



BILLET D'ÉTAT

WEDNESDAY, 24th FEBRUARY 2010

IV
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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **24th FEBRUARY, 2010**, immediately after the meeting of the States of Election already convened for that day, to consider the items contained in this Billet d'État which have been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
5 February 2010

PROJET DE LOI

entitled

**THE BANKING SUPERVISION
(BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2010**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled “The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

**THE FINANCIAL SERVICES COMMISSION
(BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2010**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the Projet de Loi entitled “The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

**THE REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES
AND COMPANY DIRECTORS, ETC.
(BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2010**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the Projet de Loi entitled “The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

PROJET DE LOI

entitled

**THE PROTECTION OF INVESTORS
(BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2010**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the Projet de Loi entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE INSURANCE BUSINESS
(BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES
(BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

VI.- Whether they are of the opinion to approve the draft Ordinance entitled “The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE BOATS AND VESSELS (REGISTRATION, SPEED LIMITS AND
ABATEMENT OF NOISE) (AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

VII.- Whether they are of the opinion to approve the draft Ordinance entitled “The Boats and Vessels (Registration, Speed Limits and Abatement of Noise) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

COMMERCE AND EMPLOYMENT DEPARTMENT**ELECTION OF NON-VOTING MEMBER**

The States are asked:-

VIII.- To elect as a non-voting member of the Commerce and Employment Department, Mr Peter David Mills who has been nominated in that behalf by that Department, to serve until May 2012 in accordance with Rule 4 (2) of the Constitution and Operation of States Departments and Committees.

(NB The Commerce and Employment Department has provided the following profile of Peter Mills

Peter Mills has been working in the finance industry for approximately 20 years, having had experience in on shore and offshore markets. His experience extends to banking, fund administration, fiduciary services and captive insurance and over 10 years in senior management. His most recent positions included Managing Director of Kleinwort Benson's Funds and Fiduciary Services Companies and Deputy Branch Manager of Kleinwort Benson's banking branch. Peter has experience in auditing local businesses and States of Guernsey departments. Peter has joined the Guernsey Finance 2010 China Committee and has attended conferences and events organised by Guernsey Finance in the UK and Shanghai. In addition, he is a member of local finance industry associations and represents these associations on panel discussions. His membership spans the Guernsey Society of Chartered and Certified Accountants and Guernsey Investment Fund Association Technical sub-committee and he has attended the Association of Guernsey Banks meetings.)

HOME DEPARTMENT

AMENDMENT TO THE ALDERNEY EGAMBLING (OPERATIONS IN GUERNSEY) ORDINANCE, 2006

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

23rd December 2009

Dear Sir

1. Executive Summary

The purpose of this report is to seek an amendment to the Alderney eGambling (Operations in Guernsey) Ordinance, 2006 ("**the 2006 Ordinance**"). The amendment to the Ordinance is required in order to reflect changes that have been made in the Alderney eGambling Ordinance, 2009 ("**the Alderney 2009 Ordinance**") in order to ensure the continued ability of licensees based in Alderney to locate their equipment in data centres located on Guernsey. It is important that this amendment is made by the 31st March 2010 in order to coincide with the end of the transitional provisions set out in the Alderney 2009 Ordinance.

2. Background

- 2.1 By way of background, the 2006 Ordinance, for which policy approval was originally given by the States in June 2006, states that a gambling transaction effected with the holder of an eGambling licence issued by the Alderney Gambling Control Commission ("**AGCC**") under the Alderney eGambling Ordinance, 2006 is not unlawful gambling for the purposes of the Gambling (Guernsey) Law, 1971, as amended.
- 2.2 The States of Alderney resolved to approve the Alderney 2009 Ordinance on the 21st October 2009. The changes flowing from this new legislative framework which have an effect on the 2006 Ordinance are set out in this Report.

3. Proposed Amendments

- 3.1 The principal amendment sought is to change the names of the licences issued from the AGCC as follows –

- A "full eGambling licence" (whereby the licensee organises and promotes egambling to customers and effects gambling transactions) will no longer exist after the 31st March 2010 and will be replaced by a "Category 1 eGambling licence" (whereby the licensee is licensed to organise and promote gambling to customers) and a "Category 2 eGambling licence" (whereby the licensee is licensed to effect gambling transactions). Therefore any references in the 2006 Ordinance to a "full eGambling licence" will need to be amended to reflect the two new categories of licensee; and
- A "restricted use eGambling licence" has changed its name to a "Temporary eGambling licence". Therefore references in the 2006 Ordinance to a "restricted use eGambling licence" should be amended to read "Temporary eGambling licence".

3.2 It is necessary to identify the relevant activities undertaken by the "Category 1 eGambling licensee" and the "Category 2 eGambling licensee". Presently, the 2006 Ordinance refers to a full eGambling licensee "effecting" a gambling transaction. Amendments will therefore be required to reflect the fact that a "Category 1 eGambling licensee" only *organises or promotes* gambling transactions, whilst a "Category 2 eGambling licensee" *effects* the gambling transactions.

3.3 There are a number of other minor consequential amendments that will need to be made to ensure that eGambling licensees regulated by the AGCC are not participating in unlawful gambling for the purposes of the Gambling (Guernsey) Law, 1971, as amended.

4. Effect of Proposed Amendments

4.1 The amendments will ensure that the 2006 Ordinance will reflect the recent changes in order to ensure the continued ability of licensees based in Alderney to locate their equipment in data centres located on Guernsey. There is a risk that if this Ordinance is not implemented before the 31st March 2010, businesses based in Guernsey which hold a licence issued by the Alderney Gambling Control Commission under the Alderney eGambling Ordinance, 2009 will be in breach of the provisions of the Gambling (Guernsey) Law, 1971.

Guernsey has for some time facilitated the hosting of eGambling licensed by the AGCC through the Alderney eGambling (Operations in Guernsey) Ordinance, 2006. eGambling represents a significant commercial benefit to Guernsey through the use of telecommunications, hosting and IT support service providers. In addition one of Alderney's largest licensees, Interactive Sports (CI) Limited (Sportingbet), maintains a significant staff presence on Guernsey.

- 4.2 It is still the AGCC's intention that gambling transactions organised, promoted and effected within premises located on the Guernsey must take place in premises that are the subject of a hosting certificate issued by the AGCC.
- 4.3 The Category 1 eGambling licence permits the holder to organise and promote gambling and the Category 2 eGambling licence permits the holder to effect the gambling transaction. This split reflects changes in the market and will enable the AGCC to extend its regulatory oversight over a greater number of entities in the gambling transaction by requiring a number of software and game providers who previously only required a core services associate certificate to submit to the Alderney licensing regime and obtain an eGambling licence.

5. Consultation

- 5.1 Both the Guernsey Financial Intelligence Service and the Guernsey Financial Services Commission have been consulted. They both have no objections to the proposed changes and have indicated that the changes to the AGCC's regulatory regime strengthen the framework against money laundering and the financing of terrorism.

6. Recommendation

The Department recommends that the States –

- (a) approve the proposed amendments to the 2006 Ordinance as set out in paragraph 3 of this report and any other minor consequential amendments necessary in order to ensure that the activities of eGambling licensees regulated by the AGCC under the 2006 Ordinance are not unlawful for the purposes of the Gambling (Guernsey) Law, 1971, as amended, and
- (b) direct the preparation of legislation to give effect to those proposals.

Yours faithfully

G H Mahy
Minister

(NB The Policy Council has no comment on the proposals.)

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

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 23rd December, 2009, of the Home Department, they are of the opinion:-

1. To approve the proposed amendments to the Alderney eGambling (Operations in Guernsey) Ordinance, 2006 as set out in paragraph 3 of that Report and any other minor consequential amendments necessary in order to ensure that the activities of eGambling licensees regulated by the AGCC under the 2006 Ordinance are not unlawful for the purposes of the Gambling (Guernsey) Law, 1971, as amended.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HOME DEPARTMENT

AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION IN RESPECT OF MONEY LAUNDERING AND TERRORIST FINANCING

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

9th January 2010

Dear Sir

1. Executive Summary

The purpose of this States Report is to seek authority from the States for a number of amendments to improve both compliance with international standards and the effectiveness of the Bailiwick's legislative regime in respect of anti-money laundering and countering terrorist financing.

In May the Bailiwick's legislative regime in respect of anti - money laundering ("AML") and countering terrorist financing ("CFT") will be evaluated by the International Monetary Fund ("IMF"). This evaluation will assess the Bailiwick's compliance with the recommendations of the Financial Action Task Force (FATF). As part of the preparations for that evaluation the Law Officers and the Home Department have been reviewing the legislative regimes in light of developments in the IMF's evaluation process.

The Law Officers have identified a number of provisions in the Bailiwick's AML/CFT regime that are at risk of being found as not fully complying with international standards.

2. Proposals from Her Majesty's Procureur

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

"A review within St James Chambers has identified a number of amendments which could be made to Bailiwick legislation to improve both compliance with international standards and the effectiveness of the Bailiwick's AML/CFT regime. I am of the view that these amendments should be put in place now. They apply to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("Proceeds of Crime Law"), the Drug Trafficking (Bailiwick of

Guernsey) Law, 2000 (“Drug Trafficking Law”), the Disclosure (Bailiwick of Guernsey) Law, 2007 (“Disclosure Law”) and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (“Terrorism Law”).

I further advise that an amendment should be made to the Cash Controls (Bailiwick of Guernsey) Law, 2007 (“Cash Controls Law”) so as to bring postage stamps within its ambit, in response to growing concern at the risk of high value stamps which are readily dealt and transported being used for money laundering purposes.

Amendments to the Proceeds of Crime Law and the Drug Trafficking Law

Section 38 of the Proceeds of Crime Law and section 57 of the Drug Trafficking Law

These sections create offences in respect of concealing, disguising, converting or transferring the proceeds of criminal property. However, the offences will only be made out if the prosecution can prove that the acts in question were carried out for the purpose of avoiding prosecution or the making or enforcement of a confiscation order. The IMF identified this requirement as inconsistent with FATF standards, and it has also been identified by the Bailiwick’s law enforcement agencies as an unnecessary impediment to successful prosecutions. Therefore I advise that the offences under sections 38 and 57 be widened by removing this requirement, which would reflect the position in the UK under the Proceeds of Crime Act 2002. However, the 2002 Act contains some safeguards which currently do not apply to section 38 and section 57 offences.

Firstly, under the Proceeds of Crime Act the mental element which the prosecution must prove in all cases is knowledge or suspicion that the property being transferred is criminal property. This is clearly an important safeguard in cases where the relevant act, such as a transfer of money, is being carried out by a third party. The Bailiwick legislation currently only requires the prosecution to prove that a third party had knowledge or reasonable grounds for suspicion of the criminal origin of the relevant funds.

Secondly, under the Proceeds of Crime Act it is a defence to all charges of money laundering to prove that the relevant transaction was carried out with the consent of law enforcement officials. In the Bailiwick the equivalent defence is only available to charges under sections 39 and 40 of the Proceeds of Crime Law and sections 58 and 59 of the Drug Trafficking Law (offences of assisting another to retain the proceeds of crime or drug trafficking, and the acquisition possession or use of the proceeds of crime or drug trafficking, respectively).

In my view these safeguards should also be given effect in the Bailiwick when the section 38 and 57 offences are widened.

Section 40 of the Proceeds of Crime Law and section 59 of the Drug Trafficking Law

Under these sections it is an offence for a person to acquire, possess or use property which he knows to be the proceeds of another's criminal conduct. It is a defence to prove that the property was acquired used or possessed for adequate consideration. The IMF has identified this defence as being inconsistent with international standards and has expressed concern that it is open to abuse. I advise therefore that this defence should be repealed.

In reports issued over the past 18 months, the IMF has also criticised the fact that the equivalent offences in other jurisdictions do not extend to a person's acquisition, possession or use of property which is derived from his own criminal conduct, on the basis that this also falls short of international standards. Therefore I advise that the offences under section 40 and section 59 should be widened to cover "self – launderers".

Disclosure of suspicion, Tipping off and Confidentiality

The provisions of the Disclosure Law dealing with these areas will require amendment – see immediately below. In the interests of consistency it is important that similar provisions in the Proceeds of Crime Law and the Drug Trafficking Law are amended along the same lines.

Amendments to the Disclosure Law

Confidentiality

The Disclosure Law expressly states that a disclosure made under its provisions does not contravene any obligation of confidentiality or similar duty. This protection should be confined to disclosures made in good faith, as otherwise the legislation could be abused by persons making disclosures of suspicion that they did not actually hold in order to damage an individual or business. I believe there is merit in removing this anomaly and advise that this protection should be restricted to cases of bona fide disclosures, that is cases where disclosure is made on the basis of an honestly held suspicion or belief.

Tipping off

The Bailiwick's tipping off offences in the Disclosure Law are limited to disclosures which are likely to prejudice an investigation. It is a defence for a person to prove that he or she did not know or suspect that an investigation would be prejudiced. The IMF view of this type of limitation is that it makes the scope of the offences more restricted than required under the relevant FATF recommendation. That recommendation simply requires that financial businesses should be prohibited from disclosing the fact that a suspicious transaction report has been filed. The Bailiwick provisions are drafted to cover

more than just the FATF requirement in this area so include the defence as a necessary safeguard in some contexts; but I advise that the Disclosure Law be amended to ensure that the FATF recommendation is fully met in a way which will not lead to injustice.

Guernsey Financial Services Commission Powers

Section 15 should be amended to give the Guernsey Financial Services Commission the power to issue instructions alongside its existing powers to make rules and issue guidance. This would replicate the position in the Proceeds of Crime Law.

Terrorism Law

Definition of Terrorism

The IMF identified the definition of terrorism in the relevant legislation in other jurisdictions as falling short of international standards. This was on the basis that the definition did not include certain non- violent acts referred to in various international treaties, such as the possession of nuclear material, which are included in the definition of terrorism at Article 2 of the United Nations Convention for the Suppression of Terrorist Financing. The FATF standard requires terrorist financing to be criminalised in line with the definitions in the UN Convention. Therefore the definition of terrorism in the Terrorism Law should be amended to cover certain non- violent acts in order to comply with the international standards in this area.

Guernsey Financial Services Commission Powers, Tipping off and Confidentiality

In the interests of consistency, the amendments to the Disclosure Law dealing with these areas as outlined above should be replicated in the equivalent provisions in the Terrorism Law.

Cash Controls Law

I understand that the law enforcement agencies have become aware of high value stamps and associated investment opportunities being assertively marketed within the Bailiwick and elsewhere. Stamps are internationally traded in all currencies and the price obtained is largely constant wherever they are sold. With over 48 million collectors worldwide, the stamp market represents a global business of \$10 billion per annum. They are obviously highly portable.

