

ADDENDUM

Additional Items for the Midsummer Meeting of Chief Pleas to be held on the 7th July 2021.

Under the Provisions of the Rules of Procedure of the Chief Pleas the Speaker of Chief Pleas has accepted a late Report from the Policy and Finance Committee and also included Laid Before Regulations and added them to the Agenda. The notice period under Rule 1(4), is waived.

Item 15. To Consider a Report with Propositions from the POLICY and FINANCE COMMITTEE entitled “**Free Trade Agreements**” (copy enclosed).

LAI D BEFORE

The Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) (Amendment) Regulations, 2021
(Came into operation on the 18th June 2021)

The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2021
(Came into operation on the 18th June 2021)

The Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (No. 7) (Bailiwick of Guernsey) Regulations, 2021
(Came into operation on the 18th June 2021)

Lt Col RJ Guille MBE
Speaker of Chief Pleas

30th June 2021

NOTES:

1. The Addendum and supporting papers may be seen at the Committee Offices, Monday to Friday, 11am – 3pm and at other times when the offices are open; copies may be obtained from the Committee Office and may also be found on the Sark Government Website at www.sarkgov.co.uk

2. The above-mentioned Road Traffic Regulation supersedes the Seasonal Regulation No. 2 that came into force on the 1st May 2021.

POLICY & FINANCE COMMITTEE
Report with Propositions to Midsummer Chief Pleas, 7th July 2021

FREE TRADE AGREEMENTS

In December 2020, Chief Pleas agreed to authorise the Policy & Resources Committee in Guernsey to represent Sark in future negotiations following the UK's exit from the European Union.

The Policy Letter accompanying this report and its Propositions have been submitted to the States of Deliberation by the States Policy & Resources Committee and that it will be considered at the September 2021 meeting of the States.

Policy & Finance have consulted with Guernsey officials to ensure that Sark is consulted when Bailiwick Free Trade Agreements are under discussion, and have requested, together with Guernsey that, where possible, our jurisdictions are given sufficient time to consider the proposed agreements.

The Letter sets out recommendations for Guernsey (and the wider Bailiwick including Sark) for participation in Free Trade Agreements (and other trade arrangements) which the UK is negotiating post Brexit and that the Chief Pleas are asked to approve the Propositions to enable Sark to participate in the process.

Proposition 1:-

That Chief Pleas agree that Sark's participation in any Free Trade Agreement ("FTA") (or other trade arrangement) should –

- a) meet Sark's needs, while respecting the constitutional relationship with the UK through the Crown and Sark's domestic autonomy; and,**
- b) be underpinned by the principles of relevance, proportionality, and practicality, taking into account the island nature of Sark, its size and population, and unique needs arising out of the same.**

Proposition 2:-

That Chief Pleas note the intention to establish a process to enable effective consultation between the Bailiwick authorities in relation to participation in any FTA (or other trade arrangement)."

Proposition 3:-

That Chief Pleas authorise the Policy & Resources Committee of the States of Deliberation to maintain efforts on behalf of Sark to ensure that Sark's interests (and those of the wider Bailiwick) continue to be represented to the UK during negotiations in relation to any FTA (or other trade arrangement).

Proposition 4:-

That Chief Pleas authorise the Policy & Resources Committee of the States of Deliberation to agree to Sark's participation in UK FTAs (or other trade arrangements) and signal that agreement to HM Government.

Proposition 5:-

That Chief Pleas endorse the process and approach as set out in the relevant paras of the Policy Letter regarding Sark's (and the wider Bailiwick's) participation in UK FTAs (or other trade arrangements).

Proposition 6:-

That Chief Pleas agree that there shall be implemented such measures (including legislative measures) as the Policy and Finance Committee thinks fit for the purpose of ensuring that Sark may comply and remain in compliance with obligations that arise from participation in any UK FTA (or other trade arrangement).

Proposition 7:-

That Chief Pleas direct the preparation of such legislation as may be necessary to give effect to the above decisions.

Conseiller John Guille
Chairman, Policy & Finance Committee

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

THE BAILIWICK'S PARTICIPATION IN UK FREE TRADE AGREEMENTS

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled "The Bailiwick's Participation in UK Free Trade Agreements" dated 25th June, 2021, they are of the opinion:-

1. To agree that the Guernsey's participation in any Free Trade Agreement ("FTA") (or other trade arrangement) should –
 - a) meet Guernsey's needs, while respecting the constitutional relationship with the UK through the Crown and Guernsey's domestic autonomy; and,
 - b) be underpinned by the principles of relevance, proportionality, and practicality, taking into account the island nature of Guernsey, its size and population, and unique needs arising out of the same.
2. To note the intention to establish a process to enable effective consultation between the Bailiwick authorities in relation to participation in any FTA (or other trade arrangement).
3. To direct the Policy & Resources Committee to maintain efforts to ensure that Guernsey's interests (and, subject to the necessary authorisations from Alderney and Sark, the Bailiwick's interests) continue to be represented to the UK during negotiations in relation to any FTA (or other trade arrangement).
4. To authorise the Policy & Resources Committee, subject to the necessary authorisations from Alderney and Sark, to agree to the Bailiwick's participation in UK FTAs (or other trade arrangements) and signal that agreement to HM Government.
5. To endorse the process and approach (set out in Paragraphs 2.5-2.7 and 2.18-2.33) regarding Guernsey's (and the wider Bailiwick's) participation in UK FTAs (or other trade arrangements).
6. To agree that there shall be implemented such measures (including legislative measures) as the Policy & Resources Committee thinks fit for the purpose of

ensuring that Guernsey may comply and remain in compliance with obligations that arise from participation in any UK FTA (or other trade arrangement).

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

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

THE BAILIWICK'S PARTICIPATION IN UK FREE TRADE AGREEMENTS

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

25th June, 2021

Dear Sir

1. Executive Summary

- 1.1 Following its withdrawal from the EU, the UK is seeking new trade relationships around the world. There is an opportunity for Guernsey (and the wider Bailiwick) to be included in the resulting Free Trade Agreements (FTAs) (and other trade arrangements). The negotiations and ratification of the proposed FTAs are often proceeding within very short timescales¹ (which are set by the UK Government and its potential trading partners).
- 1.2 If the Bailiwick participates in all or part of a UK FTA, it would have the same advantages as the UK for trade with that trading partner. That could include the application of preferential customs tariffs, quota and border measures for the trade in goods and preferential access to markets for services. There will be obligations to be met if the Bailiwick participates in future UK FTAs, with corresponding resource implications – as is the case with existing FTAs – but participation will: ensure that current and future trade interests are protected and promoted; provide trade stability; and open up future trading opportunities with the FTA trade partner(s).
- 1.3 There would be significant constitutional difficulties if the UK were to ratify a FTA which purported to extend to Guernsey (or the wider Bailiwick) without relevant decisions having been made in the island(s) first. This Policy Letter sets out the proposed process and approach to deal with that, so that Guernsey, and the wider Bailiwick, can decide whether, and to what extent, to participate in UK FTAs and other trade arrangements.

¹ Months, rather than years (which would be more typical for such negotiations).

- 1.4 In the Policy Letter considered by the three Bailiwick parliaments on 27th December, 2020² regarding the UK-EU Trade and Cooperation Agreement³ ('the TCA Policy Letter'), there were references to trade agreements between the UK and other 'rest-of-world' (RoW) partners. That included consideration of the UK's continuity 'roll over' FTAs (which were agreements which used to apply to the UK when it was a Member of the EU, and now apply to the UK in its own right) and new FTAs.
- 1.5 In deciding whether it is beneficial for the Bailiwick to participate in a particular FTA, the Bailiwick will need to weigh up the advantages of any FTA at a strategic and practical level, compared to the requirements for compliance. That will include considering whether the obligations required by the FTA would be justified by reference to the volume and type of trade undertaken (or likely to be undertaken in future) and deliverable by the Bailiwick. It might also be advantageous for the Bailiwick's international relationships or international identity for it to participate (or not) in any particular FTA.
- 1.6 It has already been recognised that the Bailiwick's approach to inclusion in FTAs after Brexit would need to adhere to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick's autonomy. The Bailiwick can ensure its interests are served by participating in agreements that best suit the Islands' needs, whilst non-participation should not undermine the UK-Bailiwick Customs Arrangement⁴.
- 1.7 The UK has repeatedly provided assurances that the UK Government understands and respects the Bailiwick's centuries-old constitutional relationship with the Crown and the Bailiwick's domestic autonomy. The UK Government is responsible for representing the interests of the Bailiwick during FTA negotiations, even when the UK and the islands' interests are different. Each of the three Bailiwick jurisdictions need to make their own decisions about participation (or otherwise) in any future trade arrangements and the Bailiwick will need to ensure that it implements its obligations, whether by legislation or other measures, to meet its commitments.
- 1.8 Guernsey/the Bailiwick needs to make decisions within the FTA timescales set by the UK and its trading partner(s). Owing to the sensitive nature and pace of the negotiations for UK FTAs, it has not been possible to provide frequent or detailed

² [Billet d'État XXIX](#) of 2020 – 'The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement,' - and [Resolutions](#), approved by the States of Deliberation, the States of Alderney and the Chief Pleas of Sark on 27th December, 2020.

³ [Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part](#) – signed in Brussels and London 30 December 2020, full text available on gov.uk

⁴ As in Paragraph 2.3 and Appendix 1, Paragraphs A1.3-A1.5, of this Policy Letter.

updates to all Committees of the States of Guernsey nor to make public statements. However, the Policy & Resources Committee's ('the Committee') mandated responsibilities and previous decisions of the States⁵ have enabled the Committee, working with other Principal Committees and with the Alderney and Sark authorities, to represent the Bailiwick's interests in ongoing discussions with the UK Government. The Committee will continue to work closely with the UK Government during periods of negotiation to ensure that any particular FTA would suit the Bailiwick's needs, that the relevant provisions of that FTA meets the Bailiwick's negotiating principles and that the Bailiwick can comply with any obligations.

1.9 Throughout the progress of the negotiations on FTAs thus far, the politicians and officers representing Guernsey and the Bailiwick have continued to work to the principles set out in Section 4 of Billet d'État II of 2020 ('the January 2020 Policy Letter')⁶. Those principles were in regard to any Bailiwick involvement in an agreement for the UK-EU future relationship but are appropriate for other trade agreements. These objectives are that any trade agreement will:

- in its extension to and application in the Bailiwick, be relevant, proportionate and practical; and,
- in its entirety, respect the Bailiwick's domestic autonomy and constitutional relationship with the UK (through the Crown).

1.10 If the States agrees to the Propositions for this Policy Letter, it will enable decisions to be made by the Policy & Resources Committee (taking into account the views of the Principal Committees responsible for the policy areas covered by the FTA (or other trade arrangement)) on a case-by-case basis as to whether Guernsey/the Bailiwick should or should not be included in the customs and goods element of a particular FTA. Each decision would be on the basis that the commitments and obligations in respect of goods were the same as or similar to those entered into by the Bailiwick in existing FTAs, including the UK-EU Trade and Cooperation Agreement ('TCA'), whilst taking into account the resulting benefits. For each FTA, it is intended that the Policy & Resources Committee would request the UK to secure an extension mechanism together with an undertaking from the partner country (and provide one itself) to facilitate any services provisions of a FTA being extended to Guernsey/the Bailiwick at a later date.

⁵ Resolutions of the States from 1987, 2016 and 2020 are particularly relevant; as in Paragraphs 2.9-2.11, 2.19 and Appendix 3 of this Policy Letter.

⁶ [Billet d'État II of 2020](#) – 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey' and [Resolutions](#) of 8th January, 2020.

1.11 This Policy Letter is to:

- ask the States of Deliberation to agree the process and approach to enable the government to respond swiftly to FTA developments – in the case of Guernsey, that would be for the Policy & Resources Committee (with due regard to the 1987 States’ Resolution on international agreements and having taken into account the process and approach set out in this Policy Letter) to decide to what extent the island should participate (or not) in any particular UK FTA
- ask the States to make Resolutions relating to the objectives and principles underpinning the Bailiwick’s participation in FTAs; intra-Bailiwick engagement; compliance with obligations arising under FTAs; and the preparation of any necessary legislation
- update the States on the Policy & Resources Committee’s consideration and decision about Guernsey’s participation in the UK-EEA EFTA FTA, having due regard to the timescales being set by the UK and its trading partners; to the Committee’s mandated responsibilities and previous States’ decisions; and noting that officers from across relevant parts of the States of Guernsey had been working on FTA provisions

2. The Bailiwick’s participation in FTAs (including other trade arrangements)

2.1 Free Trade Agreements (FTAs) are agreements which, according to international law, are created between two or more nations with the aim and purpose of removing trade restrictions and barriers to stimulate and encourage economic growth.

2.2 The UK Government has what it has described as ‘ambitious goals’ for British trade, aiming, “to have 80 per cent of UK trade covered by free trade agreements within the next three years [i.e. by the end of 2022], starting with the USA, Australia, New Zealand and Japan.”⁷ The UK Government has already commenced various negotiations to achieve its aim of securing these new FTAs; indeed, some of these began before the TCA negotiations were concluded. The TCA Policy Letter⁸ noted that, “FTA development work will continue throughout 2021 and beyond as the Bailiwick continues to develop its own international trade policy.”

⁷ Page 57 (‘Increase trade and prosperity’) of [Get Brexit Done Unleash Britain’s Potential – The Conservative and Unionist Party Manifesto 2019](#) 24th November, 2019.

⁸ Paragraph 11.8 of the TCA Policy Letter.

UK-Bailiwick Customs Arrangement

- 2.3 The UK-Bailiwick Customs Arrangement negotiated with the UK in 2018⁹ is a customs union¹⁰ as defined by the WTO. It means that the Bailiwick has to apply the UK external tariff (known as the UK Global Tariff); it must apply any preferential tariffs agreed in UK FTAs to imported goods regardless of whether the Bailiwick participates in those FTAs.

The Bailiwick can choose whether to participate in a UK FTA or not

- 2.4 The Bailiwick (and the jurisdictions within it) is not obliged to participate in all UK FTAs – but it can do so, if it so chooses and if the trading partner agrees. In line with long-standing constitutional principles, the Bailiwick will only be included in any international agreement, at the point of the UK’s ratification or by extension at a later date, if the Bailiwick consents to this¹¹. The Bailiwick (and the jurisdictions within it) can select which FTAs it wishes to participate in.
- 2.5 The Bailiwick will need to weigh up the advantages of any FTA, at a strategic and practical level, against the requirements of compliance including the resources required, so that it can decide whether, overall, it is beneficial to participate in that FTA. Consideration will include whether implementing or otherwise complying¹² with the obligations and commitments required by the FTA could be justified by the volume and type of trade undertaken (or likely to be undertaken in future). It might also be considered advantageous from the perspective of the Bailiwick’s international relationships or international identity for the Bailiwick to participate (or not) in any particular FTA.
- 2.6 It has already been recognised¹³ (in the context of the TCA) that the Bailiwick’s approach to inclusion in FTAs after Brexit should adhere to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick’s autonomy. It has also been noted that one means of ensuring that the Bailiwick’s interests are served is by participating in international agreements that best suit

⁹ [Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey \(the Government of Guernsey\) Concerning the Establishment and Operation of a United Kingdom-Crown Dependencies Customs Union](#), signed 26th November, 2018. It came into effect at 11pm on 31st December 2020.

¹⁰ The WTO defines a customs union as ‘the substitution of a single customs territory for two or more customs territories’.

¹¹ In accordance with the constitutional relationship between the Bailiwick of Guernsey and the UK, through the Crown, the Bailiwick (and each of the three jurisdictions within it) cannot sign up to an international agreement in its own right, except where authorised to do so by entrustment. It is possible for international agreements to which the UK is a party to be extended to the Bailiwick (or part of it).

¹² This could include requirements such as notification, reporting or transparency standards.

¹³ In the TCA Policy Letter – this paragraph adapted from Paragraphs 3.3-3.5 of that Policy Letter.

the Islands' needs, whilst non-participation should not undermine the extant Customs Arrangement with the UK.

- 2.7 If the Bailiwick chooses not to participate in any particular FTA (or other trade arrangement), there will be different impacts depending on whether that FTA is in respect of goods and/or services and/or other matters. By way of example:
- if the Bailiwick does not participate in 'goods and customs' chapters of a FTA: goods that originate in the Bailiwick¹⁴ (which are then shipped into the UK's FTA partner country) would not benefit from any preferential treatment under that FTA (and would thus be at a competitive disadvantage compared to a product originating in the UK and could also be less attractive as part of the UK supply chain);
 - if the Bailiwick does not participate in 'services and investments' chapters of a FTA: UK businesses/service providers could have a competitive advantage (compared to those in the Bailiwick);
 - if the Bailiwick does not participate in a FTA at all:
 - Bailiwick businesses and individuals would not enjoy any preferential arrangements when trading with that trading partner. They would then need to rely on WTO rules and protections from discrimination when trading with them.
 - the Bailiwick would also lose any potential benefit of the wider strategic relationship that a FTA may provide with any trading partner.
- 2.8 Paragraph 2.35 indicates what might happen if only one or two of the three jurisdictions of the Bailiwick wish to participate in any particular FTA (or only in part of that FTA).

Previous relevant decisions made by the States of Deliberation

- 2.9 Previous decisions of the States of Deliberation¹⁵, including in June 2016, have directed the Policy & Resources Committee to engage with the UK Government, in accordance with the Committee's mandate, in order to seek opportunities for Guernsey in new UK trading relationships including any new FTAs.¹⁶ The 2016

¹⁴ As in Paragraph 7.3 of the TCA Policy Letter: "The UK would be obliged as part of any trade agreement to protect the integrity of any shared customs arrangements (including that between the Bailiwick and the UK). The origin of any goods exported from the Bailiwick to the UK would need to be identified to ensure that the correct tariff is applied if those goods were subsequently exported..."

¹⁵ As outlined in Appendix 2, since 2016, the States of Deliberation has considered various matters relating to the UK's withdrawal from the EU, which has included the potential for new trading opportunities to arise as the UK seeks to develop its new international trade agenda.

¹⁶ As outlined in Appendix 3 of this Policy Letter, the States had decided in June 2016 that one of its main areas for engagement with the UK Government was to, "(iv) Seek opportunities for Guernsey in

Resolutions also directed the Committee, “to take all other necessary measures that may be considered appropriate.”

- 2.10 In January 2020, the States of Deliberation agreed that, “any agreement or protocol in respect of the Bailiwick [in respect of the UK-EU future relationship] should be underpinned by the principles of relevance, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population and unique needs arising out of the same”.¹⁷ While those principles were in regard to any Bailiwick involvement in an agreement for the UK-EU future relationship, they are also considered appropriate for other trade agreements¹⁸.
- 2.11 In December 2020, the States of Deliberation noted the inclusion of the Bailiwick within various FTAs that had been “rolled over” as part of the UK’s continuity programme, and other agreements, which would take effect at the end of the Brexit transition period. The Policy & Resources Committee was directed to implement such measures as the Committee, “thinks fit for the purpose of ensuring that Guernsey...may comply and remain in compliance with the obligations that arise from the inclusion of the Bailiwick in such agreements”.¹⁹

Preparation for the Bailiwick’s possible participation in UK FTAs

- 2.12 There has been close engagement with the UK’s Department for International Trade (‘DIT’) as the UK has commenced its negotiations with international partners. It was noted in the TCA Policy Letter that it had, “been confirmed that the islands of the Bailiwick wish their interests to be taken forward within the wider negotiations... It is likely that the UK will pursue a range of other agreements focusing on topics other than free trade, and there may be opportunities for the Bailiwick to participate in those other agreements.”²⁰
- 2.13 Preparatory steps, or implementation measures, may be required to enable the Bailiwick to participate in FTAs that the UK negotiates, particularly for chapters that are wider than trade in goods, such as services (including financial services), digital or intellectual property and related data protection issues. This could require certain parts of the population management framework or aspects of domestic regulatory arrangements to be changed to allow natural persons and businesses additional access to the Bailiwick.

any new UK trading relationship including with the EU and with other countries outside of the EU, including any new FTAs and exploring extension of the UK membership of the WTO”.

¹⁷ [Resolutions](#) of 8th January, 2020.

¹⁸ See also Paragraph 2.6 of this Policy Letter.

¹⁹ [Resolutions](#) of 27th December, 2020.

²⁰ From the TCA Policy Letter, Paragraphs 11.8 and 11.9. Those agreements would include the potential extension of the CPTPP and any agreement between the UK and Singapore relating to digital trade.

The UK's FTA negotiations

- 2.14 The UK's FTA negotiations are fast-paced and there are different negotiations happening in parallel, as the UK seeks to use political opportunities to secure new FTAs within a short period of time following the end of the Brexit transition period. In addition to the UK-Japan Comprehensive Economic Partnership Agreement ('CEPA')²¹ and the UK-EEA EFTA Agreement²², the UK has recently announced that agreement in principle has been reached for a UK-Australia FTA²³. The UK is also seeking agreements with other countries and groups of countries - including New Zealand, India and the USA - and working on accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('CPTPP').

The Bailiwick's involvement in UK FTA negotiations

- 2.15 Owing to the historic and special constitutional relationship with the UK (through the Crown), the UK is responsible for the Bailiwick's formal international relations and defence, and so represents the Bailiwick's interests during FTA negotiations. This responsibility to represent the Bailiwick's interests exists even where the Bailiwick's interests differ from those of the UK, and the UK Government has confirmed that it takes this responsibility seriously (more detail is available in Appendix 4).
- 2.16 Bailiwick representatives are not generally present in the FTA negotiations themselves, but Guernsey officers and politicians have met with counterparts in the UK Government (and from the other Crown Dependencies) to ensure that the UK Government fully understands the Bailiwick's position and, whether aligned or not, the Crown Dependencies' interests. Guernsey officers have been working hard to ensure that the UK Government understands and represents the Bailiwick's interests accurately during any international FTA negotiations. That involves work at the UK's FTA objective-setting stage, and before and during the negotiation phases, for each of the various FTAs which the UK Government is simultaneously pursuing at present. The Bailiwick's interests are being taken into consideration by the UK Government but, given the speed and unpredictability of negotiations, it is important that the Bailiwick can react quickly and decisively to meet condensed timelines when necessary. The Bailiwick needs to be able to move swiftly, but with accuracy and care, to ensure that the Bailiwick's interests are incorporated into the wide range of negotiations in a timely manner.

²¹ As in paragraph 11.7 of the TCA Policy Letter.

