



# BILLET D'ÉTAT

IV  
2002

---

WEDNESDAY, 27th MARCH, 2002

---

1. Projet de Loi entitled "The Motor Vehicles (Electrically Assisted Pedal Cycles) (Exemption) (Guernsey) Law, 2002", p. 191.
2. Projet de Loi entitled "The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002", p. 191.
3. States Advisory and Finance Committee – Privileges and Immunities Afforded to Certain International Organizations, p. 192.
4. States Civil Service Board – Public Servants' Pensions Scheme – Employees of Guernsey Telecoms Limited, p. 209.
5. States Board of Industry – Controlling Garden Retailing, p. 215.
6. States Board of Industry – Development of the Guernsey Enterprise Agency, p. 247.
7. Administrative Decisions (Review) (Guernsey) Law, 1986 – Report of the Review Board for 2001, p. 251.
8. Requête – Waste Separation at the Fontaine Vinery Site, St. Sampson, p. 258.

## APPENDICES

- I. States Advisory and Finance Committee – Emergency Disaster Relief, p. 267.
- II. States Advisory and Finance Committee – States Audit Commission : 2001 Annual Report, p. 268.

# ***BILLET D'ÉTAT***

---

## **TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY**

---

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 27th MARCH, 2002**, at 10.00 a.m.

**PROJET DE LOI**

ENTITLED

**THE MOTOR VEHICLES (ELECTRICALLY ASSISTED PEDAL CYCLES)  
(EXEMPTION) (GUERNSEY) LAW, 2002**

The States are asked to decide:—

I.—Whether they are of opinion to approve the Projet de Loi entitled “The Motor Vehicles (Electrically Assisted Pedal Cycles) (Exemption) (Guernsey) Law, 2002”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

---

**PROJET DE LOI**

ENTITLED

**THE FINANCIAL SERVICES COMMISSION (BAILIWICK OF GUERNSEY)  
(AMENDMENT) LAW, 2002**

The States are asked to decide:—

II.—Whether they are of opinion to approve the Projet de Loi entitled “The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**STATES ADVISORY AND FINANCE COMMITTEE**

**PRIVILEGES AND IMMUNITIES AFFORDED TO CERTAIN  
INTERNATIONAL ORGANIZATIONS**

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

31st January, 2002.

Dear Sir,

**PRIVILEGES AND IMMUNITIES AFFORDED TO CERTAIN INTERNATIONAL  
ORGANIZATIONS**

1. The Bailiwick authorities have been advised that the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe was signed by the United Kingdom on the 27th October 1999. The text of the Protocol is annexed as Appendix A and an explanatory report thereon in Appendix B.
2. The Sixth Protocol guarantees the necessary privileges and immunities to members of the new permanent European Court of Human Rights which came into being when Protocol 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 1 November 1998.
3. The European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (Appendix C) relates to the practical functioning of the new permanent European Court of Human Rights. It was also signed by the United Kingdom on 27th October 1999. The explanatory report on the Agreement is Appendix D.
4. The Bailiwick authorities have been invited to consider whether the Sixth Protocol and the Agreement should be extended to Guernsey, Alderney and Sark.
5. The Law Officers have advised that the Sixth Protocol is largely a consolidating document which draws together relevant provisions of earlier protocols whose provisions were extended to the Bailiwick. The Agreement replaces its 1969 predecessor. Their view was that it would be appropriate for both the Protocol and the Agreement to be extended to the Bailiwick. The Advisory and Finance Committee concurs with that view.
6. However, for the provisions to be enforceable in the Bailiwick, domestic legislation would need to be enacted. This could be by way of legislation specific to the Sixth Protocol and the Agreement.
7. The Law Officers added that a number of similar laws have been enacted in recent years and that it might be appropriate to enact an enabling law under which it would be possible to grant privileges and immunities to such international organizations as would be specified from time to time by Ordinance of the States.

8. The authorities in Alderney and Sark agree that the proposed legislation be applied in their Islands and that the Protocol and Agreement be extended to them.
9. The Advisory and Finance Committee therefore recommends the States to agree
  1. that the Sixth Protocol to the General Agreement on Privileges and Immunities be extended to Guernsey;
  2. that the European Agreement relating to Persons participating in Proceedings of the European Court of Human Rights be extended to Guernsey;
  3. that legislation enabling the granting of privileges and immunities to specified international organizations by ordinance be enacted;
  4. that the European Court of Human Rights be designated by ordinance pursuant to the legislation proposed in (3) above.
10. I should be grateful if you would lay this matter before the States with appropriate propositions including one directing the preparation of the necessary legislation.

Yours faithfully,

L. C. MORGAN,

President,

States Advisory and Finance Committee.

**APPENDIX A**



COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE

---

*European Treaty Series - No. 162*

**SIXTH PROTOCOL TO THE GENERAL  
AGREEMENT ON PRIVILEGES AND  
IMMUNITIES OF THE COUNCIL OF EUROPE**

**Strasbourg, 5.III.1996**

The Sixth Protocol consolidates into one instrument the relevant provisions of the Fourth and Fifth Protocols. It is applicable to the «new» Court which started to function on 1 November 1998

The member States of the Council of Europe, signatories hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”);

Having regard to Protocol No. 11 to the Convention, restructuring the control machinery established thereby, signed at Strasbourg on 11 May 1994 (hereinafter referred to as “Protocol No. 11 to the Convention”), which establishes a permanent European Court of Human Rights (hereinafter referred to as “the Court”) to replace the European Commission and Court of Human Rights;

Also having regard to Article 51 of the Convention which specifies that judges are entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder;

Recalling the General Agreement on Privileges and Immunities of the Council of Europe, signed at Paris on 2 September 1949, (hereinafter referred to as “the General Agreement”), and its Second, Fourth and Fifth Protocols;

Considering that a new Protocol to the General Agreement is advisable to accord privileges and immunities to the judges of the Court;

Have agreed as follows:

#### **Article 1**

In addition to the privileges and immunities specified in Article 18 of the General Agreement, judges shall be accorded in respect of themselves, their spouses and minor children the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

#### **Article 2**

For the purposes of this Protocol, the term “judges” means judges elected in accordance with Article 22 of the Convention as well as any *ad hoc* judge appointed by a State Party concerned in pursuance of Article 27, paragraph 2, of the Convention.

#### **Article 3**

In order to secure for the judges complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

**Article 4**

Privileges and immunities are accorded to judges not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The plenary Court alone shall be competent to waive the immunity of judges; it has not only the right, but is under a duty, to waive the immunity of a judge in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

**Article 5**

- 1 The provisions of Articles 1, 3 and 4 of this Protocol shall apply to the Registrar of the Court and a Deputy Registrar formally notified as Acting Registrar to the States Parties to the Convention.
- 2 The provisions of Article 3 of this Protocol and Article 18 of the General Agreement shall apply to a Deputy Registrar of the Court.
- 3 The privileges and immunities referred to in paragraphs 1 and 2 of this Article are accorded to the Registrar and a Deputy Registrar not for the personal benefit of the individuals themselves but to facilitate the discharge of their duties. The plenary Court alone shall be competent to waive the immunity of its Registrar and a Deputy Registrar; it has not only the right, but is under a duty, to waive such immunity in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.
- 4 The Secretary General of the Council of Europe shall be competent to waive, with the agreement of the President of the Court, the immunity of other staff members of the registry in accordance with the provisions of Article 19 of the General Agreement and having due regard to the considerations set out in paragraph 3.

**Article 6**

- 1 Documents and papers of the Court, judges and registry, in so far as they relate to the business of the Court, shall be inviolable.
- 2 The official correspondence and other official communications of the Court, judges and the registry may not be held up or subjected to censorship.

**Article 7**

- 1 This Protocol shall be open for signature by member States of the Council of Europe signatories to the General Agreement, which may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.



**Article 8**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three Parties to the General Agreement have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7 or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.
- 2 As regards any State Party to the General Agreement which shall subsequently sign this Protocol without reservation in respect of ratification, acceptance or approval or which shall ratify, accept or approve it, this Protocol shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification, acceptance or approval.

**Article 9**

- 1 Any State may, at the time of its signature without reservation in respect of ratification, of its ratification or at any time thereafter, declare, by notification addressed to the Secretary General of the Council of Europe, that the present Protocol shall extend to all or any of the territories for whose international relations it is responsible and where the Convention and its Protocols apply.
- 2 The Protocol shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
- 3 Any declaration made pursuant to paragraph 1 may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of one month after the receipt of notification by the Secretary General.

**Article 10**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 8 and 9;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 5th day of March 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

**APPENDIX B**

COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE

## Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe

(ETS no. 162)

*Français*

### *Explanatory Report*

#### **Introduction**

1. With the adoption by the Committee of Ministers on 20 April 1994, and subsequent signature by all member States of the Council of Europe, of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to, as “the Convention”), the Committee of Ministers authorised, in January and September 1995, the amendment and subsequently the consolidation into one text of the Fourth and Fifth Protocols to the General Agreement on Privileges and Immunities of the Council of Europe (hereinafter referred to as “Fourth” and “Fifth” Protocols).
2. It was considered more appropriate to prepare a sixth protocol applicable to the new Court as established by Protocol No. 11 to the Convention. The Second, Fourth and Fifth Protocols remain in force with respect to proceedings under the former system.
3. The Sixth Protocol consolidates into one legally-binding document the relevant provisions of the Fourth and Fifth Protocols, supplemented by reference back to the 1949 General Agreement on Privileges and Immunities of the Council of Europe (hereinafter referred to as “the General Agreement”).
4. These alterations were necessitated by the fact that Protocol No. 11 to the Convention restructures the Convention’s control machinery by replacing the European Commission and Court of Human Rights with a permanent Court in Strasbourg. Hence, this Court functions on a different basis from that of the former system, which was not permanent.
5. This text was prepared between the months of March and September 1995 by the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), a subordinate body of the Steering Committee for Human Rights (CDDH).
6. The draft text of the present Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (hereinafter referred to as “Sixth Protocol”), prepared by the DH-PR and subsequently finalised by the CDDH – after due consultation with the Presidents of the European Commission and Court of Human Rights – was submitted to the Committee of Ministers, which adopted the text at the 556th meeting of the Ministers’ Deputies on 9 February 1996. It was opened for signature by member States of the Council of Europe on 5 March 1996.

### **Commentary on the provisions of the Sixth Protocol**

7. The text of Article 1 is modelled on Article 16 of the General Agreement so as to provide judges, their spouses and minor children the same privileges and immunities as are accorded to the Secretary General and Deputy Secretary General of the Council of Europe, their spouses and minor children.

In addition, by referring to Article 18 of the General Agreement, this provision also accords judges:

- immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- exemption from taxation on the salaries and emoluments paid to them by the Council of Europe;
- immunity, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;
- the same privileges in respect of exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions;
- the same repatriation facilities in time of international crisis as diplomatic envoys (together with their spouses and relatives dependent on them); and
- the right to import free of duty their furniture and effects; at the time of first taking up their post and to re-export the same free of duty to their country of domicile.

Exemption from taxation on salaries and emoluments paid to judges includes "allowances", as provided in Article 1 of the Fifth Protocol.

#### *Article 2*

8. In Article 2, which is virtually identical to Article 1 of the Fourth Protocol, reference to the former Articles 39 and 43 of the Convention is replaced by reference to Articles 22 and 27, paragraph 2, of the text of the Convention, as amended by Protocol No. 11 to the Convention.

#### *Articles 3 and 4*

9. The text of Articles 3 and 4 is virtually identical to those of Articles 5 and 6 of the Fourth Protocol.

#### *Article 5*

10. The first three paragraphs of Article 5 are modelled on the text of Article 7 of the Fourth Protocol. As the Convention, as amended by Protocol No. 11, specifies that the plenary Court elects "one or more Deputy Registrars" (Article 26.e), the pertinent sections of the text have been amended accordingly.

11. Paragraph 1 ensures that the Registrar or a person acting as Registrar enjoys the same privileges and immunities as provided to judges in Articles 1, 3 and 4 (see paragraph 1 of Article 7 of the Fourth Protocol). In order to avoid legal uncertainty, the designation of a Deputy Registrar as Acting Registrar requires formal notification to all the States Parties to the Convention. Similarly, immunity from legal process, as provided to judges in Article 3, is extended, by paragraph 2, to a Deputy Registrar, in addition to privileges and immunities accorded in Article 18 of the General Agreement.

12. Paragraph 4 is new. Modelled on the former Court's Rule 13 (Rules of Court "A" and "B"), waiver, by the Secretary General of the Council of Europe, of immunity of the Court's registry officials (other than the Registrar and a Deputy Registrar) is only possible with the agreement of the Court's President. The waiver of immunity of these staff members has to be in accordance with the provisions of Article 19 of the General Agreement and with due regard to considerations set out in paragraph 3, in particular the fact that immunity should only be waived where that can be done without prejudicing the purpose for which it was accorded.

#### *Article 6*

13. The text of Article 6 is virtually identical to that of Article 4 of the Fourth Protocol.

#### *Articles 7 to 10: Final clauses*

14. The text of Article 7 is virtually identical to Article 2 of the Fifth Protocol.

15. Article 8 is modelled on Article 3 of the Fifth Protocol, except that entry into force is to take place one month after three Parties to the General Agreement have expressed their consent to be bound by the present Protocol or on the date of entry into force of Protocol No. 11 of the Convention, whichever is the later.

As regards paragraph 2 of Article 8, entry into force occurs within one month (see Article 3, paragraph 2, of the Fifth Protocol).

16. Article 9 enables States to extend the Convention (and where relevant its protocols) to territories for whose international relations they are responsible. Paragraphs 1 and 2 are modelled on the text of Article 8 of the Fourth Protocol and paragraph 3 on Article 6, paragraph 3, of Protocol No. 7 to the Convention.

17. The text of Article 10 is virtually identical to that of Article 5 of the Fifth Protocol.

**APPENDIX C**



COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE

---

*European Treaty Series - No. 161*

**EUROPEAN AGREEMENT RELATING TO  
PERSONS PARTICIPATING IN PROCEEDINGS  
OF THE EUROPEAN COURT OF HUMAN  
RIGHTS**

**Strasbourg, 5.III.1996**

The member States of the Council of Europe, signatories hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”);  
Recalling the European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights, signed at London on 6 May 1969;

Having regard to Protocol No. 11 to the Convention, restructuring the control machinery established thereby, signed at Strasbourg on 11 May 1994 (hereinafter referred to as “Protocol No. 11 to the Convention”), which establishes a permanent European Court of Human Rights (hereinafter referred to as “the Court”) to replace the European Commission and Court of Human Rights;

Considering, in the light of this development, that it is advisable for the better fulfilment of the purposes of the Convention that persons taking part in proceedings before the Court be accorded certain immunities and facilities by a new Agreement, the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (hereinafter referred to as “this Agreement”),

Have agreed as follows:

#### **Article 1**

- 1 The persons to whom this Agreement applies are:
  - a any persons taking part in proceedings instituted before the Court as parties, their representatives and advisers;
  - b witnesses and experts called upon by the Court and other persons invited by the President of the Court to take part in proceedings.
- 2 For the purposes of this Agreement, the term “Court” shall include committees, chambers, a panel of the Grand Chamber, the Grand Chamber and the judges. The term “taking part in proceedings” shall include making communications with a view to a complaint against a State Party to the Convention.
- 3 If in the course of the exercise by the Committee of Ministers of its functions under Article 46, paragraph 2, of the Convention, any person mentioned in paragraph 1 above is called upon to appear before, or to submit written statements to the Committee of Ministers, the provisions of this Agreement shall apply in relation to him.

#### **Article 2**

- 1 The persons referred to in paragraph 1 of Article 1 of this Agreement shall have immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted by them before or to the Court.
- 2 This immunity does not apply to communication outside the Court of any such statements, documents or evidence submitted to the Court.

**Article 3**

- 1 The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Court.
- 2 As regards persons under detention, the exercise of this right shall in particular imply that:
  - a their correspondence shall be despatched and delivered without undue delay and without alteration;
  - b such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Court;
  - c such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom.
- 3 In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.

**Article 4**

- 1
  - a The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement.
  - b No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 2
  - a Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.
  - b Any Contracting Party may, at the time of signature, ratification, acceptance or approval of this Agreement, declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.
- 4 The provisions of paragraphs 1 and 2 of this Article shall cease to apply when the person concerned has had, for a period of fifteen consecutive days from the date when his presence is no longer required by the Court, the opportunity of returning to the country from which his journey commenced.

- 5 Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this Article and those resulting from a Council of Europe convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this Article shall prevail.

#### **Article 5**

- 1 Immunities and facilities are accorded to the persons referred to in paragraph 1 of Article 1 of this Agreement solely in order to ensure for them the freedom of speech and the independence necessary for the discharge of their functions, tasks or duties, or the exercise of their rights in relation to the Court.
- 2 a The Court shall alone be competent to waive, in whole or in part, the immunity provided for in paragraph 1 of Article 2 of this Agreement; it has not only the right but the duty to waive immunity in any case where, in its opinion, such immunity would impede the course of justice and waiver in whole or in part would not prejudice the purpose defined in paragraph 1 of this Article.
- b The immunity may be waived by the Court, either *ex officio* or at the request of any Contracting Party or of any person concerned.
- c Decisions waiving immunity or refusing the waiver shall be accompanied by a statement of reasons.
- 3 If a Contracting Party certifies that waiver of the immunity provided for in paragraph 1 of Article 2 of this Agreement is necessary for the purpose of proceedings in respect of an offence against national security, the Court shall waive immunity to the extent specified in the certificate.
- 4 In the event of the discovery of a fact which might, by its nature, have a decisive influence and which at the time of the decision refusing waiver of immunity was unknown to the author of the request, the latter may make a new request to the Court.

#### **Article 6**

Nothing in this Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention or its protocols.

#### **Article 7**

- 1 This Agreement shall be open for signature by the member States of the Council of Europe, which may express their consent to be bound by:
- a signature without reservation as to ratification, acceptance or approval; or
- b signature, subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.



**Article 8**

- 1 This Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Agreement in accordance with the provisions of Article 7 or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, this Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of such signature or of the deposit of the instrument of ratification, acceptance or approval.

**Article 9**

- 1 Any Contracting State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Agreement to any territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 2 This Agreement shall enter into force for any territory or territories specified in a declaration made pursuant to paragraph 1 on the first day of the month following the expiration of one month after the date of receipt of the declaration by the Secretary General.
- 3 Any declaration made pursuant to paragraph 1 may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down for denunciation in Article 10 of this Agreement.

**Article 10**

- 1 This Agreement shall remain in force indefinitely.
- 2 Any Contracting Party may, insofar as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. Such denunciation shall not have the effect of releasing the Contracting Parties concerned from any obligation which may have arisen under this Agreement in relation to any person referred to in paragraph 1 of Article 1.

**Article 11**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Agreement in accordance with Articles 8 and 9 thereof;
- d any other act, notification or communication relating to this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Strasbourg, this 5th day of March 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

**APPENDIX D**

COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE

## European Agreement relating to persons participating in proceedings of the European Court of Human Rights

(ETS no. 161)

*Français*

### *Explanatory Report*

#### **Introduction**

1. With the adoption by the Committee of Ministers on 20 April 1994, and subsequent signature by all member States of the Council of Europe, of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”(1)), the Committee of Ministers authorised, in January and September 1995, the amendment and subsequently the replacement of the European Agreement relating to persons participating in proceedings of the European Commission and Court of Human Rights, signed at London on 6 May 1969 (hereinafter referred to as “the 1969 Agreement”).

(1) Unless otherwise stated, article references are to the articles of the Convention as amended by Protocol No. 11.

2. It was considered more appropriate to replace rather than amend the 1969 Agreement in that Protocol No. 11 to the Convention restructures fundamentally the Convention’s control machinery, especially by replacing the European Commission and Court of Human Rights with a new permanent Court. The 1969 Agreement remains in force and applicable to proceedings of the Commission and the Court under the present system. The new Agreement applies exclusively to proceedings before the Court as established by Protocol No.11 to the Convention.

