BILLET D'ÉTAT

IX
2005

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BILLET D'ÉTAT

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 **29th JUNE, 2005,** immediately after the meeting already convened for that day, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

DE V. G. CAREY
Bailiff and Presiding Officer

The Royal Court House
Guernsey
10th June 2005

TREASURY AND RESOURCES DEPARTMENT

INFORMATION POWERS

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

19th April 2005

Dear Sir

1. **Executive Summary**

1.1. The purpose of this Report is to obtain approval to legislation giving the Administrator of Income Tax additional powers to obtain information from taxpayers in respect of their own tax affairs, and from third persons also. Such information would be obtainable not only for domestic tax administration but also to give effect to Guernsey's international obligations arising under tax information exchange agreements.

2. **Information Powers**

Background

2.1. In the July 2002 Policy & Resource Planning Debate, the States resolved to authorise the Advisory and Finance Committee to nominate a member to execute Tax Information Exchange Agreements ("TIEAs") on behalf of the States. The responsibility of the Committee is now vested in the Policy Council. To date, one TIEA has been concluded with the United States in September 2002.

2.2. The TIEA which has been signed with the United States creates international obligations upon Guernsey, from 1 January 2006, to provide information to the United States taxation authorities in response to specific requests for information, provided that a number of conditions are satisfied. In order to provide that information, the Administrator of Income Tax (who will be responsible as the 'competent authority' for handling requests under the TIEA) needs to have comprehensive and effective information gathering powers available to him, which are not provided by the Income Tax (Guernsey) Law, 1975, as amended ("the 1975 Law"). In this respect, it should be remembered that the 1975 Law was a consolidation of earlier legislation, drafted at a time when the need for the Administrator to be able to obtain information from taxpayers was not acute. However, the increasing tendency of a number of taxpayers everywhere to engage in tax avoidance, or even fraudulent evasion, to the prejudice of the majority of law abiding taxpayers has resulted in all income tax authorities taking powers to obtain information, and Guernsey should not be immune from this process. Irrespective of the desirability of providing the Administrator with powers to obtain documents and information for domestic tax administration, the binding obligations on the States arising under the United States TIEA must be deliverable from 1 January, 2006. The Department is of the firm opinion that provision must be made enabling the Administrator, as the competent authority for the purposes of the United States TIEA, to have powers to obtain documents and information. Any failure by the States to provide such powers would reflect adversely on Guernsey's reputation internationally, and would have the inevitable consequence that Guernsey would be unable to comply with its international obligations. Accordingly in June 2004 (Billet d'Etat VIII, 2004) the States resolved, to direct "the preparation of such legislation as may be necessary or expedient to implement and give effect to bilateral agreements on taxation and transparency entered into with the authority of the States". The principal purpose of this Report is to bring to the States the primary legislation pursuant to their June 2004 Resolution to give the Administrator the requisite powers. I am grateful to the Policy Council for agreeing that this report may be placed before the States in the same Billet d'Etat as the draft Projet de Loi.

2.3. It should be noted, however, that the powers proposed in the Projet apply not only in respect of international agreements but also in respect of domestic tax administration. There are two reasons for this:

(a) Protection of the island's domestic tax base is of paramount importance. In the light of the proposed reforms to the corporate tax system from 2008 onwards (which are the subject of a consultation document issued in March 2005) pressures upon States' finances will increase. This is particularly so in respect of the proposal to transfer the burden of tax in respect of most companies from the company itself to the shareholders, where they are Guernsey resident. There are a number of ways in which true beneficial ownership of companies can be disguised and it is essential, therefore, that there are robust measures in place to counter any such tax avoidance. A significant aspect of any such measure will be the ability of the Administrator to have the power to obtain documents and information required to determine a taxpayer's correct liability. The powers will also be available to supplement the relatively limited powers currently available to the Administrator, as provided by sections 67 and 68 of the 1975 Law, which are not sufficient to enable him to administer tax fairly and effectively.

(b) The legislation has been drafted to enable the States by Ordinance to implement it at different times and for different purposes, and so for TIEAs on a case by case basis. The legislation provides that the Administrator's information gathering powers are equally as extensive as respects his administration of domestic income tax as for TIEAs, though whether and if so how any request for information is dealt with by the Administrator will, of course, depend on the facts and circumstances of each case. The States should note that H.M. Procureur has advised of the possibility of challenge to the legislation if the States were to implement information gathering powers in connection with the enforcement of TIEAs if, at the same time, such powers were not available to the Administrator in the administration of domestic income tax.

2.4 The Isle of Man has already enacted information gathering powers, for both domestic and international purposes. It is understood that, legislation is currently being drafted, for consideration by the Jersey Authorities in the middle of 2005.

2.5. At this stage it is worth mentioning the progress made in the negotiation of TIEAs with other jurisdictions. Such jurisdictions currently include Australia, France, Germany, Ireland, Italy, the Netherlands, New Zealand and the United Kingdom, and a number of other states and territories have expressed an interest in commencing negotiations. Members will know that the process arises from the commitment made by Guernsey to the OECD initiative in 2002, together with the majority of financial centres throughout the world.

2.6. That commitment was on the basis of there being a level playing field between all jurisdictions, OECD members and non-members alike. The Policy Council is not satisfied that the level playing field is presently in place, and therefore, whilst continuing negotiations with selected countries, no further TIEAs will be signed unless the Policy Council is satisfied that a level playing field is in place, or that it is in Guernsey's best economic interests in any particular case to conclude a TIEA in the absence of a level playing field. The issue of whether or not a level playing field exists is currently subject to discussion in and by the OECD, and other non-member states and territories, at Global Forum meetings regularly organised by the OECD. When those participating in the Global Forum (including Guernsey, the other Crown Dependencies and the majority of other offshore finance centres) are satisfied that a level playing field does, in fact, exist, Guernsey will then be in a position to fulfil its 2002 commitment, and thus information powers will be needed in order to comply with any TIEAs which are concluded as a result of that commitment.

Detailed Proposals

2.7. Attached as an appendix to this report is a table summarising relevant provisions of the proposed Projet.

2.8. Members will note that the powers which will be available to the Administrator of Income Tax, if approved, are widely drawn and prescriptive. For that reason, it should be emphasised that, in relation to domestic tax administration, the vast majority of taxpayers will notice little change in the way the Administrator deals with their income tax affairs. He will still use an informal request for information in most cases, followed by a request under the existing powers contained in section 68(1) of the 1975 Law, if that information is not provided. The use of the powers provided by the new Part VIA of the Projet will be only in cases where the Administrator feels it appropriate to use such formal measures, e.g. because of an inadequate, or no, response. Indeed, the new sections 75A(2) and 75B(3), introduced by the Projet, generally require the person who is to be subject to the notices under those sections to be given a reasonable opportunity to provide the information required in advance of a formal notice.

2.9. Moreover, the sections enabling court orders and warrants to be obtained (sections 75E, 75F and 75I) would be reserved for the most serious cases and their use would be exceptional.

2.10. The Treasury & Resources Department has consulted with the Guernsey Society of Chartered & Certified Accountants, the Bar Council, and the Guernsey Financial Services Commission in the drafting of the Projet.

3. **Recommendations**

The Treasury & Resources Department recommends the States to agree that legislation is enacted as set out in this Report and to approve The Income Tax (Guernsey) (Amendment) Law 2005.

I should be grateful if you would lay this matter before the States with the appropriate propositions.

Yours faithfully

L S Trott
Minister

Table summarising provisions of proposed Law regarding information powers

Section of Amendment Law	New or amended Section of main Law	Detail
2, 3 & 4	68(1), 68(1AA), 68(3) & 68(4)	Widens and clarifies powers currently available under section 68.
5	75A	Confers on the Administrator power to obtain information and documents from the taxpayer.
5	75B	Confers on the Administrator power to obtain information and documents from third parties concerning the taxpayer.
5	75C	Applies the powers under sections 75A and 75B to requests for information received under international agreements approved by the States by Ordinance.
5	75D	Contains supplementary provisions as to the manner in which sections 75A and 75B are to be applied.
5	75E	Empowers the Royal Court to order production of documents in a case where a notice has been served under section 75A and has not been complied with (or where an order under section 75A is not practical).
5	75F	Empowers the Royal Court to order production of documents in a case where a notice has been served under section 75B and has not been complied with (or where an order under section 75B is not practical).
5	75G	Contains supplementary provision as to the operation of orders under sections 75E and 75F.

Section of Amendment Law	New or amended Section of main Law	Detail
5	75H	Deals with notice of applications for and procedures regarding Court Orders under sections 75E and 75F.
5	75I	Empowers the Bailiff, where an order under section 75E or 75F has not been complied with, to issue a warrant to enter and search premises, and remove documents, subject to the usual legal safeguards.
5	75J	Prescribes how any documents removed in the course of a search under section 75I are to be kept, safeguarded and handled, and the procedure for their removal and retention.
5	75K	Provides a right of appeal to the Royal Court regarding a notice under sections 75A or 75B.
5	75L	Creates offences relative to the falsification of documents and the provision of false information under this Part of the Law.
5	75M	Overrides duties of confidentiality and safeguards any lien, and gives protection against self-incrimination.
5	75N	Prescribes the constitution of the Royal Court for the purposes of this Part of the Law.
5	75O	List of definitions.
5	75P	Allows Treasury & Resources Department to make Regulations regarding the type of tax records to be kept, and the manner and length of time for which they are to be kept.
5	75Q	Allows the States to amend this Part of the Law by Ordinance

Section of Amendment Law	New or amended Section of main Law	Detail
6	76	Clarifies that the rights of appeal provided by section 76 of the Law do not apply to notices given under sections 75A or 75B.
7	203A	Deals with general procedural matters relating to Ordinances, Regulations and Orders of the Royal Court made under the Law.
8	205	Adds to the Administrator's functions under the Law the exchange of information under approved international agreements.
9	208A	Enacts the standard provision imposing criminal liability on directors with whose consent or connivance the company has committed offences under the Law.
10	209(1)	Revises the definition of "Administrator" to include "Assistant Administrator".
11	-	Citation.
12	-	Provides that commencement of this Law shall be effected by Ordinance, and provides that different commencement dates may be provided for the purposes of the administration of income tax under domestic laws, and for the purposes of any approved international agreement.

(NB The Policy Council supports the proposals)

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 19th April, 2005, of the Treasury and Resources Department, they are of the opinion:-

1. That legislation be enacted as recommended in that Report.

2. To approve the Projet de Loi entitled "The Income Tax (Guernsey) (Amendment) Law, 2005" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

THE INCOME TAX (RESIDENCE) (GUERNSEY) (AMENDMENT) LAW, 2005

The States are asked to decide:-

II.- Whether they are of the opinion to approve the Projet de Loi entitled "The Income Tax (Residence) (Guernsey) (Amendment) Law, 2005" and to authorize the Bailiff to present a most humble Petition to Her Majesty in Council praying for her Royal Sanction thereto.

PROJET DE LOI

entitled

THE MISUSE OF DRUGS (BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2005

The States are asked to decide:-

III.- Whether they are of the opinion to approve the Projet de Loi entitled "The Misuse of Drugs (Bailiwick of Guernsey) (Amendment) Law, 2005" and to authorize the Bailiff to present a most humble Petition to Her Majesty in Council praying for her Royal Sanction thereto.

THE SUPPLEMENTARY BENEFIT (IMPLEMENTATION) (AMENDMENT) ORDINANCE, 2005

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled "The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

THE SUPPLEMENTARY BENEFIT (CLASSES OF PERSONS TO WHOM THE LAW APPLIES) ORDINANCE, 2005

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled "The Supplementary Benefit (Classes of persons to whom the Law applies) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

THE CENTRAL OUTDOOR ASSISTANCE BOARD REGULATIONS (REPEAL) ORDINANCE, 2005

The States are asked to decide:-

VI.- Whether they are of the opinion to approve the draft Ordinance entitled "The Central Outdoor Assistance Board Regulations (Repeal) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

THE FOREIGN TAX (RETENTION ARRANGEMENTS) (GUERNSEY AND ALDERNEY) ORDINANCE, 2005

The States are asked to decide:-

VII.- Whether they are of the opinion to approve the draft Ordinance entitled "The Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

PRIAULX LIBRARY

NEW TRUSTEE

The States are asked:-

VIII.- To elect a Trustee of the Priaulx Library to replace Mr P L De Garis who has resigned as a Trustee.

(NB Advocates of the Royal Court are not eligible for election)

LADIES' COLLEGE BOARD OF GOVERNORS

NEW MEMBERS

The States are asked:-

IX.- To elect

(1) a member of the Ladies' College Board of Governors, who need not be a sitting member of the States, to fill the vacancy which arose on 1st June, 2005, by reason of the expiration of the term of office of Advocate P J Atkinson, who is eligible for re-election;

(2) as a member of that Board of Governors Mrs K M N Richards who has been nominated in that behalf by the States appointed Governors and the Education Department nominated Governors for election by the States and whose term of office expired on 31st May, 2005.

POLICY COUNCIL

LOI RELATIVE À LA TAXATION PAROISSIALE 1923

Executive Summary

This Report recommends the establishment of a Special States Committee to investigate and report on the operation of the Loi Relative à La Taxation Paroissiale 1923, as amended, as to its church property aspects, with particular reference to the repair and maintenance of parochial church property, and alternative means of providing or securing the finance required to repair, maintain and support such property.

Report

HM Procureur has recently written to the Policy Council concerning the present arrangements under which ratepayers are required to support church property ie the ancient parish churches and rectories.

HM Procureur has advised the Policy Council that he commenced to investigate the historical and legal issues relevant to the parochial financial support for church property after being consulted by the Torteval Douzaine in August 2004 when it appeared that extensive repairs would be required to Torteval Church, which matter was widely covered in the media at the time.

HM Procureur has reported the outcome of his researches to date as follows:-

> "The present system of statutorily sanctioned parochial funding by tax or rates of church property stems from the *Loi relative à la Taxation Paroissiale, 1868.* This was enacted to provide a comprehensive and formal primary legislative basis for parochial taxation, both in its ecclesiastical and secular administration and application. Parochial taxation is of ancient origin, and was originally levied for relief of the poor. Secular parochial expenditure developed to embrace such diverse matters as roads' maintenance, parish schools, street lighting and public pumps; and, of course, policing. The mode, rather than the objects, of taxation had been codified in an Ordinance of 1821, which proved controversial and which was not uniformly administered amongst the parishes. The 1868 Law recited, *inter alia*, that for many years it had been "generally acknowledged" within St Peter Port that the Ordinance then in force relating to parochial taxation was unjust in principle and ineffective in operation, and that the Royal Court had determined that any legislation to regulate parochial taxation should apply throughout the Island. Those objections were not directed so much towards the objects to which parochial taxation could be applied, but more to the basis of assessment to taxation, which had been the subject of Privy Council litigation: see *Tupper v Treasurer of Town Hospital & Constables of St. Peter Port, 1836.* Parochial taxes were based on wealth, and fell, in practice, principally upon property owning parishioners.

The 1868 Law provided for two classes of objects for which parochial taxation might be raised: amongst the first was comprised "Les besoins du Trésor de l'Eglise, y compris l'entretien du Presbytère". The *trésor* was that parochial fund from which ecclesiastical expenses, including those attributable to the parish church, were derived, but which expenses did not ordinarily include repair and maintenance of the rectory, and one result of the 1868 Law was to put beyond doubt the requirement to repair and maintain the rectories at parochial, i.e. taxpayers', expense. It erected a formal scheme of parochial taxation, again founded on parishioners' wealth both personal and real (and which remained the basis of taxation in Sark until recently). Those liable to tax in respect of objects of the first class (which included the *trésor*, poor relief, parish schools and policing functions) were both the inhabitants of the parish, and the owners of properties in the parish wherever in Guernsey they resided; whereas those liable to parochial taxation in respect of objects of the second class (including parish road maintenance and parish pumps) were confined to parochial property owners.

In the period prior to 1868, parochial church expenses had been borne by the parishioners, by the occasional application of parochial taxation to supplement the *trésor*, which was primarily funded by rentes and donations. This pre-1868 scheme operated reasonably satisfactorily, although it has to be said that the position in which Torteval is now placed with respect to its church is not dissimilar from that by which it was faced in the early eighteen hundreds, when its former ancient church had fallen into such disrepair as to make rebuilding a necessity. Then, most of the funds for the construction of Torteval's new church were provided by the States; but some were provided out of parochial taxation, some by the Crown, and some by donation.

The 1868 Law, by including as an object of parochial taxation "Les besoins du Trésor . . ." was statutorily endorsing compulsion on taxpaying parishioners to contribute towards the repair and maintenance of the parish churches and their rectories, irrespective of adherence to Anglican doctrines or attendance at Anglican worship.

In 1920 the States resolved to introduce insular income tax. Accordingly much secular expenditure that had been borne by the parishes now fell as a charge on States' revenues: for example, primary schools, the country hospital and those public roads, lanes and paths parochially maintained. To remedy this position, a requête was presented to the May 1920 States' meeting proposing that the former system of parochial taxation be abolished, and replaced by a parochial rate levied on property occupiers, but having regard to the scope of the several objects of the first and second classes provided by the 1868 Law, including the *trésor*, so far as they remained objects of parochial expenditure. The States appointed a committee to review the matter. Ignoring for present purposes the various reports, debates and resolutions in respect of secular parochial administration and expenditure, the upkeep of church property had necessarily to be embraced by the review. At the July 1920 States' Meeting, a further requête directed towards the repair and maintenance of church property was considered. (This requête reproduced the terms of a requête presented to the States at its July 1915 meeting, but which was not pursued on account of the Great War.) The States resolved that another committee should be charged with particularly identifying what would be the effect of abolishing parochial taxation on the needs of the *trésor* and the upkeep of the rectories. Its report was considered by the States in December 1920, and the resolutions on that debate found the 1923 Law as it relates to upkeep of church property. The report of this committee is to be found in Billet d'État No. 17 of 1920 at p.342[1].

The report includes much historical material, and is of interest in identifying issues relevant today. Those who proposed the review had sought change to make Guernsey conformable with English practice, by which compulsory parochial contributions to the upkeep of church property had been abolished by the Compulsory Church Rate Abolition Act, ironically also of 1868 the very year in which Guernsey had erected a general statutory scheme of parochial taxation by which, *inter alia*, church property was compulsorily supported. In England, prior to 1868, repair and maintenance of the rectories had never been a charge on ratepayers, which is why so many of them came to be separated from the parishes they were intended to serve and sold as private residences. Furthermore, the requête which gave rise to the report recited that modern legislation was tending to separate completely the civil parish from the ecclesiastical parish.

The English 1868 Act was the product of decades of strife, arising in part from increasing religious tolerance, not only as respects the relaxation of discrimination against adherence to Roman Catholicism, but also as the result of the growth of non-conforming or dissenting movements, of whom the Methodists were prominent exemplars. One common feature of dissent was refusal to pay church rates, and many dissenters suffered imprisonment, or distraint of their goods, rather than satisfy the rates demands of the Anglican Church. The "compulsory" church rate was not, in effect, compulsory by the regime operative in England, because before 1868 the parishioners by a majority could vote down the rate proposed, the position established as respects Guernsey by the 1923 Law. What the 1868 Act did was to make recovery of an approved rate impossible in legal proceedings, so payment of the rate effectively became voluntary for those who chose to ignore rates demands, even though approved by the majority of voting parishioners.

By English common law, parishioners were bound to maintain the fabric of their churches, and provide for the decent celebration of their services. Prior to 1868, the upkeep of the parish's church building itself was sustained by an annual rate voted by the parishioners assembled "in vestry" and levied upon all occupiers of lands within the parish according to their ability. In former times, in which the rôle of the parish church was more than spiritual – indeed its civic functions had

[1] A copy of the report is attached as an Appendix to this States Report

always been crucial to its local community – the great majority of the population were believers and, to a perhaps lesser but still significant extent, practitioners and professors of the established Anglican faith. By the 19th century, non-conformism had spread throughout England, and in some parishes dissenters outnumbered Anglicans. Building and repairing their own chapels, and shunning the services of their parish churches, dissenters resented the payment of church rates as being onerous and unjust, and offensive to their consciences. They insisted that the burden should be borne exclusively by Anglicans, which, they argued, had been the original basis of church rates and this principle should again be recognised. The Anglican Church stood firmly upon its rights, and claimed that the law had never acknowledged such a distinction. Its principal arguments were that the fabric of the Anglican Church as a whole was national property; and that Anglican churches were open and available to all for public worship, irrespective of belief, and were, in effect, the common property of all parishioners.

From the 1830s, Parliament grappled with the arguments. It is not relevant here to recount the course of debate but, at the same time, battle was enjoined in a number of prominent cases which set the arguments in a legal context. In landmark litigation in relation a rate sought to be levied in Braintree, the House of Lords held that a majority of the parishioners could lawfully vote down the rate proposed, with the result that it was effectively, but not legally, unenforceable. In 1859 church rates had been refused in 1,525 parishes, which was a serious inroad upon the rights and abilities of the church. The matter was complicated by measures for reforms originating in a 'liberal' House of Commons being rejected by a 'conservative' House of Lords.

What is also of interest is that by the time the 1868 Law was passed, non-conformism had taken hold in Guernsey, and numerous Methodist and other non-conformist chapels had been established. Furthermore, the profession of Roman Catholicism here was significant, partly as a result of the presence of a French community, but Roman Catholics were, even then, denied access to certain local public offices (e.g. Jurats).

The 1868 Act, which so motivated the *requerants* in 1920 as the ground of reform, led to the parochial taxation regime erected by the 1923 Law which remains in force today. By the 1923 Law the lawful objects to which parochial taxation may be applied were redefined, and of them the ecclesiastical purposes are limited to

1. ordinary repairs to the parish church, and ordinary external and structural repairs to the rectory;

2. ordinary maintenance of the parish cemeteries;

3. extraordinary repairs to the parish church, and extraordinary external and structural repairs to the rectory, and extraordinary repairs to the parochial

cemeteries: in respect of each of which, a special vote is required to be taken;

4. acquisition of land for parochial cemeteries;

5. insurance of the parish church and the rectory;

6. one half of the amount of the costs of cleaning the parish church;

7. repair and maintenance of the clock of the parish church;

8. repair and maintenance of the bells of the parish church; and the remuneration of bell ringers on public occasions;

9. purchase and maintenance of parochial registers and certificates, and safes for their custody.

In its own way, the parochial taxation regime is very democratic. The respective parochial officers prepare and propose the rates to be raised for secular and church purposes. These are put to a meeting of electors and ratepayers for approval. By this means the prospective taxpayers alone determine whether or not the rate should be levied, and if so, at what rate. The options available to those voting at the meeting are limited: they can approve or reject the proposal taken as a whole; they can approve or reject the secular and ecclesiastical components of the proposal each taken as a whole; or they can approve or reject separate items of the proposal; and, in practice, items are put separately to the meeting. However, the meeting cannot propose higher rates or amounts from those proposed, but reductions in items can be proposed. Whatever the meeting approves must be put to the Royal Court as the application for the *remede*. The Royal Court is not concerned with the rate proposed, or the amount to be raised; these are taken to be matters for the meeting. However, the Royal Court is concerned to ensure that every item of the *remede* falls properly within the objects of parochial taxation provided by the 1923 Law, and is also concerned that the formalities with respect to the taxation process have been observed. Importantly, if the *remede*, so far as it concerns ordinary or extraordinary repairs to the church or rectory, has been approved at the parochial meeting, that is the end of the matter, and the Royal Court cannot hear objections to the rates or amounts proposed for those items on the application for the *remede*. Furthermore, if the meeting has voted down those items, that is also the end of the matter so far as the church property components of the *remede* are concerned, although a revised proposal may be put to a further meeting. The Royal Court does not function as some review body so as to enable the Rector and Churchwardens to ask for their claims for church property expenditure to be restored, (nor can non-church items be reviewed on the application of the secular parochial authorities). Put short, whatever the meeting has rejected cannot be reviewed, because it has, in effect, ceased to be a legitimate rate. That is why I say that the *remede* process is democratic.

> In framing its report and recommendations, the 1920 review committee relied upon the different origins, customs and administrations as between local and English parishes. Its report asserted that, from remote antiquity, Guernsey parishioners had enjoyed the "ownership" of their respective churches, glebes (i.e. church lands) and church property, and that this ownership was a "kind of trust and must be exercised in accordance with conditions which were well understood", and which was reflected in the requirement that no alterations or additions to ecclesiastical property, nor any sale or alienation of them, could be legally effected without first formally consulting and obtaining the consent of the parishioners. Bare legal ownership, whilst alluded to by the committee in its report, however, is not so certain. Every parish church in Guernsey was originally annexed to a French religious institution. Long before the Reformation, the Crown had expropriated the possessions in Guernsey of the French priories, and accordingly it is arguable that legal ownership in the strict sense of church property became, and remains, vested in the Crown. But undoubtedly, whoever has legal title to parochial church property, that property is held in trust for the benefit of the parishioners, and so their consent for any transaction in that property is necessarily required. In other words the parishioners for the time being are the beneficial owners of their parish's church property. In England, the position is different. The parish church is owned by the incumbent, and repaired and maintained at church expense, with informal parochial support."

In writing to the Policy Council, HM Procureur identified in some detail the complex legal, particularly human rights, issues relating to compulsory parochial funding by all ratepayers of church property, and also advised the Policy Council that formal legal consideration will need to be given to the potential impact of the European Convention on Human Rights, and has commented that

> "At some stage it will be at least desirable if not necessary for a formal opinion on the application of the Convention to the parochial taxation regime to be taken, but of course the issues raised involve more than human rights, including as they do – and as they did in England in the debates which led to the 1868 Act – issues of compulsion and conscience, and profession of another faith or no faith at all."

The Policy Council has considered the historical and legal research presented by HM Procureur and has noted that there is a human rights aspect to the subject. It is clear to the Policy Council that that the issues surrounding Guernsey's compulsory parochial church rates regime are complex, and potentially, controversial.

The parish churches are civic institutions, available to all, not only as places of worship but as places of celebration of rites of passage, including baptism, marriage and death, and the rectors have the cure not only of the souls of their Anglican parishioners but the souls of all parishioners. The parish churches are buildings of great antiquity and fascinating history and should be maintained for the benefit of the Island's heritage.

However, it cannot be assumed that a majority of parishioners will necessarily continue to agree to the use of parochial taxation to fund the repair and maintenance of church property particularly if substantial sums are required for repairs to a particular building.

After careful consideration, the Policy Council has concluded that the time is right for a thorough investigation to be carried out into the Guernsey's compulsory parochial church rates regime.

The Policy Council considers that this investigation would best be carried out by a Special States Committee to be called the "Parochial Ecclesiastical Rates Review Committee" with a mandate "to investigate and report on the operation of the Loi Relative à La Taxation Paroissiale 1923, as amended, as to its church property aspects, with particular reference to the repair and maintenance of parochial church property, and alternative means of providing or securing the finance required to repair, maintain and support such property".

It falls to the House Committee to make recommendations to the States regarding the constitution of committees. That Committee has advised in the following terms:-

> "In response to a request from the Policy Council, the House Committee has given consideration as to how the proposed committee, to be styled The Parochial Ecclesiastical Rates Review Committee ["the PERRC"] should be constituted.
>
> Unlike standing departments and committees of the States, the Rules relating to the Constitution and Operation of States Departments and Committees do not specify how special States committees are to be constituted. This is because of the diversity of matters investigated by such committees and to allow flexibility in achieving the best constitution for the particular purpose. Presently there is only one other special committee – The Inheritance Law Review Committee which has three States members (one of whom is Chairman), an Advocate of not less than 10 years standing and one person who need not be a member of the States.
>
> Insofar as the PERRC is concerned the House Committee, by a majority, recommends that it be constituted as follows:
>
> > "A Chairman who shall be a sitting member of the States
> >
> > Four sitting members of the States.
> >
> > The Committee may appoint up to two non-voting members, who shall not be sitting members of the States."
>
> The House Committee is of the view that the PERRC should have the flexibility of deciding whether or not it needs the participation of non-States members on a permanent basis. One member of the House Committee dissents from this view.".

The Policy Council concurs with the views expressed by the House Committee. Appropriate administrative support for the PERRC will be provided by the Policy Council and the Council will fund any necessary expenditure incurred by the Committee to enable it to carry out necessary consultation and research.

Rule 2 (v), (vi) (f) and (vi) (j) of section I of the Rules for Payments to States Members provide as follows:

> (v) [The] Special Committee Membership Allowance in respect of each seat held on any States Special Committee [shall be] £2,500 per annum or £1,250 per annum, such amount to be determined by, and subject to, resolution of the States of Deliberation upon formation of each such Special Committee taking account of the expected workload of that Committee;
>
> (vi) [The] Special Responsibility Allowance payable in addition to the [aforementioned] Allowance is
>
> (f) Chairman of a States Special Committee, an amount per annum of three times the relevant Special Committee Membership Allowance determined in accordance with sub-paragraph (v) of this paragraph;
>
> (j) Vice-Chairman of a States special Committee, an amount per annum equal to the relevant Special Committee Membership Allowance determined in accordance with sub-paragraph (v) of this paragraph.