²² For the UK-Japan CEPA and the UK-EEA EFTA FTA, the Bailiwick is included in the trade in goods elements from the time of implementation together with a territorial extension clause which could allow the Bailiwick to participate in further elements, namely trade in services parts of the agreements, in the future.

²³ [UK-Australia free trade agreement negotiations: agreement in principle – policy paper](#) published by DIT on 17th June, 2021.

Process to consider participation in future UK FTAs

- 2.17 The pace of negotiations has highlighted the need to devise a new process for agreeing FTAs which is streamlined, to enable the Bailiwick to respond accordingly and flexibly to the UK's work programme whilst allowing for appropriate scrutiny. This Policy Letter outlines the process and approach recommended by the Committee to enable Guernsey – and the other islands of the Bailiwick – to deal with the extension of (all or part of) FTAs.
- 2.18 In accordance with custom and practice relating to international agreements, it is important that Guernsey – and the other islands of the Bailiwick – has an opportunity to decide for itself which of the UK's future FTAs it participates in and the extent of its participation in each FTA, prior to ratification of those FTAs by the UK (as in Section 5).
- 2.19 The Committee notes that in relation to agreeing the extension of international agreements it already has authority to negotiate on behalf of, execute and represent Guernsey under its own mandate, existing delegated authority derived from the 1987 States' Resolution²⁴ on international agreements ('the 1987 States' Resolution') and in accordance with the Resolutions from the June 2016 Brexit Policy Letter (as outlined in Paragraph 2.9 and Appendix 3). It intends that the process for agreeing Guernsey's participation in future UK FTAs will follow these established precedents.
- 2.20 The process should be customised to suit the specific needs of the various trade agreements. This will allow a fast-track process for agreeing participation in FTAs in respect of customs and goods because this "baseline" already exists in the continuity 'roll-over' FTAs (with their link to Protocol 3²⁵), the UK-Japan CEPA, the TCA²⁶, and the UK-EEA EFTA FTA²⁷.
- 2.21 The process would also have specific scrutiny requirements for participation in FTAs in respect of services. Services aspects of FTAs have a greater potential to impact autonomy (compared to goods aspects of FTAs) and to do so in areas of greater economic importance.

²⁴ Billet d'État IV of 6 February 1987, and Resolutions of 25th February, 1987 (hyperlinks not available) set out the process to be followed to deal with the extension to Guernsey of international agreements. The Resolutions are provided in Appendix 3 for ease of reference.

²⁵ The Bailiwick's approach to the continuity 'roll-over' FTAs is outlined in Section 11 of the TCA Policy Letter (and earlier Policy Letters). Information on the Bailiwick's participation in the TCA is contained in the TCA Policy Letter.

²⁶ For the TCA, the principles for the Bailiwick's participation were defined in the TCA Policy Letter and agreed by the three Bailiwick parliaments on 27th December, 2020; the most pertinent paragraphs from the TCA Policy Letter are replicated in Appendix 5 of this Policy Letter for ease of reference.

²⁷ Section 4 and Appendix 6 of this Policy Letter explain Guernsey's approach to the UK-EEA EFTA FTA.

- 2.22 It is recommended that the States endorse the process and approach (set out in Paragraphs 2.5-2.7 and 2.18-2.33) regarding the Policy & Resources Committee's exercise of its delegated authority in relation to Guernsey's - and the wider Bailiwick's - participation in UK FTAs. This process and approach would apply equally to other trade arrangements by analogy, according to whether the trade arrangements in question concerned customs & goods or, alternatively, services & investments (or other matters).
- 2.23 In making any decision in respect of a FTA in which the Bailiwick might participate, the Committee will seek the views of the President(s) (or another nominated representative) of Committees responsible for the policy areas covered by the particular FTA.²⁸
- 2.24 The Committee intends to report back to the States periodically about those new FTAs in which all or part of the Bailiwick is taking part, in accordance with the 1987 States' Resolution on international agreements.
- 2.25 In addition, the Committee would retain the option of returning questions about participation in all or part of a particular FTA to the States of Deliberation, which is also consistent with the approach to international agreements as set out in the 1987 States' Resolution. This could be used, for instance, if "baseline" commitments for customs and goods or the costs of compliance substantially exceeded those found in the TCA or in other FTAs applying to the Bailiwick or if the Committee was of the view that referral was appropriate for some other reason.
- 2.26 It should be noted that, because of the timescales involved which are dictated by decisions and timings in the UK and elsewhere, such consideration by the States of Deliberation might involve a request to the Presiding Officer for either (a) a later-than-usual publication date for an additional Billet for a scheduled States Meeting, or (b) a short-notice States Meeting.

Approach for trade in goods

- 2.27 The UK Government and its negotiating partner(s) will agree terms relating to trade in goods that involve reducing tariffs and quotas, simplifying customs and inspection procedures, and managing and minimising non-tariff barriers to trade.

²⁸ This could be done in various ways to be determined by the Policy & Resources Committee, which might include convening a specific group of Committee representatives (with delegated authority from their Committees). There was a similar approach in the UK-EU negotiations (during the Brexit transition period) when there was a body called the Future Partnership Delivery Group ('FPDG') – as in Appendix 1, Paragraph A1.23. The committees most likely to be called upon for this purpose would be the Committee *for* Economic Development, the Committee *for* the Environment & Infrastructure and the Committee *for* Home Affairs, but may include other committees depending on the scope of the FTA chapters being considered.

Guernsey already applies any applicable tariff or quota for goods arriving from other countries, in accordance with its Customs Arrangement with the UK. The Bailiwick is also required to keep its customs regime 'correspondent' with that in the UK. Therefore, in broad terms, it is considered easier for the Bailiwick to participate in the customs elements of any UK FTA because the Bailiwick will already comply with many, if not all, of those terms.

- 2.28 For FTAs concerning trade in goods, there would be a presumption of "baseline" participation, where commitments, obligations and benefits would be the same as or similar to those found in the TCA and UK FTAs which already apply to the Bailiwick. This includes areas such as market access, customs facilitation, rules of origin, sanitary & phytosanitary measures, and technical barriers to trade.

Approach for trade in services and investments

- 2.29 As each FTA is different depending on the trade interests of the UK and its negotiating partner(s), careful consideration needs to be given by the Bailiwick as to whether or not to participate in each FTA beyond the goods and customs "baseline" as the Bailiwick will have distinct trade interests for services and investments.
- 2.30 The UK Government requires a compliance process to be completed by the Bailiwick prior to the Bailiwick's participation in a FTA being considered by the UK and its trading partner. The Bailiwick will wish to participate in FTAs in a manner that best suits the Bailiwick's interests, taking into account matters such as economic activity, trade ambitions, administrative practicalities and similar factors – that might include only participating in certain parts of the FTA.
- 2.31 The obligations and commitments can be wide-reaching and vary according to each agreement. For example, they could include commitments and obligations ensuring equal and fair market access, regarding environmental standards, labour laws and procurement, and are generally aimed at achieving the full benefits of liberalised trade. The FTA may also include obligations regarding equal access to financial services, digital and e-commerce sectors and others which require oversight and regulatory compliance. It might require the Bailiwick to adopt certain population management measures to align with mobility requirements for certain professional, skilled and experienced workers²⁹.
- 2.32 The Committee intends that the general approach to Guernsey's, or the wider Bailiwick's, participation in parts of FTAs relating to services and investments (and other supporting chapters) would be to seek provision within the FTA that would enable its service and investments aspects, if considered appropriate by

²⁹ Further details are outlined in Appendix 7.

the Bailiwick, to be extended to the Bailiwick in future (rather than at the time of the provisional application or coming into force of the FTA). This will allow full assessment and compliance work to be carried out, ensuring the Bailiwick has assessed all risk and benefits of such enhanced participation. In addition, it is proposed that the Bailiwick should seek a commitment from the UK, and, ideally, the partner country, to adopt a 'best endeavours' and timely approach to such future extension and related negotiations if the Bailiwick indicates that it wishes those additional parts of a FTA to be extended to it.

- 2.33 Once the States have agreed to Guernsey's participation in additional parts of a FTA (such as services and investments) for the first time, it could be that the Policy & Resources Committee would then decide the issue for subsequent FTAs under its existing delegated authority. This is because, as with customs and goods parts currently, there would be a "baseline" which the Committee could take account of when considering whether to agree to such additional participation in a FTA or to refer the question back to the States of Deliberation.

Alderney and Sark

- 2.34 The Committee continues to work with the States of Alderney and the Chief Pleas of Sark to ensure that both islands are kept updated on the progress of the negotiations to enable them to provide input on their own positions³⁰.
- 2.35 Owing to the nature of the intra-Bailiwick and Bailiwick-UK trading relationships, Alderney and Sark's inclusion for the customs and goods elements of any future UK FTAs (those to be extended to Guernsey) would be necessary in order to ensure that all the parts of the Bailiwick remain aligned. Should only part of the Bailiwick resolve to take part in future FTAs in respect of the "baseline", the direct consequences are likely to impact the trade in goods with the relevant FTA partner for that jurisdiction(s) only, but there are likely to be indirect consequences for relations with the UK. There may also be unforeseen consequences and wider implications for relations within the Bailiwick³¹. It is also possible that if the three jurisdictions are not aligned, it could weaken the negotiating stance of one or more of them.
- 2.36 As noted above³², even in cases of non-participation, each of the jurisdictions of the Bailiwick is required to apply the UK's Global Tariff or preferential tariffs under FTAs because of the UK-Bailiwick Customs Arrangement.
- 2.37 Owing to the likely complexities involved in being included in additional aspects of FTAs (beyond customs and goods), it will be necessary to give further detailed

³⁰ See also Paragraphs A1.25-A1.26 in Appendix 1 to this Policy Letter.

³¹ Adapted from Paragraph 7.1 of the TCA Policy Letter.

³² Paragraph 2.3.

consideration to the obligations arising from FTAs. It might be necessary to make significant legislative and/or policy changes to achieve compliance, which could differ across the Bailiwick because of the different circumstances in each of the islands. The obligations (and requisite changes) will need to be balanced against any benefits which could be achieved to ensure that any participation best suits the needs of each of the islands within the Bailiwick. It could potentially lead to differences in participation in FTAs (in whole or in part) in future.

- 2.38 Given the importance of each of the islands within the Bailiwick signifying their consent to be bound by obligations within any future UK FTAs which they wish to participate in, it is suggested that Alderney and Sark should establish a similar process for considering and consenting to FTAs within those islands. (Guernsey process outlined in Paragraphs 2.5-2.7 and 2.18-2.33 above.)
- 2.39 Consideration could be given as to whether Alderney and Sark would wish to consider inclusion within each new UK FTA on a case by case basis (for the customs and goods "baseline", as well as any additional elements where the Bailiwick may be seeking inclusion in a particular FTA). It would also be possible to explore whether Alderney and Sark would be willing to delegate authority to the Policy & Resources Committee in Guernsey to approve the Bailiwick's inclusion within FTAs for the customs and goods "baseline" only, with the relevant authorities from Alderney and Sark considering inclusion for any additional elements on a case by case basis, at a later stage, as will be the case in Guernsey.
- 2.40 If the States agrees to the Propositions for this Policy Letter, the Committee intends to discuss these matters with the governments of Alderney and Sark further, in order to find a way that the consent process can be streamlined for the Bailiwick as a whole while working to the UK's own condensed timelines.

3. Management of FTAs

- 3.1 Each FTA will be different depending on the UK's and the trading partner's objectives, but each trade agreement will include various standard provisions to enable its day-to-day management (including but not limited to the following):
- Governance – usually a combination of general and specialised committees³³;

³³ It is anticipated that the Bailiwick would agree arrangements with the UK for its participation in any committee(s) established to discuss implementation of any part of that FTA in line with the arrangements for the TCA, as set out in a [letter from the Rt Hon Lord Frost CMG](#), dated 27th May, 2021, regarding engagement with the Devolved Administrations and Crown Dependencies on TCA implementation.

- Dispute Resolution³⁴ – which may apply to different chapters in different ways and with a series of escalating steps;
- Review – to allow the FTA to respond to changes over time;
- Termination – in cases where the FTA is no longer in the interests of a participating country or territory (usually involving a defined notice period).

Governance

3.2 The UK has an ongoing obligation to represent the interests of the Bailiwick, taking account of the principles in the International Identity Framework³⁵. This will include representation at committees established under FTAs³⁶. In a Ministerial meeting in December 2020, it was agreed between the UK and Guernsey³⁷ to develop a mechanism to facilitate dealing with FTAs, in terms of both representation and any trade disputes. The principles and format for that UK-Bailiwick mechanism are still under consideration.

Dispute resolution mechanisms

3.3 The UK Government would be responsible for representing the Bailiwick's interests within any international dispute. DIT is responsible for handling international trade disputes, including any concerns which may arise from or about the Bailiwick³⁸. A UK-Bailiwick mechanism for managing international trade relations (including in the unlikely event of a dispute) is under discussion. The issue of differentiation (in the disputes context) between the different parts of the British family taking part in any given FTA will also need to be addressed.

3.4 In case there were to be any dispute or non-compliance issue that only related to one or two of the three Bailiwick jurisdictions, it is proposed that there would be an intra-Bailiwick process to deal with that. It is likely that would take the form of an agreement between Guernsey, Alderney and Sark which sets out the agreed principles for a timely and effective response and how any costs would be apportioned.

³⁴ Trade agreements generally include specific provisions for a reciprocal dispute resolution mechanism ('DRM'). The DRM would allow for disputes to be discussed through a process of consultation, mediation and, ultimately, some form of arbitration.

³⁵ As in Paragraph A1.17 in Appendix 1.

³⁶ Although it may also be possible for the Bailiwick to represent itself, when appropriate, as in footnote 33.

³⁷ UK Government represented by the Rt Hon Greg Hands MP, Minister of State for Trade Policy; Guernsey represented by Deputy Peter Ferbrache, as Chief Minister.

³⁸ Trade disputes can be either 'defensive' (for the Bailiwick, that would be trade disputes that are caused by the Bailiwick's own trade policies) or 'offensive' (where trade distortion is caused by another country's trade policies and the Bailiwick raises a concern). Additionally, the disputes can be in relation to a FTA or other trade agreement or in regard to WTO principles or otherwise.

Review clauses

- 3.5 FTAs can contain general review clauses which would allow for amendment by mutual consent of the UK and the other country/organisation. This would require the consent of the Bailiwick in respect of any changes that would affect the Bailiwick's participation in the FTA.

Termination

- 3.6 It is usual for FTAs to include a termination clause, so that any participating country or territory can withdraw from its terms after giving the required notice. If the UK or its FTA partner were to terminate the FTA, then the FTA should also cease to apply to the Bailiwick. It will also be important for FTAs to enable termination by the Bailiwick in isolation³⁹ (of the provisions which apply to the Bailiwick) – because of its distinct international identity and domestic autonomy – even if this is unlikely to arise in practice.

4. The Bailiwick's participation in the UK-EEA EFTA FTA

- 4.1 On 4th June, 2021, the UK announced⁴⁰ that it had concluded negotiations for a FTA⁴¹ with Norway, Iceland and Liechtenstein, collectively known as the EEA EFTA States⁴² (which are the three European Free Trade Association ('EFTA') States that are also part of the European Economic Area ('EEA')). This FTA now needs ratifying, including any necessary domestic parliamentary consent processes in the UK and the EEA EFTA States. Following agreement in principle, the legal text will be finalised.
- 4.2 The UK-EEA EFTA FTA will apply to the Bailiwick, in respect of customs and goods only, from the point of ratification of the FTA by the UK. The FTA broadly mirrors the TCA and contains similar obligations; in addition, there are no fisheries access commitments to consider. The agreement in effect replicates the goods and customs terms of the TCA for the wider EEA EFTA area. There is also an 'extension mechanism', together with a supporting side declaration, for the

³⁹ There is a provision in the proposed EEA EFTA FTA to allow the Bailiwick (or another Crown Dependency) to seek to terminate its trading relationship under the FTA, separately to the UK.

⁴⁰ Agreement in principle was [announced by the UK Government](#) on 4th June 2021.

⁴¹ [Free Trade Agreement between the United Kingdom or Great Britain and Northern Ireland and Iceland, the Principality of Liechtenstein and the Kingdom of Norway](#). There is already an [interim continuity trade agreement](#) in place for trade between the UK and Iceland and Norway (signed 8th December, 2020). Before the end of the Brexit transition period, the UK's trade with the three countries was principally underpinned by the EEA Agreement. The new FTA is intended to replace that one for trade between UK and the EEA EFTA States.

⁴² The 27 EU Member States, together with the three European Free Trade Association (EFTA) States Iceland, Liechtenstein and Norway, make up the European Economic Area (EEA) Contracting Parties (the 31 EEA States). Norway, Iceland and Liechtenstein go by the term "EEA EFTA States" in order to clarify that the other EFTA State, Switzerland, is not party to the EEA Agreement.

Bailiwick (or parts of it) to be included in the additional elements (such as services and investments) of the UK-EEA EFTA FTA in the future, if the Bailiwick or any part of it so chooses.

- 4.3 Owing to the need to conclude the agreement at pace to secure the negotiated outcome and for the Bailiwick to consent to inclusion before the end of the UK's ratification process for the UK-EEA EFTA FTA, the Policy and Resources Committee considered Guernsey's inclusion in that FTA for trade in goods and the declaration committing the parties to further discussions about inclusion in services and the investments-related chapters. The Committee did so using the Committee's mandated responsibilities, the 1987 Resolution on international agreements and the June 2016 Resolutions (more information in Appendix 3).
- 4.4 It is understood that consideration is being given to this FTA by the relevant authorities in Alderney and Sark for inclusion of those islands on the same terms as Guernsey.

5. Next steps

- 5.1 To protect and respect the Bailiwick's autonomy and democratic processes, it is necessary for the Bailiwick to indicate whether or not it wishes to be included in each UK FTA, or other agreement, before it is ratified in the UK (before the end of the period when the FTA is laid before the UK Parliament). This will enable the UK Parliament to consider the final legal text and, if content, the UK Government can ratify it on behalf of the UK as well as the Bailiwick, if it has consented to be included in the agreement.
- 5.2 If the States agrees to the Propositions for this Policy Letter, it will mean that it has endorsed the proposed process and approach to be used by the Committee when it makes decisions about Guernsey's participation in FTAs (or other trade arrangements) using its delegated authority under the 1987 Resolution on international agreements.
- 5.3 For any FTA which is to be extended to the Bailiwick (in whole or in part), the Law Officers of the Crown (or officers) would advise whether there are any additional legislative (or other) requirements to be implemented to ensure that the Bailiwick is compliant with the obligations in that agreement. In order to effect inclusion in any particular agreement, letters from the Policy & Resources Committee will be issued through the official channel to set out the formal request for Guernsey, or the wider Bailiwick, to be included in certain elements of the FTA. Further detail of the legislative requirements is set out in Section 6.

6. Legislative requirements

- 6.1 The UK and the Bailiwick both have 'dualist' legal systems, where, save in exceptional circumstances, treaty obligations exist on the international plane and must be given effect separately, whether through laws, regulatory practices, or governmental policies, as a part of the domestic framework. As Guernsey, Alderney and Sark are separate territories for whose international relations the UK is responsible, it is the Bailiwick's own administrations and assemblies that are responsible for applying and implementing international obligations, even though the UK remains ultimately responsible for compliance as a matter of international law.
- 6.2 The Bailiwick's inclusion in the customs and goods "baseline" of FTAs is principally underpinned by legislation relating to customs, agri-foods and manufactured goods. In accordance with the Customs Arrangement, customs legislation will be kept 'correspondent' with that in the UK. For the other two categories of legislation, which concern goods regulation, further development of the domestic legal framework is intended and will likely be equivalent to the arrangements in the UK.
- 6.3 Specific implementing legislation is unlikely to be required for particular FTAs; however, if it is, and in addition to any category-specific powers, there are general implementing powers contained in The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018⁴³. This was one of the three principal pieces of legislation which was enacted in readiness for Brexit and which provides a power for the States to make Ordinances to implement any international trade agreement or resolve trade disputes arising therein. Given the pace at which FTA negotiations, agreement and ratification could occur, and in cases where legislative changes might be required rapidly, further thought is being given to supplementing the Ordinance-making power.
- 6.4 Were the Bailiwick (or any part of it) to seek participation in additional chapters of FTAs, it is highly likely that legislative changes would be required to ensure the Bailiwick (or relevant part of it) was compliant at that time with the new international obligations it was consenting to be bound by.

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.

⁴³ [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#)

- 7.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 7.3 In accordance with Rule 4(3), the Policy & Resources Committee and the Committee *for* Economic Development have monitored, and continue to monitor, the resources used for FTA work, including work to help to mitigate and respond to any uncertain and changing operational, political and legal situations that may arise. This has meant and may continue to mean reviewing and changing legislation and assessing any opportunities or challenges that have arisen and may arise. Resources may continue to be required to ensure that the States can act swiftly to implement new arrangements. The use of resources, from across the organisation, will continue to be kept under review.
- 7.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions above have the unanimous support of the Committee.
- 7.5 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee because its mandate includes responsibilities to, "advise the States and to develop and implement policies and programmes relating to: (a) leadership and co-ordination of the work of the States" and "(c) external relations and international and constitutional affairs, which includes: ... 2. relations with the United Kingdom and other jurisdictions; 3. relations with the European Union and other supranational organisations; 4. relations with the other islands of the Bailiwick ...; [and] representing, or overseeing the representation of, and negotiating for, the Island; ..." The Committee considers that the measures outlined in this Policy Letter touch on all those aspects of its mandate.
- 7.6 The Committee was directed by the States to lead on Guernsey's (and the wider Bailiwick's) engagement with the UK Government for potential participation in the TCA and in FTAs. The States made Resolutions in that regard in the June 2016, January 2020 and December 2020 Brexit Policy Letters (as in Paragraphs 2.9-2.11). At times, these negotiations have proceeded at an extremely fast pace.
- 7.7 The UK's withdrawal from the EU and related matters remain key external influences for the Bailiwick. The States confirmed⁴⁴ that managing the effects of Brexit is one of the four key strategic priorities for the States of Guernsey at this time⁴⁵.

⁴⁴ In Resolution 1 arising from the Government Work Plan debate in March 2021.

⁴⁵ As identified in the [Government Work Plan – Stage 1](#) and the States' [Resolutions](#) of 26th March, 2021. Also explained in the [Government Work Plan 2021-2025](#) (due for debate in July 2021).

