have the effect of unduly increasing the estimated housing requirement, furthering the risk of unnecessary over-development and inefficient use of the Island's housing stock and finite land supply in the long-term.

3.8 Acknowledging the issues encountered when setting previous indicators, the SSHI Project sought to develop a new approach going forward. It explored the possibility of developing an in-house, Guernsey specific, housing needs model for assessing local housing need. It was recognised that, by managing the methodology and operation in-house, housing need studies would become more consistent, could be carried out more frequently, and would have the ability to be adapted to account for evolving policy (such as the Population and Immigration Policy Review).

Best Practice for a Housing Needs Model

3.9 To establish an in-house model required a cross-service team with access to expertise in housing policy and land planning, as well as data use and analysis. Rather than dedicate time and resource to developing a bespoke model, the Project Team first explored housing needs models used successfully in other jurisdictions.

3.10 The Team identified a comprehensive UK modelling process which had been proven to be effective in, and transferable between, various jurisdictions. The

model was first established in Scotland, where it had formed the basis of Scotland's 'Housing Need and Demand Assessment' and the country's 'Housing Supply Target'. The same model was subsequently adopted in Wales to produce estimates of housing need at a national and regional level for a twenty-year period[12], and is also being introduced in Northern Ireland.

3.11 To gain greater insight into the components of the model, members of the Project Team visited officials in Wales to view the model first-hand and ask in depth questions on its structure, set up, data requirements and outputs. The Team was able to confirm that the Welsh model could be tailored and expanded to generate the outputs needed by the States. It also established that the States had the skills available in-house to build the model for Guernsey and collected a greater granularity of data than was available in Wales, meaning that the local model would have the potential to deliver more detailed outputs.

3.12 As well as being technically feasible, the open and flexible nature of the model was considered to provide substantial advantage to the States. The States would gain the ability to continually maintain and update the model, no longer requiring the commissioning of external input or necessitating significant costs for ad-hoc revisions. Ongoing access to the model would also allow it to be adapted to explore different policy options, assumptions and time periods, thereby better informing policy decisions on the Island's housing needs.

3.13 Given the proven functionality of the model and the potential advantages of working in-house, it was agreed that a housing needs model for Guernsey would be built using the Welsh methodology as a foundation.

Overview of Guernsey's Housing Needs Model

3.14 To ensure the final SSHI provided sufficient direction for States' housing and planning policies, the model needed to deliver two key outputs[13]:

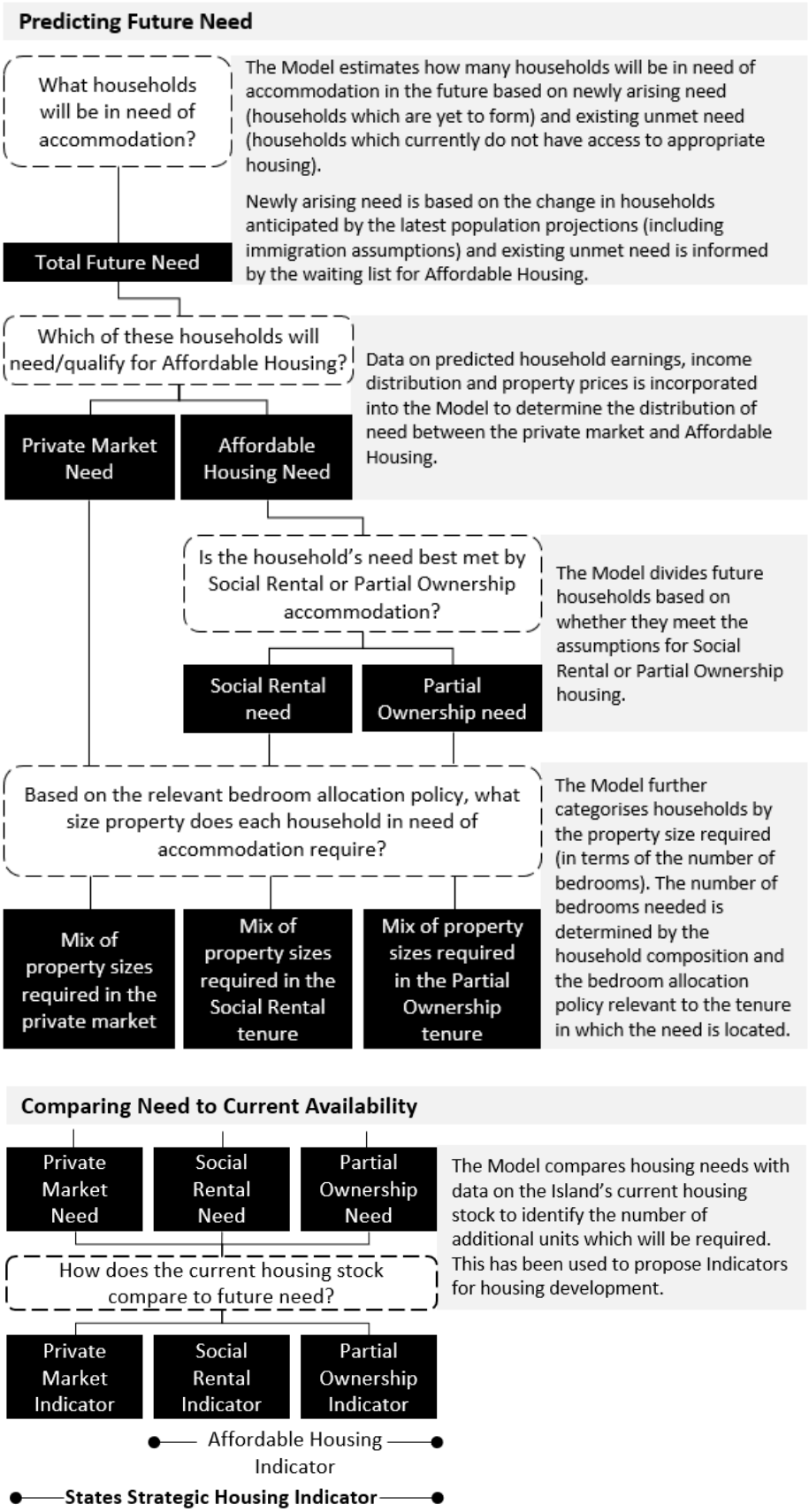
1) Total projected housing need broken down by property tenure (to at least private market/Affordable Housing level).
2) The distribution of property sizes required in each housing tenure.

3.15 In order to deliver these outputs, the model has been designed to use existing population and housing data to compare projected accommodation requirements with the current housing stock. An overview of the model is provided in Figure 3.2 and further detail is available in sections 3.17-3.29 and in Appendix 2.

[12] Local Housing Strategy - gov.scot (www.gov.scot), Estimates of housing need: 2019-based | GOV.WALES

[13] Initial discussions also considered whether housing need could be modelled to specific locations in Guernsey. It was agreed not to pursue this criterion, however, as there was insufficient data on which to meaningfully base analysis and the size and development of the Island generally negates the value of the results.

3.16 Figure 3.2: An Overview of the Housing Needs Model and Key Data Inputs



Model Development: Total Units and Tenure Breakdown

3.17 Guernsey's housing needs model uses evidence from multiple local data sources to identify the number of units needed overall and by tenure including the Rolling Electronic Census data (which includes information on population, employment, and earnings), data on the housing stock owned by the States and the GHA, bedroom data for Guernsey's current housing stock, the current Social Rental Housing waiting list, and the latest population projections.

3.18 Set assumptions are applied to the data to create a picture of the Island's households at a future point in time (based on the household composition and demographic trends observed in recent years), including newly forming households and households immigrating to the Island. Using information on each household's structure, income, etc., the housing needs of the future population can be identified and compared to the housing stock and the predicted rental and purchase costs for accommodation. This enables the overall units of accommodation needed to be split into the tenures required.

3.19 Housing need can be identified for any future date, however the modelling undertaken has focused on 2027, to reflect the life cycle of the SSHI. Figures have also been provided for 2040 to allow the States to consider the SSHI in the context of the long-term picture of housing need in the Island. This is important to help ensure that development decisions do not run counter to what is expected further into the future.

3.20 As explained previously, whilst the Affordable Housing legal definition includes Key Worker Housing and Specialised Housing, these tenures are not currently categorised in the Affordable Housing Indicator. It is the view of the Committee that the generation of the figures for these tenures will be better informed once the Key Worker Housing Project, Elderly Tenures Project and Market Intervention Project[14] have been completed so that the most relevant policy position can be incorporated. This is the benefit of having the model built in-house. The modelling of the SSHI has excluded households that have been identified as residing in units of key worker accommodation and Specialised Housing properties. Under the model, households which might be in need of Key Worker or Specialised Housing in the future have not been identified and are treated the same as other households in the model. The internal modelling will be adapted to the new context once key policy decisions on these housing tenures are confirmed. Once these tenures are added to the model, there is the potential for the overall SSHI to slightly increase, which will be represented through an increase to the Affordable Housing Indicator component of the SSHI. Although this is expected to be minimal due to the number of households

[14] These three projects are prioritised for commencement in 2023 in the Government Work Plan 2022, Billet d'État X, 2022

involved, they will each form an important sub-category tenure of the Affordable Housing Indicator alongside the individualised social rental and partial ownership tenure requirements.

Model Development: Property Sizes

3.21 In this context, property size requirements are determined by the number of bedrooms needed in a property for a household to be considered appropriately housed. In terms of bedroom number, whether housing is appropriate is decided by the bedroom allocation policy applied. For example, a household composed of a couple and two sons aged 4 and 6 may be considered appropriately housed in a two-bedroom property if the bedroom allocation policy allows for children of the same gender to share a room. If the bedroom policy requires all couples, single adults, and children to be allocated their own bedroom however, the same property would not be considered appropriate for this household.

3.22 The model can project the distribution of the property sizes required based on any mix of the following four profiles for bedroom allocation. The profiles illustrate a range of land and housing use efficiency, from the least efficient 'current profile' (which is based on current behaviours) to the most efficient 'minimum profile' (which is a strict application of the Social Rental Allocation and Eligibility Policy used for housing social rental tenants).

Least efficient	1) **Current Profile:** This profile assumes all households are suitably housed and will remain in their current sized property unless they are on a waiting list for a tenure of Affordable Housing. It projects the housing stock required based on current profile and behaviour trends, i.e. that where there is a pattern of under or over-occupancy of properties this behaviour will continue. This is the approach taken in previous housing need studies and does not attempt to directly match housing property size with actual housing needs. Instead, it represents the current behaviours of demand for certain property sizes in the marketplace and is most akin to free market behaviours. Under this profile, for example, a pensioner household currently occupying a four-bedroom property will be assumed to require a four-bedroom property going forward.
	2) **Maximum Profile:** Under this profile, each household is allocated a spare bedroom above the intermediate requirements of the projected household members. One bedroom is allocated to the following: a) A co-habiting couple, b) Each child, c) Each single adult over 18 years, and d) A spare bedroom.

	3) **Intermediate Profile:** This profile is similar to the minimum profile; however, it ensures that each child and single adult has their own bedroom. One bedroom is allocated to the following: a) A co-habiting couple, b) Each child, and c) Any single adult over 18 years.
Most efficient	4) **Minimum Profile:** Under this profile, one bedroom is allocated to each of the following in a household: a) A co-habiting couple, b) Up to two children under 11 years, c) Up to two children of the same gender between aged 11 to 18 years, and d) Any single adult over 18 years. This profile represents a strict application of the Social Rental Allocation and Eligibility Policy used for housing social rental tenants.

The Island's Current Housing Profile

3.23 The current profile is based on existing housing behaviours in the market. It is the profile with the highest average number of bedrooms per person and therefore represents the least efficient use of housing and land overall; under-occupancy is prevalent.

3.24 When comparing the present utilisation of housing stock across the Island with the intermediate profile (a bedroom per person/co-habiting couple), 55% of current households are under-occupying their property. This increases to 80% amongst households with at least one pensioner and no children. Compared with the maximum profile (a bedroom per person/co-habiting couple and a spare bedroom), 38% of households are presently under-occupying their property.

3.25 Current housing behaviours in the Island also include a level of over-occupancy relative to the intermediate (17%) and maximum profiles (38%). In these cases, households are not occupying properties with a sufficient number of bedrooms to meet their need as defined under each profile.

Testing and Validating the Model

3.26 A Technical Sub-Group consisting of peers from the industry[15] was established to help develop and test the model. The Group helped to devise and stress-test the assumptions applied within the model and to review the preliminary findings to assess their validity.

[15] Including local mortgage providers, mortgage broker, estate agent, independent economist and a representative from the private rental market.

3.27 Detailed consultation with the Committee *for* Employment & Social Security took place regarding the modelled assumptions for the Affordable Housing projections and, in particular, for decision-making on the profile split to be applied for the Social Rental Housing and Partial Ownership Housing tenures.

3.28 The Policy and Resources Committee and the Development & Planning Authority were presented with the structure of the model and its initial findings so that feedback could be used to refine decision-making on the recommended mix of bedroom profiles for modelling future private housing needs.

3.29 Every effort has been made to use the latest available data in the model, however the databases involved have different reporting cycles and reporting needs. Due to the intensive resource requirements and the time constraints for an updated SSHI, the 2021-2022 modelling process did not seek to carry out further data collection or updates. It has used the most up to date data collected and collated in the Island and has used evidence-based adjustments to this data where necessary and possible. The model can be enhanced in the future as improved data becomes available.

The Population and Immigration Policy Review

3.30 The underlying assumptions for the model such as the fertility rate and immigration rate can be amended based on any changes to States of Guernsey policy and to reflect any future changes in household behaviour. These changes can be applied using in-house resources and can be used to test different policy options to understand their impact on the Island's housing need.

3.31 The first policy development to be informed by the housing needs model was the Population and Immigration Policy Review ("the Review")[16]. The Review sought to understand whether the Island's population management regime had the capacity to respond to Guernsey's changing economic, social and environmental demands and support recovery from the COVID pandemic.

3.32 The Review identified that, in light of the ageing demographic, Guernsey would need to attract an average annual net inward migration level of +300 over the next thirty years to keep the workforce at its 2020 level. The housing needs model was used to understand the housing need that such a migration level would stimulate, providing the States with the information necessary to aid strategic decision making and set the scene for the States to consider what mechanisms might be required to support an increase the working population.

[16] Population and Immigration Policy Review, Billet d'État XVIII, 2022

3.33 In October 2022, the States Assembly resolved that "*The States of Guernsey will assume for the purpose of planning future infrastructure and service provision, that net migration will average up to +300 per year over the next thirty years. This assumption will support the capacity of the Island's workforce so that it remains a desirable and competitive jurisdiction, and will ensure that the Island can meet the needs of the economy with the necessary housing and infrastructure"*.

3.34 In line with this Resolution, the SSHI recommended by this Policy Letter has been developed based on the assumed net migration rate of +300 a year. This will ensure that the policies surrounding the development of residential property, including future housing land supply, will support the States' strategic population objectives rather than acting as a barrier to the realisation of the States' aims.

4 Model Outputs - What is the recommended 2023-2027 SSHI?

4.1 The housing needs model projects that 1,565 additional accommodation units will be needed between now and the end of 2027, based on a fertility rate of 1.5 and a net annual immigration rate of +300. This equates to an annual housing need of 313 units each year over the next five years, 186 units per year higher than the current SSHI.

4.2 When a range of plus and minus 10% is included, the recommended SSHI is 1,409–1,722 new housing units over the four years (2023-2027), or 282–344 units a year. By setting the SSHI at this level, it will support efforts to increase housing supply and help to address the housing issues currently being experienced across the community.

4.3 As acknowledged when the last SSHI was set in 2018[17], a 10% range is recommended to balance flexibility in the SSHI's implementation with the certainty needed for a stable development industry. Whilst the housing needs model has the capacity to project housing need at any time and over any interval, it would not be realistic to constantly update the SSHI whenever the Island's housing need slightly varies. By including a range, developers are provided with the flexibility to react to market conditions whilst retaining the certainty needed for forward planning over the long time periods required for development.

4.4 The same percentage range applies to each component part of the SSHI. The figures for the Private Market Indicator and Affordable Housing Indicator are explored in more detail in sections 4.5 to 4.44.

[17] Local Market Housing Review and Development of Future Housing Strategy, Billet d'État XIX, 2018

Private Market Indicator

4.5 Between 2023 and 2027, it is projected that 844 (+/-84) additional units of accommodation will be needed in the private market. This equates to an average annual requirement of 169 units (+/-17).

4.6 The private market property size requirements have been projected based on a hybrid bedroom allocation policy comprising 85% allocation at current bedroom profile (reflecting the population's existing bedroom distribution, where more than half of households have at least one spare bedroom per household), 10% at maximum bedroom profile (which includes one spare bedroom per household) and 5% at the intermediate bedroom profile (which does not include any spare bedrooms).

4.7 As shown in Table 4.1, broken down by required property size, the Private Market Indicator for 2023-2027 includes 62 one-bedroom properties, 716 two-bedroom properties, 53 three-bedroom properties and 13 four-bedroom properties. There are already sufficient 5-bed and over 5-bed properties in the private market to meet the projected need of the population.

4.8 These private market projections do not account for premium properties which may be required for high-net-worth individuals. Due to the low numbers involved, and the specific requirements of each, an insufficient volume exists for them to be effectively modelled. Therefore, any need, or demand, in this respect is not included in these projections.

4.9 In determining the property size distribution set out, it has been assumed that any surplus housing of a larger sized property category (compared to the size required) will be occupied by households requiring smaller properties (this is explained in more detail in Appendix 2).

4.10 Table 4.1: Property Sizes within the Private Market Indicator

	Private Market Indicator		
	Bedroom Standards Applied: 85% Current Bedroom Profile, 10% Maximum Bedroom Profile, 5% Intermediate Bedroom Profile		
No. of Bedrooms	Number of Additional Units Required by 2027		Number of Additional Units Required by 2040 - Indicatory[18]
	Projection	10% Range	
1	**62**	*(56-68)*	125
2	**716**	*(644-788)*	1068
3	**53**	*(48-58)*	457
4	**13**	*(12-14)*	221
5	**0**	*0*	0
5+	**0**	*0*	0
TOTAL	**844**	*(760-929)*	1,871

4.11 Consideration of the profile mix to apply for the Private Market Indicator has required detailed consideration due to the sensitivity to balance the free market behaviours of private market owners and renters, the viability of developments for developers, and the efficiency of land use for housing development on the Island.

4.12 If the housing requirements of the private market were allowed to solely follow the current housing behaviours of those living in the private market (both in private home ownership and private rental), 100% of the current profile would be applied. The current profile permits the housing behaviours observed in the market today, in terms of property sizes demanded, to continue into the future and projects household property size requirements based on properties they demand and can afford.

4.13 The modelled projections of following 100% current profile, along with some alternative profile mix scenarios, are set out in Appendix 3.

4.14 While pursuing 100% current profile may seem attractive, leaving the market to distribute resources and provide property sizes following the current prevalent trends, the immense pressures in the Island's housing market at present highlight that this alone has not met enough of the Island's housing need. Further, it comes with a heavy cost to the efficient use of Guernsey's land and has resulted in an under provision to some sectors of society.

4.15 Understandably, developers build units that they consider the market wants and the unit sizes that they consider will sell; this is the nature of their business. However, as evidenced from the current structural housing market issues (such

[18] A range has not been included for the 2040 projections as these are indicatory numbers to provide context, rather than part of the proposed SSHI.

as a lack of affordability for first time buyers, the unsustainable affordability ratios across the income spectrum of both private market purchase and rented prices to earnings, the supply issues and the mis-match of housing stock to housing requirements) the market system has not distributed resource appropriately and is not performing optimally at meeting the needs of the private housing market.

4.16 Measures need to be considered to target these structural issues. While these issues are being fully scoped, with options considered, as part of the GWP category 1 prioritised Market Intervention Project, there is a role that the SSHI can play in this now.

4.17 The profile split within the Private Market Indicator can be based away from a 100% current profile bedroom allocation policy. There is currently a prevalence of under-occupancy in the private housing market. If the current profile alone is used to project this market's housing property size requirements, these levels of underoccupancy will continue without restriction. This could lead to further strategic housing problems in the future with land supply depleted through an Island's private housing stock that is completely dissociated from the housing need requirements within it.

4.18 In understanding the current profile trends, the SSHI Project identified that approximately 55% of households have at least one 'spare' bedroom and 38% would appear to have at least two 'spare' bedrooms.

4.19 The analysis of pensioner households (one or two pensioners with no children living in the household) demonstrates a particular underoccupancy issue. Over 50% of such households live in properties with bedrooms above the maximum profile and therefore more than one spare bedroom; this number rises to nearly 80% when compared to the intermediate profile (i.e., 80% of households have at least one spare bedroom).

4.20 The current level of underoccupancy prevents households in need of three/four-bed properties from being able to access suitable accommodation already developed in the Island. Whilst there are sufficient larger properties available to meet these housing need requirements (if mapped against the maximum bedroom profile alone, no houses larger than two bedrooms would need to be built in the private market), these houses are currently under-occupied by households with lower bedroom requirements. The risk of developing more properties of this size is that Guernsey is fuelling the demand for under-occupancy, rather than an efficient use of its housing stock, as well as making no adjustment for the demographic shift that will occur as the population ages. The expectations of the SSHI have to be balanced against people's current behaviours, expectations and demands as well as the future provision requirements.

4.21 Whilst measures can be introduced to encourage right-sizing, there are a wide range of factors that discourage and prevent households from relocating and it is unrealistic to suddenly expect 100% of under-occupying households to right-size. If right-sizing is to be encouraged, it can only be achieved if there are suitable and attractive properties for people to move to that meet their housing needs to age well in their home. A key step in this is demonstrating to developers why it is important to encourage right-sizing in the market and, in particular, how targeting housing for older people to right-size into is just as important as targeting housing for first-time-buyers and family accommodation.

4.22 This has to be a starting point and in delivering against the proposed private market profile mix set within the SSHI, this provides the first step towards incentivising this objective trend while further work is done on the motivations and requirements of older people seeking to right-size.

4.23 Any move to change housing behaviour also needs to consider the current status of Guernsey's housing market. The levels of housing demand and the shortage of supply in all sectors of the market are unprecedented and any movement away from the current profile needs to be treated carefully so as to not exacerbate the current pressures. It is accepted that a transition out of the current housing position is needed before more efficient housing use can be realised. The current focus must be on addressing the stark housing market pressures being experienced and in increasing the supply within all sectors to help alleviate the current position.

4.24 Therefore, in order to make a move towards right-sizing, whilst balancing the sensitivity of the current housing market, the Committee is recommending the profile split of 85% current profile, 10% of bedroom allocations at the maximum profile and 5% at the intermediate profile to encourage an element of gradual behavioural change.

4.25 In reaching this profile split, the Committee has considered more stringent options to right-sizing such as applying 75% of the current profile, or even 50% of the current profile[19], however it felt that, at this stage, severe changes in behaviour of this type cannot happen in one step and with the current housing supply pressures.

4.26 It may well be that if, and when, incentives and intervention for right-sizing are introduced, together with plans for a wider availability of suitable properties to right-size into, a more stringent move away from the current profile could be applied. This will be continually reviewed by the Committee and will be informed through the Market Intervention Project that will seek to better define the

[19] Appendix 3 sets out the modelled results for these private market profile mixes.

issues, incentives, motivations and advantages that exist for both older people and developers to enable units of this type to be developed so this behavioural movement can occur.

Affordable Housing Indicator

4.27 It is estimated that 721 (+/-72) additional units of accommodation will be needed in the Social Rental and Partial Ownership tenures between 2023 and 2027. This equates to an average annual requirement of 144 units (+/-14). This figure is representative of the current Affordable Housing waiting lists and the increasing need trend that has been experienced over recent years.

4.28 At present, 10.3%[20] of Guernsey's residential units are within the Affordable Housing tenure. This includes Social Rental (9.5%) and Partial Ownership (0.9%). If Guernsey was to successfully deliver against both the proposed Private Market Indicator (844 units) and the proposed Affordable Housing Indicator (721 units), it would adjust this proportion to approximately 12% of Guernsey's total residential units. While this is an increased proportion, it is still a significantly lower proportion than, for example, Jersey (14.4% - Social Rental tenure only) and England (17.6% - Social Rental (16.6%) and Shared Ownership (1%) tenures).

4.29 In considering the housing needs and profile mix of this component of the SSHI, the Committee *for* Employment & Social Security has been consulted and its advice and input has been adopted in the Committee *for the* Environment & Infrastructure's proposals.

4.30 Within the Affordable Housing Indicator, 473 properties are projected to be needed in the Social Rental Housing tenure, where States of Guernsey owned or GHA owned housing units are rented below market value to households on low incomes, or with other needs identified by the Committee *for* Employment & Social Security. These properties are distributed by size as shown in Table 4.2.

[20] Guernsey Facts & Figures 2022 - Facts and Figures Booklet - States of Guernsey (gov.gg).

4.31 Table 4.2: Social Rental Property Sizes

	Social Rental Requirements		
	Bedroom Standards Applied: 90% Minimum Bedroom Profile, 10% Maximum Bedroom Profile		
No. of Bedrooms	Number of Additional Units Required by 2027		Number of Additional Units Required by 2040
	Projection	10% Range	
1	**350**	*(315-385)*	571
2	**224**	*(202-246)*	272
3	**-356**	*(-320- -392)*	-357
4	**154**	*(139-169)*	151
5	**69**	*(62-76)*	68
5+	**32**	*(29-35)*	31
TOTAL	**473**	*(426-520)*	736

4.32 In order to ensure consistency with current policy, the bedroom standards applied within the Social Rental tenure were determined by the Social Housing Allocations and Eligibility Policy[21]. The policy is aligned to the minimum bedroom profile, which allocates one bedroom to a co-habiting couple, one bedroom to up to two children under 11 years or up to two children of the same gender between aged 11 to 18 years, and to any single adult over 18 years. This is a pure need-based assessment.

4.33 To support the Allocations and Eligibility Policy, 90% minimum profile was applied to the Social Rental tenure. The remaining 10%, has been projected based on the maximum profile to reflect the proportion of Social Rental households with more complex needs that cannot be met through the application of the minimum profile.

4.34 The maximum profile allocates each child and single adult their own bedroom and provides the household with a spare bedroom. By projecting 10% of needs in line with the maximum profile, the accommodation developed in the tenure should provide the flexibility to cater for households with shared custody agreements or in need of a room for a carer. The level of 10% for the maximum profile component was based on analysis of the current waiting list needs as a quantifiable sample of overall housing need of this nature.

4.35 Unlike in the private market, the modelling for the Social Rental tenure does not include any adjustments to account for excess properties in a housing size category. In the private market projections, it has been assumed that 'spare' housing in larger categories will default to be occupied by households requiring smaller properties. Whilst the occupation of larger properties by smaller

[21] Social Housing - Allocations and Eligibility Policy

households is very common behaviour driven by private market forces, the assumption is less applicable to the more heavily controlled Social Rental tenure.

4.36 Landlord rights in place for the GHA and the States owned social rental housing allow Social Rental households to be transferred between housing stock to limit under-occupancy and ensure a greater efficiency in the use of accommodation. In addition, there is a pool of Social Rental applicants and occupiers with specific accessibility, medical and mobility needs that mean it is not possible for them to under-occupy a standard three-bed property, further reducing the suitability of an automatic adjustment into this less needed property size.

4.37 Without an automatic adjustment, the Social Rental tenure figures include a negative requirement of -356 three-bedroom units, as shown in Table 4.2. In reality, at present, there are no three-bedroom properties left vacant due to tenants either:

a) temporarily under-occupying the larger properties, primarily due to the property previously being used to accommodate the family, but where the children have now moved out to form their own household leaving the parent(s) under-occupying. While there is a lengthy new applicant waiting list for smaller properties, a policy decision has been made to pause the transfer of these under-occupying tenants; or

b) dining rooms in three-bedroom units being used as an additional bedroom (i.e. they are being used as four-bedroom properties), meaning such houses now provide less communal space than their original design. This, however, is not a long-term solution and is not a suitable solution for all tenants or applicants.

4.38 This mismatch of stock, while utilised, highlights the change in approach in the eligibility for Social Rental housing over recent decades away from purely family accommodation to a provision for the full cross section of society. If the Social Rental tenure's housing needs are to be met, it clearly demonstrates the urgent need for not only smaller properties but also larger properties to accommodate Social Rental tenure households' needs.

4.39 It is essential that small properties continue to be developed to meet this need and these very specific housing requirements are not displaced.

4.40 Unlike in the private market where larger properties have been built and, as such, have met the projected needs for larger properties, in the Social Rental tenure there is a requirement for additional 5-bed and 5+ bed properties. This reflects the mis-match of existing housing stock property sizes to the current household needs that have evolved over time within this tenure. When States-owned Social Housing was originally built, the focus was on providing 3-bed family homes.

However, through careful management of this stock and detailed knowledge of household requirements in this tenure/on the waiting list, it is clearly evidenced that larger properties are required to house the larger families eligible for social rental housing. The Affordable Housing build programme has to now factor in this rectification.

4.41 The second component of the Affordable Housing Indicator is made up of Partial Ownership Housing, currently managed by the GHA. It is projected that 248 additional units of Partial Ownership Housing will be required by 2027, as shown in Table 4.3.

4.42 Table 4.3: Partial Ownership Housing Property Sizes

	Partial Ownership Housing Requirements		
	70% Intermediate Profile and 30% Maximum Profile		
No. of Bedrooms	Number of Additional Units Required by 2027		Number of Additional Units Required by 2040
	Projection	10% Range	
1	**115**	*(104-127)*	232
2	**75**	*(68-83)*	143
3	**23**	*(21-25)*	42
4	**25**	*(22-28)*	34
5	**7**	*(6-8)*	10
5+	**3**	*(2-4)*	3
TOTAL	**248**	*(223-273)*	**464**

4.43 Part-purchasers will be able to adopt different aspirations than the minimum profile applied to Social Rental. This is reflected in existing policy which allows part purchasers to buy a property with a spare bedroom above their current housing need allowing younger families to provide for the future. This means that some households will purchase in line with their maximum profile.

4.44 As supported by the Committee *for* Employment & Security, Partial Ownership Housing needs have been projected on the basis of a 70%:30% split between the intermediate profile for bedroom allocation and the maximum profile. This enables the desire for more aspirational housing to be met through the new housing stock for this tenure.

4.45 It is important to note that, should a new form of Partial Ownership Housing be adopted in Guernsey, such as a scheme based on 75% market value home ownership[22], further modelling would be required to understand the housing need resulting from the implementation of such a scheme and this would have to be considered as part of any scheme proposals.

[22] This is required for investigation as a result of the successful Amendment to the Government Work Plan in June 2022, Billet d'État X, 2022

Land Supply for the SSHI

4.46 Focus must be given to the land supply required to meet the headline projected housing need of an additional 1,565 units of accommodation by 2027, as well as the long-term accommodation requirements identified by the housing needs model. It is essential that the Development & Planning Authority takes into account the projected housing need when considering the options for housing land supply if the housing needs of residents are to be fulfilled and the population is to be able to grow as required to sustain the Island's economy and public services, while also balancing this with the protection of its environment[23].

4.47 The Strategic Land Use Plan sets a spatial strategy for the distribution of development which concentrates development in the two main urban centres with more limited development in identified local centres where this would enable community growth. This spatial distribution of development is longstanding and instrumental in achieving sustainable development by directing the majority of development to areas well served by shops and services. The boundaries of the Main and Local Centres are designated in the Island Development Plan. Other than in exceptional circumstances, the land supply for new residential development, and therefore capacity for new build housing units, is limited to housing land supply within these centres. Although a range of mechanisms can be considered to increase housing capacity within these Centres, such as increased density and taller buildings and more housing allocations, a significant increase in the requirement for housing land may require the States to revisit the Main and Local Centre boundaries and/or create new Local Centres through a review of the housing land supply.

4.48 The Island Development Plan and the housing land supply are informed by a Strategic Housing Land Availability Assessment ("SHLAA"). This is effectively a 'stock check' of the supply of potential development sites for housing in Guernsey in the Main Centres. Most recently, the SHLAA was updated to inform the 2021 IDP Annual Monitoring Report ('AMR'). The remaining undeveloped sites identified in the 2014 SHLAA and sites in Main Centres with a Development Framework that are without an extant planning consent, and the Regeneration Areas designated in the IDP, have been assessed for their development potential (i.e. developability, deliverability and the number of dwellings that could be achieved on the site). The total estimated yield from the 26 sites is 968 to 1,954 dwellings (however it is important to note that not all eligible sites, which are privately owned, can be guaranteed to come forward for development). This means that the capacity in the existing Main Centres is sufficient only to meet, roughly, the requirement to 2027, if developed to the current design specifications/expectations. By 2040, however, the requirement for housing will

[23] Population & Immigration Policy Review, Billet d'État XVIII, 2022

exceed the maximum assessed capacity of the land supply currently identified in the SHLAA.

4.49 The SHLAA uses a range of housing density assumptions, depending on the size and nature of the sites identified, of between 40 and 110 dwellings per hectare. Applying these densities to the forecasts suggests that, to accommodate the SSHI to 2040, using current design specifications/expectations, a total of between 31 and 84 hectares (in other words, between 41 and 114 football fields, or between 25% and 75% of L'Ancresse Common) would need to be made available for housing development.

4.50 If the current model of building in terms of building heights, density, and off-street parking is continued, it is therefore likely that there will be a substantial requirement to develop land, including green field sites. This may mean that there is a requirement to refocus in terms of building form and density in order to minimise the impacts of substantial levels of new residential development.

4.51 Whilst acknowledging that the scope is within the mandate of the Development & Planning Authority to determine, the Committee *for the* Environment & Infrastructure would like to ensure that the imminent review of the Island's housing land supply gives due consideration to policy provisions to ensure the density of a development, in particular within the Main Centres, is maximised wherever possible to limit over development on the rest of the Island. In particular, the Committee would like to ensure that due consideration is given to how planning policies might be adjusted to require that, where appropriate and feasible, the height of a development is maximised wherever possible.

SSHI Summary

4.52 Based on the outputs of the housing needs model, and the bedroom allocation policies proposed by the Committee *for the* Environment & Infrastructure, the States are recommended to endorse the SSHI as summarised in Figure 4.1.

4.53 Figure 4.1: Summary of the recommended 2023-2027 SSHI

THE STATES STRATEGIC HOUSING INDICATOR

1,565 units (+/-156 units)

PRIVATE MARKET INDICATOR

844 units (+/-84 units)

1 bed	62
2 bed	716
3 bed	53
4 bed	13
5 bed	0
5+ bed	0

AFFORDABLE HOUSING INDICATOR

721 units (+/-72 units)

SOCIAL RENTAL HOUSING

473 units (+/-47 units)

1 bed	350
2 bed	224
3 bed	-356
4 bed	154
5 bed	69
5+ bed	32

PARTIAL OWNERSHIP HOUSING

248 units (+/-25 units)

1 bed	232
2 bed	143
3 bed	42
4 bed	34
5 bed	10
5+ bed	3

4.54 The updated SSHI will have no effect unless it is incorporated into the States' policies and operations. Section 5 examines how the SSHI will be used to inform policy development and how flexibility will be built into its implementation to ensure it can react to changes in market conditions and to more complex household or developer circumstances.

5 Use of the SSHI – How will the States Strategic Housing Indicator be applied?

5.1 To exert an influence on the development environment and to support the delivery of States objectives, the SSHI is used to inform States housing, infrastructure, population and spatial planning policy. It is a key contributor to the development of planning policy and setting the requirement for the ongoing pipeline supply of housing planning permissions, as well as supporting the States' funding decisions in relation to the Affordable Housing Development Programme.

5.2 The SSHI is not, however, a target to be delivered by the States. Within the private market, the States cannot control what sites come forward for development or the implementation of planning permissions, nor force developers to construct particular types of housing units in all cases. Developers' decisions are influenced by specific site conditions and external matters outside of the control of the States at this time, such as finance availability and conditions, the capacity of the construction industry, profit margins, site specifics and personal choice. The application of the SSHI, therefore, has to be flexible to

allow developers to respond to changes in market conditions and enable development to take place where households have more complex or exceptional needs.

5.3 An appropriate mix, type and size of housing is required to ensure that all the community's housing needs can be met. This is reflected in the Strategic Land Use Plan which seeks to ensure that provision is made not only to meet the requirement for the number of new homes, but that they are also of an appropriate mix of tenures, sizes and types to meet the Island's housing needs. Therefore, where a site can accommodate a variety of dwellings, relevant planning policies generally expect for it to be developed with a mix of type and unit sizes aligned to those identified as being most needed by the Island at any given time. The SSHI is used to inform that need.

5.4 However, not all sites will be able to accommodate a variety of dwellings and it is acknowledged in the Island Development Plan that there will be important economic or social reasons, in some cases, to provide a particular housing type or size. The SSHI is a guide to housing need and will not in itself preclude the development of unit sizes that are different to those specified as needed by the Island, for example five-bedroom properties, if the specific circumstances of a site were to make this appropriate or necessary. It is important to also clarify that planning policies allow for the creation of residential units outside of the centres but only through conversion of redundant buildings and subdivisions and also for the demolition and rebuilding of existing dwellings on a one-for-one basis. The spatial policy does not give scope for these sites to provide additional new build housing units so they would not be considered capable of accommodating a mix of unit sizes to which the SSHI property size indicator would apply.

Supporting Policy Priorities

5.5 By understanding the number and mix of property tenures and sizes needed in the Island, the States is better able to identify issues for the policy agenda, inform decisions about policy content and direction, and evaluate the impact of potential policy decisions.

5.6 Given the current pressures on housing availability and the increase in housing purchase and rental costs, a thorough understanding of housing need is vital to support the analysis and implementation of any measures to alleviate the market strain. This includes support for actions within the wider 'housing' workstreams of the Government Work Plan[24].

[24] Government Work Plan 2022, Billet d'État X, 2022

5.7 A targeted review of some land use policies, which will include the Island's housing land supply, has also been prioritised as part of the Government Work Plan commencing in Q1 2023. There is a statutory requirement for the Development & Planning Authority 'from time to time' to consider whether any alterations to the Island Development Plan are necessary and, if they are, to then amend the Plan and also to review the housing land supply within five years of the adoption of the Plan in 2016. Although this was paused by the States due to the Covid pandemic, it will form part of the targeted review of certain policies commencing January 2023. The SSHI will inform the housing land supply review and the potential designation of land for housing within the Island Development Plan. This is of the utmost importance to ensure that land use planning is relevant and continues to be an enabler for government objectives and priorities.

5.8 The Island Development Plan also requires the Development & Planning Authority to ensure that sufficient planning permissions are in place to maintain a two-year 'pipeline' supply of housing. The quantity of housing units which constitutes a two-year supply is determined by the SSHI.

Application of the Affordable Housing Indicator

5.9 Relative to the private market, the States has more power to influence the alignment of Affordable Housing supply to Affordable Housing need.

5.10 The Affordable Housing Indicator in the SSHI forms the foundation for the Affordable Housing Development Programme. This programme is delivered by the Guernsey Housing Association under the direction of the Committee *for* Employment & Social Security, with supportive funding made available through a capital allocation agreed by the States in 2021.

5.11 The Affordable Housing Indicator sets the additional Social Rental and Partial Ownership housing units needed between 2023 and 2027 and thereby helps inform future land purchase decisions, the number, tenure and size of units to be built and any change of tenure within the existing Affordable Housing stock. It also helps plan the funding support required to deliver this programme if the Island's Social Rental and Partial Ownership housing needs are to be met.

5.12 Over the next four years, the development programme will need to take particular account of the mismatch between current Social Rental stock and the projected Social Rental housing needs. The projected need is for the majority of developed units to be smaller properties, with also a significant requirement for four-bedroom units, but the Social Rental stock comprises a high proportion of three-bedroom properties due to the historic build programme and prioritisation of Social Rental housing for smaller families over single people and couples. The data in Table 4.2 shows that if the Affordable Housing Development Programme delivers against each of the unit sizes alone, without regard to the bigger picture,

it risks a surplus in 3-bedroom properties in the future – a situation that must be avoided.

5.13 The Committee *for* Employment & Social Security will need to give this area detailed consideration as part of its wider development programme and stock management to ensure housing needs are met through an efficient use of housing stock but also balanced through its management of budget and consequential void costs if the number of transfers within its stock are increased.

5.14 Consideration will need to be given to whether some three-bedroom units from the Social Rental tenure can be converted to Partial Ownership or Key Worker housing in the long run perhaps; whether some three-bed properties can be subdivided or extended to better meet the needs of future households; there is potential for predominantly three-bedroom estates to be redeveloped so that unit sizes more closely align to the identified housing needs for this tenure; and how under-occupying tenants in three-bedroom properties should continue to be treated in the long term so they are not unfairly disadvantaged in terms of rent or Income Support assessments.

5.15 Reviewing the options for Social Rental properties is an extensive, but essential, piece of work which will need to be informed (at the very least) by the robust and up to date evidence about supply needs provided by the SSHI alongside the financial considerations that they present.

6 Monitoring and Review – When will the SSHI be refreshed?

6.1 The States is under Resolution to produce a housing needs study at intervals no greater than five years[25]. As with the latest housing needs study, the results are used to update the SSHI. The SSHI cycle is in place to balance the risk of any changes to population need with the planning horizons and certainty required by housing developers. The Committee recommends that formal updates to the SSHI through the States of Deliberation continue to be made every five years or more frequently if the States, or the Committee, identifies a particular requirement. The in-house operation of the housing needs model, however, now provides the opportunity to monitor any changes to housing need more closely and more frequently than just once every five years.

6.2 It is proposed that the housing needs model be run every year, with the findings reported to both the Committee *for the* Environment & Infrastructure and the Committee *for* Employment & Social Security for review. This provides both Committees with the opportunity to review housing need more regularly and to consider if policies and initiatives continue to provide adequate supply or whether amendments are required.

[25] 'Survey of Guernsey's Housing Needs,' Article 9, Billet d'État IX of 2002

6.3 It is also proposed that these findings be published for complete transparency on the Island's housing needs.

6.4 Each time the model is run with more up-to-date data, it will pick up any trends in housing behaviour which will then be reflected in the results. In the event that the results of the annual modelling process vary from the 10% tolerance for the SSHI, then the results would be presented to the States of Deliberation with a proposed revision to the indicator. This allows the SSHI to take account of more extreme market changes and reduces the risk of the SSHI becoming misaligned from population need over the five-year period.

6.5 Regular updates on the SSHI will also be provided through the Development & Planning Authority's Monitoring Reports, which will provide clear performance data on how the Island is meeting the SSHI and its components.

6.6 In line with Rule 4(1)(a) of the Rules of Procedure of the States of Deliberation and their Committees, it is recommended that, should any policy changes presented to the States have an impact on the Island's housing need requirement, a section should be included within the relevant Policy Letter to inform the States of the impact of each policy proposal on the Island's housing need. This reporting will be supported by the in-house operation of the housing needs model, which can be adjusted to test policy options.

6.7 The annual 'running' of the housing needs model, and any ad hoc modelling as part of the policy development process, will have a staff resource requirement. It is acknowledged that while the ownership of the model sits with the Committee *for the* Environment & Infrastructure, the data input and operation of the model requires support from appropriately skilled centralised resource.

6.8 It is estimated that about three weeks of officer time would be required to deliver the annual update. This is expected to be managed within existing budgets and resources.

6.9 If the propositions in this Policy Letter are agreed and unless the States of Deliberation, the Committee *for the* Environment & Infrastructure or the Committee *for* Employment & Social Security identify a reason to do so sooner, the next formal SSHI update to the States of Deliberation is expected to be in 2027 to set an SSHI for 2028–2032.

7 Compliance with Rule 4

7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

7.2 In accordance with Rule 4(1):

a) The Propositions contribute to the States' objectives and policy plans and deliver the action titled 'Progress proposals to the States on the States Strategic Housing Indicator' prioritised within the Government Work Plan.

b) In accordance with Rule 4(1)(b), the Committee can advise that in preparing the Propositions, consultation has been undertaken with the Committee *for* Employment & Social Security in relation to the Affordable Housing Indicator, the delivery of which falls within that committee's mandate.

c) In accordance with Rule 4(1)(c), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no direct financial implications to the States of carrying the proposals contained within this report.

7.3 In accordance with Rule 4(2):

a) In accordance with Rule 4(2)(a), the Propositions relate to the duties of the Committee for the Environment & Infrastructure in respect of "general housing policy in relation to land use, spatial planning and infrastructure".

b) To comply with Rule 4(2)(b) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions attached to this Policy Letter have the unanimous support of the Committee *for the* Environment & Infrastructure.

Yours faithfully

Committee *for the* Environment & Infrastructure

H L de Sausmarez
President

S P Haskins
Vice President

A Cameron
S Fairclough
A Gabriel

J Niles
Non-States Member

M Palfrey
Non-States Member

APPENDIX 1

GLOSSARY OF TERMS

Affordable Housing	Specific accommodation units owned and/or managed by the States of Guernsey or a registered housing association reserved for people who cannot meet their needs in the private market without assistance. Comprises 'social housing' and 'intermediate housing'. 'Social Housing' is reserved for households on low incomes or with other needs identified by the Committee *for* Employment & Social Security. It includes Social Rental Housing, Specialised Housing and Key Worker Housing. 'Intermediate Housing' is offered on a part ownership basis. It includes Partial Ownership Housing, shared equity or low-cost ownership or similar schemes. It is mainly aimed at households that are ineligible for Social Housing but cannot meet the full cost of renting or buying appropriate housing on the private market without support. The only 'intermediate housing' scheme in operation in Guernsey at present is the GHA's Partial Ownership Scheme.
Affordable Housing Indicator	A component of the States Strategic Housing Indicator and the number of additional units of accommodation that need to be made available for Affordable Housing to meet the Island's projected Affordable Housing needs.
Bedroom Allocation Policy	The policy under which bedrooms are allocated to households in the housing needs model based on a household's composition and tenure.
Bedroom Allocation Profile - Current Profile	This profile assumes all households are suitably housed and will remain in their current sized unit of accommodation unless they are on a waiting list for a tenure of Affordable Housing. It projects the housing stock required based on current profile and behaviour trends, i.e. that where there is a pattern of under or over-occupancy of properties this behaviour will continue.

Bedroom Allocation Profile - Minimum Profile	Under this profile, one bedroom is allocated to each of the following in a household: • A co-habiting couple, • Up to two children under 11 years, • Up to two children of the same gender between aged 11 to 18 years, and • Any single adult over 18 years. This profile represents a strict application of the Social Rental Allocation and Eligibility Policy used for the social rental housing tenure.
Bedroom Allocation Profile - Intermediate Profile	This profile is similar to the minimum profile however it ensures that each child and single adult has their own bedroom. One bedroom is allocated to the following: • A co-habiting couple, • Each child, and • Any single adult over 18 years.
Bedroom Allocation Profile - Maximum Profile	Under this profile, each household is allocated a spare bedroom above the intermediate requirements of the projected household members. One bedroom is allocated to the following: • A co-habiting couple, • Each child, • Each single adult over 18 years, and • A spare bedroom.
Guernsey Housing Association (GHA)	An independent not-for-profit company limited by guarantee. The GHA is a registered housing association owning and managing Social Rental, Partial Ownership, Specialised Housing and Key Worker Housing units.
Housing Demand	The type and number of housing units that a household will choose to occupy or own, given their preference and ability to pay. It does not necessarily match their housing need.
Housing Need	The size and tenure of unit required for a household to live in accommodation that is affordable, adequate and secure. Collectively 'housing need' is the shortfall in housing units required for all households to live in accommodation that meets their essential needs.
Housing Need - Adequate Housing	Housing which meets the necessary standards (e.g. safety, condition) and meets the requirements of its occupants (e.g. accessibility, privacy, size).

Housing Need - Affordable Housing	Housing which is affordable to the residing household based on housing costs as a proportion of available income.
Housing Need - Secure Housing	Housing which is at low risk of being lost to the residing household.
Housing Tenure	The legal status under which people have the right to occupy accommodation. Different types of tenure are used to categorise accommodation.
Key Worker Housing	There is no States agreed definition of 'Key Worker' at present but 'Key Worker Housing' in this context refers to States-owned, GHA-owned and private rental housing units reserved for, and occupied by, off-island recruited health (and some teaching) essential staff. A tenure of Social Housing.
Overoccupancy	The occupancy of a unit of accommodation by more people than it is assessed should be accommodated by that unit.
Partial Ownership Housing	Housing where a portion of the property is purchased by the resident and rent is paid on the remainder of the property. A tenure of Intermediate Housing operated by the GHA.
Private Market	Owner-occupied and private rental units. Owned or rented outright at private market rates.
Private Market Indicator	A component of the States Strategic Housing Indicator and the number of additional units of accommodation that need to be made available in the private market to meet the private housing market's projected needs.
Property Size	The number of bedrooms in a unit of accommodation.
Right-sizing	Moving from a property that does not exactly meet a household's current housing needs to one that does. This would include moving from a larger property to a smaller property that directly meets the household's profile requirements.
Social Rental Housing	Housing rented below market rates to households on low incomes or with other needs defined by the Committee *for* Employment & Social Security. A tenure of Social Housing.

Specialised Housing	Housing where a degree of support or care is provided to allow residents to live as independently as possible. A tenure of Social Housing.
States Strategic Housing Indicator (SSHI)	A States-agreed figure which sets out the total number of additional accommodation units that should be created each year if Guernsey is to meet its housing need. The SSHI can be further split into the Affordable Housing Indicator and the Private Market Indicator.
Underoccupancy	An under-occupied dwelling is a dwelling deemed to have too many bedrooms for the needs of the household living in it.

APPENDIX 2

METHODOLOGY OF THE HOUSING NEEDS MODEL

Guernsey's housing needs model has been developed to provide a tool for estimating the Island's future accommodation need. It is intended to support the development and continued review of the SSHI and will itself be subject to improvement efforts as the SSHI is reviewed.

This appendix provides further information on the structure and workings of the model based on a series of Frequently Asked Questions ("FAQs").

1. What is the purpose of the Housing Needs Model?

The model has been designed to estimate housing need by tenure and property size. It has been used to generate the estimates of housing need required to inform:

- **A States Strategic Housing Indicator** – an estimate of the total number of additional housing units required to meet the Island's housing needs. The proposed SSHI estimates housing need between 2023 and 2027, including an average annual need.
    - **A Private Market Indicator** – the proportion of the SSHI which needs to be made available in the private market.
    - **An Affordable Housing Indicator** – the proportion of the SSHI which will need to be available as Affordable Housing, i.e. housing which is owned and managed by the States or the GHA and which is reserved for people who cannot meet their needs in the private market.
        - **Social Rental** – within the Affordable Housing Indicator, comprises the proportion of units which need to be made available, at a subsidised rent, to qualifying households.
        - **Partial Ownership** – the housing need for the Partial Ownership scheme (a scheme through which people may a portion of a property and pay a discounted rent on the remaining portion).
- **Property Size Indicators** – based on the number of bedrooms, these indicators represent the mix of property sizes required in each tenure.

2. Why have indicators for Key Worker and Specialised Housing not been provided?

At this stage, the model has not been used to itemise accommodation requirements in the Key Worker Housing and Specialised Housing tenures. Existing housing, and the households residing in this housing, have been excluded.

Whilst the model can break the SSHI down to this level, specific indicators for these individual tenures will not be proposed until work on the Key Worker Housing Project, Elderly Tenures Project and Market Intervention Project[26] have been completed. These

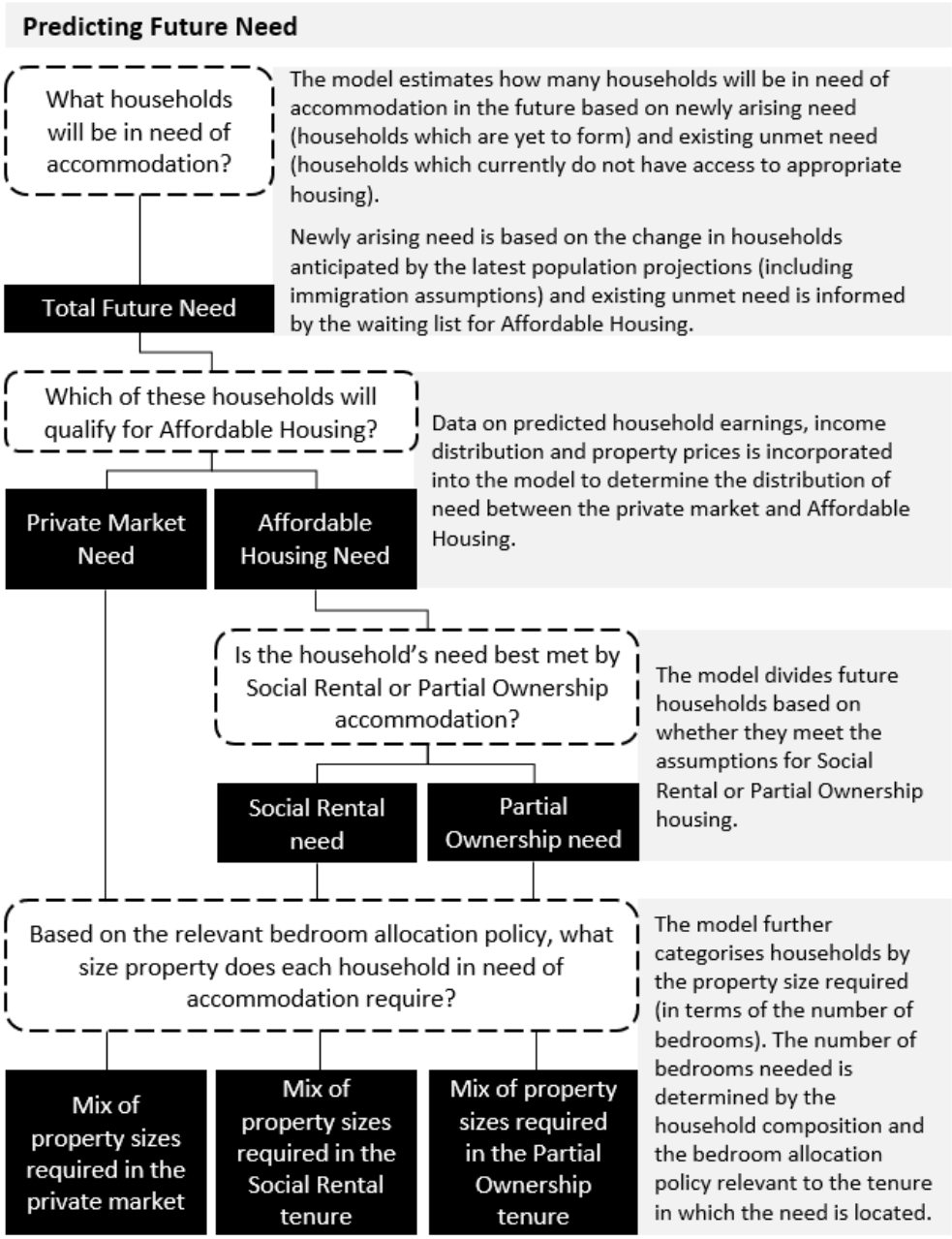
[26] These three projects are prioritised for commencement in 2023 in the Government Work Plan 2022, Billet d'État X, 2022

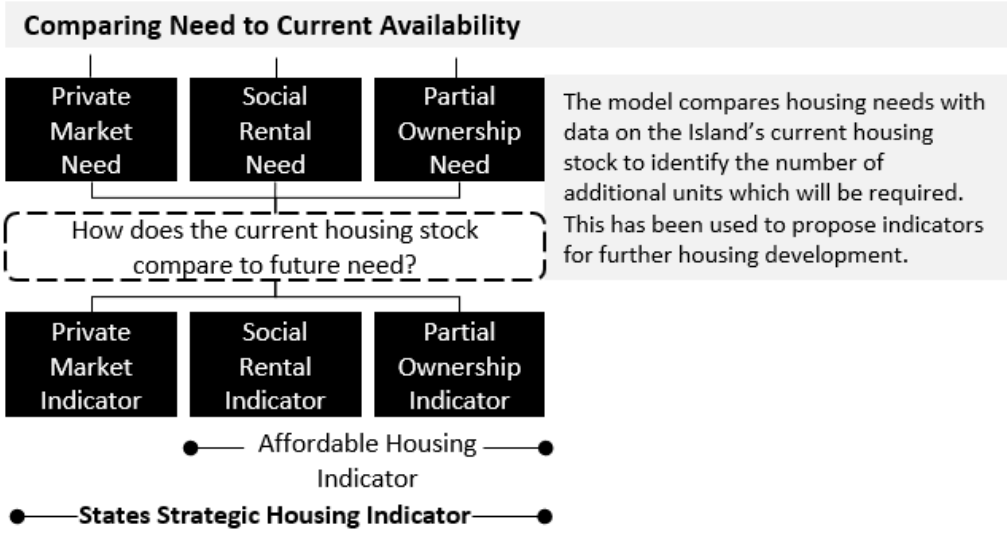
projects are likely to have a significant impact on the policy context for Key Worker and Specialised Housing and, as relatively small tenures, a change in policy position has the potential to have a material impact on the projected need.

Once these tenures are added to the model, there is the potential for the overall Affordable Housing Indicator to increase. Households which would qualify for Key Worker or Specialised Housing, but are not living in categorised key worker accommodation, are still included in the model. The model assumes that key workers or those in need of specialised accommodation in the future will continue to have their needs met in the tenure where they are currently housed.

3. How does the model estimate future housing need?

The model considers the difference between the Island's current housing stock and the housing needs of the future population.





4. What data has been used to project the requirements of future households?

Guernsey's Housing Needs Model draws on multiple databases to help estimate the Island's housing need.

The main sources of data are:

- **Rolling Electronic Census**[27] – the model uses the Rolling Electronic census data to identify and contextualise existing households. The census collates data from multiple sources on a regular basis (such as the tax system and social security contributions).
- **Population Projections** – the model uses the latest population projections, released in 2022, to forecast the number and structure of future households. In line with recently agreed policy, the results are based on 1.5 Fertility and +300 net migration.

As Affordable Housing tenants are required to submit household data to inform their eligibility assessment, the data available on households in the private market and the Affordable Housing Market is available in different levels of detail and from different points in time.

- **Private Market**
  The private sector projections are based on household composition data from the Rolling Electronic Census as at 31/12/2017. i.e. the number of people in a

[27] The last traditional census in Guernsey was held on 29th April 2001. A reliable method for counting the population using administrative records was developed in 2006 and has subsequently been developed upon via the Rolling Electronic Census Project. As a result of the Project, comprehensive Guernsey population statistics are available more frequently than in other jurisdictions and at a lower cost. The first collection of information, which was published in the Electronic Census Report in March 2015, includes a breakdown of population by parish, school catchment and (then) voting district along with a host of other information in addition to regular updates to population trends.

household and their age and gender. This is the latest available household data which includes relationships links within the household e.g. cohabiting couple, child etc.

The model is also able to identify households which may be eligible for Affordable Housing by assessing their household income in 2017 inflated to 2021.

This is the best available data that Guernsey currently has in this area.

- **Affordable Housing**

  The States has more detailed and recent data to inform the Affordable Housing market projections. The model uses household data collected by the Committee *for* Employment & Social Security on the composition of existing tenant households, i.e. the number of people in a household and their age and gender, as at 31/12/2020.

  The model also uses the waiting list from Q4 2021 for Social Rental Housing to estimate current unmet need. Households on the waiting list are assumed to be currently inappropriately housed, either in other Affordable Housing properties or in the private market and need to be added to the Affordable Housing Indicator outside of the 25% transfer of newly arising demand (see FAQ 9 for more detail).

  The waiting list for Partial Ownership Housing was not added to the unmet need component of Affordable housing. It was assumed that these households are currently appropriately housed and that their need would be accounted for by the transfer of 25% of the newly arising demand in the private market (see FAQ 9 for more detail).

5. <u>What data is used to understand current housing availability?</u>

The model uses data on Guernsey's existing domestic property units, including:

- The **tenure of the property** (e.g., private market or affordable) this matches the household data from 2017.
- The **type of property** (i.e. house, bungalow, apartment etc.) as at 31/12/2020.
- The **number of bedrooms.** This data was originally collected in 2001 but has been adjusted to improve accuracy (see FAQ 7).

6. <u>What has been excluded from the model?</u>

Only households residing in Guernsey are included in the model.

The private market modelling excludes entirely hotel and staff accommodation as they do not represent suitable accommodation for long-term occupation and any resident

households are assumed to be in the Island for a short term only. All dedicated Key Worker Housing is also excluded from the dataset.

The remaining data must meet strict criteria to be used to project the number of different household compositions in the future and the final count of each household type is then adjusted to meet the total number of households originally included in the model. In order to be used in the forward projections the data must meet the following criteria:

- Be a consistent household (household members have been consistent for a period of time i.e. one year),
- Be a household with at least one adult in the household,
- Be a household with less than 10 occupants, and
- Be a household with a valid no. of bedrooms i.e. >0.

The model uses the data that meets the criteria to adjust the qualifying households to the total households for the base year of 2017 and then projects forward based on the population projections.

For the Affordable Housing Market, households residing in specialised housing, such as care homes, sheltered/supported living and key worker accommodation, have been excluded from the Affordable Housing model.

7. How has the data on housing stock been adjusted to ensure it is as accurate as possible?

Housing Stock: Whilst full 2022 data is not yet available, adjustments have been made to account for the 460 new builds in the private sector that, through planning and building control data, are known to have been built between 2018 and Q3 2022.

Bedroom Number: Comprehensive bedroom data was last collected as part of the final traditional census in 2001. The data is updated each time a property has been put up for sale. An exercise carried out showed that since 2016 approximately 20% of properties had been updated. All updates included in the bedroom data as of March 2022 have been reflected in the model.

The data has also been adjusted based on property extensions since 2001. An additional bedroom has been added to properties which:

- Have been identified as having an extension approved by planning since 2001,
- Have been identified as having started construction for an approved extension application,
- Are categorised as a ‘Bungalow’ or ‘House’,
- Do not have zero bedrooms recorded in data provided by Data Analysis team i.e. the data is incomplete, and
- Have not been updated after the construction start date of the extension.

It is acknowledged that not all extensions result in an additional bedroom, however this overcount may be offset by the unseen increase in bedroom numbers resulting from internal subdivisions or room conversions that may not have gone through Planning.

8. How have households been divided between Private Market and Affordable Housing?

The projections for Affordable Housing are based on those households currently residing in Social Rental and Partial Ownership Housing, the waiting list for Social Rental Housing and a percentage of the newly arising need in the private sector between now and 2027.

An analysis of household earnings, income distribution and property prices determined that 25% of the newly arising need projected in the private market would need to be met through Affordable Housing. Of this 25%, 9% of newly arising need was allocated to Social Rental Housing to reflect the current proportion of Social Rental to private market properties. The remaining 16% was allocated to Partial Ownership Housing (as this provision should adequately cover the Partial Ownership waiting list, the Partial Ownership waiting list has not been included in the modelling for Affordable Housing unmet need (see FAQ 4)).

9. How has housing need been categorised by property size?

The model is capable of projecting property size requirements based on a mix of different bedroom allocation profiles. The model allows the user to select a percentage from each of the profiles and view the number of additional properties needed by the number of bedrooms required. The four profiles are:

- **Current Profile:** This profile assumes all households are suitably housed and will remain in their current sized property unless they are on a waiting list for a tenure of Affordable Housing. It projects the housing stock required based on current profile and behaviour trends, i.e. that where there is a pattern of under or over-occupancy of properties this behaviour will continue. This is the approach taken in previous housing need studies and does not attempt to directly match housing property size with actual housing needs. Instead, it represents the current behaviour of demand for certain property sizes in the marketplace. Under this profile, for example, a pensioner household currently occupying a four-bedroom property will be assumed to require a four-bedroom property going forward.

- **Minimum Profile:** Under this profile, one bedroom is allocated to each of the following in a household:
    a) A co-habiting couple,
    b) Up to two children under 11 years,
    c) Up to two children of the same gender between aged 11 to 18 years, and
    d) Any single adult over 18 years.

This profile represents a strict application of the Social Rental Allocation and Eligibility Policy used for housing social rental tenants.

