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Response

of the States of Guernsey to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Bailiwick of Guernsey

from 19 to 22 March 2010

The Government of the United Kingdom has requested the publication of this response. The report of the CPT on its March 2010 visit to Guernsey is set out in document CPT/Inf (2010) 37.

Strasbourg, 19 November 2010

**RESPONSE OF THE STATES OF GUERNSEY
TO THE REPORT OF
THE EUROPEAN COMMITTEE FOR THE PREVENTION OF
TORTURE AND INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT (CPT)
FOLLOWING ITS VISIT TO THE BAILIWICK OF GUERNSEY
FROM 19 TO 22 MARCH 2010.**

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I. INTRODUCTION

1. The States of Guernsey (“the Guernsey Government”) is pleased to provide this response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) following its visit to the Bailiwick of Guernsey from 19th to 22nd March 2010.
2. The Guernsey Government welcomes the report and has given its recommendations serious consideration.
3. The Guernsey Government is pleased to learn that the CPT received excellent cooperation at all levels and acknowledges the positive comments made by the delegation in the report. The Government is grateful for the recommendations made by the committee and would like to respond accordingly.
4. This response follows the sequence of issues raised in the CPT’s reports with extracts reproduced in bold typeface. This response also contains additional information, provides context and corrects any inaccuracies where they may have arisen.
5. A more accurate summary of the governance of the islands on the subparagraph under paragraph 1 would be:

“The Bailiwick of Guernsey is not part of the United Kingdom. The Bailiwick comprises the three separate jurisdictions of Guernsey, Alderney and Sark. The islands of the Bailiwick are Crown Dependencies with their own legislative assemblies and separate legal and administrative systems. All domestic issues, including those relating to the deprivation of liberty, are the responsibility of the relevant Bailiwick authorities.”

II. FACTS FOUND AND ACTION PROPOSED

A. Law enforcement agencies

1. Legal Framework

6. The Home Department is mandated by the States of Guernsey to advise the States on, *inter alia*, Criminal Justice Policy. The Home Department is also responsible for, *inter alia*: the Island Police Force and the effective and efficient policing of the Bailiwick of Guernsey; the provision of an effective and efficient Customs and Immigration Service; and the Prison Service and the effective and efficient control and administration of the States Prison.
7. The Island Police Force is referred to herein as the “Guernsey Police”, the Customs and Immigration service is known as the “Guernsey Border Agency” (GBA) and the Island’s Prison is referred to as the “Guernsey Prison”.

2. Ill-treatment

Recommendations:

- **appropriate steps to be taken to ensure handcuffs are applied in a correct manner. Where ratchet handcuffs are applied, the persons concerned should be informed that struggling against the cuffs might cause them to tighten (paragraph 8).**
8. The Guernsey Police Officer Safety Training programme always incorporates refresher training on the application of handcuffs. This training is not confined solely to technique, but also includes a requirement for an officer to explain to detainees, as the handcuffs are applied, precisely what they are doing and how the detainee can assist the officer in making the process as comfortable for themselves as possible. Prisoners are routinely warned that struggling could result in a tightening of the cuffs, but often they are unwilling or unable to comprehend the advice. Fortunately, these instances are in the minority. A “Use of Handcuffs” policy is in force with Guernsey Police, a copy of which has been provided to the CPT.

Comments:

- **police officers should be reminded that no more force than is strictly necessary should be used when effecting an arrest and that, once arrested persons have been brought under control, there can never be any justification for striking them (paragraph 8);**

9. In any conflict situation, a decision making process is necessary to ensure that the conflict is dealt with in a logical and progressive manner. Within the UK Police service, the Conflict Management Model (CMM) is a nationally accepted standard of providing such a logical progression. The CMM, including the underlying rationale and supporting explanatory notes, is accessible to all Guernsey Police Officers as a reference document within the policy section of the Force's intranet. The model is also a standing refresher topic on the annual two day Officer Safety Training Programme that all operational staff attend. A copy of this training material has been provided to the CPT.

- it was not evident to what extent the information garnered from complaints made against the police was fed back to inform policing practice (paragraph 9).

