



BILLET D'ÉTAT

VIII
2000

WEDNESDAY, 15th March, 2000

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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 15th March, 2000**, immediately after the Meeting already convened for that day.

STATES BOARD OF ADMINISTRATION**GUERNSEY AIRPORT – INSTALLATION OF INSTRUMENTED RUNWAY
VISUAL RANGE (IRVR) EQUIPMENT**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

26th January, 2000.

Sir,

**GUERNSEY AIRPORT - INSTALLATION OF INSTRUMENTED
RUNWAY VISUAL RANGE (IRVR) EQUIPMENT**

The operation of Guernsey Airport when visibility is 1,500 metres or below, requires a measurement of runway visual range (RVR) to be made so that the information can be passed by Air Traffic Control to the pilots of arriving or departing aircraft.

International regulations require that the RVR measurement should provide the best possible assessment of the range over which the pilot of an aircraft can see the runway surface, runway markings or lights and, therefore, these measurements should ideally be taken at both the touchdown point and at the stop-end of the active runway.

At Guernsey Airport the requirements for an assessment of RVR conditions are currently met by the use of human observers drawn from the operational strength of the Airport's Rescue and Firefighting Service, with the observations being made from a single location adjacent to the touchdown point of the active runway.

The Board has reviewed this operation and has decided that the current manual observation system should be replaced with an automated system. The proposed system, which would be located at the touchdown point for each of the Airport's two operational runways, would be integrated with the Airport's existing semi-automatic meteorological observation system so that data gathered by the Instrumented RVR would be processed and transmitted simultaneously to aircraft and Air Traffic Control.

In practice, the unit located at the touchdown point of one runway would give stop-end readings when the other runway was being used.

The Board invited three companies to submit tenders for the supply and installation of the required equipment and two were received as follows:

Aeronautical and General Instruments Ltd (AGI)	£106,479
Muir Matheson Ltd	£105,887

When evaluating the tenders, the Board noted that both tenderers proposed to supply the same equipment, namely, that produced by AGI Ltd.

The Board acknowledges that the tender submitted by Muir Matheson is marginally less than that submitted by AGI Ltd. However, it is of the opinion that, as Muir Matheson would be reliant upon the manufacturer for future spares and maintenance support, any contract awarded to that Company will inevitably result in higher life cycle costs than if the contract was awarded to AGI Ltd.

In view of the foregoing, the Board recommends that the tender submitted by AGI Ltd for the supply and installation of the Instrumented RVR equipment at Guernsey Airport, should be accepted at a cost of £106,479. In addition, the Board estimates that the costs of ancillary ground works, including communications links and foundations, will cost £16,740. The Board also recommends the sum of £12,320 be added for contingencies.

The estimated total cost of the project should not, therefore, exceed £135,539.

A sum of £140,000 is included in the Airport's approved Capital Expenditure programme for the provision of the Instrumented RVR system.

The Board therefore recommends the States:

1. to approve the purchase and installation of Instrumented RVR equipment at Guernsey Airport;
2. to authorise the acceptance of the tender submitted by AGI Ltd in the sum of £106,479 and
3. to authorise the expenditure of a total sum not exceeding £135,539 including £16,740 for ancillary works and £12,320 for contingencies, which sum shall be charged as Capital Expenditure in the accounts of the States Airport and funded by means of a loan from the Ports Holding Account, to be repaid with interest by the Airport over the estimated working life of the equipment.

I have the honour to request that you will be so good as to lay this matter before the States with appropriate propositions.

I am, Sir,
Your obedient Servant,
R. C. BERRY,
President,
States Board of Administration.

[N.B. The States Advisory and Finance Committee supports the proposals.]

The States are asked to decide:—

- I.— Whether, after consideration of the Report dated the 26th January, 2000, of the States Board of Administration, they are of opinion:—
1. To approve the purchase and installation of Instrumented RVR equipment at Guernsey Airport, at a total cost inclusive of the sum of £16,740 for ancillary works, and £12,320 for contingencies, not exceeding £135,539.
 2. To authorise the States Board of Administration to accept the tender in the sum of £106,479 submitted by AGI Ltd for the supply and installation of that equipment.
 3. To vote the States Board of Administration a credit of £135,539, which sum shall be charged as Capital Expenditure in the accounts of the States Airport and funded by means of a loan from the Ports Holding Account, to be repaid with interest by the Airport over the estimated working life of the equipment.

STATES BOARD OF INDUSTRY**FAIR TRADING PRACTICES – CIVIL MATTERS**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

31st January, 2000.

Sir,

FAIR TRADING PRACTICES – CIVIL MATTERS**Section 1 Introduction**

In December 1995 the Board of Industry approached the States with a policy letter (Billet D’Etat XXII) proposing a strategy for the development of Fair Trading Practices in Guernsey.

The Board was very conscious that, except for the regulation of financial institutions, little legislation of this type existed in Guernsey. Increasingly the Island was being used as an operational base for some businesses which, due to their trading methods, were tarnishing the good reputation of the Island.

Additionally, with consumers becoming ever more sophisticated in their choices the Board felt that guidance needed to be given to set down clear rights and obligations on consumers and traders. Furthermore such rights and obligations were often expected by visitors to the Island or by those from overseas dealing with local companies.

However, the Board was also aware that much work would be required to adequately address this broad area and hence it sought support from the States in order to ensure its resources were appropriately used.

The matter was debated in full by the States who gave the Board clear support and resolved as follows:-

- “1. To agree, in principle, to the proposals outlined in that Report.**
- 2. To request the States Board of Industry to report back to the States as soon as possible, with detailed proposals for addressing the issue of fair trading practices.”**

Section 2 The 1995 Policy Letter

At the time of the 1995 debate a number of the current States Members were not sitting members of the House. The Board therefore considers it will be of assistance to repeat the main points of the 1995 Policy Letter.

The Board stated it was conscious that traders and consumers:

- “ • *have rights and obligations;*
- *are entitled to fair treatment;*
- *require certain protection; consumers from unfair trading practices and traders from unfair competition”.*

The Board also said:

“The Board believes that the majority of traders in the Island are both fair and honest. However the Board also believes that consumers should not be prejudiced by those occasions when unscrupulous trading practices are undertaken.

Where complaints occur the Board uses its good offices in an attempt to bring the consumer and trader together in order to resolve the dispute, however the services offered do not have the force of law. They rely on the mutual willingness of the parties concerned to approach the problem objectively and to consider resolving their differences amicably. This results in some consumers having to accept a compromise when their complaint clearly justifies settlement in full.

Although the Board recognises that voluntary resolutions of problems are often the most appropriate way forward, nevertheless, in the Board's opinion, the time has now come when some limited form of Fair Trading Legislation should be introduced. The Board believes this would be in the interests of consumers, traders and the Island alike. Inevitably, and rightly so, such legislation would particularly affect the unscrupulous trader, whilst the honourable, fair business is unlikely to be affected.

The Board is also conscious of the need to protect the Island's enviable business reputation. Whilst other jurisdictions have produced Fair Trading Legislation, Guernsey essentially has none. This does not place Guernsey in a favourable light especially when instances arise which attract wide publicity and where we are powerless to act”.

The Board and the Citizens Advice Bureau were receiving nearly 2,000 complaints and enquiries per year (a figure which has been increasing steadily) and these reflect the broad range of goods and services purchased by consumers and the range of problems associated with such purchases.

Analysing the statistics it was stated:

“It is clear to the Board that very few of the complaints received are unjustified, the majority being made by ordinary people who feel aggrieved when they consider they have been treated unfairly”.

Voluntary Codes of Practice had been promulgated by the Guernsey Motor Trades Association and the Chamber of Commerce and the Board said:

“Whilst both schemes have undoubtedly raised standards of trading within the Island they also suffer from certain major disadvantages.

In particular:

- *the schemes are purely voluntary, do not cover all traders and cannot therefore set uniform standards of fair trading;*
- *they lack any specific sanctions;*
- *justified complaints which are upheld by the schemes but which the trader refuses to acknowledge cannot be enforced;*
- *because the schemes are produced by trade associations, they are often not perceived by consumers as being sufficiently independent and therefore not adequately representing their interests.”*

Finally, the Board added:

“The Board is clear that its proposals will have little effect on the majority of traders for the majority of transactions. What it is seeking to achieve is adequate legislation which can be used to set out fair standards of trading and to satisfactorily resolve legitimate complaints”.

Section 3 Formulating the Detailed Proposals

In setting out to report back to the States on “detailed proposals for addressing the issue of fair trading practices” it soon became clear to the Board that there were two broad areas of law to be addressed. Firstly those matters concerning civil rights; for example the right for a consumer to obtain redress if faulty goods are supplied and secondly the issue of trading practices; for example to prevent the sale of unsafe toys.

It also soon became clear that whilst certain civil rights may exist under local customary law there is also a great deal of uncertainty in regard to their scope; local law, unlike the UK and elsewhere, not having been clarified by statutory provisions.

Recognising the shortcomings in local law the Board was anxious to progress on all subjects, but it recognised that such an approach would take a considerable time and therefore the task had to be broken down into manageable parts. The Board also recognised that whilst the area of trading practices was probably of greater overall concern it was necessary to first have in place civil matters, the fundamental rights, and obligations for consumers and traders, before addressing Fair Trading Practices. To do otherwise would be like placing the cart before the horse resulting in unworkable proposals in respect of Fair Trading Practices.

After much consideration the Board approached the Law Officers with its initial views and subsequently in September 1997 a meeting was held in order to discuss how to proceed.

The Law Officers identified that any new legislation in this subject area would have an effect on the commercial life of the Island and therefore recommended that a small Working Group should be formed. This was to consist of a Legal Draftsman, the Board's Chief Trading Standards Officer and two experienced local Advocates.

It was also decided that the Working Group should undertake a detailed study of UK legislation in this area and to determine which provisions are appropriate for Guernsey. From this study it would be possible to prepare a policy letter for submission to the States.

The establishment of a Working Group was seen by the Board as a very positive move. It would ensure the Board's final proposals were workable, were appropriate for Guernsey, but perhaps most important the Group would be able to suggest provisions which would assist traders in their day to day business.

Section 4 Why Follow UK Legislation?

On a number of occasions States members have expressed concerns over the amount of legislation being adopted by the Island and have expressed the view that there are times when UK legislation has been incorporated into Guernsey Law when a more simplified version would be more appropriate.

The Board of Industry is fully aware of the need to ensure that local businesses are not overburdened with legislation. At the same time, however, the Board is aware of the need to ensure Guernsey's sound business reputation is protected.

The Board does not therefore believe it is realistic, or indeed desirable, to continue into the future without setting down much clearer rights and obligations than might currently exist in customary law.

A balancing act must therefore occur to ensure any provisions are necessary and are appropriate for Guernsey.

One option that was available to the Board was to sit down with a clean sheet of paper and consider the broad outline of provisions required. However, this was considered impractical, as such provisions could only be identified in detail by studying legislation from other jurisdictions.

For some time now, and for very good reason, Her Majesty's Law Officers have often advocated first studying UK legislation in any new area of law being considered. Some of the factors in favour of such an approach include the availability of reference material, the existence of case law which is persuasive in the local courts and the fact that any professional training can be applied locally.

Perhaps most importantly though is the fact that we are able to draw on the UK experiences and ensure the provisions are appropriate for Guernsey. Much of the UK legislation has been in force for many years (since the nineteenth century in the case of the Sale of Goods Act) and therefore has been refined in the light of experience. This refining process has resulted in legislation which countless consumers and traders are familiar with – and also consider provide sufficient rights and obligations.

The advantage of basing local law on UK provisions is also a very practical one. Many UK businesses operate in Guernsey and as a general rule they adopt UK methods of trading. If Guernsey's legislation were different this may well require those companies to modify their trading practices and some may well withdraw from the Island, reducing consumer choice. Again, local businesses can utilise UK training courses whenever local law is similar to that in the UK.

The Board has been particularly pleased to obtain the advice of two senior local Advocates. In the Board's view they have identified the need to ensure the proposals strike the correct balance, are appropriate for Guernsey's needs and are not an ill-considered adoption of UK legislation.

As previously stated the Board is fully aware of the need to ensure proposed legislation is identified as necessary and also appropriate for Guernsey. The Board has no reservations whatsoever that the recommendations in this policy letter satisfy those criteria.

Section 5 The Trading Practices Working Group

Advocates Nikolas van Leuven and Christopher Bound kindly donated their services to assist the Board's Chief Trading Standards Officer and the Legislative Draftsman reviewing the legislation.

Their knowledge and expertise have been invaluable in evaluating which proposals would be appropriate in Guernsey Law and the Board wishes to register its thanks for their contributions towards developing these proposals.

It has been interesting that throughout the meetings the Advocates have regularly commented that the introduction of particular provisions would bring about a greater degree of certainty – to the benefit of traders as well as consumers. This reinforced a view always held by the Board. Whilst it recognised Fair Trading Practices legislation would predominantly be of assistance to consumers it felt that establishing "ground rules" that would apply to all would bring benefits to traders.

It was stated earlier that the Board identified it was important to concentrate initially on the civil matters associated with Fair Trading Practices. The Working Group therefore evaluated legislation in the following areas:-

- (i) The sale and supply of goods and services;
- (ii) Unfair contract terms;
- (iii) Disposal of uncollected goods; and
- (iv) Misrepresentation.

Each are considered in more detail in the following sections.

Section 6 Sale and Supply of Goods and Services

Although many thousands of transactions occur locally each day without problems, the lack of local statutory legislation often gives rise to uncertainty when things “go wrong”.

Whilst most disputes are resolved, this is not always achieved to the satisfaction of consumers who often have to accept “second-best” as to take matters further can be expensive, time consuming and affected by uncertainty.

The Board does not believe this is a satisfactory situation for a developed society and in broad terms is proposing:-

- (i) The customary law of the Island should be clarified with regard to the formation of contracts for the sale of goods, including how contracts are made, the subject matter of the contract, how the price shall be determined if not specifically agreed and also in respect of implied terms relating to the quality of goods.
- (ii) Clarification should also exist in respect of the effects of the contract of sale, including the passing of title to the goods and determining when such title passes.
- (iii) The rights and obligations of buyers and sellers should also be clarified, including the duties of buyers and sellers, the buyers’ right to examine goods and rules regarding acceptance of the goods.
- (iv) The rights of the unpaid seller also require clarification, together with the actions available in respect of the breach of the contract.

The Board believes similar provisions should exist regarding the supply of services including setting down that a service should be carried out with reasonable care and skill, and where no time for completion has been agreed, within a reasonable time.

These proposals broadly follow the provisions set out in the United Kingdom Sale of Goods Act, 1989, the Supply of Goods and Services Act, 1982 and the Sale and Supply of Goods Act, 1994.

Section 7 Unfair Contract Terms

Experience in the UK showed that once certain rights and obligations were established in statutory laws, some traders sought to exclude such rights by introducing specific exclusion terms in contracts.

Consumers were often unaware of the effect of such exclusion terms and were seriously disadvantaged as a result.

The Board believes that the use of such exclusion terms should be prevented by introducing provisions including:-

- (i) To ensure liability for negligence for death or personal injury cannot be avoided;
- (ii) To ensure liability for other loss or damage, or liability for other negligence cannot be avoided unless it is reasonable;
- (iii) Provisions to ensure consumers are not disadvantaged in contracts; and
- (iv) In respect of the liabilities arising in the contract.

The Board believes that an assessment of what is “reasonable” will require consideration of the facts, based upon each set of circumstances, but should take into account:-

- (a) The relative bargaining positions of the parties;
- (b) Whether the customer received an inducement to agree to the term;
- (c) Whether the customer knew (or ought reasonably to have known) of the existence and extent of the term;
- (d) Whether compliance with a special term would be practicable; and
- (e) Whether the goods were provided to the special order of the customer.

These proposals broadly follow the provisions in the United Kingdom Unfair Contract Terms Act, 1977, and the Unfair Terms in Consumer Contracts Regulations, 1994.

Section 8 Disposal of Uncollected Goods

Section 6 of this letter proposes that there should be a clear duty on traders to undertake a service with reasonable care and skill. This duty would extend to the requirement that goods which are entrusted to traders, such as goods left for repair or other processing, would be cared for with reasonable care and skill. This obligation would extend whilst the goods are in the care of the trader.

However, on occasions, consumers fail to collect goods and where no express agreement has been reached between the parties, the trader is unable to dispose of those goods. In addition the trader may have undertaken work on the goods and if they are sold he may be able to offset some or all of his costs.

The Board therefore proposes rules should be set out which will allow traders, under certain circumstances, to dispose of uncollected goods.

The traders should be required to make every reasonable effort to contact the consumer to inform them that the goods are available for collection. Such effort

should include at least one notice in writing (or other similar secure method) to the consumer at his last known proper address.

The trader should be entitled to withhold any money to compensate him for work done, and for the cost of disposal. Any surplus should be made available to the consumer if he seeks it. Action may still be taken, however, for any outstanding balance owed to the trader.

Any person buying or otherwise obtaining the goods, should obtain good title to them (i.e. own them) subject to the provisions of any other enactment (e.g. if they were stolen, good title could not pass); and

The trader shall not be entitled to sell or dispose of the goods when the consumer has indicated he intends to initiate court (or other similar) proceedings, in respect of the goods or the service.

These proposals broadly follow the provisions in the United Kingdom Torts (Interference with Goods) Act, 1977.

Section 9 Misrepresentation

The formation of a contract will often have associated with it, descriptions relating to the goods or service which is the subject of the contract.

Occasionally such statements may be incorrect, they may misrepresent the subject of the contract. However, under local customary law only certain rights of action are available to the disadvantaged party, and these depend upon whether the misrepresentation was made in a fraudulent, negligent or innocent manner.

The Board considers the rights of the disadvantaged party should be clarified to include provisions similar to the United Kingdom Misrepresentation Act, 1967.

It is therefore proposed, amongst other matters, that a contract should be capable of rescission, even if the statement was made negligently. Similarly if the statement was made innocently the Courts should have a discretion to award damages in lieu of rescission where it would be just to do so.

Section 10 ecommerce

Since the Board's initial approach to the States in 1995 there has been a significant growth in the use of the Internet. This has resulted in many companies seizing the opportunity to broaden their trading bases and hence to attract customers from further afield, especially from communities where rights and obligations are well established.

Guernsey is a suitable base for ecommerce as it requires much lower resources than a conventional business. However, the technology can work to Guernsey's disadvantage. An impression can be created to the customer that the business is based in Guernsey, when in fact Guernsey is acting as no more than an "electronic mailbox", and forwarding orders to a company based elsewhere. If the goods or

service supplied are sub-standard the reputation of Guernsey could significantly suffer from any resultant negative publicity.

Therefore, whilst the Board wishes to encourage the development of sound, beneficial ecommerce it considers that it is important to ensure Guernsey maintains the standards of trading that can be expected in a modern world.

Other communities are currently in the process of reviewing their legislation to establish to what extent ecommerce should be facilitated or indeed regulated. At this stage it is too early to determine the full results of these reviews but the Board is anxious that its proposals set out in this letter do not conflict with the development of ecommerce, or its regulation should the latter be considered necessary.

If the proposals in this policy letter are accepted by the States, the Board would wish, as the *Projet de Loi* is prepared, that any developments in these areas of Law addressed by this policy letter which might occur relating to ecommerce, should be incorporated providing they facilitate sound, reliable and economic business practices. Any such changes will be made clear to States Members when the *Projet* is brought before the House and it may well be necessary to enable subsequent changes to be brought about by subordinate legislation due to the rapidly changing nature of this subject.

Section 11 Enforcement of Civil Matters

In section 3 of this letter it was explained that the proposals in respect of civil matters would be setting down fundamental rights and obligations between traders and consumers. But how are those rights and obligations to be enforced?

All of the proposals outlined in the Sections 6 to 9 would give rise to the right of civil action to be taken by the wronged party. Because the matters will be set down in the substantive law of the Island the Board believes the wronged party will ultimately be able to pursue the matter through the civil courts. (i.e. the Petty Debts Court or the Royal Court sitting as a civil court).

However it can be anticipated that many consumers or traders will be able to resolve any differences in an informal way – as they do at present. The clarity in the Law will, however, mean that both parties should be more aware of their rights and obligations which should result in a more focused approach to complaint resolution.

Where the differences cannot be informally resolved, or where either party might be seeking guidance on how to proceed, the Board will continue to provide a free and impartial advice and investigation service. The Citizens Advice Bureau is also expected to continue to offer a similar service, although they will be less likely to enter into discussions with traders.

In its earlier policy letter the Board highlighted consumers' concerns over the expense and formality of the civil courts. The Board was proposing the setting up of a "quasi-judicial" panel that would be able to consider the rights of redress in individual cases. The Board does not now think this is an appropriate way forward. Not only would there be resource implications in setting up such a panel, there would also be many

practical difficulties. These would include constitutional matters as to how the position of the panel could integrate into the current civil court structure and the need to adequately train the panel members to ensure their judgements were sound in law; and in any case there would have to be a right of appeal to the courts on questions of law.

Although the concerns over the experience and formality of the civil courts will remain, the Board is of the opinion that the increased clarity of the law in respect of civil matters will result in a simplification of the court process. This should overcome some of the fears consumers currently have. In addition fewer cases are likely to be needed once traders and consumers realise where their rights and obligations lie.

The Board's advice and investigation service will also be available to businesses, either in their dealings with consumers or where the business has obtained a product or service which is directly comparable with a normal consumer transaction (for example the purchase of a kettle for the office coffee). However, the Board will not provide a service when businesses have purchased goods or services which are not directly comparable with normal consumer transactions.