Having regard to that Rule the Policy Council recommends that the Special Committee Membership Allowance payable to members of the PERRC be £1,250 per annum. Consequently the Special Responsibility Allowance payable to the Chairman of the Committee would be £3,750 per annum and that payable to the Vice-Chairman £1,250 per annum. Should the work of the Committee prove, in due course, to be so onerous as to warrant payment at the higher level it would be open to the Committee to bring a proposition to the States in that regard.

Recommendations

The Policy Council recommends the States

1. That a Special States Committee called "The Parochial Ecclesiastical Rates Review Committee" shall be established.

2. That the Committee's mandate shall be "To investigate and report on the operation of the Loi Relative à La Taxation Paroissiale 1923, as amended, as to its church property aspects, with particular reference to the repair and maintenance of parochial church property, and alternative means of providing or securing the finance required to repair, maintain and support such property".

3. That the Special Committee Membership Allowance payable in accordance with Section I (2) (v) of the Rules for Payments to States Members, etc. shall be £1,250 per annum.

4. That the Committee's constitution shall be:

   A Chairman who shall be a sitting member of the States

   Four sitting members of the States

   The Committee may appoint up to two non-voting members, who shall not be sitting members of the States.

And, if the forgoing is approved,

5. To elect to that Committee

   A Chairman who shall be a sitting member of the States

   Four sitting members of the States.

L C Morgan
Chief Minister

16th May 2005

ABOLITION DES TAXES POUR LES BESOINS DU TRÉSOR DE L'ÉGLISE Y COMPRIS L'ENTRETIEN DU PRESBYTÈRE

RAPPORT DU COMITÉ

States Office, Guernsey, September 16th, 1920
Received 21st October, 1920

SIR,

On the 28th July last the States considered a petition on the above subject and passed the following resolution :

> IX.--Les Etats ont été d'avis de surseoir à la considération de l'Article IX., et de nommer un Comité chargé d'examiner la question dans tous ses rapports, et particulièrement d'indiquer quels seront les effets de l'abolition des taxes obligatoires pour les besoins du Trésor de l'Eglise et de l'entretien du Presbytère; et ont nommé pour leur Comité Thomas William Mansell de Guérin et John Allés Simon, écuyers, Jurés, les Recteurs du Valle et de Saint Pierre-Port, et MM. Henri D. Ollivier, Cecil A. Carey, Thomas Ogier, Eugène T. Lainé et John E. Dorey.

We, the undersigned members of the Committee appointed by this resolution, have the honour to report as follows:-

The petition of Jurat Hocart and others refers to the Law of 1868 relating to Parochial Taxation, and particularly to Article 2 of the Law, which includes among the objects of such taxation, "Les Besoins du Trésor de l'Eglise y compris l'entretien du Presbytère." The petition goes on to state that in the same year, 1868, an Act was passed in England entitled "The Compulsory Church Rate Abolition Act," which Act allowed the parishes in England to vote a Church Rate, but forbade the recovery of such rate by process of Law. The petition concludes with a prayer to the States to consider the question, with a view to requesting the Royal Court to draw up a Projet de Loi in the same terms as the aforesaid "Compulsory Church Rates Abolition Act" of 1868. It seems that the petitioners are under the impression that the situation here is on all fours with that of England, or at least resembles it so closely that it can be dealt with in the same way, by a brief Projet de Loi couched in the same terms as the English Act (Billet d'Etat of 28th July, 1920, page 231).

The petitioners have failed to appreciate the difference between the English Compulsory Church Rate, upon the abolition of which they base their plea, and the parochial "taxe pour les besoins des Églises," &c., which has prevailed here from a remote antiquity, and is, of course, incorporated in our Law of Parochial Taxation.

The theory of the English Compulsory Church Rate was that the occupiers of property in a parish might, if they chose, vote a rate for the maintenance of the Parish Church and for a variety of other church purposes. When once such a rate had been voted by a majority of the parishioners at a meeting duly convened and assembled for the purpose, it became compulsory, and every ratepayer had to pay his share. But if the majority of the parishioners refused to vote the Church Rate, there was no power which could enforce it on the parish. This was finally determined by a judgment of the House of Lords, which decided that a Church Rate at Common Law could be legally imposed only by the majority of the parishioners duly convened and assembled in Vestry for the purpose.

Thus, the English Compulsory Church Rate did not originate out of the ownership by all the parishioners of the Parish Church. In its first stage it was a voluntary act on the part of the majority of the parishioners. The act of the majority then became binding upon all and the Church Rate became compulsory.

The Compulsory Church Rate Abolition Act did not abolish the Church Rate, but swept away its compulsory character by extending to the individual parishioner the option which previously was exercised by the parishioners assembled in Vestry. The result was the disappearance of the Compulsory Church Rate. But the Compulsory Church Rate had, in fact, already disappeared from a great number of parishes long before the passing of the Act, while it was becoming more and more anomalous and uncertain in those where it remained. Its final disappearance caused very few regrets.

Neither did it create any complications, for the relations of the parishioners with the Parish Church remained precisely as they were. These relations are determined by English Ecclesiastical Law on principles quite irrespective of payment or non-payment of a Church Rate.

In an English parish the incumbent for the time being enjoys a Freehold in which the parishioners have no part. "To him are committed the temporalities of the Church and the actual possession of the Church and Glebe." In the eye of the Law the "Church" is not a corporation able to hold property. All Church property must be held by trustees of some sort. Every incumbent in his parish is for this purpose a "corporation sole," requiring no other formalities than that of institution and induction into his benefice to exercise all rights and privileges of his freehold. The parishioners, of course, have a right to the use of the Church at the hours of Divine Service, and the Churchwardens have responsibilities which entitle them to access to the Church at other times also. But neither churchwardens nor parishioners have any right of ownership in the Parish Church itself or the things in it. The payment of the Compulsory Church Rate, where it was paid, implied neither the rights nor the responsibilities of ownership on the part of those who paid it. And the abolition of the Compulsory Church Rate left matters exactly as they were.

In Guernsey, where our Ecclesiastical Tradition is derived from a Norman, not an English source, the condition of things is different.

To begin with : the Parson's freehold, as understood here is by no means identical with that of England. It is modified and limited by the participation of the parishioners who may be styled partners and even in some sense "predominant partners." From remote antiquity the parishioners of the ancient parishes have enjoyed the ownership of the Church and Glebe and the Church property of the parish, and all this property is, in consequence, exempt from Parochial Taxation. Of course this ownership is a kind of trust and must be exercised in accordance with conditions which are well understood. But within the limits which the Law allows it is real and effective, as is clearly shewn by the fact that no alterations or additions to Church or Rectory House or Glebe may be legally made, nor any sale or alienation of any part of any of them be legally effected, without first formally consulting the parishioners and obtaining their consent, which must be given by the votes of a majority of the chefs de famille at a meeting duly convened and assembled for the purpose. Examples of this will be found on page 235 of the Billet d'Etat of the 28th July1920.

This ownership on the part of the parishioners is reflected in the position of the Churchwardens, whose office differs in many respects from that of Churchwardens in England.

Their original name appears to have been "Procureurs et Collecteurs de l'Eglise" – and they were, in fact, and are still, the "Proctors" or representatives of the whole body corporate of the parish in all matters respecting the Church and its belongings, and so quite contrary to the rule in England, in association with the Incumbent they form a Corporation which is able to hold the Church property and pass it on to their successors in office. But this property belongs to the parishioners, and as we have seen, the Incumbent and Churchwardens must have the consent of the parishioners before they can deal with it in any way outside of its customary and proper use. Ownership usually implies responsibility, and so the Ecclesiastical system which has prevailed here from Norman times lays upon the parishioners who own the Church and Rectory the responsibility of keeping up the property which they own. The origin of the "Taxe pour les besoins des Eglises" can, in fact, be traced back to an old Norman custom which set up a kind of partnership between the parishioners and the patron. The parishioners contributed two-thirds of the upkeep, while the remaining third was contributed by the Abbots of Mont St. Michel, Marmoutier and Blanchelande, who held the advowsons. In 1303 the parishioners of St. Peter-Port and other parishes sued the Abbot of Marmoutier for the payment of £200 tournois, his third of the cost of repairing the damage done to their churches and church property during the war with France. The pleadings in the case refer to this custom as an "ancient custom" even at that date (1303). The probability is that it dates back to early in the 11th century, when Dukes Robert and William of Normandy gave the advowsons of our parishes to the Abbeys of Mont St. Michel and Marmoutier.

Further litigation with the Abbots seems to have occurred in the time of Kings Edward II. and III., and finally a series of disputes came to an end in 1369 with the assignment by the Abbots to the "Treasurers" of the Parish Churches of certain rentes to receive yearly in perpetuity, on condition that they were released from their liability for ever. Owing to the destruction of documents the original agreements have for the most part ceased to exist, but those of the Vale and Castel are still extant in the Archives de la Manche at St. Lo, and authenticated copies are now in the Greffe.

Ever since the year 1369 therefore, the parishioners of the several parishes, having accepted a consideration from the Abbots, have had the sole responsibility for the upkeep of their Churches and Rectories and that position continues to this day, and is the ground of the "Taxe pour les besoins du Trésor" of which the petitioners complain. It will be seen that this Taxe has no analogy with the English Compulsory Church Rate and that its abolition, if it is to be abolished, will necessitate legislation of a very different character from the Compulsory Church Rate Abolition Act. It may be convenient to deal at this stage with the question, "was this custom broken, like a good many others, at the Reformation, or during the "Colloque"? The question may be answered at once in the negative. It is indeed remarkable that at such a time of change and upheaval the parishioners should have remained true to their bond, whether the form of worship was unreformed, or Anglican or Presbyterian. Of this there is abundant evidence. Thus, in the report of the Commissioners sent over by James I. in 1607, we find the complaint of the parishioners of St. Peter-Port that the Governor had seized the Rectory for his own use "and enjoyed it above 30 years, during which time the parish was constrained to find out and pay the rent of another house for the Minister." And when the Governor did give it up again "it was very ruinated and decay'd, thereby the Parish hath sustained very great charges to repair ye same."

In the same report we find the complaint of the parishioners of the Vale that the same Governor had stripped off the lead roof of their parish Church for his own use, and thereby caused them to incur the great cost of covering the Church again and keeping the covering in repair.

These are typical extracts, which might be multiplied, showing clearly that there was no break in the custom of the parishioners to keep up their Parish Churches and Rectories, a custom which had existed for hundreds of years before the Orders in Council of King Charles II., and which those Orders may be more truly said to recite or at most to re-enact, than to enact.

It has also been asked whether the parishes have at any time received consideration in return for the "Taxe pour les besoins des Eglises."

The reply is in the affirmative. In the first place, from the time, probably, of Dukes Robert and William until the year 1369 the parishioners enjoyed the ownership of the Churches and Rectories and were responsible for the upkeep, &c., of these, in a kind of partnership with the Abbots (of Mont St. Michel, Marmoutier and Blanchelande). On the strength of this they sued the Abbots on more than one occasion and recovered judgement against them. In the second place, in the year 1369, they received valuable consideration from the Abbots and in return undertook the full responsibility which from that date became binding upon them.

It is also recorded in the Order in Council of King Charles II. (1662) that the "dozeniers" had "diverted to other use" some of the revenues of the Trésor of their parishes, apparently during the time of the Colloque. This was to be expected. We know very well that Church endowments, and also those of Charitable and Educational Foundations suffered a great deal from spoliation and loss at this time. As regards the Church, this was an inevitable consequence of the state of things during the Colloque. There was no longer a resident Minister in each parish. Schickler speaks of "les quatres conducteurs de dix troupeaux." In many churches there was but one service on Sunday and in some not even one. There were no longer churchwardens. Under such conditions, and in the absence of the resident officials, whose duty it was to safeguard the church property, the facilities for diverting it "to other use" were great, while the temptation was always present. Moreover, it was parish property, and what was taken out of one pocket could be replaced from the other. There can be no doubt that the statement in the Order in Council is accurate and that a good deal of the church property of the parishes was "diverted to other use," to the depletion of the Trésor and corresponding increase in the Taxe.

Our mandate requires us to enquire into the consequences which would follow if the Petition were granted and the "Taxe pour les besoins des Eglises" were abolished. This is not an easy or simple task.

The first and most striking consequence would be, of course, the change that must be effected in the relation of the parishioners to the Parish Church as owners. For it is not to be supposed that they either could or would retain their ownership and control, as at present.

Legislation would be required to divest them of their ownership and vest it in others. But in whom? The problem is complex and not capable of easy solution. In England the situation is completely, if unsatisfactorily, covered by the "Parson's Freehold" and the Law, or rather series of Laws, relating to Dilapidations. These solutions cannot be recommended here, even if they were feasible, which we doubt. Concerning dilapidations, it would, moreover, be unjust to attempt to impose upon the Incumbents of the parishes a burden from which they have been exempt from the very beginning. Some other solution would have to be found by the States. We are unable to say what it should be.

The change of ownership, with the attendant upsettal of the relations of the parishioners as a body with the Parish Church and the Ecclesiastical officials, would necessitate further changes in our Ecclesiastical system which would also require legislation. We are unable to foresee with any degree of certainty the nature and extent of the legislation that would be required, but it must obviously be of an extensive and intricate character, affecting a diversity of interests, including those of His Majesty the King, who is patron of the Benefices, and raising constitutional as well as Ecclesiastical questions. In fact, the task set by the States will be both difficult and protracted.

The English Compulsory Church Rates Abolition Act, as we have seen, involved no such difficulties and complications, because the Compulsory Church Rate was no integral part of the Ecclesiastical Fabric, which was therefore not intimately affected by its disappearance. But our Parochial "Taxe pour les besoins des Eglises" is woven into the Fabric of our Constitution and its uprootal will affect the whole Fabric, warp and woof.

It is unnecessary, however, to speculate further on the probable consequences of the proposed Abolition of the Parochial "Taxe pour les besoins des Eglises," because our study of the question in its entirety has satisfied us that such Abolition ought not to be recommended to the States, either on its merits or as being demanded by the great majority of parishioners of the various parishes.

We are of opinion that the Parochial "Taxe pour les besoins des Eglises" is based upon the ancient Law and unbroken custom of the Island for many centuries before the Law of Parochial Taxation of 1868. We are also of the opinion that the principle involved in the ownership by the parishes of the Churches, Rectories and Glebe., which is the foundation of the Taxe, is also well established by ancient Law and unbroken custom, and that this principle is of value intrinsically as well as by reason of its great antiquity and historic interest. It is an important asset in the life of the parish and of the Island which is likely in the future to assume even greater importance, and which we would not advise the parishes to abandon, Nor have we any reason to believe that they have either the desire or the intention to abandon it.

We are, therefore, unable to recommend the States to request the Royal Court to draw up a Projet de Loi in the same terms as the English Compulsory Church Rate Abolition Act of 1868.

But we are also of the opinion that a change might be made in the objects of the "Taxe pour les besoins des Eglises" with a view to excluding from it the immediate and direct expenses of Divine Service. We consider it would be more fitting that these should be borne by the worshipers than by the whole body of the parishioners.

It is true that all these expenses were included in the agreement of 1369, whereby the parishioners, in return for "value received," released the Abbots for ever from their share of the charges, not only for upkeep of fabrics, &c., but for "books, lights, vestments, &c., for the services of the Churches." Therefore, by the strict letter of the Law, these are included still, and the parishioners are liable for all such expenses.

Nevertheless, the actual expenses of Divine Service have in fact been dropped out of the Taxe in many of the parishes by tacit consent, while in one parish, at least, that of St. Peter-Port, they have ceased to be demanded for more than 30 years, by virtue of an agreement unanimously approved in the year 1888, and loyally adhered to ever since that date.

This agreement was drawn up by the late Rev. G. E. Lee, M.A., Rector of St.

Peter-Port, whose profound knowledge of matters ecclesiastical and constitutional is acknowledged by all, and the late Rev. M. Gallienne. It enumerates the charges which ought to be borne by the parishioners at large, leaving all other charges to be defrayed by the Trésor and the contributions of the congregation. It has proved workable in practice, and has, we understand, been adopted in principle in other parishes. We think that this principle which undoubtedly makes for smooth working and general goodwill, might now receive legislative sanction and be incorporated in the Law of Parochial Taxation.

We recommend that the charges to be included in the Parochial "Taxe pour les besoins des Eglises" should be limited to the following :

RECOMMENDATIONS

1. Ordinary repairs to the Church and the Rectory, of which no detailed estimate can be given in advance.

2. Ordinary upkeep of Parochial Churchyards.

3. Extraordinary repairs to the Church, the Rectory and the Parochial Churchyards, which shall be voted by the Chefs-de-Famille on the demand of the Churchwardens, a detailed estimate having previously been given.

4. Insurance against fire of Church and Rectory.

5. One half the cost of cleaning the Church.

6. "Taxe sur la valeur locative des propriétés au lieu de l'Equivalent."

7. Maintenance and repairs of the clock.

8. Maintenance and repair of the bells and bell-ropes as well as the pay of the ringers on public occasions.

9. Purchase and upkeep of Registers and Forms of Certificates which concern the parishioners.

10. Cost of printing all parochial publications and notices.

All the expenses of Divine Service will fall upon the Trésor, supplemented by the contributions of the congregation. It is not necessary or fitting that these expenses should be defined by Order in Council. They will naturally be at the discretion of those who are concerned with the Service.

We have therefore the honour to request you to be good enough to lay before the States the above recommendations.

We have the honour to be, Sir
Your obedient Servants,

T. M. W. DE GUÉRIN.
J. ALLÉS SIMON.
F. W. S. LE LIÈVRE
JOHN PENFOLD
Rector of S. Peter Port
and Dean of Guernsey.
H. D. OLLIVIER.
CECIL A. CAREY.
THOMAS H. OGIER.
E. T. LAINÉ.
JOHN E. DOREY

E. C. Ozanne, Esq., Bailiff,
and President of the States of Guernsey.

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

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 16th May, 2005, of the Policy Council, they are of the opinion:-

1. That a Special States Committee called "The Parochial Ecclesiastical Rates Review Committee" shall be established.

2. That the Committee's mandate shall be "To investigate and report on the operation of the Loi Relative à La Taxation Paroissiale 1923, as amended, as to its church property aspects, with particular reference to the repair and maintenance of parochial church property, and alternative means of providing or securing the finance required to repair, maintain and support such property".

3. That the Special Committee Membership Allowance payable in accordance with Section I (2) (v) of the Rules for Payments to States Members, etc. shall be £1,250 per annum.

4. That the Committee's constitution shall be:

    A Chairman who shall be a sitting member of the States

    Four sitting members of the States

    The Committee may appoint up to two non-voting members, who shall not be sitting members of the States.

And, if the forgoing is approved,

5. To elect to that Committee

    A Chairman who shall be a sitting member of the States

    Four sitting members of the States.

POLICY COUNCIL

INTERPRETATION OF LEGISLATION

Executive Summary

This report proposes the enactment of legislation by which words and expressions generally employed in Bailiwick legislation are statutorily defined so as to avoid the necessity for their being redefined throughout every piece of legislation..

Report

Her Majesty's Procureur has written to the Policy Council in the following terms:

> *"As Members of the States will appreciate, the amount of legislation of all types – Projets de Loi, Ordinances and subordinate legislation – the latter including Departmental regulations and statutory instruments – has dramatically increased. Furthermore, legislation has also become increasingly complex. Routinely, legislation has to be interpreted: by the public, by Departments; by advisors; and ultimately, by the courts. A cardinal aid to the interpretation of a piece of legislation is the provision of definitions within the legislation itself, and Members will be aware of the extensive use made of definitions sections as aid to interpreting, and so applying, legislation.*
>
> *However, many definitions are common to much, if not all, legislation, and accordingly to reduce the length and complexity of items of legislation, and to ease the burden on legislative draftsmen, it is the practice for legislatures to enact primary legislation defining words and expressions that recur in legislation. On the mainland the first such Act was the Interpretation Act, 1889, which was repealed and replaced by the Interpretation Act, 1978.*
>
> *In Guernsey, as a result of representations made in 1947 by H.M. Comptroller, the States resolved to legislate to specify the interpretation to be placed upon certain words and expressions in general use in legislation, and the Interpretation (Guernsey) Law, 1948 was duly enacted. The 1948 Law was based on the Interpretation Act, 1889 so far as words and expressions commonly used in English statutes were deployed in Guernsey legislation. However, the words and expressions given statutory definitions by the 1948 Law are few, and in certain instances are now redundant, or require modification. Accordingly, I recommend that the States should enact legislation by which words and expressions generally employed in Guernsey legislation are statutorily defined so as to avoid the necessity for their being redefined throughout every piece of legislation. The list of words and expressions would be broadly derived from the Interpretation Act, 1978 and would be extended and modified to reflect the legislative circumstances of the Bailiwick.*

As a separate item, Members will be aware that primary legislation – Projets de Loi – will not infrequently empower the States by Ordinance, or a Department by regulation, to implement the purpose of the primary legislation. Primary legislation which confers such powers should contain extensive so called 'boilerplate' clauses 'bolted on' to the legislation prescribing the manner and extent of the exercise by the States or Department, as the case may be, of the delegated powers. The repetition in primary legislation of such 'boilerplate' clauses lengthens it, and I therefore recommend that the States, as part of the legislation referred to above, should provide for routine provisions relating to subordinate legislation to be deemed to be included in primary legislation, unless the contrary intention appears, but subject to such modifications, adaptations and exceptions as the particular primary legislation might specify.

The draft legislation to this effect has been drafted (although it is not yet in final form), and I would recommend that this matter, which is not controversial, be considered by the Policy Council as soon as practicable and placed before the States without delay thereafter. The proposed legislation will incorporate provisions of the 1948 Law which are still relevant; provisions of the Interpretation Act, 1978 which are relevant to Guernsey (subject to the comment above); and other interpretative and 'boilerplate' provisions which will be invaluable to Guernsey, and also to the other insular legislatures of Alderney and Sark. If the Policy Council is agreeable to prompting such legislation, might I ask that the authorities of Alderney and Sark also be consulted to determine whether they wish the legislation to apply to those Islands. I strongly recommend that the proposed legislation should apply throughout the Bailiwick.".

The Policy Council concurs with the view expressed by Her Majesty's Procureur and the authorities in Alderney and Sark have confirmed that they wish the proposed legislation to apply in those Islands.

Recommendation

The Policy Council therefore recommends the States to direct the preparation of legislation on the lines set out in this report.

L C Morgan
Chief Minister

16th May 2005

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

The States are asked the decide:-

XI.- Whether, after consideration of the Report dated 16th May, 2005, of the Policy Council, they are of the opinion:-

1. That legislation be enacted as recommended 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

SECURITY OF AIR LINKS

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

28th April 2005

Dear Sir

Executive Summary

The purpose of this States Report is to cover the following matters in relation to Cabernet Limited, Aurigny Air Services Limited and Anglo Normandy Aero Engineering Limited (together "the Aurigny Group"):

- The process carried out by the Treasury and Resources Department in considering a potential strategic alliance partner.
- The current financial positions of the Aurigny Group.
- Future funding issues.
- Matters relating to Board structures.

The Treasury and Resources Department believes that it is in the overwhelming public interest that the Island has secure air links to a major London hub airport.

Having carried out an exercise to investigate whether a strategic alliance partnership could be sought, the Department is of the firm opinion that the States, at least in the medium term, should continue to ensure security of the Island's air links to London by owning the Aurigny Group.

Background

In May 2003 (Billet D'Etat XI, 2003), the States approved the acquisition of the Aurigny Group, as a strategic move to secure the future of air links between the Island and London Gatwick.

The approach to the States was born as a result of a decision by British Airways to withdraw from providing a Guernsey-Gatwick service, which highlighted the Island's vulnerability to commercial decisions in the aviation industry, and the consequences to the Island's social and economic viability of losing main London hub access. The Advisory and Finance Committee viewed the situation as a unique opportunity to protect the Island's access to Gatwick slots indefinitely.

The operating companies, Aurigny Air Services Limited and Anglo Normandy Aero Engineering Limited were acquired by the creation of a holding company, Cabernet Limited, which is beneficially owned 100% by the States of Guernsey. The shares of Cabernet Limited were held in trust for the States by the President and Vice-President of the Advisory and Finance Committee. The President and Vice-President of the Committee, together with Mr Stephen Jones, were appointed as Directors to the Cabernet Limited board. Mr Jones was also appointed as Chairman and Director of the operating companies, alongside Mr Malcolm Hart, Mr Malcolm Coupar and Mr Peter O'Donovan

This structure was considered the most appropriate to ensure that the operating companies continued to operate on an arm's length basis from the States. Mr Jones was appointed to the operating companies' boards to act as shareholder representative on the States' behalf.

Strategic Alliance Process

At the time of the acquisition, it was the intention of the Advisory and Finance Committee to keep the arrangement under continual review, and to consider whether long-term ownership of the Aurigny Group was appropriate. It was recognised at the time, however, that a period of consolidation was required before any further decisions should be taken. Hence, the Treasury and Resources Department, which has taken over shareholder responsibilities from the Advisory and Finance Committee, took over the commitment to carry out a review of the appropriateness of States' ownership of the Aurigny Group.

During the latter part of 2004 and early part of 2005, Treasury and Resources Department, together with the assistance of Mr Stephen Jones and legal counsel, carried out a full and thorough exercise to examine a wide range of possible options for the future ownership of the Aurigny Group, within the overall context of the fundamental strategic objective of security of access to Gatwick. However, the Department always kept an open mind to any offers, including outright sale, which might have been proposed by any appropriate party provided always that any such offer was consistent with the fundamental strategic objective.

Having concluded that a strategic alliance structure for the Gatwick business was legally and practicably possible, the subsequent stage of the process was to approach, on a confidential basis, thirteen potential partners, selected on the basis of certain criteria, the main ones being that they had approached Cabernet Limited in the past two years expressing an interest in the Aurigny Group (or parts of it), and that they operated commercial aircraft. These thirteen parties were asked to provide expressions of interest, supported by information on their financial standing and aviation experience. This process resulted in firm expressions of interest from four parties.

During this process, several others parties claimed that they also wished to be considered. This resulted in a further seven parties making an expression of interest.

The expressions of interest were reviewed and a long-list, comprising the original four parties and two of the subsequent seven, was prepared. All expressions of interest (both those which were solicited and those which were unsolicited) were reviewed and considered on an equal basis, hence the inclusion of two of the latter on the long-list.

The long-listed parties were provided with a partial due diligence pack on the Aurigny Group, and the parties were requested to provide an indicative offer and outline business plan for consideration by 1st February.

At this stage, a substantial offer was received from one operation, for the regional routes only, subject to the granting of a 10-year solus agreement (i.e. exclusivity) in respect of those routes. The Department felt unable to consider this proposal for various reasons, not least because it included a number of further conditions which gave rise to concerns from a commercial perspective. Having assessed the remaining indicative offer submissions, it was concluded that only one party had submitted an offer structure that was worthy of further consideration.

Having completed a detailed due diligence exercise on the preferred bidder, including visiting them at their premises, and performing detailed searches into the standing of the company and its principals, the party was requested to submit a best and final offer price, subject to detailed negotiations, by 28th February.

However, the proposal that materialised was far short of the anticipated amount, and also was less comprehensive in terms of the package included. The offer package essentially involved carving up the Aurigny Group: the bidder was interested mainly in the Aurigny Group's ATR fleet, the regional routes and in providing the Gatwick route service, but not the inter-island routes nor the Anglo Normandy Aero Engineering Limited aircraft maintenance business. The offer in respect of the ATR fleet was £1.5 million, and there was no facility for any guaranteed service levels over the regional routes that these ATRs currently served.

At this stage, the Minister, Treasury and Resources Department, wrote to States Members updating them on the matter and indicating that Treasury and Resources would not be in a position to recommend a strategic alliance partner. This position has not changed in the interim period.

The positive message to arise from the partnership process was that the Aurigny Group was an attractive proposition to a number of interested parties who saw a future for the Group. Retention of the Aurigny Group means that the States must capitalise on that potential and take the companies forward.

Funding Issues

At the time of the original acquisition, States Members were informed that the purchase of the Aurigny Group and the inherent Gatwick slots would require an investment of £5 million, funded out of General Revenue cash deposits. The States were also informed that further support, in terms of cash injections or guarantees for commercial borrowing, might be required in the order of £1-2 million.

Now that the proposal from Treasury and Resources Department is to retain ownership of the Aurigny Group, matters relating to the funding requirements of the Group must be addressed. These fall broadly into three categories: the effects of losses in the past, the consequences of future trading and restructuring expectations, and the requirements for capital investment in the Aurigny Group to secure a solid future.

Historic Results

Cabernet Limited (consolidated)	**Actual 2004 (£000)**	**May – December 2003 (£000)**
Revenue	31,114	16,293
Direct Costs	(25,601)	(12,477)
Operating Result	5,513	3,816
Overheads	(7,284)	(4,189)
Other Operating Income	139	181
Operating Profit / (Loss)	(1,632)	(192)
Restructuring Costs	(420)	-
Exchange Profit / (Loss)	6	2
Net Interest Receivable / (Payable)	(47)	(12)
Profit / (Loss) for the Financial Year/Period	(2,093)	(202)

The Aurigny Group broadly achieved its budgeted result for 2003, but faced extremely difficult trading conditions in 2004, not least due to the introduction of competition on the inter-island routes. Consequently, the Group undertook a process of complete cost rationalisation, resulting in a number of routes being removed from the schedules. Nevertheless, the actual loss, before re-organisation costs, exceeded the Group's budgeted results by £1.2 million.