- **Intermediate Profile:** This profile is similar to the minimum profile however it ensures that each child and single adult has their own bedroom. One bedroom is allocated to the following:
    a) A co-habiting couple,
    b) Each child, and
    c) Any single adult over 18 years.

- **Maximum Profile:** Under this profile, each household is allocated a spare bedroom above the intermediate requirements of the projected household members. One bedroom is allocated to the following:
    a) A co-habiting couple,
    b) Each child,
    c) Each single adult over 18 years, and
    d) A spare bedroom.

10. <u>What is the basis for the bedroom allocation policies adopted for each tenure?</u>

The following profile mixes have been applied to each tenure:

Tenure	Split	Reasoning
Private Market	**85% Current, 10% Maximum and 5% Intermediate**	The current usage of stock in the private market shows a significant degree of underoccupancy, particularly in larger properties and amongst pensioner households. Wider housing policy is likely to encourage a degree of right-sizing to improve housing efficiency. The proposed split allows for some reduction in underoccupancy whilst assuming that, in the short term, current behaviours and demands are likely to continue for the majority of the Island's households.
Social Rental	**90% Minimum and 10% Maximum**	The minimum profile is based on the existing allocation policy for Social Rental housing. A number of tenants, however, have more complex needs (such as shared custody arrangements or care requirements) which demand a spare bedroom. An analysis of tenant and prospective tenant households suggests about 10% of social rental households require the maximum profile (a single spare bedroom).
Partial Ownership	**70% Intermediate**	The policy of the Partial Ownership scheme was recently updated to enable households to purchase properties with a spare bedroom. This was intended

	and 30% Maximum	to allow families to purchase properties which allowed for a change in household composition in the future. There is not yet sufficient data to precisely predict take-up of properties with a spare bedroom, however an estimated 70/30 split has been applied at this stage to represent a balance between aspiration and affordability.

The bedroom allocation policies for each tenure are applied independently and can be varied in future iterations of the model to reflect any changes in policy or circumstance.

11. How have the results been adjusted for negative requirements?

In comparing housing need and current housing stock, the model has the potential to generate negative results. This will occur where there is an excess number of existing properties relative to the projected need in the category. For the private market and Partial Ownership Housing, it is assumed that excess properties in one category will be inhabited by households which, under the bedroom allocation policy, would be assigned larger or smaller properties. The application of this assumption is illustrated in the table below. Please note that the numbers used in the table are for illustration only and are not the same as the figures proposed for the 2023-2027 SSHI.

No. of Beds	Diff with base 2027	Required by 2027	Adjustment
1	(150)	0	There is an oversupply of one-bedroom properties. This has been adjusted to 0 in the indicator.
2	295	145	It is assumed that the oversupply of one-bedroom units will be occupied by some households which would be allocated two-bedroom properties under the bedroom allocation property. This has reduced the indicator to 145 properties (295-150).
3	740	740	The need for three-bedroom units has not been adjusted.
4	210	137	It is assumed that the oversupply of units with over five bedrooms will meet part of the need for four-bedroom properties. The indicator for four-bedroom properties has been adjusted from 210 to 137 to reflect this over supply (210-(77-4)).
5	4	0	It is assumed that four of the excess properties with more than five bedrooms will be used to meet the need for all households requiring four beds, this reduces the indicator to zero.

>5	(77)	0	There is an oversupply of 77 properties with over five bedrooms, the indicator has been adjusted to zero.
	1,022	**1,022**	

The same assumption has not been applied in the Social Rental Housing tenure. Social Rental Housing Landlord rights in place for the GHA and the States allow Social Rental households to be transferred between housing stock to limit under-occupancy and ensure a greater efficiency in the use of accommodation. In addition, there is a pool of Social Rental applicants and occupiers with specific accessibility, medical and mobility needs that mean it is not possible for them to under-occupy a standard three-bed property, further reducing the suitability of automatic adjustments.

12. <u>What time-period does the model cover?</u>

The model can be adjusted to project housing need at different points in time. In this case, housing need in 2027, to inform the five-year indicator, and in 2040, to understand potential long-term requirements, have been calculated.

APPENDIX 3

ALTERNATIVE BEDROOM ALLOCATION PROFILE SPLITS IN THE PRIVATE SECTOR

Scenario 1: 100% Current Profile (least efficient use of housing)

When 100% current profile is used to project the distribution of property sizes needed in the private market, the housing requirements model projects that only 3- and 4-bedroom units would be required.

Whilst this would likely be the most aligned to the current market structure, it does not provide for the smaller properties which will be needed to encourage right-sizing or support first-time buyers.

	Private Market Indicator		
	100% Current Bedroom Requirement, 0% Maximum Bedroom Requirement, 0% Intermediate Bedroom Requirement		
No. of Bedrooms	Number of Additional Units Required by 2027	Number of Additional Units Required by 2027 (adjusted)	Number of Additional Units Required by 2040
1	-176	**0**	0
2	108	**0**	219
3	687	**619**	1168
4	251	**225**	431
5	11	**0**	53
5+	-36	**0**	0
TOTAL	844	**844**	1,871

Scenario 2: 75% Current Profile, 15% Maximum Profile and 10% Intermediate Profile

Under a bedroom allocation policy of 75% current profile, 15% maximum profile and 10% intermediate profile, only 1- and 2-bedroom properties would be needed.

This property size distribution would increase the supply of properties suitable for right-sizing, however it risks increasing the pressure in the housing market around 3- and 4-bedroom properties as it cannot be assumed that a sufficient number of households currently under-occupying properties will move into smaller properties over the next five years, especially without right-sizing incentives in place.

	Private Market Indicator		
	75% Current Bedroom Requirement, 15% Maximum Bedroom Requirement, 10% Intermediate Bedroom Requirement		
No. of Bedrooms	Number of Additional Units Required by 2027	Number of Additional Units Required by 2027 (adjusted)	Number of Additional Units Required by 2040
1	440	**440**	555
2	974	**404**	1316
3	-374	**0**	0
4	-9	**0**	0
5	-96	**0**	0
5+	-91	**0**	0
TOTAL	844	**844**	1,871

Scenario 3: 50% Current Profile, 30% Maximum Profile and 20% Intermediate Profile (most efficient use of housing)

Scenario 3 illustrates property size requirements should further pressure be put on the market to use land and housing more efficiently. Under this bedroom allocation policy, only 1-bedroom properties would be expected to be needed.

It is very unlikely that, even with incentives, housing behaviours will be able to change this significantly in the next five years alone. As opportunities to right-size are made available, some under-occupying households will relocate, however, it is not expected that these moves from larger properties alone will be sufficient to cater for the larger property demands of the remainder of the private housing market. This change in behaviour appears too significant without a fuller scheme for encouraging and enabling right-sizing.

	Private Market Indicator		
	50% Current Bedroom Requirement, 30% Maximum Bedroom Requirement, 20% Intermediate Bedroom Requirement		
No. of Bedrooms	Number of Additional Units Required by 2027	Number of Additional Units Required by 2027 (adjusted)	Number of Additional Units Required by 2040
1	1056	**844**	1267
2	1840	**0**	604
3	-1435	**0**	0
4	-269	**0**	0
5	-203	**0**	0
5+	-145	**0**	0
TOTAL	844	**844**	1,871

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

THE STATES STRATEGIC HOUSING INDICATOR, 2023-2027

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

5th January, 2023

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for the* Environment & Infrastructure requests that the States Strategic Housing Indicator, 2023-2027 be considered at the States' meeting to be held on 15th February, 2023.

Yours faithfully,

H L de Sausmarez
President

S P Haskins
Vice President

A Cameron
S Fairclough
A Gabriel

J Niles
Non-States Member
M Palfrey
Non-States Member

P.2023/1

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

REVIEW OF THE LAND PLANNING AND DEVELOPMENT (EXEMPTIONS) ORDINANCE, 2007

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Review of the Land Planning and Development (Exemptions) Ordinance, 2007' dated 3rd January, 2023, they are of the opinion:-

1. To approve the changes proposed to policy, approved by the States of Deliberation in December 2021, relating to exemptions from the requirement to obtain planning permission for development, as set out in section 2 of the Policy Letter.

2. To agree that the Development & Planning Authority should have a power to amend Schedule 1 to the Land Planning and Development (Exemptions) Ordinance, 2023 for the purpose of amending, substituting, omitting or adding any proviso/condition to an exemption within the Schedule through the making of Regulations, as set out in section 3 of the Policy Letter.

3. To note the minor changes in relation to the land planning and development exemptions and their provisos/conditions, as set out in Appendix 1 to the Policy Letter.

4. To approve the Ordinance entitled 'The Land Planning and Development (Exemptions) Ordinance, 2023', as set out in Appendix 2 to the Policy Letter, and to direct that the same shall have effect as an Ordinance of the States, subject to Propositions 1 and 2 being approved.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

The Land Planning and Development (Exemptions) Ordinance, 2023

This Ordinance repeals and replaces the Land Planning and Development (Exemptions) Ordinance, 2007 ("2007 Exemptions Ordinance") which specifies descriptions of development for which planning permission is not required provided that listed provisos (a type of condition) are met. These are known as exemptions from planning permission. The new Ordinance carries forward, with amendments, the current exemptions in the 2007 Exemptions Ordinance, significantly widens existing exemptions and adds a large number of new exemptions. The exemptions are listed in Schedule 1 to the new Ordinance and grouped in classes relating mainly to the location or type of development. The opportunity has also been taken to make certain existing exemptions, in particular for dwelling-houses and non-domestic buildings, more consistent.

The main changes from the 2007 Ordinance are: widening the existing exemption for solar panels to cover a wider range of solar products and adding new exemptions for installation of other energy saving equipment in exemptions Classes 1, 2 and 4 in Schedule 1 relating to development in relation to dwelling-houses, flats, buildings containing flats and non-domestic buildings; adding a new class of exemptions for development in relation to flats and buildings containing flats (Class 2 to Schedule 1); a significant widening of the exemptions for development in relation to non-domestic buildings (Class 4); adding a significant number of new exemptions for development in relation to dwelling-houses (Class 1-paragraph 23 onwards); adding new exemptions in relation to agricultural land (Class 6-paragraph 3 onwards), certain States development (Class 7-paragraph 14 onwards), display of signs and temporary art installations (Class 10-paragraph 8 onwards), for certain changes of use from specified retail uses or office uses to other uses including a change of use of upper floors of buildings in the Bridge and St Peter Port from certain retail and other uses to certain residential uses (Class 11-paragraph 2 onwards) and for changes of use from certain visitor accommodation uses to residential uses (Class 12, paragraph 3 onwards); a wider exemption for demolition (Class 13) and allowing for more exemptions to apply on, or within the curtilage of, a protected building. Schedule 2 sets out the specific sites which may benefit from the new exemption in Class 12, paragraph 4 relating to a change of use from a visitor accommodation use to certain residential uses.

Section 1 to the Ordinance provides that planning permission is not required for the carrying out of development specified in Schedule 1 in the circumstances and subject to the provisos set out in relation to that development in Schedule 1 and in the rest of section 1. The provisos in section 1(2) and (3) apply in addition to those listed for specific development in Schedule 1 and impose a further condition restricting the overall area that can be covered by certain exempt development. Section 1(4) provides that the exemptions do not apply in relation to development in relation to, or within the curtilage of, a protected building or a protected monument except where the exemption specifically allows for this. Section 1 is largely the same as Section 1 of the 2007 Exemptions Ordinance except for consequential amendments to allow for the amended and new exemptions and the addition of a power for the Development & Planning Authority to amend by Regulations the exemptions in Schedule 1. The power is only to

amend the provisos to which the exemptions are subject and not the description of development which is exempt.

Section 2 is the interpretation section which has been amended to reflect the amendments to the exemptions. Sections 3 and 4 make consequential amendments to other planning legislation. Section 5(1) repeals the 2007 Exemptions Ordinance and related Ordinances. Section 5(2) provides for a standard transitional provision so as to allow owners and developers 12 months, from the date of commencement of the new Ordinance, to complete physical development started before that date, provided it is completed in accordance with the 2007 Ordinance. This provision only applies to physical development and not to a material change of use as physical development can take some time to complete. Section 5(3) provides for a further transitional provision for the temporary visitor accommodation change of use exemption to ensure that it is clear that changes of use and related notices under the current exemption relating to such changes are treated as made under the equivalent exemption in the new Ordinance.

It is proposed that the Ordinance will come into force in February, 2023 on the date that it is approved by the States of Deliberation.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

REVIEW OF THE LAND PLANNING AND DEVELOPMENT (EXEMPTIONS) ORDINANCE, 2007

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

3rd January, 2023

Dear Sir

1 Executive Summary

1.1 Following the debate on the 2022 Government Work Plan ("GWP"), the States of Deliberation ("the States") agreed 'that all Committees will work with the Policy & Resources Committee to prioritise the progression of priority actions in the Government Work Plan[1]'. Such actions include the Category 2 action to 'amend the Land Planning and Development Ordinances to provide for further planning permission exemptions', as part of the Priority 3 action to enable opportunities for regeneration[2]. Additionally, the States agreed to 'approve the proposed Schedule of prioritised drafting of legislation'[3], the first item of which was the Review of the Land Planning and Development (Exemptions) Ordinance, 2007.

1.2 In December 2021, the States considered the Review of the Land Planning and Development (Exemptions) Ordinance, 2007, Policy Letter ("the 2021 Policy Letter"[4]) and resolved to approve proposed new exemptions and to amend existing exemptions currently set out in the Land Planning and Development (Exemptions) Ordinance, 2007 ("the 2007 Ordinance")[5]. The policy intentions of the proposed amendments were: to better reflect current policies, including the Island Development Plan ("IDP")[6]; to ensure the exemptions legislation remains

[1] Resolution 11 of 28th June, 2022 on Billet d'État No. X of 2022.
[2] Billet d'État No. X of 2022
[3] Resolution 16 of 28th June, 2022 on Billet d'État No. X of 2022
[4] Review of the Land Planning and Development (Exemptions) Ordinance, 2007, Policy Letter Billet d'État No. XXV of 2021, Article IX
[5] Land Planning and Development (Exemptions) Ordinance, 2007
[6] Island Development Plan

fit for purpose; and, to allow for development to be carried out more easily across the Island through changes to the planning exemptions. Those intentions were proposed to be met through broadening and introducing certain exemptions and introducing new classes of exemptions.

1.3 The 2007 Ordinance specifies developments which do not require planning permission subject to listed conditions which must be met. Under the 2007 Ordinance 64 exemptions are separated into 12 classes.

1.4 Following the 2021 States direction, a new exemptions Ordinance was drafted to repeal and replace the 2007 Ordinance. During the legislative drafting process, a number of further amendments to the agreed policy principles have been identified which are needed to enhance the policy consistency of the new and amended exemptions, better align them to the IDP and prevent certain unintended consequences. Some of these are changes to the original policy principles and therefore require approval of the States, however most are simply making changes to points of detail to the agreed 2021 amendments, these minor changes have been set out in Appendix 1.

1.5 The 2021 Policy Letter set out the proposed changes and additions to the policy principles only, noting that points of detail, the exact wording and numbering of classes would be subject to legal drafting[7]. It is considered that certain amendments made to The Land Planning and Development (Exemptions) Ordinance, 2023 ("The Exemptions Ordinance"), in Appendix 2, amount to changes to the 2021 agreed policy principles so the approval of the States is required, in accordance with paragraph 5.1.1 of The States' Greffier Directive[8].

2 Policy changes to the 2021 agreed amendments

2.1 The changes set out in Table 1 below are considered to be fundamental policy changes from the 2021 Policy Letter which would have significant impacts practically in planning terms or would, as it became evident through legal drafting, have resulted in non-compliance with planning policy and should therefore be brought to the attention of the States.

[7] See paragraphs 5.3 and 5.18 of the 2021 Policy Letter.
[8] States' Greffier Directive

Table 1: Proposed changes to the 2021 agreed policy

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
Class 1(23). Removal of a hedge. (Development within the curtilage of a dwelling-house). **Class 2(13)[9]. Removal of a hedge. (Development within the curtilage of a flat or a building containing flats).** **Class 4(10)[10]. Removal of a hedge. (Development within the curtilage of a non-domestic building).**	Remove the condition that the removal of the hedge must not affect an existing vehicle access or create a new vehicle access or result in the ability to encroach into neighbouring land. Extend proposed condition to require a native species to be planted where the hedge is removed from a boundary with a highway or private pedestrian road, street, lane, or clos, however named. The 2021 condition only proposed this condition for boundaries with a neighbouring property.	This condition is no longer required because of the extension of the condition requiring the replacement of a hedge with another hedge of a native species where it is removed from a boundary with a highway or private pedestrian road etc. Where the hedge removed must be replaced these effects will not occur. The extension of the condition to require a hedge forming a boundary with a highway or private pedestrian road to be replaced with a new hedge of a native species means that the impact on loss of biodiversity will be reduced.
Class 1(37). Installation of energy storage equipment. (Development within the curtilage of a dwelling-house). **Class 2(19)[11]. Installation of**	Add a condition in relation to noise level emission from the equipment.	This is required to control potential issues to neighbouring amenity, similar to requirements within Class 1(26) Air source heat pump/air conditioning unit.

[9] This was listed as new Class 1B.13 in the 2021 Policy Letter.
[10] This was listed as new Class 2.10 in the 2021 Policy Letter.
[11] This was listed as new Class 1B.19 in the 2021 Policy Letter.

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
energy storage equipment. (Development within the curtilage of a flat or a building containing flats). **Class 4(13)[12]. Installation of energy storage equipment. (Development within the curtilage of a non-domestic building).**		
Class 1(38). Placement of polytunnel. (Development within the curtilage of a dwelling-house).	Change height restriction conditions so that lower height of 3m only applies within 1m instead of within 2m of a neighbouring property. This means the height within 1m of a neighbouring boundary could be up to 3m in height and where located more than 1m away up to 3.5m in height.	This change will ensure consistency with other exemptions in Class 1.
Class 2(9)[13]. Hard-surfaced areas. (Development within the curtilage of a flat or a building containing flats).	Amend the condition to state that where extending an existing area of hard standing within a conservation area the material must be the same as that original material.	This change brings it in line with Classes 1(15) and 4(3) relating to hard-surfaced areas in other locations.

[12] This was listed as new Class 2.13 in the 2021 Policy Letter.
[13] This was listed as Class 1B.9 in the 2021 Policy Letter.

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
Class 3(3)[14]. Change in use of premises in multiple occupation to a use within Use Class 1 or 2. (Residential change of use).	Omit the requirement that the change would not result in subdivision of the building. The exemption has been altered to also apply to protected monuments.	This requirement is considered unnecessary as the exemption relates to change of use only and does not permit any operational development under which subdivision would fall. The 2021 Policy Letter did not reference protected monuments. However, the current exemption in this Class for change of use from use of part of a dwelling for business purposes to Use Class 1 or 2 applies to protected monuments and land within the curtilage of the same. This change would therefore be consistent with the existing exemption.
Class 5(1)[15]. Maintenance, repair, and minor alterations. (Maintenance, repair, minor alterations and temporary structures and uses).	Include the maintenance, repair or making of minor alterations to a flat or building containing flats or to structures/features within the curtilage of the same.	This would allow the same exemption for flats as currently applies to occupiers of dwelling-houses and non-domestic buildings to maintain, repair or make minor alterations. This was an oversight especially given that there are now new proposed exemptions for flats and buildings containing flats.

[14] This was listed as new Class 1A.2 in the 2021 Policy Letter.
[15] This was listed as Class 3.1 in the 2021 Policy Letter.

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
Class 5(2)[16]. Temporary development required during approved operations. (Maintenance, repair, minor alterations and temporary structures and uses).	Extend exemption to sites where engineering or other operations (but not mining operations) are taking place subject to the same terms and conditions as applies for building operations.	It is consistent to allow the exemption to apply in relation to engineering or other operations. Mining operations, such as the quarrying at Mont Cuet, are excluded from the exemption in view of the nature of the works but such operations arise rarely on Guernsey.
Class 8(5)[17]. Changes from general storage or distribution uses to general industrial use in Key Industrial Areas. (Storage, distribution and industrial change of use).	Remove the ability to change from general industrial use in a key industrial area to a general storage or distribution use.	This is already permissible under Class 8(4) with less restriction than that originally proposed under this narrower exemption.
Class 11(4)[18]. Change of use of upper floors of buildings in the Main Centres and Main Centre Outer Areas from retail use or office use to use as a flat. (Retail and administrative, financial and professional change of use).	Amend to apply only to Main Centres and add a condition that the total area of which the use is changed does not exceed 250sq.m. Widen to permit change to Use Class 5 as well as Use Class 2. Therefore, this would allow	The 2021 Policy Letter applied this exemption to also include land in the Main Centre outer areas and provided for no limit on the area of floorspace of which the use could change. However, this could have the unintended consequence of losing prime office space or large floor plates such as Admiral Park. The exemption is designed to make it easier for those buildings unsuitable for retail or office use to be

[16] This was listed as Class 3.2 in the 2021 Policy Letter.
[17] This was listed as new Class 6.5 in the 2021 Policy Letter.
[18] This was listed as new Class 9.4 in the 2021 Policy Letter.

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
	premises unsuitable for retail/office use to be converted to either a residential flat or a residential flat also used for business purposes.	converted without the need for planning permission. The loss of prime office/retail space is not intended or desirable. The inclusion of a change of use to Use Class 5 would allow extra scope for the reuse of unsuitable buildings and would be consistent in policy terms with the exemption to allow a change of use from part of a dwelling for business purposes to use within Use Class 1 or 2.
Class 12(3)[19]. Changes of use between use as non-serviced visitor accommodation and use as a dwelling-house. (Visitor accommodation change of use).	Amend to remove the exemption for a change of use from a dwelling-house to self-catering accommodation. Allow only change of use of self-catering units from an existing use within Use Class 8[20], which originally formed part of a single dwelling-house, to a use within Use Class 1 or 5, for the purpose of allowing those units to revert back to use as part of the original dwelling-house, subject to all required conditions being met.	This exemption is not intended to allow the potential loss of residential units to use as self-catering units. This would be contrary to IDP policy and would result in a loss of housing stock. The exemption is in place to permit, without the need for planning permission, development which is supported by planning policy.

[19] This was listed as new Class 9A.3 in the 2021 Policy Letter.

[20] There was a typographical error referring to the use as self-catering units falling within Use Class 7 but this is corrected now to refer to Use Class 8 of the Use Classes Ordinance.

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
	Remove the requirement that self-catering units must have a valid boarding permit but the exemption only applies where the change is from an existing Use Class 8 as stated above.	The removal of the requirement of the visitor accommodation to have a valid boarding permit would omit additional requirements on the applicant. It is considered sufficient that the change of use only applies to a change from Use Class 8.
Class 12(4)[21] change of use from a visitor accommodation use on certain sites to use for certain residential uses. (Visitor accommodation change of use).	Remove the requirement in paragraph 6.5 of the 2021 Policy Letter relating to specified visitor accommodation premises "not been actively promoted as part of the active visitor accommodation bed stock" and replace with the requirement that the premises has not been advertised or promoted for use as visitor accommodation since 31st December, 2020.	The word "actively" has been removed as it was considered it was clearer to have a less ambiguous requirement that it had not been advertised or promoted.
Class 13(1)[22] Demolition of a shed, glasshouse, temporary or garden structure, fence, gate or exempt structure. (Demolition).	Reduce scope of suggested widening of exemption, in relation to structures erected/ constructed etc. under planning permission, to apply only to any freestanding outbuildings– • for which planning permission was granted for the construction/erection etc of the same, and • which also fall within the curtilage of a dwelling house, flat or building	It is considered that without this revision the exemption would have allowed any structure that had been given planning permission to be demolished without planning permission. This would have unintended consequences and could have resulted in necessary buildings/structures being demolished.

[21] This was listed as new Class 11 at page 75 onwards of the 2021 Policy Letter.
[22] This was listed as Class 10.1 in the 2021 Policy Letter.

Amendments agreed by the States in December 2021	Changes proposed following legislative drafting	Reasons for the changes
	containing flats and used primarily for the domestic purposes of the relevant building subject to a condition that the demolition must not result in a breach of a term or condition of the planning permission under which the building was constructed/erected etc.	

3 The ability to amend Schedule 1

3.1 A further provision is proposed within Section 1(7) of The Exemptions Ordinance which provides the Authority with the ability to amend Schedule 1 (the exemptions) for the purpose of amending, substituting, omitting or adding any proviso/condition ("condition") to an exemption, within the Schedule, by the making of Regulations. It would not allow the description of development exempted to be amended just the conditions attached. This would only apply to existing exemptions and would not permit the Authority to create new exemptions or remove existing ones without approval of the States.

3.2 The inclusion of this Regulation making power would allow the Authority to amend conditions to the exemptions relatively quickly should it become apparent that the condition has unintended consequences or if any difficulties arose on points of detail in the condition. In addition, it would allow for changes to the conditions attached to exemptions to be made, again relatively quickly, that reflect changes in technologies, design, materials or products, enabling the Authority to react to changes in the market more efficiently than currently. This allows a degree of future proofing and ensures the Authority can be reactive when needed without giving the Authority power to remove or add to the description of development exempted.

4 Conclusion

4.1 The changes detailed in section 2 of this Policy Letter provide greater clarity to the proposed changes to the exemptions and offer, in some cases, greater flexibility to homeowners in terms of development they can undertake. Additionally, the changes proposed ensure consistency with existing and other proposed exemptions and the relevant agreed States' policies including the IDP. Certain changes are also made to ensure that unintended consequences do not arise from the proposed changes.

4.2 The Exemptions Ordinance has been drafted to include the amendments and new exemptions approved by the States in 2021, subject to the changes proposed in sections 2 and 3 and Appendix 1 to this Policy Letter. If the States approve The Exemptions Ordinance it will have the effect of repealing and replacing the current 2007 Ordinance. The numbering in the new exemptions classes now runs consecutively so differs slightly to the numbering referred to in the 2021 Policy Letter but the headings to the exemption classes remain largely the same.

5 Compliance with Rule 4

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

5.2 The following information is provided in conformity with Rule 4(1):

a) The Propositions accord with the States' objectives and policy plans to "enable opportunities for regeneration" and support the community and economy in response to the COVID-19 pandemic.
b) Since the below stakeholders were consulted to inform the 2021 Policy Letter the Authority has not carried out any further consultation:

- The Policy & Resources Committee;
- The Committee *for* Economic Development;
- The Committee *for* Education, Sport & Culture;
- The Committee *for* Employment & Social Security;
- The Committee *for the* Environment & Infrastructure;
- The Committee *for* Health & Social Care;
- The Committee *for* Home Affairs;
- The States Trading Supervisory Board;
- All States' Members; and
- External industry specialists

c) The Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
d) No direct financial implications for the States of Guernsey have been identified because of the Propositions.

5.3 For the purposes of Rule 4(2):

a) It is confirmed that the Propositions relate to the duties of the Development & Planning Authority to advise the States on land use policy and develop and implement land use policies through relevant instruments.
b) It is confirmed that each of the Propositions have the unanimous support of the Authority.

Yours faithfully

V S Oliver
President

A W Taylor
Vice-President

C Blin
J F Dyke
A Kazantseva-Miller

APPENDIX 1: MINOR CHANGES TO THE 2021 AGREED AMENDMENTS

This Appendix lists the changes considered to amount to minor changes to points of detail and wording including changes to existing exemptions and the 'Repeals, transitional provision and saving' section.

Table 2 below sets out the minor changes that have been made to existing exemptions and the reasoning behind each change.

Table 2: Minor changes made to exemptions and the reasoning

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 1(1). Alterations to the external walls of a dwelling-house or an outbuilding. (Development within the curtilage of a dwelling-house). **Class 2(1)[1]. Alterations to the external walls of a building containing flats. (Development within the curtilage of a flat or a building containing flats).**	Widen exemption in Class 1(1) to include alterations to allow the cladding for the first time of dwelling-houses, or outbuildings within the curtilage of dwelling-houses but not where the building is within a conservation area or substantially constructed before 1900. Re-cladding was already allowed under the 2021 proposals. Adjust wider policy of exemption for building containing flats so that cladding for first time not allowed for such a building in a conservation area consistent with exemption for dwelling-houses.	These changes offer homeowners greater flexibility in relation to the external appearance of their properties. This is in line with policy GP13 of the IDP. The restriction to not allow cladding for the first time on properties and outbuildings pre 1900 or where the structure is attached to a building which is pre-1900 or in conservation areas would reflect the 'special' nature of these buildings and the impact that this change could have on the area and property itself. This would align with IDP policies GP4 and GP8.
Class 1(2). Satellite dish antennas. (Development	Additional condition to clarify that no more than four satellite dishes in total can be installed on or within the curtilage of the dwelling-house.	Following drafting it became apparent that this could result in several dishes within the curtilage of, on the main building or on outbuildings within

[1] This was listed as new Class 1B.1 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
within the curtilage of a dwelling-house).		the curtilage. It is therefore considered appropriate to specify a maximum number on or within the curtilage of the dwelling-house.
Class 1(3). Solar products. (Development within the curtilage of a dwelling-house). **Class 2(3)[2]. Solar products. (Development within the curtilage of a flat or a building containing flats).** **Class 4(12)[3]. Solar products. (Development within the curtilage of a non-domestic building).**	Remove the condition requiring products to be integrated if facing a highway. Require instead that where facing a highway the same type and design of solar product must be used. Draft definition of solar product flexibly to cover any future types of solar products, approved in writing by the Authority, not covered by current reference to solar photovoltaic and solar thermal equipment.	Discussions with stakeholders raised the concern that the requirement for panels to be integrated would result in additional costs as the roof covering would need to be stripped. This would deter people from installing solar products and would result in the need for a planning application to be made if not integrated. Requiring the same type and design of solar product to be used would achieve the same policy aim in terms of visual impacts and would reduce costs for owners/developers. The inclusion of the flexible wording in the definition of solar product will future proof for any new technologies for solar capture that come forward. This will allow the Authority discretion in permitting installation of these new types of product without the need to amend the Ordinance.

[2] This was listed as new Class 1B.3 in the 2021 Policy Letter.
[3] This was listed as Class 2.12 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	Add condition limiting the percentage of a roof or the ground within the curtilage covered by solar products where the products are located on, or within the curtilage of, a protected building or are on, or attached to, the relevant main structure (i.e. dwelling-house, flat/building containing flats) and that structure is substantially constructed pre-1900. Add condition in relation to non-domestic buildings limiting the percentage of the roof to be covered by solar products where the products are located on, or within the curtilage of a protected building or are on, or attached to, a non-domestic building substantially constructed pre-1900. The 2021 approved policy only referred to installation of solar products on any roof slope for non-domestic buildings but did not provide further detail.	Allowing ground mounted panels within the curtilage of non-domestic buildings could impact on ancillary facilities needed for those types of units i.e., parking, and would be difficult to control via exemption provisos/conditions. The ability to install ground mounted panels is not permitted unlike for residential units.
	Widen the exemption to allow for solar products to be installed on structures as well as buildings in relation to non-domestic buildings.	To ensure consistency with the policy for dwelling-houses and flats where there are no planning reasons not to do so.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 1(4). Replacement of a door, window, roof-light, roof-lantern or sun tunnel in existing opening. (Development within the curtilage of a dwelling-house).	Sun tunnels[4] were omitted from the 2021 Policy Letter so have been incorporated within this exemption.	Given the similarity of sun tunnels to roof lights and roof lanterns the inclusion of this type of window/feature is appropriate and is not significantly different to those products permitted in the 2021 Policy Letter. This also ensures consistency with policy for the related exemption for flats which includes sun tunnels.
Class 1(5). Installation of a door or window in a new aperture. (Development within the curtilage of a dwelling-house). **Class 2(5)[5]. Installation of a door or window in a new or altered opening. (Development within the curtilage of a flat or a building containing flats).**	Clarify that the original condition in the current exemption for dwelling-houses not allowing a new door or window to be installed above ground floor level is to be applied to all three exemptions. Apply condition that where a non-domestic building is substantially constructed before 1900, the new door or window is not installed on an elevation that faces a highway.	It was not clear from the 2021 Policy Letter that this original condition would be attached to all these exemptions. However, the omission of this condition would mean windows could be installed at upper levels which could have significant impacts on neighbouring residential amenity. This is to be consistent with the related exemptions for new doors and windows in dwelling-houses and flats and buildings containing flats. The inclusion of this condition would reduce the impact arising to the character and appearance of a pre-1900 building.

[4] Means a skylight with a highly reflective tunnel attached to it which channels light from the roof of a building into an area of the building below.
[5] This was listed as new Class 1B.5 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 4(6)[6]. Insertion of new doors or windows. (Development within the curtilage of a non-domestic building).		
1(6). Re-roofing. (Development within the curtilage of a dwelling-house).	Add condition to state that where the structure re-roofed is attached to a dwelling-house that is substantially constructed pre-1900, the materials used are natural slate or clay tiles.	An amendment to include structures attached to pre-1900 dwellings is consistent with the policy aim of reducing visual effects on more sensitive buildings.
Class 1(7). Installation of roof-light, roof-lantern or sun tunnel. (Development within the curtilage of a dwelling-house). **Class 2(7)[7]. Installation of roof-light, roof-lantern or sun tunnel. (Development within the curtilage of a flat or a building containing flats).**	Omit the requirement that a roof lantern can only be installed on a flat roof. Amend exemption so that it applies to installation on flat or sloping roofs and adjust condition prohibiting insertion on a roof slope facing a highway where the building is substantially constructed pre-1900 so that it also applies where the products installed on a flat roof are positioned facing a highway.	This change is proposed because in practice it is unlikely that it would be installed on a sloping roof because of the product itself and therefore the condition would be superfluous. This change is consequential on applying the exemption to installations on flat roofs.

[6] This was listed as Class 2.6 in the 2021 Policy Letter.
[7] This was listed as new Class 1B.7 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	Add condition to restrict the insertion of these elements where they are positioned to face a highway where the building is substantially constructed pre-1900.	The inclusion of this condition would be consistent with other similar exemptions and would prevent potential impacts on the character and appearance of these more sensitive buildings.
Class 1(8). Installation of dormer or cladding of dormer cheeks. (Development within the curtilage of a dwelling-house).	Amend exemption to allow the re-roofing of a dormer on any dwelling-house but where that dwelling-house was substantially constructed pre-1900 or within a conservation area, limit the use of the materials for re-roofing of a dormer to slate, clay tiles or the same material as that it is replacing. Amend general exemption for re-roofing in 1(6) to exclude re-roofing of dormers consequential on previous amendment to add those works to this exemption.	Re-roofing of a dormer was not mentioned in the 2021 Policy Letter but the inclusion of these works in this exemption is more appropriate as it relates specifically to dormers and is consistent with allowing the re-roofing of the main roof under Class 1(6). The restriction on materials for dwelling-houses substantially constructed pre-1900 or within a conservation area also aligns with Class 1(6), except it also permits the use of the same material as that it replaces.
Class 1(10). The erection of an extension to a dwelling-house. (Development within the curtilage of a dwelling-house).	Amend existing proposed condition to clarify that requirement for glazing not to be allowed within 3 metres of the boundary with a neighbouring residential property only applies where included in an elevation which faces such a boundary.	The amendment clarifies the intended effect of this restriction. This would allow the construction of built form within 3m of the boundary but not allow glazing to be installed.
Class 1(11). Erection of a pergola or other garden structure for the support of plants. (Development	Increase in the height permitted where within 1m of the boundary of a neighbouring property from not exceeding 2m in height to not exceeding 3m in height.	This would bring the exemptions in line with the proposed height of an extension to a dwelling-house where within 1m of a neighbouring boundary (Class 1(10)), and it is considered that it

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
within the curtilage of a dwelling-house). **Class 1 (12). Erection of shed. (Development within the curtilage of a dwelling-house).** **Class 1(13). Erection of glasshouse. (Development within the curtilage of a dwelling-house).** **Class 1(14). Erection of freestanding garage, other outbuilding or car port. (Development within the curtilage of a dwelling-house).**	This means that for garden structures for the support of plants there is just one maximum height of 3m wherever located. However, for sheds, glasshouses and free-standing garages and other outbuildings the height restriction is not exceeding 3m where sited within 1m from the boundary. Higher roof heights are allowed for structures in other locations.	would not have any additional impact on neighbouring amenity but would allow additional flexibility to householders.
Class 1(12). Erection of shed. (Development within the curtilage of a dwelling-house). **Class 1(13). Erection of glasshouse. (Development**	Alter to provide that relevant structures within the curtilage of a dwelling-house be used primarily (instead of solely or exclusively) for non-commercial purposes of the dwelling-house.	As Use Class 5 of the Use Classes Ordinance allows for use of part of a dwelling, used mainly as a residence, for business purposes, it is considered that these exemptions should be altered to allow for part use of a structure within the curtilage of a dwelling the use of which falls within that Use Class.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
within the curtilage of a dwelling-house). **Class 1(14). Erection of freestanding garage, other outbuilding or car port. (Development within the curtilage of a dwelling-house).** **Class 1(17). Domestic fuel containers. (Development within the curtilage of a dwelling-house).** **Definition of "extension" in Ordinance.**		
Class 1(13). Erection of glasshouse. (Development within the curtilage of a dwelling-house).	Amend proposed height conditions so that where the roof is flat the height is limited to 4m.	It has been established that flat roof glasshouses are now available, so an amendment is required.
Class 1(14). Erection of freestanding garage, other outbuilding or car port. (Development within the	Remove the requirement for a pitched roof to be no less than 22.5 degrees and of natural slate or clay tiles where the dwelling-house is within a conservation area.	These changes were not referenced in the 2021 Policy Letter. However, some of the changes are consistent with other exemptions. The changes reflect current practices. It would also allow more

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
curtilage of a dwelling-house).		flexibility for homeowners to develop their dwelling-house without requiring planning permission in-line with policy GP13 of the IDP.
	Broaden to allow the use of any material in relation to its construction.	The 2021 Policy Letter referred only to any type of cladding however the use of other materials would also be acceptable when applying the other provisos of this exemption
	Add condition that where the structure erected is visible from a highway and is within a conservation area or attached to a dwelling-house which is substantially constructed pre-1900, that the garage, car port etc. does not have a flat roof.	This is different to Classes 1(12) (sheds) and 1(13) (glasshouses) because the impact of a free-standing garage, free standing outbuilding or detached/attached car port could have a much greater impact on the appearance of a conservation area if flat roofed.
	Remove the requirement for the structure to be no further than 30m from the house. Omit the requirement relating to the maximum height of any elevation of the garage or other outbuilding where it meets the eaves of the roof.	This ensures consistency with other exemptions within Class 1 where relating to domestic outbuildings.
Class 1(15). Hard-surfaced areas. (Development within the curtilage of a dwelling-house).	Amend proposed condition that no hard surface created forms a new vehicle or pedestrian access onto a highway to clarify that this includes a private pedestrian road, street, lane or clos. This	Private pedestrian road, street or clos was not specifically mentioned in the 2021 Policy Letter. The definition of highway does not include a private road unless accessed via vehicle. The

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 2(9)[8]. Hard-surfaced areas. (Development within the curtilage of a flat or a building containing flats). **Class 4(3)[9]. Hard-surfaced areas. (Development within the curtilage of a non-domestic building).**	is necessary as such private pedestrian roads etc are not included in the definition of highway in the Ordinance**.** In Class 2(9), restrict proposed condition restricting the materials to be used to the existing materials so that it only applies within a Conservation Area.	change is proposed to restrict the creation of any new accesses to preserve road frontages and therefore the character of the built environment. To ensure consistency with the parallel exemptions in Classes 1(15) and 4(3).
Class 1(23). Removal of a hedge. (Development within the curtilage of a dwelling-house). **Class 2(13)[10]. Removal of hedge. (Development within the curtilage of a flat or a building containing flats).**	Remove condition requiring that the removal of a hedge must not result in encroachment onto neighbouring land.	The condition is removed as the removal of the hedge itself will not result in encroachment. Also, where a hedge forming a boundary with a neighbouring property is removed, it has to be replaced with a replacement hedge so that encroachment issues should not arise.

[8] This was listed as new Class 1B.9 in the 2021 Policy Letter.
[9] This was listed as Class 2.3 in the 2021 Policy Letter.
[10] This was listed as new Class 1B.13 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 4(10)[11]. Removal of hedge. (Development within the curtilage of a non-domestic building).		
Class 1(23). Removal of a hedge. (Development within the curtilage of a dwelling-house). **Class 1(26). Air source heat pump/air conditioning unit. (Development within the curtilage of a dwelling-house).** **Class 1(29). Widening of vehicle access. (Development within the curtilage of a dwelling-house).** **Class 1(31). Installation of electric charging point. (Development within the**	Amend to state that exempt development under these classes is not permitted if the building to which it relates, or the exempt development is within a Site of Special Significance.	Carrying out the development permitted under these classes could cause harm to the area thus impacting on the special nature.

[11] This was listed as Class 2.10 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
curtilage of a dwelling-house). **Class 1(34). Construction of external steps. (Development within the curtilage of a dwelling-house).** **Class 1(36). Construction of a ramp. (Development within the curtilage of a dwelling-house).** **Class 1(38). Placement of polytunnel. (Development within the curtilage of a dwelling-house).** **Class 2(8)[12]. Erection of, or works to enclose, porch. (Development within the curtilage of a flat or a building containing flats).**		

[12] This was listed as new Class 1B.8 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 2(9)[13]. Hard-surfaced areas. (Development within the curtilage of a flat or a building containing flats). **Class 2(10)[14]. Construction of external steps. (Development within the curtilage of a flat or a building containing flats).** **Class 2(11)[15]. Gates, fences and walls. (Development within the curtilage of a flat or a building containing flats).** **Class 2(13)[16]. Removal of a hedge (Development within the curtilage of a flat or a building containing**		

[13] This was listed as new Class 1B.9 in the 2021 Policy Letter.
[14] This was listed as new Class 1B.10 in the 2021 Policy Letter.
[15] This was listed as new Class 1B.11 in the 2021 Policy Letter.
[16] This was listed as new Class 1B.13 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
flats). **Class2(16)[17]. Installation of electric charging point. (Development within the curtilage of a flat or a building containing flats).** **Class 2(18)[18]. Construction of a ramp. (Development within the curtilage of a flat or a building containing flats).** **Class 3(3)[19]. Temporary mesh/net fencing. (Residential change of use).** **Class 4(7)[20]. Installation of an air source heat pump or air conditioning unit. (Development within the**		

[17] This was listed as new Class 1B.16 in the 2021 Policy Letter.
[18] This was listed as new Class 1B.18 in the 2021 Policy Letter.
[19] This was not listed in the 2021 Policy Letter and is a new Class.
[20] This was listed as new Class 2.7 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
curtilage of a non-domestic building). **Class 4(9)[21]. Installation of electric charging point. (Development within the curtilage of a non-domestic building).** **Class 4(10)[22]. Removal of a hedge (Development within the curtilage of a non-domestic building)** **Class 5(3)[23]. Erection of temporary mesh or net fencing to support plants. (Maintenance, repair, minor alterations and temporary structures and uses).** **Class 6(4)[24]. Placement or**		

[21] This was listed as new Class 2.9 in the 2021 Policy Letter.
[22] This was listed as new Class 2.10 in the 2021 Policy Letter.
[23] This was listed as new Class 3.3 in the 2021 Policy Letter.
[24] This was listed as new Class 4.4 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
erection of temporary polytunnel or glasshouse on land used for horticulture. (Agricultural development). **Class 6(5)[25]. Erection of other small-scale structures. (Agricultural development).** **Class 6(6)[26]. Demolition or clearance of glasshouse and associated structures. (Agricultural development).**		
Class 1(25). Installation of a chimney stack or flue (Development within the curtilage of a dwelling-house).	Amend the condition applying to certain, more sensitive, locations (those within a conservation area, pre-1900 or attached to a dwelling-house or another structure which is substantially constructed pre-1900) so that it refers to a position facing a highway instead of stacks or flues only installed on a roof slope.	This amendment is necessary to cover the case of a flue or chimney being installed on a wall or a flat roof.

[25] This was listed as new Class 4.5 in the 2021 Policy Letter.
[26] This was listed as new Class 4.6 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	Add condition to require restriction on these features *not* installed in a position facing a highway where the building/structure on which it is installed is attached to the dwelling-house or other structure which is substantially constructed pre-1900. Add condition that chimney stack or flue can only be inserted on a dwelling-house or outbuilding.	This captures the erection of a chimney or flue which is not positioned facing a highway as the impacts on the conservation area or on the appearance of a building substantially constructed pre-1900 could be significant. Allowing the installation of these structures within the curtilage of a dwelling-house could result in chimneys or flues being installed against boundaries which would be undesirable because of impacts on neighbouring amenity.
Class 1(27). Change of ground levels. (Development within the curtilage of a dwelling-house). **Class 4(8)[27]. Excavation and change in ground levels. (Development within the curtilage of a non-domestic building).**	Add condition stating that ground level must not be raised within 2m of a neighbouring boundary.	Restriction considered necessary to protect the amenity of neighbouring occupiers.

[27] This was listed as new Class 2.8 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 1(30). Alterations to roofs. (Development within the curtilage of a dwelling-house).	Altered to allow an additional increase in height from 4m to 4.5m where any part of the altered roof is located more than 1m from a boundary with a neighbouring property.	This has been altered to remain consistent with other height restrictions in similar locations within Class 1.
Class 1(32). Placement or erection of bike barn or storage unit. (Development within the curtilage of a dwelling-house). **Class 2(17)[28]. Placement or erection of bike barn or storage unit. (Development within the curtilage of a flat or a building containing flats).**	Alter relevant conditions so that bike barns or storage units can be fixed to the ground but they cannot be attached to the dwelling-house/flat, or building containing flats or other structure. Include a maximum base area as well as height for the two different locations i.e., 1. located near or facing a highway or 2. located in other locations.	This ensures these developments remain free standing as intended. Limits the exemption in terms of base area as well as height.
Class 2(6)[29]. Re-roofing. (Development within the curtilage of a flat or a building containing flats).	Clarify that exemption applies to individual flats as well as buildings containing flats and that re-roofing of a dormer is included. Expand to include restrictions on materials where	To make the extent of the amendment clearer. The express reference to re-roofing of a dormer makes it clear that this is included in the exemption. An amendment to include structures attached to

[28] This was listed as new Class 1B.17 in the 2021 Policy Letter.
[29] This was listed as Class new 1B.6 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	the structure is attached to a building containing flats which is substantially constructed pre-1900.	such buildings containing flats is consistent with the policy aim of reducing visual effects on more sensitive buildings.
	Amend the conditions to state that when re-roofing a dormer on a flat or a building containing flats within a conservation area or which forms part of, or is attached to, a building which is substantially constructed pre-1900, materials are limited to slate, clay tiles or the same material as that it is replacing. Other parts of the roof in such buildings are limited to slate and clay tiles (The same amendment is proposed to **Class 4(2)**[30] as detailed below**).**	The materials are limited on pre-1900 buildings, in conservation areas and where the structure re-roofed is attached to a building containing flats that is also substantially constructed pre-1900 consistent with Classes 1(6) and 1(8).
	Remove requirement for the original construction of flat or building containing flats to be lawful.	This condition was removed to be consistent with the similar exemption for dwelling-houses and non-domestic buildings.
Class 2(8)[31]**. Erection of, or works to enclose, porch. (Development within the curtilage of a flat or a building containing flats).**	Add additional condition to restrict the erection of new porches where the flat or building containing flats is within a conservation area or substantially constructed pre-1900 to an elevation that doesn't face a highway.	This restriction would ensure consistency with Class 1(9).

[30] This was listed as Class 2.2 in the 2021 Policy Letter.
[31] This was listed as new Class 1B.8 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	Add condition to permit only one porch to each elevation of a flat or building containing flats. This has been further clarified to state that it applies to individual flats also.	The additional condition is added to ensure that there is a limitation on numbers in the interests of visual amenity and design. This is also consistent with Class 1(9).
Class 2(17)[32]. Placement of bike barn or storage unit. (Development within the curtilage of a flat or a building containing flats).	Change from 2021 Policy Letter as exemption now does not relate to building containing flats but only individual flats.	It was inconsistent with the policy intention and it was realised through drafting that the conditions meant that in practice these works could not have been carried out in relation to a building containing flats.
Class 3(2)[33]. Change from a use within Use Class 1 or 2 to a use as part of dwelling for business purposes. (Residential changes of use).	Clarify the intention is • to retain the existing exemption for a change from use as part of a dwelling for business purposes in Use Class 5 to use within Use Class 1 or 2 (in Class 3(1)); and • to create a new exemption for a change from Use Class 1 or 2 to use as part of a dwelling for business purposes. Provide for the new exemption to apply to any land which is on or within the curtilage of a protected building or a protected monument	The 2021 Policy Letter did not refer to the existing exemption for a change from Use Class 5 (use as part of a building for business purposes) to Use Class 1 (dwelling-house or flat). The suggested amendment makes the policy intention clear that exemptions apply to both changes of use subject to the original conditions to be applied to the new exemption only for a change of use from Class 1 or 2 to Class 5. This is consistent with the existing exemption for a change from Use Class 5 to Use Class 1 or 2.

[32] This was listed as new Class 1B.17 in the 2021 Policy Letter.

[33] This was not set out as intended at Class 1A.1 in the 2021 Policy Letter. The current exemption was set out for a change of use from Use Class 5 to Use Class 1 or 2 but the proposed conditions were intended to apply instead to the new exemption for a change from Use Class 1 or 2 to Use Class 5.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	consistent with the existing related exemption. Omit condition proposed for new exemption limiting number of rooms utilised and requiring principal use of building to be residential.	 This is not necessary as the requirement that the use of the building is principally residential is already required under the Land Planning and Development (Use Classes) Ordinance, 2017 (Use Classes Ordinance) for premises to fall within Use Class 5. It was also considered, as part of the drafting process, that any limitation on the number of rooms should be provided for in the Use Classes Ordinance. However, it was decided that the current description of Use Class 5 in the Use Classes Ordinance should be amended to remove the requirement that the use is carried out in not more than two rooms. This was because it was regarded as a sufficient limitation to require the dwelling to be used principally as a residence for one household. This is consistent with policy in allowing more flexibility for householders in carrying out business from their residences. Any necessary consequential amendment to the Use Classes Ordinance was approved by the States in the resolutions following the 2021

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
		debate.
Class 4(2)[34]. Re-roofing. (Development within the curtilage of a non-domestic building).	Clarify that the re-roofing of dormers is included within the wording. Add a condition to say when re-roofing a dormer on a non-domestic building which is within a conservation area or substantially constructed pre-1900, materials are limited to slate, clay tiles or in the same material as that it is replacing. Other parts of the roof in such buildings are limited to slate and clay tiles. Expand the condition to require specific materials to be used also where a structure is attached to a non-domestic building which is substantially constructed pre-1900. Allow the re-roofing of either existing felt-clad or corrugated sheet clad roofs (not within a Conservation Area) to be re-roofed in natural slate, clay tiles, glass reinforced plastic ("GRP") or	The express reference to the re-roofing of a dormer makes it clear that this is also included in this exemption. However, the materials are limited on pre-1900 buildings and within conservation areas consistent with Classes 1(6), 1(8) and 2(6). Included to ensure that the impact on pre-1900 buildings is controlled. This could be affected by something attached to such a structure. The 2021 Policy Letter referred to the re-roofing of existing felt clad, flat roofs in GRP/single ply. The inclusion of all corrugated sheet-clad and felt-clad roofs would allow additional flexibility and would be consistent with the existing exemption in the 2007 Exemptions Ordinance. Allowing re-roofing of corrugated-sheet-clad roofs in specified other materials is consistent with the approved policy for felt clad roofs.

[34] This was listed as Class 2.2 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
	single ply roofing Adjust wording to clarify exemption is for re-roofing and not just re-cladding.	
Class 4(14)[35]. Installation of a roof fall protection system. (Development within the curtilage of a non-domestic building).	Change to include a skylight protection device which would include rails or a similar device for the purpose of arresting/preventing a fall through, or injury from falling onto, a sky light, roof light or similar structure.	This would allow further related development without planning permission and it is logical to include safety systems used in relation to skylights.
Class 5(3)[36]. Erection of temporary mesh or net fencing to support plants. (Maintenance, repair, minor alterations and temporary structures and uses).	Clarify that the exemption is to apply on, or within, the curtilage of a dwelling-house, flat, building containing flats, or non-domestic building or on an outbuilding or other structure within the curtilage of any such building, including where such building is a protected building or a protected monument.	The 2021 Policy Letter is silent on the locations where the exemption would be applicable, but it is logical to also include all categories of buildings/curtilage to which most exemptions relate.
Class 6(2)[37]. Installation of a gate on agricultural land. (Agricultural development)	Omit the requirement that the gate must not be used to provide gated parking.	It is not considered necessary to include this as the exemption only exempts installation of a gate on land used for agricultural purposes and so would not permit a change of use to use as a parking area. As such any parking would be in connection to and ancillary/incidental to the main agricultural use or amount to a minor use not

[35] This was listed as new Class 2.14 in the 2021 Policy Letter.
[36] This was listed as new Class 3.3 in the 2021 Policy Letter.
[37] This was listed as Class 4.2 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
		involving a material change of use of the land.
Class 7(5)[38]. Development in relation to the supply of electricity. (Development by the States and public utility providers).	Amend the height of enclosures consisting of fencing where not within 1m of a highway boundary to 2.5m.	The actual height of GRP substation enclosures is 2.5m which forms the basis of this exemption. If the height permissible were not increased, planning permission would be required for all such enclosures contrary to the policy intention.
Class 7(10)[39]. Minor works for navigational purposes. (Development by the States and public utility providers).	Omit the provision for the erection of CCTV within this exemption.	There is a separate existing exemption which permits the erection of CCTV where carried out by or on behalf of the States; therefore including a provision within this exemption is not necessary.
Class 7(17)[40]. Water refill points. (Development by the States and public utility providers).	Add further conditions requiring that – • no advert is displayed on the water refill point, and • when the water refill point is no longer used/required it will be removed.	The condition is consistent with the requirement that no advert is displayed on a bus shelter, cycle shelter/cycle hoop allowed under this class. This will ensure that any disused equipment is removed from the area therefore reducing visual clutter.
Class 10(2)[41]. Nameplates (Signs, advertisements and temporary art installations).	Amend to clarify that a nameplate should also not be displayed to a tree.	The 2021 Policy Letter refers only to extending this to not displaying on a hedge or earth bank, however the extension to also cover a tree is logical in relation to the other two elements.

[38] This was listed as Class 5.5 in the 2021 Policy Letter.
[39] This was listed as Class 5.10 in the 2021 Policy Letter.
[40] This was listed as new Class 5.17 in the 2021 Policy Letter.
[41] This was listed as new Class 8.2 in the 2021 Policy Letter.

Changes noted in Policy Letter (December 2021)	Changes proposed following legal drafting	Reasons for changes necessary
Class 10(9)[42]. Signs within an existing fascia board. (Signs, advertisements and temporary art installations).	Amend to clarify that the exemption applies to signs attached to a non-domestic building or other non-domestic structure. Amend condition relating to pre-1900 buildings so that it only applies where sign is erected in conservation areas or on a pre-1900 building and not where erected within the curtilage of such a building.	This provides further clarity to the exemption. The impact of signage in terms of materials, lettering and design can impact on the visual appearance of these more sensitive buildings and locations.
Class 10(13)[43]. Temporary Art Installations. (Signs, advertisements and temporary art installations).	Additional condition included requiring the installation to not result in the removal of a landscape feature other than the art installation it is replacing.	The inclusion of this condition would ensure that there is no impact on the natural environment or loss of significant landscape feature that has benefit to the area. In this instance the definition of a landscape feature has been widened to incorporate existing art work as this could have been installed as a requirement of planning permission.

[42] This was listed as new Class 8.9 in the 2021 Policy Letter.
[43] This was listed as new Class 8.11 in the 2021 Policy Letter.

Changes to the 'Repeals, transitional provision and saving' section

It is proposed that the new Ordinance will include a standard, transitional provision for any development carried out before the commencement of the new Exemptions Ordinance but in accordance with the 2007 Ordinance. Owners and developers will have a period of 12 months to complete physical operational development, exempted under the 2007 Ordinance and started before the repeal of that Ordinance once the new Exemptions Ordinance commences. The development will have to be completed in accordance with the 2007 Ordinance.

States' approval is not being sought for this transitional/saving provision as it is considered it is implicit upon their approval of the existing amendments. However, this Policy Letter is detailing, for information, two differences from the transitional/saving provision in the 2007 Ordinance.

The first difference is it is proposed that the transitional/saving provision is not applied to material changes of use exempted under the 2007 Ordinance i.e., a change from one Use Class to another, for example, from a use as a dwelling in Use Class 1 or a flat in Use Class 2 to use as part of a dwelling for business purposes in Use Class 5. This is because such changes, unlike physical development, are not carried out over an extended period so it is very unlikely that a change of use would be ongoing when the Ordinance comes into force. Also, the new Ordinance contains parallel exemptions for changes of use so that the changes can be made when it comes into force.

The second difference is to include a provision clarifying that changes of use or notifications made under the current temporary visitor accommodation change of use exemption will be treated as being made under the mirrored exemption in the new Ordinance. The current and new exemptions apply to a temporary change of use of visitor accommodation made from late March 2020 until the end of December 2023 and provide for notifications to be made in relation to such changes. The provision will make it clear to owners of visitor accommodation that they will not have to resubmit notifications made under the current Ordinance as the changes of use and notifications will be treated as if made under the new Ordinance.

The Land Planning and Development (Exemptions) Ordinance, 2023

ARRANGEMENT OF SECTIONS

1. Exempt development.
2. Interpretation and construction.
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SCHEDULE 1: Exempt development

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Class 10 Signs, advertisements and temporary art installations.
Class 11 Retail and administrative, financial and professional change of use.
Class 12 Visitor accommodation change of use.
Class 13 Demolition.

SCHEDULE 2: Visitor Accommodation change of use.
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The Land Planning and Development (Exemptions) Ordinance, 2023

THE STATES, in pursuance of their Resolutions of the 15th December, 2021[a] and the ** February, 2023[b], and in exercise of the powers conferred upon them by sections 13(4) to (6), 28, 78(1)(a) and 89 of the Land Planning and Development (Guernsey) Law, 2005[c], and of all other powers enabling them in that behalf, hereby order :-

Exempt development.

1. (1) Subject to subsections (4) and (5), planning permission is not required for the carrying out of any development specified in Schedule 1 in the circumstances, and subject to the provisos if any, specified in relation to that development in Schedule 1 and in subsections (2) and (3).

(2) The proviso referred to in subsection (1), is that the total area of ground within the curtilage of the dwelling-house, covered by development comprising the erection of a new structure and falling within any one or more of -

(a) paragraphs 9 to 15 (porch, extension, garden structure, shed, glasshouse, garage, other outbuilding, car port or hard-surfaced areas),

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a Article No. IX of Billet d'État No. XXV of 2021.

b Article No. ** of Billet d' d'État No. ** of 2023.

c Order in Council No. XVI of 2005; this enactment has been amended.

(b) paragraph 19 (swimming or other pool), and

(c) paragraphs 34 (external steps) and 36 (external ramp),

of Class 1 to Schedule 1 (development within the curtilage of a dwelling-house), including that to be constructed, does not exceed 50% of the total area of the curtilage (excluding the ground area of the dwelling-house as it was originally constructed).

(3) The proviso referred to in subsection (1), is that the total area of ground, within the curtilage of the flat or the building containing flats, covered by development comprising the erection of a new structure and falling within any one or more of -

(a) paragraphs 8 to 10 (porch, hard-surfaced areas or construction of external steps), and

(b) paragraph 18 (external ramp),

of Class 2 to Schedule 1 (development within the curtilage of a flat or a building containing flats), including that to be constructed, does not exceed 50% of the total area of the flat or building containing flats as it was originally constructed.

(4) Subsection (1) does not apply in relation to the carrying out of any development -

(a) in relation to, or

(b) within the curtilage of,

a protected building or protected monument except where there is a specific reference in Schedule 1 to such development.

(5) For the avoidance of doubt, subsection (1) does not operate to exclude the development specified in Schedule 1 from requirements imposed under any building regulations.

(6) Where under any provision of Schedule 1 more than one proviso is attached to an exemption, the exemption applies only if all of those provisos are fulfilled.

(7) The Authority may by Regulations amend Schedule 1 for the purpose of amending, substituting, omitting or adding any proviso to an exemption in that Schedule.

Interpretation and construction.

2. (1) In this Ordinance, unless the context requires otherwise -

"**agriculture**" includes dairy farming, livestock breeding and keeping, horticulture, fruit growing, seed growing, the use of land as arable land, an orchard or as grazing or pasture land, osier land, meadow land, market gardens and nursery grounds; and for the avoidance of doubt, a reference to "**agriculture**" or to any matter or use included within it in this definition includes any such matter or use whether or not carried on as a trade or business,

"**agricultural purposes**" includes all purposes directly connected with the use of land -

(a) for agriculture, or

(b) land treated as land used for agriculture in accordance with section 45A (glasshouse land etc.) of the Law,

but, for the avoidance of doubt, does not include any purposes connected with the use of land as a garden (other than a market garden),

"**altered opening**" means an opening that is being altered only to make minor alterations to accommodate a replacement door, window, roof-light, roof-lantern or sun tunnel,

"**bike barn**" means a structure which is designed and used for the shelter or storage of a bicycle, scooter, motorbike, mobility scooter or motorised wheel chair or other small vehicle but not for a car, van, lorry, caravan, motor-home or other large vehicle,

"**boarding permit**" means a permit granted by the States Committee for Economic Development under and for the purposes of the Tourist Law, 1948[d],

"**building containing flats**" means the communal parts, roof and external walls of a building containing flats,

"**cycle**" or "**bicycle**" includes a tricycle and an electric bicycle or electric tricycle,

"**cabrio-roof-light**" means a roof-light which opens to form a balcony or outlook area with a rail or balustrade projecting beyond the existing roof,

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d Ordres en Conseil Vol. XIII, p. 329; this enactment has been amended.

"**the Data Protection Law**" means the Data Protection (Bailiwick of Guernsey) Law, 2017[e],

"**development**" shall be construed in accordance with section 13(1) of the Law and Part I of the Land Planning and Development (General Provisions) Ordinance, 2007[f],

"**display**" in relation to an advertisement or sign includes attaching to or painting or otherwise exhibiting on any structure or placing on land,

"**dormer**" means a projecting upright window in a sloping roof, the height of which is lower than the apex of the roof from which it projects,

"**drain**" has the meaning given by section 29(1) of the Sewerage (Guernsey) Law, 1974[g],

"**dwelling-house**" does not include a flat, a building containing flats or a building the use of which falls within use class 6 (premises in multiple occupation),

"**exempt development**" means development which is exempted from the requirement for planning permission in accordance with section 1(1),

"**2007 Exemptions Ordinance**" means the Land Planning and Development (Exemptions) Ordinance, 2007[h],

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e Order in Council No. VI of 2018; this enactment has been amended.

f Ordinance No. XXI of 2007; this enactment has been amended.

g Ordres en Conseil Vol. XXIV, p. 372; this enactment has been amended.

"**existing opening**" does not include an altered opening,

"**extension**" means a structure, other than a porch or car port, which is attached to, and used primarily for the non-commercial purposes of, a dwelling-house,

"**flat**" means a self-contained dwelling comprising part of a building and laying wholly or partly above or below some other part of that building including -

(a) that part of the building forming the external walls immediately outside the flat, and

(b) any part of the roof of the building which only serves the flat,

"**glasshouse**" means a structure made predominantly of glass or other transparent or translucent material, which is not attached to a dwelling-house, and which is designed and used for growing plants,

"**glazing**" includes glazing comprised of perspex or other plastics,

"**ground reinforcement system**" means a system installed for the purpose of reinforcing the ground which includes a plastic grid which may be filled with gravel or earth,

"**hard-surfaced area**" does not include an area covered by artificial grass,

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h Ordinance No. XXIII of 2007; this enactment has been amended.

