



BILLET D'ÉTAT

WEDNESDAY, 25th APRIL, 2007

XIII
2007

1. Projet de Loi entitled "The Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law, p. 753
2. The Control of Intoxicating Liquor (Designated Public Places) Ordinance, 2007, p. 753
3. The Social Security (Reciprocal Agreement with Ireland) Ordinance, 2007, p. 753
4. Treasury and Resources Department - New Member, p. 754
5. Scrutiny Committee - New Member, p. 754
6. Public Services Department - Personal Watercraft - Registration Number Display Requirements, p. 755
7. Health and Social Services Department - Regulation of Health and Medical Professions - Registration of Nurses and Midwives, p. 757
8. Scrutiny Committee - Scrutiny Review of Milk Distribution Proposals, p. 772
9. Commerce and Employment Department - Review of Support for Island Dairy Farming, p. 862
10. Panel of Members (Constituted by the Administrative Decisions (Review) (Guernsey) Laws, 1986-1993) - Report of the Review Board 2006, p. 945

Ordinance laid before the States

The Motorcycle Licence Plates (Guernsey and Alderney) Ordinance, 2007, p. 946

Statutory Instrument laid before the States

The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No 2) Regulations, 2007, p. 946

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 25th APRIL, 2007**, at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
5 April 2007

PROJET DE LOI

entitled

**THE ROAD TRAFFIC (PARKING FEES AND CHARGES)
(ENABLING PROVISIONS) (GUERNSEY) LAW, 2007**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled “The Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law, 2007” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE CONTROL OF INTOXICATING LIQUOR
(DESIGNATED PUBLIC PLACES) ORDINANCE, 2007**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Control of Intoxicating Liquor (Designated Public Places) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.

**THE SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH IRELAND)
ORDINANCE, 2007**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Social Security (Reciprocal Agreement with Ireland) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.

TREASURY AND RESOURCES DEPARTMENT

NEW MEMBER

The States are asked:-

IV.- To elect a sitting Member of the States as a member of the Treasury and Resources Department to complete the unexpired portion of the term of office of Deputy C N K Parkinson, who has resigned as a member of that Department, namely to serve until May 2008 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

SCRUTINY COMMITTEE

NEW MEMBER

The States are asked:-

V.- To elect a sitting Member of the States as a member of the Scrutiny Committee to complete the unexpired portion of the term of office of Deputy E W Walters, who has resigned as a member of that Committee, namely to serve until May 2008 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

PUBLIC SERVICES DEPARTMENT

PERSONAL WATERCRAFT – REGISTRATION NUMBER DISPLAY REQUIREMENTS

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

9th February 2007

Dear Sir

Executive Summary

The Public Services Department wishes to obtain delegated authority from the States to amend by Order the registration number display requirements presently applicable to local personal watercraft.

Display Requirements

Personal watercraft display requirements are presently set out in the Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance 1970 (XIV of 1970), as amended by Ordinance XI of 1994. These can currently be changed only by reference to the States. A requirement, detailed below, has arisen to amend the rules slightly and the Public Services Department feels that having to trouble the States with such a matter is not the best use of the States' time and proposes to endeavour to obviate such a need in the future.

The specific issue which has prompted this report is that personal watercraft or jetskis are presently subject to a requirement to display registration numbers 6" high, at least 1¼" wide "on the exterior of the hull at the transom or the extreme after end of the boat", and "black on a white ground".

The Public Services Department considers that the display of registration numbers in the position presently described is unrealistic and impractical. Personal watercraft have very little freeboard and, in practice, a transom of minimal height upon which to display the numerals and lettering of the size currently prescribed. Such markings would be invisible when the vessel is afloat, thereby rendering the requirement to display identification effectively worthless. The Department considers that personal watercraft should be required to display their registration numbers in such a location on the craft so as to ensure that they can clearly be seen. In practice, this would be on the foredeck and

it would be necessary for the number to be replicated on both the left and right hand sides in order to ensure visibility from all viewpoints.

The Public Services Department also considers that the requirement for numbering to be specifically in black and white is also unnecessary, and that display in a distinctive colour, as is presently required for vessels other than speedboats, is sufficient for personal watercraft.

However, more fundamentally, the Department considers, as intimated above, that the need to refer such a minor matter to the States is really something which could sensibly be avoided and should more properly be dealt with at Departmental level anyway. This will also enable future changes brought about by changes to the way any type of boat is constructed to be introduced without the need to revert to the States.

Recommendation

The Public Services Department recommends the States to approve the preparation of legislation to ensure that authority is delegated directly to the Public Services Department to amend by Order registration number display requirements, as set out in the Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance 1970, in the future.

Yours faithfully

William M Bell
Minister

(NB The Policy Council supports the proposals.)

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

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 9th February, 2007, of the Public Services Department, they are of the opinion:-

1. To approve the preparation of legislation to ensure that, in the future, authority is delegated directly to the Public Services Department to amend by Order registration number display requirements, as set out in the Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance 1970.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HEALTH AND SOCIAL SERVICES DEPARTMENT

REGULATION OF HEALTH AND MEDICAL PROFESSIONS - REGISTRATION OF NURSES AND MIDWIVES

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

14th February 2007

Dear Sir

EXECUTIVE SUMMARY

1. The Health and Social Services Department is in the process of reviewing and, where appropriate, updating or revising the general law and existing statutory provision relating to health and social services. In the course of its review, it has become apparent that several pieces of legislation have become outdated over the preceding few years. The legislation that controls the registration and authorisation to practise for all nurses, midwives and health visitors in Guernsey and Alderney is one such piece of legislation.
2. The States passed a resolution (Billet d'Etat XIV, 1987) approving in principle the introduction of legislation to cover nursing, midwifery and health visiting in Guernsey, based on the legislation current in the UK at that time. The outcome of this was the Nurses, Midwives and Health Visitors Ordinance, 1987.
3. This Ordinance refers to the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC). In April 2002 the UK Government introduced the Nursing and Midwifery Order, 2001, which replaced previous UK legislation, and created the Nursing and Midwifery Council, as the professional and regulatory body for nurses and midwives.
4. In the circumstances the Health and Social Services Department propose that that the Nurses, Midwives and Health Visitors Ordinance, 1987, be repealed and replaced with a completely new Ordinance which reflects, and is based upon, the legislation current in the UK at this time, ie the Nursing and Midwifery Order, 2001. This proposed new Ordinance would contain provisions similar to those in the recently enacted Registered Health Professionals Ordinance, 2006

5. During the course of discussions with the Law Officers of the Crown in connection with the proposed repeal and replacement of the 1987 Ordinance, it was suggested that the opportunity should be taken to enact a general enabling *Projet de Loi* giving the States the specific statutory power, exercisable by Ordinance, to regulate all health and medical professions and the provision of health and medical services generally. Any new Ordinance relating to nurses, midwives and health visitors would then be made under that new Law and not purely in exercise of customary powers which have, in the past, been relied upon for the purposes of the regulation of health and medical professions.
6. The main points the proposed new Ordinance for Nurses and Midwives will cover are as follows:
 - All nurses and midwives (including specialist community public health nurses) working in the Islands must be registered with professional and regulatory body for nurses, midwives and specialist community public health nurses in the UK and must have paid the appropriate fee for registration.
 - All nurses and midwives (including specialist community public health nurses) working in the Islands must hold approved qualifications as described in Article 13 of the Nursing and Midwifery Order, 2001.
 - All nurses and midwives (including specialist community public health nurses) working in the Islands will be governed by the professional and regulatory body's fitness to practise requirements as detailed in the Nursing and Midwifery Order, 2001, midwives rules and standards and nursing rules and standards as produced by the professional and regulatory body from time to time.
 - Any lapse of registration for nurses and midwives (including specialist community public health nurses) working in the Islands will be governed by Article 12 of the Nursing and Midwifery Order, 2001.
 - Students being prepared for entry onto the register will need to meet standards of education and training as laid down by the Nursing and Midwifery Order, 2001 and the professional and regulatory body's rules.
 - Midwives will be required to adhere to rules as to midwifery practice and local supervision of midwives as outlined in the Nursing and Midwifery Order, 2001.
7. The proposed new Ordinance for Nurses and Midwives is intended to be non-specific in terms of which professional body is in existence at any one time in the UK, and this should prolong the life of this legislation.
8. Consultation was undertaken with the profession both within, and outwith, the Health and Social Services Department. Those that responded to the

consultation either had no comment to make or generally felt that this legislation was a positive and sensible solution.

BACKGROUND

9. The current Ordinance that controls the registration and authorisation to practise for nurses, midwives and health visitors in the Islands is the Nurses, Midwives and Health Visitors Ordinance, 1987.
10. This Ordinance is now outdated and in need of review. This paper aims to outline the history of nurses, midwives and health visitor's regulation in the Islands, and to provide some background on developments in this area that have been undertaken in the UK. The proposals contained in this paper aim to bring local legislation up to date and, therefore, reflect current UK, national, registration and authorisation arrangements for nurses and midwives and to introduce the general enabling primary legislation for the regulation of all health and medical professions as referred to in paragraph 5. In due course, the Department intends to make recommendations concerning the regulation of other health and medical professions such as doctors, dentists and pharmacists. (It is planned to update the Doctors, Dentists and Pharmacists Ordinance, 1987, when the General Medical Council have agreed revalidation criteria for doctors.)
11. Prior to the 1987 Ordinance, midwives were regulated under the Midwives Ordinance 1950, which covered two main subjects:
 - a). It required persons practising midwifery to be properly qualified and to conform to certain rules. It also stated that it is illegal for any person other than a registered midwife, or a registered medical practitioner to attend a woman in childbirth other than in an emergency.
 - b). It made provision for the Board of Health to meet the fees of doctors called "in a case of sudden and urgent need in a case of childbirth" with the proviso that the fees may be recovered in the whole or in part from the patient or the person liable to maintain the patient.
12. The only legislation prior to the 1987 Ordinance relating to nurses was the Nurses (Use of Title) Ordinance, 1973, and the Nurses (Use of Title) Order, 1974. This legislation related solely to defining those persons who are entitled to use the title of nurse and made no reference to the UK statutory bodies, e.g. the forerunner of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC).
13. Subsequently, in 1987 the States passed a resolution (Billet d'Etat XIV, 1987) approving in principle the introduction of legislation to cover nursing, midwifery and health visiting in Guernsey, based on the legislation current in the UK at that time. The outcome of this was the Nurses, Midwives and Health Visitors Ordinance, 1987.

14. This Ordinance regulates areas such as:
 - Authority to practise
 - Designated officer (Supervisor of Midwives)
 - Attendance at childbirth (similar to the 1950 Ordinance in that a person other than a registered midwife or a registered medical practitioner shall not attend a woman in childbirth unless it is an emergency.)
 - Restriction on use of medicines
 - Record keeping
 - Discipline and Training
15. In April 2002 the UK Government introduced the Nursing and Midwifery Order, 2001, which established the Nursing and Midwifery Council (NMC) as the professional and regulatory body for nurses, midwives and specialist community public health nurses (specialist community public health nurses includes health visitors, school nurses and occupational health nurses). The NMC replaced the UKCC in this respect.
16. The core function of the NMC is to establish and improve standards of nursing and midwifery care in order to serve and protect the public. The NMC is required by the Nursing and Midwifery Order, 2001 to establish and maintain a register of qualified nurses and midwives, and from time to time, establish standards of proficiency to be met by applicants to different parts of the register. These standards are considered necessary for safe and effective practise.

The NMC state that their key tasks are to:

- maintain a register listing all nurses and midwives;
- set standards and guidelines for nursing and midwifery conduct, performance and ethics;
- provide advice for registrants on professional standards;
- quality assure nursing and midwifery education;
- set standards and provide guidance for local supervising authorities for midwives;
- consider allegations of misconduct, lack of competence or unfitness to practise due to ill health

17. In 2006, the States approved an Ordinance, which regulates registered health professionals. This Ordinance, entitled the Registered Health Professionals Ordinance, 2006, is now implemented and the Health and Social Services Department manages the registers of these professions and authorisation to practise.
18. The Senior Manager of Administration, Governance and Risk Management for the Department's Corporate Services function has held discussions with the Law Officers of the Crown in connection with the proposals outlined in this paper. It has been noted in those discussions that statutory regulation of health and medical professions has traditionally been implemented by Ordinances made by the States under customary powers. Whilst no one has challenged the powers of the States to regulate in this area by way of the exercise of customary powers, the Law Officers believe that it would be prudent for the purposes of future regulatory legislation to create specific statutory powers enabling the States to regulate by Ordinances made under a Law. This would then enable the States to rely on both customary and statutory regulatory powers for the purposes of regulation in the area of health and medical professions and minimise the possibility of any challenge to the powers of the States.
19. Once a general enabling Projet has been approved and brought into force, a new Ordinance regulating Nurses, Midwives and Health Visitors would be brought to the States for enactment. Further, in due course, an Ordinance regulating Doctors, Dentists and Pharmacists (and possibly other health or medical professionals) would also be drafted for States approval.