At present the Bailiwick has no measures in place in respect of the cross border movement of stamps, in contrast to the restrictions in place in respect of cash and bullion. This gap in the Bailiwick's legislation has been identified as an area of concern, given the ease with which cash or bullion could be transferred

into a small number of high value stamps which could then be easily carried by a person entering or leaving the Bailiwick. I consider therefore that the definition of cash in the Cash Controls Law, which has previously been amended to include bullion, should be further amended to include postage stamps above a specified value.”

3. Cost/Resources

There should be no additional Law Enforcement staff or increase to any costs as a consequence of these legislative amendments.

4. Consultation

Prior to the finalisation of HM Procureur’s views expressed above the Guernsey Financial Services Commission consulted with those businesses which it supervises for AML/CFT purposes. The Law Officers Chambers have taken full account of the technical comments received from industry.

The States of Alderney and Chief Pleas of Sark are content with the amendments to legislation proposed in this Report.

The Law Officers support the legislative amendments proposed in this States Report.

5. Recommendations

The Department recommends the States to approve the amendments outlined above to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“Proceeds of Crime Law”), the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (“Drug Trafficking Law”), the Disclosure (Bailiwick of Guernsey) Law, 2007 (“Disclosure Law”), the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (“Terrorism Law”) and the Cash Controls (Bailiwick of Guernsey) Law, 2007 (“Cash Controls Law”).

Yours faithfully

G H Mahy
Minister

(NB The Policy Council has no comment on the proposals.)

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

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 9th January, 2010, of the Home Department, they are of the opinion:-

1. To approve the amendments outlined in that Report to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, the Disclosure (Bailiwick of Guernsey) Law, 2007, the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Cash Controls (Bailiwick of Guernsey) Law, 2007.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES ASSEMBLY AND CONSTITUTION COMMITTEE

THE ELECTORAL ROLL – PROPOSED AMENDMENTS TO THE REFORM (GUERNSEY) LAW, 1948 AS AMENDED

The Presiding Officer
The States of Guernsey
Royal Court House
St Peter Port

4th January 2010

Dear Sir

EXECUTIVE SUMMARY

This report proposes minor changes to the Reform (Guernsey) Law, 1948, as amended relating to the Electoral Roll which it is considered should be introduced prior to the General Election to be held in 2012.

REPORT

Introduction

1. The mandate of the States Assembly and Constitution Committee requires it “*to review and bring forward proposals for the States of Deliberation of the Island of Guernsey to consider in connection with ... elections to the office of People’s Deputy*” and “*to exercise the powers and duties conferred on it by extant legislation including ... the Reform (Guernsey) Law, 1948, as amended*”. The mandate of the Home Department requires it “*to be responsible for ... the Electoral Roll*”. Part IV of the Reform (Guernsey) Law, 1948, as amended imposes a statutory duty on the Registrar-General of Electors to compile an Electoral Roll in accordance with the provisions of that Law. This report is therefore laid before the States by the States Assembly and Constitution Committee, with the concurrence of the Home Department, the said Committee and Department having received representations from the Registrar-General of Electors on the lines set out herein.
2. The purpose of this report is to seek the States’ agreement to relatively minor amendments to the Reform Law which will assist the Registrar-General to fulfil his task, as set out in the Law, more efficiently. It is not intended to address the wider issues relating to the Electoral Roll which will be dealt with in a separate report from the Home Department.

Advance Registration

3. One of the criteria for enrolment is that applicants must have been ordinarily resident in Guernsey for the two years immediately preceding the date of application, or at any time before that date for a period of five years in the aggregate.
4. The Registrar-General has submitted that it would be helpful if he could accept applications from persons who do not fulfil the residence criterion, subject of course to the condition that such persons would not be permitted to vote until they were qualified so to do. Thus new or returning residents would be treated on the same basis as applicants aged 15 years. (The Law provides that persons aged 15 years may enrol, although they cannot vote until they attain the age of 16 years. This means that on their 16th birthday they can vote immediately, without any further enrolment.) The Committee so recommends.

Correction of Administrative Errors and Omissions

5. At each election a relatively small number of persons discover that their names are not included on the electoral Roll and consequently they are unable to vote. In the vast majority of cases the reason is quite simply that the voter did not enrol but in a few cases it is as a result of an administrative error. It is clearly quite unfair that such persons are deprived of exercising their democratic right. In the 2008 General Election the Registrar-General obtained permission from the Royal Court to rectify certain errors which had been drawn to his attention.
6. Whilst the matter was thus satisfactorily resolved it is recommended that the Law be amended to allow the Registrar-General of Electors to rectify any administrative errors or omissions discovered after the closure of the Electoral Roll.

Deleting Entries

7. From time to time the Registrar-General receives complaints from the present occupiers of a dwelling that the previous occupiers remain registered at their address. Indeed, the Data Protection Commissioner, in his Annual Report for 2007, reported as follows:

“A Guernsey resident kept receiving the postal mail of a former occupant of his house. This former occupant had left the Island and could not be traced. Cards to update the electoral Roll details were delivered to the house both for the present and former occupants. The present householder updated his card requesting that the former occupant be disassociated from his address. He was informed that this was not possible as the Law does not allow someone to remove another person from the roll. This highlights a potential need for this legal provision to be amended as, not only could it lead to a non-eligible person being able

to vote, but also to the fraudulent use of their name and address. It is understood that the House Committee is considering this matter.”.

8. The Committee understands the Data Protection Commissioner’s concerns, but is equally mindful that any amendment to the legislation should not leave persons properly registered on the Electoral Roll vulnerable to potentially malicious removal by third parties. In the United Kingdom electoral registration officers may remove a name from the electoral roll upon receipt of an application in writing from the present householder.
9. Similar issues arise in the case of deceased persons whose names remain on the Electoral Roll. It is often distressing for relatives to receive post addressed to the deceased. The Registrar-General receives a weekly list of deaths registered at the Greffe but this does not take into account electors who die outside the jurisdiction. Similarly the Registrar-General does not remove names if there is any possible doubt that the deceased is the person registered.
10. In all the circumstances, therefore, the Committee recommends that the Law be amended to enable –
 - (a) the current occupier of a dwelling to request in writing the removal of the name of a former occupant; and
 - (b) a close relative of a deceased person to request in writing the removal of the name of the deceased;

and that a malicious application made to remove an elector’s name from the Roll shall be a criminal offence.

Provision of Electoral Roll to Returning Officers

11. Article 34(9) of the Law requires the Registrar-General to furnish the Returning Officer of each district with a copy of the Electoral Roll for each polling station in the district. Article 27(3) provides that Returning Officers shall keep a list of voters in which the surname, initials and electoral roll number of each voter must be recorded. As technology advances it is anticipated that it may be possible at future elections to record voters electronically rather than by manual inscriptions on the electoral roll and in a list of voters’ book. The Committee therefore recommends that the Law be amended accordingly.

CONSULTATION

12. HM Procureur has been consulted and raises no objections.

RECOMMENDATIONS

13. The States Assembly and Constitution Committee recommends the States to agree

that the Reform (Guernsey) Law, 1948, as amended¹ be further amended to provide that:

- (a) persons who do not fulfil the requirements set out in sub-paragraph (1)(d) of Article 27 of the Law may nonetheless make application for enrolment but that such persons shall not vote at any election until they fulfil the said requirements;
- (b) the Registrar-General of Electors be authorised to rectify any administrative errors or omissions discovered after the closure of the Electoral Roll;
- (c) (i) the Registrar-General of Electors be authorised to remove a name from the Electoral Roll upon receipt of a written application either
 - 1. from the current occupier of a dwelling in which the said occupier has certified that the person named no longer resides at the said dwelling; or
 - 2. from a close relative of a deceased person, which application shall be supported by the production of a death certificate;
 (ii) the making of a false declaration in the circumstances set out in (i) above shall constitute a criminal offence;
- (d) the copy of the Electoral Roll provided to Returning Officers pursuant to Article 34(9) may be provided in electronic format and the list of voters kept pursuant to Article 27(3) may be kept electronically.

Yours faithfully

I F Rihoy
Chairman

¹ It may assist Members of the States to have the precise wording of Article 3(4) of The Reform (Guernsey) Law, 1948, as amended which applies to the above recommendation.

“... any resolution of the States of Deliberation directing the preparation of legislation to repeal or vary any of the provisions of this Law which is carried by a majority of less than two-thirds of the members present and voting shall not be deemed to have been carried before the expiration of seven days from the date of the resolution:

Provided that where before the expiration of the aforesaid seven days an application in writing signed by not less than seven members of the States of Deliberation is made in that behalf to the Presiding Officer such resolution shall be brought back before the States of Deliberation by the Presiding Officer as soon as may be after the expiration of three months from the date of the resolution whereupon such resolution shall be declared lost unless confirmed by a simple majority.”.

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 4th January, 2010, of the States Assembly and Constitution Committee, they are of the opinion:-

1. To further amend the Reform (Guernsey) Law, 1948, as amended, to provide that:
 - (a) persons who do not fulfil the requirements set out in sub-paragraph (1)(d) of Article 27 of the Law may nonetheless make application for enrolment but that such persons shall not vote at any election until they fulfil the said requirements;
 - (b) the Registrar-General of Electors be authorised to rectify any administrative errors or omissions discovered after the closure of the Electoral Roll;
 - (c)
 - (i) the Registrar-General of Electors be authorised to remove a name from the Electoral Roll upon receipt of a written application either
 1. from the current occupier of a dwelling in which the said occupier has certified that the person named no longer resides at the said dwelling; or
 2. from a close relative of a deceased person, which application shall be supported by the production of a death certificate;
 - (ii) the making of a false declaration in the circumstances set out in (i) above shall constitute a criminal offence;
 - (d) the copy of the Electoral Roll provided to Returning Officers pursuant to Article 34(9) may be provided in electronic format and the list of voters kept pursuant to Article 27(3) may be kept electronically.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

STATES ASSEMBLY AND CONSTITUTION COMMITTEE

PUBLICATION OF STATES REPORTS AND FREQUENCY & HOURS OF MEETINGS OF THE STATES OF DELIBERATION

The Presiding Officer
The States of Guernsey
Royal Court House
St Peter Port

5th January 2010

Dear Sir

EXECUTIVE SUMMARY

This report proposes amendments to the Rules of Procedure of the States of Deliberation to the effect that –

- Ordinary Billets d'État be published 5 weeks before the meeting of the States;
- Annual Budgets and Annual Accounts Billets d'État be published 3 weeks before the meeting of the States;
- Billets d'État relating only to elections be published 2 weeks before the meeting of the States;
- States reports and requêtes shall be submitted to the Policy Council 11 weeks before the meeting of the States;
- the period of notice for amendments and sursis pursuant to Rule 13(2) be increased to seven clear days (i.e. only in respect of those amendments and sursis currently subject to five clear days notice).

REPORT

1. In September 2009 the States debated a report from the States Assembly and Constitution Committee relating to a series of miscellaneous amendments to, inter alia, the Rules of Procedure of the States of Deliberation. In the course of the consultation with Members of the States which preceded that report several Members submitted that they felt that the period between the publication of a Billet d'État and its debate was insufficient. The frequency of meetings and hours of sitting were also raised. This report addresses those issues.

Format of Publication of States Reports

2. In Jersey, States Reports are not published in a Billet d'État as in Guernsey. Rather, reports are lodged *au Greffe* and are then immediately published. The agenda for each States meeting is determined by an Order Paper. Members of the States take with them the individual reports listed on the Order Paper which are to be debated. The benefit of this system is that it allows a greater flexibility in the management of business to be considered at any particular meeting. The system for the Tynwald Court and its two constituent houses is similar.
3. The Committee acknowledges that there is some virtue in the Jersey system in that the publication of a report can take place as soon as it has been approved and that there is a greater ability to achieve a more even spread of business before the States. However there is merit in having all the business of the day published in one document and the Committee does not recommend any change to the method of publication at the present time.

Timing of Publication of Billets d'État

4. The minimum period which must elapse between the issuing of a Billet d'État and the date of the States meeting at which it is to be debated is prescribed in Rule 1(3) of the Rules of Procedure. The minimum period varies according to the nature of its contents, as follows –
 - 30 days for Detailed Development Plans, Policy and Resource Plans and Strategic and Corporate Plans;
 - 15 days for the Annual Budget and Annual Accounts;
 - 14 days for ordinary business;
 - 12 days for elections;
 - 3 days for matters in respect of which the Presiding Officer is of the opinion that an early decision is required;
 - “such notice as the Presiding Officer shall decide” when he is of the opinion that the circumstances so require (this provision cannot be used for matters specified in the 1st, 2nd and 4th bullet points).
5. Whilst the rules require ordinary Billets d'État to be published with not less than 14 clear days notice, the current practice is that they are issued with 18 clear days between publication and debate (i.e. on the Friday of the third week before the meeting). The effect of this is that Members have only 13 working days in which to digest the contents of the Billet d'État which may contain hundreds of pages. If a Member wishes to propose an amendment which is subject to Rule 13(2) of the Rules of Procedure (i.e. lodged five clear days before the meeting) he then has only eight working days in which to digest the report and formulate the amendment.

6. The Committee considers that the present timescale is too short to allow Members to give full consideration to matters which are often complex and technical. A balance has to be found between allowing Members sufficient time whilst at the same time providing for the timely discharge of the States' business. It is therefore recommended that ordinary Billets d'État should be issued 5 weeks prior to the date of the States meeting. Taking the February 2010 meeting of the States to illustrate the effect of this change, the relevant dates would be:

Date of States Meeting: Wednesday 24th February

Billet d'État issued – present rule: Friday 5th February

Billet d'État issued – proposed rule: Wednesday 20th January.

7. Given that 5 weeks is a greater period than 30 clear days the Committee proposes that the special provisions relating to Detailed Development Plans, Policy and Resource Plans and Strategic and Corporate Plans be repealed.
8. At present a Billet d'État in which the only business listed is the election of a Chief Minister, a Deputy Chief Minister, Ministers, Chairmen and Members of Departments or Committees must be issued with at least 12 clear days between the date of publication and the date of the meeting. We propose that this should be changed to 2 weeks – in practice this means publication just one day earlier.
9. Billets d'État containing the Annual Budget and Annual Accounts must be issued a minimum of 15 clear days before the States meeting. Ideally the Committee would have wished such Billets d'État to be issued 5 weeks before the meeting. However the Treasury and Resources Department has put forward strong and compelling reasons justifying the retention of a shorter period for such Billets d'État. The Minister of the Treasury and Resources Department wrote to the States Assembly and Constitution Committee in the following terms:

“My Department believes that there are good practical reasons for exempting, from the revised publication dates for Billets d'État, the annual States Accounts and annual Budget Reports.