10. The Police Professional Standards Department (PSD) utilises information and learning gathered from the investigation of complaints to inform policing practice and, in general terms, this is cascaded by means of bulletins posted on the PSD's intranet site "Learning the Lessons". This site contains learning and trends accrued from both local and national investigations. To further organisational learning, the Head of PSD chairs a working group meeting approximately every six weeks, attended by key representatives across the Force including the staff association, uniformed operations, crime services and the training department. During this meeting, trends and learning opportunities arising from PSD investigations are discussed. Examples of the "Learning the Lessons" bulletins have been provided to the CPT.

Requests for information:

- the comments of the Guernsey authorities on the matter raised in paragraph 10 concerning the independence of persons responsible for carrying out investigations (paragraph 10);

11. The Deputy Chief Officer of Police maintains an intrusive strategic supervision of all complaints made against officers and staff of the Guernsey Police Force. Historically, the size of our jurisdiction and the volume and seriousness of complaints has failed, certainly from a financial perspective, to justify the establishment of a wholly independent investigatory body. In the minority of instances where it has been determined that it would be inappropriate for an investigation to be undertaken by local officers, appropriately ranked detectives from a UK Police force have been drafted into our jurisdiction to conduct such investigations.

12. The Professional Standards Branch with the GBA also has responsibility for overseeing complaints against staff of the GBA. Upon determining whether the complaint may constitute a criminal matter, it will be investigated by the appropriate mandated Agency. In more significant inquiries, the Chief of the GBA has the discretion to call upon the assistance of other authorities, e.g. the United Kingdom Border Agency (UKBA) or Her Majesty's Revenue and Customs (HMRC).

- detailed information on the proposed new law including a code of conduct on investigating complaints, mentioned in paragraph 10 (paragraph 10).

13. The Police Complaints (Guernsey) Law, 2008, has been enacted, which has seen the creation of an independent Police Complaints Commission (PCC). The commencement Ordinance and subordinate regulations are shortly to be laid before the States of Guernsey to enshrine in law misconduct procedures and standards of professional behaviour. The new legislation will provide for mandatory referral of complaints alleging that the conduct of an officer has caused the death or serious injury to some other person, whether in custody or not, or any other description of complaint that may be prescribed under the law. It is the intention of the Guernsey Police to work closely with the PCC and by arrangement to refer all complaints for their independent perusal.
14. The GBA was established on a shadow basis on 27th April 2010 until it is constituted in law and has agency status. At present the GBA Officers, although operationally independent when conducting statutory law enforcement functions, form part of the Established Staff of the Island's Civil Service and are bound by its policies and Code of Conduct. When exercising statutory functions, such as detention of persons under Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (PPACE), officers are compliant with the PPACE Codes of Practice. The effect of the new Police Complaints Law and its application to the GBA will be considered during the move to full agency status.

3. Safeguards against ill-treatment of detained persons

Recommendations:

- detained persons to be expressly informed of the possibility to have access to a doctor. It would be preferable for access to a doctor to be formally guaranteed as a distinct right (paragraph 12);

15. The medical welfare of a detainee is expressly detailed in section 9 Code C of the Codes of Practice and is detailed on the Notice of Rights and Entitlements given to all detainees. The fact that the CPT Report states that no such reference is included in the Notice suggests that, regrettably, the CPT were provided with an earlier version of the document. A current version of the Notice has been subsequently provided to the CPT.
16. GBA custody staff will "risk assess" all detainees in accordance with section 9 of Code C and a doctor will be called if considered appropriate by the custody officer. It is GBA policy that where detainees are suspected of concealing drugs internally, or are under the influence of drink/drugs, a doctor is called immediately. Due to the nature of the offences investigated by the GBA, doctors are called in the majority of cases.

- custodial staff to have access only to the medical information necessary to carry out their duties (paragraph 13).

