



# BILLET D'ÉTAT

**XIX  
2002**

---

**WEDNESDAY, 31st JULY, 2002**

---

1. Projet de Loi entitled "The Insurance Business (Bailiwick of Guernsey) Law, 2002", p. 1539.
2. Projet de Loi entitled "The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002", p. 1539.
3. Projet de Loi entitled "The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) (Amendment) Law, 2002", p. 1539.
4. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, p. 1539.
5. The Hotel Casino Concession (Guernsey) Law, 2001 (Commencement and Consequential Amendment) Ordinance, 2002, p. 1540.
6. States Gambling Control Committee – New Member, p. 1540.
7. States Public Thoroughfares Committee – New Member, p. 1540.
8. States Advisory and Finance Committee – Police Powers and Criminal Evidence, p. 1541.
9. States Advisory and Finance Committee – Establishment of the Office of Public Trustee, p. 1553.
10. States Advisory and Finance Committee – Referendums, p. 1560.
11. States Advisory and Finance Committee – European Convention for the Protection of Human Rights and Fundamental Freedoms, p. 1566.
12. States Advisory and Finance Committee – New Non-Executive Directors of Guernsey Post Limited and Guernsey Electricity Limited, p. 1568.
13. States Committee for Home Affairs – The Introduction of Roadside Alcohol & Drug Testing Devices, and Amendments to current 'Drink Driving' Legislation, p. 1570

*Statutory Instrument laid before the States*

The Driving Tests and Driving Licences (Increase of Fees) Regulations, 2002, p. 1572.

APPENDIX

States Advisory and Finance Committee – Annual Report of the Data Protection Commissioner, p. 1573.

# ***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 **31st JULY, 2002**, immediately after the Meetings already convened for that day.

**PROJET DE LOI**

ENTITLED

**THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002**

The States are asked to decide:–

I.–Whether they are of opinion to approve the Projet de Loi entitled “The Insurance Business (Bailiwick of 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 INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES  
(BAILIWICK OF GUERNSEY) LAW, 2002**

The States are asked to decide:–

II.–Whether they are of opinion to approve the Projet de Loi entitled “The Insurance Managers and Insurance Intermediaries (Bailiwick of 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 CRIMINAL JUSTICE (FRAUD INVESTIGATION) (BAILIWICK OF  
GUERNSEY) (AMENDMENT) LAW, 2002**

The States are asked to decide:–

III.–Whether they are opinion to approve the Projet de Loi entitled “The Criminal Justice (Fraud Investigation) (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.

---

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2002**

The States are asked to decide:–

IV.–Whether they are of opinion to approve the draft Ordinance entitled “The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002”, and to direct that the same shall have effect as an Ordinance of the States.

**THE HOTEL CASINO CONCESSION (GUERNSEY) LAW 2001 (COMMENCEMENT  
AND CONSEQUENTIAL AMENDMENT) ORDINANCE, 2002**

The States are asked to decide:–

V.–Whether they are of opinion to approve the draft Ordinance entitled “The Hotel Casino Concession (Guernsey) Law, 2001 (Commencement and Consequential Amendment) Ordinance, 2002”, and to direct that the same shall have effect as an Ordinance of the States.

---

**STATES GAMBLING CONTROL COMMITTEE**

NEW MEMBER

The States are asked:–

VI.–To elect a member of the States Gambling Control Committee, who need not be a sitting member of the States, to complete the unexpired portion of the term of office of Mr. L. A. de la Mare, who has resigned as a member of that Committee, namely, to the 31st May, 2004.

---

**STATES PUBLIC THOROUGHFARES COMMITTEE**

NEW MEMBER

The States are asked:–

VII.–To elect a sitting member of the States as a member of the States Public Thoroughfares Committee to complete the unexpired portion of the term of office of Deputy D. A. Barrett, who has resigned as a member of that Committee, namely, to the 31st May, 2003.

**STATES ADVISORY AND FINANCE COMMITTEE****POLICE POWERS AND CRIMINAL EVIDENCE**

The President  
States of Guernsey  
Royal Court House  
St Peter Port  
GUERNSEY

18th June, 2002.

Dear Sir,

**POLICE POWERS AND CRIMINAL EVIDENCE**

Her Majesty's Procureur has written to the States Advisory and Finance Committee in the following terms:

**"1. Introduction**

*In the light of the intended introduction of the Human Rights (Bailiwick of Guernsey) Law 2000, I have been conducting a review of the current powers available to the Bailiwick Police and Customs authorities in the investigation and detection of criminal offences, and in the operation of related rules of evidence in criminal cases. Whilst I am content that the overall position in the Bailiwick is generally satisfactory, and that there are appropriate checks and balances in place on the exercise of these powers and in the operation of the rules of evidence, I have come to the conclusion that for a number of reasons it is desirable to codify some of these matters in legislation. I set out my reasons below.*

*As many of the proposed powers will be available both to Police and to Customs Officers, for the sake of simplicity throughout this letter I shall refer to the Police and mention Customs only when their position may differ.*

**2. Background and current position**

*At present in the Bailiwick there is no fully comprehensive legislation covering the powers of the Police to stop, search and arrest persons suspected of criminal offences, nor is there specific statutory provision dealing with the general detention and treatment of suspects once they have been arrested by the investigating authorities. These procedures are governed largely by the operation of common law powers, the exercise of which is rigorously scrutinised by both the Law Officers and by the courts, and governed by voluntary Codes of Practice adopted by both Police and Customs officers.*

*In England and Wales, however, provisions relating to these areas of law have long had a statutory basis; in 1984 the Police and Criminal Evidence Act (PACE) came into effect, introducing a comprehensive statutory regime covering the exercise of police powers in the investigation of criminal offences, together with statutory Codes of Practice for the treatment of persons suspected of criminal offences. Together with the Bailiwick law enforcement agencies, we have been monitoring the use and effectiveness of that legislation,*

*with the intention of giving consideration to the implementation of similar provisions in the Bailiwick if appropriate in due course. I believe that the Law Officers in Jersey have adopted a similar approach.*

*At an early stage the Bailiwick Police and Customs authorities appreciated the value of the PACE Codes of Practice in setting out sensible and fair procedures for the detention questioning and treatment of suspects, and with suitable local modifications, have been operating under voluntary arrangements similar to those set out in PACE since 1991. This has been working satisfactorily, and in the Bailiwick voluntary codes of practice now govern all aspects of the detention of suspects without charge, including the maintenance of full custody records and the tape recording of interviews. In 1997, the States resolved that these codes of practice should be published by way of an appendix to a Billet d'État as often as they are amended to any significant extent (Resolution XVI of 29<sup>th</sup> October 1997). At that time, the States also approved in principle the preparation of legislation making some minor alterations to the regime of detention particularly in relation to drugs offences.*

*Satisfactory as the arrangements have been in the past, it is my view that the time has now arrived to set down these procedures in statutory form. Following discussion with the Chief Officers of Police and Customs, we have concluded it is now appropriate to enact comprehensive legislation covering the exercise of a wide range of police powers, similar to that contained in PACE, with suitable modification for local conditions. I believe that the authorities in Jersey have concluded likewise.*

### **3. Need for Legislation**

*The principal reason for our conclusion is the imminent introduction of the European Convention on Human Rights into local law. Although no date has yet been decided on for the implementation of the Human Rights (Bailiwick of Guernsey) Law 2000, it is essential that we ensure that the powers of the Police when carrying out their investigative function should be fully compliant with the provisions of the Convention. To this end it is vital that, for example, the powers of the Police and the rights of members of the public in relation to stop, search, arrest and detention are as clear as possible.*

*One of the key requirements of the Convention is that any interference with the human rights of an individual should be clear, identifiable and certain. In some circumstances there can be uncertainty as to the precise basis in law under which the Police or Customs are acting. This can result in unnecessary delay and lengthy, unproductive arguments later at court whilst these matters are resolved by case-law. Statutory provisions covering these areas of police activity will ensure a greater clarity and certainty in an important area of human rights.*

*A further Convention issue arises in relation to the regime relating to the detention of suspects by the police, whereby application has to be made to a Law Officer for a person to be detained for more than 36 hours. In my view, for our procedures to be demonstrably compliant with the Convention, it is desirable that such applications are made to a member of the judiciary rather than the person responsible for the conduct of prosecutions in the Bailiwick.*

*In addition, there is scope for improvement in our present arrangements that can be addressed only by legislation. In order to perform their duties effectively, the police need to have available a full armoury of powers in order to properly and adequately conduct the fight*

against crime. For example, recent advances in identification techniques based on the use of human DNA are not reflected in the historic common law powers of the police to request samples from suspected persons. Our law needs to keep pace with developments, and to make use of available modern forensic techniques in order to detect and prevent crime.

In introducing legislation covering these areas, we will achieve greater certainty for both police officers and members of the public in a sensitive and important topic, and demonstrate a clear compatibility with the European Convention on Human Rights. It will ensure that our common law does not become stale or out of touch, and enable Bailiwick courts to benefit from developed principles of case law from similar provisions in the English jurisdiction where these are appropriate. It will provide clarity of the legal position, and avoid lengthy legal arguments on these topics when the Human Rights Law comes into effect, as was experienced in other common law jurisdictions without such legislation, for example in New Zealand. A further advantage will be for local officers attending courses with law enforcement colleagues, or those recruited from other jurisdictions, who will no longer be at a disadvantage in dealing with a significantly different system.

#### **4. Proposed Legislation**

I propose that the new law if enacted by the States will be entitled “The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2002”. It will cover both police and customs officers, and will be divided up into a number of parts. I set out below the principal features for each Part. For the islands of Sark and Alderney there will need to be minor modifications in some aspects to ensure that the proposed provisions are practicable and workable, and I have mentioned these specifically where appropriate.

#### **PART I**

##### **Powers to Stop and Search Persons and Vehicles**

Part I will set out the powers of Police and Customs officers to stop and search persons and vehicles for stolen and prohibited items. The officer will have to possess reasonable grounds for suspecting that he will find such items, and any items which are found which are believed to be stolen or prohibited will be liable to seizure. An example of a prohibited item is any form of offensive weapon.

Officers who are not in uniform will have to produce appropriate identification before a search can take place. In addition, there will be a duty to prepare a written record of the reason for the search and the result of it either at the time it is conducted or as soon as practicable thereafter.

This Part will also contain provisions which permit the conduct of road checks for the purpose of ascertaining whether a vehicle is carrying:

- (a) a person who has committed an offence other than a road traffic offence or vehicle excise offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

*Authorisation for such road checks will be given in writing by an Officer of the rank of at least Chief Inspector or above, or the equivalent level in Customs. However, again, in cases of emergency, Inspectors will be able to give the necessary authorisation.*

*There will be additionally a power to stop and search persons and vehicles where it is suspected that an incident involving serious violence is likely to occur in the Bailiwick, and that it is expedient to do so in order to prevent the occurrence of the violent incident. I propose that authorisation for this should be at or above the rank of Chief Inspector (in cases of emergency it should be possible for the power to be exercised by a Police Inspector). There will be time limits on the authorisation for that locality to a period of not exceeding 24 hours, with a possibility of an extension for a further 6 hours. The power will allow the Police to search persons or vehicles for dangerous instruments or offensive weapons.*

*The provisions will also require the Chief Officers of Police and Customs to provide annually general statistical information about searches and road checks which have been carried out in Guernsey and Alderney. In Sark, the Constable will have a similar duty to report to Chief Pleas. I propose that the report will include statistics relating to the number of searches, arrests, the reasons for authorising each road check and the result of them, but will not include details of the specific searches. It is proposed that in Sark any authorisation required under this Part of the Law will be obtained from the Seneschal or his Deputy.*

## **PART II**

### **Powers of Entry, Search and Seizure**

*Part II of the proposed Law will deal with powers to enter and search premises and seize property. Generally application will need to be made to the Bailiff, the Chairman of the Court of Alderney or the Seneschal to enter and search premises where there are reasonable grounds for believing:*

- (a) a serious arrestable offence has been committed; and*
- (b) there is material on the premises which is likely to be of substantial value to the investigation; and*
- (c) that the material is likely to be relevant in evidence; and*
- (d) that the material does not consist of or include items subject to legal professional privilege or items defined as excluded material or special procedure material.*

*A serious arrestable offence will be defined in the legislation along similar lines to PACE, and will include all the most serious offences eg. murder, rape, kidnapping etc. A warrant will only be granted if, for example, there are reasonable grounds for believing that entry to the premises will not be granted unless a warrant is produced or that the purpose of the search might be frustrated or seriously prejudiced unless the officers, when they arrive at the premises, can secure immediate entry.*

### **Excluded and Special Procedure Material**

*There will be a special procedure for officers to follow when they are interested in looking at items which may be subject to legal professional privilege or which could be regarded as personal, confidential or sensitive. The Law will define these latter types of material as “excluded material” or “special procedure material”.*

*The expression “excluded material” includes -*

- (a) personal records which a person has acquired or created in the course of his business (and for the purposes of this paragraph “personal records” is restricted to records relating to matters of physical and mental health, spiritual counselling and other forms of counselling);*
- (b) human tissue which has been taken for the purpose of diagnosis; and*
- (c) journalistic material which is held in confidence.*

*The expression “special procedure material” includes items acquired or created in the course of a business which is held on an express or implied undertaking to hold it in confidence.*

*In order for access to be granted to special procedure material or excluded material a strict procedure will be followed which will involve an application to the Bailiff. The officers will have to satisfy strict access conditions before it will be possible for the Bailiff to issue an Order for the production of the material or the issue of a warrant.*

*The Law will also make clear the parameters within which officers must act when executing a warrant. For example, when someone is present on premises and officers arrive with a warrant. They will have to identify themselves and if not in uniform produce proof that they are members of the Police Force or Customs and supply the occupier of the premises with a copy of the warrant.*