In support of my Department's request I should firstly explain that we are in the process of bringing forward the preparation of the Annual Accounts so that the States can debate these earlier than has historically been the case. Rather than the debate taking place in June of each year it is our intention to bring the debate forward to May for 2010 and April for subsequent years. However, given the extensive work involved in the preparation of the States Accounts and the requirement for a thorough audit by the States External Auditors, it would not be possible for us to bring forward the debates as currently planned if the Billet publication dates are brought forward by 16 days.

Turning now to the publication of the annual Budget Report, the present timescales within which my Department issues budget guidelines to Departments, seeks the preparation and presentation of departmental budgets and then develops the annual Budget Report for consideration by the States, are already extremely tight. Of more importance is the fact that in order to have as much certainty as possible over the anticipated income for the following year (on which the annual budget is based), my Department must take account of the performance of the economy. For obvious reasons, it is essential that such modelling takes place as late as possible in the current year and involves analysing information based on the first three quarters of the year. The range of indicators we include are income from ETI as well as the latest information on income generated from other taxes. That information is generally not available until mid to late October.

We have therefore concluded that bringing forward the publication date of the annual budget report by a further 16 days is neither practical, for sound fiscal reasons, nor desirable.

Having regard to the points that have been made above and while generally supporting the thrust of what your Committee is attempting to achieve, we would ask you to consider exempting from the revised publication dates for Billets d'État, both the annual States Accounts and Budget Reports."

10. Having taken into account those representations the Committee recommends that Billets d'État containing the Annual Budget and Annual Accounts should be published 3 weeks before the date of the meeting – in practice this means publication three working days earlier.
11. In the existing rules there are two further special categories – three clear days notice for matters regarding which the Presiding Officer is of the opinion that an early decision is required and “such notice as the Presiding Officer shall decide” when he is of the opinion that the circumstances so require. These provisions allow for the convening of meetings in emergency situations or unforeseen circumstances. The Committee considers that these two provisions can be replaced with a single provision which allows the Presiding Officer to convene a meeting otherwise than in accordance with the general provisions when he is of the opinion that circumstances so require, and so recommends.
12. The effect of Rule 2 is that all States reports (other than those of the Parliamentary Committees) and requêtes must be submitted to the Policy Council at least 60 days before the meeting of the States. If the States agree to the publication of ordinary Billets d'État five weeks before the States meeting then as a consequence it will be necessary to amend the latest date for submission of reports to the Policy Council to 11 weeks prior to the States meeting, and the Committee so recommends.

Frequency and hours of Meetings of the States

13. In the latter part of 2009 several States meetings extended into three days and indeed for two months in succession the meetings lasted four days, having commenced on the Tuesday rather than on the customary Wednesday. The Committee therefore considered whether the States should sit more frequently. At present the States ordinarily meet 11 times per annum, i.e. a maximum of 33 days (although there is provision to adjourn meetings not concluded on the Friday to the second Wednesday next following). If the States were to move to fortnightly meetings, with recesses at Christmas, Easter and during the summer, this would provide 38 sitting days (at two days per session) or 57 sitting days (at three days per session).
14. Whilst the idea of moving to fortnightly meetings may appear superficially attractive the Committee is not convinced that the level of States' business currently warrants moving from monthly to fortnightly meetings. The number of States Meeting days during the past five years was as follows:

1 st November 2004 – 31 st October 2005	17
1 st November 2005 – 31 st October 2006	27
1 st November 2006 – 31 st October 2007	30
1 st November 2007 – 31 st October 2008	23
1 st November 2008 – 31 st October 2009	32
15. The amount of business before the States in September and October 2009 was high but it cannot yet be said that business has settled at such a level. Indeed the Committee believes that it is more likely to revert to previous levels. Furthermore the Committee believes that fortnightly meetings of the States would be disruptive to the deliberations of departments and committees. This view was endorsed by the Policy Council in the course of consultation. The Committee is therefore not proposing any change in the frequency of States meetings.
16. The Committee also considered whether to recommend that meetings should in future commence on Tuesdays rather than on Wednesdays but for the reasons set out above concluded that there was no case at present to make such a recommendation.
17. Rule 3 provides that the ordinary hours of sitting shall be from 9.30 a.m. to 12.30 p.m. and from 2.30 p.m. to 5.30 p.m. – that is a total of six hours per day divided into two equal sessions of three hours. It has been represented to the Committee that the Royal Court Chamber is not physically suited for long sessions. The Committee does not disagree with this sentiment but it cannot agree that the hours of sitting should be shortened. It therefore proposes no change in this regard.

Rule 13 – Notice of Amendments and Sursis

18. In the course of the consultation referred to in paragraph 1, a minister submitted that five clear days notice of an amendment or sursis pursuant to Rule 13 was insufficient to give the department or committee concerned enough time for a full investigation of its implications and, because of that, some amendments had proved to be very costly and time delaying and requested that the Committee review the operation of this rule. As previously stated in paragraph 5, given that a Member of the States currently has only eight working days in which to digest a report and draft an amendment, the Committee took the view at that time that it was not feasible to require a longer period between the lodging of an amendment and the debate.
19. However, if the States agree to the earlier publication of Billets d'État, it would now be possible to allow a slightly longer period. Under normal circumstances five clear days means that an amendment has to be lodged before the close of business on the Tuesday in the week preceding the States meeting. The Committee recommends that the notice period be changed to require seven clear days notice. In practice, therefore, amendments would have to be lodged by the close of business on the second Friday before the States meeting. This would then allow departments and committees a full week and two days to consider the implications of the amendment. This proposal relates only to amendments currently subject to five days' notice in accordance with Rule 13 (2) and (3).
20. Whilst this change may appear modest, the Committee is anxious that it should not negate the benefits of an earlier publication of the Billet d'État by extending the notice period for amendments and sursis. The Committee is fortified in its decision by the views of the Policy Council in this regard. The Chief Minister wrote to the States Assembly and Constitution Committee in the following terms:

“[Policy Council] Members considered whether, in light of the proposed increase in the time that information contained in a Billet d'État is in States Members' hands, the time limits for amendments should be increased in order to give Departments/Committees longer to consider them. There was also a suggestion that there could be a requirement to consult Departments/Committees before submitting amendments.

There was no consensus on this matter and, indeed on balance, Members concluded that this could have the undesirable effect of changing the balance in favour of Government at the expense of individual States Members who use amendments as a means of influencing States policy.”.

Transitional arrangements

21. The Committee has considered whether any transitional arrangement is required to move from the old publication dates to the new. Billets d'État will be published approximately two weeks earlier. The only consequence of the

change is that there is likely to be one month which will have fewer items for debate. This will mirror the position which occurs each year in December when that month's meeting is only two weeks after the November meeting.

22. However, the Law Officers have advised that the immediate introduction of the proposed timings would cause difficulty with regard to certain items of legislation which need to be dealt with by the States in the spring/early summer. That being so it is proposed that the new arrangements be introduced to take effect in respect of the Billet(s) d'État to be issued for the September 2010 meeting of the States.

CONSULTATION

23. HM Procureur has been consulted and raises no objections.

RECOMMENDATIONS

24. The States Assembly and Constitution Committee recommends that the proposals set out in this report be implemented by amending the Rules of Procedure of the States of Deliberation as follows:

- (a) In Rule 1 (3) for "14 clear days" substitute "5 weeks";
- (b) In Rule 1 (3) (a) for "15 clear days" substitute "3 weeks";
- (c) In Rule 1 (3) (b) for "12 clear days" substitute "2 weeks";
- (d) In Rule 1 (3) delete sub-paragraphs (c) and (d);
- (e) In Rule 1 (4) delete the words " , other than a Meeting to which sub-paragraph (3) (a), (b), or (c) applies, ";
- (f) In Rule 2 (1) (a) for "60 days" substitute "11 weeks";
- (g) In Rule 13 (3) (b) for "5" substitute "7"

to take effect in respect of the Billet(s) d'État to be issued for the September 2010 meeting of the States.

Yours faithfully

I F Rihoy
Chairman

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 5th January, 2010, of the States Assembly and Constitution Committee, they are of the opinion:-

To amend the Rules of Procedure of the States of Deliberation as follows:

- (a) In Rule 1 (3) for “14 clear days” substitute “5 weeks”;
- (b) In Rule 1 (3) (a) for “15 clear days” substitute “3 weeks”;
- (c) In Rule 1 (3) (b) for “12 clear days” substitute “2 weeks”;
- (d) In Rule 1 (3) delete sub-paragraphs (c) and (d);
- (e) In Rule 1 (4) delete the words “, other than a Meeting to which sub-paragraph (3) (a), (b), or (c) applies,”;
- (f) In Rule 2 (1) (a) for “60 days” substitute “11 weeks”;
- (g) In Rule 13 (3) (b) for “5” substitute “7”

to take effect in respect of the Billet(s) d’État to be issued for the September 2010 meeting of the States.

SCRUTINY COMMITTEE

SCRUTINY COMMITTEE PERFORMANCE REPORT AND FORWARD WORK PROGRAMME

The Presiding Officer
The Bailiff's Chambers
Royal Court House
St Peter Port

20th January 2010

Dear Sir

1 Executive Summary

- 1.1 The Committee's performance report for the first year of this term, appended to this report, is a stand-alone document that was sent to all States Members and Chief Officers and was published on the Committee's section of the government website in October 2009.
- 1.2 The Committee has taken the opportunity to reflect on its first year and has revised its approach accordingly; setting out what it believes to be a challenging but realistic programme to take us to the next elections in 2012. An outline of the proposed forward work programme was circulated to all States Members and Departments in October 2009 and is detailed in Section 4 and in the appended schedule to this report.
- 1.3 Government must be accountable and open to examination. In the light of experience since May 2008, the Committee has considered what it believes to be the current opportunities and barriers to the Committee in fulfilling its part in strengthening government accountability.
- 1.4 The Committee's experience leads it to believe that it would be premature to consider fundamental changes to its structure or the adoption of legal powers at this time. Systemic changes may be required in the future however and the Committee continues to keep its processes and procedures under regular review with the intention of updating them in due course and making recommendations for its successor in the light of experience. As part of that process, the Committee has decided to develop a memorandum of understanding to set out clearly the expectations for both the Committee (the scrutineer) and Departments (the scrutinised), to take effect as soon as possible.

- 1.5 The Committee has been able to bolster its staffing in recent months, whilst operating within existing budget allowances, and has developed a work programme for up until April 2012 that is set to deliver significant improvements in government policy-making and service delivery.

2 Introduction

- 2.1 The Scrutiny Committee is pleased to present its performance report for its first year of this term, May 2008 to April 2009, entitled '*Guernsey Scrutiny*', to the States.
- 2.2 The Committee is also pleased to present its Forward Work Programme for September 2009 to May 2012.
- 2.3 The Scrutiny process is still relatively new, created with the Machinery of Government changes in 2004. Members have taken the opportunity to consider what, as a Committee, we wish to achieve for this term and to identify the opportunities for and barriers to scrutiny.
- 2.4 The Committee has endeavoured in all aspects of its operation to maintain the role of a "critical friend" to States Departments, providing constructive criticism and recommendations to support the improvement of policy, service delivery and performance management across the States.

3. May 2008 – April 2009 Performance Summary

- 3.1 Following the General Election in April 2008 and the subsequent Committee elections, only two members from the previous Scrutiny Committee retained their membership. Accordingly, it has been necessary for the Committee to undergo a thorough induction process.
- 3.2 The Committee undertook a significant public consultation exercise for its *Investigating Vandalism* review. It issued a public questionnaire, which had approximately 400 responses, held workshops with students and meetings with stakeholder groups, such as Neighbourhood Watch representatives. The Committee's comprehensive review report *Investigating Vandalism*, examining the causes and effects of vandalism, was subsequently published in October 2009.
- 3.3 The Committee's monitoring of the implementation of the recommendations arising from the Scrutiny Review of *Milk Distribution Proposals* came to a conclusion with the Commerce and Employment Department reporting back to the States on its revised proposals. The *Milk Monitor* report was timed to coincide with the debate on the new approach. The Commerce and Employment Department agreed, at the recommendation of the Committee, to produce a supplementary paper for States Members ahead of the debate to ensure they were informed of the effects of the Department's proposals on all stakeholders.

- 3.4 The Committee was monitoring the Population Policy Group's development of the Population Strategy and sought commitment from the Group in according priority and appropriate resources and confirming a realistic timetable. The Committee continues to monitor progress against the milestones that have now been confirmed to the Committee by the Group.
- 3.5 The Committee challenged the Public Services Department on its handling of the flooding of the Belle Greve pumping station and the Department produced and published a report on the incident at the Committee's request.
- 3.6 The Committee commented on the Public Services Department's States Report *Guernsey Airport – Pavements Rehabilitation* in Billet d'Etat XVIII 2008. Its concern was that States Members should consider the wider implications of these proposals. The Department took the Committee's concerns into account by including information on the costs for a future runway extension, by appending comments of the Commerce and Employment Department, and making the commitment for a strategic report to be provided to the States. The Committee has carried out some initial background research into policies relating to Guernsey's air and sea links.
- 3.7 The Committee began initial research into the way in which the States engages the public and challenged the particular case of the Public Services Department's public consultation process through the Waste Disposal People's Panel.
- 3.8 The Committee began initial research to learn about the ongoing changes to Guernsey's child protection services in preparation for a future review once the new legislation has been implemented and has had time to be fully integrated in practice.
- 3.9 The Committee has reported on some ad-hoc work streams, monitoring various States commitments and responsibilities. This included clarifying the mandates and memberships of Policy Council sub-groups; carrying out some initial monitoring of the implementation by the Policy Council of the Robinson Review of the States as an Employer; and clarifying the action taken and future commitment of the Health and Social Services Department concerning the Wheelchair Report recommendations. The Committee has also continued to monitor the progress of the Government Business Plan and its replacement by the States Strategic Plan.
- 3.10 The Committee began the construction of a database for monitoring States Resolutions.
- 3.11 The Committee undertook a comprehensive review of its criteria for selecting topics for scrutiny and developed a process for setting a forward work programme for the next three years.