17. As a result of the concerns raised by the CPT that a detainee's rights of confidentiality were not being observed, a review of the process has been undertaken by Guernsey Police. As a result of this review the doctors' examination notes referred to in the Report are made in triplicate. The original (top) copy remains in the Custody Area Doctor's Register; one copy always remains with the custody record to provide guidance to the Custody staff on the safe detention of a detainee; the third copy is retained by the doctor.
18. In respect of the GBA, medical records are treated as strictly confidential and filed with the Custody record to ensure that the custody staff can monitor the health and well being of detainees, as well as managing potential health risks (i.e. contagious diseases) to other persons who may have contact with the detainee. Due to the nature of many drug related offences investigated by the GBA, where doctors are called, they are asked to assess whether the detainee is fit for detention and questioning, in addition to checking medical conditions. If that detainee is charged, the custody record, including the relevant medical reports, will be passed to the Police custody staff at the point of transfer to the Police for charging. Copies of these documents are also available to the Case team to comply with judicial disclosure.

- the Guernsey authorities to take the necessary steps to ensure that all 17-year-olds detained by the police are treated as juveniles and not as adults (paragraph 14).

19. The recent Children (Guernsey & Alderney) Law 2008 ("the new Children's Law") stipulates that a child is a person under the age of 18 years and determines the venue for dealing with a criminal offence committed by a person under the age of 18 years. However, the PPACE defines a child and young person (section 91) as "the same meaning as in the Children and Young Persons law 1967" – which is under 14 for a child and under 17 for a young person, for the purpose of informing a responsible adult of arrest. PPACE Code C decrees that 17 year olds are treated as adults and can therefore be interviewed without the presence of a parent or guardian.
20. The GBA has taken an administrative view and treated under 18s as young persons and has been applying the additional safeguards set out in Code C of PPACE. The number of actual cases is very small.
21. The Home Department will be actively investigating whether it would be appropriate to seek a legislative change in this area.

Requests for information:

- the views of the Guernsey authorities on the matter raised in paragraph 13 concerning the absence of support for smokers (paragraph 13).

22. It is recognised that detention in police custody can be a stressful experience for some individuals and that this may increase the desire for smokers to smoke. Officers are alert to this, and wherever practical, seek to address those needs, particularly in instances where withdrawal symptoms are evident by supervising a detainee's use of the external caged area immediately outside the custody area, where they can lawfully smoke. Discussions have previously taken place with the Chief Force Medical Examiner (FME) regarding the merits of issuing Nicotine Replacement Therapy but the case to do so has not been considered sufficiently strong enough, particularly as persons are only detained in Police custody for short periods of time.
23. The GBA took advice from HMRC on how best to deal with smokers in custody when the Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005 was enacted. The use of nicotine patches was trialled by HMRC but was not put into practice as there was very limited use of them during the trial period. Based upon that research, the GBA does not provide this facility.

4. Conditions of Detention

Recommendations:

- cells No 1 and 4 at the Police Headquarters in St. Peter Port to be used only as temporary holding places (paragraph 16);

24. The Guernsey Police are satisfied that the two cells in question are only used for short duration holdings but to clarify the situation, they will be classified by the Chief Officer of Police as non-designated, suitable for periods of detention up to 9 hours. We intend to draw the guidance to the attention of the Independent Custody Visitors in order that they may be able to provide an ongoing independent assessment of our adherence to it.

- the Guernsey authorities to take the necessary steps to ensure persons detained at the Police Headquarters in St. Peter Port are given food at appropriate times (paragraph 16).

25. The Guernsey Police make every effort to ensure meals are offered at appropriate times and include variations as required. One would have to accept the critical comments made by the detainees to the CPT delegation during their visit but qualify that by presuming that the delegation took account of how long the persons concerned had been in custody and how long it had been since their last meal. Comments of this nature are not typical or consistent with those made by detainees to the Independent Custody Visitors.

Comments:

- ventilation should be improved in the cells of the Customs Vehicle Clearance Hall, White Rock, St. Peter Port (paragraph 17).

26. Maintenance checks have been carried out and a temperature control problem detected. The annual maintenance of ventilation equipment has also been brought forward and the identified problems have been rectified.

B. Guernsey Prison (Les Nicolles Prison)

27. The Report refers to Guernsey Prison as “Les Nicolles Prison” which is a colloquial term. In order to ensure accuracy where the report refers to the Island’s Prison it should be amended to read “Guernsey Prison”.