CURRENT HSSD POLICY

20. It is current Health and Social Services Department policy that all nurses and midwives working for the Department be fully registered with the NMC and are eligible to practise.
21. Additionally the current Ordinance requires that any person who applies to the Board to be authorised to practise shall be so authorised if the Board is satisfied that the applicant is registered to practise in the UK, and is not subject to referral to the Professional Conduct Committee.

CONSULTATION

22. The head of profession for nursing and midwifery in Guernsey is the Director of Services for Adults. The Director of Services for Adults proposed that the Senior Manager, Health and Social Studies be involved in the development of the new ordinance. Consultation was also undertaken with nurses that work in the private sector, nursing unions and with other interested parties, ie the Social Security Department, the Housing Department, the GP Practices and the Medical Specialist Group and nursing and residential homes. A consultation

document was also posted on the States website inviting comments. The responses to this consultation are summarised below:

The Social Security Department fully support the proposed changes to the legislation.

The Home Department had no comment to make.

The Housing Department did not consider the proposals would have any implications on their staff.

Guernsey Nursing Homes Ltd reviewed the proposals and had no comment to make.

The Medical Specialist Group had no comment to make.

The Sark Medical Committee indicated they would like to reserve their position as to whether Sark should be included in the proposed legislation until they have reviewed the draft legislative document in its entirety and considered the full implications.

The Sark doctor was of a similar opinion.

The Healthcare Group Chairman indicted the support of the Group for the proposals.

PROPOSED LEGISLATION

23. It is proposed that a *Projet de Loi* be produced which would create enabling legislation under which such professions as registered health professionals, where an Ordinance already exists, and nurses and midwives, proposals for which are contained in this report, would be regulated. The advice of the Law Officers is that this enabling Law could also be used to provide for the revised regulation of doctors, dentists and pharmacists and other health and medical professions in due course. They advise that the powers created by such a Law should also be wide enough to enable the provision of all health, medical and related services in Guernsey and Alderney to be regulated in accordance with the best modern practices and standards
24. It is proposed that the current Nurses, Midwives and Health Visitors Ordinance, 1987, be repealed and replaced with a completely new Ordinance which reflects legislation current in the UK at this time. This concept is in line with the States resolution contained in *Billet d'Etat XIV*, 1987.
25. The Health and Social Services Department does not have the resources, or the knowledge and expertise to manage its own version of a professional and regulatory body for nurses, midwives and specialist community public health

nurses. It is therefore proposed that the new Ordinance reflects this and makes provision for all nurses and midwives working, or wishing to work, in Guernsey and Alderney, to be fully registered with the professional and regulatory body for nurses, midwives and specialist community public health nurses current in the UK at that time (currently the NMC), or the successor thereto, and be eligible to practise under the conditions of the professional and regulatory body. (Note – wherever NMC is referred to this will include its successor(s).)

26. The NMC has specific rules and standards for nurses and midwives, which regulate the behaviour and other statutory requirements of the profession. Instead of re-inventing these standards in a Guernsey version, it is proposed to adopt them and incorporate them in new legislation.
27. In terms of a new Ordinance it is proposed that it be based on current UK legislation, ie The Nursing and Midwifery Order, 2001. It should be noted, however, that the Nursing and Midwifery Order, 2001 refers to a number of other UK laws, which may not be appropriate in the Islands. Where this is the case local legislation will be referenced in the legislation, as appropriate.
28. The suggested title of the new Ordinance is The Nursing and Midwifery Ordinance, 2007. The current Ordinance applies to Guernsey, Herm, Jethou and Alderney. It is proposed that the new Ordinance also applies to these islands. Sark Chief Pleas were consulted and have indicated they would like to reserve their position as to whether Sark should be included in any Guernsey and Alderney proposed legislation, until they have reviewed any draft legislative document in its entirety and considered the full implications. The Department's view is that the regulation of health and medical professions in Sark is a matter for the Chief Pleas of Sark and that they should be left to decide whether or not to enact legislation for Sark. The Department, however, is prepared to provide administrative and other assistance/expertise to Sark in relation to regulation in this area should Sark request it and subject to any budgetary constraints.
29. In the new Nurses and Midwives Ordinance it is proposed that other than using the UK law as the baseline, a number of areas are specifically referred to. These are as follows:
 - All nurses and midwives (including specialist community public health nurses) working, or wishing to work, in the Islands must be registered with the professional and regulatory body for nurses, midwives and specialist community public health nurses in the UK and must have paid the appropriate fee for registration.
 - All nurses and midwives (including specialist community public health nurses) working, or wishing to work, in the Islands must hold approved qualifications as described in Article 13 of the Nursing and Midwifery Order, 2001.

- All nurses and midwives (including specialist community public health nurses) working, or wishing to work, in the Islands will be governed by the professional and regulatory body's fitness to practise requirements as detailed in the Nursing and Midwifery Order, 2001, midwives rules and standards and nursing rules and standards as produced by the professional and regulatory body from time to time.
- Any lapse of registration for nurses and midwives (including specialist community public health nurses) working in the Islands will be governed by Article 12 of the Nursing and Midwifery Order, 2001.
- Students being prepared for entry onto the register will need to meet standards of education and training as laid down by the Nursing and Midwifery Order, 2001 and the professional and regulatory body's rules.
- Midwives will be required to adhere to rules as to midwifery practice and local supervision of midwives as outlined in the Nursing and Midwifery Order, 2001.
- The Health and Social Services Department will maintain a register of nurses and midwives who, when employed by doctors under the terms of the Doctors, Dentists and Pharmacists, Ordinance, 1987, are approved to provide services which may be eligible for benefit under the Health Service (Benefit) (Guernsey) Law, 1990.

CONCLUSIONS

30. An Ordinance already exists which regulates registered health professionals and it is 'stand alone', as is the doctors, Dentists and Pharmacists Ordinance, 1987. Neither of these Ordinances is subsidiary to any primary legislation, which could be considered as something of an anomaly. The proposals contained in this report seek to address this whilst not changing the Registered Health Professionals Ordinance, 2006, but allowing scope to include nurses and midwives now and doctors, dentists and pharmacists in due course.
31. The current legislation regulating the authorisation to practise for nurses, midwives and health visitors in the Islands of Guernsey is the Nurses, Midwives and Health Visitors Ordinance, 1987. This legislation is now outdated and needs to be reviewed.
32. The Health and Social Services Department does not have the resources or expertise to undertake its own registration and authorisation service due to the complexity of the requirements.
33. It is therefore proposed that, in line with the States resolution contained in Billet d'Etat XIV, 1987, legislation controlling these disciplines continue to be based on current UK legislation, in this case the Nursing and Midwifery Order, 2001,

and that the current, 1987 Ordinance be repealed and replaced with new legislation.

RECOMMENDATIONS

34. The Health and Social Services Department recommends that:

- a) The States approve the enactment of a general enabling Law which will create specific statutory powers for the States to regulate health and medical professionals and control the provision of health, medical and related services in Guernsey and Alderney in accordance with the best modern practices and standards,
- b) The Nurses, Midwives and Health Visitors Ordinance, 1987 be repealed, and replaced with new legislation made under the new Law referred to at paragraph a) and as described in this report; and
- c) The Law Officers of the Crown be directed to prepare legislation such as may be necessary to give effect to the foregoing.

Yours faithfully

P J Roffey
Minister

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Our ref: IBG/psl

8 January 2007

Mr Richard Evans
Senior Manager Administration,
Governance and risk Management
Health and Social Services Department
Corporate Headquarters
Le Vauquiedor
St Andrews
Guernsey
GY6 8TW

Dear Richard

REGISTRATION OF NURSES AND MIDWIVES LAW – CONSULTATION

I was sent a copy of this Consultation Paper by Peter Roffey. I have read through the document and it would all seem to make excellent sense to me. It would be foolish for HSSD to duplicate the NMC role and a waste of resources. I, therefore, think that the proposal for the new Nursing and Midwifery (Bailiwick of Guernsey) Ordinance, 2007 would appear to make excellent sense.

Should you require any further details please do not hesitate to get in touch with me.

With many thanks.

Yours sincerely

Dr Ian Gee MB BS MRCGP
COBO HEALTH CENTRE

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**SOCIAL SECURITY**

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

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Deputy P J Roffey
Minister
Health and Social Services Department
St Andrews
Guernsey
GY6 8TW

Our Ref: ML

Your Ref:

Date: 19 January 2007

Dear Deputy Roffey

Registration of Nurses and Midwives Law - consultation

Thank you for your letter of 30 November 2006, with attached consultation document.

The Social Security Department considered this matter at its meeting on 11 January 2007 and fully supported the proposed changes to the legislation.

Yours sincerely

Mary Lowe
Minister



A Committee representing the
Chief Pleas of the Island of Sark.

THE SARK MEDICAL COMMITTEE

Committee Office
SARK
CHANNEL ISLANDS
GY9 0SF

19 January 2007

Mr R Evans
Senior Manager Administration, Governance and Risk Management
Health and Social Services Department
Corporate Headquarters
Le Vauquiedor
St Andrews
Guernsey, GY6 8TW

By email to revans@health.gov.gg

Dear Mr Evans,

Registration of Nurses and Midwives Law – Consultation document

A copy of the above document was sent by Minister Roffey to Sark's General Purposes and Finance Committee, who in turn forwarded the document to my committee as the matter falls within our mandate.

We have reviewed the document and would like to reserve our position, as to whether Sark should be included in the proposed new legislation, until we have reviewed the draft legislative document in its entirety, so that we may fully appreciate the implications.

Whilst we would like the legislation to apply to all registered nurses and midwives working on our island in the future we are mindful of the invaluable role that our current informal 'home carers' have in the community, in consultation with our Medical Officer of Health, and would not wish to approve a prospective legislation that might overly inhibit their role. We would prefer to select sections of the Law that would apply to Sark as appropriate.

I am happy for the above comments to be included in the States Report and look forward to receiving a copy of the draft Law in due course.

Yours sincerely,

Claire Hester

President of the Sark Medical Committee.

The Minister
Health and Social Services Department
Corporate Headquarters
Le Vauquiedor
ST MARTIN
GY6 8TW

Dear Deputy Roffey

Thank you for your letter dated 30 November 2006, enclosing a consultation document regarding the above.

The proposals outlined in the document will only affect the handful of professional nurses employed by the Housing Department. One of those - the Department's Coordinator of Residential Care - has reviewed the document: she does not consider that the proposals will have any implications for her or her staff.

Yours, sincerely

[Handwritten signature]

D Jones
Minister

cc Coordinator of Residential Care

emails to Richard Evans

6 December 2006

Registration of Nurses and Midwives Law

Thank you for your letter and the consultation document regarding the Registration of Nurses and Midwives Law.

I have reviewed the document with our Matron, Cathy Bailey, and can confirm that we have no problem with this or have any comments regarding the proposed legislation. Thank you for involving us.

With kind regards,

Tony Woodland
Guernsey Nursing Homes Ltd.

11 December 2006

Registration of Nurses and Midwives Law – Consultation

I refer to the letter dated 5 December 2006, your reference RE/rsm, from your Minister to the Minister, Home Department.

I can confirm that the Home Department does not wish to make any comment in relation to the new proposed legislation.

Regards

Mark Lempriere
Home Department

(NB The Policy Council supports the proposals.)