7.8 The Committee's consultation with other parties is outlined in Appendix 8, in accordance with Rule 4(5).

Yours faithfully

P T R Ferbrache
President

H J R Soulsby
Vice-President

M A J Helyar
J P Le Tocq
D J Mahoney

BACKGROUND TO THE UK'S TRADE NEGOTIATIONS

UK-EU Trade and Cooperation Agreement and continuity FTAs – preparing for the end of the Brexit transition period

- A1.1 Following the United Kingdom's ('UK') withdrawal⁴⁶ from the European Union ('EU') and during the Brexit transition period (in 2020), the UK and EU negotiated a Trade and Cooperation Agreement ('TCA') (for trade, security and other cooperation). The three parliaments of the Bailiwick (the States of Deliberation, the States of Alderney and Chief Pleas of Sark) each agreed on 27th December, 2020, to participate in the TCA insofar as it applies to the Bailiwick, in particular in respect of fisheries and the trade in goods. It was considered that the terms of the TCA satisfied the objectives agreed by the three parliaments of the Bailiwick in June 2016 and January 2020 (the main areas for engagement with the UK Government for the States of Guernsey are detailed in Appendix 3; whilst the full list of Bailiwick objectives and a comparison with the outcome of the UK-EU negotiations is set out in table 1 of the TCA Policy Letter).
- A1.2 In addition to the Bailiwick's participation in the TCA, the three parliaments of the Bailiwick also agreed to participate in other agreements from the end of the Brexit transition period, including **continuity FTAs** which had been "rolled over" by the UK⁴⁷. The Bailiwick's agreed approach is that those FTAs which previously had effect in the Bailiwick by virtue of the Bailiwick's relationship with the EU would continue to apply to the extent that Protocol 3 applied.

⁴⁶ The UK's referendum about membership of the EU took place in June 2016. The UK left the EU at 11pm on 31st January, 2020. The Brexit transition period then lasted from 31st January, 2020 until 11pm on 31st December, 2020. The TCA came into effect from 11pm on 31st December, 2020.

⁴⁷ Resolution 5 of the TCA Policy Letter, "to note the inclusion of the Bailiwick in various FTAs (which have previously had effect in the Bailiwick by virtue of the Bailiwick's relationship with the EU, and the operation of which has been "rolled over" by the UK) and other agreements which will take effect at the end of the Brexit transition period and to agree that there shall be implemented such measures (including legislative measures) as the Policy & Resources Committee, in relation to Guernsey, the Policy and Finance Committee of the States of Alderney, in relation to Alderney, and the Policy and Finance Committee of the Chief Pleas of Sark, in relation to Sark, thinks fit for the purpose of ensuring that Guernsey, Alderney and Sark may comply and remain in compliance with obligations that arise from the inclusion of the Bailiwick in such agreements."

The UK-Bailiwick of Guernsey Customs Arrangement⁴⁸

- A1.3 The Bailiwick entered into a Customs Arrangement with the UK⁴⁹ which came into effect at 11pm on 31st December, 2020.⁵⁰ “The Customs Arrangement provides that the Bailiwick will form part of a single British Islands customs territory and that common customs tariffs applicable to third countries are applied at Bailiwick borders in the same way as at any UK border.”^{51, 52} Certain obligations arise from that Customs Arrangement.
- A1.4 There are three Arrangements which together recognise that the Bailiwick, along with Jersey and the Isle of Man, will be treated as part of the UK's customs area and that trade between the Islands and the UK should continue, uninterrupted, without customs' tariffs and without new checks at the borders between the members of the Arrangements (the UK, Bailiwick of Guernsey, Jersey and the Isle of Man).
- A1.5 One of the effects of this arrangement is that if the Bailiwick does not participate in a particular FTA which has been entered into by the UK, the Bailiwick must still apply the common customs tariffs for imported goods which have been agreed under the FTA between the UK and the partner country. However, any goods originating in the Bailiwick and exported to the partner country would not benefit from any preferential tariffs which may have been agreed under the FTA.

The extension of the UK's membership of the WTO to the Bailiwick of Guernsey

- A1.6 The UK's WTO membership was extended to the Bailiwick from 11pm on 31st December, 2020, at the end of the Brexit transition period, when the UK became an independent member of the WTO.^{53,54} “The extension of the UK's WTO

⁴⁸ [Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the States of Guernsey \(the Government of Guernsey\) Concerning the Establishment and Operation of a United Kingdom-Crown Dependencies Customs Union](#), signed 26th November, 2018.

⁴⁹ As outlined in the TCA Policy Letter and in a Policy Letter on 'Customs Duties and Associated Powers Required in Respect of Brexit' - [Billet d'État XIX](#) of 2018 ([Resolutions of 18th July, 2018](#))

⁵⁰ As outlined in paragraphs 9.10 to 9.14 of [the TCA Policy Letter](#).

⁵¹ From the TCA Policy Letter Paragraph 9.10

⁵² As stated in the TCA Policy Letter (Paragraph 9.12), “Under this Customs Arrangement, Guernsey can set its own prohibitions and restrictions as long as they can be justified under certain protocols. The four member jurisdictions within the arrangement (the UK, Guernsey, Jersey and the Isle of Man) form a safety and security zone and the carriers of any goods entering the zone are required to submit a safety and security declaration. This provides a safeguard from the import of high level dangerous goods and from security risks.”

⁵³ [Billet d'État IV of 2019](#) - 'Extending the United Kingdom's Membership of the World Trade Organization' - [and Resolutions](#) approved by the States of Deliberation on 18th February, 2019, the Policy & Finance Committee of Alderney on 16th April, 2019 and the Chief Pleas of Sark on 27th March, 2019.

⁵⁴ Confirmed in the letter from the UK's Foreign Secretary to the Director-General of the WTO, dated 15th October, 2019. There is a Memorandum of Understanding (MoU) between the Government of the

membership ensures that the Bailiwick has access to the international rules of fair trade for goods and services as well as the trade-related aspects of intellectual property.”⁵⁵ WTO membership provides opportunities for the Bailiwick to access any FTAs negotiated by the UK, which are based on WTO standards but may provide for more preferential trade terms as agreed under each particular FTA.

- A1.7 Any Bailiwick trade which is not covered by the TCA or a FTA will be covered by WTO rules in any event. This offers “trade certainty but does not eliminate tariffs being applied to exports from the Bailiwick, which could be considerably higher than tariffs applied to goods from countries where a FTA exists. In general, FTAs offer lower maximum tariffs and preferential treatment for the parties compared to those provided for by the WTO.”⁵⁶
- A1.8 While WTO membership is not a requirement for the Bailiwick to be party to any UK FTAs, confirmation of adherence to the WTO rules and obligations is required for agreeing any FTAs. This means that the Bailiwick must demonstrate the same level of compliance as the UK in respect of its membership of the WTO. Partaking in the UK’s WTO membership provides a compliance baseline in support of the Bailiwick’s participation in any potential future FTAs.⁵⁷

UK’s approach to pre-existing international trade agreements which it was party to whilst a member of the EU - continuity (‘roll over’) agreements

- A1.9 As part of its preparations for withdrawal from the EU, the UK approach has been to seek continuity for the various pre-existing international trade agreements and arrangements which it was party to while a member of the EU.⁵⁸ The UK has sought to become a party to those international agreements in its own right, either bilaterally with partner countries or by acceding to various relevant multilateral agreements in its own right (rather than as part of the EU).
- A1.10 Not all the EU agreements were converted into UK ‘roll over’ (continuity) agreements by the end of the Brexit transition period, either due to willingness of the treaty partner or due to a lack of time to agree the necessary terms to roll

United Kingdom and the States of Guernsey concerning the relationship between the United Kingdom of Great Britain and Northern Ireland and the Bailiwick of Guernsey in relation to World Trade Organization matters, dated 9th October, 2019, which sets out the intended manner in which to operate the extension of the UK’s membership to the Bailiwick and future co-operation in that context. The MoU does not create legal obligations between the participants and is not intended to alter or affect the constitutional relationship between the UK and the Bailiwick.

⁵⁵ Taken from Paragraph 10.2 of the TCA Policy Letter.

⁵⁶ Adapted from Paragraph 7.12 of the TCA Policy Letter.

⁵⁷ This paragraph is adapted from Paragraph 9.4 of the WTO Policy Letter (Billet d’État IV of 2019).

⁵⁸ As set out in the January 2020 Policy Letter, paragraphs 3.16 to 3.18

over the agreement. This means that some of the preferential trading terms enjoyed by the Bailiwick under the Protocol 3 relationship (when the UK was a member of the EU) were lost at the end of the Brexit transition period.

A1.11 Some of those pre-existing agreements and arrangements relate to Protocol 3⁵⁹, including customs matters and agri-foods/sanitary/phytosanitary measures. The Bailiwick had agreed to adopt a continuity approach for, “EU international agreements that apply by virtue of, and to the extent provided for by Protocol 3”⁶⁰. Therefore, certain agreements and arrangements have been transitioned in respect of the Bailiwick, but where it was not relevant, proportionate or practical to do so, they were not extended to the Bailiwick at the end of the Brexit transition period. The option remains for such agreements to be extended at a later date if required.

A1.12 Of those pre-existing EU-third country trade agreements, such as FTAs, partnership agreements or economic cooperation agreements, as of 31st December 2020, the UK had secured approximately 30 trade agreements with 58 countries, which for the purposes of trading goods continue to apply to the Bailiwick to the extent that Protocol 3 applied⁶¹ (as was the case under the UK’s membership of the EU and due to the Bailiwick’s resulting relationship with the EU.)

2021 and beyond (after the end of the Brexit transition period)

A1.13 The work in relation to Brexit and its implications for the Bailiwick did not end on 31st December, 2020 (the end of the Brexit transition period) nor with the initial implementation of the TCA. The work encompasses continued compliance with WTO obligations, the TCA and continuity FTAs, other opportunities and challenges for relationships and agreements with the UK, EU and other jurisdictions, and further development of constitutional resilience. The work will need to continue to be prioritised and adequately resourced.

⁵⁹ From 1st January, 1973 until 31st January, 2020, the Bailiwick had a special relationship with the EU that was set out in Protocol 3 to the UK’s Act of Accession to the European Community (1972) (‘Protocol 3’). The Protocol 3 relationship is explained in Appendix 2 of the December 2020 Policy Letter.

⁶⁰ From the January 2020 Policy Letter, paragraph 3.17. Examples of the types of agreements transitioned relating to Protocol 3 are shown in Section 11 of the TCA Policy Letter.

⁶¹ In addition, as advised in paragraph 11.7 of the TCA Policy Letter, the UK-Japan CEPA formed part of the UK’s original trade continuity programme, but the terms of that agreement were renegotiated such that it fell outside of the parameters of the continuity programme. The Bailiwick’s inclusion remains based on a Protocol 3 relationship for that agreement but includes a provision to extend other elements to the Bailiwick in the future, such as the cross border supply in services, financial services and digital elements.

A1.14 Guernsey's Government Work Plan⁶² recognises managing the effects of Brexit and Guernsey's international obligations as one of the four main priorities for government in this political term (2020-2025).

A1.15 Ongoing work is required to ensure that the Bailiwick continues to participate in, and remain compliant with, the TCA and any existing UK-third country FTAs insofar as they relate to the Bailiwick. Work is also continuing for compliance checks and cost-benefit assessments for considering whether to request extension of any new UK FTAs beyond the baseline.

Representing the Bailiwick's interests during the FTA negotiations phase

A1.16 The islands of the Bailiwick are self-governing dependencies of the Crown, with their own directly elected legislative assemblies, their own administrative, fiscal and legal systems, and their own courts of law. However, neither the Bailiwick, nor any of its constituent jurisdictions, are sovereign States. The UK has responsibility for the formal international relations of the Bailiwick, as it does for Jersey, the Isle of Man and the Overseas Territories. Usually, the UK Government negotiates international agreements on behalf of the Bailiwick⁶³, either at the request of the Bailiwick (or any of its constituent jurisdictions) or if the Bailiwick agrees to such a suggestion by the UK Government. Generally, international agreements which apply to the UK can be extended to all or any of the islands at the time of ratification, accession or at a later date.

A1.17 The UK Government and Guernsey signed an International Identity Framework ('the Framework') in 2008⁶⁴. The Framework seeks to develop Guernsey's international identity through an agreed set of principles with the UK. In particular, the Framework states that "the UK will not act internationally on behalf of Guernsey without prior consultation" and that "the UK recognises that the interests of Guernsey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity."

A1.18 Accordingly, the Bailiwick has not been directly represented at the UK-FTA negotiations but has, instead, been represented by the UK Government. This might be considered a risk because of the potential difficulty in ensuring that the

⁶² [Government Work Plan – Stage 1](#) and the States' [Resolutions](#) of 26th March, 2021; and [Government Work Plan 2021-2025](#) (due for debate in July 2021).

⁶³ The States of Guernsey has sought agreement from the UK Government, acting on behalf of the Crown, to enable Guernsey to negotiate certain international agreements directly with other countries, rather than being represented in the negotiations by the UK. Entrustment has been used on various occasions, including in relation to tax transparency agreements, an asset sharing agreement with the US and, more recently, for Guernsey to enter into a social security agreement with Latvia, which was signed in September 2020.

⁶⁴ [Framework for developing the international identity of Guernsey](#) – signed between Guernsey and UK governments on 18th December, 2008

Bailiwick's interests are fully understood and therefore accurately presented by the UK negotiators, and, in turn, well understood by the potential trading partner. To mitigate that risk, Guernsey has continued to build on strong relationships at Ministerial and official level across various UK Government Departments.

- A1.19 The UK Government is responsible for representing the Bailiwick's interests in these trade negotiations even where they differ from those of the UK. The UK Government has repeatedly acknowledged this responsibility (some examples are shown in Appendix 4).
- A1.20 Officials from the States of Guernsey have been working closely with the UK Government, particularly with the Department for International Trade (DIT), the Department for Business, Energy and Industrial Strategy and the Ministry of Justice. Political liaison has been through engagement with the Minister of State for Trade Policy in DIT, the Rt Hon. Greg Hands MP. There have also been meetings with other Ministers, including the Lord Chancellor.
- A1.21 The Bailiwick has sought to maximise opportunities and minimise risks from the effects on it of the UK's departure from the EU – including the opportunities to participate in future UK FTAs.

Bailiwick of Guernsey governance structure – negotiations phase

- A1.22 The Committee was directed by the States of Deliberation to lead on Guernsey's participation in the UK-EU negotiations on the future relationship, as well as to seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new FTAs and exploring extension of the UK membership of the WTO⁶⁵.
- A1.23 Two groups were formed in January 2020 to offer support, advice and guidance to the Committee during the UK-EU negotiations phase, to ensure a collaborative approach with other Principal Committees as the many facets of UK-EU negotiations crossed all Committee mandates. In broad terms, the Future Partnership Delivery Group ('FPDG') was the political group comprising representatives of the Policy & Resources Committee and each Principal Committee, the States of Alderney, Chief Pleas of Sark and senior civil servants; and the Trade Policy Advisory Panel ('TPAP') was the business representative group enabling engagement with industry and external stakeholders. As the UK commenced negotiations on FTAs with other international partners (such as Japan and the USA), those groups also considered the Bailiwick's position towards inclusion within the UK's FTAs. Both groups were disbanded at the end of March 2021, at the end of the TCA 'cooling off period'.

⁶⁵ Resolutions of the June 2016 Policy Letter.

A1.24 A new group, the Trade Policy Forum ('TPF') was set up in 2021 to establish regular, constructive engagement with external stakeholders on future trade policy for Guernsey. This includes consideration of TCA implementation matters and discussions in relation to UK FTAs (and associated negotiations) and other trade matters. The TPF comprises political representatives from the Policy & Resources Committee, Committee *for* Economic Development and the Committee *for* Home Affairs, representatives from industry and external stakeholders. Other representatives will be invited to attend as necessary.

Alderney and Sark

A1.25 The Committee, on behalf of the Bailiwick, has led the engagement with the UK Government in respect of the FTA negotiations (and previously in the UK-EU negotiations with the EU) to ensure that the interests of the entire Bailiwick are understood by the UK Government, including when the interests of the three islands of the Bailiwick may differ. Liaison between Alderney, Sark and Guernsey (including other Guernsey Committees) occurs for technical and operational matters, or where shared legislation, policy or practice exists or could be beneficial.

A1.26 Issues have been, and continue to be, discussed in meetings between the islands of the Bailiwick to ensure that Alderney and Sark's matters and positions are known and understood – including when appropriate in the Bailiwick Council, the Alderney Liaison Group and the Sark Liaison Group – as well as in less formal fora as matters arise.

**SUMMARY OF MAIN REFERENCES TO FTAs FROM CERTAIN POLICY LETTERS
CONSIDERED BY THE STATES OF DELIBERATION**

(MAIN FOCUS OF THOSE POLICY LETTERS IS THE UK'S WITHDRAWAL FROM THE EU
AND BAILIWICK'S RELATIONSHIPS WITH UK AND EU)

- A2.1 Since 2016, the States of Deliberation has considered various matters relating to the UK's withdrawal from the EU, which has included the potential for new trading opportunities to arise as the UK seeks to develop its new international trade agenda. Below is a summary of certain Policy Letters with references to international trading opportunities and FTAs.
- A2.2 **June 2016 – “Managing the implications for Guernsey because of the UK’s changing relationship with the EU” – Policy & Resources Committee**

The first main Brexit Policy Letter⁶⁶ set the high level objectives for Guernsey and the potential for new opportunities following the UK's exit from the EU. This Policy Letter was also approved by Alderney's Policy & Finance Committee and by Sark's Policy & Performance Committee (July 2016)⁶⁷. Paragraph 6.9.3 of that Policy Letter noted the opportunities for new trading relationships that could arise following the UK's withdrawal from the EU:

“Importantly, when the UK leaves the EU, the EU will no longer have the competence to enter into international trade agreements on the UK's behalf as is currently the case under the Treaty of Lisbon. This will enable the UK to enter into new trade agreements of its own. This change may therefore provide new trading opportunities for Guernsey as it has been hitherto unable to extend EU trade agreements, except in so far as Protocol 3 applies. However, experience suggests that it is likely to take the UK many years to negotiate new trade agreements.”

The Policy Letter also set out the main areas for engagement with the UK during the UK's negotiations with the EU (set out in paragraph 7.4 and Appendix 4) – see Appendix 3 of this FTA Policy Letter.

⁶⁶ [‘Urgent Proposition’ at the States’ Meeting of 29 June 2016](#) – ‘Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU’ and [Resolutions for Billet d’État XX - 29th June, 2016](#)

⁶⁷ Approved by Sark's Policy & Performance Committee on 12th July, 2016 and approved by Alderney's Policy & Finance Committee on 19th July, 2016. A statement recognising the UK's decision to leave the EU was made by the President of the States of Alderney at its meeting on 20th July, 2016

A2.3 March 2017 – Acknowledging the Triggering of Article 50 of the Treaty on European Union in Respect of ‘Protocol 3’

In March 2017, the States of Deliberation considered a Policy Letter⁶⁸ that ensured due parliamentary process by formally acknowledging the UK’s withdrawal from the EU. That Policy Letter was also approved by Alderney’s Policy & Finance Committee and by Chief Pleas of Sark (April 2017).⁶⁹

That Policy Letter set out the objectives of the then UK Government’s negotiating objectives for its withdrawal from the EU, which included (as summarised in paragraph 6.1 of that Policy Letter) “Securing new trade agreements with other countries – We will forge ambitious free trade relationships across the world”.

Paragraph 6.4 of that Policy Letter set out the importance for Guernsey of these future trading opportunities: “Also of interest to Guernsey, is that the UK Government will seek a new network of regional and free trade agreements, including with the EU alongside some sort of new customs arrangement. The opportunity for Guernsey to have access to any such agreements [is seen] as being essential.”

That Policy Letter outlined the four initial priority areas that had been established for engagement with the UK government in the course of the negotiations, set out in paragraph 6.9. This included:

“Customs and goods: the maintenance of Guernsey’s trade links with the UK and the EU provides stability and protection for its businesses in order to safeguard and build on its trading relationships. No doors for new trading opportunities should be closed to the islands and with that in mind, the extension of the UK’s membership of the World Trade Organisation (WTO) will become a priority”.

A2.4 November 2017 – “Protecting the interests of the Bailiwick of Guernsey as the UK leaves the EU” – Policy & Resources Committee.

In November 2017, the States of Deliberation considered the third main Brexit Policy Letter⁷⁰ which set out the rationale for repealing the European Communities (Bailiwick of Guernsey) Law 1973, for implementing relevant EU measures into domestic law and other legislative provisions to provide continuity

⁶⁸ [Billet d’État VI of 2017](#) – ‘Acknowledging the Triggering of Article 50 of the Treaty on European Union in Respect of “Protocol 3”’ and [Resolutions](#) of 8th March, 2017.

⁶⁹ Approved by Alderney’s Policy and Finance Committee on 25th April 2017 (acknowledged by the States of Alderney on 24th May, 2017) and by Chief Pleas of Sark on 26th April 2017.

⁷⁰ [Billet d’État XXI of 2017](#) – ‘Protecting the Interests of the Bailiwick of Guernsey as the UK Leaves the EU and [Resolutions](#) of 8th November, 2017.

and certainty during the Brexit process. This was also approved by Alderney's Policy & Finance Committee and by Sark's Chief Pleas (December 2017)⁷¹. That Policy Letter noted the importance of Guernsey being able to benefit from any new opportunities arising from the UK's withdrawal from the EU. Part of the work required was to enact an enabling *Projet de Loi* for the purpose of the implementation of any international agreement relating to trade, in reference to international trading agreements and other instruments and associated materials. The Law Officers of the Crown prepared the relevant legislation - *The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018*⁷². The relevant *Projet* was approved by all three Bailiwick parliaments and the law was granted Royal Sanction in December 2018.

A2.5 **January 2020 – “The Withdrawal Agreement between the United Kingdom and European Union - Implications for the Bailiwick of Guernsey” – Policy & Resources Committee**

The fourth main Brexit Policy Letter⁷³ provided an update on Bailiwick-related developments that had taken place in advance of the UK's exit from the EU, sought approval of the next steps and directed preparation of any necessary legislation. It was considered and approved in Guernsey, Sark and Alderney (January 2020)⁷⁴.

