

THE BAILIFF OF GUERNSEY  
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The President  
States of Alderney  
Island Hall  
Royal Connaught Square  
ALDERNEY  
GY9 3UE

15 November 2013

Dear Sir

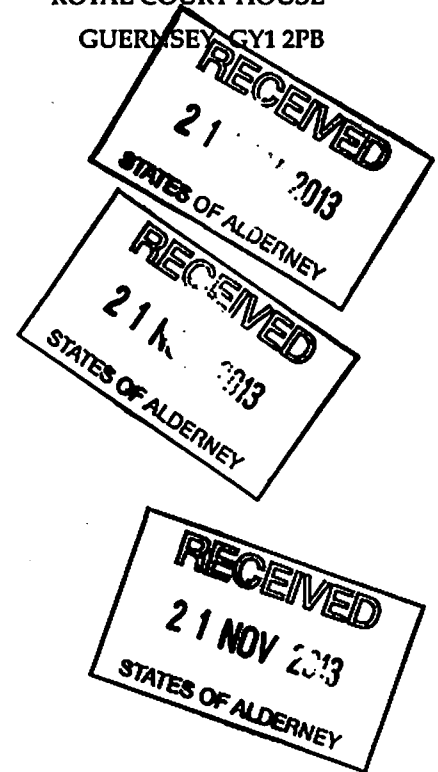
I enclose a copy of a States Report dated 10<sup>th</sup> May 2011, addressed to the Chief Minister, Policy Council, by the Minister, Home Department, concerning Sexual Offences Legislation.

On the 28<sup>th</sup> July 2011, the States of Deliberation resolved as follows:-

- “1. To introduce measures to assist and protect complainants or witnesses when attending court.
2. To introduction new substantive legislation to criminalise inappropriate sexual behaviour.
3. To introduce a system of registration for sex offenders and a range of preventative civil orders to protect the public and reduce the risk posed to vulnerable members of the community.
4. To note that the additional funding requirements arising from the proposals set out in this Report will be subject to prioritisation as part of the States Strategic Plan.
5. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

I also enclose a copy of a States Report dated 15<sup>th</sup> July 2013, addressed to the Chief Minister, Policy Council, by the Home Department, concerning further proposals and amendments to the Department's original proposals set out in the States Report of 10<sup>th</sup> May 2011.

On 30<sup>th</sup> October 2013, States of Deliberation resolved as follows:-



1. To agree the proposals set out in that Report as follows:

(a) the application of a minimum notification period for those convicted or cautioned for a relevant sexual offence;

(b) the role of a statutory office holder to determine whether a person subject to the notification requirements (a "notifier") should continue to be subject to them after the expiry of the minimum period;

(c) additional powers of the Police to enter premises in order to verify if the address given by a notifier is in fact the notifier's home address, to ascertain if there is a person at the notifier's home address who is at risk of harm from the notifier and to ascertain if there is an object which the notifier is not permitted to possess at an address notified by that person;

(d) the inclusion of notifiers in the Multi Agency Public Protection Arrangements to be established on a statutory footing;

(e) the ability of a court to direct that the right to anonymity of complainants would not apply in specified circumstances; and

(f) additional measures to protect complainants and other witnesses when giving evidence in criminal proceedings.

2. To approve the draft *Projet de Loi* entitled "The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

On the 30<sup>th</sup> of October 2013, the States of Deliberation approved a *Projet de Loi* entitled "The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013" which gives effect to the above Resolutions.

I enclose fifteen copies of the *Projet de Loi* and shall be obliged if you will place it before the States of Alderney for their approval at their next meeting.

Yours faithfully,



**HOME DEPARTMENT****THE CRIMINAL JUSTICE (SEX OFFENDERS AND MISCELLANEOUS PROVISIONS) (BAILIWICK OF GUERNSEY) LAW, 2013**

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

15<sup>th</sup> July 2013

Dear Sir

**Executive Summary**

1. This supplementary States Report requests policy approval for further proposals made by the Department and for the amendments made to the original proposals set out in the Department's States Report of 10<sup>th</sup> May 2011, entitled 'Sexual Offences Legislation', which was approved by the States on 27<sup>th</sup> July 2011 (Billet D'Etat XIII).