Section 12 Application of Proposals to Transactions between Businesses

Current UK legislation relating to the sale of goods can be readily traced back to the 1800s, notwithstanding that it has received limited amendments to reflect modern trading expectations.

The UK law had principally developed from the need to establish rights and obligations in dealings between merchants, especially where the goods were not seen until delivery had occurred often some while after the contract was formed.

It was not until the "consumer society" came about in the UK, especially during the 1960s, that the law on the Sale of Goods was regularly used for dealings between consumers and businesses.

When the working group considered the UK law on the sale of goods it identified that many of the provisions could be equally applied to dealings between businesses or to those between consumers and businesses or in certain respects between two consumers.

The Working Group identified that with the current lack of clarity in many areas of commercial customary law, the introduction of provisions similar to those in the UK would assist local businesses rather than being a burden.

Whilst the Board's proposals are principally aimed at redressing any imbalance that may exist when consumers deal with businesses – (because the latter can be expected to have a more dominant position) – the Board considers that in certain instances it is appropriate to set down fair standards of trading that will apply irrespective of the status of the parties.

The Board therefore intends that all its proposals should closely follow the principles existing in comparable UK legislation and apply to all types of dealings unless it is appropriate for them to be limited only to dealings involving consumers.

Section 13 Staffing and Financial Implications

Whilst the Board's Officers will continue to provide a confidential consumer advice and complaint investigation service, it is not envisaged that extra resources will be required as a result of these proposals.

During the initial stages of the new Law it is envisaged there may be an increase in the **number** of enquiries which have to be dealt with by the Trading Standards Service, but the Board will endeavour to deal with them using its existing resources. The clarification of individuals' and traders' rights and obligations under the Law should reduce the time currently necessary to deal with each individual enquiry, thereby increasing the number that can be dealt with.

The Board is not therefore seeking additional financial resources.

Section 14 Impact upon Local Traders and Local Trade

In 1995 the Board felt that its proposals "would have little effect on the majority of traders for the majority of transactions." This is a view still held by the Board today.

The Board believes the Island can be proud of the trading methods of the majority of local traders. Without the intervention of legislation they have adopted sound methods which ensure fair trading exists. In many instances they have adopted good practices, often based on UK principles, and naturally many of the UK businesses trade in a similar manner in Guernsey as they would in the UK.

For these traders the Board's proposals will have little effect. It is unlikely they will have to alter their trading methods in any significant way and the Board has been cautious to ensure sound UK principles will automatically satisfy the local provisions or "practices".

Unfortunately, however, not all locally based businesses adopt such sound trading practices and it is for this reason that the Board is putting forward its proposals.

From the Board's experience these traders do not respond positively, even to the skilled negotiator, leaving the disadvantaged consumer having to consider protracted, and often expensive methods to try to resolve their complaint.

It will depend upon how "unfair" any particular trader's methods are as to what extent the Board's proposals will impact upon their business. The Board feels it is quite appropriate that the greatest impact will impinge on those whose trading practices are the most unfair.

As stated earlier these proposals will, in several instances, apply to dealings between businesses. Whilst businesses are more able to look after themselves, there is every

likelihood that these proposals will be of benefit when a business finds itself being disadvantaged by an unfair supplier.

The Board is also of the opinion that introducing legislation of this type may well increase local trade. In a market place where consumers are given clear and reasonable rights they are generally more willing to purchase goods. Local traders may well therefore recoup some of the considerable trade currently lost to mail order and other suppliers in the UK and elsewhere.

Section 15 Consultation

With proposals which could impinge on business life in Guernsey and also on the rights or obligations of consumers the Board felt it was vital to consult widely on its proposals.

A report was prepared and circulated to the sixteen interested parties identified in Appendix I. Two meetings were held, one with representatives from the trader groups and the other with persons representing consumer interests. Written comments were invited subsequent to those meetings.

The Board is pleased to report that both meetings were very successful with a number of constructive comments being made. In particular, several statements in full support of the Board's proposals were received and there were no indications of disapproval.

The Board would like to register its thanks to those who participated in the consultation process.

Section 16 Impact upon Other States Policies

A number of events over recent years have shown that it is important for Guernsey to demonstrate that it supports legitimate business whilst being unwilling to support those businesses using less than sound tactics.

Although much of the concern in the past has centred on the finance industry, the Board believes its Fair Trading Practices proposals help go some way toward Guernsey maintaining a positive image in the minds of the rest of the World.

The States have also resolved to support the Tourist Industry and again the Board's proposals are seen as supporting that resolution.

Visitors to the Island are generally drawn from societies where clear rights and obligations have existed for some considerable time. On those occasions when things do go wrong visitors expect to enjoy similar rights as they might experience at home. The Board therefore sees it as another element in Guernsey's favour if tourists can obtain fair and reasonable levels of protection.

The proposals are not expected to have any effect on other States policies, except where they might impact on Trading Boards in respect of their normal transactions.

Section 17 Future Fair Trading Practices Proposals

In Section 3 of this letter it was explained that the Board was initially placing proposals which will only deal with civil matters. Thus the proposals in this letter will not address instances such as preventing unsafe toys from being sold, preventing misleading descriptions being applied to goods or requiring clear price indications. Furthermore the current proposals will not address issues relating to the provision of consumer credit, such as high penalties for the early termination of an agreement, or the lack of adequate information to compare interest rates.

Again in Section 3 it was stated that the Board had to progress with the civil law provisions before addressing the type of trading practices outlined above.

The Board intends that its proposals on these other trading practices will be formulated in a similar manner to its civil proposals. Thus the Trading Practices Working Group will again go through the relevant UK legislation to identify those provisions considered appropriate for Guernsey.

The Board is unwilling to quote a firm timescale for when it will approach the States on these other issues – several factors are outside the Board's control and it would be unfair to pressurise those who are giving their time voluntarily. However the Board does anticipate it will be in a position to approach the States again by the end of 2001 at the latest.

Section 18 Summary

In December 1995 the States instructed the Board to "report back with detailed proposals for addressing the issue of fair trading practices".

There are two broad areas to be considered, those dealing with civil matters, (such as the rights of redress if faulty goods are supplied) and fair trading practices matters (such as setting down the standard of safety that toys must reach).

The Board recognises that the latter subject matter is of greater direct concern, but it realises that it is necessary to initially deal with civil matters otherwise consumers and traders rights and obligations in relation to fair trading practices would be unworkable.

This policy letter therefore only deals with civil matters, other trading practice matters being addressed by a future policy letter.

After discussions with the Law Officers a small Working Group consisting of two experienced local Advocates, the Board's Chief Trading Standards Officer and a Legislative Draftsman, was formed to consider UK legislation in this subject area and to determine which provisions are appropriate for Guernsey.

The Working Group considered legislation in the areas of:-

1. The sale and supply of goods and services;
2. Unfair contract terms;
3. Disposal of uncollected goods; and
4. Misrepresentation.

The Board's detailed proposals in each of these subjected areas is included within this letter, but broadly it is proposed that the existing customary law is clarified to provide rights and obligations similar to that currently existing in the United Kingdom. It is also proposed that legislation should take into account legislative developments elsewhere to ensure fair and reasonable standards apply when trade is conducted by electronic means (ecommerce).

Whilst the Board is mindful of the need to ensure unnecessary new legislation is not introduced it is also conscious of the need to ensure Guernsey is portrayed as a sound base in which to do business. Likewise locals and tourists should be safeguarded by providing reasonable levels of protection – as are now expected by today's consumers.

The Board does not anticipate its proposals will have any effect on its staffing or other resources.

The Board believes its proposals will create a climate where people are more willing to purchase goods and hence will result in increased turnover for local traders.

Section 19 Recommendations

The States are recommended to resolve:-

1. To introduce legislation relating to the sale and supply of goods and services, as described in section 6 of this letter.
2. To introduce legislation relating to Unfair Contract Terms, as described in section 7 of this letter.
3. To introduce legislation relating to the Disposal of Uncollected Goods, as described in section 8 of this letter.
4. To introduce legislation relating to Misrepresentation, as described in section 9 of this letter.
5. To ensure that during the preparation of any such legislation described above, account will be taken of any developments in those areas of Law, and which relate to ecommerce in order to facilitate sound, reliable and economic business practice, as set out in section 10 of this letter.

6. To accept the principle, as detailed in section 12 of this letter, that, where appropriate, the legislation should not be restricted to dealings between consumers and traders.
7. To note the Board's intentions to address future Fair Trading Practices matters, as set out in section 17 of this letter.

I have the honour to request that you will be good enough to lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

I am, Sir,
Your obedient Servant,
P. T. R. FERBRACHE,
President,
States Board of Industry.

Organisations Consulted

Bridge Traders Association
 Chamber of Commerce
 Citizens Advice Bureau
 Guernsey Building Trades Employers Association
 Guernsey Consumer Group
 Guernsey Financial Services Commission
 Guernsey Hotel and Tourism Association
 Guernsey International Business Association
 Guernsey Manufacturers and Exporters Group
 Guernsey Motor Trades Association
 Guernsey Tourist Board
 Institute of Directors
 Island Federation of Women's Institutes
 Retired Members and Old Age Pensioners Association
 St Peter Port Traders Association
 1992 Group

[N.B. The States Advisory and Finance Committee supports the proposals.]

The States are asked to decide:—

- II.— Whether, after consideration of the Report dated the 31st January, 2000, of the States Board of Industry, they are of opinion:—
1. That legislation shall be introduced relating to the sale and supply of goods and services, as described in section 6 of that Report.
 2. That legislation shall be introduced relating to Unfair Contract Terms, as described in section 7 of that Report.
 3. That legislation shall be introduced relating to the Disposal of Uncollected Goods, as described in section 8 of that Report.
 4. That legislation shall be introduced relating to Misrepresentation, as described in section 9 of that Report.
 5. To ensure that during the preparation of any such legislation described above, account will be taken of any developments in those areas of Law, and which relate to ecommerce in order to facilitate sound, reliable and economic business practice, as set out in section 10 of that Report.
 6. To accept the principle, as detailed in section 12 of that Report, that, where appropriate, the legislation shall not be restricted to dealings between consumers and traders.
 7. To note the States Board of Industry's intentions to address future Fair Trading Practices matters, as set out in section 17 of that Report.
 8. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

STATES ADVISORY AND FINANCE COMMITTEE

FUTURE ARRANGEMENTS FOR THE PROVISION OF POSTAL AND ELECTRICITY SERVICES

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

16th February, 2000.

Sir,

FUTURE ARRANGEMENTS FOR THE PROVISION OF POSTAL AND ELECTRICITY SERVICES

1. Introduction

- 1.1 At its meeting in June 1998 (Billet d'État X, 1998) the States considered a policy letter from the Advisory and Finance Committee on the commercialisation of the Post Office Board, the Telecommunications Board and the Electricity Board which enclosed a copy of a joint report from the Committee and those three Boards.
- 1.2 The joint report provided the background to the proposals in the policy letter and relevant extracts are reproduced below:

"To varying degrees, each of the Boards is facing major changes in the technological and commercial environments in which they operate and, in some cases, increased competition in their markets from both on and off the Island. As States committees the Boards are subject to constraints at an operational level on their activities and sometimes this makes it difficult for them to react quickly to changing circumstances and to pursue the opportunities for improved performance which they believe exist within the environment in which they operate but which may not be a feature of non trading committees' activities. The manpower arrangements in terms of limits on numbers and centrally negotiated pay and conditions which do not always provide for the flexibility in the use of staff required in a commercial environment is a significant constraint but it is not by any means the only one. If the services currently provided by the Boards can be delivered in a more efficient and effective manner it would bring benefits to the community as a whole including the States and consumers."

Elements within the current range of activities of each Board can be considered to be core services the provision of which are a strategic necessity for the Island. The community would expect those services to be universally available with citizens enjoying uniform access to them in terms of cost and quality. If these services were to be left to the free market to provide there would be a danger of fragmentation and cherry picking of the more lucrative areas of services possibly leaving less commercially viable but socially desirable services to be subsidised at the expense of the taxpayer.

It was concluded that to avoid this, the provision of core services should require the granting of a licence by the States

The provision of core services by ... licensed operators removes market pressures of competition for those services. To protect the interests of the community and customers therefore, the granting of a licence should be part of a regulatory framework which at a strategic level sets out the required levels of service, quality standards and pricing policies which will compensate for the absence of market pressures. The regulatory framework will also need to ensure that there is an effective and transparent distinction between costings for core and non core activities to avoid cross subsidies and unfair competition with other providers of non core services

The proposal being brought forward therefore is that the ... licensed operators providing core services in Guernsey should continue to be 100% States owned but should be reconstituted as a separate legal entity to be known as States Trading Companies

In these circumstances however there needs to be a clearly defined mechanism for the States to fulfil its role as owners/shareholders of the separate legal entities in terms of the financial return required from the assets utilised, the extent of non core activities etc.

Currently each Trading Board is a committee of the States and, has delegated to it, or implicitly fulfils the roles of owners/shareholders, regulators and management board and, as a form of check on their activities, they are subject to the low level operational constraints referred to earlier. In these circumstances confusion and conflicts inevitably arise as to the balance which needs to be given to each role when considering a particular issue.

It is proposed that these three roles:

- Owners/Shareholders;
- Regulators;
- Management Board;

are separated and that political responsibility for the strategic level constraints of a regulatory framework and the exercise of owners/shareholders' roles be delegated to two separate States committees ...

It is proposed that on behalf of the States the Advisory and Finance Committee should undertake the role of representing the interests of the owners/shareholders and be responsible for setting financial requirements on the entities, the appointment and remuneration package of the management boards and generally looking after the owners/shareholders' interests through the consideration and approval of strategic plans for the development and operation of the business.

It is proposed therefore that on behalf of the States the Board of Industry should undertake political responsibility for the regulatory functions"

- 1.3 The policy letter set out the views of the Civil Service Board on the proposals in the following terms:

"... whilst, in principle, the Civil Service Board might not oppose a change in the Status of the Trading Boards which enabled increased efficiency in the delivery of services, it has three main concerns about the current proposals:

- the credibility of the Staff Number Limitation Policy if the wholly States owned trading entities were excluded from its provisions;
- how agreements on pay and conditions negotiated independently by the States trading entities might affect central negotiations undertaken by the Civil Service Board;
- whether or not any new regulatory structure and arrangements for setting financial targets could ever be robust enough to control staff numbers and costs as adequately as the controls currently exercised by the Civil Service Board."

- 1.4 The policy letter included a three clause recommendation intended to apply uniformly to the commercialisation of the three Trading Boards but the Advisory and Finance Committee also commented that "it is envisaged that the whole process may progress at a different pace for each Board reflecting both the different nature of their activities and possibly the necessity to develop slightly different regulatory and other arrangements for each of them".

- 1.5 For this reason the Committee did not oppose an amendment which enabled the States to vote separately on the application of the three clauses to each of the Boards. After consideration of the policy letter the States resolved to approve the application of the clauses shown below to each of the Boards:

- "i) to agree in principle that arrangements for the provision of [electricity, postal and telecommunications] services shall be revised along the lines described in that Report;
- ii) to agree in principle that detailed proposals for the implementation of such revisions shall be based on [electricity, postal and telecommunications] services being delivered by States Trading Companies having the status of body corporate wholly owned by the States;
- iii) to direct the Advisory and Finance Committee, [the Electricity Board, Post Office Board and Telecommunications Board] to liaise with the appropriate committees of the States, in particular the Board of Industry and the Civil Service Board, on the preparation and presentation to the States of detailed proposals for the implementation of the revised arrangements including appropriate transition measures."

1.6 Since approval of the proposals the Advisory and Finance Committee, Board of Industry, Civil Service Board and the three Trading Boards have separately and jointly been working on the development of detailed proposals to give effect to the "in principle" decision of the States. A staff level Commercialisation Liaison Group comprising of the chief and/or senior officers of the committees involved was formed to help coordinate the work and joint meetings of those committees at political level have been held as and when necessary. Trading Board staff have been kept informed on the process either through direct liaison with the senior management and politicians on an individual Board basis or, where appropriate (such as on pension issues), through joint liaison between representatives of staff groups from all the Boards and other committees.

1.7 In very broad terms the work that needed to be undertaken to develop detailed proposals can be broken down into the following elements:

The Regulatory Arrangements

The Structure and Status of States Trading Companies

The Transition Arrangements for:

a) Staff

how to protect the rights of the staff who are to be transferred from being States employees to being employees of legally separate commercial entities;

b) Assets

how to determine which of the existing assets of the Trading Boards are to be transferred to the commercialised entities and under what terms;

c) Rights and Responsibilities

how to enable the statutory rights and responsibilities of the Trading Boards (for instance the right to open roads or to enter private properties) to be conferred on commercial bodies granted licences to provide services under the Regulatory arrangements.

- 1.8 In January 2000 (Billet II of 2000) the States considered a report from the Advisory and Finance Committee on the Future Provision of Telecoms Services for the Bailiwick. That report explained how the development, implementation and marketing of a detailed ecommerce strategy and creating the conditions for the development of ecommerce is essential for the future economic wellbeing of the Bailiwick. An essential prerequisite to the development of ecommerce in the Bailiwick is the availability of world class telecommunications services. The report went on to describe the particular circumstances in regard to the delivery of telecommunications services locally and in particular the global considerations which impact on the provision of local services.
- 1.9 The report proposed that future arrangements for the delivery of telecommunications services in the Bailiwick had to go much further than commercialisation and the States approved the implementation of a "licensed operator" approach.
- 1.10 In January 2000 the States also approved proposals from the Board of Industry for the implementation of a regulatory regime which would apply not only to the delivery of telecommunications services but also to electricity and postal services however those services might be delivered in the future.
- 1.11 The Advisory and Finance Committee is now recommending that:
 - a) electricity services shall in future be provided by a States Trading Company set up and structured as described in this policy letter;
 - b) postal services shall in future be provided by a States Trading Company set up and structured as described in this policy letter.
- 1.12 In January 2000 the States also approved proposals from the Civil Service Board for the protection of employees' rights on the transfer of staff from the States Telecommunications Board to a new operator. In its comments on those proposals the Advisory and Finance Committee expressed its anticipation that

the necessary legislation would be drafted in such a way that the principles could be easily extended to cover employees affected by any future transfer of functions, in particular the delivery of electricity and postal services.

The Advisory and Finance Committee is now recommending that the States formally agree that this should happen.

- 1.13 Thus Regulatory Arrangements and general provisions for Transition Arrangements for staff are already in place and this report deals with the remaining issues in relation to implementing the commercialisation of the Electricity Board and Post Office Board (subsequently referred to jointly as the two Trading Boards).
- 1.14 In developing the proposals in this report, the committees involved have borne in mind that, in giving in-principle approval to the commercialisation process, some States members were awaiting presentation of detailed proposals and a clearer picture of the implications. The Civil Service Board in particular was concerned about the implications on the pay and conditions of remaining public sector workers and on the Staff Number Limitation Policy.
- 1.15 The Advisory and Finance Committee commissioned consultants KPMG to undertake, in full consultation with the Civil Service Board and the Trading Boards, an assessment of the Economic Impact of Commercialisation. The report from KPMG has to some extent been overtaken by the proposals for telecommunications services but it has been lodged at the Greffe as a matter of public record. Of continuing relevance however are the comments on pay levels and on the knock-on effect on the public sector. The sections of the KPMG report dealing with those issues are reproduced in Appendix I of this report and include the comment:

"Following discussions with the Trading Boards we believe that the changed conditions of contracts, the wage increases being contingent on performance measures and the provision of flexibility, will result in the creation of a different perception of employment. As such, any wage increases in the commercialised Trading Boards are unlikely to be regarded as like for like with the civil service".

- 1.16 The overall conclusions of KPMG on commercialisation were as follows:

" in terms of the current services provided by the Trading Boards, the overall economic impact of commercialisation on the revenues received by the States of Guernsey is small. The potential for return to the owner will depend on levels of reinvestment and how such reinvestment is funded;

- . the consumer will benefit from the introduction of commercialisation in terms of likely reductions in tariffs and increases in the quality of service;
- . the position without commercialisation will not be stable and there is the potential for gradual decline in the position of some if not all of the Trading Boards towards a loss making position within five years, and
- . plans for the introduction of commercialisation have already led to the consideration of more dynamic operations in the Trading Boards, one of its aims. Whilst there appears to have been limited actual barriers to such developments under the current environment, the belief in a permanent change of culture has proved to be the catalyst behind change. This cultural effect is similar to that observed in the UK."

- 1.17 The Advisory and Finance Committee concurs with the conclusion of KPMG that any wage increases in the commercialised Boards are unlikely to be regarded as like for like with the civil service. It also believes that the regulatory arrangements and the provision for financial targets to be imposed on the commercialised Boards will exert pressures which will ensure that labour resources will be utilised more efficiently than at present.
- 1.18 There has been much discussion with the Electricity Board, Post Office Board and Civil Service Board and with staff representatives about future pension arrangements. The discussions have resulted in an impasse.
- 1.19 The Advisory and Finance Committee had taken the stance that for its part, no option on pensions had been ruled out. It also considered that the shadow Boards should be a party to any final agreement on pension arrangements.
- 1.20 The Civil Service Board has agreed that discussions between the various parties should continue but is of the view that employees of the Trading Companies should not have the option of being members of the Public Servants Pension Scheme (the PSPS). The Civil Service Board considers that pensions are "deferred pay" and as such should be considered as an integral part of the pay and conditions of employees which, in future, will be negotiated with the new employers, the States Trading Companies. Employees of the companies, who will not be States employees, should therefore be members of pensions schemes set up, administered and subject to negotiation with those companies.
- 1.21 The PSPS includes provisions which enable the pension entitlements built up by employees prior to transfer to the Trading Companies to be protected and deferred. This protects

and links those entitlements to annual pension increases agreed by the States. The protection of employee rights approved by the States in January 2000 will ensure that, on transfer to the new States Trading Companies, pension arrangements are comparable with those currently enjoyed by employees.