The cost of the route restructure has been estimated at £1.3 million, of which £0.4 million has been paid or provided for at 31 December 2004. In addition, trading losses and restructuring costs have reduced the Group's balance sheet to a negative position, as at December 2004, of £2.3 million. Liabilities on the balance sheet include the third party loan, guaranteed by the States, equating to £1.5 million at December 2004 including rolled up interest, and a further £1.5 million trading debt owed to the States of Guernsey (Airport).

Hence, the funding required to restore the Aurigny Group to a neutral balance sheet (£2.3 million), and to cover the remaining anticipated re-organisation costs (c. £0.9 million), totals in the region of £3.2 million.

Future Trading Forecasts

Aurigny Air Services Limited	**Actual 2004 (£000)**	**Budget 2005 (£000)**	**Budget 2006 (£000)**
Revenue	29,571	22,398	22,834
Direct Costs	(25,218)	(17,618)	(17,648)
Operating Result	4,353	4,780	5,186
Overheads	(5,987)	(4,951)	(4,903)
Other Operating Income	140	128	128
Profit/(Loss) before Interest & Tax	(1,494)	(43)	411
Exceptional costs	(420)	(880)	-
Profit/(Loss) before Interest & Tax (after exceptional costs)	(1,914)	(923)	411

In terms of future trading expectations, Aurigny Air Services Limited is budgeted to make a small trading loss in 2005, prior to consideration of the exceptional route restructuring costs, although initial monthly figures for 2005 indicate results ahead of budget.

In 2006, Aurigny Air Services Limited is forecast to return to profit, estimated in the region of £400,000. However, as recent events have shown, the aviation industry is fast moving and can be seriously affected by outside events (terrorist attacks, oil prices etc.). There is, therefore, a relatively high degree of volatility and uncertainty in predicting future activities.

Anglo Normandy Aero Engineering Limited	**Actual 2004 (£000)**	**Budget 2005/6 (£000)**
Revenue	5,460	4,189
Direct Costs	(4,301)	(3,059)
Operating Result	1,159	1,130
Overheads	(1,279)	(1,293)
Profit/(Loss) before Interest & Tax	(120)	(163)

Anglo Normandy Aero Engineering Limited is budgeted in 2005 and 2006 to make losses in the region of £163,000 each year. However, retention of this company is considered crucial in terms of returning Aurigny Air Services Limited to profitability, as the companies form an integrated business.

Hence, performance in line with budget would mean that the Aurigny Group would begin to hold its own over the coming two years **(excluding the re-organisation costs)**, generating a combined Group result of £(206,000) for 2005 and £248,000 for 2006.

Capital Investment

Part of the cost cutting exercise referred to above has resulted in a short-term measure of deferring all major non-essential capital investment. This cannot be sustained in the long-term, especially if the Aurigny Group is to improve its long-term viability. Hence, capital investment, estimated in the region of £1 million, is required in the near future to cover the following items:

- E-ticketing software and implementation (£400,000) to enable administrative efficiencies and modern service levels.

- Replacement of the Jersey Shorts 360 aircraft with an ATR 42 for flight synergy benefits (£200,000 including crew training).

- Spare engine to reduce technical downtimes and risk (est. £300,000).

- Replacement of airport plant and vehicles (£100,000).

Summary

The result of the above three factors indicates that, assuming trading forecasts are met, future funding requirements for the Aurigny Group total £4.2 million over the next two years as follows:

- **to restore the Group's balance sheets (£2.3 million),**

- **to meet the balance of the exceptional costs of route restructuring (£0.9 million),**

- **to meet the need for on-going capital investment (£1 million).**

Funding Options

The Treasury and Resources Department has considered various funding options to meet the above requirements (including capital injections, loans, third party commercial borrowing and/or a combination of these options). It has come to the conclusion that, at this stage, the most appropriate mechanism would be for the Aurigny Group to continue to seek further third party funding, if necessary guaranteed by the Treasury and Resources Department.

<u>Board Structures</u>

The current directors of Cabernet Limited are the Minister and Deputy Minister of the Treasury and Resources Department (having assumed the previous responsibilities and shareholdings of the President and Vice President of Advisory and Finance Committee) and Mr Stephen Jones. Mr Jones is also Chairman and Non-Executive Director of the operating companies, to represent the shareholder interests. The Executive Directors of the operating companies are Mr Malcolm Hart (Managing Director), Mr Malcolm Coupar (Commercial Director) and Mr Peter O'Donovan (Finance Director).

Mr Jones has given notice that he wishes to resign from his directorships on the boards of Cabernet Limited and its subsidiary companies, with effect from the date of the States meeting at which this States Report is considered. The Department would like to thank Mr Jones for his commitment to the task, and for his crucial involvement in the strategic partnership process. His input over the past two years has been invaluable.

The Department is pleased to have been able to appoint Mr Paul Fairclough to the boards of Cabernet Limited, Anglo Normandy Aero Engineering Limited and Aurigny Air Services Limited. Mr Fairclough was appointed on 19th April 2005 to allow a smooth transition process prior to the departure of Mr Jones. Mr Fairclough will replace Mr Jones as Chairman of the operating companies on Mr Jones' departure.

Mr Fairclough, age 65, has recently retired as Chief Executive of the International Energy Group, and has extensive experience of working with and developing commercial companies. He has previously been a non-executive director of a number of companies, including UK Select Trust Ltd, NatWest Offshore Ltd and Islands Insurance Company Ltd, as well as Chairman of the Channel Islands Group of Professional Engineers.

Mr Fairclough was joined on the boards of Aurigny Air Services Limited and Anglo Normandy Aero Engineering Limited by Mr Anthony Creasey. Mr Creasey is the Managing Director of Creasey and Son Ltd, the local retail group which operates Creasey's Department Store and the Marks & Spencer Franchise, and hence has a strong customer service background. He has been a Council Member of the Guernsey Chamber of Commerce for many years and is currently chairman of the Chamber Retail Sub Committee.

Mr Fairclough will be charged with selecting an appropriate board structure, and persons to fill the directorships, to assist him in taking the Aurigny Group forward into the future. The board will also be tasked with defining appropriate terms, conditions and performance incentives for the Executive Directors of the operating companies.

The Department believes that the Aurigny Group has a vibrant future ahead of it and the new Cabernet Limited board will be tasked with taking the companies forward and restoring them to profitability.

Recommendation

Having outlined the comprehensive process carried out by the Department to look into the possibility of a strategic alliance partnership for the Aurigny Group, the Treasury and Resources Department recommends the States to:

(i) endorse the Treasury and Resources Department's conclusions that retention of the Aurigny Group is in the overwhelming public interest, and represents the best strategic option for the Island at the present time.

(ii) authorise the Treasury and Resources Department to facilitate (if necessary by providing guarantees) the Aurigny Group's borrowing from third parties.

(iii) direct the Treasury and Resources Department to report back to the States on the financial position of the Aurigny Group on a regular basis as part of the Interim Financial and Budget reports.

I should be grateful if you would lay the matter before the States with the appropriate propositions.

Yours faithfully

L S Trott
Minister

(NB The Policy Council supports the proposals)

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 28th April, 2005, of the Treasury and Resources Department, they are of the opinion:-

1. To endorse the Treasury and Resources Department's conclusions that retention of the Aurigny Group is in the overwhelming public interest, and represents the best strategic option for the Island at the present time.

2. To authorise the Treasury and Resources Department to facilitate (if necessary by providing guarantees) the Aurigny Group's borrowing from third parties.

3. To direct the Treasury and Resources Department to report back to the States on the financial position of the Aurigny Group on a regular basis as part of the Interim Financial and Budget reports

HOUSING DEPARTMENT

ALTERATIONS TO THE HOUSING REGISTER –
THE FORMER ROYAL HOTEL SITE

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

25th April 2005

Dear Sir,

Executive summary

The purpose of this report is to seek to approval in principle for the preparation of an Ordinance (under section 52 of the Housing (Control of Occupation) (Guernsey) Law, 1994) to allow the inscription of eight dwellings at the proposed Royal Terrace development (the former Royal Hotel site) 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 Authority 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."

The former Royal Hotel site

This site is situated in a MURA which includes more than 100 new dwellings overall. The former Royal Hotel site has been developed in phases and the next residential phase forming the corner of Glategny Esplanade and Bosq Lane, to be known as Royal Terrace, is to be developed by the Jubilee Group Limited.

The developer has requested that eight of the 42 dwellings to be erected in this phase of the development be inscribed in the Housing Register under the above policy.

The Housing Department is satisfied that provided that at least 16 Controlled ('Local Market') dwellings are erected and made available for occupation in this phase of the development it will meet the requirements of the policy.

It therefore supports the proposal that, provided that the developer company arranges for eight dwellings to be deleted from the Housing Register at the request of the owners, eight new dwellings in the development should be made eligible for inscription in the Register, subject to the foregoing proviso.

Provisions of the Law

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.

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 Authority to inscribe any dwelling in Part A or Part B of the Housing Register.

Proposals

Accordingly, the Department asks the States to agree in principle that they will be prepared to approve an Ordinance allowing it, on application being made by the owners, to inscribe eight dwellings in Royal Terrace, which is to be developed by the Jubilee Group Limited, in the Housing Register.

The inscription of the eight dwellings would be subject to the following: -

1. The deletion of eight existing dwellings from the Register at the request of their owners; and

2. The completion of the construction of the eight dwellings in Royal Terrace which would be inscribed on the Register; and

3. The simultaneous or prior completion of construction and availability for occupation of at least a further 16 dwellings in Royal Terrace, so that the one third proportion criterion is satisfied.

If the States agree these proposals, submission of the Ordinance for States' approval will be delayed until the development is nearing completion, in view of the fact that the Ordinance will need to identify the dwellings which it permits to be inscribed, and to verify that at least 16 'local market' dwellings have been constructed and completed, and so available for occupation.

Recommendations

Accordingly the Department recommends the States:

(a) To direct that an Ordinance be prepared to enable the Department to inscribe in Part A of the Housing Register by virtue of Section 52 of the Housing (Control of Occupation) (Guernsey) Law 1994, eight dwellings which will be constructed on property comprising part of the site of the former Royal Hotel, to be known as Royal Terrace;

(b) To agree that the Ordinance should provide that a dwelling shall not be inscribed until:

   (i) the construction of not less than 24 dwellings in Royal Terrace has been completed of which not less than 16 'local market' dwellings are available for occupation; and

   (ii) the deletion of eight dwellings from Part A of the Register at the request of their owners has been effected.

I should be obliged if you would place this matter before the States with appropriate propositions.

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:-

XIII.- Whether, after consideration of the Report dated 25th April, 2005, of the Housing Department, they are of the opinion:-

1. To direct that an Ordinance be prepared to enable the Housing Department to inscribe in Part A of the Housing Register by virtue of Section 52 of the Housing (Control of Occupation) (Guernsey) Law 1994, eight dwellings which will be constructed on property comprising part of the site of the former Royal Hotel, to be known as Royal Terrace.

2. That that Ordinance shall include the provision that a dwelling shall not be inscribed until:

   (i) the construction of not less than 24 dwellings in Royal Terrace has been completed of which not less than 16 'local market' dwellings are available for occupation; and

   (ii) the deletion of eight dwellings from Part A of the Register on the application of their owners has been effected.

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

EDUCATION DEPARTMENT

EDUCATION DEVELOPMENT PLAN 3 - THE DEVELOPMENT, FUNDING AND ACCOUNTABILITY OF THE GRANT-AIDED COLLEGES

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

27th April 2005

Dear Sir

Executive Summary

Purpose of the States Report

1. The Education Department is required by States' Resolution to return periodically to the States with proposals on Colleges' funding. The report, therefore, seeks the States approval for a new funding methodology to be adopted for the three Colleges: The Ladies' College, Elizabeth College and Blanchelande Girls' College.

2. These matters form part of the Education Department's Education Development Plan 3, the principles of which were endorsed by the States in April 2002. Other matters within EDP3 that will need to be addressed in future States' reports include the future development of Notre Dame du Rosaire Primary School and the duties and powers of the States in terms of the private schools. These are matters on which the Board of the Education Department will return to the States in due course.

3. The main proposals in the report are:

    1. that the States should continue to grant aid the three Colleges;

    2. that new funding arrangements for the three colleges are introduced from September 2005 onwards and that the existing funding arrangements for the three Colleges are replaced in entirety at this time;

    3. that the new funding arrangements are simplified to include just two elements:

i. an annual grant initially of £2,000 for every senior pupil educated in the Colleges, including Special Place Holders;

ii. the payment of the full annual tuition fee, in addition to the amount mentioned above, for Special Place Holders;

4. that formal funding agreements incorporating conditions of grant aid are introduced to improve accountability to the States; and

5. that the new funding arrangements are reviewed on a periodic basis.

Background

The Principles Behind College Funding

4. The States are asked to note:

- that the Board of the Education Department wish to continue to grant aid the Colleges for the contribution they make to the educational provision of the island;
- that in the current economic climate, an increase in grant aid to private charitable institutions is hard to justify but at the same time any proposals for a decrease in grant aid to the Colleges may be viewed as unfair, given the role they have in the delivery of education in Guernsey, and would pose a threat to their financial and educational viability;
- that the Board endorses the principle that the Colleges should remain as independent charitable institutions, but with financial support from the States to ensure their continued existence as economically viable institutions;
- that in view of the amount of States' funding provided to the Colleges and the number of States' pupils attending the Colleges, the Board of the Education Department believes that there is a need to establish a formal agreement setting out the conditions of grant aid; and
- that the Board view the move to a common funding methodology for all three Colleges as the right approach.

Previous States Resolutions

5. At present, all three Colleges are part-funded by different resolutions of the States.

6. The States has previously considered the funding arrangements of Elizabeth College and The Ladies' College in **BILLET D'ETAT XXIII, November**

1998. A formula was agreed for Elizabeth College whereby the total agreed school revenue budget for pupils aged 11-18 is achieved in three parts:

1. private fees

2. payment from the States for a fixed number (23 per year) of pupils gaining special places

3. subsidy from the States for each pupil.

7. In addition, the States aim was to enable the College to achieve an operating surplus of £100,000 a year (1999 price base). The model was to run for seven years' ending in 2005/2006 and, as part of the formula, the level of subsidy for each fee-paid pupil was to reduce each year so that by 2005/2006 the States funding per pupil would be about half that paid in 1999/00 in real terms.

8. The former Education Council was required to return to the States periodically with proposals for the funding arrangements for Elizabeth College and to undertake financial "health checks" after set periods to ensure the continued viability of the College. Agreement has been reached and financial settlements made with the College for the years 1999/00, 2000/01 and 2001/02.

9. The States agreed a similar formula in principle for The Ladies' College through the same Policy Letter set out in the Billet for November 1998. However, the implementation of the revised funding arrangements was suspended until such time as the States could consider the capital requirements of the College and the issue of the transfer of ownership of land and buildings.

10. The Ladies' College currently receives from the States:

    1. payment of fees in respect of 23 special place holders per year

    2. payment of the employers' superannuation contributions for all staff in the Upper and Lower Schools.

    3. payment of the difference between budgeted expenditure and anticipated income shortfall.

11. This last element nominally retains The Ladies' College on a deficit funding model i.e. the States agrees to cover any shortfall. In practice, however, the Education Council has restricted its annual States grant to the College to a percentage increase equivalent to that given to States Committees budgets. The College has also retained any surpluses it achieved. The Ladies' College, however, does not pay for any capital repairs and development to its land and buildings, although it does pay for revenue repairs and maintenance out of the deficit funding arrangements; this therefore differentiates the Ladies College from both Elizabeth College and Blanchelande who are responsible for both capital and revenue repairs and maintenance to their premises. A fine distinction

between these elements is not always possible and what is and is not a capital item is often blurred.

12. Blanchelande Girls' College declared in May 2001 (at the time of the States' debate on the ending of selection) that it had to compete on an unequal footing with the subsidized fees of the other Colleges and that without similar levels of funding it was difficult to afford improvements in many areas including teaching resources, basic facilities and building maintenance.

13. In April 2002, **BILLET D'ETAT VI, 2002,** the States considered the former Education Council's Policy Letter "A Site Development Plan for the Reorganization of Secondary, Post-16 and Special Needs Education in the Bailiwick of Guernsey." The Council presented three programmes for action in that policy letter:

    Programme 1 – the Site Development Plan (rebuilding)

    (This was the main focus of the policy letter and was targeted at the secondary, post-16 and Special Needs sectors)

    Programme 2 – the Site Development Plan (rationalisation, renovation and improvement):

    - Primary
    - Grammar School
    - Education Department and Central Services

    Programme 3 – the Development, Funding and Accountability of non-States Schools:

    - Blanchelande Girls' College
    - The Ladies' College
    - Elizabeth College
    - Voluntary Schools
    - Private Schools

14. The States gave approval in principle to the Council's plans and much of the work undertaken by the Department since that time has concentrated on the next stage of those plans for the ten, site-specific projects in Education Development Plan 1. The States' approved resolutions did not include specific reference to Programmes 2 or 3.

15. In January 2003, **BILLET D'ETAT I, 2003,** the States also agreed for the first time to provide grant funding in respect of Blanchelande Girls' College. Prior to this, the College had never received a grant, though funding was available for

the provision of up to six places per year for Roman Catholic girls who achieved a sufficiently high standard in the Eleven Plus to be awarded a Special Place.

16. **Annex 1,** attached, provides a more detailed analysis and history of these arrangements.

The Reasons For Review

17. The drivers for change come not only from the Board of the Education Department and former Education Council but from the Colleges themselves.

18. It is considered that the current arrangements are in need of change. The Colleges are unhappy with the funding arrangements for different reasons: Elizabeth College, because the new funding formula has not produced the anticipated planned surpluses; The Ladies' College, because it considers the nominal deficiency grant system stifles initiative and inhibits growth; and Blanchelande, because it is treated differently from the other Colleges. From the Department's perspective also, there are good reasons for revisiting the funding arrangements. These include, but are not limited to, achieving greater transparency and a more equitable means of distribution, and the removal of certain disincentives for change i.e. the nominal deficit funding for The Ladies' College. The biggest single objection to the current arrangements is, however, that the funding methodology for all three Colleges is different for each one of them. There is a universal feeling that this needs to change and that the Colleges should be funded in future on a common basis, albeit that the different character of each College should be accommodated by the new funding arrangements.

19. The buildings occupied by The Ladies' College are in States' ownership. The most recent reports commissioned by the College suggest that up to £11.5m is needed, based on a 2008 start and price base, to bring facilities to the standards the governors feel are necessary in terms of modern day requirements. This level of capital funding cannot be provided in priority to completion of EDP1. The College does not have sufficient reserves to meet even part of the costs, which is partly due to a previous lack of clarity over retention of reserves and also because of disincentives within the current funding arrangement which actively discourage the College in terms of any need to raise fees in real terms. The fees charged are significantly below Elizabeth College, and previous and current increases have been modest.

20. **Annex 2,** attached, provides an illustration of fee increases over the last seven years. To meet the aspirations of the College, fee levels may have to increase.

21. The Ladies' College Board does not see any benefit in taking over responsibility for the land and buildings it currently occupies and which are vested in the States. It continues to be, therefore, the States' responsibility to ensure that The Ladies' College buildings and facilities are "fit for purpose". However in order to achieve consistency between the three Colleges and their funding the Education Board consider that responsibility for all building matters should be

transferred to The Ladies' College. This, however, is a difficult issue because of the amount of the works that will be required and it may be that transitional proposals relating to capital works may be needed. The Board of the Education Department is of the view that the existing funding arrangements need to be changed for all the Colleges at the same time and the proposal is that this should be with effect from September 2005. The existing funding arrangements will cease at this time. It is the firm intention of the Board to make the on-going arrangements for the payment of grant aid conditional upon The Ladies' College accepting responsibility for capital development and maintenance of its premises, perhaps by way of long lease, and the Education Board propose to consult with The Ladies' College on this issue and how this obligation may be transitioned into the new funding arrangements, and will return to the States setting out its detailed proposals in due course.

Ownership of Buildings

22. See **Annex 3.**

Governance

23. The Board of the Education Department believes that the Department should not be too involved in the detailed running of the Colleges and that, essentially, the Colleges should continue to operate as independent institutions grant-aided by the States. However, a considerable amount of States' funding underpins the Colleges and the Board is concerned at its current lack of key information in certain areas concerning their operation, particularly as regards quality of learning. The Colleges are not subject to the same inspection routine as States' maintained schools, but rather have their own arrangements. At the moment, it is only The Ladies' College which discusses its reports with the Board of the Education Department. With higher levels of scrutiny and accountability across the States, post machinery of government changes, the Board feels that a more formal arrangement has to be adopted.

24. The Board of the Education Department considers it important to set out conditions relating to the support from the States and considers that this would be best be achieved by establishing a new underpinning agreement with the Colleges, which sets out the conditions of grant aid. This agreement would ensure that the Board of the Education Department is provided with information regarding the quality of learning, for example, by requiring the Colleges to submit information, such as inspection reports, to the Board and for these to be considered on a formal basis. Other areas of the relationship would benefit from being prescribed and include audit, presentation of accounts, and working towards common dates for fee increases. This will ensure that the States continues to receive best value from the Colleges and may also help the Colleges in their own strategic planning.

25. The details on the proposed conditions of grant aid are set out in the next section.

Conditions of Grant Aid

26. The Department's mandate is to advise the States on matters relating to the provision of education in Guernsey, Alderney and Herm and to be responsible for the provision of statutory education and training in the islands.

27. The Board of the Education Department is accountable to the States for the management and safeguarding of public funds and other resources entrusted to it.

28. While the Board of the Education Department does not seek to exercise detailed control of the activities of the recipient Colleges, it must set out the conditions and terms on which the Grant is to be paid. In drawing up the terms and conditions, a balance must be sought between the need to ensure prudent management of grant provision and the need to provide the freedom required by the Colleges.

29. To exercise the powers and duties conferred on it by the States, the Board of the Education Department proposes that conditions of grant aid should be established, and the payment of grant shall be conditional upon compliance with them.

30. The Board proposes that where grant aid conditions have been established, no grant shall be payable unless those conditions have been complied with or the Board of the Education Department has agreed otherwise. It is intended that so far as possible the same conditions will apply to all three Colleges, although there may be some variations to reflect the character of the particular College.

31. The Board of the Education Department may from time to time issue further conditions, following consultation with the Colleges.

32. Any College to whom a payment of grant has been made shall, if so required by the Board of the Education Department, furnish it with such information as may be required to verify that any grant paid has been properly paid under the conditions of grant aid: these conditions in future will be referred to as "Conditions of Grant Aid - Elizabeth College, The Ladies' College and Blanchelande Girls' College".

33. Where at the time of approving the expenditure detailed in this report, both revenue and capital, the Board of the Education Department, requests information in respect of the purposes listed in the conditions of grant-aid, payment of grant shall be conditional on that information being provided.

34. The Conditions of Grant Aid: Elizabeth College, The Ladies' College and Blanchelande Girls' College are set out in **Annex 4.**

The New Funding Proposals

35. The present level of States' funding for the Colleges for the academic year 2004/2005 is £3.64 million. The individual elements are:

Elizabeth College	£1,712,100
The Ladies' College	£1,465,000
Blanchelande College	£ 461,900

36. However, under the present 7-year funding model which applies to Elizabeth College, the College grant is set to reduce to £1,686,400 in September 2005 at current prices.

37. Fees for the Academic Year 2004/05 are:

Elizabeth College	£5,160
The Ladies' College	£3,650
Blanchelande College	£3,690

The average UK day fee in 2004 for a comparable College was £7,200.

38. Elizabeth College and Blanchelande Girls' College are responsible for revenue and capital expenditure and so have to meet these commitments from the funding the States provides from the fees they charge and any other sources of income available to them.

39. The Board of the Education Department now recommends to the States that the Colleges should be funded from September 2005 on the following basis:

- a grant of £2,000* for every Senior pupil, including Special Placeholders
- an additional payment in respect of Special Placeholders equivalent to the full tuition fee charged by the Colleges.

  * The figure of £2,000 per pupil is derived from the sum available in the original budget after meeting the costs of Special Placeholders. The figure should be adjusted, from September 2006 onwards, in line with any standard percentage increase awarded to States' Departments.

40. The current grant levels for the academic year 2004/2005 are:

	States Funding	**Private Fees**	**Pupil Numbers**		
	£	£	SPH	Private	Total
Elizabeth College	1,712,100	5,160	161	301	462
The Ladies' College	1,465,000	3,650	161	251	412
Blanchelande Girls' College	461,900	3,690	21	185	206
	3,639,000		343	737	1,080

41. If the proposed funding arrangements had applied for the Academic Year 2004/2005, the cost of the proposals would have been broadly neutral, costing just £16,000 extra, though individual College grants would have varied.

42. The revised formula funding amounts for 2004/2005, on the above basis, would be as follows:

Elizabeth College		£1,754,760
The Ladies' College		£1,411,650
Blanchelande Girls' College		£ 489,490
	Total	£3,655,900

43. Elizabeth College sets its new fee rates from September each year; The Ladies' College and Blanchelande Girls' College, from January. The proposal is for the new funding arrangements to take effect from September 2005. The Ladies' College and Blanchelande Girls' College could choose to alter fee dates accordingly, or stay as they are. Were the Colleges to increase fees, the actual impact of the revised funding formula is therefore likely to be different to that outlined above.

44. As the new grant is based on the number of pupils and the fee rates that the Colleges will charge in future, it is not possible to give a precise figure on future costs. **It is, therefore, essential that the Colleges' Budget continues to be a separate Education Department Cash Limit and remains separate from the Education General Budget.**

45. The overall grant will be based on a combination of the fees charged by the Colleges, the general level of subsidy given in respect of every pupil, and the number of pupils. Fee increases will result in the States' overall contribution to the Colleges increasing in real terms, if pupil numbers are maintained or increased. Without any fee increases in real terms, and pupil numbers remaining broadly static, the cost to the States is likely to be neutral. However, this is similar to the increases given in the existing models for inflation on various elements. It is certainly anticipated that The Ladies' College fees would rise over time in real terms to fulfil the objective of creating a building reserve for the future. Such a reserve, together with future help from the States in terms of capital assistance, is probably the most realistic way of addressing the College's future building needs and which will be addressed in the proposals for dealing with the transition referred to in paragraph 21.

46. Given the variables involved it is not possible to give exact figures regarding future grant levels. However, **Annexes 5a and 5b** give illustrative examples of the possible effect of fee increases and pupil number variations.

Recommendations

47. The Board of the Education Department therefore recommends the States:

i. to approve the continuation of States funding for Elizabeth College, The Ladies' College and Blanchelande Girls' College;

ii. to approve that the Colleges' Budget continues to be a separate Education Department Cash Limit and remains separate from the Education General Budget;

iii. to direct the Treasury and Resources Department to take into account these proposals when recommending to the States revenue allocations for 2006 and subsequent years, including any adjustments in respect of employers' superannuation rates;

iv. to endorse the cessation of the existing grant aid arrangements from September 2005;

v. to approve a new model of funding for the Colleges from September 2005, which allows the Colleges to retain any surpluses achieved by the new formula, based on the States funding Special Placeholders at the full fee costs, and all pupils attracting a "general contribution" of £2,000 from the States;

vi. to approve from September 2006 an annual adjustment in the "general contribution" element of the grant, in line with any standard percentage increase awarded to States' committees;

vii. to approve the new model of funding for a period of 7 years, commencing in September 2005;

viii. to direct the Education Department to carry out an internal review of the new arrangements after receipt of 3 years of accounts, with the reviews to be completed no later than the end of 2009;

ix. to approve provision in the formula for 161 special place holders at Elizabeth College and The Ladies' College;

x. to approve provision in the formula for 21 special place holders at Blanchelande Girls' College, or more where the actual number of special places exceed this, based on admissions in recommendation (xi) below;

xi. to approve up to 23 special places per school year for Elizabeth College and The Ladies' College and up to 6 special places per school year for Blanchelande Girls' College, subject to the existing qualifying criteria;

xii. to approve financial support, subject to the prior introduction of an agreement incorporating conditions of grant aid.

Yours faithfully

M.A. Ozanne
Minister

Annex 1.

FUNDING OF THE COLLEGES

HISTORY

Set out below is the recent history of the various funding methods used to calculate States' funding for the three independent Colleges.

1. The Ladies' College

   Historically the funding for The Ladies' College has been on a deficiency grant basis. Funding is in three parts

   - Fees at the standard fee rate are paid for Special Place Holders
   - Employer's Superannuation contributions, for all staff, are paid by the States
   - A deficiency grant is paid to balance income with expenditure.

   However, since 1992, when the States changed its financial procedures and methods of setting budgets, the third element of funding for the Ladies' College has been increased annually by the general percentage increase in States' funding and the College has retained any surplus made in any particular year. It has also carried forward any deficits that may have occurred.

   This change was agreed between the Council and The Board of Governors but no legislative changes have been made as the changes coincided with discussions to review funding methods for The Ladies' College and Elizabeth College. The review has never been completed in respect of the Ladies' College.

2. Blanchelande Girls' College

   Until January 2003, the only States' funding provided to Blanchelande College was in the form of fees paid for the Special Place Holders attending the College.