3. The present Agreement repeats the text of the 1969 Agreement with the alterations necessitated by the deletion of all references to the Commission as well as obsolete provisions of the former text of the Convention (see, in this connection, the *travaux préparatoires* of the 1969 Agreement, document H (69) 15). In addition, a few grammatical corrections have been made in the French version of the new text.

4. The new text was prepared between the months of March and September 1995 by the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR), a subordinate body of the Steering Committee for Human Rights (CDDH).

5. This draft agreement prepared by the DH-PR and subsequently finalised by the CDDH after due consultation with the Presidents of the European Commission and Court of Human Rights – was submitted to the Committee of Ministers, which adopted the text at the 556th meeting of the Ministers’ Deputies on 9 February 1996. It was opened for signature by member states of the Council of Europe on 5 March 1996.

## Commentary on the provisions of the Agreement

### Article 1

6. The text of Article 1, paragraph 1, is a simplified and shortened version of Article 1, paragraph 1, of the 1969 Agreement; it applies to Articles 33 and 34 of the Convention. It is drafted in such a way as to ensure, *inter alia*, that the present Agreement applies to “third-party interventions” under Article 36 of the Convention as well as to any persons taking part in proceedings by virtue of this provision.

7. Paragraph 2 of Article 1 is based on that of the same provision in the 1969 Agreement, taking due account of changes made to the Convention by Protocol No. 11. This paragraph encompasses the work of judges who carry out their duties under the terms of the Convention or of the rules of the Court, as the case may be. Complaints include both inter-state cases and individual applications.

8. Whereas paragraph 3 of Article 1 of the 1969 Agreement related to the former Article 32 of the Convention (cases for decision by the Committee of Ministers), in the present text of paragraph 3 of Article 1 the words “Article 32 of” are deleted. Although the Committee of Ministers has no judicial or quasi-judicial role to play under any of the proceedings established by Protocol No. 11 to the Convention, reference to the Committee of Ministers remains useful in case any party is requested to take part in proceedings under Article 46 of the Convention.

### Articles 2 to 6

9. The text of Articles 2 to 6 is virtually identical to that of Articles 2 to 6 of the 1969 Agreement. Reference to the Commission is deleted and replaced where necessary. As concerns correspondence with detained persons, the text of Article 3, paragraph 2.a, has been altered so as to take into account the judgment of the European Court of Human Rights in the Campbell case, judgment of 25 March 1992, Series A, volume 233, especially paragraphs 62 and 63.

Also, the text of Article 6 mentions the protocols to the Convention; this addition reflects developments after the adoption of the Convention in 1950. Obviously, the Agreement will extend only to protocols which States have ratified.

### Articles 7 to 11

10. These Articles are based on similar provisions to those in the 1969 Agreement (Articles 7 to 11) and contain final clauses which are in conformity with the usual final clauses.

The text of Article 9, which relates to territories for whose international relations a State is responsible, has been somewhat modified in order for it to correspond more closely to similar provisions in the Convention and its protocols.

This Agreement will enter into force only after ten member States of the Council of Europe have expressed their consent to be bound by it or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.

The States are asked to decide:—

III.—Whether, after consideration of the Report dated the 31st January, 2002, of the States Advisory and Finance Committee, they are of opinion:—

1. That the Sixth Protocol to the General Agreement on Privileges and Immunities shall be extended to Guernsey.
2. That the European Agreement relating to Persons participating in Proceedings of the European Court of Human Rights shall be extended to Guernsey.
3. That legislation enabling the granting of privileges and immunities to Specified international organizations by ordinance shall be enacted.
4. That the European Court of Human Rights shall be designated by ordinance pursuant to the legislation proposed in 3 above.
5. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

**STATES CIVIL SERVICE BOARD**

PUBLIC SERVANTS' PENSION SCHEME – EMPLOYEES OF  
GUERNSEY TELECOMS LIMITED

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

19th February, 2002.

Dear Sir,

**PUBLIC SERVANTS' PENSION SCHEME – EMPLOYEES OF GUERNSEY  
TELECOMS LIMITED**

1. In September 2001 (Billet d'État XVIII) the States approved proposals submitted by the Advisory and Finance Committee which resulted in the States Telecommunications Board becoming a limited liability company wholly owned by the States – a States Trading Company known as Guernsey Telecoms Limited (GT Ltd). The formation of GT Ltd was an essential interim stage in the search for an Equity Partner.
2. On 1 October 2001 the employees of the States Telecommunications Board became employees of GT Ltd but, for the reasons detailed in Advisory and Finance's policy letter, employees of GT Ltd were deemed to have a contract of employment with the States solely for the purposes of membership of the Public Servants' Pension Scheme (the PSPS). This interim arrangement will continue until 1 October 2002 or until GT Ltd ceases to be wholly owned by the States if earlier.
3. When GT Ltd ceases to be wholly owned by the States its employees will cease to be members of the PSPS. However, in order to provide protection for employees and a smooth transition to the new pension arrangements two interrelated steps are required in accordance with the Transfer of Undertakings (Protection of Employment) law as amended (TUPE). These are as follows:–
  - (1) GT Ltd is required to develop a "successor scheme" which will provide benefits in respect of employees' service after the company ceases to be wholly owned by the States which are broadly comparable to the provisions which apply in the PSPS.
  - (2) The Rules of the PSPS have to be amended in order to permit employees who so want to transfer their accrued benefits in the PSPS to the "successor scheme" on TUPE compliant terms.
4. GT Ltd is undertaking the work in respect of the first of these steps and a "successor scheme" will be available by the necessary date.

5. Attached as an Appendix to this policy letter are the draft amendment Rules in respect of the second of the steps. These draft Rules have been developed by the Board and the Advisory and Finance Committee in conjunction with the Law Officers and the Actuary.
6. In essence the proposed Rules will make provision for each employee to transfer their accrued benefits in the PSPS to the “successor scheme” on special terms such that for each day’s service in the PSPS they will receive a day’s credit in the “successor scheme”. This option will be available for the three month period after employees cease to be members of the PSPS.
7. There will be no obligation on any employee to transfer their accrued benefits in the PSPS to the “successor scheme” and any employee who does not wish to take advantage of the special arrangement will be able to choose any of the options in respect of their accrued benefits which would have been available had they been leaving employment.
8. All employees will be provided with the details of all of the options available to them and will have the opportunity of receiving advice from an Independent Financial Advisor, arranged by GT Ltd, prior to reaching a decision.
9. The draft Rules also make provision for the Advisory and Finance Committee, on the advice of the Actuary, to determine the sum which should be transferred from the Superannuation Fund to the “successor scheme” in respect of those employees who have chosen to transfer their benefits in accordance with these Rules.
10. In summary, the arrangements which have been developed by GT Ltd, the Advisory and Finance Committee and the Board will ensure that employees are provided with future pension arrangements broadly comparable to those of the PSPS and will be able to transfer their accrued benefits from the PSPS to the “successor scheme” without detriment.
11. The Board therefore recommends that the States approve the draft States of Guernsey (Public Servants) (Pensions and Other Benefits) (Pensions Transfer Arrangements Employees of Guernsey Telecoms Limited) Rules, 2002 which are attached as an Appendix to this report.
12. I should be grateful if you would be good enough to lay this matter before the States with appropriate propositions.

Yours faithfully,

A. SAUVARIN,

President,

States Civil Service Board.

**The States of Guernsey (Public Servants) (Pensions and Other Benefits)  
(Pensions Transfer Arrangements Employees of Guernsey Telecoms Limited)  
Rules, 2002**

The States, in pursuance of their Resolution of 27 March 2002, have approved the following Rules which Rules shall cease to have effect on the 1st October 2002 unless Guernsey Telecoms Limited has, prior to that date, ceased to be a States trading company for the purposes of the States Trading Companies (Bailiwick of Guernsey) Law, 2001.

1. The States of Guernsey (Public Servants) (Pensions and Other Benefits) Rules, 1972, as amended (“the 1972 Rules”), are further amended as set out in Schedule 1 hereto.
2. These Rules may be cited as the States of Guernsey (Public Servants) (Pensions and Other Benefits) (Pensions Transfer Arrangements Employees of Guernsey Telecoms Limited) Rules, 2002.
3. These Rules and the States of Guernsey (Public Servants) (Pensions and Other Benefits) Rules, 1972 to 2001, may be cited together as the States of Guernsey (Public Servants) (Pensions and Other Benefits) Rules, 1972 to 2002.
4. These Rules and the States of Guernsey (Public Servants) (Pensions and Other Benefits) Rules, 1972 to 2001, shall be construed as one.
5. These Rules shall come into force on the date of the Resolution of the States approving the same.

**SCHEDULE 1**

1. Notwithstanding any of the preceding provisions of the States of Guernsey (Public Servants) (Pensions and Other Benefits) Rules, 1972 to 2001 (hereafter referred to in these Rules as “the Principal Rules”), the succeeding provisions of these Rules shall apply to the payment of pensions and other benefits to or in respect of GT Members.
2. Pursuant to the Resolution of the States dated 26th September 2001 and The Transfer of Undertakings (Protection of Employment) Law, 2001 as amended GT Members were deemed, until Guernsey Telecoms Limited ceased to be a States trading company for the purposes of the States Trading Companies (Bailiwick of Guernsey) Law, 2001 or 1st October 2002 whichever should be the earlier, to have a contract of employment with the States of Guernsey solely for the purpose of membership, continued membership and the acquisition of membership in the Scheme.

- 3.1 On the appointed day all GT Members shall cease to be members of the Scheme and in consequence thereof each GT Member shall, on or before the Election Date, elect by notice, supplied to them by the Board, to:–
- (a) transfer the value of his pension rights, as determined in accordance with Rules 6 and 7 hereafter, into the Guernsey Telecoms Pension Scheme; or
  - (b) have his pension rights determined in accordance with the Principal Rules as if he were leaving the employment of the States on the appointed day.
- 3.2 A GT Member who makes an election to be dealt with under Rule 3.1 (b) above shall not thereafter be entitled to take a transfer value under Rule 3.1(a) above.
- 3.3 Once a transfer has been made pursuant to an election under Rule 3.1(a) all rights under the Scheme relating to, or derived from, the relevant GT Members who have transferred out of the Scheme shall be extinguished and they and all others claiming under them shall have no further interest in the Scheme.
4. Where any GT Member fails to make an election on or before the Election Date that GT Member shall be treated as having made an election under Rule 3.1(b) and shall not, thereafter, be entitled to take a transfer value under Rule 3.1 (a) above.
5. Within 14 days of the Election Date the Committee shall, on the advice of the Actuary and subject to Rule 9, calculate the sum total of all the transfer values to be paid under Rule 3.1 (a) and the Board shall pay the same to the Guernsey Telecoms Pension Scheme within 21 days of the Election Date.
6. The transfer values under Rule 3.1(a) shall be ascertained by reference to the Relevant Fund Assets on the appointed day, adjusted for investment return between the appointed day and the date of payment into the Guernsey Telecoms Pension Scheme, and where the States of Guernsey is about to enter or enters into any contractually binding arrangement identifying the appointed day the Committee shall, subject to Rule 9, identify the Relevant Fund Assets.
7. “Relevant Fund Assets” means in this Schedule that portion of the Fund which, in the opinion of the Committee with the advice of the Actuary, can be related to GT Members who elect to transfer their pension rights in accordance with Rule 3.1(a) and to their spouses and dependent children. That portion of the Fund shall be calculated on anyone of the following basis:–
- (a) the aggregate of the Cash Values of the whole of the benefits to which the said GT Members would be entitled from the Scheme if they had left service on the appointed day; or



- (b) the aggregate of the Cash Values of the benefits described in Rule 7(a) above but including for the purposes of calculation increases which the Actuary considers would be made to such GT Members' remuneration between the effective date of the calculation and the relevant members' normal retirement dates; or
- (c) the proportion of the total Fund which, in the opinion of the Committee with the advice of the Actuary, relates to the GT Members who elect to transfer their pension rights in accordance with Rule 3. 1(a) and to their dependent spouses and children;

provided that if the Actuary shall so advise the amount calculated in accordance with sub Rules 7(a) or 7(b) above shall not exceed the amount which could be calculated in accordance with sub Rule 7(c) above.

8. "Cash Values" means, in respect of a GT Member, an amount determined by the Committee, with the advice of the Actuary, being equal to the value on the appointed day of the whole of the benefits payable or prospectively payable from the Scheme in respect of him if he were to leave the Scheme on that date.
9. The Committee shall not be obliged to identify the Relevant Fund Assets unless the Committee is satisfied that:
  - (a) the Relevant Fund Assets shall be applied to secure the payment of the accrued rights and or benefits vested in GT Members and their spouses and dependent children; and
  - (b) the transfer of the Relevant Fund Assets safeguards, and will not prejudice, the payment of the aforementioned rights and entitlements.

### **Interpretation**

10. In these Rules, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say

"the Election Date" shall mean the day three calendar months after the appointed day.

"GT Member" means any employee of Guernsey Telecoms Limited who was a member of the Scheme as an employee of Guernsey Telecoms Limited on the day immediately preceding the appointed day.

"the Guernsey Telecoms Pension Scheme" means an approved retirement benefits scheme under section 150 of Part XIII of the Income Tax (Guernsey) Law 1975, as amended, set up by Guernsey Telecoms Limited for the purpose, inter alia, of providing pension provision for

GT Members and nominated by Guernsey Telecoms Limited and agreed by the Committee for the purposes of these Rules.

“the appointed day” means the day upon which Guernsey Telecoms Limited ceases to be a States trading company for the purposes of the States Trading Companies (Bailiwick of Guernsey) Law, 2001.

11. In these Rules, except where the context otherwise requires:–

- (a) words importing the masculine gender shall include females, and
- (b) words in the singular shall include the plural and words in the plural shall include the singular.

---

**[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 19th February, 2002, of the States Civil Service Board, they are of opinion:–

To approve the draft States of Guernsey (Public Servants) (Pensions and Other Benefits) (Pensions Transfer Arrangements Employees of Guernsey Telecoms Limited) Rules, 2002, attached to that Report.

## STATES BOARD OF INDUSTRY

### CONTROLLING GARDEN RETAILING

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

11th February, 2002.

Dear Sir,

### CONTROLLING GARDEN RETAILING

#### Introduction

The nature of retailing throughout Europe is changing significantly. The popularity of the car, the problems of parking in traditional town centres and the growing demand for bulky DIY/garden products has encouraged the creation of major out-of-town shopping outlets. In the absence of adequate planning controls, such developments can and have had serious consequences for the viability of traditional town centres and the locality where they have become established. Guernsey have not escaped such changes, indeed in a land-hungry and affluent island there are even greater commercial pressures to develop land outside of town, particularly sites formerly used by horticulture.

Recent Strategic and Corporate Plans have sought to address some specific issues raised by these changes. However, at present there is no comprehensive Island Retail Strategy debated and approved by the States which will inform property owners and developers, commercial retailers and consumers as well as guiding the Island Development Committee (“IDC”) and other policy makers.

The Board of Industry (“the Board”) is in the process of filling this vacuum with the development of an Island Retail Policy which, amongst other things, will:

- address the importance and role of retailing in maintaining the commercial life and vitality of the town centres.
- recognise the role of retailing within the various parish centres.
- identify the type of retailing which is appropriate in the rural, as opposed to the urban, areas.

The Board is making good progress with the development of this strategy, which it would wish to present to the States in 2002 and which would in future underpin the Strategic and Corporate Plan. However, given the complexity of the issue, the limited resources available to the Board and more pressing priorities, an approach to the States in early 2003 may be more realistic. Section I explains why garden retailing is being addressed in advance of the Island Retail Strategy.

The purpose of this letter is to solely examine the future of garden retailing. It sets out (a) to identify where such operations might best be located and (b) how they might be defined and controlled. In particular, the letter explores the concept of a modern garden centre and proposes a use class definition and associated controls based on a new system of registration.

### **Outline of Report**

**Section I** sets out the background to the review of garden retailing within Guernsey, the review process and the history that has led to the current position.

**Section II** takes the form of an assessment of the current retail offer and future trends, examines current economic activity, the demand for garden retailing and the social and economic factors that influence it.

**Section III** examines how best to control garden retailing through a combination of strategic planning policies, new use class definitions and a registration system supported by product range schedules. It goes on to examine the question of enforcement and whether there is a case for restricting the number of modern garden centres in the Island.

**Section IV** summarises the report and sets out recommendations for the States.

## **SECTION I – BACKGROUND TO THE REVIEW**

- 1.1 In 1990 the States first approved Strategic Policy No. 11, which formed part of the Strategic and Corporate Plan and stated:

**“There should be no further general provision for major new out-of-town retail outlets”.**

The basis for this policy was a concern that *“further large scale out-of-town retail developments could well accelerate the decline in the size of the retail business in the centre of St Peter Port and St Sampson’s”*.

- 1.2 However, with the passage of time the appropriateness of adhering to this policy in respect of garden retailing has been called into question for a number of reasons:

- (i) There has been widespread recognition that the popularity of gardening as a leisure activity has grown, and the nature of products associated with it has changed dramatically.
- (ii) Garden centres have moved away from simply providing packets of seeds and young plants into supplying bulky items ranging from peat to patio furniture – something not readily accessible from a High Street location. Furthermore, in keeping with trends elsewhere this new form of garden retailing has taken the form of multi-purpose outlets which offer a product range far beyond that traditionally associated with gardening.

- 1.3 On 11th November 1999 the States, in approving proposals for revising Sunday Trading legislation, (Billet d’État XVIII of 1999), resolved to approve an amendment which provided:

“11. That a further category of licence shall be created which will permit the opening of garden centres.

11A That a garden centre shall be defined as an establishment where the predominant range of goods is for gardening and where over half of the total trading area is devoted to the sale of living plant material.

11B For the purpose of proposition 11 A – “Goods” means items of all kinds that might be incorporated into, or used in the establishment or maintenance of, a garden; and

“Trading area,” means the ground area, regardless of the number of levels, upon which items that are for sale are placed, and (without limitation) does not include –

- non-sales areas where live plants may be propagated, held in storage or grown-on;
- areas where other goods may be warehoused, delivered or stored; or
- cafés, car parking areas, access roads, parkland or demonstration gardens”.

- 1.4 The re-zoning of land occupied by the Blue Diamond Group’s Fruit Export premises at Les Banques for commercial development as part of the Bouet MURA, and that Group’s ambitions to establish a modern garden centre in the rural area on land at Le Friquet, has been the subject of two States debates. Once again, emerging from those debates was a strong view that strategic policies which prevented garden centres, as opposed to other forms of development, from taking place outside of the Urban areas, is no longer appropriate.

- 1.5 Against this background the Advisory & Finance Committee (“A&F”) in consultation with the IDC invited the Board to review the whole question of garden retailing with particular reference to garden centres.
- 1.6 With this review in hand and after consultation with A&F and the IDC, the Strategic and Corporate Plan for 2001 recognised that certain types of specialist retailers, such as garden centres, need extensive space and have particular site and location requirements which cannot always be met within existing town centres (SCP 8.5.9). It noted that the means of defining and directing suitable retail developments in the rural areas would be the subject of reports to the States by the Board.

The specific Strategic Statement and Policy is:

Strategic Statement No. 3

“The support of commercial centres as attractive places in which to live, work and take enjoyment, strengthening the role of the Town and the Bridge as the principal centres, while ensuring that everyone has convenient access to a wide choice of shopping, leisure and other facilities”.

Strategic Policy 20

“Where there is an acknowledged demand which can reasonably be provided within the Island for out-of-town retail developments, additional provision may be made provided that the vitality and viability of any commercial centre would not be undermined and the local environment would be improved”.