4. Forward Work Programme

- 4.1 There is a summary of the process the Committee has undertaken (as of the end of April 2009) in formulating its forward work plan in the enclosed performance report (p21-22).
- 4.2 Since then, the Committee has prioritised the following work streams for further consideration as topics of ‘Scrutiny Review Meetings’: the planning service; relative poverty; housing policies; school exclusions and disruptive behaviour; and population and migration policies.
- 4.3 In addition, the Committee intends to continue its work on monitoring the progress in implementing changes to child protection services in the light of the new Children Law. The Committee wishes to further its research on States-wide practices in public engagement. It will also be monitoring the outcomes of the former Committee’s *Staff Number Limitation Policy Review*.
- 4.4 The *Investigating Vandalism* Review Report will be submitted to the States in 2010 together with a monitoring update on whether Departments have accepted the recommendations and what progress has been made.
- 4.5 The Committee continues to develop the database for monitoring the implementation of States Resolutions and departments can expect questions on their performance against previous States directions and outstanding commitments.
- 4.6 Whilst this is already an ambitious programme given the limited resources at our disposal, the Committee will continue to respond proactively to topics of particular public interest as and when they arise and as appropriate to the Committee’s mandate. Our forward work programme is not set in stone; instead it is intended as a guide for both the Committee and Departments to plan for reaching targets in key areas and monitoring progress.

5. Scrutiny Review Meetings

- 5.1 The Committee will be planning and hosting regular open forum meetings during the remainder of its term to monitor the progress of Departments against their commitments in the topic areas identified in the Committee’s work programme. It is anticipated that these will be held approximately every three or four months, beginning in February 2010.
- 5.2 The aim of these meetings is to ensure that there is consistency between overall government objectives and the way in which services are delivered to the public, identifying any shortfalls and to contribute positively to improved performance.

- 5.3 Ministers and other Members and representatives of States' Departments or Committees will be invited to attend those meetings about particular policy or service delivery commitments for which they are responsible. This might take the form of a question and answer session, or an open discussion or workshop, and on occasions might include other stakeholders.
- 5.4 Meetings will generally be open to the public and media to attend, unless it is agreed otherwise for matters considered confidential under the Committee's guidelines on Disclosure and Protection of Information. An 'A' and 'B' agenda may be necessary on these occasions. A record of the meeting in some format will usually be published.

6. Pre-decision Scrutiny

- 6.1. The Committee has an important role in influencing (n.b. not creating or developing) policy in order to improve outcomes for the benefit of the community. It assists both the Committee and the Departments responsible for the policy under review if the Committee is consulted at an early stage to test the robustness of the policy before a decision is made on it. The current publication of the Billet two and a half weeks ahead of the States debate precludes meaningful scrutiny. This position may be assisted by the States Assembly and Constitution Committee's proposals, due to be considered by the States at its February 2010 meeting, to extend the publication of the Billet ahead of the debate.
- 6.2. The Committee has published its forward work programme to give a clear indication of the areas of work in which it will be particularly interested and it would ask Departments to provide, as far as possible, early sight of any proposals and keep the Committee updated on developments relating to these and other major work streams.

7. Scrutiny's Bite

- 7.1 Following recent suggestions by some States Members that the Committee lacks 'teeth', the Committee has given further consideration to whether it should seek more formal powers.

Legal access to evidence

- 7.2 The Committee has no formal power to compel people to give evidence. The Committee has always had cooperation with its investigations to date and those that refuse to cooperate speak volumes with their absence. It is in the interest of those involved to present their side of the story and be assured a fair hearing alongside other contributions. It is important to maintain a sense of proportion; we are not trying to establish guilt or innocence in a court of law, we are trying to establish how government policies and services have been implemented and how they can be improved.

Call-in powers

- 7.3. In the UK, call-in is a provision of the Local Government Act of 2000 that enables a decision taken by a Council's Executive or Cabinet, or by one of its members, to be scrutinised by a Scrutiny or Oversight Committee before it can be implemented. In the Scrutiny context, call-in does not mean the power to call members to appear before the Committee, and it is important that this distinction is understood when discussing the concept of call-in.
- 7.4. In the UK, call-in powers are intended to be used only in exceptional circumstances. It is regarded as a last resort for 'backbench' councillors to demand scrutiny of a decision they believe to be contrary to the decision-making principles of the Authority or the decision-making powers of the Executive. Implementation of the decision is delayed, sometimes significantly, until after the scrutiny process has been concluded.
- 7.5. There is less requirement for this provision in Guernsey as call-in is principally a balance to executive authority where the non-executive councillors (able to initiate 'call-in' procedures) far outnumber the executive decision-makers. It is a measure inherently more appropriate in jurisdictions and authorities operating under systems of cabinet government. Call-in procedures would not apply to decisions referred to the States, only to those for which Departments or Members have delegated authority. However, there may be instances where Departments have, or perceive that they have, delegated authority to make particular decisions that other Members outside of that Department may wish to challenge before implementation.
- 7.6. The Committee can already challenge such decisions, although it relies on cooperation rather than legal authority to compel Departments to put a decision on hold whilst the Committee conducts a review. This was successfully the case in respect of the Commerce and Employment Department's decision to change milk distribution arrangements in 2005 and the Department agreed to put implementation of its proposals on hold until the former Committee completed its review, after which it referred the decision to the States rather than continue under its own authority.
- 7.7. If more formal powers were considered to be of benefit, the terms under which such powers could be utilised would have to be clearly defined and they would need to be adapted to the Guernsey context. In U.K authorities the 'decisions' that are subject to call-in procedures must be published in advance of implementation. The Committee is of the opinion that the concerns raised in the WAO review about the transparency of decisions and the delegation of authority need to be addressed and the option of legal call-in procedures should then be considered.

Code of Conduct

- 7.8. Parliamentary privilege is extended to Scrutiny hearings, so contributors have immunity from being sued over any evidence he or she gives. As in the States of

Deliberation, States Members giving misleading, incorrect or defamatory evidence would not be immune to disciplinary proceedings via the Code of Conduct. Similarly, officers would be open to disciplinary proceedings for any misconduct.

Cooperation

- 7.9. The Committee remains of the view that seeking legal powers at this time would be an unnecessary burden on the legislative programme. The Committee's experience has been that most Departments and individuals give their full cooperation to the Committee's activities and the sanctions for not doing so, through informal public disapproval and resulting reputational damage and the possibility of formal disciplinary procedures under the code of conduct, are sufficient to ensure this continues.
- 7.10. The Committee has experienced some defensiveness to its activities both at political and operational levels, but the Committee believes that the understandable apprehension about being scrutinised will dissipate as the process becomes more familiar. The Committee hopes that Departments can see this as an opportunity to ensure (and demonstrate) that the implementation of policy and ultimately service delivery is happening within a political structure that is receptive to closer scrutiny and that is reflective in the manner in which it operates. The Committee regards scrutiny and oversight as a process of constructive engagement with the decision-making arms of government. The Committee assesses the work of others in an objective manner with a view to improving the delivery and performance of government, and is as interested in applauding the successes of government as in criticising its failings.
- 7.11. For accountability to be successful there must be a corporate commitment to, and acceptance of, the role of scrutiny.

Memorandum of Understanding

- 7.12. The assumption of powers, whether these are assumed formally or informally, requires a shared understanding of boundaries to prevent potential abuse. The Committee expects Departments and Committees to respond to questions and requests for information in a reasonable timeframe; to formally accept or reject the Committee's recommendations; to implement these recommendations within a reasonable timeframe; and to attend meetings or hearings upon request. In return, the onus is on the Committee not to make what could be considered to be unreasonable demands.
- 7.13. The Committee has therefore decided to update its procedures and develop a memorandum of understanding to clearly set out the expectations for both Departments and the Committee.

Reconsideration of Powers

- 7.14. The Committee intends to reconsider its view on the appropriateness or otherwise of legal powers towards the end of its term.

8. Structure

Dual scrutiny/executive roles

- 8.1 From a small sample, a number of respondents to the WAO review expressed concerns about the independence of the scrutiny process on the basis that membership of the Scrutiny Committee does not preclude membership of a departmental political board with decision-making authority. It is important to note that the splitting of decision-making and scrutiny roles is an inherent feature arising out of Executive/Cabinet government; whereas the capacity for a member to undertake both functions is usually central to any system of government by committees, including in Guernsey. It is also the case that similar wariness or concerns about the independence of scrutiny and oversight occur in other systems of government and it would appear that it is the process of scrutiny itself rather than the structure of government in which it occurs that generates tension from time to time. Scrutiny is an overtly political process and the Committee does not underestimate the concerns of colleagues that they may be scrutinised by political peers. In time, the Committee trusts that such concerns will dissipate as it is demonstrated that scrutiny is a fair, transparent and objective process led by evidence and not by individual or collective political agendas.
- 8.2 In the UK, where larger local authorities have been compelled by central government to disestablish the committees system, there is much evidence to suggest that the formal splitting of decision-making and scrutiny roles is considerably less effective than intended. In 2002, a House of Commons Select Committee found that ‘backbench’ members necessarily isolated from the decision-making executive often became “disenfranchised and disengaged”.¹ The Select Committee report continued: “Not only are the majority of councillors no longer involved in decision-making; we also received evidence that they have lost the access to information and informal contact that they had with officers under the old structures...[and] we have received evidence that the new arrangements are actually working best where the split between executive and scrutiny is blurred.” It is evident that in any jurisdiction scrutiny is greatly enhanced by, and arguably dependent upon, the fostering and maintaining of good relationships with decision makers, and a formal separation of such functions can often act as a barrier to good relations.
- 8.3 It is the Committee’s experience that the ability of a Scrutiny Committee member to sit on another Committee or Department is a positive asset to the

¹ 2002, The Transport, Local Government and the Regions Committee; Fourteenth Report; How The Local Government Act 2000 Is Working; www.parliament.uk

process. This provides genuine peer to peer scrutiny, with members having a better understanding of the operation of government and insight into the everyday political culture.

- 8.4 The Committee does not accept that the maintenance of a strong scrutiny function demands the exclusion of members from a decision-making role, but is mindful that other forms of control are therefore all the more necessary to protect the integrity and objectivity of the process. Therefore, the Committee has developed comprehensive guidelines that mitigate any possible or perceived conflict of interest. Members are excluded from scrutinising aspects in which they have had a departmental decision-making role and the Committee's make-up of nine members ensures the business of the Committee can continue uninterrupted.
- 8.5 The Committee would welcome recommendations that might assist in strengthening its independence and its accountability role. However, at this time there is a lack of evidence that structural changes to the Committee are either necessary or beneficial to achieving corporate goals.

9. Profile and status

- 9.1 The Committee is concerned that there may be a perception in some quarters that membership of a Committee is in some way inferior to membership of a Department. This was a view raised in the WAO review report and was the rationale behind the former House Committee's February 2008 States Report, supported by the Policy Council, seeking to amend the Rules of Procedure to provide that members of Committees be elected before members of Departments, thereby reversing the existing order. This proposal was not approved by the States. However, following consideration of a Policy Council report in Billet d'Etat II, 28th February 2008, there will be a further examination of the relative levels of remuneration for membership of Departments and Committees.
- 9.2 The Committee is convinced that scrutiny, in its broadest sense, is an essential element of the internal review of any organisation's policies and actions and that the roles of the various Committees, in particular Scrutiny, Public Accounts and Legislation Select, in contributing the Island's government are in no way inferior to, or less important than, the roles undertaken by the ten Departments.

10. Resources

- 10.1 The Committee has a cash limit for 2010 of £210,000, the majority of which represents staff costs.
- 10.2 The Committee entirely supports the need for financial restraint and has devised a programme and established a staffing team that it believes will allow it to be much harder hitting, but operate within existing budget allocations.

- 10.3 As of 1st January 2009, the Committee had £211,000 of unspent balances available to it. Approximately half of this underspend was due to staff vacancies and half due to an accumulation of unspent budget allocation for the employment of consultants.
- 10.4 In the normal course, the Committee would use its own staff to conduct the majority of reviews and only consider use of external assistance when absolutely necessary. However, it is important to recognise that there will be times and subjects where internal resources will not have the requisite expertise and without allocating funds specifically for this purpose the Committee may be significantly restricted in its ability to fulfil its mandate. This is not possible to manage consistently within an annual budgetary period, as evidenced by the accumulation of unspent balances. The Committee has therefore proposed to the Treasury and Resources Department that it retain a rolling budget of £150,000 from its unspent balances as a contingency for expenditure on securing expertise for reviews as and when required up until April 2012. This request is still under consideration. In the meantime, the Committee has volunteered to return the accumulated unspent balances that are not required.

11. Conclusion

- 11.1 The Committee's performance report for its first year of this term illustrates the range of topics that has fallen under its remit; including milk distribution, sewage disposal, vandalism, air links and population policies. The Committee does not build hospitals or schools or introduce new services: consequently, unlike Departments, it is difficult, at a glance, to determine whether the Committee is effective. Ultimately the impact of scrutiny is measured according to the output from departments; their policy delivery will be improved and enhanced by working more closely with the Committee and this influence will not always be visible or easily measurable.
- 11.2 The Committee's approach acknowledges the responsibility of every States member and all in the community to assist in holding government to account and work to continually improve the policies and services provided. The concept of scrutiny and being scrutinised is still relatively new to the States and a relationship of this nature is ultimately based on trust; trust that will take time to build. The Committee's work in this term to set out clear and transparent boundaries and expectations for the Committee's stakeholders should go a long way to further strengthen the scrutiny role.

12. Recommendations

The Scrutiny Committee asks the States to:

- a) Note the Scrutiny Committee's 2008-9 performance report entitled *Guernsey Scrutiny*;

- b) Endorse the Committee's intended forward work programme outlined in Section 4 of this Report;
- c) Endorse the Committee's intention to develop and agree a Memorandum of Understanding with Departments and Committees that sets out the expectations of those involved in the scrutiny process.

Yours faithfully

B L Brehaut
Chairman

May 2008
to April
2009

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Guernsey Scrutiny

Performance Report - May 2008 to April 2009

This report provides the highlights of the current Scrutiny Committee's first year of operation since the elections in May 2008, up to the end of April 2009.



SCRUTINY COMMITTEE
THE STATES OF GUERNSEY

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Chairman's Foreword

When I stood for the post of Scrutiny Chairman I spoke of the need for Scrutiny to be considered, thoughtful and, crucially, to be non adversarial.

Under the system of government we operate within, we rely on good working relationships. With consensus government there is not the same divide between scrutineers and the executive as there is in other jurisdictions. In this context, the ability of a Scrutiny member to sit on another committee or department is a positive asset to the process. This provides genuine peer to peer scrutiny, with members having a better understanding of the operation of government and insight into the everyday political culture, whilst the membership of nine ensures that conflicts of interest can be avoided.

Scrutiny in Guernsey is of course in its infancy. This is only its second term and the end of its fifth year, so we are all still involved in a learning process, a process that we hope we can engage you in. Over the coming months we will be presenting our forward work programme in more detail to States departments and committees and the general public. In doing so we will be seeking to better explain the role of Scrutiny in the Guernsey context as government's critical friend and of course enable you to ask difficult questions of us for a change!

As we move forward there will no doubt be occasions when particular departments' work will fall under Scrutiny's gaze; I would hope that we all see that as an opportunity.