#### ***Power to Enter Premises to Arrest and Search***

*This Part of the proposed Law will also contain provisions which will allow officers to enter any premises to arrest, for example, a person unlawfully at large, or to recapture escapees, or to prevent injury or serious damage. Additionally, where a person has been arrested, officers will be able to enter any premises occupied or controlled by the arrested person in order to search for evidence, if there are reasonable grounds for suspecting that there is evidence which relates to the offence for which the person was arrested or some other offence which is connected or similar to it.*

*Once lawfully on the premises (for example, by way of warrant following the arrest of a suspect) officers will have a general power to seize any items if the officer considers he has reasonable grounds for believing that the property has been obtained as the consequence of a commission of an offence or is evidence in connection with an offence he is investigating. Again, there is an exemption for items subject to legal professional privilege. It will only be possible to seize an item in order to prevent it being concealed, lost, altered or destroyed. With regard to information held on a computer there will be a power for the Police to require the information contained within the machine to be produced in a form which can be taken away.*

#### ***Rights of Occupiers and Owners of Property***

*Part II of the proposed Law will also include a provision requiring the Police to provide upon request details of what has been taken to the occupier of the premises from which any property has been seized. Provided that it does not prejudice the investigation, there will also be a right for the owner of the seized property to have supervised access to it whilst the property is in Police custody. The Police will be allowed to hold the property for use as evidence at trial or for the purpose of the investigation including analysis by a forensic scientist.*

### **PART III**

#### **Arrests**

*Part III of the proposed Law will set out the circumstances in which Police and Customs may exercise powers of arrest.*

*Firstly, there will be a power to arrest when the sentence for the offence in question is fixed by law. An example is murder for which there is a mandatory sentence of life imprisonment.*

*Secondly, arrest will be permissible if a person will be liable for a sentence of imprisonment for more than five years should the Royal Court deal with the case. In PACE these offences are referred to as “arrestable offences”.*

*Thirdly, the Police should also have the power to arrest persons for offences for which the penalty is less than five years when it would clearly be in the public interest for them to have such a power. This will apply to offences such as behaving in a disorderly manner, drink driving and taking a motor vehicle without consent.*

*The proposed Law will also define the circumstance in which a person who is not a Police Officer can exercise a power of arrest.*

*For all other offences there will be only a power of arrest in limited, specified circumstances - for example, where the Police Officer dealing with the potential defendant has reasonable grounds for believing that a person has given a false name or that it will not be possible to effect service of a summons. It will also be possible for a Police Officer to arrest an individual to prevent him from suffering serious physical injury or to protect a child or other vulnerable person. Unless specifically preserved, all remaining powers to arrest a person without a warrant or order of the Court will cease to have effect when the Law comes into force.*

*Part III will also contain provisions which will permit arrest for the taking of a person’s fingerprints when they have been convicted of an offence and where their fingerprints had not been taken whilst they were in police detention, or during the course of the investigation into the offence.*

#### **Information for persons arrested**

*Even in cases where the grounds for arrest are obvious, officers will be under a duty to inform the person detained of the reason for his arrest as soon as practicable.*

#### **Voluntary attendance at Police Station**

*It is not unusual for a potential suspect to attend the Police Station of his own volition. The proposed Law will ensure that such individuals are entitled to leave the Police Station at will unless formally placed under arrest.*

#### **Transfer to the Police Station**

*When a person is arrested away from the Police Station the proposed Law will state that he should be taken to the Police Station as soon as practicable after arrest. However, when it is necessary to do otherwise, for example, where the Police wish to take an arrested person immediately to an address so that he can witness the search of those premises, the Police will be given the right to delay the prisoner’s transfer to the Police Station.*

*Finally, Part III will give the Police the right to search a prisoner after arrest.*

## **PART IV**

### **Detention**

*Part IV of the proposed Law will deal with the conditions and duration of an arrested person's detention in police custody. Much of these provisions reflect the arrangements already adopted by both Police and Customs in the voluntary codes of practice and Force Standing Orders which have been operative for several years.*

### **Custody Officers**

*During the period in custody most decisions concerning the detention and welfare of the prisoner will be the responsibility of a designated "Custody Officer". Apart from when a Custody Officer is not readily available, the person performing the duties will have to be of at least the rank of Sergeant in the Police and an equivalent level in the Customs. If at any time during the person's stay in police detention, it becomes apparent to the Custody Officer that the grounds for the arrest no longer exist, he must immediately release the detained person unless there are other grounds for the individual to be held.*

*It will only be possible to detain persons in places designated by the Chief Officers of Police and Customs in Guernsey and Alderney and by the Constable in Sark. These will be known in the Law as "designated places of detention".*

### **Custody Records**

*The Custody Officer will be responsible for keeping a written record of everything that happens during a person's detention. It will ultimately be the Custody Officer's decision to release a person or charge them with an offence, based upon the information presented to him by the investigating officers. The Custody Officer's duties will continue after a person has been charged, in making the necessary arrangements for release or continued detention pending a court appearance.*

### **Code of Practice**

*There will be a statutory Code of Practice which will cover various aspects of a person's detention. The existing Standing Orders and voluntary codes of practice in many respects mirror the statutory Codes of Practice issued under PACE. For example, the current code in relation to the detention of prisoners sets out clearly how often a prisoner must be fed or allowed to sleep. The Code published under the proposed Law will do the same.*

### **Reviews of Detention**

*During the period of detention there will be periodic reviews by officers of at least the rank of Inspector in the Police and or equivalent level in the Customs. The first review will take place not less than six hours after a person's detention was first authorised at a place of detention. Subsequent reviews will take place at least every nine hours. Only in very limited circumstances will it be possible to postpone a review, for example when it would be prejudicial to an investigation to interrupt an interview with a prisoner.*

*When a person has been in custody for 24 hours, it will not be possible for him to be detained without the authorisation of a Police Officer of at least the rank of Chief Inspector or above, or a Customs Officer of an equivalent grade or above. These Officers will be able to authorise detention for further periods of up to twelve hours. An extension may only be granted if there are reasonable grounds for believing:—*

- (a) *the detention of a person without charge is necessary to secure or preserve evidence in relation to the offence for which he is under arrest or to obtain such evidence by questioning him;*
- (b) *the offence under investigation is a serious arrestable offence; and*
- (b) *the investigation is being conducted diligently and expeditiously.*

#### ***Warrants of further detention from the Magistrate's Court***

*In the event of the Police wishing to detain a person for more than 36 hours after his detention was first authorised, an application will have to be made to the Magistrate's Court. The Magistrate will only be able to extend the period of custody for the same reasons (set out at (a), (b) and (c) of the preceding paragraph) which have to exist for an extension from 24 to 36 hours. On the first application to him, the Magistrate will be able to extend the period of detention by a maximum of 36 hours.*

*Further applications will be possible, but the period of detention in total will not be able to exceed 96 hours. The detained person will be able to have legal representation when the Magistrate considers whether to grant an extension.*

#### ***Suspect Drug Traffickers***

*Part IV of the proposed Law will also contain provisions which will allow the Magistrate to remand a person charged with a drug trafficking offence back into Police or Customs detention for a period of not exceeding 192 hours. Applications under this section will be made if it is believed that a person has concealed drugs internally.*

#### ***Appearance before a Court after charge***

*When a person is retained in Police or Customs detention after being charged he will have to be brought before the Magistrates Court, Court of Alderney or the Court of the Seneschal as soon as practicable and in any event not later than the usual first sitting after he is charged with the offence. This reflects current practice.*

#### ***Police Bail***

*It will be the responsibility of the Custody Officer to determine whether it is appropriate for a person to be released on bail after charge or held in custody pending an appearance in Court. There will be a power for the Custody Officer to allow bail with conditions where this is appropriate, and of course subject to the courts later review. In most cases the prisoner will be released on bail to appear before one of the Bailiwick's Courts at a later date, which will relieve the pressure on police cells and the island prison in proper cases.*

*The Police will also be able to release a person on bail before charge with a duty to reappear at the designated place of detention at a later date. This has proved very useful in England and Wales, since it allows the law enforcement authorities to properly conclude an investigation and obtain as much information as possible, before deciding whether or not to charge an individual.*

*There will of course be instances where a person will fail to appear before the Court to answer bail or to return to a designated place of detention. If this occurs the Police will be able to arrest the individual concerned.*

**PART V****Questioning and treatment of persons****Search of detained persons**

*The Custody Officer will be required to ascertain and record everything that a person has on him when presented to him, whether he has been brought to a designated place of detention after arrest or arrested there. A record will have to be made in writing as part of the prisoner's custody record.*

*It will only be possible to seize clothes and personal effects from detained persons if the item in question could be used to cause physical injury or there are reasonable grounds for believing that it may be evidence relating to an offence.*

*In cases where it is thought that the prisoner has concealed on him either an item which could cause physical injury or drugs of Class A or B, the Police will be able to carry out an intimate search. There will be strict conditions for carrying out such searches; for example, they will only be carried out by registered medical practitioners or nurses.*

**Notification of arrest**

*These provisions will confirm the present arrangements in statutory form. Whenever a person is arrested, he will be entitled after his arrival at a Police Station to have someone informed of the fact that he is under arrest. Delay in informing the person nominated by the prisoner will only be allowed if there are reasonable grounds for believing that an investigation will be obstructed or impeded. Also, delay will be possible if there are reasonable grounds to believe that the recovery of the proceeds of crime will be hindered by informing the named person of the arrest.*

*The consent of a Chief Inspector of Police or Customs equivalent will have to be obtained before there is any delay in informing the person nominated by the prisoner.*

**Access to legal advice**

*Persons who are detained will also be able to consult an Advocate privately at any time. Access to an Advocate will only be denied if there are reasonable grounds for believing that to permit access would interfere with the investigation or the recovery of the proceeds of crime. Again these provisions confirm existing good practice.*

**Tape recording of interviews**

*There is often a need for the Police to interview a person who is detained on suspicion of committing an offence. Since 1993 in the Bailiwick these interviews have been tape recorded and the new Law will make the tape recording of interviews a statutory requirement. There will be a Code of Practice issued giving details of exactly how the interviews should be carried out, which will replace the present non statutory arrangements.*

**Fingerprints**

*It is still very common for crimes to be solved following the comparison of finger marks found at a crime scene and those taken from a person whilst in police custody. The Law will give the Police power to take a person's fingerprints where he does not consent provided that there are reasonable grounds for suspecting that the person has been involved in a criminal offence and that the taking of fingerprints would tend to confirm or disprove his involvement. There will be a requirement for the Police to destroy fingerprints if it is later shown that the prisoner did not commit the offence under investigation.*

### ***Samples for forensic examination***

*During the investigation of offences, particularly those of a sexual nature, it can be of great assistance if samples can be taken from a suspect's body and examined by a forensic scientist. The new Law will have different regimes for intimate and non-intimate samples. The taking of intimate samples will be permitted if a Police Superintendent or an Assistant Chief Officer of Customs gives the necessary authority and the suspect gives consent (or if the suspect is under 17 years of age the consent of a parent or guardian must be obtained). Intimate samples will be defined as samples of blood, semen, or other tissue fluid, urine or pubic hair; a dental impression or a swab taken from a person's body orifice other than the mouth. Where consent for the taking of a sample is refused without good cause, the Law will provide that in any subsequent court proceedings against that person the court may draw such inferences from the refusal as appear proper, and the refusal may be treated as corroborating any other evidence against him.*

*All other types of samples will be considered to be non-intimate. It will be possible for the Police to obtain non-intimate samples without the consent of a suspect. It is anticipated that the taking of mouth swabs will be extremely helpful in that it will allow the Police to arrange for DNA comparisons.*

### ***Part VI***

#### ***The Codes of Practice***

*This part will formally introduce the statutory Codes of Practice which will apply to these provisions, which will be based upon those presently in existence, as placed before the States in Billet d'État No. XVI dated 11th July 1997.*

### ***Part VII***

#### ***Evidence in Criminal Proceedings***

*This part will contain a number of provisions designed to improve and clarify the law in relation to evidence in criminal proceedings. Many of these provisions will reflect and confirm the present position in the Bailiwick, but are set down in statutory form for the sake of clarity and to put beyond doubt compliance with the Convention.*

*Firstly, there will be provisions dealing with the manner of establishing the fact of a conviction or an acquittal. This allows for the proof of a conviction or acquittal to be achieved by the production of a certificate duly signed by H.M Greffier, or the court clerk in the case of a conviction from outside the jurisdiction, where it is necessary to adduce this evidence. In addition, it will be admissible to adduce evidence of a conviction for the purpose of proving that a person committed an offence, unless the contrary is proved. These provisions are intended to simplify the admission of evidence and speed the business of the courts.*

#### ***Confessions and the exclusion of unfair evidence***

*These provisions are aimed at clarifying the rules by which evidence of the accused's confession is admissible before the court, and to set out in statutory form the protections for a fair trial. They are not greatly different from our current common law position, but will provide confirmation that our law meets Convention requirements. At present, the common law allows for the admission of confession evidence only if the prosecution can show it has*

*been made voluntarily. The new tests, which will follow the tried and tested precedents in PACE, will be that a confession will be admissible where relevant, but shall be excluded unless it is shown beyond reasonable doubt that it was not obtained by oppression or in consequence of anything said or done to render it unreliable. The courts will also have to take special care before convicting a mentally handicapped person in reliance upon his confession.*

*The provisions will also confirm the Bailiwick courts' discretion to refuse to allow any evidence which the prosecution proposed to adduce if it appears that to do so would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.*

***Competence and Compellability of the accused's spouse.***

*These provisions will ensure that the spouse of an accused is generally both competent and compellable to give evidence for the defence, save where they are jointly charged. The provisions will also make a spouse compellable for the prosecution whenever the charge is one which involves violence against the spouse, or anyone under 16, or where the offence is a sexual offence against a person under 16.*

***Conclusion***

*As you will appreciate, these proposals provide an extensive framework of legislation which will enable the Bailiwick to meet the demands of a modern criminal legal system, and to put beyond question compliance of our laws with the Convention when the Human Rights Law is implemented. I suggest that early consideration is given to the comprehensive proposals relating to the powers of Police and Customs, and the rules of criminal evidence as outlined above, with a view to the preparation of legislation along the lines proposed. If the Committee agrees with these proposals, I should be most grateful if they would arrange for the necessary policy letter to be put before the States with appropriate recommendations, including one directing the preparation of the necessary legislation.*

**Recommendation**

The Advisory and Finance Committee concurs with the views expressed by H.M. Procureur and recommends the States to agree that legislation be enacted on the lines set out in this letter.