- 1.7 Against the background set up above and in particular in the light of:
  - requests by the A&F and the IDC to investigate the question of garden retailing;
  - the approval by the States of the Strategic & Corporate Plan which calls for reports from the Board; and
  - perceived political enthusiasm for addressing this issue
 the Board decided to bring forward this report in advance of the Island Retail Strategy.

### **The Review Process**

- 1.8 The Board created a Retail Strategy Working Party chaired by the Board’s Vice-President, Deputy Kevin Prevel, which includes representation from traders operating outside the Town, The Women’s’ Institute (representing consumer interests) and the Chamber of Commerce.
- 1.9 A team headed by the Board’s Economic & Strategic Adviser reporting to the Working Party drew together the work of consultants Thoday Associates and Quinton Edwards. Peter Thoday of Thoday Associates is a leading international horticultural consultant with experience in garden retailing who acted as the lead consultant in the internationally acclaimed “Eden Project”. Quinton Edwards are an established UK company specialising in garden retailing, advising on retail offer, garden centre acquisition and the garden retail market generally.
- 1.10 The project’s brief was:

*“To evaluate the proposed development of garden retailing in the light of the States of Guernsey’s Strategic & Corporate Plan on Town Centres. To identify any conflicts of*

*interest and proposed solutions. Where appropriate to the project to look at amendments required of the planning regulations to provide an effective regulatory framework without compromising the business viability of garden retail developments”.*

1.11 The study undertaken by the Board embraced:

- A review of retailing in the rural areas and the historic development of garden retailing on the Island.
- A comprehensive survey of Island garden retail operations (based on a questionnaire).
- A survey of selected sites and their location.
- Site visits by the expert consultants.
- A review of garden retail developments in the UK and the likely impact of similar developments on the Island.
- A review of the regulatory systems and an economic view of the size of the Guernsey market with forecast for changes over the next ten years.

### **Consultation**

1.12 The Board, through the Working Party, has consulted a number of interested parties in the preparation of this report and discussions have been held with the IDC, the A&F and the Tourist Board. H M Comptroller has also been consulted.

1.13 All garden retailers had an opportunity to comment when participating in the survey and were also invited to a presentation of the proposals.

### **The History of Garden Retail Development in Guernsey**

1.14 A common belief expressed during previous public debates on this subject is that there must exist a simple, single “catch-all” definition of a “garden centre” which can be adopted as a basis for control. This approach was reflected in the definition adopted by the States when debating Sunday Trading in November 1999. However, the Board’s research has demonstrated that while such an approach is attractive:

- there is no simple, single “off the shelf” definition that can be borrowed from the UK or elsewhere; and
- garden retailing exists in a number of different forms on the Island each with a different retail character and product mix and site facility requirements.

1.15 An understanding of why those forms of retailing exist and why they are different will become apparent from a brief examination of the history of garden retail developments in Guernsey.

1.16 Guernsey has long been associated with horticulture and agriculture and in the 19th and early 20th Century the focus of retail activity for those industries were the Town Markets. Indeed, up until the late 20th Century the Town Markets were still a prime location for the sale of bedding plants, seeds, bulbs and pot plants.

1.17 The Town also boasted a number of stores (in Mansell Street, Havelet, North Esplanade) which sold plants, garden tools or seeds. However, as the development of St Peter Port as a commercial centre drove up the value of retail space and as more and more consumers enjoyed the mobility offered by the motorcar, garden retailing largely moved out of the town and parish centres. In the last two decades this move has coincided with the

contraction of the horticultural industry and the resultant pressures have led some growers to either diversify into retailing or attempt to exit the industry by releasing their land for commercial purposes.

1.18 This horticultural legacy has shaped the route followed by garden retailing in Guernsey where the following distinct types of retailing have developed:

- Plant producers
- On-nursery sale of plants, cut flowers or vegetables
- Wholesale or horticulture store warehouses
- Garden centres combining elements of all the above

(i) Plant producers

The first to enter the garden retail market were those plant producers who raised tomato plants and propagated cuttings for the commercial industry. It was natural that they should diversify into raising plants for sale to the general public and in time they abandoned tomato plant production in favour of producing bedding plants and hanging baskets for retailing in the private and commercial sectors.

(ii) On-nursery sale of plants, cut flowers or vegetables

Some growers producing cut flowers, plants or vegetables for export began to supplement their income by selling very limited amounts of produce to the local market. However, due to the high price commanded by local products compared to the vagaries of the UK wholesale market, local sales increased in importance to the point where a number of nurseries found it more economic to concentrate on retailing and ceased local production entirely. A well-known example of the type of unit that has made this journey from exporting produce to retailing is that of Earlswood Nursery at Ville Baudu.

(iii) The wholesale or horticulture store warehouses

With the reduction in the size of the horticultural industry, horticultural stores used traditionally for wholesaling commercial products to the industry or fruit and flower packing began to diversify their retail activities, leading to the establishment of “garden stores”. Such sites sell a wide range of horticultural and non-horticultural goods. In some cases no formal change of use permission has been granted but retail activity has gradually replaced wholesale activity as sales to the general public have increased.

Any garden retailing policy needs to recognise the existence of the three categories set out above and to address whether or not this should be controlled in such a way as to prevent a move from one type of retail category into another without permission. It is worth noting that in the current absence of such controls, the plant related use of the nursery can lead and has in some cases led to general retail activity on the site and then the establishment of a completely new retail operation which owes nothing to its horticultural roots. Perhaps the best and most recent example is the 17,000 sq.ft. retail unit opened at the Forest Road in November 2000. The origin of the retail status of the site was a flower and vegetable exporter who switched to local retail sales in the 1980s.<sup>1</sup>

---

<sup>1</sup> Note: Retailing through “farm shops” or “hedge sales/roadside stalls” is not addressed by this report but will be included as part of the proposed Island Retail Strategy.



## **SECTION II – ASSESSMENT OF CURRENT RETAIL OFFER AND FUTURE TRENDS**

- 2.1 Having explored the historical and horticultural starting point, an assessment of current garden retailing categories was made through a comprehensive survey of local garden retailers during the year 2000 as well as making reference to trends within the UK and elsewhere. The key results are summarised below:

### **Types of Garden Retailing in Guernsey**

- 2.2 The garden retail operations surveyed in the Island fell into five distinct categories:

(a) Plant producers/wholesale nurseries

These are nurseries whose **primary purpose is the production for export of plants from the Island**. As a secondary activity, some plants may be sold locally, either as part of the marketing strategy or for the economic disposal of surplus stock/motherstock plants used for cutting production. An example of such a unit would be Delamore's (formerly Microstock) operating out of Petersfield Vinery in the Forest.

(b) Grower nurseries

These are nurseries whose **primary business focus is the production and sale for the local market**. As a secondary activity, some producers may offer a small range of ancillary products, e.g. terracotta pots or compost (e.g. Mr David Falla at Les Capelles).

(c) Plant centres

These units do not produce their own plants but **specialise in retailing plant and plant products that have been bought in**. Some specialise in a particular area, such as the retail of pot plants, others in garden plants, trees or shrubs. (The Dell Nursery at La Foulon is a good example of a plant centre).

(d) Garden stores

**Garden stores have developed from agricultural and horticultural warehousing or are linked to DIY outlets**. They offer a wide range of products but predominantly focus in the dry goods/non-living garden products. In the UK they are linked to larger retail groups where they are known colloquially in the trade as "the sheds".

(a local example would be the former Fruit Export premises at Les Banques).

(e) Garden Centres

**Garden centres offer the broadest range of garden products**. Unlike "the sheds" a significant proportion of their retail offer is in the living plant sector of the market.

The closest local example would be the Earlswood Garden Centre at Ville Baudu (although the garden centre run by Blue Diamond Group at St Peter's in Jersey would be more typical of a UK style garden centre).

### 2.3 **Current economic activity within garden retailing**

- Excluding the area of plant production for export, garden retailing is currently undertaken from 20 specialist outlets covering approximately 21 acres of land.
- The largest site covers 5 acres and the smallest under 1/30th of an acre. By way of comparison the St Peter's Nursery in Jersey covers 3.6 acres and a UK garden centre operated by the Blue Diamond Group covers 11.05 acres.
- The total turnover of the sales of plants and associated products in Guernsey in the Year 2000 from over 20 outlets was reported to be £6.6million. By way of comparison a modern garden centre in an area with a similar population to Guernsey produced a turnover exceeding £4 million during the same period.
- 57% of the business in Guernsey is carried out through garden stores (£3.8million), 25% through garden centres, (£1.6million) and the balance through other outlets.
- The percentage of living plant material offered varies widely from one category to another. At one end of the scale plant producers have 92% of their product offer in the categories of living plant material, often only seasonally, while at the other extreme garden stores offer only 9% in this product line, the remaining 91% of the product offer covering chemicals/fertilisers/compost; tools/sundries; garden furniture; sheds/glasshouses and gifts.
- It was noted earlier in this report that one of the key reasons for the development of garden retailing out of town was access by car. Although the survey revealed that a total of 604 parking spaces are available, much of the parking is inadequate and unsatisfactory, particularly at peak times of the year. While the garden stores have the most parking, on some sites customer parking is shared with heavy goods lorries involved in commercial trade. Similarly, grower nurseries may have an adequate number of parking spaces but these are often located at scattered points around the vinery and are subject to various hazards.
- Excluding plant producers, whose staff are mainly involved in export plant production, the garden retail industry employed 154 people, 114 of whom were full-time and 40 part-time. Grower nurseries and garden centres are the most significant employers, followed closely by the garden stores.

### **Demand for Garden Retailing within the Island**

- 2.4 The need for appropriate policies and controls is underlined by evidence that demand for garden products is expected to increase significantly over the next decade, driven by the following factors:

#### 2.5 **Re-inventing the garden**

For most 21st Century householders, a garden is no longer a place to work in to produce food, but a place for leisure and relaxation. Reflecting the fact that modern consumers have more money but less time, the retail industry has responded with containerised plants for ready planting and ease of display, ground mulches to reduce weeding, small plants, automated power tools and so on. The trend towards rapid gardening and "instant

makeovers” has been developed by the media, particularly television, which has had a major influence on changing attitudes to the garden and garden styles. This has also resulted in the garden being seen as an extension to the living quarters of the house with the consequent popularity of decked barbecue areas, patios and hard landscaping. Finally, in an Island context, the Floral Guernsey initiative, designed to promote Guernsey as a floral island, has been assisted by these trends and also contributes to the increasing demand for garden products.

**Taken together, the changing social trends and consequent popularity of gardening, the wealth in the private sector, the demand for land and property, the interest and promotion of “Floral Guernsey” all point to an expanding and sophisticated market for garden products in the Island.**

### Meeting customer expectations in the garden retail market

- 2.6 Having visited a range of garden retail operators on the Island, Consultant Peter Thoday came to the conclusion that while the community was well served with the *quantity* of garden retail outlets, there was significant market shortcomings in the *quality* of the retail offer compared to that now available in the UK and on the continent.
- 2.7 In his view *“traditionally the horticultural retail industry has not been at the quality end of the market. Some facilities have often been under capitalised in their developments”*. He describes aspects of the Guernsey experience as *“missing the muddy puddles as you look for the plants”*. He continues to see the value of the horticultural nursery sales for the plant enthusiast but states that the market for the modern consumer/leisure gardener has moved on and the retail offer has to develop to meet customer expectations.

2.8 **The Board’s assessment of both the trends and comments referred to above suggest that in view of Guernsey’s wealthy and sophisticated garden market, there is ample business opportunity to develop one or more quality garden centres, which would serve future customer expectations.**

### Economic value of garden retailing

- 2.9 A detailed analysis of the current market size and projected market development over the next ten years is summarised below:
- Current spending through garden retail outlets: £6.6 million.
  - Sales generated per household are – £291.00 p.a. – equating to a weekly expenditure of £5.59 per household.
  - The weekly Guernsey spend is significantly higher than the equivalent for the whole of the UK, which is £1.89 per household per week with the highest spending area at £2.40 per household per week.
  - The UK garden retail market is showing consistent, real term year on year growth of 3%.
  - Adopting a conservative estimate of market growth, it is predicted that garden retailing in Guernsey would be worth in excess of £10 million by the year 2010, an increase in the market of some 54%.

- As the volume of the market expands and the retail offer includes a greater range of garden products, the plant production/wholesale nurseries, grower nurseries and plant centres are likely to feel the effects of competition and lose market share.
- Competition is likely to accelerate if multiples or company groups take a larger market share. This may well squeeze out some traditional producers thereby increasing the opportunity for the larger organisations to expand.
- Quinton Edwards believe that there is some scope over the next few years for additional garden centre retail area in the Island as demographics and landscape projects indicate that there will be increasing demand in real terms.

**2.10 Overall there is expected to be sufficient demand for at least one new significant garden centre with the development of existing centres providing competition to the new entrant.**

### **SECTION III – CONTROLLING GARDEN RETAIL ACTIVITY**

3.1 In approaching the whole question of garden retailing, the Board has sought a balance. It has recognised that the development and modernisation of garden retail activities provide positive benefits to the Island while at the same time posing significant risks. Before considering how those benefits might be achieved, but the risks contained, the benefits and costs of this form of retailing are summarised below:

#### **3.2 Benefits**

- Further developments could improve the retail offer and level of retail excellence in the garden sector for the consumer.
- New or extended outlets in the rural area will support the leisure/tourism market especially if a “plant experience”/country parks theme is integrated with the retail offer on site.
- The landscape can be improved through the provision of green areas, trees and water features.
- The local horticultural industry can be supported if an expanded retail market sources plants and products from local business.

#### **Costs and risks**

- 3.3 In the absence of controls the development of modern garden centres in the rural areas could:
- Pose a major threat to the established town and parish centres by encouraging significant trade to move onto the new rural retail sites where commercial rents are lower and car parking is freely available, (e.g. the proposed site for a garden centre at Le Friquet is large enough to accommodate all of the retail operations within the Pollet, High Street and Smith Street).
  - Saturate the existing Island retail garden market.
  - Have a negative impact on the landscape and result in loss of green space.
  - Create traffic congestion and parking problems.
  - Lead to the loss of prime horticultural/agricultural sites.

3.4 **The Board is satisfied that with appropriate regulation of the type set out in this report, the benefits of developing modern garden retail activities can be realised and the costs/risks to the existing retail infrastructure and environment contained.**

#### **Combined Approach**

3.5 The Board would much prefer to devise one simple, unambiguous definition that would cover all forms of garden retailing and minimise bureaucracy. But the Board has to be realistic. In devising these controls the Board recognised that retailing is a dynamic business constantly evolving to meet the ever-changing needs and choices of consumers. In such an environment the States’ strategic objectives will not be achieved without a package of controls.

**3.6 With this in mind the Board proposes that Garden Retailing in Guernsey should be controlled by a combination of:**

- **Strategic and Detailed Development Plan Policies (approved by the States)**
- **New use class definitions under the Island Development Laws linked to schedules setting out the categories of goods that may be sold at premises within the use classes; and**
- **A system of control based on Registration of Premises administered by the Board of Industry**

**3.7** For the sake of completeness, Appendix I sets out a number of alternative controls considered and rejected by the Board including:

- Planning permission combined with a voluntary code of practice.
- A revised rating system.
- Contract linked to compulsory purchase.
- Controls by trading area.

### **3.8 Strategic Planning Policies**

Primary control over the establishment of garden retail developments should be exercised through the planning system.

This section of the report addresses:

- whether different forms of garden retailing are best located in the rural or the urban areas.
- the future of existing garden stores in the rural area.
- detailed development considerations including:
  - Green space requirements.
  - Design and build requirements.
  - Parking and traffic flow.
  - Health and Safety.

### **Location of Garden Retailing – Rural or Urban Area?**

**3.9 Given the fact that plants require high light levels, water and nutrients and that the bulky products now associated with garden retailing such as stone, aggregate, peat etc do not lend themselves to a High Street location, it is proposed that plant nurseries, plant centres and garden centres should be permitted in the rural area.**

**3.10** While the production of plants, whether under glass or on open land, is an economic activity entirely appropriate to the rural area, the retailing of products should be regarded as a **concession** in an area where retailing would otherwise not be permitted. In order to meet the objectives set out in the strategic policies already approved by the States and

designed to protect the viability and vitality of the Town and other commercial centres, such concessions should limit the scale of the retail operation and ensure that it is secondary to the plant production activities on site.

**New garden stores which do not require the Green space display requirements of garden centres and which retail a minimal amount of living plant material, should be restricted to appropriate sites within the urban areas.**

**Although garden stores feature a significant proportion of items for the garden and the Board did consider recommending a special use class for such an operation, having consulted with the IDC and taken advice from the Law Officers, it is considered appropriate that garden stores should continue to be covered by a general retailing use class.**

**The Board further recommends that the Island's Detailed Development Plans (RAP & UAP) be amended to reflect these proposals (3.9 and 3.10).**

### **Detailed planning considerations – a design template for garden retailing**

3.11 Having reviewed planning issues associated with garden centres within the UK, the Board has distilled a number of features which it believes represent a fundamental starting point for good garden centre design. While the Board fully appreciates that planning falls within the mandate of the IDC it believes nevertheless that the States should be invited to regard these conclusions as a template for garden retailing design to which the IDC should pay particular regard in future.

### **3.12 Green space requirements**

- (i) Plant nurseries are by their very nature appropriate to rural areas. The retailing activity is very much secondary and therefore such sites would not be required to set aside a certain percentage of space as outdoor green space.
- (ii) Plant centres – Inherent in the definition of plant centres is that a major part of the site would be devoted to green space and so specific green space requirements would not be required.
- (iii) Garden centres can represent a major retail activity in rural areas with significant environmental impact. That impact can be reduced by the provision of substantial areas of outdoor green space. The percentage of green space would increase with the size of the site (and would be greater on rural than on urban area sites).

For this purpose green space:

- Excludes retail plant areas and car parking; but
- Includes demonstration gardens as well as areas of grass, established trees, hedging and display borders, water features such as ponds, lakes, and streams supporting natural vegetation.

It is further recommended that this green space be open to the visiting public as a recreational facility. Such space should soften the environmental impact of a garden centre in the landscape and complement the garden retail theme.

**3.13 The minimum recommended percentage of green space for the various planning areas is as follows:**

**Urban Area**

- Sites up to 2 acres – 10% of the total area to be green space
- Sites over 2 acres – 15% of the total area to be green space

**Rural Areas**

- Sites up to 2 acres – 20% of the total area to be green space
- 2-5 acres – 30%
- In excess of 5 acres – 40%

**3.14 Design and Build Requirements**

Garden centre designs should:

- Be sympathetic to the rural setting.
- Include local materials wherever possible.
- Feature “open” light “structures” based on a glasshouse theme rather than closed block buildings.
- Favour soft green design features rather than hard landscaping (e.g. hedges to be preferred to boundary walls).

**3.15 Parking and Traffic Flow**

Any Islander who has visited a garden centre on a fine bank holiday in the spring will appreciate that garden retail activity generates significant traffic.

3.16 Traffic generated by the St Peter’s garden centre in Jersey was such that a special access route off the main airport road was constructed to ease congestion.

3.17 With this fact in mind the Board believes that any new development or extension of existing operations should be required to carry out a specific traffic survey relevant to its business and volume of visitors so as to identify any need for road improvements or traffic controls.

3.18 Any traffic survey should:

- Assess the impact on traffic flows on surrounding highways.
- Identify traffic peaks by season, day, and time of day.
- Propose sign requirements and safe entry and address traffic safety on the site.
- Identify minimum parking facilities and pedestrian and disabled access.
- Assess the impact on residents and existing business proprietors in the vicinity.
- Review availability of public transport facilities.

3.19 The cost of a traffic survey should be met by developers of a new garden retail operation and submitted as part of the planning application.



### **Health and Safety**

- 3.20 Many of the sites retailing garden products were not designed for public safety. Some production nurseries will be applying pesticides in areas which can be accessible to the public. It is important therefore that the health and safety of the visiting public is protected. Registering these sites as areas of retail activity as proposed below will ensure that any safety issues on these sites are properly regulated.

