

ISLAND OF SARK

EXTRAORDINARY (EMERGENCY) MEETING of the Chief Pleas to be held on Sunday 27th December at 10.00am in the ASSEMBLY ROOM.

1. To CONSIDER a Report with Propositions from the POLICY and FINANCE COMMITTEE entitled “**The Bailiwick’s Participation in the UK-EU Trade and Co-operation Agreement**” and to APPROVE Propositions 1-7 (copies enclosed).

2. To CONSIDER a Report with Proposition from the POLICY and FINANCE COMMITTEE entitled “**Referral of UK Act of Parliament and Orders in Council to the Royal Court**” and to APPROVE the Ordinance entitled “**The Reform (Sark) (Amendment) Law, 2020**” (copies enclosed).

3. To CONSIDER a Report with Proposition from the POLICY and FINANCE COMMITTEE entitled “**Coronavirus Vaccine, Immunity from Civil Liability**” and to APPROVE the Ordinance entitled “**The European Communities (Coronavirus Vaccine) (Immunity from Civil Liability) (Sark) Ordinance) 2020.**” (copies enclosed).

4. To CONSIDER a Report with Proposition from the POLICY and FINANCE COMMITTEE entitled “**New Arrangements for for European Union Nationals from January 2021**” (copy enclosed).

REGULATIONS LAID BEFORE

**The Emergency Regulations (Coronavirus) (General Provision)
(Bailiwick of Guernsey) (No. 9) Regulations, 2020**

(Came into operation 27th November 2020)

**The Emergency Regulations (Coronavirus) (General Provision)
(Bailiwick of Guernsey) (No. 10) Regulations, 2020**

(Came into operation 15th December 2020)

**The Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability)
(Bailiwick of Guernsey) Regulations, 2020**

(Came into operation 15th December 2020)

Lt Col RJ Guille MBE
Speaker of Chief Pleas

24th December 2020

Due to the UK & EU negotiations not concluding until the 24th December 2020, necessitating the short notice of this meeting, the Agenda, Reports and Supporting Papers may be seen on the Sark Government Website at www.sarkgov.co.uk

POLICY & FINANCE COMMITTEE

Report with Propositions to Extraordinary Chief Pleas December 27th, 2020

**THE BAILIWICK'S PARTICIPATION IN THE UK-EU TRADE
AND CO-OPERATION AGREEMENT**

Since the UK left the EU in January 2020, the Policy and Finance Committee (P&F) has been working with Guernsey and Alderney through the forum of the Future Partnership Development Group and Bailiwick Council to secure Sark's position within the Bailiwick on various issues which will arise when the UK leaves the EU.

The Policy Letter and appendices attached to this report outlines the agreement as it relates to Sark and the wider Bailiwick.

The Policy & Resources Committee in Guernsey have approved the deal offered by the EU and have recommended that the States of Deliberation also approve this deal.

The Policy & Finance Committee recommend that Chief Pleas agree the following propositions:

Proposition 1:

To approve the principles (set out in paragraph 1.20 to 1.27 of the Policy Letter) governing the future relationship of the United Kingdom with the European Union consequent on the withdrawal of the United Kingdom from the European Union, insofar as they relate to Sark.

Proposition 2:

To authorise the States of Guernsey Policy & Resources Committee, if it is of the view that they give satisfactory effect to the principles (set out in paragraph 1.7 of the Policy Letter), to agree and to signal its approval of, on behalf of Sark and, subject to the necessary authorisations, on behalf of Guernsey and Alderney, the terms and conditions of any agreement or treaty made between Her Majesty's Government and the European Union governing the future relationship of the United Kingdom with the European Union, consequent on the withdrawal of the United Kingdom from the European Union, insofar as they relate to the Bailiwick.

Proposition 3:

To declare that they agree that the Chief Pleas of Sark will endeavour to establish arrangements to cooperate with the European Union on the recovery of claims related to VAT, customs duties and excise duties within a reasonable time frame and to authorise the States of Guernsey Policy & Resources Committee to negotiate and, if it is of the view that it gives effect satisfactorily to such arrangements, to agree and to enter into, on behalf of Sark and, subject to the necessary authorisations, on behalf of Guernsey and

Alderney, any protocol, agreement or any other form of instrument giving effect in the Bailiwick to the arrangements.

Proposition 4:

To note that the extension of the UK's World Trade Organization ('WTO') membership to the Bailiwick 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 and Finance Committee, in relation to Sark, the States of Guernsey Policy & Resources Committee, in relation to Guernsey and the Policy and Finance Committee of the States of Alderney, in relation to Alderney think fit for the purpose of ensuring that Sark, Guernsey and Alderney may comply and remain in compliance with obligations that arise from the extension of the UK's WTO membership to the Bailiwick.

Proposition 5:

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 and Finance Committee, in relation to Sark, the States of Guernsey Policy & Resources Committee, in relation to Guernsey and the Policy and Finance Committee of the States of Alderney, in relation to Alderney think fit for the purpose of ensuring that Sark, Guernsey and Alderney may comply and remain in compliance with obligations that arise from the inclusion of the Bailiwick in such agreements.

Proposition 6:

To note that the Customs Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Bailiwick signed on 26th November, 2018 in London, will enter into effect from the end of the Brexit transition period following the exchange of letters between the UK and the Bailiwick.

Proposition 7:

That Chief Pleas directs the Policy & Finance Committee to request the Law Officers of the Crown to draft the necessary legislation to give effect to the above decisions.

**Conseiller Peter La Trobe Bateman
Chairman, Policy and Finance Committee**

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**THE BAILIWICK'S PARTICIPATION IN THE UK-EU TRADE AND COOPERATION
AGREEMENT**

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled "The Bailiwick's Participation In The UK-EU Trade and Cooperation Agreement" dated 24th December, 2020 they are of the opinion:-

1. To approve the principles (set out in paragraphs 1.20 to 1.27 of the Policy Letter) governing the future relationship of the United Kingdom with the European Union consequent on the withdrawal of the United Kingdom from the European Union, insofar as they relate to Guernsey.
2. To authorise the Policy & Resources Committee, if the Committee is of the view that the terms and conditions of any agreement or treaty made between Her Majesty's Government and the European Union governing the future relationship of the United Kingdom with the European Union, insofar as that agreement or treaty relates to the Bailiwick, give satisfactory effect to the principles (set out in paragraphs 1.20 to 1.27 of the Policy Letter) to agree and signal approval of that agreement or treaty, on behalf of Guernsey and, subject to the necessary authorisations, on behalf of Alderney and Sark.
3. To agree that the States will endeavour to establish arrangements to cooperate with the European Union on the recovery of claims related to VAT, customs duties and excise duties within a reasonable time frame and to authorise the Policy & Resources Committee to negotiate and agree to enter into any protocol, agreement or other form of instrument giving effect in the Bailiwick to those arrangements, if the Committee is of the view that any such instrument gives effect satisfactorily to those arrangements.
4. To note that the extension of the UK's World Trade Organization ('WTO') membership to the Bailiwick 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 extension of the UK's WTO membership to the Bailiwick.

5. 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.
6. To note that the Customs Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Bailiwick signed on 26th November, 2018 in London, will enter into effect from the end of the Brexit transition period following the exchange of letters between the UK and the Bailiwick.
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 THE UK-EU TRADE AND COOPERATION
AGREEMENT**

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

24th December, 2020

Dear Sir

1. Executive Summary

Headline summary

- 1.1 On the afternoon of 24th December 2020, the UK Government and the European Parliament announced that an agreement in principle had been reached on a future relationship with the European Union ('EU'), for trade, security and other cooperation. This will be known as the Trade and Cooperation Agreement (the TCA).
- 1.2 During these negotiations the Policy & Resources Committee ('the Committee') has worked clearly, decisively and robustly to represent the Bailiwick's interests, so that in turn the United Kingdom ('UK') can seek an agreement with the EU on its behalf that meets its economic needs within the TCA. The Committee has worked closely with the States of Deliberation's Principal Committees as well as Alderney and Sark during these negotiations.
- 1.3 Following the outcome of the negotiations, which are summarised in this Policy Letter, the Committee recommends that the Bailiwick agrees to participation in the new UK-EU relationship, insofar as it will apply to the Bailiwick, in particular in respect of fisheries and the trade in goods. The treaty text for this agreement is still being finalised. However, in order to protect the constitutional relationship with the UK and provide a clear decision to the UK, it is necessary to make a decision on the principles of this agreement. This will help inform the finalising of the agreement and its subsequent ratification by the UK Parliament. In the meantime, the Committee will continue to work closely with the UK

Government to ensure the treaty text meets the Bailiwick's negotiating principles and suits the Bailiwick's needs.

- 1.4 **The UK and EU negotiations have now concluded and it is no longer possible to make any changes to the arrangement that is on offer. This means the States of Deliberation is being asked to make an important decision, one that marks a milestone in our history. While this is an important decision, it is also a binary decision. The Committee recommends that Guernsey, and the wider Bailiwick accept the terms of the TCA and asks the UK Parliament to ratify it our behalf without consent.**
- 1.5 **Having worked closely on the negotiations, in particular over the intensive period in the last few weeks, the Committee is firmly that the agreement on offer by the EU is the best the Bailiwick could have hoped for.**
- 1.6 The Committee also takes this opportunity to mark its appreciation of the support from the States of Deliberation and Bailiwick civil servants as well as officials from Task Force Europe at Number 10, the Cabinet Office and the Ministry of Justice. This outcome is the result of many years of work and an intensive 10 months of negotiations with the additional challenges of the Covid-19 pandemic.
- 1.7 The arrangements outlined in the Policy Letter meet the Bailiwick's economic needs, replacing as far as possible the Protocol 3 relationship; and providing the basis for a stable and predictable relationship on fishing for both the Bailiwick's fishing industry and those in neighbouring regions.
- 1.8 There will be much work to meet the deadline for implementation including making relevant legislation before 31 December 2020. There will be further policy work to undertake during the course of 2021 and onwards. For instance, establishing a new border model for Sanitary and Phytosanitary ('SPS') checks before July 2021 and the progression of agri-foods policy and practices are key priorities.
- 1.9 If the States approve these Propositions, the Committee looks forward to developing the partnership with the UK and the EU as the Bailiwick moves forward to embrace this new economic relationship.

Policy Letter summary

- 1.10 In June 2016, in a referendum held in the UK on membership of the European Union EU, the majority of participants voted in favour of the UK leaving the EU. Consequently, the then Prime Minister of the UK notified the European Council

in March 2017 of the UK's intention to leave the EU¹, in accordance with Article 50 of the Treaty on European Union ('TEU')². After UK-EU negotiations, the Withdrawal Agreement³ and Political Declaration were concluded and the UK left the EU ('Brexit') at 11pm on 31st January, 2020. Since then, the UK has been in a transition period, which is due to expire at 11pm on 31st December, 2020.

1.11 The Bailiwick of Guernsey (the 'Bailiwick') was not part of the EU; instead, it had a limited relationship with the EU – through the UK – governed by Protocol 3 to the UK's Act of Accession. When the UK ceased to be a Member State of the EU, the Bailiwick's Protocol 3 relationship with the EU also ended, subject to the terms of the UK-EU Withdrawal Agreement. For the duration of the transition period it has been as if Protocol 3 still applied, which has enabled the Bailiwick's relationships with the EU in respect of trade in goods and movement of people to continue uninterrupted.

1.12 Although the Bailiwick did not participate in the UK's referendum in June 2016, it has sought to engage with the challenges presented and ensure the needs and interests of the Bailiwick are fully represented by the UK Government during the negotiations, even where these differ to the UK's.

1.13 This Policy Letter is to:

- update the islands' parliaments on developments relevant to the Bailiwick which have taken place since the UK left the EU on 31st January, 2020, particularly in regard to participation in the negotiations on the future UK-EU relationship;
- ask the islands' parliaments to agree that each island (and the Bailiwick as whole) will participate to the appropriate extent in the UK/EU future relationship agreement (the TCA, in the form reached following the end of negotiations);
- seek approval of the proposed next steps; and
- seek authority enabling the Policy & Resources Committee, on behalf of all three Bailiwick governments, to agree and approve any necessary agreements or arrangements relating to the future relationship of the UK with the EU and/or as a result of the extension of the UK's WTO membership to the Bailiwick (the intention being that wherever possible the Committee will consult with both Alderney and Sark); and
- direct the preparation of any necessary legislation.

1.14 This Policy Letter also includes information on the work undertaken within the

¹ [Letter to Donald Tusk, President of the European Council, triggering Article 50 \(29th March, 2017\)](#)

² [Text of Article 50 of the Treaty on European Union](#)

³ The UK's [European Union \(Withdrawal Agreement\) Act 2020](#) was given Royal Assent on 23rd January, 2020.

Bailiwick to plan for the end of the transition period, as well as the additional risks arising from a 'no further negotiation outcome' ('NFNO') in order to manage and mitigate the impacts should an agreement not be reached, either for the UK or for the Bailiwick.

- 1.15 The three islands of the Bailiwick, through their parliaments or Committees, have been engaged in developing the Bailiwick's response to the UK's exit from the EU and participation in the UK's negotiations on the future UK-EU relationship.
- 1.16 Throughout the progress of the negotiations, the politicians and officers representing Guernsey and the Bailiwick have worked to the principles set out in Section 4 of Billet d'État II of 2020 ('the January 2020 Policy Letter')⁴ that any Bailiwick involvement in an agreement for the UK-EU future relationship 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 Crown.
- 1.17 The UK has provided repeated written and verbal Ministerial and officer-level assurances, including from the current and former Prime Ministers, that the UK Government understands and respects the Bailiwick's centuries-old constitutional relationships with the Crown (Appendix 1) and that it would represent the Bailiwick's interests in the UK-EU negotiations.
- 1.18 As the transition period ends on 31st December, 2020, and as the UK Parliament is due to ratify the treaty before then, the Bailiwick's parliaments are being asked to make decisions on the principles of the UK/EU agreement as it would apply to the Bailiwick, rather than on the text of the agreement itself. There are a number of reasons for this, principally:
- The content and timing of this Policy Letter and the corresponding parliamentary debates within the Bailiwick have been affected by the timing and nature of decisions and actions by the UK's government as well as by the EU. As an agreement was only announced in principle on 24th December, 2020), the treaty text for the UK-EU future relationship agreement has not been finalised at the time of writing this Policy Letter.
 - It might seem prudent for the Bailiwick to wait until the treaty text has been finalised. However, the UK Government is due to ratify the agreement next week and has advised that when it recommends to the UK Parliament that a treaty be accepted/ratified it needs to be sure that

⁴ [Billet d'État II of 2020](#) – 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey' and [Resolutions](#)

all parts of the British family which are in scope of the treaty have decided whether to consent to be bound by the relevant provisions and, if they have consented, can comply with the obligations within that treaty. Doing so would overstep constitutional boundaries. Furthermore, if the Bailiwick decided not to seek the extension of the agreement, but the UK government approved the text of the agreement that included the Bailiwick in the territorial extent would breach existing constitutional boundaries. Avoiding such a situation is a priority for the UK Government and the Bailiwick generally, and for this particular important and high profile matter.

- 1.19 The principles which the Bailiwick's parliaments are being asked to make decisions about are as follows:

Goods relationship

- 1.20 Participate in the UK-EU future relationship agreement (TCA) to the extent necessary to facilitate the trade in goods only, on a chapter by chapter basis. This will enable the Bailiwick to benefit from reciprocal market access with EU markets with 'zero tariffs, zero quotas'. Participation will also reduce potential disruption for the trade in goods between the Bailiwick and the EU.

- 1.21 The relevant chapters relate to the trade in goods, customs and rules of origin matters (further information on the chapters and annexes is set out in section 3). The aims and purposes of those chapters are as follows:

- 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 and industry development. The 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 of 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 is compatible and effective administrative and enforcement customs procedures in place to facilitate trade whilst ensuring there is proper protection, safety and security processes 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 Chapter on customs and trade facilitation.

Fisheries relationship

1.22 If the Bailiwick wishes to participate in the TCA in respect of goods, it must make a commitment to the EU on fisheries access. The terms of the agreement on fishing will also cover the Bailiwick's fisheries interests in terms of access to waters, landing in ports, management and licensing. The agreement provides for:

- Bailiwick vessels to be able to fish in the Exclusive Economic Zones ('EEZ') of EU Member States on the same terms as UK vessels. This

includes the French EEZ which is adjacent to Bailiwick waters.

- Access to the Bailiwick's territorial waters for EU vessels based on a 'pool' of a fixed level of effort which EU vessels could seek a licence to fish against. The level of effort is defined using a track record period of 10 days in any of the three 12 month periods ending on 31st January on or between 1st February, 2017 and 31st January, 2020.
- Vessels landing fresh fishery products caught in the Bailiwick's territorial seas to have between a three and five hour prior notification period for landings.
- Recognition of Bailiwick responsibility for the management of its territorial seas and for authorising vessels to fish in its waters by way of licence or otherwise.
- Governance, Dispute Resolution Mechanism and termination provisions.
 - A specialised committee/s to discuss the implementation of the agreement
 - A dispute resolution mechanism, which is reciprocal, that provides for suspension on access arrangements; application of tariffs on fisheries products and finally application of tariffs on all goods. There is a provision for arbitration of any dispute by an independent panel.
 - There is a 'sunset clause' or cooling off periods which can be activated at any stage in the first 90 days, to take effect within 30 days. Thus can be activated unilaterally by Guernsey or the EU.
 - There are general provisions which would allow amendment by mutual consent of the UK and the EU. This would require the consent of the Bailiwick in respect of any changes that would affect the Bailiwick's interests in the TCA.

Side declarations

- 1.23 The TCA includes a political commitment entitled: "A declaration in respect of the Bailiwick of Guernsey and the Bailiwick of Jersey on cooperation with the European Union on the recovery of claims related to VAT, customs duties and excise duties". Essentially, it seeks to create a relationship with the EU about tax information exchange and administrative assistance regarding certain indirect taxes and ensures that this arrangement is consistent with the Bailiwick's fiscal autonomy.
- 1.24 The UK and the EU have agreed a 'Joint Political Declaration on the Countering of Harmful Tax Regimes which includes a commitment that the Parties will encourage the application of its principles in the territories for which they have special responsibilities or taxation prerogatives'.

- 1.25 This Declaration is a non-legally binding political commitment for the UK. Guernsey already meets the Organisation for Economic Co-operation and Development ('OECD') and EU Code of Conduct standards on fair taxation and tax cooperation which are referred to or inferred in the political declaration.
- 1.26 The TCA does not cover the provision of services with the EU in respect of the Bailiwick. The Bailiwick has always operated through third country arrangements with regard to trade in services with the EU. This 'third country' status does not depend on the UK's membership of the EU and will also not be directly affected by the UK's departure from the EU.
- 1.27 The agreement does not cover the movement of people for the UK or the Bailiwick, save in respect of the short term cross border supply of services. The Common Travel Area pre-dates the UK's membership of the EU and so is not directly affected by the UK's departure from the EU. The Bailiwick's future immigration policy from 1st January, 2021, has been agreed and is relevant to the needs of the islands.

2. Background

- 2.1 For detailed information on the background to and progress of the negotiations, see Appendix 2.

3. Final outcome of negotiations between the UK and EU

- 3.1 Having started in March 2020, the end of the negotiations was announced on 24th December, 2020. The TCA includes elements about goods and fisheries access. There are various side agreements, including those relating to aviation and road transport (haulage).

The goods-related aspects the TCA - application to the Bailiwick of Guernsey

Background

- 3.2 In respect of the goods relationship, the Bailiwick agreed the, "need to maintain the free trade in goods with the EU hitherto provided under Protocol 3", as set out in the June 2016 Policy Letter⁵. This was intended to ensure that the Bailiwick would be in no worse a position with respect to trade in goods compared to the UK.
- 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

⁵ Section 3.1: [Managing the implications for Guernsey because of the UK's changing relationship with the EU - June 2016](#)

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 Policy⁶). 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 union⁷ 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.
- 3.6 In preparation for the end of Protocol 3, consideration was given to a number of options, including how the EU manages its relationships with the European Microstates, which have various customs relationships with the EU. Monaco has a customs relationship with France and, through that, has access to EU FTAs. San Marino and Andorra both have a customs agreement with the EU, which also covers certain regulatory standards. The latter two Microstates apply the EU Common External Tariff. Through their current relationships with the EU, these Microstates (which are sovereign States) can take part in EU FTAs in a limited manner. Monaco takes part through the territorial scope of the agreement because it is part of the customs territory of the EU (as defined in the EU Treaties). San Marino and Andorra, however, benefit from joint declarations that have the effect of applying preferential tariffs agreed under the FTA (and the rules for determining eligibility for such preferential rates) directly between each of those Microstates and the EU's trading partner. While this provides a simple application of a FTA, the Microstates differ constitutionally and economically

⁶ [EU Common Commercial Policy](#)

⁷ The WTO defines a customs union as 'the substitution of a single customs territory for two or more customs territories'.

from the Bailiwick. The relationship between the Microstates and the EU does not provide an analogue for the constitutional and economic relationship between the Bailiwick and the UK.

The new goods relationship

- 3.7 The negotiated position is for the Bailiwick to participate in the FTA through a ‘chapter by chapter’ approach, which is the basis of the new goods relationship. The goods-related chapters of the TCA and are summarised below. They relate to the general principles for the trade in goods, customs and rules of origin matters as well as the rules relating to setting or recognising certain regulatory standards. This approach broadly reproduces the extent (but not the legal effect) of the Protocol 3 relationship; it has been achieved in a way that respects the Bailiwick’s domestic autonomy; and, it provides for the Bailiwick to be treated as part of the UK customs territory, thus producing goods of ‘UK origin’.

Chapter 1 – National Treatment and Market Access for Goods (including Trade Remedies)

- 3.8 The aim and purpose of this Chapter is to facilitate trade in goods between the UK and EU and to maintain liberalised trade in accordance with the provisions of the agreement.
- 3.9 The Chapter places obligations on the parties which ensure that both the UK and EU treat goods originating from the other party in the same way and that duties or other discriminatory measures which could be applied at the border and in practice could prohibit or restrict the movement of all types of goods, such as imports and exports, manufactured, remanufactured and repaired goods. This Chapter ensures that the UK and the EU will treat goods properly imported from either party as if they had been produced domestically.
- 3.10 The Chapter also ensures that both parties apply the relevant customs measures and any measures, or tariffs, which are applicable to goods movements from outside of the UK or EU, are treated in accordance with the obligations as set out within the WTO General Agreement on Tariffs and Trade (GATT 1994)⁸.
- 3.11 Included within the Chapter is a requirement for the Parties to ensure that there is cooperation in facilitating the return of cultural property which is enshrined within the UNESCO Convention. The Bailiwick already ensures that it meets international standards and restrictions are already applied at the Bailiwick’s borders. The Guernsey Border Agency (‘GBA’) will cooperate with other customs authorities in any circumstances which arise involving the illicit movement of cultural goods.

⁸ WTO - [General Agreement on Tariffs and Trade \(GATT 1994\)](#)

Chapter 2 – Rules of Origin

- 3.12 The aim and purpose of this Chapter is 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. In practical terms, these rules determine the economic nationality of any goods produced and ensures that the appropriate preferential tariff is applied to those goods that are eligible for it.
- 3.13 The Chapter also specifies the rules relating to the ‘cumulation of origin’, which is when different goods are combined, processed or transformed into a new product. An example is in vehicle production, where a fully manufactured vehicle will contain multiple goods (parts) which may have been produced in many other countries but the final product is deemed as originating in the country of assembly if rules of origin requirements are met.
- 3.14 It is important that the Bailiwick is included alongside the UK for these cumulation rules because there are various manufacturers in the Bailiwick which produce components for goods that complete production or are combined with other goods in the UK, such as electronics, machinery and pharmaceutical devices. These goods may then be exported to the EU or the rest of the world. Ensuring cumulation between the UK and the Bailiwick aspects of production is key to achieving preferential tariff rates under FTAs and protecting the competitiveness of UK-Bailiwick supply chains in this regard.

Chapter 3 – Sanitary and Phytosanitary Measures

- 3.15 The aim and purpose of this Chapter relates to 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 or SPS products between them.
- 3.16 The Bailiwick already applies and enforces import and export controls of such products at the islands’ borders. Ensuring that the Bailiwick is recognised as compliant with the international standards defined within this Chapter is important to maintain the Bailiwick’s trading relationship with the EU.
- 3.17 The Chapter requires that when parties do apply domestic SPS measures that these are adopted in accordance with international standards and are not aimed at distorting or restricting trade. For example, in respect of animal health and welfare controls, the baseline for any definitions and references to any controls implemented in either the UK or EU, would be the World Organisation for Animal Health, often referred to as Office International des Epizooties (‘OIE’), standards.
- 3.18 As far as the Bailiwick is concerned, this Chapter is in essence one of the components which allows the continuation of trade in SPS goods between the

Bailiwick and the EU. The Bailiwick would adhere to, and be recognised as meeting, international obligations. Any required controls will be considered and applied appropriately by the Bailiwick authorities. Therefore, the islands maintain autonomy of the controls placed at their external borders. This Chapter will also link into, and not conflict with, any ongoing and future work to establish an agreement with the UK Government for the trade and movement of SPS products between the Channel Islands and the UK.

- 3.19 In many cases, the Bailiwick applies more stringent rules (than those in the SPS Chapter), or at least equivalent controls, at the Bailiwick's borders which are aimed at protecting the Bailiwick from specific environmental, human, animal or plant health concerns. Complying with this Chapter will not restrict any of the Bailiwick islands from applying more restrictive measures than those required by the Chapter itself, if such measures are deemed necessary. Such further measures must not be an unjustified barrier to trade, must be open and transparent, and must not be applied in a discriminatory manner. Otherwise those further measures could conflict with the obligations relating to National Treatment and Market Access for Goods.
- 3.20 Inclusion within the SPS Chapter and SPS Annex does not provide guaranteed access to the EU for any SPS products exported from the Bailiwick into the EU as there are many other border and post-border controls which the EU may apply (including third country listing, depending on the type of goods).
- 3.21 However, inclusion in this Chapter will provide consistent terms for Bailiwick producers and will ensure that the Bailiwick is recognised by the EU as being well-regulated and compliant because any controls relating domestically to high-risk SPS goods are applied consistently in accordance with the TCA.
- 3.22 The SPS Chapter contains an integral SPS Annex, which focuses on criteria to be used by the Importing Party for Determining the Frequency of Identity and Physical Checks.
- 3.23 The aim and purpose of this Annex is to define specific arrangements between the parties on information sharing between the UK and the EU about importing and exporting SPS goods. There are high risks associated with the movements of SPS goods. This Annex specifies that information be made available by the exporting party (i.e., country) so that it can obtain authorisation from the importing party.
- 3.24 This Annex also requires both parties to share information relating to audits, frequency and severity of non-compliance detected, the past records of exporters and any scientific assessments or other pertinent information regarding the risk associated with the products.

- 3.25 Inclusion in this Annex will provide consistent terms for existing producers and will ensure that the Bailiwick remains an attractive, well-regulated and stable place for businesses to be located and remain competitive within UK and EU supply chains.

Chapter 4 – Technical Barriers to Trade

- 3.26 The aim and purpose of this Chapter is to facilitate trade in goods by preventing, identifying and eliminating unnecessary TBTs.
- 3.27 The Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures which may affect trade in goods between the parties. The Bailiwick's inclusion within this Chapter is important as it ensures that any goods produced in the islands are recognised and afforded protection from any unnecessary technical barriers being applied to them when they are exported from the Bailiwick into the EU. The Bailiwick is already committed to the WTO TBT Agreement⁹ and this TCA Chapter incorporates part of that agreement. Consequently, a dispute between the UK (which, for this purpose, would also include the Bailiwick) and the EU would be resolved through the dispute resolution mechanism under the TCA (rather than the WTO's dispute resolution mechanism).
- 3.28 In all cases, goods produced within the islands (such as electronics, machinery and pharmaceutical devices) already meet the technical regulations and conformity assessment procedures of the jurisdiction they are being imported globally, as this obligation falls to the importer. Bailiwick manufacturers already ensure that their products conform with health, safety, and environmental protection standards which are required for those products to be marketed and sold. Those products are marked with British Standards or CE markings to indicate conformity with those relevant standards.
- 3.29 Consideration is being given as to how to legislate (for instance via trading standards legislation), implement and resource the Bailiwick's internal market surveillance processes on non-food product safety, and the relevant pre-export conformity standards, in order to comply with the requirements of the Chapter).
- 3.30 The Bailiwick's inclusion in the TBT Chapter and the TBT Annexes does not guarantee access for Bailiwick goods to the EU for any of the manufactured products covered by the Chapter or Annexes. There are other border and market surveillance controls which the EU might apply depending on the good concerned.

⁹ As in Section 8 of [Billet d'État IV of 2019](#) – 'Extending the United Kingdom's Membership of the World Trade Organization'

- 3.31 However, inclusion in this Chapter provides consistent terms for Bailiwick producers and will ensure that the Bailiwick continues to be recognised by the EU as a well-regulated jurisdiction adhering to the terms of the TCA whilst at the same time remaining to be an attractive and stable jurisdiction for businesses to establish and be competitive within UK and EU supply chains.

