BILLET D'ÉTAT

WEDNESDAY, 27th OCTOBER, 2004

XVIII
2004

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NOTE: The item intended to be included in a separate Billet d'État to be numbered XV is not now to be laid before the October States. Accordingly there will be no Billet d'État bearing the numbers XV of 2004 and pages 1283 to 1398 are therefore unallocated.

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 **27th OCTOBER, 2004,** immediately after the meetings 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
8th October, 2004

THE REHABILITATION OF OFFENDERS (BAILIWICK OF GUERNSEY) LAW, 2002 (EXCEPTIONS AND COMMENCEMENT) ORDINANCE, 2004

The States are asked to decide:-

I.- Whether they are of opinion to approve the draft Ordinance entitled "The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Exceptions and Commencement) Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE SUNDAY TRADING (AMENDMENT) ORDINANCE, 2004

The States are asked to decide:-

II.- Whether they are of opinion to approve the draft Ordinance entitled "The Sunday Trading (Amendment) Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE SUPPLEMENTARY BENEFIT (IMPLEMENTATION) (AMENDMENT) ORDINANCE, 2004

The States are asked to decide:-

III.- Whether they are of opinion to approve the draft Ordinance entitled "The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE SOCIAL INSURANCE (RATES OF CONTRIBUTIONS AND BENEFITS, ETC) ORDINANCE, 2004

The States are asked to decide:-

IV.- Whether they are of opinion to approve the draft Ordinance entitled "The Social Insurance (Rates of Contributions and Benefits, etc) Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE LONG-TERM CARE INSURANCE (GUERNSEY) (RATES) ORDINANCE, 2004

The States are asked to decide:-

V.- Whether they are of opinion to approve the draft Ordinance entitled "The Long-Term Care Insurance (Guernsey) (Rates) Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE FAMILY ALLOWANCES ORDINANCE, 2004

The States are asked to decide:-

VI.- Whether they are of opinion to approve the draft Ordinance entitled "The Family Allowances Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE ATTENDANCE AND INVALID CARE ALLOWANCES ORDINANCE, 2004

The States are asked to decide:-

VII.- Whether they are of opinion to approve the draft Ordinance entitled "The Attendance and Invalid Care Allowances Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

THE CENTRAL OUTDOOR ASSISTANCE BOARD REGULATIONS (AMENDMENT) ORDINANCE, 2004

The States are asked to decide:-

VIII.- Whether they are of opinion to approve the draft Ordinance entitled "The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 2004", and to direct that the same shall have effect as an Ordinance of the States.

TREASURY AND RESOURCES DEPARTMENT

RESIDENCE FOR TAX PURPOSES

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

24th August 2004

Dear Sir

Executive Summary

- The purpose of this Report is to seek an amendment to current legislation which determines an individual's residence for tax purposes.

- The reason for seeking the change is that the present rules are complex and not easily understood.

- Although for the majority of the population the changes will have no effect on their tax bills, the rentier sector may be affected. However, it is not possible to predict the overall effect of the proposals on the tax take but the view is that this should be negligible.

- There are no staffing implications and the simplification should lead to a reduction in the need for correspondence with the Income Tax Office on residence matters.

Background

For income tax purposes there are three categories of individuals and the amount of income tax payable may vary according to an individual's residence status, i.e.

1. Non-residents (broadly persons who live elsewhere, who may visit the island infrequently but pay Guernsey tax because they derive income from Guernsey sources).

2. Those who are resident in Guernsey but are not solely or principally resident (broadly, persons who spend some but not all of their time in the island and have connections with another territory).

3. Those who are solely or principally resident in Guernsey (broadly, persons who live in the island).

The Income Tax (Guernsey) Law 1975 lays down rules for determining whether an individual is to be treated as resident or solely or principally resident. These rules are complex and depend on the nature of the accommodation available to the individual and that individual's future intentions.

For some time there has been concern at the lack of certainty provided by these rules and the inequitable results of applying them. A Working Group, consisting of Income Tax Office staff and representatives from the private sector, was established, and constructive and detailed discussions have taken place with a number of professional bodies – principally the Guernsey Society of Chartered & Certified Accountants.

The aim of the proposals

As stated above, the present rules are complex and lead to a lack of certainty. Therefore it is considered that the present subjective tests should be replaced by an objective test, depending on the length of time spent in Guernsey or elsewhere.

The current position and the proposals

Non-resident category

- **Current position**

  An individual is considered to be non-resident if he is in Guernsey for 90 days or less during the calendar year.

  An individual who is non-resident for income tax purposes is liable to Guernsey income tax on income arising in Guernsey, other than Guernsey bank interest and income from tax exempt collective investment schemes.

  If he is employed in Guernsey he is entitled to claim 1/52nd of the personal allowances for each week or part week in Guernsey that he is so employed.

  Alternatively, he may claim a relief known as proportional relief, which depends on the amount of his Guernsey income compared with his worldwide income.

  The nature of the accommodation available to the individual makes no difference to his tax liability.

- **Proposal**

  No change is proposed regarding the number of days spent in Guernsey. An individual will continue to be eligible for a proportion of the personal allowances where appropriate.

Resident category

- **Current position**

  An individual who is resident in Guernsey but not solely or principally resident is liable to Guernsey income tax on income arising in Guernsey and also income remitted to Guernsey.

  He is entitled to a proportion of personal allowances according to the length of time spent in Guernsey, regardless of status, i.e. whether he is employed, self-employed or unemployed.

  Proportional relief, as described above, may also be claimed.

  At present, whether an individual is considered to be resident will depend not only on time spent in Guernsey but also the nature of his accommodation. Thus there may be different tax liabilities depending on whether the individual is a house owner or occupies a bed sit. The view is that this is inequitable.

- **Proposal**

  The only test will be the number of days spent in Guernsey.

  An individual will be treated as resident in Guernsey in the following circumstances:

  1. *he spends 91 days or more in Guernsey during the calendar year; or*

  2. *he is in Guernsey during the calendar year for 35 days or more and, during the four years immediately preceding, he has been in Guernsey for an average of 91 days or more.*

  He may also be considered to be solely or principally resident depending on the circumstances – see below.

Solely or principally resident category

- **Current position**

  An individual who is solely or principally resident in Guernsey is liable to Guernsey income tax on his worldwide income and entitled to the full personal allowances.

Although the term solely resident appears in the legislation it is not defined.

Whether an individual is principally resident in Guernsey once again depends to some extent on the nature of accommodation available to him and on his future intentions.

An individual can only be treated as principally resident if he is deemed to be resident in Guernsey.

- **Proposal**

An individual will be treated as solely resident in Guernsey if he is resident in Guernsey and is not resident elsewhere. He will only be treated as resident elsewhere if he is in any other territory for a period of 91 days or more during the calendar year. In other words, the same criteria will be applied to determining whether an individual is resident in another territory as are applied in determining whether he is resident in Guernsey.

Notwithstanding that an individual may not be resident solely in Guernsey, nevertheless he may be treated as principally resident in Guernsey in the following circumstances:

1. *he spends 182 days or more in Guernsey during the calendar year; or*

2. *he is in Guernsey during the calendar year for 91 days or more and, during the four years immediately preceding the calendar year, he has been in Guernsey on average for 182 days or more; or*

3. *he takes up permanent residence in Guernsey.*

   An individual will be treated as taking up permanent residence if in the following year he is solely or principally resident but, as now, he will only be treated as principally resident if he is also resident in Guernsey. He must, therefore, be in Guernsey for 91 days or more before he will be treated as principally resident unless exceptionally, he is treated as resident under the second proposal e.g. he is in Guernsey during the calendar year for 35 days or more and during the 4 years immediately preceding, he has been in Guernsey for an average of 91 days or more.

There are some significant changes here as many individuals argue that if they have a second home elsewhere, or spend significant periods of time outside Guernsey, they cannot be treated as principally resident. This is in spite of the fact that these individuals maintain houses in Guernsey and avail themselves of the various services paid for by the island's revenues. These changes therefore provide greater certainty for the future.

Miscellaneous

Meaning of "day"

In determining the number of days spent in Guernsey during the year, a day shall be treated as ending at midnight and an individual would therefore be treated as being in Guernsey if he is in Guernsey at midnight on that day.

Remittances

In general, remittances will include any amounts spent in the island. This may include amounts spent by cash, cheque or credit card. The onus of proof that any remittances do not consist of income shall be upon the individual making the remittances.

Conclusion

It is believed that these proposals will provide certainty to individuals and their professional advisers. Moreover, they would add another measure of simplification to the Income Tax Law, a policy which the States has been keen to promote.

Recommendation

It is therefore recommended that the States approve the amendments to the Income Tax Law along the lines contained in this report, to take effect from 1 January 2006.

I should be grateful if you would lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully

L S Trott
Minister
Treasury and Resources Department

(NB The Policy Council supports the proposals)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 24th August, 2004, of the Treasury and Resources Department, they are of the opinion:-

1. That the Income Tax Law be amended, with effect from 1st January, 2006, along the lines set out in that Report.

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

ENVIRONMENT DEPARTMENT

EXTENSION OF PERIOD OF VALIDITY OF RURAL AREA PLAN, PHASES 1 AND 2

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

19th August 2004

Dear Sir

Executive Summary

An extension of validity of the current Rural Area Plans is sought in order to ensure continued coverage of the Island by Detailed Development Plans prior to the adoption of a new Rural Area Plan.

Background

The Public Inquiry into the draft Rural Area Plan (Review No. 1) was opened on 2nd December 2003 and closed on 29th July 2004 after hearing over 1,500 representations. The Inspector's Report is now awaited and is expected early 2005. The Report will be laid before the States at the first practicable opportunity.

The current Rural Area Plans (Phases 1 & 2) continue to have effect until 31st December 2004. In order to prevent a situation whereby the rural area would be left uncovered by a Detailed Development Plan, it is necessary to extend the period of validity of the current Plans until such time as the new Plan is adopted.

Recommendations

The Board recommends the States:

To agree that the Rural Area Plan (Phase 1 and Phase 2) shall continue to have effect until 31st December 2005 or such earlier date as when the States formally adopt a new Rural Area Plan.

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

Yours faithfully

Bernard Flouquet
Minister
Environment Department

(NB The Policy Council supports the proposal)
(NB The Treasury and Resources Department has no comment on the proposal)

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 19th August, 2004, of the Environment Department, they are of the opinion:-

That the Rural Area Plan (Phase 1 and Phase 2) shall continue to have effect until 31st December 2005 or such earlier date as when the States formally adopt a new Rural Area Plan.

HOME DEPARTMENT

BAILIWICK EXPORT CONTROL LEGISLATION

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

15th September 2004

Dear Sir

Executive Summary

Under the current legislation, exportation of goods from the Bailiwick is prohibited unless permitted by licence. Under the legislation, it is the export of "goods or goods of any specified description" which may be regulated. There is no definition of what constitutes "goods" for the purposes of the legislation. It is therefore arguable that the legislation is ineffective for the purpose of regulating the export of certain intangible items, such as information held in a computerised format.

The primary legislation made in 1946 and 1972 does not appear to suit the needs of the modern era. It is therefore timely and appropriate for the Bailiwick to modernise its export legislation to ensure that it has an effective export control regime, which enables it to maintain its position as a responsible jurisdiction in the modern world. Therefore it is recommended that the legislation is amended to control both the export of goods and certain intangible items. Additionally the need to amend the current export control legislation has become more pressing since the recent enactment by Parliament of the Export Control Act 2002. It would clearly be contrary to the interests of Guernsey and the Bailiwick as a whole if, for example, harmful technology, which it would be unlawful to export from the United Kingdom, could be freely exported from the Bailiwick, because the Bailiwick's legislation was not as effective as that of the UK's.

Orders have already been made under the 2002 Act by the Secretary of State and were laid before Parliament in October of last year. These Orders – (the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order, 2003 and the Trade in Controlled Goods (Control) Order 2003) – introduce a number of measures which are designed to close certain perceived loopholes in the UK legislative regime and to improve and enhance existing control upon, for example, the trafficking and brokering of military equipment between overseas countries.

The likely resource impact maybe that more licence applications will need to be processed and possible Enforcement work in relation to any investigations required. There will be some training requirements and meetings with UK authorities – these would incur the normal associated costs. It is expected that the legislation will be administered with no additional staff resources. It is therefore recommended that the States approve the proposals for Bailiwick-wide legislation based upon the provisions of the United Kingdom's Export Control Act, 2002.

The types and classes of goods currently controlled on export and those which any new legislation is likely to prohibit are very limited. Whilst this list is not exhaustive, it principally includes goods that are of a military, security and para-military nature and include arms, ammunition and related materials and any article that could be so used and goods that could be used for weapons of mass destruction such as explosive-related goods and technology, certain chemicals, micro-organisms and toxins. The legislation will, as now, also restrict the export of such things as counterfeit goods, objects of cultural interest, certain medicines, indecent or obscene articles and endangered species

Current export controls

1. Legislative control of the exportation of goods from the Bailiwick is currently exercised and given effect as follows:

   (a) in relation to Guernsey by Orders made by the Home Department (as successor to the Board of Administration) under the Import and Export (Control) (Guernsey) Law, 1946;

   (b) in relation to Alderney by Orders made by the States Policy and Finance Committee under the Import and Export (Control) (Alderney) Law, 1946; and

   (c) in relation to Sark by the combined operation of the Orders referred to in sub-paragraph (a), the Import and Export (Control) (Guernsey) Law, 1946 and the Customs and Excise (General Provisions) (Bailiwick of the Guernsey) Law, 1972 (under the latter Law Sark has no appointed port for Bailiwick import/export purposes).

   In very general terms, under the currently applicable legislation, exportation of goods from the Bailiwick is prohibited unless permitted under a licence granted either by the Home Department, effectively, in relation to Guernsey and Sark, or by the Policy and Finance Committee in relation to Alderney.

2. Under the legislation, it is the export of "goods or goods of any specified description" which may be regulated. There is no definition of what constitutes "goods" for the purposes of the legislation. Consequently, it is arguable that the legislation is ineffective for the purposes of regulating the transfer of certain intangible items, such as, for example, information held in purely computer processible format.

   It was for this reason, that when the States at their meeting of 25 July 2001 resolved to enact legislation to implement the EC Regulation for the Control of Exports of Dual-use Items (which also seeks to control the export of information concerning the operation of such items), they decided to use powers arising under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1946, rather than under the Import and Export Control (Guernsey) Law, 1946. Using those powers, the States enacted the European Communities (Implementation of Council Regulation for the Control of Exports of Dual-use Items) (Guernsey) Ordinance, 2003.

The need for revision of current export control legislation

3. The primary legislation controlling the export of goods referred to in the preceding paragraphs of this Letter consists of Laws made in 1946 and 1972. Circumstances have changed markedly since those times and the provisions of the Laws do not appear to be entirely adequate to suit the needs of the modern era. It would, therefore, seem appropriate to amend the legislation so that it may be used as effectively as possible to control the export of goods and certain intangible items.

4. The need to amend the current export control legislation has become more pressing since the recent enactment by Parliament of the Export Control Act, 2002 (the "2002 Act") a copy of which is annexed to this Letter, for reasons which are set out in the following paragraphs. The provisions of the Act should enable HM Government to exercise effective export controls in respect of the United Kingdom. It would clearly be contrary to the interests of Guernsey and the Bailiwick as a whole if, for example, harmful technology, which it would be unlawful to export from the United Kingdom, could be freely exported from the Bailiwick, because the Bailiwick's legislation was not as effective as that of the UK's.

Position in the United Kingdom

5. Until recently, export controls were exercised in respect of the United Kingdom by way of powers exercisable by the Secretary of State under the Import and Export and Customs Powers (Defence) Act, 1939 (the "1939 Act"). The 1939 Act was enacted upon the outbreak of World War II and was considered at the time to be a temporary measure to deal with the emergencies of that conflict. However, it has remained in force ever since, subject to some minor amendments in 1990. (It is perhaps worth mentioning in passing that certain provisions of the Export Control (Guernsey) Law, 1946 are closely modelled upon those of the 1939 Act).

6. In 1996 an official inquiry chaired by Sir Richard Scott into the export of defence equipment and dual use goods to Iraq and related criminal prosecutions concluded that the 1939 Act contained a number of limitations. In the light of the conclusions of the Scott Inquiry, HM Government published proposals for new export control legislation. Those proposals formed the basis for the provisions of the 2002 Act which received Royal Assent on 24 July 2002. The Act establishes a new legislative framework, in particular, for strategic export control. Under the new Act there are new order making powers that allow HM Government to introduce controls on:

   (a) the exportation of goods;

   (b) the transfer of technology by any means;

   (c) the provision of technical assistance overseas; and

   (d) trade between overseas countries (often referred to as trafficking and brokering).

7. The 2002 Act contains restrictions on the categories of goods, technology, or technical assistance which may be brought under control, such that controls may normally only be introduced on goods, technology or technical assistance:

   (a) where this is required to give effect to European Community provisions;

   (b) where this is required to give effect to other international obligations of the UK; or

   (c) as permitted by the Schedule to the Act.

   The Schedule provides for controls on military equipment and technology and controls on items whose export, transfer etc risks the creation of certain effects, such as contributing to human rights abuses or the development of weapons of mass destruction.

Orders made under the Export Control Act 2002

8. Orders have already been made under the 2002 Act by the Secretary of State and were laid before Parliament in October of last year. These Orders (the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order, 2003 and the Trade in Controlled Goods (Control) Order 2003) introduce a number of measures which are designed to close certain perceived loopholes in the UK legislative regime and to improve and enhance existing control upon, for example, the trafficking and brokering of military equipment between overseas countries.

Amendments to Bailiwick export control legislation

9. It is therefore necessary for the Bailiwick to update its export control legislation to ensure that the islands have modern and effective controls consistent with those in place in the UK. HM Government is anxious that all British territories are in a position to exercise effective up to date export controls. Meetings between representatives of Guernsey's Customs and Immigration Department and the Law Officers and representatives of the relevant UK authorities have already take place. During the course of those meetings the UK authorities have explained in detail the need for modern legislation and the necessity generally for all British territories to be in a position to implement effective controls. From those discussions, it has become apparent that it would be desirable to amend the primary legislation referred to above by means of a Bailiwick-wide Law in broadly similar terms to the UK Export Control Act, 2002. The Crown Dependencies of Jersey and the Isle of Man are also in the advanced stages of progressing similar export legislation.

10. In very broad terms, such a Law would enable the Home Department, in relation to Guernsey and (subject to the consent of the States of Alderney and the Chief Pleas of Sark) Alderney and Sark, to make control orders relating to:

    (a) the exportation of goods of any description;

    (b) the transfer of technology of any description;

    (c) the provision of technical assistance (i.e. services provided in connection with the development, production or use of any goods or technology); and

    (d) trade controls in relation to goods of any description (i.e. controls relating to international trafficking and brokering of prohibited and regulated goods).

    The powers referred to above would only be exercisable in respect of the Bailiwick in similar circumstances as parallel powers are currently exercised under the 2002 Act in respect of the United Kingdom (see paragraph 7 of this Letter and section 5 of the annexed 2002 Act). Where there is no reason to control the export of goods, which is mostly the case, such goods would be exempted from control under the legislation. It is anticipated that the powers would be used to control the export of goods only where it is necessary, as is currently the case, and to replicate (in respect of the Bailiwick) export controls introduced in respect of the United Kingdom.

11. The authorities of Alderney and Sark have been consulted regarding this matter and are in agreement with this States Report.

Recommendation

The Home Department recommends the States to approve the proposals for Bailiwick-wide legislation based upon the provisions of the United Kingdom's Export Control Act, 2002, as set out in paragraph 10 of this States Report.

I would be grateful if you would lay this matter before the States with appropriate propositions including one directing the preparation of legislation.

Yours faithfully

M W Torode
Minister
Home Department

Export Control Act 2002
2002 Chapter 28

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An Act to make provision enabling controls to be imposed on the exportation of goods, the transfer of technology, the provision of technical assistance overseas and activities connected with trade in controlled goods; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: -

1 Export controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of export controls in relation to goods of any description.

(2) For this purpose "export controls", in relation to any goods, means the prohibition or regulation of their exportation from the United Kingdom or their shipment as stores.

(3) Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.

(4) The power to impose export controls is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on the exportation of goods.

(6) For the avoidance of doubt, export controls may be imposed in relation to the removal from the United Kingdom of vehicles, vessels and aircraft (as an exportation of goods), whether or not they are moving under their own power or carrying goods or passengers.

2 Transfer Controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of transfer controls in relation to technology of any description.

(2) For this purpose "transfer controls", in relation to any technology, means the prohibition or regulation of its transfer-

(a) by a person or from a place within the United Kingdom to a person or place outside the United Kingdom;

(b) by a person or from a place outside the United Kingdom to a person who, or a place which, is also outside the United Kingdom (but only where the transfer is by, or within the control of, a United Kingdom person);

(b) by a person or from a place within the United Kingdom to a person who, or a place which, is also within the United Kingdom (but only where there is reason to believe that the technology may be used outside the United Kingdom); or

(d) by a person or from a place outside the United Kingdom to a person or place within the United Kingdom (but only where the transfer is by, or within the control of, a United Kingdom person and there is reason to believe that the technology may be used outside the United Kingdom).

(3) Technology may be described in the order wholly or partly by reference to the uses to which it may be put.

(4) The power to impose transfer controls is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on the transfer of technology.

(6) In this Act-

"transfer", in relation to any technology, means a transfer by any means (or combination of means), including oral communication and the transfer of goods on which the technology is recorded or from which it can be derived, other than the exportation of such goods; and

"technology" means information (including information comprised in software) that is capable of use in connection with-

(a) the development, production or use of any goods or software;

(b) the development of, or the carrying out of, an industrial or commercial activity or an activity of any other kind whatsoever.

3 Technical assistance controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of technical assistance controls in relation to technical assistance of any description.

(2) For this purpose-

"technical assistance controls", in relation to any technical assistance, means the prohibition or regulation of participation in the provision outside the United Kingdom of that technical assistance; and

"technical assistance" means services which are provided or used, or which are capable of being used, in connection with the development, production or use of any goods or technology.

(3) Technical assistance may be described in the order wholly or partly by reference to the uses to which it (or the goods or technology in question) may be put.

(4) The power to impose technical assistance controls-

(a) shall only be exercised for the purpose of imposing controls corresponding to or connected with-

(i) any export controls or transfer controls imposed under section 1 or 2; or

(ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 5.

(5) For the purposes of subsection (1) a person participates in the provision of technical assistance outside the United Kingdom if-

(a) he provides technical assistance outside the United Kingdom or agrees to do so; or

(b) he makes arrangements under which another person provides technical assistance outside the United Kingdom or agrees to do so.

(6) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on participation in the provision of technical assistance.

(7) Technical assistance controls may be imposed on acts done outside the United Kingdom, but only if they are done by a person who is, or is acting under the control of, a United Kingdom person.

4 Trade controls

(1) The Secretary of State may by order make provision for or in connection with the imposition of trade controls in relation to goods of any description.

(2) For this purpose "trade controls", in relation to any goods, means the prohibition or regulation of-

(a) their acquisition or disposal;

(b) their movement; or

(c) activities which facilitate or are otherwise connected with their acquisition, disposal or movement.

(3) Goods may be described in the order wholly or partly by reference to the uses to which the goods, or any information recorded on or derived from them, may be put.

(4) The power to impose trade controls-

(a) shall only be exercised for the purpose of imposing controls corresponding to or connected with-

(i) any export controls or transfer controls imposed under section 1 or 2; or

(ii) any controls imposed by a directly applicable Community provision on the exportation of goods or the transfer of technology; and

(b) is subject to section 5.

(5) The Secretary of State may by order make provision in connection with any controls that may be imposed by a directly applicable Community provision on, or on activities which facilitate or are otherwise connected with, the acquisition, disposal or movement of goods.

(6) For the purposes of this section-

(a) a person acquires goods if he buys, hires or borrows them or accepts them as a gift; and

(b) a person disposes of goods if he sells, lets on hire, lends or gives them.

(7) For the purposes of this section-

(a) the making of an agreement with another to acquire, dispose of or move goods, and

(b) the making of arrangements under which another person-

(i) acquires, disposes of or moves goods; or

(ii) agrees with a third person to acquire, dispose of or move goods,

are activities which facilitate the acquisition, disposal or movement of the goods.

(8) Trade controls may be imposed on acts done outside the United Kingdom and the Isle of Man, but only if they are done by a person who is, or is acting under the control of, a United Kingdom person.

5 General restriction on control powers

(1) Subject to section 6, the power to impose export controls, transfer controls, technical assistance controls or trade controls may only be exercised where authorised by this section.

(2) Controls of any kind may be imposed for the purpose of giving effect to any Community provision or other international obligation of the United Kingdom.

(3) In subsection (2) "international obligation" includes an obligation relating to a joint action or common position adopted, or a decision taken, by the Council under Title V of the Treaty on European Union (provisions on a common foreign and security policy).

(4) Export controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

(5) Transfer controls may be imposed in relation to any description of technology within one or more of the categories specified in the Schedule for such controls.

(6) Technical assistance controls may be imposed in relation to any description of technical assistance within one or more of the categories specified in the Schedule for such controls.

(7) Trade controls may be imposed in relation to any description of goods within one or more of the categories specified in the Schedule for such controls.

6 Exceptions from the general restriction

(1) Section 5 does not apply to the power to impose any controls if the control order which imposes them provides for its expiry no later than the end of the period of 12 months beginning with the day on which it is made.

(2) Section 5 does not apply in relation to provisions of a control order which-

(a) amend an earlier control order; or

(b) revoke and re-enact (with or without modifications) provisions of an earlier control order,

unless they impose new controls or strengthen the controls previously imposed.

(3) In subsection (2) "an earlier control order" does not include an order made by virtue of subsection (1)

7 Control powers: supplementary

(1) An order under any of the preceding provisions of this Act may (without prejudice to the generality of the power under which it is made) make provision-

(a) for an activity to be prohibited unless authorised by a licence granted by a person specified in the order;

(b) creating exceptions from any provision of the order;

(c) requiring persons to keep (and produce) records;

(d) requiring persons to provide information to any person specified in the order;

(e) about the purposes for which information held in connection with anything done under or by virtue of the order may be used;

(f) about the persons to whom any such information may be disclosed;

(g) creating indictable offences, summary offences or offences triable either way (subject to the limitation that no offence so created shall be punishable on indictment with imprisonment for a term exceeding 10 years); and

(h) for the enforcement of the order (including provision as to the powers and duties of any person who is to enforce it).

(2) Such an order may-

(a) make provision binding the Crown;

(b) amend, repeal or revoke, or apply (with or without modifications) provisions of any Act or subordinate legislation;

(c) provide for any reference in the order to a document (including a technical list by reference to which any Community provision or international obligation operates) to take effect as a reference to that document as revised or re-issued from time to time;

(d) make incidental, supplementary and transitional provision; and

(e) make different provision for different cases and different circumstances.

8 Protection of certain freedoms

(1) The Secretary of State may not make a control order which has the effect of prohibiting or regulating any of the following activities-

(a) the communication of information in the ordinary course of scientific research;

(b) the making of information generally available to the public; or

(c) the communication of information that is generally available to the public,

unless the interference by the order in the freedom to carry on the activity in question is necessary (and no more than is necessary).