   In January 2003 the States agreed to provide a grant in addition to the fees. This grant was effective from the academic year 2001/02.

   The grant was based on a payment of £1,500 per fee payer attending the senior school and payment of employer's superannuation contributions.

   The grant has been increased by "inflation" since the base year.

3. Elizabeth College

   The recent history of funding is as follows

   From 1965 to 1998, funding was based on the cost of educating a pupil at the Grammar School for Boys and subsequently the combined Grammar School.

The last States resolution, dated 1 November 1984, on this funding method was as follows:

"(a) The net total expenditure on the revenue account of the Grammar School for that year excluding those expenses incurred in the removal to the new building, after deducting there from the total amount of the contribution payable by the States to the Superannuation Fund in respect of the teachers and other staff employed at that School shall be divided by the number of pupils on the School roll on the first day of October of the preceding calendar year and the resulting amount shall be multiplied by the number of boys nominally of the age of eleven and over on the College roll on the same day.

(b) There shall be added to the amount arrived at as a result of the calculation described in paragraph (a) above an amount equal to the total amount of contribution payable by the Board of Directors of the Elizabeth College for that year to the Superannuation Fund in respect of the teachers employed at the College and the resulting sum shall be the amount of the Block Grant for that year."

This method of funding continued until 31 December 1987.

In view of the falling numbers of pupils attending school in Guernsey the States agreed to a new method of funding from January 1988 based on a fixed percentage of pupils in the secondary sector in Guernsey, the "educational costs per pupil at the Grammar School and the average "premises" costs of the four secondary schools. The latter was because of the extended use of the Grammar School by the community outside of normal school hours. The States resolution read as follows:

(a) The net total expenditure on the Revenue Account of the Grammar School for each year in respect of books, stationery, materials, furniture, equipment and the salaries of teachers, divided by the number of pupils on the Grammar School roll on the first day of October of the preceding calendar year, and the resulting amount multiplied by 13.3% of the Island's total secondary school population on the same day shall be part of the Block Grant, to which shall be added,

(b) One quarter of the total cost of providing in the four Island secondary schools cleaning, fuel, electricity, gas and water, maintenance of buildings and grounds and non-teaching staff salaries, wages and superannuation for each year.

(c) In addition to the Block Grant, the Board of Directors of Elizabeth College shall receive annually an amount equal to their contribution payable to the Superannuation Fund in respect of teachers employed at Elizabeth College.

It should be noted that superannuation contributions were payable in respect of teaching staff employed at Beechwood as well as the Upper School.

THE CURRENT SITUATION

The funding for The Ladies' College and Blanchelande Girls' College remains as described above but the funding for Elizabeth College was changed with effect from 1 September 1999. This change marked a move away from funding based on expenditure in Council schools to funding based on expenditure incurred by the College.

The new formula used financial figures from the 1998/99 College financial year and fee paying pupil numbers as the base figures. Special Place Holder numbers were based on 23 per year rising to a maximum of 161 pupils.

The formula was in three parts:

- the per capita cost of a pupil at the College
- a notional fee subsidy
- an operating surplus of £100,000

The three parts form the block grant and it was not intended that beyond the base year that the three parts would be specifically identifiable in the payments made.

The original calculation included payment of the per capita cost for each Special Place Holder based on an increasing number of Special Place Holders (to a maximum of 161).

The notional fee subsidy was taken as being the difference between the average fee paid and the per capita cost. This subsidy was to be halved over a seven year period ending in 2006.

The operating surplus was intended to provide the basis of a fund to meet, in part, Capital requirements.

The funding of employer's superannuation contributions for staff employed at Beechwood ceased under the new arrangement.

The funding formula was designed to provide the College with a known level of funding from the States. This would improve the ability to plan and would enable the College to raise additional income by raising fees beyond the levels indicated in the formula, by attracting a greater number of fee-paying pupils or by adjusting expenditure levels.

The grant is increased annually as follows:

- 70% of the grant is increased by a percentage equal to the teachers' pay award (from 1 April)

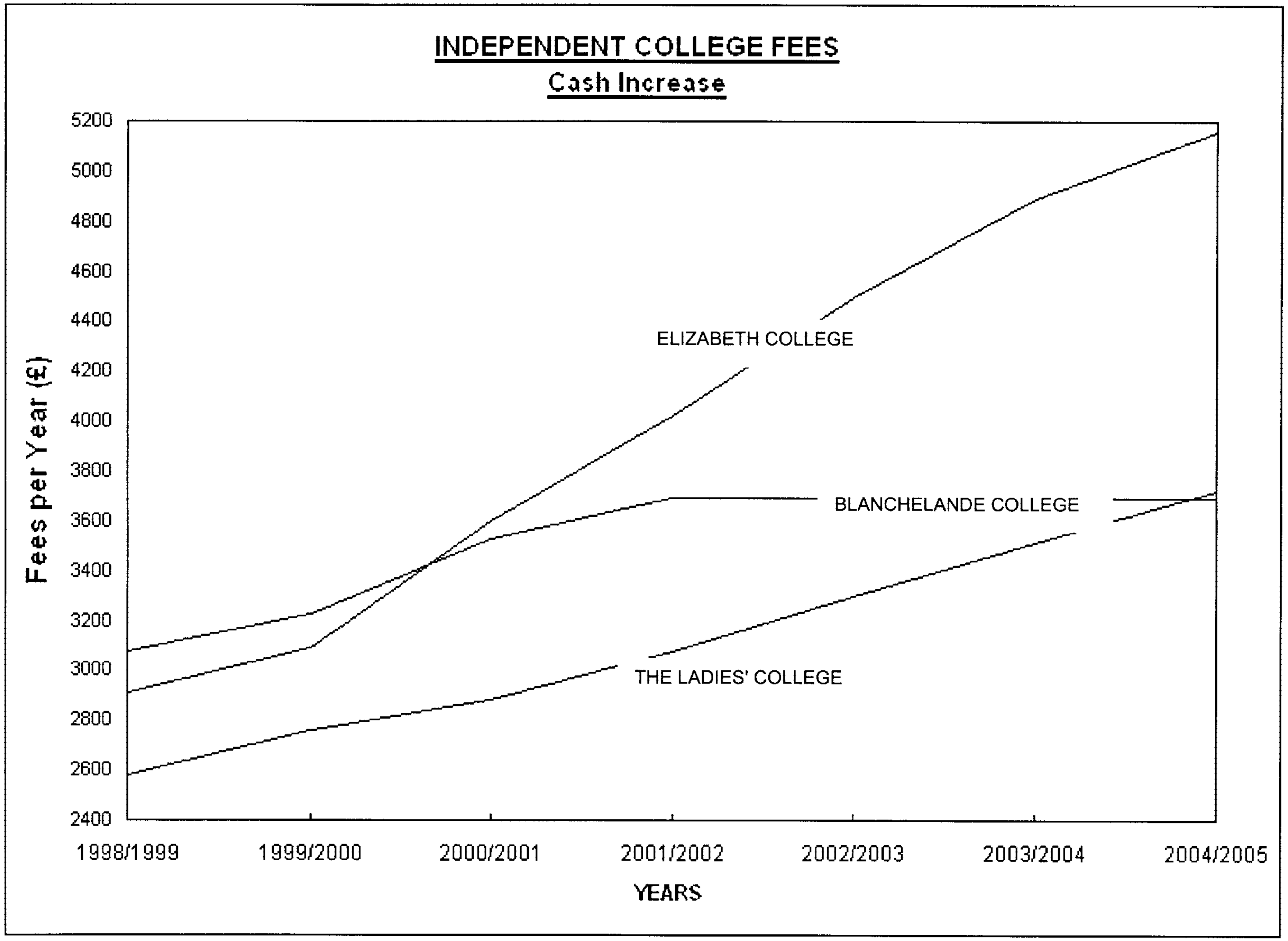
- 30% of the grant is increased by the percentage applied by the Treasury to States Committee budgets to reflect non-staff inflation

- The Operating Surplus is increased by the percentage applied by the Treasury to States Committee budgets to reflect non-staff inflation.

Annex 2

INDEPENDENT COLLEGE FEES (Upper School)

	1998/1999 £	1999/2000 £	2000/2001 £	2001/2002 £	2002/2003 £	2003/2004 £	2004/2005 £
Elizabeth College							
(wef Sept)							
per Term	970	1,030	1,200	1,340	1,500	1,630	1,720
per Year	2,910	3,090	3,600	4,020	4,500	4,890	5,160
Ladies College							
(wef Jan)							
per Term	860	920	960	1,025	1,100	1,170	1,240
per Year	2,580	2,760	2,880	3,075	3,300	3,510	3720*
Blanchelande College							
(wef Jan)							
per Term	1,025	1,075	1,175	1,230	1,230	1,230	1,230
per Year	3,075	3,225	3,525	3,690	3,690	3,690	3,690



* note 2004/05 fee rate £3,650 i.e. 4 months 03/04 and 8 months

The Ladies' College 04/05

Annex 3

Ownership of Buildings

Currently there are significant differences in the relationship between each College and the States. The former Education Council wished to move to a situation where the relationship with each College was broadly similar, and the Education Board having considered these points again, sees great merit in such a development.

Ownership of land and buildings is a key question in terms of the relationship with each College. The status of the ownership of the premises occupied by The Ladies' College and Elizabeth College and the legal powers of the College Boards in relation to the ownership of land is being researched in preparation for a further Report on these matters.

The Guernsey Ladies' College was founded in 1872 as a private initiative. In 1908 the College was reconstituted as a limited liability company. The College Board of Governors is a statutory body (created in 1962) with the same powers as a limited liability company, and therefore, it can acquire and hold real property. At the same time as the new constitution was agreed, the States approved proposals for the company to be dissolved (with shareholders receiving payment for their shares) and for the company's real property to be vested in the States and that its personal property would be vested in the new Board of Governors. So, today, The Ladies' College occupies premises owned by the States.

The Board of Directors of Elizabeth College is a statutory body (created in 1852) with the powers of a limited liability company, and, therefore, it can acquire and hold real property. The greater part of Elizabeth College's Grange Road premises is land given by the Crown for the use of the College in 1568. The States added to these premises by purchases of land and buildings in 1950 and 1956, and the States purchased Beechwood for the College in 1947. The Elizabeth College Board acquired by purchase at various dates other premises and sites. However, the College Statutes were amended in 1991 to provide that the Board cannot sell or charge any of the property held by the Board (except the King's Road boarding house) without the approval of the States. Complex issues arise over the ownership of the Elizabeth College premises and this will be covered in a detailed report prepared by the Law Officers.

Blanchelande Girls' College is recognised as a Catholic school by the Diocese of Portsmouth. When the former Blanchelande closed, Blanchelande College Trust was established (1992, amended 1993) to ensure the continuation of a Catholic school and the Trustees have to approve the appointment of the Board of Governors, the majority of whom must be Catholic. In 1997 the Trustees agreed a lease on the Les Vauxbelets building which is the College's current home. The Trustees are responsible for the entire Vauxbelets property, which includes the Little Chapel and all the surrounding land in the valley.

In 1996 the Education Council proposed to the States that the ownership of the premises of The Ladies' College be transferred to the Board of Governors of the College (BILLET D'ETAT VI, 1996). On that occasion the Council consulted the Law Officers and were advised that it would be possible for ownership to be transferred. The States did not vote on the propositions as the Council, prior to the States meeting, withdrew the whole report.

The Ladies' College Board envisages no benefit in taking over responsibility for the land and buildings they occupy, which are currently vested in the States. This is a matter which the Education Board would want to bring back to the States as outlined in the main body of the Report.

Annex 4

Conditions of Grant Aid: Elizabeth College, The Ladies' College and Blanchelande Girls' College

The following conditions shall apply to the payment of all grants.

1. Grant aid shall only be used for the purpose of running the College. Any changes to the use of grant must be agreed in advance by the Board of the Education Department.

2. The Colleges Board/ Trustees shall furnish such estimates of income and expenditure and shall give such other financial information to the Board of the Education Department, as it may reasonably require.

3. The College Board/Trustees shall keep proper accounts.

4. The College Board/Trustees shall submit audited accounts to the Board of the Education Department as soon as possible after the end of the financial year.

5. The accounts shall be prepared and audited to the satisfaction of the Board of the Education Department.

6. The accounts and other documents relating to the College Board/Trustees accounts shall be open to inspection by the Board of the Education Department and Chief Officer, and Chief Officer, Treasury and Resources.

7. Grants payable under these conditions shall be paid in 3 equal instalments commencing the first week of September, January and May, unless the College and Board of the Education Department agree otherwise.

8. Payments in respect of technical and capital financial assistance will be made in full, or in part, on the basis of original invoices of expenditure vouched as paid in such a manner as may be required by the States.

9. The College Board/ Trustees shall not dispose of any land or buildings provided, improved or maintained with the aid of grant, without the prior approval of the Board of the Education Department. The provision excludes Beechwood and Acorn House and other establishments for which no grant is payable.

10. If a College ceases to operate, the capital assets purchased with the grant, if any, shall be returned to the States, unless otherwise agreed.

11. The College Boards/Trustees shall notify the Board of the Education Department\ Minister, Treasury and Resources Department, in writing of any material changes affecting the finances within the College as soon as possible.

12. The scales of tuition and other fees charged to students attending the College shall be notified to the Board of the Education Department.

13. The total number of students attending the Colleges shall be notified to the Board of the Education Department on an annual basis or as it may otherwise determine.

14. The total number of teaching staff employed in the Colleges shall be notified to the Board of the Education Department on an annual basis or as frequently as it may otherwise determine.

15. The grant recipient shall provide such evidence, including attendance at meetings, when and where required, as the Board of the Education Department shall from time to time determine is necessary to fulfil its obligations to the States in terms of monitoring the support given to pupils and the quality of education offered.

16. The College Board\Trustees as recipients of grant aid shall provide the Board of the Education Department with such evidence and assurances that it may require confirming the maintenance of satisfactory educational standards.

17. The College Board\ Trustees shall provide the data required by the Board of the Education Department, in a form and at a date to be specified, to allow for the compilation of comparative performance tables on pupil achievement.

18. The College Board\ Trustees shall provide such evidence as the Board of the Education Department and the Treasury and Resources Department shall determine is necessary to fulfil their duty of ensuring value for money and the efficient use of public moneys.

19. Grant allocations may be reviewed or revoked at any time by the Board of the Education Department if serious breaches in these conditions occur. Any such decision to be taken in conjunction with the Treasury and Resources Department. The States shall be asked to ratify any revocation of grant.

20. The Board of the Education Department may from time to time issue further conditions following consultation with the Colleges affected.

May 2005

COLLEGE FUNDING - POSSIBLE SCENARIOS

Appendix 5a

Current Funding (September 2004 - August 2005)

	States Funding	Private Fees	Pupil Numbers SPH	Private	Total
Elizabeth College	£ 1,712,100	£ 5,160	161	301	462
The Ladies' College	£ 1,465,000	£ 3,650	161	251	412
Blanchelande Girls' College	£ 461,900	£ 3,690	21	185	206
	£ 3,639,000		343	737	1,080

New Funding Arrangements (excluding inflation)

	Fee	SPH Numbers	All Pupils	Other Funding	SPH Funding	Other Funding	TOTAL NEW STATES FUNDING	CURRENT STATES FUNDING	CHANGE IN STATES FUNDING
No Change in Pupil Numbers / Fees									
Elizabeth College	£ 5,160	161	462	£ 2,000	830,760	924,000	1,754,760	£ 1,712,100	£ 42,660
The Ladies' College	£ 3,650	161	412	£ 2,000	587,650	824,000	1,411,650	£ 1,465,000	-£ 53,350
Blanchelande Girls' College	£ 3,690	21	206	£ 2,000	77,490	412,000	489,490	£ 461,900	£ 27,590
							£ 3,655,900	**£ 3,639,000**	**£ 16,900**
Fees Increase in Real Terms by 3%									
Elizabeth College	£ 5,315	161	462	£ 2,000	855,715	924,000	1,779,715	£ 1,712,100	£ 67,615
The Ladies' College	£ 3,760	161	412	£ 2,000	605,360	824,000	1,429,360	£ 1,465,000	-£ 35,640
Blanchelande Girls' College	£ 3,801	21	206	£ 2,000	79,821	412,000	491,821	£ 461,900	£ 29,921
							£ 3,700,896	**£ 3,639,000**	**£ 61,896**
Fees Increase in Real Terms by 5%									
Elizabeth College	£ 5,418	161	462	£ 2,000	872,298	924,000	1,796,298	£ 1,712,100	£ 84,198
The Ladies' College	£ 3,833	161	412	£ 2,000	617,113	824,000	1,441,113	£ 1,465,000	-£ 23,887
Blanchelande Girls' College	£ 3,875	21	206	£ 2,000	81,375	412,000	493,375	£ 461,900	£ 31,475
							£ 3,730,786	**£ 3,639,000**	**£ 91,786**
Fees Increase in Real Terms by 3% and Private Pupils Fall by 10									
Elizabeth College	£ 5,315	161	452	£ 2,000	855,715	904,000	1,759,715	£ 1,712,100	£ 47,615
The Ladies' College	£ 3,760	161	402	£ 2,000	605,360	804,000	1,409,360	£ 1,465,000	-£ 55,640
Blanchelande Girls' College	£ 3,801	21	196	£ 2,000	79,821	392,000	471,821	£ 461,900	£ 9,921
							£ 3,640,896	**£ 3,639,000**	**£ 1,896**
Fees Increase in Real Terms by 5% and Private Pupils Fall by 20									
Elizabeth College	£ 5,418	161	442	£ 2,000	872,298	884,000	1,756,298	£ 1,712,100	£ 44,198
The Ladies' College	£ 3,833	161	392	£ 2,000	617,113	784,000	1,401,113	£ 1,465,000	-£ 63,887
Blanchelande Girls' College	£ 3,875	21	186	£ 2,000	81,375	372,000	453,375	£ 461,900	-£ 8,525
							£ 3,610,786	**£ 3,639,000**	**-£ 28,214**

COLLEGE INCOME - POSSIBLE SCENARIOS

Appendix 5b

Current Funding (September 2004 - August 2005)

	States Funding	Private Fees
Elizabeth College	£ 1,712,100	£ 5,160
The Ladies' College	£ 1,465,000	£ 3,650
Blanchelande Girls' College	£ 461,900	£ 3,690
	£ 3,639,000	

New Funding Arrangements (excluding inflation)

	Fee	SPH Numbers	All Pupils	Other Funding	CURRENT COLLEGE INCOME			REVISED COLLEGE INCOME			TOTAL CHANGE
					STATES	FEES	TOTAL	STATES	FEES	TOTAL	
No Change in Pupil Numbers / Fees											
Elizabeth College	£ 5,160	161	462	£ 2,000	£ 1,712,100	£ 1,553,160	£ 3,265,260	£ 1,754,760	£ 1,553,160	£ 3,307,920	£ 42,660
The Ladies' College	£ 3,650	161	412	£ 2,000	£ 1,465,000	£ 916,150	£ 2,381,150	£ 1,411,650	£ 916,150	£ 2,327,800	-£ 53,350
Blanchelande Girls' College	£ 3,690	21	206	£ 2,000	£ 461,900	£ 682,650	£ 1,144,550	£ 489,490	£ 682,650	£ 1,172,140	£ 27,590
					£ 3,639,000	**£ 3,151,960**	**£ 6,790,960**	**£ 3,655,900**	**£ 3,151,960**	**£ 6,807,860**	**£ 16,900**
Fees Increase in Real Terms by 3%											
Elizabeth College	£ 5,315	161	462	£ 2,000	£ 1,712,100	£ 1,553,160	£ 3,265,260	£ 1,779,715	£ 1,599,815	£ 3,379,530	£ 114,270
The Ladies' College	£ 3,760	161	412	£ 2,000	£ 1,465,000	£ 916,150	£ 2,381,150	£ 1,429,360	£ 943,760	£ 2,373,120	-£ 8,030
Blanchelande Girls' College	£ 3,801	21	206	£ 2,000	£ 461,900	£ 682,650	£ 1,144,550	£ 491,821	£ 703,185	£ 1,195,006	£ 50,456
					£ 3,639,000	**£ 3,151,960**	**£ 6,790,960**	**£ 3,700,896**	**£ 3,246,760**	**£ 6,947,656**	**£ 156,696**
Fees Increase in Real Terms by 5%											
Elizabeth College	£ 5,418	161	462	£ 2,000	£ 1,712,100	£ 1,553,160	£ 3,265,260	£ 1,796,298	£ 1,630,818	£ 3,427,116	£ 161,856
The Ladies' College	£ 3,833	161	412	£ 2,000	£ 1,465,000	£ 916,150	£ 2,381,150	£ 1,441,113	£ 962,083	£ 2,403,196	£ 22,046
Blanchelande Girls' College	£ 3,875	21	206	£ 2,000	£ 461,900	£ 682,650	£ 1,144,550	£ 493,375	£ 716,875	£ 1,210,250	£ 65,700
					£ 3,639,000	**£ 3,151,960**	**£ 6,790,960**	**£ 3,730,786**	**£ 3,309,776**	**£ 7,040,562**	**£ 249,602**
Fees Increase in Real Terms by 3% and Private Pupils Fall by 10											
Elizabeth College	£ 5,315	161	452	£ 2,000	£ 1,712,100	£ 1,553,160	£ 3,265,260	£ 1,759,715	£ 1,546,665	£ 3,306,380	£ 41,120
The Ladies' College	£ 3,760	161	402	£ 2,000	£ 1,465,000	£ 916,150	£ 2,381,150	£ 1,409,360	£ 906,160	£ 2,315,520	-£ 65,630
Blanchelande Girls' College	£ 3,801	21	196	£ 2,000	£ 461,900	£ 682,650	£ 1,144,550	£ 471,821	£ 665,175	£ 1,136,996	-£ 7,554
					£ 3,639,000	**£ 3,151,960**	**£ 6,790,960**	**£ 3,640,896**	**£ 3,118,000**	**£ 6,758,896**	**-£ 32,064**
Fees Increase in Real Terms by 5% and Private Pupils Fall by 20											
Elizabeth College	£ 5,418	161	442	£ 2,000	£ 1,712,100	£ 1,553,160	£ 3,265,260	£ 1,756,298	£ 1,522,458	£ 3,278,756	£ 13,496
The Ladies' College	£ 3,833	161	392	£ 2,000	£ 1,465,000	£ 916,150	£ 2,381,150	£ 1,401,113	£ 885,423	£ 2,286,536	-£ 94,614
Blanchelande Girls' College	£ 3,875	21	186	£ 2,000	£ 461,900	£ 682,650	£ 1,144,550	£ 453,375	£ 639,375	£ 1,092,750	-£ 51,800
					£ 3,639,000	**£ 3,151,960**	**£ 6,790,960**	**£ 3,610,786**	**£ 3,047,256**	**£ 6,658,042**	**-£ 132,918**

(NB The Policy Council, by a majority, supports the proposals)

(NB The comments of the Treasury and Resources Department are set out below)

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

18th May 2005

Dear Sir

THE DEVELOPMENT, FUNDING AND ACCOUNTABILITY OF THE GRANT-AIDED COLLEGES

The Treasury and Resources Department acknowledges the extremely valuable and significant contribution made by the Colleges.

The Department supports the proposal that the grants to the three Colleges should continue to be ring fenced from the Education Department's general revenue budget.

Although the Treasury and Resources Department is supportive of the general principle of a long term agreement as proposed by the Education Department this cannot be taken as an absolute guarantee that an earlier review shall not be undertaken should the States finances or priorities change as a result of economic or taxation changes.

Furthermore, given the pressure on States finances generally it is essential that the Colleges themselves continue to commit themselves to delivering an efficient and cost effective service. The Colleges are not, nor can they be, immune from the general need for efficiency in the delivery of public services. The Department is therefore very supportive of the necessity for the establishment of formal Conditions of Grant Aid.

States Members are asked to note that myself and Deputies Le Tocq and Dorey attended Elizabeth College and that I am a Director of Elizabeth College, as elected by the States of Deliberation. In addition, Deputy Le Tocq has a daughter attending Ladies College and Deputy Dorey a son attending Elizabeth College, both children are special placeholders.

Yours faithfully

L S Trott
Minister

The States are asked to decide:-

XIV.- Whether, after consideration of the report dated 27th April, 2005, of the Education Department, they are of the opinion:-

1. To approve the continuation of States funding for Elizabeth College, The Ladies' College and Blanchelande Girls' College.

2. To approve that the Colleges' Budget continues to be a separate Education Department Cash Limit and remains separate from the Education General Budget.

3. To direct the Treasury and Resources Department to take into account these proposals when recommending to the States revenue allocations for 2006 and subsequent years, including any adjustments in respect of employers' superannuation rates.

4. To endorse the cessation of the existing grant aid arrangements from September 2005.

5. To approve a new model of funding for the Colleges from September 2005, which allows the Colleges to retain any surpluses achieved by the new formula, based on the States funding Special Placeholders at the full fee costs, and all pupils attracting a "general contribution" of £2,000 from the States.

6. To approve from September 2006 an annual adjustment in the "general contribution" element of the grant, in line with any standard percentage increase awarded to States' committees.

7. To approve the new model of funding for a period of 7 years, commencing in September 2005.

8. To direct the Education Department to carry out an internal review of the new arrangements after receipt of 3 years of accounts, with the reviews to be completed no later than the end of 2009.

9. To approve provision in the formula for 161 special place holders at Elizabeth College and The Ladies' College.

10. To approve provision in the formula for 21 special place holders at Blanchelande Girls' College, or more where the actual number of special places exceed this, based on admissions in proposition 11 below.

11. To approve up to 23 special places per school year for Elizabeth College and The Ladies' College and up to 6 special places per school year for Blanchelande Girls' College, subject to the existing qualifying criteria.

12. To approve financial support, subject to the prior introduction of an agreement incorporating conditions of grant aid.

ORDINANCE LAID BEFORE THE STATES

THE EMERGENCY POWERS (FORMS OF OATH) ORDINANCE, 2005

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Emergency Powers (Forms of Oath) Ordinance, 2005, made by the Legislation Select Committee on 29th April, 2005, is laid before the States.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE STATES HOUSING (RENT AND REBATE SCHEME) (GUERNSEY) REGULATIONS, 2005

In pursuance of Section 3(1) of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Rent and Rebate Scheme) (Guernsey), Regulations, 2005, made by the Housing Department on 3rd May, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations make practical provision for the implementation of a rent and rent rebate scheme in respect of qualifying States tenancies and qualifying tenants under the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004.

Part I of the Regulations contains 2 regulations relating to rents for qualifying states tenancies. Regulation 1 prescribes the method for determination of the standard weekly rent for a qualifying States tenancy, by reference to a formula known as the "States Rental Formula", which is set out in the First Schedule to the regulations. Regulation 2 places an obligation upon the Housing Department to review, at least once in every 5 years, the operation of the States Rental Formula, and such other aspects of the rent and rebate scheme established under the regulations as it thinks fit, and report its findings to the States.

Part II contains provisions concerning the rebate scheme, including applications for rent rebate (regulation 3), determination of applications by the Chief Officer of the Housing Department (regulation 4), eligibility for rebate (regulation 5) and the amount of rebate to which an eligible tenant is entitled (regulation 6). Other regulations under this Part provide that entitlement to rebate is limited to occupation by an eligible tenant of one qualifying property only (regulation 7), prescribe the circumstances in which entitlement to rebate may be suspended, revoked or reduced (regulation 8), deal with the payment of rebate (regulation 9) and provide for discretionary payment of special rebate payments.

Part III deals with offences such as, for example, the making of a fraudulent statement for the purposes of claiming a rebate (regulation 12).

Part IV consists of miscellaneous matters, including the recovery of overpayments (regulation 13), the delegation of functions, under the regulations, exerciseable by the Department or the Chief Officer (regulation 14), the requirement for decisions of the Department, or the Chief Officer, under the regulations to be recorded in writing and a notice of the decision served upon the tenant (regulation 15) and the service of documents (regulation 16).

Part V comprises the interpretation and general provisions. Under regulation 20, the regulations come into force on 7 May 2005.

THE STATES HOUSING (STATUTORY TENANCIES) (GUERNSEY) REGULATIONS, 2005

In pursuance of Section 2 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Statutory Tenancies) (Guernsey), Regulations, 2005, made by the Housing Department on 5th May, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations make provision for determining who is to be the statutory tenant and set out the terms and conditions of statutory tenancies, the provisions for termination of such tenancies and for repossession in certain circumstances.

Part I of the Regulations specifies how applications for a statutory tenancy are determined and the provisions for determining who is to be the statutory tenant. Regulation 1 refers to how the application for a statutory tenancy shall be considered and determined by the Chief Officer. Regulation 2 sets out the provisions for determining the statutory tenant and regulation 3 sets out the information that the tenant may be required to produce to the Chief Officer.

Part II provides for terms and conditions of statutory tenancies under which persons shall occupy States residential property (regulation 4) and for other terms and conditions, such as those relating to rent (regulation 5) to be applied. Regulation 6 provides for the terms and conditions to be varied in any particular case and regulation 7 provides for payment of rent to the Department. Regulation 8 provides that the Department may, at such times as it thinks fit, review the statutory terms and conditions.

Part III deals with the provisions for termination of statutory tenancies and for repossession of a States residential property (regulation 9) and for the service of a notice to quit on the tenant (regulation 10), where a statutory tenancy has been terminated.