1. Preliminary Remarks

Requests for information:

- the comments of the Guernsey authorities on the matter raised in paragraph 19 concerning the reduction of the prison population (paragraph 19).

28. The States of Guernsey has recently introduced a Community Service Sentence through the enactment of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006. The Courts are only able to punish with imprisonment where the offence meets the custody threshold and only imprisonment will be appropriate. The Criminal Justice Working Party is actively looking at alternatives to prison for consideration of use by the Judiciary.

2. Ill-treatment

Requests for information:

- the outcome of the disciplinary procedures regarding the case of alleged ill-treatment referred to in paragraph 20 (paragraph 20);

29. The case against the Officer was proven and an award given. The Officer appealed against the finding. The appeal was dismissed by the Appeals Board.

- the comments of the Guernsey authorities on the matter raised in paragraph 21 concerning the absence of a permanent staff presence in certain accommodation units (paragraph 21)

30. There is a proactive element of risk assessment and management in order to locate prisoners on wings where they are less likely to be bullied. The drive to engage prisoners in more purposeful (and supervised) activity during period of unlock should create a safer environment. The bullying statistics are reviewed regularly and strategy informed by the multi agency Safer Custody Meeting.

3. Conditions of detention

Recommendations:

- the deficiencies referred to in paragraph 22 concerning the upkeep of the prison to be remedied (paragraph 22);

31. The showers on J Wing are now in full working order. The ventilation slats are part of an ongoing refurbishment programme. There will be two additional maintenance staff with the implementation of a "Working Prison Regime" from November 2010.

- all prisoners to be offered a minimum of one hour of outdoor exercise every day, and arrangements (including appropriate clothing) to be made to enable such exercise to be provided in inclement weather (paragraph 23);

32. Suitable clothing has now been made available for use by prisoners and exercise is offered between 08.10 and 09.10 on a daily basis.

- the Guernsey authorities to make every effort to increase the range of activities – work, preferably with vocational value, education, sport, recreation – on offer to prisoners. Further, offending behaviour courses should be developed (paragraph 24);

33. With effect from 1st November 2010, Prison Officer shift patterns have been realigned to allow more staff to be available during the Monday to Friday core "working day". Vocational, educational and sport activity is being increased by the introduction of a "working prison" ethos which includes the construction of a new education block in 2011 and improvements to the gym. Offending behaviour courses are being researched and developed, particularly for female prisoners. At present, 6 courses and 2 boosters are held each year. An enriched programme took place during the summer, which included a football referee course, sport competitions, introduction to music, a variety of art classes and an introduction to beauty therapy. Changing to a working prison will enable the development of work in the Prison to be accredited and be part of the balance between work, learning and skills.

- greater efforts to be made to provide female prisoners with more meaningful activities, and to ensure that they enjoy access to activities on an equal basis to male prisoners (paragraph 25).

34. The Service is considering the introduction of a gender specific strategy for females that incorporates risk assessment based work and training opportunities and focuses on the decency agenda from the recommendations of HM Chief Inspector of Prisons (HMCIP) and women specific standards that apply to Her Majesty's Prisons.

4. Staffing

Comments:

- all accommodation wings should have a staff presence whenever inmates are unlocked from their cells (paragraph 26).

35. To mitigate opportunities for prisoners bullying each other, privacy locks have been fitted throughout the Prison since the CPT visit. All wings are equipped with overt CCTV.

Requests for information:

- the impact of the new staff shift arrangements, including as regards staffing numbers on duty at any one time and the regime for prisoners (paragraph 28).

36. The new staff shift arrangements have now been finalised. With staff being available during the core day routine, staff will be in an improved position of availability to prisoners to increase the existing positive relationships between staff and prisoners. This will be introduced from 1st November 2010.

5. Juveniles

Recommendations:

- for as long as juveniles continue to be held at Guernsey Prison, particular attention to be paid to their education (including physical education) and to offering them a wide range of opportunities to develop their life skills whilst accommodated in the establishment (paragraph 31);

37. All juveniles have Individual Learning Plans on induction. Access to literacy, numeracy, financial literacy and ICT training is available. The craft workshop is to re-open in November 2010 along with an NVQ day course within the kitchen. Regular sport and BTEC sports courses are now available. Art and drama are also available.