The further proposals and amendments are in relation to:

- (a) The application of a minimum notification period for those convicted or cautioned for a relevant sexual offence;
- (b) The role of a statutory office holder to determine whether a person subject to the notification requirements (a "notifier") should continue to be subject to them after the expiry of the minimum period;
- (c) Additional powers of the Police to enter premises in order to verify if the address given by a notifier is in fact the notifier's home address, to ascertain if there is a person at the notifier's home address who is at risk of harm from the notifier and to ascertain if there is an object which the notifier is not permitted to possess at an address notified by that person;
- (d) The inclusion of notifiers in the Multi Agency Public Protection Arrangements to be established on a statutory footing;
- (e) The ability of a court to direct that the right to anonymity of complainants would not apply in specified circumstances; and

- (f) Additional measures to protect complainants and other witnesses when giving evidence in criminal proceedings.

The further proposals and amendments are reflected in the accompanying Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 ("the draft Law").

### **Background**

2. The 2011 States Report identified the need to modernise and reform the sexual offences legislation and sought to achieve this by introducing:
- New substantive legislation to criminalise inappropriate sexual behaviour which should be sanctioned by the courts;
  - Measures to assist and protect complainants or witnesses when attending court; and
  - Measures to protect the public and reduce the risk posed to vulnerable members of the community, such as a system of registration for sex offenders and a range of preventative civil orders.

The States approved the preparation of legislation to give effect to these proposals on 27 July 2011.

### **Additional Proposals**

3. The Sex Offenders Working Group, a cross Departmental Group whose responsibilities will be impacted by the proposals, continued to consider their practical application as drafting of the legislation progressed. In doing so, a number of minor amendments to the original proposals were identified which it was considered would assist in achieving the objectives set out in paragraph 2. The following sets out these additional recommendations.

### **Notification Period**

4. In its States Report of 10<sup>th</sup> May 2011, the Department proposed at paragraph 57 that:

*"a court which convicts a person of a relevant offence will specify the period of notification required of that offender. Unless the court is satisfied that there is an exceptional reason why a shorter period would be appropriate, the period of notification will be at least 5 years. The period of required notification will take into account the likelihood of the person reoffending, and the seriousness of any relevant sexual offence committed. Where a person has been cautioned for a relevant sexual offence, the period of required notification will be 2 years."*

During the drafting of the legislation this proposal was revisited as it was acknowledged that the level of risk that an individual represents will normally

change over time. It may therefore be extremely difficult for a sentencing court accurately to assess how long a person should be subject to notification requirements in order to mitigate the level of risk presented.

The draft Law therefore proposes that –

- (a) where a court sentences a person for a relevant offence, or
- (b) where the court certifies an offence was sexually aggravated,

unless it is satisfied that there is a reason why a shorter period would be appropriate, the minimum period for which that person will be subject to the notification requirements must be at least 5 years. Where a person becomes subject to the notification requirements by being cautioned, the minimum period during which that person is subject to notification requirements shall be 2 years.

#### **Removal from the Requirement to Register**

5. The 2011 States Report stated at paragraph 64 that:

*“Removal from the register will be an executive decision after the period specified has expired. Responsibility for registering, monitoring, and deregistering offenders will fall to the Police and Probation Service.”*

The implication of the proposal set out in paragraph 4 of this States Report is that, after the expiry of the minimum notification period determined by the court, the notifier will remain subject to the requirements until it is no longer necessary for the purpose of protecting the public from sexual harm that the notifier should remain subject to them.

The Department’s initial proposals recommended that the final decision about continued notification would be made collectively by the Police and Probation Service. It is recognised that clearly defined responsibilities should be established to ensure that this process is clear and robust. It is now considered that the most effective way of doing this is to give the statutory responsibility to determine reviews to a single office holder, the Chief Officer of Police, which is best practice in England and Wales.