The Policy Letter explained (in paragraphs 3.16 and 3.17) the UK's intention to 'roll over' agreements (including FTAs) which it had participated in by virtue of its EU membership. The UK approach was to seek to become a party to the international agreements in its own right either bilaterally with partner countries or by acceding to various relevant international agreements. The Policy & Resources Committee agreed in March 2019 to adopt a continuity approach in respect of EU international agreements that applied by virtue of, and to the extent provided by, Protocol 3 so that the various international agreements would continue to apply post-Brexit insofar as Protocol 3 applied. Alderney and Sark's relevant Committees also adopted a similar approach.

⁷¹ Alderney's Policy and Finance Committee on 5th December, 2017 and by Sark's Chief Pleas on 7th December, 2017.

⁷² [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#) approved by the States of Deliberation at its meeting of 6th June, 2018; approved by the Chief Pleas of Sark at its meeting of 4th July, 2018; approved by the States of Alderney at its meeting of 25th July, 2018.

⁷³ [Billet d'État II of 2020](#) – 'The Withdrawal Agreement Between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey' and [Resolutions](#) of 17th January, 2020.

⁷⁴ Approved by Alderney's Policy & Finance Committee on 23rd January, 2020 and by Sark's Policy & Finance Committee on 20th January, 2020.

A2.6 December 2020 – “The Bailiwick’s Participation in the UK-EU Trade and Cooperation Agreement” – Policy & Resources Committee

The fifth main Brexit Policy Letter⁷⁵ (the TCA Policy Letter) set out the outcome of negotiations between the UK and EU and the terms of the agreement reached, insofar as they would apply to the Bailiwick of Guernsey. The Policy Letter summarised the terms of the agreement in comparison to the Brexit objectives agreed in successive Policy Letters since 2016, and authorised the Policy & Resources Committee to agree and signal approval of the TCA if the Committee was of the view that the terms and conditions of that agreement gave satisfactory effect to the principles agreed by the States⁷⁶. The Policy Letter was considered and approved in Guernsey, Alderney and Sark (December 2020).

The Policy Letter set out the UK’s approach to continuity agreements following its departure from the EU and the ability for the UK to start negotiations on new international agreements, which the Bailiwick could seek to benefit from (as set out in section 11 of that Policy Letter). Resolution 5 of that Policy Letter asked the States of Deliberation: “To note the inclusion of the Bailiwick in various free trade agreements (which have previously had effect in the Bailiwick by virtue of the Bailiwick’s relationship with the EU, and the operation of which has been “rolled over” by the UK) and other agreements which will take effect at the end of the Brexit transition period and to agree that there shall be implemented such measures (including legislative measures) as the Policy & Resources Committee, in relation to Guernsey, the Policy and Finance Committee of the States of Alderney, in relation to Alderney, and the Policy and Finance Committee of the Chief Pleas of Sark, in relation to Sark, thinks fit for the purpose of ensuring that Guernsey, Alderney and Sark may comply and remain in compliance with obligations that arise from the inclusion of the Bailiwick in such agreements.”

There is further information about the TCA Policy Letter in Appendix 1 paragraph A1.1 and Appendix 5.

⁷⁵ [Billet d’État XXIX](#) of 2020 – ‘The Bailiwick’s Participation in the UK-EU Trade and Cooperation Agreement’ – and [Resolutions](#) of 27th December, 2020. Approved by the States of Deliberation, States of Alderney and Chief Pleas of Sark at their (separate) meetings on 27th December, 2020.

⁷⁶ The TCA Policy Letter included an Appendix which listed and summarised all the Brexit-related Policy Letters to date.

PREVIOUS RESOLUTIONS OF THE STATES OF DELIBERATION

Guernsey's objectives in relation to the UK's withdrawal from the EU and new trading relationships

- A3.1 Guernsey's objectives were set out in the June 2016 Policy Letter ('Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU')⁷⁷. Appendix 3 contained the negotiating objectives and considerations (which were also replicated elsewhere, including in the TCA Policy Letter in 2020):
- a) "Negotiating considerations – relationship with the UK"
 - b) "Negotiating objectives - relationship with the EU"

Paragraph 7.4 (also duplicated for ease of reference in Appendix 4 to that 2016 Policy Letter) was the "Main areas for engagement with the UK Government for the States of Guernsey".

- A3.2 The Resolutions of 29th June, 2016, included one which was for, "the Policy & Resources Committee to lead on the negotiations with the UK, in accordance with its mandate, in particular to: "(i) engage with the UK in the four main areas of concern outlined in paragraph 7.4; (ii) seek to protect and secure the best interests of Guernsey in its trading relationship and for those resident in the Bailiwick; (iii) to take all other necessary measures that may be considered appropriate; and (iv) to note that that the Policy & Resources Committee will undertake to keep States Members advised of progress."
- A3.3 The last two points from paragraph 7.4 of that June 2016 Policy Letter are particularly pertinent to the Bailiwick's potential participation in any UK FTAs and are copied below for ease of reference.

"7.4 Main areas for engagement with the UK Government for the States of Guernsey

In order to ensure that Guernsey's interests are best served in the negotiations with the UK it will need to ensure it monitors and engages with the UK Government to:

- (i) Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey

⁷⁷ ['Urgent Proposition' at the States' Meeting of 29 June, 2016](#) – 'Managing the Implications for Guernsey because of the UK's Changing Relationship with the EU' ('the June 2016 Policy Letter') and [Resolutions](#)

residents/persons with EU rights do not suffer any detriment compared to those resident in the UK;

- (ii) Ensure, where possible, the arrangements for free movement of goods described in Protocol 3 are replicated in some way. This may be through extension of the relevant part of any new UK / EU relationship. The States should also ensure that the best interests of Guernsey residents and businesses are served under that new agreement;
- (iii) Ensure there is no detriment to the existing, and historic, constitutional relationship between Guernsey and the UK. Work to mitigate against any risks of unintended consequences; and
- (iv) Seek opportunities for Guernsey in any new UK trading relationship including with the EU and with other countries outside of the EU, including any new free trade agreements and exploring extension of the UK membership of the WTO.”

A3.4 The January 2020 Policy Letter⁷⁸ also contained an overarching objective for the UK-EU negotiations and the States resolved (inter alia): “To agree, in particular, that any agreement or protocol in respect of the Bailiwick should be underpinned by the principles of relevance, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population and unique needs arising out of the same.”

1987 States’ Resolution on International Agreements

A3.5 For information about the 1987 Resolution on international agreements, refer to Billet d’État IV of 6th February, 1987, and Resolutions of 25th February, 1987.

Resolution:

“That each international agreement in the application of which to this Island the Insular Authorities are invited to acquiesce shall be referred by the Bailiff to the States Advisory and Finance Committee and that the States Advisory and Finance Committee shall make to the Bailiff its recommendations as to whether a notification of acquiescence in the application of an agreement to this Island either in whole or with reservations or of non-acquiescence should be made and thereupon the Bailiff shall communicate with the proper quarter in accordance with such recommendations provided that:-

- (a) where the terms of any international agreement appear to the States

⁷⁸ [Billet d’État II of 2020](#) – ‘The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey’ and [Resolutions](#)

Advisory and Finance Committee to involve questions of human rights and fundamental freedoms, or matters which, in the opinion of the States Advisory and Finance Committee are likely to be considered controversial, the terms of the proposed agreement shall be laid before the States;

(b) where the subject matter of the agreement relates to a subject which is the concern of any other States Committee, the States Advisory and Finance Committee shall refer the agreement to that Committee with a request for its views;

(c) where the States Advisory and Finance Committee or a States Committee concerned considers it necessary or expedient that the matter of acquiescence or non-acquiescence in the application to this Island of an agreement should be submitted to the States for a decision, the matter shall be so submitted by the States Advisory and Finance Committee together with any necessary clarification and recommendations; and

(d) where the views of the States Advisory and Finance Committee and of any other States Committee concerned are not in accord on the matter, the difference between them shall be submitted by the States Advisory and Finance Committee to the States for a decision thereon.”

A3.6 In accordance with the Resolutions of 27th January, 2016⁷⁹, relating to the work of the Constitutional Investigation Committee, and in accordance with the States’ Resolutions of 25th August, 2020⁸⁰, following consideration of a Requête entitled ‘Extension of the Bailiwick of the UK-US Extradition Treaty of 2003 and Changes to Processes Relating to the Approval of International Instruments’, the Policy & Resources Committee is currently reviewing the 1987 Resolution with a view to requesting the States to update it (later in 2021).

⁷⁹ [Billet d’État I of 2016](#) – ‘Proposal to Achieve Greater Autonomy in the Legislative Process and International Affairs for Guernsey’ – and [Resolutions](#) of 27th January, 2016.

⁸⁰ Requête, [‘Extension of the Bailiwick of the UK-US Extradition Treaty of 2003 and Changes to Processes Relating to the Approval of International Instruments’](#) by Deputy J Merrett and others; and Resolutions of [25th August, 2020](#).

RECENT CORRESPONDENCE WITH THE UK GOVERNMENT WHICH INCLUDES REFERENCES TO FTAs OR OTHER TRADING RELATIONSHIPS WITH (NON-EU) COUNTRIES OR ORGANISATIONS

- A4.1 There has been regular engagement and correspondence with the UK Government to ensure that the Bailiwick's interests are understood and fully represented during the UK's trade negotiations with other countries and organisations. A summary of some of the correspondence relating to the UK-EU future relationship and the Bailiwick's participation in the TCA was included in Appendix 1 of the TCA Policy Letter.
- A4.2 Some of the correspondence is directly relevant to the Bailiwick's participation in UK-Rest of World FTAs and is summarised below.
- A4.3 The UK Prime Minister, the Rt Hon Boris Johnson MP wrote to the then Chief Minister, Deputy Gavin St Pier, in September 2019 about the UK's withdrawal from the EU and the Crown Dependencies' part in the new UK-EU relationship. He said that the UK government was, "keen to further strengthen this [UK – Bailiwick of Guernsey/Crown Dependencies] relationship after the UK has left the European Union, when **the UK Government will be negotiating its own free trade agreements on behalf of the entire British family, including the Crown Dependencies.**"⁸¹ (emphasis added)
- A4.4 On 2nd March, 2020, a joint letter was sent to the Chancellor of the Duchy of Lancaster setting out aspirations of the Bailiwick of Guernsey, Jersey and the Isle of Man for participation in any future UK-EU agreement. This was in response to the publication on 27th February of the UK's approach to the negotiations. The overriding objectives, as set by each of the islands, were summarised as including, "Setting our own priorities; retaining autonomy of our own laws; maintaining our tax sovereignty and continuing to set our own fiscal policies; keeping the Common Travel Area; being in control of our own waters; and managing our own borders." It was further stated that it was, "our intention to **be constructive and collaborative partners in** the UK-EU negotiations on the future relationship, as well as **the UK's negotiations with the rest of the world.**" (emphasis added)
- A4.5 On 31st March, 2020, Guernsey's Minister for External Relations wrote to the Paymaster General to confirm the Bailiwick's position for participation in any UK-EU and RoW agreements and said, "**The Bailiwick's part in** the UK-EU future relationship (and **UK-Rest of the World relationships**) **needs to be practical, relevant and proportionate to the needs of the Bailiwick.**" (emphasis added)

⁸¹ [Letter from Prime Minister to Deputy St Pier 13th September, 2019](#)

A4.6 The UK has provided assurances throughout the Brexit transition period, in respect of the UK-EU negotiations, that the Government recognises the historic constitutional relationship between the Bailiwick and the Crown. On 1st May, 2020, the Parliamentary Under-Secretary of State for Justice, Alex Chalk MP, reaffirmed the UK's commitment to representing the Bailiwick's interests (including in RoW FTA negotiations) and to the principles of the constitutional relationship:

"This Government recognises and values the historic relationship between Guernsey and the Crown. I am glad the Prime Minister's recent recognition of this relationship has assured you that our position on this remains unchanged. ... This Government takes its constitutional responsibilities towards the Crown Dependencies very seriously. We respect your autonomy in domestic matters and we look forward to working together on matters of mutual interest."

A4.7 Mr Chalk also said that the **UK Government** would, "**continue to engage with you in a collaborative and transparent way as we seek to represent your interests**, and the interests of the whole British family, **during** the EU negotiations as well as **negotiations for new Free Trade Agreements with other countries in the rest of the world.**" (emphasis added)

A4.8 On 22nd July 2020, the Rt Hon Greg Hands MP, Minister of State for Trade Policy provided further assurance that the UK would represent the Crown Dependencies during all negotiations for agreements with other countries, with a particular reference to Rest of World FTAs. "**I recognise the constitutional role the UK Government has in representing your interests internationally, including through our RoW FTAs.**" "...the UK Government confirmed that it's [sic] **priority in its approach to including the Crown Dependencies in RoW FTAs is to ensure coverage in those areas that support the effective functioning of the UK-CD customs union**". (emphasis added)

A4.9 On 19th August, 2020, following a number of negotiating rounds between the UK and the EU, the Paymaster General confirmed that the **UK** was continuing to seek to secure the **best possible outcome for the Bailiwick in the negotiations** between the UK and EU and **for RoW FTAs**, which would meet the objectives agreed by the States of Deliberation in June 2016 and again in January 2020. "I note your concerns over the possibility of precedent being set during EU negotiations for other FTA negotiations. I understand that my colleague, Minister Hands, has committed to **regular engagement with you on the UK's approach to including the Crown Dependencies in Rest of the World FTAs.**"⁸² (emphasis

⁸² These exchanges highlighted the UK's commitment to ensure that the Bailiwick could participate in UK FTAs to the fullest extent possible and not just for the purposes of goods or customs matters only (which was the case for the TCA).

added) “We will...focus our attention and efforts on securing the best possible goods-based arrangement for your jurisdictions.”

A4.10 The Lord Chancellor wrote to the Committee⁸³ in December 2020 to set out the UK’s interpretation of how, at the domestic level, the UK and Bailiwick will work together to meet the obligations of the TCA. The letter reaffirmed that the UK Government remains committed to the principles set out in the International Identity Framework and to the development of Guernsey’s international identity. It also stated that the UK Government would continue to work with Guernsey whilst developing new trading relationships with other countries:

“I am pleased to reaffirm the UK Government’s commitment to the much valued and long-standing constitutional relationship between the UK and Guernsey. I look forward to continuing to strengthen that relationship, in line with the Justice Select Committee Reports and Government responses of 2010-14; and the Framework for Developing the International Identity of Guernsey, signed in 2008. The UK Government **will continue to work closely with Guernsey**, in positive collaboration and in the context of our existing constitutional relationship, **as we** implement the Agreement and **develop new trading relationships with other countries**. The UK Government continues to support Guernsey and the other Crown Dependencies seeking Letters of Entrustment in additional policy areas, where appropriate, recognising as it does the value to the Crown Dependencies of representing their own interests on the international stage.” (emphasis added)

⁸³ [Letter dated 24th December, 2020, from the Lord Chancellor and Secretary of State for Justice to the President of the States of Guernsey Policy & Resources Committee](#). The letter was primarily about Guernsey’s participation in the agreement between the UK and the EU. The letter was read in full during the debate in the States of Deliberation on 27th December, 2020. The letter was noted in the Resolutions of the States of Deliberation that day. It was subsequently added (for completeness) as Appendix 9 to the TCA Policy Letter (together with an explanatory note to that effect).

**THE PRINCIPLES OF THE BAILIWICK'S COMMITMENTS
IN RESPECT OF GOODS FOR THE TCA**

EXTRACTS FROM 'THE BAILIWICK'S PARTICIPATION IN THE UK-EU TRADE AND COOPERATION AGREEMENT' POLICY LETTER (DECEMBER 2020)⁸⁴

- A5.1 The principles relating to the Bailiwick's participation in the goods and customs elements of the TCA were described in the TCA Policy Letter. That Policy Letter primarily focussed on the requirements which the Bailiwick needed to meet to be able to take part in the TCA. It also covered the basis for the Bailiwick's participation in continuity FTAs and referred to future UK FTAs to be negotiated following the end of the transition period.
- A5.2 Decisions by the three parliaments of the Bailiwick to participate in the TCA were based on the principles that had already been agreed by those parliaments, as due to the timings involved with the negotiations a finalised legal text was not available to base those decisions on. Due to the fast pace of negotiations currently being undertaken by the UK for other FTAs, it will be necessary to take a similar approach to FTAs.
- A5.3 Paragraphs 1.20-1.27 of the TCA Policy Letter outlined the chapters of the TCA that the Bailiwick was being asked to participate in for the purpose of trade in goods. For ease of reference, those chapters are:
- Chapter 1 – National Treatment and Market Access for Goods (including trade remedies): To facilitate trade in goods between the UK and the EU and to maintain liberalised trade in accordance with the provisions of the agreement.
 - Chapter 2 – Rules of Origin: To lay down the provisions for determining the origin of goods for the purpose of the application of the preferential tariff treatment under the TCA.
 - Chapter 3 – Sanitary and Phytosanitary ('SPS') Measures: To set out the measures that are required to ensure human, animal and plant health is protected by the individual parties while facilitating the trade and movement of agri-foods between them. This chapter includes an Annex setting out related process matters.
 - Chapter 4 – Technical Barriers to Trade ('TBT'): To facilitate trade in goods by preventing, identifying and eliminating unnecessary TBTs. This chapter includes associated Annexes. These Annexes are either relevant to current trade in goods, or areas of potential future economic opportunity

⁸⁴ [Billet d'État XXIX of 2020](#) – 'The Bailiwick's Participation in the UK-EU Trade and Cooperation Agreement' - and [Resolutions](#), approved by the States of Deliberation, the States of Alderney and the Chief Pleas of Sark on 27th December, 2020.

and industry development. The following five Annexes are an integral part of the chapter:

- Annex on Chemicals: To facilitate the trade of chemicals and related products, ensure high levels of protection for the environment, and human and animal health, and provide for cooperation between the UK (and the Bailiwick) and the EU responsible authorities.
- Annex on Organic Products: To set out the provisions and procedures for fostering trade in organic products in accordance with the principles of non-discrimination and reciprocity. It means recognition of equivalence by the UK (and the Bailiwick) and the EU of their respective laws.
- Annex on Motor Vehicles and Equipment and Parts thereof: To apply to trade between the UK (and the Bailiwick) and the EU for all categories of motor vehicles, equipment and parts thereof.
- Annex on Trade in Wine: To ensure that science relating to wine making, referred to as oenological practices, complies with the international standards published by the International Organisation of the Vine and Wine ('OIV').
- Annex on Medicinal Products: To apply provisions relating to the marketing of finished medicinal products for human or veterinary use, as well as intermediates, including biological products for human and veterinary use and active pharmaceutical ingredients ('API').
- Chapter 5 – Customs and Trade Facilitation: To ensure that there are compatible and effective administrative and enforcement customs procedures in place to facilitate trade whilst also ensuring proper protection, safety and security processes are in place to protect citizens, and national prohibitions and restrictions and financial interests of both the UK and the EU. (Note: the Bailiwick is not included in any aspects relating to maintaining an Authorised Economic Operators ('AEO') partnership programme, either within this Chapter or in the Annex on AEOs)
- Protocol on Mutual Administrative Assistance in Customs Matters: To formalise and support the mutual assistance between customs authorities as agreed within the Customs and Trade Facilitation Chapter."

A5.4 Further details on the goods relationship, and what participation in the above Chapters and Annexes of the TCA means for the Bailiwick, were set out in Section 3 of the TCA Policy Letter, Paragraphs 3.1-3.68.

A5.5 Paragraphs 3.3-3.5 of the TCA Policy Letter made specific reference to the Bailiwick's possible approach to inclusion within future UK FTAs:

"3.3 Under Protocol 3, the EU rules on customs matters and quantitative restrictions applied to the Bailiwick under the same conditions as they applied to the United Kingdom. In the application of Protocol 3, the Bailiwick was treated as being part of the UK Member State and,

therefore, as part of the EU Customs Union. It also provided the basis for alignment in regulatory standards for trade in agri-food products. It is not possible to recreate Protocol 3 through the participation in a UK-EU trade agreement, or, indeed, through any other trade agreement with new trading partners. This is because Protocol 3 directly governed the Bailiwick's relationship with the EU (including the EU's external-facing Common Commercial Policy⁸⁵). With the end of Protocol 3, a new approach to the Bailiwick's inclusion in Free Trade Agreements ('FTAs') will need to be found – one that adheres to the principles of relevance, proportionality and practicality, whilst respecting the Bailiwick's autonomy. In terms of the UK-EU negotiations, this meant seeking to recreate (at least) a customs and goods-based relationship.

- “3.4 The Customs Arrangement negotiated with the UK in 2018 is a customs union⁸⁶ as defined by the WTO. This British Islands Customs Union provides one basis on which the Bailiwick could partake in future UK - Rest of World FTAs. The Bailiwick can also take part in any UK FTA as a territory for whose international relations the UK is responsible.
- “3.5 This provides some flexibility meaning the Bailiwick is not obliged to join all FTAs that the UK enters into; however, as part of the British Islands' Customs Union, it is bound to apply any preferential tariffs to goods imported under all UK FTAs. The Bailiwick is able to ensure its interests are served by participation in such international agreements that best suit the Islands' economic needs, without undermining the Customs Arrangement.”

⁸⁵ [EU Common Commercial Policy](#)

⁸⁶ The WTO defines a customs union as 'the substitution of a single customs territory for two or more customs territories'.

THE BAILIWICK'S PARTICIPATION IN THE UK-EEA EFTA FTA

The UK-EEA EFTA FTA

- A6.1 The UK-EAA EFTA FTA covers trade in goods, services and investment, digital trade, capital movements, government procurement, intellectual property, competition, subsidies, small and medium sized enterprises, good regulatory practices and regulatory cooperation, recognition of professional qualifications, trade and sustainable development.