(2) The question whether any such interference is necessary shall be determined by the Secretary of State by reference to the circumstances prevailing at the time the order is made and having considered the reasons for seeking to control the activity in question and the need to respect the freedom to carry on that activity.

9 Guidance about the exercise of functions under control orders

(1) This section applies to licensing powers and other functions conferred by a control order on any person in connection with controls imposed under this Act.

(2) The Secretary of State may give guidance about any matter relating to the exercise of any licensing power or other function to which this section applies.

(3) But the Secretary of State must give guidance about the general principles to be followed when exercising licensing powers to which this section applies.

(4) The guidance required by subsection (3) must include guidance about the consideration (if any) to be given, when exercising such powers, to-

(a) issues relating to sustainable development; and

(b) issues relating to any possible consequences of the activity being controlled that are of a kind mentioned in the Table in paragraph 3 of the Schedule;

but this subsection does not restrict the matters which may be addressed in guidance.

(5) Any person exercising a licensing power or other function to which this section applies shall have regard to any guidance which relates to that power or other function.

(6) A copy of any guidance shall be laid before Parliament and published in such manner as the Secretary of State may think fit.

(7) In this section "guidance" means guidance stating that it is given under this section.

(8) The consolidated criteria relating to export licensing decisions announced to Parliament by the Secretary of State on 26th October 2000 shall (until withdrawn or varied under this section) be treated as guidance which-

(a) is given and published under this section; and

(b) fulfils the duty imposed by subsection (3) in respect of any export controls and transfer controls which may be imposed in relation to goods or technology of a description falling within paragraph 1 or 2 of the Schedule.

10 Annual reports

(1) The Secretary of State shall lay before Parliament in respect of each year-

(a) a report on the operation during the year of any order under section 1 so far as relating to the export of objects of cultural interest; and

(b) a report on other matters relating to the operation of this Act (and any order made under it) during the year.

(2) A report required by subsection (1) shall be laid as soon as practicable after the end of the year to which it relates.

11 Interpretation

(1) In this Act-

"Community provision" means a provision of a directive or regulation (within the meaning of Article 249 of the Treaty establishing the European Community);

"control order" means an order under section 1(1), 2(1), 3(1) or 4(1);

"export controls" has the meaning given in section 1(2);

"objects of cultural interest" includes objects of historical or scientific interest;

"place" includes a vehicle, vessel or aircraft;

"technical assistance" and "technical assistance controls" have the meanings given in section 3(2);

"technology" has the meaning given in section 2(6);

"trade controls" has the meaning given in section 4(2);

"transfer" has the meaning given in section 2(6);

"transfer controls" has the meaning given in section 2(2); and

"United Kingdom person" means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom.

(2) For the purposes of the definition of "United Kingdom person" a United Kingdom national is an individual who is-

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or

(c) a British protected person within the meaning of that Act.

(3) The removal of goods to the Isle of Man shall not be regarded for the purposes of this Act as an exportation of those goods.

(4) This Act, so far as it relates to the imposition of export controls, is an Act relating to customs for the purposes of the definition of "the customs and excise Acts" in section 1 of the Customs and Excise Management Act 1979 (c. 2).

12 Power to modify the Schedule

(1) The Secretary of State may by order modify the provisions of the Schedule.

(2) An order under this section may make transitional provision in connection with any modification made by the order.

13 Orders

(1) The power to make an order under this Act is exercisable by statutory instrument.

(2) A statutory instrument containing a control order made by virtue of section 6(1) shall be laid before Parliament after being made but, unless it is approved by a resolution

of each House before the end of the period of 40 days beginning with the day on which it is made, shall cease to have effect at the end of that period.

(3) In reckoning that period no account shall be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

(4) A statutory instrument containing an order under section 12 shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(5) A statutory instrument containing-

(a) an order under section 1, 2, 3 or 4 which is not made by virtue of section 6(1); or

(b) an order under section 16(3),

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

14 Financial provision

There shall be paid out of money provided by Parliament-

(a) any expenses of a government department incurred in consequence of this Act; and

(b) any increase attributable to this Act in the sums payable out of such money under any other Act.

15 Consequential repeals

(1) The following provisions of the Import, Export and Customs Powers (Defence) Act 1939 (c. 69) (which are concerned with the exportation of goods and related matters) are repealed.

(2) In section 1 (control of importation and exportation)-

(a) in subsection (1), the words "or exportation from" and the words from "or the carriage" to "stores";

(b) in subsection (3), the words from "exportation" to "coastwise"; and

(c) in subsection (4), the words "or out of" and "or exportation".

(3) In section 3 (application and extension of law of prohibited goods)-

(a) in subsection (1), in paragraph (a), the words from "exported" to "stores", paragraph (b) (and the word "or" preceding it) and, in the words following paragraph (b), the words from "and the exporter" to the end;

(b) subsection (2); and

(c) in subsection (3), the words from "exported" (in the first place it appears) to "shipped" (in the second place it appears) and the words from "exportation" to "may be".

(4) In section 7 (provisions as to ultimate destination of goods), subsections (1) and (2).

(5) Those repeals have the same extent as the provisions being repealed.

16 Short title, etc

(1) This Act may be cited as the Export Control Act 2002.

(2) This Act (apart from this section and section 13(1) and (5)(b) so far as they apply to orders under this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(3) The Secretary of State may by order make such transitional provisions and savings as he considers appropriate in connection with the coming into force of any provision of this Act.

(4) This Act (apart from any repeals which extend there by virtue of section 15(5)) does not extend to the Isle of Man.

(5) Her Majesty may by Order in Council direct that any of the provisions of this Act, or of any order under this Act, shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to the Isle of Man or to any British overseas territory.

(6) This Act extends to Northern Ireland.

(7) Nothing in this Act affects Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).

SCHEDULE

CATEGORIES OF GOODS, TECHNOLOGY AND TECHNICAL ASSISTANCE

1 (1) Export controls and trade controls may be imposed in relation to-

(a) military equipment;

(b) goods on which military technology is recorded or from which it can be derived; or

(c) goods intended, designed or adapted for use in the development or production of military equipment or military technology.

(2) Transfer controls may be imposed in relation to-

(a) military technology; or

(b) technology intended, designed or adapted for use in the development or production of military technology.

(3) Technical assistance controls may be imposed in relation to any services connected with the development, production or use of-

(a) any goods falling within sub-paragraph (1)(a), (b) or (c); or

(b) any technology falling within sub-paragraph (2)(a) or (b).

(4) In this paragraph (without prejudice to the generality of the terms)-

"military equipment" includes-

(a) firearms and other weapons (whether or not intended, designed or adapted for military use or in military use); and

(b) goods intended, designed or adapted for military use (whether or not in military use); and

"military technology" includes-

(a) technology intended, designed or adapted for military use (whether or not in military use); and

(b) technology intended, designed or adapted for use in connection with the development, production or use of military equipment or goods falling within sub-paragraph (1)(c).

(5) For the purposes of sub-paragraph (4) the reference to firearms and other weapons includes a reference to-

(a) component parts of firearms or other weapons;

(b) accessories for use with firearms or other weapons; and

(c) ammunition, missiles or projectiles of any kind which are intended, designed or adapted for use with firearms or other weapons.

2 (1) Export controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence.

(2) Transfer controls may be imposed in relation to any technology the transfer or use of which is capable of having such a consequence.

(3) Technical assistance controls may be imposed in relation to any technical assistance the provision or use of which is capable of having such a consequence.

(4) Trade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having such a consequence.

3 (1) For the purposes of paragraph 2 a relevant consequence, in relation to any activity, is a consequence (direct or indirect) of a kind mentioned in the following Table.

(2) The Table referred to above is as follows-

RELEVANT CONSEQUENCES

National security of the United Kingdom and other countries

A An adverse effect on-

(a) the national security; or

(b) the security of members of the armed forces,

of the United Kingdom (or any dependency), any Member state or any other friendly State.

Regional stability and internal conflict

B An adverse effect on peace, security or stability in any region of the world or within any country.

Weapons of mass destruction

C The carrying out anywhere in the world of acts which facilitate the development, production or use of weapons of mass destruction.

Breaches of international law and human rights

D The carrying out anywhere in the world of (or of acts which facilitate)-

(a) acts threatening international peace and security;

(b) acts contravening the international law of armed conflict;

(c) internal repression in any country;

(d) breaches of human rights.

Terrorism and crime

E The carrying out anywhere in the world of (or of acts which facilitate) acts of terrorism or serious crime anywhere in the world.

(3) The question whether an activity involving goods, technology or technical assistance of any particular description is capable of having a relevant consequence is to be determined by the Secretary of State at the time the order imposing the controls is made.

(4) In this paragraph-

"country" includes a territory but does not include the United Kingdom or the Isle of Man; and

"dependency" means the Isle of Man, any of the Channel Islands or a British overseas territory.

4 Export controls may be imposed in relation to objects of cultural interest.

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

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 15th September, 2004, of the Home Department, they are of the opinion:-

1. To approve the enactment of Bailiwick-wide legislation based upon the provisions of the United Kingdom's Export Control Act, 2002, as set out in paragraph 10 of that Report.

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

COMMERCE AND EMPLOYMENT DEPARTMENT

REVIEW OF THE EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998 AND SUBSEQUENT PROPOSED AMENDMENTS TO THE LAW AND OTHER ASSOCIATED LEGISLATION

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

25th August 2004

Dear Sir

Executive Summary

This States Report has been produced following an independent review of The Employment Protection (Guernsey) Law, 1998, commissioned by the former Board of Industry and carried out by Employment Law and Industrial Relations specialist, Mr Peter Syson, during 2002.

The recommendations contained in the Syson report were the result of lengthy consultation between Mr Syson and employer and employee groups, the legal profession, the panel of Adjudicators appointed under the Law and other interested groups and individuals. The groups who contributed to the original report have also been further consulted on the subsequent Syson Recommendations.

Having considered the content of the Syson Report and the results of the consultation process, the Department of Commerce and Employment have concluded that amendments to the Employment Protection Law and the proposed Sex Discrimination in Employment Law should be made.

In addition, the Department concluded that a new Employment and Discrimination Tribunal Law should be created in order to consolidate all existing and future employment protection remedies into a single Tribunal, common to all employment protection legislation in order to establish a relatively simple and cost effective single process for the future.

The four main areas covered in the report are listed A – D below.

A. <u>Proposed amendments to The Employment Protection (Guernsey) Law, 1998</u>

The main recommendations being proposed to amend The Employment Protection (Guernsey) Law, 1998, include;

- Reducing the qualifying period of employment for notifying an unfair dismissal complaint from two years to one year

- Increasing the level of compensation from a fixed rate of three month's pay to six month's pay, **but** allow the Tribunal to reduce the award as appropriate

- Defining in Law 'continuous employment'

- Establishing 'Compromise Agreements' as an alternative method of terminating employment

- Replacing the single Adjudicator with a three person Tribunal

- Making minor amendments to ensure the smooth administration of the Law (See main recommendations on pages 31 & 32)

B. <u>Proposed amendments to the draft Sex Discrimination (Guernsey) Law, 2000</u>

Proposals to amend the draft Sex Discrimination (Guernsey) Law, 2000 to ensure consistency in the remedies for complaints of sex discrimination and unfair dismissal, and to allow for them to be dealt with simultaneously by a Tribunal rather than a single Adjudicator;

To implement the proposed Sex Discrimination Law by Ordinance under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, rather than as a Projet de Loi.

C. <u>Proposals to create an Employment and Discrimination Tribunal Law</u>

Proposals to create an Employment and Discrimination Tribunal Law to simplify the process for dealing with complaints under any existing, or future Employment and Discrimination Legislation the States may consider appropriate.

D. **Resource implications in approving A, B, and C above**

Resource implications in terms of any staffing requirements and additional funding will be minimal. In summary, the cost to the States of Guernsey in relation to these proposals is estimated to be in the region of £6,400 per year, which can be funded from the existing budget resources within the Industrial Relations Service at Commerce and Employment. Unless there is a significant increase in complaints made under the Law(s), there should be no additional staffing implications.

A. THE REVIEW OF THE EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998

1. Background

The Employment Protection (Guernsey) Law, 1998, which includes Unfair Dismissal & Minimum Periods of Notice, was approved by the States in 1995 and came into force on 4th January 1999.

The Law provides three basic protection rights;

- Statutory minimum periods of notice to terminate a contract of employment by either the employer or employee
- The right to a written reason for dismissal (subject in most cases to a 2 year qualifying period of employment)
- The right not to be unfairly dismissed (subject in most cases to a 2 year qualifying period)

This legislation provided for complaints of unfair dismissal to be heard before an independent single Adjudicator, appointed by the Board of Industry, under the Law.

The Board of Industry were keen for the operation of the Law, and the Adjudication Process set up under the Law, to be monitored and reviewed after a fairly short period, to ensure it met the expectations of the States and the parties involved in the process.

The proposed draft Sex Discrimination Law, which the Board of Industry intended to bring back to the States for final approval during 2004, also relies on the same Adjudication Process for resolving complaints of Sex Discrimination.

2. The Syson Review - "The Next Steps"

During 2002, the Board of Industry commissioned Mr Peter Syson (an independent Employment Law Specialist) to review the Law. As part of the review, the Board invited various groups or individuals (55 in all – see Appendix B) who were representative of employers and employees in Guernsey, the legal profession, the States of Guernsey Civil Service Board[1] and other interested parties, to either meet Mr Syson, or to submit their views in writing. Mr Syson interviewed a number of groups and individuals (see Appendix 1 on page 24 of the Syson Report) and considered the responses. His report titled "The Next Steps" was delivered to the Board in October 2002 (copy attached at Appendix A).

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[1] Note: The Civil Service Board met with Mr Syson and were consulted on the recommendations, despite being omitted from Appendix 1 of his Report.

3. Further consultation

In December 2002, the Syson report was circulated to the groups who had previously been consulted or responded, in order to canvas their views on the Recommendations. The feedback from those consulted is dealt with in more detail later in this States Report.

4. Factors for consideration

Prior to reporting back to the States with the Recommendations contained in this States Report, the Board of Industry considered;

- the Recommendations contained in the Syson Report;
- the feedback from those who were consulted;
- the expectation of the level of protection and compensation afforded to employees;
- the financial implications any changes may have on employers;
- the economic impact on the Island and for the States;
- the Resolution of the States in 1995 when the Law was first approved;
- the Employment Tribunal process and procedures operating in the UK;
- compensation levels for unfair dismissal in the UK and the method used for calculating them.

The Board of Industry also considered the 'proportionality' argument before making any final decision on the recommendations. In dealing with 'proportionality' the Board took account of:

- What is realistic for a small jurisdiction?
- What can Guernsey afford?
- What level of resources is Guernsey prepared to commit to employment protection?
- What obligations does Guernsey have under existing Human Rights Laws and International Conventions to provide employee protection and remedies?
- What levels of protection can reasonably be expected in society today?

The Board also took note of what was happening in the UK since many employers had UK parent companies.

Should Guernsey be drawn down the same route as the UK?

In order to determine the appropriate remedies and compensatory awards to suit the Guernsey situation, the Board of Industry revisited it's original proposals on Unfair Dismissal. The salient points of the 1995 Policy Letter were that the legislation would;

(a) *involve the minimum amount of paperwork;*

(b) *provide for a swift, efficient, inexpensive, non-adversarial and non-legalistic method for resolving disputes over "unfair" dismissals;*

(c) *provide a reasonable solution to a very contentious area in the Island's industrial relations, which the Board believes would be of benefit to both employers and employees;*

(d) *have a very limited effect upon employers in general; and*

(e) *provide some form of redress for aggrieved employees, give some balance to the relationship between employer and employee and <u>in typical Guernsey fashion,</u> address the issue of employment protection provisions in a unique manner.*

The Review of The Law identified the need for compensation to be applied, which is fair and consistent. However, if the States wish to retain the principles they approved in 1995, the system of compensation currently used in the UK is far from simple and easy to apply. The current Guernsey award system is simple by comparison, even if the award does not accurately reflect the actual loss suffered.

When Employment Law was developed in the UK and Employment Tribunals were first created, they were intended to be cheap, quick and non-legalistic.

Does this mean that Guernsey has to follow the UK Model?

The Board of Industry considered carefully the relationship between the way employment law operates in the UK and whether the principles are appropriate for Guernsey.

A recently conducted review (2002) of the UK Employment Tribunal Service, "Employment Tribunal Taskforce Report" recommends that reference to Employment Tribunals in the UK should be a last resort. The report also suggests that other forms of complaint/dispute resolution are exhausted before a complaint is referred to an Employment Tribunal for a decision.

The UK Taskforce recommendations are partly an attempt to reduce the backlog of complaints awaiting hearing by UK Tribunals and partly an attempt to try and speed up the processing of complaints by keeping them out of the legalistic Tribunal process.

In addition, the recently published UK Employment Act 2002 (due to come into force in 2004) actively encourages employees to exhaust all possible remedies, prior to taking a complaint to an Employment Tribunal. This is achieved by placing additional sanctions on both the employer and the employee if they fail to follow certain procedures e.g.

> If an Applicant is successful in a claim before the Tribunal, the Tribunal can reduce the subsequent award if the applicant, prior to making the claim, has failed to reasonably use internal remedies, such as an internal appeal process provided by the employer. Equally, if the employer fails to follow an internal procedure without good reason, the Tribunal may increase the award. In addition, the parties may be penalised for failing to use the Advisory, Conciliation and Arbitration Service (ACAS) conciliation process.

The proposed legislation in the UK will elevate to a new level the importance of:

- Internal Disciplinary and Grievance Procedures
- The Conciliation Process provided by ACAS

This should assist in resolving more unfair dismissal disputes by focusing the parties minds on the issues to be resolved through the employers own internal procedures, or with the help of ACAS thereby reducing the number of complaints referred to Tribunal.

How does UK practice and procedure affect Guernsey?

Whilst Guernsey could ignore the fundamental principles of the application of employment Law in the UK, there may be lessons to be learned from the UK experience. The UK Tribunal process has become cumbersome and more expensive than originally planned, with long delays being experienced in processing complaints.

Guernsey Adjudicators, local Advocates and Trade Union Officials have found it useful to draw on examples and case law from the UK and ultimately it has influence and can be persuasive on the Adjudicators. The local Appeal Court decisions have now established some of the UK decisions as case law in Guernsey.

A similar conciliation process to that which exists in the UK has proved successful for Guernsey in resolving in excess of 60% of complaints before they reach an Adjudication hearing.

Guernsey is in an ideal position to determine how local employment law should progress and with over four years experience of operating the Law the Board concluded that the current Law has worked well since 1999 and in the Board's view, only some minor amendments would be required. Many of the recommendations contained in the

Syson Review, were in accordance with the Board's view and the general views of those consulted.

The Syson Recommendations are explored in more detail in section 5.

5. THE SYSON RECOMMENDATIONS

This section of the States Report deals with the recommendations from the Syson Report (See Appendix A attached). The recommendations put forward by Commerce and Employment take into account representations from Employer Groups, Employee Groups, the Panel of Adjudicators and the Legal Profession following the extensive two stage consultation process referred to in the Syson report and subsequent consultation.

SYSON RECOMMENDATION 1

The qualifying period for an Unfair Dismissal complaint should be reduced to one year (para D1f). ***(currently 2 years)***

There has been total support from all those who responded, that the two year Qualifying Period of employment (QP) should be reduced to one. The only reason Guernsey has a 2 year QP is because that was consistent with the QP in the UK at the time proposals were brought to the States in 1995. The UK subsequently reduced the QP to one year.

The impact of reducing the QP to one year may lead to a slight increase of about 8-10 additional complaints from those who are currently barred from bringing the complaint.

If the QP were to be dispensed with, or reduced to 6 months (as Syson discusses in his report) the increase could be as high as 120 additional claims per year.

Consideration must be given to the 'balance of the arguments'. If an employee is dismissed within a few months of commencing employment, it could be argued that the dismissal is just as likely to be as 'unfair' as if he/she were dismissed after more than 2 years employment. Should there be any QP at all? Syson explores the arguments in D2f, of his report and concludes that a 1 year QP would be appropriate, as this would allow employers a reasonable time to deal with 'doubtful performers' before dismissing. It would also admit others to the process who may have a legitimate claim but are currently excluded and unable to pursue it under the Law.

The different qualifying periods between the UK and Guernsey that enable access to statutory protection rights, could also affect an employee's decision to work for a new employer in Guernsey, if they are to be disadvantaged in relation to their statutory protection. It would be beneficial to employers recruiting in Guernsey, by levelling the playing field and removing the disparity and creating a situation which is no less favourable for employees.

One year is consistent with the QP applicable in the UK and would not prejudice the statutory rights of those employed by UK companies, who then come to work for the same company in Guernsey during the first two years of their employment. Currently between the one and two year period, they would not be able to claim unfair dismissal here, but, had they been dismissed by the same employer in the UK, they could have asserted their statutory right and made a claim.

Based on the Syson recommendation and the support from both employer groups and the trade unions (employee groups), Commerce and Employment believe that the reduction of the QP to 1 year is appropriate in the Guernsey context.

Interestingly, the 'draft' of the Employment (Jersey) Law, reflects a 6 month 'qualifying period' or the expiry of 2/3rds of a 'fixed term contract' before an employee can make an unfair dismissal complaint. In some circumstances, statutory rights could then apply earlier than the 6 months required for permanent contract employees.

The statutory right to a 'written reason for dismissal' is also currently subject to a two year qualifying period of employment.

In order to ensure consistency in legislation, the right to request a 'written reason for dismissal' should have the same qualifying period as 'notifying a complaint of unfair dismissal', as the 'written reason' is often used in support of a claim.

Conclusion

Commerce and Employment conclude that both the qualifying period of employment for lodging a complaint of unfair dismissal, and for requesting a written reason for dismissal should be reduced from two years to one. Although there is the potential for a small increase in the number of complaints received, the Board are of the view that the small number of people who are currently barred from making a complaint after one year's service should have that right.

Commerce and Employment Recommendation.

The qualifying period of employment required under section 15 of the Law, before an employee is entitled to make a complaint, should be reduced to one year. (currently 2 years)

Commerce and Employment Recommendation.

The qualifying period of employment required under section 2. (2) of the Law, before an employee is entitled to request a written reason for dismissal, should be reduced to one year. (currently 2 years)

SYSON RECOMMENDATION 2

The period allowed for lodging an Unfair Dismissal complaint should be increased to 3 months (para D2b).

There is no resistance to the period being extended from the current 1 month to 3 months. Based on the average number of cases per year this may lead to an increase of between 5-10 complaints. However, with more time to reflect before making a complaint, potential applicants may choose not to exercise the right and the number may actually drop.

Conclusion

Commerce and Employment conclude that the period for notifying a complaint should be increased to 3 months, as there is unlikely to be any significant increase in the number of complaints received.

Commerce and Employment Recommendation.

The period allowed for notifying an unfair dismissal complaint under section 17 (2) of the Law should be increased to 3 months, beginning with the 'Effective Date of Termination'.

SYSON RECOMMENDATION 3

The principle should be adopted of a basic award, on fixed criteria, supplemented, where appropriate, by a compensatory award in which contributory fault would be taken into account. Mainland practice should be adapted in as simple a form as possible to the situation in Guernsey (para D3j).

This is the area that creates the greatest diversity of views and opinions and has caused difficulty for Commerce and Employment in deciding on whether the recommendation to be placed before the States should retain the existing award of three month's pay, or recommend the adoption of a compensatory award as recommended by Syson. The fact is, they both have merit – and risk! ***There was however no support for the Status Quo.***

Existing Fixed Rate Awards (currently 3 month's pay)

The positive elements of the existing flat rate award of 3 month's pay system are;

- It is simple to administer;
- Loosely reflects the loss of earnings suffered by each individual for a fixed period (3 months) as it is directly related to his/her actual pay rates;
- Simple for Adjudicators to calculate;

- Unlikely to be challenged on Appeal;
- Meets the States resolution of 1995 in providing "some redress for aggrieved employees";
- Employers know the maximum liability they may incur;
- In many cases the employee receives more than they would under the UK system;
- The employee retains the right to sue for Breach of Contract in the Civil Court for other related losses.

Equally there is some criticism of the fixed award, particularly from the Trade Unions, as they believe the upper limit is too low. Some members of the legal profession, who are more familiar with bargaining compensation on the actual loss suffered, believe the current system ignores actual or potential loss of earnings and other contractual or statutory rights.

However, on the negative side it is evident that the current process:

- Does not reflect the actual loss suffered;
  (The employer may lose out if the employee secures alternative employment within 3 months of dismissal – sometimes the employee will lose out if they are unable to secure alternative employment within 3 months of dismissal)
- Does not reflect loss of statutory right (to claim unfair dismissal with a subsequent employer for another 2 years);
- Prevents contractual rights from being pursued before an Adjudicator as the employee would be required to make a separate claim, based on the same or similar evidence to the Civil Court (e.g. for outstanding pay in lieu of notice, holiday pay, share options, bonuses, pension rights etc);
- Cannot take account of contributory cause
  (i.e. did the employee contribute to his own dismissal, but the employer lost the case on a technicality, or an unfair process);
- Is not "just and equitable" but "punitive" in that it provides an element of "compensation" for the employee in the form of a fixed sanction against the employer.

Basic and Compensatory Awards System (proposed by Syson)

<u>The positive side of the argument</u>

There is much to be said for the proposed compensatory award system as it provides a 'Basic Award' for job loss and a 'Compensatory Award' for the actual loss of earnings and statutory rights. The award is seen to be 'just and equitable' but could provide the potential for a high award. The award can also be reduced to take account of 'contributory cause' and other payments made at the time of the dismissal.

The common law 'duty to mitigate' losses will also be taken into account, e.g. whether the employee actively attempted to seek alternative work, or was the employer permitted to apply 'pay in lieu of notice' etc.

Compensation is calculated on the basis of:

- A Basic Award for "loss of job". This is calculated on a formula based on the age of the employee and the length of service i.e. X weeks pay (capped at £270).

- A Compensatory Award to reflect actual losses suffered.

The Compensatory Award covers Statutory Rights, Pension Rights, other Civil Claims e.g. loss of earnings.

As the award is calculated on the basis of 'compensation' the Adjudicator/Tribunal would be able to reduce the award by the amount of any payments made as a result of the dismissal e.g. redundancy pay, ex gratia payments and may also take into account whether the employee contributed to his/her own dismissal.

<u>The negative side of the argument</u>

This method of calculation can be time consuming, complicated to calculate, open to appeal on the amount and method of calculation/reduction and whether the duties to mitigate have been applied properly. As a result, the process <u>may</u> require a legally qualified Chairman to administer.

The Board of Industry had been advised that where complicated issues, such as pension entitlement, are involved, the UK Tribunal do not have the expertise to calculate that element of the award and often give the parties time, to agree between themselves and the pension provider/actuary, how much is due and only then will that amount be incorporated into the compensation awarded by the Tribunal.

Differing Views

There is general consensus that the Adjudicator/Tribunal should be able to reduce the award, **compensatory or otherwise**, where the employee contributed to their dismissal, or where it is just and equitable to do so.

The majority of those consulted, advocated a system of compensatory awards. However, many were concerned about the maximum available.