"**hedge**" includes part of a hedge but, for the avoidance of doubt, does not include an earthbank below a hedge,

"**highway**" means any -

(a) vehicular or pedestrian road, street, lane or clos, track or path, however named, used by the public, and

(b) any private vehicular road, street, lane or clos, however named,

"**insulated render system**" means a system for insulating external walls of buildings which is installed on the outside of a building and the final external surface of which is comprised of render,

"**Island Development Plan**" means the Development Plan, entitled the Island Development Plan November, 2016, comprising the Written Statement and Proposals Map adopted by the States on 2nd November, 2016 as amended or replaced from time to time under the Law,

"**LA90 level**" means the average noise level, including low frequency sounds, for 90% of the measurement period,

"**landscape feature**" includes -

(a) a tree, hedge, shrub or area of planting which forms a significant feature in the immediate landscape,

(b) a tree, hedge, shrub, area of planting or other feature in the landscape which was planted in compliance with a condition of a planning permission, and

(c) only for the purposes of Classes 7 and 10 to Schedule 1 -

(i) street furniture within the meaning of paragraph 12(3) of Class 7 to Schedule 1, and

(ii) an art work installed for the benefit of -

(A) the public, or

(B) residents of a particular locality, highway or block of flats,

but, for the avoidance of doubt, not solely for the benefit of the residents of a single dwelling,

"**the Law**" means the Land Planning and Development (Guernsey) Law, 2005,

"**Main Centre**" means the inner areas of Town and the Bridge -

(a) as described, under "Main Centre" in paragraph 1.4.13 of the Island Development Plan, and

(b) which lie within the Main Centre Inner Boundary of Town and the Bridge as described, and marked by a brown boundary line, on the Proposals Map forming part of the Island Development Plan,

"**natural stone**" does not include reconstituted stone,

"**noise sensitive building**" means a building or part of a building comprising -

(a) a dwelling-house, flat, building containing flats or a building the use of which falls within use class 6 (premises in multiple occupation),

(b) a school within the meaning of section 1(1) of the Education (Guernsey) Law, 1970[i], college of further education or other establishment where courses of study are carried on,

(c) a nursing home or a residential home within the meaning of the Nursing Homes and Residential Homes (Guernsey) Law, 1976[j],

(d) a hospital, or

(e) a residential home for children or other establishment used for residential purposes not falling within paragraphs (a) to (d),

"**non-domestic building**" means a building (other than an outbuilding) which is used for a use not falling within any of use classes 1 to 6 (residential use classes),

"**notified**" means notified in writing,

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i Ordres en Conseil Vol. XXII, p. 318; this enactment has been amended.

j Ordres en Conseil Vol. XXVI, p. 71; this enactment has been amended.

"**operational area**" means, in relation to each place referred to in paragraphs 6 to 10 of Class 7 to Schedule 1, that part of the place which is used for purposes connected with its operation as such a place,

"**outline permission**" means planning permission subject to the reservation of particular matters for subsequent approval,

"**positioned at a high level**", where used in relation to a window or door, means a door or window the whole of which is positioned more than 1.7 metres above the floor level (not including any floor covering) of the floor on which it is installed,

"**protected tree**" means any tree, group or area of trees or woodlands in relation to which a tree protection order has been made,

"**public**" includes any section of the public,

"**public highway**" means any vehicular or pedestrian road, street, lane or clos, track or path, however named, used by the public,

"**public sewer**" has the meaning given by section 29(1) of the Sewerage (Guernsey) Law, 1974,

"**public utility service**" means the supply to the public of water, gas, electricity, telecommunications or sewerage disposal services,

"**render**" does not include an insulated render system,

"**roof-lantern**" means a structure, comprised primarily of glazing, which increases the height of, and allows light into, a room,

"**roof-light**" means a window, in the same alignment as a roof slope, which does not project more than 30 centimetres from that roof slope,

"**scooter**" includes an electric scooter,

"**sewer**" has the meaning given by section 29(1) of the Sewerage (Guernsey) Law, 1974,

"**solar product**" means -

(a) solar photovoltaic equipment, including, without limitation, solar tiles,

(b) solar thermal equipment, including, without limitation, a solar hot water collector, or

(c) any other description of equipment designed to capture energy from the sun which is approved in writing by the Authority for the purposes of this definition,

"**SUDs**" means a system for managing rainwater, snow and other precipitation, which -

(a) operates so that rainwater, snow and other precipitation percolates through it into the ground on the site on which the system is located,

(b) does not form part of a public sewer or a natural watercourse, and

(c) is designed with the aim of -

(i) reducing damage from flooding,

(ii) improving water quality,

(iii) protecting and improving the environment,

(iv) protecting health and safety, and

(v) ensuring the stability and durability of drainage systems,

"**sun tunnel**" means a skylight with a highly reflective tunnel attached to it which channels light from the roof of a building into an area of the building below,

"**timber**" includes composite materials which have the appearance of wood but are comprised of wood fibre and other materials,

"**use class**" means a class of uses identified as such by Ordinance of the States under section 13(6) of the Law[k],

"**waste**" has the meaning given by section 73(5) of the Environmental Pollution (Guernsey) Law, 2004[l].

(2) For the purposes of construction of Schedule 1 to this

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[k] The current use classes are identified in the Land Planning and Development (Use Classes) Ordinance, 2017.

[l] Order in Council No. XIII of 2004; this enactment has been amended.

Ordinance, unless the context requires otherwise -

(a) a reference to an "**existing**" structure or other feature or an "**existing**" use includes only a structure or other feature in place or a use carried on immediately before commencement of the new development, work or use concerned, and not created or carried on in breach of the Law,

(b) a proviso that there is only a specified number of a structure or other feature (however worded) refers to the circumstances on completion of the new development concerned,

(c) a proviso that something is "**not within**" a specified site, area, distance of any boundary or highway, or curtilage means that no part of it is within that site, area, distance or curtilage,

(d) in a proviso limiting the floor or base area of any structure all necessary measurements are to be taken internally,

(e) a maximum height or projection or maximum increase in height, in each case, however worded, means that no part of the structure or feature concerned is to exceed that maximum in height or projection or maximum increase in height except where such a maximum is expressly required only in relation to a particular part of such a structure or feature,

(f) in a proviso that a structure or other feature is not within a specified distance of any boundary or highway all necessary measurements are to be taken from the outside face of that structure or other feature and not from any drain, pipes or other fitments to that structure or feature,

(g) an exemption which exempts the installation of anything on, or within the curtilage of, a dwelling-house includes, for the avoidance of doubt, the installation of the same in the garden or other land forming the curtilage of the dwelling-house or on an outbuilding or other structure within that curtilage,

(h) a reference to a solar product being of the same product type (however worded) means that the solar products are -

(i) all of the same specific type of solar product (for example, all solar PV panels, solar tiles or solar water collectors or all of a particular product which falls with a description approved in writing by the Authority under paragraph (c) of the definition of "**solar product**"), and

(ii) all of the same design or one which the Authority has approved in writing as being similar.

Amendment of the Land Planning and Development (Use Classes) Ordinance, 2017.

3. (1) The Land Planning and Development (Use Classes) Ordinance, 2017[m] is amended as follows.

(2) In the table relating to Residential use classes in Schedule 1 (use classes), in the second column of the entry relating to Residential use class 5, delete the words "and carried on in not more than two rooms".

Amendment of the Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021.

4. (1) The Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021[n] is amended as follows.

(2) In section 3 (further modification of section 48(4) of the Law in relation to certain changes of use from a visitor economy use to certain residential uses) -

(a) in subsection (1), for "Class 9A to the Schedule" substitute "Class 12 to Schedule 1",

(b) in subsection (2) -

(i) for "31st January, 2023" substitute "31st January, 2024" and

(ii) for "Class 9A of the Schedule" substitute "Class

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m Ordinance No. IV of 2017; this enactment has been amended.

n Ordinance No. XII of 2021; this enactment has been amended.

12 to Schedule 1".

(3) In section 4 (interpretation), in the definition of "**the Exemptions Ordinance**", for "2007" substitute "2023".

Repeals, transitional provision and saving.

5. (1) The Land Planning and Development (Exemptions) Ordinance, 2007, the Land Planning and Development (Exemptions) (Amendment) Ordinance, 2018[o], section 1 of the Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021 and section 1 of the Land Planning and Development (Visitor Accommodation) (Amendment) Ordinance, 2022[p] are repealed.

(2) The lawfulness of any development carried out before the commencement of this Ordinance without the permission of the Authority but in accordance with the 2007 Exemptions Ordinance is not affected by the repeal of that Ordinance, and any such operational development commenced but not completed may be continued provided that it is completed within 12 months of that repeal and in accordance with the 2007 Exemptions Ordinance.

(3) For the avoidance of doubt, any change of use or notification made in accordance with paragraph 1 or 2 to Class 9A to the Schedule to the 2007 Exemptions Ordinance is, on and from the commencement of this Ordinance, to be treated as if made under the corresponding provision in paragraph 1 or 2 to Class 12 to Schedule 1 to this Ordinance.

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[o] Ordinance No. XVIII of 2018.

[p] Ordinance No. I of 2022.

(4) In this section "**operational development**" means any development other than a material change of use.

Citation.

6. This Ordinance may be cited as the Land Planning and Development (Exemptions) Ordinance, 2023.

Commencement.

7. This Ordinance shall come into force on the ***, 2023.

SCHEDULE 1

Section 1(1)

EXEMPT DEVELOPMENT

CLASS 1

DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLING-HOUSE

Alterations to an external wall of a dwelling-house or an outbuilding.

1. Alterations to an external wall of a dwelling-house, or the external wall of an outbuilding within the curtilage of a dwelling-house, consisting of rendering, removing render or cladding in natural stone, timber or cement boards, provided that -

(a) in the case of the cladding or rendering for the first time of an external wall, the development is not carried out in relation to any building which is -

(i) substantially constructed before 1900, or

(ii) attached to the dwelling-house in question where that dwelling-house is substantially constructed before 1900,

(b) in the case of the cladding for the first time of an external wall, the dwelling-house or the outbuilding, on which the alterations are carried out, is not within a conservation area.

Satellite dish antennas.

2. Installation of a satellite dish antenna on, or within the curtilage of, a dwelling-house provided that -

(a) any satellite dish antenna is to be used principally for the domestic purposes of that dwelling-house,

(b) where it is installed on an elevation of the dwelling-house, there is only one satellite dish antenna on that elevation,

(c) where it is installed within the curtilage of the dwelling-house but not attached to the dwelling-house, there is only one satellite dish antenna in the garden and any other land forming the curtilage of the dwelling-house,

(d) the size of the satellite dish antenna, including any means of fixing does not exceed 1 metre, measured in any dimension,

(e) there are no more than four satellite dish antennas in total installed on, or within the curtilage of, the dwelling-house.

Solar products.

3. Installation of solar products on, or within the curtilage of, a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) where the solar products are mounted on a sloping roof, they are installed parallel to the plane of the roof slope and project no more than 30 centimetres from that plane,

(b) where the solar products are mounted on a flat roof, they are installed so that they are angled at no more than 10 degrees from the roof and project no more than 40 centimetres from the roof,

(c) where the location at which the solar products are installed is, or is within the curtilage of, a protected building, the solar products are not installed on -

(i) a roof slope facing a highway, or

(ii) a flat roof with the products positioned facing a highway,

(d) where the location at which the solar products are installed is not a protected building or is not within the curtilage of a protected building and solar products are installed on a roof slope facing a highway or on a flat roof with the products positioned facing a highway, the solar products installed must -

(i) be of the same product type, and

(ii) where existing solar products are installed on the same roof slope or area of a flat roof, be of

the same product type as the predominant type of existing solar products in that location,

(e) where the solar products are mounted on the ground, none is located forward of any elevation of the dwelling-house that faces a highway,

(f) where the solar products are mounted on the ground -

(i) none exceeds 2 metres in height,

(ii) the total area of the solar products installed, or of those solar products together with any other existing solar products mounted on the ground within the curtilage of the dwelling-house, does not exceed 10 square metres, and

(iii) none is located more than 30 metres from the dwelling-house,

(g) where the location at which the solar products are installed is on, or is within the curtilage of, a protected building or is on, or attached to, the dwelling-house and the dwelling-house is substantially constructed before 1900 -

(i) where the solar products are mounted on a roof, the area of that roof covered by solar products must not exceed 50% of the total area of that roof, and

(ii) where the solar products are mounted on the ground, the area of the ground within the curtilage of the dwelling-house covered by solar products must not exceed 50% of the total area of that curtilage,

(h) the solar products are only mounted -

(i) on the roof of the dwelling-house, or

(ii) on the roof of an outbuilding or other structure, or on the ground, within the curtilage of the dwelling-house.

Replacement of a door, window, roof-light, roof-lantern or sun tunnel in existing opening.

4. The replacement of a door, window, roof-light, roof-lantern or sun tunnel within an existing opening in a dwelling-house provided that, where the dwelling-house is substantially constructed before 1900, the replacement is of the same design, has the same means of opening and is made of the same materials as the one it replaces.

Installation of a door or window in new or altered opening.

5. The installation of a door or window within a new or altered opening in a dwelling-house provided that -

(a) where the dwelling-house is substantially constructed before 1900, the new door or window is not installed on any elevation of the dwelling-house that faces a highway,

(b) where the new door or window is installed in an elevation of the dwelling-house that -

(i) has no existing window or door or only has a window or door -

(A) the glazing of which is all obscured, or

(B) which is positioned at a high level, and

(ii) faces a boundary with a neighbouring residential property,

the new door or window is not within 5 metres of that boundary,

(c) where the new door or window is installed in an elevation of the dwelling-house that –

(i) has an existing window or door -

(A) any of the glazing of which is not obscured, and

(B) which is not positioned at a high level, and

(ii) faces a boundary with a neighbouring residential property,

the new door or window is not within 3 metres of that boundary,

(d) the new door or window is not installed above ground floor level.

Re-roofing.

6. The re-roofing of a dwelling-house or of an outbuilding or any other structure within the curtilage of a dwelling-house other than the re-roofing of a dormer, including a limited increase to the height of the roof which is reasonably necessary in relation to the re-roofing works, provided that -

(a) where the dwelling-house, outbuilding or other structure on which the re-roofing is carried out -

(i) is within a conservation area,

(ii) is substantially constructed before 1900, or

(iii) is attached to the dwelling-house in question and the dwelling-house is substantially constructed before 1900,

the material used is natural slate or clay tiles,

(b) in the case of the re-roofing of an outbuilding or other structure, the original construction, erection or placement of the outbuilding or other structure was carried out lawfully,

(c) any increase in the height of the roof is no more than

30 centimetres measured externally.

Installation of roof-light, roof-lantern or sun tunnel.

7. The installation of a roof-light (other than a cabrio-roof-light), roof-lantern or sun tunnel on the roof of a dwelling-house provided that -

(a) where the roof-light, roof-lantern or sun tunnel is installed on a sloping roof within 10 metres of a boundary with a neighbouring residential property, the height of the cill of the roof-light, roof-lantern or sun tunnel is at least 1.7 metres measured from the finished internal floor of the dwelling-house,

(b) where the roof-light, roof-lantern or sun tunnel is installed in a position where it faces a highway -

(i) it does not exceed 1 metre, measured in any dimension, and

(ii) there are no more than two roof-lights, roof-lanterns or sun tunnels in total facing that highway on the roof in question,

(c) where the dwelling-house is substantially constructed before 1900, the roof-light, roof-lantern or sun tunnel is not installed in a position facing a highway.

Installation or re-roofing of dormer or cladding of dormer cheeks.

8. The installation of a dormer within the roof-space of a dwelling-house, the re-roofing of a dormer or the cladding of the sides of a dormer ("**dormer**

cheeks") on the roof of a dwelling-house, provided that -

(a) in the case of the installation of a dormer, where the dormer is installed on a sloping roof that faces a highway -

(i) it does not exceed 1.1 metres in width measured externally, and

(ii) there are no more than two dormers on the roof slope in question,

(b) in the case of the installation of a dormer, where the dormer is installed on a sloping roof that does not face a highway -

(i) it does not exceed 2 metres in width measured externally, and

(ii) there are no more than two dormers on the roof slope in question,

(c) in the case of the installation of a dormer, any glazed elements in the dormer are not located within 10 metres, measured horizontally, of a boundary with a neighbouring residential property,

(d) in the case of the re-roofing of a dormer or the cladding of dormer cheeks, where the dwelling-house is within a conservation area or is substantially constructed before 1900, the material used is natural

slate or clay tiles or the same material as that which is being replaced.

Erection of, or works to enclose, porch.

9. The erection of a porch, or carrying out works to enclose an existing porch, on any elevation of a dwelling-house provided that -

(a) in the case of the erection of a porch where the dwelling-house is within a conservation area or is substantially constructed before 1900, the porch is located on an elevation of the dwelling-house that does not face a highway,

(b) in the case of the erection of a porch for the first time, the floor area of the porch does not exceed 6 square metres and the height of the porch does not exceed 3 metres,

(c) the porch is not within 2 metres of a highway,

(d) there is only one porch attached to each elevation of the dwelling-house,

(e) the dwelling-house is not within a site of special significance.

The erection of an extension to a dwelling-house.

10. The erection of an extension to a dwelling-house provided that -

(a) no part of the extension extends forward of any elevation of that dwelling-house that faces a highway,

(b) where the dwelling-house is within a conservation area or is substantially constructed before 1900, the extension is located on an elevation of the house that is not visible from a highway,

(c) the floor area of the extension does not exceed 30 square metres,

(d) the height of the roof of the extension -

(i) where the roof is pitched, does not exceed 4.5 metres measured to the apex of that roof, or

(ii) where the roof is flat, does not exceed 3.5 metres,

(e) where any part of the extension is located within 1 metre of any boundary with a neighbouring property, the height of that part does not exceed 3 metres,

(f) glazing is not included within any elevation which faces a boundary with a neighbouring property and is located within 3 metres of that boundary,

(g) any opening designed to admit a motor vehicle is set back at least 5 metres from a highway accessible from that opening,

(h) the dwelling-house, including the extension to be erected, is not within a site of special significance.

Erection of a pergola or other garden structure.

11. The erection of a pergola or other garden structure designed and used for the support of plants within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building or a protected monument, provided that -

(a) no part of the structure extends forward of any elevation of the dwelling-house that faces a highway,

(b) the height of the structure does not exceed 3 metres,

(c) neither the dwelling-house nor the structure to be erected is within a site of special significance.

Erection of shed.

12. The erection of a freestanding shed, within the curtilage of a dwelling-house, to be used primarily for the non-commercial purposes of that dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building or a protected monument, provided that -

(a) no part of the shed extends forward of any elevation of the dwelling-house that faces a highway,

(b) the height of the roof of the shed -

(i) where the roof is pitched, does not exceed 4.5 metres measured to the apex of the roof, or

(ii) where the roof is flat, does not exceed 3.5 metres,

(c) where any part of the shed is located within 1 metre of the boundary of a neighbouring property, the height of that part does not exceed 3 metres,

(d) the base area of the shed does not exceed 10 square metres,

(e) there is only one shed within the curtilage,

(f) neither the dwelling-house nor the shed is within a site of special significance.

Erection of glasshouse.

13. The erection of a freestanding glasshouse, within the curtilage of a dwelling-house, to be used primarily for the non-commercial purposes of that dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building or a protected monument, provided that -

(a) no part of the glasshouse extends forward of any elevation of the dwelling-house that faces a highway,

(b) the height of the roof of the glasshouse -

(i) where the roof is pitched, does not exceed 4.5 metres measured to the apex of the roof, or

(ii) where the roof is flat, does not exceed 4 metres,

(c) where any part of the glasshouse is located within 1 metre of the boundary of a neighbouring property the

height of that part does not exceed 3 metres,

(d) the base area of the glasshouse does not exceed 30 square metres,

(e) there is only one glasshouse within the curtilage,

(f) neither the dwelling-house nor the glasshouse is within a site of special significance.

Erection of freestanding garage, other outbuilding or car port.

14. The erection of a freestanding garage, or a freestanding or attached car port or other freestanding outbuilding (not falling within paragraph 12 or 13) within the curtilage of a dwelling-house, to be used primarily for the non-commercial purposes of that dwelling-house provided that -

(a) no part of the garage, car port or other outbuilding extends forward of any elevation of the dwelling-house that faces a highway,

(b) where the garage, car port or other outbuilding erected is visible from a highway and is -

(i) within a conservation area, or

(ii) attached to the dwelling-house in question and the dwelling-house is substantially constructed before 1900,

the garage, car port or outbuilding erected does not have a flat roof,

(c) the height of the roof of the garage, car port, or other outbuilding -

(i) where that roof is pitched, does not exceed 4.5 metres measured to the apex of the roof, or

(ii) where the roof is flat, does not exceed 3.5 metres,

(d) where any part of the garage, car port or other outbuilding is located within 1 metre of the boundary of a neighbouring property, the height of that part does not exceed 3 metres,

(e) the base area of the garage, car port or other outbuilding does not exceed 30 square metres,

(f) any opening designed to admit a motor vehicle is set back at least 5 metres from a highway accessible from that opening,

(g) there is only one of any such structure in total within the curtilage,

(h) neither the dwelling-house nor the garage, car port or other outbuilding erected is within a site of special significance.

Hard-surfaced areas.

15. The creation, extension or re-surfacing of a hard-surfaced area, including timber decking, within the curtilage of a dwelling-house provided that -

(a) where the hard-surfaced area is within a conservation area -

(i) in the case of an extension of an existing hard-surface, the material used is the same as the existing material, or

(ii) in any other case, the material used comprises -

(A) loose laid natural stone gravel,

(B) paviours or bricks made, in either case, from concrete or clay,

(C) natural stone setts or natural paving slabs,

(D) timber boarding, or

(E) a ground reinforcement system,

(b) no part of any area created or extended is more than 30 metres from the dwelling-house,

(c) no part of any area created or extended forms a new vehicle or pedestrian access onto a highway or a private pedestrian road, street, lane or clos, however named,

(d) the height of any timber decking or other hard-surface

created is not more than 50 centimetres above ground level,

(e) in the case of the creation or re-surfacing of a hard-surfaced area but not the extension of an existing hard-surfaced area, the hard-surface must be created or resurfaced so that -

(i) it is permeable, and

(ii) rainwater drains from the area into a soakaway or SUDS,

(f) neither the dwelling-house nor the hard-surfaced area is within a site of special significance.

Gates, fences and walls.

16. The erection or replacement of a gate, fence, or wall within or along a boundary of the curtilage of a dwelling-house provided that -

(a) the height of such a structure erected within or along a boundary of the curtilage of a dwelling-house does not exceed 2 metres in height above any land within 2 metres on either side,

(b) the height of that part of a structure which is erected in front of any elevation of the dwelling-house that faces a highway does not exceed 90 centimetres in height above any land within 2 metres on either side,

(c) any fence is of timber construction,

(d) any gate is of timber or metal construction,

(e) any wall is of natural stone or rendered blockwork,

(f) in the case of the replacement of a gate, fence or wall, the original construction, erection or placement of the gate, fence or wall was carried out lawfully,

(g) neither the dwelling-house nor the structure to be erected is within a site of special significance.

Domestic fuel containers.

17. The installation within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, of one container (including any associated catchpit) for any type of fuel where that container is used primarily for the domestic purposes of that dwelling-house, provided that -

(a) where the container is sited forward of any elevation of the dwelling-house that faces a highway, it is completely buried below the level of the ground surrounding it,

(b) no part of the container (disregarding pipes and fittings) is more than 2.5 metres above the ground surrounding it,

(c) the volume of the container does not exceed 1.50 cubic metres,

(d) neither the dwelling-house nor the container is within

a site of special significance.

Domestic cesspits or soakaways.

18. The installation of a cesspit or soakaway, wholly below ground, within the curtilage of the dwelling-house which it serves, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that neither the dwelling-house nor the cesspit or soakaway is within a site of special significance.

Installation of a swimming or other pool.

19. The installation of a swimming or other pool within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the swimming or other pool is not located forward of any elevation of the dwelling-house that faces a highway,

(b) neither the dwelling-house nor the swimming or other pool is within a site of special significance,

(c) the swimming or other pool is not within 2 metres of a boundary with a neighbouring residential property.

Installation of a traffic mirror.

20. The installation of a traffic mirror within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the size of the mirror, including any means of fixing,

does not exceed 90 centimetres, measured in any dimension,

(b) the mirror is installed so that it does not interfere with the flow of traffic on a highway or movement of pedestrians on a highway.

Installation of a flagpole.

21. The installation of a free-standing flagpole within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the height of the flagpole does not exceed 5 metres,

(b) no advertising material is flown from the flagpole,

(c) there is only one flagpole within the curtilage of the dwelling-house.

Placing of a caravan.

22. The placing of a caravan on land within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the caravan is not used for human habitation,

(b) there is only one caravan within the curtilage of the dwelling-house.

Removal of a hedge.

23. The removal of a hedge within or along a boundary of the curtilage of

a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the removal of the hedge is not carried out in the period beginning on 1st March and ending on the 31st July in any calendar year,

(b) where the hedge that is removed forms a boundary with a neighbouring property, a highway or a private pedestrian road, street, lane or clos, however named, it is replaced with another hedge of a species native to Guernsey within a period of eight weeks starting on the date of the removal of the original hedge,

(c) the hedge does not form a field boundary,

(d) neither the dwelling-house nor the hedge is within a site of special significance.

Demolition or rebuilding of a chimney stack.

24. The demolition, demolition and rebuilding or the rebuilding of a chimney stack on, or within the curtilage of, a dwelling-house, provided that -

(a) where the dwelling-house, outbuilding or other structure, within the curtilage of the dwelling-house to which the chimney stack is attached, is substantially constructed before 1900, the chimney stack must be rebuilt and be of the same design and materials as the one it replaces,

(b) in any other case, where the chimney stack is demolished and not rebuilt, the materials in the location of the former chimney stack must match the predominant material used in the relevant part of the roof of the dwelling-house, outbuilding or other structure in question.

Installation of a chimney stack or flue.

25. The installation of a chimney stack or flue for a boiler or stove on a dwelling-house or an outbuilding within the curtilage of a dwelling-house, provided that where the dwelling-house or outbuilding on which the installation is carried out -

(a) is within a conservation area,

(b) is substantially constructed before 1900, or

(c) is attached to the dwelling-house or another structure, within the curtilage of the dwelling-house, which is substantially constructed before 1900,

the chimney stack or flue must not be installed in a position facing a highway.

Installation of an air source heat pump or air conditioning unit.

26. The installation of an air source heat pump or an air conditioning unit within the curtilage of a dwelling-house, provided that -

(a) there is only one in total of either such appliance within the curtilage,

(b) there is only one fan in the air source heat pump or air

conditioning unit,

(c) the air source heat pump or air conditioning unit -

(i) is not within 1 metre of a boundary with a neighbouring property, and

(ii) does not exceed 1 metre in height, 1 metre in width and 350 mm in depth,

(d) the noise level emitted from the air source heat pump or air conditioning unit, when calculated at 1 metre from the outside face of the closest elevation of the nearest neighbouring noise sensitive building, does not exceed 5 decibels below the LA90 level of the background noise measured at that location prior to installation of the pump or unit,

(e) neither the dwelling-house nor the air source heat pump or air conditioning unit is within a site of special significance.

Change of ground levels.

27. Development to raise or lower the level of the ground within the curtilage of a dwelling-house provided that -

(a) neither the dwelling-house nor its curtilage is within a site of special significance,

(b) the increase or decrease in the height of the ground does not exceed 50 centimetres,

(c) the level of the ground is not raised within 2 metres of a boundary with a neighbouring property,

(d) there are no protected trees or roots of protected trees within the area in which the ground level is to be changed,

(e) the excavation does not result in the creation of a swimming pool, spa pool, other pool or pond.

Installation of external insulated render system.

28. (1) The installation of an insulated render system to the external walls of a dwelling-house provided that, where the dwelling-house is within a conservation area or is substantially constructed before 1900, the installation does not result in the loss of or obscuring of any distinctive features.

(2) In this paragraph "**distinctive features**" includes, without limitation, granite detailing, brick arches, decorative quoins and render bands.

Widening of vehicular access.

29. The widening of a vehicular access to a dwelling-house, within the curtilage of a dwelling-house, provided that -

(a) there is only one vehicular access serving the dwelling-house,

(b) the vehicular access is not within a conservation area,

(c) neither the dwelling-house nor the vehicular access is within a site of special significance,

(d) the dwelling-house is not substantially constructed before 1900,

(e) the width of the widened vehicular access, measured at the point where the boundary of the curtilage of the dwelling-house meets the highway, does not exceed 4 metres.

Alterations to roofs.

30. The alteration of the roof of an extension to a dwelling-house or the roof of an outbuilding within the curtilage of a dwelling-house provided that -

(a) the extension or outbuilding on which the alteration is carried out is not substantially constructed before 1900,

(b) the extension or outbuilding is not attached to the dwelling-house in question where the dwelling-house is substantially constructed before 1900,

(c) the original construction of the extension or outbuilding was carried out lawfully,

(d) where any part of the altered roof is located within 1 metre of a boundary with a neighbouring property, the height of that part does not exceed 3 metres,

(e) where any part of the altered roof is located 1 metre or more from a boundary with a neighbouring property, the height of that part does not exceed -

(i) 4.5 metres if the roof is pitched, measured to the apex of the roof, or

(ii) 3.5 metres if the roof is flat.

Installation of electric charging point.

31. (1) The installation of an electric charging point on, or within the curtilage of, a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) subject to subparagraph (2), the charging point must be installed principally for the use of vehicles used in connection with the use of the dwelling-house as a dwelling,

(b) the charging point must be installed so that a vehicle using it is located wholly within the curtilage of the dwelling-house,

(c) neither the dwelling-house nor the electric charging point is within a site of special significance.

(2) Subparagraph (1)(a) does not prevent the installation of a charging point to be used by a company car or trade van which is also used as a means of private transport by the residential occupier of the dwelling-house.

Placement or erection of bike barn or storage unit.

32. The placement or erection of a bike barn or a storage unit used for the storage of items used in connection with the use of the dwelling-house as a dwelling, within the curtilage of a dwelling-house, including where such house or its curtilage

is, or is within the curtilage of, a protected building, provided that -

(a) the bike barn or storage unit is not attached to the dwelling-house or another structure within the curtilage of the dwelling-house,

(b) where the bike barn or storage unit is located forward of an elevation of the dwelling-house in a position facing a highway or is otherwise located within 1 metre of a highway -

(i) its base area does not exceed 3 square metres,

(ii) it does not exceed 1.2 metres in height, and

(iii) there is only one bike barn or storage unit in total in that location,

(c) where the bike barn or storage unit does not fall within item (b) -

(i) its base area does not exceed 6 square metres, and

(ii) it does not exceed 2 metres in height.

Replacement of balustrade.

33. The replacement of a balustrade around a balcony of a dwelling-house or an outbuilding or other freestanding building within the curtilage of a dwelling-house or around a terrace located within the curtilage of a dwelling-house, provided that -

(a) the existing balcony or terrace is not extended as part of the development,

(b) the height of the balustrade, measured from the floor of the balcony or terrace, is at least 1.1 metres but does not exceed 1.8 metres,

(c) any existing privacy screen around the balcony or terrace is retained or replaced by a new screen of the same size, design (including level of opacity) and materials.

Construction of external steps.

34. The construction of external steps within the curtilage of a dwelling-house provided that -

(a) none of the steps is located more than 30 metres from the dwelling-house,

(b) where any part of the steps is located within 2 metres of a boundary with a neighbouring property, the height of any step does not exceed 50 centimetres above the existing ground level where the step is located,

(c) where any part of the steps is located 2 metres or more from a boundary with a neighbouring property, the height of any step does not exceed 1.5 metres above ground level,

(d) neither the dwelling-house nor any part of the steps is within a site of special significance.

Construction of earthbanks.

35. The construction of an earthbank within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) neither the dwelling-house nor the earthbank is within a site of special significance,

(b) where the earthbank is located adjacent to a highway, its height does not exceed 90 centimetres,

(c) the earth bank must be constructed so that -

(i) it has a gradient of 1:4 and is turfed with natural grass, or

(ii) it has a gradient of 1:3 and is turfed or seeded with natural grass or natural grass seeds.

Construction of external ramp.

36. The construction of an external ramp, within the curtilage of a dwelling-house, to provide access to the dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building provided that neither the dwelling-house nor the ramp is within a site of special significance.

Installation of energy storage equipment.

37. The installation of equipment to store energy at ground floor level on any elevation of a dwelling-house which cannot be seen from a highway provided

that -

(a) there is only one such item of equipment installed on the dwelling-house,

(b) the noise level emitted from the equipment, when measured at 1 metre from the outside face of the closest elevation of the nearest neighbouring noise sensitive building, does not exceed 5 decibels below the LA90 level of the background noise measured at that location prior to installation of the equipment.

Placement of polytunnel.

38. The placement of a polytunnel within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building provided that -

(a) the area of the polytunnel does not exceed 30 square metres,

(b) where any part of the polytunnel is located within 1 metre of a boundary with a neighbouring property, the height of that part does not exceed 3 metres,

(c) where any part of the polytunnel is located 1 metre or more from a boundary with a neighbouring property, the height of that part does not exceed 3.5 metres,

(d) where the polytunnel is not used throughout an entire calendar year, it must be removed from the site within

two months of the end of that calendar year,

(e) neither the dwelling-house nor the polytunnel is within a site of special significance.

CLASS 2

DEVELOPMENT WITHIN THE CURTILAGE OF A FLAT OR A BUILDING CONTAINING FLATS

Alterations to an external wall of a building containing flats.

1. Alterations to an external wall of a building containing flats consisting of rendering, removing render or cladding in natural stone, timber or cement boards, provided that -

(a) the same alterations, including design and materials used, are made to the entire wall,

(b) in the case of cladding or rendering for the first time of an external wall, the building is not substantially constructed before 1900,

(c) in the case of the cladding for the first time of an external wall, the building containing flats is not within a conservation area.

Satellite dish antennas.

2. Installation of a satellite dish antenna on an external elevation of a flat which the dish serves, or on an outbuilding or other structure within the curtilage of a flat, provided that -

(a) any satellite dish antenna is to be used principally for

the domestic purposes of the flat,

(b) there is only one satellite dish installed in total on an external elevation of the flat and any other land within the curtilage of the flat,

(c) the size of the satellite dish antenna, including any means of fixing, does not exceed 1 metre, measured in any dimension.

Solar products.

3. (1) Installation of solar products -

(a) on, or within the curtilage of a flat, or

(b) on, or within the curtilage of, a building containing flats,

including on an outbuilding within either such curtilage or where such flat or building containing flats, or its curtilage is, or is within the curtilage of, a protected building and provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) where the solar products are mounted on a sloping roof, they are installed parallel to the plane of the roof slope and project no more than 30 centimetres from that plane,

(b) where the solar products are mounted on a flat roof, they are installed so that they are angled at no more

than 10 degrees from the roof and project no more than 40 centimetres from the roof,

(c) where the location at which the solar products are installed is, or is within the curtilage of, a protected building, the solar products are not installed on -

(i) a roof slope facing a highway, or

(ii) a flat roof with the products positioned facing a highway,

(d) where the location at which the solar products are installed is not a protected building, or is not within the curtilage of a protected building and solar products are installed on a roof slope facing a highway or on a flat roof with the products positioned facing a highway, the solar products installed must -

(i) be of the same product type, and

(ii) where existing products are installed on the same roof slope or area of a flat roof, be of the same product type as the predominant type of existing solar products in that location,

(e) where the solar products are mounted on the ground, none is located forward of any elevation of the flat or building containing flats, within the curtilage of which the solar products are installed, that faces a

highway,

(f) where the solar products are mounted on the ground -

(i) none exceeds 2 metres in height,

(ii) the total area of the solar products installed, or of those solar products together with any other existing solar products mounted on the ground within the curtilage of the flat or building containing flats where the solar products are installed, does not exceed 10 square metres, and

(iii) none is located more than 30 metres from the flat or building containing flats within the curtilage of which the solar products are installed,

(g) where the location at which the solar products are installed is on, or is within the curtilage of, a protected building, forms part of a building which is substantially constructed before 1900 or is attached to a building containing flats and that building is substantially constructed before 1900 -

(i) where the solar products are mounted on a roof, the area of that roof covered by solar products must not exceed 50% of the total area of that roof, and

(ii) where the solar products are mounted on the ground, the area of the ground, within the curtilage of the flat or building containing flats where the solar products are installed, must not exceed 50% of the total area of that curtilage,

(h) the solar products are only mounted -

(i) on the roof of the flat or building containing flats, or

(ii) on the roof of an outbuilding or other structure, or on the ground, within the curtilage of the flat or building containing flats.

Replacement of a door, window, roof-light, roof-lantern or sun tunnel in existing opening.

4. The replacement of a door, window, roof-light, roof-lantern or sun tunnel within an existing opening in a flat or in a building containing flats provided that, where the location at which the replacement is carried out forms part of, or comprises, a building which is substantially constructed before 1900, the replacement is of the same design, means of opening and made of the same materials as the one it replaces.

Installation of a door or window in new or altered opening.

5. The installation of a door or window within a new or altered opening in a flat or in a building containing flats, provided that -

(a) where the flat or the building containing flats, on which the installation is carried out, forms part of, or comprises, a building which is substantially constructed before 1900, the new door or window is not installed on any elevation that faces a highway,

(b) where the new door or window is installed in an elevation of the flat or a building containing flats that -

(i) has no existing window or door or only has a window or door -

(A) the glazing of which is all obscured, or

(B) which is positioned at a high level, and

(ii) faces a boundary with a neighbouring residential property,

the new door or window is not within 5 metres of that boundary,

(c) where the new door or window is installed in an elevation of a flat or a building containing flats that -

(i) has an existing window or door -

(A) any of the glazing of which is not

obscured, and

(B) which is not positioned at a high level, and

(ii) faces a boundary with a neighbouring residential property,

the new door or window is not within 3 metres of that boundary,

(d) the window or door is not installed in a flat or a building containing flats at ground floor or raised basement level in a position where it overlooks -

(i) a garden or patio of a flat in the same building, other than a flat in which the window or door is being installed, or

(ii) a communal garden, patio or other external, communal area within the curtilage of the same building,

(e) the new door or window is not installed above ground floor level.

Re-roofing.

6. The re-roofing of a flat, a building containing flats or of an outbuilding or any other structure within the curtilage of a flat or a building containing flats, including a limited increase to the height of the roof which is reasonably necessary in relation to the re-roofing works, provided that -

(a) where the flat, building containing flats, outbuilding or other structure on which the re-roofing is carried out is within a conservation area, is substantially constructed before 1900 or is attached to the building containing flats and the building containing flats is substantially constructed before 1900, the material used is -

(i) in the case of any re-roofing other than in relation to a dormer, natural slate or clay tiles, or

(ii) in the case of the re-roofing of a dormer or the cladding of dormer cheeks, natural slate, clay tiles or the same material as that which is being replaced,

(b) in the case of the re-roofing of an outbuilding or other structure, the original construction, erection or placement of the outbuilding or other structure was carried out lawfully,

(c) any increase in the height of the roof is no more than 30 centimetres measured externally.

Installation of roof-light, roof-lantern or sun tunnel.

7. The installation of a roof-light (other than a cabrio-roof-light), roof-lantern or sun tunnel on the roof of a flat or a building containing flats provided that -

(a) where the roof-light, roof-lantern or sun tunnel is installed on a sloping roof which faces and is within 10 metres of a boundary with a neighbouring residential property, the height of the cill of the roof-light, roof-lantern or sun tunnel is at least 1.7 metres measured from the finished internal floor of the flat or building containing flats on which the installation is carried out,

(b) where the roof-light, roof-lantern or sun tunnel is installed in a position where it faces a highway -

(i) it does not exceed 1 metre, measured in any dimension, and

(ii) there are no more than two roof-lights, roof-lanterns or sun tunnels in total facing that highway on the roof in question,

(c) where the flat or building containing flats, on which the installation is carried out, forms part of, or comprises, a building which is substantially constructed before 1900, the roof-light, roof-lantern or sun tunnel is not installed in a position facing a highway.

Erection of, or works to enclose, porch.

8. The erection of a porch, or carrying out works to enclose an existing porch, on any elevation of a flat or a building containing flats, provided that -

(a) in the case of the erection of a porch where the flat or building containing flats, on which the erection is carried out, is within a conservation area or forms part of, or comprises, a building which is substantially constructed before 1900, the porch is located on an elevation of the building that does not face a highway,

(b) in the case of the erection of a porch for the first time, the floor area of the porch does not exceed 6 square metres and the height of the porch does not exceed 3 metres,

(c) the porch is not within 2 metres of a highway,

(d) there is only one porch attached to each elevation of a building containing flats following the erection of a porch on a flat or a building containing flats,

(e) the flat or the building containing flats, on which the erection or works are carried out, is not within a site of special significance.

Hard-surfaced areas.

9. The creation, extension or resurfacing of a hard-surfaced area, including timber decking, within the curtilage of a flat or a building containing flats provided that -

(a) where the hard-surfaced area is within a conservation area -

(i) in the case of an extension of an existing hard-surface, the material used is the same as the existing material, or

(ii) in any other case, the material used comprises -

(A) loose laid natural stone gravel,

(B) paviours or bricks made, in either case, from concrete or clay,

(C) natural stone setts or natural paving slabs,

(D) timber boarding, or

(E) a ground reinforcement system,

(b) no part of any area created or extended is more than 30 metres from any part of the flat or building containing flats within the curtilage of which the works are carried out,

(c) no part of any area created or extended forms a new vehicle or pedestrian access onto a highway or a private pedestrian road, street, lane or clos, however named,

(d) the height of any timber decking or other hard-surface created is not more than 50 centimetres above ground

level,

(e) in the case of the creation or re-surfacing of a hard-surfaced area but not the extension of an existing hard-surfaced area, the hard-surface must be created or re-surfaced so that -

(i) it is permeable, and

(ii) rainwater drains from the area into a soakaway or SUDS,

(f) in the case of the creation or extension of a hard-surfaced area, the area created or extended must not be used as an additional car parking area and the works must not require the removal of a landscape feature,

(g) neither the flat or building containing flats, within the curtilage of which the works are carried out, nor the hard-surfaced area is within a site of special significance.

Construction of external steps.

10. The construction of external steps within the curtilage of a flat or of a building containing flats provided that -

(a) none of the steps is located more than 30 metres from any part of the flat or building containing flats within the curtilage of which the construction is carried out,

(b) the height of any step does not exceed 50 centimetres above the existing ground level where the step is located,

(c) the works must not require the removal of a landscape feature,

(d) neither the flat or building containing flats, within the curtilage of which the construction is carried out, nor any part of the steps is within a site of special significance.

Gates, fences and walls.

11. The erection or replacement of a gate, fence, or wall within or along a boundary of the curtilage of a flat or a building containing flats, provided that -

(a) the height of such a structure erected within or along a boundary of the curtilage of the flat or building containing flats does not exceed 2 metres in height above any land within 2 metres on either side,

(b) the height of that part of a structure which is erected in front of any elevation of the flat or the building containing flats that faces a highway does not exceed 90 centimetres in height above any land within 2 metres on either side,

(c) any fence is of timber construction,

(d) any gate is of timber or metal construction,

(e) any wall is of natural stone or rendered blockwork,

(f) in the case of the replacement of a gate, fence or wall, the original construction, erection or placement of the gate, fence or wall was carried out lawfully,

(g) neither the flat or building containing flats, within or along a boundary of the curtilage of which the works are carried out, nor the structure to be erected is within a site of special significance.

Installation of a traffic mirror.

12. The installation of a traffic mirror within the curtilage of a flat or a building containing flats, including where such building or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the size of the mirror, including any means of fixing, does not exceed 90 centimetres, measured in any dimension,

(b) the mirror is installed so that it does not interfere with the flow of traffic on a highway or movement of pedestrians on a highway.

Removal of a hedge.

13. The removal of a hedge within or along a boundary of the curtilage of a flat or a building containing flats, including where such building or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the removal of the hedge is not carried out in the

period beginning on 1st March and ending on the 31st July in any calendar year,

(b) where the hedge that is removed forms a boundary with a neighbouring property, a highway or a private pedestrian road, street, lane or clos, however named, it is replaced with another hedge of a species native to Guernsey within a period of eight weeks starting on the date of the removal of the original hedge,

(c) the hedge does not form a field boundary,

(d) neither the flat or the building containing flats, within or along the boundary of which the removal is carried out, nor the hedge is within a site of special significance.

Demolition or rebuilding of a chimney stack.

14. The demolition, demolition and rebuilding or the rebuilding of a chimney stack on a flat or a building containing flats, or on an outbuilding or other structure within the curtilage of a flat or a building containing flats, provided that -

(a) where the flat, building containing flats or the outbuilding or other structure to which the chimney stack is attached is substantially constructed before 1900, the chimney stack must be rebuilt and be of the same design and materials as the one it replaces,

(b) in any other case, where the chimney stack is demolished and not rebuilt, the materials in the

location of the former chimney stack must match the predominant material used in the relevant part of the roof of the flat, the building containing flats, outbuilding or other structure in question.

Installation of external insulated render system.

15. (1) The installation of an insulated render system to the external walls of a flat or a building containing flats provided that, where any part of the flat or building containing flats on which the installation is carried out, is within a conservation area or forms part of, or comprises, a building which is substantially constructed before 1900, the installation does not result in the loss of or obscuring of any distinctive features.

(2) In this paragraph "**distinctive features**" includes, without limitation, granite detailing, brick arches, decorative quoins and render bands.

Installation of electric charging point.

16. (1) The installation of an electric charging point on, or within the curtilage of, a flat or a building containing flats, or on an outbuilding or other structure within the curtilage of either of the same, including where the flat or building containing flats or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) subject to subparagraph (2), the charging point must be installed principally for the use of vehicles used in connection with the use of the flat or the building containing flats as a dwelling or a building containing dwellings, as the case may be,

(b) the charging point must be installed so that a vehicle

using it is located wholly within the curtilage of the flat or the building containing flats where the charging point is installed,

(c) neither the flat or building containing flats, on, or within the curtilage of which the installation is carried out, nor the electric charging point is within a site of special significance.

(2) Subparagraph (1)(a), does not prevent the installation of a charging point to be used by a company car or trade van which is also used as a means of private transport by the residential occupier of the flat or the building containing flats, as the case may be.

Placement or erection of bike barn or storage unit.

17. The placement or erection of a bike barn or a storage unit, used for the storage of items used in connection with the use of a flat as a dwelling within the curtilage of a flat, including where such flat or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the bike barn or storage unit is not attached to the flat or another structure within the curtilage of the flat,

(b) where the bike barn or storage unit is located forward of an elevation of the flat, within the curtilage of which it is placed or erected, in a position facing a highway or is otherwise located within 1 metre of a highway -

(i) its base area does not exceed 3 square metres,

(ii) it does not exceed 1.2 metres in height, and

(iii) there is only one bike barn or storage unit in total in that location,

(c) where the bike barn or storage unit does not fall within item (b) -

(i) its base area does not exceed 6 square metres, and

(ii) it does not exceed 2 metres in height.

Construction of external ramp.

18. The construction of an external ramp, within the curtilage of a flat or a building containing flats, to provide access to the flat or the building containing flats within the curtilage of which it is located, including where such building or its curtilage is, or is within the curtilage of, a protected building provided that neither the flat or building containing flats, within the curtilage of which the construction is carried out, nor the ramp is within a site of special significance.

Installation of energy storage equipment.

19. The installation of equipment to store energy at ground floor level on any elevation of a flat or of a building containing flats, which cannot be seen from a highway, provided that -

(a) where the equipment is installed on an elevation comprising part of a flat, there is only one such item of equipment in total installed on that elevation,

(b) where the equipment is installed on an elevation

comprising part of a building containing flats, there is only one such item of equipment in total on that elevation,

(c) the noise level emitted from the equipment, when measured at 1 metre from the outside face of the closest elevation of the nearest neighbouring noise sensitive building, does not exceed 5 decibels below the LA90 level of the background noise measured at that location prior to installation of the equipment.

CLASS 3

RESIDENTIAL CHANGE OF USE

Change from use as part of dwelling for business purposes to a use within use class 1 or 2.

1. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use falling within use class 5 (use of part of dwelling for business purposes) to a use within use class 1 (dwelling house) or use class 2 (flat).

Change from a use within use class 1 or 2 to a use as part of dwelling for business purposes.

2. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use falling within use class 1 (dwelling house) or use class 2 (flat) to a use within use class 5 (use of part of dwelling for business purposes), provided that -

(a) the new use does not involve or result in -

(i) storage of materials outdoors,

(ii) more than two persons working at the dwelling at any one time, and

(iii) more than -

(A) eight people a day, or

(B) two persons at any one time,

visiting the premises for purposes related to the business purposes part of that use,

(b) the Authority is notified of the change of use within a period of one month starting on the date of the change.

Change in use of premises in multiple occupation to a use within use class 1 or 2.

3. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use falling within use class 6 (premises in multiple occupation) to a use within use class 1 (dwelling house) or use class 2 (flat), provided that -

(a) the change of use would not result in a dwelling-house or flat which did not meet the standards in relation to internal space within new dwellings set out in the Technical housing standards-nationally described space standard as revised, reissued or

replaced from time to time[q],

(b) the Authority is notified of the change of use within a period of one month starting on the date of the change.

CLASS 4

DEVELOPMENT WITHIN THE CURTILAGE OF A NON-DOMESTIC BUILDING

Replacement of a door or window in existing opening.

1. Replacement of any existing door or window of a non-domestic building, or of an outbuilding within the curtilage of a non-domestic building, provided that the door or window is not part of a shop front.

Re-roofing.

2. The re-roofing of an existing felt-clad or corrugated-sheet-clad roof of a non-domestic building, or of an outbuilding within the curtilage of a non-domestic building, in natural slate or clay tiles, glass reinforced plastic or single ply roofing, including a limited increase to the height of the roof which is reasonably necessary in relation to the re-roofing works, provided that -

(a) where the non-domestic building or outbuilding on which the re-roofing is carried out is within a conservation area, is substantially constructed before 1900 or is attached to the non-domestic building and the non-domestic building is substantially constructed

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[q] Issued by the Department for Communities and Local Government in the UK; current edition dated March, 2015 with notes added in May, 2016. ISBN : 978-1-4098-4567-6.

before 1900, the material used is -

(i) in the case of any re-roofing other than in relation to a dormer, natural slate or clay tiles, or

(ii) in the case of the re-roofing of a dormer or the cladding or re-cladding of dormer cheeks, natural slate or clay tiles or the same material as that which is being replaced,

(b) in the case of the re-roofing of an outbuilding, the original construction, erection or placement of the outbuilding was carried out lawfully,

(c) any increase in the height of the roof is no more than 30 centimetres measured externally.

Hard-surfaced areas.

3. The creation, extension or resurfacing of a hard-surfaced area, including timber-decking, within the curtilage of a non-domestic building provided that -

(a) where the hard-surfaced area is within a conservation area -

(i) in the case of an extension of an existing hard-surface, the material used is the same as the existing material, or

(ii) in any other case, the material used

comprises -

(A) loose laid natural stone gravel,

(B) paviours or bricks made, in either case, from concrete or clay,

(C) natural stone setts or natural paving slabs,

(D) timber boarding, or

(E) a ground reinforcement system,

(b) no part of any area created or extended is more than 30 metres from the non-domestic building,

(c) no part of any area created or extended forms a new vehicle or pedestrian access onto a highway or a private pedestrian road, street, lane or clos, however named,

(d) the height of any timber decking or other hard-surface created is not more than 50 centimetres above ground level,

(e) in the case of the creation or re-surfacing of a hard-surfaced area but not the extension of an existing hard-surfaced area, the hard-surface must be created or re-surfaced so that -

(i) it is permeable, and

(ii) rainwater drains from the area into a soakaway or SUDS,

(f) in the case of the creation or extension of a hard-surfaced area, the area created or extended must not be used as an additional car parking area and the works must not require the removal of a landscape feature,

(g) neither the non-domestic building nor the hard-surfaced area is within a site of special significance.

Non-domestic cesspits or soakaways.

4. The installation of a cesspit or soakaway, wholly below ground, within the curtilage of the non-domestic building which it serves, including where such building or its curtilage is, or is within the curtilage of, a protected building, provided that neither the non-domestic building nor the cesspit or soakaway is within a site of special significance.

Closed circuit television.

5. The installation of a closed circuit television camera on an elevation of a non-domestic building, or of an outbuilding within the curtilage of a non-domestic building, provided that -

(a) the dimensions of the camera, including its housing and fixing bracket, do not exceed 90 centimetres x 25 centimetres x 55 centimetres,

(b) the camera is installed at a minimum height of 2 metres above ground level,

(c) the camera is not installed on an elevation of a building adjacent to a boundary with a neighbouring residential property,

(d) there are no more than two such cameras on each elevation of the non-domestic building or outbuilding,

(e) any signage necessary to meet information requirements relating to the installation of the camera, under the Data Protection Law, is erected at the same time.

Installation of a door or window in new or altered opening.

6. The installation of a door or window within a new or altered opening in a non-domestic building or in an outbuilding within the curtilage of a non-domestic building, provided that -

(a) where the non-domestic building or outbuilding, on which the installation is carried out, is substantially constructed before 1900, the new door or window is not installed on any elevation of the building that faces a highway,

(b) where the new door or window is installed in an elevation of the non-domestic building or outbuilding that -

(i) has no existing window or door or only has a window or door -

(A) the glazing of which is all obscured, or

(B) which is positioned at a high level, and

(ii) faces a boundary with a neighbouring residential property,

the new door or window is not within 5 metres of that boundary,

(c) where the new door or window is installed in an elevation of the non-domestic building or outbuilding that -

(i) has an existing window or door -

(A) any of the glazing of which is not obscured, and

(B) which is not positioned at a high level, and

(ii) faces a boundary with a neighbouring residential property,

the new door or window is not within 3 metres of that

boundary,

(d) the new door or window is not installed above ground floor level.

Installation of an air source heat pump or air conditioning unit.

7. The installation of an air source heat pump or an air conditioning unit within the curtilage of a non-domestic building, including on an outbuilding within the curtilage, provided that -

(a) there is only one in total of either such appliance within the curtilage,

(b) there is only one fan in the air source heat pump or air conditioning unit,

(c) the air source heat pump or air conditioning unit -

(i) is not within 1 metre of a boundary with a neighbouring property, and

(ii) does not exceed 1 metre in height, 1 metre in width and 350 mm in depth,

(d) the noise level emitted from the air source heat pump or air conditioning unit, when calculated at 1 metre from the outside face of the closest elevation of the nearest neighbouring noise sensitive building, does not exceed 5 decibels below the LA90 level of the background noise measured at that location prior to installation of the pump or unit,

(e) neither the non-domestic building or outbuilding, on, or in the curtilage of which, the installation is carried out, nor the air source heat pump or air conditioning unit is within a site of special significance.

Change of ground levels.

8. Development to raise or lower the level of the ground within the curtilage of a non-domestic building provided that -

(a) neither the non-domestic building nor its curtilage is within a site of special significance,

(b) the increase or decrease in the height of the ground does not exceed 50 centimetres,

(c) the level of the ground is not raised within 2 metres of a boundary with a neighbouring property,

(d) there are no protected trees or roots of protected trees within the area in which the ground level is to be changed,

(e) the excavation does not result in the creation of a swimming pool, spa pool, other pool or pond.

Installation of electric charging point.

9. The installation of an electric charging point on, or within the curtilage of, a non-domestic building including on an outbuilding within the curtilage or where such building or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the charging point must be installed principally for the use of vehicles used by those visiting, or working at, the non-domestic building or outbuilding for purposes connected with the lawful use of the non-domestic building,

(b) the charging point must be installed so that a vehicle using it is located wholly within the curtilage of the non-domestic building,

(c) neither the non-domestic building or outbuilding, on, or in the curtilage of which, the installation is carried out, nor the electric charging point is within a site of special significance.

Removal of a hedge.

10. The removal of a hedge within or along a boundary of the curtilage of a non-domestic building including where such building or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the removal of the hedge is not carried out in the period beginning on 1st March and ending on the 31st July in any calendar year,

(b) where the hedge that is removed forms a boundary with a neighbouring property, a highway or a private pedestrian road, street, lane or clos, however named, it is replaced with another hedge of a species native to Guernsey within a period of eight weeks starting on the date of the removal of the original hedge,

(c) the hedge does not form a field boundary,

(d) neither the non-domestic building nor the hedge is within a site of special significance.

Installation of a defibrillator.

11. The installation of a defibrillator and its housing on, or within the curtilage of, a non-domestic building, including on an outbuilding within the curtilage or where such building or its curtilage is, or is within the curtilage of, a protected building, provided that neither the non-domestic building or outbuilding, on, or in the curtilage of which, the installation is carried out, nor the defibrillator is within a site of special significance.

Solar products.

12. Installation of solar products on, or within the curtilage of, a non-domestic building, including on an outbuilding or other structure within the curtilage or where such building or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) where the solar products are mounted on a sloping roof, they are installed parallel to the plane of the roof slope and project no more than 30 centimetres from that plane,

(b) where the solar products are mounted on a flat roof, they are installed so that they are angled at no more than 10 degrees from the roof and project no more than 40 centimetres from the roof,

(c) where the location at which the solar products are

installed is on, or is within the curtilage of, a protected building, the solar products are not installed on -

(i) a roof slope facing a highway, or

(ii) a flat roof with the products positioned facing a highway,

(d) where the location at which the solar products are installed is not a protected building, or is not within the curtilage of a protected building and solar products are installed on a roof slope facing a highway or on a flat roof with the products positioned facing a highway, the solar products installed must -

(i) be of the same product type, and

(ii) where existing solar products are installed on the same roof slope or area of a flat roof, be of the same product type as the predominant type of existing solar products in that location,

(e) the solar products are only mounted -

(i) on the roof of the non-domestic building, or

(ii) on the roof of an outbuilding or other structure within the curtilage of the non-domestic building,

(f) where the solar products are mounted on a roof

which -

(i) is on, or is within the curtilage of, a protected building,

(ii) forms part of a building which is substantially constructed before 1900, or

(iii) is attached to the non-domestic building in question and that building is substantially constructed before 1900,

the area of that roof covered by solar products must not exceed 50% of the total area of that roof.

Installation of energy storage equipment.

13. The installation of equipment to store energy at ground floor level on any elevation of a non-domestic building which cannot be seen from a highway provided that -

(a) there is only one such item of equipment in total installed within the curtilage of the non-domestic building,

(b) the noise level emitted from the equipment, when measured at 1 metre from the outside face of the closest elevation of the nearest neighbouring noise sensitive building, does not exceed 5 decibels below the LA90 level of the background noise measured at that location prior to installation of the equipment.

Installation of roof fall protection system.

14. (1) The installation of a roof fall protection system or a skylight protection device on the roof of a non-domestic building, or on the roof of an outbuilding within the curtilage of a non-domestic building, provided that any safety lines installed are horizontal or vertical.

(2) In this paragraph -

"**roof fall protection system**" means a cable system designed to arrest or prevent a fall from a roof including any rails to which safety harnesses may be connected to the cables, and

"**skylight protection device**" means -

(a) a rail or similar device designed to create a barrier around a skylight, roof-light or similar structure, or

(b) a screen, cage or similar device designed to cover a skylight, roof-light or similar structure,

for the purpose of arresting or preventing a fall through, or injury from falling onto, a skylight, roof-light or similar structure.

CLASS 5

MAINTENANCE, REPAIR, MINOR ALTERATIONS AND TEMPORARY STRUCTURES AND USES

Maintenance, repair, and minor alterations.

1. The maintenance or repair of, or the making of any minor alteration to, a dwelling-house, a flat, a building containing flats or a non-domestic building or to a structure or other feature within the curtilage of such a building, including

where such building or its curtilage is, or is within the curtilage of, a protected building, provided that -

(a) the works are not exempt to the extent that they comprise development of a description for which an exemption is provided under another paragraph of this Schedule subject to the meeting of any provisos specified in that paragraph,

(b) the works are not exempt to the extent that they comprise the painting for the first time of any significant part of any structure or other feature,

(c) there is no material effect on the external appearance of any structure or other feature other than that arising from any repainting of the exterior of that structure or other feature.

Temporary development required during approved operations.

2. Temporary change of use of land on a site where building operations, engineering operations or other operations (not including mining operations) are currently taking place for purposes connected with those operations, and the erection, installation or siting temporarily on such land of buildings, gates, fences or other structures (excluding signs), works, plant or machinery, provided that -

(a) the operations are taking place in accordance with a planning permission or comprise exempt development,

(b) no more than two structures in total are erected,

installed or sited at ground floor level on the site in reliance on this exemption,

(c) any such buildings, other structures, works, plant or machinery are -

(i) necessary for the purpose of those operations,

(ii) not used for any other purpose,

(iii) without prejudice to subitem (ii) of this proviso, not used for any residential purpose, and

(iv) permanently removed from the site upon completion of those operations, or within three years of their erection, installation or siting, whichever is sooner,

(d) no advertisement is displayed on the site, except where done in accordance with an exemption falling within Class 10 to this Schedule,

(e) following completion of the operations, the site is restored to -

(i) the same condition to that it was in before the operations were commenced, or

(ii) a condition approved in writing by the Authority,

(f) no part of the site is within a site of special significance.

Erection of temporary mesh or net fencing to support plants.

3. The erection of a mesh or net fence for the support of plants on, or within the curtilage of, a dwelling-house, a flat, a building containing flats or non-domestic building or on an outbuilding or other structure within the curtilage of any such building, including where such building or its curtilage is, or is within the curtilage of, a protected building or a protected monument, provided that -

(a) neither the building in question nor the fence is within a site of special significance,

(b) the fence is removed -

(i) when the plants have matured sufficiently so that support is no longer required, or

(ii) within a period of one year starting on the date of erection of the fence,

whichever first occurs.

CLASS 6

AGRICULTURAL DEVELOPMENT

Fencing of agricultural land.

1. Erection of a post and wire or post and rail fence or an electric fence for agricultural purposes on land used for such purposes provided that -

(a) the fence does not exceed 1.2 metres in height,

(b) in the case of a post and rail fence or an electric fence, it is used to confine animals.

Installation of a gate on agricultural land.

2. Installation of a gate across an existing opening (and not involving the creation or widening of any opening) anywhere on land used for agricultural purposes provided that the gate does not exceed 1.2 metres in height.

Placement of moveable structure to contain animals.

3. Placement of a moveable structure on land used for agricultural purposes for the purpose of containing or housing animals for agricultural purposes provided that -

(a) there are no more than four such structures on the site,

(b) the structure does not exceed 1.2 metres in height,

(c) where a structure is not used for housing or containing animals for agricultural purposes throughout an entire calendar year, it must be removed from the site within two months of the end of that calendar year.

Placement or erection of temporary polytunnel or glasshouse on land used for horticulture.

4. The placement or erection of a polytunnel or a glasshouse on land used for horticulture, for the purpose of cultivating plants, provided that -

(a) there is only one in total of either such structure on

the site,

(b) it is placed or erected on a non-permanent base which does not exceed 10 square metres,

(c) its height does not exceed 2 metres,

(d) where the polytunnel or glasshouse is not used for cultivating plants throughout an entire calendar year, it must be removed from the site within two months of the end of that calendar year,

(e) the land on which the glasshouse or polytunnel is placed or erected is not within a site of special significance.

Erection of other small-scale structures.

5. Erection of a small-scale structure, not falling within paragraphs 1 to 4 of this Class, on land used for agricultural purposes for use for horticultural purposes, provided that -

(a) there is only one such structure in total erected on the site,

(b) it is erected on a non-permanent base which does not exceed 6 square metres,

(c) its height does not exceed 2 metres,

(d) the land is actively used for horticultural purposes and is not just capable of being used for the same,

(e) where such a structure is not used for horticultural purposes throughout an entire calendar year, it must be removed from the site within two months of the end of that calendar year,

(f) the structure is not within a site of special significance.

Demolition or clearance of glasshouse and associated structures.

6. The demolition or clearance of a glasshouse or former glasshouse or other structures, which were erected for purposes which are incidental or ancillary to the use of a glasshouse, on land used for agricultural purposes provided that -

(a) any waste arising from the demolition and clearance must be removed from the site in question within two months of the completion of the demolition or clearance,

(b) any matter not comprising waste arising from the demolition must be reused on site or removed from the site within six months of the completion of the demolition or clearance,

(c) the level of the ground is not raised,

(d) the glasshouse, former glasshouse or other structure is not within a site of special significance.