- 1.22 The two Trading Boards are aware that their staff are very concerned about future pension arrangements and value the security of being in the PSPS. The two Trading Boards do not believe that the new States Trading Companies will face any serious problems if their employees are members of the PSPS or that, as employers, those companies will be bound by the requirements of the scheme and any future revisions agreed by the States. Whilst States Trading Companies will be legally separate from the States they will still be wholly owned by the States.
- 1.23 The two Trading Boards are also aware that a number of groups of non-States employees are already members of the PSPS, albeit that the numbers of employees in those groups is small compared to the number of employees at the two Trading Boards.
- 1.24 The two Trading Boards do not accept that there are any valid reasons why existing employees should not retain the option of staying in the PSPS. The two Trading Boards are insistent that it is reasonable that the option of staying in the PSPS should be confirmed by the States when it considers the commercialisation of the Boards in order to remove any unnecessary concerns of employees during a process of change which inevitably causes them some uncertainty. The two Trading Boards are also insistent that, to avoid a potentially divisive dual arrangement on the pensions element of pay and conditions, new employees of the States Trading Companies should also be able to become members of the PSPS.
- 1.25 All other issues relating to the commercialisation process had been resolved with the parties involved but discussion to resolve pension issues took place right up to the deadline for submission of this policy letter. Twenty months has already lapsed since the in-principle approval by the States of commercialisation and any further delay in bringing forward detailed proposals would increase uncertainty not only for the staff of the two Trading Boards but also for the development of the Boards' trading activities.
- 1.26 Having considered the views of the parties involved and the necessity to bring proposals to the States without further delay, **the Advisory and Finance Committee is now proposing that the States confirm that existing employees who transfer to the new States Trading Companies and future employees of those companies should have the option to remain or become members of the PSPS.**

- 1.27 This will require the Civil Service Board to bring forward proposals to the States to make the necessary changes to the provisions of the PSPS. The Advisory and Finance Committee will also need to consider what consequential changes need to be made to the way the Superannuation Fund is run to reflect the transfer of a large group of members onto pay and conditions which will no longer be negotiated centrally by the Civil Service Board. It must be stressed that the intention of the Advisory and Finance Committee that the monies underwriting the pension liabilities of States Trading Company employees should continue to be held in the Fund but that those monies need to be identified separately within the Fund so that there will be no cross subsidy between the States Trading Companies and States Committees.
- 1.28 It would also be the intention of the Advisory and Finance Committee to use the period between approval of these proposals and the submission of proposals by the Civil Service Board to bring all the interested parties together, including staff representatives and the shadow Boards to identify any other mutually acceptable options on pensions which might also be put to the States.
- 1.29 The Advisory and Finance Committee therefore recommends that the Civil Service Board be directed to bring forward proposals to change the provisions of the Public Servants Pension Scheme to enable employees of States Trading Companies to be members of the Scheme.

2. Current Status of the Trading Boards

- 2.1 Before discussing the future status and structure of the two Trading Boards it is useful to briefly review the nature and implications of their current status.
- 2.2 The States is a single legal entity and exercises the majority of its statutory and executive functions through States committees. Those States committees are formed, constituted and mandated by the States either directly by resolution or indirectly through resolution to enact legislation. States committees are responsible to, and can be directed by, the States on all aspects of their activities subject to the constraints of any applicable legislation.
- 2.3 The Electricity Board and Post Office Board are States committees originally formed and constituted through the enactment of legislation but now, by amendment to that legislation, their constitution is determined by States resolution.
- 2.4 The States determines how the activities of a particular States committee is to be financed broadly within three categories:

General Revenue Committees - principally financed from taxation and other general revenues.

Trading Boards/Committees - financed by charges levied for the services provided.

Hybrid General Revenue/
Trading Committees - activities part funded from general revenues and part from charges levied.

2.5 The States may determine the proportion of financing obtained from general revenues and from charges and also what, if any, contribution should be made to general revenue from charges levied (eg. the annual contribution made by the Post Office from philatelic profits and in 1992 the one off transfer of part of the surplus from the Telecommunications Board). States committees are not liable to pay Income Tax.

2.6 The States is able to determine the way in which the accounts of States committees are presented. The legislation originally setting up the Trading Boards requires their accounts to be presented to the States in a form which conforms to best commercial standards, i.e in the form of a profit and loss account and balance sheet. States committees are not formed under, and therefore are not subject to, the provisions of the Companies (Guernsey) Laws 1994 and 1996 (referred to in the remainder of this report as Guernsey Company Law). The States appoint external Auditors and the Boards are subject to examination by its Internal Auditors and come within the remit of the Audit Commission.

2.7 As States committees, the two Trading Boards are also subject to States resolutions in respect of:

Staffing - the Civil Service Board negotiates the pay and conditions of Trading Board staff, generally those staff are members of the Public Servants Pension Scheme and the Boards are subject to the States Staff Number Limitation Policy. This matter has already been dealt with.

Land - land owned by the two Trading Boards is held in Trust for the States. As "exempted committees" they are able to purchase property but require Advisory and Finance Committee or States approval for the sale of property.

Other Assets - are vested in the two Trading Boards in Trust for the States, cash surpluses generated by the Boards are held and invested on the Board's behalf by the Advisory and Finance Committee. The States sets any borrowing limits for the two Trading Boards.

- 2.8 As States committees the two Trading Boards are within the States central insurance arrangements and the Boards pay their proportion of cover for insurable risks.
- 2.9 If a Trading Board was to incur liabilities arising out of contractual arrangements or negligence by the Board or its servants which were not fully covered by insurance then, because the Board is a States committee, the States would be obliged to cover that liability. In normal circumstances such liability would be covered from the assets held by the Board but in exceptional circumstances, such as when such action might prejudice the continuing activities of the Board, the States might choose to cover the liability from its other assets.
- 2.10 The current legislation governing the two Trading Boards not only imposes on them statutory responsibilities and grants monopolies for the provision of services, and in some cases provide for the regulation of other service providers, they also give them the statutory rights necessary to provide services (eg the power to open up public roads, enter private property etc).
- 2.11 In bringing forward proposals to replace the Trading Boards with separate legal entities consideration has to be given not only to how the roles of owner and management are to be fulfilled but also to the practical issues of transferring:

land, cash, investments and other assets
responsibility for any liabilities incurred
statutory rights and responsibilities.

3. Assets, Statutory Rights and Responsibilities

- 3.1 In relation to land, cash, investments and other assets, the Advisory and Finance Committee will bring forward proposals to the States for the transfer of those assets based on comprehensive and up to date asset registers and valuation against agreed criteria.
- 3.2 It is anticipated that all the assets currently utilised by the Boards which will be required by the States Trading Companies to carry out their business will be transferred. Asset registers will be examined to identify if any existing assets held by the Boards for historic rather commercial reasons (such as dwellings, odd parcels of land etc) should not be transferred but retained in direct States ownership.
- 3.3 In relation to statutory rights and responsibilities, the Advisory and Finance Committee will liaise with the Trading Boards (including the Telecommunications Board) and the Law Officers on the development of legislation which would enable

such rights to be conferred on entities licensed under the regulatory regime. The Advisory and Finance Committee is recommending that the States agree to the preparation of such legislation on the basis described above.

4. Commercial management versus Political Considerations

- 4.1 It could be argued that having established a statutory, independent regulatory structure, the necessity to replace the Trading Boards with separate legal entities is diminished. One of the major objectives of the commercialisation process is however to enable the trading entities to be managed commercially and adopt a commercial culture within a regulatory structure and working to firm performance targets for efficiency and productivity.
- 4.2 The work done on these proposals has reinforced the view taken in June 1998, and endorsed in principle by the States, that the above cannot be achieved if the trading entities remain as, and are managed by, States committees for the following reasons:
- if as States committees the Boards remain subject to States staff number constraints and centrally negotiated pay and conditions they will not have the control and flexibility to manage staff costs in the way necessary to react to commercial imperatives;
 - if as States committees the Boards are free from States staff constraints then management of their staff costs (and the prevention of consequential undesirable influences on other public sector pay costs) relies on the willingness and ability of each individual Board to pursue commercial rather than political objectives at each annual round of pay negotiations;
 - in the local political situation where there is other blurring of the line between political and commercial considerations. It would be difficult if not impossible to implement mechanisms for setting clear performance targets with incentives and sanctions based on performance which will be essential to drive forward significant and ongoing efficiency and productivity improvements;
 - even under the current status of the Boards as States committees responsible for providing self financing monopoly services, the States has little or no knowledge of, or influence over their strategic policies unless either an issue is raised in the States by another committee or by Requête or the Boards voluntarily refer such matters to it.

- 4.3 Whilst the Trading Boards remain as States committees with States members in the majority, the above considerations apply. If States members are not in the majority it is impractical for the Boards to remain as committees of the States responsible directly to the States for their activities.
- 4.4 Consideration of the future status and structure of States Trading Companies has been undertaken on the basis of addressing the issues referred to above and with the objectives of:
- putting the Trading Companies at arms length from the States whilst retaining 100% States ownership and ensuring that the States' interests are represented and protected;
 - providing an effective structure for driving improved efficiency and quality of service from the Trading Companies by giving management the freedom to think and act commercially within the boundaries of regulatory requirements and performance targets;
 - providing the most appropriate status to give other commercial bodies maximum confidence to build business relationships with the Trading Companies.
- 4.5 Given that a statutory, independent regulatory structure is to be introduced to represent and protect the interests of consumers and competitors, the framework within which States Trading Companies are to function needs to provide for the carrying out of the remaining roles currently undertaken by the Boards, that of representing the interests of the States as owners and for managing the provision of services.
- 4.6 The thrust of the in principle approach to the States in June 1998 and the work undertaken by KPMG on regulation confirms that, to achieve the objectives for the commercialisation process, the ownership and management roles must be undertaken by two separate bodies.

5. The Role of Owner/Shareholder

- 5.1 If the trading entities are to be wholly owned by the States but not to be a committee of the States or responsible directly to it, the questions arise as to how the strategic interests of the States as owners/shareholders are to be exercised. The June 1998 report proposed that the Advisory and Finance Committee should adopt this role on behalf of the States but as a part of the exercise to review the proposed regulatory arrangement, KPMG were requested to assess how the role of owner/shareholder could best be discharged.

5.2 The comments of KPMG on this matter are reproduced in full below:

"Owner/shareholder

The role of the owner/shareholder of the assets in the Trading Boards (TBs) is to develop a financial discipline that will lead to greater efficiency in the operation of the TBs. The owner will need to mimic the role of a private sector shareholder in demanding performance from the management of the TBs. This will be achieved by the TBs providing a strategic plan to the owner every three years together with an annual review. This plan (and the annual review) should include both details of the strategy that the TBs wish to undertake, major operational decisions and quantifiable performance indicators, including a return to the owner. ... This financial discipline is designed to work in conjunction with control of prices through regulation or competition to drive the TBs towards efficiency. The owner will also decide upon issues such as which areas of business a TB should operate within. Such issues would need to be included in the plans proposed to the owner for approval ...

There are two main approaches to the ownership role of the TBs that could be adopted:

- use of a government body; or
- Contracting out the role of owner to an investment management company.

Interviews conducted as part of this study have suggested that a central tenant of the introduction of the commercialisation process is to remove Government from roles which it is not best placed to undertake. The extension of this rationale to the ownership of the TBs provides a question as to whether a Government body is appropriate to maximise the efficient performance of the TBs. In particular, it can be questioned whether a Government body, who will have long standing links with the TBs, is able to insist on the most efficient service possible.

If a Government body is not to be used in this role it would be necessary to contract out the management of the asset to an investment company. The States already contracts out the management of a number of financial assets and funds. However, the use of a private sector investment manager to seek an appropriate return and performance for the States from the TBs leads to significant problems in terms of:

- the design of a remuneration package for the investment company that creates the appropriate incentives but is consistent with the objectives of the Government; and
- an uneasiness in Government about handing over control of strategically important assets to the private sector.

Given the above, it appears more appropriate that a Government body is given the ownership role for the TBs. There are two existing departments that would be capable of body this role:

- the Advisory and Finance Committee (AFC); and
- the Board of Industry (B of I).

The AFC is the island's senior committee and has experience in the management of assets suggesting that it is potentially in a better position to insist on the most efficient service possible. The B of I has developed a relationship with the TBs through the operation of its existing portfolio of roles, making it a potential host for the ownership role. However, the B of I also fulfils a role as the promoter of industry within Government which may potentially conflict with the ownership role for the key utilities. In addition, the B of I also appears to be an appropriate body to host the appeals process. On balance, we therefore recommend that the AFC undertake the ownership role.

The AFC does not have sufficient sector expertise or manpower to fulfil all the requirements of ownership, particularly the review of the TBs strategic plans to see if they are sufficiently demanding and provide an appropriate return. Hence, it may be necessary for the AFC to contract outside advice on this issue. The AFC will also need to consider whether any plans from the TB to develop new lines of business are appropriate. Such plans will need to be included in the strategic plan (and annual review) and the AFC will be able to take advice on the potential commerciality of these plans if required.

- 5.3 It can be seen that, having considered a number of alternative options, KPMG concludes that the Advisory and Finance Committee is best suited to undertake on behalf of the States the role of owner/shareholder. This is qualified by an essential requirement for expert external advice to be taken on the commercial realities of the trading entities areas of operation when setting financial targets, other high level constraints and reviewing strategic plans.

- 5.4 The Advisory and Finance Committee endorses this conclusion and believes that the use of expert external advice will supplement its existing resources for strategic and corporate planning and enable it to absorb this role without any adverse effects on its other responsibilities.
- 5.5 **The Advisory and Finance Committee is therefore recommending that it, on behalf of the States should exercise the role of owner/shareholder of States Trading Companies.**
- 5.6 The way in which the role of owner/shareholder is exercised by the Advisory and Finance Committee depends to some extent on the precise status of the States Trading Companies which is considered below.

6. The Status of States Trading Companies

- 6.1 The original recommendation from the Advisory and Finance Committee, and endorsed by the other committees involved in producing the June 1998 report, was that the States Trading Companies should have the status of limited liability companies. This recommendation was amended to the more general definition of "body corporate wholly owned by the States".
- 6.2 There are obvious advantages in forming States Trading Companies under Guernsey Company Law. It avoids the need for new legislation and customers, suppliers and other potential trading partners would be familiar with, and understand the implications of such a status.
- 6.3 As was commented above, as a single legal entity, the States is ultimately responsible for any liabilities incurred by a States Committee including a Trading Board. Under Guernsey Company Law, a company may be formed with liabilities limited by shares or by guarantees.
- 6.4 If the States Trading Companies were formed as limited liability companies, in the unlikely event that a company incurred debts that could not be met from its assets without prejudicing its ongoing operations, the States, if so chose, could underwrite those debts just as it would do now for all States committees. This would be the equivalent of a parent company guaranteeing the debts of a subsidiary company.
- 6.5 There is sufficient flexibility in the way limited liability companies can be set up to ensure that the interests of the States as owners/shareholders of the companies can be represented and protected. Having the status of limited liabilities companies would also reinforce the development of a commercial culture within the States Trading Companies.

- 6.6 Having considered the above points, the Advisory and Finance Committee and the two Trading Boards remain of the view originally expressed in the June 1998 report that States Trading Companies should have the status of, and be structured as, limited liability companies. The Advisory and Finance Committee is therefore proposing that States Trading Companies shall be formed under Guernsey Company Law with liability limited by shares.

7. Exercising the Owner/Shareholder Roles

- 7.1 The Advisory and Finance Committee is proposing that the arrangements to establish States Trading Companies and the arrangements for exercising the owner/shareholder role for such companies should be enshrined in an Ordinance. An Ordinance would ensure that any changes to those arrangements could be made relatively quickly but only after full and mature consideration of the implications of such changes thus giving a stable environment within which management functions can be exercised. Such an Ordinance would need to be enacted under the provisions of a Projet de Loi. The Advisory and Finance Committee is proposing that such provisions should be included in the legislation to be introduced to implement the regulatory arrangements agreed by the States in January 2000. The Board of Industry raises no objection to this proposal.

The Advisory and Finance Committee is proposing that the "States Trading Companies Ordinance" would cover the following matters:

a) Application

The Ordinance will apply to those companies identified in a Schedule to the Ordinance. Companies may be added to (or deleted from) the Schedule by Order thus allowing for flexibility in the commercialisation timetable for the Boards and for any future function which may be commercialised.

b) Shareholding

The shares in a States Trading Company will be held in trust for the States, half by the President of the Advisory and Finance Committee and half by the Vice President. These two persons shall exercise the functions of shareholders (within the requirements of Guernsey Company Law and the Memorandum and Articles of Association of the Company) as directed by the Advisory and Finance Committee on behalf of the States. No changes to the share capital of the company nor trading in, or disposal of, shares can be undertaken without an express resolution of the States. The nominal value of the shares shall total the value of the net assets transferred from the States to the Trading Company on incorporation.

c) Appointment of Directors and Chairman

i) The appointment of non-executive directors to the Board of the Company (within the requirements of the Memorandum and Articles of Association which will specify that non-executives must always outnumber executive directors) shall be by the States on the nomination of the Advisory and Finance Committee (as for the Guernsey Financial Services Commission). The appointment of directors may be terminated by the Advisory and Finance Committee.

ii) Whilst States members are not precluded from being nominated by the Advisory and Finance Committee as non-executive directors, in order to maintain maximum separation between the States Trading Companies and the States, the presumption will be that States members will not be nominated. The only exception will be where a States member has personal knowledge or experience which can make a unique contribution to the management of the company and, if appointed, that person will serve on the Board in a personal capacity. The number of States members on the Board must never be more than one and a States member cannot fulfil the position of Chairman of the Board.

iii) Following consultation with the Board, the Advisory and Finance Committee shall appoint a non-executive director to serve as Chairman of the Board.

iv) The Advisory and Finance Committee shall determine the remuneration of the non-executive directors of the Board (as it does for the members of the Guernsey Financial Services Commission and whose remuneration was recently independently reviewed against Island norms and is currently set at approximately £5000 per annum).

v) The initial appointment of executive directors to work with shadow Boards shall be by the Advisory and Finance Committee in consultation with the shadow and Trading Boards. Thereafter the Board shall appoint executive directors and shall form a remuneration sub-committee made up of a minimum of three non-executive directors who shall determine the remuneration packages for the executive directors.

d) Strategic Influence

i) At intervals to be determined by the Advisory and Finance Committee, the Chairman of the Board shall submit to the Advisory and Finance Committee a Strategic Plan setting out in broad terms:

- the financial and other targets to be achieved for the provision of services which are subject to licences issued under the regulation arrangements;

- the extent of non-licensed activities which may be undertaken and the targets to be achieved in undertaking such activities;
- what policies are to be pursued for the provision of licensed services and other activities;
- proposals for any significant investments or divestments including sale of property;
- any other high level issues in which owners/shareholders would have a legitimate interest.

ii) Through the procedures established for the approval of the Strategic and Corporate Plan, the States may give general guidance to the Advisory and Finance Committee on the policies it wishes to be pursued for approval of the strategic plans of the Trading Companies (this will parallel the guidance to be given in the Strategic and Corporate Plan to the Regulator).

8. Corporate Governance

- 8.1 The Advisory and Finance Committee will arrange for accounts to be published as an appendix to a Billet. Over and above this, however, the Advisory and Finance Committee will require States Trading Companies to set out in their corporate plans targets for compliance with best practice in Corporate Governance (the principles of which are set out in the Combined Code of Corporate Governance and the report of the Turnbull Committee on the application of those principles).
- 8.2 The States Trading Companies will need to set up an external audit function but best practice will also require the setting up of effective internal audit functions to assist management. Whilst not falling within its remit under the Audit Commission law, the Advisory and Finance Committee would intend to invite the Audit Commission to monitor the external and internal audit functions of States Trading Companies until all parties are satisfied that those functions meet the requirements of best practice.

9. Managing the Transition

- 9.1 The Advisory and Finance Committee has considered what steps, subject to States approval of the proposals in this report, would need to be taken to implement the commercialisation programme. There is a need to provide for continuity and for those persons who are going to be involved in the regulatory process and the management of the States Trading Companies the opportunity to influence the details of legislation and

transition arrangements. For the purposes of this policy letter the day on which a States Trading Company formally starts trading is referred to as "Impact Day".