Technical Barriers to Trade Annexes

- 3.32 Included within the TBT Chapter are five Annexes. The Annexes are not optional for that Chapter.
- 3.33 These Annexes relate to current trade in goods, or areas of potential future economic opportunity and industry development. In some cases, these Annexes may need additional regulatory cooperation by the Bailiwick with the relevant UK competent authorities (e.g. the Medicines and Healthcare products Regulatory Agency ('MHRA') for medicinal products). Any additional regulatory cooperation will need to be relevant, proportionate and practicable for the islands' economies and only applied for goods in which the islands trade.
- 3.34 Due to the differences between the obligations that the Bailiwick had under Protocol 3 and those that it would have if participating in the TBT Chapter and TBT Annexes, some additional regulatory legislation and operationalised domestic product monitoring will be required within the Bailiwick. This includes general measures relating to trading standards. Some measures relate to an extant States Resolution of 2016¹⁰ and others relate to the need to introduce legislation¹¹ to provide Trading Standards with powers as a 'market surveillance authority', to demonstrate equivalence of controls.
- 3.35 The States could also explore the introduction of a licensed trader scheme which would include a licence condition to meet the standards of the destination jurisdiction for goods. This would allow the Bailiwick to meet general international obligations (as well as the specific obligations of the TCA) in a way that is proportionate and manageable for the three legislatures of the Bailiwick.
- 3.36 The Annexes are an integral part of the TBT Chapter of the agreement; it is not possible to exclude any or all of the Annexes. The Annexes are forward-looking, and they may bring about greater regulatory requirements in the future as regulatory standards evolve over time in order to continue benefitting from the terms of trade provided by the Annexes. Inclusion in all of the following TBT annexes will provide consistent terms for existing and new businesses and will

¹⁰ [Billet d'État III of 2016](#) – 'Trading Standards Legislation' and [Resolutions](#)

¹¹ In line with Chapter III of [Regulation \(EC\) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation \(EEC\) No 339/93](#)

ensure that the Bailiwick remains an attractive, well-regulated, and stable place for businesses to establish and be competitive within UK and EU supply chains. The five TBT Annexes are detailed below.

Annex on Chemicals

- 3.37 This Annex applies to the trade, regulation, import and export of chemicals between the UK (and Bailiwick) and the EU in respect of their registration, evaluation, authorisation, restriction, approval, classification, labelling and packaging.
- 3.38 The aim and purpose of the Bailiwick's inclusion within this Annex is to facilitate the trade of chemicals and related products, ensure high levels of protection for the environment, human and animal health and provide for cooperation between the UK (and Bailiwick) and EU responsible authorities.
- 3.39 Inclusion within this Annex will ensure that current and future Bailiwick businesses can continue to export chemical products. Additional legislation will be required in the Bailiwick to ensure that goods can meet the relevant standards and continue to be exported to the EU.

Annex on Organic Products

- 3.40 The aim and purpose of this Annex is 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 Bailiwick) and the EU of their respective laws.
- 3.41 Organic products are generally produced within farming systems that avoid the use of man-made fertilisers, pesticides, growth regulators and livestock feed additives. Irradiation and the use of genetically modified organisms ('GMOs') or products produced from or by GMOs are generally prohibited by organic legislation.
- 3.42 The Bailiwick is already compliant with the requirements of this Annex on Organics to the extent that Protocol 3 applied to regulation and labelling of organic products due to the rollover of EU legislation¹². Further legislative provisions will be needed before 2021 to comply with the broader coverage of this Annex. Those requirements can be fulfilled under the powers of Brexit legislation.

¹² The UK has rolled over the [Agreement on Trade in Organic Products between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile](#), signed on 30th January, 2019, which will continue to apply to the Bailiwick in so far as Protocol 3 applied. However, the TCA Annex on Organics is wider than the UK-Chile Organics agreement as the TCA Annex covers the placing on the domestic market of organics products.

- 3.43 There are currently no known Bailiwick exporters of organic products. However, inclusion in this Chapter will ensure that the Bailiwick continues to be recognised by the EU as a well-regulated jurisdiction adhering to the terms of the TCA.

Annex on Motor Vehicles and Equipment and Parts thereof

- 3.44 The aim and purpose of this Annex is to set out the shared objectives of trade between the UK (and the Bailiwick) and the EU of all categories of motor vehicles, equipment and parts thereof, as defined within the UN Economic Commission for Europe Consolidated Resolution on the Construction of Vehicles¹³.
- 3.45 The Annex ensures that the Parties refrain from introducing or maintaining a domestic technical regulation, marking, or conformity assessment procedure that diverges from the UN regulations or any other Global Technical Regulation ('GTR'). Furthermore, each Party shall ensure the required market surveillance is in place which guarantees that any motor vehicles and equipment and parts thereof, are compliant and covered by a valid UN type-approval certificate.

Annex on Trade in Wine

- 3.46 The aim and purpose of this Annex ensures that science relating to wine making, referred to as oenological practices, and complies with the international standards published by the International Organisation of the Vine and Wine ('OIV'). The Parties to this Annex shall authorise the importation and sale for consumption of wines produced in either the UK or EU if they have been made in accordance with the OIV.
- 3.47 The Bailiwick's inclusion in this Annex relates to the production of wine, particularly the certification, labelling and marketing of wines produced in the UK and EU. Inclusion is important as it maintains the previous trading relationship with the EU and it will allow any wine production business which may establish within the Islands to have the ability to trade in any grown wine products in accordance with the OIV throughout the EU. If the Bailiwick elects not to be included within this Annex, market access to the EU for wine products would be limited and based on third country access which will be problematic.
- 3.48 Whilst currently there is no wine production in Guernsey or Alderney, wine has been manufactured in Sark in recent years and inclusion in this Annex will allow Bailiwick businesses to trade in the future with the EU, subject to meeting the compliance requirements.
- 3.49 This Annex does not impact on the general importation of wine products into the islands from the UK or EU, as it relates to the production practices.

¹³ [United Nations Economic and Social Council 11 July 2017](#)

Annex on Medicinal Products

- 3.50 The aim and purpose of this Annex is 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').
- 3.51 This Annex requires both parties to recognise and adhere to international standards relating to the technical standards, inspection regimes and guidelines used in the production of human and veterinary medicines, intermediates and API.
- 3.52 When medicinal products are manufactured, they are required to be produced and inspected to rigorous standards in accordance with General Manufactured Practice ('GMP') international standards. This Annex requires the UK and EU to exchange information and to mutually recognise certificates of GMP compliance. Any exchange of information and oversight of any medicinal production will be dealt with the relevant competent authority in the UK and EU.
- 3.53 Inclusion in this Annex – and compliance with its terms – would enable Bailiwick businesses to develop and export human, veterinary medicines, intermediates and API to the EU. In previous years, there has been some medicine production in Guernsey. This sector has significant potential, particularly in relation to API production.
- 3.54 Production and export of any human, veterinary medicine, intermediates or API will need the oversight of the UK competent authority which is the MHRA. The States of Deliberation has a wide-reaching memorandum of understanding ('MoU') with the MHRA. Any future production and export of such products would require amendments to that MoU.

Chapter 5 – Customs and Trade Facilitation

- 3.55 The aim and purpose of this Chapter is to ensure that there is compatible and effective administrative and enforcement customs procedures in place to facilitate trade whilst also ensuring proper protection, safety and security processes in place to protect citizens, and national prohibitions and restrictions and financial interests of both the UK and the EU.
- 3.56 The Chapter reinforces the cooperation between the UK (and the Bailiwick) and EU customs authorities and supports appropriate levels of compatibility of customs legislation.
- 3.57 Whilst there is mutual cooperation between the Parties, the Bailiwick's inclusion within this Chapter will ensure that its customs arrangements are compliant with

the TCA. It will not impact on the Bailiwick's future Customs Arrangement with the UK or the Bailiwick's ability to manage its own borders and any future legislation regarding customs procedures.

- 3.58 Any future customs legislation will need to continue to be implemented in a non-discriminatory manner. That legislation will continue to combat fraud, provide safety and security for citizens, whilst continuing to promote legitimate trade.

Exclusion from the article regarding Authorised Economic Operators

- 3.59 The negotiated position is that the Bailiwick is excluded from the article about AEOs¹⁴ within this Chapter on Customs and Trade Facilitation. That reservation means that the Bailiwick does not need to maintain an AEO partnership programme. The AEO partnership programme is a concept based on Customs-to-Business partnership which was introduced by the World Customs Organisation (WCO)¹⁵.
- 3.60 The programme allows businesses that frequently export goods to voluntarily meet a range of criteria and work in close cooperation with customs authorities. The businesses concerned would be recognised as safe and secure business partners and fewer physical and document-based controls would be required at the Bailiwick's borders related to security & safety for goods movements.
- 3.61 As at 1st June 2018, only 626 UK businesses had been registered by HMRC as an AEO, accounting for only 4% of AEO businesses registered across the EU. Following due consideration, the Committee advised the UK Government that there would be insufficient benefits to the Bailiwick.
- 3.62 Introducing an AEO programme for the Bailiwick would require additional legislation, training of GBA officers and additional resources for implementation. Following consultation, the larger on-island businesses indicated that they would not wish to make use of either a Bailiwick or UK AEO programme. Therefore, it is not considered relevant nor proportionate to implement a Bailiwick AEO partnership programme.
- 3.63 Inclusion in the Customs and Trade Facilitation Chapter ensures compatibility between the Bailiwick's customs authority, the customs authorities within the UK, and the EU. The Bailiwick's inclusion in that Chapter does not include any aspects relating to maintaining an AEO partnership programme (either under the

¹⁴ Authorised Economic Operator status is an internationally recognised quality mark that shows your business's role in the international supply chain is secure and has customs control procedures that meet UK and EU standards.

¹⁵ [World Customs Organisation](#)

provisions of this Chapter or in the associated Annex on Authorised Economic Operators)).

The Protocol on Mutual Administrative Assistance in Customs Matters

- 3.64 The aim and purpose of this Protocol is to formalise and support the mutual assistance between customs authorities as agreed within the Customs and Trade Facilitation Chapter.
- 3.65 The Protocol requires that parties assist each other to ensure the correct application of customs legislation, particularly in regard to preventing illicit trade, investigation, and combating operations which are in breach of legislation.
- 3.66 The scope of this Protocol ensures cooperation between the parties in relation to both fiscal and non-fiscal matters. The Guernsey Border Agency is working with HMRC regarding implementing the legislative requirements.
- 3.67 For the Protocol, HMRC is the competent authority across the UK and Crown Dependencies and would respond to such requests on the Bailiwick's behalf. This will require the exchange of information between the UK and the Crown Dependencies. However, most of the procedural obligations set out in the Protocol will be undertaken by HMRC.
- 3.68 The Bailiwick's inclusion within the Protocol supports the cooperation defined in the Customs and Trade Facilitation Chapter. Further discussions will continue between Bailiwick and UK to ensure that the practical elements of the Protocol are implemented ready for any request from the EU (via the UK) for assistance on a relevant customs matter.

Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties. ('VAT Protocol')

- 3.69 Appended to Chapter 5 is a protocol relating to the tax information exchange on Value Added Tax ('VAT') and debt recovery for VAT, excise duties and customs duties. A version of the VAT Protocol was included by the EU in its original proposed legal text. At that time, it included administrative assistance (including exchange of information on request, the spontaneous exchange and automatic exchange of information) for VAT purposes and assistance in the recovery of claims (those claims not being restricted to VAT debts but instead applying to all direct and indirect taxes, including penalties, interest and surcharges).
- 3.70 Whilst the Bailiwick does not raise value-added goods-sales taxes, Bailiwick businesses may attract VAT and/or customs and excise liabilities in the EU. Parts of the VAT elements of this Protocol are not directly relevant for the Bailiwick

and the administrative assistance required would be non-reciprocal (i.e. the Bailiwick would be providing assistance, including debt recovery in relation to VAT, but would not be receiving assistance from EU Members States).

- 3.71 This Protocol might have required the Bailiwick's competent authority to be designated as a 'liaison department' by HMRC (the UK competent authority for the purposes of this Protocol). That would have undermined the Bailiwick's fiscal autonomy and its distinct status from the UK for taxation purposes. Guernsey has established a number of tax information exchange and cooperation agreements under entrustment from the UK¹⁶; those agreements respect Guernsey as an internationally recognised competent authority for such purposes.
- 3.27 Acceptance of this Protocol as a whole would not correspond with Guernsey's current tax cooperation policy; as the debt recovery provisions are not yet an international standard and are not being considered in the context of a bilateral comprehensive Double Taxation Arrangement ('DTA')¹⁷. This Protocol also goes beyond the Protocol 3 relationship that the Bailiwick's participation in the TCA is intended to replace/recreate.
- 3.73 The general principle of tax information exchange described in this Protocol is consistent with current policy. Guernsey also agreed to arrangements for administrative assistance in collection of tax debts (including VAT) with the UK as part of the renegotiation of the Guernsey-UK DTA in 2018.
- 3.74 Considering these principles generally, the overall policy objectives of this Protocol are in line with Guernsey's position as a cooperative jurisdiction for taxation (albeit Guernsey's policy is to negotiate debt recovery provisions as part of a comprehensive DTA). In order to provide a solution which could be acceptable for the Bailiwick and addresses the EU's requirement for cooperation (including debt recovery) in respect of the VAT regimes of the EU Member States, the negotiators offered on the Bailiwick's behalf (and with its approval) to make a non-binding political declaration to reach an arrangement with the EU that is consistent with the Bailiwick's fiscal autonomy. It is understood that Jersey intends to make the same commitment. This approach differs from that taken by the Isle of Man because it is part of the UK's VAT regime.
- 3.75 Consequently, there will be a side declaration which states:

¹⁶ As a result of the fiscal union between Guernsey and Alderney, these agreements also apply to Alderney insofar as the 1948 Agreement applies.

¹⁷ A Double Taxation Arrangement is an official international agreement (generally) between two jurisdictions on how to administer taxation rules when domestic tax laws of two jurisdictions apply simultaneously to a particular issue or taxpayer (see [Guidelines for requesting Mutual Agreement Procedure \("MAP"\) assistance in Guernsey](#), Section 1.1).

“The Bailiwick of Jersey and the Bailiwick of Guernsey, territories for whose international relations the United Kingdom is responsible, shall endeavour to establish arrangements to cooperate with the European Union on the recovery of claims related to VAT, customs duties and excise duties within a reasonable time frame”.

- 3.76 If the Bailiwick’s parliaments are minded to participate in the TCA, negotiations for such an arrangement between Guernsey and the EU regarding VAT, customs duties and excise duties will commence with the European Commission in 2021, following the ratification of the TCA.

Joint Political Declaration on the Countering of Harmful Tax Regimes

- 3.77 The EU has placed significant weight in the negotiation on seeking a number of commitments from the UK regarding fair competition.
- 3.78 The European Parliament recommendation¹⁸, adopted in June 2020, includes a reference to tax standards as part of the ‘level playing field requirements’. In that regard, the European Parliament:

“Strongly believes that the UK should adhere to the evolving standards on taxation and anti-money laundering legislation and terrorism financing within the EU acquis, as well as worldwide, including tax transparency, the exchange of information on tax matters and anti-tax avoidance measures, in order to ensure a fruitful and trust-based mutual cooperation and should address the respective situations of its Overseas Territories, its Sovereign Base Areas and its Crown Dependencies and their compliance with EU good governance criteria and transparency requirements, particularly on the exchange of tax information, tax transparency, fair taxation, anti-tax avoidance measures and on OECD standards against Base Erosion and Profit Shifting; calls, furthermore, on the EU and the UK to uphold Financial Action Task Force standards; recalls, with regard to Gibraltar, the negotiating directives and the provisions set out in the draft legal text of the EU.”

- 3.79 The European Parliament will be responsible for ratifying the TCA on behalf of the EU.
- 3.80 In order to address the EU’s request for a commitment on taxation matters, the UK has agreed to make a ‘non-binding’ political declaration on countering harmful tax regimes (‘the Tax Declaration’). The Tax Declaration broadly sets out certain OECD and EU Code of Conduct standards on fair tax competition and tax

¹⁸ [European Parliament recommendation of 18 June 2020 on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland \(2020/2023\(INI\)\)](#)

cooperation. It also provides that both parties will encourage their respective dependent territories to meet these standards. While the Tax Declaration states that a zero tax rate can be a harmful factor, the statement is then qualified by the recognition that the tax regime needs to be assessed as a whole taking into account the factors listed in the declaration. This approach broadly follows that used by the EU Code of Conduct Group on Business Taxation for the criteria applied to third countries for the EU list of non-cooperative jurisdictions.

3.81 The Tax Declaration is intended to provide an assurance to the EU that the Single Market will not be undermined through any perceived unfair tax competition by the UK.

3.82 In addition to the general statement(s), the Tax Declaration contains a specific commitment that:

“The Participants should encourage, within the framework of their constitutional arrangements, the application of these principles in the territories for which they have special responsibilities or taxation prerogatives.”

3.83 Guernsey already follows the OECD and EU Code of Conduct standards on fair taxation and tax cooperation which are referred to or inferred in the political declaration. Guernsey has already been assessed to have developed its tax regime to meet the requirements of the listed factors (most recently with the introduction of Economic Substance Requirements where a company carries on certain relevant activities) by both the EU Code of Conduct Group on Business Taxation and the OECD Forum on Harmful Tax Practices (the most recent assessment being in June 2019).

3.84 The Tax Declaration is not legally binding, but is a political commitment. Therefore, in the event that the TCA with the EU falls away, it is no longer relevant.

The fishing-related aspects the TCA - application to the Bailiwick of Guernsey

Background

3.85 The Bailiwick’s relationship with the EU under Protocol 3 covered trade in fisheries products but it did not expressly cover wider EU fisheries competencies. The EU established the Common Fisheries Policy (‘CFP’) in 1983. The Bailiwick has a neighbourhood approach considering the close proximity between Bailiwick and EU waters. The Bailiwick manages its fisheries relationship with the

UK, through a Fisheries Management Agreement with the UK Government and the Devolved Administrations, agreed in 2012¹⁹.

- 3.86 The Bailiwick has the legal power to license British vessels fishing in Bailiwick waters and applies management measures, such as technical controls, on a non-discriminatory basis. This ensures the waters are managed locally and fished sustainably to suit the specific needs of the region. British vessels, except those from the Bailiwick, need to demonstrate a track record, between 15th May, 2007 and 15th May, 2010 in order to obtain a Bailiwick fisheries licence. This ensures that the waters are fished by those with a genuine interest to prevent an increase in fishing effort in Bailiwick waters by British boats.
- 3.87 However, French access in Bailiwick waters was previously governed by the LFC. This permitted any French vessel to fish in a specified area of the 6-12nm outer belt off the west coast of the Bailiwick for crab and demersal fish only. This access was based on habitual fishing activity by French vessels in that area between 1st January, 1953 and 31st December, 1962. The UK denounced the LFC on 2nd July, 2017, and the withdrawal took effect on 31st January, 2020, when the UK left the EU.
- 3.88 The Bailiwick decided to extend its territorial seas from 3nm to 12nm in early 2019²⁰ and this took effect on 23rd July, 2019²¹. The extension ensured that the Bailiwick could exercise jurisdiction over the wider areas of waters up to 12nm. The extension guarantees that the Bailiwick's sovereignty over the area of sea is recognised internationally and opened up additional options for managing these waters once the UK had left the EU and withdrawn from the LFC.
- 3.89 The UK's withdrawal from the LFC meant that the treaty rights for French vessels to fish in the 6-12nm limits in the Bailiwick ended on 31st January, 2020. Whilst the Withdrawal Agreement extended the application of the CFP to the UK during the transition period to ensure that all rights enjoyed by EU vessels in UK waters continued while a future partnership was negotiated, that arrangement did not extend to the Bailiwick. In order to remain aligned during the transition period and so that the situation in Bailiwick waters was not contrary to the intention of

¹⁹ [Billet d'État V of 2012](#) - 'Implementing Fishing Vessel Licensing Controls Within British Fisheries Limits Adjacent to the Bailiwick' and [Resolutions](#)

²⁰ [Billet d'État II of 2019](#) – 'Extending the Bailiwick of Guernsey's Territorial Seas'. Guernsey decided to extend its territorial seas at a meeting of the States of Deliberation on 1st February, 2019. Alderney decided to extend its territorial seas at a meeting of the States of Alderney on 23rd May, 2018, and a Policy & Finance Committee meeting of 15th January, 2019. Sark decided to extend its territorial seas at a meeting of the Chief Pleas of Sark on 6th February, 2019. It was agreed that extension would be sought for the Bailiwick of Guernsey as a whole. It was agreed that the States of Guernsey Policy & Resources Committee would send the formal request to the UK government for the extension of the Bailiwick of Guernsey's territorial seas.

²¹ Order in Council ['The Territorial Sea Act 1987 \(Guernsey\) Order 2019'](#) made under the [UK's 'Territorial Sea Act, 1987'](#)

the Withdrawal Agreement, the Bailiwick did not request the repeal of the UK legislation that gave effect to the LFC. This maintained the status quo in terms of French access for a limited period until 31st December, 2020. However, because the UK left the EU on 31st January, 2020, French vessels became obliged to seek express authorisation for the purposes of EU Regulation 2017/2403 on the sustainable management of external fishing fleets ('the SMEFF Regulation'). This requirement was notified to the States of Deliberation at the end of January 2020 and they responded within two weeks, in consultation with Alderney and Sark, to put in place a time-limited SMEFF regime (until 31st December, 2020). This allowed the Committee *for* Economic Development to issue SMEFF documents to French vessels, which in turn enabled those vessels to get SMEFF authorisation from the EU Commission and the French Government²².

- 3.90 The change in regime in the early part of 2020 caused tensions with French fishers in the region. The French fishing industry threatened to blockade ports in Normandy to prevent landings by Bailiwick vessels. The situation was calmed by the quick response from the Bailiwick, which demonstrated the Bailiwick's intent to act in good faith in the negotiations and was well received politically in France, at both regional²³ and national level, including by the French Agriculture Minister and in questions in the National Assembly²⁴.

UK and EU position on fishing

- 3.91 The Political Declaration agreed between the UK and the EU in October 2019 stated that "within the context of the overall economic partnership the Parties should establish a new fisheries agreement on, inter alia, access to waters and quota shares."²⁵
- 3.92 The UK and the EU also agreed to use, "best endeavours to conclude and ratify their new fisheries agreement by 1st July, 2020 in order for it to be in place in time to be used for determining fishing opportunities for the first year after the transition period"²⁶. This milestone was not achieved.

²² There was a delay between the end of application of the LFC (31st January, 2020) and the first SMEFF document being issued (7th February, 2020) which meant a short break in access arrangements. See [Fishing Authorisations issued by Guernsey](#), issued 7th February, 2020.

²³ There was a delay between the end of application of the LFC (31st January, 2020) and the first SMEFF document being issued (7th February, 2020) which meant a short break in access arrangements.

²⁴ On 5th February, 2020, a French parliamentarian from the department of La Manche, Bertrand Sorre, put a [question to the French Minister of Agriculture](#) regarding fishing in Bailiwick waters from 31st January, 2020. The Minister gave a positive assessment of the close work that had taken place between the authorities in France and the Bailiwick to find and swiftly implement a solution.

²⁵ [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#)

²⁶ Ibid

- 3.93 It has been clear, throughout the negotiations phase, that fishing has been a critical issue for the EU, and coastal Member States in particular. It has also been one of the most contentious and difficult issues to resolve in the negotiations. The UK and the EU starting positions were very different, leaving a significant gap to bridge to find a mutually acceptable compromise.
- 3.94 The UK has been seeking to assert its place as an independent coastal state as set out in the ‘The Future Relationship with the EU | The UK’s Approach to Negotiations’:
- “The UK is ready to consider an agreement on fisheries that reflects the fact that the UK will be an independent coastal state at the end of 2020. It should provide a framework for our future relationship on matters relating to fisheries with the EU. This would be in line with precedent for EU fisheries agreements with other independent coastal states. Trade in fisheries products should be covered by the CFTA. Overall, the framework agreement on fisheries should provide a clear basis for an on-going relationship with the EU, akin to the EU’s relationship with other coastal states, one that respects the UK’s status as an independent coastal state and the associated rights and obligations that come with this.”²⁷
- 3.95 This approach has its foundations in the Conservative Party Manifesto from the December 2019 UK General Election.²⁸
- 3.96 In February 2020, the European Council adopted a negotiating mandate that expressly stated that it, “outlines that the future partnership should uphold the existing reciprocal access to waters as well as stable quota shares”²⁹. This was translated into a draft legal text published on 18th March, 2020³⁰.
- 3.97 For the UK-EU future relationship agreement, the EU sought continued access to the UK territorial seas the same as it had enjoyed under the CFP when the UK was an EU Member State). Whilst the EU’s draft legal text permitted UK vessels to access EU waters, the EU text expressly excluded Bailiwick vessels from EU waters while seeking EU access to Bailiwick waters.

²⁷ [HM Government: ‘Our approach to the Future Relationship with the EU’ CP211](#), published 27th February, 2020.

²⁸ [Get Brexit Done Unleash Britain’s Potential – The Conservative and Unionist Party Manifesto 2019](#) 24th November, 2019.

²⁹ [EU-UK relations: Council gives go-ahead for talks to start and adopts negotiating directives](#), 25th February, 2020.

³⁰ [Draft text of the Agreement on the New Partnership with the United Kingdom](#), 18th March, 2020.

The Bailiwick's position on fishing

- 3.98 The Bailiwick has sought a fair fisheries arrangement. During the negotiations phase, the offer from the Bailiwick was for stable access to Bailiwick waters for the regional French fishing fleets based on a pool of effort defined by a relevant track record period of fishing in those waters, in return for continued access to regional ports for Bailiwick vessels. This would be underpinned by the goods relationship providing reciprocal market access between the UK and EU markets with 'zero tariffs, zero quotas'.
- 3.99 A fundamental requirement underpinning the arrangement is the ability for the Bailiwick to manage its territorial seas (by applying conservation measures through technical controls in the interests of sustainability) and the licensing of foreign vessels.
- 3.100 To facilitate trade, the Bailiwick is seeking access to neighbouring EU ports. This can be achieved through the designation for the purposes of the Convention on Future Multilateral Cooperation in Northeast Atlantic Fisheries ('NEAFC Convention')³¹ and Council Regulation (EC) No 1005/2008 the Illegal, Unreported and Unregulated fishing Regulation (IUU)³². The terms of trade in respect of preferential tariffs (set at zero) and customs matters will be provided for in the goods chapters of the TCA. For fisheries products that are exported, rather than landed, the non-tariff barriers will apply, subject to the terms of the SPS Chapter and underpinned by third country listings, where relevant.
- 3.101 The Committee, on behalf of the Bailiwick, alongside the governments of Jersey and the Isle of Man, worked closely with the UK government to present an offer that recognised the EU's position regarding access to its territorial waters. The islands were prepared to explore providing vessels of certain EU Member States (in the Bailiwick's case, France) access to their territorial waters. This would be through bespoke arrangements that ensure no greater effort in the Bailiwick waters, while retaining local management and licensing of French vessels.
- 3.102 The Bailiwick set the following guiding principles:
- a) **Sustainability:** the joint aims of conservation and sustainable management must underpin any future fisheries regime. In order to continue developing a sustainable fisheries regime within the Bailiwick's

³¹ The [North East Atlantic Fisheries Convention](#) is an international convention covering a broad spectrum of fishing matters. It aims to ensure the sustainable management of fishing stocks and to prevent Illegal, Unreported and Unregulated (IUU) fishing.

³² In accordance with [COUNCIL REGULATION \(EC\) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations \(EEC\) No 2847/93, \(EC\) No 1936/2001 and \(EC\) No 601/2004 and repealing Regulations \(EC\) No 1093/94 and \(EC\) No 1447/1999](#)

territorial waters, all vessels should be subject to relevant management measures.

- b) **Access:** the Bailiwick controls its territorial waters. Any access that is granted to EU vessels should not exceed existing or, where relevant, past arrangements. No action should be taken that would result in new, improved or uncontrolled access for EU fleets in Bailiwick territorial waters. Therefore, access granted must not exceed that available under existing access/treaty arrangements. Appropriate termination provisions will be required to ensure that the access is not granted in perpetuity.
- c) **Management:** the Bailiwick must continue to have the ability to manage its territorial waters in order to ensure the development of modern and sustainable fisheries within the context of wider environmental and marine planning considerations. The Bailiwick has the right to license vessels in its waters including applying any technical controls and track record requirements, and to impose spatial planning controls which they each determine should apply. Management measures will be implemented through a combination of legislation and licence conditions.