The Bailiwick's participation in the UK-EU EEA EFTA FTA

- A6.2 Participation in the goods elements of the UK-EEA EFTA FTA is extremely important for those Bailiwick businesses which already export goods to these countries and offers trade stability. The effect of the Bailiwick's participation is that the Bailiwick will benefit from preferential tariffs on any goods originating in the Bailiwick and exported to the EEA EFTA States, as agreed under the FTA. If the Bailiwick had not been included, preferential tariffs resulting from the UK-EEA EFTA FTA would still have to be applied by the Bailiwick to goods originating from the EEA EFTA States imported into the Bailiwick, due to the UK-Bailiwick Customs Arrangement.
- A6.3 Following negotiations, it was considered that this FTA should apply to the Bailiwick in respect of trade in goods only at this time. The Bailiwick's participation in this FTA provides for post-Brexit continuity for trade in goods, through commitments that are the same as or similar to the TCA (though there are no fisheries access commitments to consider), together with a commitment for further discussions in the future about trade in services and investments, so that the services chapters can be extended to the Bailiwick if agreement is found on the terms of that extension.
- A6.4 Due to the shortness of time available to agree the FTA, it was not possible for the Bailiwick's (nor the other Crown Dependencies) participation in the services parts of the FTA to be considered by the EEA EFTA negotiators. However, an 'extension mechanism', together with a supporting side agreement, about the Bailiwick participating in the services and investments elements of the FTA at a later date has been included.
- A6.5 In addition, the EEA EFTA States have also agreed to include a clause within the territorial extension article which allows the Bailiwick to seek to terminate the trading relationship under the FTA separately to the UK. This is important for the Bailiwick's autonomy and international identity, although it is unlikely to arise in practice. The Bailiwick's participation in the FTA would also cease if the UK (or

EEA EFTA States) decided to end the FTA altogether.

Process to approve the Bailiwick's participation

- A6.6 In order to meet the short timescales, a local consent process was required for the Bailiwick to agree to participate in this FTA before it is considered and ratified by the UK Parliament. It is understood that this is likely to be soon; one factor being condensed timescales for ratification of the FTA by the EEA EFTA States.⁸⁷ Such action was necessary to protect the constitutional position that new international obligations must be consented to by the three jurisdictions of the Bailiwick before they apply in respect of the islands.
- A6.7 Consequently, the Committee considered Guernsey's participation in the UK-EEA EFTA FTA using the Committee's mandated delegated authority derived from the 1987 States' Resolution on international agreements and other relevant previous States' decisions.⁸⁸ In using this delegated authority, the Committee noted the earlier significant engagement during the negotiations process through various forums across the States of Guernsey, including the Finance Sector Forum, the Future Partnership Delivery Group ('FPDG') and at the recently formed Trade Policy Forum ('TPF'). It also noted that officers from relevant service areas across the States of Guernsey had assisted in their areas of expertise in regard to the likely effects and obligations which would arise from the possible extension of the UK-EEA EFTA FTA to the Bailiwick. The Committee *for* Economic Development has been regularly updated regarding all aspects of future trade policy and the wider negotiations and it is understood that it supports Guernsey's participation in this FTA.
- A6.8 By delegated authority under the aforementioned 1987 States' Resolution, the Committee approved Guernsey's inclusion in the following chapters of the UK-EEA EFTA FTA relating to trade in goods:
- (i) National Treatment and Market Access;
 - (ii) Rules of Origin;
 - (iii) Customs Administration and Trade Facilitation;
 - (iv) Sanitary and Phytosanitary Measures; and
 - (v) Technical Barriers to Trade;
- A6.9 The Committee also approved the approach taken by the UK Government to agree a joint declaration with the EEA EFTA States regarding further inclusion in other parts of the FTA in the future. The declaration commits the parties to

⁸⁷ For example, the date of the next Norwegian parliamentary election is September 2021.

⁸⁸ As outlined in Paragraphs 2.9-2.11, Paragraph 2.19 and Paragraph 4.3 in the main body of the Policy Letter.

further discussions about inclusion in trade in services and investments-related chapters as soon as possible.

A6.10 As stated in Section 4 of this Policy Letter, it is understood that consideration is being given to this FTA by the relevant authorities in Alderney and Sark for inclusion of those islands on the same terms as Guernsey.

MATTERS TO BE CONSIDERED FOR GUERNSEY/THE BAILIWICK'S POSSIBLE PARTICIPATION IN FTAs

What are the benefits to Guernsey and the Bailiwick to be part of a UK FTA?

- A7.1 Now that the UK has left the EU and has become an independent trading nation, the situation for the Bailiwick has also had to change. The Bailiwick, along with the other Crown Dependencies of Jersey and the Isle of Man, also needs to establish and secure its place in the world to ensure that future trade interests are protected.
- A7.2 In December 2018, Policy & Resources Committee and the Committee *for Economic Development* developed and released a consultation to Bailiwick businesses which sought to identify the impacts of Brexit on business. Businesses were also asked questions to identify the flows of goods imported and exported globally from the Bailiwick.
- A7.3 Whilst the consultation was primarily about the impacts of the UK's withdrawal from the EU, it clearly identified that the Bailiwick is a global exporter of locally manufactured products, with exports now estimated to be c.£100m annually in goods such as medical devices, electronics, software, and specialised plant equipment. A large proportion of these businesses will benefit from FTA preferential market access depending on the country of export.
- A7.4 In addition to FTAs with individual countries, there is potentially further benefit from multilateral agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('the CPTPP'). Established in 2011, the CPTPP currently covers 11 Pacific Rim countries (Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Canada and Vietnam) which ensures preferential tariffs and market access for goods and services between those countries.
- A7.5 Whilst Guernsey's interest in the trade in goods is clear, the other potential benefits of future FTAs are still to be realised (which will be carefully considered with Sark and Alderney and also with industry, through the forums established such as the Trade Policy Forum). Securing preferential access within FTAs could ensure opportunities not only for goods, but also for services, such as professional and financial services and IP. As the UK continues to negotiate with international trade partners, it is important that the Bailiwick's interests are also included, where relevant, proportionate and practical.

Why should the Bailiwick seek the option for future inclusion in the services elements of FTAs?

- A7.6 Where the Bailiwick's interests in a particular trade agreement are not clear, or there needs to be further analysis or consideration, it is intended that the Bailiwick's position be reserved for further negotiation at a later date. This is to ensure that it is possible to be included later in relevant chapters of a FTA. This is particularly relevant for trade in services.
- A7.7 For trade in services, tariffs and quotas are not applied as it is difficult, if not impossible, to track these intangible elements of trade. Trade in services can be restricted by other means, through applying controls around how services are delivered and offered to consumers. These are known as the modes of supply: 1) Cross-Border supply; 2) Consumption Abroad; 3) Local Presence; 4) Temporary Entry. This presents a complex picture for the Bailiwick. The following elements are generally included in services chapters of FTAs:
- general commitments on cross-border trade in services across modes 1-3⁸⁹;
 - 'mode 4' or mobility provisions, which seek to liberalise the rules that allow temporary entry of natural persons from the trading partner's territory for the purposes of supplying services;
 - investment-related provisions;
 - commitments relating to domestic regulatory framework; and
 - mutual recognition of professional qualifications ('MRPQ'), e.g. medical, legal and other professional qualifications).
- A7.8 In order to liberalise trade across the four modes, countries will agree certain approaches to liberalising trade to make access to each other's economies easier for business. Sometimes this means levelling domestic regulation and treating international business in the same way as domestic businesses. This does not prevent domestic regulation; it simply leads to a levelling of the playing field for businesses based within and outside the country.
- A7.9 In many cases, goods are sold together with a wide range of services and therefore both goods and services trade need to be considered very carefully together. For example, the purchase of machinery (goods) may also include services such as remote or in-country training or repair by remote access. There are different obligations and commitments which need to be agreed to achieve the full range of benefits of each FTA and these need to be considered carefully.

⁸⁹ Together with annexes of sector-specific application of commitments ('positive listing') or of sector-specific exceptions ('negative listing').

FTAs currently being considered/negotiated by the UK

A7.10 The timescales for inclusion within any UK FTA is dictated by the UK's negotiating programme. The pace is set by the UK and the negotiating trade partner. The list below sets out some of the ongoing UK Government consultation relating to potential future bilateral and multilateral FTAs:

- On 18th July, 2019, the UK Government published a consultation document⁹⁰ on the potential of joining Comprehensive and Progressive Agreement for Trans-Pacific Partnership ('the CPTPP');
- On 2nd March, 2020, the UK Government published a consultation document on a potential UK-USA FTA;⁹¹
- In December 2020, the UK and Singapore announced⁹² proposals to negotiate a UK-Singapore Digital Economy Agreement ('DEA')
- On 25th May, 2021, the UK Government published a consultation document⁹³ on a potential UK-India FTA;
- On 4th June, 2021, the UK Government announced that it had reached an agreement in principle ('AIP') in principle⁹⁴ with the EEA EFTA States (Norway, Iceland and Liechtenstein)⁹⁵, which in effect replicates some of the terms of the UK-EU TCA for the wider EEA EFTA area.
- On 17th June, 2021⁹⁶ the UK Government announced that it had reached an agreement in principle ('AIP') with Australia with regards to taking forward a UK-Australia FTA;
- On 17th June, 2021, the UK Government announced that it would expedite progress on negotiations with New Zealand towards agreeing a UK-New Zealand FTA. It is expected that an agreement in principle may be reached by August 2021.

⁹⁰ [UK Government consultation on trade with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#)

⁹¹ [UK-US Free Trade Agreement](#)

⁹² [Joint statement by the UK and Singapore on 10th December, 2020](#)

⁹³ [UK Government consultation - trade with India](#)

⁹⁴ Agreement in principle was [announced by the UK Government](#) on 4th June 2021

⁹⁵ The 27 EU Member States, together with the three European Free Trade Association (EFTA) States Iceland, Liechtenstein and Norway, make up the European Economic Area (EEA) Contracting Parties (the 31 EEA States). Norway, Iceland and Liechtenstein go by the term "EEA EFTA States" in order to clarify that the other EFTA State, Switzerland, is not party to the EEA Agreement.

⁹⁶ [UK-Australia FTA negotiations: agreement in principle](#)

ENGAGEMENT AND CONSULTATION ON THESE PROPOSALS

- A8.1 The Committee *for* Economic Development is mandated to develop and implement policies on matters relating to the promotion and development of all sectors of business and for the reputation of the Island as a centre for commerce and industry. It is responsible for developing any future trade policy. The Policy & Resources Committee is mandated to deal with international relations, external relations and constitutional affairs. Therefore, there is the continued need for very close collaboration between the two Committees in ensuring the Bailiwick’s international trade interests and objectives are achieved. Other States Committees also hold mandated policy responsibilities relating to FTAs and other trade arrangements. Principally these are: the Committee *for* Home Affairs, the Committee *for the* Environment & Infrastructure and the Committee *for* Health & Social Care. All States’ Committees remain responsible for their policy areas and legislation within their mandates and for driving forward any necessary changes to satisfy international obligations.
- A8.2 Often the TCA and FTA negotiations have proceeded at a fast pace, with intense periods of engagement taking place and limited time for UK-Bailiwick consultation and consideration within the Bailiwick, regarding the Bailiwick’s participation in the resulting agreements between the UK and its partner countries. As each FTA and FTA negotiation is different, the pace, timescales and potential participation of the Bailiwick will vary depending on the depth and complexity of the draft agreement. There could be differences about whether the Bailiwick could, or would want to, participate in different chapters of a FTA from the time of implementation of the FTA.
- A8.3 For the period following the end of the Brexit transition period, a governance structure was set up in Guernsey to facilitate effective and timely engagement with industry and external stakeholders through the establishment of the Trade Policy Forum (‘TPF’)⁹⁷. Whilst it does not have any decision-making function, the TPF acts as a sounding board on the impacts of certain strategic decisions and a critical friend to any negotiating strategy⁹⁸.
- A8.4 The Law Officers of the Crown have also been consulted and have provided legal advice and legislative drafting throughout the consideration of the issues described in this Policy Letter.

⁹⁷ As in Paragraph A1.24 in Appendix 1.

⁹⁸ In 2020, prior to the establishment of TPF, there were two bodies which advised the Committee on the UK-EU relationship negotiations and FTA matters – namely the Trade Policy Advisory Panel (including representatives from industry) and the Future Partnership Delivery Group (which was the political body). More information on those three bodies is in Appendix 1.

- A8.5 There has been frequent engagement between the governments of Guernsey and the UK, particularly with DIT. During this process, the UK Government has been reminded repeatedly that each of the Bailiwick's three jurisdictions needs to make its own decisions about its participation (or otherwise) in any future trade arrangements and that the Bailiwick will need to ensure it implements its own legislation to meet its commitments.
- A8.6 As it did throughout the process leading to the UK's legal separation from the EU (from 2016 until 31st December, 2020⁹⁹), the Committee has continued to work with the governments of Alderney and Sark so that both those islands were informed during negotiations and approval phases for the Bailiwick's potential participation in the UK's future trade relationships with other countries.¹⁰⁰
- A8.7 Guernsey's officials have worked and continue to work closely on future FTAs with counterparts in Jersey and the Isle of Man to ensure a shared understanding of the issues and priorities for each of the Crown Dependencies.

⁹⁹ As in Paragraphs 2.9-2.11 of the main text, in paragraphs A1.1 and A1.2 of Appendix 1 and in the summary of Brexit-related Policy Letters set out in Appendix 2 of this Policy Letter (and a more complete list in Appendix 8 of the TCA Policy Letter, December 2020).

¹⁰⁰ Issues referred to in this Policy Letter and future trade relationships more generally have also been discussed in previous meetings of the Future Partnership Delivery Group (the governance structure set up for the EU-UK negotiations process, which included Alderney and Sark political representatives and since disbanded), and through the Bailiwick Council.

SARK STATUTORY INSTRUMENT

2021 No.

The Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) (Amendment) Regulations, 2021

<i>Made</i>	17 th June, 2021
<i>Coming into operation</i>	18 th June, 2021
<i>Laid before the Chief Pleas</i>	, 2021

THE DOUZAINÉ, in exercise of the powers conferred on it by sections 15(2), 23A and 25 of the Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) Law, 2013^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amendments to 2014 Regulations.

1. For paragraph (2) of regulation 3 of the Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) Regulations, 2014 ("**the 2014 Regulations**") substitute –

"(2) Subject to paragraph (3), paragraph (1) does not apply to the driving of a tractor in order to gain access to –

(a) the home of the driver,

^a Order in Council No. XVI of 2013; amended by No. IX of 2015; No. II of 2016; Sark Ordinance No. V of 2019.

(b) any premises for the purposes of making commercial deliveries, or

(c) Gallery Stores, for the purpose of purchasing or collecting purchased goods the transport of which necessitates the use of a tractor."

2. For paragraphs 4 and 5 of the 2014 Regulations substitute –

"Parking.

4. From 1st April until 30th September inclusive each year, it is an offence to park a tractor or construction vehicle between the Power Station and the Visitor's Centre or the Church along the line of the Avenue, between 11.00 a.m. and 5.00 p.m."

Citation.

3. These Regulations may be cited as the Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) (Amendment) Regulations, 2021.

Commencement

4. These Regulations shall come into force on the 18th June, 2021.

Dated this 17th day of June, 2021



CHRISTOPHER DRILLOT

Chairman of the Douzaine

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) Regulations, 2014 so as, with effect during the period 1st April to 30th September each year, to -

- enable access by tractor to Gallery Stores for certain purposes despite the prohibition on the driving of tractors on specified roads from April until 30th September, and
- prohibit the parking of tractors and commercial vehicles on the Avenue between 11 a.m. and 5 p.m. each day.

These Regulations will come into force on the 18th June, 2021,

GUERNSEY STATUTORY INSTRUMENT
NO. 63

ENTITLED

**The Emergency Powers (Coronavirus) (General Provision)
(Bailiwick of Guernsey) (No. 7) Regulations, 2021**

ARRANGEMENT OF REGULATIONS

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC, AND CONTROLS
ON TRAVEL INTO THE BAILIWICK

1. Decisions of MOH and the Authority to impose restrictions and requirements.
2. Detention of persons by the MOH.
3. Imposition of restrictions and requirements: general.
4. Critical Workers.
5. Requirement to self-isolate on arrival in the Bailiwick.
6. Requirement to self-isolate on arrival in the Bailiwick: supplementary.
7. Screening requirements.
8. Imposition of further restrictions and requirements.
9. Self-isolation of persons suspected to be infected with coronavirus.
10. Detention or self-isolation: additional provisions.
11. Restrictions or requirements in respect of groups.
12. Variation and revocation of restrictions and requirements.
13. Initial detention of persons to enable screening and assessment.
14. Offences and enforcement.
15. False or misleading information.
16. Interpretation of this Part: general.
17. Definition of "self-isolate".

PART II

MISCELLANEOUS AND FINAL

18. Modification of legislation relating to mental health.
19. Population Management Law: Employment Permits.

20. Court of Appeal.
21. Offences by legal persons and unincorporated bodies.
22. Revocation and savings.
23. Interpretation.
24. Citation.
25. Extent.
26. Commencement.

SCHEDULE 1 Critical Workers.

SCHEDULE 2 Country Categories.

SCHEDULE 3 Modification of legislation relating to mental health.

Explanatory Note.

GUERNSEY STATUTORY INSTRUMENT

2021 No. 63

**The Emergency Powers (Coronavirus) (General
Provision) (Bailiwick of Guernsey) (No. 7) Regulations,
2021**

<i>Made</i>	17 th June, 2021
<i>Coming into operation</i>	18 th June, 2021
<i>Laid before the States</i>	, 2021

WHEREAS there are one or more persons within the Bailiwick, or who may enter the Bailiwick, who may be infected with Severe Acute Respiratory Syndrome Coronavirus 2, resulting in the occurrence of an emergency within the meaning of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012^a;

AND WHEREAS one or more persons within the Bailiwick have died after being infected with Severe Acute Respiratory Syndrome Coronavirus 2;

AND WHEREAS there has been a recent surge of infections of several different variants of Severe Acute Respiratory Syndrome Coronavirus 2 in Europe;

^a Order in Council No. XIV of 2012; amended by Ordinance No. IX of 2016; and No. II of 2017.

AND WHEREAS the Civil Contingencies Authority ("the Authority") (having consulted the Medical Officer of Health in respect of the risk to public health created thereby and by the spread of Severe Acute Respiratory Syndrome Coronavirus 2, the virus causing the disease COVID-19, and in respect of the measures necessary to prevent or slow the spread of infection) is satisfied that the conditions set out in section 13 of the Law are satisfied, and that the following regulations contain only provisions which are appropriate for and proportionate to the purpose of preventing, controlling or mitigating the emergency referred to above;

AND WHEREAS the Authority is satisfied that the effect of the following regulations is in due proportion to that emergency, and that they are compatible with the Convention rights within the meaning of section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000^b;

NOW THEREFORE THE AUTHORITY, in exercise of the powers conferred upon it by sections 12(1), 14 and 19 of the Law, and of all other powers enabling it in that behalf, hereby makes the following regulations: –

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC, AND CONTROLS ON TRAVEL INTO THE BAILIWICK

Decisions of MOH and the Authority to impose restrictions and requirements.

1. (1) Subject to paragraph (3), the Medical Officer of Health ("the MOH") may not impose a restriction or requirement under this Part unless the MOH

^b Order in Council No. XIV of 2000; amended by No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

has sought the advice of Her Majesty's Procureur in relation to the appropriateness and proportionality of the proposed requirement or restriction, and has taken account of that advice.

(2) Subject to paragraph (3), the Civil Contingencies Authority ("the Authority") may not impose a requirement under regulation 6(2) unless the Authority has sought the advice of the MOH in relation to the appropriateness of the proposed requirement and has taken account of that advice.

(3) Neither the requirement in paragraph (1) nor the requirement in paragraph (2) applies where the MOH or the Authority (as the case may be) considers that, in all the circumstances, it would be impracticable to comply with it.

(4) Where the MOH imposes a restriction or requirement under these Regulations without seeking the advice of Her Majesty's Procureur, in reliance on paragraph (3), the MOH shall, as soon as reasonably practicable, give notice that he or she has done so to Her Majesty's Procureur.

(5) Where the Authority imposes a requirement under regulation 6(2) without seeking the advice of the MOH, in reliance on paragraph (3), the Authority shall, as soon as reasonably practicable, give notice that it has done so to the MOH.

Detention of persons by the MOH.

2. (1) This regulation applies where the MOH has reasonable grounds to believe that a person ("P") –

(a) is, or may be, infected or contaminated with, or is suspected or confirmed to be suffering from,

coronavirus, and there is a risk that P might infect or contaminate others, or

- (b) has arrived in the Bailiwick by air or sea and has left an infected area within the 14 day period immediately preceding the date of P's arrival in the Bailiwick.

(2) Where paragraph (1)(a) or (b) is met in relation to P, the MOH may, for the purposes of screening, assessment or the imposition of any restriction or requirement under regulation 3, impose on P a requirement to be detained until the later of –

- (a) the end of the period of 48 hours beginning with the time from which P's detention under this regulation begins,
- (b) such time as any screening requirements imposed on or in relation to P under regulation 3 have been complied with and the assessment referred to in that regulation carried out in relation to P.

Imposition of restrictions and requirements: general.

3. (1) Where regulation 2(1)(a) or (b) is met in relation to a person ("P"), the MOH may –

- (a) (orally or in writing) impose on or in relation to P one or more screening requirements to inform an assessment by the MOH of whether P presents, or could present, a risk of infecting or contaminating

others,

- (b) carry out such an assessment in relation to P, and
- (c) following such an assessment, (orally or in writing) impose on or in relation to P any other restriction or requirement which the MOH considers necessary for the purposes of removing or reducing the risk referred to in subparagraph (a), including (without limitation) the restrictions or requirements set out in paragraph (2).

(2) The restrictions or requirements are –

- (a) that P submit to medical examination,
- (b) that P be removed to a hospital or other suitable establishment,
- (c) that P be detained in a hospital or other suitable establishment,
- (d) that P self-isolate,
- (e) that P be disinfected or decontaminated,
- (f) that P wear protective clothing,
- (g) that P provide information or answer questions about

P's health or other circumstances,

- (h) that P's health be monitored and the results reported,
- (i) that P attend training or advice sessions on how to reduce the risk of infecting or contaminating others,
- (j) that P be subject to restrictions on where P goes or with whom P has contact,
- (k) that P abstain from working or trading.

(3) For the avoidance of doubt, a requirement to self-isolate imposed under paragraph (1) may be for such period as the MOH thinks necessary in all the circumstances, and may include provision for that period to be shortened in circumstances where P undergoes a test for COVID-19 and the result of that test is negative.

(4) A restriction or requirement imposed under paragraph (1) may be varied by the MOH orally or in writing.

(5) Neither paragraph (1) nor regulation 5 or 6 affects the exercise of any powers under regulation 10; and nothing in this regulation (or in any other provision in these Regulations) affects the MOH's powers under any other enactment.

(6) In this regulation and regulation 6 a power to vary a requirement or restriction includes a power to revoke it.

Critical Workers.

4. Schedule 1 (concerning Critical Workers) has effect.

Requirement to self-isolate on arrival in the Bailiwick.