### **3.21 Environmental Impact Assessment**

The Board has been advised by the IDC that a modern garden centre will be of such a scale that it may well be appropriate to seek a partial Environmental Impact Assessment in respect of certain aspects, e.g. traffic impact, surface water run-off, visual impact. The Board supports this view.

### **New use class definitions**

- 3.22 When the use classes contained within the Island Development legislation were first drawn up, the retail trends outlined in this report could not have been foreseen. As a result it is not surprising that small specialist retail activities which developed as sidelines for some horticultural businesses have in some cases slowly evolved into significant retail outlets that bear no relationship to the original use of the site.

- 3.23 The following is a typical pattern of creeping change:

- A grower begins to sell a few surplus products on the roadside for local consumption. Perhaps he disposes of products which are of an inferior quality and cannot be exported. There is negligible trade, minimal impact on the area and the sales are not regarded as a planning issue.
- A combination of the popularity of such sales and/or poor prices on the export market leads the grower to increase the size of the local offer by inviting people to purchase direct from his packing sheds or part of a glasshouse.
- The balance between producing for the export market and the profitable local sideline begins to shift. To sustain the popular sales dedicated staff are required – but their cost could jeopardise the viability of the operation. To meet such costs the grower augments his own plant sales with other items such as peat, plant pots, bought in vegetables and fruit etc.
- In time the success of the local operation out-performs crop production which ceases. Emphasis is now on pure retailing.
- Having established a general retailing operation on site the grower then decides to sell his premises.
- Given the availability of parking and the low land price/rents/rates compared to a High Street location this is an attractive proposition and the site is acquired by some other retailer specialising in a completely different product range. The site has now become an out-of-town retail unit that bears no relationship to the site's plant production origins.
- The consequences of this creeping development are that the traffic, neighbourhood amenity issues, and the impact on the town and parish centres, have never been properly addressed.

3.24 **Given that the various categories of garden retailing described in this report and identified by the survey are not recognised as such by the use classes within the Island Development legislation, the Board proposes that three new use classes should be introduced for the various categories of garden retailing, i.e. Plant Nurseries, Plant Centres, and Garden Centres.**

3.25 It is recommended that these new use classes should be linked to a set of **schedules** setting out the product range that business classified within each will be permitted to sell. Use class legislation would need to be amended and new legislation drafted in such a way as to enable the proposed schedules to be updated regularly to cope with changing consumer behaviour. While Use Class definitions would be set out under the Island Development Laws, the Board and the IDC are agreed that given the Board's mandate and the expertise that it can draw upon in relation to the retail sector, it would be more appropriate if the Board, rather than the IDC, was responsible for revising the schedules, and registering premises (described later in this report).

3.26 Furthermore the IDC and the Board are agreed that the Board's Trading Standards Department should be responsible for enforcement and administration of a Registration Scheme.

#### **Towards the definition of garden retailing use classes**

3.27 The Board has not attempted to provide a detailed definition of each new use class category, rather it has set out in this letter, and has summarised below, a description of the key features of each of the three forms of garden retailing that it has identified. This is regarded as a starting point for more precise drafting by the Law Officers, assuming the States adopt the approach set out in this report.

#### **3.28 The Plant Nursery**

- A plant nursery is a place where plants, flowers, fruit or vegetables are produced on a nursery and where some or all of the production may be retailed from that site to the general public.
- This definition should cover both growers who specialise in producing plants specifically for local retail sales and plant producers who grow plants primarily for the export market but who sell surplus stock locally.
- In the light of modern horticultural practice it is recognised that not all plants will have been grown from seed or cuttings to finished plants on the nursery. Rather, "produced on the nursery" should be interpreted to mean all types of plants having been present on the nursery for a minimum of four weeks or one growing cycle.
- Typically, a plant nursery will consist of a glasshouse area with facilities for propagating, growing on and finishing plants. Some nurseries will have a designated sales area for the visiting public.
- It is recommended that, initially, the permitted retail product range associated with plant nurseries should be as set out in Schedule 1 of the garden retail schedules in Appendix III.

### 3.29 The Plant Centre

- Plant Centres are retail operations where plants, flowers, fruit, vegetables, seeds, bulbs and other garden accessories are sold.
- The focus on retailing means that plants are generally brought in from other nurseries with many or possibly all species imported into the Island.
- Products directly related to gardening and plant care may also be sold on the site, including growing media, garden tools, containers, garden pond products, garden books etc.
- Typically a plant centre in Guernsey will consist of an open area of land for holding and displaying plants. A sales centre may take the form of a covered area also selling plants, sundries and garden accessories.
- It is recommended that, initially, the permitted retail product range associated with plant centres should be as set out in Schedules 1 and 2 of the garden retail schedules in Appendix III.

### 3.30 The Garden Centre

Producing a satisfactory definition of a modern out-of-town garden centre is a balancing act. Consumer expectations of the range that they can purchase at such a centre and commercial ambitions have to be modified in the interests of maintaining the viability and vibrancy of established units within the town and parish centres. Controls are required to ensure that the retail offer is not so wide as to allow the unit to be used for other purposes which would be regarded as unsuitable in the rural area, e.g. bulk DIY or supermarket.

- 3.31 A useful starting point for a definition of a garden centre was provided by the Board's UK advisors.

*"A retail operation with sales areas both under cover and in the open, in which the sale of goods related to gardens and gardening is significant in relation to the sale of other goods; together with refreshment facilities ancillary to the overall garden centre use and with other ancillary and associated services and uses such as garden design service, occasional fairs and events".*

- 3.32 The Board believes that while this is a useful starting point in that these words will provide a broad "flavour" of garden centre retailing, they require to be augmented by a more detailed classification of the products that can be sold if retail activity is not to drift from the core garden retail permission into other areas.

- 3.33 Typically, garden centres in the UK and on the continent display the following features: (A full appreciation of the opportunities and limitations of a garden centre under this arrangement will only be gained by a detailed examination of these schedules. The Board would emphasise that these schedules are to be dynamic and are likely to be revised as a result of further consultations with interested parties and in any case overtime).

(a) **Covered Heated Area** enclosing:

- Composts, peats, chemicals and other goods associated with plant/garden care, tools, watering equipment and gardening machinery.
- Plants, flowers, dried flowers, artificial flowers and goods associated with their care, arrangement and maintenance.

- Garden furniture and furnishings, garden lighting, barbecues.
- Christmas decorations and displays (Christmas season only).
- Catering facilities.
- Garden clothing and footwear.
- Pet food, pet cages and fish, including ponds, pet care advice, accessories and garden products.
- Garden machinery and repairs.
- Other goods related to exhibition areas for rural crafts and seasonal country products.

(b) **Extensive outdoor areas including:**

- Outdoor plant retailing area
- Themed garden displays
- Water features
- Children's play area
- General landscaping

### **Draft Schedules**

3.34 The content of the draft schedules proposed and set out in Appendix III is summarised briefly below:

Schedule 1 – Plants, fresh fruit and vegetables grown on the nursery or imported and grown on for a minimum of four weeks or one growing cycle.

Schedule 2 – Plants, fresh cut flowers, vegetables that could be imported, composts, containers, tools, equipment, etc.

Schedule 3 – Garden furniture, garden machinery, garden crafts, garden buildings, garden leisure and pet supplies.

Schedule 4 – Giftware (maximum permitted floor area 1000 sq. ft).

Schedule 5 – Sets out special provisions for the display of Christmas and other seasonal decorations for the months of November to January inclusive.

Schedule 6 – Restricts special events and fairs to those associated with gardening and the countryside.

Schedule 7 – Provides for any café/restaurant area to meet environmental health standards.

Schedule 8 – Lists specific retail **prohibitions** to ensure that some retail offers are fully excluded from the garden offer, e.g. general grocery retailing, office equipment, fitted kitchens etc., etc. (Some 30 retail product ranges would be expressly prohibited).

3.35 The list of items in Schedule 3, covering garden furniture, garden machinery, garden crafts, building, leisure and pet supplies, was drawn up as a result of the detailed local survey, consultation with the local retail trade and the Planning Inspector's findings in the UK Cadbury's Garden Centre case.

- 3.36 The Board recognises that what is broadly described as “giftware” represents items which are often unrelated to gardening and can be found in many town centre shops. Nevertheless, such items have become an established category of products in garden centres elsewhere and indeed locally. To exclude this category could, in the Board’s view, adversely affect the viability of some operations. On the other hand, to allow uncontrolled mass retail within this area could indeed threaten some town retailers. The giftware section would therefore be more tightly controlled both by the proposed definition and by the maximum permitted retail floor area for the giftware offer, which is limited to 100 m<sup>2</sup>.
- 3.37 Local consumers will be familiar with the pattern of some of the larger garden stores of setting aside areas usually used for the retail of plant products to sell Christmas decorations, wrapping paper and other seasonal gifts in the run up to Christmas and immediately after.
- 3.38 While Christmas decorations are not obviously associated with gardening, this practice has developed as a natural extension of selling Christmas trees (a bulky traditional garden retailing item), and provides a welcome return during the pre-Christmas period when gardening sales are minimal. Furthermore, the lower commercial rents paid by garden retailing premises enable them to display quantities of bulky, low value decorations and associated products that would not be viable in expensive high street locations.
- 3.39 It is proposed that such sales are limited to the months of November, December and January.
- 3.40 The schedules also provide for the provision of static displays, e.g. Father Christmas’s grotto, in areas dedicated to other purposes during the remainder of the year.

3.41 **It is proposed that product schedules would be reviewed by the Board annually, having first consulted with consumers and retailers (most likely through the Retail Strategy Working Party). If more frequent reviews were required these would be arranged on an ad hoc basis. The Board envisages that legislation would enable schedules to be readily updated by means of Statutory Instruments.**

3.42 **The Board does not believe that garden retailing can be controlled adequately simply by adopting new use class definitions.**

- 3.43 In the light of the development of garden retailing locally, and the UK experience (e.g. the Cadbury case) it is essential that the package of Use Class definitions and associated schedules are monitored and enforced. Having consulted with H M Comptroller, the Board believes that new legislation is required which would:
- Enable the Board of Industry to specify what goods and services may be lawfully offered at premises within a particular retailing use class.
  - require businesses to register premise; and
  - provide powers to inspect and enforce.

It is envisaged that the system would work as follows:

- 3.44 A retailer, having either confirmed with the IDC that his operation falls within with one of the new use classes, or having obtained permission for a change of use to trade as a garden retailer, would have to register with the Board under the proposed legislation. The operation could not legally trade without being entered on the register. Registration would be conditional upon the retailer limiting his product offer to the items contained in the schedules appropriate to his use class.
- 3.45 The enforcement system will require powers that are sufficiently potent to discourage breach of the rules. Such powers may include some form of restriction notice, a breach of which will be prosecutable as a criminal offence, the power to impose a penalty or some other measure or combination of measures.
- 3.46 The Board has not, at this point, finalised the details of such legislation as it did not wish to devote resources to this area or take up precious legal drafting time until the States had agreed in principle with this approach. Approval of the package of measures contained in this report will lead to further detailed consultations with the Law Officers and other interested parties prior to laying the legislation before the States.
- 3.47 As mentioned elsewhere in this report it is felt more appropriate for the administration and enforcement of the proposed system to be undertaken by the Board's Trading Standards Department rather than the Island Development Committee. In this respect the Board is always reluctant to add further to the workload of a very small department with increasingly stretched resources. However, having considered the matter, it is satisfied that the number of retail outlets that are likely to be registered is relatively few and a single annual inspection should prove adequate. Consequently the Board does not believe that any additional staff resources will be required as a result of these proposals.

#### **Should the number of garden centres in the Island be restricted?**

- 3.48 Given the nature and scale of retailing on **nurseries** and **plant centres** the Board does not believe that there is a case for the States to place any limits on the number of premises in these categories.
- 3.49 However, the potential impact on the market and the environment of modern **garden centres** led the Board to examine whether there was a case for limiting the number of such units on the Island.
- 3.50 The economic assessment of the value of garden retailing in Guernsey came to the conclusion that locally the market is worth some £6.6 million and predicted that it could rise to £10 million within the next decade. Given that a single modern garden centre in a comparable location to Guernsey produced a turnover exceeding £4 million in the year 2000 (65% of the total Guernsey spend) this suggests that if one large garden centre were to be established locally then in a relatively short time it could well acquire trade at the expense of existing operators and in the long-term accommodate a significant proportion of the growth in this area.
- 3.51 This raises the obvious question of whether there is room for more than one large modern **garden centre** and whether the States should attempt to limit the number of such developments in some way.

3.52 The Board is conscious that in the UK planning permission for new out-of-town stores in rural areas often includes the requirement to demonstrate that there is demand over and above that which can be met from existing facilities or commitments.

3.53 In the Guernsey context the Board finds itself facing a dilemma.

- On the one hand it is most reluctant to propose yet further controls or to stifle competition.
- On the other hand a completely free market approach might produce, say, three large garden centres in the rural area, two of which could fail in the face of competition from the third. The resultant pressure to allow the unsuccessful centres to develop into large out-of-town retail units would be intense and, if permitted, would wreck the whole philosophy set out in this letter.
- Alternatively, any sites which became uncompetitive commercially could become run down and poorly managed land areas in the rural landscape.
- Some owners of horticultural/agricultural land might simply apply for change of use permission to acquire planning gain for the site.

**3.54 On balance the Board believes that the States should not be invited to place any limits on either the number of garden centres (or other garden retailing operations) or the area of land occupied by such enterprises. Rather a balance of planning controls and market forces should determine how many such units develop.**

#### Reflections on Sunday trading issues

3.55 In taking the above approach the Board is conscious that its proposed approach might be considered inconsistent with two conclusions to emerge from the various Sunday trading debates, namely that:

- (i) The use of schedules to establish what could or could not be lawfully sold in retail outlets had fallen into disrepute; and
- (ii) In 1999 the States approved a draft definition of a garden centre as  
“an establishment where the predominant range of goods is for gardening and where over half of the total trading area is devoted to the sale of living plant material”.

3.56 Having considered the views about schedules the Board has come to the conclusion that comparison with the schedules of goods which may or may not be sold under the Sunday Trading Laws was unfair. In the case of Sunday Trading the schedules had become outdated over time and there was no mechanism for review. Furthermore, the individual parishes charged with responsibility for granting dispensation from those schedules had taken different approaches.

3.57 In contrast, the Board proposes that there should be a regular review (annual) of the schedules for garden retailing in general and **garden centres** in particular and that a single authority of the States – the Board – should determine matters of interpretation.

3.58 The definition adopted by the States in 1999 provided a very useful step forward and a valuable starting point for a definition. However, in the light of the detailed work that it has undertaken over the last two years and which has culminated in this report, it does not



believe that it will prove workable. The proposals outlined in this report are preferred as a more realistic and enforceable approach.

**3.59 Accordingly, it is recommending to the States that the Resolution of November 1999, in respect of a definition of garden centres be rescinded.**

**What form of garden retailing should be permitted to open on a Sunday?**

**3.60 The Board's interpretation of the spirit of the States' wishes, as set out in the 1999 Resolutions is that:**

- Plant nurseries, plant centres and garden centres as defined by this report should be permitted to open on a Sunday.**
- Garden stores, whether within urban or rural areas, should not be permitted to open on a Sunday.**

**Development timetables**

3.61 The purpose of this letter is to offer the States a pathway to creating a strategic legislative and administrative environment within which one or more modern garden centres and other forms of garden retailing can flourish in Guernsey. The report has not concentrated on the development of any particular site as this is a matter outside of the mandate of the Board and falls clearly within the remit of the IDC.

3.62 However, given that at least two significant garden retailers within the Island have indicated publicly that they would wish land in their ownership to be rezoned to allow the development of a garden centre, the Board considers it might be helpful to outline the steps which it believes would need to be taken if those ambitions are to be safely achieved.

- (i) Approval by the States of the package of measures contained in this report would lead to:
  - (a) changes to the Strategic and Corporate Plan;
  - (b) the revision of existing legislation (Use Class Ordinance) and, in the case of registration, the drafting of new legislation;
  - (c) adoption by the States, subject to consideration of an Inspector's report following the necessary statutory Planning Inquiry process, of appropriate amendments to the relevant Detailed development plans.
- (ii) Against a background of endorsement by the States of the concept of developing properly controlled garden centres on appropriate sites in rural areas, the owners of those sites could approach the IDC for permission in principle.



## **SECTION IV – SUMMARY AND RECOMMENDATIONS**

### **Summary**

- 4.1 Garden retailing is increasing in popularity and is of significant value to the Island, with turnover currently in excess of £6.6 million and predicted to increase by over 50% within the next decade.
- 4.2 Lower land prices, rents, rates and operating costs on large rural sites make them an attractive proposition for general retailing in comparison with High Street locations. Furthermore, profit margins on product lines such as clothes, giftware etc are much higher than those for most traditional garden products, there are real commercial pressures to diversify away from garden retailing into multipurpose retail outlets. Add to this the size of the sites and general ease of parking on rural sites compared to St Peter Port or St Sampson's or indeed the parish centres, and the threat to the viability of our traditional commercial centres if no controls are introduced is readily apparent.
- 4.3 There is a good case for allowing one or more modern garden centres to be established in the Island on appropriate sites in the rural area but current planning controls are insufficient to be sure of preventing such multipurpose retail outlets from developing into large out-of-town DIY stores, supermarkets or other operations which would be inappropriate to the rural area and would threaten the viability of the town centres.
- 4.4 The design of any retail centres in rural areas needs to be appropriate to the landscape and rural environment.
- 4.5 Garden retailing cannot be appropriately defined in one simple catch-all definition. A set of three Use Class categories and an associated control system based on registration of premises, supported by schedules of products which can and cannot be sold and administered by the Board, is proposed.
- 4.6 The new use class definitions would cover the following operations:
  - Plant nurseries**
  - Plant centres**
  - Garden centres**
- 4.7 While the use classes would be enforced by the IDC responsibility for ensuring compliance with registration and garden retail schedule requirements would rest with the Board of Industry's Trading Standards Department. This arrangement would require new legislation.
- 4.8 It is not proposed to place any limits on the number of gardening retailing operations on the Island but to allow market forces and planning considerations to prevail.
- 4.9 The above proposals have been prepared in the context of an Island and Rural Retail Policy which is in the course of preparation and which the Board hopes to present to the States no later than 2003.
- 4.10 The definition of garden centres agreed by the States in 1999 in the context of Sunday Trading would need to be reworded and replaced by the proposals set out in this letter.

### **Recommendations**

The Board of Industry recommends the States:

1. To note the Board of Industry's intention to submit to the States proposals for an Island Retail Strategy which will include a strategy for retail operations in the Rural Area.
2. To direct the Advisory and Finance Committee in submitting to the States the Strategic and Corporate Plan for 2002, to reflect the policies set out in this report and to provide that garden retail operations as described may be developed within the Rural Area.
3. To direct the Island Development Committee to prepare appropriate amendments to the Detailed Development Plans to reflect the proposals contained in this report.
4. To invite the Island Development Committee to pay particular regard to the development "template" for a garden centre as described in this report.
5. To direct that the Use Class Ordinance under the Island Development (Guernsey) Laws 1966 and 1990 should be amended to include new garden retailing use class definitions along the lines set out in section III of this report.
6. To agree in principle to the control of garden retailing through a registration system supported by use class schedules as set out in section III of this report and administered by the Board of Industry as described.
7. To rescind the definition of a "garden centre" as set out in resolution VII, 11, 11A and 11B approved by the States on 11 November 1999.
8. To agree that the proposed amendments to the Sunday Trading legislation shall provide a category of licence to permit the opening of **plant nurseries, plant centres and garden centres** as described in this report.

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

Yours faithfully,

JOHN ROPER,

President,

States Board of Industry.

## APPENDIX I

Prior to concluding that a combination of use class definition and licensing was the best approach, the Board reviewed and rejected a number of alternatives. These are set out below together with the reasons why they were dismissed.

