



BILLET D'ÉTAT

XX
2007

WEDNESDAY, 26th SEPTEMBER, 2007

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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 26th SEPTEMBER, 2007,** at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
7 September 2007

HOME DEPARTMENT

THE CASH CONTROLS (BAILIWICK OF GUERNSEY) LAW, 2007

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

23rd July 2007

Dear Sir

1. Executive Summary

The purpose of this report is to seek States approval for the introduction of the Cash Control (Bailiwick of Guernsey) Law, 2007 (“the Law”) which is aimed at controlling the cross-border movement of cash. The key objective of this legislation is to disrupt the cash transfer networks which support terrorism, money laundering and all forms of financial crime.

The need for such legislation was highlighted by the Financial Action Task Force (“FATF”) following the 9/11 terrorist attacks on New York and Washington.

The Law will establish a cash control regime within the Bailiwick which will impose a declaration system for cash carried by individuals entering or leaving the Bailiwick, in an amount in excess of €10,000

HM Procureur is recommending a system which broadly mirrors that which operates across the EU and which is:

- Practical to implement, and
- Familiar to most people arriving in the Bailiwick and therefore easy for them to understand.

Further, by mirroring that which already operates across EU countries it will enable Customs to recognise declarations provided in other EU States and so maintain the limit with which people would have had to comply when leaving EU Member States e.g. France and the UK

Introduction

HM Procureur has written to the Department in the following terms:

“Background

Following the events of 9/11 FATF decided to implement a series of special recommendations designed to prevent terrorist financing. Special recommendation 9 is aimed at controlling the cross border movement of cash (by post or physical transportation).

The EU has implemented special recommendation 9 by introducing Regulation No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community. This regulation imposes a declaration system for cash (including bearer negotiable instruments) carried by individuals entering or leaving the Community, in an amount in excess of €10,000. (It does not impose restrictions on cash sent by post.)

The EU Regulation falls into a grey area under Protocol 3, and it is not certain whether or not it is directly applicable to the Bailiwick. The relevant authorities of the other Member States of the EU are taking the view that it does not fall within Protocol 3. In order to comply with the FATF special recommendation 9, the Bailiwick therefore needs to implement legislation that will create a cash control regime.

The proposed Bailiwick cash control regime

The most effective way of introducing a cash control regime in the Bailiwick is to enact a criminal Projet that will apply to the Bailiwick as a whole, as the present Laws regulating the import and export of goods are not Bailiwick wide and will not permit the effective introduction of a Bailiwick cash controls system.

Customs is of the opinion that it will not be practical to regulate cash sent by post (as the FATF special recommendation 9 suggests), and that it would be most sensible to impose a regime similar to the EU regime on the basis that it will–

- *be practical to implement,*
- *be familiar to most people arriving in the Bailiwick and therefore easy for them to understand, and*
- *it will enable Customs to recognise declarations provided in other EU States.*

I agree with this analysis. The cash limit above which a cash control declaration must be made should be €10,000 or any currency equivalent, in line with the EU Regulation. This should make the system more effective, as we will be maintaining the limit with which people would have had to comply when

leaving EU Member States e.g. France and the UK.

A Projet has been drafted (copy enclosed) that will require any individual entering or leaving the Bailiwick to complete a cash control declaration, as directed by Customs, if they are carrying cash (which will include bearer negotiable instruments) in excess of €10,000 (ten thousand Euros), this sum should be able to be amended by Ordinance. If any person fails to complete such a declaration, or falsely completes a declaration they will be guilty of an offence. The maximum penalties for committing such an offence will be the penalties set out in the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, namely forfeiture of the cash, imprisonment of the individual and fines.

The information from the declarations will be recorded, and will only be exchanged with other authorities in strictly defined conditions, these include:

- to enable the Chief Officer of Customs to perform his functions;*
- to comply with any enactment relating to the functions of the Chief Officer;*
- for the purposes of any proceedings in connection with a customs Law or to comply with an order of a court;*
- for the purposes of the investigation, prevention or detection of crime or with a view to the instigation or for the purposes of criminal proceedings;*
- for the purposes of any investigation or proceedings under the Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) Law, 2007;*
- where an officer has grounds to suspect that it relates to any illegal activity, in which case the information may be shared with the competent authority of another country or territory, provided that the authority agrees to provide the Chief Officer with information on a reciprocal basis;*
- with the consent of the person to whom it relates and from whom it was acquired;*
- to an officer or servant of the States for the purposes of enabling that officer or servant to carry out his duties, or;*
- to an officer or servant of the Guernsey Financial Services Commission for the purposes of enabling him to carry out his functions.*

Resources and Human Rights

The Chief Officer of Customs and Immigration believes that there will be a measure of resource implications which will need to be kept under close review so as to ensure the additional demands created by this law can be managed

without detriment to the Service's other primary responsibilities.

These proposals will not contravene the European Convention on Human Rights.

Conclusion

I should therefore be grateful if you would arrange for this proposal to be placed before the States together with a recommendation that the attached Projet de Loi entitled the Cash Controls (Bailiwick of Guernsey) Law, 2007 be approved and that the Bailiff be requested to present a most humble petition to Her Majesty in Council, praying for her Royal Sanction thereto."

7. Resources

The Department concurs with HM Procureur's comments regarding resources.

8. Conclusion

The Department recommends the States:

To approve all the provisions of the Cash Control (Bailiwick of Guernsey) Law, 2007.

The Policy Council, with the concurrence of the Presiding Officer, has agreed that this States Report and the draft Projet de Loi appear in the same Billet d'État.

Yours faithfully

G H Mahy
Minister

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 23rd July, 2007, of the Home Department, they are of the opinion:-

1. That the Cash Controls (Bailiwick of Guernsey) Law, 2007 shall be extended to include the issues set out in that Report.
2. To approve the Projet de Loi entitled "The Cash Controls (Bailiwick of Guernsey) (Amendment) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH IRELAND)
(AMENDMENT) ORDINANCE, 2007**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled "The Social Security (Reciprocal Agreement with Ireland) (Amendment) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

ENVIRONMENT DEPARTMENT

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) ORDINANCES, 2007

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

26th July 2007

Dear Sir

EXECUTIVE SUMMARY

1. Purpose of the report:

This Report proposes alterations to some of the Ordinances approved by the States in 2002 (Billet d'Etat XI, 2002) and 2005 (Billet D'Etat I, 2005), namely:

- The Land Planning and Development (General Provisions) Ordinance
- The Land Planning and Development (Exemptions) Ordinance
- The Land Planning and Development (Environmental Impact Assessment) Ordinance
- The Land Planning and Development (Special Controls) Ordinance
- The Land Planning and Development (Enforcement) Ordinance
- The Land Planning and Development (Appeals) Ordinance

Some of the proposed alterations are of a minor nature and have arisen during the course of drafting as the technical implications of some of the proposals have become apparent. Others are of a more substantial nature and relate in the main to the extension of the proposed Exemptions, the introduction of immunity certificates and the creation of rights of appeal where the original legislation did not make provision. There are, in addition, instances where the Ordinances do not contain provisions that had previously been outlined. Where this has happened, the provisions are of a description that, whilst desirable, are not essential and have significant resource implications. The issue of resources is dealt with in the Department's separate States Report on the Introduction of Planning Fees.

All of the Ordinances have been the subject of public consultation and, together with the Land Planning and Development (Guernsey) Law, 2005, The Land Planning and Development Ordinance (Application to Herm and Jethou), 2007 (agreed in 2005), and

the Land Planning and Development (Guernsey) Law (Savings and Transitional Provisions) Ordinance, 2007 will form the new planning legislation for the Island.

2. The Land Planning and Development (General Provisions) Ordinance, 2007

This Ordinance sets out the provisions for dealing with planning applications. All of the proposed amendments are of a minor nature and have resulted from the drafting process.

Sections 1 and 2 of this Ordinance deal with operations that will require permission where they relate to protected monuments and protected buildings. It was originally envisaged that these operations would be specified in detail; in the event it has been decided to define these operations more broadly in order to ensure that any operation that affects the character of a protected monument or building will require prior consent. Some consequential amendment has been made to the Exemptions Ordinance to ensure that this change does not result in operations that would normally be regarded as de minimus requiring permission.

Sections 7 and 8 of the Ordinance set out the information to be submitted as part of a planning application. The original intention had been to provide specifically for the various types of assessment that the Department might require as part of a planning application, for example, a Traffic Impact Assessment. This, too, has been drafted in a more general manner so as to avoid using a list that might not be comprehensive and thus not covering every eventuality. The Department may only require such additional information 'as it may consider necessary to determine an application for planning permission.'

Changes have also been made to the proposals for property history searches. The procedure originally envisaged has been superseded by the Department's commitment to immunity certificates (made during the course of debate on the 2005 report). These are dealt with in the Land Planning and Development (Enforcement) Ordinance. It will continue to offer property history searches, as it does at the present time, but these do not require special legal provision in order to continue this service.

Proposed provision to set a date for making certain information available to the public has not been included in the Ordinance as this has been superseded by steps the Department has already taken to make this material available on request to interested parties.

3. The Land Planning and Development (Exemptions) Ordinance, 2007

The range and scope of householder exemptions generally exceeds that indicated in the proposals of 2002. This reflects the contents of the general debate on the Department's supplementary report of 2005 and has been the subject of extensive and detailed public consultation.

4. The Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007

It was not originally proposed to specify a prescribed list of cases requiring an EIA to be undertaken in support of a planning application. This has proved impractical as it would leave too much uncertainty for prospective applicants as to whether or not an EIA would be required. The public consultation document for this Ordinance therefore contained two schedules; the first of developments that will always require an EIA, the second of developments that may require an EIA, subject to the Department issuing a screening opinion. This means that applicants will know from an early stage whether an EIA will be required or not.

In relation to EIA undertaken in support of a plan amendment, the provisions have been extended to all policies for EIA development including those in new Plans or Briefs as it would be anomalous to confine them to plan amendments.

5. The Land Planning and Development (Special Controls) Ordinance, 2007

Changes have been made to the proposals for the effect of listing protected monuments and buildings on permissions granted prior to the listing. It was originally intended that the listing would suspend any existing permission and that a new application would have to be made and assessed by the Department. There would therefore be a liability for compensation where permission was subsequently refused. This seemed on further consideration to be unduly onerous and gave rise to the possibility of the Department paying compensation, for which it does not have available resources.

The Ordinance has therefore been drafted so that listing will not supersede an existing permission. Permission will still be required for any operations that need consent under sections 1 and 2 of the General Provisions Ordinance, that would not have needed consent prior to the listing of the monument or building, thus ensuring that the listing will be effective on protecting any special character of a newly listed monument or building. This preserves the existing legal position under the Ancient Monuments and Protected Buildings (Guernsey) Law, 1967.

A number of proposals have not been carried forward into the Ordinances on the basis that, although desirable, they are not essential to the introduction of the Law and would have significant resource implications for the Department if enacted at this time. The Ordinance does not therefore provide for certificates of exemption from listing, for temporary listing and designation, for the compulsory purchase of buildings and monuments at risk or for Conservation Area enhancement proposals.

The proposals include provision for an offence of contravention of a preservation notice. This is considered necessary as otherwise the notice could not be effectively enforced. The provisions also create a right of appeal against preservation orders.

The proposals contain wider powers in relation to Tree Protection Orders as the existing power in the Law did not prove wide enough to achieve the intentions of the proposals for the Ordinance. These powers include a right of appeal on a point of Law to the Royal Court where a TPO has been confirmed contrary to any objections that may have been made against it.

The Ordinance provides that appeals against the listing of protected monuments and buildings should be made to the planning panel as this had not been settled in previous reports.

6. The Land Planning and Development (Enforcement) Ordinance, 2007

The main issue in this Ordinance relates to immunity certificates. These certificates were offered by the Department during the period of public debate on the legislation as the best way of ensuring the protection of those buying property against the possibility of unknowingly acquiring an enforcement liability. Section 48(4) of the Law has been modified to provide that a compliance notice may not be issued where an immunity certificate has been issued. The detail of how such a certificate should be applied for and how it should be dealt with are set out in the Ordinance.

Further changes have been made to this Ordinance to widen the powers to make building regulations as these were too narrow to cover certain provisions under current regulations, to allow for appeals in relation to decisions under the building regulations and to provide for the enforcement of the building regulations.

7. The Land Planning and Development (Appeals) Ordinance, 2007

The content of this Ordinance flows from the decision of the States to create a Planning Panel to deal with planning appeals. Accordingly, the Ordinance draws on the provisions for other Guernsey tribunals to a great extent.

Where earlier Ordinances create new or extended rights of appeal, the provisions deal with the detail of the grounds of appeal and the courses of action open to the tribunal when considering such an appeal.

Because of the technical nature of the building regulations, the Ordinance provides that appeals against building control decisions should be made to an adjudicator.

Provision has been made to enable the Policy Council to delegate certain appeals to an individual panel member where both parties agree; this is intended to give some flexibility to the Panel to manage workload in the future.

Provision has also been made to increase the number of panel members if required. Should the numbers of appeals exceed the initial estimate, this power will also give flexibility to the panel to deal with the situation.

RECOMMENDATIONS:

The Department recommends the States:

To approve the provisions of the Land Planning and Development (General Provisions), (Exemptions), (Environmental Impact Assessment), (Special Controls), (Enforcement) and (Appeals) Ordinances, 2007.

The Policy Council, with the concurrence of the Presiding Officer, has agreed that this States Report and the draft Ordinances appear in the same Billet d'État.

Yours faithfully

David De Lisle, PhD
Minister

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

III.- Whether, after consideration of the Report dated 26th July, 2007, of the Environment Department, they are of the opinion:-

1. That the Land Planning and Development (General Provisions), (Exemptions), (Environmental Impact Assessment), (Special Controls), (Enforcement) and (Appeals) Ordinances, 2007 shall be extended to include the issues set out in that Report.
2. To approve the draft Ordinance entitled "The Land Planning and Development (General Provisions) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.
3. To approve the draft Ordinance entitled "The Land Planning and Development (Plans) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.
4. To approve the draft Ordinance entitled "The Land Planning and Development (Exemptions) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

5. To approve the draft Ordinance entitled “The Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
6. To approve the draft Ordinance entitled “The Land Planning and Development (Special Controls) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
7. To approve the draft Ordinance entitled “The Land Planning and Development (Use Classes) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
8. To approve the draft Ordinance entitled “The Land Planning and Development (Enforcement) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
9. To approve the draft Ordinance entitled “The Land Planning and Development (Appeals) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
10. To approve the draft Ordinance entitled “The Land Planning and Development (Application to Herm and Jethou) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
11. To approve the draft Ordinance entitled “The Land Planning and Development (Guernsey) Law, 2005 (Savings and Transitional Provisions) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.

TREASURY & RESOURCES DEPARTMENT

INCOME TAX

(A) TIME LIMITS FOR RAISING ASSESSMENTS

**(B) LEGAL PROCEEDINGS IN LIEU OF PENALTIES FOR FAILURE TO NOTIFY
CHARGEABILITY TO TAX, FAILURE TO COMPLETE TAX RETURNS AND
THE MAKING OF FALSE STATEMENTS, ETC**

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

21st August 2007

Dear Sir

Executive Summary

The purpose of this States Report is to seek States approval for the inclusion in the Income Tax (Zero-10) (Guernsey) Law, 2007, the drafting of which has already been approved by the States, of additional provisions relating to (a) time limits for raising assessments and (b) legal proceedings in lieu of penalties for failure to notify chargeability to tax, failure to complete tax returns and the making of false statements, etc.

The Income Tax Office is responsible for collecting approximately 83% of the island's revenue annually.

With the introduction of the new economic and taxation strategy, it will become more important than ever that income tax is collected as effectively and efficiently as possible.

As a consequence of this, and thus the importance of his office's work to the financial wellbeing of the island, the Administrator has carried out a review of those sections of the Income Tax (Guernsey) Law 1975, as amended ("the Law"), the main purposes of which are the assessment, collection, enforcement and general administration of income tax. The intention is to make these processes more efficient and to clarify those sections that, by experience, have proven not to be wholly clear or where interpretation has been a matter of dispute.

The Administrator has identified two key areas that need to be addressed to support the implementation of the economic and taxation strategy, and the recommendations of the Treasury & Resources Department are contained in this Report.

A number of other areas of the Income Tax Law are currently under review and a further Report will follow in due course.

Detailed Proposals

(a) Time limits for raising assessments

Under section 75 of the Law, where the Administrator discovers that income that ought to have been assessed has not been assessed, or that an assessment is or has become insufficient, he can make an assessment or an additional assessment, as required, for up to six years after the end of the relevant year of charge.

The Administrator can only raise assessments outside this “six year time limit” if the taxpayer concerned has committed fraud or wilful default.

Section 75 of the Law replicates, in essence, what the position was in the United Kingdom prior to 1989. Subsequent to 1989, the United Kingdom has made no distinction between negligent and fraudulent conduct, and extended the six year time limit to, broadly, twenty-one years.

The Department is of the view that if tax should have been paid then there is little justification for that tax not to be paid, if the failure arose as a consequence of negligent conduct, simply because the year of charge involved predates, by more than six years, the discovery by the Administrator. Furthermore, the introduction of the future economic and taxation strategy, with effect from 1 January 2008, will mean that the business income of most companies will not be taxed until it is distributed/deemed distributed, which may be many years after it was earned. The Department envisages the possibility of errors and omissions arising, which may go undiscovered for many years and considers that this is an appropriate time, therefore, to revise section 75 such that, in the case of negligent conduct, the Administrator should have the right to raise an assessment for a period of up to twenty years after the end of the relevant year of charge. At present, the Administrator has the, unfettered, right to raise assessments for six prior years (i.e. at present for the Years of Charge 2001 onwards).

The Department proposes that the extension of these powers to raise assessments, from six years to twenty years, should apply with effect from the Year of Charge 2001 onwards. This will mean that those persons who have made errors in their income tax returns for Years of Charge up to and including 2000 and who believe, in the absence of fraud or wilful default, that the Administrator would not be able to raise additional assessments on them, would not be prejudiced. Whilst this will mean that it will take fourteen years for the

provision to be introduced in its entirety, the Department believes that this is equitable in the circumstances.

The Administrator has advised the Department that he has encountered cases where there has been fraudulent conduct which has continued for more than twenty years. The Department sees no reason why those persons who commit fraudulent conduct should have their liabilities to income tax limited to the previous twenty years. In those circumstances the Department proposes that the current proviso in section 75 of the Law (that in the case of fraudulent conduct an assessment can be raised for the Year of Charge 1950 or any subsequent year of charge) should be retained.

(b) **Legal proceedings in lieu of penalties for failure to notify chargeability to tax, failure to complete tax returns and the making of false statements etc.**

- (i) Where a person has failed to notify his chargeability to income tax or has failed to deliver a return of income or any other return, form or schedule (which would include, with effect from 1 January 2008, documentation relating to a tax liability under the distribution/deemed distribution basis) which he has been required to submit under any provision of the Law or any Ordinance or Regulation, he does not, at present, commit a criminal offence, unless the act or omission is part of a scheme to cheat or defraud the States of income tax, and is prosecutable as such. There have been occasions where the imposition of financial penalties by the Administrator in such circumstances has not been sufficient incentive to encourage certain individuals, companies and employers to comply with their obligations under the Law. As mentioned earlier, more than ever before, with effect from 1 January 2008, the Island's revenues will be heavily reliant on timeous and accurate reporting of information to the Administrator.

The Department believes that, in order to ensure the effective administration of the income tax regime, and so the prompt collection of revenue, the Law should provide as follows: a person who makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading, or dishonestly or otherwise recklessly makes a statement which is false, deceptive or misleading, or produces or causes or permits to be produced any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading, or, dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading, or fraudulently does or omits to do any other act whatsoever, in any case where the act or omission is in respect of information which is material to liability to tax, should be guilty of an offence. Furthermore, it should be an offence for a person, without reasonable excuse, to fail to give notice to the Administrator that he is chargeable to tax, or to fail to provide a return of

income or any other form, schedule, notification or other document which is required to be provided by or under the Law.

- (ii) Under section 201 of the Law, if a person knowingly makes a false statement or representation, or commits fraud in relation to income tax, that person may be criminally prosecuted in lieu of the Administrator taking penalty proceedings. Whether or not a prosecution proceeds is a matter for the Crown Officers to decide, not the Administrator, though the Administrator's views will necessarily inform that decision.

Cases do arise, from time to time, in which a prosecution would not necessarily warrant nor justify a full Royal Court trial on indictment, which is presently the only option under section 201 of the Law. As a consequence some cases do not proceed under section 201 to trial. The Department does not consider this to be desirable.

The Department proposes, therefore, that section 201 of the Law be amended to allow criminal proceedings to be instituted either summarily before the Magistrates' Court or on indictment before the Royal Court. It will be for the Law Officers to determine whether the circumstances warrant trial before the Royal Court, but it is anticipated that such trial would only be utilised when the amount of tax in issue is substantial, or where the accused is charged with several offences, or where the circumstances warrant the possibility of a prison sentence, and/or a fine of greater than that imposable by the Magistrate's Court. The length of the sentence will depend upon the amount of tax evaded, the period of time involved, the effort made to conceal the evasion, whether others were drawn in and corrupted, the extent, if known, of the offender's personal gain, and, of course, the character of the offender and whether there was a guilty plea. Relevant also will be the amount of money recovered.

The Department is also proposing that the penalty which may be imposed upon conviction in summary proceedings before the Magistrates' Court should be a maximum of two year's imprisonment or a fine not exceeding twice the maximum penalty which the Administrator could have imposed, or to both such imprisonment and such fine.

In proceedings on indictment before the Royal Court, the Department proposes that the Royal Court's power to impose a fine be increased to an amount not exceeding four times the maximum penalty which the Administrator could have imposed (presently the Royal Court is restricted to imposing a fine no greater in amount than that which the Administrator could have imposed). The Department proposes that the Court's power of imprisonment, under section 201, be set at five years (at present it cannot exceed 1 year).

The Law Officers have been consulted on the criminal law aspects of these proposals, and concur with them.

The Policy Council, with the concurrence of the Presiding Officer, has agreed that this States Report and the draft Projet de Loi appear in the same Billet d'Etat on the grounds of urgency to enable the 'Zero-10' measures to be introduced and effective from 1st January 2008.

Recommendation

The Department recommends the States:

1. To approve the proposals concerning income tax as set out in this Report.
2. To approve the Projet de Loi entitled "The Income Tax (Zero 10) (Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council, praying for Her Royal Sanction thereto.
3. Considering it expedient in the public interest so to do, to declare, pursuant to section 1 of the Taxes & Duties (Provisional Effect) (Guernsey) Law 1992 that the said Projet de Loi shall have effect from 1st January 2008, as if it were a law sanctioned by Her Majesty in Council and registered on the records of the island of Guernsey.

Yours faithfully

L S Trott
Minister

(NB Since the preparation of this Report the Law Officers have advised that it may be preferable for the recommendations concerning the increase in penalties for the making of a false declaration (now to be punishable before both the Magistrate's Court and Royal Court) and the revision of section 201 of the 1975 Law to come into force on the date of registration of the Law before the Royal Court rather than on the 1st January, 2008 by using the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992. The penalty provisions in question are dealt with in section 51 of the draft Projet de Loi entitled the "Income Tax (Zero 10) (Guernsey) Law, 2007", which is printed in the accompanying brochure.

An amendment will be laid before the States to revise section 60 of that Projet de Loi, which deals with the commencement of the Law, to that effect.)

(NB The Policy Council supports the proposals.)

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated 21st August, 2007, of the Treasury and Resources Department, they are of the opinion:-

1. To approve the proposals concerning Income Tax set out in that Report.
2. To approve the Projet de Loi entitled “The Income Tax (Zero 10) (Guernsey) Law, 2007” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council, praying for Her Royal Sanction thereto.
3. Considering it expedient in the public interest so to do, to declare, pursuant to section 1 of the Taxes & Duties (Provisional Effect) (Guernsey) Law 1992 that the said Projet de Loi shall have effect from 1st January 2008, as if it were a law sanctioned by Her Majesty in Council and registered on the records of the island of Guernsey.

PROJET DE LOI

entitled

**THE GUERNSEY BAR AND OVERSEAS LAWYERS
(BAILIWICK OF GUERNSEY) LAW, 2007**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the Projet de Loi entitled “The Guernsey Bar and Overseas Lawyers (Bailiwick of Guernsey) Law, 2007” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

POLICY COUNCIL

ECONOMIC & TAXATION STRATEGY OUTSTANDING ISSUES

Executive Summary

Following consideration of Policy Council Reports contained in Billets XI of 2006 and XIV of 2007, and a Treasury and Resources Department Report contained in Billet XIX of 2007, the States resolved to introduce a range of measures for the purpose of implementing the island's future economic and taxation strategy. The object of this Report is to seek States' approval for the introduction of a number of further measures and clarification on certain other issues including those that have arisen as a consequence of a period of public consultation, to ensure that the strategy will be fully implemented with effect from 1 January 2008.

Taxation of non-resident directors' fees

Under the provisions of the Income Tax (Guernsey) Law 1975 ("the Law"), certain collective investment schemes (funds) are able to obtain exemption from Guernsey tax, provided a number of conditions are satisfied and on the payment of an annual fee (currently £600 but subject to review). These arrangements will continue after 1 January 2008 as these collective investment schemes, of which there are currently approximately 650, were not regarded as a harmful tax regime by the EU Code of Conduct Group.

The directors of such collective investment schemes are themselves exempt from Guernsey tax on any emoluments (salaries, fees, etc) that arise to them if they are non-resident, whereas Guernsey resident directors are subject to Guernsey tax in the usual way.

These matters were amongst those that were raised during the consultation process. Having considered the various arguments for and against any change, the Policy Council believes that it would not be in Guernsey's best interests to disturb the current arrangements and thus considers that the emoluments of non-resident directors of collective investment schemes should remain free of Guernsey tax, i.e. as at present.

Furthermore, the Policy Council has formed the view that for both consistency and competitiveness, non-resident directors of all Guernsey companies, and not merely those companies that are collective investment schemes, should be treated equally. Consequently the Policy Council believes it would be appropriate for emoluments arising to any non-resident director to be free of Guernsey tax in the future. It is considered that such a change would have minimal impact on Guernsey's tax revenues as statistics show that the large majority of non-resident directors of Guernsey companies are, in any event, already able to receive their emoluments free of tax under the existing legislation.

Deemed distributions of:

- (a) **Company profits on the death of a shareholder**
 - (b) **Profits arising prior to 2008 on which tax has not been paid**
- (a) Company profits on the death of a shareholder

Arising from the States Resolution on Billet XIV of 2007, on the death of a shareholder accumulated, undistributed, profits will be deemed as distributed for income tax purposes, as a consequence of which a charge to income tax will arise. In the States Report, however, it was stated that:

“It is recognised ... that this could cause difficulties where those undistributed profits have been invested in business assets and consequently it is proposed that a form of “rollover” relief be introduced to cater for such situations.”

The purpose of a “rollover” relief is to defer the charge to tax to some future date. The Policy Council proposes that the Administrator be given discretion to defer the tax charge where, if he were to insist upon payment at that time, it could cause significant difficulties to the continuing operation of the company’s business, for example where undistributed profits have been reinvested in illiquid assets used in that business.

Clearly, companies and their advisers will wish to know the circumstances in which the Administrator will exercise that discretion (for example shares passing to a spouse on the death of a shareholder or shares in joint ownership), and it is intended that he will issue a Statement of Practice explaining those circumstances.

- (b) Profits arising prior to 2008 on which tax has not been paid

On occasion, if a company has no assets in Guernsey and it defaults on its tax liability, collection of that liability will be frustrated and the tax may have to be written off as uncollectible as there is no mechanism, in the existing Law, for collecting tax due from the persons controlling the company.

Under the corporate tax changes to be introduced with effect from 1 January 2008, the position regarding undistributed company profits for all periods up to 31 December 2007 is that any distribution or deemed distribution made out of those profits will be treated as having suffered tax at 20% and no further charge will arise upon Guernsey resident shareholders.

Clearly, if a company has not actually settled its tax liability on profits arising to 31 December 2007, it will secure a financial advantage for both the company and its Guernsey resident shareholders. Therefore, as a corollary to the introduction of the distribution / deemed distribution basis of taxation, the Policy

Council believes it would be appropriate for any undistributed profits as at 31 December 2007 on which Guernsey tax is due but has not been paid, to be deemed as distributed on 1 January 2008, and thereby brought into charge to tax in the assessment of the Guernsey resident shareholders, unless the Administrator is satisfied that appropriate arrangements have been made, or will be made, by the company to satisfy the outstanding tax liability.

Taxation of land and property in Guernsey

In Billet XIX of 2007, the Treasury & Resources Department proposed, and the States duly resolved, that:

“... with effect from 1 January 2008 profits arising to a company from the business of property development and exploitation of land in Guernsey should ... be taxed at 20% ...”

Since then, further consideration has been given to what should be covered by the term “property development and exploitation of land”, and discussions have been held with interested parties.

Arising from this review period, the Policy Council believes that, for the avoidance of doubt, the term “property development and the exploitation of land” should include income derived by a company from the extraction and subsequent sale of solid materials (e.g. stone, sand and aggregate) from land in Guernsey.

The Policy Council also wishes to point out that, as highlighted in the Treasury & Resources Department’s Report contained in Billet d’État XIX of 2007 (at page 1554 under “Future work relating to land and property”) work is ongoing in connection with the exploration of other possible options by which revenues could be raised from land and property in the island.

Taxation of companies involved in money lending, hire purchase, etc

In Billet XIV of 2007, the Policy Council proposed, and the States duly resolved, that:

“The 10% rate of tax should apply only to those companies which carry out “banking activities”.”

Following the recent consultation process, the Policy Council considers it appropriate to extend the 10% rate of tax to companies other than banks if they carry on what are, essentially, the same activities, such as the business of money lending, lease purchase, hire purchase and similar, financing arrangements.

It is believed that this proposal will:

- ensure that banks are not competitively disadvantaged as compared to other companies carrying on similar activities; and

- discourage the transfer of income streams that would be subject to the 10% rate, if carried on by a bank, into companies that would otherwise be chargeable at the 0% rate.

Should, in the future, the States wish to revise further the extent to which companies will be chargeable at the 10% rate, it will be able to do so by Ordinance.

Transitional provisions dealing with business losses that have arisen prior to 2008

In Billet XIV of 2007, the Policy Council proposed, and the States duly resolved, that under the distribution basis, business profits that have not been distributed could be reduced by subsequent business losses. What has not been addressed to date, however, is how losses available for carry forward as at 31 December 2007 should be dealt with under the distribution basis. For a company which is controlled by Guernsey residents, or a company that is otherwise resident in Guernsey, under the Law as it stands at present such losses would be available to off set against future profits from the same business. The reason for this is that had there been profits – not losses – those profits would have been taxed in Guernsey. It is proposed that this should not be disturbed.

Where Guernsey residents hold non-controlling (minority) interests in a company that is not otherwise resident, however, it is proposed that any losses that existed as at 31 December 2007 should not be available to be carried forward for offset against future profits (because, had those losses been profits, those profits would not have been taxed in Guernsey).

Exceptionally, however, where the losses arose to such a company from a business carried on in Guernsey, those losses would be treated as available to carry forward for offset against future profits of the same business.

With appropriate adaptations, it is proposed that the same principles should also apply to any excess management expenses of investment companies, which are available to carry forward at 31 December 2007.

Tax capping

- (a) **Possible application of cap to worldwide income**
- (b) **Possible reduction of total tax payable from £250,000**

Background

It is the case that, throughout the world, there are a significant number of wealthy individuals who will seek to move to jurisdictions that offer lower levels of tax than their home jurisdiction. Guernsey has, of course, offered an attraction for such individuals for many years but there is a perception that, for very wealthy individuals, more could be done to attract them, by offering a facility to cap the overall amount of tax they pay, as is the case in other jurisdictions, such as Jersey and the Isle of Man.

At present, the Law provides no mechanism by which the tax liability of individuals can be capped.

Following consideration of the Policy Council's report in Billet XI of 2006, the States resolved to introduce a tax cap that would have the effect of limiting to £250,000 the tax liability for individuals on their non-Guernsey source income.

In May 2007 (Billet XIV of 2007) the States further resolved that the cap should apply equally both to individuals and to married couples (i.e. a married couple, both of whom were independently wealthy, would not be required to pay £250,000 each before having their aggregated incomes capped). In addition, the States agreed that the cap should be apportioned in the year of arrival and departure (so that if, for example, a wealthy new resident arrived on 1 July, the cap for that year would be £125,000 rather than £250,000).

(a) Possible Application of Cap to Worldwide Income

Following the consultation meetings that were held in March and April 2007, a number of representations were received that a cap set at a level of £250,000 would be too high, both in real terms and having regard to the levels set in Jersey and the Isle of Man, and would be of limited benefit unless it applied to worldwide income (rather than non-Guernsey source income, in accordance with the States' Resolution of June 2006).

Whilst the Policy Council has, as a consequence, considered the possibility of extending the cap to worldwide income, it has rejected this at this time (although this could be renewed in the light of experience) on the grounds that it would then apply to a number of existing Guernsey residents and hence result in a direct reduction in existing revenues. Furthermore, because from 1 January 2008 tax would arise on the profits made by most Guernsey companies only on the basis of distributions/deemed distributions, the existence of a tax cap that applied to those profits would encourage the "rolling up" of profits over a number of years in order for them to be distributed in one year with the result that the cap would then be applied (which would lead to an additional, and possibly significant, loss of revenue). However, it may be possible at some future stage to consider whether the issue may be addressed by introducing a form of averaging of distributed profits in order to counter this particular anomaly.

(b) Possible Reduction of Total Tax Payable from £250,000

The Isle of Man has a tax cap in existence. The level is currently set at £100,000 for an individual and £200,000 for a married couple, but the cap does apply to worldwide income.

In Jersey, there are already in place provisions which limit a persons liability as follows:

Non-Jersey Source Income;

First £1,000,000	20% = £200,000
Next £500,000	10% = £ 50,000
Balance	1%

Statistical information, extracted from the Guernsey Income Tax Office database, suggests that if a cap was introduced at a level of, say, £100,000 on non-Guernsey source income (rather than the £250,000 proposed), the immediate, and minimum, loss to the island's revenues would be in the region of £250,000 (taking into account double tax relief and personal allowances).

By contrast, the indications are that the present proposal, to introduce a cap of £250,000, would lead to no immediate loss.

It is important to appreciate, however, that the above represents the minimum reductions in tax revenues and there are likely to be additional losses in practice.

This is because, at present, many island residents hold income streams through companies, and Income Tax Office records show only income that is taxed in the hands of the individual personally, without any link to the income received by companies under their ownership.

As the cap will apply to non-Guernsey source income only, there are two principal types of income that are likely to be affected:

- non-Guernsey trading income;
- non-Guernsey investment income.

Experience within the Income Tax Office suggests that, in the majority of cases, non-Guernsey trading income is likely to have suffered a level of taxation elsewhere and so the amount of Guernsey tax that would then arise on that income (after allowing double taxation relief) is relatively low (and very often nil).

By far the most significant income stream is non-Guernsey investment income. Whilst it is true that some non-Guernsey investment income will still have overseas taxes deducted (such as dividends and rental income) many sources do not (such as bank interest, income from bonds, etc). As, at present, there is no reliable way of knowing to what extent existing Guernsey residents would be able to take advantage of a tax cap in relation to the income of companies in

their ownership, the potential loss to the island's revenues of introducing a tax cap at any level is incapable of accurate estimation.

Proposing that the cap be introduced at a level of £250,000 could, therefore, lead to some loss of tax revenue but as it would be equivalent to non-Guernsey source income of £1,125,000 per annum it was considered that the number of existing Guernsey residents that would be in a position to be able to take advantage of the cap would be relatively few. Clearly, however, the lower the level at which the cap is set, the greater is the likelihood that more existing and/or new Guernsey residents could take advantage.

In view of the fact that reducing the level of the proposed cap from £250,000 could give rise to additional reductions to States' revenues, the Policy Council believes no further reduction is justifiable, at this time.

One of the consequences of the introduction of the "distribution basis" is that, with effect from 1 January 2008, an individual who holds shares in a company will be taxed on the relevant proportion of that company's investment income, (subject to de-minimis rules) irrespective of whether that income was distributed.

As indicated above, it is considered that the greatest risk to the island's revenues, from reducing the level of the cap, would arise from non-Guernsey investment income, rather than non-Guernsey trading income.

As a consequence, once the income tax assessing programme has been completed for the year 2008, statistical information should be available to the States that would assist in accurately forecasting the likely effect on States' revenues if the tax cap was to be reduced.

The Policy Council proposes, therefore, that, once more reliable statistical information is available for the year 2008, and having monitored experience elsewhere, the level of the cap and the nature of the income to which it is to apply would then be re-evaluated, to determine whether it could be reduced without having a significant impact on tax revenues. Part of this evaluation process would entail the possibility of introducing a form of averaging of distributed profits to counter the difficulty associated with the extension of the cap to worldwide income, as outlined in section (a) above.

It should be appreciated, however, that reliable statistical information for the calendar year 2008 is unlikely to be available until the middle of 2010. As a consequence, if it was then considered appropriate to reduce the cap, the first year for which it is likely to have an effect would be 2011.

As part of the review in connection with high net worth individuals and the tax capping proposal, it is apparent that there is merit in also considering the basis on which those individuals who are resident but not solely or principally resident

in Guernsey are subject to income tax in the island. The reason for this is that Income Tax Office statistics show that a significant number of residents in this category pay only modest amounts of income tax and the Policy Council believes this needs to be addressed. Consequently a staff level working group will be considering this category of resident individual and reporting to the Treasury and Resources Department in due course. Following a period of consultation with interested parties, proposals will be brought to the States by the Treasury and Resources Department.

Recommendations

The Policy Council recommends the States to

1. To approve the proposals concerning the Economic and Taxation Strategy set out in this Report.
2. To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

M W Torode
Chief Minister

20th August 2007

(NB The Treasury and Resources Department supports the proposals.)

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 20th August, 2007, of the Policy Council they are of the opinion:-

1. To approve the proposals concerning the Economic and Taxation Strategy set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

POLICY COUNCIL

LEGAL AID

1. Executive Summary

This report is the fourth report on the provision of a publicly funded system of legal aid for the Bailiwick since the States agreed to establish such a scheme in July 2001. The recommendations set out in this report follow directly from the States Resolutions of 26th May 2005.

The Report addresses the following matters. First, it provides an analysis of the advantages and disadvantages of a number of models for the future delivery of legal aid and compares the costs of the various models.

Second, it seeks States approval to award contracts for the provision of legal aid services to a number of firms of Advocates, subject to the successful outcome of post-tender negotiations, and details an estimation of the cost of providing legal aid under such a three year contractual arrangement.

Third it seeks States approval to progress detailed post-tender negotiations with the selected firms to ensure that legal aid is provided in the most cost-effective manner whilst maintaining a good standard of legal representation for those receiving legal aid.

In seeking States approval to award legal aid contracts for the provision of legal aid the Policy Council is affording the private Bar a further opportunity to demonstrate that it is able to deliver legal aid which provides those benefiting from publically funded legal representation with a high standard of representation and at a cost to the States that remains affordable, that is not significantly more expensive than other options for delivering legal aid, in particular the Public Defenders' Model which the Policy Council has considered but agreed not to pursue at this time.

Fourth, it seeks States approval for the two full-time supernumerary posts within the office of the Legal Aid Administrator to be made permanent posts. Finally, it seeks approval for such legislation as may be necessary to give effect to the foregoing issues.

The Policy Council anticipates that the statutory legal aid scheme under the provisions of the Legal Aid (Bailiwick of Guernsey) Law, 2003 will come into force no later than 1st December 2007.

2. Background

On 26th May 2005 the States resolved:

- “1) *To approve the establishment of the Office of Legal Aid Administrator as proposed in the Report (as set out in paragraphs 5 (b), (d), (e), (f), (h),*

(i) and (j))

- 2a) *To authorise the Policy Council to negotiate with the Guernsey Bar regarding the basis for, and rates of remuneration in respect of publicly funded legal aid work and to report back to the States on the outcome;*
- 2b) *To direct the Policy Council to report to the States with recommendations, including an estimation of costs, for all or any of the models for the delivery of legal aid;*
- 3) *To require Departments proposing new legislation to indicate any likely impact on the proposed Legal Aid Fund as a direct or indirect result of the proposals; and*
- 4) *To direct the preparation of such legislation as may be necessary to give effect to the foregoing.”*

The Policy Council appointed Deputies Bell, Parkinson and Sirett to the Legal Aid Steering Group (“the Steering Group”) to negotiate with the Guernsey Bar regarding the basis for, and rates of remuneration in respect of publicly funded legal aid work.

This report recommends the appointment of a Statutory Official and details the outcome of negotiations and the Policy Council’s recommendations, including an estimation of costs, for all or any of the models for the delivery of legal aid.

3. Legal Aid Costs

In the States Report considered by the States on 26th May 2005, the Policy Council indicated that its proposed changes to how both the financial and legal merits of an application for legal aid would be assessed should reduce the overall costs of civil legal aid. As set out in Table 1, the overall expenditure on civil legal aid reduced by 29.4% from 2005 to 2006 and it appears that the majority of the savings were as a direct result of refocusing the award of legal aid to persons most in need and where the legal merits of the application were good.

The increased cost of criminal legal aid appears to be linked to a number of serious offences, including a number of complex drug importation cases and two cases involving an unlawful killing. The Policy Council and the former Advisory and Finance Committee have always indicated that it is very difficult to control this area of legal aid expenditure as it will always be linked to offending.

Administration costs in 2006 have increased due to increases in rent and salaries.

The amount of money recovered by the Administrator against assets secured or preserved continues to increase. It should be noted that prior to 2005 very little had been recovered and therefore the 2005 figure was based on recoveries from legal aid awards made since January 2002 (that is, when civil legal aid was introduced). The 2006 figure

is largely based on recoveries against legal aid granted in 2005 and 2006.

Table 1 – Comparison of Legal Aid Spending 2005/2006

Area of Expenditure	Spending		Percentage Change
	2005	2006	2005 to 2006
Administration	£128,965	£151,932	+ 15%
Civil Legal Aid	£851,460	£674,448	- 26%
Criminal Legal Aid	£737,870	£986,419	+ 25%
Recoveries	£171,697	£128,205	- 34%
TOTAL	£1,546,598	£1,684,594	+ 8%

4. Models for the Delivery of Legal Aid

The Policy Council is committed to ensuring that the need to provide publicly funded legal advice and assistance for those of limited means is appropriately balanced against ensuring that taxpayers receive value for money from the services they fund. This balancing process has been at the heart of all the decisions which the States have been asked to make since it was first asked to approve the creation of a legal aid scheme in 2001.

Indeed, when the States was asked to approve the Legal Aid (Bailiwick of Guernsey) Law, 2003 the then Advisory and Finance Committee's rationale for including section 19, which enables the States to make an ordinance under the Law to enable an authorised lawyer who is providing legal assistance under the provisions of a Scheme, effectively and lawfully to represent a legally assisted person before a court exercising jurisdiction within the Bailiwick, was to ensure that should the private Bar be unable to provide legal aid representation to a standard and/or at a cost which achieved this underlying principle the States could employ lawyers, who may or may not be Advocates, to provide legal aid representation under the Scheme.

Before commencing its negotiations with the Guernsey Bar, the Steering Group identified the following possible options for the delivery of legal aid in the Bailiwick

- (a) Private-Practice Model
- (b) Contractual Model
- (c) Public Defenders' Model
- (a) Private-Practice Model**

This model was adopted since the inception of a publicly funded system of legal aid in September 2001. It allows all practising Advocates to undertake all areas of legal aid work which they chose to do. The current model does not include any system of accreditation for Advocates and the Advocates are remunerated at the same hourly rate,

currently £167 per hour, regardless of experience.

The approach was favoured when legal aid was established as it facilitated an early commencement date and broadly reflected the pre-existing *pro bono* legal aid scheme. It also enabled the Administrator to focus his attention on the framework for delivering legal aid without having to negotiate with the Bar and/or individual Advocates or firms of Advocates regarding levels of remuneration.

(i) Advantages

The private-practice model does offer a number of advantages as it provides:

- A larger pool of Advocates than could be achieved under any other model. In addition, it allows for Advocates who specialise in a particular area of law to undertake legal aid work as and when the need may arise.
- Sufficient cover to deal with issues of conflict and/or where there are multiple defendants in a criminal case or parties in a civil case who qualify for legal aid. Similarly, it distributes the burden of providing 24 hour cover to provide advice and assistance for persons detained by the Police or Customs without placing a heavy burden on any one firm.
- Advocates undertaking legal aid work are also representing private clients, the legal aid scheme undoubtedly benefits from the skills and expertise that the Advocates have developed elsewhere in practice.

(ii) Disadvantages

However, this approach has a number of disadvantages, including:

- It is likely to prove more costly than the other two options as the degree to which costs can be controlled is very limited as those Advocates undertaking legal aid are employed within a commercial and competitive business environment and will be required by their employing firms to contribute to the profitability of the firm.
- It could be seen to favour those Advocates who are, for example, less experienced as it is likely that they may take longer to prepare cases. That is, a payment system based on an hourly rate does not necessarily encourage efficient working. An alternative approach would be to make payments on the basis of fixed fees. That is, an advocate would get a set fee related to the type and/or complexity of a case. For example, a guilty plea in the Magistrate's Court would be paid at one fixed rate and a not guilty plea at a higher rate.
- Since publicly funded legal aid was introduced locally, the majority of advocates undertaking this area of work have been advocates with five or less years' call. Whilst this does not appear to have resulted in any inequality of arms for defendants it has not necessarily been cost efficient in regards legal aid

expenditure.

- Private practice firms are commercial bodies and therefore will always have to consider profit margins. This will inevitably result in a tension between the commercial needs of the private practice Advocates and the desire of government to control and, where appropriate, limit the costs of legal aid.

(b) Contractual Model

A contracted or franchised service is broadly based on the private practice model but the private practices select to provide legal aid and therefore many of the advantages and disadvantages outlined above would, to a greater or lesser extent, apply.

(i) Advantages

As with the private-practice model a contractual model would provide a sufficiently larger pool of Advocates and it can offer the following additional advantages:

- It allows for Advocates who specialise in a particular area of law to undertake legal aid work as and when the need may arise.
- It provides sufficient cover to deal with issues of conflict and/or where there are multiple defendants in a criminal case or parties in a civil case who qualify for legal aid. Similarly, it distributes the burden of providing 24 hour cover to provide advice and assistance for persons detained by the Police or Customs without placing a heavy burden on any one firm.
- Advocates undertaking legal aid work are also representing private clients, the legal aid scheme undoubtedly benefits from the skills and expertise that the Advocates have developed elsewhere in practice.

(ii) Disadvantages

However, this approach has a number of disadvantages, including:

- Whilst there is an opportunity to control costs more than under the Private Practice Model the issues of commercial and business competitiveness and profitability will remain as significant driving forces for those firms holding a legal aid contract.
- It could be seen to favour those Advocates who are, for example, less experienced as it is likely that they may take longer to prepare cases. That is, a payment system based on an hourly rate does not necessarily encourage efficient working. An alternative approach would be to make payments on the basis of fixed fees. That is, an advocate would get a set fee related to the type and/or complexity of a case. For example, a guilty plea in the Magistrate's Court would be paid at one fixed rate and a not guilty plea at a higher rate.

- Since publicly funded legal aid was introduced locally, the majority of advocates undertaking this area of work have been advocates with five or less years' call. Whilst this does not appear to have resulted in any inequality of arms for defendants it has not necessarily been cost efficient in regards legal aid expenditure.
- Private practice firms are commercial bodies and therefore will always have to consider profit margins. This will inevitably result in a tension between the commercial needs of the private practice Advocates and the desire of government to control and, where appropriate, limit the costs of legal aid.

In respect of overall costs, a contractual model would provide the States with a greater degree of certainty, that is, the contracts would be on the basis that the contracted firms would undertake to provide legal aid services to all qualifying clients. However, there may be difficulties in reaching a satisfactory agreement as it would be impossible to predict how much legal aid work would be required in any one year. Further, it would be necessary to have sufficient contracts to ensure that there was adequate provision to address issues of conflicts of interest and/or the need for separate representation for multiple parties.