CLASS 7

DEVELOPMENT BY THE STATES AND PUBLIC UTILITY PROVIDERS

The carrying out of any of the development specified in the following paragraphs of

this Class other than within a site of special significance.

Installation etc. of mains, drains, sewers, lines, pipes and cables.

1. (1) Any development referred to in subparagraph (2) which is carried out by or on behalf of a person listed in subparagraph (3) in connection with the provision by that person of a public utility service.

(2) The development referred to in subparagraph (1) is any development, not falling within paragraphs 4 to 7, which is necessary for the -

(a) installation, inspection, maintenance, repair or renewal of mains, drains, sewers, pipes, cables, lines, or

(b) making of connections to anything referred to in item (a),

provided that any hard surface which is disturbed by the development is restored with a finish which is not significantly different from the existing finish and in the case of granite cobbles or flags is restored with the same materials.

(3) The persons referred to in subparagraph (1) are -

(a) the States,

(b) Guernsey Gas Limited, or

(c) a person who is a licensee under the Telecommunications (Bailiwick of Guernsey) Law,

2001[r] or the Electricity (Guernsey) Law, 2001[s].

Maintenance, the prevention of the obstruction of, or damage to, highways etc.

2. Any development by or on behalf of the States which is necessary -

(a) for the maintenance of any highway or any private pedestrian road, street, clos, track or path, however named, provided that such maintenance does not involve -

(i) the hard surfacing of any lane, track or path that was not previously hard-surfaced, or

(ii) the creation, laying out or material widening of a means of access to that highway or pedestrian road, street, clos, track or path, however named,

(b) to avoid -

(i) the obstruction of any highway or any private pedestrian road, street, clos, track or path, however named, by any tree or other vegetation, or

(ii) damage to any highway or any private pedestrian road, street, clos, track or path,

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r Order in Council No. XIV of 2001; this enactment has been amended.

s Order in Council No. XIII of 2001; this enactment has been amended.

however named, or

(c) for the creation or maintenance of a pedestrian crossing or the installation or replacement of lighting or signage on a highway or any private pedestrian road, street, clos, track or path, however named, for the purposes of the operation of such highway, road, street, clos, track or path,

provided that where any lighting or signage is replaced, any redundant lighting or signage is removed from the highway or private pedestrian road, street, clos, track or path in question within one month of the completion of the development.

Maintenance of water courses, outfalls or carrying out of land drainage works.

3. Any development by or on behalf of the States which is necessary for the maintenance of water courses or outfalls or for the carrying out of land drainage works.

Development in relation to minor or replacement equipment by suppliers of electricity and telecommunications services.

4. (1) Any development which -

(a) is carried out by or on behalf of a person who is a licensee under the Telecommunications (Bailiwick of Guernsey) Law, 2001 or the Electricity (Guernsey) Law, 2001, and

(b) is necessary for the maintenance or replacement of overhead lines, cables, surface wiring, block terminals and dish or multiple rod aerials or the replacement of

dishes or masts used for the purpose of supplying electricity or providing telecommunications services to the public,

provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) any replacement equipment is not significantly different in terms of its siting, design, size and appearance to the equipment that it replaced,

(b) any hard surface which is disturbed by the development is restored with a finish which is not significantly different from the existing finish and in the case of granite cobbles or flags is restored with the same materials,

(c) where any equipment is replaced, any redundant equipment is removed forthwith from the site.

Development in relation to the supply of electricity.

5. (1) Any development which -

(a) is carried out by or on behalf of a person who is a licensee under the Electricity (Guernsey) Law, 2001, and

(b) is necessary -

(i) for the replacement of roadside distribution

pillars, high voltage switchgear and transformers, poles and street cabinets for the purpose of supplying electricity to the public, provided that any replacement is not significantly different in terms of its siting, size, design and appearance to the equipment that it replaced,

(ii) to avoid contact between any tree or other vegetation and overhead power lines, or

(iii) to enclose existing equipment,

provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) any hard surface which is disturbed by the development is restored with a finish which is not significantly different from the existing finish and in the case of granite cobbles or flags is restored with the same materials,

(b) where development is necessary to enclose existing equipment -

(i) the equipment to be enclosed is not within a conservation area,

(ii) in the case of equipment enclosed by hedging, the hedging is of a species native to Guernsey,

(iii) in the case of equipment enclosed by a structure and located within 1 metre of a highway, the height of the structure does not exceed 90 centimetres,

(iv) in the case of equipment enclosed by a structure and located 1 metre or more from a highway, the height of the structure does not exceed 2.5 metres.

Development within the operational areas of water treatment works, foul water treatment works, pumping stations and reservoirs etc.

6. Any development by or on behalf of the States which is carried out within the operational areas of water treatment works, foul water treatment works, pumping stations, reservoirs or other places where water is stored and which is necessary for -

(a) the provision of water supplies,

(b) the maintenance or security of any such place, or

(c) the monitoring of water flows,

provided that such development is not carried out in relation to any land or structure forming any part of the perimeter of any such place.

Development within the operational area of a power station.

7. Any development by or on behalf of a person who is a licensee under the Electricity (Guernsey) Law, 2001 which is carried out within the operational area of a power station and which is necessary for -

(a) the relocation of pumping equipment and over ground piping within the operational area of a power station provided that there is no significant change to -

(i) the siting, and

(ii) the visibility from a highway,

of such piping or equipment, or

(b) the security of the power station,

provided that such development is not carried out in relation to any land or structure forming any part of the perimeter of the power station.

Development within the operational area of an airport.

8. (1) Any development by or on behalf of the States within the operational area of an airport which is necessary for -

(a) the provision of air traffic control services,

(b) the safe navigation of aircraft,

(c) the display of non-illuminated signs for users of the airport,

(d) the security of the airport,

(e) the maintenance or resurfacing of an airport runway or to make minor alterations to the camber of such a

runway, or

(f) ensuring the health or safety of passengers or the public,

provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) development, other than display of signage, is not carried out in relation to any land or structure forming any part of the perimeter of the airport and that, where carried out in relation to an airport runway, it does not extend that runway,

(b) where any temporary buildings or other temporary structures are erected to ensure the health or safety of passengers or the public, such structures must be removed within one year of the date of the erection, installation or placement of the temporary building or other structure,

(c) where development is necessary for the display of non-illuminated signs, the signs must not be sited facing a highway.

Development within the operational area of a harbour.

9. (1) Any development by or on behalf of the States within the operational area of a harbour which is necessary for -

(a) the provision of harbour control or safe navigation of

ships,

(b) the display of non-illuminated signs for users of the harbour,

(c) the security of the harbour, or

(d) ensuring the health or safety of passengers or the public,

provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) development, other than the display of signage, is not carried out in relation to any land or structure forming any part of the perimeter of the harbour,

(b) where any temporary buildings or other temporary structures are erected to ensure the health or safety of passengers or the public, such structures must be removed within one year of the date of the erection, installation or placement of the temporary building or other structure,

(c) where development is necessary for the display of non-illuminated signs, the signs must not be sited facing a highway.

Minor works for navigational purposes.

10. (1) Any development by or on behalf of the States outside the

operational area of a harbour or an airport which is necessary to -

(a) carry out any minor works for the purpose of -

(i) the safe navigation of ships or aircraft, or

(ii) the safe operation of the port or airport in question, or

(b) avoid the obstruction of navigation points or navigation lights by any tree or other vegetation,

provided that where fencing is erected, the height of the fence does not exceed 1.5 metres.

(2) In this paragraph "**minor works**" means -

(a) minor maintenance work or replacement of fixed plant that does not involve any work to buildings, walls or fences, or

(b) the installation or erection of fencing to ensure the security of navigational equipment.

Coastal defences.

11. Any development by or on behalf of the States necessary for the maintenance of existing coastal defences provided that such development does not include development consisting of land reclamation and does not affect any shingle bank or other natural feature forming part of such defences.

Street furniture.

12. (1) Any development by or on behalf of the States necessary for the replacement or maintenance of any fixed street furniture provided that, where any replacement is installed or maintenance work is carried out in La Vallette (Bathing Pools) Conservation Area and those parts of the conservation areas identified in subparagraph (2) -

(a) any replacement installed is of the same materials, design, form and scale as the furniture it replaces,

(b) any maintenance is carried out using the same materials as the existing furniture and so that the furniture remains of the same design, form and scale.

(2) The parts of the conservation areas referred to in subparagraph (1) are those parts of -

(a) the St. Peter Port conservation area which fall within South Esplanade, the Quay, North Esplanade, Glategny Esplanade, the Pollet, High Street, Hauteville, Fountain Street, Trinity Square, Mill Street, Mansell Street, Contree Mansell, Smith Street, Lefebvre Street, Rue du Manoir, College Street, Saint Julian's Avenue, Castle Emplacement, Crown Pier and La Salerie Harbour, and

(b) the Bridge Conservation area which fall within South Quay, the Bridge and North Side.

(3) In this paragraph, "**street furniture**" includes lamp standards

and other street lighting, traffic lights and signals, traffic signs, public seating, cycle racks, cycle hoops, signposts, signs, refuse bins, bollards, rails, fences and barriers for safeguarding persons using the public highway.

Closed circuit television.

13. (1) Any development by or on behalf of the States necessary for the -

(a) installation and maintenance of one closed circuit television camera on any one structure or object provided that the dimensions of the camera, including its housing and fixing bracket, do not exceed 90 centimetres x 25 centimetres x 55 centimetres, or

(b) temporary installation and maintenance of closed circuit television cameras to cover a public event or in an emergency provided that the cameras are in place for no more than 14 days,

including, where such a camera is installed, the erection of any signage necessary to meet information requirements relating to the installation of the camera under the Data Protection Law, provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that, where a closed circuit television camera is installed -

(a) it is installed at a minimum height of 2 metres above ground level,

(b) any signage, necessary to meet information

requirements relating to the installation of the camera under the Data Protection Law, is erected at the same time.

Development in relation to traffic calming or footways.

14. (1) Any development by or on behalf of the States on a public highway necessary -

(a) for traffic calming measures, or

(b) to improve the safe movement of pedestrians,

on a public highway including, without limitation, the erection of speed bumps, the building out of a kerb or the creation of footways or pavements provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) the site is not within a conservation area or within, or adjacent to, the curtilage of a protected building or a protected monument,

(b) the site is not adjacent to a protected building or a protected monument.

The erection of a bus shelter.

15. Any development by or on behalf of the States necessary for the erection of a bus shelter over an existing bus stop provided that -

(a) the erection of the bus shelter does not result in -

(i) any obstruction of a public highway or adversely affect pedestrian flows,

(ii) the removal of a landscape feature,

(b) no advertisement is displayed on the bus shelter,

(c) where the bus shelter is erected on a footpath or pavement, the remaining footpath or pavement is at least 1 metre in width.

Cycle shelters and cycle hoops.

16. Any development by or on behalf of the States necessary for the installation of cycle shelters, cycle hoops or scooter hoops on a public highway provided that -

(a) the installation of the cycle shelter or cycle hoop does not result in -

(i) any obstruction of a public highway or adversely affect pedestrian flows,

(ii) the removal of a landscape feature,

(b) no advertisement is displayed on the cycle shelter or cycle hoop,

(c) where the cycle shelter or cycle hoop is installed on a footpath or pavement, the remaining footpath or pavement is at least 1 metre in width.

Water refill points.

17. Any development by or on behalf of the States necessary for the installation of a water refill point provided that -

(a) the installation of the water refill point does not result in -

(i) any obstruction of a public highway or adversely affect pedestrian flows, or

(ii) the removal of a landscape feature,

(b) the water refill point does not exceed 1.7 metres in height and 0.3 metres in diameter or such other dimensions as may be agreed in writing with the Authority,

(c) no advertisement is displayed on the water refill point,

(d) where the water refill point is installed on a footpath or pavement, the remaining footpath or pavement is at least 1 metre in width,

(e) where the water refill point is not used throughout a period of six months, it must be removed from the site within three months of the end of that six month period.

CLASS 8

STORAGE, DISTRIBUTION AND INDUSTRIAL CHANGE OF USE

Changes from general to light industrial use.

1. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use for any general industrial purpose within use class 25 (general industry) to use for any light industrial purpose within use class 24 (light industry).

Changes from special or waste uses to general or light industrial use.

2. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use for any purpose within use class 26 (special industry) or 27 (waste) to use for any general industrial purpose within use class 25 (general industry) or any light industrial purpose within use class 24 (light industry).

Changes between light industrial use and general storage or distribution use.

3. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, to or from an existing use for any light industrial purpose within use class 24 (light industry) to or from a use for any general storage or distribution purpose within use class 22 (general storage or distribution).

Changes from general industrial use to general storage or distribution use.

4. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use for any general industrial purpose within use class 25 (general industry) to use for any general storage or distribution purpose within use class 22 (general storage or distribution).

Changes from general storage or distribution uses to general industrial use in Key Industrial Areas.

5. (1) Change in the use of land in a Key Industrial Area, including any land which is, or is within the curtilage of, a protected building or a protected monument, from any existing use for a storage or distribution purpose within use class 22 (general storage or distribution) to a use for any general industrial purpose within use class 25 (general industry).

(2) In this paragraph "**Key Industrial Area**" means -

(a) the key industrial areas at Pitronnerie Road, Northside, Saltpans and Longue Hougue as identified in the Island Development Plan and shown shaded in light purple in the Proposals Map forming part of that plan, and

(b) the key industrial expansion areas located adjacent to the Key Industrial Areas as identified in the Island Development Plan and shown hatched in mid-purple in the Proposals Map forming part of that plan.

CLASS 9

TREES

Pruning of trees.

1. The pruning of any protected tree provided that it is carried out in accordance with British Standard Specification 3998/2010-Tree Work.

Recommendations as revised or re-issued from time to time[t].

Dead and diseased trees.

2. The cutting down, uprooting, topping, lopping or pruning of any protected tree or part of such a tree which has been certified as being dead or in a hazardous state by an -

(a) arboriculturist, or

(b) other person who has sufficient expertise to make such a certification,

provided that the tree is not within a site of special significance and that the cutting down, uprooting, lopping or topping of a tree is not carried out in the period beginning on 1st March and ending on the 31st July in any calendar year.

Cutting down etc. of trees in compliance with statutory requirements, to abate or prevent a nuisance or implement a planning permission.

3. The cutting down, uprooting, topping, lopping or pruning of any protected tree or part of such a tree to the extent that such action is -

(a) necessary to comply with any requirements under any enactment including the Cutting of Hedges Ordinance, 1953[u] and the High Hedges (Guernsey)

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[t] Current edition B.S. 3998:2010.

[u] Recueil d'Ordonnances Tome X, p. 373; this enactment has been amended.

Law, 2016[v],

(b) necessary to prevent or abate a nuisance, or

(c) required to enable a person to implement any planning permission except for an outline permission,

provided that the cutting down, uprooting, topping or lopping of a tree is not carried out in the period beginning on 1st March and ending on the 31st July in any calendar year.

Cutting down etc. of trees to prevent obstruction of a highway or to ensure safe and efficient use for civil aviation purposes.

4. The cutting down, uprooting, topping, lopping or pruning of any protected tree to the extent that such action is necessary -

(a) to prevent obstruction of a highway, or

(b) to ensure the safe and efficient use for civil aviation purposes of any land, structures, works or apparatus.

Cutting down of certain species of trees.

5. The cutting down, uprooting, topping, lopping or pruning of a tree of any of the following species which is a protected tree by virtue of being one of a group or area of trees or woodlands in relation to which a tree protection order has been made -

(a) *X Cupressocyparis leylandii* (Leyland Cypress),

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[v] Order in Council No. IV of 2017.

(b) *Chamaecypris nootkatensis* (Nootka Cypress), or

(c) *Cupressus macrocarpa* (Monterey Cypress),

provided that such operations do not cause any significant damage to any other tree, not of any of such species, which forms part of that group or area of trees or woodlands.

CLASS 10

SIGNS, ADVERTISEMENTS AND TEMPORARY ART INSTALLATIONS

Contractors' signs.

1. Temporary display of a contractor's signboard on a building or site where the contractor is currently engaged in building or other works provided that -

(a) any planning permission required under the Law for those works has been granted or those works comprise exempt development,

(b) there is only one such signboard on the building or site,

(c) the signboard is not internally illuminated,

(d) the signboard is removed upon completion of the works.

Nameplates.

2. Display on a building or on a boundary of premises of a nameplate identifying any individual, company or firm carrying on a trade, business or profession in or from that building or premises provided that -

(a) the trade, profession or business concerned is not being carried on in contravention of the Law,

(b) the nameplate is not internally illuminated,

(c) the size of the nameplate does not exceed 60 centimetres, measured in any dimension,

(d) in the case of the display of a nameplate on the boundary of premises, the nameplate is not freestanding or displayed on a hedge, tree or earthbank forming the boundary.

Signs for charity and public events.

3. Temporary display of a sign advertising, or giving directions to the location of, a charity or public event provided that -

(a) the sign is not illuminated, either internally or by external illumination,

(b) the sign is not displayed earlier than four weeks prior to the date of the event,

(c) the sign is removed within a period of seven days beginning on the day the event ended,

(d) in the case of any banner displayed across a street in St. Peter Port or St. Sampson, the sign does not include any commercial advertising material.

Election signs.

4. Temporary display of a sign, including on or within the curtilage of a protected building or a protected monument, which -

(a) promotes a candidate at, or the subject matter of which is otherwise in connection with, an election for any States or Parish office and which is displayed during the period immediately preceding the election, or

(b) promotes a campaign in relation to a question to be asked at a referendum to be held in Guernsey pursuant to an enactment, or the subject matter of which is otherwise in connection with such a referendum, and which is displayed during the period immediately preceding the referendum.

Signs advertising garden produce.

5. Display within the curtilage of a dwelling-house, including where such house or its curtilage is, or is within the curtilage of, a protected building or a protected monument of one sign advertising the sale of produce grown, otherwise than on a commercial basis, within the curtilage of the dwelling-house provided that -

(a) there is only one such sign within the curtilage,

(b) the size of the sign does not exceed 60 centimetres, measured in any dimension.

Repainting or replacement of existing signs.

6. Repainting or replacement of an existing sign provided that -

(a) the sign, as repainted or replaced, is not internally illuminated,

(b) the overall size and location of the sign is not altered as a result of the repainting or replacement.

Terre à l'amende signs.

7. Display of a terre à l'amende sign on a wall, fence or a building provided that -

(a) the Royal Court has granted an application, in respect of the land in question, for notices to be published in La Gazette Officielle to the effect that the land is terre mise à l'amende,

(b) the sign is not illuminated, either internally or by external illumination,

(c) the size of the sign, does not exceed 60 centimetres, measured in any dimension.

Heritage signs and interpretation boards.

8. Display of a sign or board, including on or within the curtilage of a protected building or a protected monument, displaying information in relation to the building or site on or near to which it is located, provided that -

(a) the sign or board is not illuminated, either internally or by external illumination,

(b) where mounted on the ground, the size of the sign (including any pole or other object on which it is mounted) does not exceed 1.2 metres in height,

(c) where mounted on a building or other structure, the size of the sign does not exceed 1 metre, measured in any dimension.

Signs within an existing fascia board.

9. (1) Display of a sign within an existing fascia board attached to a non-domestic building or other non-domestic structure provided that -

(a) the sign is not illuminated, either internally or by external illumination,

(b) where the building or other structure is within a conservation area or is substantially constructed before 1900, the sign must comprise individual letters or be painted,

(c) the sign must not be located above first floor level.

(2) In this paragraph "**fascia board**" means a signboard on a non-domestic building or other non-domestic structure.

Signs applied to a glazed area.

10. Display of a sign applied internally to an existing glazed area, including on or within the curtilage of a protected building, provided that the area of the glazing covered by signage does not exceed 25% of the total area of glazing on the elevation in question.

Electric charging point signs.

11. The display of a sign, indicating an electric charging point, displayed on a building, wall, fence, pole or gate, including where the sign is located on or within the curtilage of a protected building, provided that -

(a) the building or other structure, as the case may be, is not within a site of special significance,

(b) the sign does not exceed 60 centimetres, measured in any dimension,

(c) the sign is not illuminated, either internally or by external illumination,

(d) where the sign is mounted on a pole, it is not mounted more than 1.2 metres above ground level,

(e) no advertisement is displayed on the sign.

Parish signs.

12. The display or replacement of a sign by the Constables or Douzaine of a Parish, on a building, other structure or on other land in the Parish which is owned by the Constables, or by the Constables and Douzaine, for the time being, of that Parish, provided that -

(a) the sign is to be displayed in connection with parochial activities of the Constables or the Douzaine,

(b) the building, other structure or land, on which the sign is displayed, is not within a site of special significance,

(c) the sign does not exceed 1 metre, measured in any dimension,

(d) the sign is not illuminated, either internally or by external illumination,

(e) where the sign is mounted on a pole, it is not mounted more than 1.5 metres above ground level,

(f) no advertisement is displayed on the sign,

(g) the display of the sign does not result in any obstruction of a highway or a private pedestrian road, street, lane or clos, however named, or adversely affect pedestrians flows,

(h) where any sign is replaced, any redundant sign is removed from the site in question within one month of the replacement.

Temporary art installations.

13. The installation of an art work provided that -

(a) the art work is not installed within a site of special significance,

(b) the art work does not exceed 2 metres in height,

(c) the art work is not illuminated, either internally or by external illumination,

(d) the installation does not result in -

(i) any obstruction of a highway or a private pedestrian road, street, lane or clos, however named or adversely affect pedestrian flows, or

(ii) the removal of a landscape feature other than an art work which the installation is replacing,

(e) no advertisement is displayed on the art work,

(f) the art work is removed from the site within 20 weeks starting on the date of the installation.

CLASS 11

RETAIL AND ADMINISTRATIVE, FINANCIAL AND PROFESSIONAL CHANGE OF USE

Changes from use as an office to use for temporary re-location in emergency.

1. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use within use class 16 (administrative office) to a use within use class 17 (temporary office).

Changes between convenience retail use and general retail use in the Main Centres.

2. Change in the use of any land in a Main Centre, including of any land which is, or is within the curtilage of, a protected building or a protected monument, to or from any existing use for any convenience retail purpose within use class 9 (convenience retail) to or from use for any general retail purpose within use class 10

(general retail).

Changes from use as a hot food take-away to use for sale of food.

3. Change in the use of any land in a Main Centre, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use as a hot food take-away within use class 12 (hot food take-away) to use for sale of food for consumption on the premises within use class 11 (food).

Change of use of upper floors of buildings in the Main Centres from retail use or office use to use for certain residential uses.

4. Change of use of a floor of a building within a Main Centre including of any building which is, or is within the curtilage of, a protected building or a protected monument, from an existing use within any of use classes 9 (convenience retail), 10 (general retail), 15 (financial and professional services) or 16 (administrative office) to a use within use class 2 (flat) or 5 (use of part of dwelling for business purposes), provided that -

(a) the floor of the building is located at first floor level or above,

(b) the change of use would not result in a dwelling which did not meet the standards in relation to internal space within new dwellings set out in the Technical housing standards-nationally described space standard as revised, reissued or replaced from

time to time[w],

(c) the Authority is notified of the change of use within a period of one month starting on the date of the change of use,

(d) the total area, the use of which is changed, does not exceed 250 square metres.

CLASS 12

VISITOR ACCOMMODATION CHANGE OF USE

Temporary change of use from a visitor economy use to certain residential uses.

1. (1) Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use falling within use class 7 (serviced visitor accommodation) or use class 8 (non-serviced visitor accommodation) to a use within use class 1 (dwelling house), use class 2 (flat) or use class 5 (use of part of dwelling for business purposes) provided that -

(a) the change of use is one which occurs, or has occurred, in the period starting on 25th March, 2020 and ending on the 31st December, 2023 or such later date as the Authority may by Regulations prescribe,

(b) the land reverts to its previous lawful use,

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[w] Issued by the Department for Communities and Local Government in the UK; current edition dated March, 2015 with notes added in May, 2016. ISBN : 978-1-4098-4567-6.

immediately before the 25th March, 2020, on or before the 31st January, 2024 or such later date as the Authority may by Regulations prescribe,

(c) the owner or occupier of the land notifies, or has notified, the Authority in writing of the date the change of use occurred and of the matters in subparagraph (2) -

(i) where the change of use has occurred before 1st April, 2021, by the 21st April, 2021, or

(ii) where the change of use occurs, or has occurred, after the 1st April, 2021, within 21 days of the date of the change of use.

(2) The notification referred to in subparagraph (1)(c) must include, or have included -

(a) the name and address of the land,

(b) brief particulars of the use within use class 1, use class 2 or use class 5 to which the use of the land has changed, and

(c) the expected duration of the use to which the use of the land has changed.

Changes of use from certain residential uses to a visitor economy use.

2. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an

existing use within use class 1 (dwelling house), use class 2 (flat) or use class 5 (use of part of dwelling for business purposes) to a use falling within use class 7 (use as serviced visitor accommodation) or use class 8 (use as non-serviced visitor accommodation) where the change of use is to revert to the previous lawful use immediately before 25th March, 2020 in compliance with the proviso in item (b) of paragraph 1(1).

Changes of use from use as non-serviced visitor accommodation to use as a dwelling-house.

3. (1) Change in the use of any land, including any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use as non-serviced visitor accommodation within use class 8 (non-serviced visitor accommodation) comprising a self-catering unit to an existing use as a dwelling-house within use class 1 (dwelling house) or 5 (use of part of a dwelling for business purposes), provided that -

(a) the land formed part of a single dwelling-house,

(b) the change of use of the land is for the purpose of allowing the land to revert back to use as part of the original, single dwelling-house,

(c) the land comprises a maximum of two self-catering units,

(d) the Authority is notified of the change of use within a period of one month starting on the date of the change of use.

(2) In this paragraph -

"**self-catering unit**" means premises -

(a) categorised as such under a boarding permit granted in respect of those premises, or

(b) of such a description which would be categorised as a self-catering unit under the Tourist Law, 1948 were a boarding permit to be granted in respect of those premises, and

"**single dwelling-house**" means a single dwelling-house, and land within the curtilage of that dwelling-house, the use of which fell within use class 1 (dwelling house) or use class 5 (use of part of a dwelling for business purposes) immediately before its use as visitor accommodation.

Change of use from a visitor accommodation use on certain sites to use for certain residential uses.

4. (1) Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use falling within use class 7 (serviced visitor accommodation) or use class 8 (non-serviced visitor accommodation) to a use within use class 1 (dwelling house), use class 2 (flat), use class 3 (sheltered housing) or use class 4 (specialised housing) provided that -

(a) there has been no valid boarding permit in effect in respect of the visitor accommodation since 31st December, 2020,

(b) the visitor accommodation has not been advertised or promoted for use as visitor accommodation since

31st December, 2020,

(c) the change of use takes place within two years starting on the date of the coming into force of this Ordinance or such later date as the Authority may by Regulations prescribe,

(d) the Authority approves in writing any impacts arising from the change of use on highway safety and neighbourhood amenity before the change of use occurs,

(e) the land comprises the whole or part of a site described in Schedule 2.

(2) An application for an approval under subparagraph (1)(d) must -

(a) be made on a form supplied by the Authority and must include the particulars specified in that form, and

(b) be accompanied by one copy of -

(i) a plan which clearly and accurately identifies the location of the site to which the application relates,

(ii) a block layout plan which clearly and accurately identifies the site to which the application relates, and

(iii) any other plans, drawings and information necessary to describe the impacts arising from the change of use on roads and traffic and highway safety and the reasonable enjoyment of neighbouring properties,

and in making an application the applicant must have regard to any guidance in relation to the making of such an application issued by the Authority from time to time.

(3) The form supplied by the Authority shall include a statement to be signed by the applicant -

(a) that the applicant is the owner or has the consent of the owner, of any part of the land to which the application relates, to the application being made, or

(b) if the applicant does not know who any such owner is, that the applicant has made all reasonable enquiries to identify any such owner and obtain that owner's consent.

(4) In determining an application under subparagraph (1)(d), the Authority must have regard to -

(a) any significant adverse effects on roads and traffic and highway safety or on the reasonable enjoyment of neighbouring properties, and

(b) any relevant Development Plan or Local Planning

Brief to the extent it relates to the matters in item (a),

and the weight to be given to the Development Plan or Local Planning Brief and the matters in item (a) shall be for the Authority having regard to the particular facts and circumstances of the case.

CLASS 13

DEMOLITION

Demolition of a shed, glasshouse, temporary or garden structure, fence, gate, relevant domestic structure or exempt structure etc.

1. (1) The demolition of any -

(a) shed, freestanding glasshouse, temporary structure, garden structure, fence or gate,

(b) relevant domestic structure for which planning permission was granted for the construction, erection, creation, placement or installation of the same,

(c) exempt structure, or

(d) structure required to be demolished in accordance with a compliance notice issued under the Law,

but not including the removal of an earthbank or hedge and provided that the provisos in subparagraph (2) are fulfilled.

(2) The provisos referred to in subparagraph (1) are that -

(a) the structure is not substantially constructed before

1900,

(b) the demolition work would not create a vehicular access to premises,

(c) in the case of partial demolition, the remaining structure is made good,

(d) the structure to be demolished is not a wall which forms a field boundary or adjoins a highway,

(e) the structure to be demolished is not within a site of special significance,

(f) any waste arising from the demolition must be removed from the site in question within two months of the completion of the demolition,

(g) any matter not comprising waste arising from the demolition must be reused on site or removed from the site within six months of the completion of the demolition,

(h) in the case of the demolition of a relevant domestic structure, the demolition would not result in a breach of a term or condition of the planning permission under which the structure was constructed, erected, created, placed or installed.

(3) In this paragraph -

"**exempt structure**" means a structure or other feature the erection, creation, placement or installation of which would be exempt development,

"**garden structure**" means a structure, designed and used for the support of plants, not falling within subparagraph (1)(c), which is -

(a) located within the curtilage of a dwelling-house, flat or a building containing flats, and

(b) used primarily for the domestic purposes of that dwelling-house, flat or building containing flats, and

"**relevant domestic structure**" means a freestanding outbuilding, not falling within subparagraph (1)(a) or (c), which is -

(a) located within the curtilage of a dwelling-house, flat or a building containing flats, and

(b) used primarily for the domestic purposes of that dwelling-house, flat or building containing flats.

SCHEDULE 2

Paragraph 4(1)(e) of Class 12 of Schedule 1

VISITOR ACCOMMODATION CHANGE OF USE
DESCRIPTIONS OF SITES FOR THE PURPOSES OF PARAGRAPH 4(1)(e) OF CLASS 12 OF SCHEDULE 1

PART I
DESCRIPTIONS OF PROPERTIES

1. All of the land comprised in Cadastre land parcel D006900000, the name and address of which is La Roche, Les Rohais de Haut, Castel, Guernsey GY5 7NA.

2. All of the land comprised in Cadastre land parcel D003220000, the name and address of which is Wisteria, King's Mills Road, Castel, Guernsey, GY5 7LS.

3. All of the land comprised in Cadastre land parcel E009370000, the name and address of which is Les Rouvets Farm, Bas Rouvets, St. Saviour, Guernsey GY7 9ND.

4. All of the land comprised in Cadastre land parcel F000860000, the name and address of which is L'Eree Hotel, Route de la Rocque Poisson, L'Eree, St. Pierre du Bois, Guernsey, GY7 9LG.

5. All of the land comprised in Cadastre land parcel F007610000, the name and address of which is Mille Fleurs, Rue du Bordage, St. Pierre du Bois, Guernsey, GY7 9DW.

6. All of the land comprised in Cadastre land parcel J013390000, the name and address of which is the Bon Port Hotel, La Rue Gros Jean, La Rue des Clotures, St. Martin, Guernsey, GY4 6EW.

7. All of the land comprised in Cadastre land parcel J002270000, the name and address of which is the Forest Park Hotel (formerly known as St. Margaret's Lodge Hotel), Route de la Forêt, St. Martin, Guernsey GY4 6UE.

8. All of the land comprised in Cadastre land parcel J016230000, the name and address of which is the Idle Rocks Hotel, Route de Jerbourg, St. Martin, Guernsey GY4 6BJ.

9. All of the land comprised in Cadastre land parcel J010600000, the name and address of which is Coconut Grove (formerly known as Sunnydene Country House Hotel), Rue des Marettes, St. Martin, Guernsey GY4 6JH.

10. All of the land comprised in Cadastre land parcel K005570000, the name and address of which is La Brigade Farm, La Brigade, St. Andrew, Guernsey GY6 8RQ.

PART II

INTERPRETATION OF SCHEDULE

11. (1) In this Schedule, "**Cadastre**" means the Cadastre prepared and for the time being in force under the Cadastre Law, 1947[x] (called "**the 1947 Cadastre**" in that Law).

(2) In this Schedule a reference to -

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[x] Ordres en Conseil Vol. XIII, p. 78; this enactment has been amended.

(a) land comprised in a Cadastre land parcel number is to the land comprised in the specified land parcel number, and

(b) the name and address of land is to the name and address of that land,

at the date of commencement of this Ordinance.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

REVIEW OF THE LAND PLANNING AND DEVELOPMENT (EXEMPTIONS) ORDINANCE, 2007

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

3rd January, 2023

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Development & Planning Authority ("the Authority") requests that the Policy Letter titled 'Review of the Land Planning and Development (Exemptions) Ordinance, 2007' be considered at the States' meeting to be held on 15th February 2023.

Amending the Land Planning and Development Ordinances to provide for further planning permission exemptions has been a priority action of the Government Work Plan ("GWP") since 2021 and, in 2022, it was given Category 2 status. The Authority believes it is important that the States agree the amendments to be made to the above Ordinance and that a new Ordinance be brought in to repeal and replace it at the next available meeting so as to provide clarity to a number of existing exemptions and introduce new ones thereby enabling opportunities for regeneration.

Yours faithfully,

Deputy V S Oliver
President

Deputy A W Taylor
Vice-President

Deputy C Blin
Deputy J F Dyke
Deputy A Kazantseva-Miller

P.2023/4

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

STATEMENTS AND QUESTIONS – RULES 10-15

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Statements and Questions' dated 9th January 2023, they are of the opinion:-

1. To amend Rule 10(2) to read:

"Any Member holding the office of President or member of a Committee who has tendered a resignation from that office who wishes to make a statement regarding that resignation may do so at the next Meeting after tendering the resignation or during the meeting at which a successor to the vacated office is to be elected:
a) at the time prescribed in Rule 9; or
b) at such other time as the Presiding Officer may direct.

Provided that the Member has supplied the Presiding Officer with the text of the statement in advance and that the statement shall not exceed 15 minutes in duration.

2. To amend Rule 10(3) to read:

"Any Member who has obtained permission from the Presiding Officer to make a statement on behalf of, and approved by, a Committee or otherwise relating to States' business which, in the opinion of the Presiding Officer, should be made may make that statement:
a) at the time prescribed in Rule 9; or
b) at such other time as the Presiding Officer may direct.

Provided that the Member has supplied the Presiding Officer with the text of the statement in advance and that the statement shall not exceed 15 minutes in duration (which may be extended at the discretion of the Presiding Officer in exceptional circumstances). In respect of (3) only, after the Member has made the statement, the Presiding Officer shall allow a period not exceeding 15 minutes (which period may be extended at the discretion of the Presiding Officer) for questions to be asked within the context of the statement.

3. To amend Rule 10(5) to read:

> "Any statement made under the provisions of paragraph (4) shall not exceed 15 minutes in duration and shall be approved by the Committee. In respect of statements made under the provisions of paragraph (4) only, after the statement has been made, the Presiding Officer shall allow a period not exceeding 20 minutes (which period may be extended at the discretion of the Presiding Officer) for questions to be asked on any matter within the mandate of the Committee, or in the case of any statement made on behalf of the States of Alderney any matter for which the States of Alderney has responsibility, except any topic which is part of another item of business at the Meeting in question.
> Provided that:
> after any question asked further to a statement made under Rule 10, the Member to whom questions are addressed may decline to answer a question if, in his or her opinion, any answer given might be inaccurate or misleading but shall provide the answer to the said question in writing not later than five clear days (excluding Saturdays, Sundays and Public Holidays) following the date of the Meeting. Each individual question shall not exceed one minute in duration and the answer thereto shall not exceed one and a half minutes in duration."

4. To create a new Rule 10(5)(a) to read:

> "A Member asking or replying to a question or a supplementary question who:
>
> (a) has a direct or special interest in the subject matter of the question; or
> (b) is aware that his or her spouse, co-habiting partner, infant child or any company in which her or she has a controlling interest on his or her, or their, behalf has such an interest
>
> shall, without prejudice to the requirements of Rule 29, before he or she asks or replies to the question declare the said interest by disclosing it to the Meeting."

5. To amend Rule 11(2)(c) to read as follows:

> "shall not relate to the business of the day, with the exception of general update statements made during the meeting in question;"

6. To amend Rule 12(2)(d)to read as follows:

> "shall not relate to the business of the day, with the exception of general update statements made during the meeting in question;"

7. To amend the first sentence of Rule 14(1) to read as follows:

> "A Member may at any time place a question on any subject in accordance with this Rule for written reply by addressing the same to the President of a Committee and by furnishing a copy thereof to the Presiding Officer, His Majesty's Procureur, the States' Greffier and to the official postal or email address of the relevant Committee."

8. To amend Rule 14(3) to read as follows:

> "The States' Greffier shall cause to be published within one working day, or as soon as possible thereafter, on the States' website and in such other form as he or she may determine, a copy of every question and of the reply thereto deposited in accordance with this Rule."

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

STATEMENTS AND QUESTIONS – RULES 10-15

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

9th January 2023

Dear Sir

1 Executive Summary

1.1 The propositions and policy letter suggest minor amendments to the Rules of Procedure of the States of Deliberation and their Committees ("the Rules") further to a review of Rules 10 – 15 relating to statements and questions.

2 Introduction

2.1 In January 2022, the States' Assembly & Constitution Committee ("the Committee") agreed to review specific Rules during 2022. The first review focused on Rules 10 to 15, 'Statements and Questions'.

2.2 Statements in the States of Deliberation have evolved over the last ten years. The ability for Members to ask questions after what are now known as Rule 10(3) statements was introduced in 2012. In 2017, the States introduced Rule 10(4), commonly known as 'General Update Statements', followed by a period of questions.

2.3 Parliamentary questions – oral and written - have been a longstanding feature of the proceedings of the States of Deliberation. Such questions have an important role in the States in enabling Members to hold Committees to account: asking questions after statements delivered; oral questions to Presidents or a nominated Member of Committees during Meetings (Rule 11 or 12); or written questions (Rule 14).

2.4 Statements and parliamentary questions play an important role in parliamentary proceedings to enable scrutiny from Members on the work of

Committees and for specific matters to be raised in a public forum. They also provide an opportunity for Presidents to explain publicly the work of their Committees. The purpose of the review has been to consider – from Committees' and Members' experiences – whether improvements can be made to Rules 10 to 15.

2.5 A consultation document was issued to all Committees and Members on 15th February in respect of suggestions put forward this political term regarding Rules 10 – 15. Members were also invited to raise any further matters they wished the Committee to consider. The consultation closed on 15th March. The following sections will address the points raised as part of the consultation and other matters that the Committee has identified when reviewing the Rules.

3 Rule 10: Statements

3.1 Rule 10(1) to (4) sets out the provisions relating to the types of statements which can be delivered in the States of Deliberation and the questions that can be asked after certain statements. This is summarised in the table below:

Rule	Type of statement	Length of statement (maximum)	Time period for questions after statements
10(1)	Personal Nature/Correction	15 minutes	*Not permitted*
10(2)	Resignation	15 minutes	*Not permitted*
10(3)	States' business	15 minutes*	15 Minutes**
10(4)	General Update	10 minutes	20 minutes**

* *the time period for this statement can be extended at the discretion of the Presiding Officer in exceptional circumstances.*

** *the time period for questions can be extended at the discretion of the Presiding Officer.*

3.2 The Committee was asked to consider proposing an increase in the time allowed for 'General Update Statements' to 15 minutes to allow sufficient time for a comprehensive statement to be given, in line with the other statement lengths permitted under Rule 10. The consultation responses showed a slight majority of respondents were in favour of this change, and the Committee is proposing changing the Rule accordingly. In proposing this change, it is important to note that the time allowed is the maximum length permitted, and there is no obligation to deliver a statement of that length.

3.3 The majority of respondents to the consultation favoured retaining the current time allowed for questions, and the Committee could see no reason to change the status quo; consequently, it is not recommending any changes to the Rules in this respect.

3.4 It was suggested to the Committee that the Policy & Resources Committee and Principal Committees should only be required to provide one 'General Update statement' annually, rather than biannually. The Committee is of the view that those Committees providing such statements biannually is useful in providing Members and the public with timely updates on the breadth of work being undertaken by those Committees, and to enable scrutiny of the work of Committees. The Committee strongly supports the continuation of biannual statements by those Committees and this position was supported by the majority of consultation respondents, with only two Committees in favour of changing the arrangements. The Committee is therefore not proposing any change to the Rules.

3.5 It was suggested the Committee consider whether general update statements should be scheduled in the first six months of the political term. The Committee agreed it was useful to have statements in this period, and this was supported by the vast majority of respondents, and therefore the Committee is not proposing any change to the Rules.

3.6 At present, the Rules require Members to provide advance copies of their statements to the Presiding Officer under Rule 10(1). It is convention for Members and Committees also to provide the advance text of statements under Rules 10(2) to (4) to the Presiding Officer. This also assists the Parliamentary Team, who publish the statements online immediately after they are delivered, on the 'Statements made in States Meetings'[1] webpage. There were no objections to the suggestion to amend the Rules requiring all statements to be sent to the Presiding Officer in advance of delivery and the Committee is therefore proposing the Rules are changed to accommodate this.

3.7 In January 2022, the Presiding Officer requested that any Member making a Rule 10(3) statement at a future States' Meeting circulate a copy to Members prior to the Meeting at which it is to be made to assist in ensuring that any questions asked in the period following the statement can be formulated in the context of the statement.

3.8 The Committee considered whether this request should be formalised in the Rules. It noted it could assist Members in formulating questions that are 'within the context of the statement'.

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[1] www.gov.gg/statementsandspeeches

3.9 Out of the five Committees which responded to this question, four did not support circulating Rule 10(3) statements in advance with one not expressing strong feelings. Likewise, individual Members did not support the proposal, and consequently the Committee is not proposing any change.

3.10 The provision under Rule 10(5) states that *"after any question asked further to a statement made under Rule 10, the Member to whom questions are addressed may decline to answer a question if, in his or her opinion, any answer given might be inaccurate or misleading".*

3.11 This does not include a requirement that the Member to whom the questions are addressed must provide the answer to the question in writing within a set timeframe, unlike Rule 11(4)(d), which reads as above but goes on to say that any Member declining to answer a question on the above grounds *"…shall provide the answer to the said question in writing not later than five clear days (excluding Saturdays, Sundays and Public Holidays) following the date of the Meeting".*

3.12 The Committee is of the view that this is a helpful addition to the Rule and, for the sake of consistency, is recommending that Rule 10(5) be amended to mirror the wording of Rule 11(4)(d) in this respect.

3.13 A Member asking or replying to a question after a statement is delivered is not required to declare whether they have an interest in the subject matter of the question, whereas they are under Rules 11 and 12 by virtue of Rule 11(7).

3.14 This requirement does not exist for questions asked or replied to further to a statement being delivered, or for questions submitted under Rule 14. In the interests of transparency and consistency, the Committee is proposing the introduction of this requirement with regard to questions asked further to statements.

4 Rules 11 - 15: Parliamentary Questions

4.1 A question to be answered orally at a Meeting of the States of Deliberation, may be addressed to the President of a Committee of the States, subject to Rule 15 and the conditions set out in Rule 11(2) and 12(2). One of these conditions are that the question 'shall not relate to the business of the day'.

4.2 The business at an ordinary Meeting includes 'statements'. It has been ruled that oral questions cannot be asked of a Committee if it is scheduled to deliver a General Update Statement under Rule 10(4), given the period of questions permitted after the statement enables a Member to ask questions on any matter within the mandate of the Committee.

4.3 Representations were made to the Committee to consider amending the Rules so that Members were not precluded from asking a question under Rule 11 or 12 by virtue of a Committee being scheduled to deliver a General Update Statement. It was highlighted that questions further to such statements did not allow a Member the same scope to scrutinise a specific topic and reduced the opportunity for supplementary questions to be asked by Members on the topic.

4.4 The Committee believes it is appropriate for the Rule to exist to prevent questions being asked relevant to propositions due to be considered, where Members are able to raise their questions and points in debate for response from the sponsoring Committee. It concluded Members should not be prevented from asking Rule 11 or 12 questions on matters because a general update statement was scheduled to be delivered at the same Meeting, given the limited nature of questions after a statement. It therefore proposes amending both Rule 11(2)(c) and 12(2)(d) to exclude 'statements' for the purpose of oral questions.

4.5 In December 2021, the Policy & Resources Committee requested that the Committee consider the suggestion arising from the Presidents' Meeting that the staff resource associated with drafting written responses to Rule 11, 12 and 14 questions be calculated for all Committees going forward. It was noted that a similar initiative was undertaken in the 2012 - 2016 term but was discontinued given it had no discernible impact on the number and type of questions submitted.

4.6 The Committee sought clarification as to the objective of such a proposal. The Policy & Resources Committee stated that it believed the provision of such information might help States' Members to make informed decisions when they were determining how best to obtain information. It stated that it considered that sometimes parliamentary questions were asked when an informal question or enquiry to Committee Members or staff would achieve the same result.

4.7 The Policy & Resources Committee considered that if States' Members were made more aware of the time and resources used to answer parliamentary questions, it might help ensure that they were better informed when deciding the approach they wished to take.

4.8 The Committee was not convinced that the objective of the proposal – to encourage different approaches to obtain information – would be met. If the question was asked and answered informally, it questioned why the staff resources and costs of providing the answer would differ significantly if the same information was being provided. It also questioned the benefits of bringing in an administrative process to cost staff time which would, in itself, have its own cost.

4.9 Responses to questions asked informally at staff or Member level will normally not be provided to all Members, or the public. A key motivation for asking a parliamentary question is that the question and the response will be in the public domain by being published in the 'Hansard' Report (Rule 11 & 12) or online (Rule 14) and then permanently recorded.

4.10 The Committee consulted on the suggestion. The majority of individual Members and Committees who responded were against the suggestion. The responses from Committees were mixed: the majority of Committees that responded did not consider this should be compulsory in the Rules of Procedure.

4.11 The Committee does not support the suggestion and is not proposing any change to the Rules. It is important to note that the Committees who wish to produce such information can – as some Departments did in the 2012 – 2016 political term – include the cost of responding to questions as part of their response without this being required by the Rules. It recommended that Committees minded to do so calculate the costs in line with the methodology used to estimate costs of responding to request under the 'Freedom of Information Code'[2] to ensure consistency across Committees and the States.

4.12 At present, in accordance with Rule 14(1), a Member submitting a question for written reply sends it to the President of the Committee in question and also provides copies to the Presiding Officer and His Majesty's Procureur. Given that the Parliamentary Team manages the administration of written questions, the Committee is recommending that Rule 14(1) be amended to require a copy also to be sent to the States' Greffier.

4.13 Rule 14(3) provides that *"*[a] *copy of every question and the reply thereto deposited in accordance with this Rule shall be available at the Greffe for public inspection whenever the Greffe is open for normal business."*

4.14 Questions for written answers have been published on the States of Guernsey website since 2012. Consequently, the Rule no longer reflects modern practices and the Committee is therefore proposing that it be revised to be more in line with Rule 3(5), which covers the publication of propositions submitted to the Greffier, as follows: *"On receipt of every question and reply provided in accordance with this Rule, the Greffier shall cause it to be published within one working day on the States' website, or as soon as possible thereafter, and in such other form as he or she may determine."*

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[2] The Freedom of Information Code can be found on www.gov.gg/information. Guidance on the Freedom of Information code can be found in the downloads section of that page. Pages 8 & 9 set out how to calculate the time and cost spent responding to requests.

5 Compliance with Rule 4

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be appended to motions laid before the States.

5.2 In accordance with Rule 4(1):

a) The propositions relate to the procedures, practices and practical functions of the States' Assembly, rather than policy and, as such, do not contribute directly to the States' objectives and policy plans.

b) In preparing the propositions, all Committees and States' Members were invited to respond to a consultation on the matter.

c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no financial implications to the States of carrying the proposal into effect.

5.3 In accordance with Rule 4(2):

a) The propositions relate to the Committee's duties and powers to advise the States and to develop and implement policies in relation to "the procedures and practices of the States of Deliberation and committees of the States".

b) The propositions have the unanimous support of the Committee.

Yours faithfully

Deputy C.P. Meerveld
President

Deputy L.C. Queripel
Vice-President

Deputy S.P. Fairclough
Deputy J.A.B. Gollop
Deputy L.J. McKenna

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 91 of 2022

THE AMALGAMATION AND MIGRATION OF COMPANIES (FEES PAYABLE TO THE GUERNSEY FINANCIAL SERVICES COMMISSION) (AMENDMENT) REGULATIONS, 2022

In pursuance of sections 66, 94, 535 and 538 of the Companies (Guernsey) Law, 2008[a], "The Amalgamation and Migration of Companies (Fees Payable to the Guernsey Financial Services Commission) (Amendment) Regulations, 2022", made by the Committee *for* Economic Development on 8th December, 2022, are laid before the States.

EXPLANATORY NOTE

These regulations amend the Amalgamation and Migration of Companies (Fees payable to the Guernsey Financial Services Commission) Regulations, 2012 by increasing the fee payable to the Guernsey Financial Services Commission which must accompany an application for its consent for the amalgamation of companies pursuant to the provisions of Part VI of the Companies (Guernsey) Law, 2008 and for the removal of a supervised company from the Register of Companies for the purposes of becoming registered as a company under the law of a district, territory or place outside Guernsey in accordance with the provisions of Part VII of that Law.

There continues to be no fee payable to the Guernsey Financial Services Commission when a non-Guernsey company migrates "inwardly" to become registered as a Guernsey company.

These Regulations came into force on the 1st January, 2023.

No. 92 of 2022

THE FINANCIAL SERVICES COMMISSION (LIMITED LIABILITY PARTNERSHIPS) (FEES) REGULATIONS, 2022

In pursuance of sections 45 and 113 of the Limited Liability Partnerships (Guernsey) Law, 2013[a], "The Financial Services Commission (Limited Liability Partnerships) (Fees) Regulations, 2022", made by the Committee *for* Economic Development on 8th December, 2022, are laid before the States.

EXPLANATORY NOTE

These Regulations, made by the Committee *for* Economic Development, prescribe the fee payable to the Commission under the Limited Liability Partnerships (Guernsey) Law, 2013 in relation to an application for the consent of the Commission for a supervised LLP to be removed from the Register.

These Regulations came into force on the 1st January 2023.

No. 93 of 2022

THE LIMITED PARTNERSHIPS (FEES) (AMENDMENT) REGULATIONS, 2022

In pursuance of sections 36(1)(c), 43, and 44 of the Limited Partnerships (Guernsey) Law, 1995[a], "The Limited Partnerships (Fees) (Amendment) Regulations, 2022", made by the Committee *for* Economic Development on 8th December, 2022, are laid before the States.

EXPLANATORY NOTE

These Regulations, made by the Committee *for* Economic Development, prescribe the fee payable to the Commission under the Limited Partnerships (Guernsey) Law, 1995 in relation to an application for the consent of the Commission for a supervised limited partnership to be removed from the Register.

These Regulations came into force on the 1st January 2023.

No. 94 of 2022

THE PROTECTED CELL COMPANIES AND INCORPORATED CELL COMPANIES (FEES PAYABLE TO THE GUERNSEY FINANCIAL SERVICES COMMISSION) REGULATIONS, 2022

In pursuance of sections 438, 469, 535 and 538 of the Companies (Guernsey) Law, 2008[a], "The Protected Cell Companies and Incorporated Cell Companies (Fees Payable to the Guernsey Financial Services Commission) Regulations, 2022", made by the Committee *for* Economic Development on 8th December, 2022, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fees payable to the Guernsey Financial Services Commission by any person for consent for the conversion of a licensed company into a protected cell company or an incorporated cell company; for the conversion of an existing licensed protected cell company into an incorporated cell company; for the incorporation of a protected cell company or incorporated cell company; or for the conversion of a licensed protected cell company or incorporated cell company into a non-cellular company. The Regulations also specify a fee for the conversion of an existing cell of a protected cell company into a non-cellular company.

These Regulations came into force on the 1st January 2023.

No. 108 of 2022

THE PUBLIC HOLIDAYS (CORONATION OF HIS MAJESTY KING CHARLES III) REGULATIONS, 2022

In pursuance of section 1A(1) of the Public Holidays Ordinance, 1994[a], and all other powers enabling it in that behalf, "The Public Holidays (Coronation ff His Majesty King Charles III)

Regulations, 2022", made by the Committee *for* Economic Development on 20th December, 2022, are laid before the States.

EXPLANATORY NOTE

These Regulations, made by the Committee *for* Economic Development, appoint Monday 8th May 2023 as a public holiday to mark the Coronation of His Majesty King Charles III.

These Regulations came into force on the 21st December, 2022.

No. 109 of 2022

THE COMPANIES (ANNUAL VALIDATION) (AMENDMENT) (N0. 2) REGULATIONS, 2022

In pursuance of sections 237A, 535 and 538 of the Companies (Guernsey) Law, 2008[a], "The Companies (Annual Validation) (Amendment) (No. 2) Regulations, 2022**"**, made by the Committee *for* Economic Development on 20th December, 2022, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the definition of high value asset in section 235 of the Companies (Guernsey) Law, 2008.

These Regulations came into force on the 20th December, 2022.

No. 4 of 2023

THE PAROCHIAL ELECTIONS (SCHOOL COMMITTEES) (TORTEVAL) REGULATIONS, 2023

In pursuance of Articles 54(4) and 77C of the Reform (Guernsey) Law, 1948a and section 3 of the Education (School Committees) (Guernsey) Ordinance, 1970b, and all other powers enabling it in that behalf, "The Parochial Elections (School Committees) (Torteval) Regulations, 2023" made by the States' Assembly & Constitution Committee on 19th January, 2023, are laid before the States.

EXPLANATORY NOTE

These Regulations provide for elections to the office of Douzenier to take place in the Parish of Torteval on the 16th February, 2023.

These Regulations also provide for elections of members to the committees of Forest Primary School and La Mare de Carteret Secondary School on the 16th February, 2023.

These Regulations came into force on the day they were made, 19th January 2023.

No. 5 of 2023

THE FORFEITURE OF MONEY, ETC. IN CIVIL PROCEEDINGS (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2022 (COMMENCEMENT) REGULATIONS, 2023

In pursuance of section 5 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022, the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (Commencement) Regulations, 2023 made by the Committee *for* Home Affairs on 23rd January 2023, is laid before the States.

EXPLANATORY NOTE

These Regulations amend a typographical error in the Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (Commencement etc.) Regulations, 2022. These Regulations come into force on 24th January, 2023.

No. 6 of 2023

THE EUROPEAN UNION (SEA FISHERIES, ETC.) (BREXIT) (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2023

In pursuance of section 11 (10) of The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, as amended, "The European Union (Sea Fisheries, etc.) (Brexit) (Bailiwick of Guernsey) (Amendment) Regulations, 2023", made by the Policy and Resources Committee on 24th January, 2023, are laid before the States.

EXPLANATORY NOTE

These Regulations amend a typographical error in the Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (Commencement etc.) Regulations, 2022. These Regulations come into force on 24th January, 2023.

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

P.2023/7

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2023

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the Proceeds of Crime Law"), by inserting a new Schedule, making provision for a statutory minimum standards test for accountants.

Section 1 and the Schedule to the Ordinance insert a new Schedule 7 to the Proceeds of Crime Law. Paragraph references below are to paragraphs of inserted Schedule 7. Section 1 also makes several minor amendments to Schedule 6 to the Proceeds of Crime Law (which is concerned with the Administrator of estate agents) to make the provisions of that Schedule more consistent with the provisions of the new Schedule to be inserted by this Ordinance. Sections 2, 3 and 4 are concerned with the extent, citation and commencement of the Ordinance.

Paragraphs 1 to 3 establish an office to be called the Administrator of Accountants ("the Administrator"), provide that the office shall be held by the Registrar of Companies in Guernsey or such other person as the Policy & Resources Committee ("the Committee") may from time to time appoint by regulations, and set out statutory functions and ancillary powers of the Administrator.

Paragraph 4 introduces a requirement for initial notification to the Administrator, and the provision of information relating to the minimum standards test, before a person becomes involved in accountancy and makes provision regarding notification by persons already involved in accountancy when the Schedule comes into force.

Paragraph 5 provides for an ongoing requirement for a person involved in accountancy to provide information relating to the minimum standards test upon request and to notify the Administrator if they are convicted of any offence or where there is any change in information previously provided.

Paragraphs 6 to 8 confer a power on the Administrator to apply to the Royal Court for an accountant disqualification order (where in the opinion of the Administrator a person is not a fit person to be involved in accountancy), set out the grounds for making a disqualification order, and make provision for the revocation of a disqualification order.

Paragraph 9 makes provision for the imposition of a civil financial penalty not exceeding £20,000 (or such other amount as the Committee may prescribe by regulations) by the Administrator where there has been a failure to comply with notification and information requirements under Schedule 7, a failure to comply with a condition imposed by the Administrator under paragraph 12, where a person involved in accountancy is convicted of any offence, or has engaged in certain business practices.

Paragraph 10 confers upon the Administrator the power to issue private reprimands, having regard to the conduct of a person involved in accountancy.

Paragraph 11 confers upon the Administrator the power to issue public statements where a person has contravened in a material particular a provision of Schedule 7 or any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision.

Paragraph 12 confers upon the Administrator the power to impose conditions on a person involved in accountancy or on an accountancy business in respect of that person or business's conduct of accountancy business.

Paragraph 13 gives a person or business who is the subject of a proposed financial penalty, public statement, or condition, the right to make written representations and makes provision regarding such representations. It also makes provision, for the avoidance of doubt, preventing recovery of a financial penalty during the period in which an application to the Royal Court could be made to set aside the penalty and the period during which such an application is before the Court.

Paragraph 14 provides that a person is not liable to a civil penalty if a prosecution has been commenced and that the Administrator shall repay a penalty if a prosecution commences after a penalty has been paid.

Paragraph 15 provides a general right for a person directly affected by any action, decision or determination of the Administrator to apply to the Royal Court to set aside that action, direction, decision or determination and makes provision regarding such applications.

Paragraphs 16 and 17 create offences of contravening any provision of an accountant disqualification order, and knowingly or recklessly providing false, deceptive or misleading information to the Administrator, both punishable by a fine not exceeding

level 5 on the uniform scale, imprisonment for a term not exceeding three months, or to both.

Paragraphs 18 and 19 make provision regarding the disclosure and publication of non-confidential and confidential information by the Administrator.

Paragraph 20 provides a standard form exclusion of civil liability for persons undertaking functions under Schedule 7, in respect of things done or omitted to be done in good faith and in compliance with the Human Rights (Bailiwick of Guernsey) Law, 2000.

Paragraph 21 makes provision regarding service and notice of documents under Schedule 7, and paragraph 22 confers on the Committee power to make regulations making provision in respect of the professional qualification of accountants.

Paragraph 23 provides that a person is not a person involved in accountancy for the purposes of the Schedule when s/he is subject to requirements imposed by a jurisdiction outside the Bailiwick which the Committee is satisfied are equivalent to the requirements imposed by the Schedule, and undertakes accountancy primarily from outside the Bailiwick. It also creates a power for the Committee to make regulations specifying jurisdictions which impose such equivalent requirements.

Paragraph 24 defines certain terms used in Schedule 7, and paragraph 25 defines the term "accountant", and provides a power for that definition to be amended by regulations made by the Committee.

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023

THE STATES, in pursuance of their Resolutions of the 21st day of October, 2022[a], and in exercise of the powers conferred on them by sections 53A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999[b], and all other powers enabling them in that behalf, hereby order:-

Amendment of the Proceeds of Crime Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) In section 49AA, after subsection (3A) insert –

"(3B) Schedule 7 (Administrator of accountants) has effect.".

(3) In paragraph 19(1) of Schedule 6 (Administrator of estate agents), at the end of item (a) delete "or", and after item (a) insert –

"(aa) where the Administrator considers such disclosure or publication to be necessary and proportionate in connection with the exercise of the Administrator's powers under paragraphs 6 to 12, or".

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a Article VIII of Billet d'État No XVIII of 2022.

b Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

(4) In paragraph 22 of Schedule 6, renumber the existing text as subparagraph (1), for paragraph (b) of the definition of "confidential information" substitute –

"(b) the identity of any person whom the Administrator has been notified is the beneficial owner of an estate agency business,",

and at the end insert –

"(2) The Committee may make regulations amending the definition of "**confidential information**" in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.".

(5) After Schedule 6, insert the Schedule 7 set out in the Schedule.

Extent.

2. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

3. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023.

Commencement.

4. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the Committee; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE

Section 1(5)

"SCHEDULE 7

ADMINISTRATOR OF ACCOUNTANTS

Section 49AA(3B)

The Administrator

Administrator of Accountants.

1. (1) There is established an office to be called the Administrator of Accountants.

(2) The holder of the office established under subparagraph (1) is referred to in this Schedule as the Administrator.

(3) The Administrator shall be the Registrar of Companies within the meaning of the Companies (Guernsey) Law, 2008, or such other person as the Committee may from time to time appoint by regulations; and a person appointed under regulations made under this subparagraph shall be appointed on such terms and conditions as may from time to time be agreed between the Committee and the person, provided that none of those terms and conditions is inconsistent with any provision of this Schedule.

(4) The purpose of establishing the office of Administrator of Accountants is –

(a) to prevent unfit persons from being persons involved in accountancy, and

(b) thereby to protect the interests of the people, and the reputation, of the Bailiwick,

and the Administrator must take account of these purposes when exercising his or her functions under this Schedule.

(5) In this Schedule, subject to paragraph 23 a "**person involved in accountancy**" means a person who is either an accountant, or a relevant person, within the meaning of this Schedule (and "**persons involved in accountancy**" shall be construed accordingly).

Functions of Administrator.

2. (1) In addition to functions conferred under other paragraphs of this Schedule, the functions of the Administrator are -

(a) to communicate and co-operate with -

(i) any authority appearing to the Administrator to exercise, in a place outside the Bailiwick, functions corresponding to the Administrator's, and

(ii) such other persons as he or she thinks fit,

for the purposes of assisting such authorities and persons and promoting, and enhancing the performance of, the Administrator's function, and such communication and co-operation may, without

limitation, take the form of sharing any information which the Administrator may lawfully disclose, and

(b) to exercise such other functions as may be assigned or transferred to him or her by or under this Law or any other enactment.

(2) Subparagraph (1)(a) does not authorise the Administrator to disclose confidential information other than in accordance with paragraph 19.

Ancillary powers of Administrator.

3. (1) The Administrator has power to do anything that appears to the Administrator to be necessary or expedient for the purpose of exercising his or her functions including, without limitation, power -

(a) to require the production of such documents, accounts and information from such persons and within such periods and at such times and intervals as he or she thinks fit, including, but not limited to –

(i) persons involved in accountancy,

(ii) accountancy businesses,

(iii) the beneficial owners and legal owners of accountancy businesses,

(iv) the directors of accountancy businesses,

(v) the partners of accountancy businesses,

(vi) the controllers of accountancy businesses, and

(vii) the managers of accountancy businesses,

(b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents, and

(c) to request advice from His Majesty's Procureur in relation to the exercise of any of his or her functions.

(2) The Administrator may also exercise the power at subparagraph (1)(a) for the purpose of enabling him or her (of the Administrator's own volition or at the request of the Committee or any other authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing, the proliferation of weapons of mass destruction and all other forms of financial crime.

(3) For the avoidance of doubt (and without prejudice to any function conferred under any other enactment) the Administrator may –

(a) seek and receive information from any person, and

(b) take any such information into account in deciding whether and in what manner to exercise his or her functions.

Notification requirements

Initial notification requirement.

4. (1) Subject to subparagraph (2), a person ("**P**") or a person or body acting on P's behalf must notify the Administrator before P becomes a person involved in accountancy.