3.103 The Bailiwick was seeking access to EU waters (in particular the EEZ of France) and access to neighbouring ports (including designation for NEAFC and IUU purposes, as necessary). It was proposed that any agreement covered:

- a) access for vessels of relevant Member States (in the case of the Bailiwick, France) to specified geographical area/waters, and specified species (the areas of sea that access was permitted under the LFC and the same species, Crab and Demersal);
- b) restrictions on access (the number of EU vessels and fishing effort/maximum quantities of stocks);
- c) the evidenced track record period required;
- d) the means for cooperation, including in relation to data sharing;
- e) the process for permitting/licensing of EU vessels, fisheries management provisions and emergency procedures;
- f) flag State obligations to ensure that EU vessels comply with relevant rules when fishing under the agreements; and
- g) dispute resolution and termination articles.

3.104 The Bailiwick put forward a stable and predictable fisheries relationship that respected the islands' autonomy over their territorial seas and supported the economic balance and interdependencies of the region - in terms of protecting the interests of the Bailiwick fishing fleet; minimising the impact on the Normandy fishing communities; and guarding both against any displaced effort. This would respect the regional relationship of mutual interest and concern in terms of sustainable access to Bailiwick waters and access to Normandy ports,

and through that, the EU market. This would also reduce the risk of fisheries disputes caused by France in the short and medium term, which has been experienced in the past. A good neighbourhood relationship is important economically for trade and tourism and the development of submarine electricity cables. It also protects the islands' international reputation and the wider relationship with France.

- 3.105 The EU, on the other hand, has been seeking to grandfather the LFC rights in the abstract, namely for all French vessels in the 6-12nm outer belt to the west of the Bailiwick, limited to fishing for LFC species (crab or demersal).

The new fishing relationship regarding the Bailiwick

- 3.106 Following the negotiations between the UK and the EU, the following terms have been agreed. These arrangements closely reflect the Bailiwick's proposed position.

Legal Form

- 3.107 The provisions relating to the Bailiwick have been combined with those relating to the UK in a single legal text in the TCA, rather than being placed in a separate Protocol or Annex. However, specific provision has been made in respect of the Crown Dependencies, as the negotiations have resulted in different terms for them and for the UK.
- 3.108 Furthermore, the Bailiwick will be treated separately from the other Crown Dependencies and the UK for the purposes of dispute resolution. For example, a dispute involving Jersey or the Isle of Man will not lead to measures being taken by the EU against the Bailiwick. However, the Bailiwick itself will be treated as one entity for the purposes of this agreement; this means any dispute between the EU and the Bailiwick will affect the Bailiwick as a whole.

Access

- 3.109 The agreement provides for access in the territorial seas of the Bailiwick reflecting the actual extent and nature of fishing activity under treaty arrangements that existed on 31st January, 2020. In effect, this means the outer belt of the Bailiwick's territorial seas. Further, this access will be based on a 'pool' of a fixed level of effort which EU Vessels can seek a licence to fish against. This pool of effort is defined using a track record period of 10 days in any one of the three 12 month periods ending on 31st January falling between 1st February, 2017 and 31st January, 2020. This pool of effort will then need to be managed by licenses issued by Guernsey.

- 3.110 This provides a stable and predictable fisheries relationship with France, and in particular the neighbouring region, and helps the Bailiwick to manage the wider economic relationship in terms of trade and the GeM project. Importantly, it also results in a negligible economic impact at the end of the transition period, while protecting the Bailiwick waters from an increase in effort, particularly displaced French effort from other fishing areas.
- 3.111 The agreement defines UK vessels as including Bailiwick vessels³³, and through this gains access to the EU EEZ on the same terms as the UK. This is important for the Bailiwick vessels which fish in the French EEZ which are adjacent to Bailiwick waters.

Access to Ports and notification

- 3.112 Access to ports cannot be provided under the TCA because it is not an EU competence. In order for its vessels to access the ports without compulsory inspections, the Bailiwick has been advised by UK Government that it will need to extend the UK's Participant Country status of the NEAFC Convention. This work will be completed by the end of 2020. The UK has been informed that France has formally requested that the Commission designate the ports of Cherbourg, Carteret and Granville. The process for extension and designation is administrative and will be completed within a couple of weeks. Unfortunately, Diélette does not have designation as a customs port or an IUU port to make it suitable for landings after the end of the transition period. However, dialogue will be maintained with the regional French authorities to seek designation of Diélette in order to return to a similar position in terms of port access as that enjoyed before the UK exited from the EU.
- 3.113 There are notification requirements for landings which are limited under the terms of the TCA. The EU has agreed to reduce these notification times for landings for IUU purposes between three and five hours. Notification for direct movements which require catch documentation, rather than landings, will need to be made between one to three hours of the products reaching their destination. These notification times are a vast improvement on the notification times without an agreement, which would be at least three working days before the estimated time of arrival at the port.

Management and Licensing

- 3.114 The Bailiwick is responsible for the management and licensing of EU vessels fishing under the TCA. The management powers can be exercised as the

³³ The definition of a [UK] vessel as “a fishing vessel flying the flag of the United Kingdom, registered in the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man, and licensed by a UK fisheries administration”.

Bailiwick considers appropriate, based on the best available scientific advice, to ensure the rational and sustainable management of the fisheries.

- 3.115 The Bailiwick is required to notify the EU of any new measure it puts in place and, as a matter of prudent management, is likely to consult with French stakeholders in any event. Management measures, such as technical controls, must be applied in a non-discriminatory manner.
- 3.116 The management will be required to be based on scientific evidence and exercised in line with the general objectives of the fisheries part of the TCA. These principles are based on international standards and general principles of sustainability and marine stewardship.
- 3.117 The Bailiwick will be responsible for licensing EU vessels granted permission to fish under the TCA in the eligible waters.

Governance

- 3.118 The Bailiwick of Guernsey, Jersey and the IoM will be treated distinctly for the purposes of the dispute resolution provisions.
- 3.119 There is a specialised committee in respect of fisheries matters established between the UK and the EU to discuss implementation of this part of the agreement. The UK expects that, if this Committee wishes to discuss implementation issues of direct interest to the Bailiwick, representatives of the Bailiwick will attend the Committee to represent its own interests.
- 3.120 The Dispute Resolution Mechanism (DRM) is a reciprocal arrangement which, in the event of a dispute, provides the other party a cascade of the level of remedy. If either the EU or the UK (on behalf of the Bailiwick) alleges a breach of the fisheries provision of the TCA they will notify the respondent party of that breach. This allows time for consultation to seek to resolve the dispute. The initial step for recourse if the dispute is not resolved will be to suspend access to its waters for the other party's vessels. If this suspension does not lead to a resolution, preferential tariffs may be suspended on fisheries products from the other party. Finally, if this does not lead to a resolution, preferential tariffs may be suspended in relation to all goods. There is an arbitration process, where the complaining party must (within 14 days) request an independent arbitration panel to be established. If the arbitration panel decides there has been no breach, the respondent party may suspend certain obligations towards the complaining party. All measures taken under the DRM must be proportionate to the alleged breach and its economic and social impact.

- 3.121 The UK has a similar DRM mechanism, but the final stage is the suspension of TCA in its entirety. As it is through the TCA that the agreement applies to the Bailiwick, such a suspension would also affect it.
- 3.122 In addition to the DRM, there is a general three year termination clause for the Bailiwick of the fisheries agreement. If the goods chapters are terminated, the fisheries provisions will also cease to apply to the Bailiwick. This is different from the UK termination clause which is nine months overall but leading to the ending of the TCA as well as all side agreements.
- 3.123 The legal text had not been finalised at the time of writing this Policy Letter. As a result of the limited time available for consideration of the final legal text ahead of the end of the transition period, a sunset clause (or cooling off period) within the first 90 days of the agreement taking into effect has been included in the agreement. This clause, which applies to each of the Crown Dependencies individually, will provide the option to exit, or seek to make limited amendments to, the agreement during the first 90 days of the agreement, should the text not align with the policy approved by the Bailiwick (based on the information available at the time of writing the Policy Letter and the parliamentary debate). In order to activate the sunset clause, the Bailiwick would need to make a representation to the UK, which would then make a representation to a joint UK-EU committee established as part of the governance arrangements for the agreement. The sunset clause could be activated by either party to the agreement, and would take effect one month from the date of notification of activation.
- 3.124 Inclusion of this clause will ensure that the Bailiwick has the opportunity to consider the final legal text, following the end of the transition period, to ensure that it satisfies the principles as agreed by the Bailiwick, in accordance with this Policy Letter. While this enables the Bailiwick to exit, or seek to make limited amendments to, the agreement if the legal text does not satisfy this test, the sunset clause can also be activated by the EU which represents a risk to the Bailiwick.
- 3.125 There are general review clauses under the TCA. A joint political body established by the TCA can amend terms of the agreement if both parties agree, and if these changes impact the Bailiwick, with the Bailiwick's consent.

Managing the fishing effort

- 3.126 The TCA provides that the Bailiwick has the right to establish a pool of fishing effort for French vessels within Bailiwick fishery limits. That will be based on fishing activity during a track record period.

3.127 Calculation of this fishing effort is a complex process and there are varying ways this can be done, such as managing the number of days that can be fished or by limiting the total vessel size and engine power permitted in Bailiwick fishery limits. The Committee for Economic Development will consider what the most appropriate method of establishing this pool of effort is in consultation with the UK Government in order to implement the TCA.

4. TCA Governance Provisions

4.1 The UK proposed a suite of agreements, including a FTA and various specific side agreements, on policy areas such as, inter alia, fisheries, air transport, and cooperation in the peaceful use of nuclear energy. Conversely, in accordance with Article 217 TFEU³⁴, the EU proposed a single 'association agreement' including economic, security and other forms of cooperation between the EU and the UK.

4.2 The negotiated outcome will be in the form of a single agreement, the TCA which contains sections on goods and fisheries. This single framework means that the governance arrangements established in the TCA will apply across the suite of provisions within the agreement, with the exception of certain defined chapters.

4.3 The TCA establishes a dispute resolution mechanism which allows any disputes to be discussed through a process of consultation. A joint political body will be established to oversee the implementation and operation of the agreement, which will consist of representatives of the UK and the EU. The joint political body will be able to amend certain parts of the TCA providing an expedited process for minor changes. For example, should the Bailiwick wish to participate in the AEO Annex, this change could be given effect by the joint political body, with the Bailiwick's consent. A number of specialised committees will also be established to deal with specific aspects of the agreement.

4.4 If one of the parties (the UK or the EU) raises an issue on which there is a dispute, there will be a process of consultation and mediation. If the dispute is not resolved, an arbitration panel may be formed. However, some of the chapters of the TCA are expressly excluded from the dispute resolution mechanism.

5. Letter from the Lord Chancellor clarifying UK's expectation of how the UK-Bailiwick of Guernsey relationship will work to meet the obligation under the TCA

5.1 The Lord Chancellor will be writing to the Committee 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 reiterates that nothing

³⁴ [Article 217, Treaty on the Functioning of the European Union](#)

in the TCA alters the constitutional relationship with the UK, through the Crown, and it does not impact the Common Travel Area. It also reaffirms that the UK Government remains committed to the principles set out in the International Identity Framework. The UK set out its commitment to continue to work closely and consult with the islands on matters relating to the TCA, in particular if the TCA is amended in the future. In respect of the VAT Protocol, the letter will clarify that the relevant declaration was made with the Bailiwick's consent and that a letter of entrustment will be forthcoming on this matter so that the commitment could be negotiated and concluded by the Bailiwick. Finally, it will set out the relationship where the TCA requires the UK to act as the interlocutor on matters where the Bailiwick is responsible for operational matters and for implementing the agreement in domestic laws and policies.

6. Comparison to Guernsey's Brexit objectives

The Bailiwick's objectives in relation to the UK's withdrawal from the EU

- 6.1 In the June 2016 Policy Letter, the States of Deliberation and Alderney and Sark's Policy & Finance Committees agreed a set of objectives for the (the full objectives are detailed in Appendix 3). The objectives outlined negotiating considerations for the future relationships with the UK and the EU and set out the main areas for engagement with the UK Government during the course of the UK's withdrawal from the EU. In the January 2020 Policy Letter and its Resolutions, the islands reiterated their support for those objectives as well as setting new ones for the Bailiwick's participation in any future UK-EU agreement. The table below outlines how the objectives have been met through the TCA.

TABLE 1 - COMPARING THE BAILIWICK'S OBJECTIVES WITH OUTCOME OF NEGOTIATIONS

2016 Objectives	Current Status	UK-EU agreement, Bailiwick inclusion	UK-EU agreement, Bailiwick not included
<p>2020 overarching objective: To agree, in particular, that any agreement or protocol in respect of the Bailiwick should be underpinned by the principles of relevant, proportionality and practicality taking into account the island nature of the Bailiwick, its size and population and unique needs arising out of the same.</p>			
<p>UK</p>			
<p>For trade in goods, including agriculture and fisheries products, there is a long-standing historic trading arrangement which provides for tariff-free reciprocal trade.</p>	<p>No changes during transition period.</p> <p>UK implementing new border model in phases from January to July 2021.</p> <p>Customs Arrangement signed with the UK in November 2018 comes into effect from 1 January 2021.</p>	<p>Bailiwick's border model regarding SPS checks is subject to ongoing discussions with DEFRA.</p> <p>Any requirements will be relevant, proportionate and practical.</p>	<p>Bailiwick's border model regarding SPS checks is subject to ongoing discussions with DEFRA.</p>
<p>There are no arrangements in place that make reference to trade in services, including financial services.</p>	<p>No changes to the current arrangements for trade in services, including financial services.</p> <p>During the transition period data can continue to be exchanged between the Bailiwick and the UK. This will continue until the end of 2021 in the event that the UK does not receive a data protection</p>	<p>No changes to the current arrangements for trade in services, including trade in services.</p> <p>If no adequacy decision for UK by 31st December 2020, status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the UK is maintained until the end of 2021.</p>	<p>No changes to the current arrangements for trade in services, including trade in services.</p> <p>If no adequacy decision for UK by 31st December 2020, status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the UK is maintained until the end of 2021.</p>

	adequacy decision from the EU by 31st December 2020.	This is relevant proportionate and practical.	
For people , the Common Travel Area should continue to apply (it predates UK Accession, and is not dependent on EU law).	CTA remains protected and unchanged.	No changes – CTA remains protected and unchanged. This is relevant proportionate and practical.	No changes – CTA remains protected and unchanged, as set out in.
EU			
In order to maintain the status quo for Guernsey, the States of Guernsey will need to maintain the free trade in goods with the EU hitherto provided under Protocol 3. In principle, it is possible that this may be replaced by extending the goods provisions of any new UK/EU agreement to Guernsey, subject to the precise terms.	No change during transition period. From 1 January 2021 new regimes will be in place based on participation in the TCA.	Trade will be covered by participation in the relevant chapters of the TCA. Landing and export of fish will be in accordance with the fisheries arrangements. This is relevant, proportionate and practical when compared to the benefits of participation in the agreement.	If no participation in the TCA, trade in goods would be on WTO terms as set out in. Could lead to increased costs for businesses depending on levels of tariffs. No fisheries agreement in place. Direct landings not possible unless relevant agreements reached with France. Indirect landings must enter the EU through a border control post. Direct movements of EU goods into the Bailiwick will be regulated by the Bailiwick's border model.
The existing work exploring extension of the UK membership of the WTO should be given a higher priority. This will provide lower tariffs for any imported	Extension of UK's WTO membership to the Bailiwick will occur on 1 January 2021, when the UK becomes an independent member of the WTO.	WTO membership underpins compliance goods aspect of the UK-EU trade agreement. The TCA provides preferential trading	Trade with EU on WTO terms.

<p>goods coming direct from the EU or elsewhere (not via the UK) and will underpin an agreement on free movement of goods as well as other trading relationship.</p>		<p>terms compared with WTO terms alone.</p> <p>This is relevant, proportionate and practical.</p>	
<p>For trade in services, the States will seek to maintain its current position of being outside the EU, with market access on a case by case basis as a third country.</p>	<p>No change to trade in services.</p> <p>No change to the Bailiwick of Guernsey's existing data adequacy decision.</p>	<p>No change to trade in services – Bailiwick of Guernsey continues to be treated as a third country. Bailiwick inclusion in the UK-EU agreement does not cover inclusion in any of the services chapters.</p> <p>No change to Guernsey's adequacy decision as a result of the agreement. No change to decision making process for new adequacy decision.</p> <p>This is relevant, proportionate and practical.</p>	<p>No change to trade in services – Bailiwick of Guernsey continues to be treated as a third country.</p> <p>No change to Guernsey's adequacy decision as a result of the agreement. No change to decision making process for new adequacy decision.</p>
<p>For people, the States will need to seek to ensure any commitments made by the UK as part of its withdrawal agreement with respect to the grandfathering of rights of EU (non-UK) citizens in the UK and in the Channel Islands and that the legal status 'Channel Islander' (for the purposes of</p>	<p>EU/EEA/Swiss settlement scheme in the Bailiwick of Guernsey open until 30 June 2021.</p>	<p>EU/EEA/Swiss settlement scheme remains open until 30 June 2021 for nationals resident in the Bailiwick by 31 December 2020.</p> <p>Bailiwick of Guernsey British citizens travelling to the Schengen Area will be subject to new rules from 1 January 2021 in respect of</p>	<p>EU/EEA/Swiss settlement scheme remains open until 30 June 2021 for nationals resident in the Bailiwick by 31 December 2020.</p> <p>Bailiwick of Guernsey British citizens travelling to the Schengen Area will be subject to new rules from 1 January 2021 in respect of</p>

Protocol 3) is considered.”		passport rules. Immigration to the EU will be subject to EU legislation and policies. This is relevant, proportionate and practical.	passport rules. Immigration to the EU will be subject to EU legislation and policies.
States of Guernsey			
Ensure the interests of Guernsey residents are taken into account by the UK / EU exit agreement. This includes ensuring that Guernsey residents/persons with EU rights do not suffer any detriment compared to those resident in the UK. (Reiterated in January 2020 Policy Letter)	Rights of Bailiwick of Guernsey British citizens resident in an EU country are protected in the Withdrawal Agreement.	This is relevant, proportionate and practical.	
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.	No change during transition period. From 1 January 2021 new regimes will be in place when Protocol 3 falls away – effects dependent on negotiation outcome.	Trade will be covered by participation in the relevant chapters of the TCA. Landing and export of fish will be in accordance with the fisheries arrangements. This is relevant, proportionate and practical when compared to the benefits of participation in the agreement.	If no participation in the TCA, trade in goods would be on WTO terms. Could lead to increased costs for businesses depending on levels of tariffs. No fisheries agreement in place. Direct landings not possible unless relevant agreements reached with France. Indirect landings must enter EU through a border control post.

<p>(Reiterated in January 2020 Policy Letter)</p>			<p>Requirements for importation and onward exportation of EU goods into the UK subject to new border model being discussed with DEFRA.</p>
<p>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.</p> <p>(Reiterated in January 2020 Policy Letter)</p>	<p>Close working relationships have been developed with relevant UK Government Departments throughout the negotiations to ensure the constitutional relationship is understood and respected.</p> <p>CTA remains protected and unchanged.</p>	<p>CTA remains in place protecting rights of Bailiwick nationals to move freely and reside in the relevant jurisdictions and enjoy associated rights and privileges.</p> <p>Customs Arrangement ensures that the flow of goods from the UK to the Bailiwick and <i>vice versa</i> is preserved.</p> <p>This is relevant, proportionate and practical.</p>	<p>CTA remains in place protecting rights of Bailiwick nationals to move freely and reside in the relevant jurisdictions and enjoy associated rights and privileges.</p> <p>Customs Arrangement ensures that the flow of goods from the UK to the Bailiwick and <i>vice versa</i> is preserved.</p>
<p>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.</p> <p>(Reiterated in January 2020 Policy Letter)</p>	<p>Extension of UK's WTO membership to the Bailiwick will occur on 1 January 2021, when the UK becomes an independent member of the WTO.</p> <p>Bailiwick of Guernsey included in UK 'roll over' FTAs to the extent that Protocol 3 applied.</p> <p>Bailiwick of Guernsey engaging with DIT on negotiations for new UK-third country agreements.</p>	<p>Bailiwick of Guernsey included in UK roll over FTAs and engaging with DIT in relation to negotiations of new UK FTAs.</p> <p>This is relevant, proportionate and practical.</p>	<p>Bailiwick of Guernsey included in UK roll over FTAs and engaging with DIT in relation to negotiations of new UK FTAs.</p>

7. What if the Bailiwick decides not to participate in the UK-EU agreement?

- 7.1 The potential implications of the Bailiwick deciding not to take part in the TCA are set out below, both in respect of the EU and the UK. Should only part of the Bailiwick resolve not to take part, these consequences will only impact the trade in goods with the EU and the fisheries relationship with the EU (which will include fisheries trade with France) for that jurisdiction(s) only, as well as any indirect consequences for relations with the UK; it may also have implications for relations within the Bailiwick.

The Goods Relationship

- 7.2 The Customs Arrangement with the UK means that trade between the UK and the Bailiwick can continue tariff-free regardless whether there is a deal or not, providing certainty for Bailiwick businesses. The Customs Arrangement obliges the Bailiwick to adopt the same tariff arrangements as those applied by the UK Government for goods entering any part of the UK; including any preferential tariff negotiated under a trade agreement such as the TCA. The Bailiwick can thereby benefit from any preferential arrangement for goods imported from the EU to the UK. The main impact of not taking part in the TCA, will be that the Bailiwick would not be able to benefit from the same preferential goods trading terms with the EU as those enjoyed by the UK and Bailiwick-produced goods will not be considered to be of UK origin. This will put Bailiwick businesses which export to the EU at a competitive disadvantage compared to equivalent UK businesses exporting to the EU.
- 7.3 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 to the EU.
- 7.4 For agri-foods, there are considerably higher tariffs if the Bailiwick is not part of the TCA. For example, fishery and aquaculture products such as crab and lobster can attract tariffs as high as 8% and oysters of the type cultivated and exported from the Bailiwick to the EU would be 9% and scallops 20%.
- 7.5 For industrial goods, there are strict and complex rules referred to as 'rules of origin' as well as rules on 'cumulation' of goods assembled from parts in a party to a trade agreement. The rules of origin and cumulation for third country goods entering the UK or EU will be defined in the TCA. These rules are, in part, intended to prevent third countries to the agreement benefitting from 'back doors' into the EU market. Being outside the TCA will mean that goods produced in the Bailiwick would not be considered by the EU as originating in the UK and

those Bailiwick goods would therefore have higher tariffs when exported to the EU.

Sanitary and Phytosanitary Controls

SPS Controls: Third Country Listings

- 7.6 The EU applies strict sanitary and phytosanitary controls to relevant third country goods entering the EU (for instance on high-risk goods such as food, plants, and products of animal origin ('agri-foods')). As a third country to the EU, the Bailiwick will be subject to those third country controls for SPS goods moved or exported to the EU. As such, the treatment of some agri-foods entering the EU also depends on the Bailiwick's equivalence with certain EU standards. For certain agri-foods products, the EU's trading partners have to demonstrate equivalence to EU standards via a third country listing process. Those listings can be used in a non-negotiated outcome scenario, and can also help to underpin parts of the Chapter.
- 7.7 The Bailiwick has applied for third country listings the major SPS products that it moves to, or trades with, the EU, where such listings are available.
- 7.8 In the future, further third country listing applications can be made, if required by the Bailiwick and where proportionate to the volume and type of trade undertaken and the ongoing compliance requirements.

SPS Controls: SPS Borders

- 7.9 Following the end of the transition period, the Bailiwick and Great Britain³⁵ will operate as a single SPS zone, with measures to ensure biosecurity and maintain appropriate protection for human, animal and plant health within the zone. The Bailiwick is seeking to ensure continuity for movements and receipt of goods that reflects the Customs Arrangement that will come into effect following the end of the transition period.
- 7.10 Regardless of whether the Bailiwick participates in the TCA, Bailiwick agri-foods exports to the EU will need to enter the EU through an approved Border Control Post ('BCP'). Bailiwick exports to the EU will also need to meet any applicable EU SPS requirements (for instance documentary or physical checks, and other requirements of the applicable third country listings).
- 7.11 A Channel Islands border model and controls for the movement of SPS (and also manufactured goods) is being developed. It is considered that establishing a BCP

³⁵ This excludes Northern Ireland

would be disproportionate for the low volumes and low risk of EU imports into the Channel Islands.

WTO – and the Customs Arrangement with the UK

- 7.12 The extension of the UK’s WTO membership to the Bailiwick will enable the Bailiwick to trade on WTO terms with the EU in the event that it is not part of the TCA; Bailiwick trade not covered by the TCA will be covered by WTO rules in any event. This would offer trade certainty but would not eliminate tariffs from 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.
- 7.13 While the operational WTO relationship will function from 1st January, 2021, it should be noted that the UK-Bailiwick customs union, which also comes into effect on 1st January, 2021, may be placed under more political tension if the Bailiwick does not participate in the TCA. That tension can be mitigated by ensuring close working relationships are maintained with the UK and by regulatory alignment where it is deemed appropriate. The UK-Bailiwick Customs Arrangement may be put at greater risk by UK political changes or a divergence in approach between the UK and EU on regulatory standards on goods.

The Fisheries Relationship

- 7.14 A treaty relationship on fisheries access would help to provide stability and certainty for both the Bailiwick and France, and has economic/trade, social, cultural and political benefits at the regional level. This stability is also beneficial for strategic projects. For instance, the cable project³⁶ (‘GeM’) with Normandy is important to Guernsey as part of the States’ Energy Policy. GeM relies on cooperation from state owned enterprises (such as Électricité de France (EdF) and Réseau de Transport d’Électricité (RTE)) and therefore requires political support from the French Government. It also requires permissions to be granted at regional level, for instance to allow survey licensing and planning permission, which are precursors for GeM’s progression. A positive regional relationship, particularly on fisheries matters, will be essential to help ensure support for the project and alleviate concerns.
- 7.15 In contrast, the absence of a fisheries agreement would have a significant impact. If the Bailiwick does not take part in the TCA, there will be no access arrangements for French vessels in Bailiwick waters from 11pm on 31st December, 2020. This would put Guernsey in the position of NFNO for fisheries and the mitigation strategy would need to be activated. A temporary

³⁶ [GeM cable project description by Guernsey Electricity](#)

arrangement could be put in place, for a time limited period, to allow access for French vessels in return for French port access being maintained for Bailiwick vessels. Such a temporary arrangement would provide time to seek a bespoke solution with the regional French authorities, including establishing any new licensing and management regime for French vessels in Bailiwick waters. That approach would provide some stability, but would not provide the same certainty to the Bailiwick as a treaty arrangement and could risk the possibility of greater fisheries access being sought by another country at a later date.

- 7.16 If the Bailiwick does not participate in the TCA, fisheries products landed by Bailiwick vessels in France will be subject to tariff charges when the catch is landed. This could affect the dynamics and economics of the market and put Bailiwick vessels at a competitive disadvantage compared to French vessels fishing in the same waters for the same species.
- 7.17 The Bailiwick may benefit from some of the terms of the TCA, even if it chooses not to participate in it. Bailiwick vessels will be treated as UK vessels for the purposes of accessing EU EEZ waters. Quota allocation will be defined though the Bailiwick and UK relationship under the Fisheries Management Agreement which will be impacted by the quotas agreed under the provisions of the TCA. Port access, a Member State competence, is provided for under the TCA. France has already asked the European Commission to designate ports which can accommodate landings by non-EU vessels because they have the necessary customs or IUU status and facilities. For ports near to the Bailiwick, this includes Cherbourg and Barneville-Carteret; but Diélette is not designated for customs or IUU purposes at this stage.
- 7.18 There is a risk of hostile action if the Bailiwick does not participate in the TCA. For instance, some French fishermen would lose access to fish in Bailiwick waters, which could lead to a risk of Bailiwick vessels being denied access to land in certain ports. Hostile actions (such as port blockades, or illegal unregulated or unreported fishing) could result. Temporary fisheries access in Bailiwick waters would only provide a short-term solution to manage such risks.
- 7.19 The Bailiwick could seek a regional agreement with France. Entrustment was not granted to the Bailiwick (by the UK) to seek such an agreement whilst negotiations were ongoing for the TCA. As goods matters are an EU competence, any such regional agreement would most likely relate only to fisheries matters. Given the resources devoted to the UK-EU negotiations and any resulting implementation requirements, it may be unreasonable to expect that any regional agreement would be a quick or easy option in the very short term.

8. Next steps

- 8.1 In order to ensure that the Bailiwick's autonomy and democratic processes are

respected, it is necessary for the Bailiwick to indicate its desire for inclusion or otherwise in the TCA ahead of the UK Parliamentary debate. This will enable the UK Parliament to consider the final legal text and, if content, ratify it on behalf of the UK and those territories which have consented to be included in the agreement before the end of the transition period.

- 8.2 Following consideration of this Policy Letter, should the Bailiwick consent to be included in the agreement the relevant legislative requirements will be implemented to ensure that the Bailiwick is compliant with the obligations in the agreement. In order to effect inclusion within the agreement, letters will be issued through the official channel to set out the formal request from the Bailiwick; the first to request the Bailiwick's inclusion, or otherwise, based on agreement on the principles of the agreement, and a further letter to demonstrate how the Bailiwick will comply with the obligations once the final legal text has been reviewed. Further detail of the legislative requirements is set out in section 12.