- the Guernsey authorities to take the necessary steps, in the light of the remarks in paragraph 31, concerning the separation of juveniles, the training and mix of staff, and the need to treat 17-year-olds as juveniles (paragraph 31).

38. The new Children's Law and Tribunal has led to juveniles residing in the Health and Social Services Secure Centre with appropriately trained staff rather than at the Prison.

Comments:

- the CPT encourages the Guernsey authorities to continue to reflect on the most appropriate place in which juveniles deprived of their liberty should be held (paragraph 30).

39. The Guernsey authorities are aware of the limitations available in relation to the detention of juveniles in Prison, which is utilised as a last resort. The introduction of the new Children's Law and other alternative sentencing options as part of a Criminal Justice Strategy will reduce the need to deprive juveniles of their liberty.

6. Health care

40. Paragraph 36 refers to the "Mental Health Act", this should be amended to "Mental Treatment Law (Guernsey), 1939". Under this Law the definition of a mental hospital is any place provided by the States for the care and treatment of persons suffering mental ailment. When under exceptional circumstances it has been considered necessary to detain a mental patient at the States of Guernsey Prison, a Law Officer has applied to the Royal Court for an order under Article 19 of that law for detention "elsewhere than in a hospital"

41. In paragraph 38 the two references to the "Prison Law of 1998" should refer to the "Prison Ordinance". Similarly, the reference made in paragraph 43 should also be amended to refer to "the Prison Ordinance".

Recommendations:

- the Guernsey authorities to review the arrangements for the attendance of the general practitioner so as to ensure the presence of the equivalent of at least one-third of a full-time post spread out over more days of the week (paragraph 33);

42. A major healthcare scoping exercise was conducted by Manchester University in July 2010 (“the Custodial Healthcare Review”). This comprehensive review has determined that the current level of GP clinics is sufficient for the size and complexity of the Guernsey Prison population. However, the Custodial Healthcare Review does highlight the potential for enhancing prisoner access to a variety of services with the appropriate care pathways in place. The Home Department will invite tenders for GP services in October 2010 and this will include a more robust system for dealing with ‘out of hours’ contact and medication prescription.
43. In conjunction with the implementation of the recommendation from the HMCIP and the Custodial Healthcare Review, the Prison Healthcare team is beginning to proactively establish mechanisms for engaging prisoners in healthcare services.
44. Since the visit by the CPT, the Guernsey Government are pleased to report that the Prison Healthcare Team is now fully established and in addition to the Healthcare Manager, there are two registered general nurses and two registered mental health nurses as part of that establishment.
45. Paragraph 33 refers to “the General Hospital in St Peter Port”. For accuracy this should be amended to read “the Princess Elizabeth Hospital in St Martin’s”.

- steps to be taken to develop a more proactive health care service in the prison (paragraph 33);

46. The Custodial Healthcare Review highlights the potential for greater integrated working between Guernsey Mental Health Services and the Prison Healthcare Team. These recommendations will be discussed between the Home Department and the Mental Health Services and mechanisms established for enhancing the quality of service user care.

- the record drawn up following a medical examination of a prisoner to contain:

i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment),

ii) an account of objective medical findings including a detailed description of all injuries based on a thorough examination, and

iii) the doctor's conclusions in the light of i) and ii). (paragraph 35);

47. The Custodial Healthcare Review has identified an evidence based pathway that can be implemented for the reception and healthcare screening of new prisoners. This will further enhance the screening process that was identified by the CPT as working effectively.

48. At the time of the CPT visit the alleged ill treatment referred to in paragraph 20 was being fully investigated by the Home Department and it should be noted that the references to the prisoner in question was as a direct result of the staff not immediately reporting the noted injury. However, the Prison Healthcare Team will implement the recommendations as made by the CPT to ensure that this does not reoccur.

- whenever injuries are recorded by a doctor which are consistent with allegations of ill treatment made by a prisoner (whether on arrival or at a later stage of his detention), the record to be systematically brought to the attention of the relevant authorities (paragraph 35);

49. Any alleged injuries to prisoners that have not already been subject to an Accident Injury Form would be seen by the nursing staff through the doctor, and a Serious Incident Report/Incident Report would be generated and submitted to the relevant Prison Manager.