Part IV sets out the offences, being the failure to notify of a change in circumstances (regulation 11) and the making of a false statement for the purposes of obtaining a statutory tenancy (regulation 12).

Part V consists of miscellaneous matters, including the recovery of monies due (regulation 13), the delegation of functions under the regulations exercisable by the Department or the Chief Officer (regulation 14), the requirement for decisions of the Department, or the Chief Officer under the regulations to be recorded in writing and a notice of the decision served upon the tenant (regulation 15) and the service of documents (regulation 16).

Part VI comprises the interpretation and general provisions. Under regulation 20, the regulations come into force on 7 May 2005.

THE STATES HOUSING (TRIBUNAL AND APPEALS) (GUERNSEY) REGULATIONS, 2005

In pursuance of Sections 1 to 5 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Tribunal and Appeals) (Guernsey), Regulations, 2005, made by the Housing Department on 6th May, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations establish the Housing Appeals Tribunal for the purpose of hearing appeals against decisions of the Housing Department relating to the operation of the rent rebate scheme and other matters concerning States housing, and provide for a right of appeal by States housing tenants. The Regulations also apply to relevant decisions of the Guernsey Housing Association.

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2005

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) Regulations, 2005, made by the Social Security Department on 23rd May, 2005, are laid before you.

EXPLANATORY NOTE

These Regulations add to a limited list of drugs and medicines available as pharmaceutical benefit and which may be ordered to be supplied by medical prescriptions issued by medical practitioners or dentists, as the case may be.

APPENDIX I

HOME DEPARTMENT

DATA PROTECTION ANNUAL REPORT 2004

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

21st April 2005

Dear Sir

I enclose the annual report from the Data Protection Commissioner setting out the activities of his office for the year ended 31 December 2004.

The report is prepared in accordance with the Commissioner's responsibilities under paragraph 5 of Schedule 5 to the Data Protection (Bailiwick of Guernsey) Law, 2001.

The Home Department is pleased to support the work of the Commissioner and his office and recognises that high standards of data protection continue to be essential in ensuring the international reputation of the Bailiwick in this field.

Section 52(b) of the Law requires the report to be laid before the States. I should therefore be grateful if you would arrange for its publication as an Appendix to the June Billet d'Etat.

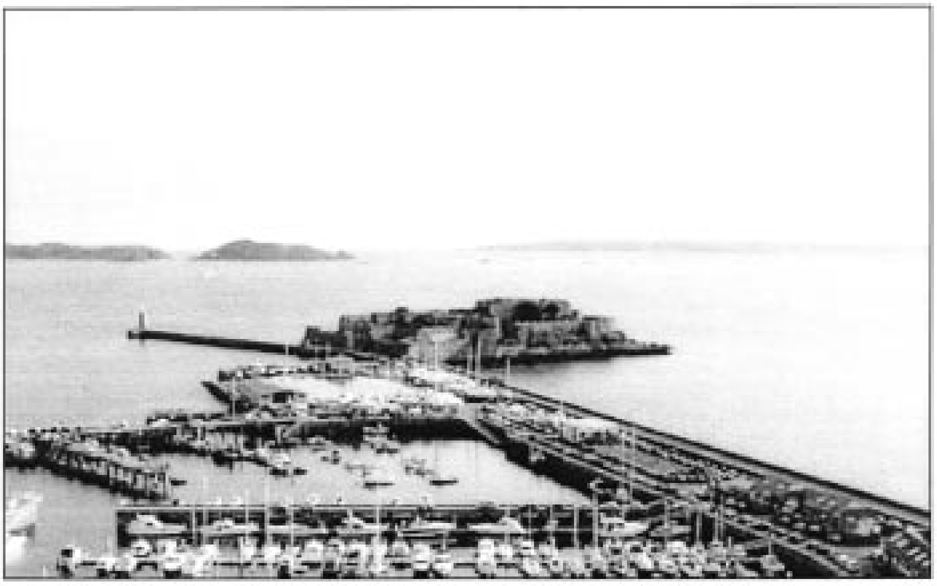
Yours faithfully

M W Torode
Minister

Enc

BAILIWICK OF GUERNSEY

DATA PROTECTION COMMISSIONER REPORT FOR 2004



MISSION STATEMENT

The Data Protection Office will encourage respect for the private lives of individuals by:

- *promoting good information handling practice,*
- *enforcing data protection legislation and*
- *seeking to influence national and international thinking on privacy issues.*

Front Cover: "Safe Harbor" – St. Peter Port harbour in the foreground, with the islands of Herm, Jethou and Sark in the background.

Data Protection Commissioner's Annual Report for 2004

CONTENTS

Data Protection Commissioner's Annual Report for 2004

FOREWORD

I am pleased to submit to the States my fourth public report on Data Protection in the Bailiwick of Guernsey; this has been prepared in accordance with paragraph 5 of Schedule 5 of the Data Protection (Bailiwick of Guernsey) Law, 2001.

The report covers the calendar year ending 31st December 2004, which started with a welcome visit from His Excellency the Lieutenant Governor in January; it was clear that His Excellency was most interested in the work of my office and in particular in the independence of the functions of the Commissioner.

Following the publication in 2003 of the European Commission's declaration of the adequacy of the Bailiwick's Data Protection legislation, the next priority was to recommend the enactment of legislation to meet the revised European standards in the Directive on Privacy and Electronic Communications; as well as strengthening the protection for the privacy of telephone subscribers and e-mail correspondents, this legislation would control the sending of unsolicited communications, including "Spam" by organisations established within the Bailiwick.

My office dealt with an increased number of complaints during the year, most of which were resolved without the need for formal action, although it was found necessary to issue Notices in a small number of cases. A complaint about the unauthorised disclosure of information by a local voluntary body was upheld. Prosecution was contemplated in a number of cases, mainly concerned with non-notification, but it was eventually decided merely to issue cautions in a few specific instances.

Many people were troubled by the increasing volume of unsolicited communications. Where these emanated from within the British Isles, they were able to be dealt with by registration with the telephone or fax preference services, with some complaints involving unsolicited faxes being submitted to the UK premium service regulator. However, little can presently be done about bothersome calls or emails originating from outside the British Isles, unless a company established in the UK can be identified as having instigated such calls.

The Bailiwick was represented during the year at international conferences held in Argentina and Poland, where I was privileged to have been asked to present a paper. Nearer to home, the Assistant Commissioner and I attended a meeting in Jersey of the authorities from the British Isles, Ireland and Cyprus.

There has been continued interest in the provision of short training courses, given either by my staff or by specialists from the UK. In 2005 it is planned to establish local training courses facilitated by the Training Agency leading for the first time to a formal qualification in Data Protection.

Data Protection Commissioner, March, 2005.

THE BAILIWICK OF GUERNSEY

2004 saw the eight hundredth anniversary of the granting of independence to the Channel Islands by the British Crown. The Islands are located in the English Channel within the Gulf of St. Malo off the north-west coast of France. The islands form part of the British Isles but, as they do not form part of the United Kingdom, they are not Member States of the European Union. However, the islands remain as 'dependencies' of the British Crown (being neither part of the United Kingdom nor colonies) and enjoy full independence, except for international relations and defence, which are the responsibility of the United Kingdom Government.

The Channel Islands comprise two independent Bailiwicks – the Bailiwick of Guernsey and the Bailiwick of Jersey. This report concerns the Bailiwick of Guernsey (hereafter referred to as 'the Bailiwick'), which includes the main islands of Guernsey, Alderney, Sark, together with Herm, Jethou, Lihou, Brecqhou and some associated uninhabited islets and offshore rocks.

Alderney and Sark have their own legislative assemblies and, whilst much legislation is applicable to the individual islands, the Data Protection Law applies on a Bailiwick-wide basis and accordingly the responsibilities of the Data Protection Commissioner extend throughout the Bailiwick.

DEVELOPMENTS IN LEGISLATION

Data Protection Law

The Bailiwick has had Data Protection legislation since 1986. Commencement of that legislation in 1987 enabled the United Kingdom's ratification of the Council of Europe Convention 108 to be extended to the Bailiwick. However, the 1986 Law was not fully compatible with the European Data Protection Directive (95/46/EC), which meant that the Bailiwick was not able to achieve an adequacy status for the transfer of personal data from the European Union.

The Data Protection (Bailiwick of Guernsey) Law, 2001 ("the Law") came into force on 1st August 2002. The Law transposes all the relevant provisions of the European Directive (95/46/EC), resulting in the Bailiwick having been recognised by the European Commission as providing adequate protection for the trans-border flow of personal data.

Two periods of transitional relief were defined in the Law: after the first, which ends on 31st July 2005, existing automated processing must be up to the standards for new processing in the Law and subject access rights will extend to manual information held in relevant filing systems; after the second, ending on 24th October 2007, manual data held in relevant filing systems will be fully incorporated into the law.

Sixteen Statutory Instruments came into force at the same time as the commencement of the Law in August 2002, providing further detail on the implementation of the legislation, for example by specifying exemptions and detailing the notification regulations.

During 2004, two further Statutory Instruments were made: the first extended the exemption for processing of sensitive personal data [without necessarily obtaining consent] to elected representatives; this had the effect of requiring those elected representatives who processed such data to Notify under the Law. Accordingly, as an administrative convenience, the second Statutory Instrument exempted elected representatives who process personal data in their own right from the need to pay notification fees.

Privacy and Electronic Communications

In June 2004, the States of Guernsey approved the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Guernsey) Ordinance 2004 ("the Regulations"). As the Regulations applied solely to Guernsey (including Herm and Jethou), similar Ordinances were drafted for Alderney and Sark.

The Regulations implement the European Directive 2002/58/EC which extends the definition of personal data to include all manner of electronic communications (including in particular e-mail and SMS messaging) and provides a statutory opt-out capability for individuals and businesses from receiving unsolicited marketing material by electronic or telephonic means.

As a result, there was increased publicity given to that fact that Bailiwick residents may take advantage of the preference services operated by the Direct Marketing Association in the UK and that organisations based within the Bailiwick and marketing to the UK must cleanse their marketing lists using the suppression databases available from that Association.

This topic is covered in more detail later in this report and a brief summary of the Regulations is given in the Appendix.

Rehabilitation of Offenders

Commencement of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law was delayed for further consultation to take place on those occupations that were excepted in the legislation.

Nevertheless, the Code of Practice on the disclosure of criminal convictions in connection with employment that was developed by the Commissioner did receive a wide circulation and is ready to be put in place once the Commencement Ordinance has been made.

The Code of Practice was produced in three parts and is designed to complement the law by:

- providing guidance to employees who may need to obtain their record,
- specifying the procedures that should be used by employers who would be seeking such information and
- outlining the procedures to be followed by the Police who would be responsible for its provision.

Updating the Law

It is understood that the European Commission has written to the UK Government with a number of questions over the conformance of the UK legislation to the Directive. This is part of community-wide measures to reduce disparities between Member States in the way that the Directive has been transposed.

It is conceivable that the outcome of this process might be some proposals for changes to the UK Data Protection Act, 1998.

These developments will be monitored in the coming year in consultation with staff from the UK Department for Constitutional Affairs and any consequential recommendations for changes to the local legislation advised to the States via the Home Department in due course.

DATA PROTECTION ISSUES

ENUM

ENUM is an acronym for Electronic NUMbering and has been on the agenda of the International Working Group for Data Protection in Telecommunications for a number of years.

The ENUM proposal is fundamentally a technical solution to facilitate the convergence of the telephone system and the Internet and could prove to be a vital component of the Voice over IP protocol which promises to lower the cost of international telephone calls by routing them over the Internet.

Whilst offering a number of technical and economic benefits, the proposed system also carries risks, especially to the privacy of telephone subscribers, since the ENUM database would be a publicly available source of all telephone numbers.

A number of trials have been carried out internationally on the feasibility of such a scheme and in particular on its privacy aspects.

In May 2004, the UK ENUM Trial Group reported on the results of the UK Trial (www.ukenumgroup.org) and the DTI mounted a consultation exercise on the options for supervisory arrangements for the public ENUM data base between August and November 2004
(www.dti.gov.uk/consultations/consultation-1230.html)

The Bailiwick authorities were invited to submit comments in particular as to how they wished to participate in the supervision scheme for the ENUM database, bearing in mind that it would be structured in a similar way to the British Isles integrated telephone numbering system, that is presently controlled by OFCOM.

The Commissioner's comments focused on the Data Protection and privacy risks and how they might be addressed. These comments were submitted to the DTI through official channels in November. It is understood that similar concerns were voiced in the response from the UK Information Commissioner.

A final report on the outcome of the DTI consultation is awaited.

The Taxation on Savings Directive

On 3 June 2003, the European Union Council of Ministers adopted the Directive on Taxation of Savings Income in the form of Interest Payments [the "TOSD"] (Council Directive 2003/48/EC - see
http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/03/787&format=HTML&aged=1&language=en&guiLanguage=en).

This measure forms one of the elements of the "Tax Package" aimed at tackling harmful tax competition in the Community. On 19 July 2004, the Council adopted a Decision establishing the application date of 1 July 2005 (Council Decision 2004/587/EC).

Compliance with the "TOSD" requires the financial services institutions established in the Bailiwick to co-operate with the tax authorities in EU Member States in respect of interest paid on money deposited here by EU residents.

The Bailiwick authorities, in common with those in the other Crown Dependencies, decided by default to collect a retention tax on such deposits, but an option existed for the exchange of information in lieu of the payment of the retention tax.

If a financial institution wished as a matter of policy to opt for the automatic exchange of information, rather than the deduction of a retention tax, this would raise data protection issues, as their deposit-holders would have to consent to any resulting disclosure of information that was not mandated by Law.

The authorities decided to issue comprehensive guidance notes on the measures needed to comply with the Directive and the Commissioner was consulted on the Data Protection guidance notes to be included in that publication.

The final version of the guidance on this matter read as follows:

> *"Authorisation to report information ... can be in such form as the paying agent will require, but can normally be expected to take the form of a written agreement, letter or other document between the parties. Individual beneficial owners will be regarded as giving express authorisation by adopting a course of conduct in accordance with such documents. The collection of retention tax is a legislative requirement that flows from the Agreements and involves no disclosure by a paying agent of personal data about an individual client to the authorities in that individual's Member State of residence. Whilst it is open to any paying agent to decide that they will not, for administrative reasons, collect retention tax it is a requirement of data protection legislation to obtain the consent of the beneficial owner to the information exchange option.*
>
> *For existing investors, the paying agent should notify all beneficial owners that, under the legislation that flows from the Agreements, exchange of information is optional and subject to the express authorisation of the individual client. Such an authorisation should normally take the form of a written agreement [i.e. a positive opt-in] and the paying agent should not infer any such authorisation from a failure to respond to that notification.*
>
> *It is sufficient in the case of new contractual relationships for the paying agent to include a clear notice in the terms and conditions of the account, fund or other relevant instrument that information will be disclosed to the appropriate authorities detailing the interest payments received by beneficial owners resident in a EU Member State from that investment."*

Identity Cards

The following statements are reproduced from the Home Office web site: *(Home Office Press Notice 196/2004).*

"The UK Government published a consultation paper on Entitlement Cards and Identity Fraud on 3 July 2002. The consultation period ended on 31 January 2003. The Home Secretary set out government plans for an ID card scheme and published the public consultation and polling results on 11th November 2003. These can be found, along with subsequent documents, at www.identitycards.gov.uk.

'Legislation on Identity Cards: A consultation' was published on 26 April 2004 and views were sought on the draft legislation during a 12 week consultation period which ended on 20 July 2004. 766 responses were received to the consultation on legislation, including 109 from organisations.

The Home Affairs Select Committee published its report on identity cards on 30 July 2004, including its pre-legislative scrutiny of the Bill. The Committee concluded that the Government had made a convincing case for proceeding with the introduction of identity cards, and raised a number of detailed points.

The first phase of public research, between July 2002 and January 2003, showed that 79 per cent of respondents were in favour, or very much in favour, of the introduction of identity cards. Of the others, 13 per cent were against and 8 per cent were unsure. A summary of findings was published in November 2003.

The more recent phase of research, was carried out in June and July 2004. This asked more specific questions about the details of the Government's proposals. There was widespread awareness that the Government is considering the introduction of ID cards although a lesser understanding of the detailed proposals. For example, at least 70 per cent had not heard of the term 'biometric information' before. A sample taken from four ethnic minority groups was also asked about their overall support for the scheme. There was a clear majority in favour in all groups - especially with Chinese respondents (84 per cent). Support for ID cards had increased among all four groups since 2003.

This recent phase of research is published alongside responses from individuals and organisations to the consultation paper published in April 2004. These can be found at the web link above.

A development partner (PA Consulting) bringing in detailed expertise from outside Government was appointed in May 2004 to help determine the best way of designing and implementing the scheme."

It is evident that, although the cards are intended to be voluntary, there will be a number of compulsory elements, such as the use of electronic ID's for passports and driving licences and it is highly likely that there would be pressure on the Bailiwick authorities to introduce a similar scheme locally.

The UK Information Commissioner expressed a number of concerns about the proposals in the draft Bill, in particular:

- Continuing uncertainty about the lack of clear and limited statutory purposes for the proposals;
- The nature and extent of the personal information that will be collected and retained;
- Uncertainties and risks relating to administrative and technical arrangements;
- The provisions relating to access to and disclosure of personal information stored on the National Identity register;
- The need for stronger independent oversight;
- The absence of a "voluntary" option for driving licence and passport holders;
- The loss of some initial safeguards as and when the scheme becomes compulsory;
- The extent to which secondary legislation can be used to extent the scheme, thus fuelling anxieties about "function creep".

The Bailiwick Commissioner concurs with these concerns and it remains to be seen the extent to which these concerns are addressed when the final version of the Bill becomes Law.

NOTIFICATION

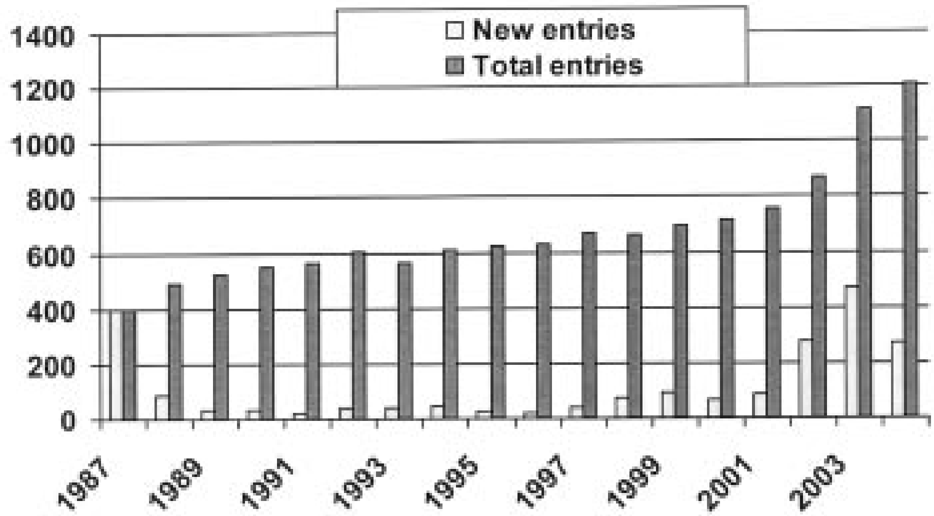
The Law requires Data Controllers to "Notify" the Commissioner of their processing of personal data. This Notification is on an annual renewable basis and covers all processing that is not exempt.

Exemptions from Notification exist for manual data, certain charitable and not-for-profit organisations and for the processing of data associated with the core business purposes of accounts, staff administration and marketing.

Data Controllers Registered under the 1986 Law are deemed to have Notified until their existing (three-year) Registrations expire. The last of these remaining 184 Registrations will expire in July 2005, after which Data Controllers will be required to Notify annually.

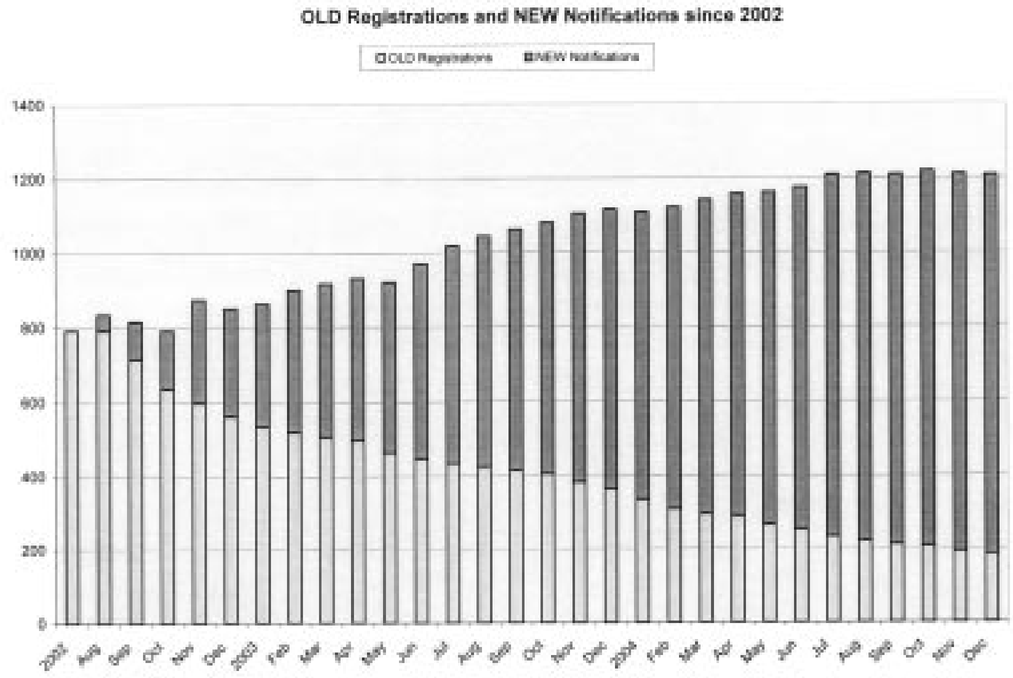
The chart reproduced below shows that the steep rise in New Notifications following the commencement of the Law in August 2002 declined as anticipated, with the total number of Notifications at the end of 2004 being 1210, only 91 higher than the corresponding figure at the end of 2003.

GROWTH IN DATA PROTECTION REGISTER ENTRIES



The chart shown overleaf shows a more gradual rise in Notifications under the New Law, corresponding to the lower number of Registrations under the Old Law that expired in 2004.

Of the 317 new notifications, 131 (41%) represented expiring Registrations from prior to 2002, whilst 186 (59%) were completely new. 39 of the expiring Registrations were not renewed and accordingly were closed during the year.



The automated facilities in the Internet Notification site that were developed in 2003 were fully exploited to minimise the administrative effort involved with the annual renewal process.

762 renewal notices were issued during the year. All those who had provided an e-mail contact address within their notification were sent their first renewal notice by e-mail.

Of the 423 (56%) reminders that were issued by email 106 (25%) needed a second reminder by post. This was mostly because an individual contact had moved and the old email address was no longer valid. Organisations are now being advised to provide a generic rather than a personal address for the receipt of communications, in order to minimise such problems in future, as failure to keep notification details up to date constitutes an offence under the Law.

During 2004, 223 notification and renewal fees (22%) were collected using direct debit. Although invitations were extended at renewal time to any non-direct debit registrants to sign up, there remains scope for this proportion to be considerably increased.

By the end of 2004, 900 notifications (88%) included an email address and 227 (22%) of the 1023 notifications on file had been set up for future collection by direct debit. This represents a marginal increase on the 2003 figures of 650 email addresses (87%) and 56 direct debit mandates (21%).

Failure to notify is a criminal offence under Section 21 of the Law. Towards the end of 2003 five data controllers who had failed to notify had been referred to the Law Officers. Early in 2004 they all eventually complied, but one received a Police caution.

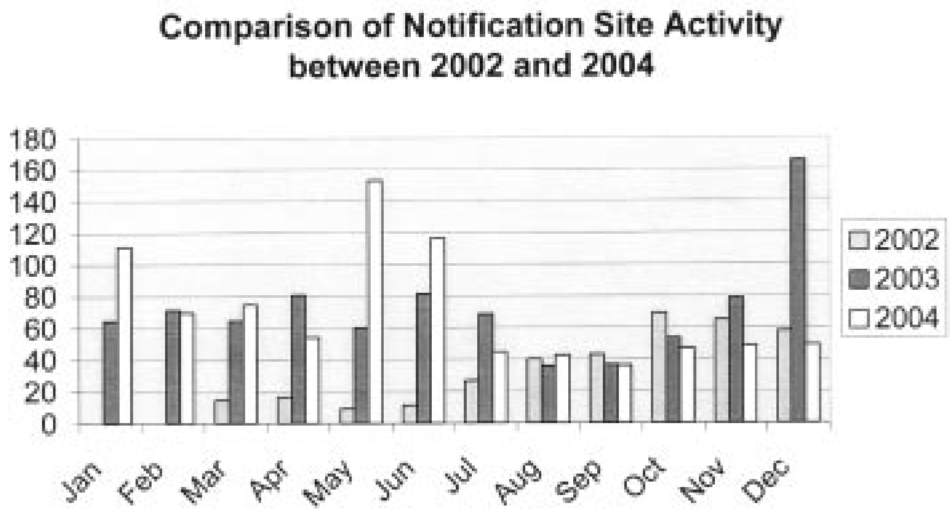
The small number of controllers who failed to notify in 2004 were issued with Final Reminders which resulted in them fully complying. Only one controller ignored the Final

Reminder and was referred to the Law Officers. This controller ultimately notified and also received a Police caution.

As there is now a general greater awareness of data protection requirements it is becoming more likely that any data controllers who, in future, ignore their notification obligations will be prosecuted.

The chart below illustrates the variation in the average daily activity on the online notification site: http://www.dpr.gov.gg , between 2002 and 2004, the vertical axis representing the average daily rate of successful requests for pages of data from the site each month.

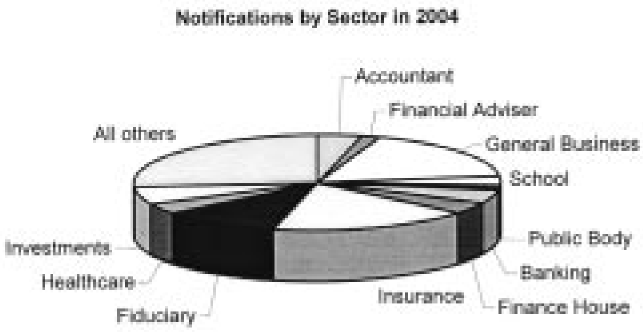
The variations generally correspond with the number of new Notifications and renewals that are dealt with in each month. There has been a gradual fall in activity as the number of old Registrations requiring replacement by new Notifications has decreased over time.



There remain a few instances where some UK data controllers find that they have mistakenly notified in Guernsey rather than in the UK. These problems, and a few where the reverse has occurred, are normally resolved fairly swiftly by liaison with the staff of the UK office.

The Notification process requires data controllers to indicate the nature of their business activity. This not only simplifies the process, as it allows for the generation of a standardised draft Notification based on a template, but also enables an indicative record to be maintained of the number of Notifications by industry sector.

The chart depicted below shows the cumulated distribution of notifications at the end of 2004 by industry sector, continuing a similar pattern to that of previous years.



Greater proportions of notifications were derived from Insurance and General Business (18%), Fiduciary (10%) , Investments (6%), Finance House, Healthcare, Accountant and Banking (all at 5%), with All others comprising 26%.

Exemptions from the need to notify may be claimed by those whose processing is limited to the core business purposes of accounts & records, staff administration and a limited amount of marketing to existing clients.

An exemption is also available to most voluntary organisations, charities and to those whose processing is limited to manual data. However, once CCTV is used by an organisation for the prevention and detection of crime, the exemption from notification is lost.

Organisations that are exempt may choose to notify voluntarily, thereby relieving themselves of a responsibility to provide information on request under section 24 of the Law. The number of voluntary notifications rose by 8 to 42, (4% of the total).

In 2003, the Data Protection Office compiled a list of those organisations that had informed the Commissioner that they were exempt from notification and by the end of that year 303 organisations were so listed. The exempt list was primarily designed to assist in monitoring compliance.

During 2004 a further 144 organisations informed the Office of their exempt status making a total of 447. This represents 27% of the overall total [of 1647 exempt, registered and notified organisations].

STAFFING AND STAFF DEVELOPMENT

The establishment of the Office of the Data Protection Commissioner comprises three staff: the Commissioner and Assistant Commissioner, both of whom work full time and the Personal Assistant to the Commissioner, who works part-time.

The Commissioner is a statutory public appointment, but members of his staff are seconded from the Home Department of the Civil Service and wholly responsible to him.

The Commissioner remains of the view that, whilst his office remains responsible only for the Data Protection law, the current establishment of one full time Assistant and one part time Administrator represents a satisfactory level of staffing resource, which enables him to undertake his current functions. There is no evidence at present that an increased establishment is required.