9. Continuity arrangements

- 9.1 In addition to the new arrangements that the Bailiwick has entered into in advance of the end of the transition period, there are a number of existing arrangements which will not change as a result of the UK's departure from the EU.

Immigration and mobility

- 9.2 The Common Travel Area (CTA) is a long-standing arrangement between the UK, Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man and the Republic of Ireland. Under the CTA, British and Irish citizens can move freely between, and reside in, these islands (subject to population management controls). Without the CTA, all islanders travelling elsewhere in the British Islands or Republic of Ireland, or UK and Irish residents travelling to the islands, would have to clear through the relevant immigration entry channels on every journey. This would have placed a considerable burden on travellers and the relevant border services at both ends of the journey.
- 9.3 The CTA pre-dates the UK's membership of the EU and so is not directly affected by the UK's departure from the EU. Notably, in a joint report in December 2017, the UK and EU both agreed that the CTA would be protected and remain unchanged. Ireland will remain an EU Member State (with commitments to EU Law regarding the free movement of EU citizens), but can maintain free movement on the basis of the CTA, without compromising such commitments. The mutual commitments to the CTA from the EU and the UK are reflected in the Withdrawal Agreement. The UK and Irish governments signed a MoU in May

2019³⁷ reaffirming their commitment to maintain the CTA, and the associated rights and privileges of British and Irish citizens, in all circumstances. The rights and privileges of the CTA will therefore continue to exist after 31st December, 2020, and the CfHA continues to work with the UK's Home Office as the UK develops its future immigration policies, including issuing any new format British passports. This is a complex area of work involving both legislative and operational changes.

9.4 The UK and the EU agreed early in the Brexit process that the current rights for UK citizens within the EU, and those EU/EEA/Swiss citizens living in the UK, would be protected after the UK had withdrawn from the EU. The UK and the Bailiwick introduced their respective EU settled status schemes to facilitate this. The GBA has rolled out a programme throughout the Bailiwick islands to ensure that EU/EEA/Swiss citizens resident in the islands could easily apply for settled status. The scheme ensures that current access to healthcare, work arrangements, and access to benefits and public services for EU/EEA/Swiss citizens and their family members can continue. In addition, a key success of this scheme is that the Bailiwick and UK schemes are reciprocal, so that time spent either in the Bailiwick or in the UK can count towards the years required for settled status.

9.5 The UK will require all EU/EEA/Swiss nationals seeking to work in the UK from 1st January, 2021 to apply to its points-based system³⁸. In order to ensure a consistent approach across the CTA, immigration laws covering the Bailiwick run parallel with those of the UK, Jersey and the Isle of Man. However, it has also been acknowledged that each jurisdiction has different needs, and that the Bailiwick's approach to EU/EEA/Swiss nationals looking to work in the Bailiwick can be different from other CTA members. The CfHA has therefore decided to utilise its ability to vary some elements of the Island's immigration policy from the UK's. This means that the UK's points-based system will not be replicated in the Bailiwick. Instead, the CfHA will combine the process of applying for an immigration work permit with the population employment permit before applicants are granted permission to enter and work. Alderney, Sark and Herm are not currently covered under the Population Management regime and will be subject to a separate immigration work permit application process. EU/EEA/Swiss nationals who have registered on the EU Settlement Scheme are exempt from this requirement. This deviation will ensure that businesses are able to continue accessing the important EU/EEA/Swiss workforce for vital sectors such as hospitality and care homes.

9.6 A major change is that EU/EEA/Swiss nationals coming to the Bailiwick to work

³⁷ [Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland concerning the Common Travel Area and associated reciprocal rights and privileges](#), signed in London on 8th May, 2019.

³⁸ [An Introduction for employers – UK Visas and Immigration](#), published by the UK Government on 4th December, 2020.

will have to apply for a visa, prior to travel. Applications must be made by the employee once the Population Management permit (or approval in principle) has been submitted through the (Guernsey) Population Management Portal. The visa application must be submitted through the UK government online system.

Services

- 9.7 The Bailiwick has always operated through third country arrangements with regard to trade in services with the EU. This ‘third country’ status does not depend on the UK’s membership of the EU and will also not be affected by the UK’s departure from the EU, other than it being underpinned by WTO rules from 11pm on 31st December, 2020. As such, any services that the Bailiwick trades with the EU (including Guernsey’s finance industry) will not be directly affected after 31st December, 2020.

Data protection

- 9.8 This ‘third country’ status also extends to the Bailiwick’s personal data protection regime, which has been recognised as having ‘adequacy’ status by the European Commission since 21st November, 2003. This means that the Bailiwick’s data protection regime is recognised as ‘essentially equivalent’ to the EU’s so that personal data can move freely between the Bailiwick and EU Member States. A number of global businesses are located in the Bailiwick and rely on this free movement of personal data.
- 9.9 The Bailiwick agreed to recognise the UK as an ‘authorised jurisdiction’ until the end of 31st December, 2020.³⁹ A further Policy Letter⁴⁰ and associated Ordinance⁴¹ were considered in December 2020, and it was agreed⁴² to extend that recognition for another year. This will ensure that the status quo of continued free-flow of personal data between the Bailiwick and the UK is maintained until the end of 2021, in the event that the EU does not grant the UK an adequacy decision by 31st December, 2020.

Customs Arrangement signed between the States of Guernsey and HM Treasury

- 9.10 On 18th July, 2018, the States of Deliberation considered and made Resolutions

³⁹ [Billet d’État II of 2019](#) – ‘Data Protection: Data Sharing with the United Kingdom and [Resolutions](#); and [The Data Protection \(Authorised Jurisdiction\) \(Bailiwick of Guernsey\) Ordinance, 2019](#)

⁴⁰ [Billet d’État XXVIII of 2020](#), - ‘Data Protection: United Kingdom Adequacy And Data Sharing’ and [Resolutions](#), on 27th November, 2020

⁴¹ [The Data Protection \(Authorised Jurisdiction\) \(Bailiwick of Guernsey\) \(Amendment\) Ordinance, 2020](#)

⁴² Approved by Alderney’s Policy and Finance Committee on 2nd November, 2020 and by Sark’s Policy and Finance Committee on 2nd November, 2020.

concerning a Policy Letter entitled “Customs Duties and Associated Powers Required in Respect of Brexit”. This included directing the Committee *for* Home Affairs to enter into negotiations regarding a customs arrangement with the UK when required. On 26th November, 2018, a Customs Arrangement⁴³ (‘the Customs Arrangement’) was signed between the UK government and States of Guernsey on behalf of the Bailiwick. That was reported to the States of Deliberation by the President of the Policy & Resources Committee in a statement in January 2019⁴⁴. 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. The Customs Arrangement was registered on the records of the Royal Court of Guernsey and transmitted to the other Islands on 11th March, 2019⁴⁵.

- 9.11 The Customs Arrangement ensures that the free flow of goods from the UK to the Bailiwick and *vice versa*, in relation to customs tariffs, is preserved and continues to be as frictionless as possible in respect of customs procedures due to the requirement to have ‘corresponding legislation’ within scope of the Customs Arrangement. Implementing the systems and processes requires substantial legislative and operational changes much of which has been, and will continue to be, delivered by the Committee *for* Home Affairs (‘CfHA’). Relevant legislation was approved by Guernsey, Alderney and Sark’s parliaments in December 2018 and January 2019⁴⁶.
- 9.12 Under the Customs Arrangement Guernsey can still set its own prohibitions and restrictions as long as they can be justified under certain protocols. The four jurisdictions within the arrangement will form a safety and security zone and the carriers of any goods entering will be required to submit a safety and security declaration. The purpose of this is to safeguard the customs union from high level dangerous goods and security risks.
- 9.13 In accordance with the provisions of the Customs Arrangement, there was a

⁴³ [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 the United Kingdom-Crown Dependencies Customs Union](#)

⁴⁴ [Statement, 30th January, 2019, to the States of Deliberation by Deputy G A St. Pier, President of the Policy & Resources Committee](#)

⁴⁵ [2019/254 - The Crown Dependencies Customs Union \(Guernsey\) \(EU Exit\) Order 2019](#), made 13th February, 2019.

⁴⁶ [The Customs and Cross-Border Trade \(General and Enabling Provisions\) \(Bailiwick of Guernsey\) Law, 2018](#) was approved by the States of Deliberation on 12th December, 2018, States of Alderney on 9th January, 2019 and Chief Pleas of Sark on 11th January, 2019. The Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018 (Commencement) Regulations 2019 were made on 26th March, 2019. One of the primary purposes of the Law was to facilitate the entering into of arrangements to establish a customs territory with the UK.

formal exchange of letters between the Financial Secretary to the Treasury and the President of CfHA (17th and 18th December, 2020) to confirm that the effective date for the Customs Arrangement would be 31st December, 2020 at 11pm (copies of those letters are in Appendix 5).

- 9.14 In addition, certain export formalities will be required to export goods directly to the EU.

10. Preparing for international trade post-Brexit

Extension of the UK's Membership of the World Trade Organization ('WTO')

- 10.1 In early 2019, the States of Deliberation, States of Alderney and Chief Pleas of Sark each considered and approved a Policy Letter regarding the extension of the UK's membership of the WTO to the Bailiwick⁴⁷. Each jurisdiction agreed to request the extension of the UK's membership to the Bailiwick.
- 10.2 On 18th October, 2019, the UK Secretary of State for International Trade confirmed that the UK's membership of the WTO would be extended to the Bailiwick when the UK becomes an independently represented WTO member⁴⁸. The extension of the UK's WTO 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. Being part of the UK's WTO membership will protect Bailiwick businesses from unfairly applied high tariffs or other discriminatory measures imposed when trading goods or delivering services across borders. Any goods exported from the Bailiwick will benefit from the WTO's core principle of 'national treatment' (NT) and 'most favoured nation' (MFN). These principles ensure that countries cannot impose discriminatory measures by implementing high tariffs or trade barriers which distort trade and cause trade injury. The Bailiwick's inclusion within the UK's WTO membership provides trading certainty for Bailiwick business which trade in goods or services with the 164 WTO member countries.
- 10.3 Trade certainty and protection is provided to the Bailiwick by the extension of the UK's WTO membership to the Bailiwick. That means that the Bailiwick retains the ability to trade with the EU and globally on WTO terms, irrespective of its future participation in the TCA.
- 10.4 Ensuring that the whole of the Bailiwick complies sufficiently with the WTO's

⁴⁷ [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.

⁴⁸ [UK membership of World Trade Organization to be extended to Bailiwick](#), States of Guernsey media release, 18th October, 2019.

international trade rules has involved working across States' Committees, the States of Alderney, Chief Pleas of Sark and industry sectors including cross border trade in services, financial services and financial services regulation, intellectual property, and the manufacturing and goods sectors. Adhering to the WTO Agreements is an ongoing obligation which will also require future policy development and implementation to take account of WTO requirements.

- 10.5 The UK's WTO membership will extend to the Bailiwick from 11pm on 31st December, 2020; the end of the UK-EU transition period. The letter from the UK's Foreign Secretary to the Director-General of the WTO, dated 15th October, 2019, is attached in Appendix 6⁴⁹. In light of this, a Privileges and Immunities Ordinance will be commenced.

11. Free Trade Agreements

Other international trade agreements or arrangements ('Rest of World' agreements)

- 11.1 The January 2020 Policy Letter referred to the UK's continuity approach to various pre-existing international trade agreements and arrangements.⁵⁰ The UK will seek to become a party to those international agreements in its own right; either bilaterally with partner countries or by acceding to various relevant international agreements in its own right (rather than as part of the EU). Guidance from the UK Government explains why some agreements may not transition through the UK's trade agreement continuity programme⁵¹. There is a chance that some of the agreements will no longer extend to the Bailiwick following this process.
- 11.2 The Committee agreed to adopt a continuity approach in relation to, "EU international agreements that apply by virtue of, and to the extent provided by Protocol 3"⁵². The relevant Committees in Alderney and Sark also adopted a similar approach.

⁴⁹ There is a Memorandum of Understanding between the Government of the United Kingdom ("the UK Government") and the States of Guernsey ("the Government of Guernsey") concerning the relationship between the United Kingdom of Great Britain and Northern Ireland ("the UK") and the Bailiwick of Guernsey ("the Bailiwick") 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. It is set out that the Memorandum 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.

⁵⁰ As set out in the January 2020 Policy Letter, paragraphs 3.16 to 3.18

⁵¹ [UK Guidance document, 5th November, 2019 - International Agreements if the UK leaves the EU without a deal](#)

⁵² From the January 2020 Policy Letter, [paragraph 3.17](#). This was agreed by the P&R Committee in [March 2019](#).

- 11.3 Examples of types of agreements transitioned relating to Protocol 3 are given below.

Customs

- 11.4 Certain conventions relating to transit procedures and the simplification of formalities in trade in goods have been extended to the Bailiwick as part of the UK's continuity programme. Where conventions were not relevant or proportionate, such as those relating to AEOs, they were not extended to the Bailiwick – but an option remains for their extension in the future.

Agri-foods / Sanitary and Phytosanitary measures

- 11.5 EU agreements with third parties relating to wine, organics and veterinary equivalence have been translated into UK specific agreements. DEFRA has identified a number of 'non treaty arrangements' that were also translated into UK-specific arrangements (for example, export health certificates). Certain agreements or arrangements had limited practical application for the Bailiwick and have not been extended to it at this time. In such instances, it is possible for the agreements to contain a 'staggered implementation clause' to allow for future extension.

FTAs

- 11.6 The UK's continuity programme sought to roll over EU-third country trade agreements, such as FTAs, partnership agreements or economic cooperation agreements. Those Agreements help ensure trading stability for businesses by preserving existing cross-border trade arrangements (such as market access and the reduction in or elimination of tariffs or trade barriers). As of 19th December, 2020, the UK has secured 29 trade agreements with 58 countries, which will continue to apply to the Bailiwick to the extent that Protocol 3 applied. Examples of countries where Trade Agreement Continuity ('TAC') agreements have been concluded before 31st December, 2020 include: Canada, Egypt, Israel, Morocco, Kenya, Singapore, and Central America.
- 11.7 The recently agreed UK-Japan Comprehensive Economic Partnership Agreement (CEPA) formed part of the UK's original trade continuity programme, however, the terms of this agreement have been 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 this agreement, but includes the expressed provision to extend other elements to the Bailiwick in the future, such as the cross border supply in services, financial services and digital elements.

New international agreements

- 11.8 The UK's departure from the EU on 31st January, 2020 also enabled the UK to start negotiations on new international agreements. That includes negotiations for agreements with countries such as Australia and New Zealand and the USA. DIT has already asked whether the Bailiwick wishes to participate in those agreements and it has been confirmed that the islands wish their interests to be taken forward within the wider negotiations. FTA development work will continue throughout 2021 and beyond as the Bailiwick continues to develop its own international trade policy.
- 11.9 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.

12. Legislative requirements

- 12.1 The Bailiwick's legislative programme, co-ordinated across Guernsey, Alderney and Sark committees, implements the varied and extensive policy initiatives that are needed to prepare the Bailiwick for the UK's withdrawal from the EU and the challenges and opportunities it presents, both during and after the transition period.
- 12.2 In 2018, three Bailiwick-wide pieces of primary legislation ('the primary Brexit Laws') were approved by the Bailiwick's legislatures and brought into force in 2019 (with exception of some provisions of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, which are due to come into force at the end of the transition period). The primary Brexit Laws are:
- 12.3 The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the 'Brexit' Law) – which provides the power to disapply or amend Preserved EU law⁵³
- 12.4 The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018 – which provides the power to make Ordinances amending preserved EU law and EU-related law⁵⁴
- 12.5 The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018 – which provides the power to make Ordinances to implement any international trade agreement, or resolve trade disputes arising therein.⁵⁵
- 12.6 The primary Brexit Laws have been, and will continue to be, used to make further

⁵³ [The European Union \(Brexit\) \(Bailiwick of Guernsey\) Law, 2018](#)

⁵⁴ [The European Union \(Amendment of Legislation\) \(Bailiwick of Guernsey\) Law, 2018](#)

⁵⁵ [The International Trade Agreements \(Implementation\) \(Bailiwick of Guernsey\) Law, 2018](#)

legislation necessary to prepare the Bailiwick for the end of the transition period, as well as to provide for the amendment or implementation of legislation as required following the end of the transition period. This will include legislation to ensure that the Bailiwick complies and remains in compliance with: the extension of the UK's membership of the WTO; the Bailiwick's participation in various continuity FTAs; the TCA; and any future FTAs.

- 12.7 In addition to the primary Brexit Laws, other legislation (often made under powers created by the primary Brexit Laws) has been prepared, amended or enacted in relation to topics such as customs, immigration, animal health, food safety, medicines, international trade (including for the purposes of international agreements), fisheries and maritime affairs, and road traffic. The Bailiwick's programme of legislative change is extensive, wide reaching and ongoing, and will continue to evolve as the UK and the Bailiwick's international trade policy develops.

13. Brexit Transition Fund

- 13.1 In November 2018⁵⁶, the States of Deliberation approved the establishment of a Brexit Transition Fund ('the Fund') within General Revenue with an allocation of £3m as part of the 2019 Budget Report. The Fund was established to enable the States to manage the costs of work to prepare for the UK's departure from the EU and throughout the negotiations phase, to mitigate risks and to implement required changes. The total amount allocated from the Fund to date is approximately c£1.6m.

- 13.2 There are further areas of expenditure that have not previously been highlighted which are likely to be incurred due to the changing relationship between the UK and the EU, irrespective of any UK-EU agreement(s) for their future relationship. This could include costs associated with changes to the Bailiwick's border operating model due to the end of Protocol 3 that enables the Bailiwick to trade in goods and agricultural products as though it was part of the EU, and the need to implement certain checks and introduce certain measures for goods entering and exiting the Bailiwick's Customs Union with the UK. For example, this may require further infrastructure or changes to IT systems to transition to the new arrangements. There is a likely, but currently unidentified, need for additional funding for implementation purposes after the transition period ends. Therefore, any unallocated funds will remain available subject to the same terms, conditions and restrictions as are currently applicable to enable urgent workstreams to be identified and for funding to be available as required.

- 13.3 The Fund does not include figures relating to officers' time covered by existing budgets, where part or all of those officers' working hours have been refocused

⁵⁶ [Billet d'État XXIV of 2018, \(various references within the Budget Report\)](#) and [Resolutions](#)

to deal with Brexit/end of transition period-related matters as and when needed (often in addition to their ‘business as usual’ and/or COVID-19 pandemic work).

14. Guernsey’s contingency planning (‘No Further Negotiated Outcome’ planning)

14.1 The States of Guernsey, as a responsible government, has made preparations to mitigate against the risks of any NFNO situation given the prolonged uncertainty over the outcome of the negotiations and the Bailiwick’s involvement in the future agreement. These plans were made in parallel to engagement on the negotiations. It has been repeatedly stated by the Committee that a disorderly UK exit from the EU was not in the Bailiwick’s interests.

14.2 Given the short timescales for the Bailiwick, the UK and the EU to ratify and implement the agreement/TCA and the concurrent risks of the COVID-19 pandemic, the NFNO plans remain active so that the Bailiwick remains ready to respond to any issues that may arise. Governance arrangements set up to manage the response to the COVID-19 pandemic have been adapted as part of the NFNO planning to enable a quick response to developing events if required.

14.3 Further information on the NFNO planning has been provided in Appendix 7.

15. Compliance with Rule 4

15.1 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.

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

15.3 In accordance with Rule 4(3), the Committee has monitored, and continues to monitor, the resources it used for managing the effects of Brexit and the transition period to help mitigate and respond to any uncertain and changing operational, political and legal situations that may arise. This has meant implementing requisite legislation and assessing any opportunities that have arisen and may arise. Resources may continue to be required to ensure that the States can act swiftly to implement new arrangements after the end of the transition period. The use of resources, from across the organisation, will continue to be kept under review. Relevant Committees remain responsible for the immediate issues and for ongoing business as usual activities arising directly or indirectly from Brexit and the upcoming end of the transition period, in accordance with their mandates. To help Committees respond to the new and often unpredictable resourcing needs the Committee, having sought States of

Deliberation approval, established the Brexit Transition Fund. That Fund enabled Committees to apply for funding to help manage the effects of Brexit or transition period events on their policy areas as needed. Unallocated funds will remain available subject to the same terms, conditions and restrictions as are currently applicable to enable urgent workstreams to be identified and for funding to be available as required.

- 15.4 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 majority support of the Committee. Deputy Le Tocq was unable to attend the Committee meeting to vote due a recent illness.
- 15.5 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.
- 15.6 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 Bailiwick in any UK-EU future relationship agreement. The States made Resolutions in that regard in the June 2016 and January 2020 Policy Letters.
- 15.7 The effects of the UK’s withdrawal from the EU remain a key external influence for the Bailiwick. The Committee considers that dealing with the implications of the UK’s exit from the EU is one of the key strategic priorities for the States of Guernsey at this time, along with managing the COVID-19 pandemic and recovery from its impacts.
- 15.8 The Committee’s consultation with other parties is outlined in section 16, in accordance with Rule 4(5).

16. Engagement and consultation on these proposals

- 16.1 The Committee leads on co-ordinating the overall policy approach and draft legislation required under the primary Brexit Laws as a result of the UK's withdrawal from the EU and helps to co-ordinate the cross-Committee decision-making process. Individual Committees remain responsible for their policy areas and legislation and for driving forward any necessary amendments within their

mandate. The Committee is mandated to deal with international relations, external relations and constitutional affairs. In terms of representing the Bailiwick in engagement with the UK Government in respect of the UK-EU negotiations, the Committee's responsibilities were reaffirmed by the States of Deliberation in its decisions of the June 2016 and January 2020 Policy Letters.

- 16.2 A governance structure to facilitate effective and timely consideration of matters and decision-making across the Principal Committees and to take into account the views of Alderney and Sark was established – FPDG and TPAP. Individual Committees could – and still can – also introduce and amend policy and legislation in the usual way for any matters which fall within their mandates and are related to the Bailiwick's response to the UK's withdrawal from the EU and consequential changes.
- 16.3 In view of the very short timeframe for the preparation of the Propositions attached to this Policy Letter, it has not been possible for the Committee to carry out the degree of engagement that would ordinarily be undertaken in the development of the exact wording of these policy proposals. However, the policy intent of the various Committees – and islands – concerned has been clear and at the centre of consideration during drafting.
- 16.4 This work relates to extant States' Resolutions and the Committee is responsible for such constitutional and external relations matters. However, the scope, scale and significance of the work during the past 4½ years to prepare and respond to the UK's withdrawal from the EU and all related matters means that the Committee has benefitted from, valued, encouraged and welcomed the close and collaborative work and enormous contributions from across the States of Guernsey – its Committees and its officers. Whilst the Committee has led the work, it is not the result of the efforts of the Committee alone. The CfHA has undertaken a significant amount of work to ensure that the necessary customs and immigration arrangements have been in place at various points in the UK's exit, for example the establishment of the EU/EEA/Swiss settled status scheme. There has also been close working with the CfED in regard to the Bailiwick's involvement in any future economic partnership, including the rest of world agreements, and future fisheries policy.
- 16.5 The Law Officers of the Crown have also been consulted and have provided extensive legal advice and legislative drafting throughout the consideration of the issues described in this Policy Letter.
- 16.6 There has been frequent and detailed engagement between the governments of the Bailiwick and the UK Government in relation to the UK's withdrawal from the EU – in regard to the legal separation (in January 2020), the future relationship negotiations and planning for 'No Further Negotiated Outcome' risks. The UK Government has been reminded repeatedly that the Bailiwick needs to make its

own decisions about its participation (or otherwise) in the UK-EU future relationship agreement and that the Bailiwick will need to ensure it has its own legislation to meet its commitments under the Withdrawal Agreement (during the transition period) and for the future (from 31st December, 2020 onwards).

- 16.7 As it did throughout the process leading to the UK's legal separation from the EU (from 2016 until 31st January, 2020), the Committee has continued to work with the States of Alderney and the Chief Pleas of Sark to ensure that both those islands were informed and engaged throughout the negotiations phase for the UK-EU future relationship. Issues referred to in this Policy Letter have also been discussed in previous meetings of the Bailiwick Council, the Alderney Liaison Group and the Sark Liaison Group. Alderney and Sark's governments are represented on FPDG, SCG and TCG which cover the negotiations phase and preparations for the end of the transition period (whether the Bailiwick is involved in any UK-EU future relationship agreement or not).
- 16.8 The Alderney and Sark political representatives on FPDG and their senior officials agreed that this Policy Letter could be used for consideration by the parliaments in Alderney and Sark. Due to the timescales, it is intended that the Policy Letter will be considered on or about the same date in all three Bailiwick parliaments.
- 16.9 The Committee and its officials have worked closely throughout with counterparts in Jersey and the Isle of Man. The same approach has been taken by other Committees working on topics under their own mandates.

Yours faithfully

P T R Ferbrache
President

H J Soulsby
Vice-President

M A J Helyar
J P Le Tocq
D J Mahoney

RECENT CORRESPONDENCE WITH THE UK PRIME MINISTER/HMG ABOUT THE UK'S WITHDRAWAL FROM THE EU

- A1.1 Since the UK left the EU on 31st January, 2020, and throughout the transition period, there has been regular engagement and correspondence with the UK Government to ensure that the Bailiwick's interests were understood and fully represented during the negotiations with the EU.
- A1.2 The Bailiwick's opening position for participation in any future UK-EU agreement was set out ahead of the UK's exit, when a letter was sent from the Chief Minister to the UK Prime Minister, the Rt. Hon. Boris Johnson MP, in December 2019⁵⁷. The letter outlined the existing, historic, constitutional relationship between the Bailiwick and the UK, through the Crown, and welcomed assurances from the UK that the Bailiwick would continue to be engaged throughout the process as the UK sought a future relationship with the EU. It also confirmed that participation by Guernsey in any future UK-EU agreement would need to be fair practical and proportionate to the size and economy of the island.
- A1.3 In January 2020, the need for continued engagement between the Bailiwick and the UK Government throughout the transition period and the UK-EU negotiations was reaffirmed in a letter to the Chancellor of the Duchy of Lancaster, the Rt. Hon. Michael Gove MP. On 31st January, 2020 the Chancellor of the Duchy of Lancaster provided assurances on this matter:

“This Government remains committed to negotiating for the whole of the UK and the British family it represents. We will continue to engage closely with you and advocate for your interests, as we strive to secure a deal that works for all of us.”

- A1.4 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.”

A response to this letter was received from the Paymaster General, the Rt. Hon.

⁵⁷ [Letter from the Chief Minister of Guernsey to the UK Prime Minister, 13th December, 2019](#)

Penny Mordaunt MP, on 12th March, 2020 which confirmed the UK's commitment to respecting the constitutional relationship between the Bailiwick and the UK, through the Crown:

“As we emphasised in the UK Public Mandate⁵⁸, the UK remains unchanged in its commitment to seek outcomes which support your security and economic interests and also reflect your unique characteristics. We have a shared recognition and appreciation of the historical relationship between the UK and the Crown Dependencies, and the UK takes its constitutional responsibilities seriously in this regard.”

A1.5 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 agreement. This included reference to seeking permission to be entrusted by the UK to negotiate directly with France in regard to a regional solution for fisheries matters. On 15th April, 2020 the Paymaster General responded to this request, and reaffirmed the UK's commitment to reaching an agreement on fisheries that would be suitable for the Bailiwick.

“I note your request to be entrusted by the UK Government to negotiate directly on fisheries matters with Normandy and Brittany. I would like to reassure you that the UK Government is committed to reaching an agreement with the EU on fisheries which works for all parts of the UK and wider British family, and protects the interests of the Crown Dependencies, including allowing for the possibility of neighbourhood agreements.

The UK Government, at Guernsey's request, has sent a note verbale to France expressing our interest in a neighbourhood agreement on Guernsey waters. We do not expect a reply from them until discussions on any fisheries framework agreement with the EU have progressed. The UK and EU remain committed to undertaking best endeavours to agree that framework by 1st July, 2020.”

A1.6 On 27th April, 2020, the Paymaster General provided further assurances that the UK negotiating team would ensure that the Bailiwick's interests would be represented in the course of the negotiations:

“My officials have taken this information...into account to ensure we continue to seek to represent your interests comprehensively during negotiations with the Commission.”

...

⁵⁸ The UK published “[The Future Relationship with the EU – the UK's Approach to Negotiations](#)” on 27th February, 2020. Paragraph 11 states “The Government will act in these negotiations on behalf of all the territories for whose international relations the UK is responsible. In negotiating the future relationship between these territories and the EU, the UK Government will seek outcomes which support the territories' security and economic interests and which reflect their unique characteristics.”

“They have particularly emphasised that the Crown Dependencies are part of the UK’s historic customs territory by law and constitution, underlining the necessity of your inclusion in the customs arrangements within the CFTA.”

- A1.7 The UK have provided assurances throughout the 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 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.

As you noted in your letter, on 3rd February, 2020 the Prime Minister set out that the Government will be acting on behalf of all the territories for whose international relations it is responsible in its negotiations with the EU. 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. We will 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.”