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

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 14th February, 2007, of the Health and Social Services Department, they are of the opinion:-

1. To approve the enactment of a general enabling Law which will create specific statutory powers for the States to regulate health and medical professionals and control the provision of health, medical and related services in Guernsey and Alderney in accordance with the best modern practices and standards.
2. That the Nurses, Midwives and Health Visitors Ordinance, 1987 be repealed, and replaced with new legislation made under the new Law referred to in proposition 1 and as described in that Report.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

SCRUTINY COMMITTEE

SCRUTINY REVIEW OF MILK DISTRIBUTION PROPOSALS

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

23rd February 2007

Dear Sir

1. EXECUTIVE SUMMARY

- 1.1 This States Report sets out the background to, and the conclusions and recommended actions arising from, the Scrutiny Committee's Review of the Commerce and Employment Department's proposals for changes to the sale and distribution of Guernsey milk and its recommendation to repeal the Milk Law. The full Review Report is appended to this Report as Appendix 1.
- 1.2 The Scrutiny Committee's Review Report concluded that the Department's willingness to tackle a clearly difficult situation it had inherited and to initiate change has been positive. It was the Department's haste to bring change forward ahead of its wider strategy, its plan for implementation and its communication of its intended strategy that the Committee found to be flawed.
- 1.3 The Department¹ co-operated fully with the Review and agreed to delay implementing changes and finalising its strategy for the industry until the Scrutiny Committee had completed its Review. The Department and the Committee also agreed, subject to the Policy Council's agreement, to submit the Department's revised strategy for the future of the dairy industry and the Committee's Review Report to the same States meeting.
- 1.4 The Committee has not carried out an investigation into the efficacy of the current proposals, but it is pleased to note that the Department has revised its strategy having taken into account the Committee's Review recommendations. States Members will be able to judge for themselves how far the Department has gone to addressing the issues raised in the Review process. The Committee will

¹ All references to 'the Department' throughout this Report refer to the Commerce and Employment Department.

continue to monitor the actions taken as a result of its Review recommendations and will be assessing the extent to which these have been implemented in due course.

2. BACKGROUND

- 2.1 At the end of September 2005 the Commerce and Employment Department announced that it would be removing restrictions on the retail price of milk with effect from 30th October 2005. It would also be establishing a common ‘gate price’ for milk purchased from the Dairy, which would no longer be exclusively sold to roundsmen² but to any Dairy account holder. In addition the Department stated that it would be submitting a States Report to the November 2005 States meeting that would set out proposals for the future of the dairy industry and include a recommendation to repeal the 1955 Milk Law.
- 2.2 The Department agreed to delay implementing changes and finalising its strategy for the industry until the Scrutiny Committee completed its Review into the above proposals. The Committee is grateful to the Commerce and Employment Department for its full cooperation with the Review process.
- 2.3 Deputies Pritchard and Le Moignan and Alderney Representative Cox, acting as the Panel’s Chairman, were appointed by the Committee to carry out this investigation. The Committee also decided to invite Mr Dudley Jehan and Mr Andrew Ozanne, well respected businessmen, to sit on the Panel. The Committee is grateful to them for their invaluable assistance, freely given, in carrying out the Review. Deputy Pritchard subsequently withdrew from the Panel after the public hearing and before the drafting of the Review Report, due to a possible ‘special interest’ identified during the course of the investigation.
- 2.4 The Scrutiny Panel considered submissions from the Commerce and Employment Department, representatives from farmers’ groups (the Guernsey Farmers’ Association and the Royal Guernsey Agricultural and Horticultural Society) and the Guernsey Milk Retailers’ Association (G.M.R.A). A formal, public hearing was held over the period 14th to 29th November 2005. The Panel considered over 160 written submissions received from the general public in response to the Committee’s Review consultation and the G.M.R.A also presented to the Panel a petition of support signed by 6,644 people. The Committee is grateful to the significant contributions from the farmers’ groups, the G.M.R.A and the general public to the Review process.
- 2.5 The Scrutiny Committee completed and published its Review of the Department’s proposals in May 2006. The report is now being laid before the States at the same time as the Commerce and Employment Department’s revised

² The use of the term ‘roundsmen’ refers to milk retailers (represented by the Guernsey Milk Retailers’ Association) currently licensed under the legislation to buy milk from the Dairy and sell it.

States Report on the future of dairy industry policy, by arrangement with that Department.

- 2.6 This States Report is presented on behalf of the Committee by Deputy Le Moignan, having been authorised by the Committee to take this forward, along with Deputies Gollop, de Jersey and Lewis.
- 2.7 As previously stated, Deputy Pritchard withdrew from consideration of this issue at an early stage of the Review process and has not taken any part in the drafting of the Review Report or this States Report due to the identification of a possible 'special interest'. Deputies Staples, Maindonald, and Walters have also declared an actual or possible 'special interest' and withdrawn from discussion on this topic and have taken no part in the Review process or consideration of this States Report. The Committee regrets that Alderney States Member Mr. Richard Cox is not able to present this Report to the States, having completed the Review process as Chairman of the investigating Panel, as he was not re-elected as Alderney Representative to the States. To avoid further delay in the consideration of this important matter, the Committee determined to proceed rather than wait for the election of a replacement Member, albeit that only four Members of the Committee were eligible to present this Report.
- 2.8 The Committee will be reviewing its processes and procedures and updating its *Guide to Scrutiny* according to the lessons learnt in this Review. In particular, it will be seeking to expand its procedures in relation to dealing with 'protected' information and 'special interest'.

3. REVIEW CONCLUSIONS

- 3.1 The Department's commercial focus for the operation of the Dairy, its efforts to seek to drive efficiencies and value for money in all elements of the dairy supply chain and its ultimate objectives to maintain farm incomes and reduce States subsidy of the industry, were all positive examples of the Department delivering its mandate and furthering States objectives.
- 3.2 The public reaction to these proposals demonstrated the strong concern for safeguarding the dairy industry as a part of the Island's heritage and cultural identity and for the maintenance of the traditional countryside. The Department stated that its former proposals addressed these concerns in contributing to its objective of securing the future viability of the dairy industry. Seeking to remove legislative protection of the industry, whether that protection is real or perceived, might be regarded as a threat to meeting this objective. However, if successful, generating more profit for the Dairy would contribute to these wider aims.
- 3.3 The Department stated its proposed changes to distribution were an integral part of its overall policies for the dairy industry. The Committee suggested that the

Department was premature in seeking to implement changes in advance of this States debate and in isolation of the bigger picture.

- 3.4 The Department's proposals were a departure from the policies previously approved by the States in 2000 in relation to the distribution of milk.
- 3.5 The Department's previous recommendation to repeal the Milk Law would have left the future of the industry subject to market demand and competition. The Committee considered that this pre-empted the Department's separate review of Competitions policies. At the time of writing its report, the Committee did not feel that the Department had yet made its case that a free market would be in the best interest of protecting the future of the dairy industry and the States investment in it.
- 3.6 The Department's review of Dairy operations, farmers' contracts and the distribution system to identify measures for improving 'value for money' was what might be expected of good government, particularly in today's climate of financial restraint.
- 3.7 The Committee concluded that it was entirely appropriate for the Department to review the protection and commission available to roundsmen. It is not the responsibility of government to 'subsidise' private business. It is the responsibility of the Department to review the service provided by the roundsmen, the Dairy and dairy farmers to ensure it represents value for money to the States in return for its investment in the industry.
- 3.8 It is apparent that upon its inception in May 2004, the Commerce and Employment Department inherited the care of a reasonably stable industry and a set of implemented policies that seemed to be working to good effect. At the same time, however, the Department had inherited an administration relating to the dairy industry that had been built up over the years based on habit and misconceptions.
- 3.9 The Department had little choice but to review the distribution system in the light of the legal advice it received. It is clear that the Department had inherited a flawed administration of the distribution system and it sought to take positive steps to lead change to rectify this.
- 3.10 The Department suggested that there would be no choice but to repeal the Law due to the Island's European Union (E.U.) obligations under Protocol 3, but had not provided any evidence to support this assertion. The Committee understood it to be the Department's ability to regulate imports provided for in the 1958 Ordinance and not the Law itself that would potentially be against the Island's commitments to the E.U.
- 3.11 The Department clearly recognised that the legislation was outdated and in need of review and it is logical that such a review should start with questioning

whether there is a need for legislative regulation of the industry at all. The Department decided that the legislation was defunct and that a free market should be introduced. The Panel believed the Department had not given proper consideration to the potential benefits of retaining legislative control or considered any alternative solutions to meet its objectives.

- 3.12 The Department's solution was a logical consequence of the administrative difficulties that it faced and could achieve its objectives to improve the profitability of the Dairy, move to a more commercial operation and maintain farm incomes whilst achieving a reduction in States subsidy.
- 3.13 The Department's solution hinged on its judgement that there would not be a drop in milk sales through the Dairy, which was based on its assumptions that the distribution system would not be adversely affected by its proposals and that milk would not be imported. Given the high impact of the possible consequences of these proposals, the Committee believed that the industry, public and States Members would need more information than had been provided in the course of the Review to support the Department's assessment that these potential consequences were not likely to happen.
- 3.14 If the Dairy had become unprofitable to the point below which it would no longer be financially viable to operate, the Department's suggested fallback position was unlikely to provide any comfort to the industry. If losses were due to competition from imports, the Department had stated it would seek a safeguard against imports from the European Commission, which would be a lengthy procedure that might be too late to prevent the decline of the dairy industry. The repeal of the legislation would remove the Department's ability to discourage imports through regulation of the retail price, which was the seemingly successful policy adopted by the former Agriculture and Countryside Board since 2000.
- 3.15 The Committee believed that the Department had not sufficiently considered options for mitigating the risks and for a fallback position if it was proven wrong.
- 3.16 It was apparent that there was misunderstanding between the Department, its predecessors and roundsmen as to what their relationship was and what the terms of being licensed were. At the time of the Review, little had been done to clarify the situation.
- 3.17 The Department did not carry out a consultation process on its previous proposals. The Panel did not accept that commercial considerations prevented any form of consultation with those affected.
- 3.18 The former proposals represented a significant business change for roundsmen in particular, requiring sensitivity in communicating and introducing changes, which the Committee found to be lacking in the Department's handling of the

situation. The Committee did not consider five-weeks notice of these changes adequate. It believed the Department should have provided to those affected a full explanation of its proposed changes well in advance of implementation and provided an opportunity for comment and feedback.

- 3.19 The Committee was not convinced that the Department had succeeded in considering the dairy industry as a cohesive whole. In bringing these proposals forward ahead of its wider strategy, the Department segregated distribution. It had not yet demonstrated its consideration of how a comprehensive delivery network could be maintained or even improved to support the profitability of the Dairy, the income of the farmers and safeguarding of the countryside.
- 3.20 The Department has to ensure that what is good for the industry is not lost to operational or commercial considerations for the Dairy. It has to align the potentially conflicting interests of the environment and business and act as both operator and regulator of these interests. The Committee recognises that finding a balance between these conflicting issues might, on occasions, prove to be very difficult.
- 3.21 The Committee considered there is potential for a gap in States environmental policy formulation due to the difficulty for the Commerce and Employment Department in aligning some of the inherited responsibilities of the former Agriculture and Countryside Board with its wider mandate.

4. REVIEW RECOMMENDED ACTIONS

The Commerce and Employment Department was recommended to:

- 4.1 Consider delaying implementation of any of its proposals until after the States of Guernsey debate on the future of the Dairy industry.
- 4.2 Define the requirements for roundsmen and retailers in their dealings with the Dairy and their relationship with the Department (which currently includes licensing requirements).
- 4.3 Seek to improve communication and ongoing consultation with the industry.
- 4.4 Explain proposed changes to the distribution system to roundsmen and farmers and take into account what effects these might have to their businesses and the industry.
- 4.5 Take a phased approach to the introduction of any proposed changes that the States might approve.
- 4.6 Provide supporting information for its judgement that there will not be a drop in milk sales through the Dairy, which is based on its assumptions that the

distribution system will not be adversely affected by its proposals and that milk will not be imported.

- 4.7 Give further consideration to how it intends to mitigate any adverse consequences and to establishing a fallback position if it is proven wrong.
- 4.8 Seek further legal advice and carry out a comprehensive assessment of where legislative control of the industry might be required and of the deficiencies identified in the current legislation that need addressing.

The Committee advised that the Commerce and Employment Department liaise with the Policy Council to give consideration to:

- 4.9 The appropriateness of the Commerce and Employment Department's dual roles as operator and regulator and the potential for conflict between its operational responsibility for the Dairy and its responsibility for policy formulation for the future of the dairy industry.
- 4.10 Reviewing the mandate of the Commerce and Employment Department with regard to its responsibility for administering environmental policy and to identify how this fits with corporate policy.

5. MONITORING OF REVIEW RECOMMENDATIONS

- 5.1 Committee Members have recently met with representatives of the Commerce and Employment Department to discuss progress on its Review recommendations. Members have also separately met with representatives of the Guernsey Milk Retailers' Association.
- 5.2 The Department has provided an initial response as to how it has sought to address the Committee's recommendations, as set out in section 6 of the Department's States Report. It is clear that the Department has taken the Review process seriously and revised its proposals accordingly.
- 5.3 States Members will be able to judge for themselves how far the Department has gone to addressing the issues raised in the Review process. The Committee will continue to monitor progress on this and in due course will be making a full assessment of the extent to which it feels its Review recommendations have been met.