(2) Where, on the coming into force of this Schedule, a person ("**P**") is a person involved in accountancy, P, or a person or body acting on P's behalf, must notify the Administrator within 14 days of this Schedule coming into force.

(3) A person or body notifying the Administrator under subparagraph (1) or (2) must provide such information as the Administrator may specify in guidance that the Administrator causes to be published on the States of Guernsey website from time to time, including, but not limited to, information relating to the minimum standards test.

(4) For the purposes of this Schedule, "**information relating to the minimum standards test**" means information relating to whether P is a fit person to be a person involved in accountancy, including certification by the notifying person or body as to whether P has at any time –

(a) been convicted of any offence, other than an offence which –

(i) is spent for the purposes of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, or

(ii) falls within a category specified in regulations made for this purpose by the Committee,

(b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the person's method of conducting business or the person's suitability to carry on accountancy, or

(c) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her soundness of judgement.

(5) Without prejudice to the generality of subparagraph (4), and for the avoidance of doubt, when assessing whether a person is a fit person to be a person involved in accountancy for the purposes of this Schedule, regard shall be had to the person's probity, integrity, honesty and soundness of judgement.

(6) For the avoidance of doubt, an accountancy business employing P or otherwise paying P for professional services, or of which P is a partner, may be a notifying person or body (as the case may be) for the purposes of this paragraph and paragraph 5, and this Schedule shall be construed accordingly.

Ongoing notification requirement.

5. A person involved in accountancy ("**P**"), or any other person or body who has notified the Administrator under paragraph 4(1) or (2) and who continues

to act on behalf of P for the purposes of this Schedule, must –

(a) provide the Administrator with information relating to the minimum standards test in respect of P within 21 days (or such other period as the Administrator may reasonably specify in all the circumstances) of being requested to do so, and

(b) notify the Administrator within 21 days after –

(i) P is convicted of any offence, or

(ii) any other change in respect of information previously provided to the Administrator,

and provide the Administrator with such information relating to that offence or change (as the case may be) as the Administrator may require.

Enforcement – Accountant disqualification orders

Accountant disqualification orders.

6. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person is not a fit person to be a person involved in accountancy, the Administrator may make and subsequently renew, on one or more occasions, an application to the Court for an order (an "**accountant disqualification order**") prohibiting that person from being a person involved in accountancy.

(2) An accountant disqualification order may, in the Court's absolute discretion, be made by consent.

(3) An accountant disqualification order and any renewal thereof-

(a) shall have effect for such period (not exceeding 15 years), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

(4) Without prejudice to the generality of subparagraph (3) and for the avoidance of doubt, where the person who is the subject of an accountancy disqualification order is the beneficial owner of an accountancy business, an accountant disqualification order may, for the purpose of (and only to the extent necessary for) giving effect to the prohibition referred to in subparagraph (1), contain terms and conditions requiring the person to divest himself or herself of such rights and interests in the accountancy business, within such period, as the Court may specify.

Grounds for making an accountant disqualification order.

7. (1) The Court may make an accountant disqualification order where it considers that, by reason of a person's conduct in relation to an accountancy business or otherwise, that person is unfit to be a person involved in accountancy.

(2) Subject to subparagraph (3), in determining whether a person is unfit to be a person involved in accountancy, regard shall be had to the matters set

out in subparagraphs 4(4)(a) – (c) and (5).

(3) For the avoidance of doubt, the Court may have regard to matters other than those set out in the subparagraphs mentioned above in determining whether a person is unfit to be a person involved in accountancy.

Revocation of accountant disqualification orders.

8. (1) A person subject to an accountant disqualification order may apply to the Court for a revocation of the order on the ground that he or she is not unfit to be a person involved in accountancy, and the Court may grant the application if satisfied that –

(a) it would not be contrary to the public interest to do so, and

(b) the applicant is not unfit to be a person involved in accountancy.

(2) An application under this paragraph for the revocation of a disqualification order shall not be heard unless the Administrator has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may –

(a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and

(b) for that purpose adjourn the hearing of the application.

(3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

Enforcement – other civil sanctions

Civil penalties.

9. (1) Where the Administrator is satisfied that –

(a) a person involved in accountancy is not unfit to be a person involved in accountancy but –

(i) has, without reasonable excuse, failed to comply with a requirement under paragraph 4 or 5, or

(ii) falls within paragraph 4(4)(a) – (c),

(b) a person involved in accountancy, or an accountancy business, has failed to comply with a condition imposed under paragraph 12, or

(c) any other person or body has, without reasonable excuse, failed to comply with –

(i) a requirement under paragraph 4 or 5, or

(ii) a request made by the Administrator to provide information (whether to the Administrator or

another person) relevant to the exercise of the Administrator's functions,

the Administrator may (subject to the provisions of this paragraph and paragraph 13) impose on that person or business a financial penalty in respect of the failure to comply that gave rise to the liability of such amount as the Administrator considers appropriate and proportionate, but not exceeding £20,000 or such other amount as the Committee may prescribe by regulations.

(2) In deciding whether or not to impose a penalty under this paragraph and, if so, the amount thereof, the Administrator must take into consideration the following factors -

(a) whether the failure was brought to the attention of the Administrator by the person concerned,

(b) the seriousness of the failure,

(c) whether or not the failure was inadvertent,

(d) what efforts, if any, have been made to rectify the failure and to prevent a recurrence,

(e) the potential financial consequences to the person or business concerned, and to third parties including customers and creditors of that person, of imposing a penalty,

(f) the penalties imposed by the Administrator under this

paragraph in other cases, and

(g) any other matter the Administrator considers relevant.

(3) Any financial penalty imposed under this paragraph is payable to the States and is recoverable as a civil debt.

(4) Where the Administrator proposes to impose a financial penalty, he or she must notify in writing the person or business on whom the penalty is to be imposed of –

(a) the proposed penalty, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the penalty, which must not be less than 42 days after the date of the notice, and

(c) the right of that person or business to make written representations to the Administrator under paragraph 13(1).

(5) Where the Administrator imposes a financial penalty he or she must-

(a) issue to the person or business on whom the penalty is being imposed notice of the penalty, and

(b) include in the notice a statement of the right to apply to the Court under paragraph 15.

(6) Where a penalty is imposed on a person or business under this paragraph, the Administrator may publish, in such manner and for such period as the Administrator may determine, the name of the person or business and the amount of the penalty, and the publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Administrator may determine.

Private reprimands.

10. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a person involved in accountancy, it is appropriate to do so, the Administrator may issue to the person a private reprimand.

(2) The Administrator may not publish a private reprimand without the consent of the person in question.

(3) A private reprimand issued under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the person in question.

Public statements.

11. (1) Without prejudice to any other powers of the Administrator, where in the opinion of the Administrator a person involved in accountancy ("**P**") has contravened in a material particular -

(i) a provision of this Schedule, or

(ii) any prohibition, restriction, condition, obligation,

enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

it may publish, in such manner and for such period as the Administrator may determine, a statement to that effect.

(2) Where the Administrator proposes to publish a statement under this paragraph, he or she must notify in writing the person in respect of whom the statement is to be published of –

(a) the text of the proposed statement, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to publish the statement, which must not be less than 42 days after the date of the notice, and

(c) that person's right to make written representations to the Administrator under paragraph 13(1).

(3) A statement published under subparagraph (1) may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information (including information as to any conditions imposed on the person under paragraph 12) as the Administrator may determine.

(4) In deciding whether or not to publish a statement under this paragraph and, if so, the terms thereof, the Administrator must take into

consideration the following factors -

(a) whether the contravention was brought to the attention of the Administrator by P,

(b) the seriousness of the contravention,

(c) whether or not the contravention was inadvertent,

(d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,

(e) the potential financial consequences to P, and to third parties including customers and creditors of P, of publishing a statement,

(f) the action taken by the Administrator under this paragraph in other cases, and

(g) any other matter the Administrator considers relevant.

(5) If at any time it appears to the Administrator that a statement published under this paragraph or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick to do so, the Administrator shall make such addition, erasure or other alteration to the statement or content thereof as the Administrator considers necessary.

(6) A statement published under subparagraph (1) may be taken into account by the Administrator in considering any matter under this Schedule concerning the person in question.

Imposition of conditions.

12. (1) Without prejudice to any other powers of the Administrator, where the Administrator considers that, having regard to the conduct of a person involved in accountancy or an accountancy business, it is appropriate to do so, the Administrator may impose conditions on that person or business in respect of the person or business's conduct of accountancy.

(2) Where the Administrator proposes to impose conditions under this paragraph, he or she must notify in writing the person or business in respect of whom or which the conditions are to be imposed of –

(a) the conditions, and the reasons for the same,

(b) the date on which it is proposed, subject to paragraph 13, to impose the conditions, which must not be less than 42 days after the date of the notice,

(c) the duration of the conditions, and

(d) that right of that person or business to make written representations to the Administrator under paragraph 13(1).

Representations prior to civil penalty, etc.

13. (1) The person or business notified under paragraph 9(4), 11(2) or

12(2) may make written representations to the Administrator concerning the proposed financial penalty, public statement or conditions (as the case may be) within 28 days of the date of the notice.

(2) If the person or business in question exercises their right under subparagraph (1) the Administrator -

(a) must consider their representations, and

(b) may decide to –

(i) impose the penalty, publish the statement or impose the conditions,

(ii) in the case of a proposed financial penalty, impose a penalty in a lesser amount, issue a private reprimand, publish a statement or impose conditions,

(iii) withdraw the penalty, not publish the statement or not impose the conditions, or

(iv) postpone the date for imposing the penalty, publishing the statement or imposing the conditions,

as the case may be, but in any event must inform that person or business of his or her decision in writing, and the reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed, the statement is

published or would otherwise have been published, or the conditions are imposed or would otherwise have been imposed, as the case may be.

(3) For the avoidance of doubt, where the Administrator has imposed a financial penalty under paragraph 9 he or she may not seek to recover payment of that penalty until –

(a) 28 days immediately following the date of the notice of the penalty issued under paragraph 9(5)(a), or

(b) if an application to the Court is instituted within that period under paragraph 15, the final determination, or withdrawal, of that application,

and for the purposes of this subparagraph, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

Relationship of civil penalties with prosecutions.

14. (1) A person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after a civil penalty has been paid, the Administrator shall repay the civil penalty.

General right to apply to Court to set aside action of Administrator.

15. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or

determination of the Administrator (including an order imposing a financial penalty) may apply to the Court to set aside that action, direction, decision or determination.

(2) An application under subparagraph (1) shall be made in such manner (if any) as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit.

(4) Subject to any direction given by the Court –

(a) the applicant shall give at least seven days' notice of the application to the Administrator,

(b) where the application is made in respect of a legal person and the applicant is not the legal person in respect of which the application is made, the applicant shall give at least seven days' notice of the application to the legal person, and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Administrator.

(5) An appeal from an order of the Court under this paragraph lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this paragraph as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Enforcement: offences

Offences: general.

16. (1) A person who contravenes any provision of an accountant disqualification order is guilty of an offence.

(2) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

False or misleading information.

17. (1) If a person to whom subparagraph (2) applies –

(a) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

(c) produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to

believe to be false, deceptive or misleading in a material particular, or

(d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

(2) This subparagraph applies to a person (D) who –

(a) makes any statement or provides any information or document to the Administrator, or to any officer, servant or agent of the Administrator, when the Administrator or that person is acting in the exercise of his or her functions, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Administrator in circumstances in which D knows or could reasonably be expected to know that the statement, information or document would or might be used by the Administrator for the purpose of exercising his or her functions.

(3) A person guilty of an offence under this paragraph is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months, or to both.

Miscellaneous and Final

Disclosure and publication of non-confidential information.

18. Any information held by the Administrator, other than confidential information, may be disclosed or published by him or her –

(a) in accordance with the provisions of this Schedule, any other enactment or any rule of law, or

(b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he or she thinks fit.

Disclosure and publication of confidential information.

19. (1) Any confidential information held by the Administrator shall not be disclosed or published by him or her except –

(a) to the persons and bodies set out in subparagraph (2) where the Administrator considers that disclosure necessary and proportionate for the purposes set out in paragraph 1(4),

(b) where the Administrator considers such disclosure or publication to be necessary and proportionate in connection with the exercise of the Administrator's powers under paragraphs 6 to 12, or

(c) in accordance with any other enactment or any rule of law.

(2) The persons and bodies referred to in subparagraph (1) are –

(a) the Commission,

(b) the Director of the Economic and Financial Crime Bureau,

(c) the Registrar of Companies (including in his or her capacity as the Registrar of Foundations),

(d) the Registrar of Limited Liability Partnerships,

(e) the Registrar within the meaning of the Companies (Alderney) Law, 1994,

(f) the Registrar of Beneficial Ownership,

(g) the Greffier,

(h) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,

(i) the Greffier within the meaning of the Government of Alderney Law, 2004,

(j) the Alderney Gambling Control Commission,

(k) the Director of the Revenue Service,

(l) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and

(m) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010.

Exclusion of liability.

20. (1) No person undertaking a function under this Schedule is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Law in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Service of notices and documents.

21. (1) Any document other than a summons to be given or served under the provisions of or for the purposes of this Schedule may be given to or served upon –

(a) an individual ("**A**"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,

(b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to-

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body -

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with subparagraph (a), or

(ii) by being left at, or sent by post to -

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) the Administrator, by being left at, or sent by post to, his or her principal office in the Bailiwick, or by being transmitted to his or her electronic address,

and in this paragraph –

(i) "**by post**" means by special delivery, recorded or signed for delivery or ordinary letter post,

(ii) "**electronic address**" includes, without limitation, an e-mail address and telecommunications address,

(iii) "**relevant electronic address**" means an electronic address -

(A) with which, in the opinion of the Administrator, the person concerned has a personal, business or other connection, and

(B) a document transmitted to which is likely to come to the attention of the person concerned,

(iv) "**transmitted**" means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication, and

(v) "**summons**" includes any document compelling a person's attendance before the court.

(2) Subparagraph (1) is without prejudice to any other lawful method of service.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Schedule to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(4) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(5) A document shall be deemed for the purposes of this Schedule to have been -

(a) addressed to the person concerned, and

(b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this paragraph, and the document shall, unless the contrary is shown, be deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

Power of Committee to make regulations in respect of qualification requirements.

22. (1) The Committee may make regulations making provision in respect of the professional qualification of accountants.

(2) Regulations made under this paragraph shall be made after consultation with the Policy and Finance Committee of the States of Alderney and

the Policy and Finance Committee of the Chief Pleas of Sark; but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Equivalent jurisdictions.

23. (1) A person is not a person involved in accountancy for the purposes of this Schedule in circumstances where the person –

(a) is subject to requirements imposed by a jurisdiction outside the Bailiwick which the Committee is satisfied are equivalent to the requirements imposed by this Schedule, and

(b) undertakes accountancy primarily from or within a jurisdiction outside the Bailiwick,

and the Committee may make regulations specifying jurisdictions which it is satisfied impose equivalent requirements for the purpose of item (a).

(2) Regulations made under this paragraph shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark; but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Interpretation.

24. (1) In this Schedule –

"**accountancy**" means the business of being an auditor, external accountant, insolvency practitioner or tax adviser within the meaning given in paragraph 5 of Schedule 2, but does not include such a business in circumstances where that business is a small business within the meaning of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008,

"**accountancy business**" means a business engaged in accountancy that carries on, or holds itself out as carrying on, business in, or from within, the Bailiwick (and, for the avoidance of doubt, consequently does not include a small business within the meaning of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008),

"**accountant**": see paragraph 25,

"**accountant disqualification order**": see paragraph 6(1),

"**beneficial owner**" has the meaning given in paragraph 22 of Schedule 3, subject to the following modification: wherever "25%" appears, there is substituted "15%",

"**confidential information**" means –

(a) an individual's usual residential address, and

(b) the identity of any person whom the Administrator has been notified is the beneficial owner of an accountancy business,

"**the Court**" means the Royal Court sitting as an Ordinary Court,

"**information relating to the minimum standards test**": see paragraph 4(4),

"**person involved in accountancy**": see paragraph 1(5), and

"**relevant person** means the beneficial owner of an accountancy business.

(2) The Committee may make regulations amending the definition of "**confidential information**" in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph.

Meaning of accountant.

25. (1) In this Schedule an "**accountant**" means an individual who is -

(a) a partner, chief executive or director (or equivalent to any of these roles) of an accountancy business or any other person participating in, or being in any way concerned (directly or indirectly) in the management of an accountancy business, where that person also has

the authority to bind that accountancy business in the Bailiwick, or

(b) a Money Laundering Reporting Officer, a Money Laundering Compliance Officer or a nominated officer of an accountancy business,

and in this paragraph "**Money Laundering Reporting Officer**", "**Money Laundering Compliance Officer**" and "**nominated officer**" have the meanings given in Schedule 3.

(2) The Committee may make regulations amending the definition of "**accountant**" in subparagraph (1).

(3) Regulations made under subparagraph (2) shall be made after consultation with the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark, but a failure to comply with this subparagraph shall not invalidate any regulations made under this paragraph."

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE TRADING STANDARDS (FAIR TRADING) (GUERNSEY) ORDINANCE, 2023

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance, made under the Trading Standards (Enabling Provisions) (Guernsey) Law, 2009, makes wide ranging provision in the area of consumer protection and fair trading. In large part it makes provision that is based on, and consistent with (subject to necessary modifications), relevant UK legislation.

The Ordinance is in eight Parts. Part I deals with statutory rights under consumer contracts and remedies for breach; Part II with unfair contract terms; Part III with information requirements and the right to cancel in respect of consumer contracts; Part IV with unfair commercial practices and rights to redress; Part V with product safety requirements; Part VI and VII with civil enforcement of the provisions; and Part VIII with final and miscellaneous provisions.

The Ordinance (at Chapter II of Part II) gives statutory recognition to the Trading Standards Service (TSS) as a service within the Committee for Home Affairs, and elsewhere confers statutory investigatory powers on TSS officers, as well as creating associated offences. Provisions at Chapter II of Part II in respect of international obligations, and the wording of some of the provisions of Part V, reflect obligations under the post-Brexit Trade and Co-operation Agreement with the European Union, and (potentially) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTTP).

The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023

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The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the 18th February 2016[a], and 18th October 2017[b], and in exercise of the powers conferred upon them by section 1 as read with section 3 of the Trading Standards (Enabling Provisions) (Guernsey) Law, 2009[c], and all other powers enabling them in that behalf, hereby order:-

PART I

CONSUMER CONTRACTS FOR SUPPLY OF GOODS, DIGITAL CONTENT AND SERVICES: RIGHTS AND REMEDIES

Application of Part I.

1. (1) This Part applies where there is a contract between a trader and a consumer for the trader to supply goods (Chapter I), digital content (Chapter III) or services (Chapter V).

(2) This Part applies –

(a) whether the contract is written, oral or implied or a combination thereof, and

(b) to mixed contracts.

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[a] Article XIX of Billet d'État No. III of 2016.

[b] Article III of Billet d'État No. XIX of 2017.

[c] Order in Council No. I of 2011. This enactment has been amended.

(3) The remedies available for contracts -

(a) under Chapter I are provided for under Chapter II,

(b) under Chapter III are provided for under Chapter IV, and

(c) under Chapter V are provided for under Chapter VI.

(4) Where there is a mixed contract, the Chapters providing for remedies may apply to any one of those contracts, except where provision is made for particular mixed contracts.

(5) For the purposes of Chapter I (contracts relating to sale and supply of goods) and except to the extent mentioned in subsection (6), a person is not a consumer in relation to a sales contract (within the meaning of section 3) if the goods are second-hand goods sold at public auction.

(6) A person is a consumer in relation to a sales contract in the circumstances mentioned in subsection (5) for the purposes of –

(a) sections 9(4) and (5), 10, 25 and 26, and

(b) the other provisions of Chapter I as they apply in relation to those sections.

(7) In this Part, a contract to which this Chapter applies is referred to as a "**contract to supply goods**".

(8) For the purposes of this Part, a trader who claims that an individual was not acting for purposes that are wholly or mainly outside of the individual's trade, business, craft or profession must prove it.

CHAPTER I

CONTRACTS RELATING TO SALE AND SUPPLY OF GOODS

Contracts covered by this Chapter

Application of Chapter I.

2. (1) Subject to subsection (2), this Chapter applies to the following –

(a) a sales contract,

(b) a contract for the hire of goods,

(c) a hire-purchase agreement,

(d) a contract for the transfer of goods,

and in each case it applies if the contract also covers something covered by another Chapter of this part (a "**mixed contract**").

(2) This Chapter does not apply to –

(a) a contract for a trader to supply coins or notes to a consumer for use as currency in accordance with the Legal Tender (Guernsey) Ordinance, 1983[d],

(b) a contract for goods to be sold by way of execution or under the authority of the courts or any legislation,

(c) a contract which operates or is intended to operate as a mortgage, charge, hypothèque, lien or other security.

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d Recueil d'Ordonnances Tome XXII, p. 477. This enactment has been amended.

(3) A contract to supply goods includes –

(a) a contract entered into between one part-owner and another,

(b) contracts for the transfer of an undivided share in goods,

(c) contracts that are absolute, and

(d) contracts that are conditional.

(4) Section 17 sets out the consumer's rights and remedies if there is any breach by the trader of a term that any of sections 7 to 12, and 15, requires to be treated as included in the contract.

Sales contracts.

3. (1) Subject to subsection (2), in this Ordinance a sales contract is a contract where –

(a) a trader transfers or agrees to transfer ownership of goods to a consumer, and

(b) the consumer pays or agrees to pay a price for those goods.

(2) A contract is a sales contract (regardless of whether it would be one under subsection (1)) if under the contract –

(a) goods are to be manufactured or produced and the trader agrees to supply them to the consumer,

(b) on supply, the goods will be owned by the consumer, and

(c) the consumer pays or agrees to pay the price.

(3) A sales contract may be conditional, and in this Part "**conditional sales contract**" means a sales contract under which –

(a) the price for the goods or part of the price is payable by instalments, and

(b) the trader retains ownership of the goods until the conditions specified in the contract (for the payment of instalments or otherwise) are met,

regardless of whether or not the consumer possesses the goods.

Contracts for the hire of goods.

4. (1) Subject to subsection (2), in this Ordinance a contract is for the hire of goods if, under the contract, a trader gives or agrees to give a consumer possession of the goods with the right to use them, subject to the terms of the contract, for a period determined in accordance with the contract.

(2) A contract is not for the hire of goods if it is a hire-purchase agreement.

Hire-purchase agreements.

5. (1) Subject to subsection (2), in this Ordinance a contract is a hire-purchase agreement if it meets the following conditions -

(a) under the contract, goods are hired by a trader in return for periodical payments by the consumer (and "hired" is to be read in accordance with section 4(1)), and

(b) under the contract, ownership of the goods will transfer to the consumer if the terms of the contract are complied with, and –

(i) the consumer exercises an option to buy the goods,

(ii) any party to the contract does an act specified in it, or

(iii) an event specified in the contract occurs.

(2) A contract is not a hire-purchase agreement if it is a conditional sales contract.

Contracts for transfer of goods.

6. In this Ordinance a contract is a contract for the transfer of goods if under it a trader transfers or agrees to transfer ownership of the goods to the consumer and –

(a) the consumer provides or agrees to provide consideration otherwise than by paying a price, or

(b) the contract is, for any other reason, not a sales contract or a hire-purchase agreement.

Statutory rights under a goods contract

Goods to be of satisfactory quality.

7. (1) Every contract to supply goods must be treated as including a term that the quality of the goods to be supplied is satisfactory.

(2) The quality of goods is satisfactory if the goods meet the standard that a reasonable person would consider satisfactory, taking into account –

(a) any description of the goods,

(b) the price or other consideration for the goods (if relevant), and

(c) all other relevant circumstances.

(3) The quality of goods includes the goods' state and condition; and aspects of the quality of goods include, but are not limited to –

(a) fitness for all the purposes for which goods of that kind are usually supplied,

(b) appearance and finish,

(c) freedom from minor defects,

(d) safety, and

(e) durability.

(4) The term mentioned in subsection (1) does not cover anything which makes the quality of the goods unsatisfactory -

(a) which is specifically drawn to the consumer's attention before the contract is made,

(b) where the consumer examines the goods before the contract is made, which that examination ought to reveal, or

(c) in the case of a contract to supply goods by sample, which would have been apparent on a reasonable examination of the sample.

(5) The relevant circumstances mentioned in subsection (2)(c) include any public statement about the specific characteristics of the goods made by the trader, the producer or any representative of the trader or the producer including statements made in advertising or labelling.

(6) For the purposes of subsection (2)(c), a public statement is not a relevant circumstance if the trader shows that –

(a) when the contract was made, the trader was not, and could not reasonably have been, aware of the statement,

(b) before the contract was made, the statement had been publicly withdrawn or, to the extent that it contained anything which was incorrect or misleading, it had been publicly corrected, or

(c) the consumer's decision to contract for the goods could not have been influenced by the statement.

(7) In a contract to supply goods a term about the quality of the goods may be treated as included as a matter of custom or as a result of a course of conduct.

(8) Section 17 sets out the consumer's rights and remedies if there is any breach by the trader of a term that this section requires to be treated as included in a contract.

Goods to be fit for a particular purpose.

8. (1) Subject to the provisions of this section, a contract to supply goods must be treated as including a term that the goods are reasonably fit for any particular purpose that the consumer made known to the trader (expressly or by implication) before the contract is made.

(2) Subsection (1) applies to a contract to supply goods whether or not that particular purpose is a purpose for which goods of that kind are usually supplied.

(3) Subsections (1) and (2) also apply to a contract to supply goods if –

(a) the goods were previously sold by a credit-broker to the trader,

(b) in the case of a sales contract or contract for transfer of goods, the consideration or part of it is a sum payable by instalments, and

(c) before the contract is made, the consumer makes known to the credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the goods.

(4) Subsections (1) and (2) do not apply if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the skill or judgment of the trader or credit-broker.

(5) In a contract to supply goods a term about the fitness of the goods for a particular purpose may be treated as included as a matter of custom.

Goods to fit description.

9. (1) Every contract to supply goods by description must be treated as including a term that the goods will match the description.

(2) If the supply is by sample as well as by description, it is not sufficient that the bulk of the goods matches the sample if the goods do not also match the description.

(3) A supply of goods is not prevented from being a supply by description just because the goods –

(a) are exposed for supply, and

(b) are selected by the consumer.

(4) Any information that is provided by the trader about the goods and is information mentioned in paragraph (a) of Schedule 3 or Schedule 4 must be treated as included as a term of the contract.

(5) A change to the information referred to in subsection (4), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Other pre-contract information included in contract.

10. (1) This section applies to any contract to supply goods.

(2) Where there is a requirement under Part III for the trader to provide information to the consumer before the contract becomes binding, any of that information provided by the trader (other than information about the main characteristics of goods) is treated as included as a term of the contract.

(3) A change to any information required under subsection (2) whether made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Goods to match sample as seen or examined.

11. (1) This section applies to a contract to supply goods by reference to a sample of goods that is seen or examined by the consumer before the contract is made.

(2) Every contract to which this section applies is to be treated as including a term that -

(a) the goods will match the sample except to the extent that any differences between the sample and the goods are brought to the consumer's attention before the contract is made, and

(b) the goods will be free from any defect that makes their quality unsatisfactory and that would not be apparent on a reasonable examination of the sample.

Goods to match model seen or examined.

12. (1) This section applies to a contract to supply goods by reference to a model of the goods that is seen or examined by the consumer before entering into the contract.

(2) Every contract to which this section applies must be treated as including a term that the goods will match the model except to the extent that any differences between the model and the goods are brought to the consumer's attention before the consumer enters into the contract.

Incorrect installation of goods.

13. (1) Goods supplied by a trader do not conform to a contract to supply goods if -

(a) installation of the goods forms part of the contract,

(b) the goods are installed by the trader or under the trader's responsibility, and

(c) the goods are installed incorrectly.

(2) Section 17 applies where the goods do not conform to the contract as described under subsection (1).

Goods not conforming to contract if digital content does not conform.

14. (1) Goods (whether or not they conform otherwise to a contract to supply goods) do not conform to it if -

(a) the goods are an item that includes digital content, and

(b) the digital content does not conform to the contract to supply that content.

(2) Section 17 applies where the goods do not conform to the contract as described under subsection (1).

Trader's right to supply goods etc.

15. (1) Every contract to supply goods, except a contract to which subsection (4) applies, is to be treated as including a term -

(a) in the case of a contract for the hire of goods, that at the beginning of the period of hire the trader must have

the right to transfer possession of the goods by way of hire for that period, or

(b) in any other case, that the trader must have the right to sell or transfer the goods at the time when ownership of the goods is to be transferred.

(2) Every contract to supply goods, except a contract for the hire of goods or a contract within subsection (4), is to be treated as including a term that -

(a) the goods are free from any charge or encumbrance not disclosed or known to the consumer before entering into the contract,

(b) the goods will remain free from any such charge or encumbrance until ownership of them is to be transferred, and

(c) the consumer will enjoy quiet possession of the goods except in so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

(3) Every contract for the hire of goods is to be treated as including a term that the consumer will enjoy quiet possession of the goods for the period of the hire except so far as the possession may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before entering into the contract.

(4) This subsection applies to a contract if the contract shows, or the circumstances when the trader and consumer enter into the contract imply, that the trader and the consumer intend the trader to transfer only -

(a) whatever title the trader has, even if it is limited, or

(b) whatever title a third person has, even if it is limited.

(5) Every contract to which subsection (4) applies is to be treated as including a term that all charges or encumbrances known to the trader and not known to the consumer were disclosed to the consumer before entering into the contract.

(6) Every contract to which subsection (4) applies is to be treated as including a term that the consumer's quiet possession of the goods -

(a) will not be disturbed by the trader, and

(b) will not be disturbed by a person claiming through or under the trader, unless that person is claiming under a charge or encumbrance that was disclosed or known to the consumer before entering into the contract.

(7) If subsection (4)(b) applies to the contract, the contract is also to be treated as including a term that the consumer's quiet possession of the goods -

(a) will not be disturbed by the third person referred to in that subsection, and

(b) will not be disturbed by a person claiming through or under the third person, unless the claim is under a charge or encumbrance that was disclosed or known to the consumer before entering into the contract.

(8) In the case of a contract for the hire of goods, this section does not affect the right of the trader to repossess the goods where the contract provides or is to be treated as providing for this.

No other requirement to treat term about quality or fitness as included.

16. (1) Subject to subsection (2), except as provided for by this Chapter, a contract to supply goods is not to be treated as including any term about the quality of the goods or the goods' fitness for any particular purpose, unless the term is expressly included in the contract.

(2) Subsection (1) is subject to provision made by any other enactment (whenever made).

CHAPTER II

REMEDIES AVAILABLE FOR BREACHES OF CONTRACTS UNDER CHAPTER I

Consumer's rights to enforce terms about goods.

17. (1) In this section and sections 20 to 22 references to goods conforming to a contract are references to -

(a) the goods conforming to the terms described in sections 7, 8, 9, 11 and 12,

(b) the goods not failing to conform to the contract under section 13 or 14, and

(c) the goods conforming to requirements that are stated in the contract.

(2) For purposes of this section and sections 20 to 22, a failure to conform as mentioned in paragraphs (a) to (c) of subsection (1) is not a failure to conform to the contract if it has its origin in materials supplied by the consumer.

(3) If the goods do not conform to the contract because of a breach of any of the terms described in sections 7, 8, 9, 11 and 12, or if they do not conform to the contract under section 14, the consumer's rights under this Ordinance are -

(a) the short-term right to reject (sections 18 and 20),

(b) the right to repair or replacement (section 21), and

(c) the right to price reduction or the final right to reject (sections 18 and 22).

(4) If the goods do not conform to the contract under section 13 or because of a breach of requirements stated in the contract, the consumer's rights under this Ordinance are -

(a) the right to repair or replacement (section 21), and

(b) the right to a price reduction or the final right to reject (sections 18 and 22).

(5) If the trader is in breach of a term that section 10 requires to be treated as included in the contract, the consumer has the right to recover from the trader the amount of any costs incurred by the consumer as a result of the breach, up to the amount of the price paid or the value of other consideration given for the goods.

(6) If the trader is in breach of the term that section 15(1) (trader's right to supply goods etc) requires to be treated as included in the contract, the consumer has a right to reject.

(7) Subsections (3) to (6) are subject to section 23, and subsections (3)(a) and (6) are subject to section 24.

(8) This Chapter does not prevent the consumer seeking other remedies -

(a) for a breach of a term that Chapter I requires to be treated as included in the contract,

(b) on the grounds that, under section 13 or 14, goods do not conform to the contract, or

(c) for a breach of a requirement stated in the contract.

(9) The other remedies referred to in subsection (8) may include -

(a) those in addition to a remedy mentioned in subsections (3) to (6) (but not so as to recover twice for the same loss), or

(b) remedies other than such a remedy, or

(c) any other remedies where no such remedy is provided for.

(10) It is not open to the consumer to treat the contract as at an end for breach of a term that this Chapter requires to be treated as included in the contract, or on the grounds that, under section 13 or 14, goods do not conform to the contract, except as provided by subsections (3), (4) and (6).

(11) In this Part, treating a contract as at an end means treating it as repudiated.

(12) Subject to subsection (13), for the purposes of subsections (3)(b) and (c) and (4), goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day.

(13) Subsection (12) does not apply if -

(a) it is established that the goods did conform to the contract on that day, or

(b) its application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Consumer's right to reject goods.

18. (1) The short-term right to reject is subject to section 20.

(2) The final right to reject is subject to section 22.

(3) The right to reject under section 17(6) is not limited by the sections referred to in subsections (1) and (2).

(4) Subject to subsections (17) and (18), each of the rights referred to in subsections (1) to (3) entitles the consumer to reject the goods and treat the contract as at an end.

(5) The right to reject is exercised if the consumer indicates to the trader that the consumer is rejecting the goods and treating the contract as at an end.

(6) The indication referred to in subsection (5) may be something the consumer says or does, but it must be clear enough to be understood by the trader.

(7) From the time when the right to reject is exercised -

(a) the trader has a duty to give the consumer a refund, subject to subsection (15), and

(b) the consumer has a duty to make the goods available for collection by the trader or (if there is an agreement for the consumer to return rejected goods) to return them as agreed.

(8) Regardless of whether the consumer has a duty to return the rejected goods, the trader must bear any reasonable costs of returning them, other

than any costs incurred by the consumer in returning the goods in person to the place where the consumer took physical possession of them.

(9) The consumer's entitlement to receive a refund works as follows-

(a) to the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money,

(b) to the extent that the consumer transferred anything else under the contract, the consumer is entitled to receive back the same amount of what the consumer transferred, unless paragraph (c) applies, and

(c) to the extent that the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted, the consumer is entitled to receive back in its original state whatever the consumer transferred.

(10) If the contract is for the hire of goods, the entitlement to a refund extends only to anything paid or otherwise transferred for a period of hire that the consumer does not get because the contract is treated as at an end.

(11) If the contract is a hire-purchase agreement or a conditional sales contract and the contract is treated as at an end before the whole of the price has been paid, the entitlement to a refund extends only to the part of the price paid.

(12) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.

(13) If the consumer paid money under the contract, the trader must give the refund using the same means of payment as the consumer used, unless the consumer expressly agrees otherwise.

(14) The trader must not impose any fee on the consumer in respect of the refund.

(15) There is no entitlement to receive a refund -

(a) if none of paragraphs (a) to (c) of subsection (9) applies,

(b) to the extent that anything to which subsection (9)(c) applies cannot be given back in its original state, or

(c) where subsection (10) applies, to the extent that anything the consumer transferred under the contract cannot be divided so as to give back only the amount, or part of the amount, to which the consumer is entitled.

(16) The consumer may claim damages -

(a) where there is no entitlement to receive a refund,

(b) where there are limits on the entitlement, or

(c) instead of a refund.

(17) Subsection (18) qualifies the application of the rights mentioned in subsections (1) to (3) where -

(a) the contract is a severable contract,

(b) in relation to the final right to reject, the contract is a contract for the hire of goods, a hire-purchase agreement or a contract for transfer of goods, and

(c) section 24(3) does not apply.

(18) Where this subsection applies, the consumer is entitled, depending on the terms of the contract and the circumstances of the case -

(a) to reject the goods to which a severable obligation relates and treat that obligation as at an end (so that the entitlement to a refund relates only to what the consumer paid or transferred in relation to that obligation), or

(b) to exercise any of the rights mentioned in subsections (1) to (3) in respect of the whole contract.

Partial rejection of goods.

19. (1) If the consumer has any of the rights mentioned in section 18(1) to (3), but does not reject all of the goods and treat the contract as at an end, the consumer -

(a) may reject some or all of the goods that do not conform to the contract, but

(b) may not reject any goods that do conform to the contract.

(2) If the consumer is entitled to reject the goods in an instalment, but does not reject all of those goods, the consumer -

(a) may reject some or all of the goods in the instalment that do not conform to the contract, but

(b) may not reject any goods in the instalment that do conform to the contract.

(3) If any of the goods form a commercial unit, the consumer cannot reject some of those goods without also rejecting the rest of them.

(4) The consumer rejects goods under this section by indicating to the trader that the consumer is rejecting the goods.

(5) The indication under subsection (4) may be something the consumer says or does, but it must be clear enough to be understood by the trader.

(6) From the time when a consumer rejects goods under this section–

(a) the trader has the duty to give the consumer a refund in respect of those goods (subject to subsection (10)), and

(b) the consumer has a duty to make those goods available for collection by the trader or (if there is an agreement for the consumer to return the goods) to return them as agreed.

(7) Regardless of whether the consumer has a duty to return the rejected goods, the trader must bear any reasonable costs of returning them, other than any costs incurred by the consumer in returning those goods in person to the place where the consumer took physical possession of them.

(8) Section 18(9)(a) to (14) apply to a consumer's right to receive a refund under this section (and in section 18(10) and (11) references to the contract being treated as at an end are to be read as references to goods being rejected).

(9) The right to receive a refund under this section does not apply -

(a) if none of section 18(9)(a) to (c) applies,

(b) to the extent that anything to which section 18(9)(c) applies cannot be given back in its original state, or

(c) to the extent that anything the consumer transferred under the contract cannot be divided so as to give back only the amount, or part of the amount, to which the consumer is entitled.

(10) It may be open to a consumer to claim damages where there is no right to receive a refund, or because of the limits of the right, or instead of a refund.

(11) References in this section to goods conforming to a contract must be read in accordance with section 17(1) and (2), but they also include the goods conforming to the terms described in section 15.

(12) Where section 18(18)(a) applies, the reference in subsection (1) to the consumer treating the contract as at an end is to be read as a reference to the consumer treating the severable obligation as at an end.

Time limit for short-term right to reject.

20. (1) A consumer who has the short-term right to reject loses it if the time limit for exercising it passes without the consumer exercising it, unless the trader and the consumer agree that it may be exercised later.

(2) An agreement under which the short-term right to reject would be lost before the time limit passes is not binding on the consumer.

(3) The time limit for exercising the short-term right to reject (unless subsection (4) applies) is the end of 30 days beginning with the first day after all of the following have taken place -

(a) ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,

(b) the goods have been delivered, and

(c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.

(4) If any of the goods are of a kind that can reasonably be expected to perish after a shorter period, the time limit for exercising the short-term right to reject in relation to those goods is the end of that shorter period (but without affecting the time limit in relation to goods that are not of that kind).

(5) Subsections (3) and (4) do not prevent the consumer exercising the short-term right to reject before something mentioned in subsection (3)(a), (b) or (c) has taken place.

(6) If the consumer requests or agrees to the repair or replacement of goods, the period mentioned in subsection (3) or (4) stops running for the length of the waiting period.

(7) If goods supplied by the trader in response to that request or agreement do not conform to the contract, the time limit for exercising the short-term right to reject is then either -

(a) seven days after the waiting period ends, or

(b) if later, the original time limit for exercising that right, extended by the waiting period.

(8) The waiting period -

(a) begins with the day the consumer requests or agrees to the repair or replacement of the goods, and

(b) ends with the day on which the consumer receives goods supplied by the trader in response to the request or agreement.

Consumer's right to repair or replacement.

21. (1) This section applies if the consumer has the right to repair or replacement under, and in the circumstances set out in, section 17(3) and (4).

(2) If the consumer requires the trader to repair or replace the goods, the trader must -

(a) do so within a reasonable time and without significant inconvenience to the consumer, and

(b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The consumer cannot require the trader to repair or replace the goods if that remedy (the repair or the replacement) -

(a) is impossible, or

(b) is disproportionate compared to the other of those remedies.

(4) A remedy mentioned in subsection (3) is disproportionate compared to the other if it imposes costs on the trader which, compared to those imposed by the other, are unreasonable, taking into account -

(a) the value which the goods would have if they conformed to the contract,

(b) the significance of the lack of conformity, and

(c) whether the other remedy could be effected without significant inconvenience to the consumer.

(5) Any question as to what is reasonable time or significant inconvenience is to be determined taking into account -

(a) the nature of the goods, and

(b) the purpose for which the goods were acquired.

(6) A consumer who requires or agrees to the repair of goods cannot require the trader to replace them, or exercise the short-term right to reject, without giving the trader a reasonable time to repair them (unless giving the trader that time would cause significant inconvenience to the consumer).

(7) A consumer who requires or agrees to a replacement of goods cannot require the trader to repair them, or exercise the short-term right to reject,

without giving the trader a reasonable time to replace them (unless giving the trader that time would cause significant inconvenience to the consumer).

(8) In this Chapter, "**repair**" in relation to goods that do not conform to a contract, means making those goods conform.

Consumer's right to price reduction or final right to reject.

22. (1) A consumer's right to a price reduction is the right -

(a) to require the trader to reduce, by an appropriate amount, the price the consumer is required to pay under the contract, or anything else the consumer is required to transfer under the contract, and

(b) to receive a refund from the trader for anything already paid or otherwise transferred by the consumer above the reduced amount.

(2) The amount of the reduction may, where appropriate, be the full amount of the price or whatever the consumer is required to transfer.

(3) Section 18(9)(a) to (14) applies to a consumer's right to receive a refund under subsection (1)(b).

(4) The right to a price reduction does not apply -

(a) if what the consumer is (before the reduction) required to transfer under the contract, whether or not already transferred, cannot be divided up so as to enable the trader to receive or retain only the reduced amount, or

(b) if anything to which section 18(9)(c) applies cannot be given back in its original state.

(5) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations -

(a) after one repair or one replacement, the goods do not conform to the contract,

(b) as a result of the application of section 21(3) the consumer can require neither repair nor replacement of the goods, or

(c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 21(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

(6) There has been a repair or replacement for the purposes of subsection (5)(a) if -

(a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and

(b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.

(7) For the purposes of subsection (6) goods that the trader arranges to repair at the consumer's premises are made available when the trader indicates that the repairs are finished.

(8) Subject to subsections (9) and (10), if the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered.

(9) No deduction under subsection (8) may be made to take account of use in any period when the consumer had the goods only because the trader failed to collect them at an agreed time.

(10) No deduction under subsection (8) may be made if the final right to reject is exercised in the first 6 months within the meaning of subsection (11) unless-

(a) the goods consist of a motor vehicle, or

(b) the goods are of a description specified by regulations made by the Committee.

(11) In subsection (10) the first six months means six months beginning with the first day after all the following has taken place -

(a) ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,

(b) the goods have been delivered, and

(c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.

(12) Regulations made under subsection (10)(b) may be made only if the Committee is satisfied that it is appropriate to do so because of significant detriment caused to traders as a result of the application of subsection (10) in relation to goods of the description specified by the order.

Other remedies relating to contracts or agreements for goods

Delivery of wrong quantity.

23. (1) Where the trader delivers to the consumer a quantity of goods less than the trader contracted to supply, the consumer may reject them, but if the consumer accepts them the consumer must pay for them at the rate specified in the contract ("**the contract rate**").

(2) Where the trader delivers to the consumer a quantity of goods larger than the trader contracted to supply, the consumer may accept the goods included in the contract and reject the rest, or may reject all of the goods.

(3) Where the trader delivers to the consumer a quantity of goods larger than the trader contracted to supply and the consumer accepts all of the goods delivered, the consumer must pay for them at the contract rate.

(4) Where the consumer is entitled to reject goods under this section, any entitlement for the consumer to treat the contract as at an end depends on the terms of the contract and the circumstances of the case.

(5) The consumer rejects goods under this section by indicating to the trader that the consumer is rejecting the goods.

(6) The indication under subsection (5) may be something the consumer says or does, but it must be clear enough to be understood by the trader.

(7) Subsections (1) to (3) do not prevent the consumer claiming damages, where it is open to the consumer to do so.

(8) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

Delivery of goods by instalments.

24. (1) Under a contract to supply goods, the consumer is not bound to accept delivery of the goods by instalments, unless that has been agreed between the consumer and the trader.

(2) The following subsections apply if the contract provides for the goods to be delivered by stated instalments, which are to be separately paid for.

(3) If the trader makes defective deliveries in respect of one or more instalments, the consumer, apart from any entitlement to claim damages, may be (subject to subsection (4)) entitled -

(a) to exercise the short-term right to reject or the right to reject under section 17(6) (as applicable) in respect of the whole contract, or

(b) to reject the goods in an instalment.

(4) Whether paragraph (a) or (b), or neither, of subsection (3) applies to a consumer depends on the terms of the contract and the circumstances of the case.

(5) In subsection (3), making defective deliveries does not include failing to make a delivery in accordance with section 25.

(6) If the consumer neglects or refuses to take delivery of or pay for one or more instalments, the trader may -

(a) be entitled to treat the whole contract as at an end, or

(b) if it is a severable breach, have a claim for damages but not a right to treat the whole contract as at an end,

depending on the terms of the contract and the circumstances of the case.

Delivery of goods.

25. (1) This section applies to any sales contract.

(2) Unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the consumer.

(3) Unless there is an agreed time or agreed period, the contract is to be treated as including a term that the trader must deliver the goods –

(a) without undue delay, and

(b) in any event, not more than 30 days after the day on which the contract is entered into.

(4) Subsections (6) and (7) apply if the trader does not deliver the goods in accordance with subsection (3) or at the agreed time or within the agreed period.

(5) In this section –

(a) an "**agreed**" time or period means a time or period agreed by the trader and the consumer for delivery of the goods, and

(b) if there is an obligation to deliver the goods at the time the contract is entered into, that time is to be treated as the agreed time.

(6) If the circumstances are that -

(a) the trader has refused to deliver the goods,

(b) delivery of the goods at the agreed time or within the agreed period is essential taking into account all the relevant circumstances at the time the contract was entered into, or

(c) the consumer told the trader before the contract was entered into that delivery in accordance with subsection (3), or at the agreed time or within the agreed period, was essential,

then the consumer may treat the contract as at an end.

(7) In circumstances other than those specified in subsection (6), the consumer may specify a period that is appropriate in the circumstances and require the trader to deliver the goods before the end of that period.

(8) If the consumer specifies a period under subsection (7) but the goods are not delivered within that period, then the consumer may treat the contract as at an end.

(9) If the consumer treats the contract as at an end under subsection (6) or (8), the trader must without undue delay reimburse all payments made under the contract.

(10) If subsection (6) or (8) applies but the consumer does not treat the contract as at an end -

(a) the consumer is not prevented from cancelling the order for any of the goods or rejecting goods that have been delivered, and

(b) the trader must without undue delay reimburse all payments made under the contract in respect of any goods for which the consumer cancels the order for which the consumer rejects.

(11) If any of the goods form a commercial unit, the consumer cannot reject or cancel the order for some of those goods without also rejecting or cancelling the order for the rest of them.

(12) For the avoidance of doubt, this section does not prevent the consumer seeking other remedies where it is open to the consumer to do so.

Passing of risk.

26. (1) A sales contract shall be treated as including the terms specified in subsections (2) to (6).

(2) Subject to subsection (3), the goods remain at the trader's risk until they come into the physical possession of -

(a) the consumer, or

(b) a person identified by the consumer to take possession of the goods.

(3) Subsection (2) does not apply if the goods are delivered to a carrier who -

(a) is commissioned by the consumer to deliver the goods, and

(b) is not a carrier the trader named as an option for the consumer.

(4) Subject to subsection (5), in the circumstances set out in subsection (3), the goods are at the consumer's risk on and after delivery to the carrier.

(5) Subsection (4) does not affect any liability of the carrier to the consumer in respect of the goods.

Goods under guarantee.

27. (1) This section applies where -

(a) there is a contract to supply goods, and

(b) there is a guarantee in relation to the goods.

(2) In this section "**guarantee**" means an undertaking to the consumer given without extra charge by a person acting in the course of the person's business (the "**guarantor**") that, if the goods do not meet the specifications set out in the guarantee statement or in any associated advertising -

(a) the consumer will be reimbursed for the price paid for the goods, or

(b) the goods will be repaired, replaced or handled in any way.

(3) The guarantee shall take effect, at the time the goods are delivered, as a contractual obligation owed by the guarantor under the conditions set out in the guarantee statement and in any associated advertising.

(4) The guarantor must ensure that -

(a) the guarantee sets out in plain and intelligible language the contents of the guarantee and the essential particulars for making claims under the guarantee,

(b) the guarantee states that the consumer has statutory rights in relation to the goods and that those rights are not affected by the guarantee, and

(c) where the goods are offered within Guernsey, the guarantee is written in English.

(5) The contents of the guarantee to be set out must include, in particular -

(a) the name and address of the guarantor, and

(b) the duration and territorial scope of the guarantee.

(6) The guarantor and any other person who offers to supply to consumers the goods which are the subject of the guarantee must, on request by the consumer, make the guarantee available to the consumer within a reasonable time, in writing and in a form accessible to the consumer.

(7) The TSS may apply to the Royal Court sitting as an Ordinary Court for an injunction against any person who appears to the TSS to be responsible for a failure to comply with this section.

(8) The court on an application under this section may grant an injunction or other order on such terms as it thinks fit to secure compliance with this section.

(9) Paragraphs 4 and 5 of Schedule 1 apply to an application for an injunction under this section as they do to an application for an injunction under paragraph 3 of that Schedule.

Contracting out of statutory rights and remedies

Liability that cannot be excluded or restricted: goods contracts.

28. (1) A term of a contract to supply goods is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under any of these provisions -

(a) section 7 (goods to be of satisfactory quality),

(b) section 8 (goods to be fit for a particular purpose),

(c) section 9 (goods to fit description),

(d) section 10 (other pre-contract information included in contract),

(e) section 11 (goods to match sample as seen or examined),

(f) section 12 (goods to match model seen or examined),

(g) section 13 (incorrect installation of goods),

(h) section 14 (goods not conforming to contract if digital content does not conform),

(i) section 15 (right to supply goods),

(j) section 25 (delivery of goods), and

(k) section 26 (passing of risk).

(2) In addition to subsection (1), a term of a contract to supply goods is not binding on the consumer to the extent that it would -

(a) exclude or restrict a right or remedy in respect of a liability under a provision listed in subsection (1),

(b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,

(c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or

(d) exclude or restrict rules of evidence or procedure.

(3) The reference in subsection (1) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.

(4) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.

(5) Subject to subsection (6), subsection (1)(i), and subsection (2) so far as it relates to liability under section 15, do not apply to a term of a contract for the hire of goods.

(6) An express term of a contract for the hire of goods is not binding on the consumer to the extent that it would exclude or restrict a term that section 15 requires to be treated as included in the contract, unless it is inconsistent with that term.

(7) Schedule 1 makes provision in respect of the enforcement of this section.

Contracts which apply a law other than this Ordinance.

29. (1) If -

(a) the law of a country or territory other than Guernsey is chosen by the parties to apply to a sales contract, but

(b) the sales contract has a close connection with Guernsey,

this Chapter, except the provisions set out in subsection (2), applies notwithstanding that choice.

(2) The excepted provisions referred to in subsection (1) are -

(a) sections 9(4) and (5) (goods to fit description),

(b) section 10 (other pre-contract information included in contract),

(c) section 26 (passing of risk),

(d) section 27 (goods under guarantee), and

(e) section 28(1)(d), (j) and (k).

CHAPTER III

CONTRACTS RELATING TO THE SALE OR SUPPLY OF DIGITAL CONTENT

Application of Chapter III.

30. (1) This Chapter applies to a contract for a trader to supply digital content to a consumer, if it is supplied or is to be supplied for a price paid by the consumer.

(2) This Chapter also applies to a contract for a trader to supply digital content to a consumer, where -

(a) it is supplied free with goods or services or other digital content for which the consumer pays a price, and

(b) it is not generally available to consumers unless they have paid a price for it or for goods or services or other digital content.

(3) The references in subsections (1) and (2) to the consumer paying a price include references to the consumer using, by way of payment, any facility for which money has been paid.

(4) A trader does not supply digital content to a consumer for the purposes of this Part merely because the trader supplies a service by which digital content reaches the consumer.

(5) A contract to which this Chapter and Chapter IV apply is referred to in this Ordinance as a "**contract to supply digital content**".

(6) This section, other than subsection (4), does not limit the application of section 43.

(7) Section 39 sets out the rights and remedies a consumer has if there is a breach of a term that one of the following provisions requires to be treated as included in a contract –

(a) sections 31 to 34,

(b) section 38.

Statutory rights available under a digital contract

Digital content to be of satisfactory quality.

31. (1) Every contract to supply digital content is to be treated as including a term that the quality of the digital content is satisfactory.

(2) The quality of digital content is satisfactory if it meets the standard that a reasonable person would consider satisfactory, taking into account -

(a) any description of the digital content,

(b) the price mentioned in section 30(1) or (2)(b) (if relevant), and

(c) all the other relevant circumstances (see subsection (5)).

(3) The quality of digital content includes its state and condition, and aspects of the quality of digital content include, but are not limited to -

(a) fitness for all the purposes for which digital content of that kind is usually supplied,

(b) freedom from minor defects,

(c) safety, and

(d) durability.

(4) The term mentioned in subsection (1) does not cover anything which makes the quality of the digital content unsatisfactory -

(a) which is specifically drawn to the consumer's attention before the contract is made,

(b) where the consumer examines the digital content before the contract is made, which that examination ought to reveal, or

(c) where the consumer examines a trial version before the contract is made, which would have been apparent on a reasonable examination of the trial version.

(5) The relevant circumstances mentioned in subsection (2)(c) include any public statement about the specific characteristics of the digital content made by the trader, the producer or any representative of the trader or the producer and in particular, any public statement made in advertising or labelling.

(6) Notwithstanding subsection (5), a public statement is not a relevant circumstance for the purposes of subsection (2)(c) if the trader shows that -

(a) when the contract was made, the trader was not, and could not reasonably have been, aware of the statement,

(b) before the contract was made, the statement had been publicly withdrawn or, to the extent that it contained anything which was incorrect or misleading, it had been publicly corrected, or

(c) the consumer's decision to contract for the digital content could not have been influenced by the statement.

(7) In a contract to supply digital content a term about the quality of the digital content may be treated as included as a matter of custom.

Digital content fit for a particular purpose.

32. (1) Subsection (3) applies to a contract to supply digital content if, before the contract is made, the consumer makes known to the trader (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.

(2) Subsection (3) also applies to a contract to supply digital content if -

(a) the digital content was previously sold by a credit-broker to the trader,

(b) the consideration or part of it is a sum payable by instalments, and

(c) before the contract is made, the consumer makes known to the credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.

(3) Where this subsection applies, the contract is to be treated as including a term that the digital content is reasonably fit for that purpose, whether or not that is a purpose for which digital content of that kind is usually supplied.

(4) Subsection (3) does not apply if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the skill or judgment of the trader or credit-broker.

(5) A contract to supply digital content may be treated as making provision about the fitness of the digital content for a particular purpose as a matter of custom.

Digital content to be as described.

33. (1) Every contract to supply digital content is to be treated as including a term that the digital content will match any description of it given by the trader to the consumer.

(2) Where the consumer examines a trial version before the contract is made, it is not sufficient that the digital content matches (or it is better than) the trial version if the digital content does not match any description of it given by the trader to the consumer.

(3) Any information that is provided by the trader about the digital content mentioned in –

(a) paragraph (a), (j) or (k) of Schedule 3, or

(b) paragraph (a), (v) or (w) of Schedule 4,

is to be treated as included as a term of the contract.

(4) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Other pre-contract information included in contract.

34. (1) This section applies to any contract to supply digital content.

(2) There is a requirement for the trader to provide information to the consumer under Part III before the contract becomes binding, any of that information that was provided by the trader is to be treated as included as a term of the contract.

(3) A change to any of the information referred to in subsection (2), whether made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Term on quality or fitness not to be treated as included in contract to supply digital content.

35. (1) Except as provided by sections 31 and 32, and subject to subsection (2), a contract to supply digital content is not to be treated as including any term about the quality of the digital content or its fitness for any particular purpose, unless the term is expressly included in the contract.

(2) Subsection (1) is subject to provision made by any other enactment (whenever made).

Supply by transmission and facilities for continued transmission.

36. (1) Subsection (2) applies where there is a contract to supply digital content and the consumer's access to the content on a device requires its transmission to the device under arrangements initiated by the trader.

(2) For the purposes of this Chapter, the digital content is supplied-

(a) when the content reaches the device, or

(b) if earlier, when the content reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.

(3) Subsections (5) to (7) apply where -

(a) there is a contract to supply digital content, and

(b) after the trader has supplied the digital content, the consumer is to have access under the contract to a processing facility under arrangements made by the trader.

(4) The contract is to be treated as including a term that the processing facility (with any feature that the facility is to include under the contract) must be available to the consumer for a reasonable time, unless a time is specified in the contract.

(5) For the purposes of this Chapter, a processing facility is a facility by which the trader or another trader will receive digital content from the consumer and transmit digital content to the consumer (regardless of whether other features are to be included under the contract).

(6) The following provisions apply to all digital content transmitted to the consumer on each occasion under the facility, while it is provided under the contract, as they apply to the digital content first supplied -

(a) section 31 (digital content to be of satisfactory quality),

(b) section 32 (digital content fit for a particular purpose),

(c) section 33 (digital content to be as described).

(7) Breach of a term treated as included under subsection (4) has the same effect as breach of a term treated as included under the sections listed in subsection (6).

Quality, fitness and description of content supplied subject to modifications.

37. (1) Where under a contract, a trader supplies digital content to a consumer subject to the right of the trader or a third party to modify the digital

content, the following provisions apply in relation to the digital content as modified as they apply in relation to the digital content as supplied under the contract -

(a) section 31 (digital content to be of satisfactory quality),

(b) section 32 (digital content fit for a particular purpose),

(c) section 33 (digital content to be as described).

(2) Subsection (1)(c) does not prevent the trader from improving the features of, or adding new features to, the digital content, provided that -

(a) the digital content continues to match the description of it given by the trader to the consumer, and

(b) the digital content continues to conform to the information provided by the trader referred to in section 33(3), subject to any change to that information that has been agreed in accordance with section 33(4).

(3) A claim on the grounds that digital content does not conform to a term described in any of the sections listed in subsection (1) as applied by that subsection is to be treated as arising at the time when the digital content was supplied under the contract and not the time when it is modified.

Trader's right to supply digital content.

38. (1) Every contract to supply digital content is to be treated as including a term that -

(a) in relation to any digital content which is supplied under the contract and which the consumer has paid for, the trader has the right to supply that content to the consumer,

(b) in relation to any digital content which the trader agrees to supply under the contract and which the consumer has paid for, the trader will have the right to supply it to the consumer at the time when it is to be supplied.

(2) Section 39 sets out the rights and remedies a consumer has if there is any breach of a term that this section requires to be treated as included in a contract.

CHAPTER IV

REMEDIES AVAILABLE FOR BREACH OF CONTRACTS UNDER CHAPTER III

Consumer's rights to enforce terms of a contract to supply digital content.

39. (1) In this section and section 40, references to digital content conforming to a contract are references to the digital content conforming to the terms described in sections 31, 32 and 33.

(2) If the digital content does not conform to the contract, the consumer's rights are –

(a) the right to repair or replacement under section 40, and

(b) the right to a price reduction under section 41,

and section 14 also applies if an item including the digital content is supplied.

(3) If the trader is in breach of a term that section 34 requires to be treated as included in the contract, the consumer has the right to recover from the trader the amount of any costs incurred by the consumer as a result of the breach, up to the amount of the price paid for the digital content or for any facility within section 30(3) used by the consumer.

(4) If the trader is in breach of the term that section 38(1) requires to be treated as included in the contract, the consumer has the right to a refund conferred under section 42.

(5) This Chapter does not prevent the consumer seeking other remedies for a breach of a term to which any of subsections (2), (4) or (5) applies, instead of or in addition to a remedy mentioned there (but not so as to recover twice for the same loss).

(6) It is not open to the consumer to treat the contract as at an end for breach of a term to which any of subsections (2), (4) or (5) applies.

(7) For the purposes of subsection (2), digital content which does not conform to the contract at any time within the period of six months beginning with the day on which it was supplied must be taken not to have conformed to the contract when it was supplied.

(8) Subsection (7) does not apply if -

(a) it is established that the digital content did conform to the contract when it was supplied, or

(b) its application is incompatible with the nature of the digital content or with how it fails to conform to the contract.

Right to repair or replacement.

40. (1) This section applies where the consumer has the right to repair or replacement within the meaning of this Chapter.

(2) If the consumer requires the trader to repair or replace the digital content, the trader must -

(a) do so within a reasonable time and without significant inconvenience to the consumer, and

(b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The consumer cannot require the trader to repair or replace the digital content if that remedy (the repair or replacement) -

(a) is impossible, or

(b) is disproportionate compared to the other of those remedies.

(4) Any of the remedies mentioned under subsection (3) is disproportionate compared to the other if it imposes costs on the trader which, compared to the costs imposed by the other remedy, are unreasonable, taking into account -

(a) the value which the digital content would have if it conformed to the contract,

(b) the significance of the lack of conformity, and

(c) whether the other remedy could be effected without significant inconvenience to the consumer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of -

(a) the nature of the digital content,

(b) the purpose for which the digital content was obtained or accessed.

(6) A consumer who requires or agrees to the repair of digital content cannot require the trader to replace it without giving the trader a reasonable time to repair it (unless giving the trader that time would cause significant inconvenience to the consumer).

(7) A consumer who requires or agrees to the replacement of digital content cannot require the trader to repair it without giving the trader a reasonable time to replace it (unless giving the trader that time would cause significant inconvenience to the consumer).

(8) In this Chapter, "**repair**", in relation to digital content that does not conform to a contract, means making it conform.

Right to price reduction.

41. (1) Subject to subsection (3), for the purposes of this Chapter the right to a price reduction is the right to require the trader to reduce the price by an appropriate amount (including the right to receive a refund for anything already paid above the reduced amount).

(2) The amount of the reduction may, where appropriate, be the full amount of the price.

(3) A consumer's right under subsection (1) may only be exercised where -

(a) because of section 40(3)(a) (impossibility), the consumer can require neither repair nor replacement of the digital content, or

(b) the consumer has required the trader to repair or replace the digital content, but the trader is in breach of the requirement of section 40(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

(4) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.

(5) The trader must give the refund using the same means of payment as the consumer used to pay for the digital content, unless the consumer expressly agrees otherwise.

(6) The trader must not impose any fee on the consumer in respect of the refund.

Right to a refund.

42. (1) Subject to subsection (2), for the purposes of this Chapter the right to a refund is the right to receive a refund from the trader of all money paid by the consumer for the digital content.

(2) If the breach giving the consumer the right to a refund affects only some of the digital content supplied under the contract, the right to a refund does not extend to any part of the price attributable to digital content that is not affected by the breach.

(3) A refund must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.

(4) The trader must give the refund using the same means of payment as the consumer used to pay for the digital content, unless the consumer expressly agrees otherwise.

(5) The trader must not impose any fee on the consumer in respect of the refund.

Compensation for damage to device or to other digital content

Remedy for damage to device or other digital content.

43. (1) This section applies if -

(a) a trader supplies digital content to a consumer under a contract,

(b) the digital content causes damage to a device or to other digital content,

(c) the device or digital content that is damaged belongs to the consumer, and

(d) the damage is of a kind that would not have occurred if the trader had exercised reasonable care and skill.

(2) If the consumer requires the trader to provide a remedy under this section, the trader must either -

(a) repair the damage in accordance with subsection (3), or

(b) compensate the consumer for the damage with an appropriate payment.