Anne Wiggins, the Assistant Commissioner, was successful in obtaining the ISEB Certificate in Data Protection. She attended the course and sat the exam at Mason's Solicitors in London in the earlier part of the year. The Certificate in Data Protection is a specialised qualification held by a limited number of people and it is thought that Anne may currently be the first person in Guernsey to obtain this qualification. It would, however, be beneficial for those with data protection responsibilities within their work role to have such a qualification. The Commissioner has liaised with the Training Agency about holding the course on island and it is anticipated that the first such course will take place sometime in 2005.

RAISING AWARENESS

There is a continual need to ensure that individuals are made aware of their rights under the Law and organisations that process personal data are made aware of their responsibilities.

The Awareness campaign for 2004 has included the following activities:-

- Delivering presentations and training
- Involvement in working groups
- Making use of the media.
- Giving compliance advice
- Developing the Internet web site

In addition, the Office has assisted in sourcing the provision of external training specialists for a number of organisations.

Delivering presentations and training

The Commissioner and Assistant Commissioner delivered a number of talks and presentations throughout the year to many professional associations and organisations in the public and private sectors. These included: schools, finance institutions, law firms and retail businesses.

The total audience reached in this way was around 564.

Involvement in Working Groups

The Commissioner and Assistant Commissioner also participated on various public sector working groups such as the E-Government Sub-Group for Citizen Access, the States Data Sharing Group, the E-Business Liaison Group and the Board of Health Registration of Care Workers' Group.

Making use of the media

Press releases

The Commissioner issued 15 press releases during 2004, which gave rise to 28 articles in the local Press and corresponding mentions and interviews on local radio and TV.

The topics covered included:

- **Scams**

  Premium telephone lines, bogus domain registry, "phishing" for e-bay and Paypal account information;

- **Manual Data**

  Guidance issued over the interpretation of the term "relevant filing system";

- **Privacy Regulations**

  Report of a seminar on the regulations, restrictions on e-mail marketing, privacy of telephone directory information, preference services and privacy statements on websites;

- **Rehabilitation of Offenders**

  The draft Code of Practice;

- **Euthanasia campaign**

  There were three articles on the investigations by the Commissioner into alleged breaches of the Data Protection principles by the organisers of the campaign.

Giving compliance advice

To assist data controllers with compliance, the office has also given advice and guidance on the following matters to various organisations:

- Standing orders
- Protocols
- Procedures
- Design of application forms
- Contracts with data processors
- Recording of telephone calls
- Subject access requests
- Transfer of personal data to other jurisdictions, especially "non-adequate" jurisdictions

All the guidance notes produced by the Data Protection Office were revised during the year and most were made available either as A5 booklets or in A4 format to facilitate easy download from the Commissioner's website.

There were five new publications:

Personal Data and Filing Systems*:* this was published following a Supreme Court of Appeal judgement in the UK which affected the definitions of personal data and relevant filing systems to some extent.

Trusts and Wills*:* this was complied in conjunction with the data protection authorities of Jersey and the Isle of Man. It had been identified that guidance was needed as to whether data protection law required that beneficiaries had to be informed of details of the terms of Trusts and Wills and if they should have access to these details.

Privacy Statements on Websites*:* this was issued after a survey by the office suggested that 76% of websites in the Bailiwick were not data protection compliant.

Privacy of Telephone Subscribers*:* this was needed following the commencement of the Privacy and Electronic Communications Regulations and the proposed introduction of a second telephone directory by another telecommunications provider.

Dealing with Spam*:* specific guidance was needed to deal with this continuing and increasing problem.

A list of the available publications is given below:-

Guidance Notes published by the Commissioner

NAME AND DESCRIPTION OF BOOKLET
Baby Mailing Preference Service: *How to stop the receipt of unwanted mail about baby products*
Be Open…with the way you handle information: *How to obtain information fairly and lawfully*
CCTV Guidance and Checklist *Explains how to comply with the law in relation to the use of CCTV*
Charities / Not-for-Profit Organisations
Data Controllers: *How to comply with the rules of good information handling*
Disclosures of vehicle keeper details *Explains when vehicle keeper details can be disclosed*
Financial Institutions
Mail, telephone, fax and e-mail preference service *How to stop the receipt of unsolicited messages.*
No Credit: *How to find out what credit references agencies hold about you and how you can correct mistakes*
Notification – a Simple Guide
Notification – a Full Guide
Notification Exemptions
Personal Data & Filing Systems (guidance on what makes information "personal" and explains what manual records are covered by the Law)
Privacy Statements on Websites – a Guidance
Respecting the Privacy of Telephone Subscribers
The Data Protection Law and You: *A Guide for Small Businesses*
Spam – *How to deal with spam*
Trusts and Wills – a Guidance
Violent warning markers: use in the public sector *How to achieve data protection compliance in setting up and maintaining databases of potentially violent persons*
Your rights under the Law: *A Guidance for Individuals*

The Assistant Commissioner has circulated the literature to a number of public, private and voluntary organisations throughout the Bailiwick. She keeps a record of the locations where the literature is sent so that a follow up can be undertaken to assess its uptake and impact.

Approximately 1,500 copies of the literature were distributed during 2004. In addition, Notification Guidance Handbooks were sent out to data controllers when their registrations under the 1986 law were about to expire and notification guidance is included in the literature that is available for downloading from the Commissioner's website.

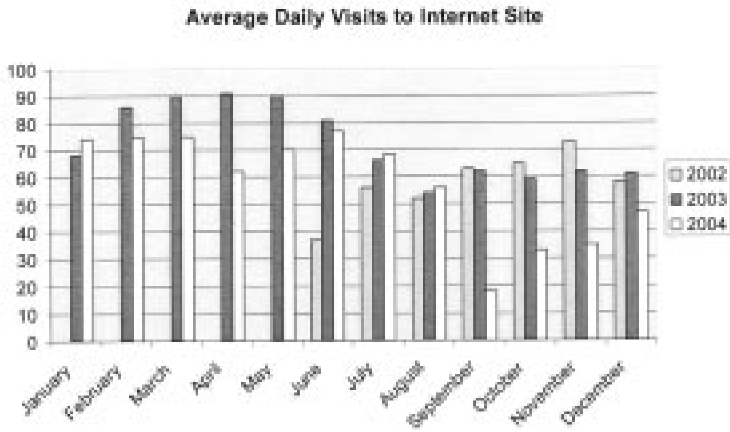
Further publications will be introduced throughout 2005. These will include more detailed guidance on the Privacy and Electronic Regulations, the monitoring of staff at work and guidance for employers in relation to staff references.

Developing the Internet Web Site

All of the information published by the Office is available on the Internet site: http://www.dataprotection.gov.gg . The chart below shows that the usage of the site in 2004 has varied between about 20 and 80 visits per day, a littler lower than in the previous two years.

The most popular sections of the site have been those devoted to the 2001 Law and to "Guidance Notes", where visitors are able to view or download an up-to-date copy of all of the guidance notes that have been published.

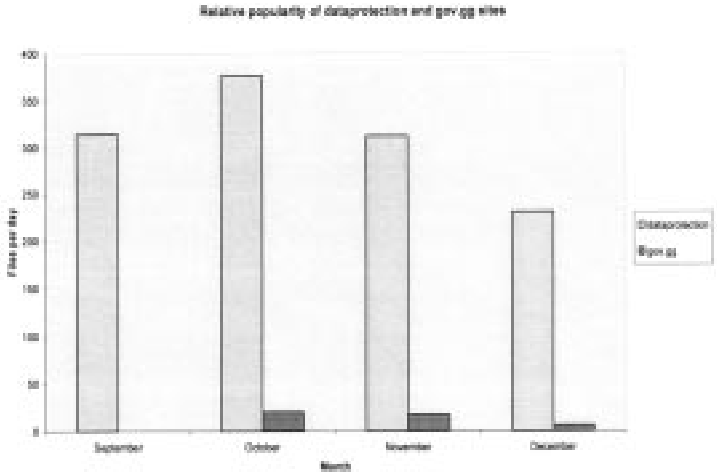
The site is updated on a regular basis and includes copies of all of the material which is published by the Data Protection Office, together with links to other data protection sites and information for data subjects about complaint handling.



In October 2004, a copy of the Data Protection web site was integrated into the States of Guernsey government portal: http://www.gov.gg.

The chart opposite illustrates that, as yet, this new site has attracted little attention. Time will tell whether the public prefers the integrated to the stand-alone site.

In the meantime, it is intended that both sites will as far as possible be kept in synchronism.



ENFORCEMENT

The Law provides for a number of offences:-

a) Failure to notify or to notify changes to an entry;

b) Unauthorised disclosure of data, selling of data or obtaining of data;

c) Failure to comply with a Notice issued by the Commissioner.

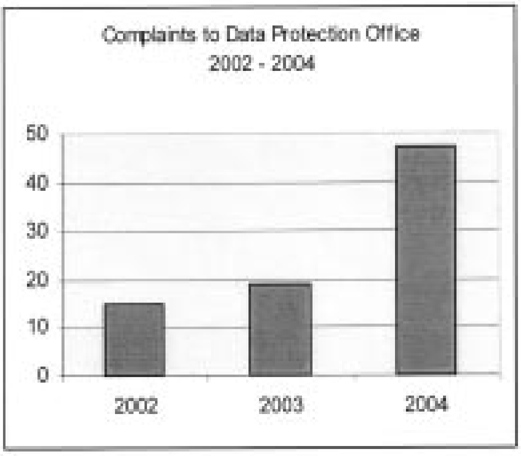
The Commissioner may serve an Enforcement Notice where he has assessed that a controller is not complying with the principles or an Information Notice where he needs more information in order to complete an assessment. With the advent of the Privacy in Electronic Communications Regulations, the Commissioner's power to issue Notices has been expanded to cover non-compliance with those Regulations.

Complaints by data subjects to the Commissioner concerning notification, or disclosure offences would be dealt with as potential criminal prosecutions by the Police and Law Officers.

Complaints about how data controllers process personal data are treated as "Requests for Assessment" by the Commissioner

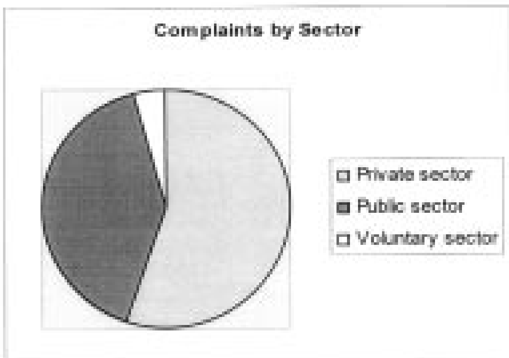
During 2004 a total of 47 such complaints were investigated. This is a significant increase compared with 2002 and 2003 and would suggest that the public are developing a greater awareness of their rights under the Law.

(These 47 complaints were in addition to the 297 calls from mainly elderly people who expressed deep concern over unwanted telemarketing calls they received. A fuller report of this issue is given in the Appendix).

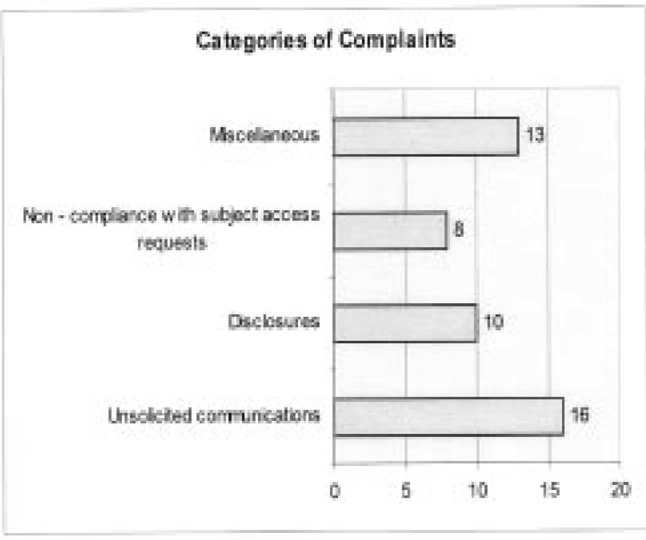


One complaint concerned three organisations and spanned both the public and private sectors.

Hence, the complaints comprised 27 about private sector bodies, 20 about public sector bodies and 2 about voluntary sector organisations.



The complaints can be categorized into unsolicited marketing communications, disclosures of personal information, non - compliance with subject access requests and miscellaneous.



The miscellaneous category comprises complaints to do with breaches of a combination of the data protection principles, mostly in relation to a lack of security and excessive processing of information.

Under section 43 of the Law the Commissioner is empowered to issue an Information Notice in pursuit of a complaint, or if he reasonably requires any information to determine if a data controller has breached any of the data protection principles.

Section 40 of the Law empowers him to issue an Enforcement Notice to require a data controller to comply with the data protection principles.

In 2004 the Commissioner needed to issue just two Information Notices and one Enforcement Notice. This means that, in the remaining cases, the data controllers concerned cooperated fully with the Commissioner without the need for formal action to be taken.

The 2002 and 2003 annual reports included summaries of all the complaints that were investigated. However, due to the larger number of complaints investigated in 2004, this report includes summaries of only a selection of those complaints in the form of Case Studies.

Case Study 1

Following complaints from two general election candidates in 2004 the Commissioner conducted an investigation into the data processing activities of the Guernsey4Dad organisation. This organisation campaigns to change the law in Guernsey to allow terminally ill, competent adults to choose a medically assisted death. It is affiliated to the VES (Voluntary Euthanasia Society) which is based in London.

The organisation ran a campaign in 2003 that sought to lobby sitting Deputies in support of an investigation into the legalisation of euthanasia and in March 2004, it ran a second campaign that involved the lobbying of election candidates and was timed to coincide with the run-up to Guernsey's general election in April 2004.

The first complainant was concerned to discover that his name appeared on a list of the supporters of the 2004 campaign although he had not signed up in support of that second campaign.

It was not clear whether the complaint related to a one-off error or was symptomatic of a more general problem with the compilation of the information in support of the 2004 campaign.

The second complainant raised a concern that he had received an unsolicited computer disc containing personal details of the respondents, when there appeared to be no evidence that their permission had been sought for such a disclosure in electronic form.

The organisers had sent pre-printed postcards by post to members of the public inviting them to show if they agreed with the statement; *"I support the legalisation of Doctor Assisted Dying"*.

In an accompanying letter, the organisers stated that they would forward the completed postcards to the candidates. There was no indication on the postcards or in the letter that information supplied by respondents was to be computerised or kept after the conclusion of the campaign, except a small opt-out box on the postcard stating; *"Please tick here if you do not wish to be updated on the campaign's progress."* There was also no indication that the respondents' personal details would be disclosed to third parties.

In actual practice the organizers had entered the names of respondents on a computer database and sent a copy of the spreadsheet and computer disk to most of the candidates, although some candidates did not receive anything. The candidates were urged to make contact with the respondents.

The Commissioner sought to resolve the matter informally and requested a copy of the organisation's database and a face to face meeting in order that he could investigate the allegation. However, the organisers chose to liaise with the Commissioner through a UK based legal representative, the database copy was not forthcoming and the request for a meeting was declined.

The Commissioner therefore had to seek information by referring to section 24 of the Law and when the information supplied was not sufficient to conduct a thorough assessment, an Information Notice, under section 43 of the law, had to be issued.

The outcome of the investigation was that there appeared to have been breaches of data protection principles in relation to how the organisers processed data during the 2004 campaign; in particular there were substantive breaches of the first principal concerned with fair and lawful processing, and the seventh principle concerned with data security.

Furthermore, it was determined that the data in question were sensitive personal data as individuals were invited to join a political lobby group and to make known their views on euthanasia (which is essentially a philosophical belief). Data protection law lays down stringent conditions for the processing of sensitive personal data.

Because of the nature of the contraventions, it was considered that continued processing of the data could cause damage or distress to anyone whose name had been incorrectly included in the data, or had been unaware that the data would be further processed, retained or disseminated electronically.

It was concluded that as the declared purposes of the 2003 campaign [lobbying Deputies] and of the 2004 campaign [lobbying election candidates] had been achieved and as there was an absence of any 'fair obtaining' notices or a published data retention policy there could be little justification for the continued processing of any personal data related to those campaigns, especially in view of the fact that the collection of the data appeared to have been unfair.

The Commissioner was minded to issue an Enforcement Notice under Section 40 of the Law requiring the organisers to destroy all personal data held by them that related to the campaigns.

However, he was prepared to consider an alternative proposition whereby the organisers undertook to communicate with the respondents, seeking their explicit consent to the holding and further processing of their personal details in electronic form and by electronic means for the limited and specified purposes associated with the campaign until its conclusion.

The organisers also had to give assurance that any future processing of personal data connected with their campaigns would be conducted in accordance with the Data Protection principles and that a privacy statement would be included on their web site.

In an effort to mitigate the damage caused by the unlawful disclosure of those data to the election candidates, the Commissioner sought the recall of the personal data that was originally disclosed to the candidates.

Case Study 2

The Commissioner received a complaint from an Open Market owner/occupier whose details were being published by the Housing Authority on the Internet.

The third data protection principle states that data must be relevant, adequate and not excessive for the purpose for which it is being processed.

It is a legal requirement that the Open Market Register is made available for public inspection. The Housing (Control of Occupation) (Implementation) Ordinance, 1982 provides that it should be made available for inspection in loose leaf form, in which various details, including the ownership of open market properties, are inscribed. The provision of the register on the Internet would not be considered inconsistent with these legal provisions.

However, the prime purpose of the aforementioned Law is to record those properties which are "Open Market" and the publication of ownership of properties is only incidental to that purpose.

The loose leaf register only permits a search to be conducted by reference to the actual properties. The Internet version had a facility which enabled a search to be made with reference to the names of property owners. This prompted a complaint and a general enquiry from members of the public who expressed concerns that the online search facility by reference to name rather than property was an invasion of personal privacy.

In the course of the investigation into the matter it was noted that it was the original intention of the Housing department to exclude ownership details from on-line publication but that this was not carried through to implementation.

The Housing Department voluntarily had the "search by name" facility disabled from use by the general public. The Commissioner did permit the continued use of this facility by a defined set of enquirers for specified purposes, e.g. conveyancing clerks.

Case Study 3

A States employee complained that, by printing his name on a work parking permit, his workplace was excessively processing his personal information and thus invading his privacy.

When contacted by the Data Protection Office the department in question accepted that there was no need to print employee names on the permits and proceeded promptly to rectify the situation.

Case Study 4

An individual working for a company based at Guernsey Airport complained that personal information was being obtained from employees that he claimed to be unduly excessive and invasive. He also stated that the company he worked for was not registered with the Data Protection Commissioner.

This investigation brought up certain issues.

A list was obtained of all companies based at the airport and was checked against the data protection register. The companies who had not met their data protection obligation to notify were contacted and subsequently complied.

It was established that the personal information being collected was for the purpose of police vetting checks and these were being carried out on the directions of the Department of Transport (DfT) in the UK.

The Commissioner was concerned to discover that the DfT had instructed the vetting to be undertaken by *Disclosure Scotland* and not the Guernsey Police. *Disclosure Scotland* provides basic disclosures, (records of unspent criminal convictions) and was, in all probability, being used by the DfT as the Criminal Records Bureau in the UK was at that time providing only Full Disclosures (spent and unspent convictions).

The Commissioner advised that the Guernsey Police should be requested to carry out the checks as they were able to provide a more comprehensive, efficient and cheaper service than *Disclosure Scotland*.

This met with disapproval from the DfT who claimed that any criminal record checks the Guernsey Police made from the Police National Computer (PNC) would not be as comprehensive as those made by *Disclosure Scotland* as no Scottish convictions would be recorded. The DfT strongly advised the airport administration to continue using *Disclosure Scotland*.

The Commissioner, in turn, informed the airport administration that the Guernsey Police do have the same access to convictions information as the *Criminal Records Bureau* and *Disclosure Scotland*. He advised that Scottish convictions were recorded on the PNC.

The Guernsey Police also raised concerns that *Disclosure Scotland* was not contacting them when making checks and were relying solely on the information held on the PNC. It was pointed out the PNC does not include Summary offences such as Disorderly Conduct and Possession of an Offensive Weapon in a Public Place whereas the local Police have knowledge of these offences.

The concerns of the Commissioner and the local Police were passed on to the President of the Home Affairs Committee.

Case Study 5

A UK resident (the complainant) asked the Commissioner for assistance in gaining access to his personal information. He was an ex-employee of a Guernsey company and had worked in one of its UK branches. He wanted access to certain documents that were carried out into the practices and procedures of the branch where he worked and he claimed that there were opinions expressed about his professional competence in these documents.

The company withheld access to certain documents claiming legal professional privilege and that, as the documents were not part of a "relevant filing system", they did not constitute data in terms of the Data Protection Law.

The Commissioner's investigation revealed that:

(a) The complainant already had a significant amount of documents released to him but the two most relevant documents had been withheld.

(b) One of the documents was a report of an investigation into the competence of another employee and, as this would not constitute the personal data of the complainant, he would not have the right of access to it.

(c) There was however an opinion expressed about the complainant's competence in the report. This part of the report could include personal information about the complainant.

(d) As a result of the opinion expressed in (c) an investigation was carried out into the complainant's professional practice. The report that resulted could also include personal information about the complainant.

(e) The company had appointed an agent to carry out the investigation into the UK branch. It received reports from the agent upon the conclusion of the investigation.

(f) The reports were in paper form and not electronic form; they were stored in A4 ring binders and were referenced according to the name of the branch. They could not be readily retrieved or accessed by reference to an individual.

(g) Accordingly, these documents did not appear to constitute a "relevant filing system." Section 1 (1) (c) of the Data Protection Law states that information in manual records must form part of a relevant filing system to constitute data.

(h) As the requested documents did not fall within the definition of a relevant filing system the Commissioner had to advise the complainant that he did not have the right of access to the requested documents from the Guernsey company.

(i) However, as it was possible that the documents were held in electronic form at the UK branch, the matter was referred to the UK Information Commissioner's Office for further investigation.

Case Study 6

An individual complained to the Commissioner about having had a provisional offer of employment withdrawn.

The prospective employer received references on behalf of the job applicant from a former employer. There was a note attached to the references advising that the referee should be contacted.

It was alleged that the referee informed the prospective employer verbally that the applicant had been subject to a disciplinary hearing and had difficulty relating to colleagues.

This was discussed with the applicant who stated that this information was inaccurate.

On advice from the Data Protection Office the applicant made a subject access request for a copy of her personnel file from the former employer. This was made available and it was clear that there was no record of a disciplinary hearing on file and past appraisals had stated that the applicant had a good relationship with colleagues.

It is understood that the offer of employment was reinstated and that the individual was subsequently appointed to the post.

Case Study 7

An individual complained that he had received an unsolicited email from a local company. He claimed that he had previously written to the company and instructed them that no further marketing emails were to be sent to his business.

The investigation revealed that the complainant had various email addresses and had only made an application in respect of one of these addresses. He was advised to inform the company of all his email addresses so that these could be suppressed from its mailing list.

Case Study 8

An individual complained about receiving marketing materials and products which she had not requested from a local company. When she approached the company about this she was informed that she must have ordered the products as they had been paid for. This caused her concern as she considered that her personal details, including her financial details, had been cross fertilised with those of another person or persons. She also continued to receive unwanted products after informing the company that she did not want them. Another concern was that her details might have been passed to third parties without her consent.

The company had informed the complainant that the products she received had been ordered by another customer with the same postal address as her own and this was why her account had been used. The other customer had ordered multiple products which were not all in stock and so were dispatched on different occasions. The last item was dispatched before the complainant had instructed that no further material be sent to her.

In addition to an apparent breach of section 11 of the Law there also were apparent breaches of the data protection principles especially the accuracy, security and fair obtaining principles.

The Commissioner asked the company to supply details of the organisational and technical measures employed to ensure that customers' details were processed accurately and securely. The company supplied evidence which showed that it did have a sound procedure for the processing of orders and that staff training was of a satisfactory level. It therefore seemed evident that that there had been a one off operational error in the case of the complainant where the placing of an order was concerned.

The Commissioner also asked for assurance that the complainant's details had been removed from the company's database and had not been passed to any third party. It had been noted that customers were not given the opportunity to opt out of receiving promotional materials from the company or third parties on the company's order forms and website.

The Commissioner asked for this to be rectified and give the company a specific time period to comply with his instructions.

When this did not happen an Enforcement Notice was issued. The company then promptly responded and complied with all the Commissioner's instructions by removing the complainant's details from their database and by redesigning the website and order forms so that the fair obtaining element of the first data protection principle was met.

INTERNATIONAL LIAISON

International Working Group on Data Protection in Telecommunications

The Commissioner [also representing Jersey and the Isle of Man] attended the 35th meeting of this group that was held Buenos Aires in April 2004.

The main topics for discussion centred on developments in e-government and the privacy aspects of the Internet and of Mobile Communications. The topics being addressed by the Working Group included:

- Regional availability of documents on the Internet as opposed to global availability;
- Prevention of unsolicited e-mail ("spam");
- Media privilege and privacy;
- Intrusion detection systems;
- The ENUM protocol for Internet-based telephony.

The 36th meeting was held in Berlin in September, 2004 but was not attended by any delegate from Guernsey or from the other Crown Dependencies; however the Commissioner was asked to provide contributions, by email, to the text of the resolutions discussed at that meeting.

The meeting dealt with many issues, including:

- Measures to combat cyber-fraud in a privacy-friendly way;
- Efforts towards the integration of cyber-security into national curricula;
- Privacy issues related to web-based e-mail services;
- Geolocation technology;
- Further developments with spam;
- "Phishing" and solutions for e-mail authentication;
- Transmission of location data for commercial purposes;
- Processing of personal data in 'Whois' databases;
- Privacy and Public key Infrastructure.

The Commissioner intends to attend the next meeting of the Working Group in Madeira in April, 2005.

Further details of the working group are available (mostly in German) at:

http://www.datenschutz-berlin.de/doc/int/iwgdpt/index.htm

European Spring Conference

The Spring Conference of European Data Protection Commissioners was held in Rotterdam and was attended by the Data Protection Supervisor from the Isle of Man, who also represented the Bailiwick. The conference was structured into 6 sessions; the first five sessions concentrated on specific topics:

- The Roles of Data Protection Authorities;
- Communication and Interaction with the Outside World;
- Compliance and Enforcement;
- Internal Organisation and Effective Privacy Governance;
- European Co-operation and law enforcement;

with the last session being devoted to more general topics.

The Assistant Commissioner plans to attend the next meeting, which will be held in Krakow, Poland in April 2005.

British and Irish Data Protection Authorities

This meeting of the supervisory authorities from the UK, Ireland and the Islands was held in Jersey and included for the first time the Cyprus Commissioner.

The Commissioner and Assistant Commissioner attended from Guernsey.

It had previously been agreed, on the instigation of the UK and Irish Commissioners, that Cyprus and Malta should be invited to participate in these meetings, as they were also relatively small island authorities with a legislative and supervisory environment very similar to those in effect in the Crown Dependencies.

Both Cyprus and Malta had received assistance from the UK and Irish Commissioners in the months prior to their accession to the European Union.

The items covered in the meeting included:

- Implementation of the Privacy and Electronic Communications Directive;
- Citizen identity cards and e-government;
- Know Your Customer banking regulations;
- Biometrics and genetic information.

The Commissioner and Assistant Commissioner plan to attend the next meeting, which is due to be held in Cyprus in May, 2005.

26th International Conference of Data Protection Authorities

This annual conference was held from 14-16 September 2004 in Wroclaw, Poland.

The theme of the conference was "The right to privacy – the right to dignity".

Topics covered at the conference included:

- Privacy and the use of RFID technology;
- The individual's awareness of the right to privacy;
- The employee's privacy protection versus the employer's interests;
- Co-operation between Data Protection authorities at national and international level;
- Economic approach to privacy protection – balancing costs and profits;
- Privacy and the media;
- Counteracting privacy violations on the Internet;
- Privacy protection and political marketing;
- The threats to privacy in the time of e-democracy;
- Biometric identification;
- Short privacy notices;
- The Individual's privacy versus the need to deal with the past;
- Transborder data flows and the challenges of the global economy.

Full details of the conference may be found on the internet site: http://26konferencja.giodo.gov.pl/zaproszenie/j/en/

The Guernsey Commissioner was asked to speak on the topic of the economic costs and benefits of Data Protection. A copy of his paper is included in the Appendix to this report.

The public sessions were followed by a closed session of accredited Commissioners, in which the Guernsey Commissioner participated and at which Formal Resolutions were made on:

1. The accreditation of Korea as a national authority, Catalonia as a sub-national authority and the European Data Protection Supervisor as a supra-national authority;
2. The Draft ISO Privacy Standard (ISO/IEC (PAS) DIS 20886);
3. An amendment to the privacy aspects of automatic software updates – this resolution was originally adopted at the 2003 conference in Sydney, but then amended following representations by Microsoft.

The Commissioner plans to attend the 27th international conference, which is to be held also from 14-16 September 2005 in Montreux, Switzerland, of which further details may be found on: www.privacyconference2005.org

Liaison with the UK Government

2004 saw the retirement of Mr. Graham Sutton, who had been primarily responsible for dealing with Data Protection policy within the Department for Constitutional Affairs (and prior to that at the Lord Chancellor's Department and the Home Office), since the early 1990's. Mr. Sutton had provided invaluable assistance during the drafting Guernsey's Data Protection legislation and was instrumental in promoting the case to the European Commission for an early determination of the adequacy of the Data Protection régime within the Bailiwick to be made.