- 9.2 Following consideration of the report from the Board of Industry on Regulation in January 2000, the States agreed that the Board of Industry should appoint a Director General of Regulation on a shadow basis prior to a permanent appointment following the enactment of the necessary legislation. Using contracted-in specialist advice the shadow regulator will also be able to oversee the development of the regulatory regime for electricity and postal services without prejudicing progress on the telecommunications regime.
- 9.3 **The Advisory and Finance Committee is proposing that the States should also be asked to appoint shadow Boards as soon as possible.** Initially the shadow Boards (and the shadow Regulator) will participate in the process in a consultative and advisory capacity but as it gets nearer to Impact Day and appointments are made by the States under the States Trading Company Ordinance, it is envisaged that the shadow boards will increase their involvement and influence in the process and will be able to make in-principle commitments on post Impact Day matters.
- 9.4 The Telecommunications Board faces particular circumstances in maintaining and developing services and in preparing the business for transfer to a licensed operator. To facilitate this the States agreed that the constitution of the Telecommunications Board should be expanded to include two members of the Advisory and Finance Committee and two members of the Board of Industry. As well as providing access to the Strategic and Corporate authority of the Advisory and Finance Committee and also with the work of the Board of Industry on regulation, it also provides a degree of corporate overseeing which enabled the Advisory and Finance Committee to propose that the Telecommunications Board should be excluded from the provision of the Staff Number Limitation Policy and should assume from the Civil Service Board responsibility for the pay and conditions of its staff.
- 9.5 The Advisory and Finance Committee is not recommending that similar arrangements should be applied to the Electricity Board and Post Office Board during the transition period as they do not face the same circumstances as those facing the Telecommunications Board.
- 9.6 The timetable envisaged for the transition process is:
 - a) April 2000 - August 2000 - Drafting of legislation on regulation, and statutory rights and responsibilities (some of which will be contracted-out to specialist law firms) for submission to the States at its September 2000 meeting. Royal Assent in June 2001.

- b) June 2000 - Nomination by Advisory and Finance Committee for appointment by the States of non-executive directors of Management Boards initially on a "shadow" basis to work with existing Trading Boards and States committees on developing legislation and transition arrangements.
 - c) June 2000 - Nomination by Board of Industry for appointment by the States of a Regulator initially on a "shadow" basis to work with existing Trading Boards and central committees on details of legislation and content of initial licences.
 - d) June 2001 - Preparation by shadow Boards of initial Strategic Plans for discussion with Advisory and Finance Committee and shadow Regulator to agree initial tariffs, extent of activities, licensing conditions etc.
 - e) January 2001 - Finalisation of recruitment process and appointment by Advisory and Finance Committee, in consultation with shadow and two Trading Boards of executive directors of Management Boards initially on shadow basis.
 - f) July 2001 - **Impact Day** when the new States Trading Companies commence trading, the shadow Boards replace the Trading Boards, and the Regulator assumes statutory responsibilities.
- 9.7 In January 2000, the States approved an increase of £600,000 in the Advisory and Finance Committee's Strategic and Corporate measures budget to cover various measures related to the development of the Regulatory arrangements and transition to the delivery of telecommunications services through licensed operators. **The Advisory and Finance Committee is proposing that initially expenses incurred by the Committee in relation to the commercialisation of the Electricity Board and Post Office Board should also be taken from the above sum.** The Advisory and Finance Committee also commented in the January 2000 report that it would review the adequacy or otherwise of this sum in the 2000 Policy and Resource Planning Report and this review will now take account of the additional requirements in respect of the commercialisation of the Electricity and Post Office Boards including expenses incurred in the appointment of Shadow Boards.
- 9.8 The Electricity Board and Post Office Board have been fully consulted on the development of these proposals.
- 9.9 The Electricity Board had a number of points relating to an earlier draft of this policy letter, those points have now been addressed to its satisfaction. The Board consequently supports the proposals in this policy letter.

- 9.10 The views of the Post Office Board are expressed in the letter dated 10 February attached as Appendix II to this policy letter and from which states that the Board gives its full support to the proposals.
- 9.11 The views of the Civil Service Board on staffing and pension issues are expressed in Section I of this policy letter.
- 9.12 Because of the complexity and wide ranging nature of this policy letter it is inevitable that some individual members of the Advisory and Finance Committee dissent from individual proposals. By a majority however, the Advisory and Finance Committee recommends the States to adopt the proposals.

10. **Recommendations**

The Advisory and Finance Committee therefore recommends the States to:

- 1. agree that:
 - a. electricity services shall in future be provided by a States Trading Company set up and structured as described in this policy letter;
 - b. postal services shall in future be provided by a States Trading Company set up and structured as described in this policy letter;
- 2. agree that the legislation to safeguard the employment and contractual rights and obligations of current employees of the Telecommunication Board which, at its January 2000 meeting, the States directed should be prepared shall be extended to cover employees affected by any other future transfer of functions, in particular the delivery of electricity and postal services;
- 3. direct the Civil Service Board to bring forward proposals for the revision of the rules of the Public Servants Pension Scheme which would enable employees of States Trading Companies to become members of the Scheme;
- 4. note the intention of the Advisory and Finance Committee to bring forward proposals for the transfer of assets from the States to the States Trading Companies formed for the future delivery of electricity and postal services;
- 5. agree to the preparation of legislation which would enable entities licensed under the system of regulation approved by the States in January 2000 to be granted the statutory rights necessary for them to be able to provide the services covered by such licences;

6. agree that the Advisory and Finance Committee, on behalf of the States, should exercise the role of owner/shareholder of States Trading Companies;
7. agree that States Trading Companies shall be formed under Guernsey Company Law with liabilities limited by shares;
8. agree that:
 - a. the arrangements to establish States Trading Companies and for exercising the owner/shareholder role shall be enshrined in an Ordinance;
 - b. provision should be made in the legislation to be introduced to introduce the regulatory arrangements agreed by the States in January 2000 for the enactment of such an Ordinance;
 - c. the Ordinance should contain the provisions set out in Section 7 of this policy letter;
9. note the intention of the Advisory and Finance Committee to bring forward to the States nominations for the appointment of shadow Boards to assist in the transition to the delivery of electricity and postal services by States Trading Companies;
10. agree that expenses incurred by the Advisory and Finance Committee in relation to the commercialisation of the Electricity Board and Post Office Board shall be taken from the committees Strategic and Corporate Measures Budget.

I have the honour to request that you will be good enough to lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

I am, Sir,
 Your obedient Servant,
 J. E. LANGLOIS,
 Vice-President,
 States Advisory and Finance Committee.

4.5 Wages

A cursory assessment of UK public private wage differentials might suggest that wages in the electricity and telecommunications industry are respectively 25% and 21% higher than the public administration sector. However, wages in the post and courier services are 10% lower in the private sector. In many cases the figures reported here reflect different organisational structures and product range in the public and private sectors (especially in the post and courier sector).

As such, we do not believe that such aggregated figures provide a realistic analogy to the situation in Guernsey. Approaches to privatised UK electricity companies suggest that there was limited upward movement of wages, outside of senior levels, following privatisation. Any subsequent gains will have been heavily linked to productivity related deals¹⁵. This outcome is similar to the plans of the TBs, who do not believe that any large scale increase in wages will occur. Finally, it is important to note that the regulator will act to control wage levels, ensuring that excessive returns from the monopoly are not distributed in this manner¹⁶.

Commercialisation could put upward pressure on the average level of wages for a number of reasons:

- productivity pay relationships. There is the potential for some of the TB staff to obtain higher wages through productivity linked deals. This may provide staff with a greater incentive to improve efficiency due to the more visible rewards structure possibly in the form of bonus payments for meeting specific targets;
- the wage negotiation process. It is unlikely that a commercialised Trading Board will be able to achieve productivity gains with settlements which are lower than that originally made in Public Sector; and
- job security is perceived to be assured within the public sector and employees of the commercialised Trading Boards may seek a premium on their wages to reflect any moves towards more flexible contracts of employment

One final point to note is that the creation of so called 'fat cats' is unlikely in the framework for commercialisation and regulation that has been proposed due to the lack of management share options. However, this creates the need for the owner to develop an appropriate incentive structure for management. This issue is addressed in the main KPMG report.

4.6 Public sector wages

Consideration has to be given as to whether or not any increase in "headline" pay levels in the commercialised Trading Boards would impact on pay negotiations for the remaining public sector. If this was to happen a public sector wage spiral could occur affecting Guernsey public expenditure and ultimately taxation. The distinct characteristics of Guernsey make this impact possible. The economy is very localised meaning that transfer of knowledge of wage rises between groups is easier than in the UK. Moreover, the same organisation negotiates wages for a significant proportion of public sector employees.

However, following discussions with the TBs we believe that the changed conditions of contracts, with wage increases being contingent on performance measures and the provision of flexibility, will result in the creation of a different perception of employment. As such, any wage increases in the commercialised TBs are unlikely to be regarded as like for like with the civil service. This conclusion is consistent with the UK, where there was no evidence of a public sector wage spiral following privatisation, and a similar change in perception of the comparability of employment contracts exists.



The President
 States Advisory & Finance Committee
 P O Box 43
 Sir Charles Frossard House
 La Charroterie
 St Peter Port
 Guernsey
 GY1 1FH

APPENDIX II

10 February 2000

Dear *Laurie*

COMMERCIALISATION OF THE GUERNSEY POST OFFICE

The States Post Office Board is pleased to give its full support to your Committee's policy letter on the above subject.

Guernsey Post Office has been completely convinced of the need to reform the delivery of postal services in the Bailiwick for several years. One of the Board's main concerns has been just how long and tortuous the process of referring this matter to the States has proved to be.

In January 2000 the States approved radical measures to reform the provision of telecommunications services in the Bailiwick. There were protracted delays in bringing forward to the States the model of commercialisation through the incorporation of limited liability companies with 100% of the shareholding in the ownership of the government. These delays centred on the time taken to try to convince the States Civil Service Board of the need for reform.

While these delays effectively meant that the commercialisation model came too late for telecommunications, I am pleased to confirm that the model is still considered to be the most appropriate way to reform postal services in the Bailiwick of Guernsey. I am also pleased that the model proposed by your Committee was arrived at following extensive consultation with the States Post Office Board.

I cannot emphasise enough however that while this model is the most appropriate it is vital that there is no further delay in resolving the future of the delivery of postal services in the Bailiwick. To procrastinate further is likely to lead to further pressures on the Guernsey Post Office, which will threaten the future viability of postal services within the islands.

In common with all other postal administrations in Western Europe, Guernsey Post Office is facing a powerful and strengthening combination of increased competition and legislation to

2/...

The Guernsey Post Office

Postal Headquarters, Guelles Road,
 St. Peter Port, Guernsey, GY1 1AA.
 Telephone: 01481 726241
 Facsimile: 01481 712082
 E-Mail: gsypost@guernsey.net
 Home page: post-office.guernsey.net

liberalise postal markets to the maximum extent possible (without prejudicing the viability of the Universal Service Obligations). The competition is growing from three main sources: -

- a) substitution to electronic communications (fax, e-mail, hybrid-mail etc);
- b) from other publicly owned postal enterprises competing for the bulk customers; and
- c) from private sector operators operating in the low volume high value end of the market (typically courier companies).

The current status of the Guernsey Post Office, as a committee of the States of Guernsey, results in the Post Office increasingly being ill-equipped to deal pro-actively and successfully with the serious threats which result from competition and liberalisation. It also inhibits the Post Office in being able to take advantage of some of the new opportunities that are developing in postal markets.

The Board believes that the reforms proposed by the States Advisory & Finance Committee will give the island the best of both worlds. It will enable the States to retain ownership of the Post Office, while giving it the commercial freedoms necessary to remain successful in the increasingly competitive world of communications.

The Board's confidence in the model proposed is enhanced by the fact that it is now the most commonly found model for the delivery of postal services in Western Europe (and increasingly worldwide).

Indeed the Guernsey Post Office has played a significant role in sponsoring the adoption and promotion of this model by the Commonwealth Conference of Postal Administrations (CCPA). This organisation represents some 54 postal authorities around the World, including of course our most important business partner - the British Post Office which is on the verge of becoming a State-owned public limited company.

The CCPA submitted this model as a petition to the Commonwealth Heads of Government meetings in Edinburgh in October 1997 and in Durban in 1999. The States Post Office Board circulated complete copies of this model to all States Members at the end of last year (The Kuala Lumpur Declaration).

The imperative now is to move forward. To lose this opportunity will weaken the Guernsey Post Office. It will increase the likelihood that within a very short period of time the States

The President
States Advisory & Finance Committee

10 February 2000

will have to consider a more radical solution if they are to retain a quality postal service which continues to deliver good value for money to its customers and protects the obligations of its Universal Service Obligations.

I should also point out that the physical delivery of letters, packages and parcels is an important element of the successful development of e-commerce. It is therefore vital for Guernsey Post Office to be able to respond in a commercial manner to play its part in the successful implementation of the island's e-commerce strategy.

As the proposals for the commercialisation of Guernsey Post Office have evolved over the past couple of years, staff within the business have been kept informed of progress. From the outset the Board was pleased at the level of understanding that the staff representatives demonstrated over the need to reform the provision of postal services.

However, from the beginning of this process the staff and their representatives made it perfectly clear to the Board that their major concerns in the whole process of commercialisation revolve around how their pension rights are dealt with. Very considerable efforts have been made by the Guernsey Post Office, Advisory & Finance Committee and the Civil Service Board to persuade staff representatives that simply remaining in the Public Servants Pension Scheme may not be in the long term interests of the employees or the new company. However, there is absolutely no doubt that staff at the Guernsey Post Office have not been convinced.

Commercialisation will bring changes to the Guernsey Post Office. It is natural for staff to be concerned about periods of significant change. However, given the forward-looking approach of the staff associations on the need for commercialisation, the Board believes strongly that it is not unreasonable for the staff to be given firm assurances now about their pensions. The Board has pursued commercialisation of the Guernsey Post Office on the basis of having its staff firmly on board and looking forward positively to the challenges which lie ahead. This aim may be seriously compromised if staff embark on their new futures with Guernsey Post Ltd looking over their shoulders with fears and concerns over their pensions.

The Board is therefore very pleased to endorse fully the Advisory & Finance Committee's recommendation that existing and future staff should be allowed to remain within/join the Public Servant Pension Scheme after incorporation of Guernsey Post Ltd.

This pragmatic solution will give the employees cast iron assurances over the stability of their pensions. This is very important if commercialisation of Guernsey Post Limited is to proceed in a positive manner with its staff on board with the new company.

The President
States Advisory & Finance Committee

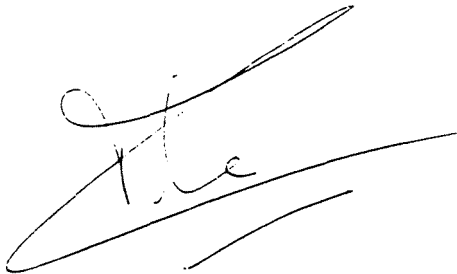
10 February 2000

In summary therefore, the States Post Office Board fully supports the model proposed by the Advisory & Finance Committee for the reform of the provision of postal services in the Bailiwick of Guernsey.

In closing I would repeat the urgency in the States dealing with this matter. To delay further will only increase the chance of a more radical solution having to be brought before the States within a few short years (as has indeed already proved to be the case for the provision of telecommunications services in the Bailiwick).

Guernsey Post Office is one of the very few post offices around the world that can claim to have been profitable in every year of its existence. The staff have earned the full support of the States in creating the operating environment to allow Guernsey Post Ltd to continue to build on the formidable track record of Guernsey Post Office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M W Torode', with a long horizontal flourish extending to the right.

M W TORODE
President

The States are asked to decide:—

III.— Whether, after consideration of the Report dated the 16th February, 2000, of the States Advisory and Finance Committee, they are of opinion:—

1. (1) That electricity services shall in future be provided by a States Trading Company set up and structured as described in that Report.
- (2) That postal services shall in future be provided by a States Trading Company set up and structured as described in that Report.
2. That the legislation to safeguard the employment and contractual rights and obligations of current employees of the States Telecommunications Board which, at its January 2000 meeting, the States directed shall be prepared shall be extended to cover employees affected by any other future transfer of functions, in particular the delivery of electricity and postal services.
3. To direct the States Civil Service Board to bring forward proposals for the revision of the rules of the Public Servants Pension Scheme which would enable employees of States Trading Companies to become members of that Scheme.
4. To note the intention of the States Advisory and Finance Committee to bring forward proposals for the transfer of assets from the States to the States Trading Companies formed for the future delivery of electricity and postal services.
5. That legislation shall be prepared which would enable entities licensed under the system of regulation approved by the States in January 2000 to be granted the statutory rights necessary for them to be able to provide the services covered by such licences.
6. That the States Advisory and Finance Committee, on behalf of the States, shall exercise the role of owner/shareholder of States Trading Companies.
7. That States Trading Companies shall be formed under Guernsey Company Law with liabilities limited by shares.
8. (1) That the arrangements to establish States Trading Companies and for exercising the owner/shareholder role shall be enshrined in an Ordinance.
- (2) That provision shall be made in the legislation to be introduced, to introduce the regulatory arrangements agreed by the States in January 2000 for the enactment of such an Ordinance.
- (3) That the Ordinance shall contain the provisions set out in Section 7 of that Report.
9. To note the intention of the States Advisory and Finance Committee to bring forward to the States nominations for the appointment of shadow Boards to assist in the transition to the delivery of electricity and postal services by States Trading Companies.
10. That expenses incurred by the States Advisory and Finance Committee in relation to the commercialisation of the States Electricity Board and States Post Office Board shall be taken from that Committee's Strategic and Corporate Measures Budget.
11. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

GUERNSEY SOCIAL SECURITY AUTHORITY

THE SUPPLEMENTARY BENEFIT (GUERNSEY) LAW, 1971:
DISREGARD OF THIRD PARTY CONTRIBUTIONS IN
RESPECT OF RESIDENTIAL, NURSING AND CHESHIRE HOME FEES

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

11th February, 2000.

Sir,

The Supplementary Benefit (Guernsey) Law, 1971: disregard of third party contributions in respect of residential, nursing and Cheshire Home fees.

1. This report contains proposals to allow third party contributions towards the cost of private sector residential, nursing or Cheshire Home fees on behalf of supplementary beneficiaries, where there is a shortfall between the fee required and the statutory benefit limitation figure.
2. Under the present supplementary benefit legislation, it is not possible for a third party to meet the difference between the benefit limitation and a private home's fees. Any such contribution would be taken into account as income and the person's benefit reduced by the same amount. There would, therefore, be no net gain.
3. The effect of the current rules is that those who are reliant on supplementary benefit to bring their income up to the required level to cover their fees cannot be helped by a family member or other third party, who might otherwise willingly pay the difference between the benefit limitation figure and the full fee for the residential or nursing bed. This can mean that those reliant on supplementary benefit assistance have less choice when being admitted into private sector residential or nursing care. They are restricted to beds available at the benefit limitation figure.

4. The current legislation allows supplementary beneficiaries themselves to meet the difference between the benefit limitation figure and the full fee from their own resources if they have sufficient capital. Problems arise when their capital is depleted and they can no longer meet the extra payment for the bed, which they may have been occupying for a considerable period. The Authority is aware that home owners are reluctant to ask residents or patients who find themselves in this position to seek alternative accommodation. This means that the home owners must accept the benefit limitation figure for a more expensive bed, even if there is a third party who would be happy to assume responsibility for the additional payment.
5. The issue of third party contributions was considered by the inter-departmental Working Party which undertook a comprehensive review of the funding of long-term care and associated services. Although the outcome of the Working Party's deliberations was a recommendation to introduce a compulsory long-term care insurance scheme, it initially conducted an in-depth investigation to design a method of assessment based on the supplementary benefit legislation, suitably amended. The Working Party concluded that it would be reasonable to allow a willing third party to contribute where there is a shortfall in funding and concluded that such payments should be ignored in the supplementary benefit assessment. This view was supported by public comment in the consultation exercise.
6. The Authority agrees with this finding and believes that the problems caused by the current rules warrant an amendment to the legislation. This would be an interim measure pending the introduction of a compulsory long-term care insurance scheme to be administered by the Authority, which was agreed in principle by the States on 24 November 1999 (Resolution XVI Billet d'Etat XIX 1999).
7. This proposal specifically relates to third party contributions in respect of private sector residential and nursing home fees. The Authority does not propose that this measure be extended to include supplementary beneficiaries in other circumstances.
8. The Board of Health has been consulted and has raised no objection to this proposal. The Alderney Policy and Finance Committee has been consulted and supports the proposal.
9. This proposal has no effect on general revenue expenditure.

Recommendation

10. The Authority accordingly recommends:

that the Supplementary Benefit (Implementation) Ordinance, 1971, as amended, be further amended so that third party contributions in respect of residential, nursing or Cheshire Home fees can be ignored as income, where the total income would otherwise exceed the relevant benefit limitation figure.

11. I have the honour to request that you will be good enough to lay this matter before the States with appropriate propositions including one directing the preparation of the necessary legislation.

I am, Sir,
Your obedient Servant,
O. D. LE TISSIER,
President,
Guernsey Social Security Authority.

[N.B. The States Advisory and Finance Committee supports the proposals.]

The States are asked to decide:—

IV.— Whether, after consideration of the Report dated the 11th February, 2000, of the Guernsey Social Security Authority, they are of opinion:—

1. That the Supplementary Benefit (Implementation) Ordinance, 1971, as amended, shall be further amended so that third party contributions in respect of residential, nursing or Cheshire Home fees can be ignored as income, where the total income would otherwise exceed the relevant benefit limitation figure.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986**REPORT OF THE REVIEW BOARD FOR 1999**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

9th February, 2000.

Sir,

In accordance with the provisions of Section 8 of the Administrative Decisions (Review) (Guernsey) Laws, 1986 to 1993, I have the honour to submit a report on the complaints received by the States Supervisor during the year ended 31st December, 1999.