6. RECOMMENDATIONS

The Scrutiny Committee recommends the States:

- a) To note this States Report and the Committee's Review Report.
- b) To note the Committee's intention to continue to monitor progress on its Review recommendations.

Yours faithfully

R Le Moignan
Scrutiny Committee Member

APPENDIX 1



SCRUTINY COMMITTEE
THE STATES OF GUERNSEY

Scrutiny Review
Milk Distribution Proposals

Report of the Scrutiny Panel on the Commerce and
Employment Department's proposals for changes to the
sale and distribution of Guernsey milk and its
recommendation to repeal the Milk Law.

MAY 2006

CONTENTS

	Page
1. Introduction	3
2. Executive Summary	5
3. Purpose and Scope of the Review	10
4. Methodology	12
5. The Department's Proposals	16
6. The Commerce and Employment Department's Response	17
▫ The Department's Objectives	
▫ States of Guernsey Objectives and Policies	
▫ The Department's Development Processes	
▫ The Department's Planning for Possible Consequences	
▫ Performance, Monitoring and Review Measures	
▫ Other Issues	
7. Stakeholder Representations	41
▫ Public Responses	
▫ Representation from Roundsmen (G.M.R.A.)	
▫ Representation from Farmers (G.F.A. and R.G.A.H.S.)	
8. Conclusions	51
9. Recommendations	72
 Appendices	
A. Commerce and Employment Department and Policy Council's comments on the Final Draft Report	74
List of documents lodged at the Greffe	75
Glossary of Terms	77

1. INTRODUCTION

1.1 The Scrutiny Committee's Terms of Reference are:

To examine States' department and committee policies and services together with the development processes in order to determine the effectiveness of those policies or services, to identify areas that might be inadequately or inappropriately addressed and to assess the performance of departments and committees in implementing policies and services.

– Billet D'Etat VII, 2003, page 893

1.2 Formal scrutiny reviews of specific issues of public importance are an important part of the Committee's work. The significant public reaction to the Commerce and Employment Department's proposals for changes to the sale and distribution of milk was a key factor in the Committee's decision to carry out a public review of the proposals. This Report details the results of that review process.

1.3 The Scrutiny Panel members were:

- Alderney Representative Richard Cox, Scrutiny Committee Member and Panel Chairman
- Deputy Jean Pritchard, Scrutiny Committee Chairman (refer to section 4.6)
- Deputy Ron Le Moignan, Scrutiny Committee Member
- Mr Dudley Jehan, Co-opted Member
- Mr Andrew Ozanne, Co-opted Member

1.4 The Review was planned and launched publicly in October 2005. Over 160 written submissions were received from the general public, together with submissions from the Commerce and Employment Department, two representatives from farmers' groups (the Guernsey Farmers' Association and the Royal Guernsey Agricultural and Horticultural Society) and the Guernsey Milk Retailers' Association. A formal, public hearing was held over the period 14th to 29th November 2005, following which all representations and the Commerce and Employment Department's responses were evaluated and analysed, preparatory to the drafting of this Report.

1.5 The Committee and the Scrutiny Panel would like to thank all those Departments, organisations and individuals who have contributed to and cooperated with this Scrutiny Review.

1.6 The Committee would particularly like to thank Mr Dudley Jehan and Mr Andrew Ozanne for agreeing to join the Panel. Mr Jehan and Mr Ozanne are well-respected members of the community with extensive experience and knowledge of Guernsey. The Committee counts itself to have been most fortunate in 'recruiting' such high calibre people. They have both committed fully to this Review and waived payment for their work.

1.7 The proposals for the establishment of the Scrutiny Committee made it clear that:

“The emphasis of the scrutiny process would be on examining policy and service delivery in a constructive and objective manner. The focus of each ‘review’ would be to assist departments and the States as a whole to improve in these areas.”¹

- 1.8 The Review Panel has adopted this approach. It is not for the Scrutiny Committee to direct Departments, but to assess performance. The conclusions and recommendations contained in its reports are designed to assist Departments and are not intended to be prescriptive. Where it is stated that Departments “should” follow a particular course, the intention is that these should be read as suggestions, and not directions.

¹ Advisory and Finance Committee: Future Machinery of Government in Guernsey, Billet d’Etat VII 2003.

2 EXECUTIVE SUMMARY

2.1 BACKGROUND TO THE REVIEW

- 2.1.1 At the end of September 2005 the Commerce and Employment Department announced that it would be removing restrictions on the retail price of milk with effect from 30th October 2005. It also stated that it would be submitting a States Report to the November 2005 States meeting that would set out proposals for the future of the dairy industry and include a recommendation to repeal the Milk Law.
- 2.1.2 The Department further announced that it would be establishing a common ‘gate price’ for milk purchased from the Dairy and that its milk would no longer be exclusively sold to roundsmen², but to any Dairy account holder. This would be set at 56p a litre for all customers instead of the two-tiered system currently operated of 52.48p a litre for roundsmen selling to doorstep customers and 55p a litre for roundsmen selling to shops or traders that have a ‘direct billing’ account with the Dairy³.
- 2.1.3 It should be noted that, at the time of writing this Report, the Department’s proposals have not been finally approved or implemented. The Department agreed to delay action pending the results of this Review. It is recognised that the proposals in question are subject to change and were only the first stage of the Department’s strategy for the dairy industry, which the Department intends to put before the States for consideration in due course.
- 2.1.4 The Panel recognises that this is the first time that a Department’s policy development processes have been subjected to this type of detailed scrutiny and in the public domain. The Panel is grateful to the Department and its staff for its full cooperation with the process and for making so much material available for investigation. The Panel has tried to deal with this information in a sensitive manner whilst ensuring that the detail and context is properly documented.
- 2.1.5 The Panel’s focus for this Review was the Commerce and Employment Department’s objectives; development processes; the Department’s investigation into, and planning for, the possible consequences of its decisions; its performance, monitoring and review measures and the compatibility of its proposals with other Commerce and Employment Department and States’ policies (see Scope outlined in section 3.2.1).
- 2.1.6 Sections 6 and 7 of this Report summarise the responses and submissions received by the Panel and section 8 sets out the Panel’s conclusions. The Scrutiny Panel makes a number of specific recommendations, stated in full in

² The use of the term ‘roundsmen’ throughout this Report refers to milk retailers (represented by the Guernsey Milk Retailers’ Association) currently licensed under the legislation to buy milk from the Dairy and sell it.

³ ‘Direct billing’ is an arrangement whereby the Dairy handles the bulk purchase accounts on behalf of the roundsman. The Dairy pays the roundsman his ‘commission’, which is an amount privately agreed between him and the end customer and the end customer pays the Dairy directly.

section 9 of this Report. The relevant sections of the Report, where greater detail and discussion can be found, are here cross-referenced for ease of referral.

2.2 OVERALL CONCLUSIONS

- 2.2.1 The Department's commercial focus for the operation of the Dairy, its efforts to seek to drive efficiencies and value for money in all elements of the dairy supply chain and its ultimate objectives to maintain farm incomes and reduce States subsidy of the industry, are all positive examples of the Department delivering its mandate and furthering States objectives. (8.1.25)

- 2.2.2 The public reaction to these proposals demonstrates the strong concern for safeguarding the dairy industry as a part of the Island's heritage and cultural identity and for the maintenance of the traditional countryside. The Department has stated that its proposals address these concerns in contributing to its objective of securing the future viability of the dairy industry. In seeking to remove legislative protection of the industry, whether that protection is real or perceived, these proposals might be regarded as a threat to meeting this objective. However, if successful, generating more profit for the Dairy would contribute to these wider aims. (8.1.26)

- 2.2.3 These proposals do not stand alone in meeting the Department's objectives (outlined in section 6.2) and the Department has stated that this is because they are part of a wider package of policies that it intended to put to the States in November 2005 and will now revise following this Review. As its proposed changes to distribution are an integral part of its overall policies for the dairy industry, the Panel suggests that the Department was premature in seeking to implement them in advance of the States debate. (8.1.27)

- 2.2.4 The Department's proposals are a departure from the policies previously approved by the States in 2000 in relation to the distribution of milk. (8.2.5)

- 2.2.5 The Department's recommendation to repeal the Milk Law would leave the future of the industry to market demand and competition. This pre-empts the Department's separate review of Competitions policies, which the Department has stated is currently still in the formative and consultation stage. The Panel does not feel that the Department has yet made its case that a free market would be in the best interest of protecting the future of the dairy industry and the States investment in it. This will be a matter for the States of Guernsey to decide. (8.2.8)

- 2.2.6 The Department's review of Dairy operations, farmers' contracts and the distribution system to identify measures for improving 'value for money' is what might be expected of good government, particularly (8.3.6)

in today's climate of financial restraint.

- 2.2.7 It is entirely appropriate for the Department to review the protection and commission currently available to roundsmen. It is not the responsibility of government to 'subsidise' private business. It is the responsibility of the Department to review the service provided by the roundsmen, the Dairy and dairy farmers to ensure it represents value for money to the States in return for its investment in the industry. (8.3.7)
- 2.2.8 It is apparent that upon its inception in May 2004, the Commerce and Employment Department inherited the care of a reasonably stable industry and a set of implemented policies that seemed to be working to good effect. At the same time, however, the Department inherited an administration of the dairy industry that had been built up over the years based on habit and misconceptions. (8.3.10)
- 2.2.9 The Department had little choice but to review the distribution system in the light of the legal advice it received. It is clear that the Department had inherited a flawed administration of the distribution system and it sought to take positive steps to lead change to rectify this. (8.3.23)
- 2.2.10 The Department suggested that there would be no choice but to repeal the Law due to the Island's European Union (E.U.) obligations under Protocol 3⁴, but has not provided any evidence to support this assertion. It is the Department's ability to regulate imports provided for in the 1958 Ordinance and not the Law itself that is potentially against the Island's commitments to the E.U. (8.3.24)
- 2.2.11 The Department clearly recognised that the legislation was outdated and in need of review and it is logical that such a review should start with questioning whether there is a need for legislative regulation of the industry at all. The Department decided that the legislation was defunct and that a free market should be introduced. The Panel believes the Department did not give proper consideration to the potential benefits of retaining legislative control or consider any alternative solutions to meet its objectives. (8.3.25)
- 2.2.12 The Department's solution (outlined in sections 8.3.26-34) is a logical consequence of the administrative difficulties that it faced and could achieve its objectives to improve the profitability of the Dairy, move to a more commercial operation and maintain farm incomes whilst achieving a reduction in States subsidy. (8.3.35)
- 2.2.13 The Department's solution hinges on its judgement that there will not be a drop in milk sales through the Dairy, which is based on its (8.4.35)

⁴ See Glossary of Terms p68

assumptions that the distribution system will not be adversely affected by its proposals and that milk will not be imported. Given the high impact of the possible consequences of these proposals, the Panel believes that the industry, public and States Members will need more information than has so far been provided to support the Department's assessment that these potential consequences are not likely to happen.

- 2.2.14 If the Dairy does become unprofitable to the point below which it is no longer financially viable to operate, the Department's suggested fallback position is unlikely to provide any comfort to the industry. If losses were due to competition from imports the Department has stated it would seek a safeguard against imports from the European Commission, which would be a lengthy procedure that might be too late to prevent the decline of the dairy industry. The repeal of the legislation would remove the Department's ability to discourage imports through regulation of the retail price, which was the seemingly successful policy adopted by the former Agriculture and Countryside Board since 2000. (8.4.36)
- 2.2.15 The Panel believes that the Department has not sufficiently considered options for mitigating the risks and for a fallback position if it is proven wrong. (8.4.37)
- 2.2.16 It is apparent that there is misunderstanding between the Department, its predecessors and roundsmen as to what their relationship is and what the terms of being licensed are. Little has been done to clarify the situation. (8.6.6)
- 2.2.17 The Department did not carry out a consultation process on these specific proposals. The Panel does not accept that commercial considerations prevented any form of consultation with those affected. (8.6.18)
- 2.2.18 These proposals represent a significant business change for roundsmen in particular, requiring sensitivity in communicating and introducing changes, which the Panel has found to be lacking in the Department's handling of this situation. The Panel does not consider five-weeks notice of these changes adequate. It believes the Department should have provided to those affected a full explanation of its proposed changes well in advance of implementation and provided an opportunity for comment and feedback. (8.6.19) (8.6.22)
- 2.2.19 The Panel believes that the Department should consider options for a phased introduction of any changes or implementing a transitional period. It should also consider measures to assist those affected to adjust to the changes. (8.6.23)
- 2.2.20 The Panel is not convinced that the Department has succeeded in (8.6.27)

considering the dairy industry as a cohesive whole. In bringing these proposals forward ahead of its wider strategy, the Department has segregated distribution. It has not yet demonstrated its consideration of how a comprehensive delivery network can be maintained or even improved to support the profitability of the Dairy, the income of the farmers and safeguarding of the countryside.