The Board of Industry considered comments from all parties concerned and whilst the introduction of a compensatory award, is on the face of it a logical improvement, it may lead to an explosion of appeals. Concern was also expressed that there may be an increased risk of appeals on the reduction of the award by the Adjudicator/Tribunal if applied to a fixed award system. However, the Board were advised that the decision to reduce the award would be made on the facts of the case, and, as that is a 'matter of fact' for the Adjudicator/Tribunal to decide, the Appeal Courts would be reluctant to interfere and this may not constitute 'a point of law' on which an appeal was permitted (unless the decision was perverse).

The CIPD expressed the view that *"We do recognise that the amount of the current award is not always high enough to act as a disincentive to an employer ..... [and] ..... therefore recommend maintaining the existing simplicity of the scheme ..... [BUT] ..... increase the amount of the award either by an increase in the number of months of salary, or to a sum of £6,000, or perhaps to the greater of the two"*.

The Industrial Disputes Officers and the Guernsey Bar Council were concerned that the process would become unduly complicated if a compensatory award were introduced.

The Adjudicators who are operating the current scheme also expressed concern that they cannot reduce the existing award in circumstances where the employee clearly contributed to his/her own dismissal, or in circumstances where the dismissal was either procedurally unfair, or where the employee had received some form of payment on termination. This is the most significant point for them in the administration of the Adjudication process.

The Adjudicators met independently to consider the Syson Recommendations and collectively agreed that in their view, the award system should be amended to:

- *Increase the pay period from 3 months for the fixed award.*

- *Permit the Adjudicator/Tribunal to reduce the amount as they see fit (subject to that which is just and equitable under the circumstances).*

The Adjudicators approach is nearer to the original proposal agreed by the States in 1995, which allowed for compensation of "*up to 3 months pay*".[2]

[2] During the drafting of the Law, the Law Officers, were concerned this would lead to appeals on the way the Adjudicators assess the awards, the final draft of the Law reflected a fixed rate of 3 months pay

Considerations

The Board of Industry considered on balance, a compromise approach, which would in effect address the concerns of those consulted, by increasing the fixed rate award of three month's pay, with the facility for the Adjudicator/Tribunal to reduce the award.

Whilst the proposed basic and compensatory award approach has much merit and support from those who were consulted, the Board considered that against the background of the original resolution of the States, the Law Officers views, the views of those consulted and the Adjudicators who are administering the existing system, the Board would recommend the States amend the existing system.

In reaching their decision, the Board also considered the administrative burden on the States in terms of the additional hearing time calculating awards, the financial implication of providing tribunal panel members with additional training in calculating awards, and the cost of perhaps employing legally qualified chairmen. In addition, the Board felt it may be opening the door to appeals against the calculation/reduction of the award, which is a complex, and time consuming area of civil court procedure. **The Commerce and Employment Department concur with the view of the previous Board.**

If the award for unfair dismissal remains fairly simple to administer and just takes account of the 'unfair dismissal' element of the complaint, then the employee who wishes, can still sue the ex-employer for loss of earnings and any other Breach of Contract claim, although in reality this has rarely happened in the past.

Conclusion

Commerce and Employment conclude that the proposed increase in the level of basic compensation, coupled with the ability for the Adjudicator/Tribunal to reduce the award, will continue to encourage employers to act reasonably. It will also introduce an element of equity in terms of the ability to reduce the award where perhaps the employee has contributed to his or her own dismissal or due to some other relevant circumstance of the case.

Commerce and Employment Recommendation.

The current fixed rate award of 3 months' pay, or 13 weeks if weekly paid, should be increased to 6 months' pay, or 26 weeks pay if weekly paid, and the Adjudicator/Tribunal should be able to reduce the amount of the award as they think fit, in accordance with equity and the substantial merits of the case.

SYSON RECOMMENDATION 4

A definition of "Continuous Employment" should be put in place at the earliest opportunity, starting with the basis used in the Employment Relations Act 1996 (sic) on the mainland (para D5c).

There have been no objections to this recommendation from any of the parties consulted.

The absence of Transfer of Undertakings and Protection of Employment legislation (TUPE) contributes to the uncertainty of the application of the Law in circumstances where there appears to have been a change of employer, normally, when a business merges with another or there is some change in the identity of the employer. This has led to difficulties in determining the continuity of employment for those employees affected. In addition, uncertainty also exists where employees are returning to seasonal employment with the same employer.

A simple amendment to the Law, which defines 'continuous employment' will clarify the situation and save much time and effort in future cases. The section of the UK Law referred to by Syson provides for 'continuity of employment' for **'statutory rights' only,** where there has been a change of employer through a transfer of business to another employer, either through a sale, takeover, merger, death of previous employer, change of partners or associated employers etc.

Conclusion

Commerce and Employment conclude that 'continuous employment' should be defined in the Law, similar to the definition contained in the UK Employment Rights Act.

Commerce and Employment Recommendation.

The Law should be amended to include a definition of 'Continuous Employment' similar to that contained in the UK Employment Rights Act 1996.

SYSON RECOMMENDATION 5

Provisions for compromise agreements in Unfair Dismissal complaints (or potential complaints) to be available in Guernsey but to be carried out, initially, by a limited range of persons given specific statutory authority to make such agreements (para D6d).

The use of Compromise Agreements in the UK has proved particularly useful to companies who wish to terminate the contract of employment of employees, often, in circumstances where the working relationship has broken down and the employer merely wishes to part company without the risk of an unfair dismissal complaint (or other related breach of contract claim) being made against them. In many circumstances, the employee would normally make a complaint of unfair dismissal, however the terms of a Compromise Agreement are likely to be more acceptable and less burdensome and result in a satisfactory outcome for both parties, negating the need for litigation proceedings.

A Compromise Agreement is the only way under UK Law[3], that an employee can sign away their statutory rights to make an unfair dismissal complaint (except in certain special circumstances involving 'fixed term contracts'). The process provides mutual protection for both employer and employee and there had been no objection to this proposal from any of the groups involved in the consultation process.

The employer is protected under a Compromise Agreement from allegations of an 'enforced resignation' made under duress or a 'constructive' unfair dismissal complaint.

The employee is protected from unwittingly signing away his/her contractual and/or statutory rights, through the provision of independent, legal advice from a qualified and fully insured Lawyer. (This is likely to be a qualified Advocate or Solicitor in Guernsey.) In many UK cases, the agreement often contains a sum of money paid by the employer, to cover some, or often all, of the employee's legal costs.

Compromise Agreements create a climate under which both parties mutually terminate the contract which is NOT classed as a 'dismissal' under the Law.

In order to be binding in the UK, such agreements must;

- Be in writing;
- Relate to the particular complaint in question; (e.g. unfair dismissal, sex discrimination etc)
- Only be made where the employee has received independent legal advice from a fully qualified (and fully insured) lawyer as to the terms and effect of the proposed agreement and in particular its effect on his or her ability to continue proceedings before a tribunal;
- Identify the adviser, and;
- State that the conditions regulating compromise agreements have been satisfied.

The terms will be enforced strictly by the Tribunal and a failure to comply with any of the above requirements is likely to render the agreement void.

Once a valid Compromise Agreement is reached, the employee is barred from bringing a claim of unfair dismissal.

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[3] Provisions are contained in the UK Employment Rights Act 1996.

Conclusion

Commerce and Employment conclude that Compromise Agreements should be included within the scope of The Employment Protection Law.

Commerce and Employment Recommendation.

Provisions in the Law should be made for Compromise Agreements in potential Unfair Dismissal complaint situations, with specific statutory authority to make agreements, similar to those that exist in the UK Employment Rights Act 1996.

SYSON RECOMMENDATION 6

Power to hear Civil claims for "Wrongful Dismissal", up to a limit of £25,000, should be given to the Adjudication/Tribunal when hearing a contingent *[sic]* dismissal claim (para D7a).

It is not uncommon, as the result of a dismissal, for there to be outstanding 'breach of contract' claims relying on the same or similar basic evidence as the unfair dismissal complaint. Interpretation of contracts, contractual clauses and breaches of contract are relevant to both, e.g. outstanding pay-in-lieu of notice, non-payment of wages, holiday pay or bonuses, repayment of training costs, unpaid loans etc.

In the UK the Employment Tribunal has jurisdiction to hear breach of contract complaints up to a value of £25,000, when they are related to an unfair dismissal complaint. This avoids the need to make a claim to a separate court, to be determined essentially on the same facts.

Currently in Guernsey, the employee and the employer would need to appear before the Civil Courts to recover the outstanding amounts. Sometimes, these matters can be incorporated (by agreement of the parties) in a conciliated settlement, but Commerce and Employment Department Industrial Relations staff only have jurisdiction to conciliate on the 'unfair dismissal' element of the complaint. There are also many occasions where unfair dismissal related 'breach of contract' claims are in excess of £2,500 (the current Petty Debts Court limit) and the employee needs to appoint an Advocate, to represent them in a Royal Court claim.

Whilst there is very little objection to Syson Recommendation 6 from those consulted, advice from the Law Officers led the Board of Industry to the view that it would not be appropriate for the States to approve this recommendation.

The suggested ceiling of £25,000 is ten times the ceiling for the Magistrates Court, which has a legally qualified judge. It would be difficult to give non-legally qualified Adjudicators/Tribunal jurisdiction over potentially, extremely difficult actions for breach of contract.

Conclusion

The Board of Industry was firmly of the view that it would **not be appropriate** for this recommendation to be adopted at this time. Commerce and Employment agree and are not bringing forward any proposals to the States on this issue. However, a statutory right to conciliate on employment-related breach of contract claims could be a way of reducing claims to the Petty Debt Court in the future and Commerce and Employment will reconsider this issue in due course.

SYSON RECOMMENDATION 7

The Board of Industry should examine afresh its publicity and guidance material on employment relations matters to spread even greater understanding and awareness of good practice (para E8).

Conclusion

The Board of Industry have already taken steps to implement this recommendation and Commerce and Employment will ensure that the Industrial Relations team continues to develop services, to meet the professional standards which Island employers and employees now expect.

In addition, the Industrial Relations team is currently reviewing publicity material and the employer/employee advisory services in order to promote modern and up-to-date principles of best practice in employment relations.

SYSON RECOMMENDATION 8

The Board should consider, with the Crown Advocate, strengthening the wording in the Law in order to point up the primacy of conciliation in conflict resolution (paras F3+4).

Conciliation in Unfair Dismissal complaints has been extremely effective in resolving the majority of complaints. As a result of the process the number that have been settled or withdrawn following conciliation is:

1st January 1999 – 31st December 2003

Complaints received	=	168
Settled in conciliation	=	67
Withdrawn following conciliation	=	40
% Success rate	=	64%

The statutory duty provided by the Law to officers of the Board as '**conciliators**' is almost lost in general text. The Law could be strengthened in this area to demonstrate the importance of this process in dealing with complaints. The Law Officers agree that the process should be re-emphasised in the amended Law, in order to help reduce the need for more time consuming and expensive litigation proceedings.

Conclusion

Commerce and Employment conclude that conciliation has been proven as an effective tool in resolving employment disputes and the promotion of conciliation as an alternative to an Adjudication/ Tribunal hearing should be encouraged.

Commerce and Employment Recommendation.

Section 18 (1) of the Law should be strengthened to point up the primacy and importance of conciliation in conflict resolution.

SYSON RECOMMENDATION 9

A new panel of independent lay chairmen (no more than 3 or 4) should be recruited to sit with two side members, again recruited by a fresh, open competition, as a new adjudication tribunal. Selection should be undertaken by a panel that includes an independent element using specifically designed selection methods for this task (para G11).

All those who responded to the review process have concluded that a Tribunal Panel of 3 people should hear all Unfair Dismissal complaints (and Sex or Race Discrimination in the future).

Selection, as proposed in this recommendation, will ensure impartiality and independence and future compliance with Article 6 'right to a fair trial or hearing before an unbiased Court or Tribunal' under the impending Human Rights Law.

In addition, the current panel of Adjudicators were unanimous in supporting a Tribunal as the way forward.

Should the chairmen be legally qualified or not?

The current system of lay adjudicators hearing complaints has led to a "common sense approach" to the interpretation and administration of justice under the Law. Adjudicators through ongoing training and experience have become aware of the required 'burdens of proof' and 'legal tests' to be applied under the various sections of the Law.

There have been 8 appeals so far on a point of Law and in 4 cases the Adjudicator has been found to apply the Law correctly. Only one case was referred back for a re-hearing. (Two have yet to be heard and one was withdrawn.) One case dismissed by the Royal Court was taken to the Court of Appeal but was refused leave to appeal.

The main comments and justification for legally qualified chairmen seems to stem from the legal profession based on the following views:

1) The calculation of compensatory awards is complex;

2) Legal issues raised in hearings are also complex;

3) "Wrongful dismissal" (breach of contract) claims are likely to benefit from legally qualified Tribunal members;

4) The number of appeals may be exacerbated if the Adjudication Tribunal is restricted to lay members;

5) Future discrimination legislation may require an understanding of more complex issues than Unfair Dismissal.

If the States decide to reject Syson recommendations 3 and 6 then the argument for a legally qualified Tribunal is reduced.

The views of the existing panel of Adjudicators relevant to the argument are as follows:

- How many Advocates have experience of the Employment Protection Law?

- How many would be free from conflict to chair Tribunals?

  NOTE ; The Industrial Relations Service experience has shown that due to their extensive corporate law work in Guernsey, many Advocates have been involved with a number of Guernsey employers at some time or other and may not be free from conflict. In one case, the issue of conflict raised a dispute between two Advocates practices and required a decision from the Royal Court before the unfair dismissal complaint could be heard.

- How many would actually be free and have the time to hear cases and write decisions?

- Who would be available to sit – a practising Advocate?
a retired Advocate?
a qualified Lawyer or Solicitor?

- Cost – a qualified person is likely to expect dedicated office accommodation, support staff, and command a higher level of payment (or retainer) than lay adjudicators.

The existing Adjudicators reached the following conclusions:

1) Cases should be heard by a panel of three Adjudicators;

2) *There is currently no need for legally qualified chairmen. The Adjudicators felt this may need to be reconsidered in the future if legislation becomes more complex, or if a compensatory award and the power to hear wrongful dismissal claims are introduced - a legally qualified chairman will be essential;*

3) *Panel members, on appointment, should indicate whether they would wish to be considered for the role of chairman.*

4) *The Board should appoint the chairman on a rotating case-by-case basis.*

5) *The number on the panel should be increased to take account of 3 people sitting at* once.

The Adjudicators themselves are clearly in agreement with the Syson recommendations on the issue of a Tribunal Panel with a non-legally qualified Chairman.

Should the States support this recommendation, it would be possible in the future to amend the Law, should a legally qualified Chairman be deemed appropriate as legislation becomes more complicated. However, if the Adjudication process is developed into a more sophisticated Tribunal[3] (non-legally qualified) this might prove adequate, particularly in a climate where the UK is attempting to reduce the number of cases referred to Tribunals, by advocating less formal methods of resolving employment disputes.

Conclusion

Commerce and Employment have concluded that in the interests of ensuring a 'fair process' with regards to human rights and sex discrimination issues, a Tribunal consisting of three persons should hear unfair dismissal complaints in place of the existing single Adjudicator.

Commerce and Employment Recommendation.

The current Adjudication Procedure for hearing unfair dismissal complaints before a single Adjudicator should be replaced with a Tribunal Panel (as described above).

SYSON RECOMMENDATION 10

Adjudication hearings should be tape-recorded (para H4).

The general consensus is for hearings to be tape-recorded. The main thrust behind the argument is related to information being on record should there be an Appeal to the Royal Court.

[3] Section C. of this policy letter deals with the creation of a specific Employment and Discrimination Tribunal with jurisdiction to hear all employment and discrimination complaints.

There are of course logistical, administrative and cost implications, which Commerce and Employment will have to consider.

Conclusion

Commerce and Employment is not making any recommendation to the States, however, the Board will monitor the situation and introduce recording at a time it deems appropriate.

SYSON RECOMMENDATION 11

Adjudicators should give full and reasoned decisions, available to the public (para H5).

The Law was amended on 1st July 2002 and all decisions are lodged at the Greffe. Full reasoned decisions are also available to the public from the Secretary to the Adjudicators.

Additional Syson Recommendations

1. **The Board should have enabling powers to change the qualifying period without the need for primary legislation (para D1f).**

   This recommendation is purely to enable the Board to amend this part of the Law in the future by order.

2. **"I recommend that the Adjudicator should also be satisfied that a late application has been made within such further period as the Adjudicator considers reasonable" (para D2c).**

   Currently this decision rests with Commerce and Employment and would be better referred directly to the Adjudicator, as there is already an appeal to the Adjudicator if the applicant thinks that Commerce and Employment's decision is unreasonable. This will further strengthen the independence of Commerce and Employment from the Adjudication process and reduce administrative problems and the potential for allegations of 'conflict of interest' that may occur if Commerce and Employment decide to reject the application.

3. **The definition of determining a weeks pay should be clarified:**
   "I recommend a similar formula appropriate to Guernsey could be incorporated into a revised award scheme" (para D4).

   Shortly after the Law came into force in 1999, it was recognised that there were some potential problems with the definition of *'pay'* as it relates to section 20 of the Law and the amount of the award. The recommendation in the report will clarify the relevant sections of the Law. The adoption of pro-rata arrangements for the calculation of any quarterly or annual bonus as it applies to the unfair dismissal award would be a much fairer approach. Currently any award includes the full amount of any bonus the employee may have received during the last 3 months of employment prior to the dismissal. This can inequitably increase the size of the award.

4. **The Law should be amended to allow enabling powers for the Commerce and Employment Department to amend the amount of the Award and the Qualifying Period for the 'right to request a written reason for dismissal' without the need for primary legislation.**

Conclusion

Commerce and Employment have concluded that the four recommendations above will assist with the administration and future amendments of the Law.

Commerce and Employment Recommendation.

The Law should be amended to provide the following enabling powers in respect of minor changes to the operation of the Law without the need for primary legislation:

- ***Powers to change the qualifying periods for making complaints and the right to request a written reason for dismissal by Ordinance of the States***
- ***The Adjudicator/Tribunal should determine whether late applications should be admitted, rather than the Board***
- ***Determining a "week's pay" for the calculation of awards by the Adjudicator/Tribunal***
- ***To vary/change the amount of the award by Ordinance of the States***

States Members may have identified other minor recommendations or advice contained in the Syson Report. Commerce and Employment have already, or are in the process of dealing with these and they are not issues on which the States would need to decide, as they are mainly administrative and not policy issues.

B. THE DRAFT SEX DISCRIMINATION (GUERNSEY) LAW, 2000

1. Background

In 1996, the States resolved to introduce legislation covering Sex Discrimination in Employment. The Board of Industry, however, decided to delay the implementation of the Sex Discrimination Law until the Unfair Dismissal Law had settled in and the Adjudication process for resolving complaints had been properly tested.

Although a draft Law was prepared by the Law Officers, the legislation was further delayed as a consequence of Advisory and Finance considering the implications of ratifying The United Nations 'Convention on the Elimination of all forms of Discrimination Against Women' (CEDAW) which would have impacted on the draft Law. This resulted in the draft Law being sent by A&F to the then Home Office and latterly the Lord Chancellor's Office for comment and advice. Exchanges of correspondence took place between 2000 and April 2002, and a further response is still expected from one of the Government Departments consulted.

At the States meeting in March 2003, Deputy John Gollop posed a question to the Board of Industry President, Deputy Roper.

Q. "When will the Board of Industry prioritise for implementation the Sex Discrimination Law as previously sanctioned by this House?"

The summary of the President's answer is as follows, '.... ***the Board has decided that it should not wait for Advisory & Finance to conclude its examination of CEDAW implications, but, should give priority (subject to any needs for consistency with any proposed Race Discrimination legislation) to get the legislation on Sex Discrimination in employment (as presently drafted) to the States without delay....***'

Following a request from the Board of Industry and after consultation with the Law Officers, the Advisory and Finance Committee agreed to elevate the priority of this legislation to Category A. This was reflected in the 2003 Policy and Resource Plan debated at the July 2003 meeting.

The proposals, agreed by the States in 1996, required Sex Discrimination complaints to be heard by a single Adjudicator in the same way as for unfair dismissal. The Syson Review of the unfair dismissal Law is proposing a Tribunal approach, which if approved by the States will be 'out of step' with the proposed Sex Discrimination Law.

This creates a potential problem. If the States agree to a Tribunal for hearing unfair dismissal complaints, there will inevitably be occasions where an employee claims both Unfair Dismissal and Sex Discrimination and the complaints will need to be heard concurrently. The States will need to approve an amendment to the draft Sex Discrimination Law to enable the same Tribunal to hear the Sex Discrimination complaint at the same time.

2. Considerations

The Board of Industry believed that it was important to develop and update employment legislation, to ensure there was a uniform approach to the drafting, implementation and administration of the processes under the Law. The Commerce and Employment Department has reached the same conclusion.

This makes for a much easier understanding of how the law works and how it impacts on employers, employees and the Adjudication/Tribunal service.

The concept of replacing the Adjudication Process with a three person Tribunal has received only positive comments from:

- Employer groups;
- Employee groups;
- The current panel of Adjudicators;
- The Industrial Disputes Officers;
- The Guernsey Bar Council;

The Board of Industry strongly recommended (and Commerce and Employment agree) that a Tribunal panel should replace the single Adjudicator originally proposed for hearing Sex Discrimination cases. It is important to avoid allegations of bias because a single Adjudicator is either of the same sex (or opposite sex) to the applicant. If a Tribunal panel replaces the single Adjudicator, the panel could include at least one person who is the same sex as the applicant, thereby reducing the risk of an allegation of bias and providing a fairer hearing.

Conclusion

Commerce and Employment support the view that the 'draft' Sex Discrimination Law previously approved by the States should be amended to include a Tribunal panel for hearing sex discrimination complaints instead of a single Adjudicator.

Commerce and Employment Recommendation.

The 'Draft' Sex Discrimination (Guernsey) Law, 2000 should be amended to allow for sex discrimination complaints to be heard before a Tribunal Panel, rather than a single Adjudicator as originally proposed and agreed by the States in the Resolution of 1996.

3. Implementation of the Sex Discrimination Law

In September 2003 the States passed a resolution to implement a Prevention of Discrimination, Enabling Provisions, Law. The Law is now in draft form and is likely to be brought back to the States for final approval in September or October 2004. (The draft Law allows the States, by ordinance, to make such provisions as they think fit in relation to the prevention of discrimination.)

The Law Officers have advised Commerce and Employment that the draft Sex Discrimination Law could then be implemented by Ordinance of the States under the enabling provisions, rather than as a separate Projet de Loi. Commerce and Employment believe this is a sensible, logical and pragmatic way to deal with the outstanding Law without causing any further delays. Sex Discrimination in Employment Laws could then be brought in either simultaneously with the enabling provisions, or shortly afterwards, subject to the Tribunal being in place to hear the complaints. Should the States at some time in the future decide to extend the scope of the Law to cover Sex Discrimination in other areas e.g. the provision of goods, services or education etc, it would be a simple task to amend the Ordinance under the enabling provisions.

Conclusion

Having given the States an assurance in March 2003, that the implementation of the Sex Discrimination Law would be introduced without delay, Commerce and Employment have concluded that the most efficient way to achieve this is by Ordinance under the proposed Prevention of Discrimination Law. This will enable the provisions of the Law to be introduced without the need for ratification by Privy Council, thereby speeding up the implementation of the Sex Discrimination Law, which is likely to be implemented during 2005.

Commerce and Employment Recommendation.

To implement the proposed Sex Discrimination Law by Ordinance, under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, rather than as a Projet de Loi.

C. THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL (GUERNSEY) LAW, 2004

1. Background

Having explored the need for a consistent approach to the Adjudication/Tribunal process, Commerce and Employment recognise there will be some administrative difficulties in amending various pieces of employment legislation if the Adjudication/Tribunal process is separately written into each piece of existing or future employment protection, or anti-discrimination legislation.

After consultation with the Law Officers the Board of Industry concluded that it would be **sensible, practical and less bureaucratic** to introduce a separate piece of legislation that provides the remedy through the Adjudication/Tribunal process for all existing, or proposed employment protection legislation. Should there be any future amendments required to the Adjudication/Tribunal process, only one Law needs to be amended.

If there are changes to compensation levels or some other amendments to the specific Unfair Dismissal, Sex Discrimination or subsequent Race Discrimination legislation, the Tribunal Law would not need to be amended and would stand alone. The Law Officers are of the view that the suggested Tribunal Law is a good idea and if required, jurisdiction could easily be extended to hear any complaints of Discrimination covered by the proposed Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law.

2. Effects On Existing Or Proposed Legislation

The existing Adjudication Procedure under the Employment Protection (Guernsey) Law, 1998 could continue to function until any new Tribunal Law is enacted, at which point it would be amended simultaneously and jurisdiction transferred to the new Law.

The Draft Sex Discrimination Law could be amended at the final drafting stage to refer all Sex Discrimination complaints to the new Tribunal Law.

3. Effects On Drafting The Legislation

Commerce and Employment believe that the drafting of any legislation would not be too difficult or onerous, as the Law Officers have indicated that they would only need to "lift out" the Adjudication Process and Procedures (tried and tested) contained in the Schedule to The Employment Protection Law, and amend the relevant parts to take account of the Tribunal and include references to the jurisdiction of the new Law.

On the 25th September 2003, the States approved the introduction of the 'enabling provisions' legislation permitting the States by Ordinance, to introduce legislation covering the prevention of discrimination in general.

The draft Projet De Loi, The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law (due to be put to the States for final approval in September or October 2004) permits the establishment of a Tribunal to deal with complaints relating to discrimination. Should the States agree to the creation of a new Tribunal, the Law Officers have advised this could also be established by Ordinance under the new 'enabling provisions'.

Conclusion

Commerce and Employment conclude that the implementation of an employment and Discrimination Tribunal Law is a logical and sensible way forward, which will enable future employment and discrimination legislation to be provided with a remedy without the need for the constitution of further tribunals.

Commerce and Employment Recommendation.

To approve the establishment of a new Employment and Discrimination Tribunal under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

D. RESOURCE IMPLICATIONS

1. Staffing

The proposed changes in section 1 – 4 above are unlikely to have any additional staffing requirements. Complaints of sex discrimination (unless there is a significant number) will be dealt with and processed by the existing Secretaries to the Adjudicators/Tribunal.

There will be no significant increase in the workload of Commerce and Employment's Industrial Relations staff in terms of the administration of a Tribunal Panel, which may be slightly larger than the existing Adjudicators Panel.

2. Funding

The legislation is currently supported by a panel of approximately 12 to 15 trained Adjudicators at any one time. If the States agree to the Tribunal Panel, Commerce and Employment will need to increase the number of people appointed to the panel to about 20, to ensure there are three who are free from conflict with the parties and available to sit together.

Hearing costs

As the number of panel members hearing unfair dismissal (and Sex and Race Discrimination in future) will be increased from one to three, there will be some additional costs relating to the actual hearing. Whilst there is the potential for hearing costs to treble, the actual increase in cost is likely to be less. This is due to the fact that the Chairman, after deliberation and reaching a decision with his/her panel members, will allocate time to writing the decision. The other two members will not need to claim this extra time.