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.

The States are asked to decide:—

VIII.—Whether, after consideration of the Report dated the 18<sup>th</sup> June, 2002, of the States Advisory and Finance Committee, they are of opinion:—

1. That legislation shall be enacted along the lines set out in that Report regarding Police Powers and Criminal Evidence.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATES ADVISORY AND FINANCE COMMITTEE****ESTABLISHMENT OF THE OFFICE OF PUBLIC TRUSTEE**

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

20th June, 2002

Dear Sir,

**ESTABLISHMENT OF THE OFFICE OF PUBLIC TRUSTEE****Introduction**

1. Guernsey is a major international centre for the provision of trustee services. Over 180 trust companies have now applied for a full fiduciary licence under the provisions of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (“the Fiduciary Law”), and 70 individuals applied for a personal fiduciary licence. According to the licence applications, a total of no fewer than 2,556 individuals are engaged in the provision of fiduciary services throughout the Bailiwick and, according to research by Deloitte & Touche two years ago, total recurring fiduciary fee income for Guernsey (including additional indirect income generated from the placement and management of fiduciary assets) is estimated in the region of £200 million per annum. It is essential for Guernsey to safeguard such a vital component of its total economy, and to introduce measures to provide for the protection of trust assets and beneficiaries in the relatively small number of cases where this is necessary. Failure to introduce appropriate measures to deal with such cases is likely in due course to damage the international good standing of the trust industry and thereby of the Bailiwick.

A Public Trustee is essentially a trustee of last resort who can be appointed to act as trustee of particular assets where, for example, there is no other trustee able or willing to act. The Committee considers that the establishment of an office of Public Trustee is necessary for two reasons:

- 1.1 It would avoid the situation arising where trust property is put at risk because there is no trustee, for example because the last trustee has died or become unable to act. This situation can occur in any trust, whether created by Guernsey residents or others whose trusts are administered here.
- 1.2 The need for such an office also arises in the context of the licensing of trust companies and other fiduciaries by the Guernsey Financial Services Commission (“the Commission”). Under the Fiduciary Law, the Commission has to determine applications from trust companies and other fiduciaries for fiduciary licences. If the Commission decides to refuse a licence to a person who acts as a trustee, the Fiduciary Law prohibits that person from continuing to act as trustee by way of

business. However, the refusal of a fiduciary licence would not automatically remove the person from the office of trustee of each individual trust because the Fiduciary Law, as a regulatory law, intentionally did not alter substantive trust law. In such a situation the trustee should retire or be removed from office to avoid committing a criminal offence.

Alternatively, if beneficiaries or any others empowered by a trust instrument were aware of the licensing situation, they might remove the trustee. In many cases however, it is possible that action will not be taken, or will not be taken quickly, to remove a trustee from office. There is a risk of an unlicensed trustee remaining in office and therefore in control of the trust assets, with consequent risks to beneficiaries who might be unaware of the problem and therefore unable to initiate action to remove the trustee.

2. In both these situations, the establishment of an office of Public Trustee would protect the trust property and the rights of beneficiaries. In the second situation, in the absence of a Public Trustee there is a risk to Guernsey's good reputation for trust business because any problems resulting from unlicensed trustees remaining in office would reflect very badly on Guernsey as a jurisdiction for the formation and management of trusts.

### **Consultation**

3. The Guernsey Financial Services Commission issued a consultation paper in May 1999, entitled "The Regulation of Fiduciaries and Administration Businesses". Paragraph 7.7 of that stated:

"Considerable thought has been given as to what happens to the trusts whose trustees are refused a licence under the provisions of the [Fiduciary] Law, or whose trustees have been granted a licence which is subsequently revoked. The Commission is strongly of the opinion that an office of Public Trustee should be set up as soon as possible. The everyday administration of the trusts could be delegated to an outside service provider."

During the process of consultation on that paper, the Commission received overwhelming support for this proposal, and the general feeling of those involved in the trust sector who took part in consultation was that the establishment of an office of Public Trustee was a necessary adjunct to a fiduciary licensing system.

### **The office of Public Trustee**

4. The Committee proposes that an individual should be appointed to the office of Public Trustee by the States on the recommendation of the Committee. The Public Trustee would be appointed for a period of up to five years and would not be a committee or agent of the States. The States, on the recommendation of the Committee, should be able to remove the Public Trustee from office on the grounds of permanent incapacity, misbehaviour or gross incompetence.

The Public Trustee would be empowered to appoint staff (subject to the Committee's approval of the maximum number of staff) and to instruct other persons such as professional advisers. The Public Trustee could then delegate the day to day trust work to suitable professionals. He should not be permitted to delegate the power of delegation itself, and would remain responsible for actions taken in his name.

5. Delegation is essential to allow the Public Trustee to operate in the flexible and cost-effective manner which his unpredictable and variable workload would necessitate. For example, there might be a significant demand for the Public Trustee's appointment whilst the Commission is determining fiduciary licence applications, perhaps followed by a quieter period with more occasional appointments. It is therefore important that the Public Trustee can delegate the day to day trusteeship work to others, whilst remaining ultimately responsible for work done in his name. In that way, the Public Trustee could retain suitable professional firms depending on the volume and complexity of his appointments at any one time.

### **The functions of the Public Trustee**

6. The Public Trustee should be able to act where certain conditions are fulfilled in relation to a trust of which:
  - 6.1 the proper law is that of any part of the Bailiwick,
  - 6.2 a trustee is resident in the Bailiwick or is a company incorporated in the Bailiwick or, if there is no trustee, the last trustee was such a person or company,
  - 6.3 any property is situated or administered in the Bailiwick,
  - 6.4 the terms provide that a court in the Bailiwick is to have jurisdiction, or
  - 6.5 a trustee has been a fiduciary licensed by the Commission or has applied for and been refused a fiduciary licence.

In addition, the States should have the power to prescribe other classes of trusts by Ordinance.

7. The pre-conditions for the Public Trustee's appointment in relation to the classes of trust described above should be:
  - 7.1 that there is no trustee lawfully able to act, or
  - 7.2 where the proper law of the trust is Guernsey law, the provisions of the Trusts (Guernsey) Law, 1989 concerning the minimum number of trustees are not satisfied, or
  - 7.3 it is necessary or desirable for the Public Trustee to act for the purposes of preserving the trust assets or otherwise in the interests of the beneficiaries of the trust, or for the protection or enhancement of the reputation of the Bailiwick.
8. However, even where the pre-conditions are fulfilled, the Public Trustee should be able to decline to act as trustee or to exercise any of his functions. This would prevent him becoming involved in trusts where another trustee could be found.
9. The Public Trustee should be appointed either by agreement with the person(s) with the power to appoint new trustees or by order of whichever court of the Bailiwick has jurisdiction in relation to the trust, or by his own written instrument. The last mode of appointment is necessary to enable urgent or non-contentious appointments to be made without the cost of a court application. However, it should be subject to a right of appeal to the court with jurisdiction over the trust in case, for example, a beneficiary wishes to challenge the appointment.

10. The Public Trustee should have the power to do anything necessary or expedient for the purpose of exercising his functions, for example, to request documents or information, publish reports or appoint other persons to advise him.
11. The Public Trustee should be obliged to submit to the Committee each calendar year a report on the exercise of his functions in the preceding year and the audited accounts of his office, together with the auditors' report. The Committee would then submit the report, accounts and auditors' report to the States with its own comments or report (if any).

### **Financial provisions/Resource implications**

12. The resource implications need to be considered on two levels:

#### **Fees payable to the office of the Public Trustee for each appointment**

- 12.1 There is no reason in principle why a Public Trustee should not receive his fees from the assets which he holds as trustee, in the same way as any other paid trustee (subject to the terms of the trust authorising such payments). Whether the trustee of a particular trust is the Public Trustee or a private individual or firm, the beneficiaries receive a benefit from the trustee's care of the trust assets. In general, therefore, the Public Trustee should be entitled to recover fees in relation to each trust over which he is appointed, on a scale to be determined by him in consultation with the Committee, from the trust assets in that case. These fees should be paid into a Public Trustee Fund, which would be the Public Trustee's operating account (but which would not hold trust assets) and from which all expenditure properly incurred in the Public Trustee's functions would be met.
- 12.2 However, there may be cases in which the Public Trustee needs to act but where the trust assets are insufficient to pay fees or, more likely, where the value of the trust assets is not initially clear or they are tied up in an illiquid form. As the Public Trustee is intended to act as a trustee of last resort, it would clearly be inappropriate for his appointment to be conditional on the trust in question having sufficient immediately realisable funds. Some of the cases in which the Public Trustee's appointment is most urgently needed may be those in which the value or location of the trust assets is unclear. For example, the Commission may have refused to grant a fiduciary licence to the existing trustee because of a lack of records or even because of dishonesty. In those cases, the good name of Guernsey as a reliable jurisdiction for trust administration requires that the Public Trustee's costs be underwritten from public funds. Any cost to the public purse in a particular case could of course be refunded if the Public Trustee was able to recoup his fees from the trust property. For example, he might either find after his appointment that there were trust assets of sufficient value to meet fees, or make a sale of some illiquid trust property in due course.

#### **Fee payable to the Public Trustee personally**

- 12.3 From the fees paid into the Public Trustee Fund, it will be necessary to pay a fee or retainer to the Public Trustee personally. The Committee recommends that it should determine the fees and any other form of remuneration payable to the Public Trustee, which will depend partly on the qualifications and experience of the person appointed to that office and on the amount of time which he has to devote to the post. The Committee hopes that a part-time appointment will be possible.

13. The States should have the power to make grants or loans to the Public Trustee from the General Revenue Account, towards his expenditure in exercising his functions. This power should be subject to the States first satisfying themselves that such a grant or loan is necessary, i.e. that the Public Trustee's costs, expenditure and liabilities are likely to exceed the income of his office in a particular year.
14. The Public Trustee Fund should not be subject to income tax. That would not affect the tax liabilities of beneficiaries entitled to interests under trusts over which the Public Trustee is appointed.

#### **Appeals, enforcement and offences**

15. Any decision of the Public Trustee to appoint himself as trustee, or to exercise his powers to obtain information or documents, should be subject to a right of appeal. The appeal should be decided by the Royal Court unless the person appealing is within the jurisdiction of the Court of Alderney or the Court of the Seneschal of Sark, in which case the appropriate Alderney or Sark court should decide the appeal. There should be provision for onward appeals from the Alderney and Sark courts to the Royal Court, and from the Royal Court to the Court of Appeal. In addition, the Public Trustee should have the power to refer any question of law arising in connection with the performance of his functions to the Royal Court.
16. The appropriate court should have the power, on the Public Trustee's application, to grant an injunction to restrain any contravention of any law relating to a trust with which he is concerned. In some cases the Public Trustee might need to apply *ex parte*, i.e. without notifying the person against whom he seeks the injunction of the application.
17. The Public Trustee will also need some enforcement powers because the trusts to which he is likely to be appointed are, by their nature, more likely than usual to have problems arising from the dishonesty or incompetence of a previous trustee. Consequently, the Public Trustee will in some cases need to obtain information or documents to identify the trust assets and their location. He should have the power to serve a notice requiring a person to produce to him or his officers or agents information or documents reasonably required for the purpose of determining whether the Public Trustee should be appointed, or other information necessary for the performance of his functions. This power needs to be backed up by a right to take copies of such documents and to require a person who is no longer able to produce relevant documents to state where he believes they now are.
18. These provisions should not oblige an advocate or other legal adviser to produce a communication to which legal professional privilege attaches, but such a person may be required to state the name and address of a client. Advocates and other professional advisers should be protected from any claim for breach of confidentiality rights which might otherwise result from compliance with these provisions.
19. The Bailiff should have the power to grant a warrant which would entitle a person named in it to enter or search premises, take copies of documents or require other persons named in the warrant to explain documents or state where they are to be found. A warrant to be executed in Alderney or Sark should be granted by the Chairman or Jurat of the Court of Alderney or the Seneschal or his deputy respectively.

20. The exercise of these investigatory provisions should be subject to a right of appeal. Any breach of them, including obstructing the execution of a warrant or falsifying, concealing, removing or destroying documents or supplying false or misleading information during an investigation, should be an offence.

### **Consequential amendments to other legislation and miscellaneous**

21. The Public Trustee should be under strict confidentiality obligations in relation to information obtained by him in the performance of his office. Those obligations should extend to his staff or any external advisers instructed by him. There will need to be exceptions allowing the disclosure of information, for example where the Public Trustee needs to seek advice or disclose information in the interests of beneficiaries or for the purposes of the investigation, prevention or detection of crime.
22. The States should provide that no liability should attach to the States or the Public Trustee or his staff in relation to any act or omission in the discharge of his functions, unless done in bad faith.
23. The establishment of the office of Public Trustee necessitates certain amendments to existing legislation. In particular, the following provisions of the Trusts (Guernsey) Law, 1989 need amending:
- 23.1 Section 13(1)(b) limits the situations in which a single trustee may act, and needs to permit that where the trustee is the Public Trustee.
- 23.2 Section 24 requires co-trustees to act unanimously unless the terms of the trust allow majority decision. This section should be disapplied from trusts in respect of which the Public Trustee has been appointed to enable him to act alone (unless the court orders otherwise).
- 23.3 Section 29(1) currently prohibits delegation by trustees unless permitted by the terms of the trust; this needs to allow the Public Trustee to delegate in any event.
- 23.4 Section 30 (which debars a trustee from charging remuneration unless the terms of the trust expressly permit) should be amended to allow the Public Trustee to pay his fees from the trust property (as discussed in paragraph 12.1 above).
- 23.5 Section 73 defines a “trustee”, and that definition needs to include the Public Trustee.