- 2.2.21 The Department has to ensure that what is good for the industry is not lost to operational or commercial considerations for the Dairy. It has to align the potentially conflicting interests of the environment and business and act as both operator and regulator of these interests. The Panel recognises that finding a balance between these conflicting issues might, on occasions, prove to be very difficult. (8.6.33)
- 2.2.22 The Panel considers there is potential for a gap in States environmental policy formulation due to the difficulty for the Commerce and Employment Department in aligning some of the inherited responsibilities of the former Agriculture and Countryside Board with its wider mandate. (8.6.34)
- 2.2.23 **Overall, the Department's willingness to tackle a clearly difficult situation that it inherited and initiate change has been positive. Its proposed solution would also appear to be sound, but it is difficult to fully assess this in the absence of the bigger picture. It is the Department's haste to bring these changes forward ahead of its wider strategy, its plan for implementation and its communication of its intended strategy that the Panel has found to be flawed.** (8.7.1)
- 2.2.24 **As the Department has not yet implemented any of its proposals and will be presenting its overall package for the future of the dairy industry to the States in due course, it has the opportunity to reconsider its proposals in the light of the strong public reaction to them and the issues arising from this Review process.** (8.7.2)

3 PURPOSE AND SCOPE OF THE REVIEW

3.1 PURPOSE OF THE REVIEW

3.1.1 The Terms of Reference for this Scrutiny Review are:

To review the Commerce and Employment Department's proposals for changes to the sale and distribution of milk, including its decision to revoke control over the retail price of milk and its recommendation to repeal the Milk Law.

3.1.2 The Committee felt that this was an appropriate area for public review and met the significant public concern criteria established in the *Guide to Scrutiny in Guernsey* (the *Guide*). It deals with the actions of a States Department and its relationships with the public and an industry whose interests it is charged with promoting. It also opens to public review ways in which a States Department seeks to balance its responsibilities.

3.2 SCOPE OF THE REVIEW

3.2.1 The Review focuses on:

- The Commerce and Employment Department's objectives.
- Compatibility of the proposals with other Commerce and Employment Department objectives and policies.
- Compatibility with States objectives and policies.
- The development process leading to the Department's actions.
- The Department's investigation into, and planning for, the possible consequences of its decisions.
- Performance, monitoring and review measures.

3.2.2 In carrying out the Review the Scrutiny Panel was mindful of the compatibility of the proposals with the Commerce and Employment Department's mandate particularly with reference to the following responsibilities identified in that mandate:

“ To advise the States on matters relating to:

The creation of a dynamic and diversified economy through the promotion and development of commerce and industry that is sustainable and operates in accordance with the strategic, economic, social and environmental policies of the States

And to be responsible for:-

- (i) *Promoting the interests of all sectors of the economy including:-
...agricultural industry...*
- (iv) *Helping to create a sustainable food and farming supply chain serving the market and the environment...*

(ix) *Consumer advice and protection and trading standards;...*

(xi) *The States Dairy.*

...To develop, present to the States for approval as appropriate, and implement policies on the above matters for the provision of services, introduction of legislation and other measures which contribute to the achievement of strategic and corporate objectives."

- 3.2.3 During the course of the Review, some aspects became more relevant than had at first been thought, in particular the consideration of the setting of the gate price and arrangements for distribution. The Panel therefore expanded its investigation to consider all of the proposals of the Department for changes in the sale and distribution of milk, in addition to its original remit to assess the revocation of the retail price and its recommendation to revoke the Milk Law.
- 3.2.4 The Panel has excluded any consideration of Dairy operations, such as the staff restructuring at the Dairy.
- 3.2.5 In line with the Committee's *Guide*, the Panel has not investigated individual complaints or grievances as part of this Review.

4. METHODOLOGY

4.1 PROCESSES AND PROCEDURES

- 4.1.1 The Review was conducted in accordance with the document entitled *A Guide to Scrutiny in Guernsey* (the *Guide*), issued by the Scrutiny Committee in January 2005. Copies of the *Guide* are available from the Scrutiny Committee's offices or can be downloaded from the Internet at www.gov.gg/scrutiny
- 4.1.2 For the purposes of this particular Review, the Committee has become involved **before** the proposals had been put to the States. The Committee was aware of the need to conduct the Review without unduly delaying the decision-making process.
- 4.1.3 The Committee agreed the Terms of Reference for the Review and appointed a Scrutiny Panel of five members to consider the matter. The Panel determined its approach and methodology for this Review.
- 4.1.4 Guidance on giving evidence to Scrutiny Panels was made available to the Commerce and Employment Department, to the organisations invited to submit representations and to individual members of the public who made submissions to the Panel.

4.2 SUBMISSION OF INFORMATION

- 4.2.1 All of the correspondence received relevant to this Review is summarised in the body of this Report. Copies of submissions where confidentiality has not been requested are available at the Greffe.
- 4.2.2 In accordance with the *Guide*, anonymous submissions were not considered, but some submissions have been made anonymous before publication to ensure confidentiality.

Commerce and Employment Department

- 4.2.3 The Commerce and Employment Department was invited to submit written information against the agreed Terms of Reference in order to explain the background to its proposals, its objectives and the development processes it had followed.
- 4.2.4 The Department was also invited to make statements and answer Panel members' questions at a public hearing in two separate sessions. This is further detailed below.

Policy Council and other States Departments

- 4.2.5 The Policy Council, the Treasury and Resources Department and the Environment Department were asked for information in relation to the Terms of Reference. The Policy Council was requested in particular for comments on

how the proposals fitted with overarching policy planning, the Treasury and Resources Department was invited to comment on the financial implications of the proposals, and the Environment Department was asked for the implications of the proposals with regard to environmental management.

- 4.2.6 The Panel determined not to pursue further information from these Departments as the Commerce and Employment Department withdrew its proposed States Report and had not yet fully involved these Departments in the policy formulation process. These responses have therefore not been included in this Report but the correspondence is lodged at the Greffe for information.

The Guernsey Milk Retailers' Association (G.M.R.A.)

- 4.2.7 The G.M.R.A. was invited to submit information in writing and then verbally at the public hearing in light of the fact that its members were the most immediately affected by the policy proposals under consideration. The G.M.R.A. represents the milk retailers (referred to in this Report as roundsmen), who provide the distribution network of milk from the Dairy under the existing arrangements.

The Guernsey Farmers' Association (G.F.A.) and Royal Guernsey Agricultural and Horticultural Society (R.G.A.H.S.)

- 4.2.8 The G.F.A. and R.G.A.H.S. were invited to provide information in relation to the consequences of the proposals on the farming industry. There is an overlap of membership represented by both organisations and so they were invited to attend the hearing jointly. The G.F.A. is representative of Guernsey's dairy farmers and responded on issues concerning the effects of the proposals on the business of farming. The R.G.A.H.S. is representative of issues relating to the protection and promotion of the Guernsey breed of cow.

The Public

- 4.2.9 In its media releases and in an advertisement placed in the Guernsey Press for three consecutive days, the Scrutiny Committee invited public comments on the Review. Letters were also sent to all States Deputies to inform them of the Review and to invite their views. The Panel received over 160 written representations, which were collated over the following weeks and have been summarised in the body of this Report.

4.3 HEARING PROCEDURE

- 4.3.1 An important feature of the scrutiny process is political accountability. The Panel invited Deputy Stuart Falla to appear at the public hearing to explain his Department's policies, proposals and actions and arrangements were made for civil servants to support him. It should be made clear that this procedure did not imply that the Minister is personally responsible or accountable for his Department's policies, merely that he is responsible for explaining those policies.

- 4.3.2 In accordance with the *Guide*, the location and layout of the venue were selected to meet the requirements of this Review. The venue chosen was a neutral one, the Peninsula Hotel. The layout of the hearing room was designed to retain a degree of formality, whilst retaining a sense of proportion and with fully adequate facilities for the public to attend.
- 4.3.3 The hearing was held over four sessions on 14th, 15th (morning and afternoon) and 29th November 2005. Appropriate announcements of dates and schedules were made through the media. The Panel heard from the Commerce and Employment Department in the first and last sessions, as well as from the G.M.R.A., with a joint representation from the G.F.A. and R.G.A.H.S.
- 4.3.4 The interviews were tape-recorded and transcripts were prepared and have been lodged at the Greffe for public access.

4.4 REPORT PREPARATION

- 4.4.1 Following the hearing and consideration of all of the written submissions, the Panel prepared a draft Report. The sections of this draft that were relevant to the Commerce and Employment Department's submission, without conclusions and recommendations, were sent to the Department asking it to inform the Panel of any factual errors and any further information it would wish to draw to the Panel's attention. Similarly, extracts of the Report relating to their organisations were sent to the G.M.R.A., G.F.A. and R.G.A.H.S. requesting confirmation of factual accuracy and inviting further comment. The Panel and Committee then considered all responses received.
- 4.4.2 A full draft of the Report, including conclusions and recommendations, was sent to the Commerce and Employment Department, the Law Officers and the Policy Council for further comments. Initial feedback was taken into account and a further draft was subsequently circulated. The final comments received have been published with this Report as appendices.

4.5 PROTECTED INFORMATION

- 4.5.1 As stated in the *Guide*, an important element of the scrutiny process is openness and transparency and the presumption is that all information considered by Scrutiny Panels and the Scrutiny Committee will be available to the public. It will only be in very exceptional circumstances that a Panel will agree to certain types of information being made 'protected' due to its sensitivity.
- 4.5.2 The submission received from Commerce and Employment Department on Friday 25th November 2005, considered after the public hearing had taken place, contained information that the Department had requested be 'protected'.
- 4.5.3 All information that the Panel considered relevant to its Terms of Reference, including that which the Committee determined should be 'protected', is summarised in the body of this Report and reflected in the Panel's findings. Some of the source documentation has been agreed to be kept confidential due to reasons of legal privilege, commercial or political sensitivity. All of the

information that is not ‘protected’ is lodged in full at the Greffe for public access.

4.6 ‘SPECIAL’ INTEREST

- 4.6.1 From the outset of the Review, Deputy Staples, a Member of the Scrutiny Committee, declared his interest as a Member of the Commerce and Employment Department Board and withdrew from any discussion on this matter.
- 4.6.2 When it appointed the Panel, the Committee discussed all Members’ connections to the subject of the Review and considered that there were no potential conflicts of interest with any of the appointed Panel Members. During the Review process the Committee received legal advice on the definition of ‘special interest’ under the procedures for States Committees. This was triggered by a query raised in a different Department on a totally unrelated subject but put a different construction on what Members and staff had taken ‘special interest’ to mean previously.
- 4.6.3 At around the same time, the Panel received information as part of its Review that suggested a degree of connection between large supermarkets and the subject matter of the Review that was more proximate than had hitherto been considered. This caused Deputy Pritchard to reconsider the connection between her role as non-executive Director of the Co-op and her position on the Panel in recognition that the connection might be perceived as being technically a ‘special interest’ under the revised definition that had now come to light.
- 4.6.4 Deputy Pritchard decided to withdraw from the Panel at the time the issue first arose, which was shortly after the public hearing. She did not therefore consider any information that had been requested ‘protected’ by the Department nor did she take part in the drafting of this Report.
- 4.6.5 Deputy Pritchard also withdrew from discussing the Report when it was completed by the Panel and given to the Committee for approval. Committee Members Deputy Maindonald and Deputy Walters also withdrew from the discussion.

4.7 FURTHER ACTIONS FOR SCRUTINY

- 4.7.1 In accordance with the *Guide*, the Scrutiny Committee will be monitoring the Department’s responses and implementation of the recommendations contained in this Report.
- 4.7.2 The Scrutiny Committee is also conducting an assessment of the Scrutiny Panel and its performance in carrying out the Review, in order to improve the conduct of future Reviews. In particular, it will be seeking to expand its procedures in relation to dealing with ‘protected’ evidence and ‘special interest’.