Finally, this approach may also limit the States options and/or negotiating strength at the end of the contract period if contracting with a single or primary service provider.

(c) Public Defenders' Model

The Public Defenders' Model delivers legal aid by lawyers who are employed directly by the state at fixed salaries for the delivery of a service. As with the other models there are strengths and weaknesses in such a system.

This model is in use in a number of jurisdictions, including England and Wales (on a pilot basis) and in Scotland. The experience of other countries suggests that there is evidence in favour of adopting a mixed system incorporating a Public Defenders' scheme where the strengths of one delivery model can work to counteract the weaknesses of others. Thus the salaried lawyer would be required to maintain results which were at least as good as those achieved by private practice, and private practice would be required to be cost effective in comparison with the Public Defenders' model. However, in considering the experience of other jurisdictions it must be noted that the legal aid rates paid under an equivalent Private Practice model are significantly less than those paid to Guernsey Advocates undertaking legal aid work (see appendix 1).

The Public Defenders' model would have to ensure that:

- (a) The States was able to meet its statutory and international obligations namely:
 - That people arrested and held in custody have the right to consult a lawyer privately at any time; and

- A legally aided person has a right to defend himself in person, or through legal assistance of his own choosing, or; if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.
- (b) Legally aided persons receive a fair hearing at each stage in the justice process; and in particular that they can state their case on an equal footing with the prosecution.
- (c) The interests of the legally aided person are protected in that he has access to a fair trial.
- (d) The legally aided person has confidence in the system, and that the system facilitates his or her effective participation in the process.

There are few examples of such models being operated other than in criminal law matters and it appears that there are no jurisdictions where publicly funded legal aid is solely or indeed principally provided by such a model. It has therefore been difficult to evaluate how effective such an approach is in delivering publicly funded legal aid. Indeed, the majority of models provide some but not all of criminal legal aid through a Public Defenders' scheme. However, although Guernsey would be entering what is somewhat uncharted territory and it is unlikely that the absence of the benefit of others' experience would add to the difficulties of establishing such a model.

(i) Advantages

This model offers a number of advantages, including:

- The cost of provision of the legal aid could be readily measured and a budget can be identified.
- The lawyers employed would not have to balance issues of commercial and business competitiveness and profitability and so are less likely to undertake unnecessary work.
- Over time the lawyers will become increasingly specialised in legal aid work and this would undoubtedly have added benefits for those they represented and the administration of justice generally.
- As such a model developed any issues of equality of arms would be less and less likely to arise, particularly given that it would be feasible and practical to employ specialist lawyers on a case-by-case basis should the need arise because of a particularly novel or complex matter.

(ii) Disadvantages

The most obvious criticism of the Public Defenders' Model is that if such a model was

established locally it is possible that some Advocates who now undertake legal aid work may withdraw from doing so. This could have two consequences.

- The availability of Advocates to assist the Public Defenders' Service when the Service is unable to act because of conflicts of interest would be very limited and this may result in delays in the proper administration of justice. However, this problem could be overcome by engaging other non-local lawyers, with appropriate experience and knowledge, to act on behalf of the legally aided party.
- The States may have limited control over the future costs of the Service as it could prove difficult to return to the current system or a contract-based approach without having to pay Advocates in private practice rates closer to the private client rates that are currently paid. However, the demand for legal aid will always be directly linked to applicants satisfying the criteria for legal aid funding and so the various merits tests, which will continue to be administered independently from the Public Defenders' office, should act to limit any unnecessary growth.

(iii) Costs for a Guernsey Public Defenders' Model

The cost of providing directly employed lawyers to undertake legal aid work locally has been estimated (see Table 2). The estimated annual costs of a Public Defenders' Model covering criminal, private and public law matters is estimated to be about £1,375,000 plus an additional £275,000 in the first year to establish the service. This is based on employing 6 full-time lawyers, plus 4 para-legals and 8 administrative and support staff. The figures also include provision for employing specialist lawyers on a case-by-case basis should this be necessary because of a complex or novel aspect of a case or because the other lawyers are unable to deal with a case because of issues of conflict or pressure of work.

Table 2 – Estimated Costs for a Public Defenders' Model

Details	Amount
Estimated Staff	£1,100,000
Estimated Administration, including rent	£275,000
Estimated Total Annual Costs	£1,375,000

The staff employed under a Public Defender's Model would not be civil servants or public sector employees and this should ensure their independence from the States which would be essential in all criminal matters and in public and private law matters where a States Department was involved.

The staffing levels are based on detailed conversations with HM Procureur and his staff and on the demand for legally aided representation in criminal, private and public law matters since the extra-statutory scheme commenced in September 2001. The contingency provision would be to provide advocates from private practice in those cases where the salaried lawyers were unable to act. Such circumstances would include where all salaried lawyers were excluded because of a conflict of interest, where the

number of parties in a particular case exceeds the number of available lawyers.

Further, it may be appropriate to use the contingency provision for particular specialist areas of law, for example mental health or asylum and immigration matters.

The Public Defenders' Model would assume the rôle currently undertaken by the Legal Aid Administrator and her two staff. This would include assessing the legal merits of applications for civil legal aid and taxing files. The administrative staff would be responsible for the financial assessment of all applications for legal aid, day-to-day enquiries, recoveries, debtors and investigating false applications. The clerical staff would provide reception, typing and general office administration support.

The para-legals would provide the mainstay of the duty scheme for attendance at custody suites. This would require an amendment to the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2004 but would mirror the position in England and Wales whereby advice and assistance to detainees is provided by suitably accredited para-legals. The employed lawyers would be available to provide advice to the para-legal on duty. The para-legals would also be able to take witness statements, see clients and assist in drafting affidavits and skeleton arguments.

The provision for consultants is to cover counsel's advice and independent reports from, for example, social workers or doctors in child protection cases. These figures are based on the costs incurred by the legal aid scheme to date. The provision also includes an allowance for forensic accounting in any appeal against a drug trafficking confiscation order. However, it should be noted that where such appeals are successful it would be possible to recover all legal aid costs from the assets released from the confiscation order.

Whilst the proposals for a Public Defenders' Model are based on the service providing lawyers for legally aided clients in criminal and public law matters, the scope could be extended to include civil matters. The main difficulty of including civil matters is that whilst the Bailiwick's laws and court practices are broadly similar in criminal and public law, to England and Wales, there are significant differences in civil matters, albeit that divorce and associated matters are now coming much more in line with England and Wales. It is estimated that to extend the Public Defenders' Model to include all civil legal aid work would require the recruitment of at least two local advocates or locally based lawyers with relevant experience.

(iv) Rights of Audience

Section 19 of the Law provides:

“19. (1) Subject to subsection (4), the States may by Ordinance make such provision as -

(a) they think fit; or

(b) *may be necessary,*

to enable an authorised lawyer who is providing legal assistance under the provisions of a Scheme, effectively and lawfully to represent a legally assisted person before a court exercising jurisdiction within the Bailiwick.

(2) *Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for or concerning -*

(a) *the class or description of legally assisted person who may be represented by an authorised lawyer;*

(b) *the class or description of matters in respect of which an authorised lawyer may represent a legally assisted person;*

(c) *the rights and privileges which an authorised lawyer shall enjoy when representing a legally assisted person;*

(d) *the obligations to which an authorised lawyer shall be subject when representing a legally assisted person; and*

(e) *the amendment of any other enactment or instrument which may be necessary or convenient to facilitate the purposes of subsection (1).*

(3) *For the purposes of this section, an “authorised lawyer” means a person (other than an Advocate) who falls within such description or class of persons as the States may, subject to subsection (4), by Ordinance specify.”*

That is, if a Public Defenders’ Model was adopted, lawyers who were not Guernsey-admitted advocates could be employed. However, such an approach would undoubtedly create a tension between the Guernsey Bar and lawyers so employed. Such tension may result in an understandable reluctance to provide support to the legal aid service as and when such need may arise.

Further, it would not be possible to establish such a service quickly for the following reasons:

- (a) The time required to establish the service, including advertising for and recruiting lawyers and for those lawyers to establish themselves in Guernsey;
- (b) The transfer of existing legal aid certificates from Advocates in private practice to the Public Defenders’ service; and
- (c) The preparation and commencement of such legislation as needed to give effect to section 19 of the Law and consequential legislation including the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2004 (see below

for further detail).

It is for these reasons the Policy Council has decided that, on balance, it should afford the private Bar a further opportunity to demonstrate that legal aid can be provided effectively and in a cost efficient manner under a contractual arrangement. However, the Policy Council believes that the Public Defenders' Model may represent a viable and cost effective alternative method for delivering publicly funded legal aid should the costs based on the private Bar representing those granted legal aid continue to increase and/or should the quality of the legal representation provided fall.

The Policy Council will therefore carefully evaluate the impact of the proposed contractual model on costs and the delivery of legal aid against costs of the Public Defenders' Model before making any recommendation to the States for the contracts proposed in this Report to be extended for a further period.

5. Negotiations with the Guernsey Bar Council

In April 2006, having, for the reasons set out above, discounted the Public Defenders' Model at this stage, the Policy Council directed the Steering Group to invite expressions of interest from advocates' firms, groups of or individual advocates to provide publicly funded legal aid work on a fixed price contractual basis. Two expressions of interest were received - one from the Bar Council and one from Trinity Chambers.

The Bar Council's expression of interest proposed fixed fee levels for criminal legal aid work based on case scenarios and fixed hourly rates based on the number of years call for other work. The Steering Group was of the view that the Bar Council's proposed rates would not have a significant impact on the overall cost of providing legal aid. The Law Officers also advised that the Expression of Interest submitted by the Bar Council was not compliant as the Council was not an entity able to accept and undertake contractual obligations.

On 12th June 2006, the Policy Council agreed, having considered the two expressions of interest received, that neither expression of interest appeared to be capable of delivering its objectives, namely:

- (a) To control and reduce the overall costs of delivering legal aid; and
- (b) To provide an appropriate level of suitably qualified and experienced advocates to service the legal aid scheme.

Therefore, the Policy Council decided to discontinue the tendering process and initiate a new open tender procedure. An invitation to tender was issued to all local legal firms and practising advocates in Alderney and Sark on 1st August 2006.

6. Evaluation of Tenders

Tenders were received from ten individual firms and "Guernsey Legal Aid Services"

(“GLAS”), a limited liability partnership specifically incorporated by selected members of the Bar Council in order to tender for the Legal Aid Services Contract.

One firm submitted two tenders – a compliant bid and a non-compliant alternative proposal. Under the non-compliant tender (“the alternative proposal”) the firm proposed to undertake approximately 46% of the total number of hours available, thus becoming the Island’s primary legal aid provider. This proposal differed from the other tenders received as it was a fixed price bid.

Following a detailed analysis of the tenders three options were identified and evaluated:

Option A - A primary contract with firm submitting the alternative proposal and multiple secondary contracts with other selected firms.

Option B - A single contract with GLAS.

Option C - Several contracts with individual firms (excluding the alternative proposal).

Although option A potentially provided the lowest cost option, the Council accepted the Steering Group’s belief that alternative proposal was not sufficiently robust at that time to justify awarding the primary contract to the firm. The following concerns resulted in the Council deciding that despite offering the lowest price for delivering legal aid services, it could not recommend it to the States for approval:

- (a) The proposal relied quite heavily on two lawyers that had not yet been admitted to the Guernsey Bar and the willingness of the other members of the Guernsey Bar to deliver the remaining 54% of legal aid work.
- (b) The definition of “Advocate” in section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 would need to be amended to allow the non-locally qualified solicitor to undertake police station and customs call outs.
- (c) The firm would have a very strong negotiating hand when it came to negotiating fees on any renewal and also in contract amendments.
- (d) Advocates employed by other firms would be required to undertake far less publicly funded criminal work than previously so experience and willingness to undertake this work would diminish and, therefore, there would be a risk that other firms might not accede to becoming secondary legal aid service providers.

On initial consideration, Option B appeared to be an attractive proposal. It offered a fair and transparent charging structure based on years call to the Guernsey Bar and was less expensive than option C. Further, having a single contract with GLAS would be easier to administer than several contracts with different service providers. However, the Council agreed that there were potential concerns regarding the long-term implications

of contracting with GLAS.

First, if the contract was awarded to GLAS it would have a very strong negotiating position in respect of the renewal, both in respect of fees and amendments or variations to the contract. Second, it was possible that at the end of the contract term, some firms might wish to withdraw from GLAS and this could result in GLAS being unable to offer enough Advocates to cover conflicts of interest and/or represent multiple parties. Third, at renewal it would be harder for individual firms or groups of firms to submit an alternative proposal, especially if the GLAS contract had been performed to a satisfactory standard and within budget.

Therefore, the Council's preferred tender option is Option C. Whilst this is a more costly option in the short term than Options A and B, it will still create substantial savings compared to the current arrangements. The current hourly rate charged by advocates undertaking legally aided work is £167 per hour. Under Option C, the hourly rates vary from £120/hour for newly qualified to £200 for senior and very experienced Advocates. Under Option C the majority of advocates' hourly rates would be less than the current rate and, based on the number of hours proposed by tenderers, the average hourly rates would be £140 for criminal law work, £145 for public law work and £132 for private law work. Based on 2006 caseload levels, it is estimated that this would result in a total saving of over £250,000 per annum (although hourly rates will increase by RPI from 2008 onwards¹).

Option C offers a number of other advantages. First, by contracting with individual law firms the States would retain a stronger negotiating position when it comes to negotiating fees on any renewal by retaining a competitive element. Second, it also retains the opportunity for other service provision models (such as the alternative proposal – Option A) to be considered in the future when the current impediments (listed above) have been overcome.

Third, it continues to provide sufficient capacity to address concerns regarding conflicts of interest and/or the requirement for multiple parties to be separately represented. That is, as the States would be signing contracts with all firms that have submitted tenders, a relatively large pool of Advocates with differing levels of experience and different specialisms would remain available to deal with legal aid cases. Finally, this option would also ensure that the Guernsey Bar is able to continue to develop as firms would have greater certainty about legal aid remuneration rates and so the commercial concerns should be reduced in some part.

7. Recommendation on Preferred Tenderers

The Council recommends that the States should accept the tenders submitted by;

Albany Chambers
Ashton Barnes Tee

¹ It should be noted that the hourly rate of £167 has not been increased since January 2004.

Atkinson, Ferbrache and Richardson
 Babbé
 Carey Olsen
 F Haskins and Co
 Ozannes
 Randell and Loveridge
 Advocate L. Strappini and Co
 Trinity Chambers

If the States accepts the Council's proposals it will ask the Steering Group to continue to negotiate the precise terms of the contracts, both with the individual firms and, if the Bar Council so agrees, representatives of the successful tenderers. It is envisaged that the contract will be supported by a Practitioners' Manual which will set out the mechanism for Advocates providing legal aid.

The contract will deal with, inter-alia, the following areas:

- (a) **Appointment to the panel of accredited legal aid providers** – under the contract all Advocates, non-admitted lawyers and para-legals wishing to undertake legal aid work will need to be accredited by the Administrator before their names can be added to the firm's contract. The accreditation process will reflect the persons experience and qualifications.
- (b) **Payment** – each of the firms has set out a schedule of rates for the Advocates, non-admitted lawyers and para-legals they wish to be named in the contract. The hourly rates for Advocates reflect the experience of the Advocates with newly appointed Advocates being paid at a lower hourly rate than those with a number of years post-call experience. The hourly rates set out in the various tenders range from £85 per hour for an Advocate in his first year post-call to £150 per hour for work in the Magistrate's Court to £200 per hour in the Royal Court for Advocates with more than six years post-call experience. Under the contracts non- admitted lawyers and para-legals would continue to be paid at hourly rates ranging from £35 to £85 per hour, depending on experience and/or qualification. Further, under the contracts work was undertaken by an Advocate, non-admitted lawyer and para-legal who was not named on the contract would not be paid by the Administrator.
- (c) **Qualifications of staff** – as indicated in (a) and (b) above, accreditation and payments will be based on qualifications and experience. In addition to the above comments, it is suggested that Advocates, non-admitted lawyers and para-legals will need to demonstrate on-going professional development, particularly where they are seeking to be accredited to undertake additional areas of work and/or where there are significant legislative changes, such as the changes which will result in criminal and public law matters relating to children and young people following the introduction of the new Children's Law.

The Practitioners' Manual (which as a condition of appointment the practitioner will be

obliged to comply with) will set out the manner in which the Legal Aid Scheme and the services to be provided are to be operated and performed. The Manual will be updated and amended from time to time by the issue of Manual Amendment Notices without the need for the contract to be amended each time. Responsibility for the determination of the provisions within the Manual will rest with the Administrator, who will take advice as appropriate. The Manual will be given statutory effect by way of a Regulation made under section 31 of the 2003 Law.

8. Costs

The details of the individual tenders have not been set out in detail in this report for a number of reasons. Unlike the majority of States contracts this is not an occasion where the States is being asked to award the contract to a single company. That is, each of the Advocates or Firms who have submitted a tender, remain in competition with the other Advocates or Firms who have also tendered. Therefore it is essential to ensure, insofar as possible, that the various rates to be charged by different Advocates, both within a particular firm and in different firms, is kept confidential as they contain detailed information which is commercially sensitive.

Further, if the various rates were to become public knowledge an number of difficulties may arise: First, firms would know what each other is charging and, more importantly, how much the States was prepared to pay individual advocates to ensure that there was a sufficient number of Advocates undertaking legal aid work to address issues of conflicts of interest. Therefore, it is likely that, when the contract is renegotiated the starting rate for all Advocates would be based on the highest rates paid under the existing contract.

Second, given the relatively small number of Advocates undertaking legal aid work, it is likely that it would be a fairly easy task to determine what a particular Advocate was being paid for legal aid work. This might result in legally aided clients forming the assumption, rightly or wrongly, that the highest charging advocate is a better advocate and therefore may lead to increased demand for that advocate's services, which he or she may be unable to fulfil. Third, and following on from the second concern, it is possible that a legally aided person could try and raise a legal challenge if they felt that the Administrator had not accorded them the Advocate of their choice, or the Advocate they felt their case warranted. This would result in an increased burden for the Administrator in justifying the allocation of a particular Advocate and would increase the complexity of the system itself.

Whilst a system based on a flat rate charge is, of course, the simplest option for the Administrator to operate, this was not favoured by any of the Advocates who tendered. A system of payments based on the number of years call provides an objective based approach and was favoured by all tenderers. This approach is simply for the Administrator to operate and does not involve a value based judgment about ability and so the concerns raised above would be easily addressed.

When assessing the rates tendered by the various Advocates, the Steering Group sought

to ensure that a particular tenderer's rates should not seek to compete with the fees Advocates may charge for their individual private client work. Further, post-tender negotiations will, insofar as is possible, seek to equalise the rates which will be paid to Advocates so that any variations are limited to year of call rather than any other reason. However, it is likely that this process may not be fully achievable until the contracts are renegotiated in 2010.

Under the contractual arrangement people who qualify for legal aid will, in the first instance, be able to go to the Advocate of their choice so long as he is named on his firm's contract. However, the Administrator will monitor the number of hours undertaken by the various firms and may direct new clients to other firms offering legal aid if she believes that it is in the interests of justice to do so, for example, if the applicant's first choice has a heavy case load and would not be able to deal with the new matter in a timely manner. That is, whilst the Administrator will endeavour to monitor the allocation of work he/she will not intervene unless necessary in the interests of justice.

Based on an analysis of the costs of the various tenders, the proposed contractual approach should be less costly than the cost of delivering legal aid under the present system. An analysis of each of the tenders suggests that savings of some £250,000 per annum should be achieved. Further, this analysis showed that, if these savings are achieved, the cost of delivering legal aid under a contractual model should be very close to the projected costs for the Public Defenders' model (as set out above in Table 2).

In addition the contractual scheme, as indicated above should provide sufficient cover (both in terms of numbers of Advocates to address conflicts of interest or where multiple parties require separate representation) and also maintain the good working relationship which has been established between the Guernsey Bar and the Administrator and the Policy Council.

In summary, it should be noted that the proposed contractual approach will not offer the order of savings which the Policy Council, and certainly the Legal Aid Steering Group, had hoped to achieve. However, the approach will achieve a stabilisation of legal aid costs with some modest savings during the period of the contract. Further, the contractual approach leaves the other options available for further consideration when these contracts are renewed.

9. Staffing

In late 2001, following the establishment of the Service, one person was appointed on a Supernumerary basis to assist the Administrator on a part-time basis. The staffing provision was subsequently increased to provide two part-time and then two full-time Supernumerary posts. The staffing levels have remained unchanged since January 2004.

The Council recommends that these two posts should be made permanent posts so as to provide the appropriate level of administrative support to enable the Legal Aid Administrator to undertake his/her duties efficiently and effectively. It should be noted that in 2005 and 2006 the amount of money recovered from legally aided persons who had secured or preserved assets through funded legal aid more than covered the staffing costs. In addition, once the Statutory Scheme commences the level of recoveries should further increase as the Administrator will have powers to secure debts against, for example, houses which are secured or preserved in favour of the legally aided person.

Finally, it should be noted that the statutory provisions establishing the Office of Legal Aid Administrator broadly mirror those which created the Office of Data Protection Commissioner. The Data Protection Commissioner currently has one and a half Established posts supporting his office. The Legal Aid office is a very busy office and therefore the request for two full-time Established posts does not appear disproportionate to the amount of work undertaken by the staff.

10. Progress of Legislation

The work in drafting the necessary Ordinances and Regulations to enable the legal aid scheme to move from its current extra-statutory basis to a statutory one is well advanced. It is anticipated that draft Ordinances will be ready for consideration by the States later this year and that the statutory scheme should commence no later than 1st December 2007.

As stated above (section 7) one of the issues raised by a number of firms in their tenders was whether consideration could be given to amending the definition of "Advocate" in section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 to allow non-locally qualified lawyers and para-legals to undertake police station and customs call outs. Clearly, as non-admitted lawyers and para-legals are paid at lower rates than Advocates, such an amendment could result in significant savings on the cost of providing advice at Police and Customs custody suites for detained persons. The Legal Aid Steering Group has sought the views of HM Procureur and the Home Department.

HM Procureur replied in the following terms:

"I preface my remarks by saying that the functions of an advisor to a person detained in custody go beyond advising whether or not to respond to questions or to give a statement; they extend to e.g. explaining the nature of the criminal charge(s) by which he or she is potentially faced, and a whole range of legal issues arising out of that, not to mention explaining the procedures and eventual proceedings.

From an ECHR perspective, the right to a fair trial normally requires that a suspect has access to a lawyer at the initial stages of an investigation, especially where steps may be taken that will impact on his or her defence, but this is not an absolute rule and the need to provide access to a lawyer will

depend upon the circumstances in each case. The core requirement is that the person must be sufficiently able to advise, and if the quality of the advice available were shown to be inadequate for that person's reasonable needs, a potential breach of Article 6 of the ECHR arises. In this respect there is no right to choose a particular lawyer, and the test is merely whether or not the person to whom the suspect has access is able to provide effective advice and representation.

In my opinion, those attending to provide legal advice to persons detained by the Police or Customs, if not an Advocate, should:

- A. Be qualified as an English solicitor or barrister, or possessing of an equivalent professional qualification in Scotland, Northern Ireland or in a recognised common law jurisdiction such as Australia or New Zealand; or*
- B. Be accredited as an English Police Station advisor, or appropriate equivalent; and*
- C. Have successfully passed a local test, examined in Guernsey: e.g. on PPACE.*

I have included C. because criminal law in Guernsey, whilst based on and very similar to that of England, is in particular aspects not the same, and criminal practice and procedure are markedly different. A person advising a detainee must have knowledge of Guernsey law and practice. On the mainland, the Law Society is responsible for providing courses and examining candidates who are not solicitors, the aim being to provide quality control and it is not possible to obtain legal aid payments for a non-solicitor giving advice without accreditation.

On the mainland, one significant factor is that an accredited person should only attend after telephone advice from a solicitor, i.e. from a qualified lawyer has been obtained. Careful thought should be given to whether that would be strictly necessary in Guernsey, given the relative ease of access and proximity to lawyers and legal offices. I remind you that, on the mainland, only accredited solicitors can act as duty solicitors for legal aid purposes.

Accordingly, the English system is sufficiently vigorous to provide a model which, with appropriate adaptations, could be used in Guernsey.”

The Minister for the Home Department replied in the following terms:

“The main concern of the Home Department is that PPACE requires that a person in custody has adequate access to competent legal advice. Whilst it is appreciated that “Police Station Advisors” assist people detained in England

and Wales, there has also been general concerns expressed in those jurisdictions that some defendants have been disadvantaged by the quality of legal advice afforded to a defendant. It is not uncommon for such an allegation to be made at trial or on appeal in the UK courts. Therefore if there is any amendment to section 91(3) of PPACE it would be vital and a core requirement that the person advising is competent and sufficiently able to give quality advice to a person in custody.

It is difficult to see how this could be achieved simply by amending the definition of an advocate in section 91(3). It may therefore prove to be somewhat problematic to achieve this as presumably the level of competence of the advice needed would vary depending upon the complexity and seriousness of the offence under investigation.”

The Policy Council acknowledges the various issues and concerns raised by HM Procurer and the Home Department Minister and appreciates that what may, at first inspection, appear a simple amendment is, on closer examination, more complex.

11. The Faulkner Judgment

In November 1999 the Island’s authorities made a commitment, through HM Government, under the terms of the friendly settlement negotiated in the case of *Faulkner v. United Kingdom* to establish a civil legal aid scheme, as follows:

“The Government undertakes that a Policy Letter to establish a civil legal aid system in Guernsey, consistent with the Commission’s findings in this case, will be introduced by the Advisory and Finance Committee of the States of Guernsey into the States. The Advisory and Finance Committee has confirmed that it intends to submit such a Policy Letter to the States to authorise the drafting of the necessary legislation and thereafter the introduction of a civil legal aid scheme which will enable Guernsey to comply with the provisions of the European Convention on Human Rights.

To this end the Advisory and Finance Committee has already sought legal advice from the Law Officers of the Crown in Guernsey and has invited the Guernsey Bar Council to make submissions to the Committee as to the form that this scheme should take. The reply of the Bar Council is awaited. Detailed discussions will then take place to establish the principles of a scheme that the Committee can recommend to the States of Guernsey.

The Committee intends that the approach to the States of Deliberation will be made in 2000 and that the scheme will come into force in the same year.”

This case concerned a complaint by Ian Faulkner that he could not pursue a civil action in Guernsey, as legal aid could not be granted for that purpose (complaint under Article 6§1 of the European Convention of Human Rights). In the friendly settlement reached in this case, the then Advisory and Finance Committee undertook to undertake to

introduce a legal aid scheme for civil cases consistent with the findings in this case.

In July 2001 the States approved a Policy letter settling out the general principles for the establishment of an extra-statutory legal aid scheme and thereafter the introduction of a civil legal aid scheme, which would enable the Bailiwick to comply with the provisions of the European Convention.

In April 2007 the Committee of Ministers of the Council of Europe (that is, the body charged with monitoring Guernsey's progress in satisfying the terms of the friendly settlement negotiated in this case) accepted the following report submitted by HM Government on behalf of the Insular Authorities:

“In July 2001 the States approved a Policy letter settling out the general principles for the establishment of an extra-statutory legal aid scheme and thereafter the introduction of a civil legal aid scheme, which would enable the Bailiwick to comply with the provisions of the European Convention.

Periodically thereafter, reports detailing the progress made in operating the extra-statutory scheme and the introduction of the legislative framework have been supplied to the Foreign and Commonwealth Office for onward transmission to the Committee of Ministers of the Council of Europe (which is the body charged with monitoring the United Kingdom's progress in satisfying the terms of the friendly settlement negotiated in this case).

In April 2007, the Committee of Ministers agreed that the steps that have been taken in Guernsey in respect of providing civil legal aid to those deserving such assistance, when coupled with the Royal Court (Signing of Summonses) Order, 2003 (which enables litigants to seek permission to dispense with the usual requirement that proceedings can only be commenced by a Summons signed by an Advocate) and the commencement of the Human Rights (Bailiwick of Guernsey) Law, 2000, as amended (enabling an allegation of a violation of Article 6 of the Convention to be dealt with in a domestic court) mean that Guernsey, on behalf of the United Kingdom, has implemented the terms of the friendly settlement contained in the judgment satisfactorily.

Subject to the preparation of a final resolution to be adopted, which may well not occur for some months, the case has been formally removed from the agenda of the Committee of Ministers and is now treated as having been closed.”

The Insular Authorities have been advised that on 20th April 2007 the Committee of Ministers' decided that Faulkner should be formally closed.

12. Recommendations

In summary, the Policy Council recommends that the States approve the following recommendations:

(a) Award of Legal Aid Contract

To award contracts to the following firms of Advocates, subject to the successful outcome of post-tender negotiations:

Atkinson Ferbrache Richardson
Carey Olsen
Albany Chambers
Ashton Barnes Tee
Babbé
F Haskins and Co
Randell and Loveridge
Ozannes
Advocate L. Strappini and Co
Trinity Chambers

Further, to authorise the Policy Council to continue to negotiate with the Guernsey Bar regarding the terms and conditions of the contract and the directions in the Practitioners' Manual.

(b) Staffing

To direct the Treasury and Resources Department to have due regard to the staffing implications of implementing the Statutory Legal Aid Scheme, with particular reference to Section 2 of Schedule 2 of the Aid (Bailiwick of Guernsey) Law, 2003, when administering the Staff Number Limitation Policy.

(c) Amendment to section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003

To request HM Procureur and the Home Department to bring forward proposals to amend section 91(3) provided that the concerns regarding how to ensure that all those providing advice to persons detained by the Police or Customs receive effective advice and representation, can be dealt with.

(d) Legislation

To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Stuart Falla
Deputy Chief Minister

20th August 2007

APPENDIX 1

Legal Aid Hourly Rates payable to Private Practice, 2003-4 in England and Wales

INVESTIGATION STAGE			
<u>Advice and assistance</u>			
Preparation	£49.90		
Travel and Waiting	£26.30		
<u>Police Station</u>			
Attendance on client or others			
Duty solicitor ordinary case	£52.00 - £69.50		
Duty solicitor serious offence	£60.00 - £80.00		
Own Solicitor	£52.00		
<u>Travel and waiting</u>			
Duty solicitor	£52.00 - £69.50		
Own solicitor	£28.80		
PROCEEDINGS STAGES			
<u>Magistrates' Courts</u>			
Duty solicitor			
Advice and assistance	£53.85 - £67.30		
Travel and waiting	£26.30		
<u>Advice and assistance</u>			
Preparation	£49.70		
Advocacy	£62.35		
Travel and waiting	£26.30		
<u>Representation order</u>			
Preparation	£49.70		
Advocacy	£62.35		
Attendance on counsel	£34.00		
Travel and waiting	£26.30		
<u>Crown Court</u>			
Category of fee earner	A	B	C
Preparation	£53.00	£45.00	£29.75
Attendance	£42.25	£34.00	£20.50
Travel and waiting	£25.75	£24.75	£12.50

(NB The Treasury and Resources Department supports the proposals.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 20th August, 2007, of the Policy Council, they are of the opinion:-

1. (1) To award contracts to the following firms of Advocates, subject to the successful outcome of post-tender negotiations:

Atkinson Ferbrache Richardson
 Carey Olsen
 Albany Chambers
 Ashton Barnes Tee
 Babbé
 F Haskins and Co
 Randell and Loveridge
 Ozannes
 Advocate L. Strappini and Co
 Trinity Chambers

- (2) To further authorise the Policy Council to continue to negotiate with the Guernsey Bar regarding the terms and conditions of the contract and the directions in the Practitioners' Manual.
2. To direct the Treasury and Resources Department to have due regard to the staffing implications of implementing the Statutory Legal Aid Scheme, with particular reference to Section 2 of Schedule 2 of the Aid (Bailiwick of Guernsey) Law, 2003, when administering the Staff Number Limitation Policy.
3. To request HM Procureur and the Home Department to bring forward proposals to amend section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 provided that the concerns regarding how to ensure that all those providing advice to persons detained by the Police or Customs receive effective advice and representation, can be dealt with.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

POLICY COUNCIL

CHARITIES AND NON-PROFIT ORGANISATIONS

Executive Summary

This States Report highlights the present lack of regulation of Non-Profit Organisations (NPOs) and charities in the Bailiwick. It states that this is an omission in Guernsey law, and advises that, without regulation, there is a risk that Guernsey NPO status could potentially be abused for terrorist purposes, among others.

In this respect, the Report recommends that the States should legislate in order to enable the potential establishment of a regime, with which to oversee such organisations. However, it does not propose that such a regime should be established now.

The Report also proposes that H.M. Procureur should be given powers to obtain and exchange information on those NPOs which are established, administered, or use business services in Guernsey, but which carry out activities (including funding) elsewhere.

The proposals in this Report are in addition to those of the Treasury and Resources Department (as set out elsewhere in this Billet d'État), which recommend that the Administrator of Income Tax should prepare and maintain a database of Guernsey NPOs, for tax purposes.

Whilst the Report does not recommend that an oversight regime is established now, it emphasises that no such scheme should be introduced without extensive local consultation and after careful consideration of the local impacts of whatever is proposed. However, it does state that, as a minimum, if and when introduced, there should be a scheme of registration of NPOs.

The Report advises that it is likely that the Policy Council will be required to progress or direct the development of policy for the establishment of any potential regulatory scheme; and in this respect, it is anticipated that a further States Report will precede or accompany the enabling legislation.

The Report also advises that a key aspect of the forthcoming International Monetary Fund (IMF) review of Guernsey's regulatory and law enforcement regimes evaluation will be how well Guernsey meets Financial Action Task Force (FATF) recommendations, which include taking measures to address the potential abuse of NPO status for the purposes of terrorist financing or laundering of terrorism funds.

The problem identified in the Report is a lack of information, and a lack of ability to obtain information, about Guernsey based or administered NPOs, particularly where their activities are carried out elsewhere than in Guernsey. The former is intended to be

remedied by the Administrator of Income Tax's database; the latter by Proposal B in the letter from H.M. Procureur, below. The principal areas that any enabling legislation will need to address can be found in Section 29, below.

If the States approve the proposals set out in the following letter from H.M. Procureur, it is recommended that the authorities of Alderney and Sark should be encouraged to extend this legislation to their islands, in order for the Bailiwick to comply with the FATF recommendation on NPOs.

Proposals from H.M. Procureur

H.M. Procureur has reported to the Policy Council in the following terms:

“Interpretation

In this letter, unless a different meaning is to be inferred from the context, the expression 'NPO' includes both non-profit organisations and charities. Their respective defining characteristics are explained in the text.

Summary

1. By this letter the Policy Council are recommended by the *ad hoc* group identified below that the States be asked to approve proposals by which
 - (a) the States, pursuant to an enabling Projet de Loi, have power, but only should circumstances require, to establish by Ordinance a regime for the oversight of NPOs in the Bailiwick; and
 - (b) H.M. Procureur, by the same Projet de Loi, be given power where any NPO established or administered in Guernsey or otherwise using any business service in Guernsey, but which is carrying out all or any of its activities (including funding) abroad, i.e. not in the Bailiwick, to obtain information about the NPO from persons in Guernsey connected with it, and to exchange that information in appropriate circumstances with overseas prosecutors, law enforcement agencies and registrars or supervisors of NPOs.

These proposals are in addition to those from the Treasury and Resources Department with regard to Guernsey tax as it may impact on NPO income and covenanted donations, and in particular the proposal to establish a database of NPOs, contained in a Report of that Department to be found elsewhere in this Billet d'État.

Background

2. Guernsey's law enforcement and regulatory authorities have been aware

since 2001 of developing international concerns with the potential for abuse of NPOs as convenient and effective, and often unsuspected, means of financing terrorism and laundering terrorist funds. Various *ad hoc* groups locally have considered the matter, most recently a group comprising, besides myself, the Chief Executive, the Administrator of Income Tax, the Director General and Director of Policy and International Affairs of the Financial Services Commission, the Chief Officer of the Commerce and Employment Department, and others. These issues have also been considered by the Bailiwick Financial Crime Committee, which includes representatives of Guernsey's Police, Customs and the Financial Intelligence Service. This letter, written after extensive internal consultation, reflects the approach that we all now recommend to the Policy Council should be taken, and it has the endorsement of the Department of Commerce and Employment. In addition, the Guernsey Financial Services Commission supports our intention to give effect to the Financial Action Task Force Special Recommendation VIII, as explained below.

3. The NPO sector is a vital component of most national, and all mature, economies, and of most social systems that complement the activities of governmental and business sectors, in supplying a broad spectrum of public benefits and services and improving not only their, but also other communities' quality of life. Throughout any consideration of proposals relating to NPO activities, overarching recognition must be given to the need to maintain and enhance the practice of charity and voluntary activity, and the strong and diversified ranges and societies of institutions and individuals by and through which charity and voluntary activity are delivered, and nothing should be done which would have the effect of reducing the commitment to public and community benefit of all those who are directly or indirectly so engaged.

4. Guernsey has a particularly strong tradition of charitable and voluntary activity. Just as the relief of poverty is accounted a Christian virtue, so the parishes – administered by parochial volunteers – have ever been active in poor support, both formally and informally, which continues to this day e.g. by the parochial distribution of funds for the benefit of the needy. Charities, large and small, are prominent in our community, ranging from substantial grant making charities, such as the Lloyds TSB Foundation, through operating charitable institutions such as Les Bourgs Hospice, to the numerous organisations that exist to raise and distribute funds and actively assist those in need, for example the Guernsey Branch of the Multiple Sclerosis Society. But, of course, a great amount is done in and for the community by volunteers in many activities that would not be accounted strictly charitable. Guernsey takes justifiable pride in the wide range of organised sporting, recreational, cultural and social activities which play a great part in defining and benefiting our community. What characterises such organisations is the

overwhelmingly voluntary nature of those who work with and for them, and the fact that such volunteers strive not for themselves but for the benefit, either of the community at large or sections of the community, including their own members. The number of such organisations, and the diverse extent of their activities, reflects well on the conscience, endeavour and vibrancy of Guernsey society.

5. The common characteristic of an NPO – be it charitable or non-charitable – is its requirement to raise and apply funds for its own purposes rather than for the benefit of its 'stakeholders'. The ways and means of raising funds vary widely, and need not be described or detailed in this letter; suffice to say that there is now almost an expectation within our community of the need to respond to fund raising initiatives, and Guernsey folk, whatever their circumstances, contribute generously to maintain and enhance the diverse and beneficial purposes of the NPO sector. But monies raised in Guernsey are not necessarily applied to benefit Guernsey's community, and many dedicated individual and group fundraisers and organisations work hard locally to raise and apply the proceeds of their splendid efforts to mainland or overseas NPOs, none of which could function without their givers and fundraisers, for whom personal donations and NPO involvement provide a practical expression of a desire to benefit others in need or less fortunate than themselves, not only here but elsewhere. Nothing in what follows should be taken in any way as intending to inhibit our community's generosity – of time, of resources, of commitment, of spirit.
6. Charity in the narrow legal sense is concerned with purposes and activities that the law recognises as charitable. Not every purpose or activity which is beneficial to the community is charitable, but the crucial condition for a purpose to qualify as charitable is that it must be directed to the public benefit, which means that the purpose itself must be beneficial (and not harmful) and it must be available to a sufficient section or class of the community to satisfy the 'public' aspect of the public benefit test.
7. Besides charities are a whole range of purposes and activities which, whilst not legally charitable, are beneficial to the community, or a section or class of the community, and which are not carried on with a view to commercial profit. The Financial Action Task Force ('FATF'), the international body which sets standards *inter alia* to suppress the financing of terrorism, uses the expression 'non-profit organisation' ('NPO') to embrace not only charitable organisations and activities, but also social purposes or the carrying out of other beneficial activities which are not necessarily charitable. FATF characterises an NPO as a legal entity or organisation that primarily engages in raising or distributing funds for non-commercial purposes, such as charitable,

religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works'. Crucially, the earnings of NPOs should not benefit any private 'stakeholder' or individual, nor should they be applied to political activities. In many jurisdictions, including Guernsey, charitable and non-profit organisations are exempt from tax liabilities: see below.

8. In Guernsey, good examples of non-profit organisations are sporting and recreational clubs, now usually constituted through companies limited by guarantee, from which those participating in the activities, or using the facilities, of the organisation derive no personal financial benefit, and from which any surplus funds generated are retained for present or future investment in club activities, or applied to other charitable or publicly beneficial purposes. Whilst the objects of many of these organisations could be said to be of public benefit in its widest sense – in that, besides providing opportunities for their members, they serve the community: for example, in the case of the Guernsey Amateur Dramatic and Operatic Club, by providing public theatrical performances – their purposes could not be said to be charitable in the strict legal sense.

Role of the Law Officers

9. H.M. Procureur, by virtue of his office, is the *partie publique*; and one of his duties is to represent the public interest. As such, H.M. Procureur is concerned with charities in the strict legal sense, because, by definition, a charity involves public benefit. Accordingly, no legal proceedings involving a charity, or a charitable gift or charitable trust, may be instituted or continued without H.M. Procureur becoming a party to those proceedings, although he may, in the circumstances, decline to participate. The role of H.M. Procureur is no different in Guernsey in respect of charities to the respective roles of Attorneys General elsewhere – on the mainland and in the other Crown Dependencies. The role of H.M. Procureur locally is particularly recognised by Guernsey trust legislation, which gives to him particular powers with respect to charitable trusts. However, H.M. Procureur's powers do not extend, in the absence of criminality, to non-charitable or other non-profit organisations and activities, except to the extent that in any court proceedings involving such an organisation or activity he may be asked to assist and advise the court. But, as mentioned above, not all Guernsey charities, and charitable activities undertaken in Guernsey are for the benefit of Guernsey and its inhabitants: likewise for non-profit organisations.
10. Guernsey is a convenient location in which grant making charities may be established, or relocated from elsewhere, and indeed there are many charities established in Guernsey, with one or more Guernsey trustees, or which are administered here, either for general or special charitable

purposes in other territories. There are many reasons for this, but prominent amongst them is Guernsey's relative lack of supervision rather than the somewhat narrow powers of H.M. Procureur.

11. In recent years the Association of Guernsey Charities has done much good work to endeavour to co-ordinate local charitable activities by, *inter alia*, preparing and maintaining a list of its members, but these tend to be the more substantial and active local charities. But membership of the Association is voluntary, and there are many charities that are not members; and furthermore there are many charities that are administered, or have funds, in Guernsey, but which are not for local benefit; nor would membership of the Association necessarily extend to non-charitable non-profit organisations. In the absence of any oversight regime, or even any need to notify anyone about the existence of a charity or non-profit organisation, even for the purpose of obtaining exemption from tax (see below), a very real difficulty exists for H.M. Procureur, or indeed anyone else, being able to intervene in the affairs of any charity, simply because of a lack of information as to its existence or its activities, and, as mentioned, H.M. Procureur cannot ordinarily directly intervene in a non-profit organisation. For the most part this does not matter, because the vast majority of NPOs are conducted in a lawful and orderly manner and for proper purposes, but there have been occasions on which the ability to obtain information from or about an NPO would have been important in preventing continuing misconduct e.g. misapplication of its funds or abuse of its status, e.g. for personal benefit, if only to encourage the NPO to put its affairs in order. An example of this is given below. It is felt that the lack of ability to obtain information about NPO activities, or at least to require that certain information be given on request in the event of misuse of NPO funds or abuse of its status, does represent an omission in our law, particularly where the NPO, though based or administered in Guernsey, or raising funds here or having services provided here (e.g. investment management), is actually established to carry on or fund its activities or purposes abroad, particularly in a territory which does not have domestic supervision of NPOs.
12. The proposal from the Treasury and Resources Department, that the Administrator of Income Tax should prepare and maintain a database of NPOs, both charitable and non-charitable, as part of the process of granting Guernsey tax exemption to such organisations, and the interaction of that process with that of obtaining tax relief on covenanted donations to Guernsey charities, will, to a large extent, provide a convenient and accessible source of information for purposes of law enforcement. But not all Guernsey based NPOs provide charitable benefit locally, or carry out their charitable or other activities locally: some raise money or do work here for purposes abroad, which will not necessarily require to be registered with the Administrator, and this gap

in Guernsey's administrative regime means that Guernsey may be non-compliant with international standards in this area.

13. Charities and non-profit organisations may be established in many different ways. Typically those desiring to establish a grant making charity will establish it by document, e.g. by settlement or will; frequently local branches of established mainland charities will constitute themselves as such here by adopting particular rules; and frequently those charities which are operational, as opposed to purely fund raising, will be constituted as companies limited by guarantee, of which the St. John Ambulance & Rescue Service is a good example. Those charities which are formally constituted, but which do not desire to conduct their activities through a corporate medium, are most usually constituted as charitable trusts, although difficulty exists in establishing trusts for purposes that are non-charitable, principally because, unlike charitable trusts which can be enforced by H.M. Procureur, trusts for non-charitable purposes have no public enforcer. (This omission will soon be rectified now that the States have approved proposals in the Commerce and Employment Department's review of Guernsey's trust law.) However a charity is established, one most important consequence, apart from the achievement of its purposes, is its tax treatment. NPOs which are not charitable are usually constituted either as a club or society, by written rules binding its members, although more recently many of the more substantial sporting, recreational and cultural non-profit organisations have been constituted as companies limited by guarantee, thereby providing the benefits of corporate status.

Tax treatment of charities and non-profit organisations

14. By Section 40(k) of the Income Tax (Guernsey) Law, 1975, as amended, the income of a charity, if and so far as its income is applied to any charitable purposes, is exempt from income tax. For the purposes of Section 40(k), charity means (a) any body of persons e.g. company, or trust, established for charitable purposes only, and (b) where any property the income whereof is applicable to charitable purposes only is entrusted to anyone, in relation to that property and its income, that person; and under Section 40(r) overseas charities which can demonstrate a like tax exemption elsewhere are exempt from Guernsey tax in respect of income derived from investments or deposits here. But, in practice, the 'exemption' is broader, because any trust established or operating in Guernsey for activities or purposes abroad will have, in effect, non-resident 'beneficiaries' and so be not liable to Guernsey income tax, which, apart from the lack of an oversight regime, is one of the reasons why Guernsey is regarded as a convenient location in which to establish charities and charitable activities that are not intended for local benefit.

15. Non-profit organisations and activities, e.g. recreational and social clubs, and agricultural and horticultural societies, are likewise generally exempt from Guernsey tax, not necessarily because they are charitable (for most are not strictly charitable), but because they derive their income, and so their surplus, from dealings with their own members. Any investment income derived by the non-profit organisation, or any income derived from non-members, e.g. ticket entry for public admission to shows, and bars open to non-members, would ordinarily attract a Guernsey income tax liability. In practice, as indicated above, such organisations reserve their surplus for investment in their facilities, services and activities, rather than distributing it amongst the members when it would attract a tax liability in their hands.
16. The Administrator of Income Tax will usually review the documents constituting a local NPO beforehand to confirm that its income or surplus derived from its activities will not be subject to Guernsey tax, and to that extent the Administrator has acted as an informal 'supervisor'. But there is no requirement to obtain his confirmation beforehand, and it is believed that many NPOs exist about which the Administrator has not been informed, and of which he knows nothing, but which would not be liable to taxation in any event because there is no Guernsey resident person in receipt of income.

Abuse of NPO status

17. Whilst it would appear that Guernsey has been fortunate in not having experienced, at least to any significant extent, abuse of NPO status, it cannot be stated for certain that abuses are not being perpetrated, simply because there is no present means of knowing what NPO activities are being conducted in Guernsey, whether for local benefit or benefit abroad, and it has to be acknowledged that such local concerns as exist are, to some extent, based on anecdotal evidence. There have been some criminal prosecutions in Guernsey for misappropriation or misapplication of charitable funds, which have been relatively severely dealt with by our courts to mark the condignity that such abuse of worthy endeavour should attract. Such charities and charitable funds as have been defrauded have usually done so because of lax systems, but, on the whole, the vast majority of domestic charitable activities are lawfully and properly conducted. I am aware of one prominent charity in receipt of States' funding which was inadequately established – by which I mean its constitutive documents were inappropriate for the way in which it was to function – and which was not properly supervised or administered. The matter was referred to me as H.M. Procureur, and I was able to encourage those concerned to take the necessary steps to reconstitute the charity, and so continue its valuable work in the community, but my legal powers to do so were limited: and had a person concerned with the charity not have expressed to me his concerns,

neither I nor anyone else would have had any knowledge of what was a potentially serious situation in which public funds were potentially at risk of loss.