During his time with those departments he had built up excellent working relationships with the authorities in the Crown Dependencies and we look forward to continuing support and good relations with his successors.

OBJECTIVES FOR 2005

The primary objectives for 2005 will encompass the following areas:-

- ***Legislation***

  Completion of the Statutory Code of Practice on the Disclosure of Criminal Convictions in connection with Employment and commencement of section 56 of the Data Protection Law.

  Considerations of any recommendations that may arise from reviews of the UK Act or legislative developments elsewhere.

- ***Adequacy***

  Ensuring that the European Commission's adequacy finding for the Data Protection régime in the Bailiwick is respected and that international data transfers comply with the eighth Data Protection principle.

- ***British Isles and International Liaison***

  Continuation of the close liaison with the Jersey Registrar, the Isle of Man Supervisor, the UK and Irish Commissioners and attendance at meetings with officials from the UK Department of Constitutional Affairs as the need arises.

  Attendance at relevant UK, European and international conferences will continue as a means of enhancing the international recognition of the Bailiwick and updating our knowledge of international developments.

- ***Raising Awareness***

  Continuation of the media awareness campaign and the mounting of seminars and talks for the public and private sectors.

  Collaboration with the Training Agency over the organisation of courses leading to formal qualifications in data protection, such as the ISEB Certificate.

  Promotion of relevant training using UK specialists, with training being targeted separately to financial sector organisations, other private sector organisations and the public sector.

  The publication of new literature and the reviewing and revision of existing literature.

  The continued publicising of the Preference Services and the undertaking of periodic surveys to determine their use and effectiveness.

- ***Compliance***

  Targeted compliance activities will be organised to increase the notification level of local organisations. More rigorous enforcement will take place, including consideration of prosecution of non-compliant organisations.

  The monitoring of websites and periodic surveys to assess compliance with data protection legislation and the privacy regulations.

- ***Government***

  Liaison with the newly constituted departments will be maintained, to ensure that data sharing protocols are redefined to reflect the newly established organisation of the Guernsey government departments, whilst maintaining the separation of purposes.

  The provision of data subject access to government information will be kept particularly under review, especially in the light of the fact the there is no freedom of information legislation in force. Efforts will be made to promote a code of practice for the release of information that would render the enactment of such legislation unnecessary.

FINANCIAL REPORT

The Data Protection Office is funded by a grant from the States of Guernsey that is administered from the Home Department. This grant is based on a budgetary estimate of expenditure prepared annually by the Commissioner.

In accordance with Section 3 of Schedule 5 of the Law, all fees received are repaid into the General Revenue Account.

The Data Protection Office's Income and Expenditure, which are included within the published accounts for the Home Department (2004) and were so included for the Advisory and Finance Committee (2003 and prior years), have been as follows:

INCOME	2004	2003
	£	£
Data Protection Fees [1]	37,622	23,937
EXPENDITURE		
Rent	15,526	15,526
Salaries and Allowances	129,782	114,988
Travel and Subsistence	7,366	15,648
Furniture and Equipment	13,107	33,045
Publications	2,199	3,255
Post, Stationery, Telephone	3,881	5,295
Heat Light, Cleaning	5,054	5,366
TOTAL EXPENDITURE	£176,915	£193,123
EXCESS OF EXPENDITURE OVER INCOME	£139,293	£169,186

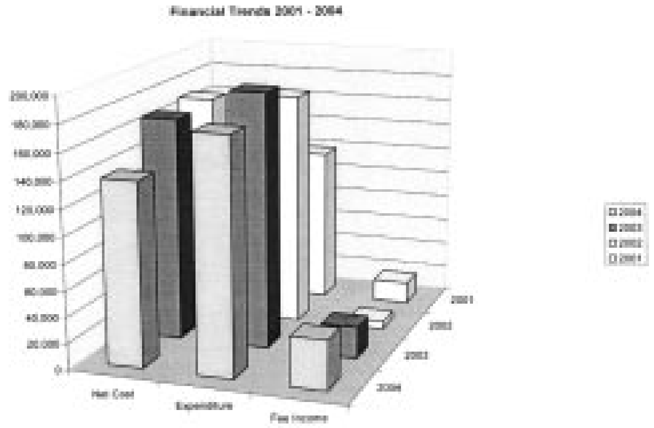
NOTES

[1] Fees were £35 per notification or renewal of a notification.

The Income for 2004 includes accrued income from previous years: £4,900 from triennial registrations from January to July 2002 and £14,992 from annual notifications and renewals throughout 2003.

The cash received for 2004 was £35,875 representing receipts for the 1025 annual notifications and renewals that were processed during 2004.

The financial trends in income and expenditure since 2001 are shown graphically below.



It can be seen that the fee income apparently fell between 2001 and 2002 but this was on account of the fact that it was the first year in which fee income was accrued; whereas expenditure for 2002 was inflated by the employment of temporary assistance with the implementation of the Law.

The 2003 expenditure included one-off costs incurred in the upgrading of the Notification System to deal more effectively with renewals and a recovery of the development costs of the notification system originally funded in 2002 directly from the Advisory and Finance Committee's unspent balances.

Accordingly, the 2004 figures are likely to be most representative of the level of future income and expenditure, although it is prudent to anticipate the need for the phased replacement of certain items of equipment in 2005 and in subsequent years.

The employment of consultants is an area that may show wide variations from year to year, depending in particular on the need for external legal assistance. This might arise specifically if any action were contemplated for which it would not be practical or possible to obtain legal advice from the Law Officers, or if any data controllers were contemplating appeals against any decisions of the Commissioner.

APPENDIX

The European perspective - is Data Protection value for money?

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Abstract
This paper aims to examine the economics of the regulation of the processing of personal data in the context of the 1995 European Directive on Data Protection. The major elements of the Directive and their impact on costs are identified and quantified where possible. Reference is made to published assessments of cost published by the UK Government in 1997 and 2003 and to the expenditure of the Commissioners in the UK and Ireland. These are compared and contrasted with a number of mostly intangible benefits associated with the relatively strong regulatory environment that results from implementation of the Directive. The question is raised as to whether the costs of strong regulation are justified by the economic benefits that ensue.

1. Introduction

Both business and government exploit Information and Communications Technologies to obtain process efficiency, and aim to maximise the use of information sharing to combat fraud and to provide tailored personalised services to individual customers.
Free market economics relies on competition to drive down prices, but needs adequate regulation to ensure fairness of trading and consumer protection.
The regulation of the processing of personal data interferes in the free market by enforcing individuals' rights and imposing standards of processing on organisations, so it is perhaps not surprising that anyone who regulates personal data processing may be required to provide an economic justification for their existence.
Regulation is also required of the public sector's use of technology to ensure that human rights are not compromised by the unwarranted sharing or unnecessary publication of personal information by government.
In Europe, regulation has tended to develop on the basis of statutory powers vested in independent public officials, whereas elsewhere in the world there may have been a greater tendency to encourage self-regulation.
There appears to be a generally held belief that Data Protection is a "good thing", but very little evidence as to whether the costs of compliance are balanced by the overall economic benefits to society.

1.1. OECD

The Organisation for Economic Co-operation and Development was established to promote policies designed to encourage economic development and a rising standard of living on a multilateral, non-discriminatory and global basis.
The Recommendation concerning the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data[1] was adopted by the Council of the OECD on 23rd September 1980.
This document was designed to stimulate international trade by defining eight principles of good practice that should apply to the protection of privacy.

[1]The text of the declaration may be found at:
http://www.oecd.org/document/20/0,2340,en_2649_34255_15589524_1_1_1_1,00.html

Broad political attention was first given to privacy online at the OECD Conference "Dismantling the Barriers to Global Electronic Commerce" held in Turku, Finland, on 19-21 November 1997 and in the following year, the Ottawa Ministerial Declaration reaffirmed a " commitment to the protection of privacy on global networks in order to ensure the respect of important rights, build confidence in global networks, and to prevent unnecessary restrictions on transborder flows of personal data".
Much of the work of the OECD in this area is detailed in: *"Privacy Online: OECD Guidance on Policy and Practice"* [2], and further information may be found on the OECD website[3]. In the privacy sphere, the OECD has sought to build bridges based on voluntary compliance with their recommendations rather than by establishing binding international treaties. However, it is evident that the members of the OECD believe that globally uniform standards of privacy protection would benefit international economic activity.

1.2. Council of Europe

At about the same time as the OECD was developing its eight principles, the regulation of Data Protection throughout Europe was being initiated by the publication of the 1981 Council of Europe Convention 108[4]; this came into force in 1985, has since been ratified by 31 Parties - including all the present EU Member States - and has also been signed by 7 other countries.
Convention 108 defined common minimum standards that were to be applied to the automated processing of personal data: it established the 5 principles of data quality, introduced the concept of special categories of data and established the rights of individuals in respect to information processed about them. Parties to the Convention were encouraged not to inhibit trans-border flow of personal data to another Party for reasons connected with privacy protection.
Some countries already had Data Protection legislation prior to Convention 108 and the subsequent implementation of national legislation in other countries diverged significantly between different European countries. The definitions of personal data were not consistent, some including manual records, for example, whilst others specifically excluded sound and image data. Some countries extended protection to legal persons, whilst others restricted protection to data about living individuals.
The result was that, despite the binding nature of the Convention, the flow of data between States was being impeded, owing to the different levels of protection in force and prohibitions by those with the strongest legislation from transfers to those States and territories with a lower standard of protection.

1.3. The Data Protection Directive

In the late 1980's, the economic consequences of the divergence of Data Protection standards were potentially quite acute and beginning to threaten the proper functioning of the Internal Market within the [then] European Economic Community. There was at least one instance, for example, where computerised personnel records of workers in one Member State were prevented from being transferred to the head office of the company that was established in another Member State. It was evident that the unequal protection of personal data was having an adverse effect on the economic progress on the Internal Market.
The European Commission responded to these by drafting a Data Protection Directive in 1990. This was not finally adopted until 1995[5] and imposed a common generally higher standard of protection and regulation across all Member States. The twin objectives of the Directive expressed in Article 1 were:

1. to protect the rights of individuals with respect to the processing of their personal data; and
2. to facilitate the free movement of personal data between Member States.

Although it was the first objective that received much attention, it was the second that held out the prospect of major economic benefit.

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[2] A description of this publication may be found at: http://www.oecd.org/document/49/0,2340,en_2649_33703_19216241_1_1_1_1,00.html
[3] Further information on the privacy policy of the OECD and the privacy statement generator may be found at www.oecd.org/privacy .
[4] Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data http://conventions.coe.int/Treaty/en/Treaties/Word/108.doc
[5] Directive 95/46/EC on the protection of individuals with the regard to the processing of personal data and on the free movement of such data OJ L 281 23.11.95 p 31-50. http://europa.eu.int/comm/internal_market/privacy/law_en.htm

However, the economic benefits came at the costs of compliance with the more uniform, but higher, standards of the national legislation resulting from the Directive and it is worth asking whether the facilitation of trade within the European Union has come at the cost of inhibiting the development of trade with Third Countries.

2. Elements of Cost

Costs may be classified as tangible or intangible as shown in the table below:

TANGIBLE	INTANGIBLE
Supervisory Authority	Impact on competitiveness
Notification Fees	Limitation on sharing of data
Compliance	Excessive bureaucracy
Subject Access	

The tangible costs of Data Protection comprise two main elements:

a) The cost of running the supervisory authority and the payment of any fees for notification; and
b) Compliance with the Data Protection principles, in particular the costs of the provision of data subject access.

Intangibles include:

c) The perception that compliance might reduce competitiveness, by limiting what can be done with customers' information; and
d) Inefficiencies introduced by restrictions on the sharing of data and the additional bureaucracy associated with compliance activities.

The major elements of the Directive that are of particular relevance to this paper are:

1. compliance with the Data Protection principles,
2. respecting the rights of data subjects,
3. administration of the notification process,
4. controlling data transfer to third countries and
5. exercising the functions of the supervisory authority.

2.1. Compliance with the Principles

The costs of compliance are borne by both the public and private sectors. In the private sector all businesses need to have regard to the privacy rights of their staff, but the main element of cost is likely to be determined by the extent to which an organisation transacts business with private individuals and then whether these transactions involve the processing of sensitive personal data.

In January 1994, the UK Home Office undertook a survey about the economic impact of the Directive [that was at that time still in a draft form] on 625 organisations, drawn from central government, local government, charities, private sector organisations and trade associations. The conclusions of that initial study[6] were that set-up costs would amount to £2.24 billion (€3.34bn) and that annual expenditure on data protection would rise by a factor of 25 to £308 million (€460m). However, that estimate received some criticism (for example in Data Protection News[7]) and a report by Ashton Business School and the Universities of Tilburg and Leiden[8] found in 1994 that : "*The financial impact of the proposed Directive will be very small for the majority of organisations studied in the public and private sectors in the Netherlands.*"

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[6] Costs of Implementing the Data Protection Directive. Paper by the United Kingdom. Home Office 1994.
[7] Data Protection News, Issue 20 Winter 1994/95, published by Hoskyns (CAP Gemini Sogeti)
[8] Report to the European Commission: An Evaluation of the Financial Impact of the Proposed European Data Protection Directive, Ashton Business School, 1994

The Home Office published a subsequent regulatory assessment of the costs of implementing the Directive in 1997 [9] that estimated the start-up costs to be £1.150bn. (€1.720bn.), representing slightly more than 0.1% of GDP for the UK for that year; the annual costs were estimated to be £0.742bn. (€1.110bn), representing just less than 0.1% of the GDP. If anything, these assessments may have underestimated the impact of the inclusion of manual records in the compliance costs. The post-implementation appraisal of the Data Protection Act 1998, undertaken by the Lord Chancellors' Department in September 2000[10] did not specifically address the economics, but did include a "… *concern over the economic impact of the provision of information. As well as the cost of providing the information, the provision of information on the telephone when selling a product or service measurably resulted in abandoned calls and lost sales* …".
Compliance with national legislation will require the data controller to manage their use of personal data. This will normally include direct costs from the need to appoint data protection officers and indirect costs associated with the provision of training and the implementation of business procedures to ensure the correct processing of data. Legislation may also limit the extent to which personal data may be shared within the organisation for different purposes from those for which it was originally collected. This will imply the need for additional resources to be devoted to increased dialogue with individual clients in order to obtain consent for the processing activities associated with these different purposes. The level of these costs depends very much on the business sector of the organisation, but could amount to a few percent of turnover.

The elements of costs that particularly affect the public sector, apart from human resource aspects, particularly relate to the control of information sharing between government departments and the security of transactions with the citizen.

These compliance costs may be quite substantial, involving the appointment of data guardians, the development of information handling and sharing protocols and the organisation of staff training programmes. These issues are coming into prominence in tandem with the drive towards the electronic delivery of more joined-up services and can be minimised by taking the opportunity to ensure that compliance is built-in at the earliest stage to the design principles for e-government.

2.2. Individual Rights

Individuals have rights to access and to have corrected personal data processed about them by data controllers. The exercise of these rights can have costly consequences for an organisation. In order to be able to respond adequately to a subject access request, the organisation must have effective information handling processes in place.

The provision of information to data subjects is often seen as one of the more onerous requirements on data controllers. However, the extent of this burden varies substantially, depending on the type of business conducted by the organisation. Arguably, the more efficient the organisation, the lower would be the costs of the provision of information, since it should be more readily available.

In July 2002, the Department of Constitutional Affairs within the UK Government published the results of a consultation exercise on subject access that had been undertaken in the previous autumn[11]. Some of the findings of this report are illustrated in the chart opposite.

Whilst 27% of those organisations that responded had to deal with less than 10 access requests per year, 14% received over 1000 annual requests.

Only 9% of the requests were dealt with at a cost less than the subject access fee (of £10 or about €15), with over 20% costing in excess of 100 times that fee. These figures may have been skewed by the fact that over one third of the respondents were from the public sector or public bodies.

A significant element in the compliance costs arises from the inclusion of the majority of manual records within the definition of personal data.

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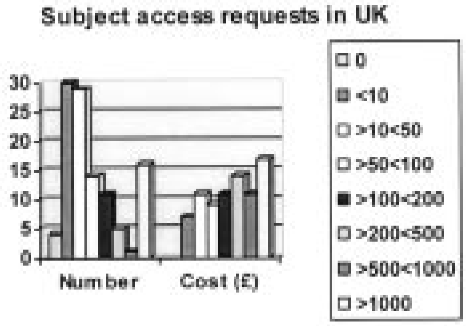
[9] Regulatory Impact Assessment of Directive 95/46/EC, Home Office December 1997
www.dca.gov.uk/ccpd/dpara.htm

[10] Data Protection Act 1998 Post-Implementation Appraisal CP(R)99/01 originally published by the Lord Chancellor's Department, December 2001 http://www.dca.gov.uk/ccpd/dparesp.htm

[11] Response to the Consultation Paper - Data Protection Act 1998:Subject Access, July 2003
www.dca.gov.uk/consult/foi/dpsaresp.htm

This means that organisations that hold a lot of manual records may spend a lot of effort bringing together all of this material in response to a subject access request. Recently, the Supreme Court of Appeal in the UK delivered a ruling[12] that substantially limited the types of manual data that were subject to the Law. This ruling, if carried through to general application, should have the effect of considerably reducing the burden on organisations in complying with subject access requests that might have involved searching relatively unstructured manual filing systems and accordingly reducing the high costs that have previously been quoted by some data controllers.



A similar survey conducted in 2003 throughout the European Union, "The Euro-barometer Report [13] on Data Protection in Europe" found that in 2002 49% of respondents received fewer than ten access requests per year, with less than 1% receiving in excess of 500 such requests. The vast majority (96%) of respondents received no Data Protection complaints during 2002. So, whilst the cost of dealing with an access request or a complaint may be significant when it occurs, the incidence of such requests is generally quite low, meaning that for most organisations the economic impact is also low.

2.3. Notification

The Directive requires data controllers to notify the supervisory authority of the details of their processing of personal data. Arrangements for notification vary substantially between different countries and in some cases (such as in the UK) a fee is charged; this is currently about €50 per notification.

The annual cost of the notification fee is a relatively insignificant expense, compared to the administrative time that may be required to generate the information required for a notification and the ongoing effort needed to ensure that it remains up to date. This activity would typically involve maintaining records of all systems that process personal data and being aware of all planned upgrades to such systems throughout an organisation. An integral part of the UK notification process involves the completion of a questionnaire on the security measures that are in place to protect the processing of personal data.

The costs of the overall notification process will vary and clearly could be significant for a large or complex organisation that transacts business with individuals.

2.4. Restrictions on Data Transfer abroad

The Directive prohibits the transfer of personal data to a territory without adequate protection. Very few Third Countries have yet achieved an adequacy finding[14], so transfers in general outside the EEA can only occur under the additional protection of contractual clauses or under the authority of the national supervisory body. Contracts can take some time to negotiate and can at times be in conflict with the national law of the "Third Country", hence the need for these contracts can inhibit trade, especially between the Pacific rim and Europe, and has proved a potential barrier to activities such as outsourcing back office operations to Asian countries. The Euro-barometer report on Data Protection in Europe shows that only 10% of the companies surveyed transferred personal data outside the European Economic Area in 2002. Data Protection constraints may have been a contributory factor in this.

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[12] Michael John Durant v Financial Services Authority [2003] EWCA Civ. 1746, Court of Appeal (Civil Division) decision of Lord Justices Auld, Mummery and Buxton dated 8th December 2003. http://www.courtservice.gov.uk/judgmentsfiles/j2136/durant-v-fsa.htm

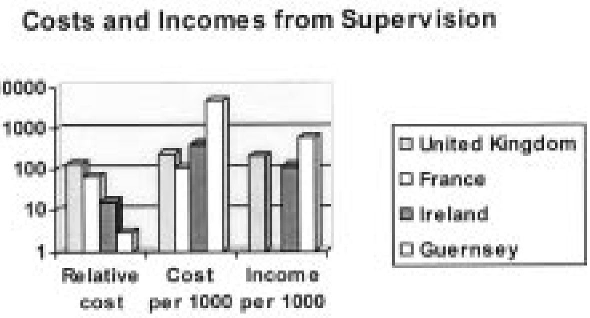
[13] EOS Gallup Europe Flash Eurobarometer 147 "Data Protection in the European Union": http://europa.eu.int/comm/public_opinion/flash/fl147_exec_summ.pdf.

[14] Commission decisions on adequacy may be found at: http://europa.eu.int/comm/internal_market/privacy/adequacy_en.htm

The European Commission's Analysis and impact study on the implementation of the Directive[15], published in 2003 found that: " *late transposition by Member States and differences in the ways the Directive is applied at national level have prevented Europe's economy from getting the full benefit of the Directive.* " There was particular divergence between the national laws and practice of Member States with regard to international transfers of data and so a similar argument could be applied to postulate the harmful effects on international trade.

2.5. Supervision

In Europe, the supervisory régime is dominated by the Directive 95/46/EC.
This lays down that supervision should be by an independent statutory authority, not under direct political control. Within Europe, the Data Protection or Privacy Commissioner's office is normally funded by central or regional government and in some cases may charge fees for its services such as for maintaining a register of data controllers. Such fees payable by law to a public body are essentially a form of indirect taxation and so any fee income should ideally be disregarded when international comparisons of the costs of the supervisory régimes are made.
The federal or regional structure of some European states further complicates a comparative study of costs as does the different functions performed by such supervisory bodies – in the UK, for example, the Information Commissioner is responsible for enforcing Freedom of Information legislation as well as Data Protection. The chart below illustrates the comparative costs of regulation in the UK, France, Ireland and Guernsey.
In the UK, which is the largest non-federal Member State in the EU, the Information Commissioner's Office spent about €14m in 2003,[16] which is €240.00 per thousand head of the population. That cost was largely offset by income of about €12.5m. (€212 per thousand).
Similarly, the 2003 budget of the CNIL in France was €6.5m[17], representing €108 per thousand head of the population for a mandate that was more specifically concerned with privacy.
By way of contrast, in the Republic of Ireland, which is one of the smaller Member States, the Data Protection Commissioner's Office[18] spent about €1.6m in 2003 (€404.00 per thousand) as against an income of €0.45m. (€115 per thousand).
In Guernsey[19], which has a population of only 60,000, last year I spent about €288,000 (€4,800 per thousand) against a income from fees of €35,000 (€583 per thousand).
These figures serve to illustrate the economies of scale that can apply to larger countries.



3. Benefits

So, let us look at the benefits of regulation, under similar headings that we used for examining the costs.

[15] European Commission's First Report on the transposition of the Data Protection Directive, 26 May 2003 http://europa.eu.int/comm/internal_market/privacy/lawreport/data-directive_en.htm
[16] Annual Report and Accounts of the UK Information Commissioner for 2003 http://www.informationcommissioner.gov.uk/cms/DocumentUploads/AR03.pdf
[17] CNIL 24e rapport d'activité 2003, Annexe 4
[18] Fifteenth Annual Report of the Data Protection Commissioner for the Republic of Ireland for 2003 http://www.dataprivacy.ie/images/annual_report_2003.pdf
[19] Bailiwick of Guernsey Data Protection Commissioner's report for 2003 http://www.dataprotection.gov.gg/Reports/2003%20Report.pdf

3.1. Compliance with the Principles

Compliance with the principles can have a significant impact on business processes and business organisation. Organisations that show that they are compliant with the principles should derive a number of benefits, including:

- Better staff relations, through improved transparency of personnel records and improved training;
- Better customer relations, through improved record keeping and up-to-date information and enhanced consumer confidence;
- Fewer complaints from clients, resulting in lower overhead costs;
- More efficient operations through better organised filing systems and improved business processes;
- Improved opportunities to transact international business, especially with customers resident in EU Member States.

3.2. Individual rights

Incorporation of respect for human rights, especially the right to privacy, into national law contributes to the establishment of a fair, just and open society.

This legislation means that citizens who transact business with government will have increased confidence that their personal information will be respected and will not be unnecessarily shared without their consent. It has been widely predicted that e-commerce will continue to grow to encompass more and more consumer-led transactions. E-commerce itself offers amazingly low transaction costs, especially where services, such as theatre bookings, tickets for public transport and music downloads are concerned. The economic consequences of the widespread adoption of e-commerce are immense. However, its growth has not nearly been as rapid as was predicted and one reason for this is the lack of trust by consumers in doing business over the Internet.

Consequently, it can be argued that exploitation of the strong regulation of Data Protection can have a pivotal role to play in facilitating the increased confidence amongst consumers that their personal data will not be abused from the use of electronic transactions.

Organisations established throughout Europe are able to exploit their compliance with strong Data Protection legislation to offer improved levels of consumer protection and should therefore be able to gain substantial competitive advantage from e-commerce applications. The high profile given to personal privacy within Europe can mean that European consumers may be discouraged from doing business over the Internet unless they can be sure that the privacy of their business is protected by adequate legislation in the destination country.

3.3. Notification

There are no particularly obvious direct economic benefits from the notification process. Indeed there are many who think that notification is a waste of time. Although it does consume some resources, the side effects of notification can be a greater awareness amongst the business community of Data Protection matters and the incentive to establish an organisational focus for everything concerned with personal data. As an example, completion of the security questionnaire that is associated with the notification processes forces an organisation to consider its security procedures and is in itself an educational exercise. Notification can also reduce the need to respond to the more straightforward requests for information about processing, as the answers to such requests may be found in the published notification; hence individuals can know at the outset the types of information processed and purposes for which they are processed prior to deciding whether it is necessary to make a detailed subject access request.

3.4. Restrictions on Data Transfer abroad

As has been previously mentioned, the prohibition of data transfers to non-adequate jurisdictions can initially have negative economic consequences as it can restrict trade, by making it more difficult to do business with organisations based in such territories.

This is very much a short-term view. In whatever field standards are introduced they have the effect of partitioning the universe into the compliant and the non-compliant. Once it has been recognised that the standards are worthwhile, they become more universally adopted, with the result that economic costs of non-compliance far outweigh the costs of compliance.

Essentially, this means that the pressure on a country to enact legislation to provide adequate Data Protection is increased as a result of the economic effect of the trade sanctions that it suffers. Certainly, it was economic arguments that were primarily used to justify updating the Data Protection legislation in Guernsey, such that we were able to obtain a finding of adequacy.

However, with much of the United States, Latin America, Africa and Asia not yet deemed "adequate" by the European Commission, we are still some way from reaching a critical mass of "adequate" economies that would enable sufficient pressure to be imposed to facilitate the free movement of personal data on a global scale. Indeed, there is a danger that the reverse could apply – strong economic pressure by those with "weak" protection might be applied in an effort to dilute the level of protection that applies in Europe and those other countries that enjoy "strong" protection.

3.5. Supervision

The supervisory body imposes a direct and an indirect load on the taxpayer. What benefits accrue from having an independent supervisor? For the regulation of business, it of little concern whether the regulator is a government servant or not. For the regulation of government, of course, it is vitally important that regulation can be seen to be independent and promoting the right balance between the legitimate needs of the state and the fundamental rights of the individual. Striking this balance is particularly relevant at the present time in dealing with the responses to international terrorism and money laundering and in the debate over biometrics, identity cards and the interception of communications.

One of the major functions of the supervisory body is that of increasing public awareness – this translates into enhanced public confidence and improved quality of life. Intangible benefits, but benefits none the less. More tangible is the power of the regulator to intervene, to respond to complaints, to enforce compliance - normally without the need to exercise the legal process by engaging in prosecution or litigation. This may be bad news for the legal profession, but it is good news for the economy, as most problems can be fixed by intervention rather than confrontation. By way of example, in 2003 the UK Information Commissioner processed approximately 12,000 complaints, involving nearly 5,000 assessments of processing, but undertook only eight prosecutions.

4. Conclusions

The protection of privacy has long been recognised as having important economic consequences and has been high on the agenda of intergovernmental organisations such as the OECD and the Council of Europe for over 25 years. The processing of personal data in Europe is subject to strong regulation driven by the EU Directive that interferes in the free market by imposing high standards on the processing and protection of Personal Data in both the private and public sectors.

Strong regulation appears to have a significant economic cost, which although amounting to a fraction of a percent of a nation's Gross Domestic Product, may have a greater indirect effect by inhibiting the capacity of that nation to trade internationally. However, this cost is balanced by the increased consumer trust in dealing with an economy that respects privacy.

Although the European Commission has undertaken an analysis of the implementation of the Directive, this did not extend to an economic appraisal. However, it is understood that the Commission is in the process of commissioning a study into the costs of compliance, the results of which should be available in 2005. Whilst some countries have followed the European approach, many other countries have favoured a regulatory approach that depends more on voluntary compliance, with sectoral legislation addressing areas of particular concern. This difference in approach could inhibit the flow of personal data between the "strong" and "weak" regulatory environments and is particularly relevant to consideration of the needs of international ecommerce.
In its 2004 economic survey of the Euro area[20], the OECD reports: *"Goods, services and financial market integration must be deepened with a view to raising that area's growth potential"*. Implicit in that statement is the need for common global privacy standards to facilitate trans-border flows of personal data. The final report of the World Summit on the Information Society[21] the important role of privacy protection is recognised in Principle 35. *"Strengthening the trust framework, including information security and network security, authentication, privacy and consumer protection, is a prerequisite for the development of the Information Society and for building confidence among users of ICT's. A global culture of cyber-security needs to be promoted, developed and implemented in cooperation with all stakeholders and international expert bodies. These efforts should be supported by increased international cooperation. Within this global culture of cyber-security, it is important to enhance security and to ensure the protection of data and privacy, while enhancing access and trade. In addition, it must take into account the level of social and economic development of each country and respect the development-oriented aspects of the Information Society."*

There is currently very little data available on the costs of complying with privacy regulation and even less on its economic benefits. The benefits of strong regulation are mostly intangible, but contribute towards the creation of a fair and open society. The question remains – are the costs balanced by the benefits?