(3) In order to repair the damage in accordance with this subsection, the trader must -

(a) repair the damage within a reasonable time and without significant inconvenience to the consumer, and

(b) bear any necessary costs incurred in repairing the damage (including in particular the cost of any labour, materials or postage).

(4) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of -

(a) the nature of the device or digital content that is damaged, and

(b) the purpose for which it is used by the consumer.

(5) A compensation payment under this section must be made without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to the payment.

(6) The trader must not impose any fee on the consumer in respect of the payment.

(7) A consumer with a right to a remedy under this section may bring a claim in civil proceedings to enforce that right.

Liability that cannot be excluded or restricted: digital content.

44. (1) A term of a contract to supply digital content is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under any of these provisions -

(a) section 31 (digital content to be of satisfactory quality),

(b) section 32 (digital content fit for a particular purpose),

(c) section 33 (digital content to be as described),

(d) section 34 (other pre-contract information included in contract), or

(e) section 38 (trader's right to supply digital content).

(2) A term of a contract to supply digital content is not binding on the consumer to the extent that it would -

(a) exclude or restrict a right or remedy in respect of a liability under a provision listed in subsection (1),

(b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,

(c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or

(d) exclude or restrict rules of evidence or procedure.

(3) The reference in subsection (1) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.

(4) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.

(5) Schedule 1 makes provision in respect of the enforcement of this section.

CHAPTER V

CONTRACTS RELATING TO THE SUPPLY OF SERVICES

Application of Chapter V.

45. This Chapter applies to a contract for a trader to supply a service to a consumer other than a contract of employment or apprenticeship, and a contract to which this Chapter applies is referred to in this Part as a "**contract to supply a service**".

Service to be performed with reasonable care and skill.

46. (1) Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

(2) A consumer has the rights specified under section 51 in respect of any breach of a term that this section requires to be treated as included in a contract.

Information about the trader or service to be binding.

47. (1) Subject to subsection (2), every contract to supply a service is to be treated as including, as a term of the contract, anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if -

(a) it is taken into account by the consumer when deciding to enter into the contract, or

(b) it is taken into account by the consumer when making any decision about the service after entering into the contract.

(2) Anything taken into account by the consumer as mentioned in subsection (1)(a) or (b) is subject to -

(a) anything that qualified it and was said or written to the consumer by the trader on the same occasion, and

(b) any change to it that has been expressly agreed between the consumer and the trader (before entering into the contract or later).

(3) Without prejudice to subsection (1), any information which is required to be provided by the trader under Part III relating to on-premises, off-premises or distance contracts is to be treated as included as a term of the contract.

(4) A change to any of the information mentioned in subsection (3), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

(5) A consumer has the rights specified under section 51 in respect of any breach of a term that this section requires to be treated as included in a contract.

Reasonable price to be paid for a service.

48. (1) This section applies to a contract to supply a service if -

(a) the consumer has not paid a price or other consideration for the service,

(b) the contract does not expressly fix a price or other consideration, and does not state how the price is to be fixed, and

(c) nothing that is to be treated as included in the contract under section 47 fixes a price or other consideration.

(2) Where this section applies to a contract to supply a service, that contract is to be treated as including a term that the consumer must pay a reasonable price for the service and not more than that.

(3) What is a reasonable price for the purposes of this section is a question of fact to be determined by reference to the circumstances of the particular case.

Service to be performed within a reasonable time.

49. (1) This section applies to a contract to supply a service if -

(a) the contract does not expressly fix the time for the service to be performed, and does not state how it is to be fixed, and

(b) information that is to be treated as included in the contract under section 47, does not fix the time.

(2) Where this section applies to a contract to supply a service, that contract is to be treated as including a term that the trader must provide the service within a reasonable time.

(3) What is a reasonable time for the purposes of this section is a question of fact to be determined by reference to the circumstances of the particular case.

(4) A consumer has the rights specified under section 51 in respect of any breach of a term that this section requires to be treated as included in a contract.

Relation to other law on contract terms.

50. (1) Nothing in this Chapter affects any enactment or rule of law that imposes a stricter duty on the trader in any particular case.

(2) This Chapter is subject to any other enactment which specifies or restricts the rights, duties or liabilities arising in connection with a service of any description.

CHAPTER VI

REMEDIES AVAILABLE FOR BREACH OF CONTRACTS UNDER CHAPTER V

Consumer's rights to enforce terms about services.

51. (1) The consumer's rights under this section and sections 52 and are without prejudice to any rights afforded by the contract, if those are not inconsistent.

(2) In this section and section 52 a reference to a service conforming to a contract is a reference to -

(a) the service being performed in accordance with section 46, or

(b) the service conforming to a term that section 47 requires to be treated as included in the contract and that relates to the performance of the service.

(3) If the service does not conform to the contract, the consumer's rights are -

(a) the right to require repeat performance conferred under section 52, and

(b) the right to a price reduction conferred under section 53.

(4) If the trader is in breach of a term that section 47 requires to be treated as included in the contract but that does not relate to the service, the consumer has the right to a price reduction conferred under section 53.

(5) If the trader is in breach of what the contract requires under section 49 (service to be performed within a reasonable time), the consumer has the right to a price reduction conferred under section 53.

(6) This section and sections 52 and 53 do not prevent the consumer seeking other remedies for a breach of a term to which any of subsections (3) to (5) applies, instead of or in addition to a remedy referred to there (but, for the avoidance of doubt, not so as to recover twice for the same loss).

Right to repeat performance.

52. (1) The right to require repeat performance is a right to require the trader to perform the service again, to the extent necessary to complete its performance in conformity with the contract.

(2) If the consumer requires a repeat performance, the trader -

(a) must provide it within a reasonable time and without significant inconvenience to the consumer, and

(b) must bear any necessary costs incurred in doing so (including, but not limited to, the cost of any labour or materials).

(3) The consumer may not require repeat performance if completing performance of the service in conformity with the contract is impossible.

(4) What is a reasonable time or significant inconvenience for the purposes of this section is a question of fact to be determined by reference to the circumstances of the particular case, taking account of -

(a) the nature of the service, and

(b) the purpose for which the service was to be performed.

Right to price reduction.

53. (1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount (including the right to receive a refund for anything already paid above the reduced amount).

(2) The amount of the reduction may, where appropriate, be the full amount of the price.

(3) A consumer who has in respect of a trader the right to a price reduction and the right to require repeat performance is only entitled to a price reduction if -

(a) as a result of the application of section 52(3), the consumer cannot require repeat performance, or

(b) the consumer has required the repeat performance but the trader is in breach of the requirement of section 52(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

(4) A refund under this section must be given without undue delay, any in any event within 14 days beginning on the day the trader agrees that the consumer is entitled to a refund.

(5) The trader must give the refund using the same means of payment as the consumer used to pay for the service, unless the consumer has expressly agreed otherwise.

(6) The trader must not impose any fee on the consumer in respect of the refund.

Contracting out of statutory rights and remedies

Liability that cannot be excluded or restricted: services contracts.

54. (1) A term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 46 (service to be performed with reasonable care and skill).

(2) Subject to section 47(2), a term of a contract to supply services is not binding on the consumer to the extent that it would exclude the trader's liability arising under section 47 (information about the trader or service to be binding).

(3) A term of a contract to supply services is not binding on the consumer to the extent that it would restrict the trader's liability arising under any of sections 46 and 47 and, where they apply, sections 48 and 49, if it would prevent the consumer in an appropriate case from recovering the price paid or the value of any other consideration.

(4) A term of a contract to supply services is not binding on the consumer to the extent that it would -

(a) exclude or restrict a right or remedy in respect of a liability under any of sections 46 to 49,

(b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,

(c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or

(d) exclude or restrict rules of evidence or procedure.

(5) The references in subsections (1) to (3) to excluding or restricting a liability also include preventing an obligation or duty arising or limiting its extent.

(6) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.

(7) Schedule 1 makes provision in respect of the enforcement of this section.

PART II

UNFAIR CONTRACT TERMS AND NOTICES

CHAPTER I

GENERAL RULES ON FAIRNESS OF CONTRACT TERMS AND NOTICES

Application of Part II.

55. (1) Subject to the provisions of this section, this Part applies to a contract between a trader and a consumer.

(2) For the avoidance of doubt, this Part does not apply to a contract of employment or apprenticeship.

(3) This Part does not apply to a term of a contract, or to a notice, to the extent that the term or notice (as the case may be) reflects mandatory statutory or regulatory provisions, or the provisions or principles of an international convention which has been extended to Guernsey; and for these purposes "mandatory statutory or regulatory provisions" includes rules which, according to law, apply between the parties on the basis that no other arrangements have been established.

(4) A contract to which this Part applies is referred to in this Part as a "**consumer contract**".

(5) Subject to the provisions of this section, this Part applies to a notice to the extent that it -

(a) relates to rights or obligations as between a trader and a consumer, or

(b) purports to exclude or restrict a trader's liability to a consumer,

regardless of whether the notice is expressed to apply to a consumer, provided that it is reasonable to assume it is intended to be seen or heard by a consumer.

(6) For the avoidance of doubt, this Part does not apply to a notice relating to rights, obligations or liabilities as between an employer and an employee.

(7) A notice to which this Part applies is referred to in this Part as a "**consumer notice**".

(8) In this section "**notice**" includes an announcement, whether or not in writing, and any other communication or purported communication.

(9) Section 1(8) (trader who claims an individual is not a consumer must prove it) applies in relation to this Part as it applies in relation to Part I.

(10) In subsection (3), "**mandatory statutory or regulatory provisions**" includes rules which, according to law, apply between the parties on the basis that no other arrangements have been established.

Requirements for contract terms and notices.

56. (1) An unfair term of a consumer contract is not binding on the consumer, but the consumer may choose to rely on such a term.

(2) An unfair consumer notice is not binding on the consumer, but the consumer may choose to rely on such a notice.

(3) A term of a consumer contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

(4) Whether a term in a consumer contract is fair is to be determined-

(a) taking into account the nature of the subject matter of the contract, and

(b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract, or of any other contract on which it depends.

(5) A consumer notice is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.

(6) Whether a consumer notice is fair is to be determined -

(a) taking into account the nature of the subject matter of the notice, and

(b) by reference to all the circumstances existing when the rights or obligations to which it relates arose and to the terms of any contract on which it depends.

(7) This section does not affect the operation of -

(a) section 28 (liability that cannot be excluded or restricted: goods contracts),

(b) section 44 (liability that cannot be excluded or restricted: digital content),

(c) section 54 (liability that cannot be excluded or restricted: services contracts), or

(d) section 59 (contract term or notice cannot restrict or exclude negligence liability).

Contract terms which may be regarded as unfair.

57. (1) Part I of Schedule 2 contains an indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair for the purposes of this Part.

(2) Subject to subsection (3), Part I of Schedule 2 is subject to Part II of that Schedule.

(3) A term listed in Part II of Schedule 2 may be assessed for fairness under section 56 unless section 55(10) or 58 applies to it.

Exclusion of a contract term from assessment for fairness.

58. (1) Subject to subsection (2), a term of a consumer contract may not be assessed for fairness under section 56 to the extent that -

(a) it specifies the main subject matter of the contract, or

(b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.

(2) Subsection (1) excludes a term from an assessment under section 56 only if it is transparent and prominent within the meanings of subsections (3) and (4).

(3) A term is transparent for the purposes of this Part if it is expressed in plain and intelligible language and (in the case of a written term) is legible.

(4) A term is prominent for the purposes of this section if it is brought to the consumer's attention in such a way that an average consumer would be aware of the term.

(5) This section does not apply to a term of a contract listed in Part I of Schedule 2.

Contract term or notice cannot restrict or exclude negligence liability.

59. (1) Subsections (2) and (3) are subject to section 60 (scope of section 59).

(2) Where a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader's liability for negligence, a person is not to be taken to have voluntarily accepted any risk merely because the person agreed to or knew about the term or notice.

(3) A trader cannot, by a term of a consumer contract or by a consumer notice, exclude or restrict liability for death or personal injury resulting from negligence.

(4) Schedule 1 makes provision in respect of the enforcement of this section.

Scope of section 59.

60. (1) Section 59 does not apply to -

(a) any contract so far as it is a contract of insurance, including a contract to pay an annuity on human life,

or,

(b) any contract so far as it relates to the creation or transfer of an interest in land.

(2) Section 59 does not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by that person of compensation in settlement of any claim the person has.

(3) Section 59 does not apply to the liability of an occupier of premises to a person who obtains access to the premises for recreational purposes if –

(a) the person suffers loss or damage because of the dangerous state of the premises, and

(b) allowing the person access for those purposes is not within the purposes of the occupier's trade, business, craft or profession.

Effect of an unfair term on the whole contract.

61. Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.

Requirement for transparency.

62. (1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.

(2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

Contract terms with different meanings.

63. (1) Subject to subsection (2), if a term in a consumer contract or in a consumer notice is capable of having different meanings, the meaning that is most favourable to the consumer will prevail.

(2) Subsection (1) does not apply to the construction of a term or a notice in proceedings on an application for an injunction under paragraph 3 of Schedule 1.

CHAPTER II

ENFORCEMENT OF RULES ON FAIRNESS

The Trading Standards Service, and enforcement of Parts I and II.

64. (1) There shall continue to be a trading standards service as a service within the Committee for Home Affairs, which service is referred to in this Ordinance as the Trading Standards Service, or "**the TSS**".

(2) When exercising any function under this Ordinance, the Chief Trading Standards Officer must have regard to international obligations that are relevant to the exercise of the function –

(a) that are binding on the Bailiwick, or any part thereof, or

(b) to which His Majesty's Government in the United Kingdom is a party.

(3) Schedule 1 confers functions on the TSS in relation to the enforcement of Part I and this Part.

Court's determination of unfairness of a contract term.

65. (1) Subsection (2) applies to proceedings before a court which relate to a term of a consumer contract.

(2) Subject to subsection (3), the court must consider whether the term is fair even if none of the parties to the proceedings has raised that issue or indicated that it intends to raise it.

(3) Subsection (2) only applies where the court considers that there is sufficient legal and factual material presented to enable it to consider the fairness of the term.

Application of rules on fairness to secondary contracts.

66. (1) This section applies if a term of a contract ("**the secondary contract**") reduces the rights or remedies or increases the obligations of a person under another contract ("**the main contract**").

(2) The term is subject to the provisions of this Part that would apply to the term if it were in the main contract.

(3) It does not matter for the purposes of this section –

(a) whether the parties to the secondary contract are the same as the parties to the main contract, or

(b) whether the secondary contract is a consumer contract.

(4) This section does not apply if the secondary contract is a settlement of a claim arising under the main contract.

PART III

CONSUMER CONTRACTS (INFORMATION, CANCELLATION AND OTHER CHARGES)

Application Part III.

67. (1) This Part does not apply to a contract to the extent that is for –

(a) gambling within the meaning of section 13 of the Gambling (Guernsey) Law, 1971[e],

(b) services in respect of banking, credit, insurance, personal pension, investment or payments,

(c) the creation of immoveable property, the transfer of immoveable property or of rights in immoveable property,

(d) the supply of foodstuffs, beverages or other goods intended for current consumption in the household and which are supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace.

(2) This Part does not apply to contracts -

(a) concluded by means of automatic vending machines or automated commercial premises,

(b) concluded with a telecommunications operator through a public telephone for the use of the telephone,

(c) concluded for the use of one single connection, by telephone, internet or fax, established by a consumer,

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[e] Ordres en Conseil Vol. XXIII, p.109. This enactment has been amended

(d) under which goods are sold by way of execution or otherwise by authority of law.

(3) Subsection (1)(b) is subject to sections 95 (effects of withdrawal or cancellation on ancillary contracts) and 96(3) (additional payments under a contract).

(4) The Committee may by regulations make provision to specify further services falling within subsection 1(b).

CHAPTER I

INFORMATION REQUIREMENTS

Application of Chapter I.

68. (1) This Chapter applies to on-premises, off-premises and distance contracts, subject to subsections (2), (3) and (4) and section 1.

(2) This Chapter does not apply to contracts to the extent that the contracts are -

(a) for the supply of a medicinal product by administration by an appropriate practitioner, or under a prescription or directions given by an appropriate practitioner,

(b) for the supply of a product by a registered health professional, under arrangements for the supply of services where the product is one that, at least in some circumstances is available under such arrangements free or on prescription.

(3) This Chapter, except for section 75(1) to (5), does not apply to

contracts to the extent that they are for passenger transport services.

(4) This Chapter does not apply to off-premises contracts under which the payment to be made by the consumer is not more than £50, or such other sum prescribed in regulations made by the Committee.

(5) In subsection (2) -

"**appropriate practitioner**" has the meaning given by section 1 of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009[f], and

"**registered health professional**" has the meaning given by section 1(2) of the Registered Health Professionals Ordinance, 2006[g].

Making information etc. available to a consumer.

69. For the purposes of this Chapter, something is made available to a consumer only if the consumer can reasonably be expected to know how to access it.

Information to be provided before making an on-premises contract.

70. (1) Before the consumer is bound by an on-premises contract, the trader must give or make available to the consumer the information described in Schedule 3 in a clear and comprehensible manner, if that information is not already apparent from the context.

(2) Subsection (1) does not apply to a contract which involves a day-to-day transaction and is performed immediately at the time when the contract

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f Recueil d'Ordonnances Tome XXXIII, p. 555. This enactment has been amended.

g Recueil d'Ordonnances Tome XXXI, p. 145. This enactment has been amended.

is entered into.

(3) Any information that the trader gives the consumer as required by this section is to be treated as included as a term of the contract.

(4) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Information to be provided before making an off-premises contract.

71. (1) Before the consumer is bound by an off-premises contract, the trader -

(a) must give the consumer the information listed in Schedule 4 in a clear and comprehensible manner, and

(b) if a right to cancel under this Ordinance exists, must give the consumer a cancellation form as set out in Part B of Schedule 5.

(2) The information and any cancellation form must be given on paper or, if the consumer agrees, on another durable medium, and must be legible.

(3) The information referred to in paragraphs (l), (m) and (n) of Schedule 4 may be provided by means of the model instructions on cancellation set out in Part A of Schedule 5, and a trader who has supplied those instructions to the consumer, correctly filled in, is to be treated as having complied with subsection (1) in respect of those paragraphs.

(4) If the trader has not complied with subsection (1) in respect of paragraph (g), (h) or (m) of Schedule 4, the consumer is not to bear the charges or costs referred to in those paragraphs.

(5) Any information that the trader gives the consumer as required by this section is to be treated as included as a term of the contract.

(6) A change to any of the information referred to in subsection (5), made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

(7) This section is subject to section 72.

Provision of information in connection with repair or maintenance contracts.

72. (1) If the conditions in subsections (2), (3) and (4) are met, section 71(1) does not apply to an off-premises contract where -

(a) the contract is a contract to supply a service,

(b) the consumer has explicitly requested the trader to supply the service for the purpose of carrying out repairs or maintenance,

(c) the obligations of the trader and the consumer under the contract are to be performed immediately, and

(d) the payment to be made by the consumer is not more than £200.

(2) The condition in this subsection is that, before the consumer is bound by the contract, the trader gives or makes available to the consumer on paper or, if the consumer expressly agrees, on another durable medium -

(a) the information referred to in paragraphs (b) to (d), (f) and (g) of Schedule 4,

(b) an estimate of the total price, where it cannot reasonably be calculated in advance, and

(c) where a right to cancel exists, a cancellation form as set out in Part B of Schedule 5.

(3) The condition in this subsection is that, before the consumer is bound by the contract, the trader gives or makes available to the consumer the information referred to in paragraphs (a), (l) and (o) of Schedule 4, either on paper or another durable medium or otherwise if the consumer expressly agrees.

(4) The condition in this subsection is that the confirmation of the contract provided in accordance with section 73 contains the information required by section 71(1).

Provision of copy or confirmation of off-premises contracts.

73. (1) In the case of an off-premises contract, the trader must give the consumer -

(a) a copy of the signed contract, or

(b) confirmation of the contract.

(2) The confirmation must include all the information referred to in Schedule 4 unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the off-premises contract.

(3) The copy or confirmation must be provided on paper or, if the consumer agrees, on another durable medium.

(4) The copy or confirmation must be provided within a reasonable time after the conclusion of the contract, but in any event -

(a) not later than the time of the delivery of any goods supplied under the contract, and

(b) before performance begins of any service supplied under the contract.

(5) If the contract is for the supply of digital content not on a tangible medium and the consumer has given the consent and acknowledgement referred to in section 94(1)(a) and (b), the copy or confirmation must include confirmation of the consent and acknowledgement.

Information to be provided before making a distance contract.

74. (1) Before the consumer is bound by a distance contract, the trader -

(a) must give or make available to the consumer the information listed in Schedule 4 in a clear and comprehensible manner, and in a way appropriate to the means of distance communication used, and

(b) if a right to cancel exists, must give or make available to the consumer a cancellation form as set out in Part B of Schedule 5.

(2) In so far as the information is provided on a durable medium, it must be legible.

(3) The information referred to in paragraphs (l), (m) and (n) of Schedule 4 may be provided by means of the model instructions on cancellation set out in Part A of Schedule 5; and a trader who has supplied those instructions to the consumer, correctly filled in, is to be treated as having complied with paragraph (1) in respect of those paragraphs.

(4) Where a distance contract is concluded through a means of distance communication which allows limited space or time to display the information-

(a) the information listed in paragraphs (a), (b), (f), (g), (h), (l) and (s) of Schedule 4 must be provided on that means of communication in accordance with subsections (1) and (2), but

(b) the other information required by subsection (1) may be provided in another appropriate way.

(5) Where the trader has not complied with subsection (1) in respect of paragraph (g), (h) or (m) of Schedule 4, the trader must bear the charges or costs referred to in those paragraphs.

(6) Any information that the trader gives the consumer as required by this section is to be treated as included as a term of the contract.

(7) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Requirements for distance contracts concluded by electronic means.

75. (1) This section applies where a distance contract is concluded by electronic means.

(2) If the contract places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places the order, of the information listed in paragraphs (a), (f), (g), (h), (s) and (t) of Schedule 4.

(3) The trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay.

(4) For the purposes of subsection (3), if placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

(5) If the trader has not complied with subsections (3) and (4), the consumer is not bound by the contract or order.

(6) The trader must ensure that any trading website through which the contract is concluded indicates clearly and legibly, at the latest at the beginning of the ordering process, whether any delivery restrictions apply and which means of payment are accepted.

Telephone calls to conclude a distance contract.

76. If the trader makes a telephone call to the consumer with a view to concluding a distance contract, the trader must, at the beginning of the conversation with the consumer, disclose -

(a) the trader's identity,

(b) where applicable, the identity of the person on whose behalf the trader makes the call, and

(c) the commercial purpose of the call.

Confirmation of distance contracts.

77. (1) In the case of a distance contract the trader must give the consumer confirmation of the contract on a durable medium.

(2) The confirmation must include all the information referred to in Schedule 4 unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract.

(3) If the contract is for the supply of digital content not on a tangible medium and the consumer has given the consent and acknowledgment referred to in section 94(1)(a) and (b), the confirmation must include confirmation of the consent and acknowledgement.

(4) The confirmation must be provided within a reasonable time after the conclusion of the contract, but in any event -

(a) not later than the time of delivery of any goods supplied under the contract, and

(b) before performance begins of any service supplied under the contract.

(5) For the purposes of subsection (4), the confirmation is treated as provided as soon as the trader has sent it or done what is necessary to make it available to the consumer.

Burden of proof in relation to off-premises and distance contracts.

78. (1) Subject to subsection (2), in case of a dispute about the trader's compliance with any provision of sections 71 to 77, it is for the trader to show that the provision was complied with.

(2) Subsection (1) does not apply to proceedings -

(a) for an offence under section 80, or

(b) relating to compliance with an injunction under section 99.

Effect on contract of failure to provide information.

79. Every contract to which this Part applies is to be treated as including a term that the trader has complied with the provisions of -

(a) sections 70 to 75, and

(b) section 77.

CHAPTER II

OFFENCES UNDER PART III

Offence relating to failure to give notice of the right to cancel.

80. (1) A trader is guilty of an offence if the trader enters into an off-premises contract to which section 71 applies but fails to give the consumer the information listed in paragraph (l), (m) or (n) of Schedule 4 in accordance with that section.

(2) A trader who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

Defence of due diligence: offence under section 80.

81. In any proceedings against a person ("**A**") for an offence under section 80 it is a defence for A to prove -

(a) that the commission of the offence was due to -

(i) the act or default of another, or

(ii) reliance on information given by another, and

(b) that A took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by A or any person under A's control.

Liability of persons other than the principal offender for offence under section 80.

82. Where the commission by a person of an offence under section 80 is due to the act or default of another person, that other person is guilty of the offence and may be proceeded against and punished whether or not proceedings are taken against the first person.

Power of investigation in respect of offence under section 80.

83. (1) If a TSS officer has reasonable grounds for suspecting that an offence has been committed under section 80, the officer may require a person carrying on or employed in a business to produce any document relating to the business, and take copies of it or any entry in it for the purposes of ascertaining whether such an offence has been committed.

(2) If the officer has reasonable grounds for believing that any documents may be required as evidence in proceedings for such an offence, the officer may seize and retain them and shall, if the officer does so, inform the person from whom they are seized.

(3) The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible form, a reference to the production of a copy of the information in a legible form.

(4) An officer seeking to exercise a power under this section must do so only at a reasonable hour and on production of the officer's identification and authority.

CHAPTER III

RIGHT TO CANCEL

Application of Chapter III.

84. (1) This Chapter applies to distance and off-premises contracts,

subject to subsections (2) and (3) and sections 67 and 85.

(2) This Chapter does not apply to contracts to the extent that they are -

(a) for the supply of a medicinal product by administration by an appropriate practitioner, or under a prescription or directions given by an appropriate practitioner,

(b) for the supply of a product by a registered health professional, under arrangements for the supply of services where the product is one that, at least in some circumstances, is available under such arrangements, whether free or on prescription, or

(c) for passenger transport services.

(3) This Chapter does not apply to off-premises contracts under which the payment to be made by the consumer is not more than £50 or such other sum not exceeding £200 specified in regulations made by the Committee.

(4) In subsection (2)(a) and (b), expressions defined in section 68(5) have the meaning given there.

Limits of application: circumstances excluding cancellation.

85. (1) This Chapter does not apply as regards any of the following -

(a) the supply of -

(i) goods, or

(ii) services,

for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the cancellation period,

(b) the supply of goods that are made to the consumer's specifications or are clearly personalised,

(c) the supply of goods which are liable to deteriorate or expire rapidly,

(e) the supply of alcoholic beverages, where -

(i) their price has been agreed at the time of the conclusion of the sales contract,

(ii) delivery of the beverages can only take place after 30 days, and

(iii) their value is dependent on fluctuations in the market which cannot be controlled by the trader,

(f) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance,

(g) the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications,

(h) contracts concluded at a public auction,

(i) the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities, if the contract provides for a specific date or period of performance.

(2) Paragraph (f) of subsection (1) does not prevent this Chapter applying to a contract for -

(a) services in addition to the urgent repairs or maintenance requested, or

(b) goods other than replacement parts necessarily used in making the repairs or carrying out the maintenance,

if the trader supplies them on the occasion of a visit such as is mentioned in that paragraph.

(3) The rights conferred by this Chapter cease to be available in the following circumstances -

(a) in the case of a contract for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons, if they become unsealed after delivery,

(b) in the case of a contract for the supply of sealed audio or sealed video recordings or sealed computer software, if the goods become unsealed after delivery,

(c) in the case of any sales contract, if the goods become mixed inseparably (according to their nature) with other items after delivery.

Right to cancel.

86. (1) The consumer may cancel a distance or off-premises contract at any time in the cancellation period without giving any reason, and without incurring any liability except under these provisions -

(a) section 91(3) (where enhanced delivery is chosen by the consumer),

(b) section 91(9) (where the value of goods are diminished by consumer handling),

(c) section 92(5) (where goods are returned by the consumer),

(d) section 93(4) (where the consumer requests early supply of service).

(2) The cancellation period begins when the contract is entered into and ends in accordance with sections 87 or 88 (as the case may be).

(3) Subsection (1) does not affect the consumer's right to withdraw an offer made by the consumer to enter into a distance or off-premises contract at any time before the contract is entered into, without giving any reason and without incurring any liability.

Normal cancellation period.

87. (1) Unless section 88 applies, the cancellation period ends in accordance with this section.

(2) If the contract -

(a) is a contract to supply a service, or

(b) is a contract for the supply of digital content which is not supplied on a tangible medium,

the cancellation period ends at the end of 14 days after the day on which the contract is entered into.

(3) If the contract is a sales contract and subsections (4) to (6) do not apply, the cancellation period ends at the end of 14 days after the day on which the goods come into the physical possession of -

(a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

(4) If the contract is a sales contract under which multiple goods are ordered by the consumer in one order, but some are delivered on different days, the cancellation period ends at the end of 14 days after the day on which the last of the goods come into the physical possession of -

(a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

(5) If the contract is a sales contract under which goods consisting of multiple lots or pieces of something are delivered on different days, the cancellation period ends at the end of 14 days after the day on which the last of the lots or pieces come into the physical possession of -

(a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

(6) If the contract is a sales contract for regular delivery of goods during a defined period of more than one day, the cancellation period ends at the end of 14 days after the day on which the first of the goods come into the physical possession of -

(a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

Cancellation period extended for breach of information requirement.

88. (1) This section applies if the trader does not provide the consumer with the information on the right to cancel required by paragraph (l) of Schedule 4, in accordance with Chapter II of this Part.

(2) If the trader provides the consumer with that information in the period of 12 months beginning with the first day of the 14 days mentioned in section 87(2) to (6), but otherwise in accordance with Chapter II of this Part, the cancellation period ends at the end of 14 days after the consumer receives the information.

(3) In circumstances other than those set out in subsection (2), the cancellation period ends at the end of 12 months after the day on which it would have ended under section 87.

Exercise of the right to withdraw or cancel.

89. (1) To withdraw an offer to enter into a distance or off-premises contract, the consumer must inform the trader of the decision to withdraw it.

(2) To cancel a contract under section 86(1), the consumer must

inform the trader of the decision to cancel it.

(3) To inform the trader under subsection (2) the consumer may either -

(a) use a form following the model cancellation form in Part B of Schedule 5, or

(b) make any other clear statement setting out the decision to cancel the contract.

(4) If the trader gives the consumer the option of filling in and submitting such a form or other statement on the trader's website -

(a) the consumer need not use it, but

(b) if the consumer does, the trader must communicate to the consumer an acknowledgement of receipt of the cancellation on a durable medium without delay.

(5) Where the consumer informs the trader under subsection (2) by sending a communication, the consumer is to be treated as having cancelled the contract in the cancellation period if the communication is sent before the end of the period.

(6) In case of dispute it is for the consumer to show that the contract was cancelled in the cancellation period in accordance with this section.

Effect of withdrawal or cancellation.

90. (1) If a contract is cancelled under section 86(1) -

(a) the cancellation ends the obligations of the parties to perform the contract, and

(b) sections 91 to 95 apply.

(2) Sections 91 and 95 also apply if the consumer withdraws an offer to enter into a distance or off-premises contract.

Reimbursement by trader in the event of withdrawal or cancellation.

91. (1) Subject to the provisions of this section, in the circumstances set out in section 90, the trader must reimburse all payments, other than payments for delivery, received from the consumer.

(2) The trader must reimburse any payment for delivery received from the consumer, unless the consumer expressly chose a kind of delivery costing more than the least expensive common and generally acceptable kind of delivery offered by the trader.

(3) In the circumstances set out in subsection (2), the trader must reimburse any payment for delivery received from the consumer up to the amount the consumer would have paid if the consumer had chosen the least expensive common and generally acceptable kind of delivery offered by the trader.

(4) Reimbursement must be made without undue delay, and in any event it must be made not later than the time specified in subsections (5) or (6).

(5) If the contract is a sales contract and the trader has not offered to collect the goods, the time referred to in subsection (4) is the end of 14 days after -

(a) the day on which the trader receives the goods back, or

(b) if earlier, the day on which the consumer supplies evidence of having sent the goods back.

(6) In circumstances where subsection (5) does not apply, the time referred to in subsection (4) is the end of 14 days after the day on which the trader is

informed of the consumer's decision to withdraw the offer or cancel the contract, in accordance with section 89.

(7) The trader must make the reimbursement using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise.

(8) The trader must not impose any fee on the consumer in respect of the reimbursement.

(9) If in the case of a sales contract the value of the goods is diminished by any amount as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods, the trader may recover that amount from the consumer, up to the contract price.

(10) An amount that may be recovered under subsection (9) -

(a) may be deducted from the amount to be reimbursed under subsection (1),

(b) otherwise, must be paid by the consumer to the trader.

(11) Subsection (9) does not apply if the trader has failed to provide the consumer with the information on the right to cancel as required under paragraph (l) of Schedule 4.

(12) For the purposes of subsection (9), handling is beyond what is necessary to establish the nature, characteristics and functioning of the goods if it goes beyond the sort of handling that might reasonably be allowed in a shop.

(13) Where the provisions of this section apply to cancellation of a contract, the contract is to be treated as including those provisions as terms.

Return of goods in the event of cancellation.

92. (1) Where a sales contract is cancelled under section 86(1), it is the trader's responsibility to collect the goods if -

(a) the trader has offered to collect them, or

(b) in the case of an off-premises contract, the goods were delivered to the consumer's home when the contract was entered into and could not, by their nature, normally be returned by post.

(2) Where a sales contract is cancelled under section 86(1) and it is not the trader's responsibility under subsection (1) to collect the goods, the consumer must -

(a) send the goods back, or

(b) hand them over to the trader or to a person authorised by the trader to receive them.

(3) The address to which goods must be sent under subsection (2)(a) is -

(a) any address specified by the trader for sending the goods back,

(b) if no address is specified for that purpose, any address specified by the trader for the consumer to contact the trader,

(c) if no address is specified for either of those purposes, any place of business of the trader.

(4) The consumer must send off the goods under subsection (2)(a), or hand them over under subsection (2)(b), without undue delay and in any event not later than 14 days after the day on which the consumer informs the trader as required by section 89(2).

(5) The consumer must bear the direct cost of returning goods under subsection (2), unless -

(a) the trader has agreed to bear those costs, or

(b) the trader failed to provide the consumer with the information about the consumer bearing those costs, required by paragraph (m) of Schedule 4.

(6) The contract is to be treated as including a term that the trader must bear the direct cost of the consumer returning goods under subsection (2) where subsection (5)(b) applies.

(7) The consumer is not required to bear any other cost of returning goods under subsection (2).

(8) The consumer shall only bear any cost of collecting goods under subsection (1) if he or she has agreed to bear them.

Supply of service in cancellation period.

93. (1) The trader must not begin the supply of a service before the end of the cancellation period provided for in section 87(1) unless the consumer -

(a) has made an express request, and

(b) in the case of an off-premises contract, has made the request on a durable medium.

(2) In the case of a service other than supply of water, gas, electricity or district heating, the consumer ceases to have the right to cancel a contract to supply a service under section 86(1) if the service has been fully performed, and performance of the service began -

(a) after a request by the consumer in accordance with subsection (1), and

(b) with the acknowledgement that the consumer would lose that right once the contract had been fully performed by the trader.

(3) Subsections (4) to (6) apply where a contract is cancelled under section 95(1) and a service has been supplied in the cancellation period.

(4) Where the service is supplied in response to a request in accordance with subsection (1), the consumer must (subject to subsection (6)) pay to the trader an amount -

(a) for the supply of the service for the period for which it is supplied, ending with the time when the trader is informed of the consumer's decision to cancel the contract, in accordance with section 89(2), and

(b) which is in proportion to what has been supplied, in comparison with the full coverage of the contract.

(5) The amount referred to in subsection (5) is to be calculated -

(a) on the basis of the total price agreed in the contract, or

(b) if the total price is excessive, on the basis of the market value of the service that has been supplied, calculated

by comparing prices for equivalent services supplied by other traders.

(6) The consumer bears no cost for supply of the service, in full or in part, in the cancellation period, if -

(a) the trader has failed to provide the consumer with the information on the right to cancel required by paragraph (l) of Schedule 4, or the information on payment of that cost required by paragraph (n) of that Schedule, or

(b) the service is not supplied in response to a request in accordance with subsection (1).

Supply of digital content in cancellation period.

94. (1) Under a contract for the supply of digital content not on a tangible medium, the trader must not begin supply of the digital content before the end of the cancellation period provided for in section 87(1), unless -

(a) the consumer has given express consent, and

(b) the consumer has acknowledged that the right to cancel the contract under section 87(1) will be lost.

(2) The consumer ceases to have the right to cancel such a contract under section 87(1) if, before the end of the cancellation period, supply of the digital content has begun after the consumer has given the consent and acknowledgement required by subsection (1).

(3) Subsection (4) applies where a contract is cancelled under section 87(1) and digital content has been supplied, not on a tangible medium, in the

cancellation period.

(4) The consumer bears no cost for supply of the digital content, in full or in part, in the cancellation period, if -

(a) the consumer has not given prior express consent to the beginning of the performance of the digital content before the end of the 14-day period referred to in section 87,

(b) the consumer gave that consent but did not acknowledge when giving it that the right to cancel would be lost, or

(c) the trader failed to provide confirmation required by sections 73(5) or 77(3).

Effects of withdrawal or cancellation on ancillary contracts.

95. (1) If a consumer withdraws an offer to enter into a distance or off-premises contract, or cancels such a contract under section 86(1), any ancillary contracts are automatically terminated, without any costs for the consumer, other than any costs arising under these provisions set out in subsection (2).

(2) The provisions referred to in subsection (1) are -

(a) section 91(3) (where enhanced delivery was chosen by the consumer),

(b) section 91(9) (where the value of goods was diminished by consumer handling),

(c) section 92(5) (where goods were returned by the consumer),

(d) section 93(4) (where the consumer requests early supply of service).

(3) When a trader is informed by a consumer under section 89(1) or (2) of a decision to withdraw an offer or cancel a contract, the trader must inform any other trader with whom the consumer has an ancillary contract that it is terminated under subsection (1).

(4) An "**ancillary contract**", in relation to a distance or off-premises contract, means a contract by which the consumer acquires goods or services related to such a contract, where those goods or services are provided -

(a) by the trader, or

(b) by a third party on the basis of an arrangement between the third party and the trader.

(5) Section 67(1)(b) does not limit the contracts that are ancillary contracts for the purposes of this section.

CHAPTER IV

MISCELLANEOUS

Additional payments under a contract.

96. (1) Under a contract between a trader and a consumer, no payment is payable in addition to the remuneration agreed for the trader's main obligation unless, before the consumer became bound by the contract, the trader obtained the consumer's express consent; and for the purposes of this section there is no express consent (if there would otherwise be) if consent is inferred from the consumer not changing a default option (such as a pre-ticked box on a website).

(2) This section does not apply if the trader's main obligation is to supply services within section 67(1)(b), but in any other case it applies even if an additional payment is for such services.

(3) Where a trader receives an additional payment which, under this section, is not payable under a contract, the contract is to be treated as providing for the trader to reimburse the payment to the consumer.

Helpline charges over basic rate.

97. (1) Where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts entered into with the trader, a consumer contacting the trader must not be bound to pay more than the basic rate.

(2) In the circumstances set out in subsection (1), if a consumer who contacts a trader in relation to a contract is bound to pay more than the basic rate, the contract is to be treated as providing for the trader to pay to the consumer any amount by which the charge paid by the consumer for the call is more than the basic rate.

(3) This section does not prevent the consumer seeking other remedies where it is open to the consumer to do so.

Complaints.

98. It is the duty of the TSS to consider any complaint made to it about a contravention of this Part, unless the complaint appears to the TSS to be frivolous or vexatious.

Enforcement of Part III: orders to secure compliance.

99. (1) The TSS may apply to the Royal Court sitting as an Ordinary Court for an injunction against any person who appears to the TSS to be responsible for a contravention of this Part.

(2) The court on an application under this section may grant an injunction or other order on such terms as it thinks fit to secure compliance with this Part.

Enforcement of Part III: application of Schedule 1.

100. Paragraphs 4 and 5 of Schedule 1 apply to an application for an injunction under this section as they do to an application for an injunction under paragraph 3 of that Schedule.

PART IV

UNFAIR COMMERCIAL PRACTICES

CHAPTER I

GENERAL

Effect of commercial practices on the average consumer.

101. (1) A trader ("**T**") who demands payment from a consumer ("**C**") in full or partial settlement of C's liabilities or purported liabilities to T is to be treated for the purposes of this Chapter as offering to supply a product to C, and the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.

(2) In determining the effect of a commercial practice on the average consumer where the practice reaches or is addressed to a consumer, account shall be taken of the material characteristics of such an average consumer including that consumer's being reasonably well informed, reasonably observant and circumspect.

(3) In determining the effect of a commercial practice on the average consumer where the practice is directed to a particular group of consumers,

a reference to the average consumer shall be read as referring to the average member of that group.

(4) In determining the effect of a commercial practice on the average consumer -

(a) where a clearly identifiable group of consumers is particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, and

(b) where the practice is likely to materially distort the economic behaviour only of that group,

a reference to the average consumer shall be read as referring to the average member of that group.

(5) Subsection (4) is without prejudice to the common and legitimate advertising practice of making exaggerated statements which are not meant to be taken literally.

Prohibition of unfair commercial practices.

102. (1) Unfair commercial practices are prohibited.

(2) A commercial practice is unfair if -

(a) it contravenes the requirements of professional diligence, and

(b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.

(3) A commercial practice is also unfair if -

(a) it is a misleading action within the meaning of section 104,

(b) it is a misleading omission within the meaning of section 105,

(c) it is aggressive within the meaning of section 106, or

(d) it is listed in Schedule 6.

(4) In this Part, "**materially distort the economic behaviour**" means in relation to an average consumer, appreciably to impair the average consumer's ability to make an informed decision thereby causing the consumer to take a transactional decision that that consumer would not have taken otherwise.

Prohibition of the promotion of unfair commercial practices.

103. The promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited.

Misleading actions.

104. (1) A commercial practice is a misleading action for the purposes of section 102 if it satisfies the conditions in either subsection (2) or (3).

(2) A commercial practice satisfies the conditions of this subsection if -

(a) it contains false information, and is therefore untruthful in relation to any of the matters in subsection (4), or

(b) it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that subsection, even if the information is factually correct,

and it causes or is likely to cause the average consumer to take a transactional decision that consumer would not have taken otherwise.

(3) A commercial practice satisfies the conditions of this subsection if -

(a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor, or

(b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if -

(i) the trader indicates in a commercial practice that the trader is bound by that code of conduct, and

(ii) the commitment is firm and capable of being verified and is not aspirational,

and it causes or is likely to cause the average consumer to take a transactional decision which that consumer would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

(4) The matters referred to in subsection (2)(a) are -

(a) the existence or nature of the product,

(b) the main characteristics of the product (as defined in subsection (5)),

(c) the extent of the trader's commitments,

(d) the motives for the commercial practice,

(e) the nature of the sales process,

(f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product,

(g) the price or the manner in which the price is calculated,

(h) the existence of a specific price advantage,

(i) the need for a service, part, replacement or repair,

(j) the nature, attributes and rights of the trader (as defined in subsection (6),

(k) the consumer's rights or the risks that consumer may face.

(5) For the purposes of this Chapter, the "**main characteristics of the product**" include-

(a) availability of the product,

(b) benefits of the product,

(c) risks of the product,

(d) execution of the product,

(e) composition of the product,

(f) accessories of the product,

(g) after-sale customer assistance concerning the product,

(h) the handling of complaints about the product,

(i) the method and date of manufacture of the product,

(j) the method and date of provision of the product,

(k) delivery of the product,

(l) fitness for purpose of the product,

(m) usage of the product,

(n) quantity of the product,

(o) specification of the product,

(p) geographical or commercial origin of the product,

(q) results to be expected from use of the product, and

(r) results and material features of tests or checks carried out on the product.

(6) For the purposes of subsection (4)(j), the "**nature, attributes and rights**" of the trader include the trader's -

(a) identity,

(b) assets,

(c) qualifications,

(d) status,

(e) approval,

(f) affiliations or connections,

(g) ownership of industrial, commercial or intellectual property rights, and

(h) awards and distinctions.

(7) For the purposes of subsection (4)(k), the "**consumer's rights**" include rights the consumer may have under sections 17, 21 or 22.

Misleading omissions.

105. (1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in subsection (2) -

(a) the commercial practice omits material information,

(b) the commercial practice hides material information,

(c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or

(d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision that consumer would not have taken otherwise.

(2) The matters referred to in subsection (1) are -

(a) all the features and circumstances of the commercial practice,

(b) the limitations of the medium used to communicate the commercial practice (including limitations of space or time), and

(c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.

(3) In this section "**material information**" means -

(a) the information which the average consumer needs, according to the context, to take an informed transactional decision, and

(b) any information requirement which applies in relation to a commercial communication as a result of any enactment having effect in Guernsey.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under subsection (3)-

(a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product,

(b) the identity of the trader, such as the trader's trading name, and the identity of any other trader on whose behalf the trader is acting,

(c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting,

(d) either -

(i) the price, including any taxes, or

(ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated,

(e) where appropriate, either -

(i) all additional freight, delivery or postal charges, or

(ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable,

(f) the following matters where they depart from the requirements of professional diligence -

(i) arrangements for payment,

(ii) arrangements for delivery,

(iii) arrangements for performance,

(iv) complaint handling policy, and

(g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

Aggressive commercial practices.

106. (1) A commercial practice is aggressive if, in its factual context, taking account of all of its features and circumstances -

(a) it significantly impairs or is likely significantly to impair the average consumer's freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence, and

(b) it thereby causes or is likely to cause a consumer to take a transactional decision that consumer would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion or undue influence account shall be taken of -

(a) its timing, location, nature or persistence,

(b) the use of threatening or abusive language or behaviour,

(c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, of which the trader is

aware, to influence the consumer's decision with regard to the product,

(d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader, and

(e) any threat to take any action which cannot be taken in law.

(3) In this section -

(a) "**coercion**" includes (but is not limited to) the use of physical force, and

(b) "**undue influence**" means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.

Inertia selling.

107. (1) This section applies where a trader engages in the unfair commercial practice described in paragraph 29 of Schedule 6 (inertia selling).

(2) Where this section applies the consumer is exempted from any obligation to provide consideration for the products supplied by the trader, and the absence of a response from the consumer following the supply does not constitute consent to the provision of consideration for, or the return or safekeeping of, the products.

(3) In the case of an unsolicited supply of goods, the consumer may, as between the consumer and the trader, use, deal with or dispose of the goods as if they were an unconditional gift to the consumer.

CHAPTER II

CONSUMER'S RIGHTS TO REDRESS

Consumer's rights to redress.

108. (1) The rights for consumers conferred under sections 112 to section 117 ("**rights to redress**") are available if -

(a) the conditions in this section are met, and

(b) the conditions (if any) in the following provisions of this Chapter for the availability of the right in question are met.

(2) The first condition is that (subject to subsection (3)) -

(a) the consumer enters into a contract with a trader for the sale or supply of a product by the trader (in this Chapter, a "**business to consumer contract**"),

(b) the consumer enters into a contract with a trader for the sale of goods to the trader (in this Chapter, a "**consumer to business contract**"), or

(c) the consumer makes a payment to a trader for the supply of a product (in this Chapter, a "**consumer payment**").

(3) Subsection (2)(b) does not apply if, under the contract, the trader supplies or agrees to supply a product to the consumer as well as paying or agreeing to pay the consumer.

(4) The second condition is that -

(a) the trader engages in a prohibited practice in relation to the product, or

(b) in a case where a consumer enters into a business to consumer contract for goods or digital content -

(i) a producer engages in a prohibited practice in relation to the goods or digital content, and

(ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.

(5) The third condition is that the prohibited practice is a significant factor in the consumer's decision to enter into the contract or make the payment.

Meaning of "prohibited practice" in this Chapter.

109. (1) In this Chapter "**prohibited practice**" means a commercial practice that -

(a) is a misleading action under section 104, or

(b) is aggressive under section 106.

(2) Sections 104 and 106 apply for the purposes of this Chapter as if for the definition of "**transactional decision**" in section 204(1) there were substituted-

""**transactional decision**" means any decision taken by a consumer to enter into a contract with a trader for the sale or supply of a product by the trader, or for the sale of goods to the trader, or to make a payment to a trader for the supply of a product.".

Products to which this Chapter does not apply.

110. In this Chapter "**product**" does not include immoveable property other than a lease of residential property for a term of seven years or less.

Financial services to which this Chapter does not apply.

111. In this Chapter "**product**" does not include a service provided in the course of carrying on a regulated business within the meaning of section 3 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020[h].

Application of the right to unwind: business to consumer contract.

112. (1) A consumer has the right to unwind in respect of a business to consumer contract if the consumer indicates to the trader that the consumer rejects the product, and does so -

(a) within the relevant period, and

(b) at a time when the product is capable of being rejected.

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[h] Order in Council No. XVII of 2021. This enactment has been amended.

(2) An indication under subsection (1) may be something that the consumer says or does, but it must be clear.

(3) For the purposes of subsection (1)(a) "**the relevant period**" means the period of 90 days beginning with the later of -

(a) the day on which the consumer enters into the contract, or

(b) the relevant day.

(4) Subject to subsection (5), in this Chapter "**the relevant day**" means the day on which -

(a) the goods are first delivered,

(b) the performance of the service begins,

(c) the digital content is first supplied, or

(d) the right is first exercisable,

(as the case may be).

(5) In the case of a mixed contract, "**the relevant day**" means the latest of the days mentioned in subsection (4) that is relevant to the contract.

(6) For the purposes of this Chapter, where the consumer's access to digital content on a device requires its transmission to the device under arrangements initiated by the trader, the day on which the digital content is first provided is -

(a) the day on which it reaches the device, or

(b) if earlier, the day on which it reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.

(7) For the purposes of subsection (1)(b), a product remains capable of being rejected only if -

(a) the goods have not been fully consumed,

(b) the service has not been fully performed,

(c) the digital content has not been fully consumed, or

(d) the right has not been fully exercised,

(as the case may be).

(8) For the purposes of subsection (7) -

(a) goods have been fully consumed only if nothing is left of them, and

(b) digital content has been fully consumed only if the digital content was available to the consumer for a fixed period and that period has expired.

(9) A consumer does not have the right to unwind in respect of a business to consumer contract if the consumer has exercised the right to a discount in respect of that contract and the same prohibited practice.

Right to unwind: business to consumer contract.

113. (1) Where a consumer has the right to unwind in respect of a business to consumer contract under section 112 -

(a) the contract comes to an end so that the consumer and the trader are released from their obligations under it,

(b) subject to the provisions of this section, the trader has a duty to give the consumer a refund, and

(c) if the contract was wholly or partly for the sale or supply of goods the consumer must make the goods available for collection by the trader.

(2) Subject to sections (7) to (9), to the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money.

(3) Subject to subsection (4), to the extent that the consumer transferred anything else under the contract, the consumer is entitled to receive back the same amount of what the consumer transferred.

(4) To the extent that the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted -

(a) the consumer is entitled to receive back in its original state whatever the consumer transferred, or

(b) if it cannot be given back in its original state, the consumer is entitled to be paid its market price as at the time when the product was rejected.

(5) There is no entitlement to a refund if none of subsections (2) to (4) applies.

(6) The consumer's entitlement to receive back the same amount of money as the consumer paid is qualified by subsections (7) to (9) if -

(a) the contract was for the sale or supply of a product on a regular or continuous basis, and

(b) the period beginning with the relevant day and ending with the day on which the consumer rejected the product exceeds one month.

(7) Where subsection (6) applies, subject to subsection (8) the consumer is only entitled to receive back the amount (if any) found by deducting the market price, when the consumer rejected the product, of the product supplied up to that time from the amount the consumer paid for it.

(8) Subsection (7) does not apply if it is not appropriate to apply that deduction having regard to -

(a) the behaviour of the person who engaged in the prohibited practice, and

(b) the impact of the practice on the consumer.

(9) Where the product supplied up to the time when the consumer rejected it consists wholly or partly of goods, their market price is only to be taken into account under subsection (7) to the extent that they have been consumed.

Right to unwind: consumer to business contract.

114. (1) A consumer who has a right to redress in accordance with section 110 in respect of a consumer to business contract -

(a) has the right to treat the contract as at an end so that the trader and the consumer are released from their obligations under it, and

(b) has the rights and obligations set out subsection (3).

(2) To treat the contract as at an end for these purposes, the consumer must indicate clearly to the trader that the contract is ended.

(3) If the trader is able to return the goods to the consumer in the condition they were in when sold by the consumer -

(a) the consumer has a right to the return of the goods,

(b) the consumer must repay to the trader the amount (if any) that the trader has paid for the goods.

(4) If subsection 3 does not apply, the consumer has a right to a payment from the trader of the amount (if any) by which the market price of the goods when the trader paid for them exceeds what the trader paid for them.

Right to unwind: payments demanded that are not due.

115. A consumer who has made a payment to a trader for a product in circumstances where the consumer was not required to make all or part of the payment has the right to receive back from the trader -

(a) the same amount of money as the consumer paid to the trader, or

(b) in a case where the consumer was required to make part of the payment, an amount equal to the part of the payment the consumer was not required to make.

Right to a discount.

116. (1) A consumer has the right to a discount in respect of a business to consumer contract if -

(a) the consumer has made one or more payments for the product to the trader or one or more payments under the

contract have not been made, and

(b) the consumer has not exercised the right to unwind in respect of the contract.

(2) If the consumer has made one or more payments, the consumer has the right to receive back from the trader the relevant percentage of the payment or payments.

(3) If one or more payments have not been made, the consumer has the right -

(a) to reduce by the relevant percentage as many of those payments as is appropriate having regard to the seriousness of the prohibited practice, or

(b) in a case within subsection (6), to reduce all of those payments by the relevant percentage within the meaning of subsection (7).

(4) Subject to subsection (6) and (7), the relevant percentage is -

(a) 25% if the prohibited practice is more than minor but not significant,

(b) 50% if the prohibited practice is significant but not serious,

(c) 75% if the prohibited practice is serious but not very serious,

(d) 100% if the prohibited practice is very serious.

(5) The seriousness of the prohibited practice is to be assessed by reference to -

(a) the behaviour of the person who engaged in the practice,

(b) the impact of the practice on the consumer, and

(c) the time that has elapsed since the prohibited practice took place.

(6) Subsection (4) does not apply if -

(a) the amount payable for the product under the contract exceeds £5,000,

(b) the market price of the product, at the time that the consumer entered into the contract, is lower than the amount payable for it under the contract, and

(c) there is clear evidence of the difference between the market price of the product and the amount payable for it under the contract.

(7) In the circumstances set out in subsection (6), the relevant percentage is the percentage difference between the market price of the product and the amount payable for it under the contract.

(8) The application of this section does not affect any of the other rights and liabilities under the contract.

Right to damages.

117. (1) Subject to the provisions of this section, a consumer has the right to damages within the meaning of subsection (2) if the consumer -

(a) has incurred financial loss which the consumer would not have incurred if the prohibited practice in question had not taken place, or

(b) has suffered alarm, distress or physical inconvenience or discomfort which the consumer would not have suffered if the prohibited practice in question had not taken place.

(2) Subject to subsections (3) to (5), the right to damages under subsection (1) is the right to be paid damages by the trader for the loss or the alarm, distress or physical inconvenience or discomfort in question.

(3) The right to be paid damages for financial loss does not include the right to be paid damages in respect of the difference between the market price of a product and the amount payable for it under a contract.

(4) The right to be paid damages under this section is a right to be paid only damages in respect of loss that was reasonably foreseeable at the time of the prohibited practice.

(5) A consumer does not have the right to damages if the trader proves that -

(a) the occurrence of the prohibited practice in question was due to -

(i) a mistake,

(ii) reliance on information supplied to the trader by another person,

(iii) the act or default of a person other than the trader,

(iv) an accident, or

(v) another cause beyond the trader's control, and

(b) the trader took all reasonable precautions and exercised all due diligence to avoid the occurrence of the prohibited practice.

Enforcement by consumer of rights to redress.

118. (1) A consumer with a right to redress under this Chapter may bring a claim in civil proceedings to enforce that right.

(2) A claim falling within subsection (1) shall be treated as falling within Article 1 of Loi relative aux Prescriptions 1889[i].

Application of Chapter II to existing law.

119. (1) Subject to subsection (2), nothing in this Chapter affects the ability of a consumer to make a claim under a rule of law or equity, or under an enactment, in respect of conduct constituting a prohibited practice.

(2) A consumer may not -

(a) make a claim to be compensated under a rule of law or equity, or under an enactment, in respect of such conduct if the consumer has been compensated under this Chapter in respect of the conduct, or

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[i] Ordres en Conseil Vol. II, p. 326. This enactment has been amended.

(b) make a claim to be compensated under this Chapter in respect of such conduct if the consumer has been compensated under a rule of law or equity, or under an enactment, in respect of the conduct.

CHAPTER III

OFFENCES UNDER PART IV

Offences relating to unfair commercial practices: section 102.

120. (1) A trader is guilty of an offence if -

(a) that trader knowingly or recklessly engages in a commercial practice which contravenes the requirements of professional diligence under section 102(2)(a), and

(b) the practice materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product under section 102(2)(b).

(2) For the purposes of subsection (1)(a), a trader who engages in a commercial practice without regard to whether the practice contravenes the requirements of professional diligence shall be deemed to engage recklessly in the practice, whether or not the trader has reason for believing that the practice might contravene those requirements.

Offences relating to unfair commercial practices: section 104.

121. A trader is guilty of an offence if that trader engages in a commercial practice which is a misleading action under section 104 otherwise than by reason of the commercial practice satisfying the condition in section 104(3)(b).

Offences relating to unfair commercial practices: section 105.

122. A trader is guilty of an offence if that trader engages in a commercial practice which is a misleading omission under section 105.

Offences relating to unfair commercial practices: section 106.

123. A trader is guilty of an offence if that trader engages in a commercial practice which is aggressive under section 106.

Offences relating to unfair commercial practices: Schedule 5.

124. A trader is guilty of an offence if that trader engages in a commercial practice set out in any of paragraphs 1 to 10, 12 to 26 and 28 to 30 of Schedule 6.

Penalty for offences under this Part.

125. A trader guilty of an offence under section 120, 121, 122, 123 or 124 shall be liable -

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Time limit for prosecution of offences under this Part.

126. No proceedings for an offence under this Part shall be commenced after the end of the period off three years beginning with the date of the commission of the offence.

Offence under this Part due to the default of another person.

127. (1) This section applies where a person ("**X**") -

(a) commits an offence under section 121, 122, 123 or 124, or

(b) would have committed an offence under those sections but for a defence under section 128 or 129,

and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under section 128 or 129, is due to the act or default of some other person ("**Y**").

(2) Where this section applies Y is guilty of the offence, subject to sections 128 and 129, whether or not Y is a trader and whether or not Y's act or default is a commercial practice.

(3) Y may be charged with and convicted of the offence by virtue of subsection (2) whether or not proceedings are taken against X.

Due diligence defence: offence under sections 121 - 124.

128. In any proceedings against a person ("**A**") for an offence under section 121, 122, 123 or 124 it is a defence for A to prove -

(a) that the commission of the offence was due to -

(i) a mistake,

(ii) reliance on information supplied to A by another person,

(iii) the act or default of another person,

(iv) an accident, or

(v) another cause beyond A's control, and

(b) that A took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by A or by any person under A's control.

Innocent publication of advertisement defence.

129. In any proceedings against a person ("**A**") for an offence under section 121, 122, 123 or 124 committed by the publication of an advertisement it shall be a defence for A to prove that -

(a) A is a person whose business it is to publish or to arrange for the publication of advertisements,

(b) A received the advertisement for publication in the ordinary course of business, and

(c) A did not know and had no reason to suspect that its publication would amount to an offence under the regulation to which the proceedings relate.

PART V

PRODUCT SAFETY

Application of Part V, and definitions.

130. (1) Subject to subsection (2) and section 3, where a product is subject to specific provisions in any other enactment concerning product safety this Part applies only to the risks or category of risks not covered by those provisions, and accordingly the definitions of "**safe product**" and "**dangerous product**" in section 204 shall not apply to such a product in so far as concerns the risks or category of risks in respect of which the specific provisions make provision.

(2) This Part does not apply to a second-hand product supplied as a product to be repaired or reconditioned prior to being used, provided that the supplier clearly informs the person to whom the product is supplied of that fact at the time of supply; and this Part shall be construed accordingly.

(3) In this Part, "**product**" means a product intended for consumers

or likely, under reasonably foreseeable conditions, to be used by consumers even if not intended for them and which is supplied or made available, whether for consideration or not, in the course of a commercial activity, and includes a product that is supplied or made available to consumers for their own use in the context of providing a service; but for the avoidance of doubt "**product**" does not include equipment used by service providers themselves to supply a service to consumers, in particular equipment on which consumers ride or travel which is operated by a service provider.

General safety requirement, and other obligations of producers and distributors

General safety requirement.

131. (1) A producer shall not place a product on the market unless the product is a safe product.

(2) A producer shall not offer or agree to place a product on the market or expose or possess a product for placing on the market unless the product is a safe product.

(3) A producer shall not offer or agree to supply a product or expose or possess a product for supply unless the product is a safe product.

(4) A producer shall not supply a product unless the product is a safe product.

(5) The prohibitions imposed by this section are collectively referred to in this Ordinance as the "**general safety requirement**".

Presumption of conformity.

132. (1) Where there is no specific provision in an enactment governing the safety of a product, a product conforming to the relevant provisions of an

enactment prescribing health and safety requirements which the product must satisfy in order to be marketed in Guernsey shall be deemed to be a safe product so far as concerns the risks or categories of risk in respect of which those provisions make provision.

(2) Where a product conforms to a standard ("**S**") which -

(a) is a voluntary national standard of the United Kingdom or a standard adopted by an international standardising body, and

(b) meets the conditions in subsection (3),

the product shall be presumed to be a safe product so far as concerns the risks and categories of risk covered by that national standard (S).

(3) The conditions referred to in subsection (2) are that -

(a) the Committee is satisfied that the relevant authority in the United Kingdom considers S appropriate for the purpose of giving rise to the presumption of conformity, and

(b) the Committee has adopted that standard, and has published that fact in such form and in such manner as it considers appropriate.

(4) Where the Committee considers that there are special circumstances which make it unnecessary for a product to conform to a standard adopted under subsection (3), the Committee may exempt the product from that standard subject to compliance with such conditions, if any, as it considers necessary.

(5) In circumstances other than those referred to in subsections (1), (2) and (4), whether a product is a safe product shall be assessed taking into account -

(a) any voluntary national standard of the United Kingdom giving effect to a European Standard, other than one referred to in subsection (2),

(b) other national standards drawn up in the United Kingdom,

(c) recommendations of the European Commission setting guidelines on product safety assessment,

(d) product safety codes of good practice in the sector concerned,

(e) the state of the art and technology, and

(f) reasonable consumer expectations concerning safety.

(6) The fact that a product is deemed or presumed to be a safe product under this section shall not prevent the TSS from exercising its powers in relation to that product where there is evidence that it is a dangerous product.

Other obligations of producers.

133. (1) Within the limits of the producer's activities, a producer ("**P**") shall provide consumers with information necessary to enable them -

(a) to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and

(b) to take precautions against those risks.

(2) The presence of warnings does not exempt any person from compliance with the other requirements of this Part.

(3) Within the limits of P's activities, P shall adopt measures commensurate with the characteristics of the products which P supplies to enable P to -

(a) be informed of the risks which the products might pose, and

(b) take appropriate action including, where necessary to avoid such risks, withdrawal, adequately and effectively warning consumers as to the risks, and recall.

(4) The measures referred to in subsection (3) include, but are not limited to -

(a) except where it is not reasonable to do so, an indication by means of the product or its packaging of -

(i) the name and address of the producer, and

(ii) the product reference or where applicable the batch of products to which it belongs, and

(b) where and to the extent that it is reasonable to do so —

(i) sample testing of marketed products,

(ii) investigating and if necessary keeping a register of complaints concerning the safety of the product, and

(iii) keeping distributors informed of the results of such monitoring where a product presents a risk or may present a risk.