- the results of the medical examination referred to in paragraph 35 to be made available to the prisoner concerned and to the prisoner's lawyer (paragraph 35);

50. Results of medical examinations are available to prisoners and their legal representatives on request, in line with this recommendation.

- the Guernsey authorities to take the necessary steps to ensure that prisoners suffering from a mental health disorder are cared for in an adequately equipped hospital environment (paragraph 36).

51. The care of patients suffering from mental health disorders has been included in the Healthcare Scoping Exercise (referred to in the response to paragraph 33 above).

Requests for information:

- current nursing levels in the prison (paragraph 33);

52. The current nursing levels are: one healthcare manager; four nurses (two of which are registered mental health nurses and two are registered general nurses).

- details of the treatment afforded to the prisoner referred to in paragraph 36 since the time of the visit (paragraph 36).

53. The prisoner concerned received treatment from the Mental Health Service and was released on temporary licence into their care to provide the appropriate treatment that continued at the end of her sentence.

7. Other issues

Recommendations:

- the authorities to take the necessary steps concerning contact with the outside world, in the light of the remarks in paragraph 38 (paragraph 38).

54. The timings of visits were determined via a consultative process with prisoners who elected for a shorter duration of 45 minutes. Consideration will be given to introducing the CPT proposal in a new Prison Ordinance, which is currently being drafted.

Comments:

- it would be helpful if the complaints system were clearly explained in the Prison Information Brochure (paragraph 40).

55. The Prison Information Brochure is to be reviewed taking these comments into account.

Requests for information:

- on the implementation of the revised reception and induction procedures (paragraph 37);

56. A revised procedure is now in place enabling the reception process to proceed more fluidly. Full implementation will be introduced on change of staff attendance patterns from 1st November 2010.

- a copy of the annual reports of the Board of Visitors for 2008 and 2009 (paragraph 39);

57. There were no annual reports prepared from the Panel of Visitors for these periods and so the Guernsey Prison is unable to honour to this request. However, the Guernsey Prison is pleased to advise that this is an area that has now been provided with administrative support and the collation of monthly reports into an annual report will be available in the future.

- a list of all authorities outside the Prison to whom prisoners can have confidential access (paragraph 40);

58. Prisoners have confidential access to: the Panel of Visitors, Advocates, Courts, Consulates, Domestic Violence Forums, Samaritans, Drug Concern, Crime Stoppers, Alcoholics Anonymous, AIDs Helpline, Bereavement Helpline, Citizens Advice Bureau, Guernsey Alcohol and Drug Advisory Council, Guernsey Welfare Service, Narcotics Anonymous, Relate, Victim Support and Witness Service, Social Security, Drugs Line and the Immigration Services.

- the comments of the Guernsey authorities on the remarks in paragraph 43 concerning two prisoners who had been removed from association (paragraph 43);

59. Both of the prisoners held under Rule 34 at the time of the CPT visit declined to provide relevant information to enable risk assessments as to their allocation within the Prison. In the event, it is worth noting that both of these prisoners have returned to custody and been managed on residential wings.

- the steps taken to upgrade the Segregation, Care and Progress Unit (SCAPU) (paragraph 44).

60. The Guernsey Prison has advised that additional funds will be available in 2011 to provide safer cell furniture to enhance the environment of the SCAPU.

C. La Perruque House Secure Unit for Children

61. The Health and Social Services Department (“HSSD”) is mandated by the States of Guernsey to advise the States on matters relating to, *inter alia*, the mental, physical and social well being of the people of Guernsey and Alderney. The Department is responsible for: promoting, protecting and improving personal, environmental and public health; preventing or diagnosing and treating illness, disease and disability; caring for the sick, old, infirm and those with disabilities; and providing a range of social services to all age groups including ensuring the welfare and protection of children, young people and their families and ensuring that the best interests of the child shall be a primary consideration.