5 THE DEPARTMENT'S PROPOSALS

- 5.1 At the end of September 2005, the Commerce and Employment Department announced that;
- a) It would remove the restriction on the retail price of milk by Order with effect from 30th October 2005; and
 - b) It would be establishing a common 'gate price' for its milk with effect from 30th October 2005. (56p per litre instead of 55p per litre for "direct billed" customers or 52.48p per litre for doorstep delivery);
 - c) It would be selling milk from the Dairy to any customer with a trade account with effect from 30th October 2005; and
 - d) It would be submitting a States Report to the November 2005 States meeting requesting that the States approve the repeal of the Milk Law as well as setting out a package of measures for the future of the dairy industry.
- 5.2 The Department also announced that it would be implementing operational changes at the Dairy, including staff reduction and phasing down the number of days each week that milk is processed. These actions have not been considered to be within the remit of this Review (see section 3.)
- 5.3 In relation to a) to d) above the Commerce and Employment Department agreed to put these decisions 'on hold' to allow the Scrutiny Committee to carry out its Review of these proposals.
- 5.4 The following sections of this Report set out the information collected by the Panel and the Panel's findings and conclusions.

6 THE COMMERCE AND EMPLOYMENT DEPARTMENT'S RESPONSE

- 6.1 This section summarises the information provided by the Commerce and Employment Department in response to the Panel's enquiries into the issues identified in section 3.2 of this Report. This is a factual collation of the information provided to the Panel by the Department. The Panel is not responsible for the factual accuracy of the comments made and recorded here. The Panel has reserved its own opinions on the information provided for its conclusions, explained in section 8 of this Report.

6.2 THE DEPARTMENT'S OBJECTIVES

Proposal Objectives

- 6.2.1 In its initial response to the Panel's questions, dated 24th October 2005, the Department stated the following objectives to be specific to its proposals set out in section 5:

- 6.2.2 **The States Dairy to operate efficiently and generate operational surpluses.**
The Department is directly responsible for the management and operation of the Dairy and has full control over the 'process' element in the supply chain from cow to consumer. In line with a general drive for economising, a key objective of its decisions has been the efficient operation of the Dairy. The Department has stated that the more efficient the Dairy operation, the lower the retail price can be and/or the less the States needs to support dairy farming by virtue of the Dairy's ability to pay a higher price to farmers for their milk:

"Its plan for the future is to maintain or enhance sales performance and to reduce processing costs, to resist as much as possible the upward pressure on prices."

- 6.2.3 **A Dairy pricing policy to "better reflect" the cost of processing and production.**

The Department has stated that it proposes to change the gate price of milk in order to meet its objective of ensuring the operational effectiveness of the States Dairy so that the cost of its products properly reflect the cost of processing and also the payment to the farmers for production.

- 6.2.4 **A pricing policy to enable doorstep roundsmen to set the price of milk to their customers.**

Milk delivered to the doorstep is currently sold at exactly the same retail price as that sold in the shops. The Department has stated that the doorstep delivery service is effectively subsidised by the Dairy and hence the taxpayer. It believes that a reasonable charge should be made to the consumer for the delivery service provided. Its proposals would allow roundsmen to charge for this service.

- 6.2.5 **Reduce the retail price of milk.**

The Department judges that removing the controls on the retail price of milk will

allow for competition, particularly between larger stores, which might mean a drop in the retail price of milk. It has stated that the Department hoped, through this mechanism, to benefit consumers with lower prices but not at the cost of additional expenditure by the States.

6.2.6 Discourage the importation of milk.

In its letter to the Panel dated 24th October 2005, the Department says that it is seeking to:

“produce a pragmatic balance that would both return a viable dairy industry and make it attractive for retailers to purchase Guernsey milk rather than bring in imports.”

6.2.7 Move closer to compliance with the Island's E.U. obligations and remove unnecessary bureaucracy.

The Department has stated that it felt it had little choice but to recommend the repeal of the Milk Law due to the fact that the Law was no longer useful or appropriate to the dairy industry and was also likely to be in breach of E.U. regulations.

Objectives for the Dairy Industry

6.2.8 The Department has stated that its announcements in September 2005 of policy changes affecting the sale and distribution of milk are part of a wider package of policies that the Department will be putting to the States of Guernsey in due course (this was to be in November 2005 but has been delayed pending this Scrutiny Review). The overarching objectives of the package of policies, which can be regarded as the Department's strategy for the future of the dairy industry, have been given as follows:

6.2.9 Maintenance of the Island's traditional farmed countryside and enhancement of biodiversity and the environment.

The Department has stated that it has adopted its predecessor's objective to safeguard Guernsey's traditional landscape and has cited this as a fundamental principle underlying its development of policies in relation to the dairy industry. It has defined 'traditional landscape' as the pattern of small, hedged fields grazed by Guernsey cows.

6.2.10 Part of the 'custody' of these environmental policies has been mandated to the Commerce and Employment Department due to the recognition that historically dairy farmers are the main 'custodians' of this traditional landscape and that if dairy farming ceased to exist then the countryside would visibly change.

6.2.11 Through its contracts with the farmers for supply of milk, the Department has inherited obligations to wider environmental issues. The Department has an objective to continue to address sensitive land management and extensive (as opposed to intensive) farming techniques in order to increase biodiversity in the countryside, improve animal welfare on dairy farms, and reduce environmental pollution.

6.2.12 The Department has stated:

“It is important that our countryside is protected through farming and that our island breed and island milk are maintained. They both help give Guernsey its unique identity.”

6.2.13 **Dairy farming to remain a viable business opportunity.**

The Department has judged that ensuring the continuity of dairy farming would be essential to achieving its objective of protecting the traditional Guernsey landscape given that dairy farming accounts for 80% of all farmed land.

6.2.14 The Department’s internal document *Dairy Farming – Policy Review 2005* states:

“Dairy farming is the most important sector within Guernsey agriculture and probably the only commercially viable agricultural enterprise in the island for a large number of farmers, as opposed to the production of local vegetables, the market for which is only able to support a small number of growers.”

6.2.15 The costs of farming in Guernsey are high, with a high cost of labour, a scattered pattern of small fields that limits the use of large machinery and the expense of providing farm services⁵ to a small number of farms. Moves towards extensive methods of farming, ensuring animal welfare and measures to limit environmental pollution, also add to the expense. The Department stated that if the full costs of farming were to be met by the farmer and in turn if the Dairy was to pay a price for the milk that reflected these costs, then milk would have to be sold at a price that would be unacceptable to the consumer and which might attract competition from imported milk.

6.2.16 The Department has concluded that the industry cannot remain viable without States support, the current cost of which is a little over £2million a year. The Department believes that this subsidy will have to continue at this level, at least in the short-term, to preserve the industry.

6.2.17 **Protection of the Guernsey cow breed.**

The Department has stated that its definition of the ‘traditional farmed countryside’ that it is seeking to protect includes the Guernsey cow. The maintenance of the Guernsey cow as a commercially viable breed was a proposed objective identified by the Department’s small policy review group under the chairmanship of Deputy Tom Le Pelley in 2004. At the public hearing, Deputy Falla stated on behalf of the Department that it had stood resolutely against the use of other breeds and that the Department wished all milk available from local sources to continue to be from the Guernsey breed.

6.2.18 **To ensure the supply of the Island’s total liquid milk needs from local production.**

One of the Department’s stated objectives in its *Dairy Industry Consultation*,

⁵ Farm services are currently subsidised and include Artificial Insemination, animal health testing, the States Veterinary Officer, the slaughterhouse and the cattle incinerator.

August 2005, is:

“to maintain the viability of the dairy farming sector aiming to encourage it to supply the Island with its liquid milk requirements from a similar area of land to that farmed at present”.

6.2.19 Supplementary to this, at the public hearing, Deputy Falla confirmed that the Department wanted all locally consumed milk to be produced from local farms.

6.2.20 Reduce States subsidy.

The Department has recognised that the strong secondary benefits (social, cultural, and environmental) of agriculture to the Island (in particular dairy farming) make it a special case in terms of States involvement and support. The Department has stated, however, that one of its guiding principles is a presumption against subsidy wherever possible and a key objective in its proposals, outlined in section 5, has been to reduce the net level of subsidy.

Guiding Principles for Department Policy

6.2.21 In its *Dairy Industry Consultation* document, August 2005, the Department outlined the general approach that underlies its policies for the farming industry:

“In line with views expressed in the Department’s ‘Building Confidence’ Document...the Department’s general approach to working with sectors of Island business will aim to:

- *Encourage entrepreneurship to incentivise increased business turnover and efficiency.*
- *Ensure that support is well targeted to those that deliver the sought after benefits.*
- *Lower bureaucratic burdens.*
- *Create a business friendly and competitive environment.*
- *Protect the interests of consumers.*
- *Adopt a “partnership principle” when dealing with the farming industry.*
- *Presume against subsidy wherever possible.*
- *Not interfere with, or drive, business change.”*

6.2.22 In its letter to the Committee dated 24th October, the Department confirmed that, as a general principle, it:

“believes there should be a stimulation of fair competition, the removal of any distortion in market practices, and the restriction of anti-competitive practices or the abuse of market dominance.”

6.2.23 The Panel is aware that the Department is currently formulating its policies relating to competition. The Department has stated that its current policy in this respect is as quoted above. It has confirmed that its current review of competition policy is essentially a separate work stream of the Department to these proposals.

6.3 STATES OF GUERNSEY OBJECTIVES AND POLICIES

- 6.3.1 As background to its recent decisions, the Department provided the Panel with copies of the two Policy Letters that were approved by the States of Guernsey in 2000 and set out the policy that has been in place for the past five years.

Environmental Objectives

- 6.3.2 The Department inherited environmental objectives from its predecessors, which are consistent with the policy objectives agreed by the former States in 2000:

“There has long been a strong commitment within the community to preserve the traditional pattern of small-hedged fields grazed by Guernsey cows. That countryside scene is a direct result of small-scale dairy farming. If dairy farming ceased to exist, some form of agriculture may continue, but it is almost certain that the countryside we know would visibly change.” (Simply Milk briefing paper)

Distribution

- 6.3.3 The Department's approach to the distribution of milk is a departure from the policy approach agreed by the States in 2000. The Department stated that it:

“took the view that the enhanced subsidy introduced in 2001 for doorstep deliveries could no longer be justified in terms of the cost of the operation of the Dairy”

Financial Support

- 6.3.4 The States has previously recognised that a dairy industry that depends on the exclusive use of the Guernsey cow is not viable without States support. Hence, the £2million subsidy agreed by the States in 2000.

6.4 THE DEPARTMENT’S DEVELOPMENT PROCESSES

Drivers for Change

- 6.4.1 In its letter to the Panel dated 24th October 2005, the Department stated that there were three main drivers to its proposals:

- “ 1. *Pressure resulting from the five year package of support enjoyed by the dairy industry coming to an end in 2005 and requiring a fundamental review and a new States Report and resolution if it was to continue in future.*
2. *Pressure from businesses retailing through shops to obtain milk direct from the Dairy rather than through a milk roundsman.*

3. *Pressure from the States against the background of increasing financial restraint to ensure value for money in all that we do.*"

6.4.2 Deadline for Farmers' Contracts

The quotas and farm contracts introduced in 2000 were due to expire at the end of 2005 and the Commerce and Employment Department had inherited a commitment to return to the States to put forward proposals for the future of the contracts and request the States to renew the £2million per annum subsidy commitment.

6.4.3 The process of reviewing the contract arrangements was started in 2003, under the auspices of the former States Agriculture and Countryside Board and the Review Group set up for this purpose met for the last time in November 2004. The Department issued its *Dairy Industry Consultation* document to the farmers in August 2005, setting out its plans for the future of the farm contracts.

6.4.4 In linking its agricultural policies with its plans for economising at the Dairy and changes to the distribution system, the Department committed itself to a deadline of the end of 2005 for finalising all of its dairy industry proposals, in line with the end of the farm contracts.

6.4.5 Pressure from Businesses for Change

The Department has stated that a key driver to its proposals was the fact that the Dairy was under pressure from businesses to change the current system of distribution. In its *Simply Milk* briefing paper the Department said:

"Over the last year...a number of enquiries on behalf of unnamed shops as to their freedoms under the Milk Law, not so much in regard to the importation of milk, but in terms of dealing direct with the Dairy rather than through the medium of the milkman."

6.4.6 The Panel requested clarification on what approaches had been made to the Dairy in this respect. In its response dated 11th January 2006 the Department said that:

"The Dairy General Manager was contacted by a dairy buyer from a large local supermarket business and he met him in late February 2005. The Dairy General Manager was again contacted in the spring by the same buyer, asking how the buyer could arrange to meet with local milk roundsmen. The Dairy General Manager put him in contact with a leading roundsman who delivered to some of the stores run by that supermarket company."