- A1.8 On 29th May, 2020 the Paymaster General again provided assurances to Guernsey’s Minister for External Relations that the UK Government was committed to representing the interest of the Bailiwick in the ongoing negotiations with the EU:

“I am fully aware of the key interests you with the UK to put forward on your behalf to the EU. To echo your comments, the UK remains committed to seeking the best outcome we can for the whole British family and upholding the long-standing and highly valued relationships between the UK and the Crown Dependencies.”

- A1.9 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, which would meet the objectives agreed by the States of Deliberation in June 2016 and again in January 2020:

“We will...focus our attention and efforts on securing the best possible goods-based arrangement for your jurisdictions. As you have also highlighted, fisheries

is a key focus area and we remain committed to working with you to develop and present a credible offer to the EU which is compatible with the interests of all your jurisdictions and the UK.”

A1.10 In September 2020, the Chief Minister wrote to the Lord Chancellor, the Rt. Hon. Robert Buckland QC MP, on the impact of the Internal Market Bill in relation to the Bailiwick of Guernsey. The Lord Chancellor responded in October 2020⁵⁹, reaffirming the UK’s commitment to representing the Bailiwick’s interests and to the principles of the constitutional relationship.

“I can assure you of the UK Government's support for the longstanding constitutional position that the UK Parliament should not legislate for the Crown Dependencies on domestic matters without the Crown Dependencies' consent.”

⁵⁹ 14th October, 2020, Media release - [Lord Chancellor reiterates UK Government commitment to protecting Bailiwick autonomy](#)

BACKGROUND TO THE NEGOTIATIONS

- A2.1 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'). Throughout this time, the Bailiwick was regarded as a territory for whose international relations the UK Member State was responsible. Under Protocol 3, the Bailiwick was effectively part of the EU Customs Union and the common market, later Single Market, so far as it related to the free movement of certain goods. The detailed rules setting out the conditions with respect to trade in agricultural products (which included fish and fish products) were set out in EC Regulation 706/73⁶⁰. Protocol 3, amongst other things, also required the Bailiwick to treat all natural and legal persons of the EU in the same way and to respect the principle of non-discrimination. Otherwise, the Bailiwick was not bound by other aspects of the Single Market.
- A2.2 Outside the formal Protocol 3 relationship, the Bailiwick was treated as a 'third country' by the EU. As a third country, and due to the Bailiwick's location and close trading relationships with both the UK and other EU Member States, the Bailiwick voluntarily implemented appropriate EU legislation and applied relevant international standards to facilitate such relationships.
- A2.3 In June 2016, the UK held a referendum on the following question "Should the United Kingdom remain a member of the European Union or leave the European Union?" The outcome of the referendum was for the UK to leave the EU. That led to a sequence of events⁶¹ and negotiations between the UK and EU, which resulted in a Withdrawal Agreement and Political Declaration⁶² being agreed between them. The UK ceased to be a Member State of the EU at 11pm on 31st January, 2020. At the same time, the transition period (until 11pm on 31st December, 2020) commenced, in accordance with the Withdrawal Agreement. The Political Declaration set out the political aspirations of the UK and EU and the intended framework⁶³ for the future UK-EU relationship, but was not binding in itself.

⁶⁰ [Regulation \(EEC\) No 706/73 of the Council of 12 March 1973 concerning the Community arrangements applicable to the Channel Islands and the Isle of Man for trade in agricultural products](#)

⁶¹ As outlined in Sections 1 (paragraphs 1.1 – 1.3) and 2 of the January 2020 Policy Letter.

⁶² [The EU-UK Withdrawal Agreement](#) 12th November, 2019 and UK legislation to bring the Withdrawal Agreement into effect in [The European Union \(Withdrawal Agreement\) Act 2020](#)

⁶³ The revised Political Declaration made clear that the future UK/EU relationship should have a 'comprehensive and balanced' Free Trade Agreement at its core, alongside agreements on security and wider areas of cooperation.

- A2.4 The Bailiwick has never been a part of the UK or the EU. When the UK ceased to be a Member State of the EU, the Bailiwick's Protocol 3 relationship with the EU also ended. However, the terms of the Withdrawal Agreement provided that there would largely be continuity for the duration of the transition period, which for the Bailiwick meant it was as though Protocol 3 still applied. This has enabled the Bailiwick's relationships with the EU for trade in goods and movement of people to continue. For fisheries, the UK decided to withdraw from the London Fisheries Convention ('LFC') which, therefore, ceased to apply to the Bailiwick from 11pm on 31st January, 2020.⁶⁴ The Bailiwick legislated unilaterally to ensure continuity of French access to its territorial seas for a temporary period in order that the UK-EU future relationship negotiations could continue from a stable platform.
- A2.5 The mandated responsibilities of the Policy & Resources Committee (the 'Committee') include advising the States and developing and implementing policies and programmes relating to external relations and international and constitutional affairs. Members of the Committee have provided updates⁶⁵ to the States about the progress of the UK's withdrawal from the EU, the future relationship and the implications for the Bailiwick. The most recent statement to the States was delivered at a Meeting on 16th December, 2020⁶⁶. Due to the sensitive nature of the negotiations for the UK's withdrawal from the EU and for the UK-EU future relationship, it has not been possible to provide frequent or detailed public updates at all stages.
- A2.6 Other States Committees also hold mandated policy responsibilities for the management and operation of elements of the Protocol 3 relationship, principally these include the: Committee *for* Home Affairs, the Committee *for the* Environment & Infrastructure, the Committee *for* Health & Social Care, the Committee *for* Economic Development, and the Committee *for* Employment & Social Security.
- A2.7 The principal Laws that give effect to the UK's withdrawal from the EU and allow the Bailiwick to manage or mitigate the consequences – both during and after the transition period – have already been enacted. A further Law has been enacted in preparation for the Bailiwick choosing to be part of the UK's global free trading future based on WTO membership and free trade agreements with international partners. Further legislation under these Laws may be necessary in respect of: any ongoing consequences of Brexit and the end of the transition period (including future alignment with UK legislation rather than EU law); WTO

⁶⁴ [The London Fisheries Convention](#) is an international agreement relating to fishing rights in the coastal waters of Western Europe. It provides full rights of access to fishing grounds between the 6-12 nautical mile for fishermen of contracting parties that had fished in those waters between 1953 and 1962.

⁶⁵ [Brexit Updates given in the States of Deliberation – 2016 to 2020](#)

⁶⁶ [Statement, 16th December, 2020, to the States of Deliberation by Deputy P T R Ferbrache, President of the Policy & Resources Committee](#)

commitments; obligations under existing free trade agreements; and, preparing to be part of new free trade agreements. These laws are discussed in greater detail in Section 12 of the Policy Letter. Many of the same challenges and opportunities exist in Guernsey, Alderney and Sark, and the measures are intended to apply to the whole Bailiwick.

Transition Period

- A2.8 The transition period was intended to be a time during which the UK-EU relationship could change from that of the UK being a Member State of the EU to one based on a new agreement. The UK's preference was to seek a relationship based on a 'classic' free trade agreement ('FTA'), rather than a closer relationship involving either one or both of the EU Customs Union and the EU Single Market.
- A2.9 In accordance with the terms set out in the Withdrawal Agreement⁶⁷, EU rules and regulations have continued to apply to the UK throughout the transition period, maintaining the same rights and obligations as if it were still a Member State of the EU. At the end of January 2020, when the UK was no longer a member of the EU, it could begin trade negotiations with the EU and any other countries, territories, or trade blocs. Such agreements cannot be put into effect, however, until the end of the transition period.
- A2.10 Similarly, under the terms of the Withdrawal Agreement, the same rights and obligations have applied to the Bailiwick throughout the transition period as if Protocol 3 still applied. The States of Deliberation acknowledged the territorial extent of the Withdrawal Agreement as including the Bailiwick in Resolution 2a of the January 2020 Policy Letter.
- A2.11 The Withdrawal Agreement allowed for the transition period to be extended by agreement. However, the UK Government was clear that it would not seek or agree to such an extension⁶⁸.
- A2.12 During the transition period, continued French fishing access to Bailiwick waters has been permitted voluntarily by the Bailiwick, underpinned by the legislation which previously gave effect to the LFC and authorisation documents required for the purposes of the EU's SMEFF⁶⁹ regime. This interim arrangement was put in place to govern access by French fishing vessels to fish in local waters from

⁶⁷ The details of the Withdrawal Agreement and Political Declaration were set out in Section 4 (paragraphs 4.1-4.40) of the January 2020 Policy Letter.

⁶⁸ The European Union (Withdrawal Agreement) Act 2020 included a provision which prohibited UK from seeking an extension to the transition period (section 33).

⁶⁹ [Regulation \(EU\) 2017/2403 of the European Parliament and of the Council of 12 December, 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation](#) ('the SMEFF Regulation')

11pm on 31st January, 2020 when the previous arrangement under the LFC ceased to apply to the Bailiwick waters (and to those of the wider UK and the Isle of Man), as in the terms of the UK's unilateral decision to withdraw from the LFC. In January 2020, the Bailiwick legislated quickly to enact regulations to provide so-called SMEFF documents, which enabled France to meet its own EU obligations, calmed regional tensions and enabled UK-EU future relationship negotiations to continue from a stable platform. The current arrangements will end automatically at 11pm on 31st December, 2020 at which point the legislation which previously gave effect to the LFC will be revoked by the UK.

Negotiations

A2.13 The first round of negotiations for the UK-EU future relationship commenced on 2nd March, 2020. Successive negotiation rounds continued throughout the year, with an announcement about the outcome on 24th December, 2020. Successive negotiation rounds continued throughout the year, with an announcement about the outcome on 24th December, 2020. The COVID-19 global pandemic affected these negotiations, as the UK and EU had to divert resources to cope with the immediate health emergency and resulting economic downturn. National lockdowns introduced in the UK and across Europe in mid-March 2020, and at various points thereafter, restricted the ability of the negotiating teams to travel and hold face-to-face meetings. Some negotiating rounds were postponed and others have taken place remotely via video conference. Despite some concerns over the viability of completing the negotiations amidst a global pandemic, the UK remained committed to completing the negotiations before the end of 2020. From the Bailiwick's perspective, there were some disadvantages in a move to virtual meetings (as it could sometimes be more difficult to convey certain viewpoints), but also some advantages as the meetings could be held more frequently and more quickly (compared to travel off-island) which suited the fast-paced nature of the negotiations.

UK opening position

- A2.14 Prior to the appointment of the current UK Prime Minister in July 2019, the UK Government, under the Rt Hon Theresa May MP, was pursuing a "deep and special partnership"⁷⁰ with the EU governed by a broad Association Agreement.
- A2.15 Following the appointment of the current UK Prime Minister, the approach changed in favour of a lighter relationship, based on a FTA (alongside a number of side agreements, as required). This position was laid out by the Conservative

⁷⁰ UK Prime Minister's [Florence speech: a new era of cooperation and partnership between the UK and EU](#), 22nd September, 2017.

Party in its Manifesto⁷¹ for the December 2019 General Election, which set the new vision for the UK's future relationship with the EU and laid out some of the core objectives. The vision set out in the Manifesto was one in which the UK would be able to, amongst other things, take back control of the UK's Trade Policy; introduce an Australian-style points-based immigration system; raise standards in areas like workers' rights, animal welfare, agriculture and the environment; and ensure the UK is in full control of its fishing waters. Then, on 27th February, 2020, the UK Government published 'Our approach to the Future Relationship with the EU'⁷² setting out its objectives/vision for the future relationship before the UK-EU negotiations began. Therefore, the intention was to deliver a future relationship with the EU through a FTA.

The EU's opening position

- A2.16 Following the UK's exit from the EU in January 2020, the Council of the European Union adopted a decision on 25th February, 2020 to enable the start of negotiations on a new partnership with the UK⁷³. The Council also nominated the Commission as EU negotiator and adopted the negotiating directives which set the scope of the future partnership⁷⁴. The mandate covered areas such as trade, fisheries, foreign policy, security and defence, law enforcement and judicial cooperation in criminal matters.
- A2.17 On 18th March, 2020, the Commission published a draft legal text covering the future EU-UK partnership⁷⁵. This set out the negotiating directives that had been approved by the Council of the European Union in February 2020.
- A2.18 The recommended decision of the Council authorising the opening of negotiations with the UK on 13th February, 2020, also suggested that the legal basis of partnership should be based on Article 217⁷⁶ of the TFEU which provided

⁷¹ [Get Brexit Done Unleash Britain's Potential – The Conservative and Unionist Party Manifesto 2019](#) 24th November, 2019.

⁷² [Our approach to the Future Relationship with the EU](#) – documents published by the Prime Minister's Office, 10 Downing Street 27th February, 2020.

⁷³ [Council decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement](#) – Published by the Council of the European Union on the 13th February, 2020.

⁷⁴ [Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland](#) – Published by General Secretariat of the Council of the European Union, 25th February, 2020.

⁷⁵ [Future EU-UK Partnership: European Commission publishes draft legal text](#), 18th March, 2020.

⁷⁶ Article 217 of the [Treaty on the Functioning of the European Union](#) - The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure. For the purposes of the Council's decision regard is to be given to Article 217, in conjunction with Article 218(3) and (4) which describe the procedure for negotiating and concluding agreements with third countries.

for “agreements establishing an association involving reciprocal rights and obligations, common action and special procedure” or association agreements. This is wider than just a FTA which can be concluded under Article 207 TFEU. The EU negotiating directives state that the envisaged future EU and UK economic relationship should be: an “ambitious, wide-ranging and balanced economic partnership” and “comprehensive, encompassing a free trade agreement as well as wider sectoral cooperation”⁷⁷.

A2.19 On 18th June, 2020, the European Parliament adopted a set of recommendations on the “negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland”⁷⁸. Those recommendations covered a series of important subjects in a comprehensive manner such as: the general principles; the implementation of the Withdrawal Agreement; the economic partnership; trade and level playing field; specific sectorial issues; foreign affairs and security; and key aspects of governance. It provided the European Parliament’s assessment of priorities for the future economic partnership.

A2.20 It has been a guiding principle from the EU perspective that any future agreement with the EU should not give the UK, and by extension the Crown Dependencies, a better outcome than the UK’s membership of the EU

The Bailiwick of Guernsey’s opening position

A2.21 Having considered a Policy Letter in June 2016 which recognised the UK’s referendum outcome to withdraw from the EU (“the June 2016 Policy Letter”)⁷⁹, the States agreed their high-level objectives for Guernsey’s future relationship with the UK and the EU. These objectives are set out in Appendix 3. In the Resolutions relating to a Policy Letter in January 2020, which, in particular, acknowledged the Withdrawal Agreement, its application to the Bailiwick, and the transition period (“Resolutions of the January 2020 Policy Letter”)⁸⁰, the States reaffirmed the negotiating objectives when they directed that “the Bailiwick’s interests continue to be represented to the UK during any negotiations in relation to the UK-EU future relationship”. The States also resolved in January 2020 that any agreement or protocol in respect of the Bailiwick should be “underpinned by the principles of relevance, proportionality

⁷⁷ [Directives for the negotiation of a new partnership with the United Kingdom of Great Britain and Northern Ireland](#) – Published by General Secretariat of the Council of the European Union, 25th February, 2020, p.8.

⁷⁸ [European Parliament recommendation of 18 June 2020 on the negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland \(2020/2023\(INI\)\)](#)

⁷⁹ [‘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](#)

⁸⁰ [Billet d’État II January 2020](#) and [Resolutions](#) of the January 2020 Policy Letter.

and practicality taking into account the island nature of the Bailiwick, its size and population, and unique needs arising out of the same”⁸¹. The Policy & Finance Committees of both Alderney and Sark approved this approach.

Bailiwick of Guernsey governance structure – negotiations phase

- A2.22 The Committee was directed by the States of Deliberation to lead on Guernsey’s participation in the UK-EU negotiations on the future relationship⁸². Alderney and Sark’s Policy & Finance Committees considered the same January 2020 Policy Letter and also approved that Guernsey’s Policy & Resources Committee lead the negotiations phase for the Bailiwick.
- A2.23 The many facets of the future relationship negotiations crossed all States of Deliberation Principal Committee mandates. Therefore, it was vital to ensure that there were arrangements in place to support the Committee as it carried out engagement with the UK Government on behalf of the Bailiwick. The Committee considered that a collaborative approach⁸³ was essential so that it could make its case most effectively such that the UK, in turn, could carry out the best possible negotiations on the Bailiwick’s behalf⁸⁴. A governance structure⁸⁵ was established to facilitate effective and timely consideration of matters and decision-making across the Principal Committees and to enable Alderney and Sark to participate directly through that structure (as well as other channels of communication to set out their needs and interests).
- A2.24 Two new groups were formed in January 2020 to offer support, advice and guidance during the negotiations phase. In broad terms, the Future Partnership Delivery Group (‘FPDG’) is the political group and the Trade Policy Advisory Panel (‘TPAP’) is the business representative group:
- The FPDG comprising representatives of the Policy & Resources Committee and each Principal Committee, the States of Alderney, Chief Pleas of Sark and senior civil servants. The FPDG is the political group, providing political governance on engagement between the Committee and the UK Government in relation to the UK-EU negotiations (and negotiations the UK has or may enter into with other countries). FPDG also took on the political responsibility for NFNO planning.

⁸¹ [Billet d’État II January 2020](#) and [Resolutions](#) of the January 2020 Policy Letter.

⁸² Resolutions of the June 2016 and January 2020 Policy Letters

⁸³ The collaborative approach proved beneficial during the pre-Brexit phase (before 31st January, 2020) when the Committee was supported in its role by the Brexit Group and the Brexit Transition Group (as set out in paragraphs 4.53, 9.2-9.3 and Appendix 5 of the January 2020 Policy Letter). Participation of Committee representatives in the Brexit Group and Brexit Transition Group also enabled the Principal Committees which were directly engaged in work relating to Brexit to be well briefed.

⁸⁴ As outlined in paragraph 4.50 of the January 2020 Policy Letter.

⁸⁵ As outlined in paragraph 4.52 and 9.8 of the January 2020 Policy Letter.

- The TPAP enables engagement with industry and external stakeholders. It is tasked to consider the operational elements of the negotiations, and whilst it does not have any decision-making function it acts as a sounding board on the impacts of certain strategic decisions and a critical friend to any negotiating strategy.

A2.25 FPDG and TPAP have met generally on a fortnightly basis (with some additional meetings as required) and considered issues that have arisen during the negotiations phase. Following the General Election in Guernsey in October 2020, the newly constituted Committee acted quickly to re-establish the two groups (by asking the Principal Committees to nominate their representatives and alternates) and to ensure that any new members of the groups were fully briefed and able to take on responsibility for representing their Committees, and the policy areas within their mandates, as a matter of priority.

A2.26 The Bureau des Iles Anglo-Normandes ('BIAN') (a joint office of the governments of Guernsey and Jersey based in Normandy representing the interests of the Channel Islands in France) and the Channel Islands Brussels Office ('CIBO') (a joint office of the governments of Guernsey and Jersey representing Channel Island interests with the EU) have provided advice to the Committee and the FPDG throughout the negotiations in regard to any implications for political relationships. BIAN and CIBO have also supported continued engagement with French and EU partners to ensure that the Bailiwick's positions are understood and respected (details of this engagement are outlined in Appendix 4).

Representing the Bailiwick's interests during the negotiations phase

A2.27 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 Bailiwick⁸⁶, 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.

⁸⁶ 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.

- A2.28 The UK Government and Guernsey signed an International Identity Framework ('the Framework') in 2008⁸⁷. 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."
- A2.29 Accordingly, the Bailiwick has not been directly represented at the UK-EU negotiations but has, instead, been represented by the UK negotiations team. This might be considered a risk because of the potential difficulty in ensuring that the Bailiwick's interests are fully understood and therefore accurately presented by the UK negotiators, and, in turn, well understood by the EU. However, the UK negotiating team has been in frequent (often daily) contact with Guernsey officials and has engaged with the Bailiwick throughout the process to check and confirm the interests of the islands. This enabled Guernsey officials to remind the UK government of the need to align outcomes for the Bailiwick in the negotiations with the objectives and Resolutions from the States of Deliberation in the June 2016 and January 2020 Policy Letters, share information, and provide input into some of the UK-EU negotiations. Throughout this year, Guernsey has continued to build on strong relationships at Ministerial and official level across various UK Government Departments.
- A2.30 The UK Government is responsible for representing the Bailiwick's interests in these negotiations even where they differ from those of the UK. The UK Government has repeatedly acknowledged this responsibility (as set out in Appendix 1) and has publicly stated that it is negotiating with the EU "on behalf of the entire British family, including the Crown Dependencies"⁸⁸.
- A2.31 Officials from across the States of Guernsey have been working closely, with the UK Government through the governance unit at the Cabinet Office and Task Force Europe (the negotiating team at No. 10 headed up by Lord Frost). Political liaison on negotiating matters has been handled through engagement with the Paymaster General, the Rt Hon. Penny Mordaunt MP. There have also been meetings with other Ministers, including the Lord Chancellor. Guernsey (and, when required, Alderney and Sark) officials have also been working closely with counterparts in other UK Government Departments, primarily: the Ministry of Justice (MoJ), the Department for Business, Energy and Industrial Strategy (BEIS),

⁸⁷ [Framework for developing the international identity of Guernsey](#) – signed between Guernsey and UK governments on 18th December, 2008

⁸⁸ [Letter from the Prime Minister](#), the Rt Hon Boris Johnson MP, to the Chief Minister of Guernsey, Deputy Gavin St Pier, 9th September, 2019).

the Department for International Trade (DIT), the Department for Environment, Food and Rural Affairs (DEFRA), HM Treasury (HMT), HM Revenue and Customs (HMRC) and the Foreign, Commonwealth and Development Office (FCDO).

A2.32 The Bailiwick has no representation in the UK Parliament and its residents generally have no right to vote in UK elections or referendums⁸⁹. The Bailiwick's parliaments and its residents did not participate in the UK's decision to leave the EU, or, by extension, the ending of Protocol 3 and its impact on the Bailiwick's trade relationship with the EU. Whilst the States of Deliberation noted the UK Government's intention to trigger Article 50 and to initiate the process of the UK leaving the EU, in March 2017⁹⁰, the States did not signal approval or support then or at any other time the UK leaving the EU and the consequential ending of Protocol 3. The Bailiwick has sought to maximise opportunities and minimise risks from the effects on it of the UK's departure from the EU.

Sark & Alderney

A2.33 The Committee has, on behalf of the Bailiwick, led the engagement with the UK Government in respect of its negotiations with the EU⁹¹ 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. 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 position. Liaison between Alderney, Sark and other States of Deliberation Committees occurs for technical and operational matters, or where shared legislation, policy or practice exists or could be beneficial.

A2.34 Sark and Alderney are represented on FPDG to ensure their interests are known and understood. Issues have been discussed in meetings between the islands of the Bailiwick – 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.

A2.35 Furthermore, Sark and Alderney officials have attended officer-level working groups with UK Government Departments on a variety of matters.

⁸⁹ [Voting if you move or live abroad](#) certain requirements apply to enable those who have moved or live abroad from the UK to vote e.g. eligibility for those registered to vote in the UK within the last 15 years.

⁹⁰ [Billet d'État VI of 2017](#) – 'Acknowledging the Triggering of Article 50 of the Treaty of European Union in Respect of 'Protocol 3' and [Resolutions](#).

⁹¹ As set out in the January 2020 Policy Letter and its Resolutions. Approved by States of Deliberation on 8th January, 2020. Approved by Alderney's Policy & Finance Committee on 23rd January, 2020. Approved by Sark's Policy & Finance Committee on 20th January, 2020.

A2.36 It has been emphasised repeatedly to the UK Government that the final decision about whether each jurisdiction will be included in the scope of any UK-EU agreement will be for each of the Bailiwick's three parliaments.

GUERNSEY'S OBJECTIVES IN RELATION TO THE UK'S WITHDRAWAL FROM THE EU⁹²

Negotiating considerations - relationship with the UK

- (i) For trade in **goods**, including agriculture and fisheries products, there is a long-standing historic trading arrangement which provides for tariff-free reciprocal trade.
- (ii) There are no arrangements in place that make reference to trade in **services**, including financial services.
- (iii) For **people**, the Common Travel Area should continue to apply (it predates UK Accession, and is not dependent on EU law).

Negotiating objectives: relationship with the EU

- (i) In order to maintain the status quo for Guernsey, the States of Guernsey will need to maintain the free **trade in goods** with the EU hitherto provided under Protocol 3. In principle, it is possible that this may be replaced by extending the goods provisions of any new UK/EU agreement to Guernsey, subject to the precise terms.
- (ii) The existing work exploring extension of the UK **membership of the WTO** should be given a higher priority. This will provide lower tariffs for any imported goods coming direct from the EU or elsewhere (not via the UK) and will underpin an agreement on free movement of goods as well as other trading relationship.
- (iii) For **trade in services**, the States will seek to maintain its current position of being outside the EU, with market access on a case by case basis as a third country.⁹³
- (iv) For **people**, the States will need to seek to ensure any commitments made by the UK as part of its withdrawal agreement with respect to the grandfathering of rights of EU (non-UK) citizens in the UK and in the Channel Islands and that the legal status 'Channel Islander' (for the purposes of Protocol 3) is considered."

⁹² ['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 January 2016 Policy Letter') and [Resolutions](#)

⁹³ This may be as a third country seeking market access separately to the UK or as a third country taking part in any future UK/EU relationship alongside the UK.

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 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.

PROGRESS REPORT ON ENGAGEMENT BETWEEN GUERNSEY AND THE REST OF THE BAILIWICK, JERSEY AND THE ISLE OF MAN, THE UK AND THE EU TO DECEMBER 2020

- A4.1 An update on engagement from the November 2017 States’ debate was included in the January 2020 Policy Letter. Since then, regular engagement with external partners has continued. At the Bailiwick level this has involved regular consultation with Alderney and Sark on matters of mutual concern, such as fishing and territorial seas. Future partnership updates have been a standing item on the agenda for meetings of the Bailiwick Council, held quarterly, whilst political representatives from Alderney and Sark have been part of the FPDG. Legislation has been drafted to be applicable to the whole Bailiwick to enable all its islands to be prepared for the end of the transition period.
- A4.2 Guernsey continues to work alongside Jersey and the Isle of Man, where relevant, to engage with a wide range of UK government departments and policy areas. Joint meetings with the UK government occur regularly at political and officer level, particularly through the Cabinet Office for the UK-EU negotiations during 2020. There have also been helpful discussions with the Ministry of Justice, which has responsibility in Whitehall for Channel Islands and Isle of Man topics and is the main point of contact in the UK Government for the Channel Islands and the Isle of Man.
- A4.3 When the UK formally left the EU on 31st January, 2020, the Department for Exiting the European Union (DExEU) was disbanded and responsibility for the negotiations came under the Cabinet Office.⁹⁴ The Rt. Hon. Penny Mordaunt MP, Paymaster General, became the minister responsible for the Channel Islands and Isle of Man in the negotiations, meeting remotely with representatives of the islands on several occasions. This engagement has helped to deepen understanding between the Guernsey and UK governments and ensured that the views and interests of the Bailiwick are accurately and appropriately conveyed to the UK Government and its negotiators.
- A4.4 In September 2019, the UK Prime Minister stated that UK Government is “unambiguous in supporting the constitutional position that the UK Parliament should not legislate on your behalf” and reconfirmed the UK’s commitment to engage with the Bailiwick throughout and beyond the Brexit process. There has not been further correspondence with the Prime Minister, the Rt. Hon Boris Johnson MP since the Chief Minister sent him a letter in December 2019. However, the Committee has written to members of the UK Cabinet Office where appropriate – two examples are given here (further information in Appendix 1).
- A4.5 Guernsey has also sought to engage on the topic of the UK-EU future relationship

⁹⁴ Robin Walker MP was the Parliamentary Under Secretary of State at DExEU with responsibilities in regard to Channel Island and Isle of Man matters from July 2016 to July 2019. James Duddridge MP took over this role following a UK Cabinet reshuffle, and was in the post until the end of January 2020, when responsibility moved to the Cabinet Office and the Paymaster General, the Rt Hon Penny Mordaunt MP.

within other forums as opportunities have arisen. A virtual British-Irish Council ('BIC') summits took place in November 2020. The All Party Parliamentary Group on the Channel Islands generally meets three times a year, most recently on 2nd November, 2020. There has also been engagement through a wide network of parliamentary contacts in the UK, mostly virtually this year due to the pandemic.