The current average Adjudicators fee for a hearing, based on an average of 14 per year is £271.

Based on the current remuneration package (currently under review) the cost of Adjudicators fees for a Tribunal, will be in the region of £451 per hearing. (based on the same average of 14 hearings per year). It is estimated that the total **additional annual expenditure** for the Tribunal hearings would be approximately £2520 per year.

Training costs

The overall cost of training will be slightly higher for a panel of 20 than for 15. However, the basic training costs will generally be a 'one-off' when an Adjudicator/panel member is initially recruited. It is only the ongoing training that will have the greatest impact.

The extra costs will be purely on a pro-rata basis according to the number on the panel. It is estimated that the **additional** training costs will amount to approximately

Local Basic Training -	£420
Local Specialist Training -	£720
UK Tribunal Training -	£1650
Quarterly update meetings -	£1067
Total additional training costs	£3857

Combining the additional training and hearing costs the total cost to the States will amount to approximately **£6377 per year.**

<u>Conclusion</u>

The additional costs can be absorbed within the existing Industrial Relations budget already allocated to Commerce and Employment for administering the Law.

Summary of Recommendations:

The Department of Commerce and Employment request that the States approve the following recommendations for amending The Employment Protection (Guernsey) Law, 1998, the 'draft' Sex Discrimination Law and for the introduction of a new Employment and Discrimination Tribunal Law.

1) The qualifying period of employment required under section 15 of the Law, before an employee is entitled to make a complaint, should be reduced to one year. *(currently 2 years)*

2) The qualifying period of employment required under section 2. (2) of the Law, before an employee is entitled to request a written reason for dismissal, should be reduced to one year. (*currently 2 years)*

3) The period allowed for notifying an unfair dismissal complaint under section 17 (2) of the Law should be increased to 3 months, beginning with the 'Effective Date of Termination'.

4) The current fixed rate award of 3 months' pay, or 13 weeks if weekly paid, should be increased to 6 months' pay, or 26 weeks pay if weekly paid, and the Adjudicator/Tribunal should be able to reduce the amount of the award as they think fit, in accordance with equity and the substantial merits of the case.

5) The Law should be amended to include a definition of "Continuous Employment" similar to that contained in the UK Employment Rights Act 1996.

6) Provisions in the Law should be made for Compromise Agreements in potential unfair dismissal complaint situations, with specific statutory authority to make such agreements, similar to those that exist in the UK Employment Rights Act 1996.

7) Section 18 (1) of the Law should be strengthened to point up the primacy and importance of conciliation in conflict resolution.

8) The current Adjudication Procedure for hearing unfair dismissal complaints before a single Adjudicator should be replaced with a Tribunal Panel.

9) The Law should be amended to provide the following enabling powers in respect of minor changes to the operation of the Law without the need for primary legislation:

   a) Powers to change the qualifying periods for making complaints by Ordinance of the States

   b) The Adjudicator/Tribunal should determine whether late applications should be admitted, rather than the Board

c) Determining a "week's pay" for the calculation of awards by the Adjudicator/Tribunal

d) To vary/change the amount of the award by Ordinance of the States

10) The 'Draft' Sex Discrimination (Guernsey) Law, 2000 should be amended to allow for sex discrimination complaints to be heard before a Tribunal Panel, rather than a single Adjudicator as originally proposed and agreed by the States in the Resolution of 1996.

11) To implement the proposed Sex Discrimination Law by Ordinance, under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, rather than as a Projet de Loi.

12) To approve the establishment of a new Employment and Discrimination Tribunal under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004

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

Yours faithfully

Deputy Stuart Falla
Minister
Commerce and Employment

Attached – Appendix A – Syson Review of The Employment Protection (Guernsey) Law, 1998.
Appendix B – List of those invited to take part in the consultation process.

APPENDIX A

WORKING
IN
PARTNERSHIP

REVIEW of the working of the EMPLOYMENT PROTECTION (GUERNSEY) LAW 1998

Report – The Next Steps

By Mr Peter Syson BSc (Econ) MCMI

14 October 2002

CONFIDENTIAL

REVIEW of the EMPLOYMENT PROTECTION (GUERNSEY) LAW 1998 – THE NEXT STEPS

Section A EXECUTIVE SUMMARY

A1 The main recommendations of the Review are:-

1 The qualifying period for an unfair dismissal complaint should be reduced to one year (para D 1f).

2 The period allowed for lodging an unfair dismissal complaint should be increased to three months (para D2b).

3 The principle should be adopted of a basic award on fixed criteria supplemented, where appropriate, by a compensatory award in which contributory fault would be taken into account. Mainland practice should be adapted in as simple a form as possible to the situation in Guernsey (para D3i).

4 A definition of "continuous employment" should be put in place at the earliest opportunity, starting with the basis used in the Employment Relations Act 1996 on the mainland (para D5c).

5 Provision for compromise agreements in unfair dismissal complaints (or potential complaints) to be available in Guernsey but to be carried out, initially, by a limited range of persons given specific statutory authority to make such agreements (para D5c).

6 Power to hear civil claims for wrongful dismissal, up to a limit of £25,000, should be given to the Adjudication Tribunal, when hearing a contingent unfair dismissal claim (para D7a).

7 The Board of Industry should examine afresh its publicity and guidance material on employment relations matters to spread even greater understanding and awareness of good practice (para E8).

8 The Board should consider, with the Crown Advocate, strengthening the wording in the Law in order to point up the primacy of conciliation in conflict resolution (paras F3 & 4).

9 A new panel of independent lay chairmen (no more than 3 or 4) should be recruited to sit with two side members, again recruited by a fresh, open competition, as a new adjudication tribunal. Selection should be undertaken by a panel that includes an independent element using specifically designed selection methods for this task (para G11).

10 Adjudication hearings should be tape recorded (para H4).

11 Adjudicators should give full reasoned decisions, available to the public (para H5).

A2 Further detailed recommendations are at paragraphs D1f, D2a, D4h, D8c-e and g & H3.

A3 The discussion leading to these recommendations will be found by a close reading of the relevant sections of the Report.

A4 I very much hope that the Board of Industry will find a coherence in the Report and that the package of recommendations will be a suitable way forward, as the next steps in the reform of the 1998 Law.

Section B TERMS of REFERENCE and CONDUCT of REVIEW

B1 I was appointed by the States of Guernsey Board of Industry on 3 May 2002 to conduct a review of The Employment Protection (Guernsey) Law 1998 with the following terms of reference: -

> *"To review the working of The Employment Protection (Guernsey) Law 1998, with particular reference to the process for the voluntary resolution of complaints under the Law and, where that has not been possible, the determination of the complaints through the Adjudication Procedure and to make recommendations".*

B2 Board officials briefed me at an earlier meeting about the requirements of the review and I was provided with all the relevant material arising from the operation of the 1998 law including the judgements in the Royal Court and the Court of Appeal. I was also given copies of the Board's explanatory leaflets about the law and codes of good practice. I visited Guernsey between 12 and 18 June to meet interested parties. The Board had already issued a press notice about the Review and had informed many organisations that might be interested in meeting me to express their views or alternatively to write in. Advantage was taken of both means of communication and I am very grateful for the co-operation I received during my visit; the interest and concern to participate in the Review was very evident in all my meetings. The desire to ensure Guernsey has a sound basis of law in the field of employment relations was most impressive. A list of those I met and/or wrote in is given in Appendix 1.

B3 The positions of the main participants will become clear in the comments I make in respect of reform of the law and do not need to be set out separately at this stage.

B4 I am especially grateful to the staff of the Board who responded promptly, and with good humour, to my many requests for information. I am also grateful to them for ensuring a smooth programme of meetings during my visit in June.

Section C THE STORY OF THE UNFAIR DISMISSAL LAW TO DATE

C1 The recent census of industry shows that the working population of Guernsey is a little over 32,000 of whom 13,473 are employed by just 90 employers. It is significant that the vast majority of the Island's 5300 employers (83%) employ 5 or less workers. There is limited information about the composition of the workforce in terms of industry sector so that it is not possible to examine whether the private or the public sector is most affected by the legislation. It is also not possible to examine experience by gender, age or, in sufficient detail, part-time or full-time workers. The size distribution of employers and employees does, however, have implications for awareness and adoption of good employment relations practices.

C2 It is also difficult to gauge the impact of trade union membership which is estimated to comprise about 6000 employees (about 20% of the total labour force). Data on the Island's wage & salary levels are also not available which could lead to difficulties for those looking at basic award/compensation levels that might be appropriate in unfair dismissal cases.

C3 In the period the Unfair Dismissal law has been in force (January 1999 to June 2002) the Board of Industry received 98 unfair dismissal complaints and declined to activate 6 further complaints that were outwith the 2 year qualifying period. Of the 89 completed cases the Board's conciliation staff achieved a positive clearance rate (PCR) of 58 per cent. The PCR is defined as including cases settled by conciliation or withdrawn or settled by private agreement; the Board staff will have been active in each case and will have influenced the outcome in those cases that did not reach an adjudicator. This is a creditable and solid start for the Board's conciliators and, if mainland experience is anything to go by, conciliators are likely to see their PCR build up so that an even smaller proportion of cases will need the services of an adjudicator. In Great Britain where the ACAS remit runs the PCR has risen gradually to around 70%, seemingly without compromising the all important impartiality and independence of the conciliators.

C4 In the period of the UD law's existence there have been 33 conciliated settlements and a further 19 cases that were withdrawn. The median settlement level in conciliation was £2000 in 1999, £3016 in 2000 and £2080 in the first half of 2002. As with mainland experience, these settlement levels were lower than those awarded by adjudicators (see below), although they had extremely limited powers to find for less than the fixed award figure.

C5 Board staff were also active in handling a further 176 enquiries relating to unfair dismissal that were clearly to fall outside the two year qualifying period. Of these enquiries 53 were from employees with between 12 and 24 months service. These enquirers provide some guide to assessing the effect of different regimes of qualifying period.

C6 The caseload of actual complaints has not shown a continuing upward trend which is difficult to explain, given the mainland experience of a new right getting off to a slow start before proceeding inexorably upwards. The very tight labour market may have been a significant factor. In addition the relative low level of awards may have led employees to the judgement that the effort was not worthwhile. There has not been a rash of inappropriate claims that some commentators have claimed. Advocates have also indicated that they, as well as Board staff, had been involved in advising the parties which in some instances may have led to a case not being pursued.

C7 The lodged complaints arose from a variety of industry sectors with finance, services & the motor trade making up almost half of the claims, followed closely by the hotel/catering and the retail sectors. The salary levels of those making claims show that just over half the 98 complainants had a salary level below £20,000, a further 14% earned over £40,000 with the remainder in between those groups.

C8 Of the 89 cases dealt with by June 2002, 34 cases (38%) went to adjudication and a further 4 went on appeal to the Royal Court/Court of Appeal, making a total of 38 hearings. Most activity for the adjudicators was concentrated in 1999 (13 hearings) and 2000 (16 hearings) with a marked falling away in 2001 & very little activity in 2002.

C9 Of the 15 adjudicators appointed to head unfair dismissal complaints, just 3 adjudicators have heard almost half of the completed adjudications. The most heard by an adjudicator was 6 and all but one of the adjudicators had heard at least one case. Of the 15 adjudicators, one third are women. All have significant experience of dealing with employment matters although few could be said to have come from a trade union or employee representative background.

C10 The vast majority of the 38 hearings lasted no more than one day, with two each lasting 2 or 3 days respectively, one lasted for 6 days & the longest lasted for 8. These figures suggest the Board's wish for a straightforward scheme with the least formality has been largely achieved. In Great Britain many cases last well over the one day hearings in Guernsey.

C11 Representatives were not present for either side in 25 out of the 38 hearings which again chimes in well with the original plans for handling unfair dismissal claims. A trade union representative appeared in only one case but unions may have appointed an Advocate to present their case and certainly Advocates appeared for the employee in a further 8 cases. Advocates were present in a total of 12 out of the 38 hearings (32%) which is well below the level of legal representation reached on the mainland after many years of operation.

C12 Adjudicators found in favour of the applicant in 22 (58%) of their decisions and 16 were for the employer. (The mainland experience is quite the opposite! where only 12% of employees are successful at Tribunal with their UD complaint). As could be expected the value of the adjudicator's award has fluctuated according to the salary level of those making the complaint. In 1999 the median award was £3527, in 2000 £5839, in 2001 £5412 & £18325 in 2002. It may be useful to note the GB comparison of a median award for UD in 2000/01 was £2744 but higher in sex discrimination at £5499 and £8012 for race discrimination.

C13 Just over half of the 38 cases reached a hearing within three months of being registered and almost all were heard within six months which is a commendable record when placed alongside experience on Great Britain. In the mainland during 2001 Employment Tribunals only managed to get 77% of single cases to a hearing in 26 weeks. This was against an official target of 85%. In Guernsey it would be surprising if, in the settling in days of a new system, there were not some that were strung out but even so only one case went past the nine month mark.

C14 Equally in the early stages one would have expected some legal challenge and there have been three instances where the adjudicators' decision has been appealed. They were as follows:-

1 *Mr S Milford v Seaward Marine Ltd* in which at a preliminary hearing the adjudicator held that the applicant had resigned and not been dismissed. The Royal Court remitted the case to a hearing by a fresh adjudicator as the original adjudicator had not followed the requirements of natural justice when he had associated with one of the parties during the original hearing.

2 *Micropublishing v Mr G Solway* in which the adjudicator found the applicant to have been unfairly dismissed. The Royal Court dismissed the company's appeal finding that, in spite of the adjudicator's tendency to overstate the employee's case, the adjudicator was entitled to reach the decision he had.

3 *Garenne Group Ltd v Mrs M Falla* in which the adjudicator found that the applicant had continuity of employment and that her case should proceed to a full hearing. The Royal Court dismissed the employer's appeal and remitted the case back to a full hearing by an adjudicator. The company sought Leave to Appeal which was heard in the Court of Appeal and the application was refused.

C15 The issue of costs was raised during the review and it may be helpful to record here the nature of awards of costs in the mainland Employment Tribunals as set out in the

Employment Tribunals Service report for 2000-01. This shows that costs were awarded in only 247 cases which was itself down from 407 the previous year. The maximum award of costs was £1500 but most costs awards were below £500; in only six cases was the award above that amount.

C16 A further point of interest from the mainland scene is the lack of take-up of the ACAS Alternative Arbitration Scheme which was introduced for parties to agree to have the case arbitrated by an independent ACAS arbitrator and the case would not then go through to a Tribunal. In the first year of operation only 13 cases were dealt with in this Scheme. It had been hoped that the Scheme would help ease the load on the tribunals and be cheaper to run.

C17 In examining the efficacy of the 1998 Law I had hoped to establish the various costs to the States' Board of Industry of a) a conciliated settlement and b) adjudicators' hearings but I understand the detailed information is not readily available. As it is not fundamental to the review I simply draw attention to the costs of an ACAS conciliated case (settled or withdrawn) were put at £360 in its Annual Report for 2001-02. This compares with an Employment Tribunal determined case of something in the region of three times that cost.

Section D REFORM of EMPLOYMENT PROTECTION (GUERNSEY) LAW 1998

D1 Qualifying period for making an unfair dismissal claim

a) According to Board records getting on for 200 employees had enquired about their rights under this legislation but were outwith the two year qualifying period and therefore unable to make a claim of unfair dismissal. About 120 employees had less than one year's service and a further 53 had between 12 & 24 months service.

b) Union representatives urged strongly for a reduction to at least one year; there was a good deal of sympathy from other quarters for, at least, some reduction. I detected no opposition to that proposition.

c) *Case for one year* rests chiefly on comparison with mainland position; some employers find problems where there is a fair degree of movement of employees both ways; different periods can cause confusion. This is the most straightforward option and probably has the widest support.

d) *Case for six months* has not been put but must rate for consideration. It has not been the rule in the mainland except for a short period of Labour Government in the mid 1970s. However it appears that the States of Jersey are to be asked to legislate for a six-month qualification in their new employment rights law. This could, of course, raise unhelpful comparisons and problems where there is interchange of employees.

e) <u>*Case for a nil qualifying period*</u>, also, has a respectable pedigree, especially as some rights to do with discrimination are in this category on the mainland and in Europe. When sex discrimination legislation is brought into Guernsey, it will be on that basis. The argument for a nil qualification rests on its intrinsic logic that a statutory right should apply in all circumstances to which the right attaches. Some of the Island's Advocates were not at all happy with the idea and felt a statutory probationary period was necessary.

The United Kingdom Government announced in late June that it would carry out a fundamental review of the 1999 employment rights legislation including a serious examination of the TUC proposal for a nil qualification period.

f) **On the balance of the arguments presented to me I recommend that the qualifying period for an unfair dismissal complaint should be reduced to one year.** This change would lead to a more equitable system and could lead to an increase in claims probably in the order of 30 %; equally it will lead employers to change their practices and those employees who are doubtful performers will be reviewed near to 6 to 9 months rather than in close proximity to 18 months as now. If the UK Government decides to alter the qualifying period the Board of Industry should keep the matter under careful review as no doubt there would be pressure on Guernsey to follow suit. To maintain flexibility **I also recommend that the Board seek to have an enabling power to change the qualifying period without the need for primary legislation.**

<u>D2 Period allowed for lodging an unfair dismissal complaint</u>

a) Experience suggests that the current one month deadline is far too short. Most parties seem to agree or were not perturbed by the possibility of change. Those who argued for change said that the aggrieved were often pushed into making a claim, simply to protect their right to proceed. This meant that attitudes tended to harden early on and claimants felt belittled if they then withdrew. It was also represented that a longer time span would enable parties to look for guidance and advice, thus providing space for calmer reflection on events.

b) Since there is widespread support for change the only question is to determine how long would be appropriate. **I, therefore recommend that the period in which to lodge a complaint should be extended to three months.**

c) A subsidiary matter was put to me about how the adjudication process should deal with late applications. If mainland practice is to be followed, as in other matters of procedure, the Employment Tribunal has first to find that it was *not reasonably practical* for the applicant to present the claim on time. However there is a second limb to be satisfied and that is whether the late application was presented *within such further period as the tribunal considers reasonable.* It was argued that if the normal time limit was changed to 3 months then the second limb applied in GB should be added to section 17(2)(b). This suggestion seems entirely appropriate if the presenting period is changed **and so I**

recommend that the adjudicator should also be satisfied that a late application has been made within such further period as the adjudicator considers reasonable.

D3 Fixed compensation level

a) The original scheme was set up on the basis of it being easy to understand by employers and employees alike. Consequently it would also be a simple system to operate and would enable the adjudication process to operate with the minimum of obstacles to decision making. These very laudable aims have enabled the system to get off to a sound start.

b) However the award element has come under scrutiny from several angles which have to be taken seriously. From the employee and their trade union representatives' perspective, it is felt that the compensation levels do not operate in a fair and just manner. The fixed levels mean they are not receiving compensation commensurate with their loss of job, status and prestige. The trade union view is that the awards do not have a punitive element to force employers to reform their ways of working.

c) Adjudicators said that they felt uneasy at having to give the fixed award when the evidence before them showed that the applicant had been significantly at fault. They felt that there was a need for discretion in such circumstances and that they should be able to assess the contribution that should be deducted. This power is only available to the adjudicator in the very limited circumstances where she/he judges a reasonable offer of reinstatement has been refused (see Section 21 of the 1998 Law).

d) The fixed and low level of award was seen as of little help to the Board's conciliators. It meant that both parties knew the risks involved and so there was little margin for compromise and no motivation for either party to do so. Voluntary solutions were, therefore, not helped by such a rigid formula.

e) A further point, perhaps carrying more contentious connotations, was that applicants could not afford the large fees employers were able to find to engage Advocates to present their case professionally. Thus the whole system was weighted against the applicant and there was uneven presentation of cases before the adjudicators. I judge, however, that the Board would be mistaken to base the level of awards on the ability or otherwise of the parties to pay for representation. Other means have to be found to solving that problem.

f) There is a good case for maintaining *the current fixed limits* as it has the merits for which the scheme was founded. If the fixed award were to continue it is clear that the current limits need to be lifted by a significant margin, especially as wage levels on the Island are at a high standard. This would not, however, deal with the contributory fault factor.

g) Alternatively, a basic award system might be introduced on conditions similar to those operating on the mainland ie *a basic award related to the employee's length of continuous service, age & the relevant amount of a week's pay.* A ceiling is attached to the amount of a week's pay that can be used in the calculation. In Great Britain the current weekly pay level is £250 so that the maximum basic award is £7500. The pay level is increased annually based on the RPI index at September. This system could be implemented in a simplified form in Guernsey eg with a higher or no pay cap figure, in similar fashion to the current fixed system. This approach could be further adapted to cover contributory fault but mainland experience suggests that awards are subject to the same pitfall that little account can be taken of an employee's contribution to the dismissal.

h) A further refinement would be, therefore, to have *a basic award system where the adjudication process enabled contributory fault to be taken into account.* One suggestion put to me was the reduction might be based on a percentage according to grading as major, average or minor contribution or better still a 5-grade structure.

i) To be more radical & comparable with mainland practice *a compensatory award* (subject to a maximum – currently £52,600, again increased annually in line with RPI) could be introduced in addition to the basic award. The idea being that, as the basic award is meant to cover loss of job as if redundant, a further award to compensate for loss attributable to action taken by the employer is made on the basis of what is just & equitable in all the circumstances. It should be emphasised that the object of a compensatory award is not to punish the employer but to genuinely compensate the employee for the loss that is suffered.

j) The Guernsey unfair dismissal scheme was established with the laudable aim of simplicity and ease of operation. The award level is, however, one of the more complex matters in this review. I think that most observers were looking for some change and so the only sensible course of action is to accept that this element has to be more sophisticated. As it stands, the most significant drawbacks are the inadequacy of the compensation level in a high earning economy & the unfairness arising from the lack of flexibility in making a fixed monetary award. It is tempting to limit the change to a fixed award system based on age, length of service & weekly pay. Tribunals in GB, the parties, & conciliators are well used to the ready reckoner approach that can be used for the basic award. But this would not go far enough to enable the adjudicator to assess fully contributory fault and future loss among other matters. Since Guernsey looks to tribunal precedent in GB for its own guidance, contributory factors can be readily ascertained from that source. Although additional matters for further determination would be added to the adjudication process they ought not to be that onerous for the adjudicator, given proper training & support. The use of discretion more often might give rise to more legal challenge but GB guidelines should reduce the risks of that happening. **I recommend that the Board adopt the principle of a basic award according to defined criteria for calculation supplemented, where appropriate, by a compensatory award similar to those in GB but adapted in as simple a form as possible to the Guernsey situation.**

k) The slight increase in complexity is likely to be acceptable as it will be fairer on two counts. It will provide a fairer award to those who are found to be unfairly dismissed; it will be fairer to employers who were not entirely at fault in making the dismissal. The introduction of contributory fault is likely to deter those applicants who previously have thought they had nothing to lose by making a claim and will serve as a warning to "ambulance chasers" that not every dismissal is an open door to earning money for themselves.

D4 Definition of a weeks pay

a) Some difficulties and inequities have arisen over the current definition of pay set out in Section 20 (2) of The Employment Protection (Guernsey) Law 1998, most notably where payments such as an annual bonus have occurred (or not!!) "during the three months immediately preceding the effective date of termination". As one can imagine the GB arrangements are more complex but the way GB deals with such payments could be quite helpful. The guidance suggests that "12/13ths of any quarterly bonus or 12/52 of any annual bonus can be included, provided the bonuses are not paid specifically for some time outside the 12 week period". **I recommend that a similar formula appropriate to Guernsey could be incorporated into a revised award scheme**

D5 Definition of continuous employment

a) The definition of continuous employment was a matter of some contention before me and it was itself the subject of an Appeal to the Royal Court in the case of *Garenne Group Limited v Maura Falla.* This was the most significant point to be the subject of legal challenge and is, of course, of immense importance to employees & trade unions in terms of protecting individual rights. It is also of prime importance to employers in an economy where change is ever present and the business of transfers and takeovers is a complex legal operation. Clarity and certainty is, therefore, important for all parties.

b) Section 34(2) in the Interpretation section of the 1998 Act carries a definition of Associated Employer which is a helpful start. Also, under section 34(4) the States "may by Ordinance make such provision as they think fit as to the meaning of the expression[s] "continuously employed" but, so far, no action has been taken on this facility. Both sides of industry & commerce are, for their own different but legitimate reasons, very anxious to have further certainty in this area. In retrospect it is a pity this power has not been used.

c) No doubt the Board thought it could rely on GB legislation and the way it had been interpreted by the mainland courts but the Guernsey situation is quite different. There is no transfer of undertakings legislation in place apart from The Transfer of States Undertakings (Protection of Employment) (Guernsey) Law 2001. This law was designed to deal with the sale and transfer of the States Telecommunications Board into private hands. I understand that the Board are now involved in consultations about the whole issue of transfers and this could help significantly but it will not solve the whole issue. The outcome of these deliberations will be sometime in coming to fruition and **I, therefore, recommend that the Board put in place at the earliest opportunity a definition of "continuously employed" that will suit the Guernsey situation.** The starting point beyond the TUPE matter might well be Section 218(2) of the Employment Rights Act 1996 which is based on legislation as far back as 1963. The section provides:-

> *"If a trade or business, or an undertaking (whether or not established by or under an Act), is transferred from one person to another –*
>
> *(a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and*
>
> *(b) the transfer does not break the continuity of the period of employment".*

A further suggestion put to me was that a period of employment in the same group of companies could be regarded as continuous and the definition of holding and subsidiary companies set out in the Amalgamation of Companies Ordinance 1997 could be adopted for the purpose of defining group companies. The Board's advisers may wish to take this idea also into their deliberations on this matter.

d) The Board will need no reminding that it is vital to give early attention to the unease about this area of the law, difficult as it is to get a handle on its complexities. The current consultation on TUPE will provide another opportunity to modify the law should that prove to be desirable.

D6 Provision of alternative compromise agreements

a) For sometime now there has been alternative, acceptable ways of reaching agreements in Great Britain that despatch with finality the statutory complaint (or where a complaint could be made), in addition to the longstanding exception for conciliated settlements reached under the auspices of ACAS. In recent years the scope of those able to oversee compromise agreements has been extended but within very strict conditions set out in primary legislation.

b) Such agreements were introduced to ease the load on the Tribunal system and have been highly effective in handling cases which did not need to clog up the system. The stringent conditions as to those who could effect such agreements was an essential safeguard to employees who were dismissed and have proved acceptable.

c) It was represented to me that this facility was not available in Guernsey and members of the Island's legal profession who saw me requested that a limited form of such arrangements would be beneficial for the Island. The idea would be that, as well as settlements reached under the auspices of the Board's conciliators, it would be possible for Advocates, under strict conditions, to reach agreements with similarly represented parties that had the same effect of avoiding the possibility of an adjudicated decision. It was argued that this would relieve some of the pressures that are put on the Board's officials and would be a useful method for resolving highly technical issues at the levels of senior management, in particular.

d) This additional approach to resolving issues is, I believe, likely to be helpful in Guernsey, just as it has been on the mainland, so long as appropriate safeguards are put in place to protect all interests. Employee interests would be protected by the statute ensuring that they received independent advice about their rights & the effect on them of any proposed agreement. **I recommend that initially compromise agreements should be permitted but limited to a narrow range of people given authority to reach such agreements. Thus, for Guernsey, it would be appropriate to give this power to a qualified Advocate " in private practice or employed to give legal advice or a solicitor who holds a practising certificate".** If introduced on this limited basis its usage and effect could be carefully monitored by the Board to ensure it is adding value to the overall unfair dismissal scheme.

e) In order for the compromise agreement to be legally binding it must, if mainland rules are followed, be:-

- i) in writing
- ii) only made where the employee has received advice from a relevant, independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on her/his ability to pursue her/his rights before an adjudicator and there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of a claim by the employee.
- iii) identify the adviser and
- iv) state that the conditions regulating compromise agreements have been satisfied.

f) There may also need to be some indication of those who cannot be an adviser in such situations eg a person who is employed by the employer who is dismissing the employee. Such safeguards are essential if justice & fairness are seen to be in place.