It is therefore proposed that, on expiry of the minimum term, a notifier may apply to the Chief Officer of Police for the obligation to notify to be removed. The Chief Officer of Police will be informed in his decision making by the provision of any relevant information held by the Probation Service and the Prison, in addition to any information already held by the Police.

The Chief Officer of Police will then determine whether the notifier should continue to be subject to notification requirements. If this application is unsuccessful, the notifier may thereafter apply on an annual basis. This process

is in line with the proposals contained within the 2011 States Report in that the decision remains with the executive; however, it is proposed that the Probation Service and the Prison will provide both the relevant information in relation to the notifier and a professional opinion to the final decision maker, the Chief Officer of Police.

### **Police powers of entry**

6. Paragraph 60 of the 2011 States Report proposed that the Police should have the power to verify information provided by the notifier by comparing it against information held by other States Departments. It was identified that it may not be possible adequately to verify a notifier's home address through the sharing of information in this way. While it was acknowledged that the Police may enter a property under the provisions provided for by PPACE, it is considered that specific powers of entry and search should be created due to the limitations on the basis for entry in PPACE.

To address this matter, the draft Law permits the Bailiff to issue a warrant authorizing a police officer to enter a property where there are reasonable grounds to believe –

- (a) that the home address provided by the notifier is false and searching the property in question is the only practical means of establishing the notifier's correct home address;
- (b) that at the home address provided by the notifier there is a person who is at risk of harm from the notifier; or
- (c) that at the home address or any other address provided by the notifier there is an object which the notifier is not permitted to possess.

### **Monitoring and Management of Relevant Offenders**

7. Multi Agency Public Protection Arrangements (MAPPA) have been in place in Guernsey for over 10 years. Agencies share information about high-risk offenders and devise robust defensible plans to manage the level of risk posed by each individual. The MAPPA process is not limited to managing the risk presented by sexual offenders, but also extends to high risk violent and other offenders who are assessed as having the potential to cause significant harm to the public.

The significance of the MAPPA process to the draft Law is that it provides the process by which all relevant offenders are monitored.

It was implied in the 2011 States Report that those subject to notification requirements should also be subject to the MAPPA process, with the level of

monitoring dependent upon the assessed risk. The current proposal clarifies the intention to include notifiers in the MAPPA process on a statutory basis.

### **Anonymity of Complainants**

8. Paragraph 47 of the 2011 States Report recommended that complainants be afforded anonymity to encourage them to come forward and report sexual allegations to the Police. This would prohibit the disclosure of any information which could be used to identify the complainant.

It is further proposed that a court should have the power to direct that this right to anonymity should be displaced where such a direction is necessary to encourage witnesses to come forward and the defendant's defence at the trial would be substantially prejudiced if the direction is not given.

It is also recommended that where a complainant requests that the right to anonymity is waived, the court should be able to direct that it no longer applies to the complainant. This proposal has been included to accommodate circumstances for example where a complainant wishes to speak to the media as part of a campaign to help other victims of sexual offences. Under the proposals contained in the earlier States Report, any person reporting such a story, even with the victim's consent, would technically be committing an offence.

### **Cross-examination of and evidence in relation to complainants**

9. As noted above one of the objectives set out in the 2011 States Report was the introduction of measures to assist and protect complainants or other witnesses when giving evidence and it set out a number of proposals that would assist in achieving this aim.

During the drafting of the legislation, it was identified that there was the potential for an unrepresented defendant to cross-examine a complainant or other witness to a relevant sexual offence. Consequently, it was acknowledged that this may adversely influence the decision of a complainant to pursue a complaint or adversely influence the quality of the evidence given by that person or another witness. It is therefore proposed to prohibit an unrepresented defendant in a prosecution for a relevant sexual offence from cross-examining a complainant or other witness. In order to allow the evidence of complainants or other witnesses to be tested, the defendant would be invited to instruct an Advocate to carry out the cross-examination or, where that was refused, the court would appointed one to represent the interests of the defendant.