Figure 1 Deputy Barry Brehaut, Scrutiny Committee Chairman

An opportunity to ensure that the implementation of policy and ultimately service delivery is happening within a political structure that is receptive to closer scrutiny; an organisation that is reflective in the manner in which it operates; and at all times recognising that we are all servants of the community.

This report is written at a time when we, the States, are facing some enormous challenges: the effects of the credit crunch; the realignment of our tax structure; the introduction of a Strategic Plan for the island; and increasing scrutiny from our colleagues in the UK and beyond. It is now, more than ever before, that the role of scrutiny, in the broadest sense, becomes increasingly relevant. Many decisions will have to be taken under increasing pressures, which will impact on our community. It is important, even imperative, that these decisions, or indeed occasions of indecisiveness, are held to account.

I very much hope that you take some time to read our performance report and that it gives you a greater understanding of the work that we do.

The work of the Scrutiny Committee is reliant on the co-operation of departments and committees and I would like to thank all staff and politicians who have assisted Scrutiny in their work over the past year.

In the months ahead there is much to be gained by government working collectively and co-operatively to the benefit of our fellow islanders. The Scrutiny Committee looks forward to continuing to make a positive contribution to that end.

Overview

May 2008 to April 2009

- Following the General Election in April 2008 and the subsequent Committee elections, only two members from the previous Scrutiny Committee retained their membership. Accordingly, the past year has focused on induction of members to scrutiny processes and procedures.
- In June 2008, the Chairman and Vice-Chairman attended the Annual Conference of the Centre for Public Scrutiny in London and participated in a training day for politicians involved in leading the scrutiny process within a range of United Kingdom public authorities.
- Committee Members held monthly meetings to scrutinise the Billet d'Etats and thereby develop their roles as individual scrutineers and States Members.
- The Committee undertook a significant public consultation exercise for its *Investigating Vandalism* review. It issued a public questionnaire, which had approximately 400 responses, held workshops with students and meetings with stakeholder groups, such as Neighbourhood Watch representatives. The Committee neared completion of its review into the causes and effects of vandalism. Its comprehensive review report *Investigating Vandalism* will be published by the end of 2009.
- The Committee's monitoring of the implementation of the recommendations arising from the Scrutiny Review of *Milk Distribution Proposals* came to a conclusion with the Commerce and Employment Department reporting back to the States on its revised proposals. The *Milk Monitor* report was timed to coincide with the debate on the new approach. The Commerce and Employment Department agreed, at the recommendation of the Committee, to produce a supplementary paper for States Members ahead of the debate to ensure they were informed of the effects of the Department's proposals on all stakeholders.
- The Committee has been actively monitoring the Population Policy Group's development of the Population Strategy and sought commitment from the Group in according priority and appropriate resources and confirming a realistic timetable. The Committee continues to monitor progress against the milestones that have now been confirmed to the Committee by the Group.
- The Committee challenged the Public Services Department on its handling of the flooding of the Belle Greve pumping station and the Department produced and published a report on the incident at the Committee's request. The Committee continues to monitor the Department's commitments from that report.
- The Committee commented on the Public Services Department's States Report *Guernsey Airport – Pavements Rehabilitation* in Billet d'Etat XVIII 2008.

Its concern was that States Members should consider the wider implications of these proposals. The Department took the Committee's concerns into account with the provision of costs for a future runway extension, by appending comments of the Commerce and Employment Department, and making the commitment for a strategic report to be provided to the States. The Committee has carried out some initial background research into policies relating to Guernsey's air and sea links.

- Scrutiny began initial research into the way in which the States engages the public and challenged the particular case of the Public Services Department's public consultation process through the Waste Disposal People's Panel.
- The Committee began initial research to learn about child protection services and to prepare the way for a review once new legislation is implemented and has had time to be fully integrated in practice.
- The Committee has reported on some ad-hoc work streams monitoring various States commitments and responsibilities. This included clarifying the mandates and memberships of Policy Council working groups; carrying out some initial monitoring of the implementation by the Policy Council of the Robinson Review of the States as an Employer; and clarifying the action taken and future commitment of the Health and Social Services Department concerning the Wheelchair Report recommendations. The Committee has also continued to monitor the progress of the Government Business Plan and its

development into the States Strategic Plan.

- The Committee has set up a database for monitoring States Resolutions and plans to improve upon this in the coming months and challenge departments on the progress made against their directed responsibilities.
- The Committee undertook a comprehensive review of its criteria for selecting topics for Scrutiny and developed a process for setting a forward work programme for the next three years.

About Scrutiny

What is Scrutiny about?

The focus of the Scrutiny Committee is on government policy. Specifically, examining whether policy development, implementation and service delivery is appropriate and effective, including identifying any gaps in existing policy and services.

Scrutiny is a learning, as opposed to a decision-making, process. Scrutiny Members develop understanding of, but also challenge, departmental policies and practices. The agenda is Member-led but informed by corporate policy priorities and public concerns. Enquiry and investigation is aimed at continuous improvement involving Members, officers and stakeholders. Recommendations are made and action is negotiated by Members with the decision-makers responsible.

Scrutiny matters because it improves government accountability and can have a positive effect on policy and service delivery and provide a forum for expression of a public voice.

Scrutiny is a “critical friend” to States Departments, providing constructive criticism that focuses on remedies rather than faults and encourages ownership of responsibility rather than apportioning blame.

Principles

We are about:

- Applying pressure to continually improve public services
- Accountability
- Integrity
- Transparency
- Rationality
 - Lessons learnt
 - Best practice
 - Constructive criticism
 - Evidence
 - Getting to the truth

We are not about:

- “Name and shame” or blame culture
- Judgement
- Opposition
- Grievances

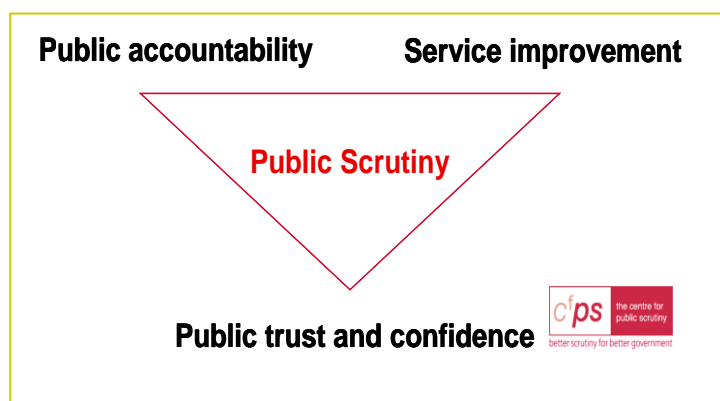


Figure 2 *Why Scrutiny Matters* - source CfPS
www.cfps.org.uk

Committee Membership

The Committee comprises nine Members, including a Chairman and Vice-Chairman, who are elected representatives of the States of Guernsey and serve a four year term.

Following the general elections in May 2008, Deputy Barry Brehaut returned to the Committee as its new Chairman.

At its first meeting on 14th May 2008, the Committee elected Deputy Matt Fallaize as its Vice-Chairman.

Besides the Chairman, only one other Member, Deputy John Gollop, has served on the Committee pre-May 2008.

Deputy Mary Lowe resigned from the Committee with effect from March 2009 and was replaced by Deputy Mike Hadley.

Members are able to also sit on departments or other committees and so are excluded from scrutinising aspects in which they have had a departmental decision-making role. The Committee's make-up of nine members of the assembly ensures the business of the Committee can continue uninterrupted. The Committee also has detailed 'Special Interest' guidelines to mitigate any possible or perceived conflict.

Committee Members

The Membership of the Committee, as at 30th April 2009, is:

- Deputy B L Brehaut (Chairman)
- Deputy M J Fallaize (Vice-Chairman)
- Deputy M Garrett
- Deputy J Gollop
- Deputy M Hadley (from March 2009)
- Deputy J Kuttelwascher
- Deputy S McManus
- Deputy R Matthews
- Deputy M Storey

Resources

Staff

The Committee was unfortunately short-staffed for this period with just two members of full-time staff supporting its work for the year.

This was due to the resignation of the former Committee's Chief Officer immediately preceding the elections, which

led to a restructuring of the Committee's staff roles that was not concluded until after the Committee's first year of office.

A Chief Officer, Parliamentary Committees, was appointed in July 2008 as a shared resource with the Public Accounts Committee and States Assembly and Constitution Committee, but the incumbent was subsequently seconded to the Policy Council for twelve months from March 2009.

Financial Report

£	Accounts 2008	Authorised Budget 2008	Accounts 2007
Staff	156,592	187,000	162,596
Supplies and Services	7,030	12,000	1,937
Consultants Fees	-	5,000	713
Use of Unspent Balances	-	(4,000)	-
Total	163,622	200,000	165,246

Training and Development

In May 2008 Members had an induction meeting and presentation and received an induction folder, introducing them to the principles of scrutiny. Members established a monthly workshop to discuss the contents of the States Billets in order to practise critically analysing policies, as well as to monitor policy developments. All Members were involved in exercises to draw up the terms of reference for the Committee's review of the causes and effects of vandalism.

In June 2008 the Chairman, Vice-Chairman and staff attended the Centre for Public Scrutiny (CfPS) annual conference and training day in London. This included talks by Sir Michael Lyons (Chairman of the BBC Trust) and John Healy MP (Local Government Minister) and a series of workshops and interactive seminars.

Members were introduced to the "Scrutiny Cafe" as a format for generating discussion, which provided a useful setting for comparing the different approaches to scrutiny adopted by county and district councils throughout the U.K.

Workshops included developing personal effectiveness and leadership, practical advice on running effective scrutiny meetings and hearings, developing questioning, diplomacy and negotiation skills, and developing stakeholder engagement.

The event was beneficial to learn about the principles of scrutiny and an appreciation of the distinct role of the scrutineer. The CfPS promotes the 'critical friend' approach to

scrutiny and there was a focus over the two days on developing relationships with and engaging stakeholders.

It was particularly useful to meet peers in different jurisdictions and appreciate that, regardless of differences in politics, constitutional and organisational make-up, scrutiny functions everywhere have very similar objectives, concerns and relevant knowledge to share.

The Committee is supporting its Principal Scrutiny Officer in undertaking a part-time Masters in Business Administration, which she is due to complete in 2009.

Investigating Vandalism



Figure iii Youth Workshop, Investigating Vandalism

The Scrutiny Committee first considered the potential for a review into the causes and effects of vandalism in June 2008. 'Sustainable Guernsey 2007' had reported that, for 2006, criminal damage remained the most frequently reported offence in Guernsey, with 1,051 offences reported, representing 31% of the total crime figure. These figures include graffiti and general unlawful damage to private and public property. In addition, there were 45 reported cases of arson.

For 2007, Guernsey Police statistics showed 977 criminal damage offences, representing 32% of the total crime figure with a further 59 reported cases of arson.

The Committee also noted that Priority 7 of the Government Business Plan "Take firm action against crime and the causes and effects of crime" included specific reference to targeting anti-social behaviour and criminal damage.

The Committee sought public opinion through a printed and on-line questionnaire. Almost 400 responses in total were received. The Committee also held face-to-face meetings with contributors, including Neighbourhood Watch representatives. Two workshops were held with young people, the first with students from the Sixth Form Centre and the College of Further Education and the second with representatives from the Youth Forum.

The review considers the nature of vandalism, the law, what is currently done to address the causes and effects of vandalism and what happens elsewhere. The review report, which collates all of the research undertaken and makes recommendations for how government departments might improve their response to the causes and effects of vandalism, was subsequently published in October 2009.

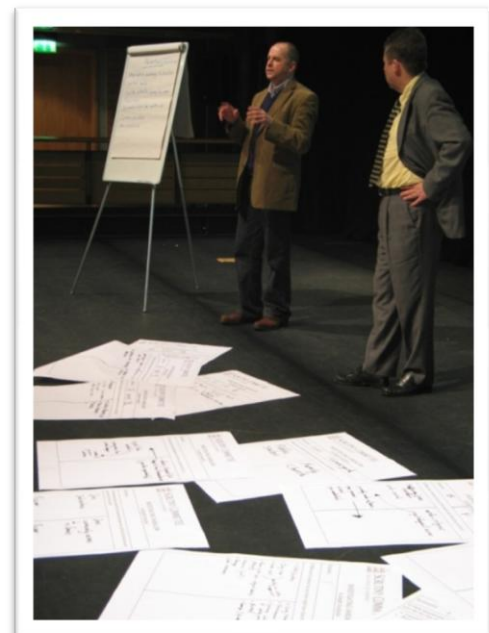


Figure iv Youth Workshop, Investigating Vandalism

The “Milk Monitor” Report



The Scrutiny Committee’s report monitoring the response to its predecessor’s 2006 Review of Milk Distribution Proposals was published in October 2008. This was timed to coincide with the Commerce and Employment Department’s report to the States on the latest development of proposals for milk distribution.

The purpose of Scrutiny’s Milk Monitor Report was to assess the progress made against the 2006 Review recommendations. Monitoring Reports are an important measure for Scrutiny to assess the impact its Reviews have, to ensure that recommendations are taken seriously and that Departments are accountable for their implementation.

The Committee was pleased to report that the Commerce and Employment Department had accepted all of the Scrutiny 2006 Review recommendations and it was evident that the Department had acted in good faith to implement them. The

Monitoring Report concluded that all of the 2006 Review recommendations had either been satisfactorily addressed or overtaken by subsequent events.

The Monitoring Report also looked at how the previous Review findings and lessons learnt might shed light on the latest proposals for milk distribution that the States were being asked to consider at that time.

The Report provided an overview of the story from the former Commerce and Employment Department’s initial proposals for changing milk distribution at the end of 2005 to the revised proposals that were being considered by the States in October 2008. It therefore provided useful background information and context to aid States Members in making their decision.

The Committee concluded that States Members needed to be given a more complete understanding of the implications of their decision for all stakeholders: the Department, the Dairy, farmers, distributors, retailers, the consumer and the industry as a whole.

The Department readily accepted Scrutiny’s recommendation to send a briefing paper to all States Members ahead of the debate. This was made available to the public, published as an appendix to the Scrutiny Monitoring Report.

The “Milk Monitor” Report, published in October 2008, and the original Milk Distribution Review Report, published in 2006, can be downloaded from www.gov.gg/scrutiny

Monitoring Population Strategy

The current policy for population and migration was resolved by the States in April 2007 and work streams to develop the strategy for delivery were set out under Priority 5 of the Government Business Plan in July 2007.

Following the May 2008 elections, responsibility for taking this policy forward rests with the Population Policy Group; the fourth Policy Council steering group to be involved since December 2004 when population first emerged as a key corporate priority.