D7 Wrongful dismissal claims

a) In Great Britain Tribunals are able to hear civil claims alongside unfair dismissal statutory claims and some lawyers as well as adjudicators put to me that such a possibility should be available to parties in Guernsey. They further suggested that there should be a limit in the level of such claims of, say, £25,000. As adjudicators hear an unfair dismissal complaint that can give rise to a civil action based on the same facts it seems eminently sensible to adopt the practise of dealing with both claims simultaneously. **I recommend that the adjudicator should be given power to hear a civil claim alongside an unfair dismissal complaint. The Board's legal advisers will, no doubt, have a view on the limit to be placed on a civil claim but £25,000 would seem to be a sensible figure.**

D8 Minor suggestions for change

a) A number of other suggestions were made to me by those who had participated in the operation of the scheme and the following points were made in correspondence as well as in my meetings from Board staff, advocates, adjudicators and trade union officials.

b) A request was made that the minimum notice periods in section 1 of Part 1 of the 1998 Law should be amended and extended to a maximum of 16 weeks. Whilst the current form is somewhat restrictive there were no other representations to this effect and I do not propose any alteration. However, it is one of those matters that Board staff could monitor and review from time to time.

c) **I recommend that the reference to the Industrial Disputes Officer in section 16(1) should be removed** as it is clear that it is not an essential part of maintaining a panel & could indeed clash with the IDO's role in collective matters. There may be other references that also need to be addressed eg section 17(7)(c).

d) **I recommend that the word "and/" before "or" in section 17(1)(a).** This would bring the statute into line with the Royal Court judgement in *Milford v Seaward Marine Ltd.*

e) **I recommend that, subject to legal advice, section 17(3)(a) should be amended** to allow for an appeal. I suggest this in the light of the Human Rights legislation.

f) The current wording of Section 17(7)(d) is not satisfactory and will require amendment if my recommendation on compromise agreements is acted upon. It should be made clear that an individual cannot sign away their statutory right, whether before or after an actual complaint has been lodged except in specifically defined, safeguarding circumstances.

g) Section 18(2) may not be felicitously worded in the light of human rights legislation but since the matter goes on to adjudication no harm is done. However **I recommend that the wording might be reviewed in the light of these comments.**

h) Some concern was expressed to me about nomenclature and the possibility that misunderstandings might arise. We are all familiar with the term "employee" who, in the legislation, becomes a complainant. Thus when a complaint is lodged it is normal practice to refer to that person, in any proceedings, as the "applicant". It should not be a surprise that the "employer" is transformed into "the respondent". I hope that in guidance leaflets these sorts of distinction can be easily described and the reason for them being the taking up of a complaint under the Law.

i) It was suggested that, in certain circumstances, employees should be ineligible to claim unfair dismissal if they had reached the relevant retiring age. The matter of part-time employees satisfying a threshold was also raised in relation to the qualifying period. I feel these are matters of detail that Board staff will only want to give attention to in handling the broad sweep of reform, including the introduction of discrimination legislation.

Section E PROMOTING GOOD EMPLOYMENT RELATIONS PRACTICE

E1 The existence of employment rights legislation is a support framework and does not take away the need for good employment relations & practice in the workplace. Whatever the nature of the employment or the sector of industry involved the aim must be for employer and employees and their representatives to act in a partnership to their mutual benefit in achieving the success of the organisation and the satisfaction of the individual employee. Resort to the law should always be seen as the last resort.

E2 Throughout my meetings it was evident that the Board of Industry staff are already highly regarded for their professional support and advice. This unsolicited praise comes equally from employees, trade unions, employers and professional organisations. They are praised for the quality and practicality of their advice and guidance. The existence of employment relations legislation and the prospect of its extension will produce greater pressure on the Board's resources. As the independent specialists on the Island people are likely to look first to the Board's staff for support and it is vital that they are able to maintain their reputation for independence and impartiality in spite of their necessarily close connection to policy making and the Island's overall economic direction.

E3 The Board's staff provide a free, confidential advisory service to employers and their organisations and also to individual employees and their representatives including trade unions. This service covers all industries, all sizes of employer, all employees and can be accessed by a simple phone call to the Board's offices. Advice is provided by phone, at meetings, in seminars and training sessions as well as in publications such as codes and advisory leaflets. Where unfair dismissal complaints are made conciliation staff, again, provide a free, confidential service. Equally where there is a collective issue in dispute between an employer and recognised trade union the Board provide an expert conciliation service. All of these activities are carried out on an independent and impartial basis. It is this impartial basis which is the bedrock of the Board's staffs success.

E4 Setting out on the road of employment relations legislation can be unpredictable but in today's modern society with its global ramifications law is the essential framework to ensure fairness and justice. The need for help and assistance is going to grow. Trade unions, employer groups, the professions and the CAB can all provide some help but it will always be partial and unlikely to be as based on the concentrated experience that can be provided by the Board's staff. One conclusion to be drawn from this review is the need to continue to strengthen the resources available to support the Island's employers, employees, trade unions and professional organisations.

E5 If evidence is needed for this conclusion, then eyes should turn to the mainland's experience over the last 30 years as employment relations legislation has increased inexorably. This has led to a continuous upward expansion of caseloads of ACAS conciliators and, most significantly, of Employment Tribunals. For example, in 1998 ACAS received 113,636 individual rights complaints that were made to the Tribunal; in the same year 29,063 cases went on to Tribunal for hearing. In 2001/02 ACAS reported receiving 165,093 complaints and 34,998 going on to Tribunal.

E6 United Kingdom Governments, of both political persuasions have, in the last decade, become increasingly worried about the costs to the public purse and have made, sometimes frantic, moves to arrest the process. It has to be said with little signs of success. In assisting Guernsey to avoid such an outbreak of legal activity we must consider some of the latest moves on the mainland to check the continuous rise of tribunal cases. These efforts have been manifest in:-

i) The provisions that have now reached the statute book in the *Employment Act 2002* including:-

a) the introduction (at a date yet to be determined) of minimum internal disciplinary & grievance procedures to encourage the internal resolution of workplace disputes;
(see Appendix 2)

b) providing incentives for the use of such procedures in enhancing the Tribunal's work;

c) greater emphasis on the provision of written particulars.

ii) *The Better Regulation Task Force report "Employment Regulation: striking a balance"* looked at the Government's policymaking process on employment law and at ways of assisting employers to comply with employment law. This report has a number of suggestions in meeting the needs of small employers and has various ideas about improving the provision of information and advice to employers in particular.

iii) *The Employment Tribunal Taskforce Report (160 pages) "Moving Forward"* was charged with making recommendations as to how Tribunal "services can be made more efficient and cost effective for users against a background of rising caseloads." In its wide ranging report, headed by the leading employment lawyer, Janet Gaymer, there were 61 detailed recommendations, some of which will lead to further research & examinations. In the Guernsey context, it is appropriate to pick out the following major recommendations:-

a) the need for greater emphasis on the prevention of disputes including a recommendation that ACAS should do more work in the promotion of best practice and instigate mediation pilots.

b) better information to be provided about how Tribunals operate & improvements on the conduct of claims & the way proceedings are held.

iv) *The Government's Review of the Employment Relations Act 1999.* Whilst much of that Act was to do with trade union recognition it is likely the review will look at eg compensatory awards for unfair dismissal as well as the qualifying period. The outcome of the review is still some months away.

E7 The above résumé of current activity by the UK Government serves to show the importance for Guernsey of seeking ways of heading off a similar rush into ever more legislation and litigious activity. It shows up the imperative for helping the generality of Guernsey employers to sharpen up their employment practices to achieve the best possible standards. That help must also be directed to individual employees and their trade union representatives who have an equal responsibility in achieving the desired standards.

E8 Among steps the Board may wish to take to strengthen their legislative & jurisdictional responsibilities might be to look again at their literature as participants at several of my meetings showed a lack of real appreciation of the different elements of the Board's work. It was also clear that explanatory information about good practice needed to be more sharply focussed for particular groups such as the smallest employers or trade union representatives. **In the context of the revision of the unfair dismissal law and procedures (and the bringing in of new employment laws such as sex discrimination) I recommend that the Board examines afresh its publicity material and its guidance literature.** For example it was urged on me that there should be a specific layperson's guide to the law and the adjudication process.

E9 The effect in Great Britain of the Employment Act 2002 provisions relating to the encouragement of the use of internal procedures to resolve problems will take time to emerge. DTI has announced that it will be consulting over the winter and expects to introduce the new procedures late in 2003. Some Advocates urged that these procedures be adopted in Guernsey but at the moment we have no hard evidence to go on, simply the belief of politicians that the changes will influence workplace practices and, in consequence, reduce claims to a Tribunal. The Board will, however, want to keep a watchful eye on the progress of the consultation to see how matters will be implemented and monitor its practical effects in 2004.

E10 Among other developments ACAS is to revise its disciplinary & grievance procedure code in the light of the new legislation, particularly now that a Standard Dismissal & Grievance Procedure has been set out in the Statute.

Section F PROMOTING THE ROLE of CONCILIATION

F1 In addition to the provision of advice, the ability to resolve issues voluntarily through conciliation is a preferred method compared to adjudication on grounds of speed of resolution, personal, emotional upset, expenditure of managerial energies as well as cost and efficiency. In my discussions there was again unprompted praise for the part played by Board staff which is a real tribute to the part they have played in ensuring this new legislation has got off to a good start. They achieved a 58% positive clearance rate in the time up to this review which says much for their professional approach to a new range of conciliation.

F2 I also detected, however, that some parties and even their advisers were not clear about the distinctive and separate roles that comprise conciliation and adjudication. As indicated above the Board will need to review its literature on the subject to ensure that the parties and advisers are clear about who can do what.

F3 A key element in the employment rights process must be to avoid the need for adjudication and tribunal decision making. It is not immediately apparent that the legislation has that emphasis and **I recommend that the Board consider, with the Crown Advocate, strengthening the wording in the Law in order to point up the primacy of conciliation in conflict resolution.** Conciliation is the better way to resolve issues. As it is done on a voluntary basis there is less stress on the parties when the matter is sorted out at the earliest opportunity and it is less costly to the parties in time as well as in financial costs.

F4 At present Section 18 (1) (a) of the 1998 law combines advice and conciliation and **I recommend that it would be helpful to start by having separate sub-sections for each role. Further changes will require consultation with the Crown Advocate but could indicate that the purpose of conciliation is to avoid the need for adjudication.** This would place things in a logical sequence and enable the sub-section on conciliation to be expanded to undergird the desire for voluntary settlement.

F5 In Great Britain the Employment Relations Act 2002 presages changes to the interaction of conciliation and tribunal processes. These changes are one element in the consultations that are due to take place this winter with a view to the new procedures being introduced in late 2003. Section 24 of the Act provides a power for Tribunal regulations to introduce a fixed period for conciliation, the idea being to encourage earlier conciliated settlements where this is possible. This will not be a compulsory system but the parties will be encouraged to engage in conciliation at a time, unlike as at present, when no tribunal hearing date will have been fixed. Much is going to depend on the detail resulting from the consultation before a preliminary view can be offered on this new approach. For the moment it would appear to be an unnecessary complication of the Guernsey scene but the Board will want to monitor closely as the story unfolds.

Section G REFORM of the ADJUDICATION PROCESS

G1 The terms of any new law naturally come in for close examination as it is tested and that has been true to a limited extent with the 1998 Law. The next area that comes under scrutiny is the place where decisions and judgements are made and this has been true in Guernsey. The process of adjudication was based on the belief that employment relations matters needed to be resolved by those who understood the workplace and had experience of its many vicissitudes. This led to the appointment of lay adjudicators with such experience who sit alone, with basic secretarial support provided by Board staff. The conduct of the hearings is meant to be inquisitorial rather than adversarial and was, no doubt, fashioned to some extent on the experience of ACAS arbitrators who carry out their task in such a way but, of course, in a non-statutory context.

G2 The Board has ensured that adequate training has been provided and much wise support has been provided by the Employment Tribunal Chairman and staff of the Southampton Regional Employment Tribunal. This link has proved immensely valuable and Board staff have maintained good relations with that link so that help and guidance has been available before, during and after hearings. The procedures and conduct of hearings have, therefore, been based largely on practice in mainland Tribunals.

G3 Those I met who have been involved with adjudicators praised their work and the way in which the adjudicators have conducted themselves even where criticisms may have arisen on some matters. Some of the criticisms have come from lawyers who have felt the adjudicators allowed hearings to drag on (it was equally said that lawyers had prolonged cases!) and may at times have permitted evidence that was not strictly germane to the issue in question. Some adjudicators have felt under pressure from skilled Advocates which has been at least unnerving.

G4 On all counts it is a success of the procedures that such a small proportion of cases found their way to adjudication and, in particular, to appeal. However, the experience of hearing cases by each adjudicator has been very limited and they have, therefore, built up extremely limited experience, including confidence in handling cases. This is demonstrated in that just 3 adjudicators have dealt with more than 4 cases in two and a half years!

G5 Pressure for reform of adjudication has built up. It is most keenly promoted by the legal profession, but supported by some employer organisations, who want to see adjudication carried out by a legal chairman. Some would like to see that person sitting alone, others feel it would be beneficial to retain side members drawn from both sides of industry. In some ways this is the most crucial reform that was put forward during the Review. It is understandable that the issue should be keenly felt, as much by the adjudicators as by the lawyers who argue for change. The parties are simply keen to have a fair hearing and a just decision.

G6 No voices are raised in support of *the status quo* so change of some sort is on the cards. The question is how extensive the change should be. The most minor of changes would be to have *three members drawn from the current panel, one of whom would be nominated as chairman for that hearing.* It is argued that, in that way, more adjudicators would be exposed to the hearing process, gain experience and would build up their confidence in the role. The one acting as chairman would feel less exposed and would have the support of the two colleagues, especially if there were legal challenge to the conduct of proceedings or on interpretation of the law.

G7 A significant refinement of that panel arrangement would be to recruit *a separate panel of chairmen who would be supported by two others drawn from a separate members panel.* A majority decision would be acceptable but British experience suggests this would be rare. The Chairmen's panel would be appointed after public advertisement seeking those with wide experience of employment issues from the perspective of both sides of the employment relationship and would not preclude lawyers. The appointments panel would be directed to find a range of experience in its final selection. Appointments would be held for 3 years with the possibility of reappointment for a maximum further three. The Chairman's panel should be no more than 3 or 4 in number so that they hear sufficient cases to become truly experienced in the role.

G8 As well as paper evidence and interview, the selection process should include practical exercises to gauge chairing abilities. The selection panel should be broadly based, drawing on both sides of industry and would benefit from an impartial voice from outside the Island as a further check on independence. The training of new chairmen should be based around the training provided on the mainland for Tribunal Chairman and should also be connected with Guernsey traditions and law by receiving assistance from the Law Officers and representatives of the Guernsey Bar Council.

G9 A more radical step still would be to have *a legally qualified Chairman sitting alone* who would be conversant with employment law and also with the appropriate procedures of a judicial system. The approach of the professional would ensure the adoption of good practice in procedures, be a more efficient approach to the timeous despatch of cases and have full awareness of the Law. The appointment of legal persons would, however, need to be approached with some caution, as most of the legal practices on the Island have to declare an interest in many of the cases that come up for decision. The field to choose from would, therefore, be limited, though not necessarily damagingly so. There would be less support for a legal chairman sitting alone than for such *a chairman with side members drawn from the adjudicators panel.*

G10 If the legal appointment solution were not acceptable it would then be a matter of looking to the mainland and appointing *an Independent Chair and deputies from the* *mainland* who would be willing to hear cases on the Island at relatively short notice. This would be less convenient and possibly more costly but would bring a fresh, independent mind to the process. In these technological days it could also be viable to arrange such matters by videoconference links.

G11 This matter is probably the most important to get right for the future of employment rights developments in the next few years. In coming to a view the Board would be well advised to look over the water and see what 30 years of increasing legalism has done to the resolution of employment disputes on the mainland. There is no doubt that the adjudication process needs to be sharpened up in its conduct of business (and that is not to cast doubt on the integrity of those who are currently performing this function). The plea for a legally qualified Chairman must be approached with some care because to adopt the British Tribunal system of its more formal approach would be a major change for Guernsey's employment relations. **On balance, therefore, I recommend that a lay Adjudicator, specifically appointed for the role of Chairman, sitting with two lay members should form the adjudication tribunal for the foreseeable future. I further recommend that a new start should be made also for the side members panel. The procedures for selection of both chairmen and side members should include an independent element to ensure that impartial judgements are made.**

Section H CHANGES to the DETAILED CONDUCT of PROCEEDINGS

H1 Although Board staff have coped successfully with the introduction of a new law and processes, there are some preliminary issues about jurisdiction and scope where professional help may have been desirable. On the mainland handling of procedural points is left largely in the hands of the legally qualified Chairman and where necessary the holding of preliminary hearings. This element has not been so easy to accommodate under the Guernsey system. In the case of *Falla v Garenne Group Ltd* the Court of Appeal made clear that the Adjudicator should have taken both the preliminary and substantive points together. If these preliminary issues grow to be a significant problem then the Board may wish to consider the idea of a Legal Assistant being assigned to the Board to make decisions that might have a quasi-legal tag to them. It may be that a junior solicitor could handle such matters working on a part-time basis. It follows that if any decisions made by the Assistant were challenged then the new Adjudication process would come into play. I make no formal recommendation as it is a matter of how such an appointment could be made in tune with Guernsey's legal arrangements.

H2 Some lawyers whom I met felt the location of the Board's offices made for difficulties in communications and suggested that it would be more convenient if the required forms could be supplied in electronic form. I imagine this must come about in time. Interestingly the ETS Taskforce made a great deal of a co-ordinated information technology system. That must be a development that would be welcomed by a Board that is also responsible for eCommerce as well as employment relations.

H3 It should not be surprising that the physical surroundings for hearings do have an impact on the proper conduct of proceedings. The ETS Taskforce took note of this issue and concluded that there was a need for a minimum standard of accommodation for Employment Tribunals. As one of the appealed cases (*Milford v Seaward Marine Limited)* turned on an inappropriate contact between an adjudicator and one of the parties, **I recommend that the Board consider some of the detailed ideas of the Taskforce** but, as a minimum separate waiting rooms for applicants and respondents and toilet facilities are required. Premises issues were especially noted by the secretariat to the adjudicators as a detriment to the smooth handling of hearings.

H4 In the case of *Micropublishing Limited v Gary Solway* at Appeal the Bailiff observed that he would have been helped if there had been a tape of the hearing in front of the Adjudicator. Although it is not yet standard practice in mainland Tribunals pilot projects have been conducted in several locations. The ETS Taskforce has recently recommended that the "proceedings in the Tribunal should be tape-recorded so that a complete record of proceedings may be maintained in a cost efficient manner." The report acknowledges the idea may need extra clerical support to ensure the equipment is properly monitored. **I recommend that tape recording of hearings should be introduced as soon as practicable.** It should help adjudicators to be confident not to take such full manuscript notes but the recording should not be used for checking on what had just been said in the hearing, nor be available for scrutiny by the parties unless required in the case of an appeal. I recognise that such an innovation cannot be achieved without further pressure on staff resources in addition to the capital costs.

H5 A request from some lawyers and the Board's conciliators was that the formal reporting of decisions of Adjudicators should be in full, arguing that wider knowledge would be useful in the improvement of employment practices. Some were, however, concerned about the impact on individuals in such a small community. It appears, however, that in the possibly even more contentious area of social security, reasoned decisions are given, although it should be noted that it is not a requirement of the Human Rights Convention. There is clearly merit in a system subject to public regulation that the outcome should be publicly known; that requirement is fulfilled by current arrangements. The development of good practice and awareness of the basis of earlier decisions could be of benefit to the Board's staff whether as advisers or conciliators, to the Adjudicators and to external advisers such as trade union officials and Advocates. This will mean more work for the adjudicators but, if new arrangements are put in place, the Chairman should carry this extra responsibility without too much difficulty. If particularly sensitive matters might be revealed the Chairman might be given flexibility to produce only the formal reported decision. **I recommend the publication of the full, reasoned decision of the Adjudicator.**

H6 The adjudicator has a power under section 17 (7) (b) to refuse to act on a complaint that appears"to be frivolous or vexatious" and some lawyers would like to see a procedure that disposes of the matter summarily. In the first place the Board may wish to note that the mainland wording has been slightly widened in a recent change by replacing "frivolous" with the word "misconceived". Experience suggests that mainland Tribunals have not used these powers very often. In the light of the emphasis on human rights I would be reluctant to recommend summary dismissal as an appropiate course of action, whatever wording is used in the Statute.

H7 An observation was made by some lawyers that there is no time limit within which an employer should respond to an unfair dismissal complaint. Although delays in cases have not been of major significance it may be useful for the Board to consider such a proposition without fettering the freedom of the adjudicators to manage cases satisfactorily.

H8 The schedule containing the Adjudication Procedure has at paragraph 5 the rules concerning costs and expressly prohibits costs of legal representation which was no doubt introduced to prevent proceedings being taken over by lawyers as in Great Britain. Even so 12 out of 38 hearings (almost a third) already have an Advocate acting on one side, and in 5 Advocates were present on both sides. The removal of the prohibition would most likely attract parties to utilise legal representatives even more. As noted earlier in Section B there has been a marked reluctance on the part of British tribunals to award costs which has been partly a signal to parties not to indulge themselves, in the clear expectation that their legal fees will be recovered. It is tempting to think that less well-healed parties might be enabled to use Advocates if costs were awarded but the nature of the scheme should not be skewed by a possibly unpromising attempt to help a particular group; other ways should be canvassed if that remains a vital issue. As I understand it assistance is available via The Green Form Scheme, up to a means tested limit, enabling an accepted client to receive advice and assistance to a value of £322.

H9 As this Review was underway, the Advisory & Finance Committee published proposals for core legislation that would allow the States of Guernsey to create a central tribunal service for the Island, under the control of a Chairman/Commissioner. The service would administer a wide range of appeals tribunals that already exist or may be created. The intention is to obtain efficiencies through the provision of central services and that could be useful in the running of the Board's UD hearings. It would appear, however, that the proposed new service concerns appeals on relevant matters and so does not apply to the adjudication process for unfair dismissal matters which is at first hearing stage. In any case the maintenance of a tripartite structure for employment relations matters is a significant difference that singles out adjudication from a central service but the Board will need to continue to monitor developments to ensure the unique nature of the unfair dismissal adjudication system.

Peter Syson
Working in Partnership
14 October 2002

Appendix 1

List of those with whom either meetings were held or letters received

1 Board of Industry senior staff – Nigel Lewis, Stuart Le Maitre and Michael Mahy
2 Conciliation staff – Mike Mahy, Sue Roberts and Toni Airley
3 Secretarial staff – Helen Reynolds, Judith Robey and Toni Airley
4 Deputy John Roper – President, Board of Industry
5 Sir de Vic Carey – Baliff
6 Chris Hookway – Crown Advocate
7 Adjudicators – Barbara Bartie, Wallie Le Bourg, David Le Conte, David Evans, Barry Ferguson, Charles Hunt, Peter Morgan, Georgie Scott and George Wherry
8 Miranda O'Donnell – Chairperson, Chartered Institute of Personnel and Development
9 Peter Du Port – Regional Industrial Organiser, Transport & General Workers Union
10 Advocates – Andy Ayres, Gordon Dawes and Louise Hall
Mark Ferbrache
Collas Day
Roger Dadd and Sarah Brehant
11 Andy Castle – Association of Guernsey Civil Servants
Wilma Edwards – Board of Health
12 Gary Solway
13 Mike Jackson – Social Security Authority
14 Richard Hamilton, Tony Kines, Martyn Priaulx and Glen Irvin – Connect trade union
15 Rodney Reed – Director, Guernsey Chamber of Commerce
16 R S Taylor – Industrial Disputes Officer
M A Fooks – Deputy Industrial Disputes Officer
17 Trevor Town – Branch Secretary, GPMU
18 Nordben Life & Pension Insurance Co Ltd
19 Tony Gallienne – Vice Chairman, Guernsey Institute of Directors
20 Kate Raleigh – Citizens Advice Bureau.

APPENDIX B

Groups invited to take part in the Consultation Process on the Review of the Employment Protection Law

Employer Groups

Guernsey Chamber of Commerce
Bridge Traders' Association
Guernsey Hotel and Tourism Association
Guernsey Motor Trades Association
Guernsey Growers Association
Guernsey Fishermans Association
Guernsey Farmers Association
Guernsey International Business Association
Guernsey Building Trades Employers Association
Association of Guernsey Banks
Civil Service Board
St Peter Port Traders
G-Mex
Institute of Management
Institute of Directors

Employee Groups

Transport and General Workers Union
GMB Union
Association of Guernsey Civil Servants
Lloyds TSB Group Union
Professional Association of Guernsey Civil Servants
UNIFI (Banking Union)
Police Association
Prospect Union
General Secretary, Communication Workers Union
Branch Secretary, Communication Workers Union
Graphical Paper and Media Union
Connect
Guernsey Public Employees Consultative Committee

Others

Institute of Personnel Development
Womens Rights Group
Crown Advocate Mr C Hookway, St James Chambers
The Guernsey Bar Council
Advocate Hall, Carey Langlois
Advocate Ferbrache, Collas Day Advocates

2016

Advocate Ayres, Babbe Le Pelley Tostevin
Advocate Dadd, Olsen Ferbrache Morgan
Advocate Ferbrache, Ozannes Advocates
Mr P Richardson, Collas Day Advocates
Mr B Ferguson, Unfair Dismissal Adjudicator
Mr G J Wherry, Unfair Dismissal Adjudicator
Mr D Evans, Unfair Dismissal Adjudicator
Mr P J H Morgan, Unfair Dismissal Adjudicator
Mr C H Hunt, Unfair Dismissal Adjudicator
Mr B A Mansell, Unfair Dismissal Adjudicator
Mrs B Bartie, Unfair Dismissal Adjudicator
Mr W C Le Bourg, Unfair Dismissal Adjudicator
Mrs C Harvey, Unfair Dismissal Adjudicator
Mrs P Lancaster, Unfair Dismissal Adjudicator
Ms G Scott, Unfair Dismissal Adjudicator
Mrs B Minta, Unfair Dismissal Adjudicator
Mr P Woodward, Unfair Dismissal Adjudicator
Mr M D Hutchings, Unfair Dismissal Adjudicator
Mr D Le Conte, Unfair Dismissal Adjudicator
Mr R S Taylor, Industrial Disputes Officer
Mr M A Fooks, Deputy Industrial Disputes Officer

(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:-

XII.- Whether, after consideration of the Report dated 25th August, 2004, of the Commerce and Employment Department, they are of the opinion:-

1. That the qualifying period of employment required under section 15 of the Employment Protection (Guernsey) Law, 1998, before an employee is entitled to make a complaint, shall be reduced to one year.