It is further recommended that evidence or questions in relation to the previous sexual experience or activity, or lack of such experience or activity, should only be permitted where the court has given leave for it to be tendered or asked. The court could only give leave where it was satisfied that –

- (a) the evidence or question has significant probative value to a fact in issue or to credit;
- (b) the evidence is of, or the question is in relation to, specific instances of sexual experience or activity;
- (c) the evidence or question has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice (taking into account factors such as the interests of justice and whether there is a reasonable prospect that the evidence or question will assist in arriving at a just determination in the case); and
- (d) the appropriate procedural requirements had been satisfied.

This would allow the court to permit evidence or a question where it was both significant and relevant, and where it would not be outweighed by other important factors in the administration of justice.

Further provisions would prohibit a general attack on the complainant's sexual activity or experience with the inference that, given that activity or experience, the complainant is more likely to have consented or is less likely of belief would also be prohibited.

### **Resources**

- 10. The Department does not anticipate that these proposals will result in any additional expenditure from that outlined in its original Report of 2011.

### **Consultation**

- 11. This States Report has been prepared in close consultation with HM Procureur and relevant States Departments and other relevant and interested parties including; the Social Policy Group, Members of the Child Protection Committee, the States of Alderney and Sark Chief Pleas who were supportive of the recommendations.

The Law Officers have been consulted and their comments have been incorporated in this Report.

### **Principles of Good Governance**

- 12. The Proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet D'État IV of 2011, particularly Principle 1 "focusing on the organisation's purpose and on outcomes for citizens and service users" and Principle 4 "taking informed, transparent decisions and managing risk."



**Recommendation**

13. The Home Department recommends that the States approve The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 which accompanies this States Report and includes the following proposals:
- (a) The application of a minimum notification period for those convicted or cautioned for a relevant sexual offence;
  - (b) The role of a statutory office holder to determine whether a person subject to the notification requirements (a "notifier") should continue to be subject to them after the expiry of the minimum period;
  - (c) Additional powers of the Police to enter premises in order to verify if the address given by a notifier is in fact the notifier's home address, to ascertain if there is a person at the notifier's home address who is at risk of harm from the notifier and to ascertain if there is an object which the notifier is not permitted to possess at an address notified by that person;
  - (d) The inclusion of notifiers in the Multi Agency Public Protection Arrangements to be established on a statutory footing;
  - (e) The ability of a court to direct that the right to anonymity of complainants would not apply in specified circumstances; and
  - (f) Additional measures to protect complainants and other witnesses when giving evidence in criminal proceedings.

These are in addition to those recommendations contained within the Department's Report dated 10<sup>th</sup> May 2011, entitled "Sexual Offences Legislation" which was approved by the States on 27<sup>th</sup> July 2011.

Yours faithfully

J P Le Tocq  
Minister  
Home Department

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

Mr A Ozanne, non-States Member

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

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

The States are asked to decide:-

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

1. To agree the proposals set out in that Report as follows:
  - (a) the application of a minimum notification period for those convicted or cautioned for a relevant sexual offence;
  - (b) the role of a statutory office holder to determine whether a person subject to the notification requirements (a "notifier") should continue to be subject to them after the expiry of the minimum period;
  - (c) additional powers of the Police to enter premises in order to verify if the address given by a notifier is in fact the notifier's home address, to ascertain if there is a person at the notifier's home address who is at risk of harm from the notifier and to ascertain if there is an object which the notifier is not permitted to possess at an address notified by that person;
  - (d) the inclusion of notifiers in the Multi Agency Public Protection Arrangements to be established on a statutory footing;
  - (e) the ability of a court to direct that the right to anonymity of complainants would not apply in specified circumstances; and
  - (f) additional measures to protect complainants and other witnesses when giving evidence in criminal proceedings.
2. To approve the draft *Projet de Loi* entitled "The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.