5. (1) Subject to –
- (a) provision made in or under Schedule 1 (concerning Critical Workers) or Schedule 2 (concerning Country Categories, which Schedule has effect), and
 - (b) paragraphs (2) to (7),

a person who has arrived in the Bailiwick from outside by air or sea must self-isolate for 21 days.

(2) If a person falling within paragraph (1) who underwent a test for COVID-19 directly on arrival in the Bailiwick undergoes a test for COVID-19 13 days after his or her date of arrival (or at such other time as the MOH may direct under this paragraph) (in this regulation, a "Day 13 test"), and the result of that Day 13 test is negative, that person will not be required to self-isolate for the remainder of the 21 day period.

(3) If a person falling within paragraph (1) undergoes a Day 13 test, and the result of that Day 13 test is positive, he or she will be required to self-isolate in accordance with instructions from the MOH and to comply with all other restrictions and requirements imposed on him or her by the MOH.

(4) Subject to where paragraph (6) applies, a child under the age of 12 who has arrived in the Bailiwick by air or sea must self-isolate for 14 days.

(5) Paragraph (6) applies where a child ("C") has been self-isolating in a household bubble.

(6) Where this paragraph applies, even after the cessation of the requirement on C to self-isolate, C may not attend college, school, nursery or childcare (as the case may be) until every other member of C's household bubble has either –

(a) undergone a Day 13 test and received a negative result,
or

(b) self-isolated for 21 days.

(7) In this regulation –

(a) "**childcare**" means such types of arrangement for the care of children under school age as the MOH may specify by direction from time to time, and

(b) "**self-isolating in a household bubble**" means self-isolating with other members of the same household in such a way that household members –

(i) do not keep themselves separated from other household members, but

- (ii) do keep themselves separated from any other person, in such a manner as to prevent infection or contamination,

and references to members of a household bubble (and the definition of "self-isolate" in regulation 17) shall be construed accordingly.

Requirement to self-isolate on arrival in the Bailiwick: supplementary.

6. (1) On arrival in the Bailiwick from any place outside the Bailiwick, a person must, if required –

- (a) answer any question put to him or her by a relevant officer relating to his or her travel, and the travel of any child travelling with that person, during the 14 day period immediately preceding the date of his or her arrival in the Bailiwick,
- (b) provide any travel document specified by a relevant officer relating to that person, or a child travelling with that person, for inspection,
- (c) provide his or her Critical Worker Exemption (if any) for inspection, and
- (d) answer any question put to him or her by a relevant officer relating to that travel document and travel authority.

(2) The Authority may, by publication on the relevant States of

Guernsey website, impose a requirement that any person who has arrived in one Island in the Bailiwick from another Island in the Bailiwick must (subject to provision made in or under Schedule 1) self-isolate for 14 days.

(3) The requirement to self-isolate under regulation 5(1) and 5(2) may be varied by the MOH in relation to a particular case, orally or in writing, and a requirement to self-isolate imposed under paragraph (2) may be varied by the MOH-

(a) by writing in relation to categories of case, and

(b) orally or in writing in relation to a particular case.

(4) The requirement to self-isolate under regulation 5(1) and 5(2) may be varied by the Authority in relation to one or more categories of case, or in relation to all cases, by publication on the relevant States of Guernsey website.

(5) The powers to vary of the MOH under paragraph (3) and of the Authority under paragraph (4) include (but are not limited to) powers to –

(a) specify exceptions to the requirement to self-isolate,

(b) shorten the duration of the requirement to self-isolate, either unconditionally or on the MOH or the Authority (as the case may be) being satisfied that one or more specified conditions have been met, and

(c) impose any requirements and restrictions on persons other than the person who has arrived in the Bailiwick that are reasonably necessary as a consequence of the

variation of the relevant requirement on that person.

(6) For the avoidance of doubt, and without prejudice to the generality of paragraphs (3), (4) and (5), in any case where the MOH exercises a power to vary under paragraph (3) or the Authority exercises its power to vary under paragraph (4) –

- (a) the MOH or the Authority may consult such persons as she or it (as the case may be) thinks fit in respect of the exercise of the power in question, and
- (b) that variation may be amended or revoked in accordance with paragraph (7), and if amended shall be treated for all purposes as continuing to have effect in accordance with its terms.

(7) In any case where –

- (a) the MOH has exercised a power to vary, the MOH may amend or revoke that variation orally or in writing (in a case where the requirement was varied orally), and in writing (in a case where the requirement was varied in writing), or
- (b) the Authority has exercised its power to vary, the Authority may amend or revoke that variation by publication on the relevant States of Guernsey website,

and the amendment or revocation shall have effect from such time as the MOH or the Authority (as the case may be) may specify.

(8) Where a restriction or requirement is imposed on or in relation to a child under regulation 5 or this regulation (including the requirement to self-isolate under regulation 5(1) and 5(2)), a person who is a responsible adult in relation to the child must ensure that the child complies with the restriction or requirement, insofar as that person is reasonably able to do so.

(9) Where a restriction or requirement is imposed orally on a person under regulation 3, regulation 5 or this regulation, or a restriction or requirement is orally varied, the person (or, in the case of a child, a person who is a responsible adult in relation to the child) must be provided with a written notification of the restriction or requirement that has been imposed or varied as soon as reasonably practicable.

Screening requirements.

7. (1) For the purposes of these Regulations, the screening requirements in relation to a person ("P") are requirements to the effect that P must –

- (a) answer questions about P's health or other relevant circumstances (including travel history and information about other individuals with whom P may have had contact),
- (b) produce any documents which may assist the MOH in assessing P's health,
- (c) at such a time as the MOH may specify, allow a

biological sample of P to be taken, including a biological sample of P's respiratory secretions or blood, by appropriate means including by swabbing P's nasopharyngeal cavity, or provide such a sample, and

- (d) provide sufficient information to enable P to be contacted immediately by the MOH during such period as the MOH may specify, where the MOH considers that such provision of information is necessary in order to reduce or remove the risk of P infecting or contaminating others.

(2) Where P is a child who is accompanied by a responsible adult, the responsible adult must –

- (a) ensure that P answers questions in accordance with paragraph (1)(a),
- (b) answer the questions if P is unable to do so or cannot reliably do so,
- (c) produce any documents, required under paragraph (1)(b), on P's behalf,
- (d) allow a biological sample of P to be taken, including a sample of P's respiratory secretions or blood, by appropriate means including by swabbing P's nasopharyngeal cavity, or provide such a sample, and

- (e) provide information where required by the MOH under paragraph (1)(d).

Imposition of further restrictions and requirements.

8. (1) Where regulation 2(1)(a) or (b) is met in relation to a person ("P") –

- (a) following an assessment by the MOH of the risk presented by P in accordance with regulation 3(1), or
- (b) following P's release from detention under regulation 2, or from self-isolation under regulation 9,

the MOH may (orally or in writing) impose on P any one or more of the requirements specified in paragraph (2) where the MOH considers that it is necessary to do so in order to reduce or remove the risk of P infecting or contaminating others.

(2) The requirements specified for the purposes of paragraph (1) are for P to –

- (a) provide P's contact details to the MOH,
- (b) supply information to the MOH which may assist in assessing P's health,
- (c) at such time as the MOH may specify, allow a biological sample of P to be taken, including a sample of P's respiratory secretions or blood, by appropriate

means including by swabbing P's nasopharyngeal cavity, or provide such a sample,

- (d) comply with any other specified condition or to take any other specified measure.

(3) The conditions or measures which may be specified under paragraph (2)(d) include –

- (a) a restriction on P's travel,
- (b) a restriction on P's activities,
- (c) a restriction on P's contact with specified persons.

(4) The MOH may (orally or in writing) revoke or vary any requirement or restriction imposed under this regulation, including by imposition of a restriction specified in paragraph (3).

(5) Subject to paragraph (6), the period for which a restriction set out in paragraph (3) is imposed may not exceed 14 days beginning with the day on which the restriction is imposed.

(6) Where a restriction set out in paragraph (3) is imposed, or the period of a restriction is extended under this paragraph, the MOH may (orally or in writing) extend the period of the restriction for a further specified period not exceeding 14 days if the MOH considers that the restriction is still necessary and proportionate.

(7) Before imposing or varying a requirement or restriction under this regulation, the MOH must –

- (a) inform P (or, where P is a child, a person who is a responsible adult in relation to P) of the requirement or variation that the MOH is minded to impose or make, and
- (b) have regard to any relevant representations by P (or, where P is a child, a person who is a responsible adult in relation to P), as to its suitability.

(8) When imposing or varying a requirement or restriction under this regulation, the MOH must inform P that it is an offence to fail to comply with the requirement.

(9) Where a requirement or restriction under this regulation is imposed on or in relation to a child, or varied in relation to a child, a person who is a responsible adult in relation to the child must ensure that the child complies with the requirement or restriction, insofar as that person is reasonably able to do so.

(10) Where the MOH orally imposes a requirement or restriction on P under this regulation, or orally varies such a requirement or restriction, the MOH must provide P (or where P is a child, a person who is a responsible adult in relation to P) with a written notification of the requirement or restriction that has been imposed or varied.

(11) Paragraph (1) does not affect the exercise of any powers under regulation 3(1)(c).

Self-isolation of persons suspected to be infected with coronavirus.

9. (1) This regulation applies where regulation 2(1)(a) or (b) is met in relation to a person ("P").

(2) The MOH may require P to self-isolate if the MOH –

- (a) has reasonable grounds to believe that P is, or may be, infected or contaminated with coronavirus, and
- (b) considers that it is necessary to do so in order to reduce or remove the risk of P infecting or contaminating others.

(3) Where the MOH has reasonable grounds to believe that P is, or may be, infected or contaminated with coronavirus, the MOH may detain P pending the decision of the MOH whether to require P to self-isolate under paragraph (2).

(4) Where the MOH has detained P under paragraph (3) or has required P to self-isolate under paragraph (2), the MOH may impose on or in relation to P one or more screening requirements.

(5) When imposing a requirement under this regulation, the MOH must inform P that it is an offence to fail to comply with the requirement.

(6) Where a requirement under paragraph (2) is imposed on or in relation to a child, a person who is a responsible adult in relation to the child must ensure that the child complies with the requirement, insofar as that person is

reasonably able to do so.

(7) This regulation does not affect the exercise of any powers under regulation 3(1)(c).

Detention or self-isolation: additional provisions.

10. (1) Where a person ("P") is required to be detained or to self-isolate under regulation 3 or 9 or subjected to restrictions or requirements under regulation 8, the MOH must have due regard to P's well-being.

(2) Where P is detained or required to self-isolate under regulation 3 or 9 or subjected to restrictions or requirements under regulation 8 for a period exceeding 14 days, the MOH must review the continuation of P's detention or self-isolation by reference to the provisions of those regulations.

(3) After each subsequent interval of 24 hours during which P is detained or required to self-isolate under regulation 3 or 9 or subjected to restrictions or requirements under regulation 8, the MOH must review the continuation of P's detention or self-isolation by reference to the provisions of those regulations.

(4) Where P is detained or required to self-isolate under regulation 3 or 9 or subjected to restrictions or requirements under regulation 8, the MOH may require P to comply with screening requirements if the MOH considers that it is necessary and proportionate to do so in order to reduce or remove the risk of P infecting or contaminating others.

(5) Where P is detained under regulation 2, the MOH may require P to move to a suitable place.

(6) The MOH must notify P (or, where P is a child, a person who is a responsible adult in relation to P), as soon as P's detention under regulation 3 starts, or as soon as it is decided to require P to self-isolate under regulation 9, of –

- (a) the fact of P's detention or requirement to self-isolate,
- (b) the powers under which P is detained or required to self-isolate,
- (c) the reason for P's detention or self-isolation,
- (d) the next steps that may be taken and by whom,
- (e) the obligation to keep the need for P's detention or self-isolation under review,
- (f) the penalty for obstructing a person carrying out a function under these Regulations under regulation 14(4), and
- (g) the right to apply for revocation or variation under regulation 12, where applicable.

Restrictions or requirements in respect of groups.

11. (1) The powers in regulations 2, 3 and 9 include powers to impose a restriction or requirement in relation to a group of persons and, for this purpose, those regulations have effect as follows.

- (2) In regulation 2, the references to "a person" and to P –

- (a) as they apply in paragraph (1)(a) are to each person in the group,
- (b) as they apply in paragraph (1)(b) are to each person in the group who has arrived on the same aircraft or ship and left the same area,

and the power to impose a requirement to be detained in paragraph (2) of regulation 2 is to be read as a power to impose that requirement on any one or more of the persons in the group in question.

(3) In regulation 3 –

- (a) in paragraph (1), the reference to "a person" is to be read in accordance with paragraph (2) of this regulation,
- (b) in the rest of that regulation, the references to P are to one or more persons in the group in question.

(4) In regulation 9 –

- (a) in paragraph (1), the reference to "a person" is to be read in accordance with paragraph (2) of this regulation,
- (b) in the rest of that regulation, references to P are to one or more of the persons in the group in question.

Variation and revocation of restrictions and requirements.

12. (1) A requirement, restriction or condition imposed under this Part, or Schedule 1 or Schedule 2, may be varied or revoked by the Royal Court on the application of an affected person.

(2) The following persons are affected persons –

- (a) P,
- (b) a person having parental responsibility (within the meaning of the Children (Guernsey and Alderney) Law, 2008^c, the Children (Sark) Law, 2016^d, or the Child Protection (Sark) Law, 2020^e, (as the case may be) for P,
- (c) a person who has been appointed Guardian of P,
- (d) P's spouse or civil partner,
- (e) a person living with P as P's spouse,
- (f) a person in respect of whom a Critical Worker

^c Order in Council No. XIV of 2009; amended by No. IV of 2018; Ordinance Nos. XI and XLVIII of 2009; Nos. IX and XX of 2016; and No. VI of 2017.

^d Order in Council No. VIII of 2016; amended by Ordinance No. IX of 2016; and Sark Ordinance No. I of 2017.

^e Order in Council No. XIII of 2020.

Exemption has been granted under, and within the meaning of, Schedule 1, and

(g) a Relevant Person within the meaning of Schedule 2,

and for the purposes of this paragraph, P includes a person subject to the requirement under regulation 5(1) and 5(2) or to a requirement imposed under regulation 6(2).

(3) For the avoidance of doubt, an application under this regulation may be made in such manner as the Court thinks fit.

Initial detention of persons to enable screening and assessment.

13. (1) This regulation applies if a police officer has reasonable grounds to suspect that –

- (a) a person ("P") is, or may be, infected or contaminated with coronavirus,
- (b) there is a risk that P might infect or contaminate others, and
- (c) it is necessary to direct, remove or detain P in the interests of P, for the protection of other persons or for the maintenance of public safety.

(2) This regulation also applies if a police officer has reasonable grounds to suspect that P is in breach of the requirement to self-isolate under regulation 5(1) or 5(2) or a requirement to self-isolate imposed under regulation 6(2).

- (3) A police officer may –
- (a) direct P to go immediately to a hospital or other suitable place for the purposes of the imposition of any restrictions or requirements under regulation 3,
 - (b) remove P to a hospital or other suitable place for the purposes of the imposition of any restrictions or requirements under regulation 3, or
 - (c) if P is already at a hospital or other suitable place, keep P at that place or remove P to another hospital or other suitable place for the purpose of the imposition of any restrictions or requirements under regulation 3.
- (4) The power in paragraph (3) may be exercised when P is at any place.
- (5) For the purpose of exercising the power in paragraph (3), a police officer may enter any place.
- (6) Before exercising the power in paragraph (3), the police officer must –
- (a) so far as is reasonably practicable, consult the MOH and have due regard to the views of the MOH and any information provided by the MOH in relation to P,

- (b) have due regard to any guidance issued by the MOH and the Chief Officer of the Island Police Force,
- (c) where consultation has not been carried out under subparagraph (a) –
 - (i) consult the MOH as soon as reasonably practicable after the power in paragraph (3) has been exercised, and
 - (ii) have due regard to the views of the MOH and information provided by the MOH in relation to P.

(7) A person removed to or kept in a hospital or other suitable place under this regulation may be detained there for a period not exceeding the permitted period of detention.

(8) A police officer or the MOH, or a person authorised by either of them for the purposes of this paragraph, may, before the end of the permitted period of detention, take a person detained in a hospital or other suitable place to one or more other hospitals or other suitable places.

(9) A person taken to a hospital or other suitable place under paragraph (8) may be detained there for a period ending no later than the permitted period of detention.

(10) A police officer may use reasonable force, if necessary, in the exercise of a power under this regulation.

(11) The MOH may, at any time before the expiry of the initial period, authorise the detention of a person for a further period not exceeding 24 hours (beginning immediately at the end of the initial period).

(12) An authorisation under paragraph (11) may be given only if the MOH considers that the authorisation is necessary because it is not reasonably practicable for the imposition of any restrictions or requirements under regulation 3 to be completed before the end of the initial period.

(13) In this regulation –

"authorised extended period" means such further period as is specified in an authorisation under paragraph (11),

"initial period" means the period of 24 hours beginning with –

- (a) in a case where the person is removed to a hospital or other suitable place, the time when the person arrives at that place, or
- (b) in a case where the person is kept at a hospital or other suitable place, the time when the police officer decides to keep the person at that place, and

"permitted period of detention" means the initial period of detention and the authorised extended period.

Offences and enforcement.

14. (1) A person commits an offence if the person –

- (a) fails, without reasonable excuse, to comply with a restriction, condition or requirement imposed under regulation 2(2), 9(2), 9(4) or 10(5), or a direction under regulation 13(3)(a),
- (b) fails, without reasonable excuse, to comply with a requirement that the person be detained under regulation 9(3), 13(7), 13(9) or 13(11).

(2) A person (D), and subject to paragraph (3), any person who is D's employer, commits an offence if D fails, without reasonable excuse, to comply with the requirement to self-isolate under regulation 5(1) or 5(3) or a restriction or requirement imposed under regulation 5(4) or regulation 6(2); including, for the avoidance of doubt, a requirement to self-isolate for any specified period of less than 14 days or 21 days (as the case may be), or until a specified event occurs –

- (a) imposed by a variation of the requirement under regulation 5(1) or 5(3), or of a requirement under regulation 6(2), by the MOH in relation to a particular case, or by the Authority in relation to a category of cases or all cases, or
- (b) imposed by or under Schedule 1 or Schedule 2.

(3) It is a defence for an employer charged with an offence under paragraph (2) to prove that he or she has taken all reasonable precautions to avoid

the commission of an offence.

(4) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

(5) A person commits an offence if the person fails, without reasonable excuse, to comply with a restriction, condition or requirement imposed under regulation 3(1) that falls within regulation 3(2)(b), (c) or (d).

(6) A person commits an offence if the person fails, without reasonable excuse, to comply with a restriction, condition or requirement imposed under –

(a) regulation 3(1), other than an offence falling within paragraph (5), or

(b) regulation 8(1), 9(4), or 10(4).

(7) A responsible adult who fails without reasonable excuse to comply with regulation 6(7), 7(2), 8(9) or 9(6) commits an offence.

(8) A person guilty of an offence under paragraph (1), (2), (4) or (5) 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.

(9) A person guilty of an offence under paragraph (6) or (7) is liable on conviction to a fine not exceeding level 3 on the uniform scale.

(10) The investigation of an offence under this Part shall be treated

as an assigned matter within the meaning of section 1 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^f (including, for the avoidance of doubt, for the purposes of paragraph 1(a) of Schedule 5 to PPACE, and consequently the provisions of PPACE which relate to the investigation of offences conducted by police officers apply to the investigation of offences under this Part conducted by customs officers).

False or misleading information.

15. (1) If a person to whom paragraph (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

^f Ordres en Conseil Vol. XXIII, p. 573; amended by Ordres en Conseil Vol. XXIV, p. 87; Vol. XXXI, p. 278; Vol. XXXIII, p. 217; Order in Council No. X of 2004; No. II of 2010; No. XIV of 2007; No. XV of 2012; No. VI of 2019; Ordinance No. XXXIII of 2003; No. XXIX of 2004; Nos. XLVIII and XXXV of 2007; No. VII of 2008; No. XLIII of 2013; No. XL of 2014; and No. IX of 2016.

- (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 paragraph applies to a person who –

- (a) makes any statement or provides any information or document to a relevant officer, when acting in the exercise of his or her functions under this Part,
- (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to a relevant 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 relevant officer for the purpose of exercising his or her functions under this Part, or
- (c) makes any statement or provides any information or document to a determining officer or reviewing officer under Schedule 1, or to an officer or authorised person mentioned in paragraph 8(2) of Schedule 2, 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

that officer or person for the purpose of exercising his or her functions under Schedule 1 or Schedule 2 (as the case may be).

(3) A person guilty of an offence under this regulation 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.

Interpretation of this Part: general.

16. (1) In this Part, unless the context otherwise requires –

"**child**" means a person under the age of 18 years,

"**customs officers**" has the meaning given by section 89(6) of PPACE, and "customs officer" shall be construed accordingly,

the "**employer**" of a person (A) includes (but is not limited to) a person who has engaged the services of A by way of a contract or other arrangement entered into with a third party (and for the avoidance of doubt, that third party may be resident or established outside Guernsey),

"**hospital**" means –

(a) any hospital regulated or operated by the States Committee for Health & Social Care (including, for the avoidance of doubt, Le Mignot Memorial Hospital in Alderney), or

(b) the Sark Medical Centre,

"infected area" means an area specified by the MOH as an infected area for the purposes of these Regulations on the relevant States of Guernsey website, or otherwise reasonably considered by the MOH to be an area where there is sustained human-to-human transmission of coronavirus, or from which there is a high risk of importation of infection or contamination (with coronavirus) via travel from that area to the Bailiwick or any part thereof,

"police officer" includes a customs officer,

"PPACE" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003⁸,

"responsible adult" means, in relation to a child, a person with parental responsibility for the child, within the meaning of the Children (Guernsey and Alderney) Law, 2008, the Children (Sark) Law, 2016, or the Child Protection (Sark) Law, 2020 as the case may be, or a person who has the care or charge of the child for the time being,

"relevant officer" means a police officer, the MOH, and any other person or category of person authorised by the Chief Officer of Customs and Excise to exercise functions under regulation 6(1),

"requirement" means a requirement imposed under this Part (including the requirement to self-isolate under regulation 5(1) and 5(2)),

⁸ Order in Council No. XIV of 2009; amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; No. IX of 2016; and No. XXVI of 2018.