### 1. Planning permission combined with a voluntary code of practice

Given the peculiar nature of the modern garden centre and its wide range of retail products, any broad use class definition is bound to be open to interpretation. This is the reason why more detailed schedules have been associated elsewhere with licences. An alternative to a licence would be to encourage the trade to adopt a voluntary code of practice. The problem with such an approach is of course that it would indeed be voluntary and not legally binding on the parties. In view of the very strong commercial forces in the retail market, the Board believes that adopting a voluntary code of practice would not be appropriate.

### 2. A revised rating system

The option for controlling expansion of retail activities on such sites through a revised rating system based on product offer definitions was explored but soon rejected as unnecessarily complex. Under this concept:

- product definitions and retail areas where product lines were displayed are defined; and
- rates are then set at a punitive level if the retail offer strayed significantly outside of the definition.

The Board believes that the current rating system would simply not allow such a development and would require a comprehensive overhaul which would inevitably lead to considerable delays.

### 3. Contract linked to compulsory purchase

Based on their UK experience, consultants Quinton Edwards suggested that there could be a section in a contract tied to planning permission which stated clearly that in the event of a garden retail centre failing to comply with the garden retail uses or indeed going out of business, then:

- the site and building could either be demolished and the area returned to agricultural use; or
- the business should be sold to another garden retail operator within a 12-month period; and
- if at the end of that 12-month period no sale had been made the States of Guernsey would be able to implement a sale to another garden retail operator at the maximum price that can be obtained on the market. Any consequent capital loss to be borne by the former operator.

While it was recognised that this is one way of preventing a garden centre site from developing into alternative retail use, it was an extremely heavy-handed approach and one that did not fit well in the Guernsey context. It was rejected.

#### 4. Controls based on trading area

Controlling sales by product types requires constant attention as specific lists of agreed “garden” products need to be kept up-to-date with the changing retail environment. In these circumstances, defining a gross sales area can appear to provide a single easily definable measure of control. In practice, however, defining areas without indicating the products that may be retailed from them could well lead to a drift away from the gardening theme into activities which threaten the vitality of the Town and Parish centres. Setting aside a modest area for retailing in relation to green space on a site would, without any restrictions as to the products on offer, mean that a virtually unlimited range of items could be offered for sale.

Modern retailing can operate from small areas where there is a large “footfall” (throughput of customers). Examples include:

- Franchise offers such as car sales on an area that occupies a few square metres for an extremely high value product which is either provided on the basis of a “drive away deal” in the car park or the vehicle supplied at a later date from another site.
- High value jewellery could be sold at prices which could undercut the High Street operations given the lower rents and access to parking.
- A vast range of products could be sold from a catalogue and bought over the counter from a warehouse facility behind the retail area.

Given the problems in controlling any operation based solely on floor area and without a comprehensive list of products that may be retailed and means of adapting to the ever changing retail environment, the Board does not favour this approach in isolation.

## APPENDIX II

### CADBURY GARDEN CENTRE CASE AVON UK.

#### Background

An example of creeping retail development, with ineffective local planning controls, was provided by the Cadbury Garden Centre. Cadbury Garden Centre sits on a 17-acre site of car parking, shops, glasshouses and open sales area. In 1999 it had an existing covered retail floor space of 68,566 sq ft (1.57 acres). The proposed re-development would have comprised an additional 129,457 sq ft (3 acres).

#### History as a horticultural nursery

The property was formerly a horticultural nursery. Planning permission to change the use to a garden centre for garden/horticultural retailing was granted in 1982. The owners maintained that their core business was still related to gardening but the authorities feared that further diversification could alter the balance by degrees to a fully-fledged retail premises selling high street goods. This would further add to the traffic flows in the nearby village of Congresbury and impact on the countryside at Cadbury Hill. The Garden Centre already drew customers from a wide catchment area, covering hundreds of square miles from Bristol to Exeter.

#### Planning Inspectorate Case

To decide the appeal, Nicholas Hammers of the Planning Inspectorate, was appointed. The Council cited their local plan containing four policies which had objectives to steer major developments, including retail developments, into settlements and resist such developments in the open countryside.

The owner wanted retail expansion but still with a garden/craft theme. The already diverse range of products and visitor services on the site gave plenty of scope for expanding sales by claiming a legal precedence on the existing offer of products, including clothes, foodstuffs, restaurant, craft/hobby activities.

Key aspects in the Planning Inspector's decision were as follows:

- Garden centres are classed with other retail premises. Reference a case of Wiggins vs Arran DC (1997) JPL 1041, local authorities must impose some other form of control if they wish to restrict retail use.
- There was no mention of garden centres in the Avon County Land Policy. The local council assumed that they were covered by retail restrictions on horticultural sites. However, the inspector no longer considered Cadbury's Garden Centre a horticultural site but a retail site because of the retail activity built up over the past 10 years.
- The Planning Inspector recommended permission to expand the garden centre with strict controls developed through clear policy recommendations, product definitions, area specifications and regulation to enforce the specific product range schedules. *A full transcript of the case can be obtained from the Board of Industry.*

### APPENDIX III

#### **GARDEN RETAIL SCHEDULE DETAILS**

##### Schedule 1 – Plants, Flowers Fruit and Vegetables, Seeds and Bulbs

1. Fruit, vegetables and flowers produced on the nursery.
2. All types of plants produced on the Island and having been present on the nursery for a minimum of four weeks or one growing cycle.
3. All types of plant propagation and storage organs including seeds, bulbs and corms.

##### Schedule 2 – Plant Sundries and Garden Accessories

1. All types of plants, flowers, fruit, vegetables, seeds and bulbs.
2. Growing media and mulches of all types including peat, composts and barks.
3. Fertilisers and plant protection products.
4. Lawn care products.
5. Garden tools and equipment.
6. Plant containers, garden ornaments and vases.
7. Garden related books, videos, tapes, CDs.
8. Aquatic gardens, garden ponds and accessories.
9. Landscaping services.
10. Products associated with the care and welfare of pets and livestock.

##### Schedule 3 – Garden Furniture, Garden Machinery, Garden Crafts. Garden Buildings, Garden Leisure and Pets

1. Gardening clothes specified as Wellington boots, garden gloves, garden hats and protective clothing for applying garden products.
2. Furniture designed for the use in a garden or conservatory.
3. Garden machinery and associated servicing.
4. Greenhouses and equipment associated with greenhouse use.
5. Construction materials and equipment necessary for the construction of patios, garden paths, fences, decorative walling, pergolas, including outdoor surfacing materials such as “artificial lawns”.
6. Refreshments, confectionery, ice cream and light snacks including the provision of a cafeteria/restaurant.

7. Floral art.
8. Swimming pools, spa pools and pool care products and associated care and maintenance products.
9. Greenhouse and garden conservatory heaters, barbecues, and fuel for the same.
10. Conservatories.
11. Pets corner and children's playground.
12. Pets, pet care, pet accessories and food.
13. Exhibitions related to the approved products list as specified in Schedules 1-4.
14. Garden lighting, plant lighting and associated electrical equipment.
15. Videos, CDs, DVDs, computer software, magazines and tapes related to the products listed in Schedules 1-4.

#### Schedule 4 – Giftware, Maximum Permitted Floor Area 100m<sup>2</sup>

The total area to be a single designated area of the store. The maximum area is a gross area inclusive of internal areas for customer access. Giftware items are not permitted for display outside of the designated area.

1. Candles, candlesticks and candle holders.
2. Picnic-ware, barbecue equipment and tableware designed for garden use.
3. Calendars, diaries, cards, gift-wrap and souvenirs.
4. Garden and outdoor toys and outdoor garden games.
5. Arts and craft products including needle ware and tapestries.
6. Christmas decorations, wrapping paper.

#### Schedule 5 – Christmas displays and decorations

1. Christmas displays and decorations are permitted throughout the store for the months November – January.

#### Schedule 6 – Events and occasional fairs

Events and occasional fairs to be permitted providing they are associated with gardening and/or the countryside.

#### Schedule 7 – Café/Restaurant

The area for a café/restaurant to a designated, separate area from the retail area for garden products. This is especially important with respect to pesticides and “organic” fertilisers. The retail/service facilities to meet food hygiene requirements, as directed by environmental health standards. “Take-away” meals are not permitted to be sold from the premises.

### Schedule 8 – Specific Retail **Prohibitions**

Note: Schedule 8 refers to areas of retail activity or customer service for which there is a total **exclusion** of certain product or service lines. It is not a comprehensive list of all excluded products and services. This is to prevent the prohibition list becoming too lengthy and specific. An item which does not appear on the prohibition list cannot be retailed unless it is specifically identified in schedules 1-5.

1. General grocery retailing.
2. Perfumery and cosmetics.
3. Ladies, men's and children's clothing and shoes, sportswear, other than the "gardening" clothes specified in Schedule 3.
4. Jewellery, spectacles, clocks and watches.
5. Cars and motorcycles, spare parts for cars and motorcycles and motor care products.
6. All electrical goods except for those specified in the Schedules 1-4.
7. Plumbing supplies and bathroom fittings except for plumbing supplies for items in schedules 1-4.
8. Wallpaper and paints.
9. Musical instruments.
10. Luggage.
11. Beds and bedding.
12. Carpets and curtains.
13. Children's nursery equipment and toys except for outdoor games specified in Schedule 4.4.
14. Fitted kitchens and bedrooms.
15. Off Licence.
16. Tobacconist or newsagent.
17. Franchised displays for products or services not listed in Schedules 1-5.
18. Financial services unless directly associated with the products in the schedules.
19. Customer services such as hairdressing.
20. Health services – medical, dentistry, pharmaceutical products.
21. Furniture except for outdoor and cane furniture as specified in Schedule 3.2.
22. Motor vehicle displays and car sales.
23. Internet café sales point.
24. Catalogue sales offer.



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

26th February, 2002.

Dear Sir,

I refer to the letter dated 11th February 2002 addressed to you by the President of the Board of Industry on the subject of Controlling Garden Retailing.

The Advisory and Finance Committee supports the Board's proposals to create a regulatory framework to enable garden retailing businesses to operate from appropriate rural sites without undermining the viability of established commercial centres or the quality of the rural environment. The approach being taken is in line with current strategic policy towards large scale retail developments as set out in the Strategic Land Use Plan (Strategic & Corporate Plan) 2001 and Strategic Policy 20 in particular.

Given the size and sophistication of modern Garden Centres, the Committee shares the Board's view that an effective package of controls is required so that this form of retailing delivers the greatest benefits to local customers and suppliers and to tourists and leisure visitors whilst also achieving a form and quality of development compatible with a countryside setting. Without proper regulation, large-scale retailing could develop on (relatively cheap) land in the rural areas of the Island drawing trade from the Town, The Bridge and other centres and creating a range of environmental pressures.

Although the Committee generally prefers to avoid regulation recognising that market forces may achieve better results with less bureaucracy, it believes this is a case where an integrated system of controls operated through a combination of land use planning and a registration scheme are necessary and justified if serious risks are to be avoided.

The Advisory and Finance Committee recommends the States to approve the Board of Industry's proposals.

Yours faithfully,

L. C. MORGAN,

President,  
States Advisory and Finance Committee.

The States are asked to decide:-

V.–Whether, after consideration of the Report dated the 11th February, 2002, of the States Board of Industry, they are of opinion:–

1. To note the States Board of Industry's intention to submit to the States proposals for an Island Retail Strategy which will include a strategy for retail operations in the Rural Area.
2. To direct the States Advisory and Finance Committee in submitting to the States the Strategic and Corporate Plan for 2002, to reflect the policies set out in that Report and to provide that garden retail operations as described may be developed within the Rural Area.
3. To direct the Island Development Committee to prepare appropriate amendments to the Detailed Development Plans to reflect the proposals contained in that Report.
4. To invite the Island Development Committee to pay particular regard to the development "template" for a garden centre as described in that Report.
5. To direct that the Use Class Ordinance under the Island Development (Guernsey) Laws 1966 and 1990 shall be amended to include new garden retailing use class definitions along the lines set out in section III of that Report.
6. To agree in principle to the control of garden retailing through a registration system supported by use class schedules as set out in section III of that Report and administered by the States Board of Industry as described.
7. To rescind the definition of a "garden centre" as set out in paragraphs 11, 11A and 11B of the resolutions of the 11th November, 1999, taken on Article VII of Billet d'État No. XVIII of 1999.
8. That the proposed amendments to the Sunday Trading legislation shall provide a category of licence to permit the opening of **plant nurseries, plant centres and garden centres** as described in that Report.
9. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

## STATES BOARD OF INDUSTRY

### DEVELOPMENT OF THE GUERNSEY ENTERPRISE AGENCY

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

11th January, 2002.

Dear Sir,

### **DEVELOPMENT OF THE GUERNSEY ENTERPRISE AGENCY**

#### **Introduction**

1. The Board of Industry has recently reviewed the funding arrangements for the Guernsey Enterprise Agency, approved by the States in 1992, and felt that this would be an appropriate time to report back to the States on the work of the Agency, and its current plans for expansion and development.

#### **Background**

2. The Enterprise Agency was first introduced to Guernsey in 1986 but did not become established until 1990 when it was set up through the initiative of the Young Businessmen's Group of the Chamber of Commerce. At that time the States of Deliberation, at its meeting held in February 1990, authorised the Board of Industry to make an annual grant to the Enterprise Agency of up to half of the Agency's running costs, and directed the Board to report back to the States in 1992.
3. As directed, the Board submitted a Policy Letter to the States meeting of December 1992, reporting on the success of the Agency and requesting that funding be extended for a further period on the same basis. The States consequently resolved to:—
  - i. Authorise the States Board of Employment, Industry and Commerce to make provision for an annual grant to the Guernsey Enterprise Agency which does not exceed half the annual budget for running the Agency.
  - ii. Instruct the States Board of Employment, Industry and Commerce to review the running of the Guernsey Enterprise Agency and its funding on a regular basis.

#### **The Role of the Agency**

4. The aim of the agency is to provide free, independent, and confidential advice and assistance to small enterprises in the earliest stages of their development. A Business Advisor helps new or proposed enterprises in the evaluation and preparation of business plans, budgets, and cash flow forecasts.

5. More mature businesses can draw upon the services of Business Link Wessex through the Board of Industry, or contract consultants; but entrepreneurs considering a new enterprise, or newly set up businesses, often cannot afford such support. Many new businesses fail in their first year, causing considerable cost to the individuals involved, the clients and investors of the business, and wasting potential return to the economy. The Agency provides local expertise to help avoid the pitfalls involved in setting up a business, to improve the chances of success and maximise opportunities.
6. The Board supports the work of the Agency as part of its mandate to seek ways of developing and diversifying the economy. Business start-ups are a source of new ideas and revenue generation, and are an important segment to target for potential growth, and therefore increase the return to the economy. The Agency is able to provide the Board with information on the attitudes and requirements of the small business community, and is a channel for appropriate support of this sector.
7. The Agency's role is not to encourage more start-ups, but to make sure that those that do undertake this commitment have the best possible chance of success. Frequently entrepreneurs have a significant personal investment in their start-up business, and the Agency ensures that appropriate advice and support is available to protect that investment. The role of the Agency is as much to deter people from investing in unsound business propositions, as it is to ensure that those who do start-up on their own have planned adequately for their business survival and growth.
8. The Agency deals in business start-ups in a range of industries, including retail, building trades, restaurants and hairdressing, and in recent years there has been a noticeable trend towards the establishment of businesses in I.T. and e-commerce, accountancy, marine engineering, and health and leisure.

### **Current Situation**

9. The Board monitors the progress of the Agency, and has a member of staff on its Management Committee, and is happy that the Agency continues to provide an invaluable business advisory service.
10. The Agency employs a part-time Director, who advises approximately 120 people a year. An average of 30 individuals a year seeking assistance go on to establish their own business. These can be regarded as successes, but equally important are the remainder of individuals who have changed their minds about setting up a business, and therefore have potentially guarded against an unsound investment.
11. The Guernsey Enterprise Agency's expenditure during 2001 will be approximately £16,500 (November estimate) and the Board of Industry has a budget of £8,000 a year to support their finances; they raise the remainder from private sponsorship. The Board has so far been limited in the amount that it has been able to contribute by the 1992 States directive, but has contributed more than half of the direct finances to ensure the service can continue to be provided. The private cash contribution is bolstered by some gifts 'in kind' such as office equipment.
12. The Agency has found it progressively more difficult to increase private funding in recent years, with the result that it has had to reduce its operating hours from 20 to 12 hours a week. The Director is also having to spend more of his time seeking sponsors; time which would be better served providing advice and assistance to the clients of the Agency.

13. While private funding is forthcoming for the tangible project work, such as training seminars and networking events undertaken by the Agency, it is difficult to sustain the operational costs, where the return for private investors is harder to demonstrate. While costs have risen due to inflation, the income of the Agency has remained static at approximately £13,600 for the last three years. Therefore, without increased investment, the Agency would struggle to maintain the service it currently provides.
14. The Board would wish to provide more support to the Agency in covering its existing operational costs, and in addition the Agency has a plan for expanding its services that would provide more comprehensive advice and support to start-up and smaller businesses. It is interesting to note that the Guernsey Agency already assists a similar number of new businesses to set up as its Jersey counterpart, although the Jersey Business Venture boasts a States grant of £55,000 as well as private sponsorship, and is able to employ full-time staff. Where Jersey has the advantage is that it is able to offer more services to its client businesses in the early years after set-up.
15. The Guernsey Enterprise Agency plans to adopt a more proactive stance in helping established small businesses to grow, including developing networking opportunities through a Business Club, providing more training seminars and workshops, publishing a newsletter, and increasing the availability of business advice and information. This will require an investment in the updating of office equipment, including a comprehensive computer database of clients, and an increase in the operating hours.
16. To ensure that the service levels remains of a high standard and meet best practice in comparison to other jurisdictions, the Agency also intends to undertake a benchmarking and training programme to keep up to date with international standards. This will include membership of the National Federation of Enterprise Agencies, and training of the Director of the Agency in a qualification for approved Membership of the Institute of Business Advisors.

### **Proposal**

17. Due to the difficulty in increasing private cash sponsorship above its current level, which is about £6,000, the existing arrangement allowing the Board to fund only half of the operational costs is too restrictive. In order to assist the Guernsey Enterprise Agency to expand its services, the Board would wish to cover its operational costs, leaving the funds raised through private sponsorship to create more of an impact in projects to extend the business network and provide better value to Agency clients.
18. With the investment in training and equipment, a contribution from the Board of £25,000 has been forecast for 2002, from its previously approved budget. The Board considers this a worthwhile investment to support the development of smaller businesses, and therefore encourage a greater return to the diversification and growth of the economy. The Board would wish to increase its overall budget from 2003 by £17,000 to allow for an annual grant to be given to the Enterprise Agency of £25,000.
19. To allow the Board to extend its support to start-up and small businesses through the Enterprise Agency, the funding structure as approved by the States in 1992 needs to be amended.
20. The Board considers that the future funding of the Agency should be a matter for it to review as appropriate at Board level, as part of its budgetary submission for approval by the Advisory and Finance Committee, and without further need for referring the matter back to the States.

### **Recommendation**

21. After consideration of this report the States are recommended to:–

- i. Authorise the Board of Industry to make an annual grant to the Guernsey Enterprise Agency;
- ii. Agree that the grant shall be £25,000 in 2002 and, for subsequent years, be of such amount as the Board of Industry may deem appropriate within its budget allocation;
- iii. Direct the States Advisory and Finance Committee to take into account the need for the Board of Industry to provide an annual grant to the Guernsey Enterprise Agency when recommending to the States non-formula led revenue allocations for that Board for 2003 and subsequent years.
- iv. Rescind the Resolutions of the 1992 policy letter.

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

Yours faithfully,

K. A. PREVEL,

Vice-President,

States Board of Industry.