The Committee was of the view that the Housing Department's request to the States in November 2008 (Billet d'Etat XV) for a further extension to the Housing Law highlighted just how frustratingly slow progress has been. The absence of a workable policy and strategy for the control of population and migration has necessitated an extension to the existing sub-standard regime. The extension of the current Law expires in December 2011 and the Population Policy Group aims to bring forward proposals for revised or new legislation before that date.

The Committee wrote to the Population Policy Group requesting confirmation of the Group's action plan, key milestones and timetable for the implementation of the Strategy.

The key proposed actions are as follows:

- Present a green paper to the States in 2009 for consultation, which will include presenting alternative methods of population management and an analysis of what other jurisdictions do.
- Present final proposals in 2010
- Draft legislation and return to the States for approval in 2011.

Population Strategy Development Timeline

- Dec 2004** The need for a corporate policy for population management was recognised in the 2005 Policy and Resource Plan (Billet d'Etat XXII 2004) as one of the eight key themes of the corporate agenda. The Strategic Population Review Group (a Policy Council steering group) was formed to drive progress.
- Aug 2005** The Scrutiny Committee first requested an update on progress. The policy was being drafted and would be sent out for consultation.
- Dec 2005** The green paper "Guernsey's Strategic Population and Migration Policy" was issued for public consultation.
- Feb 2007** Two States Reports were published setting out the new strategic policy and proposals for housing controls (Billet d'Etat IV 2007). Debate was delayed until April and subsequently the report on housing controls was withdrawn.
- Apr 2007** The Scrutiny Committee published its Study of the development of population policies.
- The Policy Council replaced the Strategic Population Review Group with the Demographics Group.
- The States resolved, in support of an Amendment, to replace the existing population policy with the Population and Migration Policy Statement *"States policies should be consistent with maintaining Guernsey's population at approximately its current level"*
- July 2007** Population was restated as a corporate priority in the newly formed Government Business Plan (XVIII 2007), with work streams identified.
- Oct 2007** Scrutiny met with the Demographics Policy Group to discuss progress.
- Nov 2007** The Policy Council established the Labour Utilisation Strategy Group alongside the Demographics Policy Group to develop concurrent work streams.
- June 2008** Following elections, the Demographics Policy Group and Labour Utilisation Strategy Group were replaced by a new Population Policy Group.

Belle Greve Flooding Incident



vGuernsey Press Monday 4 August 2008

On Sunday 3rd August 2008, a fracture occurred in the discharge pipes at the Belle Greve Wastewater Disposal Facility, causing the flooding of the pumping station and of adjacent residential land. Some Islanders' garages were flooded and waste water had to be discharged through emergency outfalls, affecting access to beaches in the height of summer.

The Scrutiny Committee asked the Public Services Department to produce a written report on why and how the sewage leak incident had occurred, how the problem was dealt with and what was being done to ensure such an event would not happen again.

The Public Services Department responded quickly and positively to the Committee's request, publishing a report that identified action points to safeguard against such incidents in the future and to improve the response to flooding. Two further recommendations were included by the

Agreed Actions

1. **Emergency pumps:** Three hired emergency pumps will be retained at Belle Greve until the permanent replacements arrive in early January 2009.
2. **Media releases:** Procedures are required for managing communications between staff, the media and the public, particularly for events that occur outside normal office hours.
3. **Plan for dealing with major flooding:** An updated plan is to be produced by the Home Department and distributed to all senior staff members who may be called out to a flooding emergency.

This will include early notification of the on-call Environmental Health Officer when dealing with any incident with potential public/environmental health significance.*
4. **Emergency response team:** To review the existing contracts with organisations able to provide emergency support at short notice.
5. **Sewage outfalls:** To research the likely effects of sewage discharge at outfalls in the event of an emergency and plan an appropriate response procedure including agreeing an appropriate level of warning and monitoring.* (The Committee also requested that this include consideration of appropriate signing and appropriateness of access to beaches potentially affected.)

Environmental Health section of the Health and Social Services Department (*).

The publication of the Public Services Department report provided an opportunity for the public to understand the causes of the incident and judge for themselves whether their concerns on this issue had been appropriately addressed.

The Committee has since obtained progress reports from the Public Services Department on the recommendations and will continue to monitor this issue.

Air and Sea Links



vi Guernsey Airport (picture courtesy of the Commerce and Employment Department)

In June 2008, the Committee appointed a Panel, led by Deputy Kuttelwascher, to explore what the longer term policy and strategy were for the development of the Island's external commercial and passenger links.

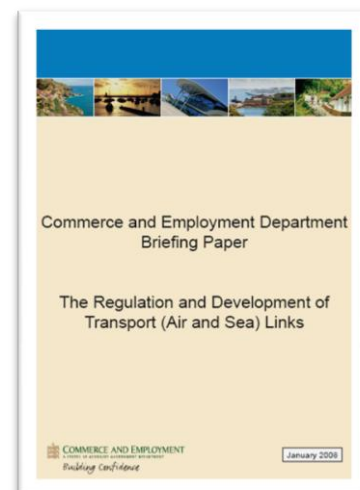
During its initial research, the Panel considered the Public Services Department's States Report *Guernsey Airport – Pavements Rehabilitation* in Billet d'Etat XVIII 2008. Although repair of the runway pavements was ostensibly a purely operational issue, the Committee was concerned that States Members be provided with the bigger strategic picture and be made aware of the potential long-term consequences of any decisions taken.

The Committee was pleased that the Public Services Department took its concerns into account with the provision of costs for a future runway extension, the appended comments of the Commerce and Employment Department and the commitment for a strategic report to be provided to the States.

Deputy Kuttelwascher's background in aviation enabled him to challenge the operational detail of the Public Services

Department's proposals and the Committee decided that there would be more value added in him taking this up as an individual States deputy. He was invited to meet the Department's Board to put forward his views during the formulation of the policy.

The strategic policy for air and sea links is still under development. The Commerce and Employment Department issued a Briefing Paper for consultation on this topic in January 2008 and has recently issued a Statement of Intent on air route licensing. The Department is due to report back to the States later this year on this matter. The Committee will therefore continue to take an interest in progress on this topic, which may be suitable for a future review once policies are more developed.¹



¹ The Commerce and Employment Department is the body primarily responsible for strategic policy relating to air and sea links. You can find more information at www.gov.gg following the links to Commerce and Employment and then published reports.

Public Engagement

The Committee has considered how it engages with the public and also the wider issue of how the States as a whole might improve its consultation and public engagement processes.

The Committee has had a fantastic response to its interactive workshops and public questionnaire carried out as part of its Vandalism review. In time, the Committee, drawing upon its own experience and in studying others, will establish a policy for its blueprint for public engagement.

The Committee has monitored States-wide approaches to public engagement over the past year with a view to assessing this as a suitable topic for future review.

One case study that the Committee considered in detail was the Public Service Department's relationship with its Waste Disposal People's Panel. Disagreement evidently arose because the People's Panel wished to examine the appropriateness of the decisions made by previous Resolution of the States, whereas the Department expected these to be taken as read and only the Department's implementation of them be considered.

Rather than find a mutually acceptable way forward it appears that the Department chose to ignore the Panel and the Panel chose to carry on with its own interpretation of its mandate. Far from improving the Department's engagement with the public, by the end of the process

Spotlight on Practice

The Committee has investigated what went wrong with the Public Services Department's relationship with the Waste Disposal People's Panel, which had been set up by the former department Board as a means of engaging the public with the development of the Waste Strategy.

The Committee found that:

- Although the Public Services Department had outline terms of reference for the Panel from the outset, it failed to define the expected outcomes or reporting mechanisms for the process.
- The role of individual Panel members and how they were expected to contribute to the review were not clearly defined.
- Against the Panel's mandate as an *"experimental means of listening to the general public"* opening the meetings up to the media and issuing press releases were not effective as the only means of engaging with the wider public. Those views that were received by the Panel were not clearly represented by the Department or the Panel in their respective reports.
- The existence of the Panel was not acknowledged in the Department's States Report and there is no evidence of the Department having taken the Panel's views or process into account.

the parties had ceased communication with each other altogether and the public disagreement threatened the Department's reputation.

The Committee would welcome your views on how government might engage more effectively with the public it serves. (See p23 for contact details).

Child Protection

New processes and procedures are being implemented throughout services for the protection of vulnerable children.

Significant changes to local services are being introduced as part of the implementation of the long-awaited new Children Law, which is expected to come into force from early 2010 pending approval by the Privy Council.

In June 2008 the Committee appointed a Panel, led by Deputy Mary Lowe, to draw up a terms of reference for a future review into the effectiveness of child protection services.

In March 2009 Deputy Martin Storey replaced Deputy Lowe as the lead panel member and he and Deputy Sean McManus were joined by Deputy Garrett to take this review forward.

The Panel has gathered some initial information from departments and agencies and has drawn up a detailed working document that sets out the draft scope of a proposed review.

In the light of high profile incidents like Baby P and the Doncaster cases, no system of child protection should go without asking serious questions of itself to make sure that it can safeguard, as far as is possible, against such tragic events ever happening in their jurisdiction. The Committee's principal objective in undertaking this investigation is to provide the public with assurances that the Guernsey system for the protection of children is as robust as it can possibly be and sustainable for the future. In particular, that the 'on the ground' service delivery is effective.

A review would also seek to demonstrate good practice locally, and in the context of awareness and learning from practices elsewhere. Any recommendations from the review would be aimed at strengthening arrangements for protecting children.

Once the proposed new procedures have had a chance to bed in, the Scrutiny Committee intends to commission an independent consultant to review the effectiveness of child protection services. In the meantime the Committee is carrying out in-house desktop research and monitoring departments' progress.

The groundwork undertaken this year has enabled the Panel to develop a sound framework for the review.

The benefit of starting scrutiny so far in advance of the proposed consultant's review is that the Committee will be monitoring progress in the interim and can highlight any concerns or layman's questions at an early stage. The Committee will gather information on the implementation process as it happens, rather than Departments and agencies having to provide evidence of this retrospectively. This approach allows us to set realistic expectations of the review outcomes and focus minds on making improvements in anticipation of in-depth, independent scrutiny.

Other Work Streams

- **Policy Council Working Groups:**

The Scrutiny Committee is seeking to encourage transparency of roles and responsibilities across the States. It therefore requested clarification from the Policy Council on the delegated responsibilities of its proposed Working Groups. The eight Policy Council sub-groups, their mandates and memberships, are now listed and circulated to every department and committee.

- **Monitoring the States as an Employer:**

The Committee carried out some initial work to monitor the implementation by the Policy Council of the Robinson Review of the States as an Employer.

- **Wheelchair Report:**

Following media headlines about the Wheelchair Report, the Committee sought clarification from the Health and Social Services Department about the history of exactly when this was considered, what priority has been attached to it and what actions have been and will be taken to move this forward.

The Department's response indicated that it has agreed to progress the recommendations of the published report assessing the service as a medium priority. In the meantime the service will be supplemented by a temporary arrangement through the Southampton Primary Care Trust.

- **Monitoring States Resolutions:**

The Committee has set up a database for monitoring States Resolutions and plans to improve upon this in the coming months and challenge departments on the progress made against their directed responsibilities.

- **Joint Working and Co-ordination:**

The Committee has been liaising with the Public Accounts Committee and Treasury and Resources Department to ensure that there is coordination between the Scrutiny forward work programme and that of Public Accounts work and Treasury's fundamental spending reviews.

- **States Strategic Plan:**

The Committee has continued to monitor the progress of the Government Business Plan and its development into the States Strategic Plan.

Forward Work Programme

In January 2009 the Committee started to plan a new approach to conducting Scrutiny for its remaining term of office.

This was in recognition of the fact that scrutiny is an evolving process and this Committee was approaching a year into its operation and felt that the model could be improved upon. The Committee was also frustrated at the restrictions on what it could realistically achieve given its limited resources.

The Committee therefore determined to review its way of doing things, set its forward work programme for the next three years and then assess what resources it would need to achieve its objectives going forward.

The criteria for the new approach to be adopted were as follows:

- To make our limited resources stretch further
- Make Scrutiny more visible and the work of the Committee more transparent and accessible
- Provide more tangible outcomes
- Provide more structure and focus
- To be more challenging

Members decided to schedule “Monitoring Meetings”, to be held approximately once a quarter, to examine priority subjects. These meetings would usually be open to the public and would invite in stakeholders to give evidence on a predetermined topic. The issue under consideration might be cross-departmental (e.g. public engagement or children’s services) or

focused on a particular Department (e.g. examining its implementation of States Resolutions).

The meeting might be part of a wider review, alongside a published research report, or, more likely, an end in itself to publicly air challenging questions and answers that monitor performance, concluding with the published transcript of the meeting.

The Committee has devised a “speed dating” process to give initial consideration to filtering possible topics and rejecting those that are considered unsuitable for Scrutiny. The Committee has then sought to prioritise according to the importance of the topic, in terms of its impact on the community, and the value that it is perceived by the Committee that it could add to policy development or service delivery by its involvement.

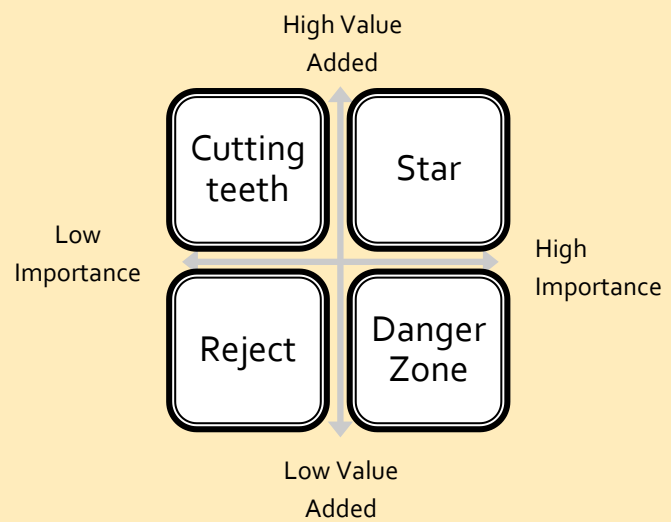
In order to determine what topics to review in its forward work programme, members have split into four teams of two, with the Chairman taking an overview of all four teams, to research particular subject areas. These broadly cover fiscal and economic policy; social policy; community and island identity; and environmental policy.

Departmental Chief Officers and Policy Council senior staff have kindly provided the Committee with information to assist members to start to identify what the key policy and service delivery priorities are. The four Scrutiny teams are then filtering possible topics in their subject areas down to two topics that they would recommend for inclusion in the forward work programme.