A further meeting with the Dairy General Manager was requested by the dairy buyer in May, at which the buyer made it clear that he was unhappy with the financial arrangements he had with the roundsmen and that he was looking for a greater discount (in other words, a greater mark up for his stores). At that time he also said that he had to deal with 10 different roundsmen and would have preferred to deal directly with the Dairy. The Dairy General Manager said that he understood that, but he had no wish to intervene between the business

arrangements between the supermarket and its roundsmen. It was a matter they had to deal with themselves. The Dairy General Manager did advise, when pressed, that there was nothing in law to stop this happening, but reiterated that he did not wish to discuss that, at the time.

During the summer of 2005 the Dairy General Manager was approached by the owner of a smaller outlet expressing concern, firstly that the system in operation between retailers appeared to “buy and sell” his shop on their rounds (whereas he believed he should control who he did business with) and, secondly, that he was looking for a better deal from the sale of milk. The Dairy General Manager said that he understood the situation, but that these were matters between the shops and their roundsmen.”

6.4.7 **Pressure from States for Financial Restraint**

The Department has stated that a major driver for reaching its proposals was pressure from the States, against the background of increasing financial restraint, to ensure value for money in all its operations. In the knowledge that the Department was intending to request the States for continued subsidy of the industry of £2million per annum by the end of 2005, it resolved to make this request more palatable to States Members and the Treasury by exploring opportunities to save money within the industry and reduce the level of net public subsidy in the longer term if possible.

6.4.8 The Department has subsequently confirmed that it had not had specific discussions or received directions from the Treasury and Resources Department concerning the reduction of ‘subsidies’ to the farming industry. It was responding to general pressures on States expenditure by seeking to reduce costs in all areas covered by its mandate and acting on an innate feeling of responsibility for good management.

6.4.9 In the light of the above pressures, the Department stated that it had carried out ‘value for money’ exercises in all areas of the industry. It looked at dairy farm account data with the assistance of the Royal Agricultural College in Cirencester and explored opportunities for savings in operations at the Dairy. This led to an examination of the distribution system. The Department then sought legal advice on its proposed changes. The advice received from the Law Officers’ Chambers brought into question the legality and appropriateness of the Law.

The Milk Law

6.4.10 The Milk Law enables the Department to:

“fix the retail price of milk (by Order); licence those who sell milk; licence the importation of milk; and require farmers to sell their milk to a States-run monopoly dairy.” (Simply Milk)

6.4.11 In its letter dated 23rd September 2005 to all States Members, the Department advised:

“Having taken further advice, this Department now believes that it is time to consider removing the Milk Law, which we are told would not be likely to be able to resist a challenge to its legality. Indeed, it is probably in breach of the Island’s obligations under Protocol 3 which requires us to allow free trade in agricultural products.”

- 6.4.12 The Department later stated, in its briefing paper to the Panel entitled *Simply Milk*, that:

“A dairy industry which depends on exclusive use of the Guernsey cow is not a viable proposition without States support [but]...some of that support is incompatible with our European obligations.”

- 6.4.13 The Department informed the Panel that it took legal advice from the Law Officers’ Chambers concerning the legal effect of the restrictions on imports under the Milk Law and how they should be assessed in the light of the trade and agricultural product commitments under Protocol 3 and also on the domestic application of the Milk Law and Ordinance. It stated that, based on this legal advice, the Department judged:

“that the Milk Law (including the Milk Ordinance) was in need of reform or repeal, given both domestic and E.U. considerations.”⁶

6.4.14 **E.U. Matters**

The Department advised that the relationship between Guernsey and the E.U. was established and enshrined in Protocol 3 in 1973. This is an agreement that has implications for trade in that it allows Guernsey to export agricultural goods (including flowers, tomatoes, fish, meat and dairy products etc.) to Member States without having to pay Third Country import tariffs. In return Guernsey agreed to follow E.U. guidelines that govern, amongst other things, the giving of State aid/support to agriculture, fishing and horticulture and the removal of restrictive trade barriers.

- 6.4.15 The 1958 Ordinance makes provision that a retailer cannot buy or obtain milk from any other source than the Dairy and nobody is permitted to sell or supply milk, except with the authority of the Department. The Ordinance states that retailers are authorised by the Department to sell milk by the issuing of a licence that sets out the terms and conditions. The effect of this provision is a *de facto* ban on the importation of milk, as retailers are not able to buy or sell milk from any other source than the Dairy, except with the Department’s permission.

- 6.4.16 The Department has advised that:

“Over the years the powers available under this [Milk] Law have been exercised to exclude milk imports (other than through the Dairy to meet deficits in local supply)”

⁶ Letter to Panel dated 24/10/05

6.4.17 According to the Department, it is this aspect of the Law that might contravene E.U. obligations.

6.4.18 The Department felt that:

“...the repeal of the Milk Law would remove a significant barrier and strengthens the States argument that there is no imposed restrictions on milk imports and sales, since anyone could set up a dairy operation to receive and process liquid milk.”

6.4.19 In response to the Panel's question, the Department clarified in its submission dated 10th November 2005, that the substance of the advice the Department had received in respect of E.U. matters was:

“that there was some doubt as to whether it [the Law] would survive a challenge under the obligations set out in Protocol 3 to allow free trade in agricultural products by reason of its effect on imports. This challenge might well come not directly from the Commission but those affected by the restrictions and such a challenge might also be founded on human rights issues. It should be noted that this is a highly complex and technical area of the law and arguments can be made on both sides of the proposition...to this end the Department is seeking a definitive legal opinion, in so far as it can be given, on this matter.”

6.4.20 The Panel requested further confirmation on whether any other aspect of the Law or subsidies provided to the industry were contrary to E.U. obligations. In its letter dated 11th January 2006 the Department confirmed that:

“This Department does not believe that the support payments (“subsidies”) it makes are incompatible with Guernsey’s European obligations...To clarify, the Department believes, based on advice from the Law Officers over a number of years, that the de facto ban on imports, enshrined within the provisions of the Guernsey Milk Ordinance, is what is against the Island’s obligations as set out in Protocol 3.”

6.4.21 Derogation and Safeguard Measures

The Department has stated that a permanent derogation from the Treaty (i.e. withdrawal from some of the obligations) would not be possible:

“Derogation has never been an option. It was explicitly ruled out in the 1970s during accession talks.”

6.4.22 It points out that Article 5 of Protocol 3 does allow for the possibility of ‘safeguard measures’, which the Island could apply for to allow it to ban the importation of milk. A ‘safeguard measure’ is:

“a specific and time limited ability to restrict free trading in a particular agriculture area, if the territory can demonstrate that there is a clear and imminent threat of an import that would have a damaging effect on their Island

or its economy”

- 6.4.23 The Department advises that such measures are time limited, usually to five years, but can be renewed on occasions. The Department has also stated that:

*“safety measures cannot be introduced simply because there is a threat of a problem – in this case milk imports – rather **they can only be applied for once the threat has arrived and there is evidence of clear public concern and impact on the economy.**”*

- 6.4.24 The Department has stated that Jersey and the Isle of Man have been seeking to confirm a ban on the import of liquid milk to their Islands and thus ‘derogate’ from the requirement under Protocol 3 to ensure free trade in agricultural goods. The EC decision on the Isle of Man application was expected by the end of 2005, but was not yet available by September 2005 when the Commerce and Employment Department announced its proposals. The Department has advised that Jersey’s application, which it stated was stimulated by a Jersey shop-owner importing milk, has yet to be considered by the Commission.

- 6.4.25 At the public hearing, Deputy Falla stated that Jersey had recently lifted restrictions on retail price, as the measures that had been in place, similar to Guernsey’s, were considered in violation of their Competition Law. Deputy Falla stated that the Department would not advocate automatically copying Jersey’s actions, but he pointed out that:

“the days in which you kept your head down, continue to apply restrictive regimes and hope the world would go away have now disappeared, as evidenced by the circumstances we find ourselves in and the challenges facing the Isle of Man and Jersey.”

- 6.4.26 The Department has stated that it received verbal advice at a meeting on 22nd July 2005 from White and Case, the lawyers advising the States on E.U. matters. The Department has stated that the discussion was to seek advice on whether there had been any significant changes in E.U. policy and approach that might impact on the proposals. Advice was also sought on the possibility of seeking safeguarding measures from the E.U. and the advice given in this respect was to wait until the outcome of similar submissions of the Isle of Man and Jersey were known.

- 6.4.27 The Minister assured the Panel at the public hearing that the repeal of the Law would not prohibit the Island seeking a safeguard measure to control imports in the future.

6.4.28 **Policy Background**

The Department has stated that there has been an awareness of a possible clash with E.U. obligations for some time. There have been in the past direct challenges to similar regimes in Jersey and the Isle of Man. The U.K. version of a monopoly State-run Dairy was challenged by the E.U. and the U.K. government changed its involvement with the dairy industry as a result. The

Department stated that it was “increasingly clear that the barriers to trade in milk and the support to the dairy industry provided by the States did not sit comfortably with E.U. expectations”. The Department stated that the approach adopted in 2000, following informal advice from the U.K. Department for Environment, Food and Rural Affairs (DEFRA), was to:

- “
- *Keep a watching brief on developments;*
 - *Recognise that increasingly the local regime was at odds with that which was now considered a standard approach in the E.U.; and that in any event*
 - *Inadvertently, the relationship between the States that had developed with the aid of the Milk Laws over the years was rapidly approaching the point where **the benefit to the dairy industry afforded by these restrictions was becoming seriously undermined by the negative aspects of dairying in Guernsey.***”

6.4.29 The then Agriculture and Countryside Board introduced measures in 2001 to try and counteract these “negative aspects of dairying”. These measures sought to address the overproduction of milk, the pollution of the water table and animal welfare issues. Milk production at the time was just under 10million litres per annum and the States approved the introduction of milk quotas and Dairy Farm Management Contracts in order to control this, aiming to reduce the volume to approximately 8million litres per annum, more in line with the demand for local consumption. The £2million subsidy of the industry was introduced to bring down the retail price to benefit the milk consumer and in return taxpayers saw benefits to the countryside through the introduction of farm contracts.

6.4.30 The Department's *Simply Milk* briefing paper explains that:

“In introducing these measures it was also recognised that, as part of an ongoing review of the Common Agriculture Policy, there were increasing moves towards shifting support to farmers from paying subsidies on their products, to supporting their efforts to maintain the environment – although in practice there have been more words than action and little has happened elsewhere.”

6.4.31 The introduction of quotas in 2001 to control production also had the effect of limiting exports to the U.K. (or anywhere else in the E.U.):

“Whilst butter and cheese are still exported to the U.K., the quantities are a small fraction of past years. Due to the high cost of producing product in Guernsey any advantage attributable to subsidies is negated. Guernsey products compete with similar products in Guernsey and have to do that at competitive prices...Following the 2000/2001 changes dairy farming / the Department is complying with E.U. waste pollution and environmental enhancement aims.”

6.4.32 In the light of Guernsey's policy direction, the representative from DEFRA advised in 2000, that since the Guernsey milk market was so small, it would probably be of no consequence to the E.U. Commission and no change of approach was therefore required. He considered that any challenge to the Milk

Law would come from ‘within’ rather than from outside sources.

6.4.33 The Threat of Challenge

The Panel has queried whether there had been any challenge to the Law. The Department has confirmed that there has not been any legal challenge, but stated that a supermarket has imported milk in the past, which is a form of challenge. The Department stated that staff persuaded this supermarket to desist from importing milk, focusing on the need to support local industry rather than threatening prosecution.

6.4.34 The Department has informed the Panel that the Law Officers’ Chambers had advised that, should a retailer import milk, it would not be able to take out a court injunction to try to enforce the ban on imports. The Department confirmed that it has had discussions during the year with Her Majesty’s Procureur on this matter, but there is no written record of these meetings. The Department invited Her Majesty’s Procureur and a lawyer from his Chambers to its meeting on 4th October 2005 and the specific advice that an injunction would not be possible was then recorded. The Department has provided a copy of the Minutes of the meeting.

6.4.35 The Department and its predecessors had avoided the threat of challenge since 2001 with the introduction of the £2million subsidy and by keeping the retail price low in order to compete with prices in the U.K. and make imports less attractive.

6.4.36 The Department felt that the pressure on prices was such that the industry would require additional funding. It did not consider rises in the retail price an option for this:

“the Dept rejected the idea of substantial increases in the retail price of milk, fearful that if it climbed up to previous levels, far above the average marketplace price within the U.K, this would result in renewed consumer pressure locally and pressure to import cheaper milk.”