Section 1 of the Law provides that all applications for a matter to be reviewed by a Review Board shall be made to the States Supervisor except where the matter complained of relates to the States Advisory and Finance Committee or its staff, in which case application is made to Her Majesty's Greffier. No such complaint has been received by Her Majesty's Greffier during 1999.

I should be grateful if you would be good enough to lay this report before the States together with a proposition requesting acceptance.

I am, Sir,
Your obedient Servant,
J. E. LANGLOIS,
Chairman,
Panel of Members.

THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAWS, 1986 TO 1993

R E P O R T

O F C O M P L A I N T R E C E I V E D

by the States Supervisor

during the year ended 31st December, 1999

SUMMARY OF COMPLAINT

M. v. States Housing Authority

A complaint against the Authority concerning its refusal to accept the complainant as eligible for States housing accommodation.

Information necessary for the States Supervisor to determine if this complaint falls within the jurisdiction of a Review Board is still awaited. An account of the outcome will be included in next year's report.

The States are asked to decide:—

- V.— Whether, after consideration of the Report dated the 9th February, 2000, of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Law, 1986, they are of opinion:—

To accept that Report.

STATES POPULATION AND MIGRATION COMMITTEE

2001 GUERNSEY CENSUS

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

3rd February, 2000.

Sir

2001 GUERNSEY CENSUS

1. Since 1976 the States has authorised the taking of a Guernsey Census every five years. A Guernsey Census was last conducted in 1996 and the Population and Migration Committee now proposes that a Guernsey Census be conducted in 2001.
2. The Guernsey Census contains essential information about the population which over time enables trends in age distribution, economic activity and other key indicators to be identified. The opportunity is also taken in specific Censuses to obtain information which will assist States Committees in developing particular policy initiatives.
3. In preparing proposals for the 2001 Guernsey Census the Population and Migration Committee sought the views of States Members, States Committees, the Douzaines and the general public.
4. The Population and Migration Committee established an officer level working group, on which senior officers from a number of States Committees served, to consider the responses received and to advise it on the information which should be obtained from the 2001 Guernsey Census. The Committee wishes to express its appreciation of the work which the working group has undertaken which has greatly assisted the Committee in formulating its proposals.
5. Attached as an Appendix to this Report is a list of the subject matters of the questions which it is proposed be asked in the 2001 Guernsey Census.
6. It is proposed to include a number of new questions which are detailed below

Household Questions**H4 Number of Bedrooms**

A specific question on the number of bedrooms has been included in order to provide information on the degree of under/over occupation of dwellings.

H5 Number of Bathrooms

A specific question on the number of bathrooms has been included to assist in identifying the availability of affordable homes: it has been

suggested that the number of bathrooms, particularly in small houses, can have the effect of putting them into a higher price category.

H7 Access to Personal Computer and Internet at home

This question has been included at the suggestion of the Information Services Department and the Institute of Directors in order to provide some measure of training needs.

Individual Questions

16 Guernsey Norman-French

The Committee considers that there is a significant degree of public interest in this subject and has agreed to include a question on Guernsey Norman-French.

17 Pensions

This question has been included in order to provide some measure of the States future financial liability in relation to the elderly.

18 Giving Care 19 Receiving Care

These questions have been included to provide some measure of the likely requirement of the States to provide additional care for the elderly/infirm. They tie in with the question on incapacity.

The recent report of the inter-departmental working party on long-term care referred to a possible decline in the provision of informal care at a time when the demand for it was likely to increase. It was noted that there was no data on the numbers involved in providing informal care.

7. There were two particular issues which were raised with the Committee but which it is not proposed should be included in the 2001 Guernsey Census

Total Gross Income from all sources

The Census Working Group endorsed a proposal that a question on gross incomes be included in the Census in the light of the work being done on low incomes as a result of Deputy Pritchard's successful Requete on low income earners and households.

Whilst appreciating the importance of this work the Committee considered that such a question would not be acceptable to the community at large and is not therefore prepared to recommend its inclusion.

The Committee has also been advised that, subsequent to the Census Working Party endorsement, the UK Government announced that it had abandoned plans to include an income question in the UK 2000 census after small scale tests by the Office of National Statistics showed that people tended not to give wholly honest answers and others simply refused to answer. It was considered that including the question would pose a serious risk to the census as a whole.

Means of transport to and from work/school

The Committee noted that this question had been asked in the 1991 Guernsey Census but dropped from the 1996 Guernsey Census.

Having considered this matter further the Committee concluded that there was no justification for reinstating this question particularly as the information could largely be obtained from existing records.

8. It is also not proposed to include a number of the questions included in the 1996 Guernsey Census, notably those relating to central heating, smoke alarms, water supply/sewage arrangements, private health insurance and ownership of motor vehicles, either because the information was only needed on a one-off basis or can be easily obtained from other sources.

9. It is proposed that the 2001 Guernsey Census be held on 29 April, the same date proposed for the UK Census. The Committee notes that this date is later than that for the 1996 Guernsey Census [31 March] which will make direct comparison slightly more difficult but considers that choosing a different date from the UK is likely to be confusing particularly given the publicity which is likely to surround the UK Census.

10. The cost of the 1996 Guernsey Census was £108,000. This was significantly below the estimate because the Population and Migration Committee arranged for the Census Questionnaires to be scanned into the computer although, because of problems incurred, this resulted in significant staff time having to be devoted to the Census the costs of which are not included in the above figure. Unless the Committee can be convinced that scanning of the Questionnaires for the proposed 2001 Guernsey Census can be carried out without problems, it may be necessary to revert to a system of manual input. The Committee has accordingly estimated that the cost of the 2001 Guernsey Census will be £145,000. As part of the 2000 Budget the States have voted the Population and Migration Committee £35,000 which will enable the Committee to undertake preparatory work. As part of the 2001 Budget it will be necessary for the States to vote the Committee a further £110,000 in order to complete the 2001 Guernsey Census.

11. The Population and Migration Committee recommends that the States agree that a Guernsey Census be taken on the night of 29 April 2001 as set out in the Appendix to this Report.

12. I have the honour to request that you will be good enough to lay this matter before the States with appropriate propositions including one directing the preparation of the necessary legislation.

I am, Sir,
Your obedient Servant,
D. A. BARRETT,
President,
States Population and Migration Committee.

2001 GUERNSEY CENSUS QUESTIONS

Household Questions

- H1 Household type
- H2 Tenure
- H3 Number of Rooms
- H4 Number of bedrooms
- H5 Number of bathrooms
- H6 Open or Local Market
- H7 Access to Personal Computer and Internet at home

Individual Questions (not to be answered by visitors)

- 1 Name
- 2 Sex
- 3 Date of birth
- 4 Country of birth
- 5 Relationship in household
- 6 Year current period of residence began
- 7 Whereabouts on Census night
- 8 Legal Marital Status
- 9 Residential qualification
- 10 Activity last week
- 11 Schooling
- 12 Occupation
- 13 Name and business of employer (including self-employed persons)
- 14 Hours worked
- 15 Education/Training
- 16 Guernsey Norman-French
- 17 Pensions
- 18 Giving Care
- 19 Receiving Care
- 20 Incapacity and Disability

The States are asked to decide:—

VI.— Whether, after consideration of the Report dated the 3rd February, 2000, of the States Population and Migration Committee, they are of opinion:—

1. That a Guernsey Census shall be taken on the night of the 29th April, 2001, as set out in the Appendix to that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES POPULATION AND MIGRATION COMMITTEE**FUTURE OF THE POPULATION AND MIGRATION COMMITTEE**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

3rd February, 2000.

Sir

FUTURE OF THE POPULATION AND MIGRATION COMMITTEE**Introduction**

1. At its meeting held on 9 June 1999 the States, after consideration of a Report from the Advisory and Finance Committee recommending the dissolution of the Population and Migration Committee, accepted an amendment proposed by Conseiller L C Morgan and seconded by Deputy D A Barrett and resolved

"To direct the Population and Migration Committee to consider the views expressed by States Members during debate, liaise with the Advisory and Finance Committee/Housing Authority and report back to the States on or before the January 2000 States meeting with a report and proposals on:

- (a) the future role of the Committee;
- (b) the resources required to fulfil that role;
- (c) the approach to population policy which the Committee would pursue;
and
- (d) any other matters which the Committee considers appropriate including consideration of constituting a new Committee to advise the States on population policy and related matters."

2. Although the Population and Migration Committee has spent much time in recent years discussing the population policy, it has attempted to carry out the States direction with an open mind.

3. As a result of the work that the Committee has carried out since June it is clear that, at the heart of the debate on population policy, there are two apparently incompatible views.

4. On the one hand there is a widespread acceptance that continued population growth will have serious consequences for the quality of life and the environment and that, in particular, the issue of rising house prices is of real concern.

5. On the other hand there is also a desire to see economic growth to provide continuing improvement in the range and quality of public and private services.

6. There is also belief that population policy and Housing Control are one and the same thing. That is not the case.

7. Whilst Housing Control is important in that it is the States chosen method of population control, population policy is a much wider issue. There is, however, much uncertainty about the provisions of the Housing Control Law nor should it be forgotten that it only applies to a small proportion of the population.

8. Population policy is intimately linked with economic policy and job creation and making the best use of resources. Issues such as IT, training, flexible working and outsourcing are also key aspects of population policy.

9. In the short timescale available the Committee does not consider that it would have been possible to produce well researched and considered alternative population policies taking into account these key issues.

10. The Committee accordingly has concentrated on proposals which would provide a structure whereby population policies can be researched and consideration given to the need to bring forward alternative policies in the most effective way.

11. In preparing this Report to the States the Committee has therefore concentrated on how, in future, the States may

- a) be better advised on population policy and on the need to provide guidelines on policy implementation;
- b) exercise executive responsibility for population controls.

Consultations

12. Having considered the views expressed by members of the States during the debate on 8 and 9 June the Population and Migration Committee decided to carry out extensive consultations seeking the views of

- States Members
- Douzaines
- States Committees with a direct interest in the impact of population issues
- interested private groups
- the general public.

13. The Population and Migration Committee subsequently held a series of meetings with individuals and organisations which had responded to the Committee's invitation to give their views. The Committee was pleased that the Advisory and Finance Committee and the Housing Authority agreed that senior staff from their Departments could attend these meetings to provide technical advice.

14. Attached as Appendix 1 to this Report is a list of the those individuals and organisations which responded to the Committee's invitation to give their views and

those who met with the Committee. A number of respondents did not feel it necessary to meet with the Committee and in a few cases it was not possible to arrange meetings.

15. The Population and Migration Committee was well pleased with the response to its consultation exercise which it believes clearly demonstrates the increased interest in population policies generated by the States debate.

16. Attached as Appendix 2 to this Report is a summary of the themes which arose during the consultation exercise. It can be seen that there was a wide range of views and issues raised during the exercise.

17. The Population and Migration Committee believes that the consultation exercise has confirmed that there

- is widespread concern about current trends in the size of the population in Guernsey
- are concerns about the impact of current Housing Licence policies on the ability of employers (including States Committees) to recruit and retain adequately skilled staff
- is concern about the way in which the States currently deals with population policies
- was widespread misunderstanding about the provisions of the Housing Laws
- are many conflicting, contradictory and sometimes impractical ideas about how population and Housing Licence policies could be better implemented.

18. The Population and Migration Committee also had the opportunity to meet with the States of Jersey Policy and Resources Committee which has been reviewing population policies in Jersey. The Committee noted that many of the same issues as were raised during the consultation exercise were also of concern in Jersey.

19. Representatives of the Population and Migration Committee also had the opportunity to meet HM Comptroller for a preliminary discussion on the possible effects of importing Human Rights legislation into domestic law on the operation of population controls.

20. As a result of its wideranging consultation exercise, the Population and Migration Committee has concluded that, at least in the short to medium term, population control will continue to have to be exercised through the Housing Control and the Right to Work Laws.

Determination and Implementation of Population Policies

21. In relation to the determination of population policy the Population and Migration Committee has considered whether this would best be achieved by

- a separate States committee with a standard constitution

[the standard constitution is a President and four ordinary members who are sitting members of the States and two ordinary members who need not be sitting members of the States]

- a separate States committee with a 'corporate' constitution along the lines of the Transport Board

[the constitution of the Transport Board is a President who shall be a sitting member of the States; four members who shall be sitting members of the States which number shall include a representative from the States Board of Administration, a representative from the States Tourist Board and a representative from the States Board of Industry; and two members who need not be sitting members of the States]

- an existing States Committee which has corporate responsibilities (in particular, the Advisory and Finance Committee).

22. In relation to the implementation of population policies the Committee has considered whether this should be exercised by

- the same States committee responsible for determination of policy
- a separate States committee.

23. In considering the above options the Population and Migration Committee has

- recognised that population policy is intimately inter-related to social, economic and environmental policies and that Housing Licence policies must also reflect these wider objectives
- noted suggestions that executive responsibility for assessing Housing Licence applications should be the core of a separate States committee's responsibilities which would allow the Housing Authority to concentrate on Housing policies
- also noted that, particularly in view of the anticipated importation of the European Convention on Human Rights into domestic law, it is likely that in future even more careful consideration will have to be given to the relationship between housing policy in general and the consideration of applications for housing licences.

24. With regard to its own role, the Population and Migration Committee believes that, whilst it is valuable for it to exist as a separate States committee with specific responsibility for population policy, it does not have the corporate responsibility or the political influence to be pro-active.

25. On the other hand the Committee believes that the Advisory and Finance Committee has corporate responsibilities and political influence. Indeed, in 1998 the Advisory and Finance Committee published the "grey book" and used a significant element of the Policy and Resources Planning Report to discuss population issues.

26. Whilst the Population and Migration Committee recognises that there is a case for it to be dissolved it would be greatly concerned if its responsibilities were simply transferred to the Advisory and Finance Committee without placing a specific onus on that committee to establish mechanisms for considering population policy on a regular basis.

27. Having regard to the above consideration the Population and Migration Committee has concluded that it should be dissolved but that specific mechanism should be put in place to ensure that the determination and implementation of population

policy remains at the forefront of public debate. The committee has identified two options - a Population Working Party and an Immigration Control Committee.

A: Population Working Party

28. In this option executive responsibility for issuing Housing Licences would remain with the Housing Authority but overall responsibility for population policy would be transferred to the Advisory and Finance Committee.

29. The Population and Migration Committee would be dissolved and its mandate assumed by the Advisory and Finance Committee.

30. The Advisory and Finance Committee would establish a Population Working Party which would advise it on population issues.

31. It is proposed that the Population Working Party would comprise representatives of the Advisory and Finance Committee, representatives of appropriate committees of the States involved with population issues and three independent members of the States. The members of the Population Working Party would be appointed by the Advisory and Finance Committee.

32. Other representatives of States committees or other interested bodies should be invited to attend meetings of the Population Working Party as appropriate.

33. The Population Working Party would

- review population policies and report to the Advisory and Finance Committee with recommendations for any changes which would be referred to the States through the annual Policy and Resource Planning process for incorporation in the Strategic and Corporate Plan
- receive, review and comment to the Advisory and Finance Committee, as necessary, on population and Housing Licence statistics
- advise the Advisory and Finance Committee on matters relating to the taking of the Census
- prepare assessments of population policy to enable the Advisory and Finance Committee to report to the States at least every three years.

34. The Population Working Party would make use of the services of the Policy Unit, Housing Authority and Committee Secretariat staff.

B: Immigration Control Committee

35. This option would involve the establishment of a new States Committee with a standard constitution and mandate as follows:

Constitution

A President who shall be a sitting member of the States

Four members who shall be sitting members of the States

Two members who need not be sitting members of the States

Mandate

- a. To advise the States on matters relating to:
 - the provision of Immigration, Population, Employment and Housing Occupation controls;
 - the provision of population and migration statistics and the need for measures relating to population and migration
- b. To develop, present to the States for approval and to implement policies on the above matters for the provision of services, introduction of legislation and other appropriate measures which contribute to the achievement of strategic and corporate objectives.
- c. To exercise the powers and duties conferred on it by extant legislation and States resolutions.
- d. To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to it.

36. The Immigration Control Committee would take on the mandate of the Population and Migration Committee and could be responsible for issuing licences and permits under the Housing Control and the Right to Work Law which are currently administered by the Housing Authority. There would be no change to the procedures for controlling immigration under which responsibility resides with the Lieutenant-Governor.

37. The Immigration Control Committee would establish a database of existing licence holders and gather information from the Education Council, Board of Industry, Guernsey Social Security Authority and other interested bodies to record the number of residentially qualified people who are on the Island or who are presently outside the Island in order to gain the relevant qualifications or work experience to enable them to return and be available for essential employment in Guernsey.

Liaison with the Advisory and Finance Committee and the Housing Authority

38. As directed by the States the Population and Migration Committee has liaised with the Advisory and Finance Committee and the Housing Authority on the contents of this Report.

Advisory and Finance Committee

39. The Advisory and Finance Committee has agreed to establish a Population Working Party as set out in paragraphs 30 to 34 above. The Advisory and Finance Committee has informed the Population and Migration Committee of its commitment to ensuring that the Population Working Party will represent a wide range of views and, as a sign of its good faith and to provide some continuity, has said that it would be happy to invite three members of the current Population and Migration Committee to sit on the Working Party.

40. The Advisory and Finance Committee also considered that the Population Working Party should be asked to consider the suggestion [see paragraph 37 above] for the establishment of a database and the collection of information on residentially qualified persons with particular skills.

Housing Authority

41. The Housing Authority's previous view was that the Population and Migration Committee should be dissolved unconditionally with its responsibilities for the census being transferred to the Advisory and Finance Committee.

42. In reaching this conclusion, the Authority was of the view that, within the constraints of the States Strategic and Corporate Plan, the requirements of the Housing Control Law and the fundamental rights provided for in both international and domestic legislation, it had been successful in controlling population growth. It therefore followed that as population policy was a strategic issue the Authority considered that it should fall within the mandate of the Advisory and Finance Committee rather than a separate committee of the States.

43. However, the Population and Migration Committee has been advised that the Authority can now see merits in a working party being established, under the auspices of the Advisory and Finance Committee, to formulate a population policy that considers all the aspects of the population issue, thereby informing revisions to the Strategic and Corporate Plan.

44. To achieve this objective, the Authority stresses the comments made in paragraphs 6 and 7 of this Report that population policy and the issue of housing licences are not synonymous.

45. The authority advises that, through the Housing Control Law, it only directly controls a small proportion of the Island's population (albeit that the working population in general is monitored through the Right to Work Law). According to the 1996 Census, only 6% of the population were shown to be directly under licence, with a further 6% of the population being "restricted but not fully controlled" through their occupation of Open Market accommodation. Consequently, the vast majority of the population is "uncontrolled", enjoying fundamental human rights provided under international convention or rights of abode vested in the Housing Control Law, ie according to the 1996 Census, 79% of the population are residentially qualified, with a further 9% being family members living with qualified residents.

46. The Authority, therefore, considers that the Working Party must not be overly influenced by controlling the number of housing licences issued, as this would falsely relegate the other contributory population factors to secondary importance.

47. The Working Party's key role should be to advise on the revision of the Strategic and Corporate Plan, and to recommend and monitor measures to ensure that it is strong enough to achieve its intentions.

48. The Authority considers that key factors in ensuring that this perspective is achieved will be the Constitution and Mandate of the Working Party. The Authority, therefore, notes with approval the Working Party's Mandate as set out in paragraph 33.

49. The Authority is less certain regarding the proposed constitution. To give the broad and unbiased perspective on population policy that is required, the Authority would have preferred that there be no appointments from particular committees with an interest in population policy (including the Authority), as there is a danger that they will be overly influenced by their respective committee mandates. The Authority would thus have preferred that the Working Party be constituted by the President (or a member) of the Advisory and Finance Committee, plus three "independent" States' Members (none of whom would be a member of the Authority). Technical and legal

advice plus administrative support would be provided by officers from the Authority, the Policy Unit and the Committee Secretariat.

50. With respect to the minority proposal to form an Immigration Control Committee, the Authority has advised that it is opposed to this proposal for the following reasons:

- there is no evidence to suggest that by transferring the Housing Authority's responsibilities to a new States committee, population control would be achieved more successfully than under present administrative arrangements.
- it would be unwise for a Committee with powers to make policy on population also to discharge executive powers through the Housing Control legislation; in particular because population control is secondary to the principal aim of the legislation, which is to reserve housing for the locally qualified population.
- it follows that a new Committee whose principal concern was to limit population growth might be less able to make "reasonable" decisions, as required under the Housing Control Law, because it could be overly concerned by the effect of those decisions on the number of licenses issued.
- without "day-to-day" involvement with housing matters, an Immigration Control Committee would have great difficulty in exercising the second stage of the licensing process; namely, to decide on the type of accommodation the licence holder can occupy.
- the establishment of an Immigration Control Committee would be in direct opposition to the statement in paragraph 23 that, in view of the anticipated importation of the European Convention on Human Rights into domestic law, it is likely that in future even more careful consideration will have to be given to the relationship between housing policy in general and the consideration of applications for housing licences. The Authority agrees with that statement.
- the establishment of an Immigration Control Committee would be fraught with practical difficulties. It would appear that Housing Control staff - but not Immigration Officers - would have to be transferred from the Housing Authority to the new Committee. (It seems odd to the Authority that an Immigration Control Committee would not take on the immigration control function.) Moreover, the same staff would administer the same laws, but under a different political body: to what benefit? Furthermore, such a reorganisation would seem pre-emptive given the current Review into the Machinery of Government.
- the effect of the establishment of an Immigration Control Committee on the mandates of the Housing Authority, Board of Administration and Board of Industry are not clearly spelt out. For example, it is stated that the Committee would be responsible "for issuing licences and permits under the Housing Control and Right to Work Laws"; but what of the Authority's other administrative functions under these Laws, eg the issue of Status Declarations, the maintenance of records on licence expiry dates, licence renewals, or the administration of the Open Market Housing Register. Who will perform these functions?
- it is stated that the Immigration Control Committee would "exercise the powers and duties conferred upon it by extant legislation and States Resolutions", but exactly which legislation and resolutions it would administer is unclear.