18. However, as part of the process culminating in this letter, the group to which I refer in paragraph 2. above, and those comprised in the Bailiwick Financial Crime Committee, have reviewed the NPO sector in Guernsey, on the basis of such limited sources of information as are available.
19. Abuse of NPOs may be divided into (a) internal abuse and (b) benefit abuse. In the former, those responsible for administering the NPO abuse the charity's or non-profit organisation's tax status, e.g. by using it to accumulate income and not distributing it for proper purposes, which, whilst in breach of trust or of the purposes of the NPO, and so actionable by H.M. Procureur or (if a club or society) its members, is not likely to be pursued, for lack of information about the NPO in the first place: or by abusing its status, to fund e.g. personal expenses not incurred in its activities. Benefit abuse, which is with what the international community such as FATF is more concerned, is the use of NPO status to raise and administer funds for objects which in no rational sense could be held to be beneficial to the community, of which terrorism is the most extreme, and to us all, the most dangerous. Benefit in such cases is measured by Guernsey standards, which means internationally accepted attitudes and standards in relation to, and so countering of, terrorism and the laundering of terrorist funds, and not some foreign notions based often on political aspirations.

Impact of terrorism and money laundering

20. All the foregoing perhaps suggests no need for some general registration or supervisory regime for NPOs, and Guernsey is not alone amongst the smaller jurisdictions in having no such regime. However, the potential for abuse of NPO status has, in recent years, translated into the horrifying actuality of terrorism, in which the use of pretended charitable, and disguised non-profit, organisations and activities for purposes of terrorist financing and money laundering have emerged. These concerns are not fanciful: substantial evidence exists that, in the guise of ostensible community benefit, monies are raised amongst communities for plausible purposes, often religious or educational, but which are actually applied towards the financing of terrorism. This development has been of such concern to the international law enforcement and regulatory communities that countermeasures have been proposed, particularly by the FATF (see below), and registration or supervision of charitable and non-profit organisations is now prominent as a feature of international review.

21. As the Policy Council will be aware, in order to maintain its pre-eminent position amongst the leading off-shore financial centres, Guernsey is required to submit to regular inspection by such bodies as the IMF, who periodically assess Guernsey against the anti-money laundering and counter terrorist financing standards of the FATF. Whilst most substantial economies have registration or supervision of charities, the lack of oversight amongst smaller jurisdictions is now coming to cause concern, particularly in the context of international money laundering and terrorism financing initiatives in which FATF is prominent. I have to advise the Policy Council that the time will come, and it is not far distant, when a lack of any oversight of NPOs, at least so far as their purposes and activities are located or conducted outside Guernsey, could come to cause Guernsey embarrassment in an international context. It is these developments, far rather than any perceived local need – because of abuse of status or misuse of funds – to oversee local NPOs, which have prompted this letter, and the two broad proposals it contains.

Financial Action Task Force

22. I have referred above to FATF. In 2008 Guernsey's regulatory and law enforcement regimes (in the case of the latter, only so far as financial crime, money laundering and terrorism financing are concerned) are due to be reviewed by the IMF. A key aspect of that evaluation will be how well Guernsey meets the recommendations of FATF. Of particular relevance in this evaluation will be the steps taken by Guernsey to meet the requirements of FATF's Special Recommendation VIII on NPOs, a copy of which is attached to this letter as Appendix I. It will be readily seen that FATF is primarily concerned about the potential abuse of NPO status for purposes of terrorist financing and laundering of terrorism funds, an abuse to the countering of which Guernsey must be wholly committed, but also, of course, an NPO could be used to launder the proceeds of financial crime.
23. It might assist to illustrate the ways in which Guernsey might be used for this purpose. For example, a charity might be established or administered in Guernsey with funds derived from abroad, collected from particular communities in the United Kingdom, the ostensible purpose of which is to fund one or more religious or educational, i.e. *prima facie* charitable, establishments in sensitive regions of the Middle East. Unknown to the trustees or the administrators, the funds, whilst donated and collected in good faith, and which are paid to educational or religious establishments, are then transmitted when received abroad to fund terrorism. No-one in Guernsey will have been aware of what is intended; indeed, were they aware and continued to act, they would be potentially subject to criminal sanction. It is also important to realise that, in many cases, the source of the funds may well be genuine. In particular, expatriate communities on the mainland may genuinely

believe that their individually modest, but cumulatively significant, contributions will benefit a lawful and needy purpose in their homeland. Relevantly, FATF Special Recommendation VIII is particularly concerned with these NPOs which, taken alone, are significant components of the NPO sector, hence the *de minimis* provisions referred to below in paragraph 30B.

24. Whilst FATF's Special Recommendation VIII is directed towards terrorist financing, other abuses of NPO status should not be ignored, particularly if and so far as those abuses deprive Guernsey of revenues to which it would otherwise have been entitled. But that is a matter for the Treasury and Resources Department, and the Administrator of Income Tax, using his powers of investigation and enforcement.
25. FATF stresses that best practice dictates that, whilst safeguarding and maintaining the NPO sector, and the strong and diversified society of institutions through which it operates, oversight of the sector should be a partnership between government and those working in and supporting the sector, and also those whom the sector serves. However, in an international context, the overall aim must be to promote transparency and accountability in the NPO sector, but against shared recognition not only of the social benefits but also of the security risks. Any NPO oversight regime must be flexible, effective and proportionate to the risk of abuse, and in particular, small organisations that do not raise significant amounts from public sources, and locally based organisations the primary function of which is to redistribute funds and to assist members of the local community, should not require oversight, as FATF acknowledges. One of the perceived weaknesses of the NPO sector is the relatively casual way in which those engaged in NPO activities keep themselves informed about the conduct of those activities, both in their fund raising and fund distributing aspects, and also their results. This casual approach would be less likely to occur, particularly in the case of substantial NPOs having purposes or activities abroad, if powers to obtain and exchange information were available. Above all, FATF proposes that, within each country and territory, government and the NPO sector must respectively take and accept such steps as are appropriate and acceptable domestically to counter abuse.
26. To a greater or lesser extent, the real problem is a lack of information, and a lack of ability to obtain information, about Guernsey based or administered NPOs, particularly where their purposes and activities are carried out elsewhere than in Guernsey. The former is intended to be remedied by the Administrator of Income Tax's database, referred to in paragraph 12 above. The latter is intended to be remedied by proposal B in paragraph 30 below.

Oversight

27. In considering the proposals which we outline below, the Policy Council needs to recognise the very important distinction between regulation of the financial services sector, which is primarily concerned with the protection of the public and particularly those who use Guernsey's financial services – banks, insurers, investment funds and the like – and which, in case of abuse, carry reputational risk, and oversight of NPOs, where the risks are, in effect, different, apart again from the reputational risk to Guernsey.
28. Any scheme of NPO oversight is, therefore, concerned with different matters in most respects from regulation of financial services business, and in particular it is necessary, or at least desirable, in any system of oversight of the NPO sector that information is available about the activities of those engaged in the sector and to what the funds being administered are applied, for purposes of countering the abuses referred to above; reducing Guernsey's reputational risk; and international co-operation in the countering of terrorism and terrorist financing, and the laundering of the proceeds of crime, especially where the activities and purposes of a NPO are abroad. Whilst FATF gives examples of possible measures such as record keeping and reporting policies, it does not require or specify a particular form of oversight scheme that has to be put in place in order to satisfy Special Recommendation VIII. For the reasons we have outlined above a registration framework (i.e. as proposed to be created as part of the income tax regime) would presently be the best way forward for Guernsey in the foreseeable future, until the need for a more extensive oversight framework develops, if at all.
29. Accordingly, the legislation that this letter proposes should enable the States, by Ordinance, to erect a potential oversight framework. It is intended that the enabling legislation will be modelled on the equivalent legislation in England and Scotland, modified as appropriate to reflect Guernsey's particular circumstances. The enabling legislation should make provision for the following matters, all or any of which may be comprised in the legislation *as it may eventuate*, if at all:
- (i) the appropriate definitions of charity and non-profit organisation, and charitable and non-profit organisational activities subject to registration ;
 - (ii) the establishment of the office of registrar;
 - (iii) the notification of specified activities to the registrar;
 - (iv) the registration of organisations conducting charitable and non-profit organisational activities;

- (v) the identification of those charities and non-profit organisations which are to be exempt from registration, whether by reference to turnover, income, assets or resources or area(s) of benefit. FATF is particularly concerned with NPOs which account for a significant portion of the financial resources under the control of the sector and with NPOs which account for a substantial share of the sector's international activities. We anticipate that the great majority of local charitable and non-profit organisational activities would be exempt, but might however be liable to compulsory notification of their existence, and no more;
- (vi) the maintenance of information about the purpose and objectives of NPOs' stated activities; the identity of persons who own, control or direct their activities; the source and application of funds; and proper accounts;
- (vii) the provision to the registrar of documents, including constitutive documents, and of information, about the trustees, directors, managers, and administrators of any NPO and its activities, and including accounts;
- (viii) the appointment and removal of trustees, directors, managers and administrators;
- (ix) the obtaining of documents and information for purposes of any criminal or other breach of the law, and the exchanging of the same with overseas prosecutors, law enforcement agencies, or NPO registrars or supervisors elsewhere.

This list is not exhaustive, but indicates the principal areas that any enabling Projet de Loi should address. In the development of the policy forming any enabling legislative regime, it will be necessary to report back to the States with further details.

30. It must be stressed that the foregoing list, whilst appearing extensive, is considered as being necessary to ensure that persons connected with NPO activities who abuse their organisation's status, or misuse funds (whether deliberately or negligently) may be removed and replaced; and that funds at risk of misuse may be conserved; and that Guernsey is not available as a place in or from which misuse or abuse may occur. Unlike regulation of financial services businesses, which is proactive and co-operative – in the sense that the prior approval of the Financial Services Commission is required to conduct a business, and once approval is given, the business is monitored, and the way in which that business can be undertaken may be defined in some way by, for example, setting standards of solvency for banks – primarily for the

protection of customers, any proposed supervision of NPOs should be more benign.

Proposals

31. **A.** We are of the view, and so recommend to the Policy Council, that the States should be recommended to enact a *Projet de Loi* by which the States, by Ordinance, would have broad powers to establish and maintain an oversight framework in respect of NPOs and their activities, as outlined above, for Guernsey to be able to protect against abuses, to safeguard our reputation and to meet international standards. Undoubtedly Guernsey should be able to meet these standards if it is to maintain its position as a leading finance centre. We are proposing enabling legislation because the oversight of NPOs and their activities is a matter properly to be legislated domestically by the States by Ordinance.

32. As mentioned above, the policy in connection with establishing a scheme of oversight is not yet developed, which will need to be taken forward by, or under the direction of, the Policy Council, NPO oversight not falling within the mandate of any Department. In this respect, we anticipate a further Report to the States to precede or accompany the enabling legislation. FATF, in particular through its recent pronouncements i.e. Special Recommendation VIII, has made clear the need for oversight. We are **not** recommending creating a detailed oversight regime now, and, in any event, no regime should be created without extensive local consultation, and after the most careful consideration of the local impact of whatever may be proposed. Whatever regime is to be created must be appropriate to Guernsey, and whatever may be Guernsey's international obligations, or the expectations of the international community as regards Guernsey's regime, nothing should be established in Guernsey that would inhibit or discourage local NPO activities and donations. Guernsey should only adopt a balanced and proportionate approach to the issue of NPO oversight. But, as a minimum, if and when introduced, there should be a scheme of registration of NPOs. Depending on domestic and international developments, an oversight regime that goes further than simply registration may have to be considered, and the legislation should permit such an approach, if necessary. Whatever is introduced should be passive, not interventionist – save in case of financial misconduct or abuse of NPO status. Small – in financial or resource terms – NPOs should be exempt in any event. Large local NPOs with significant financial resources are not exempted by FATF. There should also be *de minimis* provisions so that an NPO must meet specified criteria (for example, an NPO should have a specified level of gross assets or gross income before it falls within the oversight framework). Whether, and if so to what extent and how, NPOs and their respective activities should

be subject to oversight are matters that will come to require the most careful consideration, and will necessarily involve wide consultation. But we believe that these are matters for determination by Guernsey, and so legislated for by the States by Ordinance, but it must be recognised that Guernsey may have to respond promptly to international pressures in this area, particularly given the emergence of domestic terrorism which is, it is believed, largely domestically funded.

33. **B.** As will be noted above, H.M. Procureur has customarily had a role in relation to charities and charitable activities, but he has no formal role - unless there is suspected or actual criminality - in respect of non-profit organisations and activities. One thrust of the FATF approach concerns the ability to obtain and exchange information about NPOs, especially in the case of terrorist financing. The Terrorism and Crime (Bailiwick of Guernsey) Law 2002 contains comprehensive investigatory powers exercisable by the police pursuant to a court order for the purposes of a terrorist investigation, and in some cases these powers could be invoked in order to obtain and exchange information in respect of NPOs. However, the Terrorism Law could obviously not be relied upon in cases where the relevant facts fell outside the definitions of terrorism in the Law. Accordingly, we propose that powers be given to H.M. Procureur in the Projet de Loi to which we have referred in **A.** above, whereby, if a person in Guernsey is involved in NPO activity (see below), or provides services here to an NPO, in either case where the activity or purpose of the NPO is in any way conducted or located abroad, or where an NPO raises funds, or its funds are administered in Guernsey and applied abroad, H.M. Procureur may, by notice, require information to be furnished, which the legislation will enable him to exchange with prosecutors, law enforcement officers and agencies, and NPO authorities elsewhere. That notice may be served on the NPO, on any trustee, manager, director or administrator of an NPO, or any person providing services to the NPO, e.g. an investment manager. In the (almost certainly exceptional) case of non-compliance with the requirements of a notice, H.M. Procureur may apply for a court order permitting direct access to information and the copying or retention of documents or other material, whether by way of entry to specified premises or otherwise. H.M. Procureur would exercise such powers in respect of an NPO upon receipt of a reasoned request from overseas prosecutors, law enforcement authorities or NPO authorities. To accord with FATF Special Recommendation VIII, the legislation should provide for a *de minimis* threshold to be met: I suggest that the NPO, in order to be subject to such an enquiry, should have gross assets of not less than £100,000 or gross income of not less than £20,000 per annum: these thresholds to be variable by Ordinance. H.M. Procureur may, in exceptional circumstances, where the reasoned request discloses *prima facie* criminality in connection with terrorism and terrorist financing, serve a notice on a person where the *de minimis* limits are not met.

34. As the international community faces the threat both of terrorist activities and the risks to capital markets and law and order of financial crime, a prospect from which Guernsey is not immune, either directly or indirectly, we are of the view that H.M. Procureur should have such powers, which will, to a significant extent, not only meet FATF's recommendations, but also ensure that Guernsey's position as a co-operative, respected and effective member of the international community is maintained.

Extension to Alderney and Sark

35. Domestic NPO oversight in Alderney and Sark is a matter for their respective authorities. The proposals by which the Administrator of Income Tax will compile a database of NPOs will extend to Alderney, because it is part of Guernsey for tax purposes. Sark is not, and unless and until the authorities there compile an equivalent database, the Bailiwick's response to Recommendation VIII will be partial; likewise the power of H.M. Procureur to obtain information. If the States are minded to approve the proposals set out in this letter, the authorities of Alderney and Sark should be encouraged to support their extending to their islands, to ensure that the Bailiwick will not be found wanting in its response to the threats of terrorism that confront us all."

Recommendations

The States are recommended:

1. To approve the proposals concerning NPOs (including charities) set out in this Report.
2. To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

M W Torode
Chief Minister

1st August 2007

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 1st August, 2007, of the Policy Council, they are of the opinion:-

1. To approve the proposals concerning Non-Profit Organisations (including charities) set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

CHARITIES AND NON-PROFIT ORGANISATIONS (“NPOS”)

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

21st August 2007

Dear Sir

Introduction

The Treasury & Resources Department (“the Department”) is aware of HM Procureur’s report, which is quoted in the Report from the Policy Council (as set out elsewhere in this Billet d’État), and supports the proposals therein. As a complementary measure and as part of a review of the provisions of the Income Tax (Guernsey) Law 1975 (“the Law”) in preparation for the 2008 corporate tax changes, the Administrator of Income Tax has considered those parts of the Law which apply to charities and other NPOs, and this report proposes a number of changes.

Charities

The Law provides as follows:

Guernsey charities

Section 40(k) of the Law exempts from income tax “*the income of a charity if and so far as the income is applied to charitable purposes only ...*”.

UK and Jersey charities

Section 40(r) exempts from income tax “*the income derived from investments or deposits of any body of persons or trust established in the United Kingdom or in the island of Jersey for charitable purposes only ...*” (the object of this section being to encourage these non-Guernsey charitable organisations to invest in Guernsey).

Administrative position

In the case of a Guernsey established charity, for so long as it fulfils the conditions provided in section 40(k) of the Law, as outlined above, there is no obligation on it to

notify the Administrator of its existence. Thus there is, therefore, no need for it to make a return of income because the provisions of section 68(2) of the Law (which concerns the reporting of a chargeability to tax) do not apply. Neither is there any obligation for the charity to file its accounts or other financial statements with the Administrator.

In practice, although there is no obligation to notify the Administrator of their existence, most charities will approach him for confirmation that their objects are charitable, for the purposes of the Law, and thereby qualify for tax exemption under section 40(k) of the Law. Most charities seek this “approval” in order to add a level of official “legitimacy” when seeking donations, such as by deed of covenant, sponsorship or grant. However even though the Administrator’s letter of “approval” specifies that the income of the charity will not be subject to income tax for so long as it is applied for charitable purposes only, there is no guarantee that this can be verified as currently there is no requirement for the charity to file financial statements or any other information with the Administrator.

Treatment of charitable donations

There is no tax relief available to donors, under the Law, in respect of charitable donations other than for those that are made under a deed of covenant.

Where a Guernsey resident individual or company wishes to covenant regular donations to a Guernsey charity (in which case the payments (up to a specified limit) are tax deductible, by virtue of section 65(2) of the Law) the form of the deed of covenant has to satisfy certain requirements. These are laid down in Regulations made by the Department under the provisions of section 65(1) of the Law. Only to that extent are covenanted donations to Guernsey charities administered/regulated by the Administrator, whereas non-covenanted donations and the financial affairs of the charitable body itself are not subject to any oversight at all. Given the concerns expressed by organisations such as the Financial Action Task Force, as highlighted in HM Procurer’s report, the view of the Department is that this situation needs to be addressed.

Other NPOs

Of the overall range of NPOs, only charities enjoy tax exempt status, either wholly (Guernsey charities) or in part (UK and Jersey charities). Non-charitable NPOs, such as, for example, a members club, are liable to Guernsey tax on any income that has been derived from non-members (for example, bank interest received) and to that extent a NPO is required to notify the Administrator of its chargeability to tax in accordance with the provisions of section 68(2) of the Law.

In many cases, therefore, it is probable that non-charitable NPOs will already be in the Income Tax Office records and thereby subject to the same rules and procedures as all other taxpayers, e.g. the provision of financial statements, etc. It follows that the level of concern relating to non-charitable NPOs could be said to be much less than that relating to charities. However, there is no guarantee that all non-charitable NPOs are in

the Income Tax Office records, including some which may have income derived from non-members, in which case this situation, as in the case of charitable organisations, also needs to be addressed. Consequently, for the purposes of the remainder of this report, the term “NPO” includes both charities and other non-profit organisations.

Proposal

Having considered HM Procureur’s Report and having reviewed the Administrator’s current areas of responsibility as regards NPOs in general, namely his:

- involvement in “approving” charities for Guernsey income tax exemption purposes,
- role in the administration of the deed of covenant legislation,
- responsibility for raising income tax assessments on the taxable income of certain NPOs which derive income from non-members (e.g. bank interest received by a bank), and
- ability to use the existing powers of investigation and enforcement that are currently available to him under the Law,

the Department proposes that an Income Tax database of NPOs (both charitable and non-charitable) be introduced on which would be inscribed the names and details of such organisations based in Guernsey. Coupled with this would be a provision in the Income Tax Law that would stipulate that an individual or company claiming relief on a covenanted donation to a charity would only be entitled to that relief where the charity was a body to which the Administrator had granted formal exemption and whose details had been inscribed on the Income Tax Database. It is envisaged that at the time of the inscription of its details on the Income Tax Database a NPO would also be required to submit the following information to the Administrator:

- The purpose and objectives of its stated activities.
- The identity of person(s) who own, control or direct its activities, including senior officers, board members and trustees.

In addition to the above registration framework, a NPO would need to maintain records of domestic and international transactions that were sufficiently detailed to verify that funds had been spent in a manner consistent with the purpose and objectives of the organisation. Such records would be made available to the Administrator on request.

A NPO that had been inscribed on the Income Tax Database would, subject to appropriate de minimis provisions as determined by the Administrator (i.e. small organisations that did not raise significant amounts) be required to file annual financial statements with the Administrator, thereby reducing, if not eliminating, the possibility of a NPO being used for fraudulent purposes. Failure to comply with any of the

specified requirements would result in the imposition of penalties under the Income Tax Law.

Resource Requirement

The Department does not envisage that the proposals above would have an adverse impact on the resources of the Income Tax Office.

Recommendation

The Department recommends the States to

1. To approve the proposals concerning NPOs (including charities) set out in this Report.
2. To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

L S Trott
Minister

(NB The Policy Council supports the proposals.)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 21st August, 2007, of the Treasury and Resources Department, they are of the opinion:-

1. To approve the proposals concerning NPOs (including charities) set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

APPOINTMENT OF NON-EXECUTIVE DIRECTOR GUERNSEY ELECTRICITY LIMITED

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

27th July 2007

Dear Sir

Mr Richard Tee, one of five non-executive directors of Guernsey Electricity Limited did not offer himself for re-election to the Board at the company's Annual General Meeting earlier this month. The Treasury and Resources Department is therefore proposing that a new non-executive director is appointed to replace Mr Tee.

Mr David Farrimond has agreed that his name can be put forward as a non-executive director.

Mr Farrimond has had a distinguished career as a chartered accountant specialising in audit services. Much of his working life was spent at KPMG Channel Islands, where he was Audit and Advisory Partner from 1985 to 2002, and Managing Partner for the Guernsey Office from 1997 to 2002.

Mr Farrimond is currently a member of the Guernsey Financial Services Appeals Tribunal and the Income Tax Appeals Tribunal. He is also active in the voluntary and community sector, being Vice Chairman of the Association of Guernsey Charities, Finance Director of Relate Guernsey Ltd on a voluntary basis, and Treasurer of the Sarnia Festival Arts LBG.

It is considered that the breadth of experience Mr Farrimond has in general business, together with his knowledge of evaluating and taking forward key strategic projects significantly strengthen the Board of Guernsey Electricity. With his Audit background, he would also be well qualified to take over from Mr Tee in the important role of Chairman of Guernsey Electricity's Audit and Risk Committee.

Recommendation

In accordance with the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, it is recommended that the States approve the appointment of Mr David

Farrimond as a non-executive director of Guernsey Electricity Limited.

Yours faithfully

L S Trott
Minister

(NB The Policy Council supports the proposal.)

The States are asked to decide:-

X.- Whether, after consideration of the report dated 27th July, 2007, of the Treasury and Resources Department, they are of the opinion:-

In accordance with Section 3 of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, to approve the appointment, of Mr David Farrimond as a non-executive director of Guernsey Electricity Limited.

HEALTH AND SOCIAL SERVICES DEPARTMENT

THE NURSING AND RESIDENTIAL HOMES (GUERNSEY) LAW, 1976

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

29th May 2007

Dear Sir

EXECUTIVE SUMMARY

1. For a number of years the Health and Social Services Department, and the Board of Health before it, have been concerned that the current legislation in place to regulate care agencies and care providers in the Bailiwick has been weak and covers only part of this area of the care sector.
2. Areas of concern include the regulation of domiciliary care agencies and nurses' agencies, both of which are currently unregulated. Also excluded from the current legislation are States run care homes and the voluntary sector is not mentioned at all.
3. The relevant UK legislation relating to care agencies and care providers was subject to a comprehensive review process in the 1990's, which took some time to complete. The outcome was the introduction of new legislation and accompanying standards. The Health and Social Services Department has had the benefit of seeing what the UK has done over this time and learned from their experiences.
4. In 1998, the former Board of Health consulted with the independent sector, following which the Guernsey Standards for Care Homes were introduced. These standards were adopted by the independent sector on a voluntary basis in 2004.
5. The Health and Social Services Department is proposing that the current law is replaced with more up to date legislation that will address the areas of concern, leading to well regulated, high quality services, in which the public can have confidence.

6. The key areas of change are as follows:
- The definition of a “care home” will include both independent residential and nursing homes and care homes run by or on behalf of the States of Guernsey.
 - Domiciliary care agencies and nurses’ agencies will be subject to regulation.
 - The law will cover the voluntary sector where personal and/or nursing care is provided.
 - The proposed legislation will allow the Health and Social Services Department to take emergency action to safeguard the well-being of service users.
 - An appeal process will be introduced in cases such as the above.
 - The proposed law provides for a more meaningful definition of a “care home” in respect of “personal care “ and of “nursing care”

BACKGROUND

7. The Nursing Homes and Residential Homes (Guernsey) Law, 1976, is the primary legislation under which the Health and Social Services Department is given responsibility for regulating independent care homes to ensure that the standard of care is acceptable. This legislation gives the Health and Social Services Department responsibility for registration, inspection, complaints investigation and enforcement within the independent sector. There is separate legislation which applies to Alderney, and it is not intended that this be reviewed.
8. For some time, the Health and Social Services Department has been concerned that this legislation does not apply in respect of a number of key areas, and in particular in relation to domiciliary care agencies and nurses agencies. There is no provision in the current legislation for urgent closure of a home when, for example, there may be issues involving safeguarding the well-being of the residents.
9. The UK legislation is now far ahead of Guernsey’s, especially in terms of domiciliary care agencies and nurses agencies, as there is no Guernsey primary legislation concerning these services. Progress has, however, been made in respect of care homes with the introduction of the Guernsey Standards for Care Homes on a voluntary basis. These standards are on a par with the UK
10. The Nursing and Residential Homes (Guernsey) Law, 1976, and its two subsidiary Ordinances were based on the UK’s Public Health Act, 1936, the Nursing Home Act, 1963, and the National Assistance Act, 1948. This

legislation was largely repealed in the UK when the 1984 Registered Homes Act was introduced.

11. Since then, the UK has reviewed the Registered Homes Act, 1984, and implemented the Care Homes for Older People, National Minimum Standards. This forms Part 3 of the UK Care Standards Act, 2000. As well as nursing and residential homes, the Care Standards Act includes legislation relating to children's homes, domiciliary care agencies, nurses' agencies, fostering agencies and voluntary adoption agencies (The regulation of children's services, mentioned above, is not included in these proposals because they are covered by the new children's law).
12. Work towards updating the Nursing and Residential Homes (Guernsey) Law, 1976, and its subsidiary Ordinances has been ongoing since 1994. At that time, the UK Registered Homes Act, 1984, contained a number of provisions which were not included in local legislation but were considered to be essential elements of modern-day standards for care of older people and other persons requiring residential or nursing home care.
13. In December 1998, the former Board of Health consulted on proposals to introduce new legislation, locally, relating to the care of people who require nursing or residential care.
14. In late 1999, the Department of Health in the UK published a consultation document entitled 'Fit for the Future', proposing its own Code of Practice, which incorporated a very detailed set of standards. This was the culmination of consideration of matters raised in the Burgner Report, (September, 1995), which examined issues such as inspection, registration, standard setting, enforcement and service provision or procurement in residential and nursing homes. These were widely accepted in the UK and the Government indicated that it would base the future UK provision and regulation on these standards.
15. The former Board of Health studied the 'Fit for the Future' document and considered it an appropriate set of standards to use as a basis for consultation in Guernsey. Copies of the proposed standards were sent to all those involved in the provision of care in a residential or nursing home setting, including those responsible for States maintained homes and other key stakeholders. Whilst the response from the home owners was, in the majority, supportive of the standards, concerns were raised regarding the increased resources that would be required to implement them.
16. In the UK, the Government had received the home owners' comments on the 'Fit for the Future' consultation document. They too had raised serious concern that, in some cases, care homes would not be able to achieve some of the standards, due to time restrictions or resources, and would have to close down. The UK Government then became concerned that the number of nursing and residential home beds available may decrease, creating a national shortage.

After considering the responses received following the consultation, the UK Government reviewed the standards and introduced a final document entitled Care Homes for Older People National Minimum Standards, published in 2001. Although these standards were considered more achievable, there were still areas which caused concern, particularly the environmental standards, which would require considerable changes to some nursing and residential homes.

17. The UK Government recognised that this could still have implications for the long term survival of some homes and issued another consultation document in August, 2002, which amended the environmental section of the standards. This stated that the new environmental standards would not apply to care homes which existed before 1 April, 2002.
18. The former Board of Health reviewed the consultation process on the 'Fit for the Future' standards, which had taken place in the UK, and based a new set of standards on both the Care Homes for Older People, National Minimum Standards and the consultation document of August, 2002. In October, 2002, the former Board of Health agreed that a consultation document be circulated to registered care home owners, the Housing Authority, the Guernsey Social Security Authority and other interested parties.
19. Following the consultation process, the Guernsey Standards for Care Homes were adopted by the private residential and nursing homes on a voluntary basis. These standards have now been in operation successfully for 2 years and are monitored by the Department's Registration and Inspection Officer as part of the ongoing inspection process.

PROPOSED LEGISLATION

20. The Health and Social Services Department is proposing that revised legislation be introduced to regulate all care agencies in Guernsey, including domiciliary agencies, nurses agencies, independent care homes and States run care homes. (A domiciliary care agency supplies personal care in clients' own homes and a nurses agency supplies registered nurses, midwives and/or health visitors, in a similar way to an employment agency.)
21. It is proposed that the revised legislation is entitled the Care Homes and Care Agencies (Guernsey) Law, 2007.
22. The Law, and the various Ordinances that are expected to accompany it, will form the legislative framework around which the Guernsey Standards for Care Homes can be further developed and standards for domiciliary and nurses agencies developed. (Note – the standards will not form part of the legislation and will not be legally binding. These standards, although not enforceable, can be taken into account and used to amplify the legal framework. They are intended to be standards to which the homes and care agencies should aspire and against which they will be measured by the Registration and Inspection Officer.)

23. Work has been ongoing for a considerable time on this legislation. A first draft has been created, in house, which is attached to this report as appendix 1 purely for the purposes of illustrating those issues that any new legislation will most probably need to address. The precise format of any necessary new legislation will be agreed in consultation with the Law Officers of the Crown in the event that the proposals in this report are approved.
24. The main points in the proposed legislation are:
- a). The definition of a “care home” will include both independent residential and nursing homes and care homes run by or on behalf of the States of Guernsey, e.g. Duchess of Kent House, learning disability and mental health services community homes, Maison Maritaine and Longue Rue House.
 - b). Although there are no maternity homes in Guernsey, the new Law (as did the old) provides for this eventuality.
 - c). The proposed Law includes provision for domiciliary care agencies and nurses’ agencies within both the independent and public sector. Currently, domiciliary care agencies and nursing agencies are not regulated and this is a matter for concern. There are currently several small undertakings in the private sector that provide care to people in their own homes. As this business is unregulated, the exact number of people providing this type of service is unknown. Regulation would ensure that common standards are applied throughout, including the regulation of care provided in any future enterprises that may be set up within the public sector or private sector. Such enterprises could include housing schemes such as “sheltered or extra care housing” in which a care agency would provide packages of care within the home setting. In this type of scheme, the users live in their own self-contained dwelling, are usually granted tenancies and are provided with support services, which can include the provision of personal care.
 - d). The proposed Law provides for a more meaningful definition of a “care home” in respect of “personal care” and of “nursing care”. The definitions attempt to take into account latest UK guidance.
 - e). New sections have been included which, in essence, seek to set out the duties of the Health and Social Services Department, in particular, concerning information that should be provided to the Department with regard to the provision of and the quality of services for people in care homes and care provided through agencies. Such information would be in the form of demographics, availability of services etc.

- f). The 1976 Law does not specify that the manager should be registered. It is proposed that the revised legislation is brought into line with the UK Care Standards Act, 2000 in this respect.
- g). UK law and guidance states that the manager should be an individual (or job share). The reason for this is that the job of day to day management is of such importance that it should be undertaken by a named person.
- h). The proposed Law includes provision for urgent cancellation of a registration; this is very important in the safeguarding of vulnerable people.
- i). An appeal process in relation to urgent cancellation of registration is proposed.
- j). The person authorised to inspect homes or agencies is no longer specifically the “Medical Officer of Health” but any person whom the Department deems to be appropriate, dependent upon the circumstances.
- k). The revised legislation makes it clear what authority the Inspector has. It includes the power to take copies of computer held records and also to take photographs or to make recordings, as may be necessary, subject to appropriate confidentiality and data protection requirements.
- l). A subsection is included which makes it an offence to obstruct the exercise of any power conferred on the Inspector by the Department.
- m). General requirements include provision for additional items for inclusion in an ordinance such as:
- Fitness of premises
 - Fitness of persons carrying on an establishment or agency
 - Fitness of persons working at an establishment or agency
 - Management and training
 - Securing the welfare of service users
 - Control and restraint issues
 - The management and control of the operations of an establishment or agency
 - Financial requirements

- Various notifications required, such as periods of absence by the manager, and any changes of manager or ownership
 - Level and frequency of registration and annual fees
 - Arrangements for dealing with complaints
 - Quality and standards of care, including domiciliary and nursing care.
25. A new section, relating to standards, has been included in the proposed Law which is additional to the 1976 Law and brings the new law into line with the UK. The Guernsey Care Standards are the current “minimum standards” for care homes. New standards will have to be produced for domiciliary care agencies and nursing agencies.
26. It should be noted that, in the UK, the “National Minimum Standards” can only be “taken into account” and compliance is not enforceable but compliance with regulations is. Apparently, much confusion has arisen in the UK as the National Care Standards Commission has seen regulations and standards as having an equivalent legal status. This is not the case. It is stated that standards should be used to amplify the legal framework (including the regulations) and should also be used as a tool by the regulator and the provider in jointly improving the quality of standards.
27. It is further stated that standards must be taken into account in the making of any decisions but do not have a free- standing effect.

STATES RUN HOMES

28. The 1976 legislation specifically excludes nursing and residential homes that are run by the States. It also excludes homes for people with a learning disability.
29. However, it is proposed that the new legislation includes States run care homes.
30. The proposed legislation defines care homes as follows:

“For the purposes of this Law, an establishment is -

- (a) *a care home, [including a home or homes managed by or on behalf of a Department of the States,] if it provides accommodation or day care, together with nursing or personal care, whether for reward or not, for any of the following persons.*

They are-

- (i) *persons who are, or have been, ill;*
- (ii) *persons who have, or have had, a mental disorder;*
- (iii) *persons who are physically disabled or infirm;*
- (iv) *persons who are, or have been, dependent on alcohol or drugs*
- (v) *persons who have a learning disability*

(b) *a maternity home if it provides accommodation, or day care together with registered midwife care, whether for reward or not, for the reception of pregnant women, or of women immediately after childbirth.”*

31. This definition means that if an establishment provides personal or nursing care to clients, either as part of a day care services or as part of a residential service, the establishment is a care home. For example, the clients of St Julian’s House do not receive personal or nursing care, so it is not defined as a care home, likewise the Women’s Refuge. However, St Luke’s Day Care, at the King Edward VII Hospital would be defined as a care home because personal care is delivered.
32. This proposal does, however, exclude hospitals, which are defined as “any hospital managed by the Health and Social Services Department, the main purpose of which is to provide medical or surgical care or psychiatric treatment for mental disorder”. The sites excluded would be the Princess Elizabeth Hospital, including La Corbinerie, the King Edward VII Hospital (but not St. Luke’s) and the Castel Hospital. The Health and Social Services Department already monitors the quality of hospitals via the Health Quality Service (HQS) scheme. (The HQS scheme audits health services against pre-defined standards thereby assessing the quality of services provided. The Health and Social Services Department was accredited by the HQS in February 2005 and will be audited again in early 2008.) Additionally, homes for children and young people, are covered by the new children’s legislation and are also excluded.
33. There are advantages and disadvantages of inclusion of States run care homes in the legislation:

Advantages

- It is perceived as being fairer by demonstrating that all care homes come under the same scrutiny and are subject to the same standards, regardless of whether they be run by the Housing Department, Health and Social Services Department or are independent. Currently, many of the independent homes perceive it as unfair that the public sector homes do not have to comply with legislation or codes of practice/standards, i.e. the Nursing Homes and Residential Homes (Guernsey) Law, 1976, and Guernsey Standards for Care

Homes.

- Inclusion would demonstrate that States run care homes are “open and transparent” in terms of standards of care etc.
- There would be better sharing and understanding of care and quality issues (through the inspection team) if the law applies to all sectors.
- Service users will be better protected if the care homes legislation applies across the private and public sector.
- The general public and potential users would be able to compare homes in a more measured way. The inspection reports for individual homes could be published (as in the UK). This would drive up standards across all sectors. (These reports may be published on the Internet).
- Reduced opportunity for variation in practice.
- Poor practice is not hidden, whether in the private or public sector.
- Less costly than seeking external accreditation, such as HQS or similar.

Disadvantages

- Will have implications for the Health and Social Services Department’s inspectorate’s time (e.g. Environmental Health Department, Pharmacy and Registration and Inspection Officer).
- This may not be a source of revenue, should the Health and Social Services Department not recoup the costs of inspections via the charges for registration and inspection recently approved by the States. If the public sector homes did not pay, the private sector may perceive this as unfair but to charge would only mean recycling revenue, which would have an administrative cost.
- There could be a potential difficulty for States run homes to comply with some of the standards, e.g. there are sometimes issues with the number of suitably qualified and competent staff within some of the States run homes as this is something which fluctuates but the law requires that they be suitably qualified and competent.
- It may be seen as a cosmetic exercise, as the Health and Social Services Department would be inspecting itself. This is, however, true for other functions, such as Environmental Health, and relies on the integrity of the inspector and the Department.

CONSULTATION

34. A working party, led by the Health and Social Services Department's Registration and Inspection Officer, which included representatives of the care home owners, was involved in the development of the Guernsey Standards for Care Homes that this legislation enforces.
35. As part of the wider consultation process all care home owners were again consulted and, in addition to this, consultation was undertaken with the following organisations:
- The Housing Department
 - The Social Security Department
 - The Home Department
 - St John Ambulance and Rescue
 - Housing 21
 - States of Alderney (for information only)
 - The Women's Royal Voluntary Service
 - The Alzheimer's Society
 - Age Concern
 - Guernsey Society for the Physically Disabled
 - MIND
 - Mencap
 - The Salvation Army
 - St John Ambulance Voluntary Section

36. The comments received are summarised as follows:

Summerland House Nursing Home confirmed they had been involved with the production of the Standards for Care Homes, and also expressed general support for the proposed legislation, provided it is applied with a common sense approach.

Age Concern welcomes all measures taken to protect the old and the vulnerable members of the community. In particular they welcome specific standards whereby care homes are required to detail their fees and other costs with complete transparency.

The Home Department supports the proposed legislation, noting the creation of criminal offences.

The Methodist Homes for the Aged (Guernsey) Ltd broadly welcome the objectives.

The Social Security Department is pleased to see this legislation being progressed and are pleased to note the extension of the scope to areas not

previously covered. The Social Security Department does, however, express a concern over staffing and skill mixes, which has been noted by the Health and Social Services Department.

The Housing Department is broadly supportive of the new legislation and care standards, which it acknowledges are, in some instances, long overdue. However, the Housing Department also acknowledges that in order to meet the proposed standards some capital works to Longue Rue House and Maison Maritaine will need to be undertaken.

St John Ambulance felt that this legislation and the accompanying standards would be of benefit to the service users. However, St John Ambulance expressed concern that voluntary organisations, such as themselves, would find it difficult to comply with the numbers of volunteers that would be required to hold an NVQ level 2 qualification in a care related subject.

The Women's Royal Voluntary Service had no reservations about their premises, and services being inspected and would act on any appropriate advice being given to them.

CONCLUSIONS

37. Since 1994, the Department has been working towards updating the Nursing and Residential Homes (Guernsey) Law, 1976, and its subsidiary Ordinances. The Department has undertaken a thorough review of the local legislation, in consultation with owners and managers of local care homes and States Departments. The result of this consultation and review is the draft revised legislation, attached.
38. The need to safeguard vulnerable people is increasing. The Health and Social Services Department's proposed policy will help to ensure that adults receiving care, whether in care homes or at home, are safeguarded from abuse.
39. The current legislation that controls nursing and residential homes, the Nursing Homes and Residential Homes (Guernsey) Law, 1976, and the Guernsey Standards for Care Homes, which have been developed by the Registration and Inspection Officers, specifically exclude those homes that are operated by the States. Exclusion of the States homes could be seen as 'favouritism' on part of the States and is perceived as unfair by the independent sector. The independent care homes are obliged to abide by the legislation and conform to the standards laid down. This can sometimes involve considerable expense in terms of alterations required to meet the standards. States run homes have not had to meet these standards as the independent sector has.
40. In consequence of the proposals set out in this Report, the Nursing Homes and Residential Homes (Guernsey) Law, 1976 and all Ordinances made under that

Law, should be repealed to be replaced by new legislation prospectively entitled the Care Homes and Care Agencies (Guernsey) Law, 2007. The intention is that this new legislation will improve quality for the service users whilst having as low an impact on the Health and Social Services Department's resources as possible. It also brings Guernsey in line with current UK good practice.

RECOMMENDATIONS

41. The States is asked:

- a) to approve the Report relating to Nursing Homes and Residential Homes, and;
- b) to direct the preparation of such legislation as may be necessary to give effect to their above decision.

Yours faithfully

P J Roffey
Minister

APPENDIX 1

PROJET DE LOI

ENTITLED

CARE HOMES AND CARE AGENCIES (GUERNSEY) LAW, 2007

draft January 2007

(including States care homes and agencies)

ARRANGEMENT OF SECTIONS

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PROJET DE LOI

ENTITLED

THE CARE HOMES AND CARE AGENCIES (GUERNSEY) LAW, 2007

PART I

Preliminary

Care homes

1. For the purposes of this law, an establishment is -
- (a) a care home, including a home or homes managed by or on behalf of a Department of the States, if it provides accommodation, or day care, together with nursing, or personal care, whether for reward or not, for any of the following persons.

They are-

- (i) persons who are, or have been, ill;
- (ii) persons who have, or have had, a mental disorder;
- (iii) persons who are physically disabled or infirm;
- (iv) persons who are, or have been, dependent on alcohol or drugs
- (v) persons who have a learning disability
- (b) a maternity home if it provides accommodation, or day care together with registered midwife care, whether for reward or not, for the reception of pregnant women, or of women immediately after childbirth.

Other basic definitions

2. (1) In this Law, unless the context otherwise requires –
- (a) “Authorised medical practitioner” means a person authorised to practise in the Island as a medical practitioner, according to the law for the time being in force
- (b) “The Department” means the Health and Social Services Department
- (c) “Domiciliary care agency” means, an undertaking, including an undertaking managed by or on behalf of a Department of the States, which consists of or includes arranging provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide for themselves without assistance.

- (d) “Fit person” means that
 - (i) he is of integrity and good character; and
 - (ii) he is physically and mentally fit;
- (e) “Health visitor” means a person who is registered in the Specialist Community Public Health Nurses part of the new register established by the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (UK Statutory Instrument No. 1765), maintained by the Nursing and Midwifery Council.
- (f) “Hospital” means any hospital managed by the Health and Social Services Department, the main purpose of which is to provide medical or surgical care or psychiatric treatment for mental disorder.
- (g) “Midwifery care” means care provided by a midwife who is a specialist qualified to give total care to a woman and her baby during pregnancy, labour and after the baby is born for a regulatory time.
- (h) “Nurses agency” means an employment agency or employment business, being (in either case) a business which consists of or includes supplying, or providing services for the purpose of supplying, registered nurses, registered midwives or registered health visitors and includes any agency managed by or on behalf of a Department of the States.
- (i) “Nursing care” means any services provided by a registered nurse and involving: (a) the provision of care; or (b) the planning, supervision or delegation of the provision of care, other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse.
- (j) “The Ordinary Court” means the Royal Court sitting as an Ordinary Court.
- (k) “Personal care” means assistance with bodily functions such as feeding, bathing and toileting and other care assistance such as help with getting in or out of a bath and help with dressing, and non-physical care such as advice, encouragement and emotional and psychological support, including the promotion of social functioning, behaviour management and assistance with cognitive problems.

- (l) “Registered Nurse” means a person who is registered in the Nurses: Sub-Part 1, of the new register established by the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (UK Statutory Instrument No. 1765), maintained by the Nursing and Midwifery Council.
- (m) “Registered Midwife” means a person who is registered in the Midwives parts of the new register established by the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (UK Statutory Instrument No. 1765), maintained by the Nursing and Midwifery Council.
- (n) “The register” means the register of homes compiled under the provisions of subsection (c) of section five of this law.
- (o) “Registration” means the registration of a person in respect of a care home, domiciliary care agency or nurses agency, in accordance with the provisions of section seven of this law.

Provided that the said expression does not include –
any hospital maintained in whole, or in part, by the Health and Social Services Department.

- (2) Any reference in this law to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended, repealed and replaced, extended or applied by, or under, any other enactment including this law.

Registration authorities

Registration authority

- 3. For the purposes of this law –
The registration authority in relation to the Island of Guernsey is the Health and Social Services Department.

General duties

- 4. The Department shall have the general duty of keeping the States informed about the provision of services for people in care homes and care provided through domiciliary care agencies and nurses agencies, in particular, about -
 - (a) availability of the provision
 - (b) the quality of the services
 - (c) providing advice or information about such matters relating to the provision of services

- (d) giving advice on any changes which the Department thinks should be made for the purposes of securing improvement in the quality of services, provided for people in care homes, or through domiciliary and nurses agencies.
- (e) encouraging improvement in the quality of services provided
- (f) making information available to the public

Other general duties

5. The Department shall cause to be compiled, and kept up to date, a register of homes, domiciliary care agencies and nurses agencies for the purposes of this law and such register shall be available for inspection by the public at the headquarters office of the Department on any weekday, other than a Saturday or a Public Holiday, during such hours as the Department may from time to time determine.

PART II

ESTABLISHMENTS AND AGENCIES

Registration

Law not to apply to hospitals managed by the HSSD

6. The provisions of this law shall not apply to a hospital, managed in whole, or in part, by the Health and Social Services Department of the States.

Requirement to register

7. If any person carries on or manages an establishment or agency of any description without being registered under the provisions of this law in respect thereof, he shall be guilty of an offence and liable on conviction to a fine not exceeding ...scale..... or, in the case of a second or subsequent offence, to imprisonment for a term not exceeding three months or to a fine not exceeding...scale..... or to both such imprisonment and such fine.

Applications for registration

8. (1) An application for registration under the provisions of this law shall –
- (a) be made to the Department in writing and shall be in such form and contain such particulars as the Department may, from time to time, determine; and
 - (b) be accompanied by such fee as the States may, from time to time, by Ordinance, prescribe.

- (2) A person who applies for registration as the manager of an establishment or agency must be an individual.
- (3) A person who carries on or manages, or wishes to carry on or manage, more than one establishment or agency must make a separate application in respect of each of them.