Obligations of distributors.

134. (1) A distributor shall act with due care in order to help ensure compliance with the applicable safety requirements, and in particular a distributor -

(a) shall not expose or possess for supply or offer or agree to supply, or supply, a product to any person which the distributor knows or ought to have known, on the basis of the information in that distributor's possession and as a professional, is a dangerous product, and

(b) shall, within the limits of the distributor's activities, participate in monitoring the safety of a product placed on the market, in particular by —

(i) passing on information on the risks posed by the product,

(ii) keeping the documentation necessary for tracing the origin of the product,

(iii) producing the documentation necessary for tracing the origin of the product, and cooperating in action taken by a producer or the TSS to avoid the risks.

(2) A distributor shall, within the limits of that distributor's activities, take measures to cooperate efficiently in the action referred to in subsection (1)(b)(iii).

Obligations of producers and distributors.

135. (1) Where a producer or a distributor knows that a product placed on the market or supplied by that producer or distributor poses risks to the consumer that are incompatible with the general safety requirement, that producer or distributor shall immediately notify the TSS in writing of that information and -

(a) the action taken to prevent risk to the consumer, and

(b) where the product is being or has been marketed or otherwise supplied to consumers outside the Bailiwick, of the identity of each jurisdiction in which, to the best of that producer or distributor's knowledge, it is being or has been so marketed or supplied.

(2) Subsection (1) shall not apply –

(a) in the case of a second-hand product supplied as an antique or as a product to be repaired or reconditioned prior to being used, provided the supplier clearly informed the person to whom he supplied the product to that effect,

(b) in conditions concerning isolated circumstances or products.

(3) In the event of a serious risk to the consumer the notification under subsection (1) shall include the following -

(a) information enabling a precise identification of the product or batch of products in question,

(b) a full description of the risks that the product presents,

(c) all available information relevant for tracing the product, and

(d) a description of the action undertaken to prevent risks to the consumer.

(4) A producer or a distributor shall, within the limits of that producer or distributor's activities, co-operate with the TSS (at the TSS's request) in action taken to avoid the risks posed by a product which that producer or distributor supplies or has supplied.

(5) The TSS shall maintain procedures for such co-operation, including procedures for engagement and information sharing with the producers and distributors concerned on issues related to product safety.

Enforcement

Enforcement by the TSS.

136. (1) It shall be the duty of the TSS to enforce this Part.

(2) The TSS shall, in enforcing this Part, act in a manner proportionate to the seriousness of the relevant risk, and shall take due account of the precautionary principle.

(3) In order to give effect to subsection (2), the TSS shall encourage and promote voluntary action by producers and distributors.

(4) Notwithstanding subsection (3), if a product poses a serious risk to the consumer, the TSS may take any action under this Part without first encouraging and promoting voluntary action.

(5) A notice falling within sections 137 to 141 is referred to in this Part as a "**safety notice**".

Suspension notices.

137. (1) Where a TSS officer has reasonable grounds for suspecting that this Ordinance has been contravened in relation to a product, a TSS officer may, for the period needed to organise appropriate safety evaluations, checks and controls, serve a notice ("**a suspension notice**") prohibiting the person on whom it is served from doing any of the following things without the consent of the TSS -

(a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or

(b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A suspension notice served in relation to a product may require the person on whom it is served to keep the TSS informed of the location of any product in which that person has an interest.

(3) A consent given by the TSS for the purposes of subsection (1) may impose such conditions on the doing of anything for which the consent is required as the TSS considers appropriate.

Requirements to mark.

138. (1) Where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product in that it could pose risks

in certain conditions, the TSS may serve a notice ("**a requirement to mark**") requiring the person on whom the notice is served at that person's own expense to undertake either or both of the following, as specified in the notice -

(a) to ensure that the product is marked in accordance with requirements specified in the notice with warnings as to the risks it may present,

(b) to make the marketing of the product subject to prior conditions as specified in the notice as to ensure the product is a safe product.

(2) The requirements referred to in subsection (1)(a) shall be such as to ensure that the product is marked with a warning which is suitable, clearly worded and easily comprehensible.

Requirements to warn.

139. Where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product in that it could pose risks for certain persons, the TSS may serve a notice ("**a requirement to warn**") requiring the person on whom the notice is served at that person's own expense to undertake one or more of the following, as specified in the notice -

(a) where and to the extent it is practicable to do so, to ensure that any person who could be subject to such risks and who has been supplied with the product be given warning of the risks in good time and in a form specified in the notice,

(b) to publish a warning of the risks in such form and manner as is likely to bring those risks to the attention of any such person,

(c) to ensure that the product carries a warning of the risks in a form specified in the notice.

Withdrawal notices.

140. (1) Where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product, the TSS may serve a notice ("**a withdrawal notice**") prohibiting the person on whom it is served from doing any of the following things without the consent of the TSS -

(a) placing the product on the market, offering to place it on the market, agreeing to place it on the market or exposing it for placing on the market, or

(b) supplying the product, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A withdrawal notice may require the person on whom it is served to take action to alert consumers to the risks that the product presents.

(3) Subject to subsection (4), in relation to a product that is already on the market, a withdrawal notice may only be served by the TSS where the action being undertaken by the producer or the distributor concerned in fulfilment of that producer or distributor's obligations under this Ordinance is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons.

(4) Subsection (3) does not apply in the case of a product posing a serious risk requiring, in the view of the TSS, urgent action.

(5) A withdrawal notice served by the TSS in relation to a product may require the person on whom it is served to keep the TSS informed of the location of any such product in which that person has an interest.

(6) A consent given by the TSS for the purposes of subsection (1) may impose such conditions on the doing of anything for which the consent is required as the TSS considers appropriate.

Recall notices.

141. (1) Subject to subsection (4), where the Chief Trading Standards Officer has reasonable grounds for believing that a product is a dangerous product and that it has already been supplied or made available to consumers, the TSS may serve a notice ("**a recall notice**") requiring the person on whom it is served to use that person's reasonable endeavours to organise the return of the product from consumers to that person or to such other person as may be specified in the notice.

(2) A recall notice may require -

(a) the recall to be effected in accordance with a code of practice applicable to the product concerned, or

(b) the recipient of the recall notice to -

(i) contact consumers who have purchased the product in order to inform them of the recall, where and to the extent it is practicable to do so,

(ii) publish a notice in such form and such manner as is likely to bring to the attention of purchasers of the product the risk the product poses and the fact of the recall, or

(iii) make arrangements for the collection or return of the product from consumers who have purchased it, or for the product's disposal,

and may impose such additional requirements on the recipient of the notice as are reasonable and practicable with a view to achieving the return of the product from consumers to the person specified in the notice or its disposal.

(3) In determining what requirements to include in a recall notice, the TSS shall take into consideration the need to encourage distributors, users and consumers to contribute to its implementation.

(4) Subject to subsection (5), a recall notice may only be issued by the TSS where -

(a) other action which it may require under this Ordinance would not suffice to prevent the risks concerned to the health and safety of persons,

(b) the action being undertaken by the producer or the distributor concerned in fulfilment of their obligations under this Ordinance is unsatisfactory or insufficient to prevent the risks concerned to the health and safety of persons, and

(c) the TSS has given not less than ten business days' notice to the person on whom the recall notice is to be served of its intention to serve such a notice.

(5) Subsections (4)(b) and (c) shall not apply in the case of a product posing a serious risk requiring, in the view of the TSS, urgent action.

(6) A recall notice served by the TSS in relation to a product may require the person on whom it is served to keep the TSS informed of the whereabouts of any such product to which the recall notice relates, so far as the person is able to do so.

(7) Where the conditions in subsection (1) for serving a recall notice are satisfied and either the TSS has been unable to identify any person on whom to serve a recall notice, or the person on whom such a notice has been served has failed to comply with it, then the TSS may itself take such action as could have been required by a recall notice.

(8) Where -

(a) the TSS has complied with the requirements of subsection (4), and

(b) the TSS has exercised its powers under subsection (7) to take action following the failure of the person on whom the recall notice has been served to comply with that notice,

the TSS may recover from the person on whom the notice was served, as a civil debt, any costs or expenses reasonably incurred by it in undertaking the action referred to in paragraph (b).

Supplementary provisions relating to safety notices.

142. (1) In circumstances where it is reasonably practicable, prior to serving a safety notice the TSS shall give an opportunity to the person on whom the notice is to be served to submit that person's views to the TSS.

(2) When it is not reasonably practicable for the TSS to give an opportunity to the person on whom the notice is to be served to submit that person's views to the TSS prior to serving a safety notice, the TSS shall give the person an opportunity to submit any such views to the TSS after service of the notice.

(3) A safety notice served by the TSS in respect of a product shall -

(a) describe the product in a manner sufficient to identify it,

(b) state the reasons for serving the notice,

(c) indicate the rights available to the recipient of the notice under this Ordinance and (where applicable) the time limits applying to their exercise, and

(d) in the case of a suspension notice, state the period of time for which it applies.

(4) In circumstances where the TSS serves a suspension notice in respect of a product, the TSS shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if -

(a) there has been no contravention of any requirement of this Ordinance in relation to the product, and

(b) the exercise by the TSS of the power to serve the suspension notice was not attributable to any neglect or default by that person.

(5) In circumstances where the TSS serves a withdrawal notice in respect of a product, the TSS shall be liable to pay compensation to a person having an interest in the product in respect of any loss or damage suffered by reason of the notice if -

(a) the product was not a dangerous product, and

(b) the exercise by the TSS of the power to serve the withdrawal notice was not attributable to any neglect or default by that person.

(6) In circumstances where the TSS serves a recall notice in respect of a product, the TSS shall be liable to pay compensation to the person on whom the notice was served in respect of any loss or damage suffered by reason of the notice if-

(a) the product was not a dangerous product, and

(b) the exercise by the TSS of the power to serve the recall notice was not attributable to any neglect or default by that person.

(7) The TSS may vary or revoke a safety notice which it has served provided that the notice is not made more restrictive for the person on whom it is served, or more onerous for that person to comply with.

(8) Wherever reasonably practicable, prior to varying a safety notice the TSS shall give an opportunity to the person on whom the original notice was served to submit that person's views to the TSS.

Appeals against safety notices.

143. (1) A person on whom a safety notice has been served, and a person who has an interest in a product in respect of which a safety notice (other than a recall notice) has been served may, before the end of the period of 21 days beginning with the day on which the notice was served, apply to the Magistrate's Court for an order to vary or set aside the terms of the notice.

(2) On an application under subsection (1) the court shall make an order setting aside the notice only if satisfied that -

(a) in the case of a suspension notice, there has been no contravention in relation to the product of any requirement of this Ordinance,

(b) in the case of a requirement to mark or a requirement to warn, the product is not a dangerous product,

(c) in the case of a withdrawal notice —

(i) the product is not a dangerous product, or

(ii) where applicable, section 140(3) has not been complied with,

(d) in the case of a recall notice —

(i) the product is not a dangerous product, or

(ii) section 141(4) has not been complied with,

(e) in any case, the serving of the safety notice concerned was not proportionate to the seriousness of the risk.

(3) On an application concerning the period of time specified in a suspension notice as the period for which it applies, the court may reduce the period to such period as it considers sufficient for organising appropriate safety evaluations, checks and controls.

(4) On an application to vary the terms of a notice, the court may vary the requirements specified in the notice as it considers appropriate.

(5) A person on whom a recall notice has been served and who proposes to make an application under subsection (1) in relation to the notice may, before the end of the period of seven days beginning with the day on which the notice

was served, apply to the court for an order suspending the effect of the notice and the court may, in any case where it considers it appropriate to do so, make an order suspending the effect of the notice.

(6) If the court makes an order suspending the effect of a recall notice under subsection (5) in the absence of the TSS, the TSS may apply for the revocation of such order.

(7) An order under subsection (5) shall take effect from the time it is made until -

(a) it is revoked on an application being made under subsection (6),

(b) where no application is made under subsection (1) in respect of the recall notice within the time specified in that subsection, the expiration of that time,

(c) where such an application is made but is withdrawn or dismissed for want of prosecution, the date of dismissal or withdrawal of the application, or

(d) where such an application is made and is not withdrawn or dismissed for want of prosecution, the determination of the application.

(8) A person aggrieved by an order made pursuant to an application under subsection (1), or by a decision not to make such an order, may appeal against that order or decision.

Forfeiture.

144. (1) The TSS may apply to the Magistrate's Court for an order for

the forfeiture of a product on the grounds that the product is a dangerous product.

(2) When making an application under subsection (1), the TSS shall serve a copy of the application on any person appearing to it to be the owner of, or otherwise to have an interest in, the product to which the application relates, together with a notice giving that person the opportunity to appear at the hearing of the application to show cause why the product should not be forfeited.

(3) A person on whom notice is served under subsection (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the product to which the application relates shall be entitled to appear at the hearing of the application and show cause why the product should not be forfeited.

(4) The court shall not make an order for the forfeiture of a product-

(a) if any person on whom notice is served under subsection (2) does not appear, unless service of the notice on that person is proved, or

(b) if no notice under subsection (2) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(5) The court may make an order for the forfeiture of a product only if it is satisfied that the product is a dangerous product.

(6) Any person aggrieved by an order for the forfeiture of a product, or by a decision of the court not to make such an order, may appeal against that order or decision to the Royal Court sitting as an Ordinary Court.

(7) An appeal under subsection (6) must be brought within the period of 14 days beginning with the day on which the order or decision was made.

(8) An order for the forfeiture of a product shall not take effect until the later of -

(a) the end of the period referred to in subsection (7), or

(b) if an appeal or an application is so made, when the appeal or application is determined or abandoned.

(9) Subject to subsection (10), where a product is forfeited it shall be destroyed in accordance with such directions as the court may give.

(10) On making an order for forfeiture of a product the court may, if it considers it appropriate to do so, direct that the product shall (instead of being destroyed in accordance with subsection (9)) be delivered up to such person as the court may specify, on condition that the person —

(a) does not supply the product to any person otherwise than as mentioned in subsection (11), and

(b) on condition, if the court considers it appropriate, that that person complies with any order to pay costs or expenses (including any order under section 146) which has been made against that person in the proceedings for the order for forfeiture.

(11) The supplies which may be permitted under subsection (10) are -

(a) a supply to a person who carries on a business of buying products of the same description as the product concerned and repairing or reconditioning them,

(b) a supply to a person as scrap (that is to say, for the value of materials included in the product rather than for the value of the product itself),

(c) a supply to any person, provided that being so supplied the product is repaired by or on behalf of the person to whom the product was delivered up by direction of the court and that following such repair it is not a dangerous product.

Product safety offences.

145. (1) A person who contravenes section 131 or 134(1)(a) shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding 12 months or to a fine or to both.

(2) A person who contravenes section 133 or 134(1)(b) shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(3) A producer or distributor who does not give notice to the TSS under section 135(1) in respect of a product that the producer or distributor has placed on the market or supplied commits an offence where it is proved that the producer or distributor knew, or ought to have known, that the product poses risks to consumers that are incompatible with the general safety requirement; and the producer or distributor (as the case may be) shall be liable on conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

(4) A person who contravenes a safety notice shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding 12 months or to a fine or to both.

Recovery of expenses of enforcement.

146. (1) This section shall apply where a court -

(a) convicts a person of an offence in respect of a contravention in relation to a product of any requirement imposed by or under this Ordinance, or

(b) makes an order under section 144 for the forfeiture of a product.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the product, to reimburse the TSS for any expenditure which has been or may be incurred by the TSS -

(a) in connection with any seizure or detention of the product by or on behalf of the TSS, or

(b) in connection with any compliance by the TSS with directions given by the court for the purposes of any order for the forfeiture of the product.

Due diligence defence, and defence in relation to antiques.

147. (1) In proceedings against a person for an offence under this Part it shall be a defence for that person to show that that person took all reasonable steps to avoid committing the offence.

(2) Subject to subsection (4), subsection (3) shall apply in proceedings against any person for an offence under section 145(1) in respect of the supply, offer or agreement to supply or exposure or possession for supply of second hand products supplied as antiques.

(3) It shall be a defence for that person to show that the terms on which he supplied the product or agreed or offered to supply the product or, in the case of a product which he exposed or possessed for supply, the terms on which he intended to supply the product, contemplated the acquisition of an interest in the product by the person supplied or to be supplied.

(4) Subsection (3) applies only if the producer or distributor clearly informed the person to whom he supplied the product, or offered or agreed to supply the product or, in the case of a product which he exposed or possessed for supply, he intended to so inform that person, that the product is an antique.

Liability of person other than principal offender.

148. Where the commission of an offence by a person ("**A**") under this Part is due to an act or default committed by some other person ("**B**") in the course of a commercial activity of B, B shall be guilty of the offence and may be proceeded against and punished by virtue of this subsection regardless of whether proceedings are taken against A.

Miscellaneous

Duty to notify other jurisdictions.

149. (1) When the TSS receives a notification under section 135(1) it shall, as soon as possible, pass the same on to -

(a) the competent authority in the United Kingdom, and

(b) so far as is practicable, competent authorities in jurisdictions where, to the best of the Chief Trading Standard Officer's knowledge, the product in question is or has been marketed or otherwise supplied to consumers,

(together, "**the notifiable authorities**"; and references in this Ordinance to a duty to notify the notifiable authorities shall be construed to include the qualification in paragraph (b) in respect of notifying the competent authorities referred to there).

(2) Where the TSS takes a measure which restricts the placing on the market of a product, or requires its withdrawal or recall, it shall as soon as possible notify the notifiable authorities, specifying its reasons for taking that action.

(3) The TSS shall as soon as possible notify the notifiable authorities notified under subsection (2) of any modification or lifting of a measure under that subsection.

(4) Where the TSS adopts or decides to adopt, recommend or agree with producers and distributors, whether on a compulsory or voluntary basis, a measure or action to prevent, restrict or impose specific conditions on the possible marketing or use of a product (other than a medicinal product) by reason of a serious risk, it shall as soon as possible notify the notifiable authorities.

(5) The TSS shall as soon as possible notify the notifiable authorities of any modification or withdrawal of any such measure or action mentioned under subsection (4).

Provisions supplemental to section 149.

150. (1) A notification by the TSS under section 149 shall be in writing and shall provide all available details including, but not limited to -

(a) information enabling the product to be identified,

(b) a description of the risk involved, including a summary of the results of any test or analysis and of their conclusions which are relevant to assessing the level of risk,

(c) the nature and the duration of the measures or action taken or decided on, if applicable, and

(d) information on supply chains and distribution of the product, in particular on destination countries.

Market surveillance.

151. (1) For the purpose of ensuring a high level of consumer health and safety protection, the TSS shall undertake market surveillance of products employing appropriate means and procedures and co-operating with other enforcement authorities in other jurisdictions which may include –

(a) establishment, periodical updating and implementation of sectoral surveillance programmes by categories of products or risks and the monitoring of surveillance activities, findings and results,

(b) follow-up and updating of scientific and technical knowledge concerning the safety of products, and

(c) the periodical review and assessment of the functioning of the control activities and their effectiveness and, if necessary revision of the surveillance approach and organisation put in place.

(2) The Committee may make regulations to make further provision in respect of market surveillance falling within subsection (1), including but not limited to provision necessary to satisfy requirements under relevant international obligations and agreements having effect in Guernsey.

Complaints procedures in respect of product safety and market surveillance.

152. The TSS shall maintain and publish a procedure by which complaints may be submitted by any person on product safety, and market surveillance and control activities.

Information in respect of product safety.

153. (1) Subject to subsection (3), the TSS shall make available to the public such information as is available to it on the matters set out in subsection (2) relating to the risks to consumer health and safety posed by a product, and the measures taken in respect of the risk, without prejudice to the need not to disclose information for effective monitoring and investigation activities.

(2) The matters referred to in subsection (1) are –

(a) the nature of the risk, and

(b) the product identification.

(3) Subsection (1) shall not apply to any information which is protected by professional secrecy, unless the circumstances require such information to be made public in order to protect the health and safety of consumers.

Evidence in proceedings for offence relating to section 135(1).

154. (1) This section applies where a person has given a notification to the TSS pursuant to section 135(1).

(2) No evidence relating to that statement may be adduced and no question relating to it may be asked by the prosecution in any criminal proceedings (other than proceedings in which that person is charged with an offence under section 145(3)), unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

PART VI

CIVIL ENFORCEMENT: POWERS, AND ASSOCIATED OFFENCES

Interpretation of this Part and Part VII.

155. (1) In this Part and Part VII an infringement is an act or omission which -

(a) is done or made by a person in the course of a business,

(b) satisfies the condition in subsection (2),

(c) falls within subsection (3), and

(d) harms the collective interests of consumers.

(2) An act or omission satisfies the condition referred to in subsection (1) where at least one of the following is satisfied -

(a) the person supplying (or seeking to supply) goods or services has a place of business in Guernsey, or

(b) the goods or services are supplied (or sought to be supplied) to or for a person in Guernsey.

(3) Subject to subsection (4), an act or omission falls within this subsection if it consists of a contravention of a provision of this Ordinance.

(4) Regulations made by the Committee under this section may provide that any description of act or omission falling within subsection (3) is not an infringement.

(5) For the purposes of subsection (3) it is immaterial -

(a) whether or not any duty, prohibition or restriction exists in relation to consumers as such,

(b) whether or not any remedy or sanction is provided for the benefit of consumers as such,

(c) whether or not any proceedings have been brought in relation to the act or omission,

(d) whether or not any person has been convicted of an offence in respect of the contravention mentioned in subsection (3),

(e) whether or not there is a waiver in respect of the breach of contract mentioned in subsection (3).

(6) A document is not goods for the purpose of this Part.

Power to require the production of information.

156. (1) A TSS officer may give notice to a person requiring the person to provide the officer with the information specified in the notice for the purposes of –

(a) ascertaining whether there has been an infringement in circumstances where the officer reasonably considers that to be the case,

(b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance, or

(c) ascertaining whether to serve a safety notice under Part V or to vary or revoke a safety notice that has been served,

(2) A notice under subsection (1) must be in writing and specify the purpose for which the information is required.

(3) If the purpose is to enable a person to exercise or to consider whether to exercise a function, the notice must specify the function concerned.

(4) The notice may specify –

(a) the time within which and the manner in which the person to whom it is given must comply with it, and

(b) the form in which information must be provided.

(5) The notice may require –

(a) the creation of documents, or documents of a description, specified in the notice, and

(b) the provision of those documents to the officer.

(6) A requirement to provide information or create a document is a requirement to do so in a legible form.

(7) A notice under this section does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce in proceedings in the Royal Court on the grounds of legal professional privilege.

Enforcement of a notice under section 156.

157. (1) If a person fails to comply with a notice under section 156, a TSS officer may make an application under this section to the Royal Court.

(2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this section.

(3) An order under this section is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.

(4) An order under this section may require the person to meet the costs or expenses of the application.

(5) If the person is a company, partnership or unincorporated association, the court in acting under subsection (4) may require an official who is responsible for the failure to meet the costs or expenses; and for these purposes "**official**" means –

(a) in the case of a company, a director, manager, secretary or other similar officer,

(b) in the case of a limited liability partnership, a member,

(c) in the case of a limited partnership, a general partner,

(c) in the case of any other partnership, a partner, and

(d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

Restriction on use of information provided in response to a notice under section 156.

158. (1) This section applies if a person provides information in response to a person a notice under section 156.

(2) Subject to subsections (3) and (4), where this section applies, in any criminal proceedings against the person –

(a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and

(b) no question relating to the information may be asked by or on behalf of the prosecution.

(3) Subsection (2) does not apply if, in the proceedings-

(a) evidence relating to the information is adduced by or on behalf of the person providing it, or

(b) a question relating to the information is asked by or on behalf of that person.

(4) Subsection (2) does not apply if the proceedings are for –

(a) an offence under section 173 (obstruction), or

(b) perjury.

Power to purchase products etc.

159. (1) For the purposes of –

(a) ascertaining a trader's compliance with this Ordinance (other than Part II), or

(b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

a TSS officer may –

(i) make a purchase of a product, or

(ii) enter into an agreement to secure the provision of a product.

(2) For the purposes of exercising the power in subsection (1) an officer may –

(a) at any reasonable time, enter premises to which the public has access (whether or not the public has access at that time), and

(b) inspect any product on the premises which the public may inspect.

(3) The power of entry in subsection (2) may be exercised without first giving notice or obtaining a warrant.

Power to observe carrying on of business.

160. (1) For the purposes of –

(a) ascertaining a trader's compliance with this Ordinance (other than Part II),

(b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

a TSS officer may enter premises to which the public has access in order to observe the carrying on of a business on those premises.

(2) The power in subsection (1) may be exercised at any reasonable time (whether or not the public has access at that time) and without first giving notice or obtaining a warrant.

Power to enter premises without a warrant.

161. (1) For the purposes of –

(a) ascertaining a trader's compliance with this Ordinance (other than Part II), or

(b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

a TSS officer may enter premises (other than premises used wholly or mainly as a dwelling) at any reasonable time.

(2) In the case of a routine inspection, the power of entry in subsection (1) may only be exercised if a notice has been given to the occupier of the premises in accordance with the requirements in subsection (3), unless subsection (4) applies.

(3) The requirements referred to in subsection (2) are that –

(a) the notice is in writing and is given by a TSS officer,

(b) the notice sets out why the entry is necessary and indicates the nature of the offence under section 173 (obstruction), and

(c) there are at least two working days between the date of receipt of the notice and the date of entry.

(4) A notice need not be given if the occupier has waived the requirement to give notice.

(5) In this section "**routine inspection**" means an exercise of the power in subsection (1) other than where –

(a) the TSS officer exercising the power reasonably suspects a breach of this Ordinance,

(b) the officer reasonably considers that to give notice in accordance with subsection (3) would defeat the purpose of the entry, or

(c) it is not reasonably practicable in all the circumstances to give notice in accordance with that subsection, in particular because the officer reasonably suspects that there is an imminent risk to public health or safety.

(6) If a TSS officer enters premises under subsection (1) otherwise than in the course of a routine inspection, and finds one or more occupiers on the premises, the officer must provide to that occupier or (if there is more than one) to at least one of them a document that –

(a) sets out why the entry is necessary, and

(b) indicates the nature of the offence under section 173 (obstruction).

(7) If a TSS officer enters premises under subsection (1) and finds one or more occupiers on the premises, the officer must produce evidence of the officer's identity and authority to that occupier or (if there is more than one) to at least one of them.

(8) An officer need not comply with subsection (6) or (7) if it is not reasonably practicable to do so.

(9) Proceedings resulting from the exercise of the power under subsection (1) are not invalid merely because of a failure to comply with subsection (6) or (7).

(10) An officer entering premises under subsection (1) may be accompanied by such persons, and may take onto the premises such equipment, as the officer thinks necessary.

(11) In this section "**working day**" means any day other than a Saturday, Sunday or a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958[j].

Powers to enter premises with a warrant.

162. (1) If the Bailiff by any written information on oath is satisfied that there are reasonable grounds for believing that -

(a) Condition A or B is met, and

(b) Condition C, D or E is met,

the Bailiff may, by warrant, authorise a TSS officer to enter premises at any reasonable time, using reasonable force if necessary.

(2) Condition A is that there are, on any premises, goods which the officer has power to inspect under section 164, or documents which the officer could require a person to produce under section 165.

(3) Condition B is that there has been, or is about to be, an infringement.

(4) Condition C is that the access to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier.

(5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

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j Ordres en Conseil Vol. XVII, p. 384; this enactment has been amended.

(6) Condition E is that it is likely that products or documents on the premises would be concealed or interfered with if notice of entry on the premises were given to the occupier of the premises.

(7) A warrant under subsection (1) -

(a) ceases to have effect at the end of the period of one month beginning with the day it is issued,

(b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(8) An officer entering any premises under this section may take such other persons and such equipment as may appear to that officer to be necessary.

(9) On leaving any premises which an officer is authorised, by warrant, to enter under this section, the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the officer found them.

Application of sections 164 to 169.

163. Sections 164 to 169 apply if a TSS officer has entered any premises under section 161 or under a warrant under section 162.

Power to inspect products.

164. (1) For the purposes of –

(a) ascertaining a trader's compliance with this Ordinance (other than Part II),

(b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance, or

(c) ascertaining whether to serve a safety notice under Part VI or to vary or revoke a safety notice that has been served,

the officer may inspect any product on the premises.

(2) The officer may examine any procedure (including any arrangements for carrying out a test) connected with the production of a product.

Power to require production of documents.

165. (1) For the purposes of –

(a) ascertaining whether there has been an infringement (other than in respect of Part II) in circumstances where the officer reasonably considers that to be the case, or

(b) ascertaining whether a person has complied or is complying with an undertaking given or enforcement order or injunction granted under this Ordinance,

the officer may, at any reasonable time –

(i) require a trader occupying the premises, or a person on the premises acting on behalf of such a trader, to produce any documents relating to the trader's business to which the trader has access, and

(ii) take copies of, or of any entry in, any such document.

(2) The power in subsection (1) may also be exercised for the purpose of ascertaining whether the documents in question may be required as evidence in proceedings under this Ordinance.

(3) The power in subsection (1) is available regardless of whether the purpose for which the documents are required relates to the trader or some other person, and includes power to require the person to give an explanation of the documents.

(4) Where a document required to be produced under subsection (1) or (2) contains information recorded electronically, the power in that subsection includes power to require the production of a copy of the document in a form in which it can easily be taken away and in which it is visible and legible.

(5) This section does not permit an officer to require a person to create a document other than as described in subsection (4).

(6) This section does not permit an officer to require a person to produce any document which the person would be entitled to refuse to produce in proceedings in the Royal Court on the grounds of legal professional privilege.

Power to seize and detain goods.

166. (1) Where the officer reasonably suspects the goods may disclose an infringement, or may be required as evidence in proceedings under this Ordinance, the officer may seize and detain goods other than documents (for which see section 167).

(2) Subject to subsection (3), an officer seizing goods under this section from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.

(3) The officer need not comply with subsection (2) if it is not reasonably practicable to do so.

(4) An officer seizing goods under this section must take reasonable steps to –

(a) inform the person from whom they are seized that they have been seized, and

(b) provide that person with a written record of what has been seized.

(5) If, under this section, an officer seizes any goods from a vending machine, the duty in subsection (4) also applies in relation to –

(a) the person whose name and address are on the vending machine as the owner of the machine, or

(b) if there is no such name and address on the machine, the occupier of the premises on which the machine stands or to which it is fixed.

(6) In determining the steps to be taken under subsection (4), an officer exercising a power under this section must have regard to any relevant provision about the seizure of property made by a code of practice under section 73

of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003[k].

(7) Goods seized under this section may not be detained-

(a) for a period of more than 3 months beginning with the day on which they were seized, or

(b) where the goods are reasonably required to be detained for a longer period by the enforcer for a purpose for which they were seized, for longer than they are required for that purpose.

Power to seize documents required as evidence.

167. (1) Where the officer reasonably suspects documents may be required as evidence in proceedings under this Ordinance, the officer may seize and detain documents.

(2) Subject to subsection (3), an officer seizing documents under this section from premises which are occupied must produce evidence of the officer's identity and authority to an occupier of the premises before seizing them.

(3) The officer need not comply with subsection (2) if it is not reasonably practicable to do so.

(4) An officer seizing documents under this section must take reasonable steps to –

(a) inform the person from whom they are seized that they

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k Ordres en Conseil Vol. XLIII(2), p. 61; this enactment has been amended.

have been seized, and

(b) provide that person with a written record of what has been seized.

(5) In determining the steps to be taken under subsection (4), an officer exercising a power under this must have regard to any relevant provision about the seizure of property made by a code of practice under section 73 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

(6) This section does not confer any power on an officer to seize from a person any document which the person would be entitled to refuse to produce in proceedings in the Royal Court on the grounds of legal professional privilege.

(7) Documents seized under this section may not be detained –

(a) for a period of more than three months beginning with the day on which they were seized, or

(b) where the documents are reasonably required to be detained for a longer period by the enforcer for the purposes of the proceedings for which they were seized, for longer than they are required for those purposes.

Power to break open container.

168. (1) The officer may, for the purpose of exercising any of the powers in sections 166 or 167, require a person with authority to do so to –

(a) break open any container,

(b) open any vending machine, or

(c) access any electronic device in which information may be stored or from which it may be accessed.

(2) Where a requirement under subsection (1) has not been complied with, the officer may, for the purpose of exercising any of the powers in sections 166 or 167 –

(a) break open the container,

(b) open the vending machine, or

(c) access the electronic device.

(3) Subsection (1) or (2) applies if and to the extent that the exercise of the power in that subsection is reasonably necessary for the purposes for which that power may be exercised.

(4) In this section "**container**" means anything in which goods may be stored.

Power to require assistance from person on premises.

169. The officer may require any person on the premises to provide such assistance or information as the officer reasonably considers necessary.

Miscellaneous provisions in respect of powers

Access to seized goods and documents.

170. (1) This section applies where anything seized by a TSS officer under this Part is detained by the TSS.

(2) If a request for permission to be granted access to that thing is made to the TSS by a person who had custody or control of it immediately before it was seized, the TSS must allow that person access to it under the supervision of a TSS officer.

(3) If a request for a photograph or copy of that thing is made to the TSS by a person who had custody or control of it immediately before it was seized, the TSS must –

(a) allow that person access to it under the supervision of a TSS officer for the purpose of photographing or copying it, or

(b) photograph or copy it, or cause it to be photographed or copied.

(4) Where anything is photographed or copied under subsection (3), the photograph or copy must be supplied to the person who made the request within a reasonable time from the making of the request.

(5) This section does not require access to be granted to, or a photograph or copy to be supplied of, anything if the TSS has reasonable grounds for believing that to do so would prejudice the investigation for the purposes of which it was seized.

(6) The TSS may recover the reasonable costs of complying with a request under this section from the person by whom or on whose behalf it was made.

(7) References in this section to a person who had custody or control of a thing immediately before it was seized include a representative of such a

person.

Appeals against detention of goods and documents.

171. (1) This section applies where goods or documents are being detained as the result of the exercise of a power in this Part.

(2) A person with an interest in the goods or documents may apply to the Magistrate's Court for an order requiring them to be released to that or another person.

(3) On an application under this section, the court may make an order requiring goods to be released only if satisfied that condition A or B is met.

(4) Condition A is that -

(a) no proceedings have been brought –

(i) for an offence as the result of the investigation in the course of which the goods or documents were seized, or

(ii) for the forfeiture of the goods or documents or (in the case of seized documents) any goods to which the documents relate, and

(b) the period of 6 months beginning with the date the goods or documents were seized has expired.

(5) Condition B is that –

(a) proceedings of a kind mentioned in subsection (4)(a) have been brought, and

(b) those proceedings have been concluded without the goods or documents being forfeited.

(6) A person aggrieved by an order made under this section by a magistrates' court, or by the decision of the Magistrate's Court not to make such an order, may appeal against the order or decision to the Royal Court.

(7) An order made under this section by the Magistrate's Court may contain such provision as the court thinks appropriate for delaying its coming into force pending the making and determination of any appeal.

Compensation.

172. (1) This section applies where a TSS officer has seized and detained goods under this Part.

(2) Where this section applies, the TSS must pay compensation to any person with an interest in the goods in respect of any loss or damage caused by the seizure and detention, if –

(a) the goods have not disclosed an infringement, and

(b) the power to seize and detain the goods was not exercised as a result of any neglect or default of the person seeking the compensation.

Offences associated with enforcement powers

Offence of obstruction of TSS officer.

173. (1) Any person who -

(a) intentionally obstructs a TSS officer acting in pursuance of this Ordinance,

(b) intentionally fails to comply with any requirement properly made to that person by such an officer, or

(c) without reasonable cause fails to give such an officer any other assistance or information which the officer may reasonably require of that person for the purpose of the performance of the officer's functions under this Ordinance,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

(2) Any person who, in giving any information which is required of that person under subsection (1)(c), makes any statement which the person knows to be false in a material particular is guilty of an offence and liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Offence of impersonating TSS officer.

174. A person who is not a TSS officer who purports to –

(a) be such an officer, and

(b) exercise powers conferred on such officers under this Ordinance,

commits an offence, and is liable on conviction to a fine not exceeding level 4 on the uniform scale.

False or misleading information.

175. (1) If a person to whom subsection (2) applies –

(a) makes a statement which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

(c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

(2) This subsection applies to a person who –

(a) makes any statement or provides any information or document to a TSS officer, when acting in the exercise of his or her functions under this Ordinance, or

(b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to a TSS officer in circumstances in which he or she knows or could reasonably be expected to know that the statement, information or document would or might be used by a TSS officer for the purpose of exercising his or her functions under this Ordinance.

(3) A person guilty of an offence under this section is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

PART VII

CIVIL ENFORCEMENT: ENFORCEMENT NOTICES, UNDERTAKINGS AND ENHANCED CONSUMER MEASURES

Enforcement Notices

Consultation.

176. (1) The TSS must not make an application for an enforcement order under this Part unless it has engaged with the person against whom the enforcement order would be made for the purpose of -

(a) achieving the cessation of the infringement in a case where an infringement is occurring,

(b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred,

(c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a),

(d) ensuring that the infringement does not take place in the case of an infringement which the TSS believes is likely to take place.

(2) Subsection (1) ceases to apply -

(a) for the purposes of an application for an enforcement order at the end of the period of 14 days, beginning with the day after the person against whom the enforcement order would be made receives a request for engagement from the TSS, or,

(b) for the purposes of an application for an interim enforcement order at the end of the period of seven days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the TSS.

(3) The Committee may by regulations make further provision in relation to engagement under this section.

(4) In this section (except subsection (2)) and in section 178 references to an enforcement order mean an order under section 178 and include references to an interim enforcement order within the meaning of section 179.

Application for an enforcement order.

177. (1) An application for an enforcement order must name the person the TSS thinks has engaged or is engaging or is likely to engage in conduct which constitutes an infringement.

(2) The TSS may make an application to the Royal Court sitting as an Ordinary Court for an enforcement order in respect of any infringement.

Enforcement orders.

178. (1) This section applies if an application for an enforcement order is made under section 177 and the court finds that the person named in the application is engaging, has engaged or is likely to engage in conduct which constitutes an infringement.

(2) If this section applies the court may make an enforcement order against the person.

(3) In considering whether to make an enforcement order the court must have regard to whether the person named in the application -

(a) has given an undertaking under section 181 in respect of conduct such as is mentioned in subsection (3) of that section, and

(b) has failed to comply with the undertaking.

(4) An enforcement order must -

(a) indicate the nature of the conduct to which the finding under subsection (1) or (2) relates, and

(b) direct the person to comply with subsection (5).

(5) A person complies with this subsection if that person -

(a) does not continue or repeat the conduct,

(b) does not engage in such conduct in the course of business,

(c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of section 183(3)).

(6) Subsection (5)(a) does not apply in the case of a finding that the person is likely to engage in conduct which constitutes an infringement.

(7) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement -

(a) the order,

(b) a corrective statement.

(8) An enforcement order may require the person to take enhanced consumer measures within a period specified in the enforcement order.

(9) If the court makes a finding under subsection (1) it may accept an undertaking by the person -

(a) to comply with subsection (5), or

(b) to take steps which the court believes will secure that the person complies with subsection (5).

(10) An undertaking under subsection (9) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement -

(a) the terms of the undertaking,

(b) a corrective statement.

(11) An undertaking under subsection (9) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.

(12) Where a person is required by an enforcement order or an undertaking under this section to take enhanced consumer measures, the order or undertaking may include requirements as to the provision of information or documents to the court by the person in order that the court may determine if the person is taking those measures.

(13) If the court -

(a) makes a finding under subsection (1), and

(b) accepts an undertaking under subsection (7),

it shall not make an enforcement order in respect of the infringement to which the undertaking relates.

Interim enforcement order.

179. (1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court -

(a) that it is alleged that the person is engaged or is likely to engage in conduct which constitutes an infringement,

(b) that if the application had been an application for an enforcement order it would be likely to be granted,

(c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately, and

(d) if no notice of the application has been given to the person named in the application, that it is appropriate to make an interim enforcement order without notice.

(2) An interim enforcement order must -

(a) indicate the nature of the alleged conduct, and

(b) direct the person to comply with subsection (3).

(3) A person complies with this subsection if that person -

(a) does not continue or repeat the conduct,

(b) does not engage in such conduct in the course of business, and

(c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of section 183(3)).

(4) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.

(5) An application for an interim enforcement order must refer to all matters -

(a) which are known to the applicant, and

(b) which are material to the question whether or not the application is granted.

(6) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.

(7) The court may vary or discharge an interim enforcement order on the application of -

(a) the TSS, or

(b) the person against whom it is made.

(8) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.

(9) If it appears to the court as mentioned in subsection (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application -

(a) to comply with subsection (3), or

(b) to take steps which the court believes will secure that the person complies with subsection (3).

Unfair commercial practices: substantiation of claims.

180. (1) This section applies where an application for an enforcement order or an interim enforcement order is made in respect of an infringement involving a contravention concerning unfair business-to-consumer commercial practices.

(2) For the purposes of considering the application the court may require the relevant person to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.

(3) In subsection (2), "**the relevant person**", in relation to an application, means the person named in the application under section 177(1).

(4) If, having been required under subsection (2) to provide evidence as to the accuracy of a factual claim, a person -

(a) fails to provide such evidence, or

(b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,

the court may consider that the factual claim is inaccurate.

Undertakings.

181. (1) This section applies in circumstances where the TSS has power to make an application for an enforcement order under section 177.

(2) In such a case the TSS may accept from a person to whom subsection (3) applies, an undertaking that the person will comply with subsection (4).

(3) This subsection applies to a person who the Chief Trading Standards Officer believes -

(a) has engaged in conduct which constitutes an infringement,

(b) is engaging in such conduct, or

(c) is likely to engage in conduct which constitutes an infringement.

(4) Subject to subsection (5), a person complies with this subsection if that person -

(a) does not continue or repeat the conduct,

(b) does not engage in such conduct in the course of business,

(c) does not consent to or connive in the carrying out of such conduct by a body corporate with which that person has a special relationship (within the meaning of section 183(3)).

(5) Subsection (4)(a) does not apply in the case of an undertaking given by a person in so far as subsection (3) applies to the person by virtue of paragraph (c).

(6) An undertaking under subsection (2) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.

(7) Where a person is required by an enforcement order, or an undertaking under this section, to take enhanced consumer measures, the order or undertaking may include requirements as to the provision of information or documents to the court by the person in order that the court may determine if the person is taking those measures.

(8) If the TSS has accepted an undertaking under this section it may accept a further undertaking from the person concerned to publish the terms of the undertaking or take steps itself to publish the undertaking.

Further proceedings.

182. (1) This section applies if the court -

(a) makes an enforcement order under section 178 or makes an interim enforcement order under section 179, or

(b) accepts an undertaking under either of those sections.

(2) Where this section applies, an application to the court by the TSS in respect of a failure to comply with an undertaking may include an application for an enforcement order or an interim enforcement order.

(3) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order.

(4) For the avoidance of doubt, in the case of an application for an enforcement order or for an interim enforcement order as mentioned in subsection (3), the requirement for consultation under section 176 does not apply.

Bodies corporate: accessories.

183. (1) This section applies where the conduct of a body corporate constitutes an infringement.

(2) If the conduct takes place with the consent or connivance of a person ("**an accessory**") who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.

(3) A person has a special relationship with a body corporate if that person is -

(a) a controller of the body corporate, or

(b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.

(4) A person is a controller of a body corporate if -

(a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions, or

(b) either alone or with an associate or associates that person is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

(5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.

(6) The court may accept an undertaking under this Part from an accessory in respect of an infringement regardless of whether it accepts such an undertaking from the body corporate.

(7) The TSS may accept an undertaking under this Part from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.

(8) Subsection (9) applies where -

(a) an enforcement order or an interim enforcement order is made as mentioned in subsection (5), or

(b) an undertaking is accepted as mentioned in subsection (6) or (7).

(9) Where this section applies, sections 178, 179 and 181 shall have effect as if for the text at section 178(5), 179(3) and 181(4) there were, in each case, substituted the following text –

"A person complies with this subsection if the person -

(a) does not continue or repeat the conduct,

(b) does not, in the course of business, engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in section 183(1),

(c) does not consent to or connive in the carrying out of such conduct by another body corporate with which that person has a special relationship (within the meaning of section 183(3)).".

(10) A person is an associate of an individual if that person -

(a) is the spouse or civil partner of the individual,

(b) is a relative of the individual,

(c) is a relative of the individual's spouse or civil partner,

(d) is the spouse or civil partner of a relative of the individual,

(e) is the spouse or civil partner of a relative of the individual's spouse or civil partner,

(f) lives in the same household as the individual otherwise than merely because the person or the individual is the other's employer, tenant, lodger or boarder,

(g) is a relative of a person who is an associate of the individual by virtue of paragraph (f),

(h) has at some time in the past fallen within any of paragraphs (a) to (g).

(11) A person is also an associate of -

(a) an individual with whom that person is in partnership,

(b) an individual who is an associate of the individual mentioned in paragraph (a),

(c) a body corporate if the person is a controller of it or an associate of a person who is a controller of the body corporate.

(12) A body corporate is an associate of another body corporate if -

(a) the same person is a controller of both,

(b) a person is a controller of one body corporate and associates of that person are controllers of the other,

(c) a person is a controller of one body corporate as well as being, along with that person's associates, controllers of the other,

(d) a group of two or more persons is a controller of each company and the groups consist of the same persons,

(e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom that person is an associate.

(13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

Bodies corporate: orders.

184. (1) This section applies if a court makes an enforcement order or an interim enforcement order against a body corporate and -

(a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,

(b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or

(c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.

(2) Where this section applies, the court may direct that the order referred to in subsection (1) is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.

(3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(4) Any two bodies corporate are interconnected -

(a) if one of them is a subsidiary of the other, or

(b) if both of them are subsidiaries of the same body corporate.

(5) In this section "**subsidiary**" has the meaning given by section 531 of the Companies (Guernsey) Law, 2008[l].

Miscellaneous

Evidence.

185. (1) Proceedings under sections 177 to 184 are civil proceedings for the purposes of section 11 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009[m] (convictions as evidence in civil proceedings).

(2) Subject to subsection (3), in proceedings under sections 177 to 184, any finding by a court in civil proceedings that an act or omission mentioned in section 130(5)(b), (c) or (d) has occurred -

(a) is admissible as evidence that the act or omission occurred,

(b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.

(3) Subsection (2) does not apply to any finding which -

(a) has been reversed on appeal,

(b) has been varied on appeal so as to negative it.

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l Order in Council No. VIII of 2008. This enactment has been amended.

m Order in Council No. X of 2010. This enactment has been amended.

Enhanced consumer measures.

186. (1) For the purposes of this Ordinance, "**enhanced consumer measures**" are measures (not excluded by subsection (5)) falling within -

(a) the redress category described in subsection (2),

(b) the compliance category described in subsection (3), or

(a) the choice category described in subsection (4).

(2) The measures in the redress category are -

(a) measures offering compensation or other redress to consumers who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking,

(b) where the conduct which has given rise to the enforcement order or undertaking relates to a contract, measures offering consumers falling within paragraph (a) the option to terminate (but not vary) that contract,

(c) where consumers falling within paragraph (a) cannot be identified, or cannot be identified without disproportionate cost to the subject of the enforcement order or undertaking, measures intended to be in the collective interests of consumers.

(3) The measures in the compliance category are measures intended to prevent or reduce the risk of the occurrence or repetition of the conduct to which the enforcement order or undertaking relates (including measures with that

purpose which may have the effect of improving compliance with consumer law more generally).

(4) The measures in the choice category are measures intended to enable consumers to choose more effectively between persons supplying or seeking to supply goods or services.

(5) The following are not enhanced consumer measures -

(a) a publication requirement included in an enforcement order as described in section 178(7), or

(b) a publication requirement included in an undertaking accepted by the court as described in section 178(10).

Inclusion of enhanced consumer measures etc.

187. (1) An enforcement order or undertaking may include only such enhanced consumer measures as the court or the TSS (as the case may be) considers to be just and reasonable.

(2) For the purposes of subsection (1), the court or the TSS (as the case may be) must in particular consider whether any proposed enhanced consumer measures are proportionate, taking into account -

(a) the likely benefit of the measures to consumers,

(b) the costs likely to be incurred by the subject of the enforcement order or undertaking, and

(c) the likely cost to consumers of obtaining the benefit of the measures.

(3) The costs referred to in subsection (2)(b) are -

(a) the cost of the measures, and

(b) the reasonable administrative costs associated with taking the measures.

(4) The enforcement order or undertaking may include enhanced consumer measures in the redress category -

(a) only in a loss case, and

(b) only if the court or the TSS (as the case may be) is satisfied that the cost of such measures to the subject of the enforcement order or undertaking is unlikely to be more than the sum of the losses suffered by consumers as a result of the conduct which has given rise to the enforcement order or undertaking.

(5) The cost referred to in subsection (4)(b) does not include the administrative costs associated with taking the measures.

(6) Subsection (7) applies if an enforcement order or undertaking includes enhanced consumer measures offering compensation and a settlement agreement is entered into in connection with the payment of compensation.

(7) Where this subsection applies, a waiver of a person's rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than the conduct which has given rise to the enforcement order or undertaking.

(8) The following definitions apply for the purposes of subsection (4)(a) -

(a) in the case of an enforcement order or undertaking under section 178, "a **loss case**" means a case in which -

(i) subsection (1) of that section applies (a finding that a person has engaged in conduct which constitutes an infringement), and

(ii) consumers have suffered loss as a result of that conduct, and

(b) in the case of an undertaking under section 181, "**a loss case**" means a case in which -

(i) subsection (3)(a) or (b) of that section applies (a belief that a person has engaged or is engaging in conduct which constitutes an infringement), and

(ii) consumers have suffered loss as a result of that conduct.

References in this Part to goods and services.

188. (1) References in this Part to goods and services are to be construed in accordance with this section.

(2) In addition to goods as defined in section 204, goods include-

(a) buildings and other structures,

(b) ships, aircraft and hovercraft.

(3) The supply of goods includes -

(a) supply by way of sale, lease, hire or hire-purchase,

(b) in relation to buildings and other structures, construction of them by one person for another.

(4) Goods or services which are supplied wholly or partly outside Guernsey must be taken to be supplied to or for a person in Guernsey if they are supplied in accordance with arrangements falling within subsection (5).

(5) Arrangements fall within this subsection if they are made by any means and -

(a) at the time the arrangements are made the person seeking the supply is in Guernsey, or

(b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in Guernsey.

References in this Part to the supply of goods.

189. (1) This section has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under -

(a) a hire-purchase agreement,

(b) a credit-sale agreement,

(c) a conditional sale contract.

(2) For the purposes of subsection (1), the references to a person include references to a person who conducts any antecedent negotiations relating to

the agreement.

(3) For these purposes -

(a) "**hire-purchase agreement**" has the meaning given in section 5,

(b) "**credit-sale agreement**" means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement, and

(c) "**conditional sale contract**" has the meaning given in section 3(3).

(4) For these purposes, "**antecedent negotiations**" shall be taken to begin when the negotiator and the consumer first enter into communication (including communication by advertisement), and include any representations made by the negotiator to the consumer and any other dealings between them; and for the avoidance of doubt, "**the negotiator**" means the person by whom negotiations are so conducted with the consumer.

References in this Part to the supply of services.

190. (1) References in this Part to the supply of services must be construed in accordance with this section.

(2) The supply of services does not include the provision of services under a contract of service, employment or apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.

(3) The supply of services includes –

(a) performing for gain or reward any activity other than the supply of goods,

(b) rendering services to order,

(c) the provision of services by making them available to potential users.

(4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

PART VIII

MISCELLANEOUS AND FINAL PROVISIONS

Product liability

Liability for defective products.

191. (1) Subject to the following provisions of this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage.

(2) This subsection applies to –

(a) the producer of the product,

(b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product, and

(c) any person who has imported the product into Guernsey in order, in the course of any business of his, to supply it to another.

(3) Subject as aforesaid, where any damage is caused wholly or partly by a defect in a product, any person who supplied the product (whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised or to any other person) shall be liable for the damage if –

(a) the person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence or not) to whom subsection (2) above applies in relation to the product,

(b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and

(c) the supplier fails, within a reasonable period after receiving the request, either to comply with the request or to identify the person who supplied the product to him.

(4) Where two or more persons are liable by virtue of this Part for the same damage, their liability shall be joint and several.

(5) This section is without prejudice to any liability arising otherwise than by virtue of this Part.

Meaning of "defect".

192. (1) Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes "**safety**", in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

(2) In determining for the purposes of subsection (1) above what persons generally are entitled to expect in relation to a product all the circumstances shall be taken into account, including –

(a) the manner in which, and purposes for which, the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions for, or warnings with respect to, doing or refraining from doing anything with or in relation to the product,

(b) what might reasonably be expected to be done with or in relation to the product, and

(c) the time when the product was supplied by its producer to another,

and nothing in this section shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

Product liability: defences.

193. (1) In any civil proceedings by virtue of this Part against any person (D) in respect of a defect in a product, it shall be a defence for D to show-

(a) that the defect is attributable to compliance with any requirement imposed by or under any enactment or with any obligation in Preserved EU law,

(b) that D did not at any time supply the product to another,

(c) that the following conditions are satisfied –

(i) that the only supply of the product to another by D was otherwise than in the course of D's business, and

(ii) that section 191(2) above does not apply to that person or applies to him by virtue only of things done otherwise than with a view to profit,

(d) that the defect did not exist in the product at the relevant time,

(e) that the state of scientific and technical knowledge at the relevant time was not such that a producer (P) of products of the same description as the product in question might be expected to have discovered the defect if it had existed in P's products while they were under P's control, or

(f) that the defect –

(i) constituted a defect in a product ("**the subsequent product**") in which the product in

question had been comprised, and

(ii) was wholly attributable to the design of the subsequent product or to compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

(2) In this section "**the relevant time**", in relation to electricity, means the time at which it was generated, being a time before it was transmitted or distributed, and in relation to any other product, means –

(a) if D is a person to whom section 191(2) applies in relation to the product, the time when D supplied the product to another,

(b) in any other case, the time when the product was last supplied by a person to whom section 191(2) applies in relation to the product.

Damage giving rise to liability.

194. (1) Subject to the following provisions of this section, in this Part "**damage**" means death or personal injury or any loss of or damage to any property (including land).

(2) A person shall not be liable under section 191 in respect of any defect in a product for the loss of or any damage to the product itself or for the loss of or any damage to the whole or any part of any product which has been supplied with the product in question comprised in it.

(3) A person shall not be liable under section 191 above for any loss of or damage to any property which, at the time it is lost or damaged, is not –

(a) of a description of property ordinarily intended for private use, occupation or consumption, and

(b) intended by the person suffering the loss or damage mainly for the person's own private use, occupation or consumption.

(4) No damages shall be awarded to any person by virtue of this Part in respect of any loss of or damage to any property if the amount which would fall to be so awarded to that person, apart from this subsection and any liability for interest, does not exceed £275.

(5) In determining for the purposes of this Part who has suffered any loss of or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred at the earliest time at which a person with an interest in the property had knowledge of the material facts about the loss or damage.

(6) For the purposes of subsection (5) the material facts about any loss of or damage to any property are such facts about the loss or damage as would lead a reasonable person with an interest in the property to consider the loss or damage sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) For the purposes of subsection (5) the knowledge of a person (P) includes knowledge which P might reasonably have been expected to acquire -

(a) from facts observable or ascertainable by P, or

(b) from facts ascertainable by P with the help of appropriate expert advice which it is reasonable for P to seek,

but P shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by P only with the help of expert advice unless P has failed to take all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Application to certain enactments.

195. (1) Any damage for which a person is liable under section 191 shall be deemed to have been caused for the purposes of the Law entitled "Loi relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident"[n], by that person's wrongful act, neglect or default.

(2) Where any damage is caused partly by a defect in a product and partly by the fault of the person suffering the damage, section 1 of the Law reform (Tort) (Guernsey) Law, 1979[o] (apportionment of liability in case of contributory negligence) shall have effect as if the defect were the fault of every person liable by virtue of this Part for the damage caused by the defect.

(3) Liability by virtue of this Part is to be treated as liability in tort for the purposes of any enactment conferring jurisdiction on any court with respect to any matter.

Construction of sections 191 to 195.

196. (1) For the purposes of sections 191 to 195 –

(a) "**producer**", in relation to a product, means -

(i) the person who manufactured it,

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[n] Ordres en Conseil Vol. III, p. 235. This enactment has been amended.

[o] Ordres en Conseil Vol. XXVII, p. 50. This enactment has been amended.

(ii) in the case of a substance which has not been manufactured but has been won or abstracted, the person who won or abstracted it, and

(iii) in the case of a product which has not been manufactured, won or abstracted but essential characteristics of which are attributable to an industrial or other process having been carried out (for example, in relation to agricultural produce), the person who carried out that process, and

(b) "**product**" means any goods or electricity and (subject to subsection (2)) includes a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise.

(2) For the purposes of sections 191 to 195, a person who supplies any product in which products are comprised, whether by virtue of being component parts or raw materials or otherwise, shall not be treated by reason only of his supply of that product as supplying any of the products so comprised.

Miscellaneous

Information and guidance.

197. (1) The TSS shall prepare and publish information and guidance with a view to -

(a) explaining the provisions of this Ordinance to persons who are likely to be affected by them, and

(b) indicating how the TSS expects such provisions to operate.

(2) Information and guidance published in accordance with subsection (1)(b) may include advice or information about the factors which the TSS may take into account in considering how to exercise the functions conferred on it by this Ordinance.

(3) Information and guidance published by the TSS under this section is to be published in such form and in such manner as the TSS considers appropriate.

Annual report.

198. The TSS shall, as soon as practicable each year, make a report to the Committee on its activities during the preceding year; and the President of the Committee shall, as soon as practicable, submit that report for consideration by the States.

Freedom from self-incrimination, and legal professional privilege.

199. For the avoidance of doubt, nothing in this Ordinance is to be construed as requiring a person -

(a) to answer any question or give any information if to do so might incriminate that person.

(b) to produce or provide, or authorises a person to inspect or take possession of, anything in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Offences committed by bodies corporate.

200. (1) Where an offence committed by a body corporate is proved -

(a) to have been committed with the consent or connivance of an officer of the body corporate, or

(b) to be attributable to any neglect on the part of an officer of the body corporate,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1) a reference to an officer of a body corporate includes a reference to -

(a) a director, manager, secretary or other similar officer, and

(b) a person purporting to act as a director, manager, secretary or other similar officer.

Service of documents.

201. (1) A document required or authorised by virtue of this Ordinance to be served on a person may be so served —

(a) on an individual by delivering it to the person, or by leaving it at or by sending it by post to the person's proper address,

(b) on a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body,

(c) on a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership,

(d) on a limited partnership, by serving it in accordance with paragraph (a) on a general partner,

(e) on a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business,

(f) on any other person by leaving it at or by sending it by post to that person's proper address.

(2) For the purposes of subsection (1), the proper address of a person on whom a document is to be served by virtue of this Ordinance shall be that person's last known address except that —

(a) in the case of a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body,

(b) in the case of a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership,

(c) in the case of a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership,

and for the purposes of this subsection the principal officer of a company constituted under the law of a country or territory outside the Bailiwick of Guernsey or of a partnership carrying on business outside the Bailiwick of Guernsey is its principal office within the Bailiwick of Guernsey.

Powers of the GCRA under the Competition Ordinance unaffected.

202. For the avoidance of doubt, the provisions of this Ordinance are without prejudice to the powers of the Guernsey Competition and Regulatory Authority under the Competition (Guernsey) Ordinance, 2012[p], and shall be construed accordingly.

Regulations.

203. Regulations under this Ordinance shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

204. (1) In this Ordinance, except where the context otherwise requires, or contrary or qualifying provision is made -

"**advertisement**" includes a catalogue, a circular and a price list,

"**average consumer**" means a consumer who is reasonably well-informed, observant and circumspect, and see also subsections (5) – (8),

"**business**" includes a trade, craft or profession, the trading activities of any committee of the States of Guernsey, and any other undertaking carried

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[p] Ordinance No. XXXI of 2012. This enactment has been amended.

on for gain or reward,

"**business premises**" means -

(a) any immoveable retail premises where the activity of the trader is carried out on a permanent basis, or

(b) any moveable retail premises where the activity of the trader is carried out on a usual basis,

"**Chief Trading Standards Officer**" means the Chief Trading Standards Officer of the States of Guernsey, and includes any deputy Chief Trading Standards Officer and (in the absence of the Chief Trading Standards Officer) any acting Chief Trading Standards Officer,

"**code of conduct**" means an agreement or set of rules (which is not imposed by legal or administrative requirements), which defines the behaviour of traders who undertake to be bound by it in relation to one or more commercial practices or business sectors,

"**code owner**" means a trader or a body responsible for -

(a) the formulation and revision of a code of conduct, or

(b) monitoring compliance with the code by those who have undertaken to be bound by it,

"**commercial guarantee**", in relation to a contract, means any undertaking by the trader or producer to the consumer (in addition to the trader's duty to supply goods that are in conformity with the contract) to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to

conformity set out in the guarantee statement or in the relevant advertising available at the time of the contract or before it is entered into,

"**commercial practice**" means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product,

"**commercial unit**" means a unit the division of which would materially impair the value of the goods or the character of the unit,

the "**Committee**" means the Committee for Home Affairs,

"**conditional sales contract**": see section 3(3),

"**consumer**" means an individual acting for purposes that are wholly or mainly outside of the individual's trade, business, craft or profession, and references to "**the consumer**" shall be construed accordingly,

"**dangerous product**" means a product other than a safe product, and the feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be a dangerous product,

"**delivery**" means voluntary transfer of possession from one person to another,

"**digital content**" means data which is produced or supplied in digital form,

"**director**", in relation to a body, includes any person who occupies the position of, or fulfils the role of, director, by whatever name called, and also

includes the chief executive and any member of the committee or other similar governing body,

"**distance contract**" means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded, and "**means of distance communication**" means any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties,

"**distributor**" means a professional in the supply chain whose activity does not affect the safety properties of a product,

"**district heating**" means the supply of heat (in the form of steam or hot water or otherwise) from a central source of production through a transmission and distribution system to heat more than one building,

"**durable medium**" means paper or email, or any other medium that -

(a) allows information to be addressed personally to the recipient,

(b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information, and

(c) allows the unchanged reproduction of the information stored,

"**enhanced consumer measures**": see section 186,

"**functionality**" in relation to digital content includes region coding, restrictions incorporated for the purposes of digital rights management, and other technical restrictions,

the "**general safety requirement**": see section 131(5),

"**goods**" means any tangible moveable items, including water, gas and electricity if they are put up for supply in a limited volume or set quantity,

"**hire-purchase agreement**": see section 5,

"**invitation to purchase**" means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase,

"**medicinal product**" has the meaning given by section 133(1) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008[q],

"**mixed contract**" means a contract relating to a product which consists of any two or more of goods, a service, digital content, immoveable property or rights,

"**motor vehicle**" has the same meaning as in section 14(1) of the Road Traffic (Guernsey) Ordinance, 2019[r], subject to the proviso that a vehicle is not a motor vehicle if it is constructed or adapted -

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[q] Order in Council No. V of 2009. This enactment has been amended.

[r] Ordinance No. IX of 2019.

(a) for the use of a person with a physical impairment or disability, and

(b) so that it may only be used by one such person at any one time,

"**negligence**" means the breach of –

(a) any obligation to take reasonable care or exercise reasonable skill in the performance of a contract where the obligation arises from an express or implied term of the contract, or

(b) a customary law or common law duty to take reasonable care or exercise reasonable skill,

and it is immaterial whether breach of duty or obligation was inadvertent or intentional, or whether liability for it arises directly or vicariously.