Transferring responsibility for some legislative functions would require specific amendments to the appropriate laws.

For all the above reasons, the Authority concludes that the proposed Immigration Control Committee is neither necessary nor a practical option.

Conclusions and Recommendations

51. After considering the results of the consultation exercise and having liaised with the Advisory and Finance Committee and the Housing Authority the Population and Migration Committee, by a majority, supports the establishment of a Population Working Party, as set out in this Report, which would report to the Advisory and Finance Committee and absorb the functions currently carried out by the Population and Migration Committee.

52. The Population and Migration Committee also agrees that the Population Working Party should be asked to consider the establishment of a database and the collection of information on residentially qualified persons with particular skills.

53. The Committee recommends the States

- a) to dissolve the Population and Migration Committee and to transfer its mandate to the Advisory and Finance Committee;
- b) to approve the establishment by the Advisory and Finance Committee of a Population Working Party as set out in paragraphs 30 to 34 of this Report.

54. I have the honour to request that you will be good enough to lay this matter before the States with appropriate propositions.

I am, Sir,
 Your obedient Servant,
 D. A. BARRETT,
 President,
 States Population and Migration Committee.

RESPONDENTS

Many put their views to the Population and Migration Committee. *The entries in italics indicate that the respondents met the Population and Migration Committee*

States members

Deputy M Ozanne
Conseiller P Ferbrache
Deputy D Nussbaumer
Deputy J Beaugéard
Conseiller I Rihoy
Deputy P Mellor
Deputy O Le Tissier
Conseiller M Torode
Deputy M Dene
Conseiller C Steere
Deputy M Lainé
Conseiller M Lowe
Deputy G Poat
Douzaine Representative D Grut
Conseiller R Le Moignan

Deputy H Allen
Deputy B Russell
Conseiller T Webber
Douzaine Representative P Jones
Deputy R Bisson
Deputy J Gollop
Deputy A Robilliard
Douzaine Representative B Gabriel
Deputy M Best
Deputy P Derham
Douzaine Representative G Domaille
Deputy H Dorey
Douzaine Representative M Laine
Deputy P Falla

Relevant States committees

Advisory and Finance Committee - liaison
Housing Authority - liaison
Board of Health
Committee for Home Affairs
Agriculture and Milk Marketing Board

Board of Industry
 Education Council
 Civil Service Board
 Tourist Board
 Committee for Horticulture

Douzaines

St Saviour
St Peter Port
Vale
Forest

Castel
St Pierre Du Bois
St Martin

Representative Organisations

Institute of Directors
 Chamber of Commerce
 Guernsey Financial Services Commission

Guernsey Growers' Association
 G-Mex

General Public

Ms M Trott

VIEWS OF CONSULTEESAppendix 2

Many themes, concerns and suggestions were put to the Population and Migration Committee during the States debate on 8 and 9 June 1999 and as part of the consultation process for this policy letter. Please note that the following comments are the views of consultees and not necessarily those of the Committee.

1. Is population a cause for concern? Population was a major concern for consultees.

2. What are the perceived population problems? Consultees had difficulty defining an ideal population level for Guernsey. However, they identified the population problems as being:
 - a crowded island with a high population density
 - expensive housing
 - a desire to preserve Guernsey's attractive environment that conflicted with the other demands leading to the urbanisation of Guernsey. The negative effects of urbanisation were seen as more buildings, traffic and pollution combined with shortage of parking and a reduction in the quality of life
 - a shortage of local labour
 - a perception that there are more individuals living and working illegally in Guernsey
 - the Housing Control Law (which was seen by some as too restrictive and by others as too lax).

3. What are the perceived causes of the population problems? Consultees thought that the causes of the population problem were:
 - a natural increase in population, i.e. more births than deaths
 - net migration, i.e. more immigration than emigration caused by
 - ◆ a growing economy which, combined with full employment in the local labour force, resulted in a demand for non-local labour
 - ◆ the local environment being attractive to immigrants, particularly those with young children
 - ◆ marriage and co-habitation between locals and non-locals
 - ◆ Guernsey wages being higher than in the UK which encourages immigration and discourages emigration
 - ◆ local people who have left the Island wanting to return, e.g. to retire
 - ◆ a demand for more and better services and a higher standard of living
 - a booming economy creating jobs and a perception that more housing licences were being issued
 - an increasing demand for accommodation resulting from a trend for smaller households, and a more affluent population with higher expectations
 - a limited land mass which prevents expansion outwards.

VIEWS OF CONSULTEESAppendix 2

4. Solutions to the population problems Consultees generally acknowledged that there were no simple, effective solutions to the population problems. It was notable that, although many consultees identified a range of factors that affected population, most of their proposals centred on the Housing Control Law.

5. “Nil-growth” population policy A “nil-growth” population policy would aim for a static or reduced population.

Positive results of a “nil-growth” population policy would include a slowing down of the urbanisation of Guernsey.

Negative results would include a shortage of staff - resulting in wage inflation. In addition some businesses would cease operating, some existing businesses would move off-island and Guernsey would be less attractive to new business. Then there would probably be a downturn in the economy and a recession. The Island’s income would fall and some public services would be withdrawn or cutback. There was also a concern that draconian measures would be needed in order to achieve a “nil-growth” in the local population.

6. “Open door” population policy An “open door” population policy would allow unlimited people into Guernsey.

Positive results would include enabling businesses to recruit staff more easily, cutting recruitment costs and reducing wage inflation thus making businesses more profitable. This could then increase the Island’s income.

Negative effects of a bigger population would include an increasing demand for accommodation leading to rising property prices and rental costs. Guernsey’s environment would be affected as new buildings are constructed to meet the demand for accommodation. There would also be a demand for more public services. An “open door” policy may also encourage proportionally more of the economically inactive into the Island.

7. Impact of population on the economy Consultees noted that population, migration and housing policies had a major effect on the introduction and development of business in Guernsey.

8. Impact of population on strategic planning There was concern that policy makers needed to better understand population control and migration when undertaking Guernsey’s strategic planning for the short, medium and long term.

VIEWS OF CONSULTEESAppendix 2

9. Interdependent economic sectors Guernsey's economic sectors are reliant on each other. For example, the tourism, horticulture and finance industries create customers for the transport and service industries. Good transport links and hospitality services then make the island more attractive to the finance sector and tourism.
10. Targeting types of industry There were concerns that population policies that targeted a less productive area of the economy could adversely effect economically productive ones.
11. Concern about declining industries There was concern that failing economic sectors were supported by cheap labour. However, it was also noted that some parts of the declining industries were improving their competitiveness through consolidation and new technology.
12. Concern about States' Committee structure Consultees noted that many States Committees had been set up to represent industries that are now in decline. Consultees were concerned that this meant there was little or no States Committee representation for newer economic sectors such as e-commerce and light industry and that declining industries, that were largely responsible for importing staff, were being supported by the States' Committee system.
13. Concerns about the public sector Pressure is put on expanding public sector services as demands on the Island's infrastructure become greater. This is caused by:
 - a trend towards smaller household size which creates more households needing services
 - the public's increasing expectations of services
 - additional houses being built, particularly for first time buyers
 - an ageing population that needs proportionally more services
 - a growing population.
14. Consultees noted that Guernsey's public sector has more restrictions on it than the private sector, i.e. the staff number limitation policy and centrally set salaries and conditions. Most supported these restrictions but some consultees asked for special consideration for the needs of services such as health, education and the police. However, there was a general agreement that public services could not be improved ad infinitum.
15. Concerns about labour Migration of labour into the finance sector and competition between employers for staff made it difficult for new businesses to set up locally or to expand. It created problems for the Island in diversifying its economy. There was a belief that a range of local employment opportunities had to be available for local people, even if this meant supporting declining economic sectors.

VIEWS OF CONSULTEESAppendix 2

16. Concerns about labour (continued) Some organisations reported problems recruiting professional staff from outside the Island. They wanted their problems recognised. They also asked that no measures be taken that would worsen the situation.
17. The poor quality of some of the local labour force was a concern. It was suggested that the buoyant economy masked the unskilled labour resource. If the economy faltered there could be problems.
18. The number of licence holders increases when the economy is booming and reduces in a recession.
19. Limiting, or reducing, the Island's population is especially difficult when there is full employment, a strong demand for labour and there are inflationary wages pressures.
20. The Guernsey Growers' Association re-iterated that the horticulture industry kept tight control on immigrant workers. It only re-employed good-quality staff. Very few workers married local residents, although this was not the public perception. Also, because the employees were seasonal very few contributed to the permanent population growth in Guernsey.
21. Concerns about Human Rights Human rights were identified as a key factor when implementing and proposing legislation to control, or limit, the size of the Island's population.
22. Complex problem Many consultees acknowledged that social, economic, environmental and legal issues made population policy a very complex matter. There were some suggested solutions but none were without side-effects, such as needing more staff to run it, increasing bureaucracy, infringing human rights, being unfair or being ineffective.
23. Replacement of the Population and Migration Committee It was also suggested that a key committee should monitor the States' population policies. The body should also look at migration and housing, liaise regularly with interested bodies and regularly report to the States on the success of the policy and whether it should be amended. There was a belief the group should be forward-looking because population control and understanding of migration was seen to be of vital importance in Guernsey's short, medium and long term planning. There were mixed views about whether the group should also assume responsibility for issuing housing licences.

VIEWS OF CONSULTEESAppendix 2

24. Mandate and Membership Consultees said that a group that tried to advise and/or control population needed a stronger mandate than the current Population and Migration Committee.
- There were concerns that too large a group would become unwieldy but it was also felt that a wide range of interests should be reflected. Suggestions about membership were that the group could comprise of some, or all, of the following:
- representatives of relevant States Committees
 - industry representative organisations
 - States members.
25. Liaison with industry It was also suggested that a sub-group could be set up with membership derived from public and private sector employers who rely on essential licence holder employees. The aim of this group would be to improve liaison with business.
26. Disband Population and Migration Committee It was suggested that the Population and Migration Committee should be disbanded and its responsibilities devolved, as follows:
- Guernsey five yearly census → Advisory & Finance Committee
 - Population policy → Advisory & Finance Committee or Housing Authority or another specially created body.
 - Population control → Advisory & Finance Committee or Housing Authority or another specially created body. NB the current Population and Migration Committee has no executive mandate to control population.
27. Responsibility for Housing Control There was a view that the Housing Authority's maintenance of States Housing role did not sit well with administering the Housing Control Law. It was suggested that Housing Control should be transferred to whichever body assumed the executive responsibility for population control.
28. Retain Population and Migration Committee It was suggested that the Population and Migration Committee should be retained. It could then assume responsibility for issuing Housing Control licences and publish better statistics on housing licences.
29. Responsibility for work permits for non-EU residents It was suggested that the role of issuing work permits to non-EU residents be transferred from the Board of Administration's Customs and Immigration Department to the body with executive responsibility for issuing housing licences. (NB Overall responsibility for work permits for non-EU residents rests with the Lieutenant-Governor).

VIEWS OF CONSULTEES

Appendix 2

- | | |
|--|---|
| 30. <u>Better information</u> | A comprehensive review of population, migration and population control should be undertaken to provide the basis for strategic planning. |
| 31. | Better population information was requested covering the residential population and housing licence statistics (especially for live licences, numbers of dependants and the number of licence-holders who leave the Island). |
| 32. | It was suggested that further research be undertaken into other countries' systems of controlling immigration. |
| 33. <u>Public Sector Open Market Accommodation</u> | It was suggested that the public sector should circumvent the need for housing licences by creating staff houses in open market accommodation. This would lower the demand for local market houses. |
| 34. <u>Public Sector "Service" Housing</u> | States-owned buildings are outside the Housing Control Law which means that the States Committees would not have to apply for housing licences for non-local staff living in such accommodation, although they would require a declaration of lawful residence. |

It was proposed that the States could buy or build flats or houses as "service housing", which would be used for non-local public sector on contracts. "Service housing" could include accommodation for single people, couples or families.

The suggested benefits of "service housing" were that:

- it could help public sector recruitment of non-locals
- rent could be subsidised to attract non-local staff
- it would allow States Committees to extend the contracts of the best non-local staff and help recruitment to the most difficult to fill posts, especially nurses, police officers and teachers
- non-locals in such accommodation were more likely to leave at the end of their contracts.

The suggested disadvantages of "service housing" were that :

- it would be an expensive option
- public sector tied-housing might not be attractive to staff
- non-local individuals and their children could still acquire residential rights to live in Guernsey permanently and
- it was divisive to those who could not benefit, i.e. the rest of the Island's population.

There were also concerns that "service housing" would not comply with Guernsey's strategic and corporate plan.

VIEWS OF CONSULTEESAppendix 2

35. Work permits Work permits, visas and housing control licences are currently required for non-EU residents who want to work in Guernsey. Work permits are designed to protect a local population's jobs in a recession and prevent non-locals from taking jobs that a local could fill.
- Work permits do not prevent immigration. Nonetheless there was a view from some consultees that work permits for all local workers should either replace Guernsey's Housing Control Laws or be in addition to those Laws. Others felt a work permit system would be ineffective and bureaucratic.
36. Jersey's Regulation of Undertakings Law Jersey's Regulation of Undertakings Law aimed at limiting the creation of jobs because it was accepted that immigration was the result of the availability of work. However, residents with five, or more, years residency can be employed without coming under the legislation.
- Few consultees commented on Jersey's Regulation of Undertakings Law.
- Some felt that the Undertakings Law was draconian, too bureaucratic, increased inflationary pressures, did not work and prevented economic diversity.
- Others said that the Undertakings Law had the benefits of persuading non-productive operations to relocate, making businesses use their staff more effectively, encouraging the retired and others back into work, and improved the training of existing staff thus reducing the demand for immigrant labour.
37. Better use of local resources It was suggested that Guernsey's economy could be improved by:
- encouraging the outsourcing labour-intensive or less profitable operations
 - developing the quality and expertise of the local staff available,
 - utilising technology effectively
 - using under-utilised pools of local labour, e.g. the retired, housewives
 - using flexible hours and annualised hours contracts to attract staff to part-time, seasonal or term-time only work.
 - employing Alderney residents, i.e. the staff would still live in Alderney and either work there or commute daily to Guernsey. The assumption was that Alderney staff were available and would not need housing licences
 - postponing retirement age until age 65.

VIEWS OF CONSULTEESAppendix 2

38. Housing Control Law There was significant confusion about the Housing Control Law. However there was also much support for its continuation.
- The original purpose of the Housing Control Laws – to preserve housing for the local population - was seen as secondary to its use in controlling who lived and worked locally.
- The Housing Authority was acknowledged as having a difficult job and many consultees supported it.
39. Concerns about seasonal licences There was concern that seasonal staff were illegally bringing in their dependants to Guernsey. It was felt young children and babies brought in under these conditions were living in unsuitable accommodation and were a drain on the Island's education and health services.
40. Concerns about shorter term essential licences Consultees stated that reducing the number of the longer-term essential housing licences did not reduce the number of people resident in Guernsey.
- It was noted that shorter licences were also less attractive to non-local staff, increased employers' costs as they had to replace staff more frequently and meant lost productivity as more experienced staff had to leave the Island. Some employers also reported that they weren't able to fill five-year posts.
- There was also a concern that greater numbers of temporary residents increased the likelihood that relationships would be formed with local people and so more non-locals would remain under "en famille" licences.
- Concern was also expressed that non-essential staff were being employed under essential licences.
41. Concern about returning Guernsey men and women Some consultees wanted former Guernsey residents, particularly from the armed forces, to retain a right to return to the Island with their dependants, e.g. to retire. Others felt that if a person had spent many years away from Guernsey then they should not have an automatic right to return with their dependants.

VIEWS OF CONSULTEESAppendix 2

42. Erroneous beliefs about the Housing Control Law It was widely held that essential licences were given to people not posts and that this enabled a person to move from job to job, between employers and between economic sectors. The Housing Authority confirmed that an essential licence is given to an employer for a particular job. An employee in Guernsey under an essential licence for such a job forfeited the licence if he/she moved jobs and could only undertake a new job that also had an essential licence attached.
43. Consultees said that “en famille” licences were open to abuse and so licences should be checked. The Housing Authority confirmed that licences were initially checked at one or two year intervals and thereafter every five years.
44. There was a view that there were many people living in Guernsey illegally after their licences expired. Housing confirmed that checks are made when a licence expires and also while the licence was “live”.
45. Consultees wanted more detailed records kept of licences that were issued and licences that were still active. The Housing Authority confirmed that it keeps detailed records. It reports on licences issued or extended at four monthly intervals and has started to report on the number of “live” licences on an annual basis.
46. It was proposed that essential licences should only be granted to employers on the condition that they train up local residents as replacements. Housing confirmed that it required employers to train up local staff. Some employers reported problems retaining trainee staff especially when they qualified.
47. Consultees wanted housing licences to be issued subject to a criminal record check. Housing confirmed that the 1994 Law provides for criminal records to be a factor for employment –related licences only. The Police check such licences and the Authority may refuse to grant a licence if the applicant has a criminal record.
48. Some consultees objected that open market residents have more rights than local people. The Housing Authority confirmed that there is only one right that open market people have that is not shared by local market residents. Open market houses on Part A of the register are free from control over who can occupy the premises so householders can accommodate additional people in their household. However checks are made to ensure that the property is not being used as a lodging house. If the Authority deems a Part A property to be in use as a lodging house it becomes a controlled dwelling and additional persons would require licences.

VIEWS OF CONSULTEESAppendix 2

49. Suggestions regarding the Housing Control Law Consultees believed that the policy of cutting back on fifteen-year licences and using shorter-term essential licences instead was ineffective and increased recruitment costs. It was suggested that short-term licences be abandoned and only fifteen-year licences be issued.
50. Statistics should be available to show how many holders of 15-year essential licences remained in the Island once their licence expired.
51. Five-year essential licence holders should not be allowed to buy local market properties because they upgraded properties beyond the means of most local residents when they were resold. The Housing Authority confirmed that the Housing Control Law was based on residence not ownership but it pointed out that using rateable reserved lower value properties for local persons.
52. The proposal to allocate housing licences according to each economic sector's contribution to the Guernsey economy received as much support as it did opposition. However even the proposal's supporters regarded it as a reasonable idea – but only for sectors other than their own.
53. Many consultees wanted longer-term licences to be available for staff in their economic sector. Employers from tourism and horticultural industries stated that their businesses were not seasonal therefore use of nine month seasonal was inappropriate. They wanted the Housing Authority to issue more long-term licences. Some consultees wanted the flexibility to be able to extend a fixed number of licenses more easily.
54. It was suggested that the current housing control systems were too complex and bureaucratic and should be simplified.
55. It was proposed that the Housing Authority should be able to limit the household size of immigrants. The Housing Authority confirmed that short-term employment-related licences are limited to single or unaccompanied people and do not allow the holder to bring any dependants. However, the Housing Control Law has no provision under which the Authority could refuse a "full essential" licence on the basis of the size of an applicant's household. Even if it were possible to limit the issue to a single person or a person without dependants, it would be impossible to prevent the licence holder marrying or having children once they were in Guernsey.
- The Authority's view is that strict adherence to the five year limitation is an adequate safeguard against large families establishing long-term rights in Guernsey through essential licences.

VIEWS OF CONSULTEESAppendix 2

56. Suggestions regarding the Housing Control Law (continued) Consultees were concerned that licence holders could bring their elderly parents to Guernsey who they did not then contribute to the economy and were a drain on the Island's resources. However, consultees generally felt that it would be reasonable to allow people who would live in Guernsey for several years to bring in their close family members, e.g. their spouse, children, partner.
57. Some consultees believed that licence holders should not be allowed to do more than one job. It was also suggested that open market residents and the dependants of licence holders should not be allowed to work in the Island. Other consultees argued that introducing such restrictions would increase the pressure to bring in additional non-local labour to do the work.
58. It was proposed that the Housing Authority should be able to refuse licences without giving reasons. The Housing Authority has confirmed that it believes that if such a case went to appeal to the Royal Court then the appeal would be upheld and the Authority required to provide an adequate explanation. It is also a basic human right to be provided with such an explanation.
59. It was suggested that licences should be issued subject to a deposit so that they are returned to the Authority if they are no longer required thus enabling more accurate statistics to be kept. The Housing Authority has confirmed that, by liaising with the Guernsey Social Security Authority, it could monitor the entry and departure of all legally employed persons in Guernsey.
60. Essential licence holders should sign up to leaving the Island once their licence expired.
61. Non-locals whose marriages/relationships break down should not expect to be able to stay in Guernsey. The Housing Authority confirmed that it considers cases on their merits and that not all requests for compassionate cases were granted. However, it noted that it was refusal of compassionate cases that most often resulted in the appeal procedures being started.
62. Essential licences (which allow non-locals to live in some local market properties) should only being available for the moderately paid technical persons, low paid professions and persons making a good case. Well-paid professionals who currently get essential licences should be accommodated in open market housing. This would lessen inflation in the local market.

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

9th February, 2000.