### **Geographical extent**

24. The problems identified in paragraph 1 above are not peculiar to Guernsey and the need to appoint a Public Trustee could also arise in Alderney and Sark, although in a significantly smaller number of cases than in Guernsey because of the lower volume of trust work undertaken in those jurisdictions. There is a limited amount of trust work in Alderney and virtually none in Sark. The Committee has initiated discussions with the Policy and Finance Committee in Alderney and the General Purposes and Finance Committee in Sark, and understands that those committees would support the recommendations of this policy letter.

**Recommendation**

25. The Advisory and Finance Committee recommends that an office of Public Trustee be established as set out in this letter.
26. 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,

J. E. LANGLOIS,

Vice-President,  
States Advisory and Finance Committee.

---

The States are asked to decide—

IX.—Whether, after consideration of the Report dated the 20th June, 2002, of the States Advisory and Finance Committee, they are of opinion:—

1. That an office of Public Trustee shall be established as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATES ADVISORY AND FINANCE COMMITTEE****REFERENDUMS**

The President  
States of Guernsey  
Royal Court House  
St Peter Port  
Guernsey  
GY1 2PB

27th June, 2002.

Dear Sir,

**REFERENDUMS**

1. At the States' meeting on 12 July 2000, the Advisory and Finance Committee undertook to prepare a policy letter considering the possibility of introducing legislation to facilitate the holding of referendums in Guernsey.
2. After consideration of the issues, the Committee believes that, in exceptional circumstances, it may be appropriate to hold a referendum in Guernsey and that there are merits in having enabling legislation to facilitate the holding of referendums in Guernsey. The Committee considers however, for the reasons detailed in this policy letter, that the circumstances in which a referendum should be held should be confined only to questions of Guernsey's constitutional relationship with other jurisdictions.

**Use of referendums in other jurisdictions**

3. The Committee has carried out some research into the use of referendums in other jurisdictions. In liberal democracies, there is perhaps a predominant philosophy that participation in discussion of topics should be carried out almost entirely through political party systems and that, if the electorate are to have any involvement in the decision making process, this should be through the establishment of groups representing an interest or cause.
4. While the United Kingdom has no general legislation facilitating future referendums, specific statutory provision has been made for particular referendums. For example, the Referendum Act 1975 was enacted solely to facilitate the holding of a referendum on the UK's membership of the European Economic Community. (Section 1(1) of the Act simply states: "*A referendum shall be held on the question whether the United Kingdom is to remain a member of the European Economic Community*".) That Act was supplemented by a Statutory Instrument creating a comprehensive framework for the referendum.
5. A more recent example is the Referendums (Scotland and Wales) Act 1997, which deals with many of the relevant issues which would need to be dealt with within legislation in Guernsey. The purpose of the Act was to make provision, firstly, for a referendum to be held in Scotland on the propositions that there should be a Scottish Parliament and that a Scottish Parliament

should have tax-varying powers; and, secondly, for a referendum to be held in Wales on the proposition that there should be a Welsh Assembly. The Act made provision as respects the following matters:

- Entitlement to vote. (It stipulated that those entitled to vote in the referendums would be those who would be entitled at the date of the referendum to vote in local government elections in Scotland or Wales. It also specified the cut-off date for alterations to the register of electors.)
  - The counting of votes and the duties and functions of Counting Officers.
  - Campaigns expenditure.
  - The display of advertisements relating to the referendum.
  - The format of the ballot paper (e.g. being capable of being folded up, having a number printed on the back, having attached a counterfoil with the same number printed on it.)
6. Both the 1975 and 1997 Acts were introduced to facilitate referendums on specific topics. Neither made any provision for the holding of future referendums.
  7. Some jurisdictions have a more enthusiastic approach to referendums. Italy and Switzerland have legislation which provides for the population itself to be able to initiate referendums in certain, limited circumstances. In Italy, for example, Article 75 of the country's Constitution provides that a referendum must be held on subjects (falling within a limited range) where "demanded by five hundred thousand voters or by five Regional Councils". Switzerland has a similar arrangement, and there have been in the region of 500 national referendums in Switzerland in the last 150 years. Prior to voting, the Swiss government will, as a matter of course, present an analysis of the issues to the public.
  8. Referendums, on a wide variety of topics, have been held in a number of other countries in recent years including France, Denmark, the USA, Canada, Australia, China, New Zealand, Estonia and Austria.
  9. In Jersey, the States have recently approved a Law which enables a referendum to be held on any matter specified in a resolution of the States carried by a majority vote.

#### **The merits and de-merits of referendums**

10. To the Committee's knowledge, referendums have not previously been held in Guernsey. While, at present, it would theoretically be open to the States to engage in any such form of public consultation exercise as it wished, there is currently no legislation in Guernsey to facilitate a formal referendum. If a referendum was to have a status above that of an "opinion poll" then it should certainly be conducted in accordance with a legal framework.
11. The Committee is mindful of several criticisms which are frequently put forward of referendums.
  - It is true that the success of referendums depends on a high level of participation. Historically, the use of referendums across the world has shown that the level of participation is sometimes so low that groups can achieve a particular cause with the participation of a relatively small percentage of the population. (In Switzerland, however, of the referendums raised by outside petitioners on new subjects, only about a tenth have been passed during the history of referendums in the country.

This would perhaps counter to some extent the suggestion that the availability of referendums allows pressure groups to have an undue influence.)

- The nature of referendums runs counter to the whole concept of co-ordinated, strategic thinking. The use of referendums can make it difficult for governmental policies to be followed because each referendum can address one specific question only, the result of which may or may not fit within an overall strategy.
  - Abuse or over-use of referendums could lead in effect to government by referendums.
  - Referendums are perceived by some (particularly when non-binding) as being designed to rubber-stamp and give the appearance of public approval to the views of the government.
  - A non-binding or consultative referendum may well be perceived to be little more than an opinion poll, which may discourage voters from participating.
  - Often members of the public may not have a clear or full understanding of all of the issues or implications on a particular subject. This is particularly likely to be the case in single issue campaigns which may lack significant opposition or proper, thorough, rigorous consideration.
  - Sometimes those with substantial personal funds available to invest in their campaigns are able to sway support in their favour. This perhaps counters the argument that referendums are democratic, though this point could be countered by setting spending limits on campaigns.
12. However, the arguments which are frequently put forward in favour of referendums are as follows.
- If a legislature is to be responsive to the wishes of its electorate, then it should recognise that there are certain circumstances in which it may be appropriate to give the whole population greater involvement in decision making, particularly on questions which are of particular significance to the whole electorate.
  - Referendums could encourage people to take a more active interest in the political process and become more involved in the running of their communities.
  - Referendums enable the public to ensure that their views on issues are directly represented, which is not the case when they vote once every four years or so for a limited number of candidates with whom they are extremely unlikely to agree on everything.
  - Referendums reduce the perception of barriers between the government and the electorate.
  - The result of a referendum will represent the will of the people.
13. **On balance, and subject to the considerations outlined in paragraphs 16 to 24 below, the Committee recommends that legislation facilitating referendums should be introduced.**
14. The Committee would however wish the permissible areas for referendums under the legislation to be circumscribed. Guernsey, like the UK, has a long history and tradition of not governing by referendum. The Committee would not propose that the Island should move far away from this position.

15. However, the Committee recognises that times are changing. The rapid development of technology and e-commerce means that geographical boundaries are less important than they once were. It is not impossible to foresee a time in the future where major decisions may have to be made concerning the Island's constitutional future. It may therefore be useful to have enabling legislation to enable high level external issues to be put to a referendum.

#### **The required framework of legislation**

16. There are two major principles which the Committee is strongly of the opinion should be enshrined in the enabling legislation. These are firstly, that the scope for referendums should be confined solely to questions of the relationship between Guernsey and any other jurisdiction, and, secondly, that to preserve the autonomy of the States of Deliberation, referendums would be consultative, that is, not binding on the States. However, in practice the status of a referendum would be much higher than that of a general opinion poll and in its deliberations the States would give due weight to the results.
17. With the assistance of the Law Officers of the Crown, the Committee has carried out some research into the possible design of the form which the legislation would need to take to meet Guernsey's requirements.
18. The most sensible way forward would appear to be to introduce relatively simple enabling legislation providing for the basic principle of referendums. Voting entitlement, it is envisaged, would extend to those people who would be eligible to vote in a General Election of People's Deputies held on the date proposed for the referendum. A statement to this effect would be included within the enabling legislation. The enabling legislation would also deal with the counting of votes and the duties and functions of Counting Officers. Again, it is envisaged that the enabling legislation would provide that arrangements would be the same as those in a General Election of People's Deputies.
19. Once the enabling legislation was in place, if and when a topic appeared which the States believed should be put to a referendum, then this could be progressed within a relatively short period by way of secondary legislation whose central provision would be a precise formulation of the options or question(s). It is also envisaged that it would be appropriate for issues arising from the practicalities of holding referendums (the degree of participation required, rules relating to campaigns expenditure, the display of advertisements relating to the referendum and the format of the ballot paper) to be dealt with within the secondary legislation, as each case will be different and the appropriate parameters will change from case to case.

#### **The extent of legislation**

20. The Committee, with the assistance of the Law Officers of the Crown, gave very careful consideration as to whether to recommend a Bailiwick Law with regard to referendums or to recommend the enactment of a law for Guernsey only.
21. The Committee has decided to recommend the enactment of its proposals purely as a Guernsey Law.
22. It reached this conclusion as Alderney and Sark are both separate jurisdictions to Guernsey. As the States of Alderney and Chief Pleas of Sark are responsible for making decisions for their jurisdictions, the Committee is of the view that it follows that they should be free to decide how best to gauge public opinion within their own jurisdictions, and, as part of that process, whether or not to enact similar, or indeed different, legislation.

**Conclusion**

23. The Committee believes that there are merits in having legislation to facilitate the holding of referendums in Guernsey.
24. The Committee considers that it would be necessary that any such legislative mechanism should be used sensibly, and only where the subject genuinely merited it – in other words, in extremely rare circumstances. Clearly the Committee would not wish to have a situation where the existence of a referendum mechanism was abused through over-frequent use. The Committee would not wish to see the States abrogate its responsibilities to the electorate by using a referendum every time it faced a difficult or unpopular decision. The Committee is therefore proposing four measures which, it considers, would safeguard against such a scenario, and which measures it recommends should be expressly stated within the enabling legislation:
- The legislation should expressly prescribe the topics on which a referendum could be held. The Committee proposes that the topics on which a referendum could be held should, as stated above, be confined solely to questions of Guernsey's constitutional relationship with other jurisdictions.
  - The Committee proposes that referendums would be consultative, that is, not binding on the States of Deliberation.
  - It is proposed that a request to hold a referendum could be made only on the basis of a recommendation, within a policy letter, from the Advisory and Finance Committee.
  - Further, the Committee proposes that, whereas States decisions are generally made by a straight majority of the States, a referendum should be initiated only in cases where at least a two-thirds majority of the States of Deliberation vote in favour of a Committee recommendation to hold a referendum on a particular topic.
25. The Committee believes that a law along the above lines would provide for the use of referendums in Guernsey in an appropriate and effective manner.

**Recommendation**

The Advisory and Finance Committee therefore recommends the States to agree that steps should be taken to make provision for the holding of referendums in Guernsey in the manner detailed in paragraphs 18, 19 and 24 of the Committee's report.

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.

The States are asked to decide:—

X.—Whether, after consideration of the Report dated the 27th June, 2002, of the States Advisory and Finance Committee, they are of opinion:—

1. That steps shall be taken to make provision for the holding of referendums in Guernsey in the manner detailed in paragraphs 18, 19 and 24 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATES ADVISORY AND FINANCE COMMITTEE****EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS**

The President  
States of Guernsey  
Royal Court House  
St Peter Port  
GUERNSEY

26th June 2002

Dear Sir,

**EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS**

The European Convention for the Protection of Human Rights and Fundamental Freedoms provides that certain basic rights and freedoms should be secured. These include the right to life; freedom from torture or inhuman or degrading treatment or punishment; freedom from slavery or compulsory labour; the right to liberty and security of person, fair trials for the determination of civil rights and criminal charges; respect for private and family life; freedom of thought, conscience and religion; freedom of expression and association; and peaceful assembly.

The Convention was extended to the Island in 1953, subject to the same reservations as were made by Her Majesty's Government on ratification of the Convention. In 1987 the States requested Her Majesty's Government to make a declaration extending the First Protocol to the Convention (rights to peaceful enjoyment of possessions, to education, and to free elections) to the Bailiwick, subject to a reservation similar to that made by the United Kingdom in respect of education.

The Convention originally provided that States party to it were to have the option of declaring whether or not they accepted two of the Articles of the Convention, namely Articles 25 and 46. Those Articles embodied the principles that individual citizens had the right to petition the then Commission making complaint against their government; and that in the event that their complaint reached the Court for a final ruling any judgment would bind the State party to the Convention.

It was not until 1966 that H.M. Government felt that the time was right to make a declaration of acceptance of the applicability of those two Articles; and at that time after consultation with the Insular Authorities Her Majesty's Government included the Bailiwick of Guernsey in its declaration of acceptance in respect of Articles 25 and 46. The initial declaration was made for a period of three years. Thereafter declarations of renewal have been made for periods of five years at a time, the last being in 1996 when following a Resolution of the States of 28th February of that year the declaration was renewed on our behalf by Her Majesty's Government for a period of five years from the 14th January, 1996.

Meanwhile, in May 1994 the United Kingdom decided to sign and ratify the Eleventh Protocol to the European Convention on Human Rights which, inter alia, merged the Commission and the

Court of Human Rights, and replaced the “optional” right of individual petition with an automatic and permanent right. That right did not, however, become permanent and mandatory until the Eleventh Protocol had been ratified by all 34 signatories to the Convention. The Protocol entered into force on the 1st November 1998. It was agreed that the present arrangements with regard to the right of individual petition in respect of the Crown Dependencies should not be affected, so that right remained optional and renewable.