---

### **[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 January, 2002, of the States Board of Industry, they are of opinion:–

1. To authorise the States Board of Industry to make an annual grant to the Guernsey Enterprise Agency.
2. That the grant shall be £25,000 in 2002 and, for subsequent years, be of such amount as the States Board of Industry may deem appropriate within its budget allocation.
3. To direct the States Advisory and Finance Committee to take into account the need for the States Board of Industry to provide an annual grant to the Guernsey Enterprise Agency when recommending to the States non-formula led revenue allocations for that Board for 2003 and subsequent years.
4. To rescind the Resolutions taken on Article XV of Billet d'État No. XXI of 1992.

**ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986**

**REPORT OF THE REVIEW BOARD FOR 2001**

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

30th January, 2002.

Dear 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 2001.

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 2001.

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

Yours faithfully,  
J. E. LANGLOIS,  
Chairman,  
Panel of Members.

**THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAWS 1986 TO 1993****REPORT OF COMPLAINTS RECEIVED****by the States Supervisor****during the year ended 31st December 2001****INDEX****Respondent****Serial Numbers  
(see following pages)**

Guernsey Social Security Authority	1
States Agriculture and Countryside Board	2
States Tourist Board	3
States Education Council	4, 5
States Board of Administration	6



## **PART 1 – SUMMARY OF COMPLAINTS**

### **1. Mrs. Lawrence King v. Guernsey Social Security Authority**

A complaint against the Social Security Authority regarding a decision not to refund contributions paid at full rate between July 1988 and November 2000.

The States Supervisor referred the matter to the Chairman of the Panel of Members and a Review Board was convened (for details see Part II No. 1).

### **2. P. v. States Agriculture and Countryside Board**

A complaint against the Agriculture and Countryside Board concerning its refusal to allow the complainant to import a dog whilst foot and mouth restrictions were in place.

Not referred to a Review Board as the Agriculture and Countryside Board's temporary restrictions were lifted and the complainant was permitted to import the dog.

### **3. Q. v. States Tourist Board**

A complaint against the Tourist Board concerning a decision to reduce the size of an advertisement printed in the Board's 'Information and Holiday Services' Guide for 2001.

Not referred to a Review Board because the complaint did not fall within the jurisdiction of a Review Board and because the complainant had a right of appeal in a court of law in relation to the matter from which the complaint arose.

### **4. R. v. States Education Council**

A complaint that the Education Council had refused to allow the complainants' son to be registered for education at a school outside the catchment area in which the family was living.

Not referred to a Review Board as the Education Council reconsidered its decision and agreed to the request.

### **5. S. v. States Education Council**

A complaint that the Education Council had refused to pay the complainant's son's school fees

This matter is still under consideration by the States Supervisor.

### **6. Mr. S Collins v. States Board of Administration**

A complaint that the Board of Administration had refused to grant permission for Mr. Collins to employ an overseas national as a Restaurant Manageress at the Belle Vue Hotel, Alderney for a four-year period.

The States Supervisor referred the matter to the Chairman of the Panel of Members. A Review Board will be held in January 2002 (details of this case will be listed in the 2002 Report).

**PART II - REVIEW BOARD DECISIONS****NO. 1****MRS. S LAWRENCE-KING****against the****GUERNSEY SOCIAL SECURITY AUTHORITY****Constitution, Venue and Representation**

The Review Board was constituted as follows:

Douzenier R J Falla, O.B.E. (Chairman)  
Deputy K A Prevel  
Deputy Miss C H Le Pelley

The parties were heard in public at Les Cotils Christian Centre on 19th April 2001.

Mrs. Lawrence King was present.

The Guernsey Social Security Authority was represented by Deputy O D Le Tissier, President, and Mr M Nutley, Administrator of Social Security

**Substance of the Complaint**

The substance of the complaint is the Guernsey Social Security Authority's decision not to refund contributions paid at full rate between July 1988 and November 2000.

**The Case**

Mrs. Lawrence King stated that she had had a telephone conversation with a member of the staff of the Guernsey Social Security Authority in 1987 and had been advised that if she opted to pay full rate contributions she would receive an enhanced pension when she reached 60 years of age. She stated that it was on the basis of this information that she had decided to pay full rate contributions. She also stated that, at the time, she had clearly indicated to the member of staff that she had no intention to seek a divorce.

Mrs. Lawrence King said she had remained under the belief that when she reached pensionable age she would receive a better pension than she would have been eligible for as a married woman paying reduced contributions. She said in making her decision to pay full rate contributions her understanding that she would receive an enhanced pension was the overriding factor. She said the entitlement to sickness and unemployment benefit had not influenced her decision, saying that in twelve years she had only lost five days through sickness and even then she had taken work-related telephone calls at home. Further, Mrs. Lawrence King said if she became unemployed she would find another job or work from home as a seamstress rather than claim unemployment benefit and had she realised she would not receive an enhanced pension she would have paid reduced rate contributions and paid the difference into her private pension scheme.

Mrs. Lawrence King stated she felt the Social Security Authority's submission had sought to discredit her and the Authority had been unresponsive to her correspondence. Mrs. Lawrence King maintained that she had only received answers to her queries after persistent action on her part.

Mrs. Lawrence King advised the Board that in 1987-1988, when she had sought to re-enter the employment market, jobs had been much harder to secure than now and as she had not been in employment for some thirty years she needed to retrain.

Mrs. Lawrence King said she took great exception to the Authority's 'assumption' of the likelihood that she would be divorced before reaching pensionable age.

Deputy Le Tissier opened for the Social Security Authority by providing a brief explanation of the differences between the pension entitlements for married women based on full or reduced rate contributions.

Deputy Le Tissier said had the Social Security Authority decided to refund the difference between the two levels of contributions Mrs. Lawrence King would still have received the entitlement to the additional benefits associated with full rate contributions regardless of whether or not she had received the benefits per se. Deputy Le Tissier likened Mrs. Lawrence King's request to a request to an insurance company for a refund of insurance premiums if no claim is made.

The Administrator of Social Security opened by apologizing to Mrs. Lawrence King for the Authority's delay in replying to her letters of 30 August 2000 and 20 September 2000 but stated that whilst the delays were inexcusable they did not affect the substance of Mrs. Lawrence King's complaint.

The Administrator stressed that neither the Authority's computer system nor database were flawed. He explained that the Authority had two systems, one for benefits and one for contributions, and both systems were currently being reconfigured to allow for better cross-checking of the information held on both systems. The Administrator explained that the reasons for two separate systems were historic but the only area of vulnerability for the Authority in operating under two systems was that each could hold a different address for a contributor/claimant.

The Administrator explained that under the Social Insurance (Guernsey) Law, 1978, as amended, a refund against contributions could only be made where payments had been made in error. In Mrs. Lawrence King's case, whilst she maintained an error had been made in the information provided by Authority staff and on which she made her decision to pay full rate contributions, the payments themselves had been made correctly. Therefore no refund was allowable under the Law.

The Administrator said the Authority's decision was just and that it was essential for the Authority to act justly towards all contributors. He said if the Authority had agreed to Mrs. Lawrence King's request for a refund it would have to allow similar refunds to any married woman paying full rate contributions whose pension entitlement was greater based on her husband's contributions.

The Administrator briefly outlined the reasons why married women are able to pay full or reduced rate contributions. He said the Authority was seeking to change this position as it gave married women an advantage over men and single women and that it was envisaged that the reduced rate contributions would be phased out.

The Administrator said Authority staff do not advise contributors on whether or not they should pay the full or reduced rate contributions. The staff provide information about the benefits and entitlements associated with each scheme but it is the contributor's decision as to which option to choose. The Administrator said each married woman was required to sign a form indicating her choice and an information booklet was supplied with the form.

The Administrator said the decision not to refund the difference between the two levels of contributions had been ratified by the Authority.

The Administrator accepted that there would appear to have been difficulties in the communications between the Authority and Mrs. Lawrence King. He suggested that some confusion may have occurred with the Authority's understanding of the phrase 'enhanced pension' and what Mrs. Lawrence King understood the phrase to mean.

The Administrator concluded by refuting any suggestion that the Authority had, at any time, sought to take any aspect of the case out of context nor had it sought to manipulate the facts of the case to support its decision.

Deputy Le Pelley asked Mrs. Lawrence King when she had taken out her private medical cover and pension scheme. Mrs. Lawrence King replied that she had had private medical insurance for many years prior to returning to work and had started her private pension scheme in 1985.

Deputy Prevel asked if the information booklet explaining the two schemes and the form Mrs. Lawrence King signed indicating her wish to pay full rate contributions were available. The Administrator replied that such forms are shredded after six years and that he did not have a copy of the booklet. Deputy Prevel asked if the form Mrs. Lawrence King signed was identical to that submitted by the Authority. The Administrator replied that the form had changed slightly but the declaration remained unchanged. Deputy Prevel asked about the Authority's procedures had Mr. King divorced Mrs. Lawrence King. The Administrator replied that as Mrs. Lawrence King was paying full rate contributions there would be no change, but her pension entitlement would have been based solely on her own contributions record.

Mrs. Lawrence King re-iterated that her decision to pay full rate contributions was based on the information given to her by Authority staff, namely that she would receive a pension based on the full rate contributions she had made since 1988 plus the pension entitlement from the contributions made by Mr. King prior to 1988.

The Administrator explained that the pension entitlement from Mrs. Lawrence King's own contributions since 1988 was less than her entitlement to a 60 percent pension based on Mr. King's contribution. Deputy Le Tissier added that the Authority never calculates a married woman's pension on the basis of a mixture of full rate contributions and her husband's contributions.

Mrs. Lawrence King said she understood that the pension payable to her was better based on Mr. King's contribution history, but she maintained that Authority staff had given her incorrect information in 1987.

The Administrator asked Mrs. Lawrence King if she accepted that she had opted to pay full rate contributions. Mrs. Lawrence King said she did not dispute that she had made a conscious choice but said the choice was made on the basis of wrong information.

The Review Board decided, by a majority, that the Guernsey Social Security Authority's actions could, in all the circumstances, have been taken by a reasonable body of persons after proper consideration of all the facts.

The complaint was, therefore, dismissed.

The States are asked to decide:—

VII.—Whether after consideration of the Report dated the 30th January, 2002, of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Law, 1986, they are of opinion:—

To accept that Report.

**REQUÊTE**

WASTE SEPARATION AT THE FONTAINE VINERY SITE, ST. SAMPSON'S

**TO THE PRESIDENT AND MEMBERS OF THE STATES OF DELIBERATION**

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

That in the opinion of your Petitioners, and of the Constables and Douzaine of St Sampson:—

1. The States Board of Administration and others have not properly considered alternative sites within St Sampson, such as Guernsey Recycling Limited's premises at Bulwer Avenue and others, which would be more appropriate from a traffic perspective for the creation of a waste separation facility than the Fontaine Vinery site.
2. Many of the roads in the area, including Rue de Bas, Duveaux Road, Baubigny Road, Les Effards, and Les Gigands Road, are unsuitable for increases in heavy traffic.

THESE PREMISES CONSIDERED

YOUR PETITIONERS humbly pray that the States may be pleased to resolve as follows:—

1. To instruct the Board of Administration, in conjunction with other relevant and appropriately qualified parties, to undertake a Traffic Impact Assessment in relation to the proposed waste separation facility at the Fontaine Vinery Site.
2. To instruct the Board of Administration to advise the findings of that Traffic Impact Assessment to the Constables and Douzaine of St Sampson, and to the States Traffic Committee.
3. To instruct the Board of Administration to consider carefully, and to resolve in conjunction with the Traffic Committee, all issues that may result from that Traffic Impact Assessment.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY, this 14th day of February, 2002



Deputy K. A. Prevel



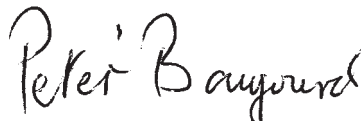
Deputy L. S. Trott



Deputy I. F. Rihoy



Deputy D. P. Le Cheminant



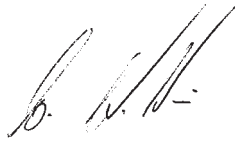
Deputy P. N. Bougord



Douzaine Representative  
M. E. Levrier



Deputy J. A. B. Gollop



Deputy E. W. Walters



Deputy F. W. Quin



Deputy M. M. Lowe



Constable  
S. G. Park



Junior Constable  
S. Maindonald



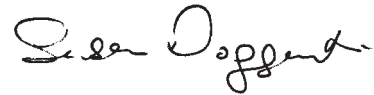
Douzenier  
J. E. Foster



Douzenier  
A. M. J. Courtney



Douzenier  
K. Tostevin



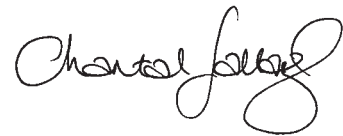
Douzenier  
S. Daggart



Douzenier  
M. Hamel



Douzenier  
C. Le Messurier



Douzenier  
C. Fallaize



Douzenier  
T. R. Oliver



Douzenier  
D. J. Harvey

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

22nd February, 2002.

Dear Sir,

**Requête – Waste Separation at the Fontaine Vinery Site, St Sampson**

I refer to the Requête, dated 14th February 2002, signed by Deputy K A Prevel and nine other Members of the States, concerning the above matter.

The Committee has sought the Board of Administration's comments on the Requête, and these are appended in a letter dated 14th February 2002, together with enclosures, from the President of that Board.

It is seen from the Board's response that it believes it has already considered the traffic impacts of the new waste segregation facility in consultation with the Douzaine, and is proposing specific measures to minimise the effects of additional traffic generated in the area. The Board stresses the need to press ahead with the much needed waste segregation facility, and sees the Traffic Impact Assessment requested by the Douzaine as an unnecessary requirement which will further delay the facility's operation.

In the circumstances the Committee, by a majority, sees no reason to support the Requête. In practical terms the Douzaine can help to alleviate problems by granting the necessary permissions to enable effective access and egress on to Vale Road. The Board assures the Committee that the trial period of avoiding school drop off and pick-up times will be monitored to see whether or not it needs to be enforced for the duration of the life of this temporary facility. Furthermore, the Board has also confirmed that it will monitor the traffic situation closely after the facility opens to ensure that any difficulties are quickly addressed.

In all the circumstances the Committee is opposed to the Requête, and accordingly recommends States Members to reject it.

Yours faithfully,

L. C. MORGAN,  
President,  
States Advisory and Finance Committee.



The President,  
 States Advisory and Finance Committee,  
 Sir Charles Frossard House,  
 La Charroterie,  
 St. Peter Port,  
 Guernsey,  
 GY1 1FH.

14th February, 2002.

Dear Deputy Morgan,

**PROPOSED WASTE SEGREGATION FACILITY AT FONTAINE VINERY**

I refer to the Requête as proposed by Deputy Prevel and attached to his letter dated 11th February 2002 with regard to the Waste Segregation Facility at Fontaine Vinery, St Sampson.

The Requête outlines two issues which, the Board of Administration believes, have already been investigated fully. The first being that Fontaine Vinery is not a suitable location. The Board investigated many sites and came to the conclusion that Fontaine Vinery is the most suitable location for the temporary facility, until such a time that the Materials Recovery Facility is operational at Longue Hougue.

The principal reason for the segregation facility is, of course, to prolong the life of Mont Cuet which in turn will contribute to a sustainable waste solution for Guernsey. The project is many months behind schedule as a result of difficulties encountered in locating a suitable site and the Board is now in a position where any further delays to the construction of this facility could seriously impinge on the future effectiveness of the Island's Waste Strategy.

A meeting was held on 11th February 2002 with the Senior Constable and Douzaine Representative of St Sampson's and I enclose a copy of the Board's letter resulting from that meeting. The Board accepts that the volume of traffic will increase but not significantly.

However, in order to alleviate the pressure on the roads and junctions around the Le Murier area, the Board also proposes that a temporary road is constructed following the line of an existing track onto the Vale Road. This would limit vehicles using Baubigny, Duvaux Road, Rue de Bas and the junction on Le Murier and St Clair Hill. (see attached plan)

The fear of many parishioners has also been the mix of large vehicles with school children using these roads. In order to minimize the risks for children, for an initial trial period of six months, the facility will not accept vehicles between the hours of 8-9 am and 3-4 pm (school opening and closing times).

The Requête requests that a traffic impact assessment be undertaken. This would be a time consuming exercise and in light of the above information the Board does not agree that such a study is necessary. It is the Board's belief that adopting the measures as detailed above will alleviate any potential traffic problems and cannot support delaying construction activities for an unnecessary traffic assessment.

Yours faithfully,

R. C. BERRY,

President,  
 States Board of Administration.

The Senior Constable,  
 Constables of St. Sampson's,  
 Chambre de la Douzaine,  
 Le Murier,  
 St. Sampson's,  
 Guernsey,  
 GY2 4HQ.

14th February, 2002.

Dear Sir,

**WASTE SEGREGATION FACILITY – FONTAINE VINERY**

I refer to previous correspondence and our meeting held on 11 February 2002.

At its meeting held on 13 February, the Board gave further consideration to the proposal to site the waste segregation facility at Fontaine Vinery and agreed that works associated with providing this facility at Fontaine Vinery should be progressed immediately.

I have, as requested during our meeting, attached 2 copies of a further plan showing the proposed location of the facility, along with access roads, hardstandings, etc. As indicated during our discussions, any congestion on Le Murier, Duvaux Road and Baubigny can be relieved by the provision of effective access and egress on to Vale Road. The attached plan therefore shows the proposed road alignment and the extent to which the existing granite wall would need to be demolished. The Board would be willing, subject to any future development plans at Fontaine Vinery, to reinstate the wall once the waste segregation facility has been relocated away from Fontaine Vinery.

Therefore, in accordance with the States of Guernsey building regulations which require permission to be granted from the Constables of the Parish for works to be carried out within 9 metres of any public or private road or way, the Board should be grateful to receive confirmation of your permission for these works to be carried out.

During our meeting it was agreed that much of the media reporting and concern expressed over the various issues amounted to scare mongering and that the only real potential impact was that of traffic. The Board, therefore, considered your suggestion that deliveries to the site be restricted during the school drop off and pick up times thus avoiding the introduction of additional vehicles during these busy periods. The Board raised no objection to this suggestion and, therefore, I can confirm that, for an initial trial period of six months, the opening hours for the site will be published as to 9.00 am to 3.00 pm Monday to Friday, 7.00 am till 10.00 am on Saturdays. The site will, however, be open for segregation activities between 7.00 am and 5.00 pm Monday to Friday and 7.00 am to 12 pm Saturdays.

During our meeting, Mr Smith agreed to provide further figures showing the likely frequency of vehicles visiting this site. You will be aware that the Board had previously referred to a theoretical maximum of 45,000 vehicles per annum. You will also recall that during our meeting Mr Smith advised that the Board had taken the decision not to tender the operation of this facility but to operate it with its own staff and that, as a consequence of this decision, the probability of one of

the large skip operators operating the facility and hence moving all existing waste segregation operations to the facility has now been removed. Nevertheless, as indicated by Mr Smith, the Board cannot quote anything other than reasonable projections.

Based on surveys of mixed loads and inert material entering Mont Cuet during a twelve month period commencing 1 January 2001, the Board can reasonably predict that no more than 20,000 tonnes of material will be segregated at the Fontaine Vinery facility. This equates to a maximum of 65 tonnes per day or approximately 50 vehicles per day. By condensing the number of hours available for deliveries (by avoiding school peak hours) this equates to approximately 8 vehicles per hour or one every 7 minutes. Once again, these figures are based on the total amount of inert material and mixed loads currently entering Mont Cuet and, as much as the Board would wish to remove all this material, it is unrealistic to assume that every tonne of this inert/mixed waste can be diverted to the segregation facility. As such, I think it would be reasonable to predict that vehicle movements will be in the order of one every 10 to 15 minutes. Good management of the site will ensure that vehicles having deposited a load and ready to leave the site will be reloaded with the segregated material for delivery to the other waste disposal facilities. As a consequence, the additional vehicle movements associated with removing segregated material should be minimal.