Grant or refusal of registration

9. Subject to the provisions of the law, the Department shall, on receipt of an application under the provisions of section eight, register the applicant in respect of the home or agency named in the application and issue to him a certificate of registration:

Provided that the Department may refuse to register the applicant if it is satisfied –

- (a) that he, or any person employed, or proposed to be employed by him at the home, or in the service of an agency, is not a fit person to carry on, or to be employed, at a home or in an agency of such a description as the home or agency named in the application; or
- (b) that he is not of sound financial standing; or
- (c) that, for reasons connected with situation, construction, state of repair, provision of utilities, means of escape from fire, accommodation, staffing or equipment, the home or any premises used in connection therewith are not fit to be used for a home of such a description as aforesaid; or
- (d) in the case of an establishment, that the home or premises are used or proposed to be used for purposes which are, in any way, improper or undesirable in the case of such an establishment; or
- (e) in the case of an establishment, that provides nursing care, that the home is not, or will not be, under the charge of a person who is a registered nurse, on the appropriate part of the Nursing and Midwifery Council Register, or that there is not, or will not be, a proper proportion of qualified nurses among the persons having the superintendence of, or employed in the nursing of the patients, in the home; or
- (f) in the case of a maternity home, that the person who has, or will have, the superintendence of the care of the patients in the home is not a qualified midwife, or that any person employed, or proposed to be employed, in attending any women in the home in childbirth, or in caring for any patient in the home is not a registered midwife; or

- (g) that in the case of a home providing solely personal care, the way in which it is proposed to conduct the home is such as not to provide services or facilities reasonably required by persons resorting to such a home.
- (h) that in the case of an agency providing
 - (i) a health visiting Service; or
 - (ii) a domiciliary care service; or
 - (iii) a nursing agency service; or
 - (iv) a midwifery agency service,
 the registered person shall make suitable arrangements to ensure that the agency provides services reasonably required by such persons resorting to such an agency.

Certificate of registration

- 10.** The certificate of registration issued in respect of any establishment or agency shall be kept affixed in a conspicuous place in the home, or office of the agency; and if default is made in complying with this subsection the person carrying on the home or agency shall be liable to a fine...*scale*..... and to a further fine*scale*.... and to a further fine*scale*....for each day on which the offence continues after conviction therefore.

Cancellation of registration

- 11.** Subject to the provisions of this law, the Department may at any time cancel the registration of a person in respect of an establishment or service –

- (a) on any ground which would entitle it to refuse an application for the registration of that person in respect of that home or agency; or
- (b) on the ground that that person has been convicted of an offence against the provisions of this law; or
- (c) on the ground that any other person has been convicted of such an offence in respect of that home or agency; or
- (d) against the provisions of any ordinance made under this law

Procedure where registration refused or cancelled

- 12.** (1) The Department shall not ordinarily refuse an application for registration or cancel a registration unless it has given to the applicant, or the person registered, as the case may be, not less than fourteen days notice in writing of its intention so to do and of its reasons for so doing, and every notice shall state that if, within fourteen days of the date of the notice, such person informs the Department in writing of his desire to show

cause, in person or by a representative, why the Department should not refuse the application or cancel the registration, the Department will, before making its decision, afford him an opportunity to do so.

- (2) If the Department, after giving the applicant or person registered, as the case may be, an opportunity of being heard by it, decides to refuse the application for registration, or to cancel the registration, it shall record such decision in writing and shall serve a notice of the decision upon the applicant or person registered, as the case may be, and any such notice shall contain the reasons for the decision and shall state the right of appeal to the Ordinary Court under the provisions of section fifteen of this law and the time within which such appeal may be brought.

Urgent procedure for cancellation etc.

- 13.** (1) In the case of an urgent situation, in which it appears that there will be a serious risk to a person's life, health or well-being, the Department may issue an order to.-
- (a) cancel the registration of a person in respect of an establishment
- (b) vary or remove any condition for the time being in force by virtue of this Part; or
- (c) impose an additional condition.
- (2) The order shall have effect from the time that it is made.
- (3) The order may, if the Department sees fit, be made without notice.
- (4) An order under subsection (1) shall be in writing.
- (5) Where such an order is made, the Department shall, as soon as practicable after the making of an order, serve on the person registered in respect of the establishment or agency-
- (a) a copy of the order; and
- (b) notice of the right of appeal conferred by section fifteen of this Law.

Provisional registration of established homes

- 14.** (1) Where a person makes application to the Department for registration in respect of an establishment or agency, in accordance with the provisions of section seven of this law, and the Department is satisfied that, for any of the reasons contained in the proviso to subsection (1) of section nine of this law, it should refuse to register the applicant under the provisions of the said section nine, the Department may provisionally register the

applicant under the provisions of this section, which registration shall, however be operative only until it is confirmed upon an application being made to the Department in that behalf, in accordance with the succeeding provisions of this section.

- (2) On the registration of a person provisionally under the provisions of the last preceding subsection, the Department may require the person concerned to do all such things to the established home or agency concerned as may be necessary to ensure that the said person may be registered under the provisions of section nine of this law and the Department may specify the time within which such things shall be completed and the application for confirmation as aforesaid made.
- (3) At least seven days prior to the making of an application for confirmation as aforesaid, a notice of intention to make the same shall be sent to the Department.
- (4) If, at the hearing of any such application, the Department is satisfied that there has been done to the establishment, or agency, which is the subject of the application, all such things as were required by the Department under the provisions of subsection (2) of this section and that they have been done within the time required by the Department under the said subsection, the Department may register the applicant in respect of the established home under the provisions of section eight of this law.
- (5) The registration of a person in respect of an establishment, or agency, provisionally as aforesaid, shall be cancelled upon the confirmation of such registration being refused.
- (6) In this section, "establishment or agency" means any premises which were, immediately before the date of the coming into force of this law, in use as a care home, maternity home or agency.

Appeals to the court

- 15**
- (1) Any person aggrieved by a decision of the Department made under the provisions of section twelve, or section thirteen, or section fourteen, of this law, may appeal therefrom to the Ordinary Court within twenty one days next following the date of the said decision.
 - (2) An appeal under the provisions of this section shall be instituted by way of summons served on the Health and Social Services Minister and such summons shall set out the grounds upon which the appellant relies.
 - (3) Where on appeal, under the provisions of this section, the Ordinary Court varies or reverses any decision of the Department, it shall be the duty of the Department to give effect to the order of the Ordinary Court and, in

particular, to grant any necessary certificate and to make any necessary entry in the register.

- (4) Any decision of the Ordinary Court under the provisions of this section shall be final.

Decease or incapacity of person registered

- 16.** On the decease of a person registered or provisionally registered in respect of an establishment or agency, or on such a person being certified by a medical practitioner authorised to practise in this Island as incapable of personally carrying on the establishment or agency, the Department may, on the application of the legal personal representative or the duly authorised representative of such person, as the case may be, register or provisionally register such representative in respect of the establishment or agency for such period as may be necessary to enable application to be made under the provisions of section eight of this Law for the registration of a person in respect of the establishment or agency.

Inspections

Inspection of establishments and agencies

- 17.** (1) A person authorised in writing by the Department may, subject to such conditions as may be laid down by the Department, at any time, enter and inspect premises and services which are used, or which he has reasonable cause to believe to be used as a care home, a maternity home or for the purposes of an agency.
- (2) A person authorised by virtue of this section to enter and inspect premises may –
- (a) make an examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he thinks appropriate; or
 - (b) inspect and take copies of any documents or records (other than medical records) required to be kept in accordance with the provisions of this law; or
 - (c) interview in private the manager or the person carrying on the establishment or agency; or
 - (d) interview in private any person employed there; or
 - (e) interview in private any patient or person accommodated or cared for there who consents to be interviewed; or
 - (f) take such photographs and make such recordings as he considers necessary for the purpose of any examination or investigation.

- (3) The powers under subsection (2) (b) include -
- (a) power to require the manager or the person carrying on the establishment or agency to produce any documents or records, wherever kept, for inspection on the premises; and
 - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (4) Subsection (5) applies where the premises in question are used as an establishment and the person so authorised -
- (a) is a medical practitioner or registered nurse or registered midwife; and
 - (b) has reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care.
- (5) The person so authorised may, with the consent of the person mentioned in subsection (4) (b), examine him in private and inspect any medical records relating to his treatment in the establishment.
- The powers conferred by this subsection may be exercised in relation to a person who is incapable of giving consent without that person's consent.
- (6) A person who proposes to exercise any power of entry or inspection conferred by this section shall, if so required, produce some duly authenticated document showing his authority to exercise the power.
- (7) Any person who –
- (a) intentionally obstructs the exercise of any power conferred by this section; or
 - (b) fails without reasonable excuse to comply with any requirement under this section, shall be guilty of an offence and liable, on conviction, to a fine not-exceedingscale etc.

Forms of notice etc

18

All notices and other documents authorised, or required to be given, made or issued for the purposes of the this Law shall be in writing and shall be in such form as the Department may, from time to time, determine.

- 19.** Any notice or document which may be served for the purposes of this law shall be validly served :-
- (a) on any person, if delivered to him, left or sent by registered post or recorded delivery service to him, at his usual or last known place of abode;
 - (b) on any firm, if delivered to any partner of the firm, or left at, or sent by registered post or recorded delivery service to, the principal or last known principal place of business of the firm;
 - (c) on any body corporate, if left at, or sent by registered post or recorded delivery service to, its registered office if situate in the Island of Guernsey or, if its registered office is not so situate, its principal or last known place of business in the Island.

Ordinances and standards

Ordinances

- 20.** (1) Subject to the provisions of this Law, the States may, by ordinance, make such provisions as to the conduct of establishments or agencies as may seem to them to be necessary or expedient.
- (2) Without prejudice to the generality of the last preceding subsection, an ordinance under this section may, in particular, make provision for all or any of the following matters:-
- (a) the facilities and services to be provided in establishments and by agencies;
 - (b) the fitness of premises to be used as an establishment or agency;
 - (c) the fitness of persons carrying on an establishment or agency;
 - (d) the fitness of persons working at an establishment or for the purposes of an agency;
 - (e) the management and training of such persons;
 - (f) empowering the Department to limit the number of persons of any description, who may be received therein, in excess of the number fixed for the home,
 - (g) the keeping of records relating to establishments and agencies and the notification of events therein;

- (h) securing the welfare of persons accommodated in an establishment or provided with services by an establishment or an agency;
- (i) the control and restraint of adults accommodated in, or provided with services by an establishment or agency;
- (j) the management and control of the operations of an establishment or agency;
- (k) imposing requirements as to the financial position of an establishment or agency;
- (l) the giving of notice by the person carrying on an establishment or agency of periods when he (or if he does not manage it himself) the manager proposes to be absent from the establishment or agency, and specify the information to be supplied in such a notice;
- (m) provision for the making of adequate arrangements for the running of an establishment or agency during a period when the manager is absent from it;
- (n) the giving of notice by a person registered in respect of an establishment or agency of any intended change in the identity of the manager or the person carrying it on;
- (o) the giving of notice by a person registered in respect of an establishment or agency which is carried on by a body corporate of changes in the ownership of the body or the identity of its officers;
- (p) as to the level and frequency of fees in respect of registration and annual fees;
- (q) to impose requirements that the person carrying on an establishment or agency appoint a manager in prescribed circumstances;
- (r) requiring arrangements to be made by the person who carries on, or manages, an establishment or agency for dealing with any complaints made by or on behalf of those seeking, or receiving, any of the services provided in the establishment or by the agency and requiring that person to take steps for publicising such arrangements;

- (s) requiring arrangements to be made by the person who carries on, or manages, a care home for securing that any nursing provided by the home is of appropriate quality and meets appropriate standards.
- (t) empowering the Department to make such orders as may be necessary or expedient for the effectual operation of any such ordinance;
- (u) such incidental or supplementary matters for which the States may deem it necessary or expedient for the purposes of any such ordinance to provide;

Minimum standards

- 21.** (1) The Department may prepare and publish statements of minimum standards applicable to establishments or agencies;
- (2) The Department shall keep the standards set out under review and may publish amended statements whenever it considers it appropriate to do so;
- (3) Before issuing a statement, or an amended statement, which in the opinion of the Department effects a substantial change in the standards, the Department shall consult any persons it considers to be appropriate;
- (4) The standards shall be taken into account -
- (a) in the making of any decision by the Department under this law;
 - (b) in any proceedings for the making of an order;
 - (c) in any proceedings on an appeal against such a decision or order;
 - (d) In any proceedings for an offence under an ordinance under this Part.

Variation and repeal of Ordinances and orders

- 22.** Any power conferred by this law to make any ordinance shall be construed as including a power exercisable in the like manner to vary or repeal the ordinance or order.

Offences

Offences

- 23.** Save as expressly provided by that ordinance, any person who contravenes, or attempts to contravene, or fails to comply with any of the provisions of any ordinance, made under this law, or any direction given,

or requirement imposed under, or by virtue of, that ordinance, shall be guilty of an offence against that ordinance.

Penalties

24. The States may, from time to time, by ordinance, prescribe the penalties which shall be incurred by any person guilty of any offence under any ordinance made under this law and different penalties may be so prescribed for different offences.

False statements

25. Any person who –

(a) in connection with an application for registration in respect of a home, or agency, knowingly makes any false statement or recklessly makes any statement which is false in a material particular, or produces or furnishes any information which he knows to be false; or

(b) who knowingly fails to produce or furnish any information which he is required to produce or furnish under the provisions of this law or any ordinance made there-under; shall be guilty of an offence and liable, on conviction to a fine.....scale etc

offences by bodies corporate

26. Where a person convicted of an offence under this law, or any ordinance made there under, is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

27. (1) This law may be cited as The Care Homes and Care Agencies (Guernsey) Law, 2007

(2) This law shall come into force on such day as shall be appointed in that behalf by ordinance of the States.

Repeal

28. The Nursing and Residential Homes (Guernsey) Law, 1976 is hereby repealed.



SOCIAL SECURITY
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Deputy P J Roffey
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Our Ref: ML

Your Ref:

Date: 2 November 2006

Dear Deputy Roffey

Draft Projet de Loi: Care Homes and Care Agencies (Guernsey) Law, 2007

Thank you for your letter of 9 October 2006, with attached draft Projet de Loi and Guernsey Standards for Care Homes, which was considered by the Social Security Department at its meeting on 1 November 2006.

Members are pleased to see this legislation being progressed and pleased to note the extension of the scope of the legislation into areas not previously covered.

While generally supportive of the proposed new structures and conditions, the Social Security Department has some concerns over Standard 27 concerning staffing numbers and skills mix. The Department appreciates the good sense in giving the power to the Homes Inspector to require that the care homes are staffed in accordance with the particular needs of the residents and having regard to the layout and purpose of the home. However, the Department would prefer to see the application of this standard working on top of a prescribed minimum staffing standard.

The Department understands that an Ordinance is in the course of preparation and that that piece of legislation will, among many other things, set a requirement for homes providing nursing care that a qualified nurse be on duty at all times. Some of the Department's concerns may, therefore, be allayed when the draft Ordinance is available for perusal.

Finally, it appears that the new legislation may make redundant several provisions contained within Part V of the Long-term Care Insurance Law, 2002 and the subordinate legislation. You may wish to bring this to the attention of the legislative draughtsman working on the legislation.

Yours sincerely

Mary Lowe
Minister

NOT PROTECTIVELY MARKED



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Deputy P Roffey
 Minister
 Health and Social Services Department
 Le Vauquiedor
 St Andrews
 Guernsey
 GY6 8TW

27 October 2006

Dear Deputy Roffey

Health and Social Services Department
Care Homes and Care Agencies (Guernsey) Law, 2007 consultation

Thank you for your letter dated 9 October 2006, the enclosed draft Project de Loi and Standards for Care Homes consultation document.

I am pleased to support the introduction of revised legislation and standards for vulnerable persons in care homes.

I note that Sections 7, 10 and 25, of the draft legislation create criminal offences, which would probably necessitate the assistance of the Police to investigate. However, it is likely that the number of cases will be small and therefore should not place any undue burden on Police resources.

Section 17 3 (a) relates to the requirement to produce documents including those retained on a computer. It may be that in certain circumstances, the computer forensic skills held by the Police could be used to recover these documents.

I hope that this information is of use to your Department.

Yours sincerely

M W TORODE
Minister
Home Department

E/HSSD/Letter to Dep Roffey re Care Homes Law 2007/271006/jmm



Priory of England
And the Islands

30th April 2007

Deputy P. Roffey
Minister of Health
Board of Health
Le Vauquiedor
St. Martins

Dear Deputy Roffey

Re: Care standards for domiciliary care agencies

We are very grateful to be able to comment on the above document, which made very interesting reading.

Overall it was felt that the greater protection that both this and the standards for care homes would offer for the service users would be of great benefit to them and is not before time.

St John Ambulance as a voluntary organisation is involved in the support of these clients in the Care in the Community aspects of our role and meets or would be able to meet most of the standards without too much difficulty. However the requirement for 50% of the volunteers to hold an NVQ level 2 in a care related subject by 2010 would be unrealistic, unless they already hold one by virtue of their normal employment. Several of our volunteers have vast experience in the care setting but are coming up to retirement and would not be willing or able to undertake an NVQ. This would leave clients who have been visited for a number of years without the support that we can offer.

As previously stated, we appreciate the extra controls that are required to maintain the standard of care within this setting, but feel that voluntary organisations would find it very difficult to comply with these standards. In fact in the UK St John Ambulance no longer offers a sitting service because of their regulations.

Yours sincerely,

Mr. A. H. Adam
Commander



**Caring
for Life**

Bailiwick of Guernsey

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St. Peter Port
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**Please Support
St. John Ambulance**

A Company registered in
England No. 3866129
Registered Office:
St. John's Gate, Clerkenwell,
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Mr P J Roffey
Minister
Health & Social Services Department
Corporate Headquarters
Le Vauquiedor
St Andrews
GY6 8TW

25th January 2007

Dear Mr Roffey,

I refer to your letter dated 9th October 2006, regarding the new legislation for Care Homes and Care Agencies.

I apologise for the lateness of our reply; we have been seeking advice as to whether there would be a need for our services to be included in the legislation. I understand that you were hoping to receive comments in time for your January meeting and I realise we may be too late but we just thought it would be a good idea to make contact anyway.

We would have no reservation in our premises, services we provide etc. being inspected and we should be happy to act upon any appropriate advice given resulting from the new legislation. However, I refer to draft 2, section 8(1)b where it outlines a fee. As a charity, our funds are extremely limited and as such, we would be unable continue to provide our current services should the amount payable impose too heavy a financial burden.

We look forward to hearing from you with further details, once you have them.

Yours sincerely,

A handwritten signature in cursive script that reads "Susie Doggart".

Mrs Susie Doggart
BAILIWICK ORGANISER



PATRON: *The Bailiff of Guernsey*

TELEPHONE: 01481 - 267660

Minister P.J.Roffey
Health and Social Services
Corporate Headquarters,
Le Vauquiedor,
St Andrews, GY6 4AA

24th October, 2006.

Dear Mr Roffey,

Care Homes and Care Agencies (Guernsey) Law 2007.

Thank you for your letter and draft copy of the proposed law and the new standards. We welcome all measures taken to protect the old and vulnerable members of the community seeking the services of Care Homes in Guernsey.

In particular we welcome the provisions of Standard 2 whereby every home is required to detail precisely what is included in the fees quoted. In the past we are aware of instances where it is only after admission to a home the service user and/or their representative finds there are 'hidden extras' such as incontinence products and other items that were not fully set and explained prior to admission.

Yours sincerely,

David I. Woodland.
Chairman.

Summerland House Nursing Home

*Mount Durand, St Peter Port,
Guernsey, GY1 1DX.*

Mr. P. J. Roffey,
Health & Social Services Minister,
Corporate Headquarters,
Le Vauquiedor,
St. Andrews,
GY6 8TW.

Tel: 01481 724196 Fax: 01481 715995

*email: summerlandhouse@cwgsy.net
website: www.cwgsy.net/private/summerlandhouse*

16 October 2006

Dear Mr. Roffey,

Care Homes & Care Agencies (Guernsey) Law 2007

Thank you for your letter dated 9th October, 2006 enclosing a draft copy of the Care Homes & Care Agencies (Guernsey) Law 2007 and the Guernsey Standards for Care Homes.

As you know we have been involved in the consultation process for the new Standards for many years and our concerns were outlined in a letter sent to Mrs. Jane Rowe on 6th December 2002. However, the majority of our concerns have not been represented in the revised standards.

Regarding the legislation the key factor, as always, will be in the flexibility of interpretation and the appliance of common sense in dealing with unintentional non-compliance. We welcome legislation that will allow the Inspector to have teeth and to deal effectively with the unscrupulous operator. The well being and protection of Residents should always be the overriding issue when implementing the legislation as opposed to concentrating on the processes.

Dealing specifically with the draft legislation I refer to section 8 (3) on page 13: "A person who carries on or manages, or wishes to carry on or manage, more than one establishment or agency must make a separate application in respect of each of them." This is contrary to Standard 32.3 which states: "The registered manager is responsible for no more than one registered establishment."

Apart from the point of technicality outlined above we have no issues with the proposed new legislation, which is long overdue and welcome.

Yours sincerely,



Tony Woodland
Managing Director

METHODIST HOMES FOR THE AGED (Guernsey) LTD

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Tel 01481 257206 FAX 01481 251706 e-mail: gu3uoq@cwgsy.net
Patron: The Bailiff, Mr G R Rowland

Deputy Peter Roffey
Minister For Health and Social Services
Corporate Headquarters
Le Vauquiedor
St Andrew's
GY6 6TW

November 2006

Dear Deputy Roffey

Thank you for the opportunity to respond to your letter of the 9th October and the enclosed documents.

We broadly welcome the objectives in the Consultation document.

We have drawn your attention to some differences in a care home operated as a commercial enterprise as against a charity operating a home with a not for profits policy. We did this in our last response to your department's invitation. We do not see mention of our particular concerns.

We would ask that when considering the level of registration fees etc that some allowance be made for homes registered as a charity in Guernsey and operating on a not for profit basis. Can consideration be made of this point?

With reference to 'Standard 5' (page 8). Our experience is that a period of one week is sufficient for a trial. In over 14 years of operation of Maison L'Aumone, only once have we felt it necessary to offer an extended trial period. We feel some flexibility in this area is helpful to both parties.

With small reservations we welcome the introduction of the care standards and support the 'PROJET De LOI'.

Yours sincerely,



Paul P. Le Boutillier
Chairman

NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 29th May, 2007, of the Health and Social Services Department, they are of the opinion:-

1. To approve that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HOUSING DEPARTMENT

CHARGING FOR HOUSING CONTROL SERVICES

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

5th July 2007

Dear Sir

Executive Summary

The purpose of this Report is to explore ways in which the Housing Department might be able to raise revenue in light of the current financial situation. The Report suggests that it would be appropriate to charge for certain Housing Control functions but not for other services provided by the Housing Department. It explains the reasons why certain services have been targeted and not others, and goes on to set out a proposed scale of charges, together with the projected income that could be raised if the charges are approved by the States, as per the Report's recommendations.

Introduction

In February 2007, the States approved the recommendations of a Report from the Treasury and Resources Department on 'Fees and Charges'. Specifically, the States resolved that all departments should review the fees and charges for which they have administrative responsibility, taking into account the evaluation criterion set out in paragraph 4.1 of that Report¹.

It was noted in that Report that there was scope for the Housing Department to introduce fees and charges for the Housing Department's Housing Control functions.

Owing to budgetary restrictions that are being placed on all States Departments, the Housing Department has been carefully examining how it may cut or recoup its operating costs. One area that has been identified as a suitable source of revenue is the Department's Housing Control Section, which is responsible for:

- (i) administering the Housing Control Law, which:

¹ Treasury and Resources Department – Fees and Charges - Billet d'État III 2007

- (a) determines who may occupy Local Market housing in Guernsey;
 - (b) requires an up-to-date Register to be kept of Open Market properties;
- (ii) the Right to Work Law, that is effectively the policing mechanism for the Housing Control Law.

Administering these laws involves a very heavy workload for the Housing Department, which, as shown in Appendix One, currently processes over 6,300 different applications per annum, few of which are straightforward.

The full cost of running the Housing Control Section is budgeted at £668,000 for 2007. The Housing Department wishes to recoup part of this expenditure by introducing charges to cover its operating costs.

Application of charges

With very few exceptions, all persons in employment in Guernsey require a Right to Work document verifying that they are lawfully housed.

Many countries have licensing or permit systems for immigrant workers, and Guernsey's Immigration Service already charges non-EU citizens for a work permit. Therefore the Department considers it reasonable to ask people to pay for the appropriate documentation if they choose to come and work in Guernsey. It is not proposed that charges should be levied on those whose primary purpose in coming to Guernsey is not to work – for example, the partners or spouses of residentially qualified individuals.

It is also not proposed that residentially qualified persons should pay for Status Declarations, as they are entitled to such documents and are required to hold them only to assist the Housing Department in policing the Housing Control Law. The Department considers it is appropriate to distinguish between local residents who are entitled to occupy controlled dwellings and other people who choose to relocate to Guernsey for the purpose of employment.

Until now, the cost of operating the Housing Control Section has been met from General Revenue – i.e. from income raised through taxation. However, one of the reasons why all States Departments are facing budgetary freezes/cuts is the forthcoming abolition, in 2008, of corporate taxation. This will lead to a substantial decrease in revenue for the States of Guernsey but will result in lower business costs for the majority of companies.

As revenue income is going to decrease significantly because most companies will cease paying tax, the Housing Department is of the opinion that the proposed charges should principally be borne by employers. Consequently, it is proposed that the processing of applications related directly to employment should attract a charge. In

targeting this type of document, the Department is attempting to ensure that employers who bring workers to the Island bear some of the costs of doing so.

Individuals will only be required to pay where they have lost personal documents that need replacing.

The Department also hopes that the introduction of charges will further encourage employers to make every effort to find local labour before making application for a housing licence.

(It could be argued that charges might tempt employers to import labour without ensuring that the requisite documentation is secured from the Housing Department. However, the Department considers that, owing to its policing mechanisms, it would be very difficult to achieve this on a large scale.)

Proposed System

It is proposed that all applications for employment-related licences - whether short-term (i.e. 9 months to 3 years maximum) or essential - will attract a charge. Similarly, applications for Declarations of Lawful Residence (DLRs) in respect of the occupation of staff quarters will also incur a fee. This category will consist largely of live-in hotel employees.

It is proposed that applicants should pay at the time of application and that the fee should be non-refundable. The Department is anxious to avoid the implication that housing licences and other documents are saleable commodities. On the contrary, they cannot be bought and sold. Payment on application helps to reinforce the message that it is not the document itself that is being paid for but the cost of processing that application, regardless of the outcome.

Furthermore, it is hoped that the introduction of an application fee might dissuade employers from making serial applications, each one of which has to be considered, even when the decision not to grant a licence has been communicated and the applicant is unable to demonstrate any significantly changed circumstances².

Proposed Charges

In 2006 the Department issued a total of 2,822 employment-related Right to Work documents, as detailed at Appendix Two. In addition to these, 427 applications for employment-related housing licences were rejected, making a total of 3,249 applications processed.

The above figures do not include documents issued to persons working for other States Departments. Whilst there is a cost associated with processing such applications, it is

² Under the Housing (Control of Occupation) (Guernsey) (Amendment) Law, 2006, the Department can decline to consider applications that do not raise new circumstances. However, a charge would still be raised for these applications.

debatable whether it is desirable to try to recoup any of that cost.

Given that the need to consider charges is driven by existing budgetary constraints in the public sector, it would seem counter-productive to charge other States Departments for documents. The result would be that funds would be moved – at a cost – from one States’ budget to another with no overall gain, which would be contrary to the objective of improving States’ finances. Applications from persons directly and solely employed by States Departments or Committees have therefore been excluded from all the following calculations.

Given the volume of applications dealt with, there is scope to recoup a significant amount of the cost associated with processing them. One way of achieving this would be to levy a flat rate across the board.

However, while the Housing Department wishes to emphasise that charges are being introduced to offset operating costs, in setting the actual charges payable it believes that it is reasonable for the amount paid by employers to reflect the relative benefits they will gain from the grant of a licence.

Therefore, as shown in Table 1, the charges increase in line with the length of licence applied for. **The figures have been calculated on the basis of documents issued rather than applications made, as it is difficult retrospectively to break down the rejections by category of application. Consequently the potential revenue figures given are lower than the amounts that would be collected if the charge was made on application.**

Table 1

Type of document/service	No of documents issued in 2006 (excluding States Departments)	Proposed charge (£)	Estimated income (£) (based on 2006 figures)
Up to 9 month short-term licence	1,257	75	94,275
Up to 3 year short-term licence	757	275	208,175
5 year essential licence	147	540	79,380
15 year essential licence (including extensions)	28	1,620	45,360
Employment-related DLR	631	50	31,550
Totals	2,820		458,740

Notes

1. For initial applications, the charge for an essential licence will be £108 per year applied for, i.e. the charge for a 3 year licence will be £324.

2. Where the initial essential licence length requested is a part year, the charge will be for a full year, plus £9 for every month, i.e. the charge for applying for an essential licence of 5 years 3 months, will be £567.
3. Applications for extensions to essential licences will be charged for according to the total licence length requested, e.g. if application is made to extend a 5 year essential licence to 7 years, the charge will be £756; requests for extensions from 5 to 15 years will be charged £1,620.
4. Where the extension to an essential licence length requested is a part year, the charge will be for a full year, plus £9 for every month, i.e. the charge for applying for the extension of an essential licence of 5 years to 5 years 3 months will be £567.

To clarify, the proposed charges are to be levied in respect of the length of licence sought for the post of employment and will not be adjusted if an employer, say, appoints a person with two years' residence in Guernsey to a post that, in the Department's opinion, warrants a 5-year housing licence. In such a case, the appointee will be given a licence for only the balance of the 5-year period – i.e. three years.

The Department has to carry out a full assessment of whether the post merits a 5-year licence and the work is not lessened if the eventual appointee has previous residence in Guernsey. In addition, it is hoped that this might dissuade employers from taking on staff already here and working under licence for a different company. The Department is keen that, wherever possible, licence holders do not move from one employer to another because this can lead to requests for licence extensions and consequently additional administrative procedures having to be carried out.

Replacement documents

As well as processing new applications, the Department issues approximately 1,000 replacement documents per year. It is proposed to levy a separate, slightly lower, charge for these, to reflect the fact that producing replacement documents is not as labour intensive as issuing an original.

Right to Work documents are the property of the holder and should not be given up to employers. Many are permanent documents that should be retained but it seems that the public and employers do not treat them with the requisite care.

It is hoped that the introduction of a charge for replacement documents will encourage people to look after them properly but, if this cannot be achieved, then the Department will at least be able to recoup some of the costs associated with issuing new documents. These charges will have to be met by individuals but will not, of course, be payable if the employee retains his/her Right to Work document in the correct manner.

It is proposed that the charge for replacement documents be set at £10. Based on a projected 1,000 being issued out in a year, this would increase income by an additional £10,000.

This would result in estimated total income from all the above charges of £468,740.

Whilst this does not cover the entire operating costs of the Housing Control Section, it would offset those costs and would represent a significant long-term saving for the States' General Revenue budget.

Other Sources of Income

Using the evaluation criterion for evaluating fees and charges, as outlined in paragraph 4.1 of the aforementioned States Report from the Treasury and Resources Department (and reproduced in Appendix Three), the Housing Department has also reviewed whether it has any other opportunities for revenue generation from its administration of the Housing Control and Right to Work Laws. It has concluded that at present there is only one significant service that could be charged for: namely, the inspection of Open Market properties prior to sale.

It is standard practice (although not a requirement in Law) for Advocates representing purchasers to request that the Housing Control Inspector inspects Part A Open Market properties to confirm that they are properly and validly inscribed in the Housing Register. In 2006, 111 Open Market inspections were carried out.

Given that many of the processes involved in property purchase are costly, the Department does not consider it unreasonable that prospective purchasers should pay to acquire confirmation of the status of the property they wish to buy.

In any event, there is no obligation on any of the parties to have an inspection carried out and if the fee is not acceptable, then the purchaser need not request the inspection.

It is considered that a reasonable fee for this service would be £250. Based on 2006 inspections, this would raise approximately £27,750 per annum, although this figure could obviously rise or fall depending on the number of properties changing hands in any given year and also on the uptake of the service if it has to be paid for.

Summary of potential revenue from charges

Table 2 shows the potential revenue that could be raised from all sources identified within the Housing Control Section.

Table 2

Type of document/service	No of documents issued/ inspections carried out in 2006 (excluding States Departments)	Proposed charge (£)	Estimated income (£) (based on 2006 figures)
Up to 9 month short-term licence	1,257	75	94,275
Up to 3 year short-term licence	757	275	208,175
5 year essential licence	147	540	79,380
15 year essential licence (including extensions)	28	1,620	45,360
Employment-related DLR	631	50	31,550
Replacement documents	1,000	10	10,000
Open Market inspections	111	250	27,750
Totals	3,931		496,490

Costs

If charges are levied for certain services it is inevitable that there will be a cost to the Housing Department and to other States Departments in administering the collection of such funds.

The Housing Department itself does not have secure facilities for taking cash over the counter. Therefore it is proposed that applicants should be able to pay at the Cashiers Desk in Frossard House; at designated Post Offices; and also on-line. Any applications that arrive without proof that the requisite fee has been paid will not be processed until such time as the charge has been paid.

At this stage it is difficult to predict accurately what the costs will be because to a large degree they will depend on the exact number of applications submitted and also the ways in which people choose to make their payments.

However, it is inevitable that additional work will be caused by the introduction of charges. Staff time will have to be spent chasing up payments that have not been received as well as reconciling payments.

It is estimated that Housing Department staff time spent in chasing and reconciling payments will cost approximately £6,000 per annum.

In addition, the Post Office will levy a charge for taking the payments. It is anticipated that these costs could be in the region of £1,000 per annum, although the exact figure is difficult to predict at this time.

On-line payments could cost a similar amount; and it is also necessary to consider the costs to the Treasury and Resources Department of collecting the income at the Cashiers

Desk in Sir Charles Frossard House, the details of which are yet to be finalised. Such costs are estimated to be in the region of £3,500.

As well as these ongoing costs, there will be a one-off cost associated with the modification of the Housing Control database to enable data concerning payments to be captured. However, this is but one of a number of system enhancements referred to in the section immediately below.

Taking all the above factors into account, the net revenue likely to be raised on an ongoing basis is approximately £486,000, representing a significant proportion of overall operating costs.

Improvements to customer service

In its Report on ‘Fees and Charges’, the Treasury and Resources Department stated that:

“... if Departments introduce charges (or increase existing ones) there will be an increased expectation on client services. Quite understandably members of the public and businesses will be less tolerant of poor service if they have to pay for it. In some circumstances this will mean that client services will have to improve which may have an impact on costs.”

The Treasury and Resources Department’s report on ‘Fees and Charges’ (as quoted above) confirms that it is necessary to maintain a high standard of service once a fee has been introduced for that service. Thus it might prove necessary to use a small portion of the revenue generated from the introduction of charges to fund the resources required to ensure that a high standard of service is maintained.

The administration of the Housing Control and Right to Work legislation is very paper-driven. Although administration of the legislation is supported by a bespoke computer system, this has developed and evolved over the years, and been supported by a mixture of external consultants and in-house Department staff, largely on an ad-hoc basis.

The proposed introduction of charges has confirmed the overdue need for the IT system to undergo significant enhancement (with associated changes to business processes) so that efficiency savings may be gained and customer service can be improved to coincide with the introduction of charges. Specifically, the enhancement project will enable *inter alia*:

- On-line licence applications
- Automating workflow to improve efficiency in processing licence applications
- Automatic generation of letters
- A payment collection system
- Production of statistics for both Housing Department and external use

Following the production of a detailed specification for the enhancements required, a total project budget of £692,000 has been agreed, which the Treasury and Resources Department has agreed to fund from the Reorganisation and Restructuring Fund.

Legislative requirements

If the States accept that charges should be introduced then it will be necessary to amend the Housing Control Law to enable the Department to charge for processing documents.

It is also recommended that the initial and future increases in charges should be able to be introduced by the Department without the need for a Projet de Loi or Ordinance to be prepared, i.e. by Regulation.

Implementation date

In view of the need to make changes to primary legislation and significantly to enhance the IT system that supports the administration of the Housing Control and Right to Work Laws, it is planned to introduce charges with effect from 1 January 2009.

Conclusions

In line with the States Resolution of February 2007, the Housing Department has considered what opportunities there are to introduce fees and charges for which it has administrative responsibility.

Given the current financial climate the Housing Department is keen to recoup and/or offset its operating costs wherever possible. It believes that it is no longer possible to continue to provide a costly service to the public without some of those costs being recovered.

It also believes that the charges should principally be borne by employers, who are set to experience lower business costs as a result of forthcoming changes to Guernsey's taxation system.

Further, insofar as they apply, the charges set out in this Report satisfy the evaluation criteria approved by the States in February 2007 (see Appendix Three).

Recommendations

In light of the foregoing, the States are asked to agree as follows:

- i. That charges should be introduced for Right to Work documents and replacement documents as outlined in this Report;
- ii. That charges should be introduced for Open Market inspections as outlined in this Report;

- iii. That the Housing Control Law should be amended to give effect to i) and ii) above;
- iv. That the Housing Department should be able to set and change the level of charges by Regulation as required; and
- v. That the Treasury and Resources Department is directed to take account of the fees raised from charging for Housing Control Services when recommending to the States, Cash Limits for the Housing Department for 2009 and subsequent years

Yours faithfully

D Jones
Minister

APPENDIX ONE – All Documents Issued 2006

Type of Document	Number issued in 2006
Status Declaration (issued to qualified residents)	984
Nursing Homes and Compassionate Licences	31
'En Famille' or One-to-one Licence	434
Tent dweller's declaration	2
Boat crew certificate	30
Declaration of lawful residence (for people who are not residentially qualified but who are lawfully housed)	2,557
Short-term Licences 9 months	1,257
Short-term Licences 3 years	757
Essential Licences 5 years or less	203
Essential Licences extended 15 years	22
Essential Licences issued 15 years	26
Total	6,303

APPENDIX TWO Employment-related Documents issued 2006 (excluding States Departments)

Type of Document	Number issued in 2006
Tent dweller's declaration	2
Declaration of Lawful Residence (employment-related)	631
Short-term Licences 9 months	1,257
Short-term Licences 3 years	757
Essential Licences 5 years	147
Essential Licences extended 15 years	15
Essential Licences issued 15 years	13
Total	2,822

APPENDIX THREE – Criteria approved by the States for evaluating fees and charges

- **How much can be raised?**
- **How much will it cost (full costs of administering, policing and processing) to collect the income?**
- **What is the cost of providing the service?**
- **What will be the costs and impact on the customer?**
- **Can the customer realistically afford to pay?**
- **Does the fee or charge already exist?**
- **Does the fee or charge exist in other comparable jurisdictions?**
- **How easy would it be to implement, including legislative requirements?**
- **How often would the amounts charged require revision?**
- **What, if any, is the impact on local inflation?**
- **Does the fee or charge support or restrict the agreed economic strategy?**
- **Does the fee or charge support or restrict social and environmentally desirable or undesirable behaviour?**
- **Is the charge realistically collectable, how easily can it be avoided?**
- **Is the service considered to be a potential profit making activity?**
- **It is politically deliverable?**

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department supports the proposals.)

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 5th July, 2007, of the Housing Department, they are of the opinion:-

1. That charges shall be introduced for Right to Work documents and replacement documents as outlined in that Report.
2. That charges shall be introduced for Open Market inspections as outlined in that Report.
3. That the Housing Control Law shall be amended to give effect to 1 and 2 above.
4. That the Housing Department shall be able to set and change the level of charges by Regulation as required.
5. To direct the Treasury and Resources Department to take account of the fees raised from charging for Housing Control Services when recommending to the States, Cash Limits for the Housing Department for 2009 and subsequent years
6. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HOME DEPARTMENT

INSURANCE DISCS

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

13th July 2007

Dear Sir

1. Executive Summary

The purpose of this States Report is to seek approval for an amendment to the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended, (“the Law”) to require drivers of motor vehicles to display insurance discs in the front windscreen of the vehicle showing the policy number, period of cover and insurer of the motor vehicle.

The proposals are in response to the decision of the States in October 2006¹ to abolish motor tax and the consequential loss of the requirement for motorists to display a valid tax disc. The Guernsey Police have expressed concern that the abolition of motor tax has resulted in the loss of an annual check that a locally registered motor vehicle was insured in accordance with the requirements of the Law.

Further, the Report proposes that the Guernsey Police be afforded additional powers to enable them to detain motor vehicles where an officer has reasonable suspicion that the driver is uninsured. The Department believes that such a power is a reasonable and proportionate response for ensuring that all road users are protected from those who drive without insurance.

2. Background

On 26th October 2006, following consideration of a report from the Treasury and Resources Department, the States resolved as follows:

“After consideration of the Report dated 5th September, 2006, of the Treasury and Resources Department:-

¹ Billet d’État XVII of 2006

1. *That motor vehicle taxation should be abolished with effect from 1 January 2008 and that, subject to certain exemptions, increased duties on petrol and diesel fuel should be introduced.*
2. *That the End of Life Disposal Levy should be abolished with effect from 1 January 2008.*
3. *That diesel fuel used for exempted purposes such as agricultural and horticultural purposes, the construction, maintenance and clearance of roads and other construction machinery that is not primarily used to transport goods and people should be exempt from diesel duty and that a system of dyeing be implemented with effect from 1 January 2008.*
4. *To direct the Treasury and Resources Department to continue to review the issue of diesel duty on non-commercial marine vessels and to report back as soon as practicable.*
5. *To note the Environment Department's intention to continue to investigate and report back on the most appropriate method of ensuring that motor vehicles are registered and adequately insured."*

Following the States decision to abolish motor tax the Chief Officer of Police raised his concerns that as motorists would no longer be required to re-tax their motor vehicles at least once a year there would also be a loss of the annual check, by staff at the Vehicle Registration and Licensing Department, that a motor vehicle was covered by the minimum level of insurance required under the Law.

In raising his concerns the Chief Officer of Police recognized that there was little to prevent a motorist from cancelling his insurance policy immediately after re-taxing his motor vehicle or allowing the policy to lapse by defaulting on an installment plan. However, his experience suggested that the vast majority of locally registered vehicles displaying a valid tax disc were appropriately insured under the Law.

The Chief Officer of Police commended the approach Jersey had adopted when it abolished motor tax in favour of additional duty on petrol and diesel. That is, the introduction of a requirement for motor vehicles to display an insurance disc in place of the tax disc.

3. The Motor Traffic (Third-Party Insurance) (Jersey) Law 1948, as amended

The Motor Traffic (Third-Party Insurance) (Jersey) Law 1948, as amended, ("the Jersey Law") was amended in 1993 to require Jersey-registered motor insurers to issue insurance discs referring to the policy of insurance and the period of cover provided under the policy. Further, these discs must be displayed on the windscreen of three and four-wheeled motor vehicles and the forks of motorcycles. That is, the insurance discs must be displayed in the same way as the tax disc they replaced.

The Jersey Law provides the following provisions:

- “6 *Certificates of insurance and insurance discs to be delivered to insured persons and display of insurance discs***
- (1) *A policy of insurance shall be of no effect for the purposes of this Law unless and until there is issued by the authorized insurer and delivered by the insurer to the person by whom the policy is effected a certificate of insurance which shall refer to the policy of insurance and the period of cover provided under the policy.*
- (2) *In addition to the certificate of insurance, there shall be issued and delivered by the authorized insurer to the person by whom the policy of insurance is effected –*
- (a) *except where that person is a fleet registered keeper or the holder of a motor cycle rider policy, an insurance disc in respect of each motor vehicle the use of which is covered by the policy;*
- (b) *where that person is a fleet registered keeper, that number of insurance discs which corresponds with the number of motor vehicles the use of which at any one time is covered by the policy;*
- (c) *where that person is the holder of a motor cycle rider policy, an insurance disc, and each insurance disc so issued shall refer to the policy of insurance and the period of cover provided under the policy.*
- (3) *A certificate of insurance shall –*
- (a) *be in the prescribed form; and*
- (b) *contain such particulars of –*
- (i) *any conditions subject to which the policy is issued, and*
- (ii) *any other matters, as may be prescribed, and different forms and different particulars may be prescribed in relation to different cases or circumstances.*
- (4) *Except as provided in paragraph (7), at all times when a motor vehicle is being used or kept on a road, there shall be displayed on the vehicle in the prescribed manner an insurance disc which shall –*
- (a) *be in the prescribed form;*

- (b) *bear the prescribed particulars which shall refer to a policy of third-party risks for the time being in force covering the use of the vehicle; and*
 - (c) *unless the person by whom the insurance policy is effected is a fleet registered keeper or the holder of a motor cycle rider policy, bear the registration mark of the vehicle.*
- (5) *In respect of insurance discs, different forms, different particulars and different manners of display may be prescribed in relation to different cases or circumstances.*
- (6) *For the purposes of this Law, the expression “fleet registered keeper” means a person by whom a single policy of insurance in respect of third party risks is effected in relation to the user of not fewer than a prescribed number of motor vehicles which are –*
- (a) *owned by the person; and*
 - (b) *operated for trade or business purposes,*
- and in this Article –*
- “motor cycle rider policy” means a policy of insurance in respect of third party risks in relation to the user of motor cycles or mopeds under which the cover relates to the policy holder and not to a particular motor cycle or moped; and “motor cycle” and “moped” have the same meanings, respectively, as in the Road Traffic (Jersey) Law 1956.*
- (7) *Nothing in this Article shall operate to require the display of an insurance disc on a motor vehicle –*
- (a) *to which the provisions of Article 2(3) or (4) apply; or*
 - (b) *prescribed as a vehicle on which an insurance disc is not required to be displayed.*

16 Requirements as to display and production of insurance disc

- (1) *A person who uses or keeps on a road a motor vehicle on which an insurance disc required to be displayed under Article 6 is not so displayed shall be guilty of an offence.*
- (2) *The owner of a motor vehicle –*
- (a) *which is used or kept on a road; and*

- (b) *on which an insurance disc required to be displayed under Article 6 is not so displayed, shall be guilty of an offence:*

Provided that the owner shall not be convicted of an offence under this paragraph if the owner shall prove that at the relevant time the vehicle was being used or kept without the owner's consent by another person.

- (3) *Any person driving a motor vehicle on a road shall, on being so required by a Police or Traffic Officer, produce for examination the insurance disc displayed on the vehicle, and, if the person fails to do so, the person shall be guilty of an offence."*

Further, the Jersey Law requires the policyholder to surrender both the policy and the insurance disc when the policy is cancelled either by the policyholder or as a result of the non-payment of an installment or for such other reason as the insurer may deem appropriate:

"11 Surrender of certificate and disc

- (1) *Where a policy of insurance has been effected and an insurance disc bearing the registration mark of a motor vehicle has been delivered under Article 6 by the insurer to the person by whom the policy was effected and that vehicle is subsequently transferred by that person to another, that person shall, within 7 days after the transfer takes effect, surrender to the insurer the insurance disc, and if the person fails to do so or, where the disc has been lost or destroyed, to comply with the provisions of paragraph (3), the person shall be guilty of an offence.*
- (2) *Where a policy of insurance has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person by whom the policy was effected shall, within 7 days after the cancellation takes effect, surrender to the insurer the certificate of insurance and insurance disc delivered under Article 6 by the insurer to that person in respect of the policy, and if the person fails to do so or, where the certificate or disc has been lost or destroyed, to comply with the provisions of paragraph (3), the person shall be guilty of an offence.*
- (3) *Where a person is under an obligation under paragraph (1) or (2) to surrender a certificate of insurance or insurance disc and by reason of its loss or destruction the person is unable to do so, the person shall make an affidavit deposing to its loss or destruction and within a period of 10 days after the transfer or cancellation, as the case may be, takes effect the person shall deliver the affidavit to the insurer."*

In addition, the Jersey Law permits the relevant Department to make Orders as to:

- (a) the form and manufacture of insurance discs;
- (b) the particulars to be contained on insurance discs;
- (c) the issue, delivery, replacement and surrender of insurance discs; and
- (d) the manner of display of insurance discs.

Further the relevant Department can make Orders to relieve certain types or classes of motor vehicles from the requirement to display an insurance disc.