Requests for information:

- a detailed report on the assessment made of holding a juvenile remand prisoner in the Secure Unit rather than in the prison, including whether the juvenile had to be restrained during his stay in the Unit (paragraph 49);

62. A detailed report on this matter has been provided to the CPT.

- whether the unit has accommodated two young persons at the same time, and whether any conclusion can be drawn from this experience (paragraph 49).

63. The Secure Unit has not yet accommodated two young persons concurrently. However, when this incident occurs, it will be monitored in order to assess the experience and identify areas that may require improvement. The HSSD would be pleased to discuss these matters further with the CPT in due course.

D. Involuntary psychiatric placement

64. Paragraph 60 refers to a “Police Urgency Order” this should be amended to read “Urgency Order”. The same paragraph refers to consultant psychiatrists being able to recall a discharged patient, however this is not an accurate summary of the process. A patient may be recalled from temporary leave of absence. In order to be “recalled” to hospital after discharge the certification process would have to be repeated, including being supported by two medical practitioners and the admission order signed by one of the two Law Officers.

1. Preliminary remarks

Recommendations:

- **the Guernsey authorities to take the necessary steps to ensure that mentally-ill persons are not held in prison or in a police station (paragraph 50).**

65. Paragraph 50 refers to Article 1 of the Mental Treatment Law (Guernsey), 1939 (“the 1939 Law”). This article defines a mental hospital as ‘as place provided by the States for the care and treatment of persons suffering from any mental ailment.’ Article 19 of the 1939 Law allows for detention ‘elsewhere than in a mental hospital’ on order of the Royal Court. The Court must be satisfied that the premises are suitable for the purpose and that proper care will be provided for the patient and his detention there is in his interests (Article 19(3) of the 1939 Law).

66. The HSSD agree with the view expressed by the CPT that it is highly undesirable to use the prison as a place of detention for mental patients.

67. A bid has been made in the States Strategic Planning process to formulate a mental health strategy for the Bailiwick. Part of this strategy will be to review arrangements with the Home Department for people with mental health problems.

68. Under the existing 1939 Law, detention must be in a mental health hospital, unless there has been an Act of the Royal Court authorising the detention of someone somewhere other than a mental health hospital.

69. On 28th July 2010 the States of Deliberation in Guernsey passed the Mental Health (Bailiwick of Guernsey) Law, 2010 (“the 2010 Law”)¹. When the 2010 Law comes into force, it will be possible for the HSSD to nominate certain places as “approved establishments” and, under the 2010 Law, detention can be either in a mental health hospital or a HSSD approved establishment.

Requests for information:

- **the criteria for confining a patient involuntarily in a private house (paragraph 50).**

70. Article 19 of that 1939 Law allows for detention ‘elsewhere than in a mental hospital’ on order of the Royal Court. The Court must be satisfied that the premises are suitable for the purpose, that proper care will be provided for the patient and his detention there is in his interests (Article 19(3) of the 1939 Law); but the provision has not been used for a “private house” for very many years.

¹ The Projet de Loi was also approved by the States of Guernsey on 28th July 2010 and Chief Pleas of Sark on 6th October 2010. It will be approved by the States of Alderney in October 2010. This Projet de Loi will then be sent to Privy Council for Royal Assent.

2. Albecq Acute Psychiatric Ward, Castel Hospital

Recommendations:

- **alternative arrangements to be found, when necessary in the best interests of the child, so that psychiatric patients who are minors are accommodated separately from adults (paragraph 53);**

71. The HSSD agree that it is inappropriate for young people to be accommodated in Albecq Ward. However, it is sometimes necessary for this to happen and in such circumstances the decision to do this is based on what is least inappropriate for the person concerned and often it is a decision that is made in extremely urgent circumstances.

72. If a young person is detained on Albecq Ward they remain for as short a time as possible and are accommodated in part of the ward that can be separated, with its own washing and toilet facilities, sitting room and access to the garden area.

- **a central register to be introduced for the administration of Electro-Convulsive Therapy (ECT) at Albecq Ward (paragraph 56).**

73. Electro-Convulsive Therapy (ECT) is not undertaken on Albecq Ward but it takes place at the Princess Elizabeth Hospital. A new policy regarding ECT has been implemented which puts into practice this recommendation.