THE DATA PROTECTION PRINCIPLES

1. Personal data shall be processed fairly and lawfully and special conditions apply to the processing of sensitive personal data.
2. Personal data shall be obtained for one or more specified and lawful purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are processed.
4. Personal data shall be accurate and kept up to date.
5. Personal data shall not be kept for longer than necessary.
6. Personal data shall be processed in accordance with the rights of data subjects.
7. Technical and organisational measures shall be taken against unauthorised or unlawful processing and against accidental loss or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the Bailiwick unless the destination ensures an adequate level of protection for the data.

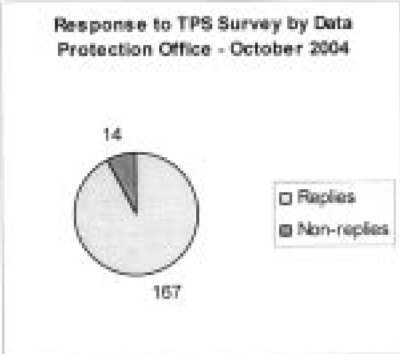
[20] www.oecd.org/dataoecd/17/33/33626607.pdf
[21] Final Report of the Geneva Phase of the Summit WSIS-03/GENEVA/DOC/0009 (rev. 1) http://www.itu.int/wsis/documents/doc_multi-en-1191|0.asp

FIRST BATTLE AGAINST NUISANCE CALLS WON

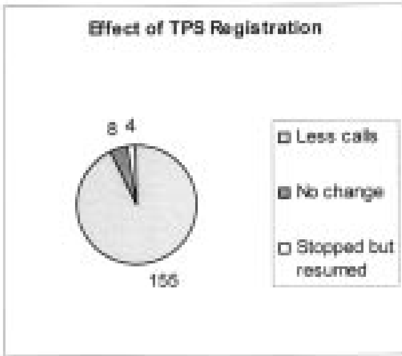
Anne Wiggins
Assistant Data Protection Commissioner

Results of an interim research project undertaken recently by the Data Protection Office have suggested that the Telephone Preference Service (TPS) is very effective in its aim of reducing the numbers of unsolicited telephone calls received by individuals.

A questionnaire was sent to 180 individuals whom the office had registered with the TPS during October 2004. There was an excellent response with 167 forms being returned, this represents almost a 92% response rate.



Out of the 167 individuals who responded 155 stated that they received less calls, this represents a 93% improvement.



Many people have expressed gratitude for the improvement in their lives due to the reduction of these unwanted telephone calls.

Some typical comments were:

"It is certainly a wonderful improvement and I am very grateful"

"Very satisfied. Recently all we have had is one call"

"Am very pleased and relieved as they were becoming a real problem"

"Thankfully these calls appear to have ceased and I have had none for the last three weeks"

"I have been very pleased with the effectiveness of this service"

"We no longer receive any of these unwanted calls. Your service is excellent. Thank you very much"

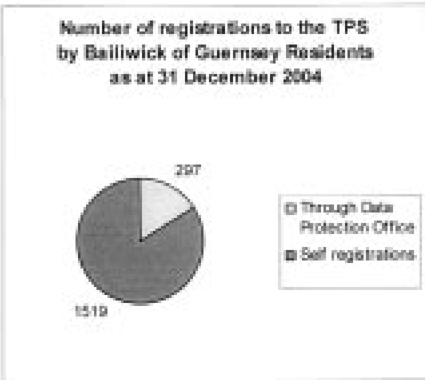
Although calls do not stop completely many people notice a significant improvement. The calls that persist come from outside the Bailiwick and the United Kingdom, mostly from America, and so are not subject to the Privacy and Electronic Regulations which are in force in the former jurisdictions.

The TPS is operated by the Direct Marketing Association in the UK. It maintains a register of telephone numbers which companies must, according to the Regulations, screen on a monthly basis. It is unlawful to make marketing calls to any number listed on the register. It is a service provided free of charge and available to Bailiwick of Guernsey residents.

As the Regulations are in force in the Bailiwick local companies must also screen the TPS register before making any marketing calls. Non-compliance with this rule would result in the Commissioner taking enforcement action.

Companies are increasingly telephoning individual households with offers and information about products and services. Such calls are not always welcome.

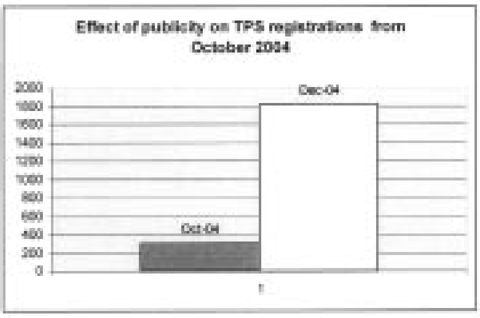
A local press article in early October 2004 highlighted the plight of many elderly people who were subjected to receiving unwanted telephone calls. The contact details for the TPS were widely circulated in the wake of this report and a lot of elderly people contacted the Data Protection Office stating that they were experiencing difficulty in trying to register. Therefore the office decided, with their permission, to undertake registration on their behalf. Between 10 October 2004 and 31 December 2004 a total of 279 telephone numbers were registered in this way.



The office is happy to continue to make registrations on behalf of the elderly. They may contact the Data Protection Office on tel: 742074.

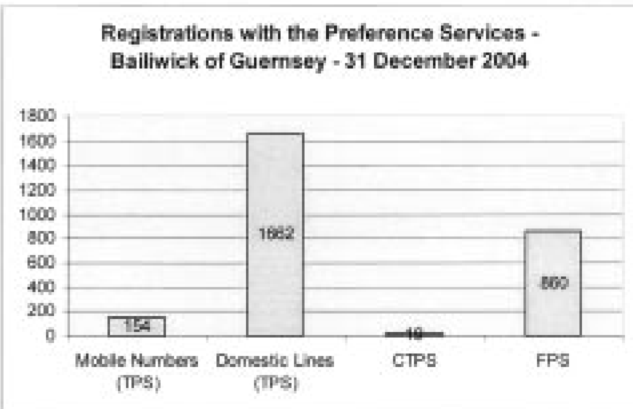
Many more people in the Bailiwick have registered directly with the TPS following the publicity last October. Then only 240 Bailiwick telephone numbers were registered but this had risen to 1,816 in January 2005, representing over a 750% increase.

The TPS may be directly contacted on 0845 070 0707 or registrations may be made on line at www.tpsonline.org.uk. An information leaflet on the TPS is available from the Data Protection Office.



Mobile telephone numbers may be registered on TPS as can business telephone numbers, (Corporate Telephone Preference Service - CTPS) and fax numbers (Fax Preference Service - FPS). So far there have not been so many registrations made to these services as to the TPS.

The chart opposite suggests that businesses within the Bailiwick are not making best use of the Corporate Telephone and Fax Preference Services (CTPS and FPS). It is recommended that all telephone and fax numbers that are used should be registered if marketing calls are not required. Registration is available through the DMA website.



The Data Protection Office intends to continue doing periodic surveys to assess the use and ongoing effectiveness of these services.

THE PRIVACY AND ELECTRONIC COMMUNICATIONS REGULATIONS

1. Telecommunications services must be secure and information processed within such services must be kept confidential.

2. Traffic data should not be retained for longer than necessary and the detail of itemised billing should be under subscriber control.

3. Facilities should be provided for the suppression of calling line and connected line information.

4. Information on the subscriber's location should not generally be processed without consent.

5. Subscribers may choose not to appear in directories.

6. Automated calling systems may not be used for direct marketing to subscribers who have opted out.

7. Unsolicited faxes may not be sent to private subscribers unless they have opted in or to business subscribers who have opted out.

8. Unsolicited marketing calls may not be made to subscribers who have opted out.

9. Unsolicited email marketing may not be sent to private subscribers and must never be sent where the identity of the sender has been disguised or concealed.

10. The Data Protection Commissioner may use enforcement powers to deal with any alleged contraventions of the Regulations.

Further information about compliance with the Data Protection (Bailiwick of Guernsey) Law 2001 can be obtained via:

E-mail address: dataprotection@gov.gg
Internet: www.dataprotection.gov.gg
Telephone: +44 (0) 1481 742074
Fax: +44 (0) 1481 742077

Post: Data Protection Commissioner's Office
P.O. Box 642
Frances House
Sir William Place
St. Peter Port
Guernsey
GY1 3JE

POLICY COUNCIL
THE STATES OF GUERNSEY

GUERNSEY RETAIL PRICES INDEX

4.6% annual change as at 31 March 2005

Wednesday
20 April 2005

At the end of March, Guernsey's annual rate of inflation, as measured by changes in the Index of Retail Prices, was 4.6% compared with 4.9% at the end of the previous quarter.

RPI X, the rate of inflation that excludes mortgage interest payments stands at 3.2%

The Index Figures at the end of March 2005 were:
122.8 (Dec 99=100)
145.8 (Mar 1994 =100)
197.0 (Dec 1988 =100)
263.3 (Dec 1983 =100)
418.0 (Dec 1978 =100)

Table 1

Period	%	Period	%
3 Months	1.9	2 Years	9.1
6 Months	2.6	3 Years	14.2
9 Months	3.7	4 Years	17.5
12 Months	4.6	5 Years	21.4

Issued by:
Policy and Research Unit
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P O Box 43
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St Peter Port
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GY1 1FH

Matters affecting the R.P.I during the last year

The major contributors to the March 2005 figure over the past **12 months** were Alcohol (0.3% out of 4.6%) Housing (2.8%), Fuel, Light and Power (0.8%), Motoring (0.4%), Leisure Services (0.3%) and Food Away from Home (0.4%).

The Housing group was again the largest contributor at 2.8% out of 4.6%. The cost of servicing the average mortgage debt has increased over this period. Although interest rates remained unchanged by the Bank of England in the last two quarters, they have risen from 4.0% in March 2004 to 4.75% in March 2005. Elsewhere within the Housing Group, there were increases in the cost of major house improvements, building costs and water rates.

The Fuel, Light and Power group contributed 0.8% which was mainly due to the effects of the increase in the price of oil, especially from September 2004. This has had the knock on effect of increasing the price of heating oil and gas. The increase in the motoring group was mainly due to the increase in petrol, again due to rising oil prices.

Small decreases were observed in the Clothing, and Fares and Other Travel and Leisure Services Groups.

RPI enquiries -
Tel: 01481 717012
Fax: 01481 717157
Internet: www.gov.gg/esu
Email:
policy.research@gov.gg

Matters affecting the R.P.I during the last three months

The main contributors to inflation over the last **three months** were: oil prices, the cost of alcohol for home consumption, fares and other travel, and increases in tobacco prices.

Annual % Changes for each quarter

Table 2

	March	June	September	December
1992	4.6	4.1	3.6	3.2
1993	2.3	1.5	1.8	1.4
1994	2.9	2.3	2.0	2.4
1995	3.0	3.5	4.0	3.6
1996	2.5	2.1	2.0	2.8
1997	3.1	4.0	4.4	4.7
1998	4.1	4.0	4.0	3.2
1999	2.1	2.2	1.8	2.4
2000	3.8	4.4	4.6	3.9
2001	3.3	2.3	2.6	1.9
2002	2.9	3.3	3.9	4.4
2003	4.7	4.3	3.3	3.9
2004	4.2	4.5	5.2	4.9
2005	4.6			

GUERNSEY RETAIL PRICES INDEX - MARCH 2005

PERCENTAGE CHANGES IN GROUP INFLATION AND THEIR CONTRIBUTION TO OVERALL INFLATION

Table 3

GUERNSEY INFLATION RATE (+4.6%)

	Weight	Quarterly %Change	Annual %Change	% Contribution
Food	127	-0.4	0.2	0.0
Alcoholic Drink	52	5.4	5.3	0.3
Tobacco	19	5.8	7.2	0.2
Housing	216	2.8	12.0	2.8
Fuel, Light and Power	41	3.8	17.0	0.8
Household Goods	79	1.4	-0.1	0.0
Household Services	33	1.9	2.9	0.1
Clothing & Footwear	56	2.5	-2.6	- 0.2
Personal Goods	49	0.5	1.3	0.1
Motoring Expenditure	85	1.3	4.2	0.4
Fares/Other Travel	33	8.1	-9.1	- 0.3
Leisure Goods	63	-4.1	-3.8	- 0.3
Leisure Services	92	0.9	3.2	0.3
Food Away from Home	55	1.1	6.9	0.4
Overall	1000			
All Items				4.6

Weight is the proportion of the total index represented by each group. **Contribution** shows the effect of price changes in relation to the relative weight of the groups.

Retail Prices Index (RPI)

The RPI is a measure of inflation in Guernsey. It can be defined as "an average measure of change in the prices of goods and services bought for the purpose of consumption by the vast majority of households" (RPI Technical Manual, Office for National Statistics, 1998).

Goods and services that consumers purchase have a price, and these will vary over time. The RPI is designed to measure such changes. Imagine a very large shopping basket (over 2100 items) comprising all the different kinds of goods and services bought by a typical household. As the prices of individual items in this basket vary, the total cost of the basket will vary - the RPI is a measure of the change from quarter to quarter in this total cost.

No two households spend their money in exactly the same way and this basket of goods is compiled using spending pattern data from the Household Expenditure Survey. This is carried out every five years, hence the RPI index base is reset to 100 e.g. Dec 1999 = 100, Mar 1994 = 100 etc. The RPI while not applying precisely to any one household or person, will be close to the experience of inflation for the great majority of households.

GUERNSEY RETAIL PRICES INDEX - MARCH 2005

Figure 1

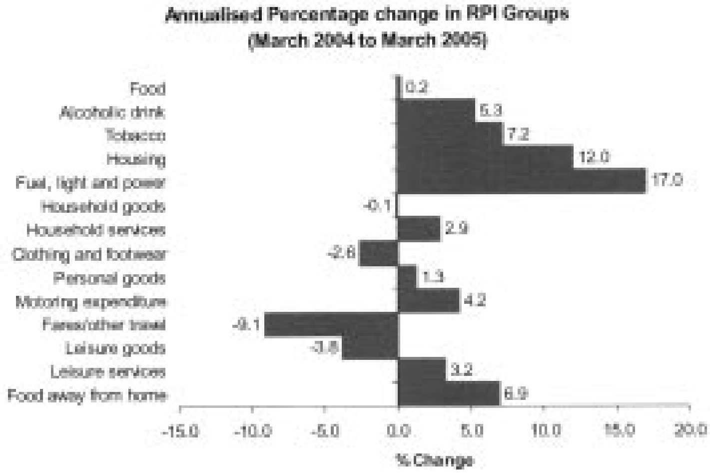


Figure 2

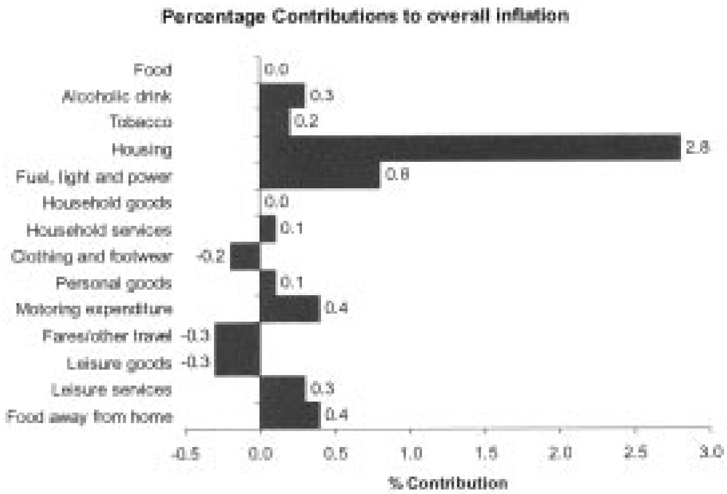
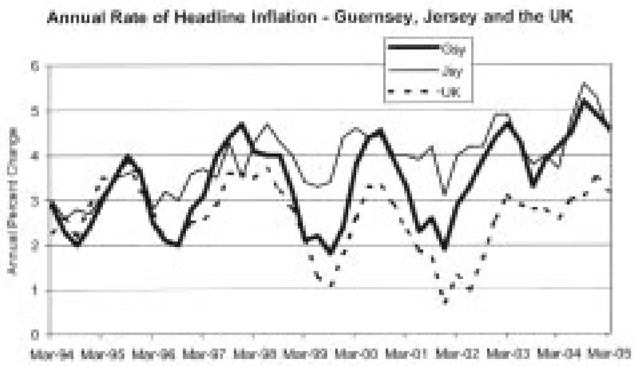


Figure 3



GUERNSEY RETAIL PRICES INDEX - MARCH 2005

RPI comparison with Jersey and the UK

Guernsey and Jersey tend to run at a higher rate than the UK. The chart on page 3 (figure 3) shows that inflation in Guernsey followed the general trends of the UK inflation rate, albeit at a higher level. Guernsey and Jersey's inflation rates have been at similar levels over this period.

Table 4

		Annual Movements						Quarterly Movements		
		Guernsey		UK		Jersey		Guernsey	UK	Jersey
		Headline	RPI X	Headline	RPI X	Headline	RPI X	Headline RPI		
1998	Mar	4.1	2.3	3.5	2.6	4.3	3.8	0.9	0.5	1.7
	June	4.0	2.3	3.7	2.8	4.7	4.1	0.9	1.6	1.2
	Sept	4.0	2.6	3.2	2.5	4.3	3.9	1.0	1.0	0.9
	Dec	3.2	2.2	2.8	2.6	4.0	3.9	0.4	0.0	0.2
1999	Mar	2.1	2.6	2.1	2.7	3.4	3.6	-0.2	-0.2	1.1
	June	2.2	3.1	1.3	2.2	3.3	3.6	1.0	0.9	1.1
	Sept	1.8	3.0	1.1	2.1	3.4	3.6	0.4	0.5	0.9
	Dec	2.4	2.8	1.8	2.2	4.4	4.3	1.1	0.7	1.1
2000	Mar	3.8	3.1	2.6	2.0	4.6	4.3	1.2	0.3	1.3
	June	4.4	3.6	3.3	2.2	4.4	4.0	1.6	1.6	1.0
	Sept	4.5	3.5	3.3	2.2	4.6	4.2	0.7	0.4	1.1
	Dec	3.9	3.8	2.9	2.0	4.0	3.4	0.5	0.3	0.5
2001	Mar	3.3	2.9	2.3	1.9	4.0	3.6	0.6	0.0	1.4
	June	2.3	2.7	1.9	2.4	3.9	3.8	0.8	1.3	0.9
	Sept	2.6	3.1	1.7	2.3	4.2	4.2	0.8	0.1	1.3
	Dec	1.9	2.9	0.7	1.9	3.1	3.6	-0.1	-0.7	-0.6
2002	Mar	2.9	3.8	1.3	2.3	4.0	4.4	1.6	0.6	2.3
	June	3.3	3.6	1.0	1.5	4.2	4.4	1.0	1.0	1.1
	Sept	3.9	3.8	1.7	2.1	4.2	4.2	1.4	0.8	1.3
	Dec	4.4	3.8	2.9	2.7	4.9	4.5	0.4	0.5	0.1
2003	Mar	4.7	4.3	3.1	3.0	4.9	4.8	1.9	0.8	2.4
	June	4.3	3.8	2.9	2.8	4.2	4.6	0.6	0.8	0.4
	Sept	3.3	3.1	2.8	2.8	3.8	4.4	0.4	0.7	0.9
	Dec	3.9	3.4	2.8	2.6	4.0	4.0	1.0	0.5	0.3
2004	Mar	4.2	3.2	2.6	2.1	3.7	3.5	2.2	0.6	2.1
	June	4.5	3.1	3.0	2.3	4.8	3.4	0.9	1.2	1.5
	Sept	5.2	2.9	3.1	1.9	5.6	3.3	1.1	0.8	1.7
	Dec	4.9	2.9	3.5	2.5	5.3	3.4	0.7	1.0	0.0
2005	Mar	4.6	3.2	3.2	2.4	4.5	2.7	1.9	0.2	1.3

RPI X

A single measure of inflation may not meet all user's needs. Following the Office for National Statistics' Review of the Island's RPI, one recommendation was for the Policy and Research Unit to publish the RPI X. RPI X literally means RPI **eXcluding mortage interest payments**; the RPI is calculated again after this item has been removed.

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Email: gareth.jones@gov.gg

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IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 29th DAY OF JUNE 2005

The States resolved as follows concerning Billet d'État No IX
dated 10th June, 2005

TREASURY AND RESOURCES DEPARTMENT

INFORMATION POWERS

I.- After consideration of the Report dated 19th April, 2005, of the Treasury and Resources Department:-

1. That legislation be enacted as recommended in that Report.

2. To approve the Projet de Loi entitled "The Income Tax (Guernsey) (Amendment) Law, 2005" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

THE INCOME TAX (RESIDENCE) (GUERNSEY) (AMENDMENT) LAW, 2005

II.- To approve the Projet de Loi entitled "The Income Tax (Residence) (Guernsey) (Amendment) Law, 2005" and to authorize the Bailiff to present a most humble Petition to Her Majesty in Council praying for her Royal Sanction thereto.

PROJET DE LOI

entitled

THE MISUSE OF DRUGS (BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2005

III.- To approve the Projet de Loi entitled "The Misuse of Drugs (Bailiwick of Guernsey) (Amendment) Law, 2005" and to authorize the Bailiff to present a most humble Petition to Her Majesty in Council praying for her Royal Sanction thereto.

THE SUPPLEMENTARY BENEFIT (IMPLEMENTATION) (AMENDMENT) ORDINANCE, 2005

IV.- To approve the draft Ordinance entitled "The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

THE SUPPLEMENTARY BENEFIT (CLASSES OF PERSONS TO WHOM THE LAW APPLIES) ORDINANCE, 2005

V.- To approve the draft Ordinance entitled "The Supplementary Benefit (Classes of persons to whom the Law applies) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

THE CENTRAL OUTDOOR ASSISTANCE BOARD REGULATIONS (REPEAL) ORDINANCE, 2005

VI.- To approve the draft Ordinance entitled "The Central Outdoor Assistance Board Regulations (Repeal) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

THE FOREIGN TAX (RETENTION ARRANGEMENTS) (GUERNSEY AND ALDERNEY) ORDINANCE, 2005

VII.- To approve the draft Ordinance entitled "The Foreign Tax (Retention Arrangements) (Guernsey and Alderney) Ordinance, 2005", and to direct that the same shall have effect as an Ordinance of the States.

PRIAULX LIBRARY

NEW TRUSTEE

VIII.- To postpone consideration of this Article to a later meeting of the States.

LADIES' COLLEGE BOARD OF GOVERNORS

NEW MEMBERS

IX.- To re-elect

(1) Advocate P J G Atkinson as a member of the Ladies' College Board of Governors;

(2) Mrs K M N Richards as a member of that Board of Governors.

POLICY COUNCIL

LOI RELATIVE À LA TAXATION PAROISSIALE 1923

X.- After consideration of the Report dated 16th May, 2005, of the Policy Council:-

1. That a Special States Committee called "The Parochial Ecclesiastical Rates Review Committee" shall be established.

2. That the Committee's mandate shall be "To investigate and report on the operation of the Loi Relative à La Taxation Paroissiale 1923, as amended, as to its church property aspects, with particular reference to the repair and maintenance of parochial church property, and alternative means of providing or securing the finance required to repair, maintain and support such property".

3. That the Special Committee Membership Allowance payable in accordance with Section I (2) (v) of the Rules for Payments to States Members, etc. shall be £1,250 per annum.

4. That the Committee's constitution shall be:

   A Chairman who shall be a sitting member of the States

   Four sitting members of the States

   The Committee may appoint up to two non-voting members, who shall not be sitting members of the States.

5. To elect to that Committee

   (1) As Chairman, Deputy Mrs D E Lewis; and

   (2) As Members, Deputy J A B Gollop, Deputy G Guille, Deputy T M Le Pelley and Deputy B R De Jersey.

POLICY COUNCIL

INTERPRETATION OF LEGISLATION

XI.- After consideration of the Report dated 16th May, 2005, of the Policy Council:-

1. That legislation be enacted as recommended 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

SECURITY OF AIR LINKS

XII.- After consideration of the Report dated 28th April, 2005, of the Treasury and Resources Department:-

1. To endorse the Treasury and Resources Department's conclusions that retention of the Aurigny Group is in the overwhelming public interest, and represents the best strategic option for the Island at the present time.

2. To authorise the Treasury and Resources Department to facilitate (if necessary by providing guarantees) the Aurigny Group's borrowing from third parties.

3. To direct the Treasury and Resources Department to report back to the States on the financial position of the Aurigny Group on a regular basis as part of the Interim Financial and Budget reports.

HOUSING DEPARTMENT

ALTERATIONS TO THE HOUSING REGISTER –
THE FORMER ROYAL HOTEL SITE

XIII.- After consideration of the Report dated 25th April, 2005, of the Housing Department:-

1. To direct that an Ordinance be prepared to enable the Housing Department to inscribe in Part A of the Housing Register by virtue of Section 52 of the Housing (Control of Occupation) (Guernsey) Law 1994, eight dwellings which will be constructed on property comprising part of the site of the former Royal Hotel, to be known as Royal Terrace.

2. That that Ordinance shall include the provision that a dwelling shall not be inscribed until:

   (i) the construction of not less than 24 dwellings in Royal Terrace has been completed of which not less than 16 'local market' dwellings are available for occupation; and

   (ii) the deletion of eight dwellings from Part A of the Register on the application of their owners has been effected.

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

EDUCATION DEPARTMENT

EDUCATION DEVELOPMENT PLAN 3
THE DEVELOPMENT, FUNDING AND ACCOUNTABILITY OF THE GRANT-AIDED COLLEGES

XIV.- After consideration of the report dated 27th April, 2005, of the Education Department:-

1. To approve the continuation of States funding for Elizabeth College, The Ladies’ College and Blanchelande Girls’ College.

2. To approve that the Colleges’ Budget continues to be a separate Education Department Cash Limit and remains separate from the Education General Budget.

3. To direct the Treasury and Resources Department to take into account these proposals when recommending to the States revenue allocations for 2006 and subsequent years, including any adjustments in respect of employers’ superannuation rates.

4. To endorse the cessation of the existing grant aid arrangements in respect of Elizabeth College and Blanchelande Girls' College from September 2005, and The Ladies' College from September 2006.

5. To approve a new model of funding for Elizabeth College and Blanchelande Girls' College from September 2005 and The Ladies' College from September 2006, which allows the Colleges to retain any surpluses achieved by the new formula, based on the States funding Special Placeholders at the full fee costs, and all pupils attracting a 'general contribution' of £2,000 from the States.

6. To approve from September 2006 an annual adjustment in the “general contribution” element of the grant, in line with any standard percentage increase awarded to States’ committees.

7. To approve the new model of funding for a period of 7 years, commencing in September 2005.

8. To direct the Education Department to carry out an internal review of the new arrangements after receipt of 3 years of accounts, with the reviews to be completed no later than the end of 2009.

9. To approve provision in the formula for 161 special place holders at Elizabeth College and The Ladies’ College.

10. To approve provision in the formula for 21 special place holders at Blanchelande Girls’ College, or more where the actual number of special places exceed this, based on admissions in proposition 11 below.

11. To approve up to 23 special places per school year for Elizabeth College and The Ladies’ College and up to 6 special places per school year for Blanchelande Girls’ College, subject to the existing qualifying criteria.

12. To approve financial support, subject to the prior introduction of an agreement incorporating conditions of grant aid.

ORDINANCE LAID BEFORE THE STATES

THE EMERGENCY POWERS (FORMS OF OATH) ORDINANCE, 2005

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Emergency Powers (Forms of Oath) Ordinance, 2005, made by the Legislation Select Committee on 29th April, 2005, was laid before the States.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE STATES HOUSING (RENT AND REBATE SCHEME) (GUERNSEY) REGULATIONS, 2005

In pursuance of Section 3(1) of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Rent and Rebate Scheme) (Guernsey), Regulations, 2005, made by the Housing Department on 3rd May, 2005, were laid before the States.

THE STATES HOUSING (STATUTORY TENANCIES) (GUERNSEY) REGULATIONS, 2005

In pursuance of Section 2 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Statutory Tenancies) (Guernsey), Regulations, 2005, made by the Housing Department on 5th May, 2005, were laid before the States.

THE STATES HOUSING (TRIBUNAL AND APPEALS) (GUERNSEY) REGULATIONS, 2005

In pursuance of Sections 1 to 5 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Tribunal and Appeals) (Guernsey), Regulations, 2005, made by the Housing Department on 6th May, 2005, were laid before the States.

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2005

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) Regulations, 2005, made by the Social Security Department on 23rd May, 2005, were laid before the States.

K. H. TOUGH
HER MAJESTY'S GREFFIER