Finally, the Jersey Law provides for a number of offences relating to the falsification and wrongful use of insurance discs, namely:

“18 Falsification and wrongful use of certificates or discs

- (1) *If, with intent to deceive, any person –*
 - (a) *makes, in order that it may be used as genuine, or alters or uses or lends to or allows to be used by any other person, a certificate of insurance or insurance disc under this Law; or*
 - (b) *makes or has in the person’s possession any document so closely resembling such a certificate or disc as to be calculated to deceive, the person shall be liable to a fine or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.*
- (2) *If any person for the purpose of obtaining the issue of a certificate of insurance or insurance disc under this Law makes any false statement or withholds any material information, the person shall be liable to a fine or to imprisonment, for a term not exceeding 6 months, or to both such fine and imprisonment.*

If any person issues a certificate of insurance or insurance disc which is to the person’s knowledge false in any material particular, the person shall be liable to a fine or to imprisonment, for a term not exceeding 6 months, or to both such fine and imprisonment.
- (3) ...
- (4) *In this Article the expression “certificate of insurance” includes any document issued under an Order made by the Committee in pursuance of its power under this Law to prescribe evidence which may be produced in lieu of a certificate of insurance.”*

4. Notification of Ineffective Insurance Policies

In addition, the Chief Officer of Police has requested that the Law be amended to include a provision similar to section 11 of the Motor Vehicles (Third Party Risks) Regulations 1972 in respect of the notification of cancelled or revoked insurance policies, namely:

“11. Where to the knowledge of a company a policy or security issued by them ceases to be effective without the consent of the person to whom it was issued otherwise than by effluxion of time or by reason of his death the company shall forthwith notify the Secretary of State [for the Environment, Transport and the Regions] of the date on which the policy or security ceased to be effective provided that such notification need not be made if the certificate relating to the policy or security has been received by the company from the person to whom the certificate was issued on or before the date on which the policy or security ceases to be effective.”

The Department supports the Chief Officer of Police’s view that such a requirement would assist the Guernsey Police in its endeavours to ensure that all motor vehicles are adequately insured when used on the island’s roads.

5. Removal of Uninsured Motor Vehicles

The Chief Officer of Police also recommended that the Law be further amended to provide Guernsey Police with similar powers to those afforded to UK police officers under section 7(1) of the Motor Vehicles (Compulsory Insurance) (No 2) Regulations 1973, suitably amended. That is, a police officer has a power to detain vehicles where he has reasonable suspicion that the driver is uninsured, namely:

“7 (1) Where a constable in uniform has reasonable cause to suspect the driver of a vehicle of having committed an offence under the preceding Regulation, the constable may detain the vehicle, and for that purpose may give a direction, specifying an appropriate person and directing the vehicle to be removed by that person to such place and subject to such conditions as are specified in the direction; and the prohibition shall not apply to the removal of the vehicle in accordance with that direction.

(2) Where under paragraph (1) of this Regulation a constable—

(a) detains a motor vehicle drawing a trailer, or

(b) detains a trailer drawn by a motor vehicle,

then, for the purpose of securing the removal of the trailer, he may also (in a case falling within sub-paragraph (a) above) detain the trailer or (in a case falling within sub-paragraph (b) above) detain the motor

vehicle; and a direction under paragraph (1) of this Regulation may require both the motor vehicle and the trailer to be removed to the place specified in the direction.

- (3) *A vehicle which, in accordance with a direction given under paragraph (1) of this Regulation, is removed to a place specified in the direction shall be detained in that place, or in any other place to which it is removed in accordance with a further direction given under that paragraph, until a constable (or, if that place is in the occupation of the Secretary of State, the Secretary of State) authorises the vehicle to be released on being satisfied-*
- (a) *that the prohibition (if any) imposed in respect of the vehicle under the preceding Regulation has been removed, or that no such prohibition was imposed, or*
 - (b) *that appropriate arrangements have been made for removing or remedying the circumstances in consequence of which any such prohibition was imposed, or*
 - (c) *that the vehicle will be taken forthwith to a place from which it will be taken out of Great Britain to a place not in the European territory other than Gibraltar of a member state of the Communities [and not in the territory of a relevant foreign state].”*

The Chief Officer of Police believes that such an additional power would assist his officers when dealing with people who they suspect may be driving without insurance and therefore serve to provide additional protection for other road users, including pedestrians.

Finally, the Department would wish to be able to charge the registered owners of vehicles impounded for any costs incurred in storing the vehicle pending production of proof of appropriate insurance.

6. Consultation with the Environment Department

Following the States decision the Department has been working closely with the Environment Department on this matter, in particular, in pursuance of resolution 5:

- “5. *To note the Environment Department’s intention to continue to investigate and report back on the most appropriate method of ensuring that motor vehicles are registered and adequately insured.”*

Following a number of officer level meetings which involved representatives from the Department, Guernsey Police, the Customs and Immigration Department and the Environment Department, a proposal was put to the Boards of the two Departments

recommending that the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended, be further amended to provide for the introduction of insurance discs and that, in so far as possible, the amendments should be based on the requirements for insurance discs set out in the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948, as amended. The Boards of both Departments agreed to proceed in this way.

Further meetings were held with representatives of Guernsey-registered motor insurers who indicated their general support for the proposed changes. The industry representatives highlighted the considerable merit of mirroring the Jersey Law in so far as possible as the majority of motor insurers carried out business in both Islands and therefore it seemed prudent for Guernsey to adopt the system which has been operating successfully in Jersey for nearly 15 years.

The Department was also grateful to receive assurances from the Minister for the Environment Department that Guernsey Police and the Customs and Immigration Service would be able to access information held on the Vehicle Licensing and Registration Department's new computer database. The Department noted that this was welcomed by the Chief Officers of Guernsey Police and the Customs and Immigration Service as a valuable tool when investigating crime and ensuring that the island's road traffic laws are enforced effectively and efficiently.

The Environment Department fully endorses the Department's proposals as set out in this report.

7. Consultation with Guernsey-registered Motor Insurers

The Department, together with the Environment Department and the Guernsey Police, has held some outline discussions with representatives of Guernsey-registered motor insurers. It was clear from these discussions that the proposals to mirror the Jersey legislation requiring motorists to display insurance discs would not present them with an administrative difficulties or result in additional costs which may need to be passed on by way of increased insurance premiums.

The Department hopes that the insurers will undertake to commence issuing insurance discs ahead of the introduction of the legislation proposed in the Report as this approach would encourage motorists to get into the habit of displaying an insurance disc before it becomes a legal requirement. To this end the Department is working with the Environment Department and the insurers to try and have all the administrative requirements, including providing the insurers with water and security marked paper for the insurance discs to be printed on, in place so that motorists can replace their tax disc with an insurance disc on 1st January 2008.

8. Alderney

The States of Alderney has previously adopted the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended. The States of Alderney has indicated that, in principle, Alderney would wish to have the proposed amendments relating to insurance

discs similarly extended to Alderney, subject to any amendments that may be required to so extend the requirement for insurance discs to be displayed. That is, insurance discs would also be required to be displayed on all motor vehicles being used in Alderney.

This should not present any difficulties for the insurers as it is those companies providing motor insurance in Guernsey also offer insurance to Alderney motorists.

9. Consultation with HM Procureur

The Department has consulted with HM Procureur regarding the proposals for amending the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended, to require motorists to display insurance discs and otherwise as set out in this Report and he supports the proposals.

10. Resources

The Department believes that the implementation of proposals set out in this report can largely be managed from within the Department's existing resources. However, the Guernsey Police will require some secure garaging to accommodate any vehicles which may be seized under the provisions set out in section 5 above. It is envisaged that the costs of such additional accommodation could be defrayed by recovering some storage costs from the owners of such vehicles.

Further, the Department has been advised by the representatives of the motor insurance industry it has consulted with that when the Jersey Law was introduced in 1993 it was achieved without any increase in motor insurance premiums. Further, the industry has advised the Department that if the Jersey approach is adopted in Guernsey it could also be achieved without imposing any additional costs on individual motorists.

11. Conclusion

The Department recommends the States:

To approve the Department's proposals for amending the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended to

- introduce insurance discs and require them to be displayed on motor vehicles as set out in this report;
- require insurers to notify the Home Department when a policy is cancelled without the consent of the person insured;
- allow police officers to detain vehicles where there is reason to believe the vehicle is uninsured; and

To direct the preparation of such legislation as may be necessary to give effect to the foregoing and as otherwise set out in this Report.

Yours faithfully

G H Mahy
Minister

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

XIII.- Whether, after consideration of the Report dated 13th July, 2007, of the Home Department, they are of the opinion:-

1. To approve the Home Department's proposals for amending the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended to
 - introduce insurance discs and require them to be displayed on motor vehicles as set out in that Report;
 - require insurers to notify the Home Department when a policy is cancelled without the consent of the person insured;
 - allow police officers to detain vehicles where there is reason to believe the vehicle is uninsured.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

PUBLIC SERVICES DEPARTMENT

INSTALLATION OF FRENCH MARITIME RADAR TOWER AT GUERNSEY AIRPORT

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

16th July 2007

Dear Sir

Executive Summary

This report proposes that an area of land situate at Guernsey Airport be leased to the French Government (Department of Maritime Affairs) for the purposes of erecting a maritime radar.

The proposal was first considered by the States of Deliberation in October 2002 (Billet D'Etat XXII, 2002) when the house approved the construction of a maritime radar installation at Guernsey Airport and authorised that the Board of Administration should lease an area of land for a period of 25 years.

Since that time however, part of the original site identified for the tower has been developed as meteorological observation post. In addition the Public Services Department is minded that with the passage of time the proposal should be referred back to the States for ratification.

Background

Following a number of serious shipping accidents, including the loss of the tanker 'Erika' the French administration, supported by the United Kingdom, introduced a mandatory ship reporting system for vessels over 300 gross tonnes in the Casquets Traffic Separation Scheme (TSS). This reporting scheme was approved by the International Maritime Organisation (IMO) and came into force in July 2001.

The Northern section of the TSS is currently in British waters, however the UK signed over its rights to control shipping in this area to the French Authorities.

The sea areas adjacent to the Bailiwick are particularly busy with around 300 ships a day on average transiting in the area. While some of this traffic is cross channel

passenger traffic, it is estimated that the daily traffic in the Casquets lanes includes cargoes of approximately 300,000 tonnes of oil, 20,000 tonnes of gas and 120,000 tonnes of chemical products in bulk and containers. The Islands are, therefore, demonstrably vulnerable to the environmental effects of a shipping casualty in these busy waters as evidenced by the MSC Napoli, Ece, Ievoli Sun and Perintis incidents in recent times.

In order to improve the safety and control of vessels around the TSS area, the French Authorities arranged for a radar coverage survey to be carried out in 1999. Currently there are radars established at Ouessant (Cross Corsen) and at Cap de la Hague (Cross Jobourg). There remains a lack of radar coverage between these two sites and as a result the French wish to establish further radar sites at Ploumanac and on Guernsey to cover the radar gaps.

The States of Deliberation considered the matter at its meeting held in October 2002, and at that stage approved the construction of a maritime radar installation at Guernsey Airport. In addition the States authorised the Board of Administration to lease an area of land at the Airport for a period of 25 years.

Despite some subsequent follow up investigations and surveys, the matter was not actively pursued by the French Maritime Authority, as it had to divert capital finance away from new radar installations, to replace its existing stations which were in need of renewal. In 2004, the Director of Maritime Affairs indicated that the programme would be restarted in 2007. To date no formal agreement has been signed.

Proposed Agreement

The original proposal was that the French would construct, maintain and operate the maritime radar at its own cost. The States of Guernsey would lease an area of land at Guernsey Airport for the installation of two towers, which would house a maritime radar, direction finding equipment, microwave communications links and maritime radios.

The towers would become the property of the States of Guernsey upon completion of construction and the land would continue to belong to the States, but let to the French at nominal rent of £1 per annum. The French proposed a 25 year lease in order to cover its significant investment in the site and equipment.

This commercial arrangement drafted in 2002 is not favoured by the Public Services Department. Firstly the Department is concerned over assuming responsibility for the tower(s), particularly over a long period of time, given the ongoing maintenance costs for a facility that would be primarily of benefit to an outside agency. In addition the Department would be keen to achieve a more commercial rent on the site. In mitigation and in recognition of these more demanding lease conditions, the Department would be prepared to consider a longer lease for the site.

As with the original proposal, the French have agreed to allow data from all the equipment at the installation to be made available to the Guernsey and Alderney Authorities, which could be particularly beneficial for the Harbour Offices. This information would also be available to other Departments should they require it. Responsibility for meeting the cost of the purchase and installation of equipment necessary to process, interpret and transfer data from the Maritime Radar at the Airport to the Insular Departments would rest with the end user Departments.

Location

The original proposal was to locate two towers (each approximately 25m high) to the south of the Airport Administration Building. The site was selected so that the height of the towers would provide the optimum performance for the French Maritime radar whilst not interfering with the Airport's safety/transitional surface.

The site originally identified (in 2002) has since been partly developed by Guernsey Airport as a meteorological recording station, and as such any construction in the immediate vicinity could adversely affect data reliability. An alternative site 40m from the original location has been identified as an alternative. This site is shown on the attached site plan (Appendix A).

It is probable that the radar installation will now be limited to a single tower at a height of either 19m or 24m (depending on whether Direction Finding Equipment is to be installed). A sketch plan showing the initial design of a single tower is attached (Appendix B).

Consents

Details of the proposed installation of the two towers were previously submitted to the Island Development Committee which raised no objections to the proposals in 2002. Clearly the new proposals once finalised in draft form would need to be resubmitted to the Environment Department for ratification. Under the terms of the Aerodrome Licence, the Royal Court of Guernsey would also need to approve the detailed development proposal.

In addition, a number of physical safeguarding, health & safety and technical evaluation checks will be required for the proposed installation. The results of these checks could influence the overall design, location or height of the structure.

In order to produce these detailed plans for planning and technical evaluation, the French Government is required to undertake a comprehensive appointment process to select a design architect. Accordingly, the States of Guernsey is being asked to revalidate the principle of this installation, in order that the French Authorities can then invest the necessary time and costs associated with re-starting its project.

Conclusions

The installation of a maritime surveillance radar with associated communications devices by the French Authorities will significantly improve the safety of shipping transiting through the shipping routes to the north and west of the Bailiwick.

The Channel Islands and the Bailiwick of Guernsey remain particularly vulnerable to the impact of any shipping casualties in this area and will benefit from the enhanced protection that will result from this installation.

By assisting the French Authorities, the States of Guernsey will be demonstrating a commitment to improving safety in the adjacent sea areas.

Some raw data obtained from the equipment will be available free of charge to the Island Authorities which will be of considerable benefit.

The costs of construction, maintenance and operation will be borne by the French Authorities in exchange for a lease of a site at Guernsey Airport.

Recommendations

The Public Services Department recommends that the States:

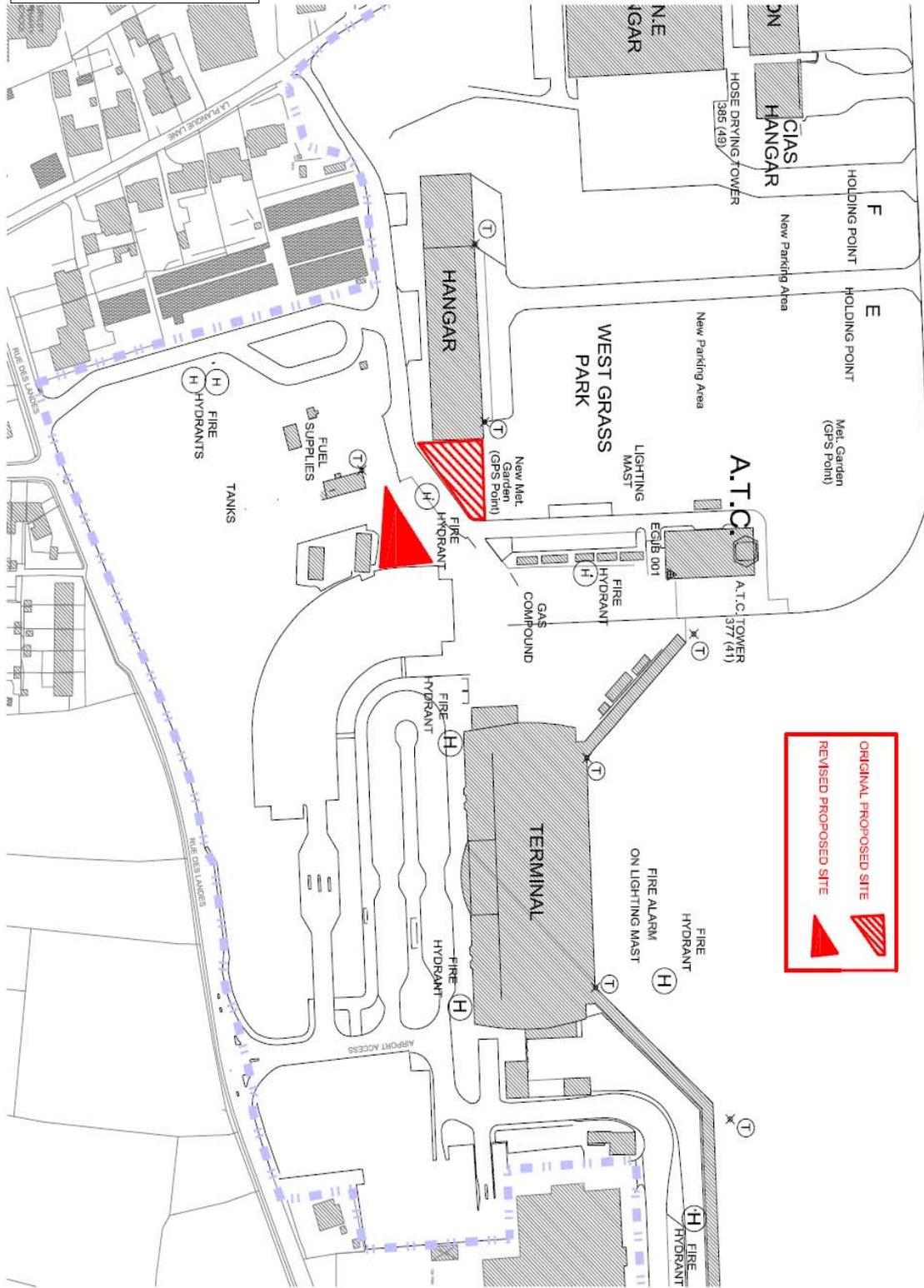
Revalidates its previous approval for the construction of a maritime radar installation at Guernsey Airport by the French Authorities as set out in this report.

Authorises the Public Services Department, in conjunction with the Treasury and Resources Department, to lease to the French Authorities an area of land at Guernsey Airport for a period of up to 60 years. The terms and conditions of this lease are still to be agreed.

Yours faithfully

William M Bell
Minister

APPENDIX A

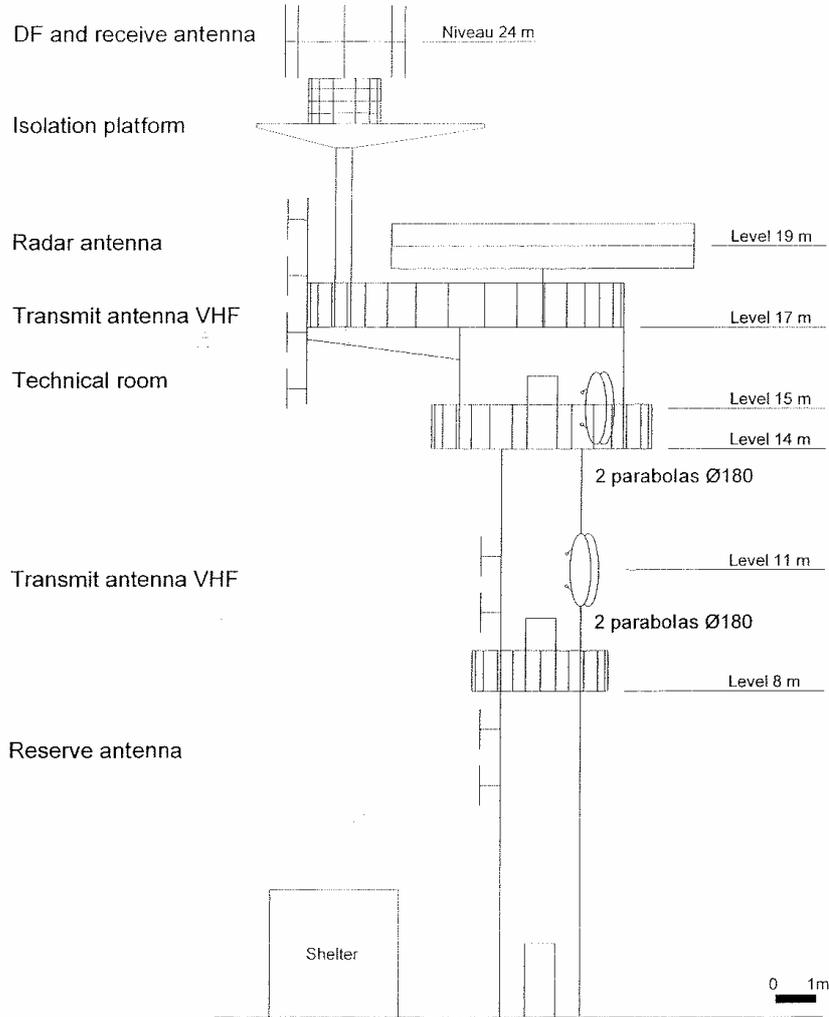


ORIGINAL PROPOSED SITE
REVISED PROPOSED SITE

The legend is enclosed in a red rectangular border. It contains two entries: 'ORIGINAL PROPOSED SITE' with a red triangle symbol, and 'REVISED PROPOSED SITE' with a red hatched triangle symbol.

Appendix B

RADAR STATION OF GUERNSEY
Solution with one tower



(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

XIV.- Whether, after consideration of the Report dated 16th July, 2007, of the Public Services Department, they are of the opinion:-

1. To revalidate their previous approval for the construction of a maritime radar installation at Guernsey Airport by the French Authorities as set out in that Report.
2.
 - (1) To authorises the Public Services Department, in conjunction with the Treasury and Resources Department, to lease to the French Authorities an area of land at Guernsey Airport for a period of up to 60 years.
 - (2) To note that the terms and conditions of this lease are still to be agreed.

ENVIRONMENT DEPARTMENT

THE INTRODUCTION OF FEES FOR PLANNING AND BUILDING CONTROL APPLICATIONS

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

26th July 2007

Dear Sir

EXECUTIVE SUMMARY

1. Purpose of report

This report puts forward proposals for the Environment Department to charge fees for services and functions provided under the Land Planning and Development (Guernsey) Law, 2005.

The Department requests the States to consider the introduction of fees for planning and building control applications, for carrying out property history searches and, at the request of the Policy Council, for planning appeals.

In the case of application fees, the Department proposes that fees be charged at a similar level to other jurisdictions, such as the UK and that part of the revenue raised be retained by the Department to fund the implementation of a service level agreement.

In the case of charges for property history searches, the Department proposes that fees should be set at a level that enables the service to be self-financing.

In the case of fees for planning appeals, the Department proposes that these should be funded out of general revenue and the recovery of costs.

The Department proposes that the level of fees, the funding of the service level agreement and the performance of the system should be subject to annual review by itself and the Treasury and Resources Department, within an overall three year plan, in order to ensure that the new system meets its targets. It is proposed that the system as a whole should be reviewed after the first three years.

Once all of the relevant Ordinances (including a Fees Ordinance) have been agreed by the States, the whole package of legislation will be brought into force by a Commencement Ordinance.

2. Introduction

Section 81 of the Land Planning and Development (Guernsey), 2005 enables provision for 'fees to be paid on the making of any application or otherwise' to be made by Ordinance.

At the time that the Projet was approved by the States it was not proposed to include such an Ordinance in the first phase of essential Ordinances. Since that time, a number of factors have persuaded the Environment Department that fees should be introduced alongside the new Law.

In the first place, the fiscal situation of the Island has changed. In the second place, the Department considers the introduction of fees to be an integral part of modernising the planning system. Finally, the Policy Council has requested that the Department report to the States on the introduction of planning fees, including fees for planning appeals. These factors are explained in subsequent sections of this report.

3. Fees in other jurisdictions

Most jurisdictions within the British Isles charge fees for planning and building regulation applications and for property history searches. In the United Kingdom, legislation was introduced in 1974, enabling the charging of fees for building regulations applications. Fees were subsequently introduced for planning applications in 1981 in the Town and Country Planning Act. Fees were introduced in Jersey in 1992.

Fees are not normally charged for planning appeals in the UK (there are exceptions for some categories of enforcement appeal). The Republic of Ireland does, however, charge fees for appeals.

4. Reasons for charging fees

The charging of fees for planning and building control applications has broadly been justified in other jurisdictions on the basis that the planning system operates in the interests of both society and the individual and that therefore at least a proportion of the costs of administering the system should be paid by the applicant rather than the entire cost being borne by the public purse.

In Guernsey, this issue has come to the fore because of the rapidly changing fiscal situation since 2005, when the Land Planning and Development (Guernsey) Law and the policies for the essential Ordinances were approved by the States.

The National Audit Office Report of 2005 'Income Generation in Guernsey' acknowledged the projected revenue shortfall that would result from Guernsey's corporate taxation strategy and examined the scope to raise tax and duty rates, fees and charges to help meet this revenue shortfall. Charges for planning and building regulations applications were included as a potential source of revenue. Subsequently, the report of the Treasury and Resources Department to the States on Fees and Charges (Billet d'Etat III, 2007) discussed charging fees for planning applications and property searches under 'Possible New Fees and Charges'.

In addition to raising revenue, an important function of fees is to make the system more efficient. It raises expectations of the system and creates a more business-like relationship between the planning authority and the applicant. If fees are to be charged, the Department considers that the opportunity to modernise the planning system should be taken.

An agreed level of service is an inevitable expectation where fees are being charged. In the UK for instance, the target is for 60% of major applications to be dealt with within 13 weeks, 65% of minor applications within 8 weeks and 80% of other (householder) applications within 8 weeks. Government monitors performance, rewards high performing authorities and censures those who fall below the required standard. If fees are introduced, a service level agreement will be an essential element of the new system.

Fees also have an effect on applicants and their agents, from whom a high standard of submission will be expected by the planning authority. They encourage applicants and their agents to think schemes through on a more thoroughgoing basis from the outset, rather than to submit successive amending applications. Fees also deter applications made on a speculative basis, or which have little chance of success in relation to the policies of the Development Plans. In Jersey, fees have proved a catalyst to improve the standard of applications submitted by agents as well as the performance of the planning system.

Carrying out property history searches is a service to those purchasing property, the benefits of which accrue almost entirely to the prospective property owner. These searches are time consuming for the Department, which currently does not charge for them.

Charging fees for planning appeals is more controversial. One of the objectives of the new appeal system is to make it more accessible to aggrieved applicants than the current appeal system to the Royal Court. As a general principle of fairness, access to appeals should not be limited by excessive costs, although a case for an administrative fee may be justifiable. The issue is entirely financial, as the Policy Council is now faced with the position of having to fund the new appeal mechanism and has specifically requested that the Environment Department include consideration of fees for planning appeals within its Report.

5. Introducing fees for planning and building control applications in Guernsey

5.1 Modernising Guernsey's planning system

The implementation of the new planning legislation represents a unique opportunity to ensure that the future shape of the planning service is fit for the Island's needs. It comes at a time when Guernsey is facing new fiscal and economic challenges. The role of the planning system in underpinning the new economic and taxation strategy, as it takes effect over the next few years, will be crucial. It is equally important that, at the same time, the ability of the planning system to protect and enhance the environment is strengthened. The powers of the new legislation will help the Department in both these endeavours.

The pressure of development within the Island makes it critically important that the planning and building control system is able to offer robust protection for the environment in all its aspects. It is equally important that the system is capable of enabling development which is agreed to be essential to the economic and social needs of the community in a positive and timely fashion. The island expects its essential development needs to be met, whilst at the same time protecting its environment and maintaining high environmental and design standards in new development.

The Environment Department wishes to foster a positive planning and building control system which places less focus on the detail of householder development and a stronger focus on more significant development which has a major impact on the lives of islanders. It accepts the implication of the Strategic Economic Plan that a timely and proactive planning system is essential to deliver economic objectives – as well as social and environmental objectives.

The Department also believes that the system should be more responsive, open and transparent, and that there should be all reasonable opportunity for aggrieved parties to challenge its decisions.

To achieve all this, the Department is aware that it needs both to streamline its activities (which both the new legislation and fees will help it achieve) as well as to ensure that they are properly resourced (which fees will help it achieve). This means addressing both historic and future resource issues, as well as the service level improvements that fees will require.

5.2 Existing resource issues

Any discussion of charging fees for planning and building regulations applications will inevitably include consideration of the historic resource and performance issues surrounding the existing planning system.

It has been a perennial criticism of the successive Committees (and now the Environment Department) responsible for the processing of planning and building regulations applications that the average time taken to deal with applications is too long.

Whilst the planning and building control system has been successfully modernised in many important respects over the last two decades, this has remained the most consistent complaint. Whilst the issue is most evident in development control, it also affects building control, which currently manages waiting periods for permissions by risk managing its site inspections.

The former IDC and now the Environment Department have taken various steps over the years to tackle these criticisms, including introducing appropriate technology, increasing delegation to officers, widening exemptions, streamlining procedures and, in the case of Building Control, introducing risk management. Experience shows, however, that the savings in staff time that have undoubtedly been achieved have been offset to a great extent by improvements to the service that have been made in the interests of greater transparency, in response to rising public expectations both of the quality of the service and of the development that results and as a result of the increasing influence of the potential for judicial review and human rights challenges to decisions.

In 1998, the IDC commissioned a Report by the UK District Audit, which examined the Committee's service delivery, including an element of comparison with English local planning authorities of a similar size. The Report concluded, among other things, that the application processing services were substantially under-resourced and that individual planning and building control officers were dealing with a case load up to three times that of the highest equivalent English Council. In terms of resources, the situation has not changed in essence since that time.

Whilst there are some differences in the Guernsey system that mitigate the situation to some extent, it remains the case that the development and building control systems are significantly under-resourced in relation to the UK. The long-standing nature of the problem bears out the conclusion that at least a part of the solution is increased staff resources.

5.3 The resource implications of the new Law

When the new legislation was last considered by the States (Billet d'Etat I, 2005), the Environment Department stated that it would endeavour to introduce the new planning legislation within existing staff resources. It did however draw attention to the additional demands on staff resources that would be a direct result of the legislation and predicted that there would be 'severe strains on existing resources to deliver the minimum essential reforms to the system'. It envisaged 'that these will manifest themselves very early' and that it would be necessary to seek additional resources once the new Law was in place. The Environment Department no longer considers that this position is tenable.

In developing the essential Ordinances, the Department has been mindful of the need to make the optimum use of resources. It has therefore concentrated on those aspects of the Law which are essential to its implementation:

- In several instances it has not included procedures within the Ordinances that, however desirable, are not essential and could await implementation at a later date.
- At the same time, the Department has sought the most economic means (in terms of staff resources) to introduce new procedures; for example, the responsibility for the erection of site notices will rest with the applicant, leaving the Department the less demanding task of administration.
- Where it has been possible to streamline procedures, the opportunity has been taken; for example, the arrangements to publicise representations in respect of draft Development Plans in the Plans Ordinance.
- In addition, the new Exemption Ordinance, by widening the scope of development for which formal permission will not be required, is expected to reduce the overall number of planning applications by some 10-15%.

In preparing for the implementation of the new legislation, the Department is also actively seeking areas where its procedures can be streamlined and efficiencies introduced.

The Department believes that the cumulative result of increased exemptions and the streamlined procedures that will result from new application processing procedures arising out of the implementation of the Law may be to take as much as 20% of the minor cases out of the system.

However, it has become increasingly apparent during the period of drafting the Ordinances and preparing for their implementation that, however carefully the Department attends to the opportunities to make savings, the resource implications of the legislation are greater in scale than those savings and should be addressed from the outset rather than left to emerge later, to the detriment of the Department's service levels.

The main additional areas of work for the Department are as follows:

- New neighbour notification procedures, principally the administration and checking of the new site notices.
- The provision of additional information to applicants relating to the decisions of the Department.
- Screening and scoping for Environmental Impact Assessment.
- The use of Challenge Notices, Compliance Notices and Interim Compliance Notices by the Department's staff, rather than the institution of prosecutions through the Law Officers.

- The related need for improved checking of compliance with permissions.
- The increased role of property history searches and the issuing of immunity certificates.
- The preparation of appeal cases and attendance at hearings.
- The preparation of new registers of listed buildings and monuments and protected trees (including dealing with challenges).

5.4 Service Level Agreement

In addition to resolving historic and future resource issues, charging fees has resource implications in itself. At the most basic level, it means that additional work will have to be done to calculate, collect and account for them.

More broadly, and as has been discussed in the earlier parts of this report, it will change the relationship between applicants and the Department: the Department will be entitled to expect a certain standard of submission and the applicant will be entitled to expect a certain level of service delivery. The most important element of service delivery is the time taken to process applications, but it covers a broader range of issues; for example, charging fees will have an effect on the current risk management strategy of the building control section whereby site inspections will have to be undertaken for all cases, whether identified as a particular risk or not.

The Department will set performance benchmarks at a similar level to that in the UK, and will be accountable for meeting them (see below Performance review).

5.5 Additional resources:

The additional resources to be applied to the system must address the historic resource issues and the resource implications of the new legislation in such a way that a service level agreement can be met.

On the one hand, this means using the new exemptions and a drive to achieve a general reduction in paperwork in order to reduce workloads. On the other hand, it means making a realistic assessment of the additional resources needed to deliver other aspects of the new Law to an agreed service level. Balancing the equation will mean allowing the Department to retain a sum from the revenue raised by fees in order to match staff resources to the task.

The precise numbers of staff and the income to be retained will emerge from discussions between the Department and the Treasury and Resources Department in setting up the new system and will subsequently form part of a proposed regular review of resources and performance with the Treasury and Resources Department (see below Performance review).

The overall budget staff costs of the Planning Division amounted to £1,990,000 in 2006 (£1,801,589 actual cost). This figure includes forward planning and other staff not directly associated with the processing of applications.

5.6 Proposed fee levels

In recommending an appropriate level at which to set fees, the Department has taken into account a number of factors. If its objective were to fund the development and building control services in their entirety as well as to leave a substantial contribution to general revenue, fees would have to be set at a level significantly higher than in other jurisdictions. Moreover, particularly in its introductory phase, the actual fee income is difficult to predict, for reasons that are discussed below. The Department has therefore looked at levels that are considered reasonable elsewhere and which are likely to raise a sufficient sum to allow a reasonable retention by the Department in order to meet a service level agreement together with a significant sum for general revenue.

The NAO Report estimated that approximately £1,365,000 p.a could be raised by fees. The subsequent report to the states by the Treasury and Resources Department estimated a potential annual income of £1.25m.

The Department has made its own assessment of potential income, based on analysis of its records of application numbers and types. It has applied similar fee levels to those charged in the UK, Jersey and the Isle of Man. Each of the jurisdictions apply charges in a different way. (Examples are attached to this report as Appendix 1) In making its own estimations the Department has worked on the following basis:

Planning Fees

£265 for a domestic extension.

£135 for minor domestic and non-domestic works which create no additional floorspace.

£265 per hectare (6.1 verges) for outline applications for new housing or commercial development.

£265 per dwelling or per 75m² floorspace created for full planning permission.

Building Control Fees

£500 for large domestic extensions.

£330 for small domestic extensions.

£80 for minor domestic works.

£130 - £500 for improvements to dwellings dependant upon the amount of work.

£400 per new dwelling.

£300 per £50,000 work of works plus £8 per £1000 of works over that sum for non-domestic commercial works.

The Department has taken into account savings arising from the Exemptions Ordinance, which forms part of the overall package of legislation, as well as the potential efficiencies discussed in earlier sections of this Report.

It is important to emphasise that the above figures illustrate the particular level of fees that, it is estimated, will generate a particular approximate income. Further research is needed, in the light of discussions with the Treasury and Resource Department before firm proposals can emerge

The calculations contain large areas of uncertainty and must be treated with a degree of caution. They cannot, for example, account accurately for any decrease in the numbers of applications caused by the fact of charging in itself; this could apply to both planning and building control applications for different reasons and has been experienced elsewhere when fees were introduced. Subject to this, the figures do, however, confirm that a substantial sum could be raised by fees; up to £600,000 p.a. for building regulations and up to £400,000 p.a. for planning applications, the final sum dependant upon the level of fees that is set and the reduction in numbers of applications that can be achieved.

Exemptions are proposed for such categories as the adaptation of a building for use by disabled people. Reduced fees are proposed for certain categories of resubmission in order to encourage those that are amending proposals to take account of the Department's requirements.

5.7 Performance review

It is proposed to charge fees for planning and building regulations applications on a scale of fees comparable with that currently operating in the UK. It is proposed to use a portion of those fees to fund improvements in service to meet persistent historic shortfalls in resources, the resource requirements of the new legislation and to meet the requirements of a service level agreement. At the same time, the Department will implement the new Exemptions and seek further efficiencies.

The Department will publish performance figures on an annual basis and, together with the Treasury and Resources Department, will review fee levels, income and performance. This will ensure that the Department is accountable for meeting its service level agreement and that the retention of income is adequate to ensure this. This process will be particularly important in view of the large degree of uncertainty about the new system and will enable the Department's resources to be increased or decreased depending upon the known facts of the time. Whilst the review will be on an annual basis, the planning period will extend over 3 years to ensure that short term fluctuations can be accommodated without disrupting the equilibrium of the overall system.

5.8 Property history searches

It is anticipated that the preferred method of checking planning histories for the purposes of property transactions will be by application for an immunity certificate.

The procedures for dealing with immunity certificates are set out in the Enforcement Ordinance which, on the basis of an earlier States decision, provides for fees to be set by Regulation for this service. These will be laid before the States in due course. The intention is to make the service self-financing.

However, many prospective purchasers will still wish to check the property history in more detail in order to check that extensions and alterations to properties have been constructed in accordance with the Law. This is particularly important in the case of building control where matters of health and safety are involved. Such searches are also frequently required by mortgage lenders.

It is proposed to streamline the current system of property searches and to charge accordingly. The Department currently deals with approximately 260 such searches each year which, at a cost of, say, £120 would yield an income of £31,000 per annum. This level of fee would cover the existing cost of the service and could be expanded, pro rata, so that the service would continue to be self-financing if demand were to increase in the future.

6. Appeals

At the time that the States considered the planning legislation (Billet d'Etat I, 2005), the Environment Department calculated that the cost of the new appeals system, assuming a total of 200 appeals per year, would be around £1m if all cases went to a tribunal hearing and half that if all cases were considered by written representation. These figures were based on the assumption that a certain proportion of decisions to refuse planning permission (calculated by comparison with English local authorities of similar profile to Guernsey) would result in an appeal. However, the final figure will depend on a number of circumstances, including new factors, such as the influence of the new exemptions on overall numbers of applications. In addition, if charges were levied on appeals, this would, in itself, be likely to reduce overall numbers. On the other hand, planning decisions are not the only type of appeal that the new planning system will deal with; there will be appeals against compliance notices, against the listing of protected monuments and buildings and appeals to an adjudicator on building control matters. The considerable degree of uncertainty surrounding predicted numbers of appeals makes the future situation particularly difficult to manage. However, it potentially represents a substantial sum to find in current circumstances.

Clearly, a fee that would cover the entire costs of each individual appeal would be prohibitively expensive. A modest fee in order to register an appeal would be a possible alternative and may deter appeals where the grounds are not strong. A differential fee could be used to encourage the use of written representation procedures rather than a hearing.

The Department has considered whether such a charge for appeals in addition to the possible award of costs could be justified. The Department's view is that it would be unfair to charge an appellant for exercising a right of appeal as a matter of principle. The intention of the new appeal system is to give broad access to the appeal process and

any financial disincentive runs counter to this basic objective. The Department notes that no other similar jurisdiction, with the exception of the Republic of Ireland, charges fees for appeals.

The Appeals Ordinance provides for the award of costs by the tribunal, up to specified limits, in line with procedures for other Guernsey tribunals. This will make a contribution towards the costs of appeals. The costs of the appeal system should be met from general revenue, to which planning and building regulations applications fees will make a substantial contribution.

7. States Resolutions on Fees and Charges

In its Report on Fees and charges the Treasury and Resources Department set out the criteria against which fees and charges should be evaluated:

- How much can be raised?
- How much will it cost (full costs of administering, policing and processing) to collect the income?
- What is the cost of providing the service?
- What will be the costs and impact on the customer?
- Can the customer realistically afford to pay?
- Does the fee or charge already exist?
- Does the fee or charge exist in other comparable jurisdictions?
- How easy would it be to implement, including legislative requirements?
- How often would the amounts charged require revision?
- What, if any, is the impact on local inflation?
- Does the fee or charge support or restrict the agreed economic strategy?
- Does the fee or charge support or restrict social and environmentally desirable or undesirable behaviour?
- Is the charge realistically collectable, how easily can it be avoided?
- Is the service considered to be a potential profit making activity?
- Is it politically deliverable?

In addition Departments were directed to “pay particular attention to the impact on those lower incomes” and on “other Departments” of “the fees and charges for which they are responsible.”

The States was, at the same time, asked to note the fees to be proposed by Departments in the near future, which included fees for planning and building control applications.

This report deals with the practical aspects set out above and the Department considers that the proposed fees meet those criteria. Further detailed work will be done on all these aspects in developing a final fees proposal for inclusion in an Ordinance.

In respect of affordability and inflation issues, the Department would comment that fees for applications represent a very small element in the overall costs of development and those for property history searches are likewise small in relation to the overall costs of a property transaction. Moreover, the individuals who avail themselves of the service derive direct benefit from it. Clearly, however, the Department and the Treasury and Resources Department will consider these matters in greater detail in setting fee levels, particularly in respect of minor development.

RECOMMENDATIONS

The Environment Department recommends that the States:

1. Agrees in principle that fees should be charged for planning and building control applications
2. Agrees in principle that fees should be charged for carrying out property searches
3. Directs that an Ordinance to that effect should be drafted.
4. Agrees that fees, resource allocation and service levels should be agreed between the Treasury and Resources Department and the Environment Department in accordance with a three year Plan, to be reviewed annually.

Yours faithfully

David De Lisle, PhD
Minister

APPENDIX 1**Fees for Planning Applications****ENGLAND**

Source: The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2005.

<i>Category of development</i>	<i>Fee payable</i>
<p>I. Operations 1. The erection of dwellinghouses (other than development within category 6 below).</p>	<p>(a) Where the application is for outline planning permission and:</p> <p>(i) the site area does not exceed 2.5 hectares, £265 for each 0.1 hectare of the site area;</p> <p>(ii) the site area exceeds 2.5 hectares, £6,625 and an additional £90 for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of £25,000.</p> <p>(b) in other cases:</p> <p>(i) where the number of dwellinghouses to be created by the development is 50 or fewer, £265 for each dwellinghouse;</p> <p>(ii) where the number of dwellinghouses to be created by the development exceeds 50, £13,250, and an additional £80 for each dwellinghouse in excess of 50 dwellinghouses, subject to a maximum of total of £50,000.</p>
<p>2 The erection of buildings (other than buildings in categories 1,2,3,4,5 or 7)</p>	<p>(a) Where the application is for outline planning permission and:</p> <p>(i) the site area does not exceed 2.5 hectares, £265 for each 0.1 hectare of the site area;</p>

	<p>(ii) the site area exceeds 2.5 hectares, £6,625 and an additional £80 for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of £25,000.</p> <p>(b) in other cases:</p> <p>(i) where no floor space is to be created by the development, £135;</p> <p>(ii) where the area of gross floor space to be created by the development does not exceed 40 square metres, £135;</p> <p>(iii) where the area of the gross floor space to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £265;</p> <p>(iv) where the area of the gross floor space to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £265 for each 75 square metres of that area;</p> <p>(v) where the area of gross floor space to be created by the development exceeds 3750 square metres, £13,250, and an additional £80 for each 75 square metres in excess of 3750 square metres subject to a maximum in total of £50,000</p>
<p>3 The erection, on land used for the purposes of agriculture, of buildings to be used for agricultural purposes (other than buildings in category 4).</p>	<p>(a) Where the application is for outline planning permission and:</p> <p>(i) the site area does not exceed 2.5 hectares, £256 for each 0.1 hectare of the site area;</p>

	<p>(ii) the site area exceeds 2.5 hectares, £6,625, and an additional £80 for each additional 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of £25,000.</p> <p>(b) In other cases:</p> <p>(i) where the area of gross floor space to be created by the development does not exceed 465 square metres, £50;</p> <p>(ii) where the area of gross floor space to be created by the development exceeds 465 square metres but does not exceed 540 square metres, £265;</p> <p>(iii) where the area of the gross floor space to be created by the development exceeds 540 square metres but does not exceed 4215 square metres, £265 for the first 540 square metres, and an additional £265 for each 75 square metres in excess of 540 square metres; and</p> <p>(iv) where the area of gross floor space to be created by the development exceeds 4215 square metres, £13,250, and an additional £80 for each 75 square metres in excess of 4215 square metres, subject to a maximum in total of £50,000.</p>
<p>4. The erection of glasshouses on land used for the purposes of agriculture.</p>	<p>(a) Where the gross floor space to be created by the development does not exceed 465 square metres, £50;</p> <p>(b) Where the gross floor space to be created by the development exceeds 465 square metres, £1,495.</p>
<p>5. The erection, alteration or replacement of plant or machinery</p>	<p>(a) Where the site area does not exceed 5 hectares, £265 each 0.1 hectare of the site area;</p>

<p>9. The carrying out of any operations not coming within any of the above categories.</p>	<p>(a) In the case of operations for the winning and working of minerals:</p> <p>(i) Where the site area does not exceed 15 hectares, £135 for each 0.1 hectare of the site area;</p> <p>(ii) Where the site area exceeds 15 hectares £20,250, and an additional £80 for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of £50,000;</p> <p>(b) in any other case, £135 for each 0.1 hectare of the site area, subject to a maximum of £1,350.</p>
<p>II. Uses of Land</p> <p>10. The change of use of a building to use as one or more separate dwellinghouses.</p>	<p>(a) Where the change of use is from a previous use as a single dwellinghouse to use as two or more single dwellinghouses:</p> <p>(i) Where the change of use is to use as 50 or fewer dwellinghouse, £265 for each additional dwellinghouse;</p> <p>(ii) Where the change of use is to use as more than 50 dwellinghouses, £13,250, and an additional £80 for each dwellinghouse in excess of 50 dwellinghouses, subject to a maximum in total of £50,000;</p> <p>(b) in all other cases:</p> <p>(i) Where the change of use is to use as 50 or fewer dwellinghouses, £265 for each dwellinghouse;</p> <p>(ii) Where the change of use is to use as more than 50 dwellinghouses £13,250, and an additional £80 for each dwellinghouse in excess of 50 dwellinghouses subject to a maximum in total of £50,000.</p>

<p>11.</p> <p>(a) The use of land for the disposal of refuse or waste materials for the deposit of material remaining after minerals have been extracted from the land; or</p> <p>(b) for use of land for the storage of minerals in the open.</p>	<p>(a) Where the site area does not exceed 15 hectares, £135 for each 0.1 hectare of the site area;</p> <p>(b) Where the site area exceeds 15 hectares £20,250, and an additional £80 for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of £50,000.</p>
<p>12. The making of material change in the use of a building or land (other than a material change of use coming within any of the above categories).</p>	<p>£265</p>

JERSEY

Source: Planning and Building (Jersey) Law, 2002.

<i>Category of development</i>	<i>Fee payable</i>
<p>1. New dwelling and associated miscellaneous works (including change of use of a building to form a dwelling).</p>	<p>(a) Flats (per flat) £233</p> <p>(b) Dwelling Houses (per house) £465</p> <p>(c) Prefabricated portable dwelling unit £155</p>
<p>2. Other new buildings and extensions to any type of existing building (including associated miscellaneous works)</p>	<p>(a) Erection or extension of any building up to 20 sq m in floor area £78</p> <p>(b) Erection or extension of any building 20 - 50 sq m in floor area £155</p> <p>(c) Erection or extension of any building 50 - 100 sq m in floor area £233</p> <p>(d) Erection or extension of any building 100 - 250 sq m in floor area £465 and for every additional 250 sq m or part thereof £465</p> <p>(e) Material alteration of any building where work is of a minor nature (per building) £78</p> <p>(f) Material alteration of any building where work is of a major nature (per building) £155</p>

<p>3. Applications for agricultural and other purposes</p>	<p>(a) Erection or extension of a glasshouse or polytunnel for agricultural purposes for agricultural purposes for every thereof £155</p> <p>(b) Erection or extension of other building for agricultural purposes for every 500 sq m or part thereof £233</p> <p>(c) Change of use of land or building or part, for any purpose other than the creation of a dwelling £233</p> <p>(d) Mineral extraction (per 1 acre, 2.25 verges or 0.4 hectare site area) £1940</p> <p>(e) Moveable structures as defined in the Law £155</p> <p>(f) Miscellaneous development not otherwise specified, e.g. demolition, reservoirs, golf courses, outdoor recreational development, surface car parking, earthworks (per 1 acre, 2.25 verges or 0.4 hectare site area or part thereof) £233</p> <p>(g) Request for certificate of completion £155</p>
<p>4. Miscellaneous works (not carried out as part of any other work)</p>	<p>(a) Replacement windows and doors (per application) £39</p> <p>(b) Satellite dish £39</p> <p>(c) Replacement of or substantial alteration to a shop front £155</p> <p>(d) Erection of sign or advertisement (per sign up to a maximum of £156.00) £39</p> <p>(e) Flag pole, telephone box or other similar structure (each) £39</p> <p>(f) Wall, fence or other similar structure (each) £39</p> <p>(g) Swimming pool, spa (not enclosed) and associated landscaping £155</p> <p>(h) Formation or alteration of a vehicular access £155</p> <p>(i) Provision of material alternation of a tank for the storage of liquid or gaseous fuel £39</p>

ISLE OF MAN

Source: Fees and Duties Act 1989.