2. That the qualifying period of employment required under section 2 (2) of the Employment Protection (Guernsey) Law, 1998, before an employee is entitled to request a written reason for dismissal, shall be reduced to one year.

3. That the period allowed for notifying an unfair dismissal complaint under section 17 (2) of the Employment Protection (Guernsey) Law, 1998 shall be increased to 3 months, beginning with the 'Effective Date of Termination'.

4. That the current fixed rate award of 3 months' pay, or 13 weeks if weekly paid, shall be increased to 6 months' pay, or 26 weeks pay if weekly paid, and the Adjudicator/Tribunal shall be able to reduce the amount of the award as they think fit, in accordance with equity and the substantial merits of the case.

5. That the Employment Protection (Guernsey) Law, 1998 shall be amended to include a definition of "Continuous Employment" similar to that contained in the UK Employment Rights Act 1996.

6. That provision shall be made in the Employment Protection (Guernsey) Law, 1998 for Compromise Agreements in potential unfair dismissal complaint situations, with specific statutory authority to make such agreements, similar to those that exist in the UK Employment Rights Act 1996.

7. That Section 18 (1) of the Employment Protection (Guernsey) Law, 1998 shall be strengthened to point up the primacy and importance of conciliation in conflict resolution.

8. That the current Adjudication Procedure for hearing unfair dismissal complaints before a single Adjudicator shall be replaced with a Tribunal Panel.

9. That the Employment Protection (Guernsey) Law, 1998 shall be amended to provide the following enabling powers in respect of minor changes to the operation of the Law without the need for primary legislation:

a) To change the qualifying periods for making complaints by Ordinance of the States;

b) To enable the Adjudicator/Tribunal to determine whether late applications should be admitted;

c) To determine a "week's pay" for the calculation of awards by the Adjudicator/Tribunal; and

d) To vary/change the amount of the award by Ordinance of the States.

10. That the 'Draft' Sex Discrimination (Guernsey) Law, 2000 shall be amended to allow for sex discrimination complaints to be heard before a Tribunal Panel.

11. To implement the proposed Sex Discrimination Law by Ordinance, under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

12. To approve the establishment of a new Employment and Discrimination Tribunal under The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

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

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE REGULATION OF INVESTIGATORY POWERS (CODES OF PRACTICE) (BAILIWICK OF GUERNSEY) ORDER, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Codes of Practice) (Bailiwick of Guernsey) Order, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

As from 14th June 2004 this Order brings into effect the following Codes of Practice issued in accordance with the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003:-

(i) Accessing Communications Data;

(ii) Covert Human Intelligence Sources;

(iii) Covert Surveillance;

(iv) Interception of Communications; and

(v) Interception of Communications – Postal.

THE REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF OFFICES, RANKS AND POSITIONS) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe offices, ranks and positions for the purposes of sections 20(2), 25(1), 28(1), and 41(2) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 ("the Law"), under which individuals holding such offices, ranks or positions as are prescribed may grant or may be authorised to grant authorisations and notices for the purposes of the Law.

Regulation 2 and Part I of the Schedule prescribe those offices, ranks and positions in the Island Police Force and in Customs and Excise who may grant an authorisation or issue notices for the purposes of Chapter II of Part I of the Law. Regulation 3 and Part II of the Schedule provide that an individual holding an office, rank or position listed in column 2 of Part II of the Schedule, with a public authority listed in column 1, may grant authorisations under either section 23 or section 24 of the Law. The public authorities listed in column 1 of Part II of the Schedule to the Regulations are the authorities listed in Schedule 1 to the Law, as amended by the Regulation of Investigatory Powers (Applicable Public Authorities) Regulations, 2004.

Regulation 4 provides that individuals holding the ranks or positions listed in column 2 of Part III of the Schedule may act on behalf of the Chief Officers of the Police and Customs in granting authorisations under section 26 of the Law.

Regulation 5 prescribes in Part IV of the Schedule those ranks or positions with the Island Police Force or Customs and Excise who may grant authorisations in the situations set out in section 41(1) of the Law.

The offices, ranks and positions prescribed include individuals holding more senior posts. Additional offices, ranks and positions are also prescribed for urgent cases in respect of sections 23, 24, and 26 of the Law.

Regulation 7 addresses the situation where the duty to cancel an authorisation which has been granted under sections 23, 24, and 26 of the Law falls on a person who is no longer able to perform it. Regulation 7(1)(b) provides that the duty falls instead on the person who has taken over most of that individual's responsibilities. There is also a power to appoint a person for the specific purpose of cancelling an authorisation.

THE REGULATION OF INVESTIGATORY POWERS (CANCELLATION OF AUTHORISATIONS) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Cancellation of Authorisations) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

Section 36 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 imposes a duty on a number of persons to cancel authorisations under Part II of the Act, provided certain conditions are met.

These Regulations address the situation where the duty falls on a person who is no longer available to perform it. Regulation 2(1)(b) provides for the duty to fall instead on the person who has taken over most of that person's responsibilities. There is also a power in regulation 2(1)(a) to appoint a person for this specific purpose, which may be needed where the application of regulation 2(1)(b) is uncertain or inappropriate in a particular case.

Where section 36 imposes a duty to cancel on two persons, and one of those persons remains available, neither the Law nor the Regulations relieve the duty imposed on him.

THE REGULATION OF INVESTIGATORY POWERS (JUVENILES) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Juveniles) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

Section 24 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 allows authorisations to be granted for the use or conduct of covert human intelligence sources.

This Order contains special provisions for the cases of covert human intelligence sources who are under eighteen.

THE REGULATION OF INVESTIGATORY POWERS (BRITISH BROADCASTING CORPORATION) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (British Broadcasting Corporation) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

These Regulations apply Part II of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, with modifications, to the carrying out of surveillance to detect whether a television receiver is being used in any residential or other premises (referred to in the Regulations as "the detection of television receivers").

Part II of the 2003 Law provides for the grant of authorisations for certain forms of surveillance. By virtue of section 21(6), the detection of television receivers is not one of the kinds of surveillance regulated by Part II. However, section 37 provides for that Part to be applied, or applied with modifications, to surveillance not otherwise covered. These Regulations are made under that section, and provides for authorisations to be granted for the detection of television receivers under a modified version of Part II. Authorisations may cover such detection in any part of the Bailiwick.

Article 2 modifies Part II by providing that certain of its provisions are not to apply to the detection of television receivers. Article 3 modifies Part II so that it has effect in relation to such detection as if the "section 22A" set out in that article were inserted in that Part. "Section 22A" provides for authorisations to be granted by persons holding certain positions within the BBC, if they are satisfied that the authorisation is necessary for preventing or detecting certain offences under section 1 or 1A of the Wireless Telegraphy Act 1949, or for assessing or collecting sums payable in respect of television licences. Article 4 modifies the general rules in section 34 about the grant, renewal and duration of authorisations and provides (in particular) that authorisations for the detection of television receivers are to last for up to eight weeks. Article 5 modifies the duty imposed by section 36 to cancel an authorisation where the requirements that were necessary for its grant or renewal no longer apply.

THE REGULATION OF INVESTIGATORY POWERS (APPLICABLE PUBLIC AUTHORITIES) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Applicable Public Authorities) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

These Regulations amend Schedule 1 to the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 by modifying the names of the applicable public authorities specified in the Schedule to reflect the changes introduced by the Machinery of Government (Transfer of Functions) Ordinance, 2003.

THE REGULATION OF INVESTIGATORY POWERS (SOURCE RECORDS) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Source Records) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

Under section 24(2)(c) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 a person may not grant an authorisation for the conduct or use of a covert human intelligence source unless he believes that arrangements exist that satisfy the requirements of section 24(5). For example, the arrangements must be adequate to ensure that the records relating to the source contain particulars of certain matters. Those matters are specified in these Regulations.

In some cases, the activities of the source will be for the benefit of more than one public authority. By virtue of section 24(8), the records relating to the source must be kept by one of those authorities. The matters specified in the Regulations, however, relate to the source's contact with each of them.

THE REGULATION OF INVESTIGATORY POWERS (TELECOMMUNICATIONS) (LAWFUL BUSINESS PRACTICE) (INTERCEPTION OF COMMUNICATIONS) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Telecommunications) (Lawful Business Practice) (Interception of Communications) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

These Regulations authorise certain interceptions of telecommunication communications which would otherwise be prohibited by section 1 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003. To the extent that the interceptions are also prohibited by Article 5.1 of Directive 2002/58/EC, the authorisation does not exceed that permitted by Articles 5.2 and 14.1 of the Directive.

The interception has to be by or with the consent of a person carrying on a business (which includes the activities of government departments, public authorities and others exercising statutory functions) for purposes relevant to that person's business and using that business's own telecommunication system.

Interceptions are authorised for specific business purposes only. These are -

- monitoring or recording communications:
    - to establish the existence of facts, to ascertain compliance with regulatory or self-regulatory practices or procedures or to ascertain or demonstrate standards which are or ought to be achieved (quality control and training),
    - in the interests of national security (in which case only certain specified public officials may make the interception),
    - to prevent or detect crime,
    - to investigate or detect unauthorised use of telecommunication systems or,
    - to secure, or as an inherent part of, effective system operation;

- monitoring received communications to determine whether they are business or personal communications;

- monitoring communications made to anonymous telephone help-lines.

Interceptions are authorised only if the controller of the telecommunications system on which they are effected has made all reasonable efforts to inform potential users that interceptions may be made.

The Regulations do not authorise interceptions to which the persons making and receiving the communications have consented: these are not prohibited by the Law.

THE REGULATION OF INVESTIGATORY POWERS (NOTIFICATION OF AUTHORISATIONS, ETC.) REGULATIONS, 2004

In pursuance of Section 65 (5) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, the Regulation of Investigatory Powers (Notification of Authorisations, etc.) Regulations, 2004, made by the Home Department on 11th June, 2004, is laid before the States.

EXPLANATORY NOTE

This Order specifies the matters which must be notified to Her Majesty's Procureur when a person grants, renews or cancels a police or customs authorisation for the carrying out of intrusive surveillance under Part II of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003.

COMMERCE AND EMPLOYMENT DEPARTMENT

ANNUAL REPORT AND ACCOUNTS 2003 – OFFICE OF UTILITY REGULATION

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

23rd August 2004

Dear Sir

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 provides, in Section 8, that the Department of Commerce and Employment shall submit to the States annually a report on the activities of the Office of Utility Regulation during the preceding year.

I enclose the Director General's report for 2003.

Section 8 3 (b) of the Law also provides that the Department may, at the same time, submit its own report commenting on the activities of the Director General during this period.

The Department has noted the Office of Utility Regulation report and is confident that the considerable level of activity undertaken during 2003 has delivered significant benefits to both commerce and the consumer.

The Department is, however, concerned to note the high legal costs incurred during 2003 which amounted to £313,975 and the subsequent increase in licence fees required to cover this outlay. These costs have arisen as a result of an appeal hearing undertaken by the Utilities Appeal Tribunal. Having reviewed the process involved in this, the first appeal against a decision of the Regulator, and having consulted with Her Majesty's Procureur, the Department believes that the current process, as set out under the existing law for resolving such matters, may not represent the best and most cost effective means of resolving such issues. With this in mind the Department intends to explore with HM Procureur whether there is a case for recommending the States to adopt more efficient mechanisms for hearing such appeals in future.

Yours faithfully

Stuart Falla
Minister

OUR
OFFICE OF UTILITY REGULATION

Office of Utility Regulation, Bailiwick of Guernsey

Annual Report and Accounts 2003

Year Ending 31st December 2003

Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: +44 1481 711120 Fax: +44 1481 711140 Web: www.regutil.gg

Annual Report: 2003

Deputy Stuart Falla
Minister for Commerce and Employment
Raymond Falla House
Longue Rue
St Martins
Guernsey
GY4 6AF

12th July, 2004

Dear Deputy Falla,

I am pleased to submit this report on the activities of the Office of Utility Regulation for the period 1st January 2003 to 31st December 2003.

In accordance with section 8 of the Regulation (Bailiwick of Guernsey) Law, 2001, I would be grateful if you would present this report to the States of Guernsey as soon as practicable.

Yours sincerely,

Regina Finn

Director General of Utility Regulation

Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey GY1 2NH
Tel: +44 1481 711120 Fax: +44 1481 711140 Web: www.regutil.gg

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Annual Report: 2003

*"Change is the law of life.
And those who look only to
the past or present are certain
to miss the future"*

-John F. Kennedy

Director General's Report

2003 was the second full year of operation of the OUR and saw a number of exciting developments that represent real progress in the utility sectors. The short and long term interests of consumers remained at the top of the OUR's agenda and informed the extensive work programme during the year.

The achievements of the OUR in 2003 can be attributed to the dedication, professionalism and hard work of the small team of four people in the Office. By meeting consistently high and demanding standards they have safeguarded the interests of Guernsey's economy, now and in the longer term.

In the **telecommunications sector**, competitive markets moved closer to being a reality with the removal of the last legal monopoly held by Cable & Wireless Guernsey in the mobile sector. In March 2003 Wave Telecom Ltd was granted licences to provide mobile telecommunications networks and services in the Bailiwick, including services using new 3G technology.

Guernsey is now poised to reap the benefits of competition in this key market segment when the new network goes live in 2004.

At the same time the new players in the fixed telecoms market— Wave Telecom and Newtel—started to put in place their service offerings, concentrating initially on business users. Towards the end of the year Wave Telecom announced its intention to launch competitive call services to residential users using carrier selection, bringing choice to that segment of the market.

Unfortunately, valuable time and resources in the telecoms sector were diverted during the year to deal with time consuming and costly litigation against the OUR and this impacted on the pace of developments in the telecoms sector, leading to a rescheduling of some key projects.

In March, **electricity** prices to customers were frozen to allow a window for a detailed examination of Guernsey's options for sourcing electricity in the future.

At the same time the high quality of customer standards met by Guernsey Electricity Ltd were reviewed and tightened further, and compensation for failure to meet targets was extended across all guaranteed service standards.

The Guernsey **postal service** started the year on a difficult note, with significant quality of service problems over Christmas 2002 and New Year 2003, but ended the year in a better position with the restoration and improvement of quality standards for Christmas 2003.

The OUR set new quality of service standards for all key mail streams and Guernsey Post Ltd put in place a programme for measuring and publishing its performance against these. The company submitted an application for tariff increases in November which would be decided on in 2004.

Director General's Report

In all three sectors key players consolidated and had the opportunity to focus attention on their customers' needs. But one thing is very clear; this is just the beginning of the process of adapting and adjusting to meet Guernsey's needs.

We are all familiar with the truism, things that do not change, die. The work of the OUR—described in detail in this report—has been designed to ensure that the changes that are happening globally are matched by changes in the essential utility sectors in Guernsey.

Change is essential if Guernsey is to continue to thrive and it is important not to become complacent. We have only laid the foundations and Guernsey's utility sectors must run very hard, just to stay in the one spot in terms of global standards. But exceeding those global standards is not an idle dream for Guernsey and it is something worth aiming for.

Regina Finn
Director General of Utility Regulation

The Year in Brief

January 2003

OUR publishes information note on investigation into postal quality of service in Guernsey; Consultation launched on postal quality of service (QoS) targets; Publication of notice of proposal to modify electricity licences to meet requirements of States Directions.

February 2003

Electricity licences modified to meet States Directions.

March 2003

Conclusion of OUR investigation into postal service failures over Christmas 2002; Report and detailed Directions issued to Guernsey Post Limited; OUR freezes electricity prices until 2005.

April 2003

OUR publishes finding in dispute with GPL over closure of Arcade Post Office; consultation on corporate number ranges launched; Mobile (2G and 3G) licences in Guernsey awarded to Wave Telecom Ltd come into force.

May 2003

OUR report on postal quality of service published along with decision to impose QoS targets for key mail streams in and out of Guernsey.

June 2003

New technology opportunities highlighted—OUR publishes information notes on Broadband Fixed Wireless Access licences and ENUM opportunities. Review of C&W price changes concluded; First sitting of Utility Appeals Tribunal in appeal taken by C&WG against an OUR decision.

July 2003

OUR proposes to direct C&WG to produce and publish separated accounts by specified deadlines; Proposal to direct C&WG to comply with disputed direction to include leased lines in RO published.

August 2003

C&WG directed to produce 2001 and 2002/3 separated accounts; Hearing of application for stay of OUR decision on leased lines–stay granted on basis of undertaken given by C&WG to reimburse new entrants as appropriate.

Review of C&WG Reference Offer—consultation document published on future priorities; Update on Guernsey Post Ltd's compliance with Directions; Quality of Service Targets for letter mail and customer service measures incorporated into postal licence.

September 2003

OUR consults on publication of Guernsey Electricity Ltd's separated accounts; Consultation on licensing of internet access in Guernsey launched; Consultation on quality of electricity services published.

October 2003

OUR directs C&WG to publish detailed separated accounts; Finding in Postal Dispute on insurance of parcels is published.

November 2003

Report on Reference Offer for Interconnection and Access published; OUR consults on and decides to apply the Code for access to Land and Property to Wave Telecom's mobile licenses; Guernsey Post announces proposed tariff increases—OUR publishes consultation; Utility Appeals Tribunal hears appeal by C&WG against OUR decision.

December 2003

OUR amends Direction to C&WG on publication of Regulatory Accounts—revised accounts published by C&WG; C&WG directed to reduce charges to other licensees for interconnection and access; GEL required to publish Regulatory Accounts; QoS targets for electricity tightened.

Annual Report: 2003

"It is important to recognise that the regulator – whether an individual or a board – has legitimacy from only two sources: first is the statute which confers powers and duties on the regulator; and second is the professionalism, openness and fairness with which the regulator discharges those duties and exercises these powers."

-Speech given by Callum McCarthy, Ofgem 2003

The Guernsey Regulatory Environment

The States of Guernsey set up the regulatory framework for telecommunications, post and electricity in various Laws and Orders that were made in 2001 and 2002. The States has also issued a number of Directions to the Director General of Utility Regulation that develop States policy in more detail. The OUR which was established in 2001, is charged with implementing that policy and regulating in the best interests of the Bailiwick.

Legislation

The principal piece of regulatory legislation is the **Regulation of Utilities (Bailiwick of Guernsey) Law, 2001** which establishes the Office of Utility Regulation (OUR), sets out the governing principles of the Office, and allows the States to assign further functions to the Office over time. Three other key laws are:

- The Telecommunications (Bailiwick of Guernsey) Law, 2001;
- The Post Office (Bailiwick of Guernsey) Law, 2001; and
- The Electricity (Guernsey) Law, 2001.

Each law sets out in more detail the powers and functions of the Director General in the relevant sector. Secondary legislation has been enacted by the States on a number of issues including commencement ordinances for each of the laws, exclusion of liability ordinance and the Utility Appeals Tribunal Ordinance which sets up an appeals mechanism for decisions of the OUR.

Where empowered to do so the Director General has also introduced regulations and orders and these, along with directions, decisions and the large body of published documentation on the OUR website, record the implementation of the legislative and policy framework for regulation of utilities in Guernsey.

Texts of all relevant legislation are available from the OUR website at www.regutil.gg

States Directions

The Regulation Law provides that the States of Guernsey may give States **Directions** to the Director General on certain specific issues in each of the sectors. These include directions on:

- The identity of the **first licensee** in each sector to be granted a licence with a universal service obligation;
- The scope of a **universal service** or minimum level of service that all customers in the Bailiwick must receive;
- Any special or **exclusive rights** that should be granted to any licensee in any of the sectors; and
- Any requirements on licensees that might be needed for Guernsey to comply with any of its **international obligations**.

The Guernsey Regulatory Environment

The States debated and agreed policy directions in relation to all three sectors in 2001. In response to a request from the States of Guernsey, the OUR provided a detailed report on the electricity sector so that the States could consider and decide on further policy directions in 2003 in relation to electricity.

The full text of the directions that were in place in 2003 is included in **Annex A** to this report in accordance with section 8 of the Regulation Law.

The Office of Utility Regulation

The OUR was set up in October 2001 to regulate the three sectors of electricity, post and telecommunications independently from government and the players in the market, and in line with States policy and the provisions in the Laws. The Regulatory Laws require the Director General to be independent, fair and impartial, in carrying out her functions and to do so in a manner that is timely, transparent and objective and consistent with States policy directions.

OUR Team

OUR is located in its own separate offices in Hirzel Court in St Peter Port and, although small, continues to be independently run and staffed with its own computer network, telephone system and services.

During 2003 the Office had four core staff in addition to the Director General and continued its use of external specialist technical expertise to complement in-house resources and to handle specific projects.

Regina Finn

Appointed by the States of Guernsey as Director General of Utility Regulation in October 2001, Regina has led and managed the independent OUR in the formative years of utility regulation in Guernsey, regulating the telecommunications, post and electricity sectors.

Regina spent the previous year working as an adviser to the States in the establishment of the regulatory framework for utility sectors and setting up the OUR. Before moving to Guernsey, Regina was Head of Market Operations and Deputy Director of the telecommunications regulator in Ireland and has spent over ten years in the regulation of communications sectors.

Jon Buckland

Jon joined the OUR in October 2001 shortly after it was established. Jon has lead responsibility for the regulatory work programme in the postal sector, developing quality of service standards and setting postal price controls. He also supports OUR's projects in the telecoms and electricity sectors.

Prior to joining OUR, Jon was a Strategy and Economics Manager at the Independent Television Commission (ITC) and previously he worked for a number of consultancies specialising in environmental economics primarily in the water sector advising water companies, Ofwat, Environment Agency, European Commission, EBRD and the World Bank. Jon has a BSc in Economics and Politics from the University of Bath and is currently completing his MBA with the University of Warwick.

The Office of Utility Regulation

John Curran

John worked with OUR when it was initially set up in 2001 and returned in April 2003 after spending eight months as regulatory adviser with the Australian telecoms incumbent, Telstra.

John has a strong background in telecommunications regulation and leads on key telecoms projects in OUR ranging from interconnection, licensing and dispute resolution to key international contacts. He also contributes, with the rest of the team to the postal and electricity projects.

Before joining OUR John worked for six years in communications regulation in Ireland, four in telecommunications and two dealing with broadcasting and cable TV. He started his career in the Irish Civil Service having studied Electronic Engineering at Galway Institute of Technology.

Sean McComish

Sean joined OUR in October 2001 and has worked on key economic projects particularly in the electricity and telecommunications sectors. As well as taking the lead in the development of the strategic review of electricity policy, he also plays a key role in the economic analysis underpinning OUR's price control regime, as well as economic issues in relation to competition analysis.

Before joining the OUR he worked for two years at the Independent Television Commission (ITC) as a Strategy and Economics Manager, specialising in the economics associated with licence valuation and competition law. Sean holds an honours and masters degree in Economics, as well as postgraduate qualifications in Competition Law, and is currently studying for his MBA with the University of Warwick.

Nicola Whittaker

Nicola became part of the OUR team in May 2002 and since then has managed the small Office and provided support to all the team assisting with projects across all sectors.

Nicola also manages all communications with the media, and as Customer Care Manager, is responsible for responding to and investigating complaints against OUR Licensees.

Before joining the OUR Nicola worked as an Environmental Consultant and holds a degree in Environmental Management and Technology.

The Office of Utility Regulation

It is OUR policy to operate with a small core team of **professional staff** and bring in short term, expert resources as needed to meet the objectives and work programme of the Office. This ensures that the Office works efficiently and effectively and keeps its skills and expertise up to date with knowledge transfer from experts in their fields.

During 2003, the following consultants and **external specialists** worked with the OUR on a range of specific projects, as well as in providing general support for the OUR work programme:

- **322 Consulting** and **Jay Lakshman** worked as part of the OUR team on key telecommunication work items including interconnection, pricing and service levels.
- **Andersen Management International** (AMI) were engaged in 2002 and continued to work in 2003 on the evaluation and award of 2G and 3G mobile telecommunications licences in Guernsey.
- **Brockley Consulting Ltd** provided assistance in the review of Guernsey Post Ltd's application for tariff increases.
- **Design & Implement Ltd** continued to support the OUR work in the electricity sector during the year.
- **GOS Consulting Ltd** advised on a wide range of telecommunication projects including interconnections, Reference Offer review, regulatory accounts and others.
- **Mott MacDonald** were engaged by the Board of Industry and OUR to assist in the strategic review of Guernsey's electricity sector.
- OUR's legal advice during 2003 was provided by **Babbe Le Pelley Tostevin and Landwell Solicitors.**

The input and support of the OUR's wide network of experts was fundamental in achieving the Offices' objectives during the year.

OUR Communication

OUR operates in a transparent and open way, and seeks to consult with as wide a range of stakeholders as possible on all key decisions. The OUR website (**www.regutil.gg**) is heavily used as a means of communicating with the operators within the regulated industries and with interested members of the public on a fair and open basis. All consultation documents are published on the site as well as being made available in hard copy on request, and responses, where not confidential, are also made available. OUR publishes all decisions with reasons and a commentary on the views received.

The Office of Utility Regulation

The website has continued to be invaluable and an efficient method of conducting public consultations and disseminating information with **40 papers** published in 2003. A full list of all the documents published in 2003 is at **Annex B**.

The Director General and OUR staff also held public meetings and presentations during the year, principally in the postal sector, as well as speaking to various interest groups including, GSCCA, GILA and Chambers of Commerce.

The Director General and her staff also met and had discussions with a wide range of individuals and companies that are interested in or affected by the regulatory regime and OUR continues to be pleased to have an ongoing open communication process.

Contacts continued to be strong with UK regulators who have a major influence over matters relating to telephone numbers and frequency spectrum in the Bailiwick, as well as regulators and policy makers in a wide range of other jurisdictions.

OUR Work Programme

The OUR publishes its indicative work programme on its website and updates this regularly. However the Office also has to be able to react to specific issues that may arise and have a high priority for consumers or the market and the work programme is therefore flexible and can be adjusted as necessary.

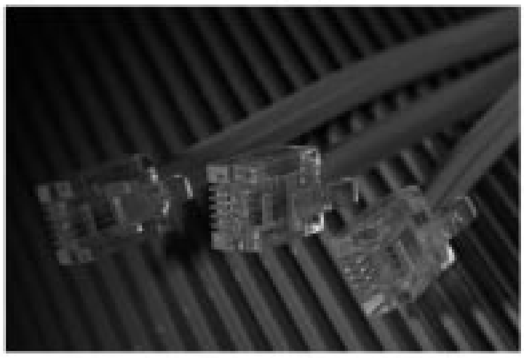
During 2003, the OUR work programme was affected by a case taken against the Office by Cable & Wireless Guernsey Ltd. The case was initially lodged in July 2002 and was heard during 2003 with the final decision due to be published early in 2004. Throughout 2003 a considerable amount of time had to be spent by the small team in managing and defending the case. As a result of this the OUR work programme saw some slippage.