When one considers the peak loading on the roads in question during the school drop off/pick up hours and the fact that the Board has agreed, as a trial period, to avoid these periods, I believe that the additional vehicle movements identified above will not compromise traffic flows in the area.

During our meeting, reference was made to the Board's letter of November 2001 and Douzaine Representative Levrier's understanding that a response had been sent in December. I can confirm that a search of our files has failed to identify such a letter and I should, therefore, be grateful to receive the copy promised.

I trust the above observations address all the specific issues raised during our meeting and I look forward to receiving the Parish's confirmation with regard to the bournement.

Yours faithfully,

R. C. BERRY,

President,

States Board of Administration.

The Senior Constable,  
Chambre de la Douzaine,  
Le Murier,  
St. Sampson's,  
Guernsey,  
GY2 4HQ.

12th November, 2001.

Dear Sir,

#### **WASTE SEGREGATION FACILITY – FONTAINE VINERY**

For a number of years the Board of Administration has been attempting to establish waste segregation facilities with a view to prolonging the life of Mont Cuet and improving the segregation and recycling of appropriate waste streams. Those attempts have, to date, been thwarted by the absence of a suitable site.

With the decision by the States in 1998 to support, in principle, the establishment of an energy from waste facility, along with the alarming rate at which Mont Cuet continues to be infilled, the need to establish a waste segregation facility has become of paramount importance and urgency. Therefore, since early this year the Board of Administration has renewed and intensified its efforts to locate a site which could be utilised as a temporary waste segregation facility pending relocation to Longue Hougue, should the outcome of the Planning Inquiry support the establishment of an integrated waste management facility at this land reclamation site.

The following consultation with the Island Development Committee, the Advisory and Finance Committee and the Estates Sub-Committee, the Board of Administration has identified an area at Fontaine Vinery as being suitable for the location of this temporary waste segregation facility.

The Board is now entering into discussion with the Board of Health and Water Board in order to address any licensing requirements and anti-pollution measures, and hopes to be able to commence installing the infrastructure of this facility in the very near future.

It had previously been the Board's wish to have a waste segregation facility up and running by 1 January 2002, but it now seems more likely that the facility will become operative in March or April of 2002. Whilst the exact details of the facility remain to be formulated, it is the Board's intention to provide a large shed over a bunded concrete hard standing with all waste segregation facilities taking place inside this building. The Board envisages that the majority of waste segregated at the facility will arise from "domestic garage/house clearances" and from construction and demolition waste delivered either in skips or on builders' lorries. The Board does not intend to permit predominantly putrescible waste to enter the site, nor will it allow any small quantities of putrescible waste which are mixed in with other material to be stored on the site. The Board would wish to stress that this facility, which is absolutely essential for the successful implementation of the long term sustainable waste strategy, will be a temporary facility and will be run in accordance with the requirements of the Board of Health.

The Board understands that some residents in the area and parishioners of St Sampson's will object to the location of this facility at Fontaine Vinery but the Board firmly believes that no other suitable location can be made available to the Board and set up as an operating facility within the required time frame.

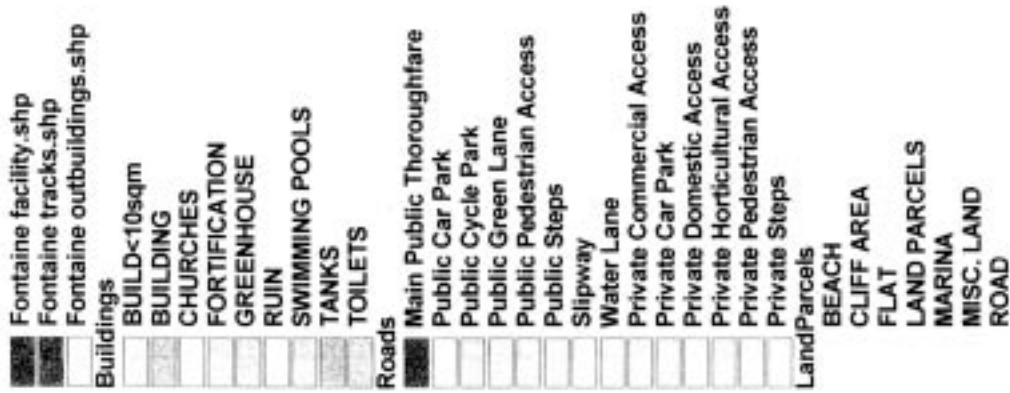
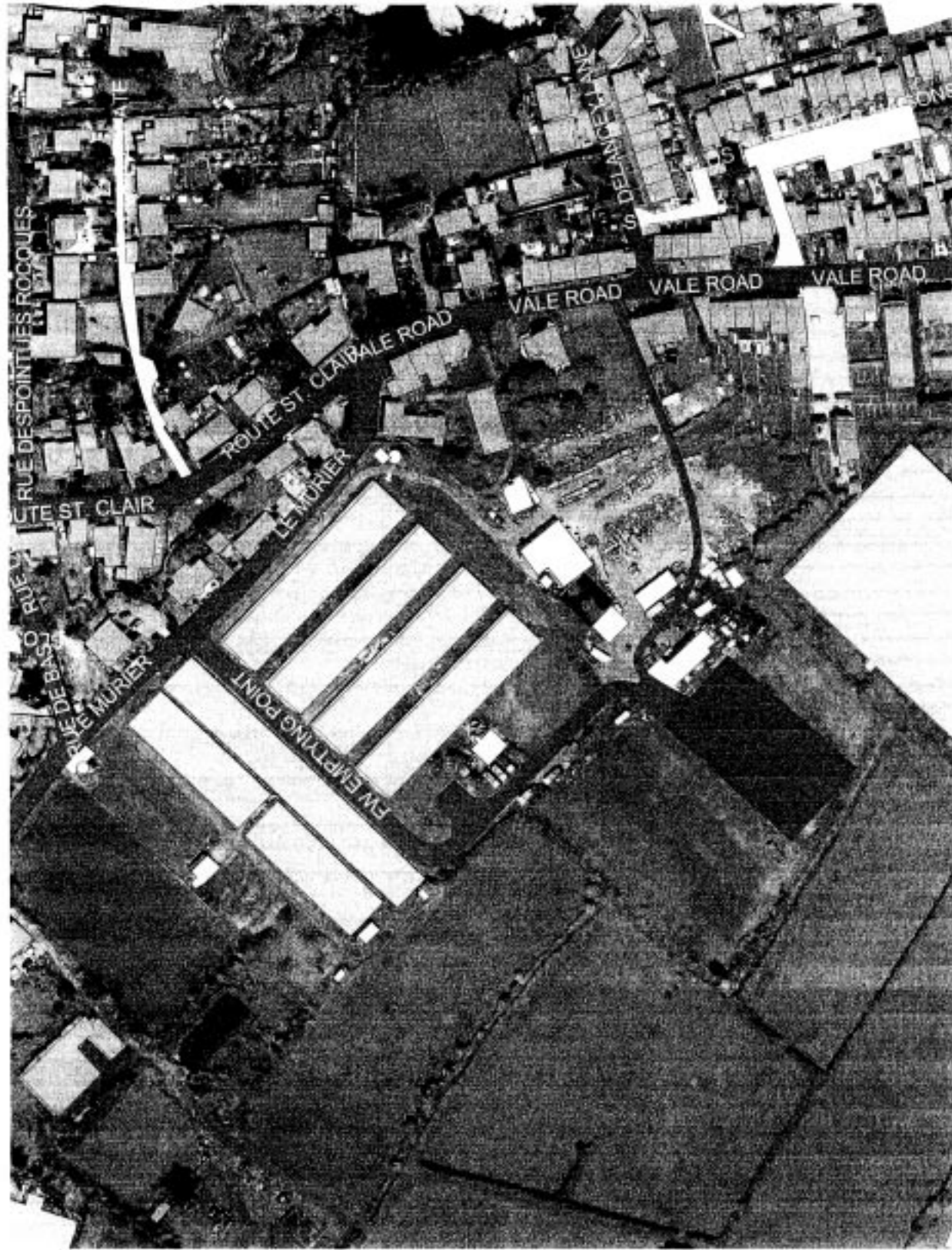
The Board will keep you informed as these proposals develop. However, should you have any specific questions then please do not hesitate to contact the Board's Deputy Chief Executive, Mr S Smith.

Yours faithfully,

R. C. BERRY,

President,  
States Board of Administration.

# Fontaine Vinery Site



0.16 Miles

0.08

0

0.08

The States are asked to decide:—

.—Whether, after consideration of the Requête dated the 14th February, 2002, signed by Deputy K. A. Prevel and nine other Members of the States, they are of opinion:—

1. To instruct the States Board of Administration, in conjunction with other relevant and appropriately qualified parties, to undertake a Traffic Impact Assessment in relation to the proposed waste separation facility at the Fontaine Vinery Site.
2. To instruct the States Board of Administration to advise the findings of that Traffic Impact Assessment to the Constables and Douzaine of St. Sampson, and to the States Traffic Committee.
3. To instruct the States Board of Administration to consider carefully, and to resolve in conjunction with the States Traffic Committee, all issues that may result from that Traffic Impact Assessment.

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

The Royal Court House,  
Guernsey.  
The 8th March, 2002.



# APPENDIX I

## STATES ADVISORY AND FINANCE COMMITTEE

### EMERGENCY DISASTER RELIEF

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

31st January, 2002.

Dear Sir,

### EMERGENCY DISASTER RELIEF

On 15 July 1999 the States approved the recommendations in the Policy and Resource Planning Report, including the following with regard to Emergency Disaster Relief:

*“That as regards emergency aid for disasters overseas:*

- (i) to authorise the Advisory and Finance Committee, in consultation with the Overseas Aid Committee, to increase the budget of that latter Committee by a total of up to £200,000 in any one financial year for the purpose of providing aid in respect of specific emergency disasters;*
- (ii) to direct the Advisory and Finance Committee to inform the States on each use of the above delegated power by means of a report appended to a Billet d’État for submission at the next available States meeting.”*

The Advisory and Finance Committee wishes to inform the States that on 29 January 2002 it considered a letter dated 25 January 2002 from the President, Overseas Aid Committee suggesting that that Committee’s 2002 budget be increased by £50,000 for the purpose of contributing to the Disasters Emergency Committee’s Appeal in respect of the effects of the recent earthquake in Goma, Africa. In view of the scale and nature of the disaster, the Advisory and Finance Committee agreed to the budget increase as requested.

It should be noted that the Overseas Aid Committee has made only one grant amounting to £14,800 in the last eight years in respect of a long-term development project in the area currently affected by the volcano crisis and considers that it would be entirely appropriate for the States of Guernsey to make a contribution under the terms of the above resolution.

I have the honour to request that you be good enough to include this Report as an Appendix to the Billet d’État for the States meeting for March 2002.

Yours faithfully,

L. C. MORGAN,

President,  
States Advisory and Finance Committee.

## APPENDIX II

### STATES ADVISORY AND FINANCE COMMITTEE

#### STATES AUDIT COMMISSION : 2001 ANNUAL REPORT

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

6th February, 2002.

Dear Sir,

#### **States Audit Commission : 2001 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’État.” The Committee has received the Commission’s 2001 annual report.

In its letter accompanying last year’s annual report the Committee announced its intention, in co-operation with the Commission, to carry out a review of the audit arrangements of the States to ensure that they are appropriate and in accordance with modern best practice.

The review, which is being carried out by the United Kingdom National Audit Office is, at the time of writing, close to completion. The Committee would hope to bring forward specific proposals to the States during 2002.

In the meantime, the Committee would like to take this opportunity to thank all those including States Committees, individual States Members and representatives from a number of Non-Governmental Bodies for their contribution to this important review.

I would be grateful if, in accordance with the Law, you would arrange for the publication of the States Audit Commission’s 2001 annual report as an appendix to a Billet d’État.

Yours faithfully,

L. C. MORGAN,

President,

States Advisory and Finance Committee.



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

21st January, 2002.

Dear Deputy Morgan,

## **FOURTH ANNUAL REPORT OF THE STATES AUDIT COMMISSION**

### **1 Introduction**

As required by the States Audit Commission (Guernsey) Law, 1997 (“the Law”), I am pleased to set out the States Audit Commission’s fourth annual report.

The objectives of this report are three-fold:

- to set out the activities of the Commission during the calendar year 2001
- to provide the Commission’s general assessment on the adequacy of States financial procedures and controls
- to provide commentary on current wider matters concerning value for money and corporate governance

A summary of the legislation and mission statement of the Commission, its functions, and current membership are set out in Appendices I to III of the report.

### **Summary**

#### *2.1 Control Assessment*

In the Commission’s third annual report an opinion was expressed for the first time on the overall control environment within the States of Guernsey. The opinion was that the control environment within the States of Guernsey at that time was “Marginally Deficient”.

Given the results noted in this report, it is the Audit Commission’s opinion that the state of the control environment as a whole within the States of Guernsey currently remains “Marginally Deficient”.

Of the internal audit reports considered by the Commission during the calendar year 2001 (see **Appendix IV**), again the majority of opinions expressed were “Marginally Deficient”. Overall 16% of reports were given a “Satisfactory” opinion.

#### *2.2 Review of Audit*

In its covering letter to the Commission’s third annual report, the Advisory & Finance Committee announced its intention, with the cooperation of the Commission, to carry out a review of the audit arrangements within the States. The timing of this review recognised that the Commission had

been in existence for some three years and, in light of its experiences during this time, and the on-going review of the machinery of government, it was felt appropriate to consider what, if any, changes needed to be made to the mandate and operation of the Commission.

The review has been completed and the findings of the report will be presented soon.

### *2.3 Review of Information Technology within the States*

In 2001, the Commission submitted its report entitled “Review of Information & Communications Technology in the States of Guernsey” to the Advisory & Finance Committee for consideration by the States. The Commission felt that the report highlighted issues of such great concern to public value for money, and required policy decisions to be made to address these concerns, that the Commission asked for the first time for the report to be debated by the States.

The Commission was greatly encouraged by the positive response of States members and committees to this report, and look forward to seeing the recommendations implemented.

### *2.4 Review of Machinery of Government*

Last year, the Commission welcomed the release of the Harwood Panel’s report on its review of the Machinery of Government in Guernsey. The Commission believes that the time is ripe for change – the current system of Government with numerous, autonomous committees generates significant duplication of effort. The Commission fully supports the principle of allowing greater scrutiny of States matters and will work with Advisory & Finance to achieve a suitable mechanism for achieving this alongside the work of the Commission.

### *2.5 Conclusion*

The Commission acknowledges that much work has been undertaken in the year to improve the control environment as committees become increasingly aware of the benefits of effective internal control.

However, there is still much improvement to be made and the Commission encourages all committees to seek to continue their development of an efficient internal control environment at a reasonable cost.

## **3. GENERAL FINDINGS**

### *3.1 Control Assessment*

One area where improvement was noted was in the clearance of the management letter points raised by the External Auditors. At the end of each annual external audit, the auditors raise issues that require attention by management. In previous years, the Audit Commission had been disappointed to note that the rate these points were being addressed was deteriorating year on year. However, the management letter from Deloitte & Touche, the External Auditors, for the audit of the 2000 year-end accounts reported that only 12% of points raised in prior years remained outstanding, whereas previous years had seen approximately 20% still outstanding.

### *3.2 Corporate Governance*

#### *3.2.1 Audit Committees*

In its third annual report, the Commission encouraged committees to consider the creation of Audit Sub-Committees, following the release of a position statement by the Institute of Internal Auditors – UK, which said:

“It is the IIA’s position that . . . every organisation (irrespective of their size and nature) should have an Audit Committee (or an appropriate equivalent).”

This position has been supported during 2001 by a statement by the Association of Chartered Certified Accountants, which again emphasises the need for government organisations to have audit committees in place, as a key element of proper corporate governance.

Whilst no such Audit Committees have been set up during 2001, the Review of Audit currently being performed by the National Audit Office is addressing this issue.

### 3.2.2 Risk Management

In respect of the practical details of Corporate Governance, the Commission is pleased to have noted greater effort generally within the States in this area. Section 4.4.1 below highlights the significant work completed within the States during 2001 on the recommendations made by the Commission in its 2000 report on Insurance and Risk Management.

### 3.2.3 Business Continuity

The trend noted last year that committees were paying increasing attention to Business Continuity (Disaster Recovery) planning has continued to be demonstrated during 2001. Business Continuity continues to have a high profile, and the Commission is pleased to note that committees are increasingly committing to developing, testing and maintaining workable Business Continuity plans that will ensure public services continue to be delivered effectively in the event of a disaster of any magnitude.

## 3.3 *Quality Standards*

Last year, the Commission reported that various committees had been successful in achieving recognition, under globally recognised quality standards, for improvements in their stewardship of public funds, and in the services provided by them to the public.

The Commission is pleased to note that this trend has continued during 2001. For example, the Guernsey Social Services Authority and the Board of Health’s Services for People with Learning Difficulties Department both achieved recognition under the “Investors in People” quality mark, and others have been working towards achieving specific quality standards in their particular areas of operation, the most notable example being the Board of Health’s accreditation under the HQS (previously known as “King’s Fund”) Quality Standard. The achievement of this accreditation took a significant amount of work by the Board of Health and its staff, and the Commission is pleased to express its congratulations to the Board.

The Commission is encouraged to note committees’ commitment to achieving nationally recognised levels of service and performance. It urges committees to strive to achieve equivalent standards of performance in the stewardship of public funds as they do in the delivery of public service.

## 3.4 *Review of the Machinery of Government*

Last year, the Commission welcomed the release of the Harwood Panel’s report on its review of the Machinery of Government in Guernsey. The Commission believes that the time is ripe for change – the current system of Government with numerous, autonomous committees generates significant duplication of effort. The Commission’s latest report on the use of information

technology in the States highlighted the significant problems that have arisen from each committee “doing its own thing” in relation to I.T., and the consequent inability to act for the corporate good, both at a strategic and at a practical level.

### *3.5 Accounting Standards*

As reported in previous annual reports, the Commission notes the continuing inability of the States’ external auditors to express a ‘True & Fair’ opinion on the States financial accounts, due mainly to the general absence of accounting for fixed assets

The failure to account properly for fixed assets continues to concern the Commission and, as such, it is the Commission’s intention to perform a detailed review of this area in the near future.

It is hoped that subsequent phases of the E-Pact project will address the States’ requirements for proper fixed asset accounting, but the Commission recognises that a major element of this will require not only the identification and recording of all fixed assets owned by States committees and department, but the valuation of the States’ property portfolio (see section 4.3 below)

## **4 Activities of the Commission During 2001**

### *4.1 Review of Information Technology within the States*

In 2001, the Commission submitted its report entitled “Review of Information & Communications Technology in the States of Guernsey” to the Advisory & Finance Committee for consideration by the States. The Commission felt that the report highlighted issues of such great concern to public value for money, and required policy decisions to be made to address these concerns, that the Commission asked for the first time for the report to be debated by the States.

The Commission was greatly encouraged by the positive response of States members and committees to this report.

### *4.2 Review of Audit Arrangements within the States of Guernsey*

In its covering letter to the Commission’s third annual report, the Advisory & Finance Committee announced its intention, with the cooperation of the Commission, to carry out a review of the audit arrangements for the States. The timing of this review recognised that the Commission had been in existence for some three years and, in light of its experiences during this time, and the on-going review of the machinery of government, it was felt appropriate to consider what, if any, changes needed to be made to the mandate and operation of the Commission.

Following a competitive tendering process, the UK National Audit Office was appointed to carry out the review, which was undertaken during October and November of 2001. The review involved consultations with a wide range of interested parties, not just within the States, but also including various external bodies.

The review considered various aspects of the audit arrangements for the States of Guernsey, including the role and remit of the Internal Audit Department, the structure and mandate of the Audit Commission (in particular, its remit concerning those public bodies falling outwith the definition of “States interests” and in respect of non-public bodies funded wholly or in part by public money), and the alignment of the arrangements in Guernsey with best practice in other jurisdictions.