Comments:

- **the CPT invites the Guernsey authorities to explore ways to facilitate the recruitment of qualified psychiatric staff (paragraph 57).**

74. The HSSD have noted this comment and can advise that it is regularly exploring mechanisms to facilitate recruitment of staff.

Requests for information:

- **the basic features of the planned new unit, including the timeline for its construction (paragraph 52).**

75. The new unit will include the following facilities: acute mental health ward, outpatient facilities, drug and alcohol services, a base for community mental health teams, Lithium clinic, tribunal rooms for hearings under the new law, day centre/facilities, offices for mental health staff (e.g. managers, doctors and support staff), an assessment and respite ward for people with mental health problems.

76. It is anticipated that work will start on site in 2012 and the unit will be complete in 2014, if the current timescale can be maintained.

3. Safeguards in the context of involuntary placement

Recommendations:

- long-term admission orders such as Certifications, always to be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two; the need for such placements should be reviewed at regular intervals (paragraph 61);

77. The 2010 Law addresses these issues. It has now been approved by the States of Guernsey and Chief Pleas of Sark and is due to be approved by Alderney in October 2010 at which time it will be sent to London for Royal Assent.

78. However, under the current legislation, approval of a certification order by a Law Officer is considered to give additional checks and balances to the system.

- the person or body deciding upon a compulsory admission always to see and hear the person concerned before making the decision (paragraph 61);

79. Whilst the Law Officer signs the admission order he is not responsible for certification; for him to see the patient may imply that he is making a clinical decision, whereas it is not the role of the Law Officer to make an unskilled judgment concerning the state of a person's mental health. Under the current regime it is the two doctors who sign the certification, which certifies the patient as suffering a mental illness of a nature and degree as to require compulsory admission. The role of the Law Officer is to be satisfied that the provisions of the Mental Treatment Law have been complied with.

- a fully-fledged right of appeal against compulsory admission orders to be introduced, without waiting for the new mental health law to be adopted (paragraph 62);

80. The HSSD are currently in the process of setting up the administration procedures for holding Tribunal reviews and Appeal hearings. Tribunal panel members have been identified and confirmed, as have independent Second Opinion Approved Doctors (SOAD's). SOAD's will be called upon as and when any relevant case is brought to the attention of the Mental Health Law Administrator commencing October 2010. HSSD plan to facilitate Tribunal and Appeal hearings in order to test the Tribunal process commencing spring 2011, even if the 2010 Mental Health Law is not by then in force.

- the right to consent to treatment to be enshrined in the new Law on Mental Health, in accordance with the precepts referred to in paragraph 63 (paragraph 63);

81. The HSSD fully support this recommendation and it is pleased to confirm that the right to consent to treatment is enshrined in the new Law.

- Albecq Ward to be inspected by an independent body on a regular basis (paragraph 66).

82. The 2010 Law affords the power to the HSSD to appoint any person to inspect any approved establishment in Guernsey or Alderney; to assess the standard of care provided for patients at any such approved establishment, or elsewhere in Guernsey and Alderney; and to report to the Department upon any such inspection or assessment in such manner as the Department may determine. It is intended that under these provisions this function would be performed by an independent body to ensure there is sufficient scrutiny into the standard of facilities and services.

Comments:

- as regards Holding Orders, an opinion from a second doctor who is independent of the hospital would offer a further, important safeguard in the context of the transformation of voluntary stays into involuntary placements (paragraph 61);

83. Where treatment requiring consent is intended, independent SOAD's have been identified and will be utilised for any relevant cases that arise prior to the enactment of the new 2010 Mental Health Law, commencing October 2010.

- specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment (paragraph 64).

84. Arrangements are in place for people to lodge formal complaints and appropriate literature is available on the ward so that people can make their complaint directly to senior staff or the Minister outside of the ward environment.

Requests for information:

- a copy of the inspection report mentioned in paragraph 66, and in due course, of the relevant action plan (paragraph 66).

85. A copy of this report from the Health and Social Care Advisory Service has been provided to the CPT, the action plan is being formulated and will be forwarded in due course.

**Policy Council
States of Guernsey**

October 2010