The Committee will seek to schedule its programme to gain maximum coverage of the full spectrum of government responsibilities so as not to overly burden any one department or committee. Finally, the Committee will consider the timing of its programme in relation to other accountability reviews, such as the Public Accounts Committee's programme and the Fundamental Spending Reviews commissioned by the Treasury and Resources Department, in order to coordinate these and mitigate the overall impact on departments.

Having taken some time to reflect on the opportunities and limitations of its first year of office and change its approach accordingly, the Committee anticipates commencing its revised programme from September 2009.

Prioritising Topics Matrix



Is the issue important?

This is how important the issue is for the government in terms of the impact on the community, which the government is there to serve.

Would Scrutiny add value?

Would Scrutiny intervention add value to the policy or service delivery in question? Consider this in terms of the likely outcomes of Scrutiny intervention and whether these would be positive. Consider the risks of Scrutiny intervention and whether these are manageable. Finally, consider the resources that might be required and test the perception of value for money (potential impact v potential cost).

Get In Touch

Is there an issue you feel Scrutiny should be looking at? The Committee welcomes suggestions for Review subjects from members of the public, groups, politicians or public sector staff. Of course we cannot look at everything and topics must fit with the Committee's role and mandate. Guidance on the Committee's criteria for topic selection is available on the internet at www.gov.gg/scrutiny, or please feel free to contact the Committee's staff.

Scrutiny is an evolving process and we are always looking for ways to improve. Let us know how you think we are doing and what we could do better. Have you contributed towards a Scrutiny investigation? What was your experience of the scrutiny process? Do you feel the reviews and subjects of investigation described in this Report are relevant and important to holding government to account?

If you have any views, suggestions or questions on the role, processes or procedures of Scrutiny in Guernsey, then we would welcome hearing from you.

Contact Us:

Website: www.gov.gg/scrutiny

Telephone: 01481 717000

Email: scrutiny@gov.gg

Address: Scrutiny Committee

Sir Charles Frossard
House

La Charroterie

St Peter Port

Guernsey

GY1 1FH

SCRUTINY COMMITTEE

WORK PROGRAMME TO 2012

SCRUTINY REVIEW MEETINGS			
Meetings will be open to the public and will invite Ministers and other representatives of States Departments or Committees to answer questions about the particular policy or service delivery commitments for which they are responsible. This might take a Q&A format, or open discussion/workshop and on occasions might include other stakeholders.			
SUBJECT	REMIT	PANEL	ACTION
Planning Service	To review the action taken by the Environment Department and the Policy Council Strategic Land Planning Group in addressing the recommendations contained in the 'Review of Guernsey's Planning Service' Report (Chris Shepley, April 2008)	Deputies Hadley (Lead Member), Storey, Jan Kuttelwascher and John Gollop	The Panel aims to publish its terms of reference in January with a view to inviting key contributors to a public meeting in March 2010. The Panel would welcome comments or submissions from anyone wishing to contribute to this review. Please contact scrutiny@gov.gg
Population and Migration Policy	Monitor progress by the Policy Council, Population Policy Group (PPG) on the development of its policy proposals, with reference to April 2007 States Resolutions, 2008 commitments, and previous Scrutiny comments.	<i>To be determined</i>	Members are monitoring the progress of the PPG, which is keeping the Committee updated, with a view to holding a review meeting once the PPG has had an opportunity to formulate and publish its proposals for consultation.

SUBJECT	REMIT	PANEL	ACTION
School Exclusions and Disruptive Behaviour	Monitor progress against Education policies / commitments made in 2006 / performance against, and fit with, the Social Policy Plan.	<i>To be determined</i>	The Committee aims to confirm its Panel Members and publish its terms of reference in January/February 2010, with a view to inviting key contributors to a public meeting towards the end of 2010.
Staff Numbers and Expenditure	Follow up on the outcomes of the 2006 Staff Number Limitation Policy Review to see how the controls on staff costs are working and what the effect of the new policy has been on overall headcount.	<i>To be determined</i>	Initial research is being carried out. The target timescale for a public meeting on this subject is between July and October 2010.
Housing Policies	Monitor progress against the Corporate Housing Programme commitments and test policies against the Social Policy Plan. This review might take an overview or pick up on a particular aspect of the policy. <i>The review might follow-up on the work carried out by the former Scrutiny Committee on the Corporate Housing Programme.</i>	<i>To be determined</i>	The Committee has exchanged initial correspondence with the Housing Department, but is not due to progress this review meeting until late 2010 / 2011.

SUBJECT	REMIT	PANEL	ACTION
Relative Poverty policies	Monitor progress on corporate anti-poverty strategies since work streams were subsumed by first the Guernsey Business Plan and now the States Strategic Plan – Social Policy Plan. <i>This review will pick up on the former Scrutiny comments on the Corporate Anti-Poverty Programme.</i>	<i>To be determined</i>	This review has not yet been started. The timescale for a public meeting is Oct 2011 to Jan 2012.
Child Protection Services	Monitor the implementation of policies, processes and procedures throughout services for the protection of vulnerable children in line with the new Children Law.	Deputies Storey (Lead Member), Garrett and McManus Martin (Lead Mike Sean	A monitoring programme is being established and initial information has been supplied. The Committee intends to employ a specialist consultant to review services once the provisions of the new Law have been fully integrated. Confirmation of Review timing is pending the introduction of the legislation, expected early 2010.
Public Engagement	Consider recommendations for improving States-wide public consultation and engagement	<i>To be determined</i>	This review has not yet been started. The review is timetabled for late 2010.

Other Work Streams			
SUBJECT	REMIT	PANEL	ACTION
Investigating Vandalism	Monitoring of response to the Committee's recommendations in its review report <i>Investigating Vandalism</i> , published October 2009.	The Chairman	<p>The Committee has written to departments to confirm acceptance or rejection of the review recommendations.</p> <p>The Committee intends to issue a short follow-up report and submit this to the States for consideration from mid 2010. This may also be the subject of a future open Scrutiny Review Meeting.</p>
Training and Development	The Committee is committed to the training and development of its Members and staff.	All	<ul style="list-style-type: none"> - Committee Members had a training day on Developing Questioning Skills in October 2009. - Deputy Hadley attended a Parliamentary Seminar at Westminster in December 2009. - Staff are attending the CMI Workshop 'Performance Management for Managers' on 15/12/09
Monitoring States Resolutions	The Committee is hoping to facilitate the development of a public database for monitoring States Resolutions	The Chairman	The Committee is currently liaising with the Greffe and Information Technology Unit to explore possible solutions.

SUBJECT	REMIT	PANEL	ACTION
Performance Indicators	The Committee is developing its own performance indicators.	The Chairman	The Committee has agreed an initial pilot framework of performance indicators and will report against these in its next performance report (second half of 2010).
Public Accounts Committee WAO Review of Good Governance	The Committee is considering the implications for Scrutiny in the Wales Audit Office (WAO) Review of Good Governance commissioned by the Public Accounts Committee (PAC).	The Chairman	<p>Scrutiny is committed to identifying, and contributing to, improvements in corporate governance against the six best practice principles.</p> <p>The Committee has shared its views with the Public Accounts Committee about how the review should be progressed and will continue to monitor developments and contribute positively to the process where it can.</p>
General Processes and Procedures	The Committee keeps its processes and procedures under review and updates these as and when necessary.	The Chairman	The published Guide to Scrutiny will be updated before May 2012. In the meantime, it is intended to draw up a Memorandum of Understanding setting out the expectations for both Scrutiny and the Departments being scrutinised.

The States are asked:-

XIII.- Whether, after consideration of the Report dated 20th January, 2010, of the Scrutiny Committee, they are of the opinion;-

1. To note the Scrutiny Committee's 2008-9 performance report entitled *Guernsey Scrutiny*.
2. To endorse the Committee's intended forward work programme outlined in Section 4 of that Report.
3. To endorse the Committee's intention to develop and agree a Memorandum of Understanding with Departments and Committees that sets out the expectations of those involved in the scrutiny process.

REQUÊTE

RESIDUAL WASTE TREATMENT – CONTRACTING WITH SELECTED PREFERRED BIDDER

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:

1. On 30th July 2009, after consideration of a Report dated 29th May 2009 of the Public Services Department (Billet d'État XX of 2009), the States resolved *inter alia*:

“To agree to the appointment of Suez Environnement as the Preferred Bidder for the design build and operation of a residual waste treatment facility as detailed in that Report.”

2. Since the time of that Resolution, your Petitioners have noted mounting public concern and opposition to incineration as a means of waste disposal, as well as concern about the capital and running costs associated with the waste treatment facility proposed.
3. Without offering any views about the potential viability or suitability of any alternative means of residual waste treatment, your Petitioners believe that it is desirable to enable consideration to be given during the period before the finalisation of the contract with Suez Environnement (“Suez”) of other options for Guernsey’s waste disposal. Because there is no requirement for the Public Services Department to return to the States before concluding the contractual arrangements with Suez, proponents of an alternative solution may be unsure of how long they have to demonstrate that their proposals are viable, robust and potentially acceptable. Accordingly, your Petitioners believe that some certainty should be introduced into the overall timetable by requiring the Department to obtain States’ authorisation before executing a final contract with Suez.
4. By adding that requirement to the process, your Petitioners have no intention of hindering the progress of the current negotiations with Suez; indeed they can and should be progressed in a timely fashion. They understand that the onus remains firmly on those who wish to propose any alternative solution to secure sufficient public and political support for their project to justify consideration of it by the States. This proposal is designed to introduce transparency and finality into the time at which the overall process will conclude, namely when the Department seeks States authorisation to execute the contract.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve to instruct the Public Services Department to return to the States to seek authorisation for the execution of a final contract with Suez Environnement for the design build and operation of a residual waste treatment facility.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 16th day of December, 2009

J Kuttelwascher
T J Stephens
M P J Hadley
G P Dudley Owen
D de G De Lisle
M H Dorey
M J Storey

(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)

ENVIRONMENT DEPARTMENT

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

24th December 2009

Dear Deputy Trott

RESIDUAL WASTE TREATMENT – CONTRACTING WITH SELECTED PREFERRED BIDDER

The Environment Department is of the view that the prayer of the Requête is more a matter for the Public Services Department to comment on as the primary impacts, if any, relate to the ongoing development of the Suez contract.

Nevertheless, the Department notes that paragraph 4 of the petition presents a desire to allow those who wish to propose a solution the time required to “secure sufficient public and political support for their project to justify consideration of it by the States”. The Department considers this to be a most inappropriate approach to procuring

essential infrastructure and compromises all accepted best practice in respect of **Corporate Governance** and open and **transparent procurement**.

If it is the view of the States that the Suez contract and solution is not the appropriate answer to Guernsey's waste problem then the Department is firmly of the view that the correct way forward must be to identify those areas where the current proposal is unacceptable and to then redefine the project and consequently the tender package to address those unacceptable areas. The new revised project would, of course, then have to be subjected to open transparent tendering.

The Department is of the view that it cannot be right to allow the "best sales person" to convince the public and/or States members that they have the right solution and hence secure the contract. Rather the States must establish its clear vision, strategy, targets and objectives and then design a procurement package that enables tenderers to offer solutions which will deliver those requirements. In doing so the States must pay due regard to the existing waste management plan which is supported by legislation and must, of course, pay due regard to the requirements of the Environmental Pollution (Guernsey) Law, 2004.

Yours sincerely

Peter Sirett
Minister

PUBLIC SERVICES DEPARTMENT

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

7th January 2010

Dear Deputy Trott

RESIDUAL WASTE TREATMENT – CONTRACTING WITH SELECTED PREFERRED BIDDER

Thank you for your letter dated 22 December 2009 in respect of the above.

It is pertinent to this issue to recall that following many debates over a prolonged period of time, including the rejection by the previous Assembly of export to Jersey, the States resolved in January 2007:-

“To agree to seek competitive tenders for the design, build and operation of either a Mass Burn Energy from Waste Facility, or

a Mechanical Biological Treatment plant coupled to an Energy from Waste facility, which facility may be a Mass Burn or Advanced Thermal Treatment plant;

such facilities, whether through procurement of successive modules or not, to have the capacity to deal with the waste arisings to be endorsed, but that tenders for any, or any combination of, MHT, MBT and ATT should also be considered.”

The States further resolved:

“to direct the Public Services Department to appoint engineering and legal consultants to assist with the preparation and issue of tender packs, the assessment of tenders and post tender negotiations.”

The Public Services Department duly appointed Ramboll Danmark, A/S AEA Energy and Environment/PH McCarthy & Partners to act as its technical consultants.

In January 2008 a notice inviting Expressions of Interest was placed in the Official Journal of the European Union, the magazine of the Chartered Institution of Wastes Management and the Guernsey Press. In addition, the Department’s consultants wrote to all the organisations that had been identified as part of the Environment Department’s “global search” in 2006, as well as to other companies that had expressed an interest in being considered for the contract. This gave a total of 62 approaches in addition to the advertisements.

The Department received over 30 submissions covering a wide range of solutions. All the submissions were evaluated against criteria which included financial stability, track record and robustness of the proposed technology.

The result of the evaluation process was reported to the current Assembly in July 2008 when a shortlist of 8 companies was agreed. The States also noted the criteria against which the tenders would be evaluated. Subsequent to this, 3 tenders were received, evaluated and carefully scrutinised by legal and technical advisers against the criteria reported to the States in July 2008.

In July 2009 the States agreed the Public Services Department’s recommendation to appoint Suez Environnement SA, the company that had submitted the lowest compliant tender, as Recommended Bidder.

The tender price is valid until 11 July 2010, by which time it will have been “held” for 18 months from tender submission. It is unlikely that the price validity will be extended further, which means that if the Requête is successful, a significant risk of delay and price uncertainty could result from a further States decision not being made by that date.

Even without the need for a further debate, it is evident that the timetable is tight and in order to reduce the risk of slippage, meetings have already taken place between Environment Department’s Planning Section and Suez in order to clarify the process required to secure planning consent. Indications are that if the final planning application is submitted in mid January 2010, the Environment Department will not be in a position to deliver its planning decision before the latter part of May 2010. Depending on what that decision is, there may need to be revisions and refinements to the Contract, making it an extremely short timeframe within which to conclude matters. Nevertheless, this is considered to be achievable. If however an allowance has to be made for the production and consideration of a further States Report, it will be unlikely that all will be concluded within the validity period of the current tender price.

In addition to the financial risks, the Department considers that the Requête (in particular paragraph 4) is an inappropriate approach to securing infrastructure and is against all accepted best practice of government procurement and States good governance.