The declaration approved by the States on the 9th February 1996 expired on the 13th January 2001. Unfortunately, due to an oversight, the Foreign and Commonwealth Office omitted to renew the declaration on behalf of Guernsey and Jersey. H.M. Government has been advised, however, that it can be renewed with retroactive effect as from 14th January, 2001. This will avoid any temporary gap in the Court's jurisdiction.

The States have the option of either making the right of individual petition permanent and mandatory or of allowing it to remain optional and renewable. The Committee believes that the Bailiwick should be at the forefront in matters of human rights and therefore prefers the first option. Since the right of individual petition was last renewed in 1996 the Convention has been incorporated into Bailiwick legislation and there is now no reason why the right should be not be agreed on a permanent basis. . Not to do so would put Guernsey out of line with almost all the other territories where the Convention applies. The States of Jersey are also giving consideration to renewing the declaration of acceptance on a permanent basis.

The Committee therefore recommends the States to agree to the making of a further declaration under the European Convention for the Protection of Human Rights and Fundamental Freedoms, making the right of individual petition permanent and mandatory with effect from 14th January, 2001.

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

Yours faithfully,

L.C. MORGAN,

President,

Advisory and Finance Committee.

---

The States are asked to decide:—

XI.—Whether, after consideration of the Report dated the 26<sup>th</sup> June, 2002, of the States Advisory and Finance Committee, they are of opinion:—

To request Her Majesty's Government to make a further declaration under the European Convention for the Protection of Human Rights and Fundamental Freedoms making the right of individual petition permanent and mandatory with effect from the 14<sup>th</sup> January, 2002, in the Bailiwick of Guernsey.

**STATES ADVISORY AND FINANCE COMMITTEE****NEW NON-EXECUTIVE DIRECTORS OF GUERNSEY POST LIMITED AND  
GUERNSEY ELECTRICITY LIMITED**

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

25th June, 2002.

Dear Sir,

Section 3 (1) of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001 requires that “ the non-executive directors of a States Trading Company shall be appointed by the States on the nomination of the [Advisory and Finance] Committee”.

In September 2001 (Billet XVIII) the States appointed five persons to serve as non-executive directors on the Board of Guernsey Post Limited. In December 2001 (Billet XXIV) the States appointed four persons to serve as non-executive directors on the Board of Guernsey Electricity Limited. The policy letter recommending the appointments to Guernsey Electricity Limited commented that further recommendations would be brought forward if it was found to be advantageous to increase the number of non-executive directors to, for instance, bring in legal expertise.

Sadly, in October 2001 one of the persons appointed to Guernsey Post Limited, Mr Ernest Smith, died.

Whilst there is no requirement for a specific number of non-executive directors, the Board of Guernsey Post Limited has advised the Committee that it now wishes a replacement for Mr Smith to be appointed and have asked that Mr Terry Holder be nominated.

Mr Holder came to the Island in 1990 with a background in the newspaper industry, latterly as the joint owner of a group publishing free newspapers and magazines. After a short break he founded the Guernsey Globe, which was subsequently sold to Guernsey Press and which itself was taken over by the Guiton Group. Mr Holder remains a director of the two Guiton Group companies that publish the Guernsey Evening Press and the Jersey Evening Post, neither of which will cause any material conflict of interest.

The Committee considers that, with his background and experience, Mr Holder will be able to make a valuable contribution to the work of the Board of Guernsey Post Limited.

The Board of Guernsey Electricity Limited has also advised the Committee that it wishes to increase its number of non-executive directors to five and has asked that Advocate Ian Beattie be nominated. Advocate Beattie served on the States Electricity Board and was also appointed by the States to serve on the shadow Electricity Board during the commercialisation process. At the time, Advocate Beattie did not wish to be nominated in December 2001 to serve as a non-executive director but has confirmed his current willingness to be nominated.

The Committee considers that, with his background, experience and legal expertise, Advocate Beattie will be able to make a valuable contribution to the work of the Board of Guernsey Electricity Limited.

The Advisory and Finance Committee therefore recommends the States to:

- 1) Appoint Mr Terry Holder to serve as a non-executive director of Guernsey Post Limited;
- 2) Appoint Advocate Ian Beattie as serve as a non-executive director of Guernsey Electricity Limited.

Yours faithfully,

L C MORGAN,

President,

Advisory and Finance Committee.

---

The States are asked to decide:—

XII.—Whether, after consideration of the Report dated the 25th June, 2002, of the States Advisory and Finance Committee, they are of opinion:—

1. To appoint Mr. Terry Holder to serve as a non-executive director of Guernsey Post Limited.
2. To appoint Advocate Ian Beattie to serve as a non-executive director of Guernsey Electricity Limited.

**STATES COMMITTEE FOR HOME AFFAIRS****THE INTRODUCTION OF ROADSIDE ALCOHOL & DRUG TESTING DEVICES,  
AND AMENDMENTS TO CURRENT 'DRINK DRIVING' LEGISLATION**

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

31st May, 2002.

Dear Sir

**The Introduction of Roadside Alcohol & Drug Testing Devices, and Amendments to current  
'Drink Driving' Legislation**

During the time following the introduction of 'The Road Traffic (Driving under the influence of Drink and Drugs) (Guernsey) Law, 1986' a number of deficiencies in the Law have been identified. This policy letter, which is split into 2 Parts (Drink Driving & Drug Driving), makes recommendations to address these deficiencies.

**1. Part 1 – Drink Driving**

The Committee for Home Affairs, in consultation with the Chief Officer of Police, recommends the introduction of handheld roadside breath testing devices for use by police officers within Guernsey, for the accurate testing of drivers suspected of exceeding the prescribed limit of alcohol, a test which at present can only be performed at police headquarters.

Research indicates that over the past six years around 25 per cent of suspects arrested under the present arrangements prove to be under the limit when tested at police headquarters.

This represents a considerable waste of police time and the unnecessary inconvenience of members of the public.

An amendment to current legislation is sought to support the introduction of roadside breath testing devices, together with an incidental amendment that will close a potential lacuna in respect of the current approved breath-testing device.

**2. Background – Drink Driving**

- 2.1 **Blood/Urine Testing** – On 26th February, 1986, the States resolved to approve a Projet de Loi entitled "The Road Traffic (Driving under the influence of Drink and Drugs) (Guernsey) Law, 1986<sup>1</sup>. The provisions of the law came into effect on 16th December 1986.

---

<sup>1</sup> Ordres en Conseil XV – 1986

The legislation introduced a prescribed limit to the proportion of alcohol found in a sample of blood and urine taken from a driver, beyond which it would be unlawful for him/her to drive, attempt to drive or be in charge of a motor vehicle on a public highway.

The legislation changed the evidential requirement from that of opinion-based evidence to that of a more precise nature.

Although relatively successful in operation, there was a considerable cost involved in relation to medical practitioners attending police headquarters to obtain samples, which would then be forwarded for analysis. In the two years prior to 1989, the cost to the Committee of enforcing this legislation amounted to almost £30,000.

There was also a significant time implication for police, doctors and those suspected of committing an offence, many of whom were later found to be under the limit.

Also, there would often be a wait of some days before the analysis report was received. An easier and quicker screening method was required.

### 2.3 Breath Testing

The Committee for Home Affairs sought to obtain the same results without the need to require samples of either blood or urine, by the introduction of precision breath testing equipment, the 'Lion Intoximeter 3000.'

This matter was laid before the States in 1989 and subsequently adopted.

The legislation<sup>2</sup> followed a similar format to that of the UK, but omitted roadside testing devices. A legal limit was set as to the amount of alcohol contained in a sample of breath, which could be analysed by an approved device held at police headquarters. The limit being 35 micrograms of alcohol in 100 millilitres of breath.

### 3. Arrest Procedure

In order to justify an arrest on suspicion of an offence of 'drink driving', a police officer, will often require the driver to perform a number of simple tests of balance and dexterity, at the roadside.

These tests are subjective in nature and require judgement of the officer in translating behaviour into a likely subsequent objective scientific analysis of the quantity of alcohol in the driver's body.

In many cases an officer will only have the opportunity to form a 'reasonable suspicion' during this brief roadside interview.

### 4. Statistics

It is perhaps unsurprising that a significant number of those arrested are later found to be under the prescribed limit. The following figures indicate the extent of the difficulty in making these judgements.

- 4.1 During **1998** – 212 persons were arrested on suspicion of drink/drive offences, 22% (48) were found to be under the prescribed limit, 21 of which recorded a level of between 0-10. (the limit is 35 micrograms of alcohol in 100 millilitres of breath.)

---

<sup>2</sup> Ordres en Conseil XXVI – 1989 – The Road Traffic (Drink Drive) (Guernsey) Law, 1989

- 4.2 During **1999** – 208 persons were arrested, 21% (45) were under the prescribed limit, 28 of which recorded a level of between 0-10.
- 4.3 During **2000** – 243 persons were arrested, 27% (65) were under the prescribed limit, 33 of which recorded a level of between 0-10.
- 4.4 During **2001** – 241 persons were arrested, 24% (59) were under the prescribed limit, 33 of which recorded a level of between 0-10.

This is not only wasteful in terms of police time, but many people who have not committed an offence, are arrested, detained for the purpose of providing a specimen of breath, and subsequently released without charge when the device indicates zero or low levels of alcohol. The whole procedure can also take some time to complete.

Although some of these lower readings may be accounted for by drivers being under the influence of drugs, most are released without charge.

This is a situation that could be alleviated by the introduction of handheld devices, to screen out low alcohol cases prior to arrest, reducing the inconvenience to drivers and saving police time.

- 4.5 The total numbers of ‘drink drive’ arrests during the last few years has been fairly constant.

**Total number of Arrests - ‘Drink Drive’ Offences**

Year	1996	1997	1998	1999	2000	2001
No. of arrests	<b>205</b>	<b>227</b>	<b>212</b>	<b>208</b>	<b>243</b>	<b>241</b>

**5. Roadside Breath Testing Devices.**

It is proposed that the Police Force use a precision instrument, the ‘Lion Alcolmeter SL-400A’, to assist with the roadside tests. This device is widely used throughout the UK. It would reduce the number of arrests where drivers subsequently provide samples well below the legal limit, by giving officers an indication of a driver’s alcohol level prior to arrest.

**6. Financial Implications**

The ‘set up’ cost for 10 roadside breath-testing machines has been estimated at £6,000.00 with an annual revenue cost of approximately £700 for training and service contracts.

Subject to the decision of the States, an amount has been provisionally allowed for this within current budgets.

There would be a considerable saving on ‘opportunity costs’ of the time processing those currently arrested unnecessarily.

**7. Amendment to Legislation – handheld breath test devices**

An amendment to current Legislation<sup>3</sup> is proposed, to enable officers to require a person who may be suspected of driving whilst over the prescribed limit, to provide a specimen of breath for a breath test. This would be conducted at the roadside by means of an approved device.

---

<sup>3</sup> Ordres en Conseil XXVI – 1989 The Road Traffic (Drink Drive) (Guernsey) Law, 1989

It should be an offence for a driver to refuse or fail to provide a specimen of breath, without reasonable excuse.

Should the test prove positive or the driver refuse/fail to provide a specimen of breath, current procedures would follow whereby the driver would be required to provide two further specimens of breath at police headquarters. Should the test prove negative the procedure is concluded.

The device at police headquarters is calibrated, it indicates and records the actual level of alcohol in the breath sample. It is the results of this test that would form the basis of any prosecution.

A police officer should be able to require a 'screening' breath test of:–

- 7.1 A person driving or attempting to drive, or in charge of, a motor vehicle on a road.
- 7.2 A person whom an Officer of Police has reasonable cause to believe to have been the driver, attempting to drive or was in charge of a motor vehicle at the time when an accident occurred.
- 7.3 A person whom an Officer of Police has reasonable cause to believe to have been the driver of a motor vehicle at the time when offence was committed in relation to the use of a motor vehicle.

It is not proposed to seek amendments to definitions in respect of "Motor Vehicle" and "Road", contained in current Legislation.

#### 8. **Amendment to Legislation** – requirement to provide blood/urine.

Since its introduction in 1986, the 'approved device' has been upgraded to the Lion Intoxilyzer 6000, which is a new generation machine and far more sensitive than its predecessor.

The Lion Intoxilyzer 6000, is capable of detecting 'interfering substances' which are not necessarily of a narcotic origin and which shield the alcoholic content of the specimen.

This will have the effect of discounting the sample provided. An amendment to current legislation<sup>4</sup> is proposed, for the provision of a sample of blood or urine, in the event of the device rejecting a contaminated sample of breath. Current legislation only provides for this if the devices is not available or it is not practicable for it to be used.

- 8.1 "Section 3(4)(b)(ii) – A device of the type mentioned in subsection (1)(a) above has been used at the Police Station but the Officer of Police who required the specimen of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned, or"

#### 9. **Amendment to Legislation** – Police Power of Entry.

Where a road traffic accident occurs and a suspected drunk driver leaves the scene or a driver is suspected of being unfit to drive through drink or drugs, and is pursued by police officers, if the driver enters the 'sanctuary' of his or another's property, there is no power of entry for the officers.

---

<sup>4</sup> Section 3(4) of the Road Traffic (Drink Drive) (Guernsey) Law, 1989.

This is particularly frustrating in cases where a driver is clearly unfit to drive through drink or drugs, or an accident has occurred involving injury.

<sup>5</sup> UK legislation has covered this area to some degree. If as a result of an accident someone other than the driver in question is injured, or the driver is suspected of being unfit through drink or drugs, or provided a positive test or failed to provide a sample, a constable has a power of entry. The power enables a test to be administered in respect of the accident case and an arrest in the case of driving whilst unfit or failing to provide/positive test.

These particular powers will not be captured by the local version of the Police and Criminal Evidence Act, when it comes into force during 2002. If, as seems likely, it mirrors the UK version, it will deal with entry for 'arrestable offences'. The offences in question fall outside the definition.