- A4.6 The Channel Islands have joint offices in Brussels and in Caen to ensure continuity of relations between the islands and the EU and French authorities. Guernsey representatives continue to build and maintain relationships with contacts within the EU (both the EU as a whole and its individual nations), providing opportunities to raise awareness of the implications of Brexit for the Bailiwick. In March 2020, the Chief Minister of Guernsey⁹⁵ and Minister for External Affairs of Jersey visited Brussels and met with Permanent Representatives to the EU (ambassadors) of France, Slovakia and Latvia; MEPs from France and Finland; and the EU Justice Commissioner Didier Reynders.
- A4.7 The Bailiwick also hosts occasional visits from Ambassadors (from EU Member States) to the UK, which provide further opportunities to strengthen relations. Since March 2020, due to the COVID-19 pandemic, no visits have been hosted, but virtual meetings have taken place with the Ambassador of Iceland, Acting Ambassador of New Zealand and the new Ambassador of the European Union to the UK.
- A4.8 Engagement with France has also been important and has been undertaken at a regional level (with Normandy and Brittany) to underpin relationships at a national level. In May 2020 the Minister for External Relations⁹⁶ attended a virtual annual summit with the department of Ille et Vilaine, where the existing cooperation agreement was renewed for a further three years, and in September 2020 he attended a virtual annual summit with Normandy and La Manche which provided the latest opportunity to discuss regional concerns about the end of the transition period and future relationship with the EU, for example relating to fishing and territorial seas.

⁹⁵ The President, Policy & Resources Committee, uses the title Chief Minister when outside the island.

⁹⁶ The member of the Policy & Resources Committee with responsibility for external relations, who has been authorised by the Committee for ease of understanding by other jurisdictions to be known outside the island as the Minister for External Affairs.

**FORMAL EXCHANGE OF LETTERS BETWEEN THE FINANCIAL SECRETARY TO THE TREASURY
AND THE PRESIDENT OF THE COMMITTEE FOR HOME AFFAIRS**

Deputy Rob Prow
President of the Committee for Home Affairs
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

17 December 2020

Dear Deputy Prow,

I have the honour to propose to you that the 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 THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION (the ARRANGEMENT) should take effect on 31 December 2020 at 23:00 GMT.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter together with your reply will constitute our agreement to 31 December 2020 at 23:00 GMT as the effective date for the ARRANGEMENT, in accordance with paragraph 19 of the ARRANGEMENT.

Yours sincerely,

[signed]

RT HON JESSE NORMAN MP

RT Hon Jesse Norman MP
Financial Secretary
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

18th December 2020

Dear Financial Secretary,

I have the honour to acknowledge receipt of your letter of 17th December 2020, which reads as follows:

“Dear Deputy Rob Prow, President of the Committee for Home Affairs,

I have the honour to propose to you that the 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 THE UNITED KINGDOM-CROWN DEPENDENCIES CUSTOMS UNION (the ARRANGEMENTS) should take effect on 31 December 2020 at 23:00 GMT.

I have the further honour to propose that, if the above is acceptable to the States of Guernsey, this letter together with your reply will constitute our agreement to 31 December 2020 at 23:00 GMT as the effective date for the ARRANGEMENT, in accordance with paragraph 19 of the ARRANGEMENT.”

I am able to confirm that the contents of your letter of 17th December 2020 are acceptable to the States of Guernsey, and therefore that this letter together with your letter constitute our agreement to 31 December 2020 at 23:00 GMT as the effective date for the ARRANGEMENT, in accordance with paragraph 19 of the ARRANGEMENT.

Yours sincerely

[signed]

Deputy Rob Prow
President
Committee *for* Home Affairs

APPENDIX 6

**LETTER FROM THE UK FOREIGN SECRETARY TO THE DIRECTION-GENERAL OF THE WTO,
DATED 15TH OCTOBER, 2019**

15th October 2019

FOREIGN & COMMONWEALTH OFFICE
King Charles Street
London
SW1A 2AH

His Excellency Robert Azevêdo
Director-General, World Trade Organization
Centre William Rappard
Rue de Lausanne 154
1211 Geneva 21

Your Excellency,

I have the honour to refer to the Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994, ("the Agreement") to which the United Kingdom of Great Britain and Northern Ireland deposited its instrument of ratification on 30 December 1994 and which it extended to the Isle of Man by a communication dated 3 March 1997.

I have the honour further to notify you that the Government of the United Kingdom of Great Britain and Northern Ireland hereby extends the application of the ratification of the Agreement by the United Kingdom to the Bailiwicks of Guernsey and Jersey, for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers that the extension of the Agreement to the Bailiwicks of Guernsey and Jersey will come into effect on the date on which the United Kingdom exits the European Union, or in the event of transition period being agreed between the European Union and the United Kingdom, at the end of that period. The Government of the United Kingdom of Great Britain and Northern Ireland will notify the Director General when this date is established.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Your thanks,

Dominic Raab,
THE RT HON DOMINIC RAAB MP

OVERVIEW OF NO FURTHER NEGOTIATED OUTCOME PLANNING

The NFNO work has built on the preparations for a ‘no deal’ Brexit undertaken in 2019 and early 2020⁹⁷ and also on the response to the COVID-19 pandemic, which has had parallels such as including possible supply chain disruption. The information and advice has been regularly updated and shared with the public and business via the States of Guernsey website and communications.

During the negotiations phase, the Committee identified likely negotiation outcomes and the main risks associated with these scenarios.

Risk area	High Level Summary of Risk	High Level Summary of Mitigation Actions
Commercial Fishing	Disruption linked to fisheries access and port access.	<ul style="list-style-type: none"> • Liaison with the BIAN office, CIBO, UK Government (DEFRA/MMO) and Normandy/Brittany authorities to understand emerging UK, French and EU risks. • Published States of Guernsey Guidance advice⁹⁸ regarding key landing and exporting requirements following the end of the transition period. • Direct liaison by Sea Fisheries Officers with the Bailiwick Fishing industry in Guernsey, Sark and Alderney. • Issuance of SMEFF authorisations to eligible French vessels for an initial three month period ahead of licensing arrangements being in place. • Amendments to the Sea Fisheries Licensing (BoG) Law, 2012 to grant licences to EU fishing vessels.
Access to Preferential Tariffs	Importers and exporters may not be eligible to claim preferential tariffs when trading with the EU.	<ul style="list-style-type: none"> • Bailiwick to be included within the UK’s WTO membership, which will ensure that MFN tariffs are applied. • Trade advice and support to businesses from CfED and GBA. • Publication of Customs and Business Guidance. • Publicly available tariff and customs-related guidance⁹⁹.

⁹⁷ As set out in Paragraphs 5.1, 5.2 and 5.3 in the January 2020 Policy Letter.

⁹⁸ [Fishing and Aquaculture; Landing or exporting fresh fish and shellfish to the EU after 31st December 2020](#)

⁹⁹ [Information for Businesses](#)

Export trade into the EU of high risk goods which need to be approved by the EU through the third country process.	Export Trade with EU in certain products (e.g. live animals, products of animal origin (POAO), and seeds); and in pet travel, more restricted than under Protocol 3.	<ul style="list-style-type: none"> • Trade advice and support to businesses from CfED, OEHPR and GBA. • Liaison with DEFRA to ensure the Bailiwicks interests are included within the UK's third country listings application to the EU. • Publication of Customs and Business Guidance.
Customs declarations	Delays in customs clearance of goods.	<ul style="list-style-type: none"> • Trade advice and support to businesses from CfED and GBA, with specialised training and advice offered to Customs and logistics agents. • Publication of Customs and Business Guidance.
Supply chain risks	Potential for additional regulatory checks at border leading to backlogs	<ul style="list-style-type: none"> • Well established formal Supply Chain Cell which includes all key shipping and logistics agents to understand emerging supply chain risks. • Trade advice and support to businesses from CfED, OEHPR and GBA. • Publication of Customs and Business Guidance.
Import trade into the EU of high risk goods which need to clear through Border Control Posts (BCPs)	Certain high risk goods will need to be cleared through a BCP prior to import into Bailiwick.	<ul style="list-style-type: none"> • Trade advice and support to businesses from CfED, OEHPR and GBA. • Development of an approved border model for movements of goods between Bailiwick with DEFRA to anticipated to be implemented in 2021. • Publication of Customs and Business Guidance.
Immigration	EU identification cards will no longer be accepted for entry to UK. The number of EU visitors to the Bailiwick	<ul style="list-style-type: none"> • Public messaging has been issued to inform EU nationals of the new requirements for entry into the Bailiwick.¹⁰⁰ • The onus is on EU nationals to ensure that they are correctly documented prior to travel. However, during summer 2021, a communications campaign on passport border requirements for EU nationals will be run by

¹⁰⁰ [Guidance for EU nationals and employers](#), New arrangements for European Union nationals from January 2021

	may reduce if obtaining a passport becomes more burdensome than using ID cards.	the UK government, which the Bailiwick will also benefit from.
Passports	Bailiwick residents will need to have at least six months validity on passports to be able to travel to EU.	<ul style="list-style-type: none"> Public messaging from the GBA has occurred and featured in local media to advise local residents of this risk¹⁰¹. New passports are not issued with additional time added to them, so this avoids this risk occurring in respect of newly-issued passports.
Visas	EU Nationals coming to work will require correct entry visas to travel into the UK and Crown Dependencies.	<ul style="list-style-type: none"> When the joint Population Management and Immigration work permit is issued, both the EU national employee and their employer will be advised that a visa must be obtained prior to travel, with information made available¹⁰².
Concurrent risks	Concurrent risks of COVID-19 and winter pressures (i.e. healthcare and extreme weather).	<ul style="list-style-type: none"> Contingency planning has occurred to take into account concurrent risks; relevant structures meet regularly and are well-placed to communicate and assess emerging cross-cutting risks. Regular centralised political and officer briefings and email updates on existing Brexit/end of transition period matters and emerging issues. Ongoing briefings from officers directly to their own Committee.

The States of Guernsey, and the wider Bailiwick, continue to work to ensure that their contingency planning is closely aligned to the UK Government’s planning where appropriate. This is particularly significant in areas outside the Bailiwick’s control and/or where the Bailiwick has an interdependence with the UK. In some cases, the Bailiwick will need to rely on the UK’s minimisation of any disruption to the flow of goods and services that are essential to the economy and the functionality of the islands.

¹⁰¹ [Passports](#), regarding the new information and process for 2021

¹⁰² [Guidance for EU nationals and employers](#)

Officials have worked closely with UK Government Departments, including the Ministry of Justice, to prepare for the potential scenarios.

In terms of decision-making, the Civil Contingencies Authority (CCA) has the powers to invoke laws or regulations in if an emergency situation arises or is about to arise. In non-emergency situations the Committees (in Guernsey, Alderney and Sark) will make decisions in relation to their respective mandates. The members of the FPDG also have delegated decision-making powers (on behalf of the Committee which they represent on the FPDG) for use in exceptional circumstances where a decision falls outside the mandate of the CCA, but cannot be considered sufficiently quickly through Committee structures. The FPDG has additionally taken on an oversight role for the end of the transition period. The Strategic Coordinating Group (SCG) and Tactical Coordinating Group (TCG) are officer-level groups which were set up for the response to the COVID-19 pandemic and have been broadened to include end of transition period planning and response. The SCG and/or its members will report to Committees and the CCA as appropriate and will consider a diverse range of D20 Bailiwick issues.

**SUMMARY OF POLICY LETTERS CONSIDERED BY THE STATES OF DELIBERATION IN
RELATION TO THE UK'S WITHDRAWAL FROM THE EU**

A4.1 Since 2016, the States of Deliberation has on a number of occasions considered matters relating to the UK's departure from the EU. Below are the Policy Letters relating to this issue, as considered by the States of Deliberation in Guernsey and also by Alderney and Sark's assemblies or committees.

A4.2 June 2016 – “Managing the implications for Guernsey because of the UK’s changing relationship with the EU” – Policy & Resources Committee

The first Brexit Policy Letter¹⁰³ set the high level objectives for Guernsey and the potential for new opportunities following the UK's exit. This Policy Letter was approved by Alderney's Policy & Finance Committee, and by Sark's Policy & Performance Committee (July, 2016)¹⁰⁴.

A4.3 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 Letter¹⁰⁵ that ensured due parliamentary process by formally acknowledging the UK's withdrawal from the EU. It recognised the impact this will have on the Bailiwick and directed further work be undertaken to repeal or amend the European Communities (Bailiwick of Guernsey) Law 1973, in addition to the provision of necessary resources to ensure Committees can react appropriately in the best interests of the Bailiwick This Policy Letter was also approved by Alderney's Policy & Finance Committee and by Chief Pleas of Sark (April 2017).¹⁰⁶

A4.4 June 2017 – “Implementation of International Sanctions Measures” – Policy & Resources Committee

This Policy Letter¹⁰⁷ was debated on 7th June, 2017 and an additional Policy Letter

¹⁰³ [‘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](#)

¹⁰⁴ 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, 2016¹⁰⁴,

¹⁰⁵ [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](#).

¹⁰⁶ 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.

¹⁰⁷ [Billet d’État XI of 2017 – ‘Implementation of International Sanctions Measures’](#) and [Resolutions](#)

was considered on 12th December, 2018¹⁰⁸. The Policy Letters described the necessary changes required to ensure that the Bailiwick retained the ability to implement effective and robust sanctions measures after the UK leaves the EU and made various other improvements to the sanctions framework. The 2017 Policy Letter was approved by Alderney’s Policy & Finance Committee on 26th July, 2017. The subsequent Projet, entitled The Sanctions (Bailiwick of Guernsey) Law 2018¹⁰⁹, was approved by the States of Deliberation (December 2018), the States of Alderney (January 2019) and the Chief Pleas of Sark (January, 2019).

A4.5 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 Brexit Policy Letter¹¹⁰ 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 and certainty during the Brexit process. This was approved by Alderney’s Policy & Finance Committee and by Sark’s Chief Pleas on (December 2017)¹¹¹. The States agreed that legislation should be prepared to repeal the European Communities (Bailiwick of Guernsey) Law 1973.. The Law Officers of the Crown prepared the relevant legislation – three Projets de Loi entitled The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018¹¹²; The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018¹¹³; and The International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018¹¹⁴. All three Projets have been approved by all three Bailiwick parliaments and were granted Royal Sanction in 2018 and 2019.

A4.6 July 2018 – “Customs Duties and Associated Powers Required in Respect of

¹⁰⁸ [Billet d’État XXVII of 2018](#) – ‘Implementation of International Sanctions Measures’ and [Resolutions](#)

¹⁰⁹ Legislation approved by the States of Deliberation on 12th December, 2018, the States of Alderney on 9th January, 2019 and the Chief Pleas of Sark on 11th January, 2019.

¹¹⁰ [Billet d’État XXI of 2017](#) – ‘Protecting the Interests of the Bailiwick of Guernsey as the UK Leaves the EU and [Resolutions](#)

¹¹¹ Alderney’s Policy and Finance Committee on 5th December, 2017 and by Sark’s Chief Pleas on [7th December, 2017](#)

¹¹² [The European Union \(Brexit\) \(Bailiwick of Guernsey\) 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 12th September, 2018 (after having been deferred from its meeting of 25th July, 2018).

¹¹³ [The European Union \(Amendment of Legislation\) \(Bailiwick of Guernsey\) Law, 2018](#) - approved by the States of Deliberation at its meeting of 24th October, 2018; approved by the States of Alderney at its meeting of 12th September, 2018; it was considered by the Chief Pleas of Sark at a meeting of 11th January, 2019.

¹¹⁴ [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.

Brexit” – Committee for Home Affairs.

This Policy Letter¹¹⁵ sought a flexible framework of primary legislation to facilitate the imposition of customs requirements on imported and exported goods. The Policy Letter was approved by Alderney’s Policy and Finance Committee on 12th June, 2018. Subsequently, on 26th November, 2018, a Customs Arrangement was signed between the States of Guernsey and the UK on behalf of the Bailiwick’. The Customs and Cross-Border Trade (General and Enabling Provisions) (Bailiwick of Guernsey) Law, 2018 was then drafted by the Law Officers of the Crown¹¹⁶. The legislation was approved by the States of Deliberation (December 2018)¹¹⁷, the States of Alderney (January 2019) and Chief Pleas of Sark (January 2019).

A4.7 December 2018 – “Road Transport and Driving Licence Implications for Driving in Europe Post-Brexit and other related matters” – Committee for the Environment & Infrastructure

This Policy Letter¹¹⁸ covered the extension of the UN Convention on Road Traffic, 1968 to ensure that Bailiwick residents would be able to legally drive in certain EU/EEA Member States in the event of a no deal being reached between the UK and EU on road traffic matters after the UK exited the EU. This Policy Letter was approved by Alderney’s Policy & Finance Committee on (January 2019)¹¹⁹. Relevant legislation was put in place so that the Convention could be extended by 29th March, 2019.

A4.8 January 2019 – “Extending the Bailiwick of Guernsey’s Territorial Seas” – Policy & Resources Committee

This Policy Letter¹²⁰ recommended the extension of the Bailiwick of Guernsey’s territorial seas from 3 nautical miles to 12 nautical miles to give the three jurisdictions of the Bailiwick of Guernsey greater control over activities in the 3-12 nm area. Alderney decided to extend its territorial seas at a meeting of the States of Alderney in May 2018 and by Alderney’s Policy & Finance Committee in

¹¹⁵ [Billet d’État XIX of 2018](#) – ‘Customs Duties and Associated Powers Required in Respect of Brexit’ and [Resolutions](#)

¹¹⁶ Projet approved by the States of Deliberation 12th December, 2018, States of Alderney 9th January, 2019 and Chief Pleas of Sark 11th January, 2019.

¹¹⁷ Resolutions of [Billet d’État No XXVII dated 12th December, 2018](#).

¹¹⁸ [Billet d’État XXVII of 2018](#) – ‘Road Transport and Driving Licence Implications for Driving in Europe Post-Brexit and Other Related Matters’ and [Resolutions](#)

¹¹⁹ This was not relevant for Sark, as Sark residents register vehicles and acquire driving licences in Guernsey, as stated in Paragraph 14.1 of the relevant Policy Letter. The Policy Letter was not considered by Sark’s Government on that basis and was approved by [Alderney’s Policy and Finance Committee on 15th January, 2019](#)

¹²⁰ [Billet d’État II of 2019](#) – ‘Extending the Bailiwick of Guernsey’s Territorial Seas’ and [Resolutions](#)

January 2019¹²¹. Sark agreed to extend its territorial seas at a meeting of the Chief Pleas of Sark in February, 2019¹²².

The possibility of extending the territorial seas had been under consideration in the Bailiwick for decades. Until 2018/19, it had not proved possible for the three Bailiwick jurisdictions to reach a common position in order for the islands to approach the UK collectively to request extension of the territorial sea around the entire Bailiwick. However, there was increased impetus due to the UK's decision to withdraw from the EU and the UK's decision to withdraw from the London Fisheries Convention 1965 ('LFC'). As a result of the collaborative work by the Bailiwick islands, the territorial seas were extended by an Order in Council on 23rd July, 2019¹²³.

A4.9 **January 2019 – “Data Protection: Data Sharing with the United Kingdom” – Committee for Home Affairs**

Also in January 2019, the Committee for Home Affairs submitted a Policy Letter¹²⁴ to the States to seek approval of the UK as an authorised jurisdiction for the purposes of the Data Protection (Bailiwick of Guernsey) Law, 2017 as well as approval of an additional ordinance, namely the Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) Ordinance, 2019. These steps were necessary to ensure that the status quo regarding the continued free-flow of data between the Bailiwick and the UK is maintained in the event of a no-deal Brexit or NFNO. The Policy Letter and the enclosed Ordinances were approved by Guernsey (January 2019), by Alderney (March 2019) and Sark (April 2019).¹²⁵

A4.10 **February 2019 – “Extending the United Kingdom’s Membership of the World Trade Organization” – Policy & Resources Committee**

This Policy Letter¹²⁶ recommended that the islands request the extension of the UK's Membership of the WTO, including the obligations that extension would confer on the Bailiwick and dispute resolution mechanisms. The matter was considered and approved in Guernsey (February 2019), Sark (March 2019) and

¹²¹ [Official Report of the States of the Island of Alderney, 23rd May, 2018](#); [Alderney's Policy & Finance Committee Agenda, 15th January, 2019](#)

¹²² [Extraordinary Meeting of the Chief Pleas of Sark held on 6th February, 2019](#)

¹²³ Order in Council '[The Territorial Sea Act 1987 \(Guernsey\) Order 2019](#)' under the [UK's 'Territorial Sea Act, 1987'](#)

¹²⁴ [Billet d'État II of 2019](#) – 'Data Protection: Data Sharing with the United Kingdom' and [Resolutions](#)

¹²⁵ Ordinances approved by Alderney's Policy & Finance Committee on 19th March, 2019 and by Sark's Policy & Finance Committee on 16th April, 2019.

¹²⁶ [Billet d'État IV of 2019](#) – 'Extending the United Kingdom's Membership of the World Trade Organization' and [Resolutions](#)

Alderney (April 2019)¹²⁷.

A4.11 January 2020 – “The Withdrawal Agreement between the United Kingdom and European Union - Implications for the Bailiwick of Guernsey” – Policy & Resources Committee

This Policy Letter¹²⁸ 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)¹²⁹.

A4.12 November 2020 – “Brexit and Biometric Data: Extending Relevant Provisions of UK Immigration Acts – Committee for Home Affairs and Policy & Resources Committee” – Committee for Home Affairs and Policy & Resources Committee.

The Policy Letter¹³⁰ asked for sections 1, 2, 4, 5, 7 and 10 from the Immigration and Social Security Co-ordination Act 2020, to be extended to the Bailiwick in a modified form. The Immigration and Social Security Co-ordination Act 2020 contains provisions ending the free movement of EEA nationals, protecting the status of Irish citizens and providing for consequential, transitional and savings provisions to be made. As the Bailiwick is part of the Common Travel Area with the United Kingdom, the Isle of Man, the Bailiwick of Jersey and the Republic of Ireland, the Committee for Home Affairs recommended that relevant provisions of the 2020 Act be extended to the Bailiwick in order that they may have similar effect in the Bailiwick. The Policy Letter was approved in Guernsey (October 2020), Alderney (October 2020) and Sark (November 2020)¹³¹.

A4.13 December 2020 – “Data Protection: United Kingdom Adequacy and Data Sharing” – Committee for Home Affairs

The Policy Letter¹³² sought approval for matters in the draft Ordinance, namely "The Data Protection (Authorised Jurisdiction) (Bailiwick of Guernsey) (Amendment) Ordinance, 2020. The Ordinance ensures that the status quo regarding the continued free-flow of personal data between the Bailiwick of Guernsey and the United Kingdom (“UK”) will be maintained for a further year in

¹²⁷ Approved by States of Deliberation on 28th February, 2019. Approved by Alderney’s Policy & Finance Committee on 16th April, 2019 and by Chief Pleas of Sark on [27th March, 2019](#).

¹²⁸ [Billet d’État II of 2020](#) – ‘The Withdrawal Agreement Between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey’ and [Resolutions](#)

¹²⁹ Approved by Alderney’s Policy & Finance Committee on 23rd January, 2020 and by Sark’s Policy & Finance Committee on 20th January, 2020.

¹³⁰ [Billet d’État XXVII of 2020 Article I](#) – ‘Brexit and Biometric Data: Extending Relevant Provisions of UK Immigration Acts’ and [Resolutions](#)

¹³¹ Approved by Alderney’s Policy & Finance Committee on [29th October, 2020](#) and by Sark’s Policy & Finance Committee on 2nd November, 2020.

¹³² [Billet d’État XXVIII 16th December, 2020](#) - ‘Data Protection: United Kingdom Adequacy And Data Sharing’ and [Resolutions](#), by Alderney’s Policy and Finance Committee (outside a formal Committee meeting due to urgency) on 2nd November, 2020 and by Sark’s Policy and Finance Committee on 2nd November, 2020

the event that the UK does not receive an adequacy decision in respect of data protection from the EU by 31st December, 2020. The Policy Letter and Ordinance were approved in Guernsey (December 2020), Policy Letter approved by Alderney's Policy and Finance Committee Members and by Sark's Policy & Finance Committee (November 2020).

POLICY & FINANCE COMMITTEE

Report with Proposition to Extraordinary Chief Pleas December, 2020

REFERRAL OF UK ACTS OF PARLIAMENT AND ORDERS IN COUNCIL TO THE ROYAL COURT.

In 2016 during the passage of the UK's Criminal Finances Bill and the 2018 Sanctions and anti-money laundering Bill, several amendments were moved within the UK Parliament which included references to the oversea Territories of the Channel Islands and the Isle of Man and to their respective registers of beneficial ownership of companies.

Certain amendments to the Sanctions & Anti-Money Laundering Bill (2018) threatened to undermine Guernsey's establish policy position by seeking to impose UK policy on the Channel Islands and the Isle of Man.

These amendments were subsequently withdrawn, however Guernsey developed legislation to allow the States of Deliberation to approve UK Acts of Parliament or Orders in Council before they were approved by the Royal Court.

The 2020 UK Fisheries Bill which has been approved by the House of Commons and the House of Lords and awaits Royal Assent, contains a permissive extent clause which will allow the UK Government to legislate for the Bailiwick.

Sark were advised by the Law Officers that in the case of a UK Act of Parliament or an Order in Council applying directly to Sark an amendment to the Reform Law should be made allowing Sark to present the views of Chief Pleas to Guernsey prior to Royal Court approval.

Policy & Finance Committee submitted their proposal to the Extraordinary Chief Pleas, 19th November 2020, in order that the Chief Pleas could signify their views on it. This law was cited as the Reform (Sark) (Amendment) Law, 2020 and shall come into force on the date of its registration on the records of the Island of Sark. The Committee have worked with the other Bailiwick Jurisdictions to bring forward Bailiwick Legislation. intended to avoid any possible delay or conflict should there be dissent within the Bailiwick.

Proposition: –

That Chief Pleas approves the Projet de Loi entitled The Reform (Sark) (Amendment) Law 2020 and authorises the Policy & Finance Committee to approve and enact the provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

**Conseiller Peter La Trobe Bateman
Chairman, Policy and Finance Committee**

PROJET DE LOI

ENTITLED

The Reform (Sark) (Amendment) Law, 2020

THE CHIEF PLEAS OF SARK have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

Amendment to 2008 Law.

1. Immediately after the heading "PART VI MISCELLANEOUS AND GENERAL" in the Reform (Sark) Law, 2008^a, insert the following section –

"Duty to refer certain matters to the Chief Pleas.

63A. Where it is proposed that –

- (a) a provision of a draft Act of the Parliament of the United Kingdom should apply directly to Sark, or
- (b) an Order in Council should be made –

^a Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. IX of 2017; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017; No. XIII of 2018.

- (i) extending to Sark a provision of an Act of the Parliament of the United Kingdom,
- (ii) extending to Sark a Measure, pursuant to the Channel Islands (Church Legislation) Measures 1931^b and 1957^c, or
- (iii) that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Sark,

the Sark Policy and Finance Committee shall, unless that Committee considers it unnecessary, submit the proposal to the Chief Pleas in order that the Chief Pleas may signify their views on it."

Citation.

- 2. This Law may be cited as the Reform (Sark) (Amendment) Law, 2020.

Commencement.

- 3. This Law shall come into force on the date of its registration on the records of the Island of Sark.

^b 21 and 22 Geo.V. No. 4 and 5.

^c 5 and 6 Eliz. 2, No. 1.

POLICY & FINANCE COMMITTEE

Report with proposition to Extraordinary Chief Pleas December, 2020

Coronavirus Vaccine, Immunity from Civil Liability.

The MHRA started the rolling review of Pfizer/BioNTech's data in October 2020 and the UK Government asked the regulator to assess the vaccine for its suitability for authorisation under Regulation 174 of the Human Medicines Regulations, enabling the temporary supply of medicines to be authorised in response to a public health need, which the regulator has recommended.

Following rigorous clinical trials involving thousands of people and extensive analysis of the vaccine's safety, quality and effectiveness by experts from the Medicines and Healthcare products Regulatory Agency (MHRA), Pfizer/BioNTech's vaccine was authorised for use in the UK on the 2nd December 2020.

The States of Guernsey Assembly submitted a policy letter (attached), in August 2020 and approved the legislation (attached) to allow administration of the vaccine on the 14th December 2020.

The Committee for Health and Social Care in Guernsey consider that the voluntary administration of this vaccine is justified in preventing spread of COVID 19 and reduces the severity of the disease within the community.

This is a new vaccine and long-term effects may emerge, therefore authorised personnel administering, handling or supplying the vaccine cannot be held liable for any claims arising.

Proposition: -

That Chief Pleas approve the Ordinance entitled:

The European Communities (Coronavirus Vaccine) (Immunity from Civil Liability) (Sark) Ordinance) 2020.

**Conseiller Peter La Trobe Bateman
Chairman, Policy and Finance Committee**



LAW OFFICERS
OF THE CROWN

MEMORANDUM

To: States Members
From: HM Procureur
Date: 15th December 2020

Client/Matter: CCA
Subject: The Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (Bailiwick of Guernsey) Regulations, 2020 - Explanation of UK process and relevance to administration of the vaccine in the Bailiwick

Normally, vaccines (and other medicinal products) are given a UK marketing authorisation by the UK licensing authority under Part 5 of the Human Medicines Regulations 2012 (regulations 48 to 64A), and then wholesale distributors are given a wholesale dealers' licence to distribute those vaccines (or other medicinal products). These marketing authorisations and licences are automatically recognised in the Bailiwick under the Medicines (Human) (Exemptions and Recognition of Marketing Authorisations) (Bailiwick of Guernsey) Regulations, 2009 and the Medicines (Human) (Recognition of Licences) (Bailiwick of Guernsey) Regulations, 2009.