The findings of the report will be presented in the near future.

#### 4.3 *Follow Up Review of the Commission's Report on Property Administration in the States*

At the time of writing this report, the Commission is undertaking a formal follow up of its previous report on "The Administration of Property within the States of Guernsey".

The initial findings of the follow up work completed to date indicate that the management of property has improved significantly during 2001, and that property is beginning to be treated as the high-level issue that it warrants, given its total estimated value to the States of over £1 billion. The creation of the new Strategic Property Unit within the Advisory & Finance Committee, and the revised rôle of the Estates Sub-Committee were two major developments during 2001 that indicate the increasing commitment to the proper management of property and property matters.

As noted above, however, one major piece of work, the valuation of States properties, remains outstanding at present.

#### 4.4 *Progress on Other Previous Commission Reports*

##### 4.4.1 Risk Management & Insurance

This report, published in April 2000, highlighted the need for the States to have a clear framework for the identification of the risks it faces, and the management of those risks. Risks may be defined as events which threaten the ability of States committees to achieve their stated objectives in the delivery of public services.

During 2001, work on the recommendations of this report has been progressing well. The Risk Management Task Force, created after the publication of the report in 2000 and consisting of senior members of Advisory & Finance Committee and the Board of Administration, has met on a regular basis. During 2001, following a competitive tendering exercise, the Task Force appointed Marsh UK Limited to provide risk management consultancy services to the States.

Marsh have begun their work by completing a through analysis of the key risk areas in the States and reported the results of this work to the Commission in the Autumn of 2001. The findings indicated that States committees and departments generally had a good level of awareness of their key operational risks (i.e. those hazard-type risks specific to their own particular areas of operation and commonly recognised risks such as fraud and health & safety type risks), but needed assistance in identifying those strategic-level risks that might have an impact on them, and in developing solutions to manage those risks.

Strategic level risks tend to be risks which are generic to all committees, (such as the inability to recruit into key posts, risks to the reputation of the States, the impact of decisions of external bodies such as the OECD etc.), and hence this is another example where working together for the corporate good will achieve benefits and efficiencies.

The next phase of the work is to develop a Risk Management Framework for the States as a whole, and to test this in three pilot areas, prior to rolling it out to all States committees and departments.

##### 4.4.2 Performance Reporting

This report was published in 1999, and encouraged improvements in the way the States financial results were reported to the public, as well as in the quality and quantity of information provided to and by managers in-house. It encouraged States committees and departments to set themselves pre-defined performance targets, and to measure and publish their success in reaching those targets. These measures are commonly referred to as "Key Performance Indicators". KPIs can be

set in various areas, including financial performance, service delivery performance etc. A key element of this process would be for States committees to benchmark themselves against similar organisations, and against their own results year-on-year, to measure improvements.

The Commission is pleased to see the commitment given by Advisory & Finance, and endorsed by the States in the 2002 Policy and Resource Planning Report to identifying key performance indicators. The Commission looks forward to progressing this matter in 2002.

#### *4.5 Progress against Strategic Plan*

Having published its first Strategic Business Plan in 2000, the Commission stated at the time that it wished the Plan to be a working document, and hence would monitor its own progress against the objectives and targets detailed in the Plan.

Part of this was the establishment of KPIs for the Commission itself, and the Internal Audit Department. The results achieved against these KPIs are set out in **Appendix V** to this report.

The Plan also included a comprehensive business action plan, detailing specific tasks the Commission wished to achieve during the three years covered by the Plan. Of the 59 detailed actions listed, all bar two have been completed or are on-going in line with the pre-defined timescales set.

Having set itself what it believed to be stretching but achievable targets, the Commission is pleased with the level of achievement reported above, particularly in view of the pressure the Commission has been under since the publication of the Plan through lack of resources. The Internal Audit Department has been under-establishment throughout most of the period, having only reached full establishment from November 2001.

In order to address the problems of resources, internal audit services were outsourced to Bentley Jennison (Chartered Accountants & Registered Auditors), who have carried out a total of 17 audits over the year. This has provided a useful resource and, particularly in the field of IT has allowed specialist audit work to be completed.

#### *4.6 Meetings*

The Law requires the Commission to hold regular meetings. During 2001, the Commission met formally on twelve occasions.

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

- Director – Human Rights Implementation
- States Supervisor
- States Treasurer
- Head of Policy Unit
- Data Protection Commissioner & Assistant Data Protection Commissioner
- Chief Executive Officer – Housing Authority

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

- President & Finance Director, Guernsey Telecoms
- Director General of the Office of Utility Regulation
- Harwood Panel for the Review of the Machinery of Government
- Representatives of the Board of Health
- Representatives of the Office of the Lieutenant Governor
- Deloitte & Touche – External Auditors
- Director General and Director of Operations, Guernsey Financial Services Commission
- Representatives of the Education Council
- BDO Guernsey Ltd – External Auditors (GFSC)
- Representatives of the Heritage Committee
- Representatives of the Board of Administration
- Marsh Risk Consultants
- Chairman of St John Ambulance & Rescue Service
- National Audit Office consultant re Review of Audit

During the year, the Commission and the Director of Audit Services also paid a visit to the National Audit Office Headquarters in London. The National Audit Office (NAO) is the body charged with the external financial audit and value for money review of the UK Central Government, and reports through the Comptroller & Auditor General to the Parliament. The aim of the day was to establish contact with the NAO, and to share experiences and best practice with officers of the NAO.

During the visit, the Commission was privileged to hold a meeting with Sir John Bourn, Comptroller & Auditor General, and was extremely grateful to Sir John for his time.

Other matters discussed included:

- The history and role of the NAO
- The Lord Sharman Review of “Audit and Accountability for Central Government”
- Financial Audit of Central Government Departments
- Value for Money Audit of Central Government

Having now met with the National Audit Office and, in 2000, the UK Audit Commission, the States Audit Commission has established extremely useful working relationships with officers of both bodies, and with the States of Jersey, and intends to continue these relationships to ensure the sharing of best practice and knowledge to the benefit of the States of Guernsey.

#### *4.7 Membership*

Commission membership has again not changed during 2001. During the year, the remaining two members, Mr Rodney Benjamin and Mrs Mary Perkins, who had not retired by rotation in the previous two years, retired and expressed their willingness to re-stand for election. As a consequence, both Members were re-elected to the Commission by the States in March 2001.



At the same time, Mr Tony Wills, who had stood as Chairman of the Commission since its inception in 1998, expressed his desire to step down as Chairman. The Members of the Commission are grateful to Mr Wills for his dynamic leadership of the Commission in its formative years, and for establishing the solid foundations from which the Commission can move forward in future years.

Mr Wills has remained on the Commission as an ordinary member, and Mr John Lee (the previous Vice-Chairman) was elected by the members of the Commission to replace Mr Wills as Chairman. Mr Rodney Benjamin was elected Vice-Chairman.

#### *4.8 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. The Commission also met with the external auditors of the Guernsey Financial Services Commission

The Commission also confirms that, again in accordance with the Law, it was consulted by the Advisory & Finance Committee in respect of the reappointment of the external auditors.

The Commission notes that the contracts for the external audit of States committees, States Trading Companies and the Guernsey Financial Services Commission end with effect from the audit of the 2001 year-end accounts.

#### *4.9 Website*

The Audit Commission website has continued to be updated throughout 2001, and all reports of the Commission are posted on the website when published. The website may be visited within the States of Guernsey website at [www.gov.gg](http://www.gov.gg) under the 'Government' section and the Commission welcomes comments from visitors to the site.

### **5 Review of the Internal Audit Department**

#### *5.1 Audit Reports*

An important aspect of the Commission's work is to receive the reports produced by the States Internal Audit Department on the affairs of States committees. During the year, the Commission has considered 49 reports, (see **Appendix IV**).

Of the audit reports considered by the Commission during the year, 16% achieved a 'Satisfactory' opinion. As noted last year, the majority of 'Marginally Deficient' opinions given were as a result of the lack of a Fixed Asset Register and a Business Continuity Plan, which are considered key controls in terms of the protection of assets and operations.

Once again, the Internal Audit Department has noted that the vast majority of committees audited, who did not achieve a "Satisfactory" audit opinion at the time of first being audited, did work towards implementing the recommendations made in the Internal Audit report and, as a consequence, achieved a "Satisfactory" opinion at follow up stage.

Two reports (8%) were given a "Deficient" opinion, but encouragingly, no "Seriously Deficient" opinions were expressed.



No audits resulted in a “Good” opinion being expressed. However, the emphasis in recent years has been to get committees and departments audited up to a satisfactory level of control, i.e. having a control structure that is appropriate for the size, complexity and risks of the entity being audited. Those committees and departments, which have now achieved that standard, are encouraged to strive to achieve a “Good” audit opinion, which is dependent on the entity having a more efficient and effective control framework in place.

### *5.2 Professional Standards of Auditing Practice*

During the year, the Institute of Internal Auditors – UK issued its revised “Standards of Professional Auditing Practice”. The States Internal Audit Department has always sought to ensure that its working practices and procedures are in line with current best practice. A review of the new standards has been completed, and the Department was pleased to report that it complied with the vast majority. It is currently reviewing its own internal practices to ensure that it reaches full compliance during 2002.

The standards are set out on the website.

### *5.3 Performance Measures*

The feedback questionnaires continue to be issued following each audit, and ask auditees to grade the quality of service provided by the Internal Audit Department under a range of categories, such as the usefulness and quality of the report and its recommendations, the communication and conduct of the audit team etc. Each category is graded on a points scale ranging from 1 (Poor) to 4 (Excellent). Of the total points attainable, the average score achieved throughout 2001 was 79.3%. Whilst a pleasing result, and an improvement on the average for 2000 (75.9%) there is still room for improvement, and the Internal Audit Department will continue to strive to improve the service it provides to committees.

See Appendix V for a summary of the results shown above.

### *5.4 System Implementation Audits*

The Commission continues to recommend that committees involved in significant projects to implement new IT systems recognise the inherent risks that such projects bring. The Internal Audit Department has been pro-active in seeking to be involved in such projects during 2001, and the increasing expertise developed in-house has been considered valuable to those committees who call upon the assistance of the Internal Audit Department on these projects.

Major IT projects that have had Internal Audit Department involvement during the year include the States Corporate Finance and Procurement Project (Project E-Pact), and the Education Council’s ICT Project to implement the Guernsey Grid for Learning within the Island’s schools.

Whilst this involvement has increased the pressure on resources within the Department, the risks of such projects going wrong have been well demonstrated and the involvement of Internal Audit can help to mitigate some of those risks, not least by cross-sharing of the learning derived from being involved in projects, be they successful or not so.

## **6 Future Work of the Commission**

### *6.1 Future Reports*

The Commission has always sought to be transparent in what it intends to scrutinise on behalf of the public, and this year is no exception.

The areas the Commission wishes to review in the future are as follows:

- The management of capital expenditure throughout the States
- Project management within the States
- Employment practices and procedures within the States
- Income generation within the States
- Asset Accounting within the States of Guernsey (fixed assets and stock management)

The Commission normally seeks to publish two reports per annum, which it has not achieved during 2001, due mainly to resources and the length of time the Review of IT took to finalise. However, to redress this situation, the Commission hopes to review three of the areas listed above during 2002, subject to full establishment being maintained within the Internal Audit Department.

## **7 Acknowledgements**

The Commission 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

*Signed John Lee*

J.P. Lee  
Chairman

## APPENDIX I

## SUMMARY OF LEGISLATION AND MISSION STATEMENT

**The functions of the States Audit Commission are to be carried out in cooperation 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'État.

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****FUNCTIONS OF THE STATES AUDIT COMMISSION**

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.

**APPENDIX III****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 2001, was as follows:

Mr. John Lee (Chairman – with effect from 1st March 2001)

Mr. Rodney Benjamin (Vice-Chairman – with effect from 1st March 2001)

Mrs. Mary Perkins

Mr. Tony Wills

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

## APPENDIX IV

## INTERNAL AUDIT REPORTS CONSIDERED BY THE COMMISSION IN 2001

**Full Scope Audit Reports**

- Heritage Committee
- Board of Health – Theatres
- Board of Administration – Properties Section
- Island Development Committee
- Home Affairs Committee – Police
- Board of Health – Fraud Investigation
- Advisory & Finance Committee – Economics & Statistics Unit
- Bailiff's Office
- Island Reception Committee
- Guille Allès Library
- Education Council – College of Further Education
- Board of Health: Duchess of Kent House
- Guernsey Telecoms – Income
- Committee Secretariat
- Sheriff & Sergeant's Office
- Board of Health – Grants
- Board of Health – Mignot Memorial Hospital
- Housing Authority – Review of Loans System
- Board of Health – Budgets
- Board of Health – Castel Hospital
- Board of Administration – Central Secretariat
- Board of Administration – Harbour Authority
- Board of Health – School Dental Service
- Raymond Falla House Committees
- Board of Administration – Customs & Immigration
- Board of Health – King Edward VII

**Follow Up Audit Reports**

- States Works Department Second Follow Up
- Income Tax Authority Follow Up
- Tourism Marketing Value for Money Follow Up
- Guernsey Telecoms Follow Up
- Post Office Board Second Follow Up
- Alderney Second Follow Up
- Advisory & Finance Committee – Department of Engineers Follow Up
- Advisory & Finance Committee – Department of Architects Follow Up
- Probation Service Committee Follow Up
- Greffe Follow Up
- States Dairy Follow Up & Extended Review
- Housing Authority – Follow Up
- Board of Administration – Airports

## APPENDIX V

## PERFORMANCE MEASURES

	2001	2000
Average customer feedback results (%age of total possible marks awarded)	79.3%	75.4%
Number of audit reports issued	26	16
Number of value for money studies issued	1	0
Number of follow up reports issued	13	14
Number of ad hoc reports issued	0	1
Number of Audit Commission reports published	1	4
Percentage of audits achieving 'Satisfactory' opinion at first audit	16%	31%
Percentage of audits achieving 'Satisfactory' at follow up	38%	50%

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 27TH DAY OF MARCH, 2002

The States resolved as follows concerning Billet d'Etat No. IV  
dated 8th March, 2002

**PROJET DE LOI**

entitled

**THE MOTOR VEHICLES (ELECTRICALLY ASSISTED PEDAL CYCLES)  
(EXEMPTION) (GUERNSEY) LAW, 2002**

- I. To approve the Projet de Loi entitled "The Motor Vehicles (Electrically Assisted Pedal Cycles) (Exemption) (Guernsey) Law, 2002", and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE FINANCIAL SERVICES COMMISSION (BAILIWICK OF GUERNSEY)  
(AMENDMENT) LAW, 2002**

- II To approve subject to the following amendment the Projet de Loi entitled "The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002", and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

AMENDMENT

In clause 1(p) of the Projet (printed on pages 13 and 14 of the Brochure to the Billet) subparagraphs (iv) and (v) are deleted.



## **STATES ADVISORY AND FINANCE COMMITTEE**

### **PRIVILEGES AND IMMUNITIES AFFORDED TO CERTAIN INTERNATIONAL ORGANIZATIONS**

III. After consideration of the Report dated the 31st January, 2002, of the States Advisory and Finance Committee:-

1. That the Sixth Protocol to the General Agreement on Privileges and Immunities shall be extended to Guernsey.
2. That the European Agreement relating to Persons participating in Proceedings of the European Court of Human Rights shall be extended to Guernsey.
3. That legislation enabling the granting of privileges and immunities to Specified international organizations by ordinance shall be enacted.
4. That the European Court of Human Rights shall be designated by ordinance pursuant to the legislation proposed in 3 above.
5. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

## **STATES CIVIL SERVICE BOARD**

### **PUBLIC SERVANTS' PENSION SCHEME – EMPLOYEES OF GUERNSEY TELECOMS LIMITED**

IV. After consideration of the Report dated the 19th February, 2002, of the States Civil Service Board:-

To approve the draft States of Guernsey (Public Servants) (Pension and Other Benefits) (Pensions Transfer Arrangements Employees of Guernsey Telecoms Limited) Rules, 2002, attached to that Report, subject to the following modifications in the Rules set out at Schedule 1 to those draft Rules:

- (a) in Rule 2 (at line 2) immediately after "(Protection of Employment)" insert "(Guernsey)";
- (b) in Rules 7 (at lines 4 – 5) delete "anyone of the following basis" and substitute "any one of the following bases";
- (c) in Rule 7(c) (at line 3) delete "dependent spouses and children" and substitute "spouses and dependent children";

(d) in Rule 7(b):

(at line 1 ) delete "of the Cash Values of the benefits described in Rule 7(a) above but" and substitute "value of the benefits accrued by the said GT Members in respect of service to the appointed day";

(at the end of line 5 ) after "retirement dates" insert "or earlier cessation of service".

## **STATES BOARD OF INDUSTRY**

### **CONTROLLING GARDEN RETAILING**

V. After consideration of the Report dated 11th February, 2002, of the States Board of Industry:-

1. To note the States Board of Industry's intention to submit to the States proposals for an Island Retail Strategy which will include a strategy for retail operations in the Rural Area.
2. To direct the States Advisory and Finance Committee in submitting to the States the Strategic and Corporate Plan for 2002, to reflect the policies set out in that Report and to provide that garden retail operations as described may be developed within the Rural Area.
3. To direct the Island Development Committee to prepare appropriate amendments to the Detailed Development Plans to reflect the proposals contained in that Report.
4. To invite the Island Development Committee to pay particular regard to the development "template" for a garden centre as described in that Report.
5. To direct that the Use Class Ordinance under the Island Development (Guernsey) Laws 1966 and 1990 shall be amended to include new garden retailing use class definitions along the lines set out in section III of that Report, and that, when premises cease to be registered by the States Board of Industry as therein set out, they should be returned to their former lawful use or used for agriculture (including horticulture) as defined in Agricultural Use Class 60.
6. To agree in principle to the control of garden retailing through a registration system supported by use class schedules as set out in section III of that Report and administered by the States Board of Industry as described.
7. To rescind the definition of a "garden centre" as set out in paragraphs 11, 11A and 11B of the resolutions of the 11th November, 1999, taken on Article VII of Billet d'État No. XVIII of 1999.

8. That the proposed amendments to the Sunday Trading legislation shall provide a category of licence to permit the opening of **plant nurseries, plant centres and garden centres** as described in that Report.
9. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

## **STATES BOARD OF INDUSTRY**

### **DEVELOPMENT OF THE GUERNSEY ENTERPRISE AGENCY**

- VI. After consideration of the Report dated 11th January, 2002 of the States Board of Industry:-
1. To authorise the States Board of Industry to make an annual grant to the Guernsey Enterprise Agency.
  2. That the grant shall be £25,000 in 2002 and, for subsequent years, be of such amount as the States Board of Industry may deem appropriate within its budget allocation.
  3. To direct the States Advisory and Finance Committee to take into account the need for the States Board of Industry to provide an annual grant to the Guernsey Enterprise Agency when recommending to the States non-formula led revenue allocations for that Board for 2003 and subsequent years.
  4. To rescind the Resolutions taken on Article XV of Billet d'État No. XXI of 1992.

## **ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986**

### **REPORT OF THE REVIEW BOARD FOR 2001**

- VII. After consideration of the Report dated 30th January, 2002 of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Law, 1986:-
- To accept that Report.

## **REQUÊTE**

### **WASTE SEPARATION AT THE FONTAINE VINERY SITE, ST. SAMPSON'S**

- VIII. After consideration of the Requête dated the 14th February, 2002, signed by Deputy K. A. Prevel and nine other Members of the States:-

TO NEGATIVE THE PROPOSITION to instruct the States Board of Administration, in conjunction with other relevant and appropriately qualified parties, to undertake a Traffic Impact Assessment in relation to the proposed waste separation facility at the Fontaine Vinery Site.

**K. H. TOUGH  
HER MAJESTY'S GREFFIER**