An amendment to current legislation<sup>6</sup> is proposed,

#### Power of Entry

9.1 3A. An officer of police may, for the purpose of requiring a person to provide a specimen of breath in a case where he has reasonable cause to suspect that the accident involved injury to another person or for arresting a person whom he has reasonable cause to suspect of committing an offence under section 1 (1) of this Law, or providing a positive breath test or has failed to do so, enter, if need be by force, any place where that person is or where the officer, with reasonable cause, suspects him to be.

### 10. Part 2 – Drug Driving

The Committee for Home Affairs, in consultation with the Chief Officer of Police, recommends the amendment of legislation to include an enabling clause to permit the future use of an approved type of roadside drug screening device.

This device would provide an officer with firm grounds on which to arrest a suspected offender and would reduce the unnecessary inconvenience to innocent members of the public.

Research by the U.K. Department of the Environment, Transport and Regions (DETR) shows that in fatal collisions between 1985 and 1987 traces of alcohol were present in 35 per cent of those killed, prescription drugs were present in 35 per cent and other drugs in 3 per cent.

The figure for controlled drugs rose to 18 per cent by the time another study took place in 1996 to 1999.

Whilst locally, the evidence we have of the nature and extent of the problem is circumstantial. There is a suspicion that some of the 25 per cent of persons who are suspected of drink driving but 'pass' the objective test at the Police Station are under the influence of drugs. Strong grounds for suspicion are required to proceed to calling a doctor to require a specimen of blood for analysis.

### 11. Drug Driving – Background

There continues to be trials both in the UK and in Europe of roadside drug screening devices. At present no device has been approved by the Home Office for use by UK Police Forces, however, a drug test similar to the breathalyser is currently under development.

---

<sup>5</sup> Road Traffic Act 1988

<sup>6</sup> The Road Traffic (Drink Drive) (Guernsey) Law, 1989.

Science and Technology are developing at a pace and it is probable that a suitable roadside drug-screening device will be nationally available within a short time frame. A number of U.K. Police Forces are currently trialing ‘mouth swab’ devices, calibrated to test for Opiates and Cocaine.

It would therefore seem appropriate to take this opportunity of revising the drink drive legislation to include an enabling clause to authorise the Committee for Home Affairs to approve a device or devices that may be used for roadside drug-screening tests.

**12. Amendment to Legislation – Roadside Drug Screening Devices-Approval.**

An amendment to current Legislation<sup>7</sup> is proposed, to enable the States to approve a device or devices that may be used for roadside screening tests for drugs.

This change in Legislation will permit the expedient introduction and use of a suitable device aimed at preventing and detecting offences committed under Section 1 of the said Law.

12.1 The States may by Ordinance make provision for the testing of any person driving, or in charge of a vehicle on a road, to ascertain whether he has any drug in his body.

**13. Amendment to Legislation – Roadside Drug Screening – Requirement.**

An amendment to current Legislation<sup>8</sup> is proposed, to enable officers to require a person who may be suspected of driving whilst unfit to drive through drugs to provide a sample of sweat or saliva (or any other ‘non intimate’ sample as may be required for use by the approved roadside device.)

It should be an offence for a driver to refuse or fail to provide the sample, without reasonable excuse.

Should the test prove positive or the driver refuse/fail to provide a sample, current legislative procedures would follow whereby the driver would be required to provide samples of blood or urine at police headquarters. It is the results of this sample’s analysis that would form the basis of any prosecution.

A police officer should be able to require a drug ‘screening’ test under the identical conditions to that of a suspected drink driver.

**14. Recommendations**

In view of the circumstances outlined in this report, the Committee for Home Affairs considers that the time is now appropriate to recommend to the States:–

**Drink Driving**

14.1 To approve the use of roadside breath testing for alcohol by approved devices, as described in this report.

---

<sup>7</sup> Section 3(a) of the Road Traffic (Drink Drive) (Guernsey) Law, 1989.

<sup>8</sup> Ordres en Conseil XXVI - 1989 The Road Traffic (Drink Drive) (Guernsey) Law, 1989

14.2 That the provisions of The Road Traffic (Drink Driving) (Guernsey) Law, 1989, shall be extended to:—

- (a) include the requirement for a specimen of breath to be provided at the roadside and that it would be unlawful for a person to refuse or fail to provide without reasonable excuse.
- (b) to extend the requirement to obtain blood or urine samples following a rejected sample of breath by the latest approved breath testing device currently used at police headquarters.
- (c) to include a power of entry for an officer of police, for the purpose of requiring a person to provide a specimen of breath in a case where a road traffic accident involved injury to another person or for arresting a person whom he suspects of, committing an offence under this Law, or providing a positive breath test or has failed to do so.

**14.3 Drug Driving**

That the provisions of The Road Traffic (Drink Driving) (Guernsey) Law, 1989, shall be extended to:—

- (a) include a clause to permit the States, by way of Ordinance, to approve a device or devices for the testing of drivers for drugs.
- (b) enable police officers to require a person who may be suspected of driving or being in charge of a vehicle on a road whilst unfit to drive through drugs, to provide a sample for testing, and that it would be unlawful for a person to refuse or fail to provide without reasonable excuse.

14.4 To direct the preparation of such legislation as may be necessary to give effect to the decisions of the States.

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,

M. W. TORODE,

President,  
States Committee for Home Affairs.

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

The States are asked to decide:–

XIII.– Whether, after consideration of the Report dated the 30 May, 2002, of the States Committee for Home Affairs, they are of opinion:

1. To approve the use of roadside breath testing for alcohol by approved devices, as described in that Report.
2. That the provisions of the Road Traffic (Drink Driving) (Guernsey) Law, 1989 shall be extended to:–
  - (a) include the requirement for a specimen of breath to be provided at the roadside and that it will be unlawful for a person to refuse or fail to provide without reasonable excuse;
  - (b) to extend the requirement to obtain blood or urine samples following a rejected sample of breath by the latest approved breath testing device currently used at police headquarters;
  - (c) to include a power of entry for an officer of police, for the purpose of requiring a person to provide a specimen of breath in a case where a road traffic accident involved injury to another person or for arresting a person whom he suspects of, committing an offence under that Law, or providing a positive breath test or has failed to do so.
3. That the provisions of the Road Traffic (Drink Driving) (Guernsey) Law, 1989, shall be extended to:–
  - (a) include a clause to permit the States, by way of Ordinance, to approve a device or devices for the testing of drivers for drugs;
  - (b) enable police officers to require a person who may be suspected of driving or being in charge of a vehicle on a road whilst unfit to drive through drugs, to provide a sample for testing, and that it would be unlawful for a person to refuse or fail to provide without reasonable excuse.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

*STATUTORY INSTRUMENT LAID BEFORE THE STATES*

**THE DRIVING TESTS AND DRIVING LICENCES (INCREASE OF FEES) REGULATIONS, 2002**

In pursuance of the provisions of section 2B(e) of the Motor Taxation and Licensing (Guernsey) Law, 1987, as amended, I lay before you herewith the Driving Tests and Driving Licences (Increase of Fees) Regulations, 2002, made by the States Traffic Committee on the 20th June, 2002.

EXPLANATORY NOTE

These Regulations set the fees that are chargeable for tests of competence to drive and driving licences with effect from 1 September, 2002, by amending the current fees that are set out in Schedule 2 and Schedule 3 respectively of the Driving Licences (Guernsey) Ordinance, 1995, as amended.

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

The Royal Court House,  
Guernsey.  
The 12th July, 2002.

**APPENDIX****STATES ADVISORY AND FINANCE COMMITTEE**

## ANNUAL REPORT OF THE DATA PROTECTION COMMISSIONER

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

5th June, 2002

Dear Sir,

**Annual Report of the Data Protection Commissioner**

The Committee has received the Data Protection Commissioner's report setting out the activities of his office for the year ended 31 December 2001.

Although there is no formal requirement to publish the annual reports of the Data Protection Commissioner until new legislation is enacted (probably during the latter part of 2002) the Commissioner has requested that this, his first annual report, be published as if the new legislation was already in place.

It is, of course, essential for the protection of the citizens of the Bailiwick and for its international reputation that the highest standards of Data Protection are established and maintained. The Committee therefore remains supportive of the work of the Commissioner and his office.

The Committee believes that the publication of this report shows the increasing commitment to Data Protection in the Bailiwick of Guernsey and is therefore pleased to support the Commissioner's request that his report for 2001 is included in a Billet d'Etat.

I should be grateful if you would arrange for the publication of the Data Protection Commissioner's report as an appendix to a Billet d'Etat.

Yours faithfully,

L. C. MORGAN

President,  
States Advisory and Finance Committee

**DATA PROTECTION COMMISSIONER****REPORT FOR 2001****CONTENTS**

	<b>Page</b>
Foreword	1581
Guernsey's Geography and Politics	1582
Council of Europe	1583
Legislation	1584
Staffing	1586
Raising Awareness	1588
External Liaison	1591
Other Issues	1593
Complaints	1594
Objectives for 2002	1595
Registration Statistics	1596
Financial Report	1597

*Bailiwick of Guernsey Data Protection Report for 2001*

## **FOREWORD**

I am pleased to present the first public report on Data Protection in the Bailiwick of Guernsey, covering the calendar year ending 31st December, 2001.

As this is my first report, I have taken the opportunity to include some background information and historical data to put the report into perspective.

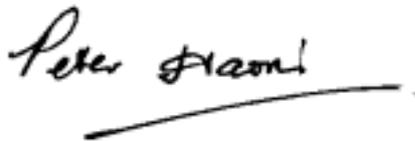
I was appointed to the post of Data Protection Commissioner for the Bailiwick of Guernsey in October 2001 and accordingly this report also covers work undertaken by my predecessor, Mr. Winston Bull.

I should like to express my appreciation for the work done by Mr. Bull (and his predecessor, Advocate Diana Thompson) in laying a firm foundation for the legislation that was passed by the States in November 2001 and in establishing many of the administrative procedures necessary for its effective implementation.

I also welcome the fact that the Advisory and Finance Committee agreed, on the recommendation of the former Commissioner, to a substantial increase in the resources to be devoted to Data Protection and that a separate office should be established to underline the independence of this function. This office opened in Frances House in January 2002.

These actions contributed to the process of ensuring that the Bailiwick will be recognised as having an adequate régime for the protection of personal data, thereby facilitating the free exchange of personal data between the Bailiwick, EU Member States and other adequate territories and regulating the flow of data to countries where the protection may be inadequate.

In the coming year I look forward to the commencement of the Law and to the realisation of the enhanced protection that it affords both to the citizens of the Bailiwick and to the clients of our international business community.

A handwritten signature in black ink, appearing to read "Peter Harris", with a horizontal line underneath it.

P.R. Harris

May 2002

*Bailiwick of Guernsey Data Protection Report for 2001*

## **GUERNSEY'S GEOGRAPHY AND POLITICS**

The Bailiwick of Guernsey is located in British waters in the Bay of St. Malo area of the English Channel and comprises the Island of Guernsey (with the adjacent inhabited islets of Herm and Jethou), Alderney and Sark. The Bailiwick was part of the Duchy of Normandy in the eleventh century when Duke William, following his conquest of England, also became King William I of England. It has since 1204 been a possession of the English Sovereign as successor to that part of the Duchy of Normandy which was not subsequently surrendered to the Kings of France.

The Bailiwick is not part of the United Kingdom nor the European Union and has no representation in the UK Parliament at Westminster nor at the European Parliament. It operates as an independent state with wide powers of self-government and generally neither receives subsidies from, nor pays contributions to, the United Kingdom or the European Union.

The United Kingdom government is responsible for the international relations and the defence of the Bailiwick.

The position of the Bailiwick in respect of the European Union is governed by Articles 25-27 of, and by Protocol 3 to, the 1972 Treaty of Accession of the United Kingdom to the EEC.

These Articles provide that the Community Treaties shall apply to the Bailiwick only to the limited extent described in the Protocol: in general, community legislation has no direct effect and may only be extended to the Bailiwick with the consent of its legislature, known as the States of Guernsey.

Although, as a consequence of Protocol 3, Guernsey is a "Third Country" as far as the European Union is concerned, it may, in appropriate cases, enact legislation that complies with relevant EU Directives.

More detailed information on the Bailiwick may be found on the individual websites of the government bodies of the islands that comprise the Bailiwick<sup>1</sup>

---

<sup>1</sup> [www.gov.gg](http://www.gov.gg) - [www.alderney.gov.gg](http://www.alderney.gov.gg) - [www.sark.gov.gg](http://www.sark.gov.gg)

*Bailiwick of Guernsey Data Protection Report for 2001*

## **COUNCIL OF EUROPE**

The Council of Europe<sup>1</sup> was formed immediately after the Second World War as a means of bringing stability to Europe by fostering co-operation between member states.

Any state can become a member of the Council of Europe provided that it accepts the principle of the rule of law and guarantees human rights and fundamental freedoms to anyone under its jurisdiction. There are now 43 Member States, and the UK was a founder-member.

The Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (108) was opened for signature in January 1981 and was the first legally binding international instrument in the data protection field. The UK ratified its signature of the Treaty in 1987 and extended its ratification to the Bailiwick of Guernsey at that time.

The Additional Protocol to Convention 108, opened for signature in November 2001, requires parties to set up independent supervisory authorities and to regulate the transborder flow of personal data. The UK signed the Protocol on 8th November 2001, extending its signature to cover the Bailiwick of Guernsey at that time.

---

<sup>1</sup> [www.coe.int](http://www.coe.int)

*Bailiwick of Guernsey Data Protection Report for 2001***LEGISLATION****Data Protection (Bailiwick of Guernsey) Law 1986**

The Data Protection (Bailiwick of Guernsey) Law 1986<sup>1</sup>, which came into effect in 1987, established eight principles of data protection:-

1. Information shall be obtained and processed fairly and lawfully.
2. Personal data shall be held for only one or more specified and lawful purposes
3. Personal data shall not be used or disclosed in any manner incompatible with that purpose or those purposes
4. Personal data shall be adequate and not excessive for those purposes
5. Personal data shall be accurate and where necessary, kept up to date
6. Personal data shall not be kept for longer than is necessary
7. An individual shall be entitled to be informed of and have access to any personal data held by a data user and where appropriate to have such data corrected or erased.
8. Appropriate security measures shall be taken

Following the passage of this legislation, the Bailiwick was able to be included in the United Kingdom's ratification of Council of Europe Convention 108 which established common minimum standards to be applied to the automated processing of personal data.