However, in the case of the COVID-19 mRNA Vaccine BNT162b2 concentrate for solution for injection, also known as the Pfizer-BioNTech COVID-19 Vaccine, due to the urgent circumstances, there has not been time for full consideration of an application for marketing authorisation under Part 5 of the Human Medicines Regulations 2012. Therefore, the UK licensing authority have authorised the vaccine on a temporary basis under regulation 174 of the Human Medicines Regulations 2012. That provision allows the UK licensing authority to issue such temporary authorisation in response to the suspected or confirmed spread of pathogenic agents, toxins, chemical agents or nuclear radiation which may cause harm to human beings. The temporary authorisation granted for the Pfizer-BioNTech COVID-19 Vaccine allows the UK government to supply and administer that vaccine in the UK, despite existing restrictions on sale, supply and administration without a marketing authorisation and licence.

In light of the temporary authorisation granted, in the Bailiwick, the Committee for Health & Social Care has duly designated the Pfizer-BioNTech COVID-19 Vaccine for use against the coronavirus in the Medicines (Coronavirus and Influenza) (Bailiwick of Guernsey) Regulations, 2020, as of the 9th December, 2020. Accordingly, the Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (Bailiwick of Guernsey) Regulations, 2020 would apply in relation to the sale, supply or administration of that vaccine.

If in future, the UK licensing authority gives any other vaccine against the coronavirus temporary authorisation under regulation 174 of the Human Medicines Regulations 2012, and the Committee for Health & Social Care designates that other vaccine for use against the coronavirus (in the Bailiwick), the Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (Bailiwick of Guernsey) Regulations, 2020 (if still in force then) would also apply in relation to the sale, supply or administration of that other vaccine.

The European Communities (Coronavirus Vaccine) (Immunity from Civil Liability) (Guernsey) Ordinance, 2020

THE STATES POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and all other powers enabling them in that behalf, and on the Committee by Article 66A(1) of the Reform (Guernsey) Law, 1948^b, hereby order:-

Application of this Ordinance.

1. (1) This Ordinance applies 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

^a Ordres en Conseil Vol. XXXV (1), p. 65; as amended by Order in Council No. I of 2019.

^b Ordres en Conseil Vol. XIII, p. 288; as amended by Order in Council No. XVII of 2015; there are other amendments not material to this Ordinance.

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

coronavirus under regulations made under section 15(2) and (3) of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009^d, and

- (c) a medicinal product falling within the description or class of the designated vaccine has been sold, supplied or administered by a person specified in section 3 in accordance with –
 - (i) a Patient Group Direction approved or consented to by the Committee, or
 - (ii) a protocol.

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

Exclusion of civil liability

2. (1) Where this Ordinance applies, none of the persons specified in section 3 are to be subject to any civil liability for any loss or damage arising out of or in connection with any person receiving the relevant medicinal product administered in accordance with the Patient Group Direction or (as the case may be) protocol.

(2) Subsection (1) is subject to section 4.

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

Persons excluded from civil liability.

3. Sections 1(c) and 2(1) refer to the following persons –
- (a) any person responsible for the sale, supply, procurement for sale or supply, procurement for manufacture or assembly, or otherwise placing on the market in Guernsey, of the relevant medicinal product, in the course of a business carried on by the person,
 - (b) any officer, servant, employee or agent of a person described in paragraph (a),
 - (c) any person specified in Part II of Schedule 2 to the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009,
 - (d) any dentist, nurse independent prescriber, pharmacist independent prescriber or supplementary prescriber, within the meaning given to each of these terms by section 20(1) of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009,
 - (e) any medical practitioner registered under the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015^e, and

^e Ordinance No. XXII of 2015; as amended by No. L of 2015 and No. IX of 2016.

- (f) where section 1(1)(c)(ii) applies, any person (not being a person mentioned in any of paragraphs (a) to (e)) who sold, supplied or (as the case may be) administered the relevant medicinal product in accordance with the protocol mentioned in section 1(1)(c)(ii).

Time of sale, supply or administration.

4. The exclusion of liability in section 2(1) applies only in respect of a relevant medicinal product sold, supplied or (as the case may be) administered –

- (a) after this Ordinance comes into force, 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) Regulations, 2009^f, before it is given either marketing authorisation concerned.

Interpretation.

5. In this Ordinance, unless the context requires otherwise –

"the Committee" means the Committee for Health & Social Care,

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

"**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 section 1(1)(b),

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

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

"**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, and

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

Extent.

6. This Ordinance has effect in Guernsey.

[§] Order in Council No. V of 2009; as amended by Ordinance No. XXIV of 2009; No. XLI of 2013; No. IX of 2016.

Citation.

7. This Ordinance may be cited as the European Communities (Coronavirus Vaccine) (Immunity from Civil Liability) (Guernsey) Ordinance, 2020.

Commencement.

8. This Ordinance shall come into force on the 15th December, 2020.

POLICY & FINANCE COMMITTEE

Information Report to Extraordinary Chief Pleas December, 2020

**NEW ARRANGEMENTS FOR EUROPEAN UNION
NATIONALS FROM JANUARY 2021**

From 1 January 2021, free movement that is currently enjoyed between the European Union and United Kingdom which was enabled and governed by the relationship between the UK and the EU will end and free movement between the EU and the UK will cease on 31 December 2020.

This means that from 1 January 2021 all EU nationals, other than British or Irish citizens, travelling for anything other than visitor purposes, will be required to apply for a visa to enter the United Kingdom, Bailiwick of Guernsey or Jersey, prior to travel.

Those coming for employment will require an immigration work permit which will need to be applied for by the employer prior to travel and well in advance of any intended start date.

A simplified work permit application form is available for EU nationals and must be authorized through the Constable's office or by the Chief Secretary before being submitted to Immigration & Nationality for processing. Visas will only be issued by the Guernsey Border Agency upon approval of the work permit documentation.

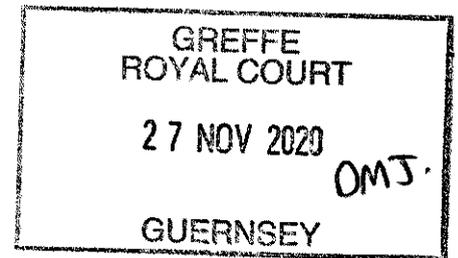
Details of the Committee for Home Affairs' work permit policy which will allow for the issue of work permits to most positions can be found here: www.gov.gg/immigration.

It is very important to note that switching from a visitor category visa into an employment visa will not be permitted. Therefore, it is imperative to ensure that both the work permit and visa are obtained prior to departure from the home address. Any person without the correct documentation will be refused entry at the border.

It should be noted that those from outside the EU will continue to be subject to the Committee for Home Affairs' main work permit policy, which is industry based and remains more restrictive. This system remains unchanged.

This Policy is imposed upon the Bailiwick by the UK Government, therefore this report is for information only.

Conseiller Peter La Trobe Bateman
Chairman, Policy and Finance Committee



GUERNSEY STATUTORY INSTRUMENT
2020 No. 115

The Emergency Powers (Coronavirus)
(General Provision) (Bailiwick of Guernsey) (No. 9)
Regulations, 2020

ARRANGEMENT OF REGULATIONS

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC.

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

PART II

MISCELLANEOUS AND FINAL

17. Modification of legislation relating to mental health.
18. Guernsey Financial Services Commission: officers appointed as Senior Decision Makers.

19. Power of MOH to close schools.
20. Court of Appeal.
21. Offences by legal persons and unincorporated bodies.
22. Revocation and savings.
23. Interpretation: general.
24. Citation.
25. Extent.
26. Commencement.

- SCHEDULE 1: Exception to self-isolate on arrival in the Bailiwick: 7-Day Self-Isolation Option.
- SCHEDULE 2: Exception to self-isolate on arrival in the Bailiwick: Critical Workers.
- SCHEDULE 3: Modification of legislation relating to mental health.

**The Emergency Powers (Coronavirus)
(General Provision) (Bailiwick of Guernsey) (No. 9)
Regulations, 2020**

<i>Made</i>	26 th November, 2020
<i>Coming into operation</i>	27 th November, 2020
<i>Laid before the States</i>	, 2020

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 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

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

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 them in that behalf, hereby makes the following regulations: –

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC.

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 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 4(3) 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.

^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.

(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 4(3) 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) A restriction or requirement imposed under paragraph (1) may be varied by the MOH orally or in writing.

(4) Neither paragraph (1) nor regulation 4 affects the exercise of any powers under regulation 9; and nothing in this regulation (or in any other provision in these Regulations) affects the MOH's powers under any other enactment.

(5) In this regulation and regulation 4, a power to vary a requirement or restriction includes a power to revoke it.

Requirement to self-isolate on arrival in the Bailiwick.

4. (1) Subject to provision made in or under the Schedules given effect by regulation 5(1), a person who has arrived in the Bailiwick by air or sea and who has left an infected area within the 14 day period immediately preceding the date of his or her arrival in the Bailiwick must self-isolate for 14 days.

(2) 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, and
- (c) answer any question put to him or her by a relevant officer relating to that travel document.

(3) 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 self-isolate for 14 days.

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

(5) The powers of the MOH under paragraph (4) to vary the requirement under paragraph (1) or a requirement imposed under paragraph (3) include (but are not limited to) powers to –

- (a) specify exceptions to the requirement to self-isolate, and
- (b) shorten the duration of the requirement to self-isolate, either unconditionally or on the MOH being satisfied that one or more specified conditions have been met.

(6) For the avoidance of doubt, and without prejudice to the generality of paragraphs (4) and (5), in any case where the MOH varies the

requirement to self-isolate under paragraph (1) or a requirement to self-isolate imposed under paragraph (3), that variation may be amended in accordance with paragraph (7), and if so amended shall be treated for all purposes as continuing to have effect in accordance with its terms.

(7) In any case where the MOH has varied such a requirement to self-isolate, 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); and the amendment or revocation (as the case may be) shall have effect from such time as the MOH may specify.

(8) Where a restriction or requirement is imposed on or in relation to a child under regulation 3 or this regulation (including the requirement to self-isolate under paragraph (1)), 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 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.

Exceptions to requirement to self-isolate on arrival in the Bailiwick.

5. (1) Schedules 1 and 2 have effect.

(2) Schedules 1 and 2 set out exceptions to the requirement to self-isolate on arrival in the Bailiwick imposed under regulation 4(1) in specified circumstances, and in respect of specified persons and categories of person, and

make associated provision, including (but not limited to) -

- (a) imposing and providing for the imposition of, requirements, conditions and restrictions in respect of those exceptions, and
- (b) creating associated criminal offences, and prescribing relevant penalties.

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

Screening requirements.

6. (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.

7. (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 8,

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.

8. (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.

9. (1) Where a person ("P") is required to be detained or to self-isolate under regulation 3 or 8 or subjected to restrictions or requirements under regulation 7, 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 8 or subjected to restrictions or requirements under regulation 7 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 8 or subjected to restrictions or requirements under regulation 7, 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 8 or subjected to restrictions or requirements under regulation 7, 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 8, 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 13(4), and
- (g) the right to apply for revocation or variation under regulation 11, where applicable.

Restrictions or requirements in respect of groups.

10. (1) The powers in regulations 2, 3 and 8 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 8 –

- (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.

11. (1) A requirement, restriction or condition imposed under this

Part or Schedule 1 or 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 Relevant Person within the meaning of Schedule 1, and
 - (g) 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 2;

and for the purposes of this paragraph, P includes a person subject to the requirement under regulation 4(1) or to a requirement imposed under regulation 4(3).

(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.

12. (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 4(1) or a requirement to self-isolate imposed under regulation 4(3).

(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.

13. (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), 3(1), 4(2), 7(1), 8(2), 8(4) or 9(4) or 9(5), or a direction under regulation 12(3)(a),
- (b) fails, without reasonable excuse, to comply with a requirement that the person be detained under regulation 8(3), 12(7), 12(9) or 12(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 4(1) or a requirement imposed under regulation 4(3); including, for the avoidance of doubt, a requirement to self-isolate for any specified period of less than 14 days, or until a specified event occurs--

- (a) imposed by a variation of the requirement under regulation 4(1), or of a requirement under regulation 4(3)), by the MOH in relation to a particular case, or
- (b) imposed by or under Schedule 1 or 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 responsible adult who fails without reasonable excuse to

comply with regulation 4(8), 6(2), 7(9) or 8(6) commits an offence.

(6) A person guilty of an offence under paragraph (1), (4) or (5) is liable on conviction to a fine not exceeding level 3 on the uniform scale.

(7) A person guilty of an offence under paragraph (2) is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 14 days, or to both.

(8) 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.

14. (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,

^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.

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

(2) This 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, or
- (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.

(3) A person guilty of an offence under this regulation is liable on conviction to a fine not exceeding level 3 on the uniform scale.

Interpretation of this Part: general.

15. (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 4(2),

"requirement" means a requirement imposed under this Part (including the requirement to self-isolate under regulation 4(1)),

"restriction" means a restriction imposed under this Part,

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.

"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 6(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".

16. (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.

17. Schedule 3 modifies –

- (a) the Mental Health (Bailiwick of Guernsey) Law, 2010^h,
and
- (b) the Mental Health Review Tribunal Procedure Rules,
2012ⁱ,

which modifications shall have effect for the period of validity of these Regulations.

Guernsey Financial Services Commission: officers appointed as Senior Decision Makers.

18. (1) This regulation applies when a Senior Decision Maker is undertaking work in connection with deciding whether sanctions, proposed against an individual or person, should be imposed, including, but not limited to -

- (a) the publication of a public statement under section 11C of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^j (the "**Financial Services Commission Law**"),

^h Order in Council No. XV of 2011; amended by Ordinance No. IX of 2016; and No. I of 2017.

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

^j Ordres en Conseil Vol. XXX, p. 243; amended by Ordres en Conseil Vol. XXXI, p. 278; Vol. XXXII, p. 471; Vol. XXV(1), p. 271; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. III of XXII of 2003; Nos. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; No. I of 2015; No. XIII of 2017; Ordinance No. XXXIII of 2003; Nos. XII, XX, XXXIV and XXIX of 2015; Nos. IX and XXII of 2016; Nos. III, XIX and XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 29 of 2009; and G.S.I. No. 49 of 2017.

- (b) the imposition of a discretionary financial penalty under section 11D of the Financial Services Commission Law, and
- (c) the imposition of a prohibition order under -
 - (i) section 34E of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^k,
 - (ii) section 17A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^l,

^k Ordres en Conseil Vol. XXX, p. 281; amended by Ordres en Conseil Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVII, p. 264; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. XV and XXXII of 2003; Nos. XVIII and XX of 2008; No. XIII of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, p. 51; Tome XXVIII, p. 87; Ordinance No. XXXIII of 2003; No. XXXI of 2008; No. VII of 2009; Nos. XII, XX and XXXIX of 2015; Nos. IX and XXIX of 2016; Nos. III and XXVII of 2017; Sark Ordinance No. X of 2017; Nos. XXVI and XXVII of 2018; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

^l Order in Council No. I of 2001; amended by Order in Council No. I of 2000; No. XIV of 2003; No. XVI of 2007; Nos. VIII and XXV of 2008; Nos. XIII and XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; No. XXVII of 2017; Aldemey Ordinance No. III of 2017; Sark Ordinance No. X of 2017; Nos. XXVI and XXVII of 2018; G.S.I. No. 3 of 2018; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013; G.S.I. No. 50 of 2017; G.S.I. No. 56 of 2017; and G.S.I. No. 72 of 2017.

- (iii) section 28A of the Insurance Business (Bailiwick of Guernsey) Law, 2002^m,
- (iv) section 18A of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002ⁿ, and
- (v) section 17A of the Banking Supervision (Bailiwick of Guernsey) Law, 1994^o,

and in this regulation, a "**Senior Decision Maker**" means an officer, appointed by the Guernsey Financial Services Commission ("**the Commission**") to fulfil the role of Senior Decision Maker, and exercising powers delegated by the Commission in relation to the same under section 19 of the Financial Services Commission Law.

^m Order in Council No. XXI of 2002; amended by Order in Council No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XII of 2008; Nos. VIII and XXXI of 2010; No. XXXVI of 2011; No. LV of 2014; Nos. XII and XXXIX of 2015; No. IX of 2016; No. III and XXVII of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 33 of 2004; G.S.I. No. 4 of 2008; G.S.I. No. 15 of 2010; G.S.I. No. 83 of 2010; G.S.I. No. 68 of 2014; G.S.I. No. 121 of 2015; and G.S.I. No. 50 of 2017.

ⁿ Order in Council No. XXII of 2002; amended by Order in Council No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XIII of 2008; No. IX of 2010; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 2 of 2008; G.S.I. No. 16 of 2010; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

^o Ordres en Conseil Vol. XXXV(1), p. 271 of 2001; amended by Order in Council Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; Nos. XIII and XXI of 2010; Ordinance No. XXXIII of 2003; Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 3 of 2000; G.S.I. No. 1 of 2008; G.S.I. No. 35 of 2010; and G.S.I. No. 50 of 2017.

(2) A Senior Decision Maker undertaking work described in paragraph (1) may undertake some or all of that work outside the Bailiwick, including, but not limited to –

- (a) the consideration of representations,
- (b) the preparation of reports, Minded to Notices, final decisions,
- (c) the acceptance of written representations, and
- (d) the holding of oral hearings.

(3) An oral hearing may be held by a Senior Decision Maker who is outside the Bailiwick by telephone, live television link or any other means of telecommunications or electronic communications, and for the purposes of such a hearing, a Senior Decision Maker, party or other person who is in communication with other persons at the hearing so that each person at the hearing can hear or read what is being said or communicated by each of the others, is deemed, subject to paragraph (4), to be present at the oral hearing for all purposes.

(4) In the event that a means of communication referred to in paragraph (3) fails or is corrupted, or the Senior Decision Maker considers that confidentiality is compromised, the Senior Decision Maker shall have the discretion at any time during the hearing to determine that a person who is affected by that failure, corruption or compromise of confidentiality is no longer deemed to be present at the hearing.

(5) For the avoidance of doubt, a determination under paragraph (4) does not affect the validity of the proceedings of the hearing for any purpose prior to the making of that determination.

Power of MOH to close schools.

19. (1) The powers of the MOH under Article VIII(8) of the Public Health Ordinance, 1936¹, to require measures to be taken by any school in order to prevent the spread of infection, shall apply in respect of Sark.

(2) For the avoidance of doubt, the measures that the MOH may require to be taken under the above enactment (including as it applies in Sark under paragraph (1)) include, but are not limited to, the immediate closure, partial closure, or closure subject to conditions, of any school for any period.

Court of Appeal.

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

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

¹ Recueil d'Ordonnances Tome VIII, p. 315; amended by Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XIV of 2012; No. VI of 2015; Recueil d'Ordonnances Tome X, pp. 35 and 61; Tome XIII, p. 264; Tome XV, p. 239; Tome XV, p. 387; Tome XIX, p. 91; Tome XX, p. 163; Tome XXIII, p. 427; Tome XXVIII, p. 80; Ordinance No. XXXIII of 2003; No. XXXVIII of 2006; No. XLI of 2010; No. XLII of 2014; Nos. IX and XXI of 2016. This Ordinance is applied to the Island of Alderney by the Alderney (Application of Legislation) Ordinance, 1948 and to the Islands of Herm and Jethou by the Public Health (Amendment) Ordinance, 1963.

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

(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 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. 8) Regulations, 2020⁹ ("the (No. 8) Regulations") are revoked.

(2) Subject to paragraph (4), anything done under or for the

⁹ G.S.I. No. 105 of 2020.

purposes of the (No. 8) 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) Subject to paragraph (4), anything in the process of being done under or for the purposes of the (No. 8) 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 the equivalent provision of these Regulations.

(4) The variations of the requirement to self-isolate on arrival in the Bailiwick made by the Authority and published on the States of Guernsey website, entitled "7 Day Self-Isolation Option" and "Critical Workers", shall continue to have effect, notwithstanding the revocation of the (No.8) regulations, but only in respect of persons who, on commencement of these Regulations, are –

- (a) taking part in the 7 day self-isolation option under and in accordance with that variation, for so long as the variation applies to those persons, or
- (b) persons to whom an exemption under the "Critical Workers" variation has been granted and is in force, for so long as that exemption is expressed to be in force, or until it is brought to an end or otherwise ceases to have effect, whichever is earlier.

(5) 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.

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

(3) 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. 9) Regulations, 2020.

Extent.

25. These Regulations shall have effect throughout the Bailiwick.

Commencement.

26. These Regulations shall come into force on 27th November, 2020.

Dated this 26th day of November, 2020

A handwritten signature in black ink, appearing to read 'P. T. R. Ferbrache', with a stylized, cursive script.

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

SCHEDULE 1

Regulation 5

EXCEPTION TO THE REQUIREMENT TO SELF-ISOLATE ON ARRIVAL IN THE BAILIWICK: 7 DAY SELF-ISOLATION OPTION

Introductory.

1. (1) This Schedule provides for an exception to the requirement to self-isolate set out in regulation 4(1) –

(a) in respect only of persons who have been assessed to be eligible for, and have elected to take part in, the 7 day 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 in, and has elected to take part in, the 7 day self-isolation option, and so is a person to whom the Exception set out in this Schedule applies, 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 7 day self-isolation option, the 7 day 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 13(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 7 day self-isolation option.

(5) Failure without reasonable excuse to comply with the requirement to self-isolate under regulation 4(1) (as it has effect under this Schedule) is an offence under regulation 13(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; and 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 this Schedule.

Eligibility.

2. (1) To be eligible to take part in the 7 day self-isolation option, a person ("P") must not have spent any of the period of 7 days immediately before P's arrival in the Bailiwick in a place that is a Category 4 country^r 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 7 days (or any part thereof) in a place that is, at the relevant time, so specified as a Category 4 country, P will not be eligible to take part in the 7 day self-isolation option - even if that place was not so specified as a Category 4 country when the person was in it.

^r A town, city, area or region can constitute a Category 4 country.

(3) For the avoidance of doubt –

(a) a person not wishing to take part in the 7 day self-isolation option or assessed to be ineligible to do so must self-isolate for 14 days pursuant to, and in accordance with, the requirement imposed by regulation 4(1) of the Regulations, and

(b) a person who –

(i) elects to take part in the 7 day 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 for the remainder of the 14 day period in accordance with the Regulations;

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 of the period of 7 days immediately before his or her arrival in the Bailiwick in a place that is a Category 3 country⁵ 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 immediately 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 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 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 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 (Enhanced Passive Follow-Up).

⁵ A town, city, area or region can constitute a Category 3 country.

Category 2 country arrivals

4. (1) A Relevant Person who has spent any of the period of 7 days immediately before his or her arrival in the Bailiwick in a place that is a Category 2 country^t 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 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.

(3) If the result of that day of arrival test is negative, the Relevant Person will be required to take a Day 7 test; and in the period from receipt of a negative day of arrival test result until receipt of the result of the Day 7 test, the Relevant Person will not be required to self-isolate subject to the Relevant Person complying with the conditions and restrictions specified in paragraph 8 (Enhanced Passive Follow-Up).

(4) If the result of that Day 7 test is positive, the Relevant Person 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. 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 the Relevant Person complying with the conditions and restrictions specified in paragraph 7 (Passive Follow-Up).

^t A town, city, area or region can constitute a Category 2 country.

Direct Transit.

5. (1) Direct transit–
- (a) in a private vehicle, or
 - (b) in public transport,

through a Category 4 country is not spending time in that Category 4 country for the purposes of this Schedule.

(2) In this paragraph, a "private vehicle" includes a taxi, and references to a private vehicle stopping are to such a vehicle stopping in circumstances where one or more persons alight from, or get into, the vehicle.

- (3) In this paragraph, "direct transit in a private vehicle" means –
- (a) travel in a private vehicle that does not stop at all in the Category 4 country, or
 - (b) travel in a private vehicle that only stops in the Category 4 country in circumstances where –
 - (i) no new people get into the vehicle, and
 - (ii) no-one in the vehicle gets out, comes within two metres of any other person (other than another occupant of the vehicle), 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.

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 7 day self-isolation option.

(2) Where a child takes part in the 7 day 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(4),
- (b) so far as reasonably practicable, keep the record of people referred to at paragraph 8(9) (including paragraph 8(9) as it applies pursuant to paragraph 9(2)), and

- (c) ensure the child does not return to school in accordance with paragraph 9(10), where that restriction applies.

Conditions and restrictions: general, and offences.

7. (1) A Relevant Person must remain in self-isolation for the 14 day period unless and until that requirement 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 a Day 7 test must self-isolate for the remainder of the 14 day period.

(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 7 day 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 13(2).

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

(a) in subparagraph (2), and

(b) paragraphs 8(2) to (10) and 9(3) to (10),

is a criminal 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 4, that Relevant Person must comply with each of the following restrictions during that 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) The Relevant Person must comply with any additional conditions and restrictions imposed from time to time by the MOH.

Conditions and restrictions: Enhanced Passive Follow-Up.

9. (1) A Relevant Person in relation to whom the requirement to self-isolate has been lifted subject to the person complying with the Enhanced Passive Follow-Up conditions and restrictions, under and in accordance with paragraph 3 or 4, must comply with each of the following restrictions during the period in which those conditions and restrictions apply in accordance with that section.

(2) The Relevant Person must comply with each of the Passive Follow-Up conditions and restrictions set out at paragraphs 8(2) to (10); and in this regard the reference to "these restrictions" at paragraph 8(8) is to be construed as a reference to these Enhanced Passive Follow-Up conditions and restrictions.

(3) The Relevant Person must not enter a pub, nightclub, members' club, café or restaurant (including a café or restaurant al fresco dining area), cinema, theatre or sports or leisure centre.

(4) The Relevant Person must not enter a shop other than to buy food, medicines, or any other essential item, and must not stay in the shop for any longer than is necessary to make his or her purchases.

(5) The Relevant Person must not enter a bus.

(6) The Relevant Person must not enter a taxi unless measures are in place that conform with guidance issued for this purpose by the MOH to protect the driver from the risk of infection.

(7) The Relevant Person must not travel by a scheduled air service or a scheduled sailing unless he or she is an Alderney or Sark resident travelling home from Guernsey to Alderney or Sark (as the case may be), and that service or sailing departs within 24 hours of the Relevant Person receiving a negative test result for COVID-19.

(8) The Relevant Person must not travel in a private aircraft or vessel unless he or she is an Alderney or Sark resident travelling home from Guernsey to Alderney or Sark (as the case may be), and measures are in place that

conform with guidance issued for this purpose by the MOH to protect the pilot or captain, any other crew, and any other passenger, from the risk of infection.

(9) The Relevant Person must not return to work unless his or her work does not involve interaction with the public; and for the purposes of this subparagraph, jobs that involve interaction with the public include, but are not limited to, teachers, retail assistants, waiters, receptionists, bus and taxi drivers, and GPs. In relation to workers at nursing, care or residential homes, or at the Princess Elizabeth Hospital, the provisions of the Passive Follow-Up conditions and restrictions at paragraphs 8(4) and 8(7) (respectively) apply.

(10) 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.

SCHEDULE 2

Regulation 5

EXCEPTION TO THE REQUIREMENT TO SELF-ISOLATE ON ARRIVAL IN THE BAILIWICK: CRITICAL WORKERS

Introductory.

1. (1) This Schedule provides for the granting of exemptions from the requirement to self isolate at regulation 4(1) to 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) 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 4(1), but only if that person complies with the conditions that apply to him or her.

(5) 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.

(6) Under regulation 13(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.

(7) 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 Care and Veterinary Services	Those individuals providing, or directly facilitating, 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) undertake a test for COVID-19 immediately on arrival in the Bailiwick (or as otherwise directed). If the result of that test is positive, they must self-isolate in accordance with instructions from the MOH and comply with all other restrictions and requirements imposed by the MOH,
- (c) not attend the place of work if they have any symptoms of COVID-19, no matter how mild,
- (d) 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,
- (e) adhere to good standards of hygiene and respiratory etiquette,
- (f) wear a mask within two metres of other people,
- (g) if staying overnight, have a confirmed address at which they are staying,

- (h) 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,
- (i) remain on-island for the duration of their work, and
- (j) comply with any 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>	<ul style="list-style-type: none">• Any worker who is not resident in the Bailiwick may only travel between their place of work and a specified place of residence.• The worker must be able to self-isolate at the specified place of residence when not at work.
<i>Site precautions</i>	<ul style="list-style-type: none">• 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.• The name of a designated contact person for the site must be provided to the States of Guernsey.• All elements of work must be an outside activity and a

	<p>distance of over 10 metres from all other persons must be maintained at all times.</p> <ul style="list-style-type: none"> • 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.
<i>Accommodation</i>	<ul style="list-style-type: none"> • Workers on a single project must stay in one hotel or set of self-catering units. • Food must be supplied either via the hotel as cooked meals or groceries delivered to the door of the self-catering unit. 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. • 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.
<i>Health requirements</i>	<ul style="list-style-type: none"> • No-one in the worker's household has, nor has had during the previous 14 days, any of the symptoms of COVID-19. • Workers must undertake testing at an accredited testing centre 72 hours prior to travel. • Workers must undertake a test for COVID-19 on the 5th

	<p>day and the 13th day after arrival in the Bailiwick, or on such other days as the MOH may require.</p> <ul style="list-style-type: none"> • The business meets the cost of all testing in Guernsey.
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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, 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.