Sir,

I have the honour to refer to the policy letter dated 3 February addressed to you by the President of the Population and Migration Committee on the subject of the Future of the Population and Migration Committee.

The Advisory and Finance Committee supports the recommendation that the Population and Migration Committee should be dissolved and that its mandate should be transferred to the Advisory and Finance Committee.

The Advisory and Finance Committee also supports the proposal that it should form a Population Working Party.

In order to provide for continuity, and to demonstrate its commitment to having a wide representation, the Advisory and Finance Committee would intend to invite three members of the Population and Migration Committee to join the Working Party as independent members of the States.

The Advisory and Finance Committee recommends the States to approve the proposals.

I am, Sir,
Your obedient Servant,
J. E. LANGLOIS,
Vice-President,
States Advisory and Finance Committee.

The States are asked to decide:—

- VII.— Whether, after consideration of the Report dated the 3rd February, 2000, of the States Population and Migration Committee, they are of opinion:—
1. That the States Population and Migration Committee shall be dissolved and its mandate transferred to the States Advisory and Finance Committee.
 2. To approve the establishment by the States Advisory and Finance Committee of a Population Working Party as set out in paragraphs 30 to 34 of that Report.

STATES ECCLESIASTICAL COMMITTEE

ECCLESIASTICAL OFFICES – AGE LIMIT

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

1st February, 2000.

Sir

ECCLESIASTICAL OFFICES - AGE LIMIT

1. The mandate of the Ecclesiastical Committee is

"To study, together with the Advisory and Legislative Committee of the Guernsey Deanery Synod, all measures and draft measures emanating from the General Synod of the Church of England submitted to it by the Bailiff, and to report thereon to the States."

2. The Ecclesiastical Committee has received recently details of a draft scheme prepared by the Bishop of Winchester, in pursuance of the arrangements provided in the Channel Islands (Church Legislation) Measures 1931 and 1957, to extend the Ecclesiastical Offices (Age Limit) Measure 1975 to the Channel Islands. A copy of the draft scheme and of the 1975 Measure are attached to this Report.

3. If implemented, the draft scheme would provide that

- no person shall be appointed as Dean of Jersey, Dean of Guernsey or as the incumbent of any benefice in the Channel Islands if that person has attained the age of 70 years
- the Dean of Jersey, the Dean of Guernsey and the incumbent of any benefice in the Channel Islands shall vacate that office on the day on which they attain 70 years of age (this provision will not apply to any person holding one of these offices when the legislation comes into force until that person vacates that office)
- the Bishop may extend the term of office of the Dean of Jersey or the Dean of Guernsey by up to one year after that person attains the age of 70 years
- the Bishop, with the consent of the churchwardens, may extend the term of office of the incumbent of any benefice in the Channel Islands by up to two years after that person attains the age of 70 years.

4. The Ecclesiastical Offices (Age Limit) Measure has now been operating satisfactorily in the UK for more than twenty years and, indeed, most UK clergy now retire before reaching the age of 70 years. The proposal to extend the Measure to Guernsey has come about as the result of discussions within the Church locally where it is considered that such a change would be beneficial.

5. The Ecclesiastical Committee has met with the Advisory and Legislative Committee of the Guernsey Deanery Synod to study the scheme proposed by the Bishop of Winchester. The Advisory and Legislative Committee has advised that at a meeting earlier this summer the Guernsey Deanery Synod agreed that the Measure should be extended to Guernsey as proposed by the Bishop. The Ecclesiastical Committee concurs.

6. The Ecclesiastical Committee therefore recommends the States to acquiesce in the draft scheme prepared by the Bishop of Winchester, in pursuance of the Channel Islands (Church Legislation) Measures 1931 and 1957, for applying the Ecclesiastical Offices (Age Limit) Measure 1975 to the Channel Islands.

7. I have the honour to request that you will be good enough to lay this matter before the States with an appropriate proposition.

I am, Sir,
Your obedient Servant,
F. M. TRICKEY,
President,
States Ecclesiastical Committee.

**THE ECCLESIASTICAL OFFICES (AGE LIMIT) (CHANNEL ISLANDS)
ORDER 2000**

Made	2000
Coming into operation	2000

At the Court at Buckingham Palace

the day of 2000

PRESENT

The Queen's Most Excellent Majesty in Council

WHEREAS the Bishop of Winchester has, in accordance with the Schedule to the Channel Islands (Church Legislation) Measure 1931, as amended by section 2 of the Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, settled the Scheme set out in the Schedule to this Order for applying the Ecclesiastical Offices (Age Limit) Measure 1975 to the Channel Islands, and the procedure set out in the Schedule to the first-mentioned Measure has been followed.

NOW, THEREFORE, HER MAJESTY, in pursuance of section 2 of the Channel Islands, (Church Legislation) Measure 1931, as amended by section 1 of the Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, and of section 7 (2) of the Ecclesiastical Offices (Age Limit) Measure 1975, is pleased, by and with the advice of Her Privy Council, to order and direct as follows –

1. This Order may be cited as the Ecclesiastical Offices (Age Limit) (Channel Islands) Order 2000 and shall come into operation on the day of 2000.
2. The Scheme set out in the Schedule to this Order is hereby confirmed.
3. The Ecclesiastical Offices (Age Limit) Measure 1975 shall apply to the Channel Islands in accordance with the provisions of the said Scheme.

SCHEDULE

A SCHEME

Prepared by the Bishop of Winchester in pursuance of the Channel Islands (Church Legislation) Measures 1931 and 1957 for applying the Ecclesiastical Offices (Age Limit) Measure 1975 to the Channel Islands.

Preamble

Whereas section 7 (2) of the Ecclesiastical Offices (Age Limit) Measure 1975 provides that the Measure may be applied to the Channel Islands or either of them, as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, in accordance with the provisions of the last-mentioned Measures.

And whereas the Bishop of Winchester has come to the conclusion that the Measure ought to be applied to the Channel Islands with certain variations and has in accordance with paragraphs 1 to 3 of the Schedule to the Channel Islands (Church Legislation) Measure 1931 prepared the following draft Scheme for the purpose:

Scheme

*Application of the
Ecclesiastical Offices (Age
Limit) Measure 1975*

1. In its application to the Channel Islands the Ecclesiastical Offices (Age Limit) Measure 1975 shall have effect as if -
 - (a) section 1 (2) were omitted;
 - (b) in section 1 (4), paragraphs (a), (b) and (c) were omitted;
 - (c) in section 1 (5) all words after the words "Measure or in" were omitted and there were substituted the words "any Order made in pursuance of the Channel Islands (Church Legislation) Measure 1931 and 1957";
 - (d) section 2 were omitted;
 - (e) for section 3 (1) there were substituted -

“(1) Where the diocesan bishop considers that there are special circumstances which make it desirable that a person holding the office of Dean of Jersey or Dean of Guernsey should continue in that office after the date on which he would otherwise retire in accordance with section 1 of this Measure, the bishop may from time to time authorise the continuance in that office of that person after that date for such period or further period, not exceeding one year in all, as he may specify.”;

(f) for section 3(2) there were substituted -

“(2) Where the diocesan bishop considers that the pastoral needs of a parish in his diocese, or of his diocese, make it desirable that a person holding the office of incumbent of a benefice in his diocese should continue in that office after the date on which he would otherwise retire in accordance with section 1 of this Measure, the bishop may, with the consent of the majority of the Church Wardens and Almoners (if any) of the Parish, from time to time authorise the continuance in that office of that person after that date for such period or further period, not exceeding 2 years in all, as he may specify.”;

(g) section 3(3) were omitted;

(h) sections 4 and 5 (2) were omitted;

(i) in Section 6, in the definition of “incumbent”, the words “but does not include the Dean or Provost of a Cathedral Church” were omitted;

(j) subsections (3) and (4) of section 7 were omitted;

(k) in the Schedule there were substituted for the listed offices the following offices -

“Dean of Jersey
Dean of Guernsey
Incumbent of a benefice”.

Interpretation

2. For the purpose of this Scheme, and of the Measure applied to the Channel Islands by this Scheme -
 - (a) any reference to the Channel Islands or either of them shall have the same meaning as has such a reference in the Channel Islands (Church Legislation) Measure 1931; and
 - (b) any reference to any other enactment is a reference to that enactment as it has effect in the Channel Islands.

Explanatory Note

(This Note is not part of the Order)

This Order applies the Ecclesiastical Offices (Age Limit) Measure 1975 to the Channel Islands in accordance with a Scheme prepared by the Bishop of Winchester.



Church of England: 5

Statutes in Force

Official Revised Edition

Ecclesiastical Offices (Age Limit) Measure 1975 (No. 2)

Revised to 1st December 1977

BY AUTHORITY

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ECCLESIASTICAL OFFICES (AGE LIMIT) MEASURE 1975 (No. 2)

Ss.1-3

A Measure passed by the General Synod of the Church of England to make provision with respect to the age limit for the holding of certain ecclesiastical offices.

[1st August 1975]

1.—(1) Subject to subsection (2) of this section, no person shall be capable of being appointed or presented to an office listed in the Schedule to this Measure if at the time of his appointment or presentation he has attained the age of seventy years.

Age limit for appointment, etc. to certain ecclesiastical offices.

(2) Subsection (1) of this section shall not apply to an office in a Royal Peculiar nor to the office of residentiary canon in a cathedral church if the canonry is annexed to a professorship in a university nor to the office of dean of the Cathedral Church of Christ in Oxford.

(3) Subject to the following provisions of this Measure, a person who holds an office listed in the Schedule to this Measure shall vacate that office on the day on which he attains the age of seventy years.

(4) Subsection (3) of this section shall not apply to—

- (a) any person who holds an office in a Royal Peculiar; or
- (b) any person who holds a residentiary canonry which is annexed to a professorship in a university; or
- (c) any person who holds the office of dean of the Cathedral Church of Christ in Oxford; or
- (d) any person who at the commencement of this Measure holds any office listed in the said Schedule unless and until he vacates the office held by him at the said commencement.

(5) The foregoing provisions shall have effect notwithstanding anything in any Measure passed before the date of the passing of this Measure, or in any instrument made under such a Measure or in the constitution and statutes of a cathedral church.

2. Where Her Majesty considers that there are special circumstances which make it desirable that a person holding the office of archbishop should continue in that office after the date on which he would otherwise retire in accordance with the foregoing section, She may authorise the continuance in office of that person after that date for such period, not exceeding one year, as She may in her discretion determine.

Archbishop may continue in office for certain period after attaining retiring age at discretion of Her Majesty.

3.—(1) Where—

- (a) an archbishop considers that there are special circumstances which make it desirable that a person holding the office of diocesan bishop in his province should continue in

Provisions with respect to continuance in office of other office holders after attainment of retiring age.

ECCLESIASTICAL OFFICES (AGE LIMIT) MEASURE 1975 (No. 2)

Ss.3, 4

that office after the date on which he would otherwise retire in accordance with section 1 of this Measure, or

- (b) a diocesan bishop considers that there are special circumstances which make it desirable that a person holding the office of suffragan bishop, dean, provost, residentiary canon or archdeacon in his diocese should continue in that office after the date on which he would otherwise retire in accordance with that section,

the archbishop or bishop, as the case may be, may from time to time authorise the continuance in that office of that person after that date for such period or further period, not exceeding one year in all, as he may specify.

(2) Where a diocesan bishop considers that the pastoral needs of a parish in his diocese or of his diocese make it desirable that a person holding—

- (a) the office of incumbent of a benefice in his diocese, or
- (b) the office of vicar in a team ministry established for the area of any benefice in his diocese,

should continue in that office after the date on which he would otherwise retire in accordance with section 1 of this Measure, the bishop may, with the consent of the parochial church council of the parish, or, as the case may be, of each of the parishes, belonging to the benefice, from time to time authorise the continuance in that office of that person after that date for such period or further period, not exceeding two years in all, as he may specify.

(3) Where the Bishop of London considers it to be desirable on pastoral grounds that a person holding the office of vicar of a guild church should continue in that office after the date on which he would otherwise retire in accordance with section 1 of this Measure, he may, with the consent of the guild church council, from time to time authorise the continuance in that office of that person after that date for such period or further period, not exceeding two years in all, as he may specify.

Declaration of
vacancy in
archbishopric or
bishopric.

4.—(1) Not less than six months before the date on which an archbishop is required to vacate his office in accordance with section 1 of this Measure he shall tender his resignation to Her Majesty, and Her Majesty may by Order in Council declare the archbishopric vacant as from that date or, if She decides to exercise her discretion under section 2 thereof, as from such later date as She may determine under that section.

(2) Not less than six months before the date on which a person holding the office of diocesan bishop or suffragan bishop is required to vacate his office in accordance with this Measure the archbishop

ECCLESIASTICAL OFFICES (AGE LIMIT) MEASURE 1975 (No. 2)

Ss.4-7

of the province in which that bishop holds office shall declare the bishopric vacant as from that date, but the declaration shall not take effect unless and until it is confirmed by Her Majesty in Council.

(3) Where a declaration declaring a bishopric vacant has been made under this section by an archbishop, he shall send a copy thereof to Her Majesty with a petition that the declaration may be confirmed, and upon receipt of the petition Her Majesty may by Order in Council confirm the declaration.

(4) Where an Order in Council is made under subsection (1) or (3) of this section, the vacancy may be filled in the same manner and with the same incidents in all respects as if the archbishop or bishop, as the case may be, were dead.

5.—(1) The powers exercisable by a diocesan bishop under this Measure shall during the absence abroad or incapacity through illness of the bishop or a vacancy in the see be exercisable by the archbishop of the province or a person appointed by him.

Exercise of powers of bishop or archbishop during absence abroad, etc.

(2) The powers exercisable by an archbishop under this Measure shall during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see be exercisable by the other archbishop.

6. In this Measure—

Interpretation.

“benefice” means a benefice with cure of souls and includes all rectories and vicarages with cure of souls;

“incumbent”, in relation to a benefice, means a rector or vicar with cure of souls but does not include the dean or provost of a cathedral church.

7.—(1) This Measure may be cited as the Ecclesiastical Offices (Age Limit) Measure 1975.

Short title, extent and commencement.

(2) This Measure shall extend to the whole of the province of Canterbury except the Channel Islands, but may be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures.

1931 No. 4.
1957 No. 1.

(3) This Measure shall extend to the whole of the province of York except the Isle of Man, but notwithstanding that exception this Measure shall, subject to section 1(4)(d) thereof, apply to the Bishop of Sodor and Man.

(4) This Measure shall come into operation on such day as the Archbishops of Canterbury and York may jointly appoint and the day so appointed shall be notified in the London Gazette.

1.1.1976 appointed under s. 7(4)

ECCLESIASTICAL OFFICES (AGE LIMIT) MEASURE 1975 (No. 2)**Sch.****Section 1(3).****SCHEDULE****OFFICES TO WHICH SECTION 1 APPLIES**

	Archbishop.
	Diocesan Bishop.
	Suffragan bishop.
	Dean or provost of a cathedral church.
	Residentiary canon in a cathedral church.
	Archdeacon.
	Incumbent of a benefice.
1968 No. 1	Vicar in a team ministry established under the Pastoral Measure 1968.
	Vicar of a guild church.

The States are asked to decide:—

VIII.—Whether, after consideration of the Report dated the 1st February, 2000, of the States Ecclesiastical Committee, they are of opinion:—

To acquiesce in the draft scheme prepared by the Bishop of Winchester, in pursuance of the Channel Islands (Church Legislation) Measures 1931 and 1957, for applying the Ecclesiastical Offices (Age Limit) Measure 1975 to the Channel Islands.

STATES ELECTRICITY BOARD

NEW MEMBER

The States are asked:—

- IX.— To elect a sitting member of the States as a member of the States Electricity Board to complete the unexpired portion of the term of office of Deputy M. S. Lainé, who has resigned as a member of that Board, namely to the 31st May, 2000.

STATUTORY INSTRUMENT LAID BEFORE THE STATES

THE IDENTIFICATION OF BOVINE ANIMALS ORDER, 2000

In pursuance of the provisions of Section 33(1)(c) of the Animal Health Ordinance, 1996, I lay before you herewith The Identification of Bovine Animals Order, 2000, made by the Agricultural and Milk Marketing Board on the 21st January, 2000.

EXPLANATORY NOTE

This Order introduces new methods for identifying bovine animals which take account of technological advances in the manufacture of eartags and it also introduces a revised numbering system for the identification of individual bovine animals and the holding on which they were born.

DE V. G. CAREY
Bailiff and President of the States

The Royal Court House,
Guernsey.
The 25th February, 2000.

APPENDIX I

STATES ADVISORY AND FINANCE COMMITTEE

STATES AUDIT COMMISSION: SECOND ANNUAL REPORT

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

27th January, 2000.

Sir,

States Audit Commission: Second Annual Report

The States Audit Commission (Guernsey) Law, 1997 requires the Commission to "prepare and submit to the Committee an annual report outlining the exercise of the Commission's functions, which annual report the Committee must within three months submit for inclusion as an appendix to a Billet d'Etat." The Advisory and Finance Committee has received the second annual report of the Commission.

As reported in the 1999 Policy and Resource Planning Report, the Committee strongly supports the work of the Commission and is confident that, with the cooperation of States Committees, the Commission will continue to make a valuable contribution to increasing public confidence that States resources are safeguarded and used effectively, efficiently and economically.

The Commission's report includes reference to its approach to the Committee for additional resources. The Committee has sympathy with the Commission's request and, in consultation with the Commission and the Civil Service Board, is reviewing this matter and, if appropriate, will include recommendations in this year's Policy and Resource Planning Report.

I would be grateful if, in accordance with the Law, you would arrange for the publication of the States Audit Commission's second annual report as an appendix to a Billet d'Etat.

I am, Sir,
Your obedient Servant,
L. C. MORGAN,
President,
States Advisory and Finance Committee.



STATES OF GUERNSEY

**AUDIT
COMMISSION**

The President
Advisory and Finance Committee
Sir Charles Frossard House
La Charroterie
St. Peter Port
Guernsey

Sir Charles Frossard House
P.O. Box 43 · La Charroterie
St. Peter Port · Guernsey
GY1 1FH · Channel Islands
Switchboard (01481) 717000
Fax No. (01481) 712520

14th January 2000

Dear Conseiller Morgan,

SECOND ANNUAL REPORT OF THE STATES AUDIT COMMISSION

1 Introduction

The States Audit Commission was established with effect from 1st March 1998 under the States Audit Commission (Guernsey) Law, 1997.

The functions of the States Audit Commission are:

- a) to oversee, co-ordinate and evaluate the internal audit of States interests;
- b) to receive, on behalf of the [Advisory and Finance] Committee, all reports made by external auditors of States interests;
- c) to monitor the selection and application by States committees of accounting standards, accounting policies and accounting procedures;
- d) to assist and encourage States committees, where appropriate by commissioning studies and reports, in the effective, efficient and economical management of States' assets and finances;
- e) to report to the [Advisory and Finance] Committee in relation to all of the above matters.

A summary of the legislation and mission statement is set out in Appendix I of this report. Appendix II sets out the membership of the Commission.

The States Audit Commission (Guernsey) Law, 1997 ("the Law") requires the Audit Commission to prepare and submit to the Advisory and Finance Committee an annual report outlining the exercise of the Commission's functions." The Law also requires that the Commission's report must be presented to the States within three months as an appendix to a Billet D'Etat.

Although the primary purpose of this annual report is to set out the activities of the Commission, the members of the Commission believe that they should also take the

opportunity to make some general comments on the standard and adequacy of States financial procedures and controls and on relevant issues in which the Commission has an interest. In this way, the Commission believes it will be fulfilling its primary objective of assisting committees in ensuring the good management of States' assets and finances.

2 General Observations

2.1 Control Assessment

In the Commission's first annual report, it was stressed that controls and procedures within States Committees had been at a very low base level some five years ago, but that there had been significant improvement since that time. However, during 1999, the Commission was frustrated on a number of occasions to note little improvement or progress when following up previous Internal Audit reports. Additionally, the Commission was disappointed to note a comment in the Summary Management Letter from Deloitte & Touche, External Auditors, that the rate of committees' clearance of prior year management letter points was declining.

The Commission wishes to stress the importance of addressing issues raised in both internal and external audit reports.

2.2 Best Value

During 1999, the UK Audit Commission has launched the 'Best Value' concept. The concept is based on four 'Cs':

- committees should **Challenge** their stated objectives and find better ways of achieving those objectives
- committees should **Consult** with the public to assess what they want from public services and gain feedback on how well committees are providing those services
- committees should **Compare** their own performance with both similar and unrelated bodies to identify 'ideal' performance
- committees should embrace open **Competition** in the supply of goods and services

The States Audit Commission supports strongly the Best Value concept, and will be encouraging all committees to perform or commission a Best Value review. The Commission feels that Best Value might usefully become an integral element of the Policy and Resource Planning Process.

The Commission commends the Island Development Committee for having commissioned such a review during 1999, and looks forward to seeing the results of that review develop during 2000.

The Commission's 'Performance Reporting' report, (see Section 3.1 below), provides guidance on how committees can compare their performance with others, and stresses the need for consistency in calculation of performance measures to enable meaningful comparison.

Additionally, the Best Value concept is based on having clearly defined and measurable objectives. The Commission acknowledges the work which has been put into the Policy and Resource Planning process to date, but strongly believes that the process needs to be developed to encompass measurable policy objectives, in a form which is commonly known as a 'Business Plan'.