In 1995 the European Commission published a Directive on Data Protection, 95/46/EC, that specified more stringent criteria that Member States should transpose into their domestic legislation. These included increased rights for data subjects and a prohibition on the transfer of personal data to those countries that did not offer an adequate level of protection.

Member States were given three years to bring their legislation up to the standards of the Directive. The U.K. enacted the Data Protection Act (1998) to give effect to the Directive and the Act came into force on 1st March 2000.

**Data Protection (Bailiwick of Guernsey) Law 2001**

The Data Protection (Bailiwick of Guernsey) Law 2001 (to replace the current 1986 Law) is expected to be brought into force in the Summer of 2002. The *Projet de Loi* was approved by the States in November 2001, and by the States of Alderney and Sark Chief Pleas at the turn of the year.

During 2001 the former Commissioner and current Commissioner spent a large proportion of their time in liaison with the Law Officers and other interested parties who were involved in the development of this major item of legislation.

The intention to upgrade the current Law follows moves across Europe, via the 1995 European Directive on Data Protection to strengthen the rights for individuals in the face of advancing information technologies. Guernsey is closely modelling its new Law on the 1998 UK Act as the Bailiwick wishes to see its citizens with rights similar to those enjoyed by European citizens and to safeguard its trading position with Europe.

---

<sup>1</sup> Order in Council XXXII of 1996

*Bailiwick of Guernsey Data Protection Report for 2001*

The new Law will contain familiar elements from the current 1986 legislation including; the Data Protection Principles of good practice covering such things as accurate records, retention periods for data and appropriate security safeguards; a registration system; an independent supervisory authority to oversee data protection matters; and the data subject's right to have access to his or her personal data, held by say, his/her employer or bank and to correct it where inaccurate.

New areas will include some manually held records, sensitive data rules and (as mentioned above) additional rights for individuals. These will include;

- enhanced access rights
- the right to prevent processing for direct marketing purposes
- rights in relation to automated decision-taking
- the right to compensation
- rights in relation to the rectification, blocking and destruction of personal data
- the right to ask the Commissioner to assess whether the Act has been contravened by an organisation

An important element of the new Law will ensure that personal data is not transferred outside the Bailiwick or EEA countries (the European Union plus Norway, Iceland and Liechtenstein) unless it is to a country providing adequate security safeguards. EC findings have to date established that Switzerland, Hungary, and Canada offer adequate protection. As the USA does not have federal data protection laws US based companies can achieve compliance by adhering to the Safe Harbour Privacy Principles issued by the US Department of Commerce.

Where adequacy cannot be established, alternative safeguards may include the transfer being made with the consent of the individual or under appropriate inter company agreements or third party contracts (for details of EC decisions on standard contract clauses see<sup>1</sup> below).

A new exemption from the need to notify (formerly register) with the Commissioner's office will be included to cover the core business purposes of staff administration, advertising, marketing and public relations, accounts and records. This should assist some organisations although compliance with the good practice Principles will still be required.

The new Law will provide a period of transitional relief during which data controllers can bring their existing systems into compliance with the new provisions. Organisations already complying with the 1986 Law should be well placed to meet the requirements of the revised legislation.

---

<sup>1</sup> [http://www.europa.eu.int/comm/internal\\_market/en/dataprot/news/clauses2.htm](http://www.europa.eu.int/comm/internal_market/en/dataprot/news/clauses2.htm)

*Bailiwick of Guernsey Data Protection Report for 2001***STAFFING**

The 1986 Law provided for the Advisory and Finance Committee to undertake the roles and responsibilities of Data Protection in the Bailiwick.

The Committee initially appointed a Data Protection Officer, Michael Clarke, on a part-time basis, to carry out its responsibilities and, once the Law was fully in place, the role of Data Protection Officer was delegated to the Manager of Information Services.

Following the publication of the European Commission Data Protection Directive in 1995, it became apparent that an independent Commissioner would be needed before it would be possible for the Bailiwick to be granted adequate status by the Commission.

Accordingly, the Committee appointed Advocate Diana Thompson, in May 1998, to the position of Data Protection Commissioner (designate) again on a part-time basis. She was succeeded by Mr. Winston Bull in December 1999.

In July 2000, the States approved the drafting of new legislation and, in the interim, the Data Protection (Office of Commissioner) Ordinance<sup>1</sup> that created the office of an independent Commissioner. Mr. Bull's appointment as the first Commissioner for the Bailiwick was approved by the States. The office of Commissioner continues under the 2001 Data Protection Law, with amended responsibilities.

In January, 2001 the staff resources comprised the Commissioner, who worked part time, together with administrative assistance on an ad-hoc basis from the Information Services Department, the Policy Unit, and a part-time typist.

Following consideration of a paper by the Commissioner, the Advisory and Finance Committee agreed to increase the resources devoted to Data Protection.

The reasons for this increase in resource were identified as the need:

- a) to oversee the introduction and implementation of the new Law;
- b) to ensure that the Bailiwick was properly represented in international fora.

In April the office was pleased to acquire the services of Richard Ansell as temporary Assistant Commissioner, on secondment from the UK Information Commissioner's office in Wilmslow, Cheshire. His primary role, using his data protection experience of some sixteen years, has been to raise awareness of the forthcoming Law through the provision of seminars to both public and private sector organisations.

During the period April to December 2001, Mr. Ansell made 18 presentations, speaking to just over 600 people across the Bailiwick, with invitations being accepted to give seminars on both Alderney and Sark.

---

<sup>1</sup> Ordinance V of 2000.

*Bailiwick of Guernsey Data Protection Report for 2001*

The Assistant Commissioner has also gained experience of existing registration procedures and assisted with developing the new on-line notification system and related administrative procedures.

In July, the States approved the appointment of Dr. Peter Harris to the office of Data Protection Commissioner. He took up his appointment on a full time basis from 1st October and at the same time Mrs. Ozanne, who had provided part-time typing services for the office over many years, was formally appointed to the post of Administrative Assistant.

It is intended that, once Mr. Ansell's contract comes to an end, he will be replaced as Assistant Commissioner by an officer on secondment from the Civil Service who would be primarily responsible for ensuring compliance with the Law.

*Bailiwick of Guernsey Data Protection Report for 2001*

## **RAISING AWARENESS**

### **Publications**

A number of Guidance Notes have been produced during the year. These are accessible via the revised website and are available as hard copies from the Data Protection office. The Notes provide a broad overview of the following subjects:-

- Summary of the Law
- Implementation Timetable
- Guidance for Individuals
- Guidance for Charities
- Guidance for Small Businesses
- Guidance for States' Committees
- Guidance for Financial Institutions

### **Logo**

A new logo was developed for the office in order to enhance the corporate branding.

It comprises the familiar shield that is associated with the Bailiwick, surrounded by a "ring of protection", and has stylistic similarities to the logos used by some other data protection authorities around the world.

### **Media Releases**

Regular Press Releases were issued during the year, resulting in a dozen articles appearing in the Guernsey Press that included mention of Data Protection, and a number of mentions on TV News. The Commissioner was also interviewed on local radio about the implications of the forthcoming legislation.

### **Seminars**

A series of awareness seminars was given by the Assistant Commissioner to help explain the changes which the new Law will introduce. These seminars were aimed to appeal to a wide audience, from those new to data protection to experienced compliance officers.

Content included a brief look at the origins of data protection, the current 1986 Law, similarities with the new Law and the significant changes ahead. The expected implementation timetable for the new Law (including transitional arrangements) was covered and each session closed with an action plan for managing the changes. Through liaison with the Training Agency in Smith Street, seven 1½ hour presentations were provided to mainly private sector audiences. A further five were made to public sector staff arranged through the Civil Service Board Training and Development Unit. Feedback suggested that most delegates found the sessions useful and informative.

Shorter seminars were also given at a number of lunchtime meetings held by professional bodies and institutions.

*Bailiwick of Guernsey Data Protection Report for 2001*

In addition to the above, following discussions with the Guernsey Business School (GBS) The Assistant Commissioner attended and provided input to a number of IT Manager and Human Resource Manager Workshops held at the GBS site and the Peninsular Hotel.

**Website**

The website was renamed [www.dataprotection.gov.gg](http://www.dataprotection.gov.gg) for consistency with the UK and Jersey and to aid its location by search engines.

The range of information on the website was expanded during the year to include guidance on the effects of the new Law.

Requests for information packs are now routinely received from the website.

The *Projet de Loi* was published on the Internet as was the explanatory Policy Letter that was approved by the States in July 2000.

It is proposed to develop the website further in 2002 to include an on-line copy of the notification register and to provide an on-line means for data controllers to enter particulars of their processing to the notification register.

**Meetings Held**

*Credit Referencing Agencies* – Proposed regulations including a Statement of Rights for Individuals, whose details are held by Credit Reference Agencies, were discussed with local Agencies.

*Audit Commission* – The office met with the Commission on 14 May and provided a progress report on the new Law.

*Data Protection Working Party* – This public sector forum met on 29 June. Concerns of mutual interest included widening the use of the Guernsey Social Security Authority number, data sharing initiatives across States Departments and audit/data health checks.

Separate meetings were held with senior staff of the Traffic Committee and the Children Board to discuss compliance with the Data Protection Law.

*Guernsey Police/Avon and Somerset Constabulary* – A meeting was held in July to discuss the issue of enforced subject access and Guernsey Police's use of the UK Police National Computer. The right of subject access under the current Law allows individuals to know what is being held about them, broadly speaking, on computer and to obtain a copy of that information. This right is undermined to some degree by prospective employers in the UK and steps have been taken to remedy this on the mainland. The Bailiwick wishes to adopt appropriate safeguards in this area and the matter will be reviewed once the new Law is in place.

*Drug Strategy Unit* – The office met with Unit representatives in October to discuss the impact of data protection Law on proposals to generate statistics relating to the delivery of multi-agency services.

*Guernsey Post Office* – A meeting was held with a representative of the Post Office in November to discuss the data protection aspects of possible e-business ventures.

*Bailiwick of Guernsey Data Protection Report for 2001*

*Human Rights Act Workshop* – The Commissioner and his Assistant provided data protection input to a two day HRA workshop for public bodies organised by the Civil Service Board held at The Mallard Conference Centre on 12/13 December.

*Board of Health* – The Commissioner attended a meeting with the Board of Health and Medical Practices in December and provided data protection advice in relation to a number of medical issues.

*Guernsey Geographical Information Service* – The Commissioner continues as a member of the GGIS Management Board in order to provide data protection advice to the Board.

*Guernsey Association of On-line Enterprise* – The Commissioner was invited to participate in this liaison group run by the e-business team at the Board of Industry.

*Bailiwick of Guernsey Data Protection Report for 2001*

## **EXTERNAL LIAISON**

### **UK Government Liaison**

During the year responsibility for Data Protection moved from the Home Office to the Lord Chancellor's Department, although the officials within the Freedom of Information and Data Protection Unit remained the same.

The Commissioner maintained regular contact with the unit and attended the annual liaison meeting in London on 3 December together with his opposite numbers from Jersey and the Isle of Man.

A number of issues were discussed, including:

- Progress with the Islands' legislation;
- Implementation issues concerning the EC Data Protection and Telecommunications Directive;
- Implications of the Home Office anti-terrorism legislation;
- Police and Customs issues including the impact of the Criminal Records Bureau

Following consultation with Alderney and Sark, the Commissioner was able to recommend that the UK Government extend its signature of the Additional Protocol to European Convention 108 to the Bailiwick.

### **International Liaison**

*British and Irish Data Protection Authorities (BIDPA)* – Guernsey hosted this twice yearly gathering of data protection authorities from the UK, Jersey, Isle of Man and Republic of Ireland on 30 April/1 May. Topics discussed included the use of the Police National Computer by the Islands, privacy audits, credit reference agencies, work place monitoring of staff and cyber crime.

The second BIDPA meeting of the year was held as usual, at the U.K. Information Commissioner's offices in Wilmslow on 16/17 October. Whilst each authority presented a country report in the usual manner and discussed various areas of interest, the bulk of the meeting was concerned with structural planning for the 24<sup>th</sup> International Data Protection Conference in Cardiff from 8 – 11 September 2002. This event is being co-hosted by the BIDPA countries. Themes, speakers, venues etc. were discussed in conjunction with the conference organisers.

*The 23<sup>rd</sup> International Conference of Data Protection and Privacy Commissioners* -  
The Commissioner attended this conference held in Paris from 24 to 26 September 2001.

The immediate aftermath of the 11 September terrorism incident adversely affected the attendance with very few delegates from the U.S. being able to attend. Nevertheless over 350 delegates from over 50 states and 5 continents took part.

*Bailiwick of Guernsey Data Protection Report for 2001*

The theme of the Conference was Personal Privacy – a Human Right and the topics covered included:

Projects and People

The Third Millennium or The Technological Odyssey

Biometrics and Face Recognition

Localisation Techniques

Personal Data and Privacy Protection: the Pedagogics at Issue

Cybercrime and Cybersurveillance: for Cybertizenship

Private Life – Working Life

Health at the Heart of Files

Company Changes, Personalisation of Services

Technologies for Privacy Protection

Electronic Democracy

Companies and Personal Data Protection : what Initiatives and what Organisation to ensure Confidence

One World, One Privacy

The 2002 Conference is to be held in Cardiff and will be hosted jointly by the UK, Irish, Guernsey, Jersey and Isle of Man authorities. The Commissioner is grateful to the Advisory and Finance Committee for approving the funding required to participate as a joint host for this conference.