In addition, the legal costs of the case were considerable in 2003, using up all reserves and diverting resources from other planned projects. The work programme and budget of OUR along with licence fees for the period 2004-2006 were revised in 2004 to take this into account.

Telecommunications: Overview

The Global Telecoms Market

Following the turmoil of 2002, which saw a host of high profile global telecoms companies seek Chapter 11 protection in the US, 2003 was marked by signs that things might be starting to improve in the global telecoms market. In January 2003, NTL announced that it had completed its restructuring while in December **Global Crossing** – the first major casualty of the telecoms bust – announced that it too had completed its turnaround. In October the US Courts cleared MCI's (formerly MCI Worldcom) restructuring plan which cleared the way for the company to emerge from Chapter 11 in 2004.



There were other signs that telecoms market may have turned a corner with the big European players showing encouraging evidence of recovery. **Duestche Telecom** announced that it had returned to profitability, driven by its mobile business. In November 2003 BT announced a 26% increase in profits for the 6 months to September 2003, reflecting the fact that incumbents have remained particularly resilient during the downturn. A major focus for all telecoms companies in 2003 was debt reduction. Cable & Wireless, the parent of Cable & Wireless Guernsey Ltd, exited the US market and refocused its remaining businesses throughout the world.

Mobile business remained strong with most operators consolidating their customer bases, particular in the high penetration markets, and focus turning to measures to increase ARPU (average revenue per user). The main UK mobile operators, Vodafone, O2 and T-Mobile all announced increased revenue, profit figures and subscriber numbers, though growth was at lower levels than previous years. Not surprisingly all mobile players have sought to expand on the massive success of SMS with the introduction of **picture messaging**, **polyphonic ringtones** and other consumer driven services. It is estimated that in 2003 over 20 billion text messages were sent over the 4 UK networks, a 25% increase on 2002, with 111 million text messages sent on New Years Day 2004 alone.

On the legislative side, the main development was the coming into force of new European Directives covering the communications market. Six new directives have now replaced the 20-odd directives that existed before July 2003. The focus has shifted away from the traditional telecommunications market to the electronic communications market which embraces converging technologies and includes the rapidly growing IP and data sectors.

In the UK, the new regulatory body for the communication market, Ofcom, took over the roles of the five separate regulatory agencies that existed prior to 29 December 2003, including Oftel, ITC and the Radiocommunications Agency.

Telecommunications: Overview

The Guernsey Telecoms Market

2003 saw the final piece of the liberalisation jigsaw being put in place in the Guernsey telecommunications market, with the licensing of a second operator to provide mobile networks and services. In March 2003, following a competitive tender process, **Wave Telecom** was issued with licences to provide both 2G and 3G services and is the only licensee in the Bailiwick to hold licences for both technologies. With this step, all segments of the Guernsey telecoms market are open to competitive entry.

The year also saw the first hearing of an appeal against a decision of the OUR before the **Utility Appeals Tribunal** in October 2003. The appeal, brought by Cable & Wireless Guernsey against a decision of the OUR in relation to the development of the interconnect regime, was heard over two days with both Wave Telecom and **Newtel Solutions** joined as interveners. A decision was expected early in 2004.

Cable & Wireless Guernsey published its first set of Regulatory Accounts in October 2003 – the first time such accounting information has been made publicly available from any of the utility companies in Guernsey. The accounts, covering financial years 2001 and 2002/03, were published following lengthy delays and after a formal Direction from the OUR.

2003 also saw significant changes to the Directory Enquiry service market in the UK with the introduction of several new Directory Service providers in September 2003. As a result new services also became available in the Bailiwick although by the end of 2003 this had been limited due to constraints on the Cable & Wireless Guernsey network. However these will be removed early in 2004 with the result that Bailiwick users will have access to a much wider range of service providers.

Price changes to be introduced by **Cable & Wireless Guernsey** in July 2003 including increases in charges for local calls and line rentals and decreases in calls to the UK and internationally, resulted in the OUR undertaking an investigation of the possible impact the changes may have on the company's price control compliance. Following the initiation of the investigation Cable & Wireless Guernsey announced further changes resulting in significant drops in the costs of national and international calls.

www.wavetelecom.com

www.newtelsolutions.com

www.cwguernsey.com

www.utilityappeals.org.gg

Telecommunications: Activity Report

Introduction

2003 was a significant year for the OUR and the telecoms market in the Bailiwick and was marked by a series of firsts. It saw the completion by the Office of the liberalisation of the entire telecoms market with the opening to competition of the mobile market and the award of the **first 3G licence in the Channel Islands**.

The first set of **Regulatory Accounts** by any of the licensed utilities were published when Cable & Wireless Guernsey made its regulatory accounts for 2002/03 available on its website.

There was also the first hearing by the Utility Appeals Tribunal of an **appeal** against a decision of the OUR. The appeal, taken by Cable & Wireless Guernsey in July 2002, was heard in October 2003 before a three person tribunal.

The OUR continued its work on the core work areas such as the development of the interconnection and access regimes and the ongoing monitoring of Cable & Wireless Guernsey's compliance with its price control requirements. To enable it to carry out work in the areas of numbering and frequency spectrum, the OUR continued to maintain a close working relationship with **Oftel** and the **Radiocommunications Agency** in the UK (both of which became part Ofcom in December 2003).

Fixed Telecoms Market

With the fixed telecoms market fully opened to competition the OUR concentrated on creating an environment to enable the development of that competition and to **facilitate innovation** by new and existing licensees.

Consultations were held on a number of new initiatives being considered in other markets. These included developments in Corporate Numbering that were considered by Oftel in April 2003 (**OUR 03/11**) and ENUM (Electronic Numbering) – a new numbering scheme being considered and trialled that can allow an individual to be contacted using only one set of contact details, but using any of several different communications devices (**OUR 03/16**).

In September 2003 the Office consulted on whether to consider a separate licensing scheme for ISPs that are solely involved in such services with a view to facilitating the development of that segment of the market while taking into account rapid technological developments such as the spread of voice over IP (**OUR 03/27**).

In June the OUR also announced the availability of licences for Broadband Fixed Wireless Access in Guernsey (**OUR 03/14**). The licences, which are awarded by the Radiocommunications Agency in the UK (now Ofcom), allow for the construction of a wireless network which companies could use to make the "last-mile" connections between users' premises and a telecommunications network without using the incumbent fixed network.

Telecommunications: Activity Report

Mobile Telecommunications Licensing

A competition for mobile licences had been launched at the end of 2002 and the first quarter of 2003 was taken up with examining an application by **Wave Telecom** for licences for both 2G and 3G mobile services. The Director General, with the assistance of Anderson Management International (AMI), concluded her review of the application in March 2003 and awarded Wave Telecom both a 2G and a 3G mobile license.

The award of the 3G licence represents the **first 3G mobile licence** awarded in the Bailiwick and the Channel Islands and marks the final stage of the liberalisation of the Guernsey telecoms market that commenced in October 2001. Now all sectors of the telecoms market are open to competitive market entry. By the end of 2003 Wave Telecom had commenced the construction and roll-out of its network with services due to be launched in the 2nd Quarter of 2004.

Third-generation protocols in mobile telephony support much higher data rates, measured in Mbits/second, intended for applications other than voice. 3G will support broadband and bandwidth-hungry applications such as full-motion video, videoconferencing and full Internet access.

-Marconi

Interconnection and Access

In August 2003 the OUR initiated a review of the Reference Offer (RO) for interconnection and access that Cable & Wireless Guernsey is required to make available to new entrants (**OUR 03/22**). The first RO had been prepared in July 2002 and the Director General wished to see whether it still met the needs of the new entrants one year on. In addition the Director General took the opportunity in this review to open a debate on further competition enhancing measures such as the possible introduction of **Carrier PreSelection** and **Number Portability**. In November 2003 the report on this consultation was published (**OUR 03/32**) which required Cable & Wireless Guernsey to make certain amendments to the RO and present these to the market in early 2004.

Separate to the review of the text of the RO, the OUR also looked to introduce charges for the interconnection and access services contained in the RO that would be compliant with the Telecoms Law. The initial charges were set in July 2002 by the OUR partly based on benchmark rates in other countries. However the Telecoms Law requires that charges for such services should be "*transparent, cost oriented and that promote efficiency and sustainable competition and maximise consumer benefit*".

Cable & Wireless Guernsey was requested to prepare rates that would comply with this requirement. In November 2003 it submitted revised charges for the RO services. Following a review of these, the Director General did not accept that they were in compliance with the Law and following a further benchmarking exercise by the OUR in December 2003 directed that the company cut its interconnection and access charges by between 15% and 20% (**OUR 03/38**).

Following this direction the OUR commenced a full review of the C&WG submission and plans to report on this in the second quarter of 2004.

Telecommunications: Activity Report

Regulatory Accounts

A considerable amount of effort was spent in 2003 on getting the first sets of Cable & Wireless Guernsey's Regulatory Accounts published. These covered the years 2001 and 2002/03, and the accounts for 2002/2003 were published in October 2003 following a series of Directions by the Director General (**OUR 03/18, OUR 03/20, OUR 03/29, OUR 03/31, OUR 03/36**).

Following the publication, the accounts were found to contain a number of technical breaches of the OUR Guidelines which were published in March 2002. Cable & Wireless Guernsey rectified those breaches and the accounts were republished. In addition the Director General set out the level of information that Cable & Wireless Guernsey will be required to publish when its 2003/04 accounts are published.

At the end of 2003 the Director General had commenced a detailed review of the Regulatory Accounts and aims to complete this review in the 2nd quarter of 2004.

Price Control

Work on monitoring Cable & Wireless Guernsey's compliance with its price control obligations continued in 2003. The price control, which had been introduced in 2002, sets price controls on Cable & Wireless Guernsey across four main baskets of products in the fixed telecoms market in which the company has a dominant position.

In addition to this regular compliance work the OUR initiated a separate interim investigation of Cable & Wireless Guernsey's compliance in June 2003 (**OUR 03/15**). This was prompted by an announcement by the company of a wide range of changes to its prices – both in terms of the charges for certain services and the structure of the charging – which it was proposing to introduce in July 2003. Because of the number of changes, the magnitude of some of the individual changes and the complexity of the overall changes, the OUR carried out a detailed examination to forecast compliance with the price control and to examine compliance with other aspects of Cable & Wireless Guernsey's licence.

The investigation confirmed that Cable & Wireless Guernsey was clearly at significant risk of not being in a position to comply with its price cap obligations for the period (**OUR 03/17**). The company accepted the validity of the OUR's concerns and consequently decided to introduce further price changes in July 2003. This resulted in further price reductions for certain call times and certain other changes to the proposals announced previously.

Utility Appeals Tribunal

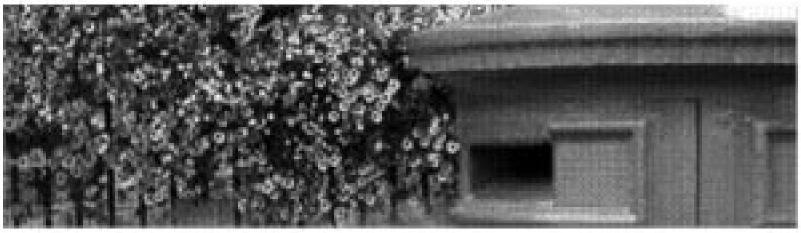
Following the launch of an appeal against a decision of the Director General in July 2002, 2003 saw the first sitting of the Utility Appeals Tribunal. The Tribunal, which was set up under the Regulation of Utilities Law, sat three times in 2003. In June 2003, almost a year after the appeal was first lodged by Cable & Wireless Guernsey, it held its first sitting which concentrated on directions as to case management. A further directions hearing was held in July 2003.

The full hearing of the appeal took place in October 2003 over two days. By the end of the year a decision had not yet been handed down by the Tribunal.

Guernsey Post Customer Charter

- Make posting facilities easily accessible and appropriate to the community need.
- Make letter deliveries to each local address 6 days a week.
- Collect and despatch mail from all posting facilities 6 days a week.
- Publish clear and current information on competitively priced, secure and reliable services.
- Report on our performance, against the standards set out in the Customer Charter.
- Monitor customer satisfaction with our services and seek improvements in all areas.
- Provide easily accessible, consistently professional, courteous and considerate service.
- Provide our Customer Service contact details in all communications, throughout the retail network and on roadside boxes.
- Respond swiftly and efficiently to customer enquiries and complaints.
- Exercise the utmost integrity in providing services.

Post: Overview



World Postal Markets

The postal services market represents an important part of the wider communications and logistics market. Companies and individuals who buy postal products often have several choices available to them for transmitting items or communicating information, for example email and telecommunications, and for larger postal items freight and logistics services. The development of new technology continues to widen this choice of substitutes.

Despite these competitive threats mail volumes have consistently grown over time and changes in demand seem to be linked to the general performance of the global economy. One estimate puts the value of the global letters market at £113bn.

Across Europe, postal markets are **liberalising**, albeit slowly in some countries. Privatisation has been flagged or is rumoured for many postal operators and alliances and mergers are the norm. Despite the growth in mail over time, the traditional letter mail volumes are showing declines, while new products, technology and innovation are all providing opportunities for traditional postal operators, in their home markets and outside.

Within the UK, approximately 28 billion items are handled by all operators in the market. Developments in the UK postal market are particularly important for Guernsey as Royal Mail is Guernsey Post Ltd's largest trading partner. Royal Mail which used to enjoy a statutory monopoly, still retains well over 99% of the letters market in the UK, remaining by far the dominant player in that market.

Postcomm, the licensing authority and regulator in the UK has awarded 14 interim licences to 13 operators since its establishment and to date four long term licences have granted to new operators including Express Dairies, Hays, TPG Post UK, and UK Mail. These new operators have been targetting niche services for business customers but have yet to make large in roads into Royal Mail's market share and together, they accounted for only 0.27% of the licensed letter market in 2002/03.

Royal Mail made a £3 million profit before tax in the first half of the financial year representing the first time in five years it has been in the black at the half year. Part of the reason for this resulted from Royal Mail's 1p increase in basic First and Second class stamps in May in accordance with its **price control** set by Postcomm. This drove the profit on operations in the letters business to £161 million in the first half of the year, although these half yearly figures excluded the effect of the industrial action that occurred in the autumn of 2003.

Post: Overview

Guernsey Postal Market

While Guernsey is small, these global changes, and particularly changes in the UK seriously affect the Guernsey postal market due to the large volumes of mail that Guernsey sends to the UK and internationally. This includes business and private mail. At present all such mail is handed by **Guernsey Post** to **Royal Mail** in the UK for onward delivery and so the UK market is of particular interest to Guernsey.

2003 proved to be a turbulent year of change for Guernsey Post, with changes in senior management and the Board. The company implemented a series of change management projects designed to improve the company's operations and address deficiencies particularly in quality of service, identified by an investigation by the OUR in January 2003.

It was also the first full year of operations at the new postal headquarters - Envoy House – using the new mechanised sorting equipment which involved changes in work practices and methods.

Most significant during the year was the renegotiation by Guernsey Post of its contractual arrangements with Royal Mail. Until recently the arrangement between Royal Mail and Guernsey Post had been that whilst Guernsey Post delivered all mail received from Royal Mail and Royal Mail in turn delivered all mail received from Guernsey Post, the companies did not in fact charge each other but assumed that the costs "balanced out". This was based on the assumption that the same amount of mail flows in each direction. However, there is in fact significantly more mail going from Guernsey to the UK than vice versa.

As a result, the Royal Mail move to charge for the actual volumes of mail in each direction resulted in **significant increases** in charges to Guernsey Post for the services provided by Royal Mail. The effect of this was seen in Jersey where Jersey Post, which is in a similar position, increased rates with local mail increasing from 23p to 29p, Jersey to UK increasing from 29p to 30p. **Jersey Post** flagged that 2004 would see more price increases in postal services due to the Royal Mail charges.

However Guernsey Post is subject to a different regulatory regime and any price increases for its postal services have to be assessed by the OUR. In November Guernsey Post submitted a tariff change application to the OUR and a final decision on this would be made in 2004.

Post: Activity Report

Introduction

The year began with an investigation into the service failure experienced by postal customers during Christmas 2002 which led to a series of directions from the Director General requiring Guernsey Post to implement remedial measures to improve the company's operational performance.

During 2003 the Director General was able to build upon the research and analysis carried out in the previous year and, following extensive consultation with interested parties, introduced formal quality of service measures and targets for Guernsey Post which came into effect in 2003.

The OUR helped Guernsey Post to develop its regulatory accounting system and the format of its business plan in time to be able to make its crucial application to change its postal tariffs. In November the company submitted its proposals for tariff changes which was then issued by the OUR for public consultation and assessed independently by the OUR. A decision on the company's proposals would be made early in 2004.

The OUR also concluded two investigations into Guernsey Post Limited following disputes between the company and its customers.

Investigation of December 2002 Service Failure

In January, the OUR issued an Information Note (**OUR 03/01**) which described its investigation into the quality of postal services in Guernsey in light of the disruption to postal customers within the Bailiwick over Christmas 2002. The OUR's investigation focused on three main areas:

- the significant delays in the delivery of post over the period of December 2002/January 2003 with a backlog of mail in excess on 350,000 items;
- the failure by Guernsey Post to provide consistent postal delivery to all addresses in the Bailiwick six days a week since commercialisation (although data available from November 2000 showed the Post Office Board did not provide a daily service to addresses in the Bailiwick either); and
- the company's inadequate customer complaint handling procedures and information provision both during the service difficulties and in general.

The investigation report (**OUR 03/06**) was published in early March and concluded that the problems were due to a general failure to properly forecast, plan and manage a range of functions in the company. These problems were compounded by the inability of the management and workforce to jointly agree and secure sufficient cooperation from the workforce, at a reasonable cost, to provide the necessary labour to guarantee either the basic level of service, or to cope with the service difficulties encountered at Christmas 2002.

Post: Activity Report

Within this environment the company also had inadequate project planning and management systems in place leading to decisions on a number of issues being based on insufficient information, in particular with respect to the move to Envoy House just before the Christmas peak periods which triggered the service failure. Finally the OUR noted a failure of the corporate governance systems to identify the problems in the company, scrutinise decisions adequately and identify the need for remedial action in a timely fashion.

Having found Guernsey Post in breach of its licence the Director General gave notice of a number of detailed proposed directions which fell under three broad headings; preventative and remedial measures, universal postal service targets and redress to customers. Upon receipt of written representations and objections the Director General issued a final set of directions (**OUR 03/09**) to the company and monitored the company's compliance with the directions over the year.

The Director General was very pleased to be able to confirm Guernsey Post's compliance with all of the Directions (**OUR 03/25**), ultimately leading to a much improved and smoother service delivery at Christmas 2003.

Quality of Service

A major work programme item for the OUR during 2003 was consultation on the quality of postal services in Guernsey and the development, setting and monitoring of targets for key mail services used by postal customers in the Bailiwick.

At the beginning of the year, over 30 people attended an OUR public presentation (**03/02**) on the "Quality of Service for Postal Services in Guernsey". A separate workshop was held for bulk mailers who have an interest in specific postal services that are used by their businesses.

Taking the feedback from these meetings into account, in January, the OUR issued a consultation paper (**03/04**) looking at what performance indicators best reflected the Quality of Service required by postal customers within the Bailiwick. The paper also considered how the proposed quality of service for those indicators should be measured, what targets should be set for each quality of service indicator and how the information should be published.

In May, a decision (**03/12**) on the quality of service consultation was published. Three types of quality of service indicators and targets were introduced.

- **End to end delivery times** and reliability of the mail from the customers' perspective: This measure of service was considered the most significant and of greatest interest to the majority of customers. In line with international best practice, targets were set using the J+n formula (where J is date of deposit and n the number of days to delivery) for six main mail flows.

Post: Activity Report

- **Guernsey Post's internal operations:** These targets allow Guernsey Post to measure how well it is handling mail before it is handed to Guernsey Post's partners (mainly Royal Mail) for onward delivery and upon receipt of mail from its trading partners, allowing any local service problems to be isolated and addressed.
- **Key customer facing functions:** This included key performance indicators such as complaint resolution times and number of misdeliveries.

A direction (**03/24**) was issued in August to the company which formalised the requirement on Guernsey Post to comply with the specific targets set out in the earlier decision notice. The company was required to publish its performance against the quality of service targets and measures every six months and the first report would be published by the end of April 2004, whilst the company would continue to provide the OUR with regular quarterly updates.

Disputes

In December 2002 the OUR had received a request for dispute resolution concerning the closure of the **Arcade Post Office** ("Arcade") by Guernsey Post. The complainant believed that the Arcade facility was heavily used by the elderly and disabled members of society and consequently, the absence of this facility within St Peter Port would be of serious detriment to these customers.

The OUR investigation concluded (**03/10**) that in closing the Arcade, Guernsey Post was not in breach of its Licence Conditions and not in breach of its Universal Service Obligation. However during the course of the investigation it became clear that Guernsey Post did not collect sufficiently accurate and reliable data to measure what services were provided at the Arcade and the customer groups that used them. The complaint therefore led to a direction to Guernsey Post to develop a project plan and timetable for the development of a customer statistic compilation programme at all its post offices.

In June 2003 the Board of Industry's **Trading Standards Services** ("TSS") forwarded a complaint concerning a compensation claim disputed by Guernsey Post. The complaint was referred to OUR after a satisfactory outcome was not achieved following arbitration by TSS. The complainant claimed to have purchased insurance from Guernsey Post for a parcel containing an electrical item which was posted to the UK and was received at its destination in a damaged condition.

The OUR investigation concluded that there was not sufficient evidence to reject the complainant's claim for compensation and noted that there was some lack of clarity in Guernsey Post's procedures. Guernsey Post was directed (**03/30**) to award compensation to the complainant in the amount for which the complainant has produced a receipt. However, the OUR acknowledged the attempts taken by Guernsey Post to resolve the dispute and in particular the company's proposal to introduce new procedures to clarify Guernsey Post's parcel acceptance process.

Post: Activity Report

Postal Tariff Change Application

In November Guernsey Post submitted an application to make certain changes to its prices in 2004. The Guernsey Post application was put out to public consultation (OUR 03/34) during which time the OUR met with a number of stakeholders to help to inform the assessment of the company's proposals.

Guernsey Post noted that the principal driver for the company's request for tariff changes was a change to a number of its core costs including: Royal Mail's decision to renegotiate the contractual arrangements between Royal Mail and some Crown Dependencies, including Guernsey; increases in the costs of the company's other suppliers particularly airlines and shipping companies; and changes in the company's cost base following mechanisation.

The Director General's decision on the **postal tariff application** was announced early in 2004 following the OUR's own economic modeling and analysis of the company's proposals.

www.guernseypost.com

Electricity: Overview

World Electricity Markets

In 2003, electricity moved centre stage when a number of spectacular outages across the developed world sent clear warning signals: the competitively priced, secure supplies of energy that have helped underpin economic growth in recent decades cannot be taken for granted.

The first and most severe outage was in North Eastern America and Canada on 14 August 2003. This was followed by various **power cuts** in Europe which saw London lose its power in the rush hour, blackouts throughout the majority of Italy and outages in parts of Scandinavia. The heat wave in France meant that EdF, the country's integrated power supplier, had to resort to warnings of power cuts as it struggled to cool its nuclear reactors. In Japan, **Tokyo Electric Power** (Tepco) had to shut 17 nuclear power stations due to safety concerns leaving Tokyo and other parts of Japan vulnerable to blackouts.

Although there was no single technical reason for the problems faced by various countries, it is clear that many problems are due to insufficient investment in transmission and/or generation capacity. This is largely because incentives to invest have been limited either due to political or regulatory uncertainty or the fact that electricity prices had been driven down to such an extent that investment over a 25-30 year time horizon was not viable.

Even the UK, which is generally seen to be a world leader in the development of competitive energy markets, has yet to solve the conundrum of generating market incentives to invest in reserve electricity margins without impinging on the competitive process for wholesale trading in electricity.

The events of 2003 have led to a shift in the mood across the energy sector in the developed world. Concern is growing that despite the existence of mothballed plant, longer term demand for power may not be met unless **investment incentives** can be improved. Greater emphasis is being placed on longer term planning and supply security rather than simply on liberalised markets producing competitive prices in the short to medium term.

The need for this investment, along with the cost of comprehensive EU legislation relating to emissions taxes, imply that retail prices are likely to increase in the coming years and western economies, that are heavily dependent on fuel costs, will have to face up to that reality.

Electricity: Overview

Guernsey Electricity Market

Guernsey's electricity market is not unaffected by international developments and particularly those in mainland Europe because, through the **Channel Island Electricity Grid** (CIEG), Guernsey's power system is connected to the systems in Jersey and France.

In recent years Guernsey has been importing the majority of its energy from France at marginal prices that are competitive when compared to the cost of generating on-island. This has led to short term environmental and technical benefits as on island emissions have reduced.

But developments in Europe suggest that attaining such benefits at competitive cost may become harder to achieve as time goes by. This is of great importance for how Guernsey sources its future energy needs and, along with security of supply issues, mean that Guernsey needs a clear yet flexible and transparent policy direction for the development of generation sources of energy into the future.

This issue and its potential impact on electricity prices underpinned much of OUR's work stream for the electricity sector throughout 2003.

www.electricity.gg

www.energy.gg

www.e-si.co.uk

Electricity: Activity Report

Introduction

In 2003, following a consultation on price control for electricity in Guernsey, it became clear that a strategic review of the direction of Guernsey's generation sector was needed to develop a clear policy framework for Guernsey on issues such as independence, environmental concerns, security of supply and overall cost of electricity to the consumer and the economy. This review was started in 2003 so as to inform policy development in 2004 and price setting in 2005.

The States of Guernsey also issued further States Direction to OUR in relation to the supply of electricity to end customers and OUR made some adjustments to the licensing regime to implement a statutory monopoly in this sector for a number of years, subject to review.

Guernsey Electricity's quality of service results were also reviewed and revised and work continued work on the development and publication of Guernsey Electricity's regulatory accounts.

The Strategic Direction of Guernsey's Generation Sector

In March 2003, the OUR published a decision notice on the regulation of retail prices charged by Guernsey Electricity Ltd (OUR 03/07). Prices were frozen at their 2002 level for a variety of reasons including the need to clarify States policy objectives in key areas such as environmental impact, security and independence, and the level of costs that is considered necessary to fund efficient investment that meets those policy objectives.

Electricity plays a pivotal role in underpinning Guernsey's economic competitiveness and it is sensible to set electricity prices so as to ensure the provision of electricity from the "least cost" economic investment portfolio. However, as can bee seen from electricity markets worldwide, there are other considerations such as security of supply and environmental impact which could increase costs but which might be politically and socially desirable. The OUR is concerned to ensure that the right balance is struck for the social and economic wellbeing of the Bailiwick.

For this reason the OUR approached the Board of Industry in 2003 to seek clarification on Sates policy. The Board, in May 2003, formally requested the Director General to research and assess the relative costs and benefits of the electricity generating options facing Guernsey to identify the impact of key strategic policy decisions on the market and on electricity prices to customers. The OUR and Board of Industry engaged Mott MacDonald to assist in this work.