Review.

10. (1) An applicant for a Critical Worker Exemption who is aggrieved by a decision to refuse the application, or to grant the application subject to the imposition of further specific conditions under paragraph 6(2), 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 criticaltravel.gov.sg.

(2) If an applicant 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 11 to vary or revoke those conditions.

SCHEDULE 3

Regulation 17

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 2010 Law.

4. Where section 56(1)(b) applies (administration of medicine for more than three months), an approved medical practitioner (other than the responsible medical officer of the patient) may give a certificate under section 56(3)(b) (appropriateness of treatment without understanding or consent) if the responsible medical officer is of the opinion that complying with the requirement under that provision for the certificate to be given by a second opinion approved doctor is not reasonably practicable or would involve unreasonable delay.

Modification of the 2012 Rules.

5. 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.

6. Any hearing which takes place in accordance with paragraph 5 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 minor modifications and the addition of two Schedules) regulations previously made by the Civil Contingencies Authority in respect of the coronavirus pandemic.

These Regulations will come into force on the 27th November, 2020 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.

Schedules 1 and 2 to these Regulations set out exceptions to the requirement to self-isolate on arrival in the Bailiwick, in respect of critical workers and persons eligible to take part in the 7 day self-isolation option. This provision was previously made by the Civil Contingencies Authority in variations (separate from the emergency regulations) to the requirement to self-isolate that were published on the States of Guernsey website.

Part II miscellaneous and final

Schedule 3 to these Regulations sets out the modifications to be made to mental health legislation having effect in the Bailiwick.

Paragraph 4 modifies the Mental Health (Bailiwick of Guernsey) Law, 2010 to permit an approved medical practitioner (rather than only a second opinion approved doctor) to provide a certificate for the purposes of section 56 where the practitioner is of the opinion that is not reasonably practicable or would involve unreasonable delay to comply with the unmodified requirement of that section.

Paragraphs 5 to 6 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 18 makes provision in relation to Senior Decision Makers ("SDMs") appointed by the Guernsey Financial Services Commission, including providing for SDMs to hold oral hearings remotely. Regulation 19 empowers the Medical Officer of Health to exercise her powers to require schools to take measures to prevent the spread of infection in Sark, and provide, for the avoidance of doubt, that such measures may include the immediate closure of any school. Regulation 20 enables the Court of Appeal to conduct its proceedings remotely.

GREFFE
ROYAL COURT

14 DEC 2020

JA
GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2020 No. 128

**The Emergency Powers (Coronavirus)
(General Provision) (Bailiwick of Guernsey) (No. 10)
Regulations, 2020**

ARRANGEMENT OF REGULATIONS

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC.

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

PART II

MISCELLANEOUS AND FINAL

17. Modification of legislation relating to mental health.
18. Guernsey Financial Services Commission: officers appointed as Senior Decision Makers.

19. Power of MOH to close schools.
20. Court of Appeal.
21. Offences by legal persons and unincorporated bodies.
22. Revocation and savings.
23. Interpretation: general.
24. Citation.
25. Extent.
26. Commencement.

SCHEDULE 1: Exception to self-isolate on arrival in the Bailiwick: 7-Day Self-Isolation Option.

SCHEDULE 2: Exception to self-isolate on arrival in the Bailiwick: Critical Workers.

SCHEDULE 3: Modification of legislation relating to mental health.

The Emergency Powers (Coronavirus)
(General Provision) (Bailiwick of Guernsey) (No. 10)
Regulations, 2020

<i>Made</i>	14 th December, 2020
<i>Coming into operation</i>	15 th December, 2020
<i>Laid before the States</i>	, 2020

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 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

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

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 them in that behalf, hereby makes the following regulations: –

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC.

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 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 4(3) 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.

^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.

(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 4(3) 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) A restriction or requirement imposed under paragraph (1) may be varied by the MOH orally or in writing.

(4) Neither paragraph (1) nor regulation 4 affects the exercise of any powers under regulation 9; and nothing in this regulation (or in any other provision in these Regulations) affects the MOH's powers under any other enactment.

(5) In this regulation and regulation 4, a power to vary a requirement or restriction includes a power to revoke it.

Requirement to self-isolate on arrival in the Bailiwick.

4. (1) Subject to provision made in or under the Schedules given effect by regulation 5(1), a person who has arrived in the Bailiwick by air or sea and who has left an infected area within the 14 day period immediately preceding the date of his or her arrival in the Bailiwick must self-isolate for 14 days.

(2) 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, and
- (c) answer any question put to him or her by a relevant officer relating to that travel document.

(3) 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 self-isolate for 14 days.

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

(5) The powers of the MOH under paragraph (4) to vary the requirement under paragraph (1) or a requirement imposed under paragraph (3) include (but are not limited to) powers to –

- (a) specify exceptions to the requirement to self-isolate, and
- (b) shorten the duration of the requirement to self-isolate, either unconditionally or on the MOH being satisfied that one or more specified conditions have been met.

(6) For the avoidance of doubt, and without prejudice to the generality of paragraphs (4) and (5), in any case where the MOH varies the

requirement to self-isolate under paragraph (1) or a requirement to self-isolate imposed under paragraph (3), that variation may be amended in accordance with paragraph (7), and if so amended shall be treated for all purposes as continuing to have effect in accordance with its terms.

(7) In any case where the MOH has varied such a requirement to self-isolate, 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); and the amendment or revocation (as the case may be) shall have effect from such time as the MOH may specify.

(8) Where a restriction or requirement is imposed on or in relation to a child under regulation 3 or this regulation (including the requirement to self-isolate under paragraph (1)), 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 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.

Exceptions to requirement to self-isolate on arrival in the Bailiwick.

5. (1) Schedules 1 and 2 have effect.

(2) Schedules 1 and 2 set out exceptions to the requirement to self-isolate on arrival in the Bailiwick imposed under regulation 4(1) in specified circumstances, and in respect of specified persons and categories of person, and

make associated provision, including (but not limited to) -

- (a) imposing and providing for the imposition of, requirements, conditions and restrictions in respect of those exceptions, and
- (b) creating associated criminal offences, and prescribing relevant penalties.

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

Screening requirements.

6. (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.

7. (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 8,

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.

8. (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.

9. (1) Where a person ("P") is required to be detained or to self-isolate under regulation 3 or 8 or subjected to restrictions or requirements under regulation 7, 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 8 or subjected to restrictions or requirements under regulation 7 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 8 or subjected to restrictions or requirements under regulation 7, 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 8 or subjected to restrictions or requirements under regulation 7, 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 8, 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 13(4), and
- (g) the right to apply for revocation or variation under regulation 11, where applicable.

Restrictions or requirements in respect of groups.

10. (1) The powers in regulations 2, 3 and 8 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 8 –

- (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.

11. (1) A requirement, restriction or condition imposed under this

Part or Schedule 1 or 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 Relevant Person within the meaning of Schedule 1, and
 - (g) 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 2;

and for the purposes of this paragraph, P includes a person subject to the requirement under regulation 4(1) or to a requirement imposed under regulation 4(3).

(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.

12. (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 4(1) or a requirement to self-isolate imposed under regulation 4(3).

(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.

13. (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), 3(1), 4(2), 7(1), 8(2), 8(4) or 9(4) or 9(5), or a direction under regulation 12(3)(a),
- (b) fails, without reasonable excuse, to comply with a requirement that the person be detained under regulation 8(3), 12(7), 12(9) or 12(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 4(1) or a requirement imposed under regulation 4(3); including, for the avoidance of doubt, a requirement to self-isolate for any specified period of less than 14 days, or until a specified event occurs—

- (a) imposed by a variation of the requirement under regulation 4(1), or of a requirement under regulation 4(3)), by the MOH in relation to a particular case, or
- (b) imposed by or under Schedule 1 or 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 responsible adult who fails without reasonable excuse to

comply with regulation 4(8), 6(2), 7(9) or 8(6) commits an offence.

(6) A person guilty of an offence under paragraph (1), (4) or (5) is liable on conviction to a fine not exceeding level 3 on the uniform scale.

(7) A person guilty of an offence under paragraph (2) is liable on conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 14 days, or to both.

(8) 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.

14. (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,

^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.

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

(2) This 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, or
- (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.

(3) A person guilty of an offence under this regulation is liable on conviction to a fine not exceeding level 3 on the uniform scale.

Interpretation of this Part: general.

15. (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 4(2),

"requirement" means a requirement imposed under this Part (including the requirement to self-isolate under regulation 4(1)),

"restriction" means a restriction imposed under this Part,

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.

"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 6(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".

16. (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.

17. Schedule 3 modifies –

- (a) the Mental Health (Bailiwick of Guernsey) Law, 2010^h,
and
- (b) the Mental Health Review Tribunal Procedure Rules,
2012ⁱ,

which modifications shall have effect for the period of validity of these Regulations.

Guernsey Financial Services Commission: officers appointed as Senior Decision Makers.

18. (1) This regulation applies when a Senior Decision Maker is undertaking work in connection with deciding whether sanctions, proposed against an individual or person, should be imposed, including, but not limited to -

- (a) the publication of a public statement under section 11C of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^j (the "**Financial Services Commission Law**"),

^h Order in Council No. XV of 2011; amended by Ordinance No. IX of 2016; and No. I of 2017.

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

^j Ordres en Conseil Vol. XXX, p. 243; amended by Ordres en Conseil Vol. XXXI, p. 278; Vol. XXXII, p. 471; Vol. XXV(1), p. 271; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. III of XXII of 2003; Nos. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; No. I of 2015; No. XIII of 2017; Ordinance No. XXXIII of 2003; Nos. XII, XX, XXXIV and XXIX of 2015; Nos. IX and XXII of 2016; Nos. III, XIX and XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 29 of 2009; and G.S.I. No. 49 of 2017.

- (b) the imposition of a discretionary financial penalty under section 11D of the Financial Services Commission Law, and
- (c) the imposition of a prohibition order under -
 - (i) section 34E of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^k,
 - (ii) section 17A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^l,

^k Ordres en Conseil Vol. XXX, p. 281; amended by Ordres en Conseil Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVII, p. 264; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. XV and XXXII of 2003; Nos. XVIII and XX of 2008; No. XIII of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, p. 51; Tome XXVIII, p. 87; Ordinance No. XXXIII of 2003; No. XXXI of 2008; No. VII of 2009; Nos. XII, XX and XXXIX of 2015; Nos. IX and XXIX of 2016; Nos. III and XXVII of 2017; Sark Ordinance No. X of 2017; Nos. XXVI and XXVII of 2018; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

^l Order in Council No. I of 2001; amended by Order in Council No. I of 2000; No. XIV of 2003; No. XVI of 2007; Nos. VIII and XXV of 2008; Nos. XIII and XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; Nos. XXVI and XXVII of 2018; G.S.I. No. 3 of 2018; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013; G.S.I. No. 50 of 2017; G.S.I. No. 56 of 2017; and G.S.I. No. 72 of 2017.

- (iii) section 28A of the Insurance Business (Bailiwick of Guernsey) Law, 2002^m,
- (iv) section 18A of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002ⁿ, and
- (v) section 17A of the Banking Supervision (Bailiwick of Guernsey) Law, 1994^o,

and in this regulation, a "**Senior Decision Maker**" means an officer, appointed by the Guernsey Financial Services Commission ("**the Commission**") to fulfil the role of Senior Decision Maker, and exercising powers delegated by the Commission in relation to the same under section 19 of the Financial Services Commission Law.

^m Order in Council No. XXI of 2002; amended by Order in Council No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XII of 2008; Nos. VIII and XXXI of 2010; No. XXXVI of 2011; No. LV of 2014; Nos. XII and XXXIX of 2015; No. IX of 2016; No. III and XXVII of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 33 of 2004; G.S.I. No. 4 of 2008; G.S.I. No. 15 of 2010; G.S.I. No. 83 of 2010; G.S.I. No. 68 of 2014; G.S.I. No. 121 of 2015; and G.S.I. No. 50 of 2017.

ⁿ Order in Council No. XXII of 2002; amended by Order in Council No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XIII of 2008; No. IX of 2010; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 2 of 2008; G.S.I. No. 16 of 2010; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

^o Ordres en Conseil Vol. XXXV(1), p. 271 of 2001; amended by Order in Council Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; Nos. XIII and XXI of 2010; Ordinance No. XXXIII of 2003; Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; No. XXVI of 2018; G.S.I. No. 3 of 2000; G.S.I. No. 1 of 2008; G.S.I. No. 35 of 2010; and G.S.I. No. 50 of 2017.

(2) A Senior Decision Maker undertaking work described in paragraph (1) may undertake some or all of that work outside the Bailiwick, including, but not limited to –

- (a) the consideration of representations,
- (b) the preparation of reports, Minded to Notices, final decisions,
- (c) the acceptance of written representations, and
- (d) the holding of oral hearings.

(3) An oral hearing may be held by a Senior Decision Maker who is outside the Bailiwick by telephone, live television link or any other means of telecommunications or electronic communications, and for the purposes of such a hearing, a Senior Decision Maker, party or other person who is in communication with other persons at the hearing so that each person at the hearing can hear or read what is being said or communicated by each of the others, is deemed, subject to paragraph (4), to be present at the oral hearing for all purposes.

(4) In the event that a means of communication referred to in paragraph (3) fails or is corrupted, or the Senior Decision Maker considers that confidentiality is compromised, the Senior Decision Maker shall have the discretion at any time during the hearing to determine that a person who is affected by that failure, corruption or compromise of confidentiality is no longer deemed to be present at the hearing.

(5) For the avoidance of doubt, a determination under paragraph (4) does not affect the validity of the proceedings of the hearing for any purpose prior to the making of that determination.

Power of MOH to close schools.

19. (1) The powers of the MOH under Article VIII(8) of the Public Health Ordinance, 1936¹, to require measures to be taken by any school in order to prevent the spread of infection, shall apply in respect of Sark.

(2) For the avoidance of doubt, the measures that the MOH may require to be taken under the above enactment (including as it applies in Sark under paragraph (1)) include, but are not limited to, the immediate closure, partial closure, or closure subject to conditions, of any school for any period.

Court of Appeal.

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

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

¹ Recueil d'Ordonnances Tome VIII, p. 315; amended by Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XIV of 2012; No. VI of 2015; Recueil d'Ordonnances Tome X, pp. 35 and 61; Tome XIII, p. 264; Tome XV, p. 239; Tome XV, p. 387; Tome XIX, p. 91; Tome XX, p. 163; Tome XXIII, p. 427; Tome XXVIII, p. 80; Ordinance No. XXXIII of 2003; No. XXXVIII of 2006; No. XLI of 2010; No. XLII of 2014; Nos. IX and XXI of 2016. This Ordinance is applied to the Island of Alderney by the Alderney (Application of Legislation) Ordinance, 1948 and to the Islands of Herm and Jethou by the Public Health (Amendment) Ordinance, 1963.

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

(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 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. 9) Regulations, 2020⁹ ("the (No. 9) Regulations") are revoked.

(2) Anything done under or for the purposes of the (No. 9)

⁹ G.S.I. No. 115 of 2020.

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 (No. 9) 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 the equivalent provision of these Regulations.

(4) Notwithstanding the revocation of the (No. 9) Regulations, the variation of the requirement to self-isolate on arrival in the Bailiwick made by the Authority and previously published on the States of Guernsey website entitled "Critical Workers" shall continue to have effect in respect of those persons in respect of whom the (No. 9) Regulations provided for that variation to continue to have effect, notwithstanding the revocation of the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2020^r, to the extent provided for in the (No. 9) Regulations; that is, persons who, on commencement of the (No. 9) Regulations were persons to whom an exemption under the "Critical Workers" variation had been granted and was in force, for so long as that exemption is expressed to be in force, or until it is brought to an end or otherwise ceases to have effect, whichever is earlier.

^r G.S.I. No. 105 of 2020.

(5) 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.

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

(3) 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. 10) Regulations, 2020.

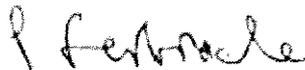
Extent.

25. These Regulations shall have effect throughout the Bailiwick.

Commencement.

26. These Regulations shall come into force on 15th December, 2020.

Dated this 14th day of December, 2020



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

SCHEDULE 1

Regulation 5

EXCEPTION TO THE REQUIREMENT TO SELF-ISOLATE ON ARRIVAL IN THE BAILIWICK: 7 DAY SELF-ISOLATION OPTION

Introductory.

1. (1) This Schedule provides for an exception to the requirement to self-isolate set out in regulation 4(1) –

(a) in respect only of –

(i) persons who have been assessed to be eligible for, and have elected to take part in, the 7 day self-isolation option, within the meaning of that term in this Schedule, and

(ii) persons who undergo a Day 13 test within the meaning of paragraph 6, and

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

(2) A person who is assessed to be eligible in, and has elected to take part in, the 7 day 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 7 day self-isolation option, the 7 day 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 13(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 7 day self-isolation option.

(5) Failure without reasonable excuse to comply with the requirement to self-isolate under regulation 4(1) (as it has effect under this Schedule) is an offence under regulation 13(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; and 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 this Schedule.

Eligibility.

2. (1) To be eligible to take part in the 7 day self-isolation option, a person ("P") must not have spent any of the period of 7 days immediately before P's arrival in the Bailiwick in a place that is a Category 4 country^s at the time of P's arrival in the Bailiwick.

^s A town, city, area or region can constitute a Category 4 country.

(2) For the avoidance of doubt, and subject to paragraph 5 (direct transit), if P has spent any of the previous 7 days (or any part thereof) in a place that is, at the relevant time, so specified as a Category 4 country, P will not be eligible to take part in the 7 day self-isolation option - even if that place was not so 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 7 day self-isolation option or assessed to be ineligible to do so must self-isolate for 14 days pursuant to, and in accordance with, the requirement imposed by regulation 4(1) of the Regulations, and

(b) a person who –

(i) elects to take part in the 7 day 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 for the remainder of the 14 day period in accordance with the Regulations;

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 of the period of 7 days immediately before his or her arrival in the Bailiwick in a place that is a Category 3 country^t 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 immediately 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 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 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 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.

^t A town, city, area or region can constitute a Category 3 country.

(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 10 (Conditions and restrictions: Enhanced Passive Follow-Up).

Category 2 country arrivals

4. (1) A Relevant Person who has spent any of the period of 7 days immediately before his or her arrival in the Bailiwick in a place that is a Category 2 country^u 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 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.

(3) If the result of that day of arrival test is negative, the Relevant Person will be required to take a Day 7 test; and in the period from receipt of a negative day of arrival test result until receipt of the result of the Day 7 test, the Relevant Person will not be required to self-isolate – subject to the Relevant Person complying with the conditions and restrictions specified in paragraph 10 (Conditions and restrictions: Enhanced Passive Follow-Up).

(4) If the result of that Day 7 test is positive, the Relevant Person 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

^u A town, city, area or region can constitute a Category 2 country.

MOH. 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 the Relevant Person complying with the conditions and restrictions specified in paragraph 9 (Conditions and restrictions: Passive Follow-Up).

Direct Transit.

5. (1) Direct transit–
 - (a) in a private vehicle, or
 - (b) in public transport,

through a Category 4 country is not spending time in that Category 4 country for the purposes of this Schedule.

(2) In this paragraph, a "private vehicle" includes a taxi, and references to a private vehicle stopping are to such a vehicle stopping in circumstances where one or more persons alight from, or get into, the vehicle.

- (3) In this paragraph, "direct transit in a private vehicle" means –
 - (a) travel in a private vehicle that does not stop at all in the Category 4 country, or
 - (b) travel in a private vehicle that only stops in the Category 4 country in circumstances where –
 - (i) no new people get into the vehicle, and

- (ii) no-one in the vehicle gets out, comes within two metres of any other person (other than another occupant of the vehicle), 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.

Day 13 test.

6. (1) A person ("P") who is not eligible or who has chosen not to take part in the 7 days self-isolation option is not required to self-isolate for all of the 14 day period in the circumstances set out, and only to the extent provided for, in this paragraph.

(2) If P 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 Schedule, a "**Day 13 test**"), and the result of that Day 13 test is negative, P will not be required to self-isolate for the remainder of the 14 day period.

(3) If the result of that Day 13 test is positive, P 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.

Children.

7. (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 7 day self-isolation option, and may undergo a Day 13 test for the purposes of paragraph 6.

(2) Where a child takes part in the 7 day 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 8(2),
- (b) so far as reasonably practicable, keep the record of people referred to at paragraph 9(9) (including paragraph 9(9) as it applies pursuant to paragraph 10(2)), and
- (c) ensure the child does not return to school in accordance with paragraph 10(10), where that restriction applies.

Conditions and restrictions: general, and offences.

8. (1) A Relevant Person must remain in self-isolation for the 14 day period unless and until that requirement 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 a Day 7 test must self-isolate for the remainder of the 14 day period.

(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 7 day 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 13(2).

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

(a) in subparagraph (2), and

(b) paragraphs 9(2) to (10) and 10(3) to (10),

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

Conditions and restrictions: Passive Follow-Up.

9. (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 4, that Relevant Person must comply with each of the following restrictions during that 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) The Relevant Person must comply with any additional conditions and restrictions imposed from time to time by the MOH.

Conditions and restrictions: Enhanced Passive Follow-Up.

10. (1) A Relevant Person in relation to whom the requirement to self-isolate has been lifted subject to the person complying with the Enhanced Passive Follow-Up conditions and restrictions, under and in accordance with paragraph 3 or 4, must comply with each of the following restrictions during the period in which those conditions and restrictions apply in accordance with that section.

(2) The Relevant Person must comply with each of the Passive Follow-Up conditions and restrictions set out at paragraphs 9(2) to (10); and in this regard the reference to "these restrictions" at paragraph 9(8) is to be construed as a reference to these Enhanced Passive Follow-Up conditions and restrictions.

(3) The Relevant Person must not enter a pub, nightclub, members' club, café or restaurant (including a café or restaurant al fresco dining area), cinema, theatre or sports or leisure centre.

(4) The Relevant Person must not enter a shop other than to buy food, medicines, or any other essential item, and must not stay in the shop for any longer than is necessary to make his or her purchases.

(5) The Relevant Person must not enter a bus.

(6) The Relevant Person must not enter a taxi unless measures are in place that conform with guidance issued for this purpose by the MOH to protect the driver from the risk of infection.

(7) The Relevant Person must not travel by a scheduled air service or a scheduled sailing unless he or she is an Alderney or Sark resident travelling home from Guernsey to Alderney or Sark (as the case may be), and that service or sailing departs within 24 hours of the Relevant Person receiving a negative test result for COVID-19.

(8) The Relevant Person must not travel in a private aircraft or vessel unless he or she is an Alderney or Sark resident travelling home from Guernsey to Alderney or Sark (as the case may be), and measures are in place that conform with guidance issued for this purpose by the MOH to protect the pilot or captain, any other crew, and any other passenger, from the risk of infection.

(9) The Relevant Person must not return to work unless his or her work does not involve interaction with the public; and for the purposes of this subparagraph, jobs that involve interaction with the public include, but are not limited to, teachers, retail assistants, waiters, receptionists, bus and taxi drivers, and GPs. In relation to workers at nursing, care or residential homes, or at the Princess Elizabeth Hospital, the provisions of the Passive Follow-Up conditions and restrictions at paragraphs 9(4) and 9(7) (respectively) apply.

(10) 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.

SCHEDULE 2

Regulation 5

EXCEPTION TO THE REQUIREMENT TO SELF-ISOLATE ON ARRIVAL IN THE BAILIWICK: CRITICAL WORKERS

Introductory.

1. (1) This Schedule provides for the granting of exemptions from the requirement to self-isolate at regulation 4(1) to 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 4(1), 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 13(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 Care and Veterinary Services	Those individuals providing, or directly facilitating, 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,
- (d) 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,

- (e) adhere to good standards of hygiene and respiratory etiquette,
- (f) wear a mask within two metres of other people,
- (g) if staying overnight, have a confirmed address at which they are staying,
- (h) 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,
- (i) remain on-island for the duration of their work, and
- (j) comply with any 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>	<ul style="list-style-type: none">• Any worker who is not resident in the Bailiwick may
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	<p>only travel between their place of work and a specified place of residence.</p> <ul style="list-style-type: none"> • The worker must be able to self-isolate at the specified place of residence when not at work.
<i>Site precautions</i>	<ul style="list-style-type: none"> • 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. • The name of a designated contact person for the site must be provided to the States of Guernsey. • 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. • 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.
<i>Accommodation</i>	<ul style="list-style-type: none"> • Workers on a single project must stay in one hotel or set of self-catering units. • Food must be supplied either via the hotel as cooked meals or groceries delivered to the door of the self-catering unit. 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

	<p>loading into a washing machine.</p> <ul style="list-style-type: none"> • 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.
<i>Health requirements</i>	<ul style="list-style-type: none"> • No-one in the worker's household has, nor has had during the previous 14 days, any of the symptoms of COVID-19. • Workers must undertake testing at an accredited testing centre 72 hours prior to travel. • 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. • The business meets the cost of all testing in Guernsey.

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, 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.

Review.

10. (1) An applicant for a Critical Worker Exemption who is aggrieved by a decision to refuse the application, or to grant the application subject to the imposition of further specific conditions under paragraph 6(2), 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 an applicant 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 11 to vary or revoke those conditions.

SCHEDULE 3

Regulation 17

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 2010 Law.

4. Where section 56(1)(b) applies (administration of medicine for more than three months), an approved medical practitioner (other than the responsible medical officer of the patient) may give a certificate under section 56(3)(b) (appropriateness of treatment without understanding or consent) if the responsible medical officer is of the opinion that complying with the requirement under that provision for the certificate to be given by a second opinion approved doctor is not reasonably practicable or would involve unreasonable delay.

Modification of the 2012 Rules.

5. 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.

6. Any hearing which takes place in accordance with paragraph 5 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 minor modifications) regulations previously made by the Civil Contingencies Authority in respect of the coronavirus pandemic.

These Regulations will come into force on the 15th December, 2020 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.

Schedules 1 and 2 to these Regulations set out exceptions to the requirement to self-isolate on arrival in the Bailiwick, in respect of critical workers and persons eligible to take part in the 7 day self-isolation option and who take a day 13 test.

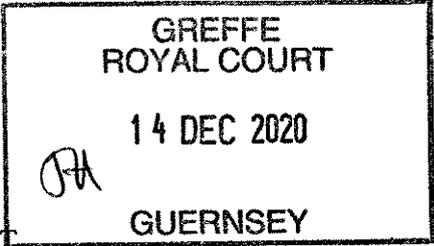
Part II – miscellaneous and final

Schedule 3 to these Regulations sets out the modifications to be made to mental health legislation having effect in the Bailiwick.

Paragraph 4 modifies the Mental Health (Bailiwick of Guernsey) Law, 2010 to permit an approved medical practitioner (rather than only a second opinion approved doctor) to provide a certificate for the purposes of section 56 where the practitioner is of the opinion that it is not reasonably practicable or would involve unreasonable delay to comply with the unmodified requirement of that section.

Paragraphs 5 to 6 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 18 makes provision in relation to Senior Decision Makers ("SDMs") appointed by the Guernsey Financial Services Commission, including providing for SDMs to hold oral hearings remotely. Regulation 19 empowers the Medical Officer of Health to exercise her powers to require schools to take measures to prevent the spread of infection in Sark, and provide, for the avoidance of doubt, that such measures may include the immediate closure of any school. Regulation 20 enables the Court of Appeal to conduct its proceedings remotely.



GUERNSEY STATUTORY INSTRUMENT

2020 No. 129

**The Emergency Powers (Coronavirus) (Vaccine)
(Limitation of Liability) (Bailiwick of Guernsey)
Regulations, 2020**

<i>Made</i>	<i>14th December, 2020</i>
<i>Coming into operation</i>	<i>15th December, 2020</i>
<i>Laid before the States</i>	<i>, 2020</i>

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 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 one or more vaccines that have been

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

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 them in that behalf, hereby makes the following regulations: –

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

^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.

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,
- (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

^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.

- (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 –

- (a) after these Regulations come into force, 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, before it is given either marketing authorisation concerned.

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

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

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

"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,

"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,

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

"**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.

Extent.

6. These Regulations apply throughout the Bailiwick of Guernsey.

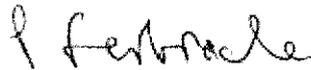
Citation.

7. These Regulations may be cited as the Emergency Powers (Coronavirus) (Vaccine) (Limitation of Liability) (Bailiwick of Guernsey) Regulations, 2020.

Commencement

8. These Regulations shall come into force on the 15th December, 2020.

Dated this 14th day of December, 2020



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

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 after these Regulations come into force and before the vaccine receives either a UK marketing authorisation or a European Medicines Agency marketing authorisation.

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 will come into force on the 15th December, 2020 and shall have temporary effect only in accordance with the provisions of section 16 (duration and scrutiny of emergency regulations) of the Law.