*Bailiwick of Guernsey Data Protection Report for 2001*

## **OTHER ISSUES**

### **Pensions Scheme Trustees**

Following enquiries from a number of insurance companies, a press release was issued to clarify the registration requirements for companies or individuals who act as trustees of staff pension schemes but use third party service providers in the UK or EEA to process the data.

### **Administrators of Company Trusts, Funds, etc.**

General advice was produced and incorporated into our Guidance Note for Financial Institutions to clarify the position where administrators act as a sole data controller managing the affairs of numerous client companies.

### **Commercial provision of data protection registration/notification services**

The UK Commissioner's Legal Department contacted the office concerning a commercial organisation offering a registration/notification service on a profit making basis. Whilst such a service is not illegal, steps have been taken to prevent any organisation establishing a business in the Bailiwick in a name similar to the Commissioner's title or office. This should ensure that those wishing to register/notify through official channels are not misled.

### **Police use of CCTV**

Following discussions with Guernsey Police, it was agreed that explanatory signs should be prominently displayed where individuals enter zones covered by close circuit television equipment installed for crime prevention purposes.

*Bailiwick of Guernsey Data Protection Report for 2001***COMPLAINTS**

Complaints received during the year included one regarding the format of an individual's address as displayed in the Guernsey Telecoms (GT) published telephone directory. This was resolved following our approach to GT.

Further allegations were made concerning the misuse of personal data gathered by an Island based organisation involved in a joint venture with a UK based body. However these allegations were not substantiated.

A further complaint concerned the fair obtaining of personal data gathered through an on-line public petition. Enquiries revealed that extensive disclosures of the data had not been made. Advice was provided on the need for privacy statements on websites explaining the uses and disclosures to which petitioners' details may be put.

The forced disclosure of personal data to ICANN, a body associated with the registration of internet domain names was also brought to our attention. This is an international matter which is only likely to be resolved through high level European action.

An individual contacted the office after he discovered that his ex-employer held a CD that contained some of his personal details. Following intervention by the Commissioner the data were destroyed.

The Commissioner was contacted by the French data protection agency (CNIL) over an allegation that an individual had received unsolicited e-mail "spam" from an organisation which had its registered office in Guernsey. Investigation revealed that the spam was not emanating from Guernsey, but the information provided to the CNIL assisted in the process of forcing the organisation to cease issuing the spam.

*Bailiwick of Guernsey Data Protection Report for 2001*

## **OBJECTIVES FOR 2002**

### *Legislation*

Once the new Law has received Royal Assent it will be necessary to develop the Statutory Instruments needed to bring it into force in 2002.

The impact of the European Commission Directive on Data Protection in Telecommunications will need to be considered in the context of local legislation.

### *Resources and Staffing*

A replacement for the Assistant Commissioner will need to be appointed and the staffing levels kept under review in the light of the volume of work needed.

### *New Premises*

As a further demonstration of the independence of the Commissioner, the office will relocate in January of 2002 from Sir Charles Frossard House, the States of Guernsey's administrative centre, to self-contained premises in the heart of St. Peter Port.

This will provide a convenient location for meetings with most private sector organisations or for visiting them at their premises. Equally importantly, it offers a central town based point of contact for the general public, which is separate from any States Offices to ensure confidentiality.

Bailiwick of Guernsey  
Data Protection Office  
Frances House  
Sir William Place  
St. Peter Port  
Guernsey  
GY1 1GX  
Channel Islands

Switchboard	+44 1481 742074
Facsimile	+44 1481 742077
E-Mail	<a href="mailto:dataprotection@gov.gg">dataprotection@gov.gg</a>
Website	<a href="http://www.dataprotection.gov.gg">www.dataprotection.gov.gg</a>

### *Raising Awareness*

The media awareness campaign will need to be continued in order to promote the new Law to business, the public sector and the general public. Further development of the website will take place to include on-line notification and access to the register.

### *External Liaison*

Further work will be needed on obtaining an adequacy declaration from the European Commission.

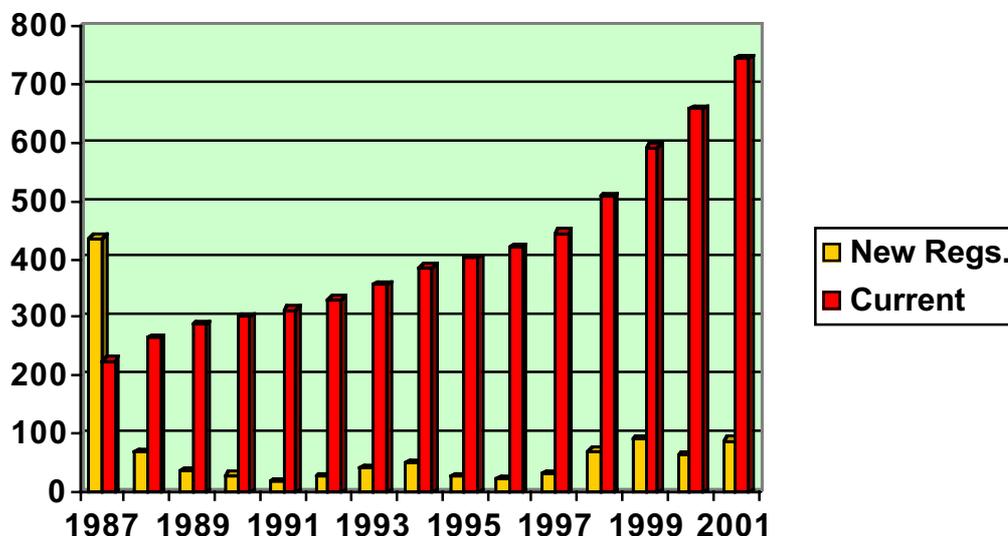
Significant effort is anticipated in respect of the organisation of the 24<sup>th</sup> International Conference in Cardiff.

Closer links need to be forged with European and International Commissioners.

### REGISTRATION STATISTICS

It is a requirement of current legislation for organisations that process personal data to register on a three yearly basis, with the Commissioner. A list of the organisations that have registered is available for inspection at the Greffe in Guernsey, the States Office in Alderney and the S n schal’s office in Sark.

The chart shows that of the 436 original registrations under the Law in 1987, 228 remained current in 2001. There was a gradual increase in registrations up to 1998 when the appointment of the first Commissioner designate resulted in a significant increase in the rate of registration.



**CHART OF CURRENT REGISTRATIONS**  
Date of first registration

The new Law provides for a similar process of notification on an annual basis, but organisations will not normally be required to notify until their current three year registrations expire. Following the implementation of the on-line notification system, it is intended that the register will be available on the Internet.

*Bailiwick of Guernsey Data Protection Report for 2001***FINANCIAL REPORT**

In 2001, the Data Protection Office was funded directly by the Advisory and Finance Committee and all fees received were paid into the General Revenue Account.

The Data Protection Office's Income and Expenditure, which was included within the accounts for the Advisory and Finance Committee, was as follows:

<b><u>INCOME</u></b>	<b>2001</b>	<b>2000</b>
	£	£
Data Protection Fees <sup>1</sup>	16,950	12,634
<b><u>EXPENDITURE</u></b>		
Rent	18,150	-
Salaries and Allowances	69,458	24,070
Travel and Subsistence	5,099	3,432
Furniture and Equipment	23,838	9
Publications	<u>2,176</u>	<u>1,432</u>
	<u>£118,721</u>	<u>£28,943</u>

<sup>1</sup>Fees are £75 for a new registration or to renew an existing registration for a three year period, with a lower fee being charged for a major update to an existing registration.

The Fee Income shown above is on a cash received basis.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 31ST DAY OF JULY, 2002

The States resolved as follows concerning Billet d'Etat No. XIX  
dated 12th July, 2002

**PROJET DE LOI**

entitled

**THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002**

- I. To approve the Projet de Loi entitled "The Insurance Business (Bailiwick of 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 INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES  
(BAILIWICK OF GUERNSEY) LAW, 2002**

- II. To approve the Projet de Loi entitled "The Insurance Managers and Insurance Intermediaries (Bailiwick of 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 CRIMINAL JUSTICE (FRAUD INVESTIGATION)  
(BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2002**

- III. To approve the Projet de Loi entitled "The Criminal Justice (Fraud Investigation) (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.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME)  
(BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2002**

- IV. To approve the draft Ordinance entitled "The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002", and to direct the same shall have effect as an Ordinance of the States.

**THE HOTEL CASINO CONCESSION (GUERNSEY) LAW, 2001 (COMMENCEMENT  
AND CONSEQUENTIAL AMENDMENT) ORDINANCE, 2002**

- V. To approve the draft Ordinance entitled "The Hotel Casino Concession (Guernsey) Law, 2001 (Commencement and Consequential Amendment) Ordinance, 2002", and to direct the same shall have effect as an Ordinance of the States.

**STATES GAMBLING CONTROL COMMITTEE**

NEW MEMBER

- VI. To elect Mr. Richard Cann as a member of the States Gambling Control Committee, who need not be a sitting member of the States, to complete the unexpired portion of the term of office of Mr. L. A. de la Mare, who has resigned as a member of that Committee, namely, to the 31st May, 2004.

**STATES PUBLIC THOROUGHFARES COMMITTEE**

NEW MEMBER

- VII. To elect Deputy F. Quinn as a member of the States Public Thoroughfares Committee to complete the unexpired portion of the term of office of Deputy D. A. Barrett, who has resigned as a member of that Committee, namely, to the 31st May, 2003.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 1ST DAY OF AUGUST, 2002

(Meeting adjourned from 31st July, 2002)

The States resolved as follows concerning Billet d'Etat No. XIX  
dated 12th July, 2002

**STATES ADVISORY AND FINANCE COMMITTEE**

**POLICE POWERS AND CRIMINAL EVIDENCE**

VIII. After consideration of the Report dated the 18th June, 2002 of the States Advisory and Finance Committee:-

1. That legislation shall be enacted along the lines set out in that Report regarding Police Powers and Criminal Evidence.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATES ADVISORY AND FINANCE COMMITTEE**

**ESTABLISHMENT OF THE OFFICE OF PUBLIC TRUSTEE**

IX. After consideration of the Report dated 20th June, 2002, of the States Advisory and Finance Committee:-

1. That an office of Public Trustee shall be established as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATES ADVISORY AND FINANCE COMMITTEE**

**REFERENDUMS**

X. After consideration of the Report dated 27th June, 2002, of the States Advisory and Finance Committee:-

1. That steps shall be taken to make provision for the holding of referendums in Guernsey in the manner detailed in paragraphs 18, 19 and 24 of that Report, SUBJECT to the modifications that:-
  - (i) referendums shall not be confined to questions of Guernsey's constitutional relationship with other jurisdictions;
  - (ii) requests to hold a referendum shall not be limited to cases in which the States Advisory and Finance Committee has so recommended; and

- (iii) the enabling legislation should provide that a referendum may be binding or consultative and that the States when resolving that a referendum shall be held shall resolve whether it shall be binding or consultative and that the necessary secondary legislation be prepared.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

#### **STATES ADVISORY AND FINANCE COMMITTEE**

##### **EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

- XI. After consideration of the Report dated the 26th June, 2002, of the States Advisory and Finance Committee:-

To request Her Majesty's Government to make a further declaration under the European Convention for the Protection of Human Rights and Fundamental Freedoms making the right of individual petition mandatory for a further period of five years with effect from the 14th January, 2001 in the Bailiwick of Guernsey.

#### **STATES ADVISORY AND FINANCE COMMITTEE**

##### **NEW NON-EXECUTIVE DIRECTORS OF GUERNSEY POST LIMITED AND GUERNSEY ELECTRICITY LIMITED**

- XII. After consideration of the Report dated the 25th June, 2002, of the States Advisory and Finance Committee:-

1. To appoint Mr. Terry Holder to serve as a non-executive director of Guernsey Post Limited.
2. To appoint Advocate Ian Beattie to serve as a non-executive director of Guernsey Electricity Limited.

#### **STATES COMMITTEE FOR HOME AFFAIRS**

##### **THE INTRODUCTION OF ROADSIDE ALCOHOL & DRUG TESTING DEVICES AND AMENDMENTS TO CURRENT 'DRINK DRIVING' LEGISLATION**

- XIII. After consideration of the Report dated the 30th May, 2002, of the States Committee for Home Affairs:-

1. To approve the use of roadside breath testing for alcohol by approved devices, as described in that Report.
2. That the provisions of the Road Traffic (Drink Driving) (Guernsey) Law, 1989 shall be extended to:-
  - (a) include the requirement for a specimen of breath to be provided at the roadside and that it will be unlawful for a person to refuse or fail to provide without reasonable excuse;

- (b) to extend the requirement to obtain blood or urine samples following a rejected sample of breath by the latest approved breath testing device currently used at police headquarters;
  - (c) to include a power of entry for an officer of police, for the purpose of requiring a person to provide a specimen of breath in a case where a road traffic accident involved injury to another person or for arresting a person whom he suspects of, committing an offence under that Law, or providing a positive breath test or has failed to do so.
3. That the provisions of the Road Traffic (Drink Driving) (Guernsey) Law, 1989, shall be extended to:-
- (a) include a clause to permit the States, by way of Ordinance, to approve a device or devices for the testing of drivers for drugs;
  - (b) enable police officers to require a person who may be suspected of driving or being in charge of a vehicle on a road whilst unfit to drive through drugs, to provide a sample for testing, and that it would be unlawful for a person to refuse or fail to provide without reasonable excuse.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

***STATUTORY INSTRUMENT LAID BEFORE THE STATES***

**THE DRIVING TESTS AND DRIVING LICENCES  
(INCREASE OF FEES) REGULATIONS, 2002**

In pursuance of the provisions of section 2B(e) of the Motor Taxation and Licensing (Guernsey) Law, 1987, as amended, the above Regulations made by the States Traffic Committee on the 20th June, 2002, were laid before the States.

K. H. TOUGH  
HER MAJESTY'S GREFFIER