This work started immediately and is due to be concluded in mid 2004, with a report being presented to the Department of Commerce and Employment (previously the Board of Industry). If there is a need for any States policy decisions, it is expected that the Department will bring the appropriate issues to the States for debate and decision.

Although the strategic review was commenced early in 2003, it is clear from events in the global market later in that year and the fact that European electricity prices are expected to increase, that the decision to consider the future strategic direction at this time is particularly timely for Guernsey.

Electricity: Activity Report

Licensing

In 2002 the States of Guernsey had requested that the Director General investigate Guernsey's retail electricity market and report back on the feasibility of introducing competition into this market in the future. The Director General reported to the BoI in November 2002 (**OUR 02/35**) and concluded that there was little scope for customer savings to be made that would provide for meaningful price based competition in electricity retailing in the short term. Furthermore, the cost of implementing that competition would be likely to be equal to, or greater than the level of potential savings to customers, thus negating the price benefits.

The States considered the OUR report at its meeting in January 2003 and resolved to issue States Directions to the Director General that;

- exclusive conveyance and supply licences be issued to Guernsey Electricity for the period ending 31st January 2012, on the proviso that the issue could be re-examined prior to this point, particularly if there were any changes in the OUR's underlying assumptions, and
- the generation market remain open to competitive entry.

The States Direction was issued at the end of January and the full text is in Annex A to this report. The OUR went on to modify Guernsey Electricity's licence to implement the Direction, publishing a notice of this in February 2003, OUR (**OUR 03/05**). Guernsey Electricity now holds exclusive licences to convey and supply electricity in Guernsey.

Quality of Service and Consumer Protection

Because the structure of the electricity market in Guernsey makes the development of competition unlikely in the short term, Guernsey Electricity effectively holds a monopoly or heavily dominant position across the entire electricity supply chain. Where there is a lack of competitive pressures, one area that is important to monitor is the quality of service provided to consumers as they have no alternative supplier to choose from.

Following commercialisation in February 2002, and in accordance with its licence, Guernsey Electricity published **service standards** across 17 quality of service indicators ranging from restoration of supplies to charges and payments. By the end of the year Guernsey Electricity had introduced compensation for failure to meet a number of publicised quality of service targets including replacing faulty service fuses, providing connections for new customers, faults relating to prepayment meters, changing meters and investigating voltage complaints within agreed time frames.

"Quality regulation must be regularly monitored and reviewed. Standards should be periodically adjusted if necessary. "

— Council of European Energy Regulators (CEER)

In order to ensure that these measures adequately protected consumers OUR issued a consultation paper in September 2003 (**OUR 03/28**) looking at:

- Extending the range of service standards and setting targets for additional services which Guernsey Electricity would be required to achieve;
- Tightening the targets for existing service standards;

Electricity: Activity Report

- Changing the status of some standards from an overall standard to a guaranteed standard such that customers could claim compensation if Guernsey Electricity failed to achieve the required standard; and
- Changing the compensation regime in light of international best practice.

The report on this consultation was published in December 2003 (**OUR 03/40**) and resulted in various new service standards being included, as well as targets, **compensation levels** and the level of guaranteed standards all being brought into line with international best practise via a raft of measures effective from the 1st April 2004.

As well as increasing the formal level of consumer protection via the tightening of the service standards and the compensation regime in Guernsey, OUR also began a further work stream with Guernsey Electricity in order to set up a Consumer Council. This would provide a forum for both residential and business customers to discuss any areas relating to Guernsey Electricity's standard of service with a panel comprising of independent representatives.

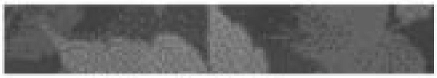
Accounting Separation

The OUR consulted in September 2003 on the publication of Guernsey Electricity's regulatory accounts (**OUR 03/26**). **Regulatory accounts** differ from statutory accounts in that they separate the business into its various components and are focused on the cost and revenues that accrue to the regulated businesses/services. They provide significantly more detail than statutory accounts and are used worldwide by regulators to address concerns regarding the potential abuse of a dominant position or market power.

Guernsey Electricity's regulatory accounts are split into its generation, conveyance and supply and non-core businesses. This is particularly important to ensure that Guernsey Electricity's core business of generation, as well as conveyance and supply, are not cross-subsidising the company's non-core operations, for example sale of white goods.

In order to provide stakeholders with a high degree of transparency regarding the operation of Guernsey Electricity's business, the Director General proposed that Guernsey Electricity's regulated accounts should be **published in their entirety** and after consulting on this issue concluded that there was no substantive reason not to publish them in full. A report was published in December 2003 (**OUR 03/39**), along with a direction to Guernsey Electricity to publish its 2002/2003 regulatory accounts and all future regulatory accounts in full on its website and also to make hard copies available on request.

Annual Report: 2003



The Bailiwick of Guernsey

- **Guernsey.** Population around 60,000 and consist of the parishes of; Castel, Forest, St Andrew, St Martin, St Peter Port, St Pierre du Bois, St Sampson, St Saviour, Torteval and Vale.
- **Alderney**. 5 km long and 3 km wide with a population of 2,294.
- **Sark.** Population of 610 has a total area of only 5.45 km2 and is some 4.8 km long and 2.4 km wide at its widest point.
- **Herm** Herm is only 2.4 km long and less than 1k wide covering an area of just 2km2.
- **Jethou.** Located immediately south of Herm and has an area of approximately 18 44 acres, the island is not open to the public.
- **Brecqhou**. Located just west of Sark. It is politically a part of Sark and privately owned.
- **Lihou.** Connected to Guernsey by a causeway which is accessible at low tide.

Alderney and Sark

Inclusion and Equity

The Bailiwick of Guernsey comprises a number of islands including Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou. Both Alderney and Sark have their own independent parliaments separate from the States of Guernsey.

Alderney and Sark come within the regulatory regime for telecommunications and postal services and the Law explicitly recognises the inclusion of these islands. Both islands operate separate electricity arrangements from those in Guernsey and the OUR does not have any jurisdiction in the other islands.

The development of the regulatory regime for post and telecommunications during 2003 affected Alderney and Sark as significantly as Guernsey. The OUR remains conscious of the special position of the other islands and the fundamental importance of communications services, and this was taken into account in particular in the postal quality of service investigation and when considering price changes in post and telecommunications services.

Telecoms Pricing

Because of the overarching ethos of the regulatory regime and States policy on universal services, the inhabitants of Alderney and Sark were affected by exactly the same price changes as Guernsey in 2003. The effect of the OUR investigation which led to even lower prices for some UK and international calls was also extended to those islands.

Postal Services

Regrettably the postal service disruptions of Christmas 2002 also affected residents of Alderney and Sark and the OUR took this into account when concluding its investigation. The extensive consultation on quality of postal services in 2003 recognised the specific transport network to the islands and the effect this had on mail delivery. The island's postal service targets were therefore integrated into the overall Bailiwick targets to ensure that the quality of service throughout the islands would be uniform.

Mobile Telecommunications Competition

When licensing a second mobile telecommunications operator in the Bailiwick the OUR explicitly included obligations on the new licensee – Wave Telecom – to roll out all of its services to all of the Bailiwick. This will ensure that the residents of Alderney and Sark have the benefit of being able to chose from competing mobile operators as well as the benefit of new innovative 3G services, as customers in Guernsey.

The OUR will continue to regulate in the interests of all customers of utility services, including post and telecommunications customers in Alderney and Sark

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Financial Statements and Report for the Period 1 January 2003 to 31 December 2003 for the Public Utilities Regulation Fund

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Foreword to the Accounts

2003 was the second full calendar year of operation for the Office of Utility Regulation. During that period the fees payable to the Office of Utility Regulation were paid into the Public Utilities Regulation Fund which was initially established in 2001. Fees were collected from licensees in the three regulated sectors of telecommunications, post and electricity.

Regulation of utilities requires a keen understanding of all the facets of the industries and an ability to combine expertise in law, engineering, accounting, audit, economics and business analysis to develop innovative and practical solutions to facilitate market development.

During 2003 the Office was staffed by four fulltime officers as well as the Director General. The Office occasionally used temporary staff for additional support and employed consulting expertise during the year to enable it to carry out its functions.

The OUR faced exceptional legal costs during 2003, amounting to £313,975, more than a five fold increase over legal fees in 2002. These fees were primarily as a result of the first case taken against a decision of the OUR which was heard by the Utility Appeals Tribunal.

Public Utilities Regulation Fund

Fund Information

DIRECTOR GENERAL:	Ms R Finn
OFFICE ADDRESS:	Suites B1&B2 Hirzel Court St Peter Port Guernsey GY1 2NH
AUDITORS:	Chandlers Limited Chartered Accountants Anson Court La Route des Camps St Martin's Guernsey

Public Utilities Regulation Fund

Report of the Director General for the Period 1 January 2003 to 31 December 2003

I have pleasure in submitting the annual report and audited financial statements for the Public Utilities Regulation Fund for the period ended 31st December 2003.

Principal Activities

The Office of the Director General of Utility Regulation was established in 2001 under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. The functions of the Office relate to the regulation and licensing of the telecommunications, electricity and postal industries. The Office is funded by income received from the regulated industries and some funding from the Board of Industry.

Review of Business

The results of the year and the financial position of the Fund are as shown in the annexed financial statements.

Statement of the Director General's Responsibilities

The Director General is responsible for preparing the financial statements for each financial year which give a true and fair view of the state of affairs of and the income or deficit of the Public Utilities Regulation Fund for that period. In preparing those financial statements the Director General is required to:

- Select suitable accounting policies and then apply them consistently;
- Make judgements and estimates that are reasonable and prudent;
- Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Fund will continue in operation.

The Director General is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the Fund and to ensure that the financial statements comply with the applicable accounting standards. The Director General is also responsible for safeguarding the assets of the Fund and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

In accordance with Section 13 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, the Director General shall keep all proper accounts and records in relation to those accounts and shall prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of the Office of the Director General.

The Law also requires the Director General to have the accounts audited annually by auditors appointed with the approval of the Board of Industry. The Director General, with the approval of the Board of Industry, has appointed Chandlers Limited as the auditors to the Public Utilities Regulation Fund.

The audited accounts shall be submitted to the Board of Industry which shall in turn submit them together with the auditors' report thereon to the States with the Director General's annual report

Auditors

The auditors, Chandlers Limited, have indicated their willingness to continue in office.

Regina Finn
Director General of Utility Regulation
12th July 2004

Public Utilities Regulation Fund

Report of the Independent Auditors to the Members of the Public Utilities Regulation Fund

We have audited the financial statements of Public Utilities Regulation Fund for the year ended 31 December 2003 on pages thirty nine to forty two. These financial statements have been prepared under the historical cost convention and the accounting policies set out therein.

This report is made solely to the Fund's members, as a body, in accordance with The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. Our audit work has been undertaken so that we might state to the Fund's members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Fund and the Fund's members as a body, for our audit work, for this report, or for the opinions we have formed

Respective responsibilities of the Director General and auditor

As described on page thirty seven the Fund's Director General is responsible for the preparation of financial statements in accordance with applicable law and United Kingdom Accounting Standards.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and United Kingdom Auditing Standards.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. We also report to you if, in our opinion, the Report of the Director General is not consistent with the financial statements, if the Fund has not kept proper accounting records, if we have not received all the information and explanations we require for our audit, or if information specified by law regarding the Director General's remuneration and transactions with the Fund is not disclosed.

We read the Report of the Director General and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with United Kingdom Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Director General in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Fund's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In the opinion the financial statements give a true and fair view of the state of the Fund's affairs as at 31 December 2003 and of its deficit for the year then ended and have been properly prepared in accordance with The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

Chandlers Limited

Chandlers Limited
Chartered Accountants
Anson Court
La Route des Camps
St Martins, Guernsey
Dated: 12th July 2004

Public Utilities Regulation Fund

Income and Expenditure Account for the Year Ended 31 December 2003

	Notes	2003 £	2002 £
INCOME			
License fees		793,886	732,381
Grants		-	287,359
Bank interest		8,319	1,125
		802,205	1,020,865
EXPENDITURE		905,142	915,887
(DEFICIT)/SURPLUS FOR THE YEAR ENDED 31 DECEMBER 2003		(102,937)	104,978
TRANSFER TO CONTINGENCY RESERVE		102,937	(104,978)
NET OPERATING SURPLUS FOR THE YEAR/PERIOD		-	-

The Fund has no other gains or losses for the current or preceding financial year other than those stated in the Income and Expenditure Account.

The notes form part of these financial statements

Public Utilities Regulation Fund

Balance Sheet 31 December 2003

	Notes	2003 £	2003 £	2002 £	2002 £
FIXED ASSETS:					
Tangible assets	4		32,185		43,634
CURRENT ASSETS:					
Debtors	5	8,294		170,972	
Cash at Bank		185,147		270,890	
		193,441		441,862	
CREDITORS: Amounts falling due within one year	6	158,468		315,401	
NET CURRENT ASSETS:			34,973		126,461
TOTAL ASSETS LESS CURENT LIABILITIES:			67,158		170,095
RESERVES:					
Contingency reserve			67,158		170,095
			67,158		170,095

Regina Finn
Director General of Utility Regulation
Dated: 12th July 2004

The notes form part of these financial statements

Public Utilities Regulation Fund

Notes to the Financial Statements for the Year Ended 31 December 2003

1. ACCOUNTING POLICIES

Accounting convention

The financial statements have been prepared under the historical cost convention.

Income

Income represents net invoiced licensed fees and grants received from the States of Guernsey.

Tangible fixed assets

Depreciation is provided at the following annual rates in order to write off each asset over its estimated useful life.

Office Equipment	-20% on cost
Fixtures and Fittings	-20% on cost
Computer Equipment	-20% on cost

2. OPERATING (DEFICIT)/SURPLUS

The operating deficit (2002—operating surplus) is stated after charging:

	2003	2002
	£	£
Depreciation—owned assets	11,634	11,597
Auditors' Remuneration	2,200	2,000

3. TAXATION

Under Section 12 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 the fund is exempt from Guernsey Income Tax

Public Utilities Regulation Fund

4. TANGIBLE FIXED ASSETS

	Office Equipment	Fixtures and Fittings	Computer Equipment	Totals
	£	£	£	£
COST:				
At 1 January 2003	35,891	3,065	19,028	57,984
Additions	185	-	-	185
At 31 December 2003	36,076	3,065	19,028	58,169
DEPRECIATION:				
At 1 January 2003	8,886	707	4,757	14,350
Charge for Period	7,215	613	3,806	11,634
At 31 December 2003	16,101	1,320	8,563	25,984
NET BOOK VALUE:				
At 31 December 2003	19,975	1,745	10,465	32,185
At 31 December 2002	27,005	2,358	14,271	43,634

5. DEBTORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2003	2002
	£	£
Grants	-	152,678
Licence fees due	-	10,000
Prepayments	8,294	8,294
	8,294	170,972

6. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2003	2002
	£	£
Bank Loans and overdrafts	-	7,093
States Loan	-	150,000
Trade creditors	129,274	84,584
Accruals	29,194	73,724
	158,468	315,401

Public Utilities Regulation Fund

Detailed Income and Expenditure Account

	2003		2002	
	£	£	£	£
INCOME:				
Post Office revenue	120,000		120,000	
Telecoms revenue	493,886		447,381	
Electricity revenue	180,000		165,000	
Grant—Board of Industry	-		287,359	
		793,886		1,019,740
OTHER INCOME:				
Bank interest		8,319		1,125
		802,205		1,020,865
EXPENDITURE:				
Salaries & Staff Costs	315,781		271,297	
Consultancy Fees	189,344		506,820	
Legal Fees	313,975		56,787	
General Overheads	71,625		69,204	
		890,725		904,108
		(88,520)		116,757
FINANCE COSTS				
Interest—States of Guernsey loan	2,582		-	
Bank charges	201		182	
		2,783		182
		(91,303)		116,575
DEPRECIATION				
Office Equipment	7,215		7,178	
Fixtures and Fittings	613		613	
Computer Equipment	3,806		3,806	
		11,634		11,597
		(102,937)		104,978

This page does not form part of the statutory financial statements

Annual Report: 2003

Annex A: States Directions; Telecoms

States Directions to the Director General in relation to telecommunications that were in force during 2003 are set out below in accordance with Section 8(2) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

Telecommunications: Universal Service Obligation

The States resolved to give the following direction to the Director General of in accordance with Section 3(1)(c) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

All users in the Bailiwick shall have available to them the services set out below at the quality specified, independently of geographical location and, in the light of local and national conditions, at an affordable price:

Access at Fixed Locations:

- all reasonable requests for connection to the public telephone network at a fixed location and for access to publicly available telephone services at a fixed location shall be met by at least one operator;
- the connection provided shall be capable of allowing users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit Internet access;

Directory enquiry services and directories:

- at least one subscriber directory covering all subscribers of direct public telephone service providers shall be made available to users and shall be updated regularly and at least once a year;
- at least one telephone directory enquiry service covering all listed subscribers' numbers shall be made available to all users, including users of public pay telephones;

Public Pay telephones:

- public pay telephones shall be provided to meet the reasonable needs of users in terms of the geographical coverage, the number of telephones and the quality of services.

Special measures for disabled users and users with special needs:

- these provisions shall also apply to disabled users and users with special social needs, and specific measures may be taken by the Regulator to ensure this.

Annex A: States Directions; Telecoms

Telecommunications: First Licensee

The States resolved to give the following direction to the Director General in accordance with section 3(1)(a) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The Director General of Utility Regulation shall issue the first licence to contain a telecommunications Universal Service Obligation to Guernsey Telecoms Limited, the company established to take over the functions of the States Telecommunications Board pursuant to the States agreement to the recommendations of the Advisory and Finance Policy letter published in this Billet.

Telecommunications: Special or Exclusive Rights

The States resolved to give the following direction to the Director General in accordance with Section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The provision of telecommunications networks and services in the Bailiwick of Guernsey shall be opened up to competition at the earliest possible time consistent with the Regulation of Utilities (Bailiwick of Guernsey) Law 2001.

In accordance with section 3(1)(b) of that Law, the States directs the Regulator to decide the duration of any exclusive or special privilege granted to any licensee in relation to the provision of telecommunications networks and/or services with a view to ensuring that competition is introduced into all parts of the market at the earliest possible time.

The Regulator may decide on different terms for privileges granted in different markets or segments of the market. In any case, the States directs that the term of any such rights shall not exceed three years at most from the date of this Direction.

Annex A: States Directions; Post

States Directions to the Director General in relation to post that were in force during 2003 are set out below in accordance with Section 8(2) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

Post: Universal Service Obligation

The States resolved to give the following direction to the Director General in accordance with section 3(1)(c) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The following universal postal service shall be provided by at least one licensee throughout the Bailiwick of Guernsey at uniform and affordable prices, except in circumstances or geographical conditions that the Director General of Utility Regulation agrees are exceptional:

- One collection from access points on six days each week;
- One delivery of letter mail to the home or premises of every natural or legal person in the Bailiwick (or other appropriate installations if agreed by the Director General of Utility Regulation) on six days each week including all working days;
- Collections shall be for all postal items up to a weight of 20Kg;
- Deliveries on a minimum of five working days shall be for all postal items up to a weight of 20Kg;
- Services for registered and insured mail.

In providing these services, the licensee shall ensure that the density of access points and contact points shall take account of the needs of users.

"access point" shall include any post boxes or other facility provided by the Licensee for the purpose of receiving postal items for onward transmission in connection with the provision of this universal postal service.

Post: First Licensee

The States resolved to give the following direction to the Director General in accordance with section 3(1)(a) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The Director General of Utility Regulation shall issue the first licence to contain a postal Universal Service Obligation to Guernsey Post Limited, the company established to take over the functions of the States Post Office Board pursuant to the States agreement to the recommendations of the Advisory and Finance Policy letter published in this Billet.

Annex A: States Directions; Post

Post: Special or Exclusive Rights

The States resolved to give a direction to the Director General in accordance with section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Post Office Limited the exclusive right to provide postal services in the Bailiwick to the extent that such exclusive right is necessary to ensure the maintenance of the universal postal service specified by States' directions under section 3 (1)(c) of that Law; and

To request the Director General to review and revise the award of exclusive rights from time to time with a view to opening up the Bailiwick postal services market to competition, provided that any such opening up does not prejudice the continued provision of the universal postal service.

Annex A: States Directions; Electricity

States Directions to the Director General in relation to post that were in force during 2003 are set out below in accordance with Section 8(2) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

Electricity: Universal Service Obligation

The States did not make any Directions in relation to a Universal Service Obligation in the electricity markets, as it noted that the provisions of the Electricity Law adequately protected the interests of users by ensure a Public Supply Obligation would be in place.

Electricity: First Licensee

The States resolved to give the following direction to the Director General in accordance with section 3(1)(a) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The Director General of Utility Regulation shall issue the first licence to contain an electricity Universal Service Obligation to Guernsey Electricity Limited, once that company is established to take over the functions of the States Electricity Board.

Electricity: Special or Exclusive Rights

Conveyance

The States resolved to give a direction to the Director General in accordance with section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Electricity Limited an exclusive electricity conveyance licence in respect of the conveyance of electricity in Guernsey for a period of 10 years once that company has been formed.

Subsequently, the States resolved to give a direction to the Director General to issue an exclusive licence to Guernsey Electricity Ltd for conveyance activities subject to any exemptions granted by the Director General under section 1(2) of the Electricity (Guernsey) Law, 2001 for the period ending 31st January 2012

Generation

The States made no resolution giving a direction to the Director General in relation to the period of exclusivity of any generation licence to be granted under the Electricity (Guernsey) Law, 2001.

Supply

The States resolved to give a direction to the Director General in accordance with section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Electricity Limited (once that company has been formed) an exclusive electricity supply licence in respect of the supply of electricity in Guernsey for a period of one year.

Annex A: States Directions; Electricity

The States also resolved to request the Director General to investigate the impact of the introduction of competition into the electricity supply market further and to provide a recommendation and advice to the Board of Industry on the introduction of such competition.

The States subsequently resolved to give a direction to the Director General to issue an exclusive licence to Guernsey Electricity Ltd for supply activities subject to any exemptions granted by the Director General under section 1(2) of the Electricity (Guernsey) Law, 2001 for the period ending 31st January 2012.

Annex B: Documents Published in 2003

03/01 Postal Quality of Service in Guernsey—Information Notice

03/02 Quality of Service for Postal Services in Guernsey—Public Presentation 23rd January 2003

03/03 Notice of Proposal to Modify the Licences issued to Guernsey Electricity Ltd under Section 2(1) of the Electricity (Guernsey) Law 2001

03/04 Guernsey Post Quality of Service—Consultation Paper

03/05 Notice of Modification to Licences issued to Guernsey Electricity Ltd under Section 2(1) of the Electricity (Guernsey) Law, 2001

03/06 Report on Findings of OUR Investigation and Notice of Proposal to issue Directions to Guernsey Post Ltd under Section 31 of the Post Office (Bailiwick of Guernsey) Law, 2001

03/07 Price Regulation of Electricity—Report on the Consultation Paper and Decision Notice

03/08 States Directions to the Director General of Utility Regulation—Information Notice

03/09 Postal Services in Guernsey—Notice of Directions in Accordance with Section 31 of the Post Office (Bailiwick of Guernsey) Law, 2001

03/10 Guernsey Post Ltd: Investigation into the closure of the Arcade Post Office— Summary of Finding in Dispute D01/02

03/11 Consultation Document on the Allocation of Corporate Number Ranges in response to a Consultation issued by the UK telecoms regulator (Oftel)

03/12 Guernsey Post Ltd: Quality of Service—Report on the Consultation, Decision Notice and Direction

03/13 Corporate Numbering: Oftel Consultation on New Options for Businesses—Information note on Extension of Deadline

03/14 Broadband Fixed Wireless Access; Opportunities to apply for Licences in the Bailiwick of Guernsey—Information Note

03/15 Telecommunications Price Changes by Cable & Wireless Ltd—Information Note

03/16 ENUM: Accessing multiple Customer Services through Telephone Numbers: Opportunities for Guernsey—Information Note

03/17 Telecommunications Price Changes by Cable & Wireless Guernsey: Conclusion of Interim Investigation—Information Note

03/18 Cable & Wireless Guernsey: Separated Accounts: Notice of Proposal to issue a Direction to Cable & Wireless Guernsey Ltd under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/19 Cable & Wireless Guernsey: Reference Offer: Notice of Direction to Cable & Wireless Guernsey Ltd in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

Annex B: Documents Published in 2003

03/20 Cable & Wireless Guernsey: Separated Accounts: Notice of Direction to Cable & Wireless Guernsey Ltd under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/21 Cable & Wireless Guernsey: Reference Offer: Information Notice with regard to Proposal to issue a Direction to Cable & Wireless Guernsey Ltd in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/22 Review of Cable & Wireless Guernsey's Reference Offer for Interconnection and Access—Consultation Document

03/23 Publication of Cable & Wireless Regulatory Accounts—Consultation Documents

03/24 Guernsey Post Ltd: Quality of Service—Notice of Direction to Guernsey Post Ltd under condition 14.1 of its Licence to provide Postal Services

03/25 Update on Guernsey Post Ltd's compliance with Directions—Information Notice

03/26 Publication of Guernsey Electricity Ltd's Regulatory Accounts—Consultation Document

03/27 Licensing of Internet Access in the Bailiwick of Guernsey—Consultation Document

03/28 Guernsey Electricity Ltd Quality of Service—Consultation Document

03/29 Publication of C&W Guernsey's Regulatory Accounts—Direction to Cable & Wireless Guernsey Ltd in accordance with condition 27.1 of Cable & Wireless Guernsey's Fixed Telecommunications Licence and Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

03/30 Guernsey Post Ltd: Investigation into Dispute D01/03—Summary of Finding

03/31 Publication of C&W Guernsey's Regulatory Accounts: Notice of Proposal to amend a Direction to Cable & Wireless Guernsey Ltd

03/32 Review of Cable & Wireless Guernsey's Reference Offer for Interconnection and Access—Report on the Consultation and Decision Notice

03/33 Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001—Proposed Application of the Code to Wave Telecom Ltd.

03/34 Guernsey Post Ltd's Proposed Tariff Changes—Consultation Paper

03/35 Decision under the Telecommunications (Bailiwick of Guernsey) Law, 2001—Application of the Code to Wave Telecom Ltd's 2G and 3G Mobile Licences

03/36 Publication of Cable & Wireless Guernsey's Regulatory Accounts—Amendment to a Direction to Cable & Wireless Guernsey Ltd

03/37 Guernsey Post's Proposed Tariff Increases—Information Notice: Notice of Extension of Deadline for Responses to Consultation Paper

Annex B: Documents Published in 2003

03/38 Reference Offer for Interconnection and Access: Rates—Direction to Cable & Wireless Guernsey Ltd in accordance with Section 10(3) of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/39 Publication of Guernsey Electricity Ltd's Regulatory Accounts: Direction to Guernsey Electricity Ltd in accordance with Condition 16 of Guernsey Electricity's Licence and Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

03/40 Guernsey Electricity Ltd Quality of Service—Report on the Consultation