"restriction" means a restriction imposed under this Part,

"Royal Court" means the Royal Court sitting as an Ordinary Court, which shall be constituted by the Bailiff sitting alone,

"screening requirements" means the requirements set out in regulation 7(1), and

"travel document" means anything that is or appears to be –

- (a) a passport,
- (b) an identity card, or
- (c) a ticket or other document that permits a person to make a journey, including such a ticket or document that is in wholly electronic form.

(2) In this Part, a reference to infection or contamination, however expressed, is a reference to infection or contamination with coronavirus, and related expressions are to be construed accordingly.

Definition of "self-isolate".

17. (1) In these regulations, **"self-isolate"** in relation to a person ("**P**") means for P to keep himself or herself separated from any other person in such a manner as to prevent infection or contamination, in accordance with such directions as may be given by the MOH from time to time; and such directions may be given both generally (by publication on the relevant States of Guernsey website) and in respect of any particular case (in such manner as the MOH thinks fit).

(2) For the avoidance of doubt, a direction by the MOH given under paragraph (1) may include, amongst other things, a requirement that P remain within and not leave notified premises other than in accordance with –

(a) the terms of the direction, or

(b) a permission granted by the MOH to P,

and a permission under paragraph (b) may be granted in such manner as the MOH thinks fit.

(3) For the avoidance of doubt, a direction including a requirement of the type referred to in paragraph (2) may, amongst other things, specify that P may not enter a garden, yard, passage, outhouse or other appurtenance of such notified premises, or may do so only for a specified period of time each day, where the MOH considers that such a restriction is necessary to protect P, or other persons, from the risk of infection.

(4) In paragraph (2), "**notified premises**" means premises at an address to be notified by P to the States of Guernsey at such time, and in such manner, as the MOH may from time to time require; and for the avoidance of doubt, the MOH may require such an address to be notified before, or on, P's arrival in the Bailiwick.

PART II

MISCELLANEOUS AND FINAL

Modification of legislation relating to mental health.

18. Schedule 3 modifies the Mental Health Review Tribunal Procedure Rules, 2012^h, which modifications shall have effect for the period of validity of these Regulations.

Population Management Law: Employment Permits.

19. (1) The holder of an Employment Permit may, during the period of validity of that Permit –

- (a) be resident without being employed,
- (b) be employed by an employer other than the employer or category of employer specified in the Permit, and
- (c) be employed by the employer or category of employer specified in the Permit on a part-time basis.

(2) Without prejudice to the generality of paragraph (1), the holder of an Open Market Employment Permit may, during the period of validity of that Permit, be accommodated at a dwelling or property other than -

- (a) the dwelling specified on the face of the Permit, or
- (b) a property inscribed in Part B or Part C,

as the case may be.

^h O.R.C. No. I of 2012; as amended by O.R.C. No. III of 2018.

- (3) To the extent necessary to give effect to paragraphs (1) and (2)-
- (a) Employment Permits (including the conditions set out therein) shall be deemed to be varied, and
 - (b) the provisions of the Population Management Law, any Ordinance and subordinate legislation made under that Law, and any other enactment, shall be deemed to be modified,

and Employment Permits, and those provisions, shall have effect accordingly.

(4) For the avoidance of doubt, this regulation shall not affect the period of validity of any Certificate or Permit issued or granted under the Population Management Law, nor the calculation of time for any purpose under that Law.

(5) The Administrator may issue guidance in respect of this regulation.

(6) In this regulation –

"the Administrator" means the Administrator of Population Management under the Population Management Law,

"Employment Permit" has the meaning given by section 20(1) of the Population Management Law,

"Open Market Employment Permit" has the meaning given

by section 20(2) of the Population Management Law,

"Part B" and "Part C" mean those Parts of the Open Market Housing Register, and

"the Population Management Law" means the Population Management (Guernsey) Law, 2016ⁱ.

Court of Appeal.

20. (1) Section 7 (Venue) of the Court of Appeal (Guernsey) Law, 1961^j is disapplied.

(2) The Court of Appeal may sit for the hearing of appeals in or outside the Bailiwick.

(3) For the avoidance of doubt, the Bailiff or presiding judge may give directions as to how the proceedings of the Court of Appeal shall be conducted, including (but not limited to) a direction that the proceedings, or part thereof, shall be conducted by way of telephone, live television link or any other means of telecommunications or electronic communications.

Offences by legal persons and unincorporated bodies.

21. (1) Where a legal person is guilty of an offence under these Regulations, and the offence is proved to have been committed with the consent or

ⁱ Order in Council No. VI of 2016; as amended by No. IV of 2018; Ordinance No. VII of 2017; and Ordinance No. XXVII of 2018.

^j Ordres en Conseil Vol. XVIII, p. 315. There are other amendments not material to these Regulations.

connivance of, or to be attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

he or she as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director.

(3) Where an offence under these Regulations is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in subparagraph (a) or (b),

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

(4) Where an offence under these Regulations is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations must be paid from the funds of that body.

Revocation and savings.

22. (1) The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2021^k are revoked.

(2) Anything done under or for the purposes of regulations revoked under paragraph (1) ("**the revoked regulations**") before the commencement of these Regulations shall, to the extent that the same is required or authorised to be done under or for the purposes of these Regulations, have effect as if done under or for the purposes of the equivalent provision of these Regulations; and for the avoidance of doubt, the revocation of the revoked regulations does not affect any restriction, requirement, condition, prohibition, or penalty, imposed thereunder.

(3) Anything in the process of being done under or for the purposes of the revoked regulations before the commencement of these Regulations may, to the extent that the same is required or authorised to be done under or for the purposes of these Regulations, be continued to be done under or for the purposes of

^k G.S.I. No. 55 of 2021.

the equivalent provision of these Regulations.

(4) Any reference howsoever expressed in any enactment or subordinate legislation to a revoked regulation which is re-enacted (with or without modification) by or under these Regulations shall (unless the contrary intention appears) be construed as a reference to the provision as re-enacted.

(5) In so far as any subordinate legislation made or other thing done (or having effect as if made or done) under or for the purposes of a revoked regulation could be made or done under or for the purposes of these Regulations, it shall (unless the contrary intention appears) have effect as if made or done under or for the purposes of these Regulations.

Interpretation: general.

23. (1) In these Regulations, unless the context requires otherwise –

"**the Authority**": see regulation 1(2),

"**coronavirus**" means Severe Acute Respiratory Syndrome Coronavirus 2 and/or COVID-19,

"**Medical Officer of Health**" means the Medical Officer of Health appointed by the States of Guernsey Policy & Resources Committee and includes the Deputy or Acting Medical Officer of Health for the time being, and any officer authorised by the Medical Officer of Health to exercise the Medical Officer of Health's functions under these Regulations, and

"**the MOH**": see regulation 1(1).

(2) In these Regulations, references to a Category 2, 3 or 4 country are references to a Category 2, 3 or 4 country as specified on the relevant States of Guernsey website for the purposes of these Regulations; and an area, region or country may be specified as a Category 2, 3 or 4 country for those purposes.

(3) For the avoidance of doubt, in these Regulations references to a "test" for COVID-19 are references to a test for COVID-19 of such type as the MOH may specify from time to time in her discretion, and she may specify different types of test for different purposes; and references to undertaking a test, and other associated expressions, shall be construed accordingly.

(4) Words and expressions used in Schedules 1 and 2 have the meanings given in these Regulations, unless contrary provision is made.

(5) Other terms used in these Regulations in provisions modifying an enactment have the same meaning as in that enactment.

(6) For the avoidance of doubt, the powers of police officers under these Regulations are exercisable in addition to all other powers which police officers may exercise.

Citation.

24. These Regulations may be cited as the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2021.

Extent.

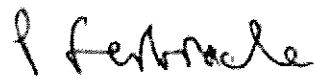
25. (1) Subject to paragraph (2), these Regulations shall have effect throughout the Bailiwick.

(2) Regulation 19 (Population Management Law: Employment Permits) shall have effect in the Island of Guernsey.

Commencement.

26. These Regulations shall come into force on 18th June, 2021.

Dated this 17th day of June, 2021

A handwritten signature in black ink, appearing to read 'P. T.R. Ferbrache', written in a cursive style.

P. T.R. FERBRACHE
Chairman of the Civil Contingencies Authority
For and on behalf of the Authority

SCHEDULE 1

Regulation 4.

CRITICAL WORKERS

Introductory.

1. (1) This Schedule provides for the granting of exemptions from –
 - (a) the requirement to self-isolate at regulation 5(1) and 5(2), and
 - (b) a requirement to self-isolate imposed under regulation 6(2),

in respect of Critical Workers, within the meaning of that term in this Schedule and only to the extent set out in this Schedule, and such an exemption is referred to in this Schedule as a "**Critical Worker Exemption**".

(2) Subject to paragraph 2, for the purposes of this Schedule, a Critical Worker means a person whose presence in the Bailiwick is required to keep a critical service running, as further provided for in paragraph 3.

(3) A Critical Worker Exemption may only be granted to a person in respect of whom an application under and in accordance with this Schedule has been made to an officer authorised by the Authority to determine applications under this Schedule (a "**determining officer**").

(4) Other than in exceptional circumstances to be assessed at the

absolute discretion of the determining officer determining the application, a Critical Worker Exemption will not be granted to a person requiring to stay within the Bailiwick for a period greater than eight weeks, and this Schedule shall be construed accordingly.

(5) A person in respect of whom a Critical Worker Exemption has been granted does not have to self-isolate in accordance with the requirement at regulation 5(1) and 5(2) or a requirement imposed under regulation 6(2) but only if that person complies with the conditions that apply to him or her.

(6) If a person in respect of whom a Critical Worker Exemption has been granted fails to comply with the conditions which apply to him or her in respect of the Critical Worker Exemption, the Critical Worker Exemption shall lapse as it applies to that person, and he or she may be liable to prosecution under the Regulations.

(7) Under regulation 14(2), the employer of a person ("P") in respect of whom a Critical Worker Exemption has been granted may be liable to prosecution if P fails to comply with any of the conditions and restrictions which apply to him or her in respect of this exception.

(8) When considering whether to grant a Critical Worker Exemption, a determining officer shall consider all the circumstances of the case, and in particular shall assess and take into account –

- (a) the risk to public health in the Bailiwick or any part thereof that granting the Critical Worker Exemption would create, and

- (b) if the Critical Worker Exemption were not granted , the damage (if any) that would be suffered by –
 - (i) the business by or on behalf of which the application has been made, and any other potentially affected business based in the Bailiwick, and
 - (ii) the economy of the Bailiwick or any part or sector thereof.

Existential risk to a Bailiwick business.

2. (1) A Critical Worker Exemption may be granted in respect of a person if the determining officer is of the view that either of the conditions set out in subparagraphs (2) and (3) is satisfied.

(2) The condition in this subparagraph is that if the Critical Worker Exemption is not granted, there is a significant risk that, as a consequence, a business based in the Bailiwick will cease trading.

(3) The condition in this subparagraph is that –

- (a) the application has been made by or on behalf of a business based in the Bailiwick that operates transport links into and out of the Bailiwick ("**the applicant business**"),
- (b) the application is in respect of a particular journey or journeys into or out of the Bailiwick, to be undertaken

for a commercial, or primarily commercial, purpose,
and

- (c) the undertaking of journeys of the type in respect of which the application is being made is necessary for the continued operation of the applicant business.

Categories of Critical Worker

Categories of Critical Worker.

3. Subject to paragraph 2, a Critical Worker Exemption may only be granted in respect of a person who –

- (a) satisfies the definition of Critical Worker in paragraph 1(2), and
- (b) falls into one of the following categories (subject to the additional eligibility conditions in respect of business stability and recovery, and technical specialist contractors, specified in paragraphs 4 and 5) –

BUSINESS CATEGORY INDIVIDUALS	
Air and Sea Links	Those individuals directly involved in maintaining the Islands' air and sea links.
Critical National Infrastructure	Those individuals directly involved in maintaining and protecting the Islands' critical national infrastructure.
Frontline Health and	Those individuals providing, or directly facilitating,

Care and Veterinary Services	critical front line health and care, and veterinary, services.
Emergency Services and Justice Administration	Those individuals delivering emergency services or the administration of justice.
Education	Education professionals delivering critical activity within the Islands' schools.
Business Stability and Recovery	Those individuals involved in business continuity and/or business recovery.
Technical Specialist Contractors	Those skilled individuals required for construction projects to continue or begin.
Financial Stability	Those individuals involved in ensuring financial stability and resilience.

Categories of Critical Workers: business stability and recovery.

4. (1) A person ("P") falls into the business stability and recovery category of Critical Workers –

- (a) only if both of the following conditions would be satisfied if a Critical Worker Exemption were granted in respect of P –
 - (i) P would provide professionally qualified technical or specialist expertise that is not currently available or accessible on-island, and
 - (ii) P would fill a designated role, or undertake a designated set of tasks, that would be completed during a fixed term and would be time-critical, and

- (b) only if any of the following conditions would be satisfied if a Critical Worker Exemption were not granted in respect of P –
 - (i) a business would not be able to continue in operation, or
 - (ii) a business' continuity plan would be undermined in a way that meant it could not comply with regulatory, health and safety or other essential statutory standards, and that this would mean it could not continue to operate some critical functions fully, or
- (c) a business would be unable to resume a project or commercial contract that would either (a) prevent the return to employment of on-island works, or (b) lead to the curtailing of employment for current on-island workers.

Categories of Critical Workers: technical specialist contractors.

5. A person falls into the technical specialist contractor category of Critical Worker only if there is a specified start and end to the period of work required by the person under the Critical Worker Exemption, and he or she –

- (a) provides a service or set of skills that cannot feasibly be secured on-island,

- (b) performs a role that is critical to the progression of the project,
- (c) has relevant formal professional qualifications to undertake their role, and
- (d) has health insurance which covers COVID-19 related matters.

Risk mitigation conditions: general and sector-specific

Risk mitigation conditions: general.

6. (1) Each successful applicant for a Critical Worker Exemption must –

- (a) not travel to the Bailiwick if they have any symptoms of COVID-19, no matter how mild,
- (b) self-isolate as directed by the MOH,
- (c) undertake tests for COVID-19 as directed by MOH. If the result of any test is positive, the applicant must self-isolate in accordance with instructions from the MOH and comply with all other restrictions and requirements imposed by the MOH,
- (d) not attend the place of work if he or she has any symptoms of COVID-19, no matter how mild,

- (e) stop working immediately and withdraw from the workplace if any symptoms of COVID-19, no matter how mild, develop whilst working and arrange for testing for COVID-19,
 - (f) adhere to good standards of hygiene and respiratory etiquette,
 - (g) wear a face covering, that complies with any guidance in respect of face coverings issued by MOH, within two metres of other people,
 - (h) if staying overnight, have a confirmed address at which they are staying,
 - (i) use only pre-arranged transport where the details of the driver are fully recorded or a hire car to move between the workplace and their place of residence,
 - (j) remain on-island for the duration of their work, and
 - (k) comply with any method statement agreed with or imposed by the MOH, or other direction given or requirement imposed by the MOH.
- (2) Further specific conditions may be imposed in particular

cases.

Additional risk mitigation conditions: business stability and recovery.

7. (1) The conditions in this paragraph apply to a person falling into the business stability and recovery category of Critical Workers.

(2) For the avoidance of doubt, when these conditions apply they apply in addition to the general risk mitigation conditions set out in paragraph 6.

(3) The conditions in this paragraph are that the Critical Worker's business must –

(a) provide a method statement of how it will meet social distancing and hygiene standards, and

(b) meet the cost of any testing undertaken and any associated medical treatment that is required, including hospital treatment for COVID-19.

Additional risk mitigation conditions: technical specialist contractors in the construction sector.

8. (1) The conditions in this paragraph apply to the following subcategory of persons falling into the technical specialist contractor category of Critical Workers (and referred to in the table at subparagraph (3) as "workers"): specialist technical consultants required in situ on-island to support projects considered necessary to support business recovery work in the construction sector, where there is a clear requirement to augment on-island capacity and capability for a designated period.

(2) For the avoidance of doubt, when these conditions apply they apply in addition to the general risk mitigation conditions set out in paragraph 6.

(3) The conditions in this paragraph are those set out in the following table –

<i>Movement on-island</i>	<p>Any worker who is not resident in the Bailiwick may only travel between their place of work and a specified place of residence.</p> <p>The worker must be able to self-isolate at the specified place of residence when not at work.</p>
<i>Site precautions</i>	<p>During works the site must be zoned, i.e. the areas of work must be isolated using fencing and barriers, with a separate vehicular entrance for the worker.</p> <p>The name of a designated contact person for the site must be provided to the States of Guernsey.</p> <p>All elements of work must be an outside activity and a distance of over 10 metres from all other persons must be maintained at all times.</p> <p>Dedicated toilet and hand washing facilities must be provided to each of the work areas for the sole use of workers. Spray disinfectant must be supplied for use on handles for before and after each use. Running water and hand washing points must be located in each of the work areas. Hand sanitiser must be provided to be used regularly throughout the day.</p>
<i>Accommodation</i>	<p>Workers on a single project must stay in one hotel or set of self-catering units.</p> <p>Food must be supplied either via the hotel as cooked meals or groceries delivered to the door of the self-catering unit.</p>

	<p>The cooked food must be supplied on a 'closed tray' system. Collection of the used plates will be at pre-arranged times. Towelling and bedding must be left outside self-catering units if used in a sealed bag to all direct loading into a washing machine.</p> <p>At the end of the self-isolation period a specialist cleaner must be employed to complete a deep clean using a ULV Microbial fogging method.</p>
<i>Health requirements</i>	<p>No-one in the worker's household has, nor has had during the previous 14 days, any of the symptoms of COVID-19.</p> <p>Workers must undertake testing at an accredited testing centre 72 hours prior to travel.</p> <p>Workers must undertake a test for COVID-19 on the 5th day and the 13th day after arrival in the Bailiwick, or on such other days as the MOH may require.</p> <p>The business meets the cost of all testing in Guernsey.</p>

Applications and reviews

Application process.

9. An applicant for a Critical Worker Exemption must make an application in such form and providing such information as may from time to time be required, both generally by the Authority by publication on the States of Guernsey website, and by a determining officer in the applicant's particular case including (but not limited to) information sufficient to allow a determination to be made as to whether –

- (a) the person named in the application meets the definition of a Critical Worker as set out in this

Schedule,

- (b) the resource the applicant represents is not already available in the Bailiwick, and
- (c) the person named in the application does not have, and has not had during the previous 14 days, any of the symptoms of COVID-19, however mild.

Amendment, revocation and review.

10. A determining officer may amend a Critical Worker Exemption on a request being made by the holder, or on the officer's own volition.

11. An officer authorised by the Authority to review the determination of applications under this Schedule (a "reviewing officer") may revoke a Critical Worker Exemption if he or she is satisfied that –

- (a) it was granted in error,
- (b) any false, deceptive or misleading statement was made, or information or document provided or furnished, by the applicant in the course of his or her application, or
- (c) any condition of it has been contravened.

12. (1) An applicant for a Critical Worker Exemption who is aggrieved by a decision to refuse the application, to grant the application subject to the imposition of further specific conditions under paragraph 6(2), and a holder of a Critical Worker Exemption who is aggrieved by a decision to amend it under

paragraph 10 or to revoke it under paragraph 11, may make written representations to an officer authorised by the Authority to review the determination of applications under this Schedule (a "reviewing officer") concerning the outcome of his her application within 14 days of being notified of that decision, by emailing those representations to critical.travel@gov.gg.

(2) If a person exercises his or her right under subparagraph (1), the reviewing officer must consider those representations and shall –

- (a) uphold the decision of the determining officer, or
- (b) make a different decision (including the imposition of different, or no, specific conditions),

and must, within 14 days of receipt of the applicant's written representations, inform the applicant in writing of –

- (i) his or her decision,
- (ii) the reasons for that decision, and
- (iii) if the decision is to impose different specific conditions, the applicant's right to make an application to the Royal Court under regulation 12 to vary or revoke those conditions.

SCHEDULE 2

Regulation 5(1).

COUNTRY CATEGORIES

Introductory.

1. (1) This Schedule provides for an exception to the requirement to self-isolate on arrival in the Bailiwick set out in regulation 5(1) –

(a) in respect only of persons who have been assessed to be eligible for, and have elected to take part in, the reduced self-isolation option, within the meaning of that term in this Schedule, and

(b) to the extent only set out in this Schedule.

(2) A person who is assessed to be eligible for, and has elected to take part in, the reduced self-isolation option is referred to herein as a "**Relevant Person**".

(3) If a Relevant Person fails to comply with any of the conditions and restrictions which apply to him or her in respect of the reduced self-isolation option, the reduced self-isolation option shall cease to apply to that person, and he or she may be liable to prosecution under these Regulations.

(4) Under regulation 14(2), the employer of a Relevant Person may be liable to prosecution if the Relevant Person fails to comply with any of the conditions and restrictions which apply to him or her in respect of the reduced self-isolation option.

(5) Failure without reasonable excuse to comply with the requirement to self-isolate under regulation 5(1) (as it has effect under this Schedule) is an offence under regulation 14(2), and this Schedule shall be construed accordingly.

(6) In this Schedule, "the 14 day period" in respect of a person means the period of 14 days starting from the day of that person's arrival in the Bailiwick.

Eligibility.

2. (1) To be eligible to take part in the reduced self-isolation option, a person ("P") must not have spent any of the period of 14 days immediately before P's arrival in the Bailiwick in a place which is a Category 4 country at the time of P's arrival in the Bailiwick.

(2) For the avoidance of doubt, and subject to paragraph 5 (direct transit), if P has spent any of the previous 14 days (or any part thereof) in a place that is, at the relevant time, a Category 4 country, P will not be eligible to take part in the reduced self-isolation option – even if that place was not specified as a Category 4 country when the person was in it.

(3) For the avoidance of doubt –

(a) a person not wishing to take part in the reduced self-isolation option or assessed to be ineligible to do so must self-isolate pursuant to, and in accordance with, the requirement imposed by regulation 5(1), and

- (b) a person who –
 - (i) elects to take part in the reduced self-isolation option, and
 - (ii) subsequently decides that he or she does not wish to take a test for COVID-19,

will not be required to undertake that test, but he or she will be required to self-isolate pursuant to, and in accordance with, the requirement imposed by regulation 5(1);

and references (however expressed) in paragraphs 3 and 4 to a Relevant Person being required, or not being required, to take a test for COVID-19, shall be construed accordingly.