<i>Category of development</i>	<i>Fee payable</i>
1. Application for approval in principle	£105
2. Application for approval of building, rebuilding, engineering, mining or other operations (other than approval in principle)	<p>(a) Estate layout (residential or industrial) £318</p> <p>(b) (i) The erection of, or conversion of a building to, a dwelling house (per dwellinghouse) £172 (ii) The conversion of a dwellinghouse into one or more separate dwellings. (For each additional dwellinghouse to be created by the development) £172</p> <p>(c) Installation of replacement windows/doors NIL</p> <p>(d) The enlargement, improvement or other alterations of existing dwellinghouses (including the erection of a private garage):</p> <ul style="list-style-type: none"> • where no floorspace is to be created by the development £53 • up to 15 sq. m. floorspace £53 • exceeds 15 sq. m. £136 <p>(e) Alterations and erection of buildings other than buildings in categories 2(b), 2(d), 2(f), 2(i) and 2(j):</p> <ul style="list-style-type: none"> • where no floorspace is to be created by the development £136 • for every 20 sq. m. or part thereof of floor area, subject to a maximum of £3875 £47 <p>(f)(1) The erection on land used for the purposes of agriculture, of buildings to be used for agriculture purposes £100</p> <p>(f)(2) Erection of stables £58</p> <p>(g)(1) The use of land for:</p> <ul style="list-style-type: none"> (i) The disposal of refuse or waste materials or for the deposit of

	<p>materials remaining. After minerals have been extracted from the land; or</p> <p>(ii) The storage or minerals in the open; or</p> <p>(iii) Operations for the winning and working of minerals</p> <ul style="list-style-type: none"> • (For every 0.2ha of site area, subject to a maximum of £6710) £240 <p>(h) Installation, alteration or replacement of satellite antennae NIL</p> <p>(i) The erection, alteration or replacement of plant or machinery £53</p> <p>(j) (i) The carrying out of operations including erection of a building within the curtilage of an existing dwellinghouse as such or the erection of fences, walls, or other means of enclosure along a boundary of the curtilage of an existing dwellinghouse; or</p> <p>(ii) The construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land. £53</p> <p>(k) Any operation not falling within (a) to (j) above. £53</p>
<p>3. Application for change of use of a building or land (other than a material change of use coming within any of the above categories)</p>	<p style="text-align: right;">£53</p>
<p>4. Application for a certificate of lawful use or development</p>	<p>(i) existing use and development:</p> <ul style="list-style-type: none"> • Fee to reflect the amount that would be payable in respect of an application for planning permission. <p>(ii) Proposed use and development:</p> <ul style="list-style-type: none"> • Half fee to reflect the amount had

	an application for planning permission been made.
5. Advertisements	<p>(i) Advertisements displayed on business premises, on the forecourt of business premises or on other land within the curtilage of business premises, wholly with reference to all or any of the following matters: £80</p> <p>(a) the nature of the business or other activity carried on the premises;</p> <p>(b) the goods sold or the services provided on the premises; or</p> <p>(c) the name and qualifications of the person carrying on such business or activity or supplying such good or services.</p> <p>(ii) Advertisements for the purpose of directing members of the public to or otherwise drawing attention to the existence of business premises which are in the same locality as the site on which the advertisement is to be displaying but which are not visible from that site. £80</p> <p>(iii) All other advertisements £131</p>
6. Variation or discharge (removal) of condition	£141

Fees for Building Control Services

ENGLAND

English local authorities are empowered to set their own fees for building regulations, subject to conditions; there is therefore no set rate. The fees are generally set at a level that retrieves the cost of the service.

JERSEY

Source: Building Bye-Laws (Jersey)

<i>Category</i>	<i>Fee</i>	<i>£</i>
1. Creation of a new dwelling and associated miscellaneous works (including change of use of a building to form a dwelling and associated parking):		
		500
(a) For each flat up to and including 20		390
(b) For each additional flat up to and including 40		280
(c) For each additional flat		780
(d) For each dwelling house up to and including 20		555
(e) For each additional dwelling house up to and including 40		335
(f) For each additional dwelling house		170
(g) Prefabricated portable dwelling units (per unit)		
2. Improvements to a dwelling (including associated miscellaneous works):		
(a) Extension of a dwelling up to 20 sq. m. in floor area		335
(b) Extension of a dwelling over 20 sq. m. in floor area		555
(c) Loft conversion		390
(d) The erection or extension of a building that is ancillary to a dwelling where the floor area is under 20 sq. m.		110
(e) The erection or extension of a building that is ancillary to a dwelling where the floor area is over 20 sq. m.		220
(f) Material alteration of a dwelling (per dwelling) where the estimated cost of the work is less than £5,000		135
(g) Material alteration of a dwelling (per dwelling) where the estimated cost of work is more than £5,000 but less than £20,000		225
(h) Material alteration of a dwelling (per dwelling) where the estimated cost of the work is more than £20,000		500

3. Applications for works not listed in categories 1, 2 and 4.	
(a) The erection or extension of building up to 20 sq. m. in floor area	280
(b) The erection or extension of building 20 - 50 sq. m in floor area	555
(c) The erection or extension of building 50 - 100 sq. m. in floor area	780
(d) The erection or extension of building 100 - 250 sq. m. in floor area and for every additional 250 sq. m. or part thereof	1335
(e) The erection or extension of building for storage purposes up to 20 sq. m.	280
(f) The erection or extension of building for storage purposes up to 20 - 50 sq. m.	390
(g) The erection or extension of building for storage purposes up to 50 - 100 sq. m.	500
(h) The erection or extension of building for storage purposes up to 100 - 250 sq. m. and for every additional 250 sq. m. or part thereof	890
(i) Material alteration of a building where the estimated cost of the work is less than £10,000	170
(j) Material alteration of a building where the estimated cost of the work is more than £10,000 but less than £50,000	500
(k) Material alteration of a building where the estimated cost of the work is more than £50,000 but less than £100,000	610
(l) Material alteration of a building where the estimated cost of the work is more than £100,000	1115
(m) Change of use of a building or part, for any purpose other than the creation of a dwelling	555
4. Miscellaneous works (not carried out as part of any other work)	
(a) Provision or alteration of a drainage system.	105
(b) Provision or material alteration of all other controlled services and fittings	83
(c) The erection of a retaining wall	335
(d) Work involving the underpinning of a building	335
(e) Replacement of or substantial alteration to a shop front	170

ISLE OF MAN

Source: The Building Control Act 1991
The Building (Fees) Regulations 2006

SCHEDULE 1
Fixed Fees

<i>Type of work</i>	<i>Plan fee</i>	<i>Inspection fee</i>
1. Erection of a detached building which consists of a garage or carport or both having floor area not exceeding 50m² in total and intended to be used in common with an existing building, and which is not an exempt building.	£21	£62
2. a) Erection of an attached building which consists of a garage or carport or both having floor area not exceeding 40m ² in total and intended to be used in common with an existing building, and which is not an exempt building.	£21	£62
b) Erection of an extension to an attached building which consists of a garage or carport or both having floor area not exceeding 40m ² in total and intended to be used in common with an existing building, and which is not an exempt building.	£21	£62
3. Installation of Un-vented hot water system in accordance with Part G3 of Schedule 1 to the principal Regulations, where the installation is not part of a larger project and where the authority carries out an inspection.	—	£57
4. Any extension of a dwelling the floor area of which does not exceed 60m² , including means of access and work in connection with that extension.	£67	£176
5. Any extension or alteration of a dwelling consisting of the provision of one or more rooms in a roof space, including means of access.	£67	£176

Regulations 3, 4 and 5
SCHEDULE 2
FIXED FEES FOR NEW SMALL DOMESTIC BUILDINGS
(up to 250m² total floor area)

<i>Date of deposit of plans</i>	<i>Plan fee</i>	<i>Inspection fee</i>
After the commencement of these Regulations	£104	£155

Regulations 3, 4 and 5
SCHEDULE 3
FEES BASED ON ESTIMATED COST OF WORK

<i>Estimated cost of work</i>		<i>Plan Fee</i>	<i>Inspection fee</i>
Exceeding	Not exceeding		
0	£1,500	£21	£31
£1,500	£3,000	£31	£52
£3,000	£5,000	£52	£73
£5,000	£10,000	£63	£114
£10,000	£12,000	£73	£166
£12,000	£14,000	£78	£182
£14,000	£16,000	£83	£203
£16,000	£18,000	£83	£224
£18,000	£20,000	£94	£250
£20,000	£25,000	£99	£276
£25,000	£30,000	£120	£359
£30,000	£35,000	£130	£390
£35,000	£40,000	£145	£430
£40,000	£45,000	£161	£468
£45,000	£50,000	£172	£515
£50,000	£60,000	£192	£572
£60,000	£70,000	£224	£676
£70,000	£80,000	£255	£774
£80,000	£90,000	£275	£832
£90,000	£100,000	£306	£910
£100,000	£140,000	£338	£1,008
£140,000	£180,000	£436	£1,310
£180,000	£240,000	£546	£1,627
£240,000	£300,000	£670	£2,023
£300,000	£400,000	£806	£2,418
£400,000	£500,000	£1,024	£3,078
£500,000	£700,000	£1,200	£3,598
£700,000	£1,000,000	£1,570	£4,680
£1,000,000	—	£1,664	£4,992
plus for each £100,000 or thereof above £1,000,000:		£265	£790

(NB The Policy Council supports the proposals but reserves its position in relation to the Environment Department's recommendations regarding Planning Appeals fees pending further detailed consultations with the department and Treasury and Resources Department.

The Policy Council's preliminary view is that it may be appropriate to charge fees for Planning and Building Control Appeals probably on a sliding scale according to the scale and complexity of the case, but that the level of fees, the refunding of costs to successful appellants and the administration of the appeals system all require further careful consideration before the proposed ordinance is brought forward.

The Policy Council strongly supports the Environment Department's intended modernisation of Guernsey's planning system as set out in section 5 of the report and the introduction of a service level agreement. This is very much in line with Priority 12 of the Government Business plan which seeks to streamline the delivery of public services in response to the reasonable expectations of customers. It is also strongly endorsed by the Strategic Land Planning Group (SLPG) which has a strategic overview of planning matters.

Under Action Point 17 of the recently adopted Strategic Economic Plan, the SLPG is directed to, "...review the current land use planning and application processes to establish if there is a case to make additional resources available to the Environment Department to enable more appropriate administration of current processes or whether these processes should be streamlined to react more quickly to opportunities for economic development". The group has since agreed that the terms of this review should be widened to include all forms of development and this work will be closely related to the development of a service level agreement.

(NB By a majority, the Treasury and Resources Department support the proposals)

The States are asked to decide:-

XV.- Whether, after consideration of the Report dated 26th July, 2007, of the Environment Department, they are of the opinion:-

1. That, in principle, fees shall be charged for planning and building control applications.
2. That, in principle, fees shall be charged for carrying out property searches.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

4. That fees, resource allocation and service levels shall be agreed between the Treasury and Resources Department and the Environment Department in accordance with a three year Plan, to be reviewed annually.

SOCIAL SECURITY DEPARTMENT

BENEFIT AND CONTRIBUTION RATES FOR 2008

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

27th July 2007

Dear Sir

Executive summary

1. This report is in five parts:

Part I *Social insurance*

recommends increases in the rates of social insurance benefits from 7 January 2008;

recommends increases in the lower and upper earnings limits and an increase in the contribution rate for employers to fund the increased benefits and to allow a reduction in the grant to the Guernsey Insurance Fund from General Revenue, to accord with the resolutions of the States on the future economic and taxation strategy for Guernsey;

sets out the effect of these changes on the finances of the social insurance scheme; and

informs the States of the need to improve the finances of the Guernsey Insurance Fund in order to maintain its long-term sustainability of the scheme and gives notice that the Department will in next year's report of this nature, recommend changes to take effect from 2009

Part II *Health Benefits*

reports on the pharmaceutical service and recommends an increase in the prescription charge; and

reports on progress with the first five-yearly review of the contracts with the Medical Specialist Group and the Guernsey Physiotherapy Group.

Part III *Long-term care insurance*

recommends increases in the standard co-payment and benefit rates to take effect from 7 January 2008.

Part IV *Non-contributory services*

recommends increases in supplementary benefit requirement rates from 11 January 2008, with the exception of the rates for 16 and 17 year-old non-householders;

recommends an increase in the benefit limitations for supplementary benefit, including a substantial increase in the benefit limitation for families, including single parents;

recommends a winter fuel allowance;

recommends an increase in family allowance from 7 January 2008 and reports on progress in developing proposals for a scheme of income-related family allowance;

recommends an increase in the rates of attendance and invalid care allowances from 7 January 2008;

comments on the Community and Environmental Projects Scheme;

comments on the free TV licence scheme;

Part V *Recommendations*

sets out a summary of the Department's recommendations.

Introduction

2. The Department has undertaken its annual review of the social security and health benefits paid under the various schemes for which it is responsible and, with the exception of medical benefit grants, will recommend increases in all benefit rates.
3. The most recent RPI figure for Guernsey was 4.7% for the year to 30 June 2007. The Department is recommending general increases of that amount in non-contributory benefits funded by general revenue. However, an increase of 24% is recommended in the benefit limitation for supplementary benefit received by

families, including single parents. For most of the contributory benefits, including old age pension, the Department is recommending an increase of approximately 6%.

4. This report includes propositions which will give full effect, from 1 January 2008, to the social security aspects of the resolutions of the States on 30 June 2006 (Billet d'Etat XI of 2006) concerning the Future Taxation and Economic Strategy for Guernsey. The contribution rates, upper earnings limits and States Grant from General Revenue that are pertaining in 2007 have been an interim step towards the approved 2008 position.
5. This report also identifies the need to improve the long-term sustainability of the Guernsey Insurance Fund, in particular for the payment of pensions. The sooner that such steps are taken, the more moderate those steps may be. The Department is mindful of the difficulty in imposing further charges on contributors and employers, beyond those to apply in 2008 as part of the Future Fiscal and Economic Strategy. The Department, therefore will defer the necessary measures until 2009.
6. It should be noted that there may also be a need, within the next two years, to increase contributions to the Guernsey Health Service Fund, principally to finance additional costs of the specialist health insurance scheme.

PART I SOCIAL INSURANCE

7. In accordance with the States Resolutions concerning the Future Economic and Taxation Strategy, the upper earnings limit for employed and self-employed people will, from 1 January 2008, increase to £64,896 per year. The upper earnings limit for employers will increase to £108,108. The upper income limit for non-employed people will increase to £64,896 per year. These figures are the 2008 equivalents of the £60,000 and £100,000 limits approved by the States in 2006.
8. The employer' contribution rate will increase from 5.5% to 6.5% of earnings from 1 January 2008 (Resolution 9, Billet d'Etat XI of 2006).
9. The foregoing changes will allow a reduction in the States Grant to the Guernsey Insurance Fund and Guernsey Health Service Fund. These grants are set as percentages of total contribution income to the Funds. The 2007 grant to the Guernsey Insurance Fund is equal to 36% of contribution income. This will reduce to 15% from 1 January 2008. The 2007 grant to the Guernsey Health Service Fund is equal to 27% of contribution income. This will reduce to 12% from 1 January 2008. The reduction in the two grants will reduce General Revenue input to the Funds in 2008 by £16.61m, adding to the recurring £10m saving arising from the reduction in the grants at the beginning of 2007. The combined reduction of approximately £26m in 2008 is the difference between

what the States grants would have been under a continuation of the insurance principle-based funding arrangements and what the grants will be under the new arrangements.

10. The forgoing changes have been entirely for the purposes of the Future Taxation and Economic Strategy for Guernsey and, in terms of overall income to the social security funds, have had neither a positive nor negative affect. However, by raising the upper earnings limits and by increasing the contribution rate for employers, there has been a loss of headroom for increasing income to the social security funds for social security purposes. That loss of headroom was foreseen by the Social Security Department and expressed prior to and in the course of the States debate on the fiscal strategy. The issue is now coming sharply into focus as the impending need to increase contributions for social security purposes has been identified.
11. Recent projections obtained from the Government Actuary's Department have shown a deterioration in the projected finances of the Guernsey Insurance Fund compared with the projections published in the last actuarial review of the Fund (Billet d'Etat XXIV of 2004).
12. It is important to make clear that the deterioration in the financial position of the Guernsey Insurance Fund has not been brought about by the Future Economic and Taxation Strategy. The deterioration is unconnected with the so-called 'zero-10 black hole'. Instead, it is the result of a combination of factors, principally the long-term costs of the substantial increases that have been applied to the single old age pension rate in recent years, the effects of the gender equality reforms that took effect from 1 January 2004 and, more recently, a reduction in the growth of contribution income from wages and salaries. The changes to single pension rates were required as part of the Corporate Anti-poverty plan, responding to reported rates of relative poverty of 43% among single pensioners.
13. Whereas, in 2004, it was projected that an option existed for the percentage rates of contributions to the Guernsey Insurance Fund to remain unchanged throughout the 60 year projection period and for social insurance expenditure to be met from contribution income, from States Grants, from income from investments and from a draw-down of the capital value of the Guernsey Insurance Fund, the more recent projections indicate that this option no longer exists. On the assumption, among others, that social insurance benefits continue to be increased by approximately the mid-point of earnings and prices indices, unless contribution rates are increased for social security purposes, the reserves of the Guernsey Insurance Fund, which are approximately £560m, will be reduced to zero by around the year 2040.
14. In the light of this recently received information, the Department has concluded that there is a case for an immediate increase of 1% in the contribution rates for social insurance proposes. The Department is aware, however, of the difficulty

in applying further increases on top of the other measures being taken in connection with the Future Economic and Taxation Strategy. These considerations have persuaded the Department to refrain from recommending contribution increases for social insurance purposes with effect from 2008. The Department has decided to consider an increase in contribution rates alongside two other possible measures before recommending a course of action to the States in one year's time. One of the other measures, which is a medium to long-term measure, is a possible increase in pension age. This would not be effective for at least ten years. The second measure would involve a commitment for an ongoing level of funding by way of the States grant from general revenue.

Benefit Rates

15. As Guernsey and Alderney enter the period of transition between Stages 1 and 2 of the Economic and Taxation Strategy, the Department is mindful of the impact that some of the additional charges will have on the less well-off in the community, in particular many of the pensioners. Taking this into account, along with the most recent figure for Guernsey RPI and the projected income and expenditure for 2007 and 2008, the Department recommends increases in the rates of pension and all other social insurance benefits of approximately 6%, to take effect from 7 January 2008.
16. In 2006, benefit expenditure on old age pensions amounted to £63.6m and constituted 82% of the total expenditure of £77.5m on social insurance benefits. At the end of 2006, the Department was paying pensions to 13,656 pensioners worldwide. Approximately 9,500 of these pensions were being paid to residents in Guernsey and Alderney.
17. With pension expenditure so dominant in the accounts of the Guernsey Insurance Fund, the importance of the decisions on entitlement rules and medium and long-term pension uprating policy can be appreciated. The impact of those decisions compounds with the growing number of pensioners, with the result that annual pension expenditure always exceeds the simple percentage by which the standard rates of benefit were increased.
18. The proposed 6% increase in old age pension will add £9.25 per week to the full rate single pension, will add £4.50 per week to the married woman's pension and will mean a £13.75 per week increase for a pensioner couple on full rate pension.
19. The proposed new rates of pension and other contributory social insurance benefits, to take effect from 7 January 2008, are shown overleaf.

Weekly paid benefits	2008 rates	(2007)
Old age Pension -		
Insured person	£160.75	(£151.50)
Increase for dependant wife or pension for wife over 65 (marriages pre 01-01-04)	£80.50 £241.25	(£76.00) (£227.50)
Widow's/Survivor's Benefits -		
Widowed Parent's Allowance	£169.00	(£159.50)
Widow's Pension/Bereavement Allowance	£145.25	(£137.00)
Unemployment, Sickness, Maternity and Industrial Injury Benefit	£118.30	(£111.58)
Invalidity Benefit	£144.06	(£135.94)
Industrial Disablement Benefit -		
100% disabled	£129.50	(£122.00)
One-off grants		
Maternity Grant	£297.00	(£280.00)
Death Grant	£460.00	(£434.00)
Bereavement Payment	£1,458.00	(£1,375.00)

20. These foregoing rates of weekly benefit and grants apply to persons who have fully satisfied the contribution conditions. Reduced rates of benefit are payable on incomplete contribution records, down to threshold levels.

Restoring proportionality of pension rates

21. Full rate old age pension is paid when the insured person has achieved an average of at least 50 contributions per year over the pension average period of 45 years. A minimum old age pension is paid when the insured person has a contribution average of 10 contributions per year over the 45 year period. If the average is less than 10, no pension is payable unless the insured person has also paid contributions to a country with which Guernsey has a reciprocal agreement on social security.
22. Putting aside the complication of reciprocal agreements, Guernsey old age pension is paid at 41 different levels, being each increment between the maximum of 50 contributions per year and the minimum of 10 contributions per year.
23. Logically, a person who has only paid half of the number of contributions necessary for a full pension should get half of the full amount of pension. Likewise, a person who has the minimum average of 10 should get one fifth of the full amount of pension provided by an average of 50. Ideally, the 41 levels of pension should, apart from minor variations for rounding, be strictly pro-rata to the amount of contributions paid.

24. The current range of pension payments is not, however, pro-rata, as can be seen from the table below, where the full rate pension and just two of the 41 increments are shown for illustration:

Pension average	2007 pension rate	Pro-rata
50 contributions per year	£151.50	£151.50
25 contributions per year	£76.75 (50.6%)	£75.75 (50%)
10 contributions per year	£32.00 (21.1%)	£30.30 (20%)

25. The origin of the rates of pension being above the strict pro-rata level at the lower contribution averages lies in the removal of a Christmas bonus payment in 1990. Between 1973 and 1990, a Christmas Bonus payment was paid to everyone in Guernsey and Alderney over the age of 65. The Christmas Bonus in 1990, its last year of direct payment, was £20. The benefit was financed from General Revenue.
26. In 1990, at a time when all States bodies were being urged to seek operational efficiencies, the then States Insurance Authority proposed (Billet d'Etat XII of 1990) withdrawing Christmas bonus and replacing it with an increase of £1 per week in the rate of old-age pension. A Christmas bonus of £20 would continue to be paid to the few Guernsey and Alderney residents who did not receive a pension from Guernsey or elsewhere.
27. The proposed withdrawal of the Christmas bonus faced some opposition in the course of debate by the States. Although the £20 bonus was being replaced with £52 over the course of the year for people receiving full pensions, some members considered that pensioners receiving a partial pension would be disadvantaged.
28. In response to that concern, the then President of the States Insurance Authority gave an undertaking, in his summing up on debate, that pensioners with partial pensions would continue to receive the full value of the converted Christmas bonus.
29. That undertaking has been followed throughout the following 16 years by the Guernsey Social Security Authority and the Guernsey Social Security Department. The result can be seen in the amount of the minimum pension, set out in the table in paragraph 24, above. The £1.70 difference between the pension being paid and the true pro-rata pension is the current value of the £1 per week addition in all pension rates from 1991 as a replacement of Christmas bonus. The continued presence of the Christmas Bonus element within general pension rates is, however, a fact that is all but unknown.
30. The Department considers that it is now an appropriate time to restore the true proportionality of reduced pensions within the contributory scheme. It is relevant to note that more than three-quarters (78%) of small, partial pensions

are being paid to pensioners living outside Guernsey, for whom there is no justification for preserving a former general revenue benefit that was intended only for residents. Furthermore, contributors who are now reaching pension age and, unknowingly, receiving a preserved Christmas Bonus within their Guernsey pension were no older than 48 when the undertaking was given in the course of debate and were clearly not the intended beneficiaries of that undertaking.

31. The Department recommends restoring strict proportionality in pension rates over a two year period. No effect will be seen on pensions at or near to the full rate, which will receive the full 6% uprating. However, for incomplete pension records, lower upratings will apply during the two year transition. For example a pension average of 25 (50% contribution record) will in 2008 receive 5.5% and a pension average of 10 (20% contribution record) will receive 3.1% percent.
32. It should be noted that Guernsey and Alderney residents receiving a partial pension are encouraged to seek assistance from supplementary benefit unless they have significant levels of savings or income from other sources.

Social insurance contributions

33. In accordance with the Resolutions of the States concerning the Future Economic and Taxation Strategy, The Department recommends that, from 7 January 2008, the contribution rate for employers should increase from 5.5% to 6.5% of earnings. The Department recommends no further changes to contribution rates for 2008, but has given notice earlier in this report (para.14) of the likelihood of increased contributions for social insurance purposes from 2009.
34. The 2007 and 2008 percentage contribution rates are shown below for reference. These are the consolidated rates which include contributions to the Guernsey Insurance Fund, the Guernsey Health Service Fund and the Long-term Care Insurance Fund.

Contribution rates for employed persons	2008	2007
Employer	6.5%	5.5%
Employee	6.0%	6.0%
Total	12.5%	11.5%

Contribution rates for self-employed persons	10.5%	10.5%
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Contribution rates for non-employed persons under 65	9.9%	9.9%
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Contribution rates for non-employed persons over 65	2.6%	2.6%
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Number of contributors paying at 2006 and 2007 upper earnings limits

35. In 2006, with an upper earnings limit of £36,036 per year, 22% of employed persons and 32% of self-employed persons were contributing on earnings at that level.
36. In 2007, with an upper earnings limit of £53,664 per year, there are 10% of employed persons and 20% of self-employed persons paying on earnings at that level.

2008 upper earnings limit for employed people

37. As referred to in paragraph 7, the Department recommends that the upper earnings limit for employed persons be increased from 7 January 2008 from £53,664 to £64,896 per year. The latter is the 2008 equivalent of the £60,000 approved by the States in 2006, uprated by the increase in Guernsey RPI for two years. For people paid weekly, this means an increase from £1,032 to £1,248 per week. For people paid less frequently than weekly, this means an increase from £4,472 to £5,408 per month.
38. As also referred to in paragraph 7, the Department recommends that the upper earnings limit for the employers' contribution be increased from 7 January 2008 from £53,664 to £108,108 per year. For people paid weekly, this means an increase from £1,032 to £2,079 per week. For people paid less frequently than weekly, this means an increase from £4,472 to £9,009 per month.
39. The effect of the proposed new upper earnings limit and the increase in the employer's contribution rate (see paragraph 8) on people who pay a contribution at the new upper earnings limits is as follows:

Maximum 2008 contributions (2007 in brackets)

Weekly Earnings	Contributions per week		
	Employer	Employee	Total
	6.5%	6.0%	12.5%
	(5.5%)	(6.0%)	(11.5%)
Upper Earnings Limit	£2,079	£1,248	
	(£1,032)	(£1,032)	
Maximum payable	£135.13	£74.88	£210.01
	(£56.76)	(£61.92)	(£118.68)

2008 lower earnings limit for employed people

40. The Department proposes to increase the lower earnings limit from £100 per week to £105 per week. The corresponding monthly limit would be £455.00.

41. The effect of the foregoing changes on a contribution at the lower earnings limit is as follows:

Minimum 2008 contributions (2007 in brackets)

Weekly Earnings	Contributions per week		
	Employer	Employee	Total
	6.5%	6.0%	12.5%
	(5.5%)	(6.0%)	(11.5%)
Lower Earnings Limit			
£105	£6.82	£6.30	£13.12
(£100)	(£5.50)	(£6.00)	(£11.50)

2008 upper earnings limit for self-employed people

42. As referred to in paragraph 7, the Department recommends that the upper earnings limit for self-employed persons be increased from 7 January 2008 from £53,664 to £64,896 per year.
43. The effect of the proposed new upper earnings limit on self-employed people who pay a contribution at the upper earnings limit is as follows:-

Maximum 2008 contributions (2007 in brackets)

Annual earnings from self-employment	Contributions per week
	10.5%
£64,896 or more	£131.04
(£53,664 or more)	(£108.36)

44. Self-employed people who have applied to pay earnings related contributions, and whose earned income from self-employment was less than £64,896 per year, will pay less than the maximum contribution.
45. The proposed increase in the lower earnings limit from £100 to £105 per week would mean that the lower annual earnings limit for self-employed persons in 2008 would be increased from £5,200 to £5,460 (£105 x 52). The minimum self-employed (Class 2) contribution in 2008 would be £11.02 per week (£10.50 in 2007).

2008 upper income limit for non-employed people

46. As referred to in paragraph 7, the Department recommends that the upper income limit for non-employed persons be increased from 7 January 2008 from £53,664 to £64,896 per year.
47. As with the self-employed, non-employed contributors are liable to pay non-employed, Class 3 contributions, at the maximum rate unless application is

made to the Department and authorisation given for the release of the relevant information by the Administrator of Income Tax. This allows an income-related contribution to be calculated

48. There are two categories of non-employed contributions:
- (i) Full percentage rate contributions to cover social insurance, health service and long-term care insurance liabilities. This is the rate of contribution that non-employed adults under the age of 65 are liable to pay, based on their personal income. The contribution rate is 9.9% of income up to the upper income limit;
 - (ii) Specialist health insurance and long-term care insurance contributions. These contributions, which are payable by people aged 65 or over, go towards funding the specialist health insurance scheme and the long-term care insurance scheme. The contribution rate is 2.6% of income up to the upper income limit.
49. A small number of non-employed contributors aged between 60 and 65 have a preserved right to continue paying non-employed contributions at the reduced rate of 4.2% of income. Contributions at this reduced rate do not count towards old age pension entitlement. In last year's benefit uprating report (Billet d'Etat XVI of 2006) the Department gave notice of its intention, by Regulation, to remove this reduced rate option for new entrants from 1 January 2007. The Regulation was duly made and, consequently, the number of non-employed people paying the reduced contribution rate has since been decreasing and will reduce to zero by no later than 31 December 2011, as all such contributors will have reached 65 by that time.
50. The Department recommends that the lower income figure at which non-employed contributions become payable be increased from £13,000 per year to £13,650 per year from 1 January 2008.
51. The following table shows the minimum and maximum weekly contributions payable in 2008 by non-employed people. People with income at some point between the upper and lower limits will pay pro-rata.

2008 non-employed weekly contributions (2007 in brackets)

Annual Income	Full rate (under 65)	Specialist health and long- term care only (over 65)
	9.9%	2.6%
Less than £13,650	zero	zero
(less than £13,000)	(zero)	(zero)

£13,650	£25.99	£6.82
(£13,000)	(£24.75)	(£6.50)
£64,896	£123.55	£32.45
(£53,664)	(£102.17)	(£26.83)

52. As referred to in the Government Business Plan (Billet d'Etat XVIII of 2007), the Department will be examining the merits of an allowance being made on personal income, similar to an income tax personal allowance, in respect of non-employed contributions. If a personal allowance on income were to be applied to non-employed contributors, it would have to apply across the board, which would mean a considerable loss in contribution income. This would have to be replaced through other means, possibly by increasing the percentage rate of the non-employed contribution that applies on the income over an above the allowance. The investigatory work is in progress.

Voluntary contributions

53. As shown above, where a non-employed person's annual income is below £13,650 that person will be exempted from the payment of contributions. However, this could affect old age pension entitlement. A voluntary contribution which counts towards old age pension can be paid by or on behalf of non-employed people, resident in Guernsey and under pension age, with personal income below the lower income limit.
54. The voluntary contribution in 2007 is £14.25 per week. The rate is calculated by applying the social insurance element of the non-employed contribution rate, being 5.7% of the total 9.9%, to the lower income limit. With a proposed lower income limit of £13,650 per annum in 2008, the voluntary contribution will increase to £14.96 per week.

Special (minimum) rate Class 3 contributions

55. A special rate non-employed contribution is payable by insured persons who would normally rely upon employed contributor's employment for their livelihood, but have a small gap in their record where they were neither employed nor receiving an unemployment credit. The rate of this contribution is

aligned with the rate of the voluntary contribution. The special rate Class 3 contribution will, therefore, be £14.96 per week in 2008.

Income and expenditure on Guernsey Insurance Fund

56. The Guernsey Insurance Fund accounts for 2006 show income from contributions of £56.08m and from the States' Grant of £27.94m, giving a total income of £84.02m, before taking investment income into account. Total benefit expenditure and administration amounted to £80.67m, producing an operating surplus, before depreciation, of £3.35m. Depreciation of £0.5m, mainly comprising the Department's new computer systems, reduced the operating surplus to £2.85m for the year.
57. Within the administrative costs, salary and superannuation costs for all of the Social Security Department's activities amounted to £3.72m, an increase of 1.4% on the previous year and less than the increase in civil service pay rates.
58. The Department informed the States in last year's uprating report (Billet d'Etat XVI of 2006) that it was concerned over the sharp reduction in the operating surpluses of the Guernsey Insurance Fund, which had been reducing from a high point of £9m in 2002. At that time, an operating surplus of £1.6m was projected for 2007. The revised estimate of the operating surplus for 2007 is £2.4m.
59. The finances of the Guernsey Insurance Fund and Guernsey Health Service Fund for both 2007 and 2008 carry more uncertainty than usual, in consequence of the fiscal strategy, which includes applying the substantial increases in the upper earnings limits and applying compensatory reductions in the grants to the funds from General Revenue. The uncertainty comes about through the Department's imperfect knowledge of the distribution of salaries above the old upper earnings limits.
60. The Department can report that contribution income to the Guernsey Insurance Fund for 2007 to date is 15.9% up on 2006, owing to the increases in the upper earnings limits. This is 0.7% below the budgeted contribution income.

Further reduction in States grant from general revenue

61. The contribution rates quoted in paragraph 34 are consolidated rates which include contributions to the Guernsey Insurance Fund, the Guernsey Health Service Fund and the Long-term Care Insurance Fund. For illustration, the 2007 consolidated rate of 11.5% for an employed person is made up as follows:

Composition of combined Class 1 contribution in 2007	
Guernsey Insurance Fund	7.3% of earnings
Guernsey Health Service Fund	2.8% of earnings
Long-term Care Insurance Fund	1.4% of earnings
	11.5%

62. Each of those three funds formerly received a grant from general revenue. However, the grant to the Long-term Care Insurance Fund reduced to zero with effect from 1 January 2007. Grants to the Guernsey Insurance Fund and the Guernsey Health Service Fund remain, as follows:

Fund	2007 States Grant
Guernsey Insurance Fund	36% of contribution income
Guernsey Health Service Fund	27% of contribution income

63. In practice, this means that for every £1 of contribution income collected for the Guernsey Insurance Fund, a grant of 36p is paid to the Fund from general revenue. For each £1 of separate contribution income collected for the Health Service Fund, the grant is 27p.
64. The proposed new upper earnings limits and the additional 1% on the employers' contribution rate will apply to contributions for all three contributory funds, including the Long-term Care Insurance Fund and will allow a further reduction in the remaining two States Grants.
65. On advice from the Government Actuary's Department, of the additional 1% employers' contribution, 0.8% will be allocated to the Guernsey Insurance Fund and 0.2% will be allocated to the Guernsey Health Service Fund. The composition of the employee's and employer's combined Class 1 contribution from 1 January 2008 is therefore as follows:

Composition of combined Class 1 contribution in 2008	
Guernsey Insurance Fund	8.1% of earnings
Guernsey Health Service Fund	3.0% of earnings
Long-term Care Insurance Fund	1.4% of earnings
	12.5%

66. Having also received advice from the Government Actuary's Department, concerning the effects of the increased upper earnings limits and employers' contribution rate, the Department recommends that the States Grants from General Revenue be reduced to the following percentages from 1 January 2008.

Fund	2008 States Grant
Guernsey Insurance Fund	15% of contribution income
Guernsey Health Service Fund	12% of contribution income

67. Taking account of the foregoing, for the Guernsey Insurance Fund only, it is estimated that contribution income in 2008 will be £80.15m and the States grant will be £12.02m. For the Guernsey Health Service Fund, it is estimated that contribution income in 2008 will be £31.96m and the States grant will be £3.83m. The estimated combined amount of the States grants in 2008 will, therefore, be £15.85m.

68. The estimated combined amount of the grants to the two funds in 2007 is £30.63m. Had there been a normal uprating of contributions and benefit rates, without the complication of the changes for the fiscal strategy, those grants may have been expected to increase by approximately 6% in 2008, which would equate to £32.46m. The difference between that figure and the estimated £15.85m combined amount of the States Grants is £16.61m, reflecting the saving to General Revenue expenditure from increasing the upper earnings limits and the employers' contribution rate. This adds to the £10m recurring annual saving in 2007 from the first stage of the restructure.
69. Taking into account all of the foregoing including the proposed revised rates of benefits, for the Guernsey Insurance Fund, it is estimated that:
- (1) there will be an operating surplus in 2007 in the order of £2.4m; and
 - (2) there will be an operating surplus in 2008 in the order of £0.44m.

Consideration of increasing pension age

70. Having regard to the substantially reduced operating surplus for the Guernsey Insurance Fund, and the revised projections as described in paragraphs 11 to 14 of this report, there is a need to consider carefully the appropriateness of the present pensionable age of 65 years. Increasing pension age to, say, 68 would help towards improving the sustainability of the Guernsey Insurance Fund finances and would moderate the increases in contribution rates that in any case now appear unavoidable.
71. Increasing pension age and, consequently, applying a pressure to remain economically active for longer, is also a very relevant point of discussion within the Workforce Development Plan, within the context of the States population and migration strategy.
72. Discussions on increasing pension age should not be cause for alarm among Islanders. The Department has no intention of bringing forward proposals for an immediate increase in pension age. The Department fully understands that an increase in pension age needs proper notice, planning and, almost certainly, phasing in over a period of several years. For illustration, the department notes that the proposed increase in state pension age planned for the United Kingdom, from 65 to 68, will be phased in between 2024 and 2046. A proposed change in the pension age in Germany, from 65 to 67, will be phased in between 2012 and 2029.
73. If, after due consideration, the Department concludes that an increase in the Guernsey pension age should be recommended to the States, it is unlikely that any increase would take effect for at least 10 years following approval by the States.

Joint liability for contributions on Class 1 and Class 2 earnings

74. Many employed persons in Guernsey and Alderney engage in some self-employed activity in their free time. In the wider context of maximising Guernsey's workforce, this is much welcomed. As regards social insurance contributions, the Class 1 employed person's contribution takes precedence and avoids the need to pay contributions on the earnings from self-employment.
75. The Department has, to date, been broadly content with that situation, but in consequence of the changes in the financing of social insurance, including the substantial increases in the upper earnings limit, the income foregone by not attaching a liability on the subsidiary self-employment is believed to be significant. In addition to the generality of the issue, the Department is aware of many individual cases where the earnings from self-employment substantially exceed the earnings from employment.
76. The Department gives notice that from 1 January 2008 contribution liability will be attached to earnings from self-employment, above the lower earnings limit of £5,460 per year, that is being undertaken by persons who are elsewhere engaged in a contract of employment on which they are paying Class 1 contributions.
77. A person who is paying employed person contributions at the maximum rate, that is on earnings at or above £1,248 per week (£64,846 per year) would not be liable for contributions on any additional income from self-employment.
78. A person paying employed person contributions on earnings below the upper earnings limit would be liable to pay additional self-employed contributions on self-employed income up to the difference between the earnings received from employment and the annual upper earnings limit.
79. The foregoing will be given effect by Regulations of the Department.

PART II
HEALTH SERVICE BENEFITS

80. The health service benefits, costing £29.01m in 2006, were financed by £22.99m from contributions allocated to the Health Service Fund and £9.19m from the States' Grant from general revenue. There was an operating surplus, before investment income, of £3.17m.

Medical Benefit Grants

81. The total benefit expenditure on consultation grants in 2006 was £3.40m. This was a 4.5% increase on 2005, wholly through increased volume, as the £12 and £6 grants for, respectively, the doctor and nurse consultations remained unchanged.

82. The Department will not be recommending any change in the level of the consultation grants for 2008.
83. The £12 doctor consultation grant represents a 28% subsidy towards the £43.60 total cost of a standard medical consultation. The proportionate level of subsidy will slip further from 2008, as the £12 grant remains fixed but medical fees are expected to increase. The future of the medical benefit grants is uncertain. The Department included in its operational summary, appended to the Government Business Plan (Billet d'Etat XVIII of 2007) the comment that one of its longer term objectives was to give consideration to abolishing the grant and replacing it with a more targeted, income-related scheme of support.

Pharmaceutical Service

84. Prescription drugs cost a total of £14.08m in 2006, before netting off the prescription charges paid by patients. This was an increase of 2.0% over the previous year. This was a very satisfactory outcome which, as in recent years, owed much to the activities of the Prescribing Support Unit, the States Prescribing Adviser and the good cooperation of Prescribing doctors and dispensing pharmacists.
85. The total cost to the Health Service Fund for the drugs dispensed was reduced by approximately £1.3m collected in prescription charges.
86. The number of items prescribed under the pharmaceutical service increased by 5.3% in 2006 to 1.19 million items.

Prescription charge

87. The prescription charge for 2007 is £2.60 per item. For a number of years the States have approved annual increases of 10p in the charge. The Department recommends the same increase this year, with a charge of £2.70 per item effective from 1 January 2008.

Specialist Health Insurance Scheme

88. The cost of the specialist health insurance scheme was £11.47m in 2006. After netting off a recovery of £94,832 from the Health and Social Services Department in respect of reciprocal health expenditure for visitors, the cost to the Guernsey Health Service Fund was £11.38m.
89. 2007 is the fifth year of the 15 year contracts with the Medical Specialist Group and the Guernsey Physiotherapy Group. Both contacts include terms for review of the contact price, within certain parameters. This work is in progress between the parties.

90. When the States approved the 15 year contracts in 2002 (Billet d'Etat II of 2002), it was specified that the number of consultants would not exceed a maximum of 37 within the first five years of the contract. That maximum figure was reached towards the end of 2004.
91. The Medical Specialist Group has made representations for the appointment of additional consultants. The Social Security Department and the Health and Social Services Department are considering these requests with the medical specialists. These discussions are being informed by expert reviews of the several specialties within which the Medical Specialist Group is organised. The States Departments have accepted the need to appoint a further paediatrician, increasing the current number to 4.
92. Although all parties will make best efforts, including close examination of the workloads of all specialties, to contain the number of consultants funded by the specialist health insurance scheme it appears likely that a net increase in the number of consultants is inevitable.
93. From 2008, when the contract enters its second five year term, the Social Security Department and Health and Social Services Department, may agree to an increase in the number of consultants, beyond 37, without necessarily reporting to the States. However, a report to the States will be necessary if an increase in the number of consultants cannot be financed from the Health Service Fund at current contribution rates or if consequential costs on the Health and Social Services hospital services require special consideration.

PART III LONG-TERM CARE INSURANCE

94. Contribution income to the Long-term Care Insurance Fund was £12.12m in 2006. This was supplemented by a States Grant equal to 12% of contribution receipts, in the amount of £1.45m. As noted in paragraph 62, the States Grant was reduced to zero with effect from 1 January 2007. Benefit and administration expenditure for 2006 amounted to £10.04m, producing an operating surplus of £3.53m
95. The operating surplus is relatively large in proportion to expenditure, but it is reducing year on year. This reflects the strategy for this particular fund, approved by the States prior to commencement of the scheme in 2003. The strategy is to have a front-loaded contribution rate of 1.4%, which should hold good for a minimum of 15 years, assuming no fundamental change in the range of benefits. This strategy involves the accumulation of reserves to provide an investment income to supplement future contribution rates.
96. Benefit expenditure increased by 12% in 2006, driven partly by the annual increase in benefit rates, but also, significantly, by an increased provision of nursing beds during the year. Some of these extra beds were entirely new

provisions, while others were re-registrations of beds that were previously registered as residential.

97. As the additional nursing bed provision came on during 2006, the 12% additional expenditure does not fully represent the financial impact on the Fund. The full year effects are being experienced in the current year.
98. Notwithstanding the impacts on the Fund, the Department is pleased to note the additional provision of nursing beds, which is consistent with the objectives of the scheme when it was first being considered. There is likely to be continued demand for additional nursing beds as the number of elderly people in the Islands increases.

Co-payment by person in care

99. It is a condition of entitlement to benefit under the long-term care insurance scheme that the person in care should make a co-payment. The 2007 co-payment is £147 per week. The Department recommends a co-payment of £154 per week from 7 January 2008.
100. It should be noted that the co-payment to the long-term care insurance scheme also sets the level of fee to be charged for accommodation in the States-run homes including the Castel and King Edward VII hospitals, the Maison Maritaine and the Longue Rue House as well as the long-stay beds in the Mignot Memorial Hospital, Alderney.

Nursing care benefit

101. The maximum nursing care benefit is currently £602 per week. The Department recommends that it should be increased to £637 per week from 7 January 2008.

Residential care benefit

102. The maximum residential care benefit is currently £322 per week. The Department recommends that it should be increased to £341.25 per week from 7 January 2008.

Respite care benefits

103. Persons needing respite care in private sector residential or nursing homes are not required to pay a co-payment. The long-term care fund pays instead. This is to acknowledge the value of occasional investment in respite care in order to allow the person concerned to remain in their own home as long as practicable. It also acknowledges that persons having respite care also continue to bear the majority of their own household expenditure. The respite care benefits, therefore, are the sum of the co-payment and the residential care benefit or nursing care benefit, as appropriate. The Department, therefore, recommends a

nursing care respite benefit of up to £791 per week and a residential care respite benefit of up to £495.25 per week from 7 January 2008.

PART IV
NON-CONTRIBUTORY SERVICES FUNDED FROM GENERAL REVENUE

104. For the non-contributory benefits contained in this Part of the report, which are funded entirely from general revenue, the Department recommends general increases of 4.7%, with some small variations for rounding. The Department recommends a more substantial increase in the benefit limitation for families supported by supplementary benefit. The Department recommends a reduction in the rates of supplementary benefit paid to 16 and 17 year old claimants who are non-householders, with the new rates of benefit applying to new claims only.

Supplementary benefit

105. Supplementary benefit expenditure amounted to £12.11m in 2006, which was an increase of approximately £1.5m (14%) on 2005. The expected outturn for 2007 is £13.4m, which is a further increase of 11%.
106. The significant additional expenditure is partly the result of improved benefit rates for single pensioners and single parents, in accordance with the corporate anti-poverty plan, but also because of increasing numbers of claimants.
107. As of July 2007, there were 564 pensioners receiving weekly financial assistance from supplementary benefit and a further 230 pensioners covered for their medical expenses. There were 424 single parents, 387 people incapable of work through sickness and 174 jobseekers claiming supplementary benefit. None of the foregoing numbers includes the number of adult or child dependants associated with the claim.

Supplementary benefit requirement rates

108. The Department recommends a general increase of 4.7% in long-term supplementary benefit and short-term supplementary benefit from 11 January 2008. This is with the exception of the requirement rates for claimants aged 15 to 17, inclusive, who are not householders. In this context 'non-householder' means that the person is either living with family or in someone else's household. The non-householder is not paying rent.
109. As at 30 June 2007, there were 97 teenagers, between the ages of 15 and 18, inclusive, claiming supplementary benefit in their own right. Of this number, 70 were non-householders. Their qualifying criteria for supplementary benefit are shown below. The number in brackets is the number who are non-householders.