"**notice**" means a notice in writing,

"**officer",** in relation to the TSS, means a person appointed or otherwise authorised in writing by the Committee to assist the TSS in carrying out its functions, or to undertake specified functions under this Ordinance, and "**TSS officer**" and cognisant expressions shall be construed accordingly,

"**off-premises contract**" means a contract between a trader and a consumer which is -

(a) a contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader,

(b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader,

(c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer, or

(d) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer,

"**on-premises contract**" means a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract,

"**personal injury**" includes any disease and any impairment of physical or mental condition,

"**premises**" includes any place and any stall, vehicle, ship or aircraft,

"**producer**" means -

(a) the manufacturer of a product, when that person is established in Guernsey, and any other person presenting themself as the manufacturer by affixing to the product that person's name, trademark or other

distinctive mark, or the person who reconditions the product,

(b) when the manufacturer is not established in Guernsey -

(i) if the person has a representative established in Guernsey, the representative,

(ii) in any other case, the importer of the product from a jurisdiction outside Guernsey,

(c) any other professional in the supply chain, in so far as the activities of that professional may affect the safety properties of a product,

and includes a producer acting personally or through another person acting in the producer's name or on the producer's behalf,

"**product**" means -

(a) goods,

(b) a service,

(c) digital content,

(d) immoveable property (but see section 110 as regards Chapter II of Part IV),

(e) rights or obligations, and

(f) a product of the kind mentioned in subsections (3) and (4),

"**professional diligence**" means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either -

(a) honest market practice in the trader's field of activity, or

(b) the general principle of good faith in the trader's field of activity,

"**public auction**" means a method of sale where -

(a) goods or services are offered by a trader to consumers through a transparent, competitive bidding procedure run by an auctioneer,

(b) the consumers attend or are given the possibility to attend in person, and

(c) the successful bidder is bound to purchase the goods or services,

"**recall**" means any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers,

"**recall notice**": see section 141,

"**requirement to mark**": see section 138,

"**requirement to warn**": see section 139,

"**record**" includes any book or document and any record in any form,

"**safe product**": see subsection (2),

"**safety notice**": see section 136(5),

"**sales contract**": see section 3,

"**ship**" includes any boat and any other description of vessel used in navigation,

"**supply**" in relation to a product includes making it available, in the context of providing service, for use by consumers,

"**suspension notice**": see section 137,

"**trader**" means a person acting for purposes related to that person's trade, business, craft or profession whether the person is acting personally or through another person acting on the trader's behalf or in the trader's name, and references to "**the trader**" shall be construed accordingly,

"**transactional decision**" means any decision taken by a consumer, whether it is to act or to refrain from acting, concerning -

(a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product, or

(b) whether, how and on what terms to exercise a contractual right in relation to a product,

"**transparent**": see sections 58(3) and 62(2),

"**the TSS**": see section 64,

"**withdrawal**" means any measure aimed at preventing the

distribution, display or offer of a dangerous product to a consumer, and

"**withdrawal notice**": see section 140.

(2) In this Ordinance, a "**safe product**" means a product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons; and in determining the foregoing, the following shall be taken into account in particular -

(a) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, instructions for installation and maintenance,

(b) the effect of the product on other products, where it is reasonably foreseeable that it will be used with other products,

(c) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product, and

(d) the categories of consumers at risk when using the product, in particular children and the elderly.

(3) A trader ("**T**") who demands payment from a consumer ("**C**") in full or partial settlement of C's liabilities or purported liabilities to T is to be treated for the purposes of this Ordinance as offering to supply a product to C.

(4) In a case falling within subsection (3), the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.

Citation.

205. This Ordinance may be cited as the Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023.

Commencement, and transitional provision.

206. (1) This Ordinance shall come into force on the date appointed by regulations of the Committee; and different dates may be appointed for different purposes.

(2) Regulations made under subsection (1) may make such transitional provision as the Committee thinks fit in relation to the coming into force of the Ordinance and specified provisions thereof.

SCHEDULE 1

Sections 28, 44, 54, 59, and 64.

ENFORCEMENT OF THE LAW ON UNFAIR CONTRACT TERMS

Application of Schedule.

1. This Schedule applies to –

(a) a term of a consumer contract,

(b) a term proposed for use in a consumer contract,

(c) a term which a third party recommends for use in a consumer contract, or

(d) a consumer notice.

Consideration of complaints.

2. (1) The TSS may consider a complaint about a term of a contract or a consumer notice to which this Schedule applies ("**a relevant complaint**").

(2) If the TSS considers a relevant complaint but decides not to make an application under paragraph 3 in relation to the complaint, it must give reasons for its decision to the person who made the complaint.

Application for injunction.

3. (1) The TSS may apply for an injunction against a person if it thinks that -

(a) the person is using, or proposing or recommending the use of, a term or notice to which this Schedule applies, and

(b) the term falls within any one or more of sub-paragraphs (2), (3) or (5).

(2) A term falls within this sub-paragraph if it purports to exclude or restrict liability of the kind mentioned in -

(a) section 28(1) (liability that cannot be excluded or restricted: goods contracts),

(b) section 44(1) (liability that cannot be excluded or restricted: digital content contracts),

(c) section 54 (liability that cannot be excluded or restricted: services contracts), or

(d) section 59(1) (contract term or notice cannot restrict or exclude negligence liability).

(3) A term or notice falls within this sub-paragraph if it is unfair to any extent.

(4) A term within paragraph 1(b) or (c) (but not within paragraph 1(a)) is to be treated for the purposes of section 56(3) and (4) (assessment of fairness) as if it were a term of a contract.

(5) A term or notice falls within this sub-paragraph if it breaches section 62 (requirement for transparency).

(6) The TSS may apply for an injunction under this paragraph in relation to a term or notice whether or not it has received a relevant complaint about the term or notice.

Determination of application.

4. (1) On an application for an injunction under paragraph 3, the court may grant an injunction on such conditions, and against such of the respondents, as it thinks appropriate.

(2) The injunction may include provision about -

(a) a term or notice to which the application relates, or

(b) any term of a consumer contract, or any consumer notice, of a similar kind or with a similar effect.

(3) It is not a defence to an application under paragraph 3 to show that, because of a rule of law, a term to which the application relates is not, or could not be, an enforceable contract term.

Undertakings.

5. (1) The TSS may accept an undertaking from a person against whom it has applied, or thinks it is entitled to apply, for an injunction under paragraph 3.

(2) The undertaking may provide that the person will comply with the conditions that are agreed between the person and the TSS about the use of terms or notices, or terms or notices of a kind, specified in the undertaking.

SCHEDULE 2

Section 57.

CONSUMER CONTRACT TERMS WHICH MAY BE REGARDED AS UNFAIR

PART I

LIST OF TERMS

1. A term which has the object or effect of excluding or limiting the trader's liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader.

2. A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader.

3. A term which has the object or effect of making an agreement binding on the consumer in a case where the provision of services by the trader is subject to a condition whose realisation depends on the trader's will alone.

4. A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract.

5. A term which has the object or effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the

trader a disproportionately high sum in compensation or for services which have not been supplied.

6. A term which has the object or effect of requiring a consumer who fails to fulfil that consumer's obligations under the contract to pay a disproportionately high sum in compensation.

7. A term which has the object or effect of authorising the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader to retain the sums paid for services not yet supplied by the trader where it is the trader who dissolves the contract.

8. A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.

9. A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably early.

10. A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.

11. A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.

12. A term which has the object or effect of permitting the trader to determine the characteristics of the subject matter of the contract after the consumer has become bound by it.

13. A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or services to be provided.

14. A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.

15. A term which has the object or effect of permitting a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.

16. A term which has the object or effect of giving the trader the right to determine whether the goods, digital content or services supplied are in conformity with the contract, or giving the trader the exclusive right to interpret any term of the contract.

17. A term which has the object or effect of limiting the trader's obligation to respect commitments undertaken by the trader's agents or making the trader's commitments subject to compliance with a particular formality.

18. A term which has the object or effect of obliging the consumer to fulfil all of the consumer's obligations where the trader does not perform the trader's obligations.

19. A term which has the object or effect of allowing the trader to transfer the trader's rights and obligations under the contract, where this may reduce the guarantees for the consumer, without the consumer's agreement.

20. A term which has the object or effect of excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, in particular by —

(a) requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions,

(b) unduly restricting the evidence available to the consumer, or

(c) imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.

PART II

SCOPE OF PART I

Financial services

1. Paragraph 8 (cancellation without reasonable notice) does not include a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, if the supplier is required to inform the consumer of the cancellation immediately.

2. Paragraph 11 (variation of contract without valid reason) does not include a term by which a supplier of financial services reserves the right to alter the rate of interest payable by or due to the consumer, or the amount of other charges for financial services without notice where there is a valid reason, if -

(a) the supplier is required to inform the consumer of the alteration at the earliest opportunity, and

(b) the consumer is free to dissolve the contract immediately.

Contracts which last indefinitely

3. Paragraphs 11 (variation of contract without valid reason), 12 (determination of characteristics of goods, etc after consumer bound) and 14 (determination of price after consumer bound) do not include a term under which a trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration if -

(a) the trader is required to inform the consumer with reasonable notice, and

(b) the consumer is free to dissolve the contract.

Sale of securities, foreign currency etc

4. Paragraphs 8 (cancellation without reasonable notice), 11 (variation of contract without valid reason), 14 (determination of price after consumer bound) and 15 (increase in price) do not apply to —

(a) transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control, and

(b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

Price index clauses

5. Paragraphs 14 (determination of price after consumer bound) and 15 (increase in price) do not include a term which is a price-indexation clause (where otherwise lawful), if the method by which prices vary is explicitly described.

SCHEDULE 3

Section 70.

INFORMATION RELATING TO ON-PREMISES CONTRACTS

The information referred to in section 70(1) is -

(a) the main characteristics of the goods, services or digital content, to the extent appropriate to the medium of communication and to the goods or services,

(b) the identity of the trader (such as the trader's trading name), the geographical address at which the trader is established and the trader's telephone number,

(c) the total price of the goods, services or digital content inclusive of taxes, or where the nature of the goods, services or digital content is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,

(d) where applicable, all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable,

(e) where applicable, the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods, to perform the service or to supply the digital content,

(f) where applicable, the trader's complaint handling policy,

(g) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract,

(h) where applicable, the existence and the conditions of after-sales services and commercial guarantees,

(i) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract,

(j) where applicable, the functionality, including applicable technical protection measures, of digital content, and

(k) where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

SCHEDULE 4

Sections 73 and 74.

INFORMATION RELATING TO DISTANCE AND OFF-PREMISES CONTRACTS

The information referred to in sections 73(2) and 74(1) is (subject to the note at the end of this Schedule) -

(a) the main characteristics of the goods, services or digital content, to the extent appropriate to the medium of communication and to the goods, services or digital content,

(b) the identity of the trader (such as the trader's trading name),

(c) the geographical address at which the trader is established and, where available, the trader's telephone number, fax number and e-mail address, to enable the consumer to contact the trader quickly and communicate efficiently,

(d) where the trader is acting on behalf of another trader, the geographical address and identity of that other trader,

(e) if different from the address provided in accordance with paragraph (c), the geographical address of the place of business of the trader, and, where the trader acts on behalf of another trader, the geographical address of the place of business of that other trader, where the consumer can address any complaints,

(f) the total price of the goods, services or digital content inclusive of taxes, or where the nature of the goods, services or digital content is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,

(g) where applicable, all additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable,

(h) in the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs,

(i) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate,

(j) the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods, to perform the services or to supply the digital content,

(k) where applicable, the trader's complaints-handling policy,

(l) where a right to cancel exists, the conditions, time limit and procedures for exercising that right in accordance with Part III,

(m) where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods,

(n) that, if the consumer exercises the right to cancel after having made a request in accordance with section 93(1), the consumer is to be liable to pay the trader reasonable costs in accordance with section 93(4),

(o) where under sections 85, 93 or 94 there is no right to cancel or the right to cancel may be lost, the information that the consumer will not benefit

from a right to cancel, or the circumstances under which the consumer loses the right to cancel,

(p) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract,

(q) where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees,

(r) the existence of relevant codes of conduct, and how copies of them can be obtained, where applicable,

(s) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract,

(t) where applicable, the minimum duration of the consumer's obligations under the contract,

(u) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader,

(v) where applicable, the functionality, including applicable technical protection measures, of digital content,

(w) where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of, and

(x) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

Note: In the case of a public auction, the information listed in paragraphs (b) to (e) may be replaced with the equivalent details for the auctioneer.

SCHEDULE 5

Sections 71, 72, 74 and 75.

INFORMATION ABOUT THE EXERCISE OF THE RIGHT TO CANCEL

PART A
MODEL INSTRUCTIONS FOR CANCELLATION

1. Right to cancel.

(1) You have the right to cancel this contract within 14 days without giving any reason.

(2) The cancellation period will expire after 14 days from the day [*see Note 1*].

(3) To exercise the right to cancel, you must inform us [*see Note 2*] of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model cancellation form, but it is not obligatory. [*see Note 3*]

(4) To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

2. Effects of cancellation.

(1) If you cancel this contract, we will reimburse to you all payments received from you, including the costs of delivery (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).

(2) We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by you.

(3) We will make the reimbursement without undue delay, and not later than -

(a) 14 days after the day we receive back from you any goods supplied, or

(b) (if earlier) 14 days after the day you provide evidence that you have returned the goods, or

(c) if there were no goods supplied, 14 days after the day on which we are informed about your decision to cancel this contract.

(4) We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement. [*see Note 4*].

3. Notes on instructions for completion:

(1) Insert one of the following texts between inverted commas -

(a) in the case of a service contract or a contract for the supply of digital content which is not supplied on a tangible medium: "of the conclusion of the contract.",

(b) in the case of a sales contract or a contract for the supply of digital content which is not supplied on a tangible medium: "of the conclusion of the contract.",

(c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.",

(d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.",

(e) in the case of a contract for regular delivery of goods during a defined period of time: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.".

(2) Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

(3) If you give the option to the consumer to electronically fill in and submit information about the consumer's cancellation from the contract on your website, insert the following: "You can also electronically fill in and submit the model cancellation form or any other clear statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a cancellation on a durable medium (e.g. by e-mail) without delay.".

(4) In the case of sales contracts in which you have not offered to collect the goods in the event of cancellation insert the following: "We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.".

(5) If the consumer has received goods in connection with the contract -

(a) insert -

(i) "We will collect the goods.", or

(ii) "You shall send back the goods or hand them over to us or [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.",

(b) insert -

(i) "We will bear the cost of returning the goods.",

(ii) "You will have to bear the direct cost of returning the goods.",

(iii) if, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: "You will have to bear the direct costs of returning the goods, … GBP [insert the amount]"; or if the cost of returning the goods cannot reasonably be calculated in advance: "You will have to bear the direct costs of returning the goods. The cost is estimated at a maximum of approximately … GBP [insert the amount].", or

(iv) if, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have

been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense.", and

(c) insert "You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.".

(6) In the case of a service contract insert the following: "If you requested to begin the performance of services during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated us your cancellation from this contract, in comparison with the full coverage of the contract.".

PART B

MODEL CANCELLATION FORM

To [*the trader's name, geographical address and, where available, fax number and e-mail address are to be inserted by the trader*]:

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*]/for the supply of the following service [*],

Ordered on [*]/received on [*],

Name of consumer(s),

Address of consumers(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[*] *Delete as appropriate*.

SCHEDULE 6

Sections 102 and 107.

COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

1. Claiming to be a signatory to a code of conduct to which the trader is not a signatory.

2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

4. Claiming that a trader (including that trader's commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that the trader will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

6. Making an invitation to purchase products at a specified price and then -

(a) refusing to show the advertised item to consumers,

(b) refusing to take orders for it or deliver it within a reasonable time, or

(c) demonstrating a defective sample of it,

with the intention of promoting a different product (bait and switch).

7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language other than English and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

9. Stating or otherwise creating the impression that a product can legally be sold when it cannot legally be sold.

10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or the consumer's family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not.

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

15. Claiming that the trader is about to cease trading or move premises when that trader is not intending to cease trading or move premises.

16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illnesses, dysfunctions or malformations.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

20. Describing a product as "gratis", "free", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product when that consumer has not done so.

22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to that person's trade, business, craft or profession, or falsely representing oneself as a consumer.

23. Creating the false impression that after-sales service in relation to a product is available in a place other than Guernsey.

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.

25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation.

26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation.

27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising that consumer's contractual rights.

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer.

30. Explicitly informing a consumer that if the consumer does not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or, on doing a particular act, will win, a prize or other equivalent benefit, when in fact either -

(a) there is no prize or other equivalent benefit, or

(b) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

P.2023/6

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

TRANSFER OF FEE-MAKING POWERS TO THE
GUERNSEY FINANCIAL SERVICES COMMISSION

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Transfer of Fee-Making Powers to the Guernsey Financial Services Commission' submitted by the Policy & Resources Committee, they are of the opinion:

1. To approve the re-vesting of fee-making powers in the Guernsey Financial Services Commission.

2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

TRANSFER OF FEE MAKING POWERS TO THE
GUERNSEY FINANCIAL SERVICES COMMISSION

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

23 January 2023

Dear Sir

1. EXECUTIVE SUMMARY

1.1 In 2014, the States of Deliberation (the "States") transferred the fee making powers of the Guernsey Financial Services Commission ("the Commission") to the then Policy Council and the Commerce and Employment Department.

1.2 The current position means that, following a period of public consultation, the Commission's fees are set by regulations which are drafted and approved by the President of the Policy & Resources Committee (the "Committee").

1.3 The Commission has advised the Committee that this position is likely to be viewed negatively by any external body examining the efficacy of the regulation of the financial sector. The Commission has also advised the Committee that this arrangement could call into question the independence of the Commission from the States.

1.4 It is therefore recommended that the States accept the recommendation of the Committee to direct the preparation of such legislation as may be necessary to replace The Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015 and to allow the re-vesting of the fee making powers in the Commission.

2. BACKGROUND

13 February 2014 – Review of the funding of the Guernsey Financial Services Commission ("the Report")

2.1 In July 2013, following a States' debate on the Commission's 2012 Annual Report and Financial Statements, the then-Policy Council commissioned an independent report entitled "Reviewing the Funding Mechanism for the Guernsey Financial Services Commission"[1]. This report was carried out by Mr Ian Tower[2].

2.2 The Report was commissioned following recommendations made at the States' debate which "*…highlighted concerns among policy-makers and in the financial sector over recent growth in GFSC fees"*[3] and raised concerns over *"…the transparency of the GFSC's finances."*[4]

2.3 The Terms of Reference, set by the States, were as follows:

"*To review potential alternative funding arrangements for the Guernsey Financial Services Commission as presently commonly operated globally, including direct funding by the government, and provide a series of potential options for consideration, together with worked proposals on their implementation, and provide a clear recommendation on future arrangements. That recommendation should be measured against the need to ensure that international standards and expectations are met and the operational independence of the Commission is maintained*."[5]

2.4 This detailed report sets out that "*…financial regulation is almost universally funded by central bank income, regulated firms, governments or a mix."*[6]. After considering each of the options, it recommended that no changes were made to the funding arrangements: *"The recommendation of the paper is that in the interests of maintaining effective regulation, such changes in GFSC funding are not made.*[7]*"*, highlighting the fact that *"Current funding arrangements for the GFSC are*

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[1] The report is included at Appendix 1.

[2] Taken from the footnote of page 1 of the paper presenting the report to the Policy Council: "*Ian Tower is an independent expert in financial regulation. Until late 2012, he was a senior manager at the United Kingdom's Financial Services Authority, where various roles included policy development and supervision of insurance companies and foreign-owned banks. From 2007 to 2010 he was seconded by the FSA to the International Monetary Fund, where he worked on financial sector issues. He has worked previously at the Bank of England and the Cabinet Office. Mr Tower now works on financial regulation issues as consultant to international organisations and other clients."*

[3] Appendix 1 – page 4, para. 17.

[4] Appendix 1 – page 4, para. 18.

[5] Appendix 1 – page 1, para. 3.

[6] Appendix 1 – page 5, para. 20.

[7] Appendix 1 – page 2, para. 11.

consistent with and supportive of its independence from government and industry, which ranks high by international comparison[8]".

Consideration of the Report by the States

2.5 The Report was presented to the States in July 2014. The recommendations made by the then Policy Council included that *"fees regulations currently made by the Commission should be made by the Policy Council…and the Commerce and Employment Department"[9].*

2.6 The policy letter, although setting out that the Report's *"principal recommendation is that no change should be made to the Commission's existing funding mechanism"[10]* goes on to state that *"While the Policy Council agrees that no fundamental change should be made, it is recommending that the States should make an amendment to the process through which fee regulations are enacted, so that, in future, regulations will be made by the Policy Council…and the Commerce and Employment Department…rather than by the Commission."*

2.7 The States accepted the recommendations and the Commission's fee making powers were subsequently transferred by Ordinance[11].

3. CURRENT POSITION

Independence

3.1 The Committee currently sets the Commission's fees, through regulations made following an industry consultation undertaken by the Commission.

3.2 The independence of the financial regulator from the State continues to be at the forefront of effective regulation. It is one of the primary considerations of those bodies assessing the effectiveness of national regulation of the financial industry.

3.3 The assessment of independence includes consideration of the way in which the regulator is funded. The Report includes a summary, still relevant today, of the international standards which are relevant in respect of fee-setting funding. These include:

Basel Committee on Banking Supervision (Basel Core Principles, 2012)

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[8] Appendix 1 – page 2, para. 7.

[9] Billet d'État XX, 2014, 'Reviewing the funding mechanism for the Guernsey Financial Services Commission, para. 10.1.2.

[10] Billet d'État XX, 2014, 'Reviewing the funding mechanism for the Guernsey Financial Services Commission, – page 1, para. 1.2.

[11] The Guernsey Financial Services Commission (Transfer of Functions)(Fees)(Bailiwick of Guernsey) Ordinance, 2015 – coming into force on 1st May 2015.

- BCP 1 Independence, accountability, resourcing and legal protection for supervisors: The supervisor possesses operational independence, transparent processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources.
- BCP1, Essential Criterion 4: The supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence.

International Association of Insurance Supervisors (IAIS) (Insurance Core Principles, 2011)

- ICP 2 Supervisor: The supervisor, in the exercise of its functions and powers, is operationally independent, accountable and transparent; protects confidential information; has appropriate legal protection; has adequate resources; meets high professional standards.

- ICP 2.4: The supervisor is financed in a manner that does not undermine its independence. The supervisor had discretion to allocate its resources in accordance with its mandate and objectives and the risks it perceives.

International Organisation of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation (2011):

- Principle 2, Key Issue 4: The regulator should have a stable source of funding sufficient to exercise its powers and responsibilities.

- Principle 3: The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.[12]

3.4 Independence has been explored more recently, in the Bank of England's 2020 paper, "Does regulatory and supervisory independence affect financial stability?"[13] (the "Paper"). This Paper looked at reforms to the independence of the regulator and the subsequent effects on financial stability - the focus being on independence from politically elected bodies.

3.5 The Paper highlights the importance of independence: *"The independence of supervisors from governments is…one of the pillars of the Basel Committee's core principles for effective banking supervision…Similarly, the Financial Stability Board*

[12] Appendix 1 – page 9, Box 3.

[13] 'Does regulatory and supervisory independence affect financial stability?', Nicolo Fraccaroli, Rhiannon Sowerbutts and Andrew Whitworth, Bank of England Staff Working Paper No. 893, November 2020. https://www.bankofengland.co.uk/-/media/boe/files/working-paper/2020/does-regulatory-and-supervisory-independence-affect-financial-stability.pdf

includes the need for sufficient independence for supervisors among its recommendations to improve the intensity and effectiveness of supervision."

3.6 Having looked at 3,000 banks over 43 countries from 1999 to 2019, the Paper's conclusion was as follows – *"We find that regulatory and supervisory independence is associated with a significant improvement in financial stability."*

The Commission's position

3.7 In the Report, Ian Tower warned that "*international bodies could make a negative assessment of changes in GFSC funding…"*. This shift in perspective is already apparent and can be demonstrated. In 2010, the IMF reported that – *"The GFSC enjoys considerable independence, and is subject to suitable accountability provisions."*[14]

3.8 By 2019 IAIS, following its assessment, recommended "that Guernsey consider the independence, transparency and accountability of the GFSC by: Allowing the GFSC rather than the government to set the level of fees on entities it regulates." [15]

3.9 The Commission is mindful that the current position undermines the view that it is an appropriately independent regulator. The funding related recommendations made, by the public review of Bailiwick financial services regulation by IAIS in 2019, have not been carried out an, as such this represents a gap in the Bailiwick's overall compliance with international standards.

3.10 In comparison, the Jersey Financial Service Commission has the power to set its own fees[16], as does the UK Financial Conduct Authority and the UK Prudential Regulation Authority. The July 2014 policy letter set out that the Commission, at that point, was in an unusual position in that it could make legislation[17]. However, it is not unusual for statutory bodies, such as the Commission, to have the power to make secondary legislation and this was highlighted in the Report – *"For agencies that have fees as a source of revenue, half report that fees charged are set in legislation, while most of the rest (36 percent) set fees by [their own] regulations, though some of these have to consult with a ministry."*[18]

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[14] International Monetary Fund Financial Sector Stability Assessment 2010, para. 60.

[15] International Association of Insurance Supervisors Detailed Assessment of Insurance Core Principles – Bailiwick of Guernsey, page 30, Recommendation 2. See Appendix 2.

[16] The Jersey law copied the Guernsey law, at the time when the Commission retained the powers, as it was considered to be an exemplar in the industry.

[17] Billet d'État XX, 2014, 'Reviewing the funding mechanism for the Guernsey Financial Services Commission, para. 1.2 "It is quite unusual for entities independent of government such as the Commission to have legislative powers." repeated at para. 6.4.

[18] Appendix 1, page 8, Box 2.

4. Summary

4.1 Following consideration of a broad range of international standards, the Policy & Resources Committee has decided to recommend to the States of Deliberation that the Guernsey Financial Services Commission's ability to implement its own fees be reinstated.

4.2 The principal grounds for this decision are to ensure that the Commission can be clearly seen to be a credible, operationally independent regulator, complying with international norms as set out by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors and the International Organisation of Securities Commissions.

4.3 A return to the original position, prior to the 2015 legislative changes, would not impact on the necessary oversight of the States. After a period of industry consultation, the regulations would be laid before the States and can be approved or annulled.

4.4 This process rightly respects the sovereignty of the States without any overt undermining of the Commission's independence.

5. Compliance with Rule 4

5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

5.2 In accordance with Rule 4(1):

a) The propositions contribute to the States' objectives and policy plans by ensuring operational independence of the financial regulator which is a critical facet of regulatory effectiveness in several international standards.

b) In preparing the propositions, the Policy & Resources Committee has engaged with the Committee *for* Economic Development, the financial regulator and the Guernsey International Business Association.

c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.

d) There are no financial implications to the States of carrying the proposal into effect.

5.3 In accordance with Rule 4(2):

a) The propositions relate to the Committee's purpose and policy responsibilities for the regulation of financial services.

b) The propositions have the unanimous support of the Committee.

Yours faithfully

PTR Ferbrache
President

MAJ Helyar
Vice President

JP Le Tocq
DJ Mahoney
RC Murray

Guernsey: Review of the funding of the Guernsey Financial Services Commission

Report by Ian Tower, Consultant[1]

13 February 2014

1. The States of Guernsey (Guernsey's government) has commissioned this review of the funding arrangements of the Guernsey Financial Services Commission (GFSC), the regulatory authority for financial services.

2. The GFSC is funded mostly by fees levied from regulated entities. Discussions in mid-2013 on the GSFC's 2012 Annual Report in the States of Deliberation (Guernsey's parliament and overarching executive authority) concluded in an instruction to the Policy Council (the coordinating body comprising departmental ministers) to review alternative funding mechanism[2].

3. The Terms of Reference for this review developed by the States of Guernsey are:

   "To review potential alternative funding arrangements for the Guernsey Financial Services Commission as presently commonly operated globally, including direct funding by the government, and provide a series of potential options for consideration, together with worked proposals on their implementation, and provide a clear recommendation on future arrangements. That recommendation should be measured against the need to ensure that international standards and expectations are met and the operational independence of the Commission is maintained."

4. This review has been informed by discussions in Guernsey on 16th December 2013 with the Ministers for Treasury and Resources and Commerce and Employment, senior staff of the States of Guernsey, the GFSC and Guernsey Finance (the body responsible for promotion of financial services in Guernsey) and with representatives of financial services sector participants in a meeting coordinated by the Guernsey International Business Association (GIBA). The author of this report is grateful for all the valuable input and especially to Mike Brown, formerly Chief Executive, and staff of the States of Guernsey for their support.

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[1] See the end of this document for background on the author.

[2] The States agreed: "To direct the Policy Council in conjunction with the Commerce & Employment Department (and having particular regard to the latter's on-going work following its consultation entitled "A Regulatory Framework for the 21st Centre") to review the funding mechanism for the Guernsey Financial Services Commission ("the Commission") and in particular whether the Commission could in future be funded by way of direct grant from the Treasury & Resources Department and to report back to the States accordingly by no later than 30th September 2012." (States, 30 July 2013, http://www.gov.gg/Billets2013).

5. After a summary and statement of recommendations, Section I of this report provides an overview of current arrangements for GFSC funding. Section II reviews practices on funding of financial sector regulators internationally. Section III then summarises the approach and expectations of international bodies. Section IV discusses potential alternative funding mechanisms for the GFSC. Section V makes recommendations.

Summary and recommendations

6. There are limited sources from which regulators can derive their funding, the key ones being central bank income, where available; fees and levies on regulated entities; and the government budget. A 2009 IMF survey of around 100 countries suggested that only around 25% of regulators have government funding as their primary income source. However, even if regulators are funded from non-government sources, government often has a role in setting the level of industry fees or in approving the regulator's expenditure budget.

7. Current funding arrangements for the GFSC are consistent with and supportive of its independence from government and industry, which ranks high by international comparison.

8. International standard-setting bodies such as the Basel Committee on Banking Supervision do not provide detailed standards on funding of financial sector regulators. Their focus is on how funding arrangements contribute to, or detract from, the regulator's operational independence and the adequacy of its resources relative to its objectives. IMF assessments take a similar approach. Government funding is not on its own a reason for a significant negative assessment. However, international bodies are focusing more on funding in the context of efforts since the financial crisis to strengthen not just regulatory standards but the capacity of regulatory bodies.

9. Alternative funding arrangements could be introduced for Guernsey which would either:

   - keep fees as the main source of GFSC funding but give the government greater control over the setting of the level of the fees or of GFSC expenditure (or both); or

   - make the government budget the major source of funding, with the industry continuing to pay fees, which would become payable to government rather than to the GFSC.

   Either approach would enable the government to influence the direct costs to the financial sector of the GFSC as a tool to help meet its objective of fostering growth and innovation in financial services.

10. However, safeguards would be needed to protect the operational independence and effectiveness of the Commission. Even with such safeguards, international bodies could make a negative assessment of changes in GSFC funding in the circumstances in which they would occur.

11. The recommendation of the paper is that in the interests of maintaining effective regulation, such changes in GFSC funding are not made. However, current arrangements can also be improved, to focus more attention on key drivers of regulatory spending (for example through a plan and budget publication) and to increase the transparency of GFSC policies and practices in relation, for example, to income from financial penalties and senior staff remuneration.

Section I: Current GFSC funding arrangements

12. This section examines the current funding mechanism. References are to The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, referred to in this document as the "FSC Law".

13. There are three main features of the GFSC's financial arrangements to highlight:

- **Most income is derived from fees charged to the financial services sector and there is no government funding[3]**. The GFSC has powers under various regulatory laws to charge fees for regulatory transactions (mainly new license applications) and to impose levies on existing licensed entities. The level of these fees is in almost all cases set by the GFSC itself under provisions in legislation enabling it to make Regulations[4]; the GFSC also derives income from discretionary and administrative (automatic) monetary penalties imposed on regulated entities, which are payable to the Commission but must be taken into account when setting future fee levels[5]. (The Commission is starting to impose significant discretionary fines - one fine was imposed in 2012). While there are provisions in law for the government to contribute to GFSC resources[6], particularly (but not confined to) where a Commission shortfall is expected, these have not been used and are not expected to be used in practice.

- **The GFSC has full control of its own expenditure**. It is empowered to set its own budget and determine its spending priorities. Most significantly, it sets its own salary scales and is independent of the annual government budget approval process. In return, the government currently expects the GFSC to be wholly self-financing.

[3] FSC Law, section 12 sets out general funding provisions.
[4] The exception is for fees charged to professional service providers (lawyers, accountants and estate agents) to meet the costs of GFSC regulation to which they are subject.
[5] FSC Law, section 11D, which also provides that individual penalties may not exceed £200,000.
[6] FSC Law, section 14

- **Accountability to government and industry is provided for by both consultation and review requirements**. The Commission consults with government and industry on fees in the context of regulatory objectives and priorities according to a standard timetable for the second half of each year; early discussions are held with government, as required under the FSC Law[7], and fee proposals are then set out in a consultation paper. The States of Deliberation has the opportunity each year to review the fees regulations, which are laid before the States after enactment by the Commission (in practice in February of the year to which the fees relate) and laws also provide for the States to be able to annul regulations[8].

  In addition, the Commission's annual report, including its income and expenditure must also be laid before the States[9], giving the opportunity (as was taken in 2013) for a debate on the Commission's work generally as well as its finances.

14. A strong commitment to providing the GFSC with both operational independence and adequate resources to meet its objectives is evident in the recent discussions in the States, the GFSC's legal and policy framework and the Commission's use of its powers since the financial crisis. The FSC Law, particularly since significant revisions in 2008, seeks to balance independence with accountability and transparency of how the Commission uses its resources. As the IMF has noted in its assessments, the GFSC enjoys a high degree of independence[10]. The financing arrangements are an important contributor to this independence.

15. Since 2008, the Commission has in practice been able to raise additional fees to develop its supervision in response to the financial crisis, significantly in a number of years. Total fee income has increased from £9.4 million in 2008 to £12.25 million in 2013 (as estimated in the 2014 fees consultation exercise), an increase of around one third. The increase in Jersey to 2012 (excluding fees from Companies Registry work, a function which the GFSC does not have) has been 22%. Increases in staffing and in legal and enforcement costs have been material for regulators. The difference relates mainly to one-off costs incurred by the GFSC on an independent review of its organisation and conduct of its business, together with associated implementation costs.

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[7] FSC Law section 13 (b)

[8] For example, section 25(3) of the FSC Law states that regulations made under that law must be laid before and may be annulled by the Stats. However, annulment would be without prejudice to anything done under the relevant regulation.

[9] Sections 6 of the FSC Law 1987 (annual report) and 18 (annual accounts).

[10] IMF Financial Sector Stability Assessment, 2010, paragraph 60: "The GFSC enjoys considerable independence, and is subject to suitable accountability provisions. The GFSC is broadly adequately resources."

16. While the amount of GFSC fees is outside the scope of the review, it is noteworthy that regulators seen as both independent and as having performed well through the financial crisis such as the Canadian prudential regulator have been significantly increasing their resources[11].

17. The debate in the States in mid-2013 has, however, highlighted concerns among policy-makers and in the financial sector over recent growth in GFSC fees. The Commission has committed to raise its total fee income by no more than 2% per annum over three years starting in 2013.

18. Concerns have also been raised over the transparency of the GFSC's finances. As mentioned, GFSC explains its approach in its annual fees consultation exercise (focusing mostly on how fees are calculated, the sectoral distribution etc.) and in its annual report. Some other regulators (including the UK, Australia – APRA - and the Jersey FSC) publish plan and budget documents, using these to explain in some detail the key drivers of their work and expected costs. Further, some other regulators publish more detail on actual costs including senior executive remuneration. In the UK, Australia, Jersey and Isle of Man, for example, the chief executive's remuneration is either disclosed directly or is observable from published salary bands. GFSC's disclosure is more limited. Section V of this paper includes recommendations in this area.

Section II: Funding arrangements internationally

19. There are few sources from which regulators can derive their funding. The key ones are central bank income, fees and levies on regulated entities (to which may be added financial penalties) and government. Box 1 below sets out more detail and examples of each model.

20. In theory, there are other sources of income – investment income, sales of services etc; and regulators could be funded by levies on users of financial services (transactions taxes etc payable to the regulator). In practice, financial regulation is almost universally funded by central bank income, regulated firms, governments or a mix. As the GFSC is not a monetary authority, this paper focuses on government funding as the only practical alternative to current arrangements.

21. Although this review's terms of reference focus on the GFSC's source of funds, it is important also to consider the overall funding mechanism, including the ways in which governments influence the regulator's funding even where they are not its source. There are three key drivers:

[11] Fees in Canada (OSFI, the federal bank and insurance prudential regulator) have increased, depending on sector, by between 40% and 60% from March 2008 to March 2013. Spending and fees of the Australian prudential regulator APRA rose by less than 20% in the same period but has more than doubled since 2002.

- The need for mechanisms to hold regulatory authorities accountable, including for their financial management. In many countries this is achieved, as in Guernsey, through regular liaison and published reports. Elsewhere, governments exercise control over regulatory authorities' budgets and/or set fees directly. The risk of budgetary control by government is that it will be used to influence regulatory decisions; or simply that the budget is subject to broader fiscal policy pressures that may in particular lead to funding reductions at key times when, for example, financial stability is at risk.

- The contribution which levies on the financial sector can make to government revenues. Comparison across countries is complicated by the inclusion and scale of companies registration work in some jurisdictions (for example, BVI[12] and the Isle of Man) and in some cases, of insurance premium tax. In a number of countries, fees and levies raised from the financial sector significantly exceed funding of the regulator.

- The need for fees to be set as enforceable obligations on regulated entities, which is possible in some jurisdictions, depending on the legal system, only through the government's legislative process. This creates at the least a dependence on that process and an opportunity for active government involvement.

[12] The fees collected by the BVI FSC and passed on to government account for some 60% of total government revenue.

Box 1: Funding sources for financial regulation

Funding sources available to regulatory agencies may be classified by three main sources:

Central banks: where the central bank is the supervisor, as is often the case for banks, general central bank income may be available to finance supervisory work. (Example: US Federal Reserve) However, many central banks and monetary authorities, particularly where they also supervise non-banks, levy fees on regulated firms (Examples: Bank of England, Bermuda Monetary Authority, Monetary Authority of Singapore). Some are funded by government (Example: Cayman Islands Monetary Authority)

Regulated firms and applicants for new licenses: Fees and levies can be designed in various ways. Most common are levies proportionate to the scale of business of the individual firm and charges for regulatory transactions (new licenses, waivers, transfers of business, applications for approvals of capital models etc.). Some regulators levy risk-based fees, i.e. higher for institutions assessed as greater risk. Charges for supervisory work (examinations or onsite inspections, depending on the terminology) are common. Some jurisdictions require annual relicensing of all entities, charging the same flat fee as a license applicant would pay, or require licensees to make monetary deposits with the regulator which are used to generate interest income. Financial penalties, in some cases imposed on unregulated as well as regulated entities, may also generate income for regulators, where not passed to government or recycled to the regulated population. (Examples: Canada - OSFI, Australia – APRA, Jersey FSC, GFSC)

Governments: some regulators are formally part of government rather than separate agencies and subject to the government budget process. In other cases, funding is provided by government grant, again out of general government revenue. (Examples: US SEC, Australia – ASIC, Caymans Islands Monetary Authority, Isle of Man FSC and IPA) In the British Virgin Islands, the BVIFSC retains a share of fees collected which by law may vary from 7.5% to 15% of the total.

Notes:

(i) Mixed models are also found, e.g., the Netherlands - both government and fee income.
(ii) Authorities which collect fees but pass them to government are best regarded as government financed.
(iii) Most regulators derive some (normally negligible) income from investments, publications, events etc.

22. Examples from Australia are illustrative:

- In the case of APRA, the prudential regulator of banks and insurance companies which is funded by industry fees, the central government approves the annual budget, which then in effect determines the rates at which fees are levied (i.e. they are set by APRA at the level required to fund, with other sources of income, the expenditure budget).

- In the case of ASIC, the markets, securities and business conduct regulator, the levies are collected by the regulator and passed on to government in full. Government approves the ASIC budget, expenditure being typically equivalent to a share of revenues raised.

23. Even where the regulator is funded by fees and is independent of the government budgeting process, practice varies on how fees are set. Two models may be identified:

- The regulator sets fees itself using its own powers with no involvement of government (executive or parliament). In the UK, for example, the regulators have rule-making powers in respect of fees (their rule-making authority is unusually wide by international standards). In some cases, as in Guernsey, the regulator issues fees regulations and these have to be laid before parliament, giving an opportunity for objection. But approval is not required and the regulator is not dependent on government processes.

- More frequently, the regulator is dependent on the government to legislate to make fees into binding obligations. Legislation is enacted each year. This is usually through secondary legislation (regulations) and typically, both government support and parliamentary approval are required. Occasionally, as in Gibraltar, the regulator is able to vary fee levels set in legislation but only with the permission of the finance minister.

24. Regulators' approach to income from financial penalties (fines) is not always easily understood from published information. Much depends on the legal system and how practice has developed over time. In many countries, including Guernsey until 2008, financial penalties have been reserved for criminal authorities and the courts. In principle, penalties may be applied for the benefit of the government, the regulator, the regulated population, victims (if identifiable) or a mix. In practice, it appears to be rare, because of unwanted incentives, for penalties to be retained by the regulator and they can be discounted as a funding source.

25. The case of the UK is illustrative. Both the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) are explicitly required to delink decisions on the scale of penalties from regulatory costs – i.e. they must not be regarded as a funding source. They both must remit income from penalties to HM Treasury, but after deduction of enforcement costs, the "retained penalties" being subject to requirement for a “financial penalty scheme” establishing how they will be used “for the benefit of regulated persons”.[13] Both regulators in practice remit retained penalties to the regulated population as discounts to annual fees.[14]

[13] Paragraph 21 of Schedule 1ZA of Financial Services and Markets Act 2000 (as amended by the 2012 Financial Services Act). http://www.legislation.gov.uk/ukpga/2012/21/schedule/3/enacted

[14] FCA publication, How we raise our fees, July 2013, http://www.fca.org.uk/static/documents/how-we-raise-our-fees.pdf

26. In 2009, the IMF published the results of a survey of governance practices in which 140 agencies participated from over 100 countries.[15] This found that only around 25% of agencies are funded by government, although government funding is relatively more important for securities regulators (i.e. those which regulate securities only). A separate IMF study on securities regulation, also published in 2009, highlighted dependence on government funding as a driver of under-resourcing in many countries.[16] More detail of the IMF's wider survey's findings are in Box 2 below. Although it should be noted that the inputs predate the financial crisis, the survey results indicate a relatively high degree of reliance on fees payable by regulated entities.

Box 2: Conclusions on funding from 2009 IMF survey of governance of regulators

- The most important source of funding is central bank funds. Ninety percent of agencies housed in central banks are primarily funded by their central banks.
- The second major source of funding is fees imposed on regulated entities.
- About 76 percent of insurance-only and securities-only supervisors receive funding from fees. However, only 35 percent of bank-only supervisors are reliant on fee income.
- Almost 60 percent of all supervisors indicated that they had the independence to determine budget and funding allocations.
- Slightly more than a quarter of the agencies receive allocations from their central government. For 45 percent of securities regulators, government appropriations are their second most important source of funding.
- One-fourth of insurance regulators receive funding from the government budget, but only 8 percent of bank supervisors.
- For agencies that have fees as a source of revenue, half report that fees charged are set in legislation, while most of the rest (36 percent) set fees by [their own] regulations, though some of these have to consult with a ministry.

27. The IMF survey included few supervisors of international financial services centres[17]. A review of available information on other Group of International Financial Services Centre Supervisors (GIFCS) members points to a picture similar to the IMF survey. Many of these regulators are also central banks or monetary authorities[18]. The others are all funded by fees with varying degrees of government involvement in setting fees and expenditure control.

[15] Governance Practices at Financial Regulatory and Supervisory Agencies, Steven Seelig and Alicia Novoa, WP/09/135, July 2009, http://www.imf.org/external/pubs/ft/wp/2009/wp09135.pdf

[16] The Challenge of Enforcement in Securities Markets: Mission Impossible? Ana Carvajal and Jennifer Elliott, WP/09/168, August 2009, http://www.imf.org/external/pubs/ft/wp/2009/wp09168.pdf

[17] Only Bahamas, Panama, Barbados and Mauritius.

[18] Aruba, Bahamas, Barbados, Bermuda, Caymans, Curacao, Mauritius, Samoa.

28. Of the UK Crown Dependencies, the Isle of Man is an outlier. The Financial Services Commission is formally a statutory board, effectively an integral part of government. While it raises revenues through fees, these are for the account of government and government sets the rates at which fees are raised and determines the Commission's expenditure budget.

29. Jersey, by contrast, has a funding model which since 2008 has been similar to Guernsey's. The Financial Services Commission sets fees by notices issued under provisions in relevant legislation (previously the government issued fees regulations); and whereas the Commission used to raise what is effectively tax revenue from companies in respect of its registrar responsibilities, it now levies registration fees on a basis similar to that used for regulated entities.

Section III: International standards and assessments

30. This section sets out relevant international standards and reviews some of the assessments and evaluations made of regulators internationally. The focus is on the IMF and the FSAP program as the most relevant process for more advanced jurisdictions.

31. The key standards of the Basel Committee, International Association of Insurance Supervisors (IAIS) and International Organization of Securities Commissions (IOSCO) are set out in Box 3[19]. Requirements in relation specifically to funding are relatively high-level and lack detail. The issues are addressed by all the standard-setters from the perspective of requirements that regulators are independent of government and industry and have adequate resources.

[19] FSAP assessments are made using standards and assessment methodologies developed by the international standards-setting bodies, but the IMF assessors make their own judgments.

Box 3: select international standards addressing on regulatory funding

Basel Committee on Banking Supervision (Basel Core Principles, 2012):

- BCP 1 Independence, accountability, resourcing and legal protection for supervisors: The supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources.
- BCP 1, Essential Criterion 4: The supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence.

International Association of Insurance Supervisors (Insurance Core Principles, 2011):

- ICP 2 Supervisor: The supervisor, in the exercise of its functions and powers, is operationally independent, accountable and transparent; protects confidential information; has appropriate legal protection; has adequate resources; meets high professional standards.
- ICP 2.4: The supervisor is financed in a manner that does not undermine its independence. The supervisor has discretion to allocate its resources in accordance with its mandate and objectives and the risks it perceives.

International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation (2011):

- Principle 2, Key Issue 4: The regulator should have a stable source of funding sufficient to exercise its powers and responsibilities.
- Principle 3: The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

32. The IMF and other bodies have, however, been more vocal on funding issues in recent policy statements, drawing on FSAP and other work:

- An IMF paper 2010 "The Making of Good Supervision: Learning to Say "No"[20] analysed country assessments under the FSAP programme and made observations on what constitutes an effective supervisory style and key drivers. On resourcing, it noted:

  "Supervisors need to have sufficient funds and stable funding sources to be able to carry out their mandates, as much in good times (when supervisors can be at their most effective) as in bad. Supervision is resource intensive….Adequate resources are also a key determinant of will [i.e., will to take effective supervisory action] - they demand a degree of budgetary autonomy, which in turn drives operational independence."

[20] Staff Position Note, SPN/10/08, May 2010, http://www.imf.org/external/pubs/ft/spn/2010/spn1008.pdf

- The Financial Stability Board (FSB) has also highlighted, in the content of supervisory effectiveness and intensity in relation to Global Systemically Important Financial Institutions (G-SIFIs), the importance of adequate funding and the scope for mechanisms which involve government budgetary approval to frustrate this[21]. The work refers to caps on funding or on the fees which regulators may raise as being a particular issue.

33. The OECD has also published thinking on best practice in the governance of regulators. Although not specific to financial regulation, their principles (draft as at May 2013) echo the need for funding to be consistent with the need for independence and objectivity of the regulator, for adequate resourcing and for the funding mechanism to be transparent and simple[22].

34. In relation to insurance supervision, the IAIS is undertaking peer reviews of compliance with Insurance Core Principles, covering ICP2 (see Box 3) most recently. The IMF and World Bank participate. Their report commented that ratings of less than Observed[23] are due primarily to the source and conditions of funding or budgetary independence in the allocation of resources[24].

35. In individual assessments surveyed for this review, the IMF approach is similarly focused on non- financial aspects of independence and on the adequacy of resources. Where countries have been marked down by assessors on relevant principles, it is usually for a range of issues related to independence. There are recent cases of concern being expressed on funding mechanisms:

    - in the 2013 assessment of ASIC in Australia, the IMF highlighted the dependence on government funding decisions, especially the uncertainty created by the system of core and (less stable) non-core funding. ASIC maintained in its comments on the assessment that funding requests had consistently been met by government in full.

    - In the 2009 assessment of the Isle of Man (FSC and IPA), the assessors drew attention to the regulators' dependence on government to agree expenditure and/or vote funds as part of a wider analysis of independence; no specific recommendation was made.

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[21] Financial Stability Board, Supervisory Intensity and Effectiveness Reports, 2010-12. Latest available at: http://www.financialstabilityboard.org/publications/r 12103ab.htm

[22] OECD Principles for the Governance of Regulators, Public Consultation Draft, June 2013, http://www.oecd.org/gov/regulatory-policy/governance-regulators.htm

[23] Or in IOSCO terms, Fully and Broadly Implemented. All three standard-setters; assessment methodologies work on a four grade assessment scale and a grade for non-applicable.

[24] Report from Expert Review Teams Conducting the Self-Assessment and Peer Review of ICPSs 1, 2, and 23, IAIS Oct 2013

- In the USA 2009 assessment of insurance supervision, the vulnerability of insurance supervisors to cuts in their expenditure budgets (and evidence that this had happened) were highlighted, as part of a wider set of issues on independence. The assessment of US securities regulation mentioned that the method of funding (from government) did not provide sufficient assurance of continuing funding levels for capital projects.

36. However, it is not clear from the assessments that reliance on government funding and/or decisions on fees or expenditure on their own lead to large downgrades - more than from Compliant/Observed to Largely Compliant/Observed. Other factors such as provisions for the involvement of a government minister in regulatory decisions or evidence of government constraints on required funding in practice have also to be present. In a number of assessments surveyed for this review, the assessors make clear that they have satisfied themselves that potential risks to independence from the funding mechanisms have not materialised in practice.

37. The conclusions of this review are that the IMF has regard to the funding mechanism of regulators when carrying out assessments. There are cases where it has downgraded countries for funding mechanisms that may compromise independence. However, their main focus is on independence and adequacy of resources and the funding mechanism is one of many inputs into their judgments. Assessors also take into account actual experience, particularly whether regulators have been able in practice to finance themselves adequately, from whatever source, and whether applications to government for fee increases, where necessary, have been met.

38. That said, the IMF would look closely at significant changes in funding mechanisms. If more government involvement were to have been the result (and there was limited or no track record to show how this has worked in practice), then more weight would likely be placed on the risks to regulatory independence. Furthermore, the high priority given since the crisis to strengthening financial sector regulation and regulators, as well as initiatives such as the FSB's, are likely to increase the scrutiny of funding mechanisms in assessments undertaken in future.

Section IV: An alternative approach for the GFSC

39. As discussed, any consideration of alternative funding mechanisms for the GFSC must focus on government financing and this is what has been proposed in the decision of the States (see footnote 2). The objectives of such a change are evident from the debate in the States. The separate but related States review of GFSC governance ("A Regulatory Framework for the 21st Century"), including the May

2013 Discussion Paper,[25] also highlights government objectives.

40. Given the government commitment to operational independence and adequate resourcing of the Commission, the objectives of funding reform relate to a wider determination to foster growth in the financial sector through cost effective regulation and the promotion of innovation. It is not the objective of government to obtain access to increased revenues.

Model 1: Government control

41. If the objective is to increase government leverage on these important public policy issues, then this could be done simply through taking powers over either the income or expenditure side of the Commission (or both):

- **Control of GFSC fee levels:** Decisions on fees could be taken over by the States, presumably by amendment to the various statutes which are administered by the GFSC: the Commission would continue to propose fee levels to government based on its work programme, but the States would make the implementing regulations. This would enable the government to determine both the aggregate level of fees and the fees applying to each sector or transaction type (for example, making new license applications less costly at the expense of periodic fee-payers or even giving a particular sector a fee holiday, if this were thought helpful to support increased activity).

- **Control of GFSC expenditure:** The States would explicitly approve the Commission's budget before the start of each year, maybe at the same time as it sets the general government spending budget. Again, the Commission would continue to develop its own expenditure plans based on its objectives and work programme and the States could be required to have regard to these. In practice, the Commission would normally expect to secure its key spending plans. However, the States would be able to negotiate deferrals in some spending, for example, and so reductions in industry fees, to reflect the government's assessment of the growth prospects of the financial sector or parts of it.

42. Under both of these approaches, although the government would have varying degrees of control, the Commission would continue to be a separate agency, able to raise its own income in the form of fees on regulated entities, set its own salaries etc. The basic funding mechanism (reliance on industry fees payable directly to the Commission) would remain as now. If the government's objective were limited to relieving regulatory cost pressures on the industry, it could choose

[25] http://www.gov.gg/gfscconsultation

to make up Commission income by grant from general government revenues. As mentioned in Section I, the legislation already empowers the government to provide financial support to the Commission. Box 4 considers the advantages and disadvantages of Model 1.

Box 4: Government control (Model 1)

Under this approach, industry levies remain the key funding source, but the government controls the Commission's income and/or expenditure through powers of approval.

Advantages	Disadvantages
Meets the government objective to take control of direct regulatory costs	Risk of under-funding of Commission work, especially if government is unwilling or unable to make grants
Requires GFSC to justify fees and/or expenditure with discipline of challenge	GFSC loss of financial control risks weakening its regulatory authority
No change in GFSC or government cash flows, saving costly systems changes etc.	Risk of public disputes between GFSC and government, damaging Guernsey reputation
Limited legislative changes required	Risk of downgrade and criticism in future international assessments

Model 2: Government funding mechanism

43. What some in the States and the industry have said they want the government to consider would go further than Model 1 to incorporate the Commission more fully into the government budget and financial management. This could involve extensive reform of the Commission, making it into a part of government on the Isle of Man FSC model. It is assumed that the States would not want to go this far, with the significant change in status of the Commission and major legislative change it would involve, as well as presentational challenges.

44. A similar outcome could be achieved, however, by changing to a government funding model. This approach would involve:

- The Commission bidding not simply for approval for its budget but for an allocation from general government revenues; it would participate in the States annual budgeting process, effectively in the same way as other government departments; monies would then be disbursed to the Commission to fund its agreed spending. Separate accounts would continue to be produced by the Commission as a separate legal entity and would need to be approved by the States as now; but accounting for spending outcomes would also be

undertaken as for general government spending.

- The fees currently raised by the Commission would continue to be levied on the regulated entities, license applications etc, but would accrue to government under regulations made by government; income from financial penalties would similarly accrue directly to government. The Commission could continue to collect the fees, using the mechanism currently in place, but as agent for the government; or it could collect and retain the fees on its own account, as a method for the government to fund what in accounting terms would be budgetary support for the Commission.

45. If the objective is not to raise revenue, there should of course be no surplus fee income (as there is in some other countries using a similar model) to remit to government. However, as is the case under Model 1, funding of the Commission by government could exceed amounts taken in fees in any year, i.e., the government could fund the Commission in part from general government revenues. Box 5 considers the advantages and disadvantages of Model 2.

Box 5: Government funding (Model 2)

Under this approach, a government grant replaces industry levies as the key funding source. Levies on the industry would continue, but would be payable to the government.

Advantages	Disadvantages
As for Model 1, meets government's objective to take control of regulatory costs and requires GFSC to justify funding requirements when bidding for budget	As for Model 1, risks of under-funding, damage to GFSC's regulatory authority and to Guernsey's reputation, downgrade and criticism in future international assessments
Integration with government budgetary process sets GFSC's needs in broader context	Open to abuse by government for general revenue-raising
Separation of GFSC funding and industry levy facilitates funding of GFSC in excess of levy income, if government so chooses	Could change GFSC and government cash flows, requiring systems changes, and potentially extensive legislative change

46. Either model would equip the States to achieve the objectives of reform. Option 1, the government control model, appears operationally simpler to implement as it would be less likely to require change in government or Commission cash flows or accounting, while required legislative change would appear to be limited. Within Option 1, the control of fees approach offers the greater scope for government to affect fees most extensively, the expenditure control approach being more focused on aggregate fee levels. However, the fundamental change in the relationship between government and Commission under any of these approaches should enable government to influence Commission finances to a high degree and at any level of detail.

47. Both approaches would require a new framework for government consultation and engagement with the industry. Given risks of excessive industry influence over GFSC funding through its access to government, the government may need an enhanced capacity to evaluate both the impact of regulatory costs on the financial sector and the needs for spending on effective regulation, including the need for new regulatory initiatives.

48. Both models clearly entail significant risks of impairing the Commission's independence and security of financing, even if this is not the intention of the current States government. If any such changes were to be agreed, the States would therefore want also to consider a means of protecting Commission income from both excessive volatility and from the appearance, if not the reality, of control of funding being used to influence regulatory or supervisory decisions. The obvious risk would be that the States place such a high priority on supporting growth and innovation in the financial sector through the mechanism of Commission fees that effective regulation would be compromised through resulting budgetary constraint.

49. Possible approaches would be:

- Process safeguards, especially a high degree of transparency around the process for setting the Commission's budget and/or fees. There would need to be a clear accounting by government of the basis for its decisions on Commission financing. The Commission would need to be given an explicit right to put on record its views on its annual financing, if necessary that it had been unable to obtain the funding which it deemed necessary to carry out effective regulation. Clearly, there would be risks to Guernsey's reputation from a public disagreement between government and the Commission.

- Alternatively, there could be some guarantees of minimum or core funding built into the arrangements, related maybe to the number and scale of regulated institutions, potentially with indexation. There could be provisions for additional or non-core funding to be made available in case of particular pressures such as international regulatory reform initiatives; and for the Commission to seek additional funding intra-year, if necessary.

50. Even with such safeguards, there is a significant risk that international bodies would make a negative assessment of the change in GSFC funding, in the circumstances in which it would occur. This risk would reduce only to the extent that over time the States and Commission were able to show evidence that this had not been the outcome in practice.

Section V: Recommendations

51. The recommendation of the paper is that in the interests of maintaining effective regulation in Guernsey and protecting the reputation of Guernsey as a financial centre, the changes in GFSC funding outlined in Section IV are not made.

52. As the GFSC currently enjoys a high level of independence, to which its financial arrangements are a contributor, an increase in government control over funding, even with the limited objectives that have been associated with this review, risks being perceived as significantly weakening the Commission. Reassessment by international bodies of their previously positive views of the GFSC could reinforce such perceptions.

53. However, current arrangements can also be improved, to focus more attention on key drivers of regulatory spending and to reduce the chances of further criticism of the Commission as occurred in 2013. There is also scope to increase the transparency of GFSC policies and practices in relation, for example, to income from financial penalties and senior staff remuneration.

54. The objective should be to help the GFSC engage even more extensively with government and industry on public policy issues in relation to regulatory costs and financial sector development, recognising that the sector makes a direct contribution of 40% of Guernsey's GDP; and to strengthen existing accountability mechanisms for the GFSC, recognising that accountability is an essential counterpart to independence.

55. In particular, the States and Commission could consider the following:

- **The Commission could provide more information on its plans each financial year**. As mentioned in Section I, some other regulators publish plan and budget documents explaining the drivers of their work. GFSC could issue such a publication, covering, for example, how the Commission is reacting to international regulatory initiatives and to changes in the regulated population. Alternatively, it could develop its existing process for consultation with government and with the industry on its fee proposals by setting out more detail on the drivers of its spending plans. Either way, the objective would be to enrich the debate with government and wider stakeholders on why fee increases are required or why a cap on fee increases, as is now in place, is justified.

- **It could set out in more detail its approach to handling income from fines.** As the Commission, as mentioned in Section I, is now imposing more significant discretionary fines, it would be timely to explain, in a speech or public statement for example, how the Commission will continue to meet the statutory requirement to take fine income into account in setting future fees.

56. **It could also increase its reporting on actual spending, including on senior staff remuneration.** The Commission could use its annual report to provide greater analysis and explanation of its key areas of expenditure in the previous year, including on supervision, new authorisations, enforcement etc. Publication of senior staff remuneration is clearly a sensitive issue which needs careful consideration. However, as mentioned in Section I, the Commission's disclosure is less extensive than that of some other regulators. The objective of making such a high profile disclosure would be to reassure that the Commission is committed to a high level of transparency in all key areas of its costs.

Ian Tower

13 February 2014

Ian Tower is an independent expert in financial regulation. Until late 2012, he was a senior manager at the United Kingdom's Financial Services Authority (FSA), where various roles included policy development and supervision of insurance companies and foreign-owned banks. From 2007 to 2010, Ian Tower was seconded by the FSA to the International Monetary Fund, where he worked on financial sector issues. He has worked previously at the Bank of England and the Cabinet Office, a department of the UK central government. Ian Tower now works on financial regulation issues as consultant to international organisations and other clients.

Table 12 Guernsey: Recommendations to Improve Observance of ICPs[26]

Insurance Core Principle	
1 – Objectives, Powers and Responsibilities of the Supervisor	• It is recommended that when the FSC legislation is next reviewed, consideration be given to establishing a more explicit "objectives section" that includes establishing the promotion and maintenance of a far, safe and stable insurance sector for the benefit and protection of policy holders as a primary objective of insurance supervision.

2 – Supervisor	• It is recommended that Guernsey consider strengthening the independence, transparency and accountability of the GFSC by:
	  ○ Allowing the GFSC, rather than government, to set the level of fees on the entities it regulates.
	  ○ Continue to strengthen the accountability framework through initiatives like inclusion of its three-year operational plan as an addendum to the annual report.
	  ○ Clarifying the legislative provisions concerning dismissal of Commissioners to automatically require reasons for dismissal to be publicly reported.
	• Consideration should be given to increasing supervisory resources to meet workload in the insurance areas.
	• In order to more fully meet the requirements of ICP 2.7, GFSC should publish more information on the insurance sector it regulates in its annual report and elsewhere.
	• Many of GFSC's regulatory requirements are principle based. Consideration should be given to selectively supplementing these requirements with some more specific rules, procedures or minimum standards to ensure transparent and consistent application.

3 – Information Exchange and Confidentiality Requirements	No recommendation.
4 – Licensing	No recommendation.
5 – Suitability of Persons	• It is recommended that consideration be given to developing and publishing more specific minimum competency requirements for people who head control functions (e.g. compliance, actuarial, internal audit and risk management). Such guidance would increase transparency of requirements and help to ensure that the numerous applications GFSC receives are treated in a consistent manner as well as ensure that candidates have necessary technical competencies.

[26] For full report see: https://www.iaisweb.org/uplods/2022/01/190625-Assessment -Report-MAP-Guernsey-2018-20191.

6 – Changes in Control and Portfolio Transfers	• It is recommended that the GFSC review its requirements concerning significant decrease below predetermined shareholder levels to ensure that they comply with ICP 6.3 and that legislative changes be made at the next opportunity to amend the legislation.

LEGISLATIVE BUSINESS

Legislation laid before the States

The Amalgamation and Migration of Companies (Fees payable to the Guernsey Financial Services Commission) (Amendment) Regulations, 2022
The Financial Services Commission (Limited Liability Partnerships) (Fees) Regulations, 2022
The Limited Partnerships (Fees) (Amendment) Regulations, 2022
The Protected Cell Companies and Incorporated Cell Companies (Fees payable to the Guernsey Financial Services Commission) Regulations, 2022
The Public Holidays (Coronation of His Majesty King Charles III) Regulations, 2022
The Companies (Annual Validation) (Amendment) (No. 2) Regulations, 2022
The Parochial Elections (School Committees) (Torteval) Regulations, 2023
The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (Commencement) Regulations, 2023
The European Union (Sea Fisheries, etc.) (Brexit) (Bailiwick of Guernsey) (Amendment) Regulations, 2023

Legislation for Approval

9. Policy & Resources Committee - The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023, P.2023/7
10. Committee *for* Home Affairs - The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023. P.2023/9

OTHER BUSINESS

11. Policy & Resources Committee - Transfer of Fee Making Powers to the Guernsey Financial Services Commission, P.2023/6
12. Policy & Resources Committee - Schedule for future States' business, P.2023/11

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 **29th MARCH, 2023**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. McMAHON
Bailiff and Presiding Officer

The Royal Court House
Guernsey

20th February, 2023