Mindful of the foregoing, the Public Services Department has taken advice from St James Chambers on the contractual position if the States should decide not to proceed. Under the arrangements that have been entered into with Suez to enable the detailed design, planning and preparation works to proceed, the States are obliged to make a compensatory payment to Suez to meet their Design Costs in a sum up to a maximum of 4% of the Capital Cost if they should withdraw pursuant to a challenge which alters the political or funding commitment. (This would result in a maximum payment on current figures of up to £3.2 million.) Certain other legal advice was received (which must remain confidential at this time so as not to prejudice the States position) which indicated that there were additional other significant financial and legal risks to the States if the States were not to proceed. There was also a clear reputational risk to the Island in withdrawing from a tendered process for the second time and this would also make attracting bidders in the future tendering of specialist projects whether for waste, schools or otherwise much more difficult.

It is noteworthy that the abortive costs arrangements outlined above arose directly as a result of the Contractor’s knowledge and concerns that the States withdrew at a late stage in the previous waste project.

To conclude, the Public Services Department is firmly of the opinion that: every opportunity was given to suppliers/operators of a wide range of technology at the tender stage; the Requête’s recommended process does not represent good governance; and as a result the actions that the Requête seeks to achieve carry significant financial, contractual and reputational risks.

The Public Services Department therefore recommends that the States should proceed with the procurement of the residual waste plant as previously agreed.

Yours sincerely

S J Ogier
Deputy Minister

TREASURY AND RESOURCES DEPARTMENT

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

14th January 2010

Dear Deputy Trott

**RESIDUAL WASTE TREATMENT – CONTRACTING WITH SELECTED
PREFERRED BIDDER**

Thank you for your letter of 22 December 2009 attaching a copy of a Requête that has been signed by seven States Members concerning the above matter.

My Board considered the Requête at its meeting held on Tuesday 12 January 2010.

We understand that the approximate total costs that have already been incurred since the rejection by the States in 2004 of the proposals from Lurgi is £1.8 million. In addition, payments to Lurgi totalling £3.3m were made over the lifetime of the aborted project. We further understand that if the States should decide not to contract with Suez, a payment involving up to a further £3.2 million will need to be made and in that event it would appear that the Island would have spent at least £8 million on successive procurement processes and be no closer to having an agreed waste disposal solution.

Suez Environnement was selected as the States preferred contractor following an extensive and competitive tendering process. For the States to now indicate, no matter how tenuously, that some five months after agreeing to the appointment of Suez, they

may now be prepared to ignore the outcome of their own tendering procedures is, in my Board's view, inappropriate and could bring with it potentially damaging reputational consequences. Should that point be reached, then the States would be obligated to commence a new tendering process involving further time and expenditure of tax payers' money.

My Board accepts that the estimated capital and operating costs of the solution that has been put forward by Suez Environnement are very considerable. These costs were however known by the States when the decision was made in July 2009 to contract with Suez. It is, understandable that in the current economic climate the States will want to ensure that they are achieving best value for money. However, in my Board's view, constantly putting off a final decision in an attempt to find a "better" and cheaper solution may ultimately result in the States running out of time to put in place a long term and sustainable solution to the issue of residual waste treatment.

Yours sincerely

C N K Parkinson
Minister

(NB By a substantial majority, the Policy Council concurs with the views expressed by the Treasury and Resources Department, the Public Services Department and the Environment Department and strongly recommends the States to reject the prayer of the Requête entitled "Residual Waste Treatment – Contracting with Selected Preferred Bidder.")

The States are asked to decide:-

XIV.- Whether, after consideration of the Requête dated 16th December 2009, signed by Deputy J Kuttelwascher and six other Members of the States, they are of the opinion:-

To instruct the Public Services Department to return to the States to seek authorisation for the execution of a final contract with Suez Environnement for the design build and operation of a residual waste treatment facility.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS) (BAILIWICK OF GUERNSEY) (AMENDMENT) (NO. 2) REGULATIONS, 2009

In pursuance of Section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2009, made by the Policy Council on 21st December, 2009, are laid before the States.

EXPLANATORY NOTE

These Regulations are made under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and amend the registration and annual fees payable under the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as from 1 January 2010.

THE SOCIAL INSURANCE (CONTRIBUTIONS) (AMENDMENT) REGULATIONS, 2009

In pursuance of Section 117 of the Social Insurance (Guernsey) Laws, 1978-2004, the Social Insurance (Contributions) (Amendment) Regulations, 2009, made by the Social Security Department on 22nd December, 2009, are laid before the States.

EXPLANATORY NOTE

These regulations amend the Social Insurance (Contributions) Regulations, 2000 to provide for the Class 3 rate allowance to be taken into account when calculating the contribution liability of non-employed persons paying a reduced rate of contributions (i.e. making an income related application). As there is no equivalent allowance for self-employed persons, it is necessary to provide two different formulas to calculate the contribution liability of self-employed and non-employed contributors desirous of paying a reduced rate of contribution.

THE SOCIAL INSURANCE (RESIDENCE AND PERSONS ABROAD) (GUERNSEY) (AMENDMENT) REGULATIONS, 2009

In pursuance of Section 117 of the Social Insurance (Guernsey) Laws, 1978-2004, the Social Insurance (Residence and Persons Abroad) (Guernsey) (Amendment) Regulations, 2009, made by the Social Security Department on 22nd December, 2009, are laid before the States.

EXPLANATORY NOTE

These regulations amend the Social Insurance (Residence and Persons Abroad) (Guernsey) Regulations, 1978 to decouple the amount of the ‘overseas voluntary

contribution' from the upper annual income/earnings limits and make it a sum of money.

**THE SOCIAL INSURANCE (BENEFITS)
(AMENDMENT) (NO. 2) REGULATIONS, 2009**

In pursuance of Section 117 of the Social Insurance (Guernsey) Laws, 1978-2004, the Social Insurance (Benefits) (Amendment) (No. 2) Regulations, 2009, made by the Social Security Department on 22nd December 2009, are laid before the States.

EXPLANATORY NOTE

These regulations amend the schedules to the Social Insurance (Benefits) Regulations, 2003 and prescribe the reduced rates of benefit payable from 4th January 2010 to claimants who do not satisfy the conditions for entitlement to payment of the maximum rate of benefit.

**THE HEALTH SERVICE (MEDICAL APPLIANCES)
(AMENDMENT) REGULATIONS, 2009**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Medical Appliances) (Amendment) Regulations, 2009, made by the Social Security Department on 22nd December, 2009, are laid before the States..

EXPLANATORY NOTE

These regulations further amend the Health Service (Medical Appliances) Regulations, 1990, as amended, by increasing the charges payable to authorised appliance suppliers in Guernsey and Alderney by persons supplied with Part I, II or III medical appliances who are not exempt from such charges.

**THE HEALTH SERVICE (PHARMACEUTICAL BENEFIT)
(AMENDMENT) REGULATIONS, 2009**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Pharmaceutical Benefit) (Amendment) Regulations, 2008, made by the Social Security Department on 1st December, 2008, are laid before the States.

EXPLANATORY NOTE

These regulations amend the Health Service (Pharmaceutical Benefit) (Amendment) Regulations, 1990 so as to provide new forms of medical prescription for use by approved medical practitioners and approved dental practitioners and to provide a new form of declaration for use on the reverse side of medical and dental prescriptions.

THE BOARDING PERMIT FEES ORDER, 2009

In pursuance of Section 17 of the Tourist Law, 1948, the Boarding Permit Fees Order, 2009, made by the Commerce and Employment Department on 15th December, 2009, is laid before the States.

EXPLANATORY NOTE

This Order prescribes the fees payable by the holder of a boarding permit under the Tourist Law, 1948 as from 1 April 2010 and replaces the Boarding Permit Fees Order, 2008.

THE COMPANIES (REGISTRAR) (FEES) REGULATIONS, 2009

In pursuance of Section 501(1) of the Companies (Guernsey) Law, 2008, the Companies (Registrar) (Fees) Regulations, 2009, made by the Registrar of Companies on 23rd December 2009, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fees payable to the Registrar in respect of the performance of his functions under the Law, and have effect from 1 January 2010. The Companies (Registrar) (Fees) Regulations, 2008 and the Companies (Registrar) (Fees) (No.2) Regulations, 2008 are repealed.

CHILDREN (SECURE ACCOMMODATION) (GUERNSEY AND ALDERNEY) REGULATIONS, 2009

In pursuance of Section 120(3) of the Children (Guernsey and Alderney) Law, 2008, the Children (Secure Accommodation) (Guernsey and Alderney) Regulations, 2009, made by the Health and Social Services Department on 22nd December, 2009, are laid before the States.

EXPLANATORY NOTE

These Regulations are made under the Children (Guernsey and Alderney) Law, 2008 by the Health and Social Services Department. They make provision relating to the designation and standards of secure accommodation provided for the purpose of restricting the liberty of any child. The Regulations include arrangements for review and the imposition of conditions.

THE CHILDREN (RESIDENCE) REGULATIONS, 2009

In pursuance of Section 120(3) of the Children (Guernsey and Alderney) Law, 2008, the Children (Residence) Regulations, 2009, made by the Health and Social Services Department on 22nd December, 2009, are laid before the States.

EXPLANATORY NOTE

These Regulations are made under the Children (Guernsey and Alderney) Law, 2008 by the Health and Social Services Department. They prescribe the meaning of "the children of Guernsey and Alderney" for the purposes of that 2008 Law.

THE HARBOUR DUES AND FACILITIES CHARGES REGULATIONS, 2009

In pursuance of Section 5 (2) (c) of the Fees, Charges and Penalties (Guernsey) Law, 2007, the Harbour Dues and Facilities Charges Regulations, 2009, made by the Public Services Department on 24th December, 2009, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the harbour dues payable under section 2 of the Harbour Dues (Saint Peter Port and Saint Sampson) Law, 1957, and the charges payable for the use of harbour facilities under section 33(1) of the Harbours Ordinance, 1988. Under the terms of the Fees, Charges and Penalties (Guernsey) Law, 2007, these dues and charges may now be prescribed by regulations of the Public Services Department.

Legislative background.

Harbour dues payable under section 2 of the 1957 Law were originally set out in a Schedule to that Law. Section 1 of the Harbours, Moorings and Pilotage (Fees and Dues) Law, 1986 amended section 2 of the 1957 Law to provide that the dues would be payable at such rates as the States may, from time to time, by Resolution determine. In 2001, the 1957 Law was further amended by section 1 of the Harbour Dues, Harbour Charges and Mooring Charges (Guernsey) (Amendment) Law, 2001 to provide that such a States resolution could authorise the Board of the Public Services Department to amend the amount of those dues in respect of any specified twelve month period or periods by an amount not exceeding the change in the Guernsey Retail Price Index during such earlier twelve month period or periods as may be so specified.

Charges for the use of harbour facilities under section 33 of the Harbours Ordinance, 1988 were originally payable at such rates as the States may from time to time determine by resolution. Section 33 was amended by section 1 of the Harbours (Amendment) Ordinance, 2001 to provide that such a States resolution could authorise the Board of the Public Services department to amend the amount of those charges in respect of any specified twelve month period or periods by an amount not exceeding the change in the Guernsey Retail Price Index during such earlier twelve month period or periods as may be so specified.

THE PILOTAGE (FEE FOR RENEWAL OF SPECIAL PILOTAGE LICENCE) REGULATIONS, 2009

In pursuance of Section 5 (2) (c) of the Fees, Charges and Penalties (Guernsey) Law, 2007, the Pilotage (Fee for Renewal of Special Pilotage Licence) Regulations, 2009,

made by the Public Services Department on 24th December, 2009, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fee payable for the renewal of a special pilotage licence under section 16(b)(i) of the Pilotage Ordinance, 1967. Section 9 of the Pilotage Dues and Fees Ordinance, 1987 amended that subsection to provide that the fee would be such amount as the States may, from time to time by Resolution determine. In 2001, the Pilotage (Guernsey) Law, 1966 was (further) amended by section 3 of the Harbour Dues, Harbour Charges and Mooring Charges (Guernsey) (Amendment) Law, 2001 to provide that such a Resolution could authorise the Public Services Department to amend the amount of that fee in respect of any specified twelve month period or periods by an amount not exceeding the change in the Guernsey Retail Price Index during such earlier twelve month period or periods as may be so specified. Under the provisions of the Fees, Charges and Penalties (Guernsey) Law, 2007, the fee may now be prescribed by regulations of the Public Services Department.

**THE INCOME TAX (PENSIONS) (CONTRIBUTION LIMITS
AND TAX-FREE LUMP SUMS) REGULATIONS, 2010**

In pursuance of Sections 153(2), 157A(2)(b)(vi), 157A(5B) and 159 of the Income Tax (Guernsey) Law, 1975, as amended, the Income Tax (Pensions) (Contribution Limits and Tax-free Lump Sums) Regulations, 2010, made by the Treasury and Resources Department on 19th January, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations are substantially the same as the 2008 Regulations; the only material changes being the tax-free lump sums payable from an approved occupational pension scheme or an approved annuity scheme, the maximum tax-free amount of which increases to the prescribed amount.

**THE INCOME TAX (GUERNSEY) (VALUATION OF
BENEFITS IN KIND) REGULATIONS, 2010**

In pursuance of Section 8(2)(b) of the Income Tax (Guernsey) Law, 1975, as amended, the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations, 2010, made by the Treasury and Resources Department on 19th January, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations increase the levels of benefits from motor vehicles and accommodation benefits for proprietary directors and proprietary employees in a hotel or guesthouse, by 5% (rounded to the nearest £5) over and above those included in the 2008 Regulations.

Guernsey Retail Prices Index¹⁸⁸

Quarter 4 - 31 December 2009

Issue Date - 22nd January 2010



POLICY COUNCIL
THE STATES OF GUERNSEY

Introduction

The Guernsey RPIX and RPI, are measures of inflation used in Guernsey. They measure the change in the prices of goods and services bought for the purpose of consumption or use by households in Guernsey. The indices are published quarterly by the States of Guernsey Policy and Research Unit. The calculation of the RPIX and RPI are based on the price change of items within a 'shopping basket'. Whilst some prices rise over time, others will fall or fluctuate and the Indices represents the average change in these prices. More detailed information on the calculation of these indices can be found at the end of this handout.

Headlines

- Guernsey's RPIX ("core" inflation excluding mortgage interest payments) was 2.9% this quarter, compared to 2.4% at the end of September 2009 and 4.6% at the end of December 2008.
- In the UK and Jersey the equivalent RPIX figures for the end of December 2009 were 3.8% and 3.5% respectively (see *Figure 1*).
- Eleven of the fourteen RPIX groups increased over the year ending December 2009. The Motoring group made the largest contribution to the annual increase.
- The RPIX index stood at 143.7 (1998 base).
- The annual RPI inflation rate was 2.2% compared to -1.2% at the end of September 2009 and 1.2% at the end of December 2008.
- The RPI index stood at 141.0 (1999 base)

Figure 1: Annual Rates of Inflation - RPIX