	Age 15 to 17	Age 18	Total 15 to 18
Jobseekers	34 (28)	10 (8)	44 (36)
Single parent	8 (5)	14 (5)	22 (10)
Sick	11 (9)	7 (4)	18 (13)
Disability	<u>8 (8)</u>	<u>5 (3)</u>	<u>13 (11)</u>
	61 (50)	36 (20)	97 (70)

110. The current (2007) supplementary benefit rate for all of the non-householders in the table above is £82.90 per week for short-term claims of less than 6 months' duration and £103.85 per week for long-term claims of over 6 months.
111. In the case of 15 year old claimants, of which there are currently 5, the Department gives effect, through a provision which allows a benefit to be increased or decreased in appropriate circumstances, to a reduced rate of supplementary benefit of £43.55 per week for short-term claims and £54.45 per week for long-term claims. These rates are the same as the additions that are made to an adult supplementary beneficiary's claim in respect of a 15 year old dependant.
112. The Department, for some time, has held some unease about the level of supplementary benefit paid to teenage beneficiaries, in particular those under the age of 18, who it could be argued should be the responsibility of their parents. The Department does appreciate that parental support will not be available in all cases.
113. Taking the example of a 16 year old job seeker, the Department is of the view that £82.90 per week, increasing to £103.85 per week after 6 months, may be more than necessary as a subsistence benefit for a non-householder. Prior to leaving school, in some cases the young person's family would have been providing for his or her needs, with the young person receiving at best some pocket money. The justification for moving, immediately on leaving school, to £82.90 per week is questionable. It is acknowledged that if the young person's parents or parent were themselves receiving supplementary benefit, then that rate of benefit would have been reduced by the appropriate increase for the young person, coincident with the young person beginning to receive benefit in his or her own right. But in many cases, the parents or parent will not be in receipt of supplementary benefit, so that this has no relevance.
114. Consistent with the foregoing, the Department takes the view that the supplementary benefit requirement rates for non-householders of all classifications and all ages should be the same as the rate that would be paid to another person if they were dependants on that other person's supplementary benefit claim. The Department would then look to meet justifiable additional expenses on the non-householder on a case by case basis. For example, if a jobseeker had particular expenses with regard to looking for work, these could be considered for assistance. A non-householder with severe disability would be

given assistance with the purchase of necessary equipment, outside the standard supplementary benefit rates, as is indeed is now the case. Single parent non-householders would receive additional benefit in respect of their child or children, to add to their own personal rate.

115. To give effect to this restructuring of the benefit rate, the Department recommends the introduction of 2 new levels of benefit for non-householders, one being for persons aged 15 and the other being for persons aged 16 or 17. The Department also recommends the introduction of a new rate of Dependant's allowance on supplementary benefit claims, to apply to dependants aged 18 or over.
116. This is best illustrated by the table below, which shows the old and new rates for non-householders and for dependants at 2007 rates:

2007 rates	Short-term		Long-term	
	new	old	new	old
Non-householder				
18 and over	£82.90	£82.90	£103.85	£103.85
16 and 17	£70.40	£82.90	£88.00	£103.85
15*	£43.15	£82.90	£54.45	£103.85
Dependant				
18 and over	£82.90	£70.40	£103.85	£88.00
16 to 17	£70.40	£70.40	£88.00	£88.00
12 to 15	£43.15	£43.45	£54.45	£54.45
5 to 11	£31.60	£31.60	£39.45	£39.45
Under 5	£23.30	£23.30	£29.15	£29.15

* As referred to in paragraph 111, 15 year old non-householders have not been paid the full 'old rate' but have had benefit reduced to the 'new' rate

117. The proposed rates in the table above show a formalisation of the payment practice concerning 15 year-old beneficiaries and a reduction in the rates for 16 and 17 year-old non-householders. The Department recommends applying the new rates, at 2008 values, to new claims, leaving those already in payment at the higher rate.

Jobseekers to remain at short-term rates unless exceptional case

118. The Department has questioned the merits of allowing people claiming supplementary benefit as a jobseeker to progress to the long-term rate of benefit automatically after six months' receipt of the short-term rate. The Department has concluded that, in some cases, this will give off the wrong message. The Department recommends, therefore that people who receive supplementary benefit as a jobseeker, should remain at short-term rates of benefit unless the

circumstances of a particular jobseeker are such that the Administrator considers it just and equitable for the individual to receive benefit at the long-term rate. One such example could be where a person who has been long-term sick attempts a return to the workplace. Another case could be where a family with limited income from employment is reliant on the additional income from supplementary benefit.

119. Taking into account the foregoing, the Department recommends supplementary benefit requirement rates, to take effect from 11 January 2008, as follows:

(a)

Long-term supplementary benefit (after payment of short-term rates for 6 months)	2008	(2007)
Married couple	£202.50	(£193.35)
Single householder	£140.15	(£133.85)
Non-householder:		
18 or over	£108.75	(£103.85)
16 – 17	£92.15	(£103.85)
15	£57.00	(£54.45)
Member of a household -		
18 or over	£108.75	(£88.00)
16 - 17	£92.15	(£88.00)
12 - 15	£57.00	(£54.45)
5 – 11	£41.30	(£39.45)
Under 5	£30.50	(£29.15)

(b)

Short-term supplementary benefit rates (less than 6 months)	2008	(2007)
Married couple	£164.10	(£156.75)
Single householder	£114.00	(£108.85)
Non-householder:		
18 or over	£86.80	(£82.90)
16 – 17	£73.70	(£82.90)
15	£45.60	(£43.55)
Member of a household -		
18 or over	£86.80	£70.70
16 - 17	£73.70	(£70.40)
12 - 15	£45.60	(£43.55)
5 – 11	£33.10	(£31.60)
Under 5	£24.40	(£23.30)

A rent allowance, on top of the above short-term or long-term rates, will apply to people living in rented accommodation.

Increase in benefit limitation for families

120. The benefit limitation, currently £297 per week, is the maximum level allowed for the combination of supplementary benefit and income from other sources, excluding family allowances. The same benefit limitation applies to all supplementary benefit claims, whether they be concerning individual claimants, couples, couples with children or single parents.
121. The benefit limitation, while remaining an important control on supplementary benefit expenditure, works to the advantage of individual claimants, who have reasonable scope for the payment of rent from the difference between their personal requirement rate and the cap of the benefit limitation. For families, however, the aggregate of their several personal requirement rates can exceed the benefit limitation before making any allowance. In such circumstances, rent can only be paid by the family sacrificing some of their personal allowances that have been set by the States as subsistence levels of income.
122. There are approximately 1,400 supplementary benefit claimants who rent property or pay a mortgage. Of these, 136 (9.7%) are affected by the benefit limitation. The problem is almost entirely confined to families renting in the private sector. It is an infrequent problem for families in Housing Department of Guernsey Housing Association accommodation, which is eligible for rent rebate. This figures, when broken down by housing sector, are concerning.
123. Of 432 people renting in the private sector, 102 (24%) are affected by the benefit limitation. Of 654 people in States Housing, just 18 (3%) are affected by the benefit limitation. None of the 79 supplementary benefit tenants living in Guernsey Housing Association housing are currently affected by the benefit limitation.
124. Of 129 owner occupiers, who are being assisted by supplementary benefit 12 (9%) are affected by the benefit limitation.
125. The extent to which the benefit limitation impacts on individual claimants varies. In some cases it is by only a few pounds, while in others it can be £100 or more per week.
126. In 84 cases (62%) the impact of the benefit limitation is between £1 and £50 per week. In 108 cases (79%) the benefit limitation is between £1 and £70 per week.
127. A similar situation had developed in 2002, when 14% of supplementary benefit householder claims were being affected by the benefit limitation. In that year's benefit uprating report (Billet d'Etat XX of 2002) the Guernsey Social Security Authority recommended an increase in the benefit limitation from £208 per week to £250 per week. This was approved by the States and duly implemented from January 2003.

128. With the passage of 5 years, it appears that private sector rents have generally increased by more than the annual increases in the various supplementary benefit rates, in particular the benefit limitation. The Department considers, therefore, that a further step increase is required.
129. The Department is very aware of the inadequacy of having a single benefit limitation which applies to all family profiles. Investigation of a more satisfactory approach is one of the Level 4 responsibilities of the Department under Priority Action Area 4 of the Government Business Plan.

Benefit limitation in the community

130. As a substantial move in that direction, the Department recommends an increase in the benefit limitation from £297 per week in 2007 to £367 from 11 January 2008. This is with the intention of removing the full impact of the benefit limitation from approximately two thirds of the families being currently being affected and to substantially reduce the impact for the remaining one third. However, the Department is keen to ensure that the substantial increase in the benefit limitation is not exploited in the case of single beneficiaries, who have adequate opportunity to find rented accommodation within the current benefit limitation of £297 per week. The Department, therefore, will as a working practice set a cap on the rent allowance that can be paid to single claimants. For this purpose, single claimant means one adult with no dependants. A single parent would be treated as a family and would be able to access the higher benefit limitation if necessary.

Benefit limitation- residential homes

131. Notwithstanding the existence of the long-term care insurance scheme, there needs to remain a benefit limitation applicable to a person residing in a residential home who does not satisfy the residence requirements for long-term care insurance and may, therefore, need to rely on supplementary benefit assistance. The benefit limitation is currently £410 per week. The Department recommends an increase to £430 per week from 11 January 2008. It should be noted that this particular benefit limitation, and that of the following paragraph, are at present provisional only, as there are no relevant claims.

Benefit limitation- nursing homes and Guernsey Cheshire Home

132. Being necessary for the reason explained above, the Department recommends that the benefit limitation applicable to a person residing in a nursing home or the Guernsey Cheshire Home be increased from £589 per week to £617 per week from 11 January 2008.

Personal Allowance for residents of residential or nursing homes

133. The amount of the personal allowance for supplementary beneficiaries in

residential or nursing homes is currently £23 per week. It is intended to allow modest purchases of, say, newspapers, confectionery, toiletries, small family presents and so on. The Department recommends that the personal allowance be increased to £25 per week from 11 January 2008.

Personal Allowance for Guernsey residents in UK hospitals and care homes

134. The Health and Social Services Department pays for Guernsey and Alderney residents to be placed in UK hospitals and specialized institutions if their mental or physical health needs cannot be met on-island. While the Health and Social Services Department meets the cost of accommodation and care, residents are expected to pay from their own resources for such things as newspapers, toiletries and other items of personal expenditure. Residents who cannot afford these things can apply to the Social Security Department for a discretionary personal allowance that is paid through the Supplementary Benefit scheme. While numbers vary, there are approximately 15 people at off-island placements receiving a personal allowance from supplementary benefit.
135. Historically, there has been no set rate of UK personal allowance, with payments being decided on a case by case basis. In making such decisions, the guiding principle has been that Guernsey and Alderney people should receive broadly the same level of 'pocket money' as do the UK residents in the same hospital or care home. Usually, the resident's social worker liaises with the institution and the UK Benefits Agency and recommends an appropriate rate. The rates vary considerably, owing to the various combinations of benefits and allowances that apply in the UK, including some benefits that usually apply outside the institution, but are allowed to continue for a limited period post admission.
136. When a personal allowance rate cannot be determined by comparison with the rates paid to UK residents, a personal allowance is paid at the same amount as for supplementary benefit claimants living in a Guernsey or Alderney care homes, which is currently £23.00 per week (see para.133).
137. In the interests of transparency and consistency, the Department intends to introduce a standard UK personal allowance that will be part of the benefit uprating report and which, with other such rates, will appear in an Ordinance of the States.
138. The Department recommends a personal allowance of £42.30, to apply to new and existing cases from 11 January 2008. £42.30 is the amount paid to local, long-term supplementary benefit claimants who live in hotel or guest house accommodation and who have their meals provided for them as part of their residency. The Department takes the view that living expenses faced by this group of claimants are similar to those faced by the majority of residents in UK institutions. As a point of comparison, the UK's Income Support Scheme pays a basic living allowance of £45.50 to 18 to 24 year olds receiving treatment within a hospital or similar institution.

Supplementary Fuel Allowance

139. A supplementary fuel allowance is paid from general revenue for 27 weeks from the last week in October until the last week in April of the year following. The fuel allowance was £18.70 per week for the 2006 to 2007 period.
140. In the year to June 2007, the price of fuel, light and power increased by 3.3%. The Department, therefore, recommends an increase of 3.3% in the supplementary fuel allowance, taking it to £19.30 per week for the winter of October 2007 to April 2008.
141. It is estimated that the fuel supplement will cost £590,000 over the 27 week payment period.

Cost of proposals for Supplementary Benefit

142. The expected outturn for supplementary benefit expenditure for 2007 is £13.40m. It is estimated that benefit expenditure in 2008, taking account of the above proposals, will increase by £0.90m to £14.30m.

Amendments to Supplementary Benefit (Implementation) Ordinance

143. Section 6(1) of the Supplementary Benefit (Implementation) Ordinance, 1971, as amended, provides that:

'The Administrator may at any time demand for his inspection and information the production by an applicant of all bank pass books, certificates, statements, books of account and other documents whatsoever in the possession of or under the control of that applicant containing or likely to contain evidence of the means of that applicant.'

144. As supplementary benefit is a means-tested benefit, it is an essential part of the claim process for an applicant to provide information on all bank accounts which are held and the current balances of those accounts. It has been the working practice of the Department, for many years, to request all applicants to sign a form of authorisation allowing their bank or banks to release to the Administrator relevant information for the purpose of determining the means of the applicant. This is necessary in order to verify the current balances, to check for any undisclosed accounts held with the nominated banks and to investigate any large movements of funds prior to making the claim to supplementary benefit.
145. It has recently been brought to the attention of the Department that, the subsection of the Ordinance, quoted in paragraph 143, above, does not compel an applicant to sign an authorisation for his bank to disclose information to the Administrator. The Department recommends an amendment to the legislation in order to give the power of law to what is considered to be an essential part of the

claim application.

146. The Department recommends a second amendment to the Ordinance, in respect of the valuation of life insurance policies held by an applicant.
147. In assessing the resources available to an applicant for supplementary benefit, the Administrator is required to take into account the surrender value of life-assurance policies. Although surrender values are at greatly reduced values to the potential sum at maturity, where such policies are wholly or in part a form of savings, valuation at the time of claiming supplementary benefit is necessary in order to be fair with the treatment of applicants whose savings may be only in the form of a bank account.
148. In practice, applications for supplementary benefit, particularly from older people, often include an insurance policy of very modest maturity value and, consequently, an even smaller surrender value. Frequently, the applicant refers to the policy as being for the costs of his or her funeral. Policies which are explicitly for funeral costs, having been marketed and bought on that basis, are ignored for supplementary benefit purposes. If such policies were not in place, the Department may very well have to assist with the cost of the applicant's funeral at some stage in the future.
149. The Department wishes the same approach to be taken with insurance policies which are not designated as funeral plans, but which the applicant considers to be for funeral costs and where the value does not greatly exceed the approximate cost of a funeral. The Department recommends that the Administrator be given the discretion in the assessment of an applicant's resources to ignore the surrender value of insurance policies of this description.

Family Allowances

150. Family allowances expenditure amounted to £8.06m in 2006. The allowance is paid at the rate of £13.20 per week per child. The budget for 2007 is £8.30m.
151. The Department is actively examining the feasibility of a scheme of income-related family allowance, as a replacement for the current flat-rate universal system. A consultation document was issued to all Guernsey and Alderney households in July 2007 and the responses are currently being analysed. It is the Department's intention to report to the States on this matter before the end of 2007.
152. If the States decide in due course that the family allowance scheme should undergo the fundamental change which is being considered, there will be a need for the drafting of primary legislation and the passage of that legislation through the necessary processes. It is clear, therefore, that the current system of family allowance will remain throughout 2008 and possibly longer.

153. The Department recommends, therefore, that family allowance be increased to £13.85 per week from 7 January 2008. It is estimated that this will increase the expenditure on family allowances in 2008 by £0.40 to £8.70m.

Attendance and Invalid Care Allowances

154. The Department recommends that attendance allowance and invalid care allowance be increased with effect from 7 January 2008 as shown below:-

2008 rates (2007 in brackets)

Attendance Allowance - weekly rate	£81.45	(£77.80)
Invalid Care Allowance - weekly rate	£65.75	(£62.80)
Annual income limit for both allowances	£75,000	(£72,000)

155. The annual income limit is the upper limit of income that a family may have, while still being entitled to receive either attendance allowance or invalid care allowance.
156. Benefit expenditure on attendance and invalid care allowances in 2006 was £2.05m. The budget for 2007 is £2.18m. It is estimated that the Department's proposals will increase expenditure in 2008 by £0.14m to £2.32m.

Community and Environmental Projects Scheme

157. The Department administers the Community and Environmental Projects Scheme (CEPS), which offers short-term employment opportunities for unemployed people. The Department contracts with the States Works for the necessary supervision of the work teams and also for the provision of transport, equipment and tools.
158. The CEPS teams have undertaken a remarkably wide range of activities during the last year, including:
- removing noxious weeds from coastal areas
 - clearing litter from nature walks
 - tidying Bring Bank recycling sites
 - road cleaning
 - maintaining park seats
 - collecting bulk refuse
 - recycling furniture, collecting and delivering unwanted furniture to needy households
 - maintaining children's playground in Saumarez Park
 - maintaining play equipment and garden furniture at St. Andrews School
 - planting trees and shrubs at schools
 - propagating plants
 - clearing overgrown areas at Vale School playing fields

- clearing debris and vegetation at Petit Bot Valley
- creating pathway at the Hedgehog rescue centre
- filling sand bags for coastal defence
- upgrading path surfaces at Castle Cornet

159. The hourly wage rates for the CEPS scheme are set by the Department and do not require a resolution of the States. For the information of States members, the 2007 and 2008 hourly and standard weekly rates are shown below:

	2008	(2007)
Under 18	£4.54 per hour	(£4.31 per hour)
For 36 hours	£163.44	(£155.52)
18 and over	£6.18 per hour	(£5.87 per hour)
For 36 hours	£222.48	(£211.43)

Free TV licences

160. In accordance with the resolutions of the States on the 2001 budget (Billet d'Etat XXIV of 2000), the Department administers a scheme to provide free TV licences for Guernsey and Alderney residents aged 75 or over and residents aged 65 or over and in receipt of supplementary benefit. Benefit expenditure under this scheme was £483,000 in 2006, which included a provision in respect of accounts not yet received from the BBC. The scheme is expected to cost £476,000 in 2007. The costs in 2008 will depend on the standard charge per TV licence made by the UK Department of Culture, Media and Sport.

PART V RECOMMENDATIONS

161. The Department recommends:
- (i) that, from 7 January 2008, the standard rates of social insurance benefits shall be increased to the rates set out in paragraph 19 of this report;
 - (ii) that the strict proportionality in the rates of old age pension for incomplete insurance records shall be restored over a two year period through removal of the residual Christmas bonus element within all pension rates;
(paragraphs 21 to 32)
 - (iii) that for employed persons, the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit, from 1 January 2008, shall be £1,248, £5,408 and £64, 896 respectively;
(paragraph 37)

- (iv) that for employers, the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit, from 1 January 2008, shall be £2,079, £9,009 and £108,108 respectively;
(paragraph 38)
- (v) that for employed persons and employers, the lower weekly earnings limit, the lower monthly earnings limit, from 1 January 2008, shall be £105 and £455 respectively;
(paragraph 40)
- (vi) that for self-employed persons, the upper earnings limit and lower earnings limit, from 1 January 2008, shall be £64,896 per year and £5,460 per year, respectively;
(paragraph 42 and 45)
- (vii) that for non-employed persons the upper and lower annual income limits, from 1 January 2008, shall be £64,896 per year and £13,650 per year respectively;
(paragraphs 46 and 50)
- (viii) that the States grants to the contributory funds in respect of contributions falling due from 1 January 2008, shall be as follows:

Guernsey Insurance Fund	15% of contribution income
Guernsey Health Service Fund	12% of contribution income

- (paragraph 66)
- (ix) that the States note that from 1 January 2008, the Department will be attaching a joint liability on an individual's employed and self-employed earnings, as outlined in paragraphs 74 to 79 of this report;
- (x) that, from 1 January 2008, the prescription charge per item of pharmaceutical benefit shall be £2.70;
(paragraph 87)
- (xi) that, from 7 January 2008, the contribution (co-payment) required to be made by the claimant of care benefit, under the long-term care insurance scheme, shall be £154 per week;
(paragraph 99)
- (xii) that, from 7 January 2008, care benefit shall be a maximum of £637 per week for persons resident in a nursing home or the Guernsey Cheshire Home and a maximum of £341 per week for persons resident in a residential home;
(paragraphs 101 and 102)

- (xiii) that, from 7 January 2008, respite care benefit shall be a maximum of £791 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home and a maximum of £495 per week for persons receiving respite care in a residential home;
(paragraph 103)
- (xiv) that, from 11 January 2008, persons receiving supplementary benefit as jobseekers should continue to receive the short-term rates of benefit, with the long-term rates applicable to exceptional cases only;
(paragraph 118)
- (xv) that, from 11 January 2008, the supplementary benefit requirement rates shall be as set out in paragraph 119 of this report;
- (xvi) that, from 11 January 2008, the weekly benefit limitations for supplementary benefit shall be:
 - (a) £367 for a person living in the community;
 - (b) £430 for a person who is residing in a residential home; and
 - (c) £618 for a person who is residing as a patient in a hospital, nursing home or the Guernsey Cheshire Home;
 (paragraphs 130 to 132)
- (xvii) that, from 11 January 2008, the amount of the personal allowance payable to persons in Guernsey and Alderney residential or nursing homes who are in receipt of supplementary benefit shall be £25 per week;
(paragraph 133)
- (xviii) that, from 11 January 2008, the amount of the personal allowance payable to persons in UK hospitals or care homes who are in receipt of supplementary benefit shall be £42.30 per week;
(paragraph 138)
- (xix) that a supplementary fuel allowance of £19.30 per week be paid to supplementary beneficiaries who are householders from 26 October 2007 to 18 April 2008;
(paragraph 140)
- (xx) that the Supplementary Benefit (Implementation) Ordinance, as amended, be further amended on the lines set out in paragraphs 143 to 149 of this report;

(xxi) that, from 7 January 2008, family allowance shall be £13.85 per week;

(paragraph 153)

(xxii) that, from 7 January 2008, the rates of attendance allowance and invalid care allowance and the annual income limits shall be as set out in paragraph 154.

Yours faithfully

D P Le Cheminant
Deputy Minister

(NB The Treasury and Resources Department's comments are set out below.)

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

28th August 2007

Dear Deputy Torode

**SOCIAL SECURITY DEPARTMENT –
BENEFIT AND CONTRIBUTION RATES FOR 2008**

The Treasury and Resources Department supports the Social Security Department's proposals in respect of benefits, contribution rates and earnings limits for 2008.

However, recent fundamental changes that have been made to the funding arrangements for the social security funds, in particular the substantial increases in the upper earnings limit, will have a significant long-term impact on the future level of the States grants to the contributory funds. The continued application of the **current** method of calculating the States grants will result in short-term above RPI annual increases in the grants, at a time when the States has agreed that increases in public sector expenditure should be restrained to RPI or less. This will then be followed by progressive, real terms decreases in the level of grants to the social security funds from General Revenue, leading to the eventual end of the requirement for these States grants.

The Treasury and Resources Department therefore believes that it is essential that a review of the method of calculating the States grants is carried out jointly with the Social Security Department. This will enable a consistent approach to be taken and an appropriate arrangement put in place.

It is proposed that the review will be informed by expert actuarial advice and that recommendations will be developed for the future method of calculating the States grants to the social security funds. It is intended that the recommendations will be included in the forthcoming Budget Report.

Yours sincerely

L S Trott
Minister

(NB The Policy Council supports the proposals in respect of benefits which further the objectives of the Corporate Anti-Poverty Programme and contribution rates which are in accordance with the Economic and Taxation Strategy.

The Policy Council also strongly endorses the comments of the Treasury and Resources Department concerning the method of calculating the States grants to the social security funds. Therefore, it intends to place an amendment to replace Recommendation (viii) with the following:

“To note that recommendations for the future method of calculating the States grants to the social security funds will be included in the forthcoming Budget Report.”

At the request of the Social Security Department, a recent exchange of correspondence between the Policy Council and the Department is attached for the information of States members.)

POLICY COUNCIL

The Deputy Minister
Social Security Department
Edward T Wheadon House
Le Truchot
St Peter Port
Guernsey
GY1 3WH

6th August 2007

Dear Deputy Le Cheminant

Social Security – Grants from General Revenue

Thank you for taking the time, together with your officers, to meet last week with myself and representatives of the Policy Council’s Fiscal & Economic Policy Steering Group (FEPSG) in order to discuss the above matter.

As you know, one of the fundamental requirements of the Economic & Taxation Strategy is the need for as much certainty as possible in relation to public sector finances particularly during the first phase of the Strategy (2008-2011/12). The FEPSG is therefore trying to address several areas where some uncertainty exists and as you are

aware from our discussions, one of these concerns the Grants paid to your Department from General Revenue and specifically: -

- The underlying basis for calculating the grants which currently sees above RPI increases applied.
- The level of the Grants for 2008 which your Departments estimates at £15.85M.

As discussed during our most recent meeting, the FEPSG is of the view that during the first phase of the Economic & Taxation Strategy, the Grants should be subject to an annual increase of no more than RPI. As you will recall, following the recent debate on the Government Business Plan, the States resolved to contain increases in public expenditure to RPI or less. Unless the formula for calculating the Social Security Grants paid from General Revenue is adjusted, then the only way to ensure compliance with the States decision to limit increases in expenditure to RPI or less, would be to reduce in real terms the revenue budgets of other Departments which in practice means the Health and Education Departments.

The FEPSG accepts that applying RPI increases to the Social Security Grants would have implications for the Funds and in particular the Insurance Fund notwithstanding the fact that the projections your Department is using have been arrived at on the basis of actuarial assumptions which may (or may not) prove to be correct. Furthermore, those implications could be offset, if necessary, by very small percentage increases in contribution rates or a lump sum replacement, at some time after 2011, to restore the Fund to the position it would have been in had the basis for increasing the Grant not been altered.

Against this background, it is the intention of the FEPSG to recommend to the Policy Council and the Treasury & Resources Department that from 2008 onwards, the Social Security Grants from General Revenue should be increased in line with inflation. That being the case, I would welcome confirmation on whether or not your Department would be prepared to amend its latest report entitled "Benefit and contribution rates for 2008" to take account of the proposed change in funding and to include a recommendation that a joint review should be commissioned to assess the implications and options of such a change. It is our view that no immediate changes to contribution rates should be recommended until after such a joint review has been completed.

It is noted that your current report on "Benefit and contribution rates for 2008" states that *"It is important to make clear that the deterioration in the financial position of the Guernsey Insurance Fund has not been brought about by the Future Economic and Taxation Strategy. The deterioration is unconnected with the so-called 'zero-10 black hole'".* Of course, any necessary changes to future contribution rates arising solely from the adjustment to the Grants formula would be attributable to the Strategy.

Turning now to the current level of the Grants, we acknowledge your Department's estimate that £15.85M will be required for 2008. The Treasury & Resources Department's calculation (admittedly in 2006 terms) is for the provision of £13.5M

which is the figure that has been used in the forecasts since June 2006. There is therefore a potential funding difference of around £2.35 million which can only be met by reducing the cash limits of other Departments. It is therefore suggested that the Treasury & Resources Department will provide £14M towards the Social Security Grants and the implications for the Funds of that level of funding will need to be considered as part of the above-mentioned review to be jointly undertaken during 2008.

There is one further point I wish to make. I understand that, in future years, due to the introduction of the higher upper earnings limits, it is predicted that contribution income will increase so that the requirement for a Grant from General Revenue will reduce and, eventually, disappear. If, over the lifetime of the Fund (i.e. up to 2063), the Grant was set at a fixed sum, increasing annually by RPI, what would the initial fixed sum need to be?

I look forward to hearing from you on the above issues as soon as possible.

Yours sincerely

M W Torode
Chief Minister

SOCIAL SECURITY DEPARTMENT

Deputy M W Torode
Chief Minister
Policy Council
Sir Charles Frosard House
St Peter Port
Guernsey
GY1 1FH

13th August 2007

Dear Deputy Torode

Social Security - Grants from General Revenue

I refer to your letter of 6 August 2007, which followed the meeting of the Policy Council's Fiscal and Economic Policy Steering Group, which I attended with Social Security Department officers on 2 August 2007.

The minutes of that meeting should have recorded my statement that the members of the Social Security Department were unanimously opposed to a variation in the formula-led basis of the States Grants to the contributory funds. I was happy to attend the meeting, and the previous meeting on 20 July 2007, but that was in order to assist with your Group's understanding of the short, medium and long-term finances of the contributory funds and of the Guernsey Insurance Fund in particular. My attendance was not indicative of a willingness to treat the position of the States grants as negotiable.

The Social Security Department, on 27 July 2007, submitted to the Policy Council and the Treasury and Resources Department, its annual States Report on benefit and contribution rates for debate by the States at the September meeting. If the States approve the Social Security Department's proposals, the Department will, by 1 January 2008, have fully and speedily complied with its obligations under Stage 1 of the Future Economic and Taxation Strategy, as approved by the States on 30 June 2006.

From 1 January 2008, through the application of an upper earnings limit of £64,896 per annum for employees, self-employed and non-employed persons, an upper earnings limit of £108,108 per annum for employers and an increase of 1% in the employers' contribution rate, the States General Revenue account will be relieved of £27m per annum of expenditure, compared with what would have been paid without the intervention of Stage 1 of the fiscal strategy. The £27m is the 2008 equivalent of the estimated £25m that was being referred to in 2006 terms. We have explained to your Group in the course of our recent meetings why we consider it an accounting error to expect the 2006 balance of the General Revenue grants, at £13.5m, to hold good for 2008, when all other figures are changing at some point between the movement in prices and the movement in earnings.

The Department's States Report for the September meeting refers to the rapid reduction in the operating surpluses of the Guernsey Insurance Fund, mainly through the recent strategy of increasing the single old age pension rates above RPI. The estimated operating surplus for 2008, if the States approve the recommended 6% increase in pensions and other contributory benefits, will be just £0.44m. Clearly, if the States grant to the funds was to reduce from the £15.85m estimated on the formula-led basis to the £14m fixed sum as suggested in your letter, the Guernsey Insurance Fund would be faced with an immediate operating deficit. The amount of the deficit would depend on the apportionment of the grant between the Guernsey Insurance Fund and the Guernsey Health Service Fund, but would be approximately £1.4m for 2008.

You will be aware that the Guernsey Insurance Fund has reserves of approximately £515m and annual investment income of £16.4m (31 December 2006 figures). However, on 2 August 2007, we showed how the investment income and the capital value of the Fund would be applied against the very large increases in pension expenditure which will fall on the Guernsey Insurance Fund over the next 40 years. The actuarial projections that we discussed with your Group showed how the capital value of the Fund was expected to be drawn down to near-zero by 2043, unless remedial action took place by way of increased contribution rates, increased pension age, a

commitment for an ongoing level of funding by way of the States grant from general revenue or some combination of those factors.

The difference between us is that the Social Security Department is taking the long-term view of the sustainability of the state pension scheme whereas the Fiscal and Economic Policy Steering Group is taking a short-term view on balancing the 2008 revenue budget.

I draw very little confidence from the last paragraph of the first page of your letter, which notes that the Department's actuarial projections *'may (or may not) prove to be correct'*. While the statement is factually correct, it conveys desperate optimism, particularly when followed up by a vague suggestion of *'a lump sum replacement, at some time after 2011, to restore the Fund...'*

I am also disappointed to see the budgets for the Health and Education Departments drawn into our correspondence, as I do not consider that sort of emotive reasoning to be appropriate to this issue.

The Social Security Department will proceed with its report to the States unamended, noting as always the right of States members to amend the report if the majority so wishes. If the States decide to support the Social Security Department's proposals, then any material consequences on the States Budget will have to be addressed by the States in the course of the November meeting.

As regards the question that you posed in the last paragraph of your letter, the Department will seek actuarial advice and will let you know as soon as a response is received. This may prove a difficult question to answer and, given the very short time that is available before the Billet d'Etat for September is printed, it could be that the response is not obtained in time for inclusion in any letter of comment from the Policy Council.

Yours sincerely

D P Le Cheminant
Deputy Minister

The States are asked to decide:-

XVI.- Whether, after consideration of the Report dated 27th July, 2007, of the Social Security Department, they are of the opinion:-

1. That, with effect from 7th January, 2008, the standard rates of social insurance benefits shall be increased to the rates set out in paragraph 19 of that Report.
2. That the strict proportionality in the rates of old age pension for incomplete insurance records shall be restored over a two year period through removal of the residual Christmas bonus element within all pension rates.
3. That, with effect from 1st January, 2008, for employed persons the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit shall be £1,248, £5,408 and £64, 896 respectively
4. That, with effect from 1st January, 2008, for employers, the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit shall be £100, £433.33 and £5,200 respectively.
5. That, with effect from 1st January, 2008, for employed persons and employers, the lower weekly earnings limit, the lower monthly earnings limit shall be £105 and £455 respectively
6. That, with effect from 1st January, 2008, for self-employed persons, the upper earnings limit and lower earnings limit shall be £64,896 per year and £5,460 per year, respectively
7. That, with effect from 1st January, 2008, for non-employed persons the upper and lower annual income limits shall be £64,896 per year and £13,650 per year respectively
8. That, with effect from 1st January, 2008, the States grants to the contributory funds in respect of contributions falling due from 1st January, 2008, shall be as follows:

Guernsey Insurance Fund	15% of contribution income
Guernsey Health Service Fund	12% of contribution income

9. To note that, with effect from 1st January, 2008, the Social Security Department will be attaching a joint liability on an individual's employed and self-employed earnings, as outlined in paragraphs 74 to 79 of that Report;
10. That, with effect from 1st January, 2008, the prescription charge per item of pharmaceutical benefit shall be £2.70;
11. That, with effect from 1st January, 2008, the contribution (co-payment) required

to be made by the claimant of care benefit, under the long-term care insurance scheme, shall be £154 per week;

12. That, with effect from 7th January, 2008, care benefit shall be a maximum of £637 per week for persons resident in a nursing home or the Guernsey Cheshire Home and a maximum of £341 per week for persons resident in a residential home;
13. That, with effect from 7th January, 2008, respite care benefit shall be a maximum of £791 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home and a maximum of £495 per week for persons receiving respite care in a residential home.
14. That, with effect from 11th January, 2008, persons receiving supplementary benefit as jobseekers shall continue to receive the short-term rates of benefit, with the long-term rates applicable to exceptional cases only.
15. That, with effect from 11th January, 2008, the supplementary benefit requirement rates shall be as set out in paragraph 119 of that Report
16. That, with effect from 11th January, 2008, the weekly benefit limitations for supplementary benefit shall be:
 - (a) £367 for a person living in the community;
 - (b) £430 for a person who is residing in a residential home; and
 - (c) £618 for a person who is residing as a patient in a hospital, nursing home or the Guernsey Cheshire Home.
17. That, with effect from 11th January, 2008, the amount of the personal allowance payable to persons in Guernsey and Alderney residential or nursing homes who are in receipt of supplementary benefit shall be £25 per week.
18. That, with effect from 11th January, 2008, the amount of the personal allowance payable to persons in UK hospitals or care homes who are in receipt of supplementary benefit shall be £42.30 per week
19. That a supplementary fuel allowance of £19.30 per week be paid to supplementary beneficiaries who are householders from 26 October 2007 to 18 April 2008;

20. That the Supplementary Benefit (Implementation) Ordinance, as amended, be further amended on the lines set out in paragraphs 143 to 149 of that Report.
21. That, with effect from 7th January, 2008, family allowance shall be £13.85 per week
22. That, with effect from 7th January, 2008, the rates of attendance allowance and invalid care allowance and the annual income limits shall be as set out in paragraph 154 of that report.
23. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

STATES HOUSING DEPARTMENT

HOUSING (CONTROL OF OCCUPATION) (GUERNSEY) LAW 1994 – VARIATION TO THE HOUSING REGISTER

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

2nd August 2007

Dear Sir

Executive Summary

The purpose of this report is to seek approval for the preparation of an Ordinance (under section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994) to allow the inscription of six dwellings at the Vega Apartments development (situated at the former Fruit Export site in the Bouet MURA) in the Housing Register (i.e. on the ‘Open Market’).

Background

On 14 March 2001, the States approved proposals from the then Housing Authority for the inclusion of ‘Open Market’ accommodation in prestigious or important developments.

The proposals were summarised in that policy letter as follows:

- “1. *The policy would not apply to small one-off sites or single dwellings.*
2. *It can apply to sites:*
 - *Which are part of a Mixed Use Redevelopment Area (MURA) and where the overall number of new dwellings in the MURA is likely to be in excess of 100;*
 - and/or*
 - *Where there are other strategic issues.*
3. *In return for each dwelling to be inscribed, one existing dwelling must be*

deleted from Part A of the Housing Register.

4. *Neither the dwelling to be deleted nor that to be inscribed will have to meet any specific size or rateable value criteria. It will simply be a numerical exchange, albeit that the department will have to approve the specific dwelling which is to be inscribed or deleted.*
5. *The dwelling to be deleted must be unoccupied, or occupied by an unrestricted qualified resident at the time of the application to delete the inscription. The fact that the dwelling is the subject of an application for the deletion of the inscription from the Housing Register under this policy would not be regarded as a reason which, of itself, would justify the grant of a housing licence to an occupier or former occupier.*
6. *The number of dwellings which can be inscribed on a one to one exchange basis will be limited to one third of the total number of dwellings in the development or a maximum of eight dwellings whichever is the lesser.*

Note – for the purposes of the above policy statement the words “site” in number 2 and “development” in number 6 mean that an owner will only be eligible for one such concession in respect of parcels of adjacent land in his ownership in the MURA. The owner would not be able to increase the number of dwellings beyond the eight or one-third mentioned in number 6 by phasing the site development or by transferring land to an associate company.”

Vega Apartments (The former Fruit Export site)

In 2002, Comprop Limited (acting for and on behalf of Admiral Court One Limited), sought the then Authority’s agreement in principle to inscribe in the Housing Register eight dwellings within the Bouet MURA, provided that it (Comprop Limited) arranged the deletion of eight existing dwellings from the Housing Register.

At the then Authority’s meeting of 25 July 2002 it was agreed in principle that it would recommend the States to approve an Ordinance to permit the Authority to inscribe, in Part A of the Housing Register, eight dwellings to be constructed in the Bouet MURA by Comprop Limited subject to compliance with the above Policy Statement.

Between May 2002 and March 2005 a total of eight dwellings were deleted from Part A of the Housing Register in accordance with the above conditions and their inscriptions have been ‘held’ for and on behalf of the developers.

This site is situated in a MURA which will include more than 100 new dwellings overall. The site has been developed in phases and the next residential phase, known as Vega Apartments, is in the process of being developed by Admiral Court One Limited.

The Vega Apartment complex consists of four separate blocks of accommodation

known as Vermerette, Epec, Godfrey and Alligande.

Once completed, this complex will provide 84 individual units of accommodation, eight of which will be eligible to be inscribed in the Housing Register.

At this stage, the developer has requested that six of the dwellings erected in this phase of the development be inscribed.

The 4 smaller units of accommodation within Alligande and Godfrey are complete. The 2 larger units of accommodation within Alligande and Godfrey are not yet habitable, but are in the final stages of being completed, whilst Epec and Vermerette are in the initial stages of construction.

Admiral Court One Limited has identified Apartments 1, 3 and 5 in Alligande and Apartments 1, 4 and 7 in Godfrey as units of accommodation to be inscribed in the Housing Register.

The remaining two units of Open Market accommodation will be the subject of a separate application once Epec is nearing completion.

The Housing Department is satisfied that, as 43 dwellings have so far been completed and a further 41 are to be erected within this development, it will meet the requirements of the policy.

It proposes that, as the developer company has arranged for eight dwellings to be deleted from the Housing Register, at this stage six new dwellings in the development (with a further two to follow) should be made eligible for inscription in the Register.

Provisions of the Law

Since the commencement of the Housing (Control of Occupation) (Guernsey) Law, 1982, the Housing Register has been closed for new inscriptions by the Housing Department. Section 30 of the current Law refers.

However section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, provides that the States may, by Ordinance, permit the Department to inscribe any dwelling in Part A or Part B of the Housing Register.

It should be noted that under the provisions of section 33 of the Housing (Control of Occupation) (Guernsey) Law, 1994, any dwelling which is deleted from the Register at the request of the owner cannot thereafter be re-inscribed in the Housing Register. Such a dwelling therefore becomes a permanent local market dwelling.

Recommendations

In the light of all of the above, the Department recommends that each of the six Apartments, namely Alligande 1, 3 and 5 and Godfrey 1, 4 and 7 at Vega Apartments,

Les Banques, St Peter Port, should be individually inscribed in Part A of the Housing Register.

The Department recommends that the States agree that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe these six Apartments in Part A of the Housing Register subject to application being made by the owners within 6 months from the commencement date of the Ordinance.

Yours faithfully

D Jones
Minister

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

XVII.- Whether, after consideration of the Report dated 2nd August, 2007, of the Housing Department, they are of the opinion:-

1. That each of the six apartments, namely Alligande 1, 3 and 5 and Godfrey 1, 4 and 7 at Vega Apartments, Les Banques, St Peter Port, shall be individually inscribed in Part A of the Housing Register.
2. To direct that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe these six Apartments in Part A of the Housing Register subject to application being made by the owners within 6 months from the commencement date of the Ordinance.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

HOUSE COMMITTEE

STATES EMPLOYEES – POLITICAL ACTIVITIES

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

19th June 2007

Dear Sir

Executive Summary

This report proposes that:

- no States employee, whether full-time or part-time, shall be permitted to take the oaths relating to membership of the States;
- holders of certain defined public offices shall not be permitted to take the oaths relating to membership of the States;
- any States Member who, subsequent to taking the oaths, is offered full-time or part-time employment by the States or appointment to one of those offices shall resign as a Member of the States before commencing that employment;
- civil servants shall be ineligible to serve as members of departments or committees;
- States employees other than civil servants shall be eligible to serve as members of departments or committees, other than as members of their employing departments or the Public Sector Remuneration Committee.

Interpretation

In this report the phrase “States employee” means all employees of the States including civil servants, police officers, fire fighters, nurses, teachers and public service employees. When a distinction needs to be drawn between civil servants and the other categories the phrase “non-civil service employees” includes all States employees who are not civil servants. The phrase does not include people employed or holding office in the public sector but who are not employees of the States.

Report

Introduction

1. On the 27th April 2006 the States resolved¹, inter alia:

“To direct the House Committee to undertake a comprehensive review of the eligibility of employees of the States and other public sector bodies to serve as Members of the States of Deliberation or as non-States Members of States Departments or Committees, and to report back to the States as soon as possible before the next General Election.”.

2. The House Committee had intended, in any event, to report to the States on the matter as it had been the subject of several representations to the Committee in the period immediately following the 2004 General Election of People’s Deputies. Furthermore, in June 2005², the Policy Council advised the House Committee in the following terms:

“The Policy Council noted that non-voting Members of Departments have responsibility with their voting Member colleagues, for the development of policy. The Council felt that, for a civil servant to be a non-voting Member and be seen to play such a role in policy development could be construed as prejudicing the impartiality and political neutrality of the civil service. Whilst supporting the more liberal provisions relating to the expression of opinion directive which were introduced a few years ago, the Policy Council felt that it is difficult in our small community to be a civil servant and to be ‘politically active’. In view of these concerns the Council agreed that it was appropriate to ask your Committee to give consideration, having taken legal advice, to an amendment to the Reform Law which would prohibit civil servants from being non-voting members of States Departments.”.

3. The Committee has examined the historical development of this issue and the current position, both of which are detailed below. The position in other jurisdictions is briefly summarized in appendix 1 to this report.

The historical position

4. The loi relative à l’inéligibilité du Personnel Salarié des États aux Charges Paroissiales et à celle de Député du Peuple of 1925³ was the first enactment which restricted salaried States employees from holding the office of People’s Deputy or any parochial office (other than Churchwarden). This was on the basis that *“the holding of such offices by States’ servants is wrong in principle,*

¹ Billet d’État 2006, p.505 (amended proposition)

² Letter dated 17th June 2005

³ Ordres en Conseil Vol.VII, p.372

*and incompatible with their duties as public officials” and was intended to apply to all “permanent salaried staff of the States, whether whole or part-time”.*⁴

5. The States Employees (Ineligibility for Membership of the States of Deliberation) Law, 1949⁵ replaced the 1925 Law. This Law rendered waged staff also ineligible (the 1925 Law referred to salaried staff only) and debarred States employees from serving as Conseillers or Douzaine Representatives (the 1925 Law referred to People’s Deputies only). However the restriction on States employees holding parochial office was removed. The Advisory Council’s report states its opinion *“that it is undesirable that full time employees of the States should sit as members of the States of Deliberation”*⁶ and consequently States employees were defined in the 1949 Law as being persons who *“shall devote the whole of [their] services to such employment during all the hours of work normally applicable thereto”*.
6. The matter was next considered by the States in 1969⁷ as a result of representations received by the Advisory and Finance Committee from certain employee organizations which had complained of *“manual workers employed by the States being refused the democratic right to stand for election as candidates to serve as People’s Deputies”*. The Committee stated that it was *“in complete agreement with the view of the delegation that it is regrettable that employees generally are not represented in the States by more Deputies who are themselves employees and who should, therefore, be better able to represent the point of view of their constituents”*. However, it was noted that in the United Kingdom a person in any paid office or other place of profit in the gift or disposal of a local authority or of any committee of it was disqualified from being elected or being a member of that local authority.⁸
7. The Committee went on to report that: *“One obvious difficulty about such a situation is that civil servants, in the course of their duties, might have to reprimand or discipline employees who were also members of the States and the task of management could become extremely difficult. This would still be the position even if eligibility for States membership were restricted to certain classes of States employees as suggested by the delegation. The Committee cannot, therefore, recommend any solution of the problem which would permit a person to become a members of the States of Deliberation and at the same time be an employee of the States.”*.
8. The States were asked to consider a scheme which would have enabled a States employee to give up that employment on being elected as a member of the States, with the certainty that if s/he subsequently failed to be re-elected the

⁴ Billets d’État 1925 p. 15 (see also 1924, p.441)

⁵ Ordres en Conseil Vol. XIV, p.158

⁶ Billets d’État 1949, p.192

⁷ Billets d’État 1969, p.435

⁸ The Local Government Act, 1933

States would guarantee re-employment and pension rights. The States, however, rejected the proposition.

9. In 1971 the States considered a further report from the Advisory and Finance Committee on the matter.⁹ It stated that, notwithstanding the rejection of its 1969 report, it considered that States employees should be eligible to seek election whilst continuing in their present employment but that if elected they should be required to resign such employment. The Committee stated that it was *“impressed by the fact that the States employ over 2,000 persons and that such a large number of the working population of the Island are disqualified from membership of the States”*. These proposals were approved by the States and were incorporated within the provisions of the Reform (Amendment) (Guernsey) Law, 1972¹⁰ and the 1949 Law was repealed.

The current position and proposals regarding States membership

10. Section 16 of the Reform (Amendment) (Guernsey) Law, 1972, as amended (the 1972 Law) provides that:

“A States Employee who is elected under the provisions of the principal Law to hold office as a member of the States of Deliberation shall not be permitted to take before the Royal Court the oaths required to be taken in pursuance of the provisions of Article nineteen of the principal Law unless he has previously ceased to be a States Employee.”

Section 18 of the 1972 Law defines “States Employee” as meaning:

“a person employed by the States of Guernsey in such circumstances that the said States have the right to require that he shall devote the whole of his services to such employment during all hours of work normally applicable thereto.”

11. Thus, consistently with the 1949 Law and the policy to which it gave effect, all States employees, not only civil servants, are prohibited from holding the office of People’s Deputy if in the full-time employment of the States; and successive Law Officers have confirmed that this continues to be the intention and effect of the retained wording in section 18. In the past 20 years, however, several States Members have been employed by the States on a part-time basis, for example as teachers, lecturers, fitness instructors and museum attendants.
12. Paragraph 7 sets out the historical thinking as to why States employees should not be States Members pointing out the management difficulties which might arise if, for example, a civil servant has to reprimand or discipline a colleague who is also a States Member. In the Committee’s view such potential

⁹ Billets d’État 1971, p.622

¹⁰ Ordres en Conseil Vol. XXIII, p.476

difficulties continue to exist, but their existence is not the only reason for debarring States employees from membership of the States of Deliberation.