The Commission recommends that all committees develop a comprehensive Business Plan, within twelve months. The preparation of such business plans should involve the performance of detailed SWOT (Strengths, Weakness, Opportunities and Threats) analyses, and should define appropriate, meaningful business objectives and measurable performance indicators.

In challenging their objectives and methods of operation, committees should be willing to embrace positive change where that would improve value and quality of service, improve efficiency, and optimise the use of the assets and finances entrusted to them.

2.3 Turnbull Guidance on the Combined Code of Corporate Governance

During the year, the UK Committee led by Turnbull issued much-awaited guidance on the Combined Code of Corporate Governance (originally devised after the Cadbury Review). The basis of Turnbull's recommendations is in line with the Commission's report on 'Risk Management and Insurance' (see Section 3.2 below), and the recommendations are based on the following main principles:

- all entities should identify and assess risks that threaten the achievement of corporate objectives
- entities should have a system of internal control and risk management embedded within the organisation to control those risks
- the system of internal control and risk management should be monitored and reviewed on a continual systematic basis to ensure it is operating correctly
- a specific additional annual process should be completed to assess changes in the nature and extent of risks, the entity's ability to respond effectively to change, the quality of the regular review process and the incidence of significant control failings

These principles are codified by a set of annual disclosure statements on the entity's application of the above principles. Where an entity is not in a position to make such disclosures, a statement should be made to that effect, going on to state what is being done to rectify the situation.

The Turnbull disclosure requirements are applicable only to UK Listed Companies at present, although the UK Central and Local Government are likely to follow suit in the near future. The Commission will continue to monitor developments in the UK in respect of Turnbull, and recommends that Advisory & Finance Committee consider the implications for the States. Ultimately, voluntarily acceptance of the principles of

the Turnbull Guidance is appropriate to ensure good corporate governance and open government.

2.4 Commercialisation of Trading Boards

The Commission is watching with interest the on-going issue of commercialisation of trading boards. Whilst the Commission has no concerns about commercialisation as a concept, the Commission is concerned that the commercialised trading boards should be subject to the same high level of internal control and audit as at present. The Commission will continue to hold discussions with Advisory & Finance in this regard.

2.5 Business Continuity (Disaster Recovery) Plans

The work performed during 1999 to address the 'Millennium Bug' issue has highlighted the crucial need for comprehensive, documented and tested Business Continuity Plans. The Commission notes that many committees have yet to devise such a plan and we emphasise the importance of doing so. Moreover, the Commission is aware that a number of States committees are facing accommodation moves during 2000 and feel that this may raise questions over the continuing feasibility of some committees' Business Continuity Plans. Hence, the Commission is of the opinion that an umbrella review of the existence and feasibility and consistency of Business Continuity Plans throughout the States should be commissioned as a priority during 2000.

2.6 Accounting Standards

The Commission notes that there are still a number of outstanding issues, with regard to accounting policies with the States, which prevent the expression of a 'True and Fair' opinion in the external auditors' annual report. These issues include accruals accounting and accounting for fixed assets, neither of which is fully implemented as yet. The Commission continues to monitor this situation with the Advisory & Finance Committee, and hopes that progress against the Commission's 1998 report on Property Administration will soon result in the valuation of States properties, which represent the major element of States' owned assets.

3 Activities of the Commission

3.1 Performance Reporting

As referred to above, the Commission sent a copy of its report, entitled 'Performance Reporting', to the Advisory and Finance Committee and this was subsequently included as an appendix to the May 1999 Billet D'Etat.

The report highlighted the need for committees to measure their performance against set targets, those targets being derived by reference to other entities and to previous years' performance. Performance measurement and comparison is a key element to achievement of Best Value.

The Advisory & Finance Committee has initiated changes to the year-end accounting pack to incorporate performance measures and it is essential that committees choose

measures which are relevant and value-adding. Moreover, those measures need to be defined and calculated on a basis consistent with UK Audit Commission guidelines to enable meaningful comparison with UK local authority bodies.

The Commission was disappointed to note the proposed time scale of year-end 2001 for the implementation of the performance measures.

3.2 Risk Management and Insurance

During 1999, the Commission employed the UK Strategic Risk Consultancy Division of Deloitte & Touche to perform a review of States of Guernsey Risk Management and Insurance Arrangements. The subsequent report was considered by the Commission, and used as the basis for a Commission report on 'Risk Management and Insurance' within the States, which is due for publication in March 2000.

The report stresses the need for committees, once they have identified their business objectives, to identify the threats to achievement of those objectives. The management of that risk requires a framework of controls and procedures, of which financial controls and insurance are sub-sets.

The responsibility for risk management is currently a central function within the States, but this does not remove the responsibility of each committee to identify and manage its own business risks.

3.3 Progress on Previous Commission Reports

During the year, the Commission monitored the progress made against the recommendations included in the 'Purchasing in the States of Guernsey' report, which was issued by the Commission during 1998. Although quantitative benefits will take some time to be realised, there have been a number of qualitative benefits derived from the work of the Purchasing Steering Group, set up as a result of the report. Examples of these benefits include the introduction of a States of Guernsey purchasing card, a Suppliers' Charter, and clarification of the guidance on the use of local suppliers by States committees.

Similarly, progress on the Commission's report on "The Administration of States Property" was monitored, and a formal follow up is planned for July 2000. Comprehensive follow up reviews on both reports will be published in due course.

3.4 Meetings

The Law requires the Commission to hold regular meetings. During 1999, the Commission has held the following formal meetings of members:

January 8th
February 1st
March 1st
March 29th
April 26th
June 7th
July 5th

August 9th
September 13th
October 4th
November 1st
December 6th

The Commission also invited a number of senior civil servants to make presentations at its meetings, including:

- Chief Officer, Post Office Board: Post Office Working Practices
- States Policy Analyst: IT Strategy and Commercialisation of Trading Boards
- Representatives of the Committees located at Raymond Falla House
- Purchasing Co-ordinator: Purchasing Practices in the States
- Strategic Property Advisor: Property Administration
- Strategic & Policy Advisor, Civil Service Board: Redundancy Procedures
- Computer Services Manager: Y2K Compliance
- States Supervisor: Various Current Issues

In addition, Commission members also held or attended meetings with the following:

- President, Post Office Board
- Civil Service Board Senior Management Team
- Civil Service Board
- Panel for the Review of the Machinery of Government
- Deloitte & Touche Insurance Specialist (as per Section 3.2 above)
- Strategic Policy Forum
- UK Audit Commission

Meetings were held with representatives of committees as the Commission continues to believe that it will be able to contribute most effectively to improving the States' control environment if it develops closer working relationships with States committees and their employees, whilst still maintaining independence.

The Commission made a submission to the Panel for the Review of the Machinery of Government, both by meeting with the Panel, and subsequently submitting a written document.

The Commission was invited to meet with the Strategic Policy Forum and discussed areas of common interest.

The Commission established contact with the UK Audit Commission during the year and met with the UK Commission on 15th October 1999. The meeting was considered to be very useful in discussing mutual aims, objectives, issues and problems. The Best Value concept was discussed at length.

3.5 *External Auditors*

The Commission confirms that, in accordance with the provisions of the Law, the States' external auditors (Deloitte & Touche) have attended a meeting of the Commission.

Additionally, the auditors of the Guernsey Financial Services Commission (BDO Guernsey Ltd) also attended a meeting of the Commission.

The Commission also confirms that, again in accordance with the Law, it was consulted by the Advisory and Finance Committee in respect of the reappointment of the external auditors as part of the 1999 Policy and Resource Planning Debate.

3.6 Website

During 1999, the Commission created a website with public access to increase awareness of its existence and role. The website may be visited within the States of Guernsey website at www.gov.gg under the 'Government' section.

4 Reports of the Internal Audit Department

4.1 Director of Audit Services

In May 1999, a new Director of Audit Services, Mrs Jane Needham, was appointed, to replace Mr David Clark on his appointment as Director of Client Services, States Treasury. The Commission acknowledges with thanks the contribution of Mr Clark and welcomes Mrs Needham in her new role.

4.2 Audit Reports

An important aspect of the Commission's work is to receive the reports produced by the States Internal Audit Department on the financial affairs of States committees. During the year, the Commission has considered 21 reports, (see Appendix III).

4.3 Audit Opinions

During 1999, the new Director of Audit Services introduced a system of standard audit opinions to enable the Commission, and the committees themselves, to assess their overall standard of control environment against a defined target.

The system allows for the following five standard opinions: good, satisfactory, marginally deficient, deficient and seriously deficient.

Since the system was introduced, all the opinions considered by the Commission were either 'Satisfactory' or 'Marginally Deficient'. However, the Commission is aware that in four recent cases, 'Deficient' audit opinions have been given. In three of these four cases, the entity audited was a department within a Committee. The Commission is to consider these reports in final format early in 2000.

As noted above, the Commission was disappointed to see little progress, in some cases, on follow up of previous audits. However, some committees had placed a high priority on addressing audit recommendations and improving the control environment. Those committees are to be encouraged and they already recognise the improvements and streamlining of business processes gained by operating a sound control framework.

The Commission wishes to re-emphasise the responsibilities of Committee members and staff to ensure that each committee maintains a sound control environment to ensure the safeguard of States' assets and finances. Hence, the recommendation made in the Commission's 1998 Annual Report is reproduced here:

- All reports should be included on the agenda of the first available meeting of the relevant committee
- The contents of the report, including management's responses on the matters raised, should be discussed in the appropriate amount of detail
- Committees should ensure that they and their senior staff commit themselves to a detailed timetable for undertaking the required corrective actions, with specific target dates
- Committees should monitor regularly the progress that they and their senior staff have made against the agreed timetable

4.4 Customer Feedback

In line with the recommendations in the Commission's 'Performance Reporting' report (see Section 3.1 above), the Internal Audit Department has developed a customer feedback process to monitor the quality of audit service provided. The Director of Audit Services will use the results of the feedback system to generate a continuous improvement programme.

5 Future Work of the Commission

5.1 Strategic Business Plan

The Commission is in the process of producing a Strategic Business Plan to set out the Commission's objectives and action plan for the coming three years. To a certain extent, this plan is dependent on the resources available to the Commission. The Commission has performed a review of resources and believes those available are insufficient for it to be able to carry out its full range of duties.

Hence, the Commission has approached the Advisory & Finance Committee for additional manpower and financial resources. The Commission recognises that the Advisory & Finance Committee will need to approach the States in this regard, and negotiations on this matter are therefore on-going. It is hoped that these discussions will be completed early in 2000, after which the plan will be finalised and published.

5.2 Value for Money

The Commission intends to make use of any additional resources to implement a programme of value for money reviews. This programme is intended to ensure that the Commission fulfils its stated aim of assisting committees in the effective, efficient and economical management of States' assets and finances.

5.3 *Risk Management*

The Commission will seek to encourage committees to identify, manage and control their business risks, in line with the recommendations in its report on 'Risk Management and Insurance', and the new Turnbull Guidance.

5.4 *Future Reports*

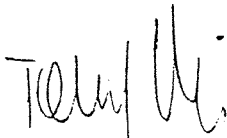
The Commission is considering a number of potential areas for review during 2000 and future years. Included in those areas are:

- The use of Information Technology throughout the States
- The management of capital throughout the States
- Project Management within the States
- Employment Practices and Procedures within the States
- Income generation within the States
- A Risk Review of the work of the States audit function

6 **Acknowledgements**

During 1999, the Commission has continued to enjoy the support of the Advisory and Finance Committee. The Commission also wishes to acknowledge the important contribution of the Director of Audit Services and her staff in carrying out its functions.

Yours sincerely
For and on behalf of the States Audit Commission



A.P. Wills
Chairman



APPENDIX I

SUMMARY OF LEGISLATION AND MISSION STATEMENT

The functions of the States Audit Commission are to be carried out in co-operation with States committee with the primary objective of assisting committees to ensure good management of States finances.

The States Audit Commission is an agency of the States without a separate legal identity. However, the Commission is not a Committee of the States.

The Commission will seek to assist and encourage States committees, where appropriate by commissioning studies and reports, in the effective, efficient and economical management of States assets and finances.

In carrying out its function, the Commission will pay particular attention to ensuring that all committee members are aware of their responsibilities and that they act promptly to address any issues raised in audit reports. Therefore, the review of the work of the internal and external auditors will form an important part of the Commission's activities.

The Commission will monitor the selection and application of accounting standards, policies and procedures to ensure that the accounts of States bodies are prepared in accordance with modern best practice.

The Commission may require any report which it has received, together with its comments thereon, to be placed before the States. The Commission would consider such a step if a committee's response to a report was unsatisfactory or the report raised a matter of exceptional public interest. In addition, the Commission will prepare an annual report of its activities, which will be included as an Appendix to a Billet D'Etat.

All communications to the Commission should be in writing and addressed to the Chairman, States Audit Commission, Sir Charles Frossard House, La Charroterie, St. Peter Port.

The Commission's role is not to deal with specific individual complaints. If members of the public have any complaints they should be addressed to the appropriate States committee in the normal manner.

APPENDIX II

MEMBERSHIP OF THE STATES AUDIT COMMISSION

The States Audit Commission consists of five members; the President of the Advisory and Finance Committee ex officio, and four “ordinary members” elected by the States from persons nominated by the Advisory and Finance Committee. Three members of the Commission shall constitute a quorum.

The ordinary members of the Commission must not be members of the States. Each ordinary member shall normally hold office for three years, but may stand for re-election.

The Commission shall elect annually a Chairman and Vice-Chairman, both from the ordinary members.

The membership of the States Audit Commission, during the year ended 31st December 1999, was as follows:

Mr. Tony Wills (Chairman)

Mr. John Lee (Vice-Chairman)

Mr. Rodney Benjamin

Mrs. Mary Perkins

Conseiller L.C. Morgan, President Advisory and Finance Committee (ex officio)

APPENDIX III

INTERNAL AUDIT REPORTS CONSIDERED BY THE COMMISSION IN 1999

- Education Council
- Cadastre Committee *
- Board of Administration: Harbour Authority *
- States Electricity Board
- Recreation Committee: Beau Sejour Performance Indicators
- Traffic Committee *
- Income Tax Authority
- Board of Health: Cash Handling
- Arts Committee
- Liberation & Millennium Celebrations Committee
- Board of Health: Estates Department Controls
- Board of Health: Estates Department Value for Money Study
- Civil Defence Committee
- Post Office – Systems Implementation Review
- Public Thoroughfares Committee *
- Overseas Aid Committee
- Public Assistance Authority – St Julian's House *
- Children Board *
- States Telecommunications Board
- States Works Department *
- Civil Service Board

NB: '*' denotes a follow-up audit

APPENDIX II

STATES EDUCATION COUNCIL

VAUVERT PRIMARY SCHOOL – VALIDATION REPORT

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

9th February, 2000.

Sir,

Vauvert Primary School
Validation Report

I enclose two copies of the summary of the validation report and Council's response for the above school. I have the honour to request that you will be good enough to arrange for this to be published as an appendix to the Billet d'État for March.

Copies of the full report will be made available for any member of the public to inspect at both the school and the Education Department.

I am, Sir,
Your obedient Servant,
M. A. OZANNE,
President,
States Education Council.

SUMMARY OF THE VALIDATION REPORT

VAUVERT PRIMARY SCHOOL

The school is situated in St. Peter Port, and the catchment area is in the southern half of the urban parish.

It is a two form entry school. There are 389 pupils on roll, made up of 175 boys and 214 girls, aged from 4 to 11.

They are taught by 23 full-time staff, including the headteacher, and 1 part-time teacher.

There are 21 classes with an average class size of 19 and a pupil/teacher ratio of 17.5 : 1.

Background

The school was visited by a validation team of 6 inspectors during the week of October 18th 1999.

The school provided a wide range of detailed documentation in advance of the inspection, having spent a year on a variety of well planned self-evaluation activities.

During the inspection all classes and teachers were visited and 111 lessons were observed. Planned discussions were held with teaching and non-teaching staff. Informal discussions were held with pupils and their current and previous work was scrutinised. The 129 replies to a parental survey were analysed. Observations and recommendations were discussed with the headteacher and appropriate staff during the week and a report was made to the Director of Education.

Main Findings

- * The school has made good progress in a number of important areas since the amalgamation of the former infant and junior schools.
- * The headteacher has provided strong leadership in establishing the two former schools into one cohesive and purposeful institution. He has received good support from a hard working deputy and most staff.
- * The school has carried out a thorough and honest review of its current provision and practices, and has drawn up a sound school development plan to continue to move the school forward. The headteacher used the VSSE process effectively to help bring about necessary change.
- * Most parents support the work of the school, and speak warmly of the improvements, particularly in attitudes and behaviour, which have been brought about since the establishment of the new school.
- * The school provides a broad curriculum which covers all the subjects of the National Curriculum (Guernsey), together with religious education and PSHE. Satisfactory provision is made for pupils' spiritual and cultural development, and the provision for social and moral development is good. The curriculum is enhanced by a range of extra-curricular activities.
- * Strong emphasis over the past two years has been placed upon the short, medium and long-

term planning of work, which is having a beneficial impact upon the quality of teaching, learning and attainment. Most teachers are working effectively in subject and year teams to facilitate the planning process. A teaching and learning policy has been established. Schemes of work have yet to be devised for French, art, design technology, and geography. Good use is also being made of appropriate QCA guidelines.

- * Further work is needed to enhance the role of subject co-ordinators and to provide a curriculum framework which will assist with the monitoring of continuity and progression.

- * The National Literacy Strategy is being implemented successfully, and good preparations are being made for the introduction of the National Numeracy Strategy.

- * Of the 111 lessons observed during the week, 85% were deemed to be at least satisfactory, and 32% were judged as good or excellent. Unsatisfactory lessons, with some shortfalls in the quality of teaching, learning and attainment, amounted to 15%. Strengths are apparent in English and mathematics, and in most other curriculum areas throughout the school.

- * The school's scores in all the National Curriculum Tests at both key stages are in line with UK national averages. They are above average for reading at Key Stage 1.

- * The school is working hard to strengthen its practices for assessment, recording and reporting and is making steady progress.

- * The school has drawn up sound policies to guide its work for special educational needs and for improving behaviour. It is largely successful in providing a caring environment where all children are valued and in establishing a well ordered community. Most children are courteous and well behaved; those with behavioural difficulties are dealt with sympathetically and firmly. Attendance is generally satisfactory, and for most pupils it is good.

- * There is a need for the review and rationalisation of the existing structures and practices for the provision and co-ordination of special educational needs support.

- * The school is working effectively to develop positive and purposeful relationships with parents and the local community. The parental questionnaire (Appendix A) reveals high levels of support for many areas of the school's work.

- * The school is well staffed to meet the requirements of the NC(Guernsey) and many staff have taken the opportunity through in-service training to prepare themselves for new initiatives and curriculum development. Good levels of support are being provided for the four newly qualified teachers. Classroom assistants and some parents make a valuable contribution to the work of the school.

- * The school organises itself well to overcome and minimise the restrictions imposed by its existing buildings and site. Good efforts are being made to provide an attractive environment for teaching and learning. Health and safety issues are being addressed. The school is well cleaned and maintained.

- * The school is adequately resourced in most areas and spending is sensibly linked to the identified priorities in the school development plan. Major purchases have been made to assist work in English, ICT and PE. There is a need for further resources in music, mathematics, DT, French, geography and the library. A further audit of resources is necessary to improve location and access.

- * Financial systems are secure and the office is run efficiently by an experienced school secretary. Daily routines, which include split breaks and lunchtimes, run smoothly.

Key Issues that the School Needs to Address

* Overall, the school has now successfully completed the first phase of amalgamation and the establishment of agreed whole school policies and procedures. There is a purposeful, corporate ethos for school improvement. The headteacher and staff now need to concentrate on the implementation of the school's curriculum aims through the monitoring and development of all subject areas. This will be achieved through prioritising and carrying out the school's intended development plans, and in particular those related to :

- the enhancement of the roles of subject co-ordinators in overseeing, monitoring and guiding the work of colleagues;
- the continued attention to joint planning, evaluation and review;
- the provision of relevant in-service training and staff development;
- the rationalisation of the provision for special educational needs support;
- the audit of school resources to improve their location and access.

The school is responsible for drawing up an action plan after receiving the report, showing what it is going to do about the issues raised and how it will incorporate them in the school's Development Plan. A follow-up visit to the school will be made in the autumn of 2000 in order to monitor and discuss progress, and a written report will be made to the Director of Education.

STATES EDUCATION COUNCIL

RESPONSE TO THE VALIDATION REPORT

ON

VAUVERT PRIMARY SCHOOL

The Education Council and the staff of Vauvert Primary School welcome and accept the Validation Report of October, 1999. It is pleasing to note that the VSSE process assisted in bringing about desirable change.

Recognition is also made of the fact that the amalgamation of the two schools into a single unit has been carried out successfully since its inception in September, 1997, creating a primary school which is both cohesive and purposeful.

The curriculum provided by the school is broad and is enhanced by a range of extra - curricular activities. The emphasis on curriculum planning has had a beneficial impact on the quality of teaching, learning and attainment.

The school is working well to develop positive and effective relationships with parents, many of whom have high levels of support for many areas of the school's work.

The first phase of the amalgamation process has been successfully completed. The next phase will be to:

- enhance the role of subject co-ordinators;
- pay continual attention to joint planning, evaluation and review;
- provide relevant in-service training and staff development;
- rationalise special educational needs support;
- audit school resources to improve their location and access.

The school has developed a purposeful, corporate ethos for improvement and will continue to build on the strong platform that currently exists.