(4) In this paragraph and paragraphs 3 and 4, "the relevant time" means when P provides the information as to his or her travel history (which may be 48 hours before travel) or, if the information is not provided before, on P's arrival in the Bailiwick.

Category 3 country arrivals.

3. (1) A Relevant Person who has spent any time in the period of 14 days immediately before his or her arrival in the Bailiwick in a place that is a Category 3 country at the relevant time (and who has not spent any time in that period in a Category 4 country) will be required to take a test for COVID-19 directly on arrival in the Bailiwick (in this Schedule, a "day of arrival test").

(2) If the result of that day of arrival test is positive, the Relevant Person must continue to self-isolate in accordance with instructions from the MOH and to comply with all other restrictions and requirements imposed on him or her by the MOH.

(3) If the result of that day of arrival test is negative, the Relevant Person must continue to self-isolate, and will be required to take another test for COVID-19 seven days after his or her date of arrival (or at such other time as the MOH may direct) (in this Schedule, a "Day 7 test").

(4) If the result of that Day 7 test is positive, the Relevant Person must continue to self-isolate in accordance with instructions from the MOH, and comply with all other restrictions and requirements imposed on him or her by the MOH.

(5) If the result of that Day 7 test is negative, the Relevant Person will not be required to self-isolate for the remainder of the 14 day period, subject to him or her complying with the conditions and restrictions specified in paragraph 8 (Conditions and restrictions: Passive Follow-Up) during that period.

Category 2 country arrivals.

4. (1) A Relevant Person who has spent any of the period of 14 days immediately before his or her arrival in the Bailiwick in a place that is a Category 2 country at the relevant time (and who has not spent any time in that period in a Category 4 country or a Category 3 country) will be required to take a day of arrival test.

(2) If the result of that day of arrival test is positive, the Relevant Person must continue to self-isolate in accordance with instructions from the MOH

and to comply with all other restrictions and requirements imposed on him or her by the MOH.

(3) If the result of that day of arrival test is negative, the Relevant Person will not be required to self-isolate, subject to him or her complying with the conditions and restrictions specified in paragraph 8 (Conditions and restrictions: Passive Follow-Up), but he or she will be required to take a Day 7 test.

(4) If the result of that Day 7 test is positive, the Relevant Person must self-isolate in accordance with instructions from the MOH, and comply with all other restrictions and requirements imposed on him or her by the MOH.

(5) If the result of that Day 7 test is negative, the Relevant Person will not be required to self-isolate for the remainder of the 14 day period, subject to him or her continuing to comply with the conditions and restrictions specified in paragraph 8 (Conditions and restrictions: Passive Follow-Up) during that period.

Direct Transit.

5. (1) Direct transit –

(a) in a private vehicle or private vessel, or

(b) in public transport,

through a Category 4 or Category 3 country is not spending time in that Category 4 country or Category 3 country (as the case may be) for the purposes of this Schedule.

(2) In this paragraph –

- (a) a "private vehicle" includes a taxi,
- (b) references to a private vehicle or private vessel stopping are to such a vehicle or vessel stopping in circumstances where one or more persons alight from, or get into, the vehicle or vessel, and
- (c) references to a Category 4 or Category 3 country include its internal waters, and the territorial waters adjacent thereto.

(3) In this paragraph, "direct transit in a private vehicle or private vessel" means –

- (a) travel in a private vehicle or private vessel that does not stop at all in the Category 4 country or Category 3 country, or
- (b) travel in a private vehicle or private vessel that only stops in the Category 4 country or Category 3 country (as the case may be) in circumstances where –
 - (i) no new people get into the vehicle or vessel, and
 - (ii) no-one in the vehicle or vessel gets out, comes within two metres of any other person (other than another occupant of the vehicle or vessel), and then gets back in again.

(4) In this paragraph, "**direct transit in public transport**" means travel on any form of public transport that does not stop at all in the Category 4 country or Category 3 country (as the case may be).

Children.

6. (1) Subject to advice and any contrary direction from the MOH in particular cases, and to the provisions of this paragraph, a child may take part in the reduced self-isolation option.

(2) Where a child takes part in the reduced self-isolation option, the person with parental responsibility for the child or who has the care or charge of the child for the time being (the child's "**responsible adult**") is responsible for ensuring that the child complies with the restrictions and conditions set out herein so far as he or she is reasonably able to do so; and a person who fails so to ensure may be liable to prosecution under the Regulations.

(3) For the avoidance of doubt, a child's responsible adult must, in respect of that child –

- (a) provide the information required under paragraph 7(2),
- (b) so far as reasonably practicable, keep the record of people referred to at paragraph 8(9), and
- (c) ensure the child does not return to school in accordance with paragraph 8(11), where that restriction applies.

Conditions and restrictions: general, and offences.

7. (1) A Relevant Person must self-isolate pursuant to, and in accordance with, the requirement imposed by regulation 5(1) unless and until that requirement to self-isolate is lifted in accordance with the provisions of paragraphs 3 and 4 above; and so a Relevant Person who fails to undergo a day of arrival test, or (in the case of a Relevant Person who has arrived from a Category 3 country) a Day 7 test, must self-isolate in accordance with that regulation.

(2) A Relevant Person must provide such information to officers from the MOH, the Guernsey Border Agency and Guernsey Police, and to any other persons authorised in this behalf by the Chief Officer of Customs & Excise, as those officers and persons may require in connection with the operation and enforcement of the reduced self-isolation option, and must comply with any other direction from those officers in that connection.

(3) For the avoidance of doubt, failure to comply, without reasonable excuse, with the requirement to self-isolate set out in subparagraph (1) is a criminal offence under regulation 14(2).

(4) Failure to comply, without reasonable excuse, with any of the conditions and restrictions set out in –

(a) in subparagraph (2), or

(b) paragraphs 8(2) to (12),

is an offence, punishable by a fine not exceeding level 5 on the uniform scale.

Conditions and restrictions: Passive Follow-Up.

8. (1) Where the requirement to self-isolate has been lifted in relation to a Relevant Person following a negative Day 7 test under and in accordance with paragraph 3 or following a negative day of arrival test under and in accordance with paragraph 4 (as the case may be), that Relevant Person must comply with each of the following restrictions during the remainder of the 14 day period.

(2) The Relevant Person must at all times be vigilant for symptoms, however mild, of COVID-19, must report any such symptoms immediately to the MOH, and must comply with any instructions given by the MOH thereafter (which may, for the avoidance of doubt, include an immediate resumption of self-isolation).

(3) Subject to subparagraph (4), the Relevant Person must not enter a nursing, care or residential home without the prior agreement of the manager of the home, received after having informed the manager of the home of his or her status as being subject to these restrictions.

(4) If the Relevant Person is a worker at a nursing, care or residential home and the manager of the home agrees, the Relevant Person may enter that home to work, but such work may be carried out only in accordance with a method statement that has been agreed with the MOH.

(5) Subject to subparagraphs (6) and (7), the Relevant Person must not, other than in an emergency, enter the Princess Elizabeth Hospital, and in an emergency must give prior notification of his or her status as being subject to these restrictions before entering the Princess Elizabeth Hospital, if reasonably practicable in all the circumstances.

(6) The Relevant Person may enter the Princess Elizabeth Hospital to visit a patient who is seriously ill if the management of the hospital agrees, but such a visit may be undertaken only in accordance with a method statement that has been agreed with the management of the Hospital and the MOH.

(7) If the Relevant Person is a worker at the Princess Elizabeth Hospital and his or her line manager agrees, the Relevant Person may enter the hospital to work, but such work may be undertaken only in accordance with a method statement that has been agreed with the MOH.

(8) The Relevant Person must inform any other healthcare provider of his or her status as being subject to these restrictions when making any appointment for care.

(9) The Relevant Person must, so far as reasonably practicable, keep a record of people met and places visited (to assist with contact tracing if necessary).

(10) If the Relevant Person works at a school or college or otherwise works with or cares for children as part of his or her work, he or she must not return to that work unless he or she has received a negative test result for COVID-19 within the previous 48 hours.

(11) If the Relevant Person is a child or otherwise in full-time or part-time education, he or she must not return to school or college unless he or she has received a negative test result for COVID-19 within the previous 48 hours.

(12) The Relevant Person must comply with any additional conditions and restrictions imposed from time to time by the MOH.

SCHEDULE 3

Regulation 18.

MODIFICATION OF LEGISLATION RELATING TO MENTAL HEALTH

Interpretation.

1. References in this Schedule to –
 - (a) sections are to sections of the Mental Health (Bailiwick of Guernsey) Law, 2010 ("**the 2010 Law**"), and
 - (b) rules are to rules of the Mental Health Review Tribunal Procedure Rules, 2012 ("**the 2012 Rules**").

2. Expressions in this Schedule and in the 2010 Law or the 2012 Rules shall have the same meaning as in that Law or those Rules (as the case may be).

Forms.

3. Where any form prescribed in the Mental Health (Treatment and Forms) Regulations, 2013 or under the 2012 Rules is inconsistent with a modification made by these Regulations, the form –
 - (a) may, in connection with that modification, be used with appropriate amendments, and
 - (b) is otherwise, for use in that connection, to be read with such amendments as are necessary to reflect that modification.

Modification of the 2012 Rules.

4. For the purposes of any hearing subject to the 2012 Rules –
- (a) the Tribunal is deemed to be properly constituted by the members of the Tribunal sitting within or without the Bailiwick, or a combination thereof,
 - (b) where the legally qualified member is of the opinion that it is not reasonably practicable or would involve unreasonable delay for one, or both, of the other members of the Tribunal to participate in the hearing, the Tribunal is deemed to be properly constituted by the legally qualified member –
 - (i) sitting with the other member able to participate, or
 - (ii) sitting alone,(as the case may be),
 - (c) notwithstanding subparagraph (b), where, after hearing from the patient’s legal representative or the patient (if unrepresented), the legally qualified member is of the opinion that it is in the patient’s interests that the hearing takes place before a single member of the Tribunal (including, but not limited to, where the patient’s mental disorder might be adversely

affected by the participation of multiple members of the Tribunal by telephone), the Tribunal is deemed to be properly constituted by the legally qualified member sitting alone, and that member may consult with the other members of the Tribunal where it is in the interests of justice to do so, and

- (d) for the avoidance of doubt, the Tribunal may exercise any or all of its powers under the 2010 Law where it is constituted in accordance with this paragraph.

5. Any hearing which takes place in accordance with paragraph 4 shall be deemed for all purposes (including that of determining the *lex fori*) to have taken place in Guernsey and the courts of Guernsey accordingly have jurisdiction in accordance with Part VI of the Law, and sections 46 and 47 have effect accordingly.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are emergency regulations made by the Civil Contingencies Authority under Part 3 of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 ("**the Law**"). They are made on the occurrence of an emergency, within the meaning of the Law, in the Bailiwick, arising from the urgent need to prevent, control or mitigate the spread of the virus Severe Acute Respiratory Syndrome Coronavirus 2 and the disease caused thereby, COVID-19 (referred to together in these regulations as coronavirus). They are prefaced with a statement by the Civil Contingencies Authority, as required by section 12(2) of the Law. COVID-19 was made a notifiable disease for the purposes of the Public Health Ordinance, 1936 on 10th February 2020.

These Regulations revoke and re-enact (with modifications) regulations previously made by the Civil Contingencies Authority in respect of the coronavirus pandemic.

These Regulations will come into force on the 18th June, 2021 and shall have temporary effect only in accordance with the provisions of section 16 (duration and scrutiny of emergency regulations) of the Law.

Part I - screening, assessment and powers to detain etc.

This Part places a requirement to self-isolate on persons arriving in the Bailiwick, enables the Medical Officer of Health to place restrictions and requirements on other persons who are or who may be infected with coronavirus, and makes provision in respect of related matters, including powers for the Medical Officer of Health to impose screening requirements, to detain people and to require people to self-isolate. The provisions also create criminal offences and confer powers of enforcement on police officers, and provide for applications to vary or revoke requirements or restrictions imposed under this part to be made to the Royal Court.

Regulation 4 gives effect to Schedule 1, which makes provision in respect of Critical Workers. A person who has been granted a Critical Worker Exemption will have to self-isolate in accordance with, and otherwise comply with, the provisions of Schedule 1.

Schedule 2 to these regulations, which is given effect by regulation 5, provides for shorter periods of self-isolation to be undertaken by persons who arrive from a place specified as a Category 2 country or a Category 3 country on the States of Guernsey website, and who elect to comply with the restrictions and requirements set out therein.

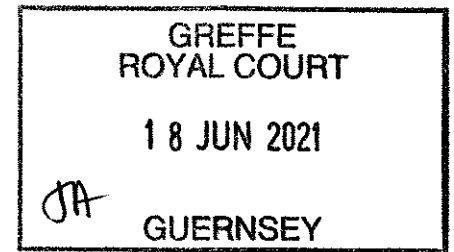
Finally, this Part also provides that a person of 12 years or over who chooses not to take both a day of arrival test for COVID-19 and a test on day 13 after arrival will have to self-isolate for 21 days; otherwise, a person who does undergo those tests is required to self-isolate until receipt of a negative result for the day 13 test. A child under 12 has to self-isolate for 14 days after arrival.

Part II – miscellaneous and final

Schedule 3 to these Regulations, which is given effect by regulation 18, sets out the modifications to be made to mental health legislation having effect in the Bailiwick. Paragraphs 4 and 5 modify the Mental Health Review Tribunal Procedure Rules, 2012 to provide that the Mental Health Review Tribunal may properly be constituted according to specified criteria.

Regulation 19 provides for the deemed variance of Long Term Employment Permits, Medium Term Employment Permits and Short Term Employment Permits, to allow the holder to be resident without being employed and to be employed by a different employer from that specified in the Permit; and for the modification of the Population Management (Guernsey) Law, 2016 and other legislation to the extent necessary to give effect to this.





GUERNSEY STATUTORY INSTRUMENT

2021 No. 62

**The Emergency Powers (Coronavirus) (Vaccine)
(Limitation of Liability) (No. 7) (Bailiwick of Guernsey)
Regulations, 2021**

<i>Made</i>	17 th June, 2021
<i>Coming into operation</i>	18 th June, 2021
<i>Laid before the States</i>	, 2021

WHEREAS there are one or more persons within the Bailiwick, or who may enter the Bailiwick, who may be infected with Severe Acute Respiratory Syndrome Coronavirus 2, resulting in the occurrence of an emergency within the meaning of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012^a;

AND WHEREAS one or more persons within the Bailiwick have died after being infected with Severe Acute Respiratory Syndrome Coronavirus 2;

AND WHEREAS there has been a recent surge of infections of several different variants of Severe Acute Respiratory Syndrome Coronavirus 2 in Europe;

^a Order in Council No. XIV of 2012; amended by Ordinance No. IX of 2016; and No. II of 2017.

AND WHEREAS the States of Guernsey Committee for Health & Social Care considers that, for the purposes of controlling or mitigating the emergency referred to above, it is appropriate and proportionate to carry out a voluntary mass vaccination programme throughout the Bailiwick, using vaccines that have been temporarily authorised by the licensing authority in the United Kingdom,

AND WHEREAS the Civil Contingencies Authority ("**the Authority**") (having consulted the Medical Officer of Health in respect of the risk to public health created thereby and by the spread of Severe Acute Respiratory Syndrome Coronavirus 2, the virus causing the disease COVID-19, and in respect of the measures necessary to prevent or slow the spread of infection) is satisfied that the conditions set out in section 13 of the Law are satisfied, and that the following regulations contain only provisions which are appropriate for and proportionate to the purpose of preventing, controlling or mitigating the emergency referred to above;

AND WHEREAS the Authority is satisfied that the effect of the following regulations is in due proportion to that emergency, and that they are compatible with the Convention rights within the meaning of section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000^b;

NOW THEREFORE THE AUTHORITY, in exercise of the powers conferred upon it by sections 12(1), 14 and 19 of the Law, and of all other powers enabling it in that behalf, hereby makes the following regulations: –

^b Order in Council No. XIV of 2000; amended by No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

Application of these Regulations.

1. (1) These Regulations apply where –
 - (a) the UK licensing authority has authorised a medicinal product on a temporary basis (whether with or without conditions) under regulation 174 of the Human Medicines Regulations 2012^c,
 - (b) the Committee has designated the medicinal product to be used for vaccination or immunisation against the coronavirus under regulations made under section 15(2) and (3) of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009^d,
 - (c) a medicinal product falling within the description or class of the designated vaccine has been sold, supplied or administered by or on behalf of, or under arrangements made by, any person in accordance with–
 - (i) a Patient Group Direction approved or consented to by the Committee, or
 - (ii) a protocol,

^c UK S.I. 2012 No. 1916.

^d Ordinance No. XXV of 2009; as amended by No. XXV of 2010; No. IX of 2016; No. XXXIV of 2020.

- (d) any person dies or suffers any personal injury as a result of the person receiving the relevant medicinal product administered in accordance with the Patient Group Direction or (as the case may be) protocol, and
- (e) any person (whether the person referred to in subparagraph (d) or any other person) suffers or incurs any loss or damage arising out of or in connection with the death or personal injury.

(2) In paragraph (1)(a), "UK licensing authority" means the licensing authority within the meaning given by regulation 6(2) of the Human Medicines Regulations 2012.

Limitation of liability.

2. (1) Where these Regulations apply and a court determines in any civil proceedings that a responsible person is liable to any other person in respect of any loss or damage falling within regulation 1(1)(e), the maximum aggregate amount of damages and costs that may be awarded against the responsible person in respect of all such losses and damages is £120,000.00 in respect of any one person who died or suffered personal injury.

(2) Paragraph (1) –

- (a) is subject to regulation 3, and
- (b) does not apply so as to limit an award of damages on the ground that any action or omission of the responsible person was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

(3) In paragraph (1), "**damages and costs**" includes all liabilities, costs, expenses, damages and losses, including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses.

Time of sale, supply or administration.

3. Regulation 2(1) applies only in respect of a relevant medicinal product sold, supplied or (as the case may be) administered in any particular circumstances (including to any age group) –

- (a) at any time on or after the 15th December, 2020, and
- (b) if the designated vaccine is given a United Kingdom marketing authorisation or a European Union marketing authorisation within the meaning given by regulations 12 and 13(1), respectively, of the Medicines (Human) (Exemptions and Recognition of Marketing Authorisations) (Bailiwick of Guernsey) (Bailiwick of Guernsey) Regulations, 2009^e, for administration in those circumstances, before it is given the marketing authorisation concerned.

Relationship with the European Communities (Coronavirus Vaccine) (Immunity from Civil Liability) (Guernsey) Ordinance, 2020 and equivalent enactments.

4. Nothing in these Regulations limits the effect of the European Communities (Coronavirus Vaccine) (Immunity from Civil Liability) (Guernsey)

^e G.S.I. No. 63 of 2009.

Ordinance, 2020 or any equivalent Ordinance or other enactment having effect in Sark or Alderney.

Interpretation.

5. In these Regulations, unless the context requires otherwise –

"**the Committee**" means the States of Guernsey Committee for Health & Social Care,

"**the coronavirus**" has the meaning given by section 15(3) of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009,

"**designated vaccine**" means the medicinal product designated in accordance with regulation 1(1)(b),

"**medicinal product**" has the meaning given by section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^f,

"**Patient Group Direction**" has the meaning given by section 15(4) of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009,

"**personal injury**" includes any disease and any impairment of a person's physical or mental condition,

^f Order in Council No. V of 2009; as amended by Ordinance No. XXIV of 2009; No. XLI of 2013; No. IX of 2016.

"protocol" means any protocol for the sale, supply or administration of the designated vaccine approved under or for the purposes of section 15A of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009,

"relevant medicinal product" means the medicinal product sold, supplied or (as the case may be) administered in accordance with regulation 1(1)(c), and

"responsible person" –

(a) means the person –

(i) by or on whose behalf the relevant medicinal product was sold, supplied or (as the case may be) administered in circumstances falling within regulation 1(1)(c), or

(ii) who made the arrangements under which the relevant medicinal product was sold, supplied or (as the case may be) administered in circumstances falling within regulation 1(1)(c), and

(b) for the avoidance of doubt, includes (but is not limited to) –

(i) the States of Guernsey, and

(ii) the Committee.

Revocation.

6. The Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (No. 6) (Bailiwick of Guernsey) Regulations, 2021⁸ are revoked.

Extent.

7. These Regulations apply throughout the Bailiwick of Guernsey.

Citation.

8. These Regulations may be cited as the Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (No. 7) (Bailiwick of Guernsey) Regulations, 2021.

Commencement

9. These Regulations shall come into force on the 18th June, 2021.

Dated this 17th day of June, 2021



P.T.R. FERBRACHE
Chairman of the Civil Contingencies Authority
For and on behalf of the Authority

⁸ G.S.I. No. 56 of 2021.

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are emergency regulations made by the Civil Contingencies Authority under Part 3 of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 ("the Law"). They are made on the occurrence of an emergency, within the meaning of the Law, in the Bailiwick, arising from the urgent need to prevent, control or mitigate the spread of the virus Severe Acute Respiratory Syndrome Coronavirus 2 and the disease caused thereby, COVID-19 (referred to together in these regulations as coronavirus). They are prefaced with a statement by the Civil Contingencies Authority, as required by section 12(2) of the Law. COVID-19 was made a notifiable disease for the purposes of the Public Health Ordinance, 1936 on 10th February 2020.

These Regulations apply where a vaccine against the coronavirus has been temporarily authorised under the UK's Human Medicines Regulations, 2012 and designated under regulations made under the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009, and the vaccine is sold, supplied or administered in accordance with a Patient Group Direction or protocol approved or consented to by the States of Guernsey Committee for Health & Social Care. They only apply to a vaccine administered on or after the 15th December, 2020 (the date on which the Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (Bailiwick of Guernsey) Regulations, 2020 came into force) and before the vaccine receives either a UK marketing authorisation or a European Medicines Agency marketing authorisation for administration in the circumstances concerned.

Where these Regulations apply they will limit the aggregate amount of damages and costs that may be awarded by any court in respect of death or personal injury suffered by any one person receiving the vaccine administered in accordance with the Patient Group Direction or protocol.

These Regulations revoke (and replace) the Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (No. 6) (Bailiwick of Guernsey) Regulations, 2021.

These Regulations will come into force on the 18th June, 2021 and shall have temporary effect only in accordance with the provisions of section 16 (duration and scrutiny of emergency regulations) of the Law.