13. Inevitably and increasingly conflicts of interest arise, from time to time, both in general political debate and also when States Members are requested to take up issues on behalf of constituents. Whilst it is clearly desirable that as many islanders as possible play an active part in public affairs, the public interest demands that confidence be maintained in a politically impartial public service.
14. The Committee believes that the restriction currently set out in section 18 of the 1972 Law produces a potentially unsatisfactory situation, in that a part-time States employee who is also a States Member is just as likely to present the sort of management problems identified above, just as likely to be faced with conflicts of interest, and just as likely to be perceived as lacking political impartiality, as is a full-time States employee. The Committee therefore proposes that the 1972 Law should be amended to the effect that no States employee, whether full-time or part-time, shall be permitted to take the oaths relating to membership of the States; and that any States Member who, subsequent to taking those oaths, proposes to accept an offer of full-time or part-time employment by the States, shall resign as a member of the States before commencing that employment.

The current position and proposals regarding non-States membership of departments/committees

15. Insofar as departments and committees are concerned, there is no legislation which prohibits any States employees – including civil servants - from serving as a non-States Member of those bodies. Civil servants are, however, bound by established staff directives. Whilst the directive on conduct allows civil servants to express their opinions publicly concerning States and political issues, in doing so they must:
 - *Take care to express comments with moderation bearing in mind their position, i.e. their grade, closeness to policy issues, department/committee work etc.;*
 - *Have regard to the need to maintain a good working relationship with their employer; and*
 - *Not do or say anything that would inhibit or appear to inhibit loyal and effective service to the department/committee or to the States of Guernsey.*
16. The States can expect to receive impartial, politically neutral advice and support from civil servants. The Committee has concerns about the general principle of civil servants being members of States departments and committees, notwithstanding the fact that they do not have the right to vote. A persuasive

civil servant of whatever grade or role might be quite influential as a department or committee member and could play a significant part in policy development; which, in turn, might be construed as prejudicing the impartiality and political neutrality of the civil service. The Committee concurs with the Policy Council's view that it is particularly difficult in a small community such as Guernsey for a civil servant to be politically active. The Committee has therefore concluded that the Rules relating to the Constitution and Operation of States Departments and Committees should be amended, with effect from the 1st May, 2008, to provide that civil servants be not eligible to serve as non-States members of departments or committees.

17. The position regarding non-civil service employees is, however, different. Generally they are not in a position to influence policy in the same way as civil servants and need not, therefore, be constrained in the same way. However, the Committee believes that department/committee membership by non-civil service employees should be limited as follows:

- They should not be permitted to serve on the Public Sector Remuneration Committee or on their employing department e.g. a teacher would not be eligible to be a member of the Education Department;
- Before accepting nomination as a non-States member of a department or committee they should be required to obtain the prior consent of their employing department.

18. The Committee has therefore concluded that the Rules relating to the Constitution and Operation of States Departments and Committees should be amended, with effect from the 1st May, 2008, to provide that

- civil servants shall be ineligible to serve as non-States members of departments or committees; but
- other States employees shall continue to be eligible to serve as non-States members of departments or committees, other than their employing department or the Public Sector Remuneration Committee and provided that the employing department has given its consent to acceptance of the nomination.

The current position and proposals regarding other public sector bodies and offices

19. The States resolution of 27th April 2006 required the Committee to consider employees of "other public sector bodies". Whilst that term was not defined the Committee has assumed it to mean bodies such as the Guernsey Financial Services Commission, Guernsey Electricity and possibly even Aurigny Air Services. The Committee's view is that there is no reason why a blanket prohibition on membership of the States or States departments or committees should be placed generally on the employees of "other public sector bodies".

20. However the Committee does believe that elected States Members should be debarred from holding certain key offices because of the nature of their functions and has identified the following as falling within this category:

Holders of judicial office in the Island's courts
 Members of the regular armed forces
 Members of the Guernsey Financial Service Commission
 The Director-General of the Financial Services Commission
 The Director-General of Utility Regulation
 The Data Protection Commissioner
 The Public Trustee

21. It is possible that other offices will be identified in the passage of time and the Committee therefore recommends that the list of offices which may not be held by elected Members of the States of Deliberation be made capable of amendment from time to time by Ordinance.

Consultation

22. The Law Officers have been consulted with regard to these proposals and have not identified any legal or constitutional obstacles.
23. The holders of the public offices listed in paragraph 20 (other than the armed forces) have been consulted and they have raised no objection to the proposals. Nine employee organisations were also consulted of which seven either expressed themselves content with the proposal or did not reply. Two organisations raised objections and their responses are set out in appendix 2.

Minority Report

24. This Report sets out the views and recommendations of the majority of the House Committee. Deputy R. R. Matthews dissents from certain aspects of the Report and his Minority Report is included as appendix 3.

Recommendations

25. The House Committee recommends the States to resolve that:
1. the Reform (Amendment) (Guernsey) Law, 1972, as amended be further amended to the effect that:
 - (a) no States employee, whether full-time or part-time, shall be permitted to take the oaths relating to membership of the States of Deliberation, and that any States Member who, subsequent to taking those oaths, proposes to accept an offer of full-time or

part-time employment by the States shall resign as a member of the States before commencing that employment;

- (b) holders of the under-mentioned offices and any other office which may be prescribed from time to time in that regard by Ordinance of the States shall not be permitted to take the oaths relating to elected membership of the States and that any elected States Member who, subsequent to taking the said oaths, proposes to accept appointment to one of the said offices shall resign as a member of the States before so doing:

Prescribed offices:

Holders of judicial office in the Island's courts
 Members of the regular armed forces
 Members of the Guernsey Financial Service Commission
 The Director-General of the Financial Services Commission
 The Director-General of Utility Regulation
 The Data Protection Commissioner
 The Public Trustee

[It may assist Members of the States to have the precise wording of Article 3(4) of The Reform (Guernsey) Law, 1948, as amended which applies to the above recommendation.

“... any resolution of the States of Deliberation directing the preparation of legislation to repeal or vary any of the provisions of this Law which is carried by a majority of less than two-thirds of the members present and voting shall not be deemed to have been carried before the expiration of seven days from the date of the resolution:

Provided that where before the expiration of the aforesaid seven days an application in writing signed by not less than seven members of the States of Deliberation is made in that behalf to the Presiding Officer such resolution shall be brought back before the States of Deliberation by the Presiding Officer as soon as may be after the expiration of three months from the date of the resolution whereupon such resolution shall be declared lost unless confirmed by a simple majority.”.]

2. the Rules relating to the Constitution and Operation of States Departments and Committees be amended, with effect from 1st May 2008, by inserting the following after paragraph (3) of Rule 11:
- “(4) Civil servants shall not be eligible to serve on Departments or Committees.

- (5) States employees other than civil servants shall not be eligible to serve on the Public Sector Remuneration Committee or on their employing Department but shall be eligible to serve on other Departments or Committees save that they shall obtain their employing Department's consent to such service prior to accepting nomination thereto.”.

Yours faithfully

B M Flouquet
Chairman

APPENDIX 1**THE CURRENT POSITION IN OTHER JURISDICTIONS*****The United Kingdom***

The House of Commons (Disqualification) Act 1975 disqualifies a large number of public office holders. It lays down six classes of office holders who are disqualified, namely:

- holders of certain judicial offices including High Court and Court of Appeal judges (Law Lords are disqualified already by virtue of being Members of the House of Lords);
- civil servants, whether established or not, and whether full or part time;
- members of the regular armed forces;
- full time police officers;
- members of the legislature of any country outside the Commonwealth; and
- holders of any of the offices list in the Act. (*This list runs to several pages the vast majority of which have no relevance in the Guernsey context*).

With regard to local authorities, under section 116 of the Local Government Act 1972 a local authority cannot appoint as an employee in any capacity, any councillor who is currently a member of that authority or who has been a member in the previous 12 months. Further, pursuant to section 80 of the Act an authority employee is disqualified from being elected or holding office as a member of that local authority.

Jersey

A review of political activities by States employees was considered by the States of Jersey last year. In that Island States employees are categorised as being either “politically eligible” or “politically ineligible”. The latter group comprises civil servants graded 12 or above, educational, technical and support officers graded 12 or above, head-teachers, police officers, the chief officer and area managers of the fire service, the prison governor and deputy prison governor.

The practical effect of this two-tier system is that “politically eligible” employees may seek election to political office without resigning as public employees whereas the “politically ineligible” employees must resign office before seeking election. However, and importantly, if a “politically eligible” employee is elected his employment with the States is deemed to have been terminated on the day preceding that on which he is sworn in as a member of the States.

Employees of “other public sector bodies” in Jersey are not prohibited from seeking political office.

Isle of Man

The position in the Isle of Man is, in broad terms similar to that in Jersey with regard to seeking election to and holding public office.

APPENDIX 2**RESPONSES RECEIVED FROM EMPLOYEE ORGANISATIONS**

The following organisations either stated that they were content the proposals or did not reply:

Transport and General Workers' Union
 Nurses' Negotiating Committee
 Guernsey Association of Teaching Assistants
 Association of Guernsey Senior Fire Officers
 Guernsey Police Association
 Senior Officers' Police Association
 British Medical Association.

The Negotiating Committee for Teachers and Lecturers in Guernsey responded as follows:

“NCTLG met today and the draft report was given our careful attention. In particular, NCTLG noted the 5 proposals outlined in the Executive Summary attached to the report. It might assist your colleagues if we were to organise our response around these 5 proposals.

*Our group cannot agree with Point 1 of the House Committee's proposals. Rather, we take the view that such a stance unnecessarily and unfairly discriminates against a large and significant portion of the local community, additionally it denies the island access to the expertise and ability of many talented and committed individuals. In particular, NCTLG notes that those employed in the private sector are able to take the oaths relating to membership of the States. Should any potential conflict of interest arise, such members are expected to declare an interest and to then withdraw from further participation in proceedings. It is our contention that States employees would be equally capable of recognising potential conflicts of interest and should therefore be treated no less favourably than other people. Our response to this point is entirely reasonable given our response to Point 5 below. NCTLG does, however, recognise that **full-time** employment is no longer compatible with membership of the States and that members of the Policy Council no longer have time for alternative forms of employment.*

NCTLG recognises and accepts the reasoning underpinning Point 2. We agree that the prescribed public offices should be those listed in Section 24.1(b) of the report. Points 3 and 4 would be rendered unnecessary if Point 1 was deleted.

NCTLG accepts Point 5 and is persuaded by the principle underpinning the House Committee's recognition that such service should occur only “... other than as members of their employing departments or the PSRC.”.

The Association of Guernsey Civil Servants wrote to the House Committee in the following terms:

“While the Executive Committee raises no objection to the principle, it does have some concerns, in particular with aspects of paragraph 18, which states that while civil servants shall be ineligible to serve as non-States members of departments or committees, other States employees do not have this restriction.

The Committee has concerns that staff working as part of the same team, for example in education or in health, could find themselves governed by different rules in this matter, simply by dint of being a civil servant or an ‘other States employee’. It is our view that all employees should be treated equitably.

The Committee also has concerns that the employing department appears to have total discretion in the giving of its consent as to whether a staff member may accept nomination to a department or committee. The Committee feels that there should be an appeals procedure introduced.

Paragraph 20, lists those groups or individuals who should be debarred from membership of the States. The Committee wonders why some groups are exempted except for the most senior member of the group. The Committee believes that those who advise the political process should all be bound by the same rules.”

The Committee responded as follows:

“The Association expressed concerns regarding paragraph 18, that is that civil servants should not be eligible to serve as non-States members of departments or committees but that, subject to certain constraints, other States employees should be so eligible. The reason for differentiating in this way is clearly set out in paragraphs 16 and 17 of the Report.

The Committee understands your concerns and accepts that in departments such as Education and Health there will be occasions when the line drawn between the two groups is grey. For the reasons set out in paragraphs 16 and 17 the Committee did not feel able to recommend that civil servants be allowed to serve on departments and committees. The alternative would have been to debar all States employees but the Committee was of the view that that would debar a large number of States employees when there was no need to do so. Whilst being sympathetic to your view in this regard the Committee believes that its proposals are the fairest possible in all the circumstances.

The Association was also concerned that employing departments would have total discretion as to whether a States employee could accept nomination as non-States member of a department or committee. The Committee holds by its recommendation in this regard. In most cases participation as a non-States

member will involve activities during the hours in which the employees would normally be expected to be working for the department. In those circumstances the Committee believes that it is reasonable for the employing department to be required to give its consent to acceptance of nomination. This would almost certainly be the case in the private sector.

Finally the Association referred to paragraph 20 which deals with “other public sector bodies”. It appears in this case that the Association’s comments may be based on a misunderstanding as you state “The Committee believes that those who advise the political process should all be bound by the same rules.”. This group in general needs to be apolitical and it is for that reason, rather than as “advisers to the political process” that it is sought to debar them from membership of the States.”.

The Association responded to that letter as follows:

“The Association wishes to stand by its original concerns regarding paragraph 18 and feels that the proposals as they stand are not equitable. The Association acknowledges the difficulty in finding an ideal solution but believes that the matter should be explored further in order to find a satisfactory outcome in which a Civil Servant is treated no less favourably than a colleague who happens to be an ‘other States Employee’.

The Association is happy that its letter and this response are published as appendices to the report.”.

APPENDIX 3**MINORITY REPORT SUBMITTED BY DEPUTY R R MATTHEWS**

This brief Minority Report is to allow an alternative approach to eligibility to be considered. It questions whether some difficulties in operation should disqualify a large and able proportion of Guernsey's population from giving public service to the States.

Rather than disqualify by law each and every full or part-time employee from service, it may be preferable to permit (subject to some exceptions) most employees to hold office, provided that the employee concerned is able to continue to usefully serve in his or her post.

Apart from the limited number of exceptions to be specified in law, it would be a matter for the employer and the employee to reach agreement as to whether membership could be held under the existing contract of employment, or if a mutually acceptable revised contract could be entered into.

The States Rules of Procedure should cover appropriate declarations of interest and exclusion in respect of conflict. The States would not elect a Member to a Department or Committee if it was thought to be incompatible with his or her employment.

A relatively small number of senior civil service and management positions could easily be drawn up as exceptions to the rule as to whether the taking of oaths were permissible (or resignation necessary if taking up an appointment). Similarly with holders of certain defined public offices.

It is restricting the democratic rights of the population not to allow it to have the widest possible choice of candidate for election, and it denies the possibility of the better government resulting from the election of suitable candidates.

The choice before the States is therefore whether to reject the majority report from the House Committee in favour of rules and legislation to be drawn up in line with the above principles.

To that end I therefore intend to lay an amendment, the effect of which will be to delete all the existing propositions and to substitute therefor a proposition which will direct the House Committee to report back to the States with detailed proposals for the enactment of legislation which would permit States employees (with certain exceptions) to take the oaths relating to membership of the States, on the lines set out in this minority report.

(NB By a majority, the Policy Council supports the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

XVIII.- Whether, after consideration of the Report dated 19th June, 2007, of the House Committee, they are of the opinion:-

1. That the Reform (Amendment) (Guernsey) Law, 1972, as amended be further amended to the effect that:
 - (a) no States employee, whether full-time or part-time, shall be permitted to take the oaths relating to membership of the States of Deliberation, and that any States Member who, subsequent to taking those oaths, proposes to accept an offer of full-time or part-time employment by the States shall resign as a member of the States before commencing that employment;
 - (b) holders of the under-mentioned offices and any other office which may be prescribed from time to time in that regard by Ordinance of the States shall not be permitted to take the oaths relating to elected membership of the States and that any elected States Member who, subsequent to taking the said oaths, proposes to accept appointment to one of the said offices shall resign as a member of the States before so doing:

Prescribed offices:

Holders of judicial office in the Island's courts
 Members of the regular armed forces
 Members of the Guernsey Financial Service Commission
 The Director-General of the Financial Services Commission
 The Director-General of Utility Regulation
 The Data Protection Commissioner
 The Public Trustee

2. That the Rules relating to the Constitution and Operation of States Departments and Committees be amended, with effect from 1st May 2008, by inserting the following after paragraph (3) of Rule 11:
 - “(4) Civil servants shall not be eligible to serve on Departments or Committees.
 - (5) States employees other than civil servants shall not be eligible to serve on the Public Sector Remuneration Committee or on their employing Department but shall be eligible to serve on other Departments or

Committees save that they shall obtain their employing Department's consent to such service prior to accepting nomination thereto."

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

REQUÊTE

FOUL WATER SEWERS IN VICINITY OF NEW SCHOOLS AT LES NICOLLES

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation

SHEWETH THAT:

There are currently no foul water sewers in the vicinity of the new schools at Les Nicolles. However:

1. Included in the construction of these new schools is a gravity sewer and foul water pumping station within the school boundaries with adequate capacity to serve the surrounding area.
2. Your petitioners understand that the Public Services Department does not have a sufficient capital allocation to construct sewers in the surrounding area.
3. Once the schools and proposed road improvements have been completed and the school is operational, it will seem illogical, in financial and road safety terms, to close the surrounding roads for the purpose of constructing such foul water sewers, thus depriving the residents the right to enjoy main drainage.

THESE PREMISES CONSIDERED, your Petitioners humbly pray that the States may be pleased to resolve:-

- a) To instruct the Public Services Department to construct 725 meters of gravity sewer in Les Effards Road, Le Bordage, Les Gigands Road and Baubigny Road as shown on drawing no. SKO2 annexed hereto, at a total cost including road resurfacing not exceeding £850,000, to enable properties in the immediate environs of the new schools currently under construction to connect to the main drains.
- b) To vote the Public Services Department a total credit of £850,000 to cover the cost of the above scheme, such sum to be charged to its capital allocation.
- c) To authorise the Treasury and Resources Department to transfer the sum of £850,000 from the Capital Reserve to the capital allocation of the Public Services Department.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 30th day of May, 2007

I F RIHOY
D P LE CHEMINANT
S J OGIER
B M FLOUQUET
M A OZANNE
J M TASKER
E W WALTERS

S J MAINDONALD
G GUILLE
B R DE JERSEY
R J LE MOIGNAN
M M LOWE

(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)

EDUCATION DEPARTMENT

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

20th June, 2007

Dear Deputy Torode

re: Requête – Foul Water Sewers in the Vicinity of New Schools At Les Nicolles

I refer to your letter of 7th June, 2007 enclosing a copy of the requête dated 30th May, 2007 led by Deputy Ivan Rihoy and requesting views from the Education Department.

The Education Board would be concerned about access to the new schools if the works proceeded after they had been opened.

Yours sincerely

M A Ozanne
Minister

PUBLIC SERVICES DEPARTMENT

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

19 June 2007

Dear Deputy Torode

**REQUÊTE – FOUL WATER SEWERS IN THE VICINITY OF NEW SCHOOLS
AT LES NICOLLES**

Thank you for your letter dated 7 June 2007 in respect of the requête signed by Deputy Ivan Rihoy and eleven other States Members.

The Public Services Department appreciates the reasoning why the work should ideally proceed ahead of the opening of the new schools. However, the Department's priority, with its limited capital funds, is extending the network to Creux Mahie which will enable the practice of discharging sewage at the south coast to come to an end.

In addition, the current plant and equipment at Creux Mahie is reaching the end of its operational life and will soon require replacing at an enormous capital cost. By transferring flows away from Creux Mahie this expenditure can be avoided.

The Department keeps under review the various proposed schemes for unsewered areas of the Island and whilst it is acknowledged that the Baubigny area would be a practical scheme it does not come out as high priority on a cost per property basis. The Public Services Department's priorities would be as set out on the accompanying sheet.

I must also point out the estimate of £850,000 provided to Deputy Rihoy was without the benefit of site investigations, which are an essential pre-requisite of any such works, and therefore it is not possible for the Public Services Department to give any guarantee that the works can be achieved within this sum.

Yours sincerely

William M Bell
Minister

Adjusted Priority Order	Scheme	Parish	Average cesspit loads per year	Properties included in scheme	Estimated Cost	Cost per Property
1	Braye Road	St Sampsons	1357	50	£700,000	£14,000
2	Kings Mills	Castel	1986	70	£1,000,000	£14,286
3	Richmond Phase 2	St Saviours	1706	70	£1,000,000	£14,286
4	Forest Road Phase 1	St Martins	1066	80	£1,025,000	£12,813
5	Forest Road Phase 2	Forest	1835	90	£1,000,000	£11,111
6	Forest Road Phase 3	Forest	1696	70	£1,000,000	£14,286
7	Richmond Phase 4	St Saviours	1210	45	£725,000	£16,111
8	Baubigny	St Sampsons	1049	55	£850,000	£15,455
9	L'Islet Phase 9	St Sampsons	1421	40	£800,000	£20,000
10	La Passee Phase 2	St Sampsons	768	60	£850,000	£14,167
11	L'Eree Phase 1	St Peters	1220	33	£800,000	£24,242
12	Rocquaine Phase 1	St Peters	2254	55	£1,100,000	£20,000
13	Rocquaine Phase 2	Torteval	3019	74	£1,100,000	£14,865
14	Marais Phase 3	Vale	2049	95	£1,700,000	£17,895
15	Sausmarez Park	Castel	920	55	£950,000	£17,273
16	St Andrews Phase 1	St Andrews	1844	95	£1,900,000	£20,000
17	St Andrews Phase 2	St Andrews	1547	80	£1,250,000	£15,625
18	Richmond Phase 3	St Saviours	893	40	£750,000	£18,750
19	Charuee Phase 2	Vale	660	45	£800,000	£17,778
20	L'Islet Phase 8	Vale	1156	80	£1,425,000	£17,813
21	L'Eree Phase 2	St Peters	795	35	£800,000	£22,857
22	L'Eree Phase 3	St Peters	615	31	£650,000	£20,968
23	Route Militaire Phase 4	Vale	620	50	£900,000	£18,000
24	Charuee Phase 1	Vale	393	30	£575,000	£19,167
25	Ramee	St Samp / St PP	1812	85	£2,000,000	£23,529
26	Marais Phase 4	Vale	1046	70	£1,425,000	£20,357
27	Pleinheume	Vale	1492	70	£1,700,000	£24,286
28	Friquet	Castel	472	33	£700,000	£21,212
29	Route Militaire Phase 3	Vale	2280	100	£2,800,000	£28,000
30	Bailiffs Cross Road Phase 2	Castel / St And	263	40	£850,000	£21,250
31	L'Islet Phase 10	St Sampsons	1095	60	£2,400,000	£40,000

Areas of Capital schemes made up from previously cancelled work					
Scheme	Parish	Length	Number of Properties	Approximate Cost	Cost Per Property
L'Islet Area	St Sampsons	1,000	70	£750,000	£10,700
Les Beaucamps Area	Castel	1,050	80	£787,500	£9,850
Richmond Area	St Saviours	510	40	£382,500	£9,550
Perelle Area	St Saviours	750	75	£562,500	£7,500
Frie Baton	St Saviours	500	60	£375,000	£6,250
St Peters	St Peters	1,700	120	£1,275,000	£10,600

TREASURY AND RESOURCES DEPARTMENT

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

26 June 2007

Dear Deputy Torode

**REQUETE – FOUL WATER SEWERS IN THE VICINITY OF NEW SCHOOLS
AT LES NICOLLES**

Thank you for your letter dated 7 June 2007 in respect of the requête signed by Deputy Ivan Rihoy and eleven other States Members.

The Treasury and Resources Department considered this matter at its meeting on 19 June 2007 and noted that Department Member, Deputy Guille, was a signatory to the requête.

The Department does not dispute that, **if funding was available**, it would be logical to carry out this project whilst the schools at Les Nicolles (and associated road improvements) are under construction.

However, as recently as October 2006, the States agreed a capital prioritisation programme which identified the projects which would receive the highest priority for capital funding (including the sewer network extension to the Creux Mahie connection). The Treasury and Resources Department has agreed that £10million (£3million in each of 2005, 2006 and 2007 and £1million in 2008) would be made available to complete the vital Creux Mahie Link to avoid the need for an extensive refurbishment of the Pumping Station. When approving any individual schemes within the Creux Mahie Link project, the Treasury and Resources Department made it clear that only works essential to complete the Link should be carried out. Therefore, there will be a number of properties in that area that could have been connected to the main drain but were not due to the limited funding available.

As part of the capital prioritisation process, the States also agreed those projects which should not be progressed in the foreseeable future. It was emphasised that if those projects were to be progressed, it would be at the expense of projects already identified as a higher priority including extending the life of buildings identified as low priority for replacement.

Therefore, the Department is of the view that, if this particular project was considered a priority by the signatories of the requête, it should have been brought to the attention of the States in October 2006 in order that its relative merits could have been considered as part of the overall capital prioritisation debate.

Furthermore, the Treasury and Resources Department understands that the Public Services Department does not consider this scheme to be its highest priority within the overall Network Extension Plan. The Public Services Department's priority list details approximately £10million of other schemes which could be connected to the main drain at a lower cost per property if additional funding was to be made available for the Network Extension Plan.

Yours sincerely

J P Le Tocq
Deputy Minister

(NB By a majority, the Policy Council does not consider the construction of a gravity sewer in Les Effards Road, Le Bordage, Les Gigands Road and Baubigny Road to be a priority for capital spending at this time, particularly in the light of the comments made by both the Public Services Department and the Treasury and Resources Department, and will not therefore support the prayer of the Requête.)

(NB By a majority, the Treasury and Resources Department opposes the prayer of the Requête.)

The States are asked to decide:-

XIX.- Whether, after consideration of the Requête, dated 30th May, 2007, signed by Deputy I F Rihoy and eleven other Members of the States, they are of the opinion:-

1. To instruct the Public Services Department to construct 725 meters of gravity sewer in Les Effards Road, Le Bordage, Les Gigands Road and Baubigny Road as shown on drawing no. SKO2 annexed hereto, at a total cost including road resurfacing not exceeding £850,000, to enable properties in the immediate environs of the new schools currently under construction to connect to the main drains.
2. To vote the Public Services Department a total credit of £850,000 to cover the cost of the above scheme, such sum to be charged to its capital allocation.
3. To authorise the Treasury and Resources Department to transfer the sum of £850,000 from the Capital Reserve to the capital allocation of the Public Services Department.

ORDINANCES LAID BEFORE THE STATES**THE LIMITED PARTNERSHIPS (GUERNSEY) (AMENDMENT) LAW, 2006,
(COMMENCEMENT) ORDINANCE, 2007**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Limited Partnerships (Guernsey) (Amendment) Law, 2006, (Commencement) Ordinance, 2007, made by the Legislation Select Committee on the 8th August, 2007, is laid before the States.

THE IRAN (RESTRICTIVE MEASURES) (GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Iran (Restrictive Measures) (Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 8th August, 2007, is laid before the States.

STATUTORY INSTRUMENT LAID BEFORE THE STATES**THE HEALTH SERVICE (BENEFIT)
(LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO. 5) REGULATIONS, 2007**

In pursuance of section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 5) Regulations, 2007, made by the Social Security Department on 1st August, 2007, are laid before the States.

EXPLANATORY NOTE

These Regulations add to a limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners or dentists, as the case may be.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 26th SEPTEMBER, 2007

**The States resolved as follows concerning Billet d'État No XX
dated 7th September 2007**

HOME DEPARTMENT

THE CASH CONTROLS (BAILIWICK OF GUERNSEY) LAW, 2007

I.- After consideration of the Report dated 23rd July, 2007, of the Home Department:-

1. That the Cash Controls (Bailiwick of Guernsey) Law, 2007 shall be extended to include the issues set out in that Report.
2. To approve the Projet de Loi entitled "The Cash Controls (Bailiwick of Guernsey) (Amendment) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH IRELAND) (AMENDMENT) ORDINANCE, 2007

II.- to approve the draft Ordinance entitled "The Social Security (Reciprocal Agreement with Ireland) (Amendment) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

ENVIRONMENT DEPARTMENT

THE LAND PLANNING AND DEVELOPMENT (GUERNSEY) ORDINANCES, 2007

III.- After consideration of the Report dated 26th July, 2007, of the Environment Department:-

1. That the Land Planning and Development (General Provisions), (Exemptions), (Environmental Impact Assessment), (Special Controls), (Enforcement) and (Appeals) Ordinances, 2007 shall be extended to include the issues set out in that Report.
2. To approve the draft Ordinance entitled "The Land Planning and Development (General Provisions) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

3. To approve the draft Ordinance entitled “The Land Planning and Development (Plans) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
4. To approve the draft Ordinance entitled “The Land Planning and Development (Exemptions) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
5. To approve the draft Ordinance entitled “The Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.
6. To approve, subject to the following amendments, the draft Ordinance entitled “The Land Planning and Development (Special Controls) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States: -

AMENDMENTS

- (1) In section 6(3) delete the words “and such representations were material to its decision”.
- (2) For section 17(2) (register of tree protection orders) substitute the following subsection -
 - “(2) Where a tree protection order is -
 - (a) endorsed or modifications are indicated on it pursuant to section 15(2) to (4), or
 - (b) modified pursuant to section 8(3) of the Land Planning and Development (Appeals) Ordinance, 2007,the copy of the order on the register must be replaced with a copy of the order as so endorsed, endorsed and modified or modified.”
- (3) For section 20 (appeal to Royal Court against decision of Department to repeal a tree protection order) substitute the following section -

“Appeals against confirmation of tree protection orders.

- 20.** Where the Department confirm a tree protection order, any person who the Department are required to notify of that fact under section 16(a) or (b), may appeal to the Planning Tribunal on the ground that -
- (a) it is not in the interests of amenity to provide for the protection of the tree, group or area of woodlands in question or of any tree in such group or area, or

- (b) the confirmation of the order was (for any other reason) ultra vires or unreasonable."
- (4) In section 21 (making of appeals under sections 18 or 19) -
 - (a) for the words "18 or 19 " substitute "18, 19 or 20",
 - (b) after paragraph (a)(i) the word "or" is deleted, and
 - (c) after paragraph (a)(ii) insert the following -
 - "or,
 - (iii) in the case of an appeal against the confirmation of a tree protection order, the appellant was notified under section 16,."
- (5) Amend the Table of Arrangement to the Ordinance and the section headings accordingly.
- 7. To approve the draft Ordinance entitled "The Land Planning and Development (Use Classes) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.
- 8. To approve the draft Ordinance entitled "The Land Planning and Development (Enforcement) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.
- 9. To approve, subject to the following amendments, the draft Ordinance entitled "The Land Planning and Development (Appeals) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States: -

AMENDMENTS

- (1) for each reference to the words "18 or 19" substitute "18, 19 or 20".
- (2) in section 2 (notice of appeal) -
 - (a) at the end of paragraph (3)(c), the word "and" is deleted,
 - (b) at the end add the following -
 - "and,
 - (e) in relation to an appeal against the confirmation of a tree protection order -
 - (i) the tree protection order which has occasioned the appeal,

- (ii) any objections and representations duly made by the appellant to the Department in relation to the making of the order,
 - (iii) the notification by the Department to the appellant of the confirmation, and
 - (iv) all correspondence with the Department relating to the order."
- (3) In section 8 (determination by Planning Tribunal of appeals made under the Special Controls Ordinance) -
 - (a) after subsection (2) insert the following subsection and renumber the following subsections accordingly -
 - "(3) On an appeal against the confirmation of a tree protection order, the Planning Tribunal must -
 - (a) if the appellant satisfies it of the ground mentioned in section 20(b) of the Special Controls Ordinance or satisfies it under the ground mentioned in section 20(a) of that Ordinance in relation to each tree to which the order relates, quash the order,
 - (b) if the appellant satisfies it under the ground mentioned in section 20(a) of the Special Controls Ordinance in relation to one or more, but not all, of the trees to which that order relates, modify the order so that it only relates to those trees it considers should be protected in the interests of amenity, and
 - (c) otherwise, dismiss the appeal."
 - (b) in subsection (3) (new (4)) after the words "preservation notice" insert "or tree protection order" and at the end add "or make another order".
- (4) In section 21 (interpretation) -
 - (a) in the definition of "**interested party**" -
 - (i) at the end of paragraph (d) the word "and" is deleted, and
 - (ii) after paragraph (d) add the following paragraph and renumber the next paragraph accordingly -

"(e) in relation to an appeal against the confirmation of a tree protection order, any person other than the appellant who the Department are required to notify of the confirmation under section 16(a) or (b) of the Special Controls Ordinance, and,"

(b) after the definition of "**subordinate legislation**" add the following definition -

"tree protection order" means an order made under section 43(1) of the Law for the protection of any tree, group or area of trees or woodlands,".

10. To approve the draft Ordinance entitled "The Land Planning and Development (Application to Herm and Jethou) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.
11. To approve the draft Ordinance entitled "The Land Planning and Development (Guernsey) Law, 2005 (Savings and Transitional Provisions) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

TREASURY & RESOURCES DEPARTMENT

INCOME TAX

(A) TIME LIMITS FOR RAISING ASSESSMENTS

(B) LEGAL PROCEEDINGS IN LIEU OF PENALTIES FOR FAILURE TO NOTIFY CHARGEABILITY TO TAX, FAILURE TO COMPLETE TAX RETURNS AND THE MAKING OF FALSE STATEMENTS, ETC

IV.- After consideration of the Report dated 21st August, 2007, of the Treasury and Resources Department:-

1. To approve the proposals concerning Income Tax set out in that Report.
2. To approve, subject to the following amendment, the Projet de Loi entitled "The Income Tax (Zero 10) (Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council, praying for Her Royal Sanction thereto.

AMENDMENT

For section 60 substitute the following section:

"Commencement

60. (1) Subject to subsection (2), this Law shall have effect, by

virtue of the States' resolution of the 26th September, 2007, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992, on and from the 1st January, 2008, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

(2) Section 51 ("discretion to prosecute in cases involving fraud, etc.") shall come into force on the day of the registration of this Law on the records of the Island of Guernsey."

3. Considering it expedient in the public interest so to do, to declare, pursuant to section 1 of the Taxes & Duties (Provisional Effect) (Guernsey) Law 1992 that the said Projet de Loi, apart from section 51 thereof, shall have effect from 1st January 2008, as if it were a law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey; and that the said clause 51 shall come into force on the day of the registration of the said Projet on the records of the Island of Guernsey.

PROJET DE LOI

entitled

THE GUERNSEY BAR AND OVERSEAS LAWYERS (BAILIWICK OF GUERNSEY) LAW, 2007

V.- At the instance of the Chief Minister, TO GRANT LEAVE TO WITHDRAW this article.

ORDINANCES LAID BEFORE THE STATES

THE LIMITED PARTNERSHIPS (GUERNSEY) (AMENDMENT) LAW, 2006, (COMMENCEMENT) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Limited Partnerships (Guernsey) (Amendment) Law, 2006, (Commencement) Ordinance, 2007, made by the Legislation Select Committee on the 8th August, 2007, was laid before the States.

THE IRAN (RESTRICTIVE MEASURES) (GUERNSEY) ORDINANCE, 2007

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Iran (Restrictive Measures) (Guernsey) Ordinance, 2007, made by the Legislation Select Committee on the 8th August, 2007, was laid before the States.

STATUTORY INSTRUMENT LAID BEFORE THE STATES

**THE HEALTH SERVICE (BENEFIT)
(LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO. 5) REGULATIONS, 2007**

In pursuance of section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 5) Regulations, 2007, made by the Social Security Department on 1st August, 2007, were laid before the States.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 27th SEPTEMBER, 2007

(Meeting adjourned from 26th September 2007)

**The States further resolved as follows concerning Billet d'État No XX
dated 7th September 2007**

POLICY COUNCIL

ECONOMIC & TAXATION STRATEGY OUTSTANDING ISSUES

VI.- After consideration of the Report dated 20th August, 2007, of the Policy Council:-

1. To approve the proposals concerning the Economic and Taxation Strategy set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

POLICY COUNCIL

LEGAL AID

VII.- After consideration of the Report dated 20th August, 2007, of the Policy Council:-

1. (1) To award contracts to the following firms of Advocates, subject to the successful outcome of post-tender negotiations:

Atkinson Ferbrache Richardson
Carey Olsen
Albany Chambers
Ashton Barnes Tee
Babbé
F Haskins and Co
Randell and Loveridge
Ozannes
Advocate L. Strappini and Co
Trinity Chambers

- (2) To further authorise the Policy Council to continue to negotiate with the Guernsey Bar regarding the terms and conditions of the contract and the directions in the Practitioners' Manual.

2. To direct the Treasury and Resources Department to have due regard to the staffing implications of implementing the Statutory Legal Aid Scheme, with particular reference to Section 2 of Schedule 2 of the Legal Aid (Bailiwick of Guernsey) Law, 2003, when administering the Staff Number Limitation Policy.
3. To request HM Procureur and the Home Department to bring forward proposals to amend section 91(3) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 provided that the concerns regarding how to ensure that all those providing advice to persons detained by the Police or Customs receive effective advice and representation, can be dealt with.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

POLICY COUNCIL

CHARITIES AND NON-PROFIT ORGANISATIONS

VIII.- After consideration of the Report dated 1st August, 2007, of the Policy Council:-

1. To approve the proposals concerning Non-Profit Organisations (including charities) set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

CHARITIES AND NON-PROFIT ORGANISATIONS (“NPOS”)

IX.- After consideration of the Report dated 21st August, 2007, of the Treasury and Resources Department:-

1. To approve the proposals concerning NPOs (including charities) set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

TREASURY AND RESOURCES DEPARTMENT

APPOINTMENT OF NON-EXECUTIVE DIRECTOR GUERNSEY ELECTRICITY LIMITED

X.- After consideration of the report dated 27th July, 2007, of the Treasury and Resources Department:-

In accordance with Section 3 of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, to approve the appointment of Mr David Farrimond as a non-executive director of Guernsey Electricity Limited.

HEALTH AND SOCIAL SERVICES DEPARTMENT

THE NURSING AND RESIDENTIAL HOMES (GUERNSEY) LAW, 1976

XI.- After consideration of the Report dated 29th May, 2007, of the Health and Social Services Department:-

1. To approve that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HOUSING DEPARTMENT

CHARGING FOR HOUSING CONTROL SERVICES

XII.- After consideration of the Report dated 5th July, 2007, of the Housing Department:-

1. That charges shall be introduced for Right to Work documents and replacement documents as outlined in that Report.
2. That charges shall be introduced for Open Market inspections as outlined in that Report.
3. That the Housing Control Law shall be amended to give effect to 1 and 2 above.
4. That the Housing Department shall be able to set and change the level of charges by Regulation as required.
5. To direct the Treasury and Resources Department to take account of the fees raised from charging for Housing Control Services when recommending to the States, Cash Limits for the Housing Department for 2009 and subsequent years.

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

HOME DEPARTMENT

INSURANCE DISCS

XIII.- After consideration of the Report dated 13th July, 2007, of the Home Department:-

1. To approve the Home Department's proposals for amending the Road Traffic (Compulsory Third Party Insurance) Law, 1936, as amended to
 - introduce insurance discs and require them to be displayed on motor vehicles as set out in that Report;
 - require insurers to notify the Home Department when a policy is cancelled without the consent of the person insured;
 - allow police officers to detain vehicles where there is reason to believe the vehicle is uninsured.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 28th SEPTEMBER, 2007

(Meeting adjourned from 27th September 2007)

**The States further resolved as follows concerning Billet d'État No XX
dated 7th September 2007**

PUBLIC SERVICES DEPARTMENT

INSTALLATION OF FRENCH MARITIME RADAR TOWER AT GUERNSEY AIRPORT

XIV.- At the instance of the Minister, Public Services Department, TO GRANT LEAVE TO WITHDRAW this Article.

ENVIRONMENT DEPARTMENT

THE INTRODUCTION OF FEES FOR PLANNING AND BUILDING CONTROL APPLICATIONS

XV.- After consideration of the Report dated 26th July, 2007, of the Environment Department:-

1. That, in principle, fees shall be charged for planning and building control applications.
2. That, in principle, fees shall be charged for carrying out property searches.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.
4. That fees, resource allocation and service levels shall be agreed between the Treasury and Resources Department and the Environment Department in accordance with a three year Plan, to be reviewed annually.

SOCIAL SECURITY DEPARTMENT

BENEFIT AND CONTRIBUTION RATES FOR 2008

XVI.- After consideration of the Report dated 27th July, 2007, of the Social Security Department:-

1. That, with effect from 7th January, 2008, the standard rates of social insurance benefits shall be increased to the rates set out in paragraph 19 of that Report.

2. That the strict proportionality in the rates of old age pension for incomplete insurance records shall be restored over a two year period through removal of the residual Christmas bonus element within all pension rates.
3. That, with effect from 1st January, 2008, for employed persons the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit shall be £1,248, £5,408 and £64, 896 respectively
4. That, with effect from 1st January, 2008, for employers, the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit shall be £2,079, £9,009 and £108,108 respectively.
5. That, with effect from 1st January, 2008, for employed persons and employers, the lower weekly earnings limit, and the lower monthly earnings limit shall be £105 and £455 respectively
6. That, with effect from 1st January, 2008, for self-employed persons, the upper earnings limit and lower earnings limit shall be £64,896 per year and £5,460 per year, respectively
7. That, with effect from 1st January, 2008, for non-employed persons the upper and lower annual income limits shall be £64,896 per year and £13,650 per year respectively
8. That, with effect from 1st January, 2008, the States grants to the contributory funds in respect of contributions falling due from 1st January, 2008, shall be as follows:

Guernsey Insurance Fund	15% of contribution income
Guernsey Health Service Fund	12% of contribution income

- 8.A That the Social Security Department should carry out a comprehensive review of the long term future funding of the Guernsey Insurance Fund, Guernsey Health Service Fund and the Long-term Care Insurance Fund in conjunction with the Treasury and Resources Department, and that –
 - (a) the Review should, in particular, encompass all possible options for contribution rates, the level of the States Grant and the retirement age and include actuarial advice and wide consultation, and
 - (b) the results of the Review should be reported to the States as part of the Benefit and Contributions Rates Report in September 2008.
9. To note that, with effect from 1st January, 2008, the Social Security Department will be attaching a joint liability on an individual's employed and self-employed earnings, as outlined in paragraphs 74 to 79 of that Report;
10. That, with effect from 1st January, 2008, the prescription charge per item of pharmaceutical benefit shall be £2.70;

11. That, with effect from 1st January, 2008, the contribution (co-payment) required to be made by the claimant of care benefit, under the long-term care insurance scheme, shall be £154 per week;
12. That, with effect from 7th January, 2008, care benefit shall be a maximum of £637 per week for persons resident in a nursing home or the Guernsey Cheshire Home and a maximum of £341 per week for persons resident in a residential home;
13. That, with effect from 7th January, 2008, respite care benefit shall be a maximum of £791 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home and a maximum of £495 per week for persons receiving respite care in a residential home.
14. That, with effect from 11th January, 2008, persons receiving supplementary benefit as jobseekers shall continue to receive the short-term rates of benefit, with the long-term rates applicable to exceptional cases only.
15. That, with effect from 11th January, 2008, the supplementary benefit requirement rates shall be as set out in paragraph 119 of that Report
16. That, with effect from 11th January, 2008, the weekly benefit limitations for supplementary benefit shall be:
 - (a) £367 for a person living in the community;
 - (b) £430 for a person who is residing in a residential home; and
 - (c) £618 for a person who is residing as a patient in a hospital, nursing home or the Guernsey Cheshire Home.
17. That, with effect from 11th January, 2008, the amount of the personal allowance payable to persons in Guernsey and Alderney residential or nursing homes who are in receipt of supplementary benefit shall be £25 per week.
18. That, with effect from 11th January, 2008, the amount of the personal allowance payable to persons in UK hospitals or care homes who are in receipt of supplementary benefit shall be £42.30 per week
19. That a supplementary fuel allowance of £19.30 per week be paid to supplementary beneficiaries who are householders from 26 October 2007 to 18 April 2008;

20. That the Supplementary Benefit (Implementation) Ordinance, as amended, be further amended on the lines set out in paragraphs 143 to 149 of that Report.
21. That, with effect from 7th January, 2008, family allowance shall be £13.85 per week
22. That, with effect from 7th January, 2008, the rates of attendance allowance and invalid care allowance and the annual income limits shall be as set out in paragraph 154 of that report.
23. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

STATES HOUSING DEPARTMENT

HOUSING (CONTROL OF OCCUPATION) (GUERNSEY) LAW 1994 – VARIATION TO THE HOUSING REGISTER

XVII.- After consideration of the Report dated 2nd August, 2007, of the Housing Department:-

1. That each of the six apartments, namely Alligande 1, 3 and 5 and Godfrey 1, 4 and 7 at Vega Apartments, Les Banques, St Peter Port, shall be individually inscribed in Part A of the Housing Register.
2. To direct that an Ordinance be prepared, in accordance with section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994, to permit the Department to inscribe these six Apartments in Part A of the Housing Register subject to application being made by the owners within 6 months from the commencement date of the Ordinance.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

HOUSE COMMITTEE

STATES EMPLOYEES – POLITICAL ACTIVITIES

XVIII.- After consideration of the Report dated 19th June, 2007, of the House Committee:-

1. By a majority of more than two thirds of the Members present and voting, that the Reform (Amendment) (Guernsey) Law, 1972, as amended be further amended to the effect that:
 - (a) no States employee, whether full-time or part-time, shall be permitted to take the oaths relating to membership of the States of Deliberation, and that any States Member who, subsequent to taking those oaths,

proposes to accept an offer of full-time or part-time employment by the States shall resign as a member of the States before commencing that employment;

- (b) holders of the under-mentioned offices and any other office which may be prescribed from time to time in that regard by Ordinance of the States shall not be permitted to take the oaths relating to elected membership of the States and that any elected States Member who, subsequent to taking the said oaths, proposes to accept appointment to one of the said offices shall resign as a member of the States before so doing:

Prescribed offices:

Holders of judicial office in the Island's courts
Members of the regular armed forces
Members of the Guernsey Financial Services Commission
The Director-General of the Financial Services Commission
The Director-General of Utility Regulation
The Data Protection Commissioner
The Public Trustee

2. That the Rules relating to the Constitution and Operation of States Departments and Committees be amended, with effect from 1st May 2008, by inserting the following after paragraph (3) of Rule 11:

“(4) Civil servants shall not be eligible to serve on Departments or Committees.”

3. TO NEGATIVE THE PROPOSITION that the Rules relating to the Constitution and Operation of States Departments and Committees be amended, with effect from 1st May 2008, by inserting the following after paragraph (4) of Rule 11:

“(5) States employees other than civil servants shall not be eligible to serve on the Public Sector Remuneration Committee or on their employing Department but shall be eligible to serve on other Departments or Committees save that they shall obtain their employing Department's consent to such service prior to accepting nomination thereto.”

4. By a majority of more than two thirds of the Members present and voting, to direct the preparation of such legislation as may be necessary to give effect to their above decisions.

REQUÊTE

FOUL WATER SEWERS IN VICINITY OF NEW SCHOOLS AT LES NICOLLES

XIX.- TO POSTPONE CONSIDERATION of this Requête until 10th October, 2007.

**K H TOUGH
HER MAJESTY'S GREFFIER**

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 10th OCTOBER, 2007

(Meeting adjourned from 28th September 2007)

**The States further resolved as follows concerning Billet d'État No XX
dated 7th September 2007**

REQUÊTE

FOUL WATER SEWERS IN VICINITY OF NEW SCHOOLS AT LES NICOLLES

XIX.- After consideration of the Requête, dated 30th May, 2007, signed by Deputy I F Rihoy and eleven other Members of the States:-

1. To instruct the Public Services Department to construct 725 meters of gravity sewer in Les Effards Road, Le Bordage, Les Gigands Road and Baubigny Road as shown on drawing no. SKO2, at a total cost including road resurfacing not exceeding £850,000, to enable properties in the immediate environs of the new schools currently under construction to connect to the main drains.
2. To vote the Public Services Department a total credit of £850,000 to cover the cost of the above scheme, such sum to be charged to its capital allocation.
3. To authorise the Treasury and Resources Department to transfer the sum of £850,000 from the Capital Reserve to the capital allocation of the Public Services Department.

**K H TOUGH
HER MAJESTY'S GREFFIER**