6.4.37 The Department had felt that the current arrangements were vulnerable to challenge:

“What the Board believes inevitable, however, is that if it left the current anomalous situation in place then sooner or later that would be challenged and events could unfold in a manner and at a speed that is outside the control of the States. In those circumstances the form of market restructuring that it believes is possible to keep out imports might then not be possible.”

6.4.38 Domestic Considerations

In its briefing paper entitled *Simply Milk* the Department asks “*If Guernsey had restructured to provide a better deal locally which reflected apparent European trends, why seek to repeal the Milk Law?*” Its answer relates to the domestic application of the Milk Law and the relationship that has developed between the Department and roundsmen.

- 6.4.39 The Department has stated that the domestic considerations raised by the Law Officers' Chambers were that the Law does not support the current position of roundsmen acting as wholesaler in selling milk to shops. The Department, therefore, had no choice but to change the system to sell milk directly to stores if it were to follow the correct procedure under the legislation as it stands. Deputy Falla expanded on this at the session of the public hearing held on 29th November 2005:

"The response [from the Law Officers' Chambers] that we received was absolutely clear. Not only did the Milk Law fly in the face of our commitments under Protocol 3, but for the first time, it was pointed out that certain historic interpretations of the Milk Law, were fundamentally flawed. By way of example, the Dairy had chosen in the past, to interpret the reference to retailers and their need to be licensed by the Dairy, as applying exclusively to milk roundsmen. The Law Officers pointed out that retailers, encompasses shops, that shops which sell milk should indeed be licensed and that as licence holders, those shops are perfectly entitled to buy their milk directly from the Dairy, something that in the past had been refused on the grounds that only licensed milkmen could sell milk."

- 6.4.40 There were other difficulties with the current system that the Department had identified for change. Roundsmen delivering to large stores benefit from the 'direct billing' arrangement that was set up at the Dairy in order to administer the differential in the gate price. This means that the Dairy takes the risk in handling the accounts on behalf of the roundsman, whilst he is paid immediately and does not have to worry about cash flow and chasing late payments.

- 6.4.41 The Department states that the 'direct billing' arrangement was introduced due to the protective approach of previous agricultural committees:

"The intention was to ensure that the milk retailer was assured of a steady cash flow at the expense of the Dairy acting as his unpaid accounts office. When it was introduced the volume of supermarket sales was far smaller than today"

- 6.4.42 The Department said that in recent times some roundsmen have requested to come off the direct billing system but this creates a problem for the Department. If this occurred then the system of operating two gate prices would become unsustainable, as it would no longer be possible for the Dairy to tell where the milk was being delivered, which effects what the gate price should be for the milk.

- 6.4.43 The Department identified the direct billing arrangement as a 'hidden subsidy' to roundsmen that it felt was no longer justified.

- 6.4.44 The Department also felt there is an 'anomaly' in the doorstep delivery customer paying the same retail price as those buying from the shops. The Department judged that rather than the service being subsidised by the tax payer through a lower gate price at the Dairy, it would be fairer to charge the consumer a little

extra for the service provided.

6.4.45 The Department has pointed out that the 1955 Law was introduced at a time when:

- “
- *there were some 300 small dairy farmers in the Island* [there are now 20 over a similar area of land]
- *milk was purchased almost exclusively from the doorstep – before the days of supermarkets or in-store refrigeration;* [over 50% of sales are now through shops]
- *the E.U. did not exist;*
- *the idea of consumerism and concerns for a free market and competition were not on the public agenda.”*

6.4.46 Decision to Recommend Repeal

In its briefing paper written for the Panel entitled *Simply Milk* the Department sets out that it felt it had three possible options in the circumstances that it faced. Firstly, it could adopt a ‘head in the sand’ policy and continue with the status quo, thereby ignoring the legal advice received and continuing the administration as it stands and hope that nobody would challenge the Law or its administration by the Department. Secondly, it could update the Ordinance to better reflect the traditional arrangements and hope that the exposure of this Law to debate publicly would not raise questions about the legitimacy of the Law alongside Protocol 3 commitments. Finally, the Department judged that it could choose to recognise the Law’s ‘sell by date’ and find a market-based solution.

6.4.47 The Department has clearly stated that it would not consider retaining the status quo in the knowledge that the Law was being administered incorrectly, (in respect of the roundsmen acting as ‘wholesaler’ to the major stores).

6.4.48 The Department did have an option to return to the States to change the Ordinance to protect the current system. It had judged that, whilst it might be in the best interests of the roundsmen, this option would not be commercially sound or in the best interests of the consumer or the Island. The Department confirmed to the Panel that:

“The Department considered whether a fundamental reform of the Ordinance was required and on balance judged that this level of state control of a straightforward commercial situation to be unnecessary and was a bureaucratic intervention that could be done without.”

6.4.49 At the public hearing, Deputy Falla stated that the Department:

“could seek special dispensation from Europe to somehow legitimise these restrictions on...free trade. In the light of the advice received...the Board decided that there was a far higher probability of a satisfactory outcome if we took matters into our own hands and created a situation that stood scrutiny by the E.U., rather than the uncertain step of petitioning Brussels to treat Guernsey as a very special case.”

- 6.4.50 The Department chose what it deemed to be its only realistic option; restructuring the industry according to a market-based solution. As stated in its letter dated 24th October 2005 in response to the Panel's questions:

"The Department is firmly of the view that the most robust protection for the Island's dairy industry is that high quality locally produced milk is available at a competitive price. Its policies are designed to bring this situation about rather than a reliance on legal protection that is presently uncertain."

- 6.4.51 The Department has made it clear that it wished to take action and precipitate change rather than be in a situation where it would have to react to change. In its letter to all States Members dated 23rd September 2005, the Department stated that it felt it was:

"preferable to lead change rather than to have such changes forced upon it."

Timeline

- 6.4.52 The Department has provided a timeline summary of its development processes, which is summarised here. In addition to answering the Panel's written questions and verbal questions at the Hearing, the Department has forwarded to the Panel copies of its correspondence with the Law Officers' Chambers and Minutes of its Board meetings and supporting papers to illustrate the development process followed in formulating its proposals. Below is a summary of the information provided that the Panel considered particularly relevant to this Review, set out according to the chronological sequence in which the issues were considered. This includes the preliminary development by the Department's staff and by Review Groups set up by the Department. Of particular interest to this Review is the consideration and decision process applied by the Board at its meetings, as it is the Board that is ultimately responsible for policy decisions.

- 6.4.53 2003 – November 2004 Dairy Farming Review Group development of proposals for reviewing agricultural policy and farm contracts.**

The preparatory work for reviewing the support contracts with the farming industry was begun in 2003 by a Dairy Farming Review Group with representation from the Guernsey Farmers' Association and chaired by Deputy Tom Le Pelley. The final meeting of the Group was in November 2004 and the recommendations of this group are included in the Department's August 2005 *Dairy Industry Consultation* document, sent to all farmers.

- 6.4.54 September 2004 to December 2004 Dairy Management Board development of proposals for increasing profitability at the Dairy.**

A Dairy Management Board (D.M.B.)⁷ was created in September 2004. This group commenced a review of processing and distribution costs at the Dairy in November 2004, which included an examination of the distribution system and

⁷ The Dairy Management Board comprises of the Dairy Manager, the Director of Client Services and two local businessmen (in an advisory non-executive role) appointed by the Department.

the relationship with the roundsmen and larger retailers such as shops. In this respect, the D.M.B. proposed, amongst other things, that its pricing policy should return to that in existence prior to 2001 and a single 'gate price' for products should be set. This would have the effect of reducing the 'commission' payments or profit margin available to roundsmen for doorstep deliveries by setting a higher factory gate price. The retail price would remain at its current level (set at 70p) but roundsmen would be allowed to add on delivery/service charges for doorstep delivery (it was envisaged that this might be around 2p per litre).

6.4.55 The objective of these proposals by the D.M.B. was to increase profitability at the Dairy.

6.4.56 February to April 2005 Legal advice sought on Dairy Management Board proposals.

The Report of the D.M.B. was discussed with the Department's Chief Officer and Minister in early February 2005. Consequently, at the end of February 2005, the Department's staff sought legal advice from the Law Officers' Chambers on the D.M.B proposals.

6.4.57 In brief, the correspondence between the Department's staff and the Law Officers' Chambers from February to April 2005 indicates that the legal advice received was as follows:

- The current practices do not comply with the Law as it now stands. In effect, roundsmen and stores are breaking the Law in selling and buying milk and the stores are breaking the Law again when they sell the milk to the consumer. It could be deemed that the Department had given 'authority' under the legislation for these transactions historically. In order to comply for the future, as a minimum requirement, shops would need to be issued with a licence by the Department as 'retailers' under the legislation. Roundsmen would need to be authorised by the Department to sell to shops and a change to the Ordinance to permit wholesale sales would be required if this practice were to continue, as the present controls had not envisaged such sales.
- In the light of the above, the proposals would be possible under the current legislation under section 2 of the Law that allows the Department to make changes to the arrangements that allow the States to regulate, amongst other things, the transport, distribution, disposal and acquisition of any milk or milk product. This might be achieved without a further Ordinance simply by amending the terms of any licence granted. A cautious approach should be taken to the introduction of any changes.

6.4.58 According to the Department's submitted policy development timeline, staff then met with the lawyer advising them to discuss the comments as outlined above and reported back to the Chief Officer and Minister.

6.4.59 The initial response from the Law Officers' Chambers in April 2005, before the

ramifications of the proposals had been considered, queried whether the provisions of the Milk Law had been subject to a recent audit as to its compliance and sufficiency as there might be aspects of the legislation that would not “*pass muster in E.U. terms nowadays*”. In his response, the Department’s Chief Officer noted that the Department and its predecessors had been aware for some time from discussions with the Law Officers in the past that some aspects of the Milk Law might not, if challenged, “*pass muster*” in E.U. terms.

6.4.60 May 2005 to August 2005 Board consideration of issues and decisions.

Dairy industry policy was first considered by the new Board of the Commerce and Employment Department at its meeting of **31st May 2005**. At this meeting Members were presented with a briefing on the background to dairy farming industry policy to date and the requirement to review policy to report to the States by the end of the year. The discussion included consideration of the Milk Law and the necessity for its review following the discussions with the Law Officers on its administration. The Board decided to carry out an all-encompassing review of Agricultural policies (later resulting in the *Dairy Farming Policy Review* and *Industry Consultation* documents) and to consider a future report from the Dairy Management Board on its proposals for the Dairy and distribution system.

6.4.61 The D.M.B. report was considered by the Board at its meeting on **14th June 2005**. Members agreed in principle with the recommendations but requested more time to consider them and to be presented with a proposed timetable. A letter dated 31st May 2005 from the G.M.R.A. requesting an increased commission was presented to the Board at this meeting, but it appears that no action was agreed on this letter and no response was sent to the G.M.R.A. at this time. A response was later sent dated 19th July 2005, stating that the Board was engaged in an extensive review of policy for the agricultural sector and that the points the G.M.R.A had made in its letter would be taken into consideration as part of that review.

6.4.62 The D.M.B. report also included a recommendation for making the Dairy more commercial. This included suggesting that the Dairy pay a notional rental charge and that a Board of Directors be appointed, answerable to the Department but taking responsibility for major day-to-day trading decisions.

6.4.63 At its meeting on **12th July 2005**, the Board considered a suggested timetable for the D.M.B.’s proposed changes. The Minutes note that “*The Minister asked that the process be delayed, that the Board be given the opportunity to consider legal advice relating to the status and contracts with the roundsmen, and to ensure that the Board was satisfied with the detail of the manner of dealing with its staff and roundsmen prior to setting in progress this chain of events.*” The Board agreed that a draft policy report should be prepared, which should include a recommendation to repeal the Milk Law and reference to the efficiency improvements being implemented by the Board.

6.4.64 At the **12th July 2005** meeting, the Board also considered a paper outlining

future options for use of the expected dairy profits. The following options were considered:

- Fund a reduction in the retail price of milk (or maintain the current price)
- Keep it in the bank to create a fund
- Pay it to Treasury and Resources Department as a dividend
- Increase producer price to offset environmental subsidy payments.

6.4.65 The briefing paper recommends that in the longer term the Board use the increased income to pay dairy farmers a higher price for their raw milk and offset this with reductions in the environmental subsidies.

6.4.66 In a letter dated 18th July 2005, the Department wrote again to the Law Officers indicating that, although not yet confirmed, the Board had agreed in principle that they wished to pursue the proposals brought forward by the D.M.B. It also advised that *“bearing in mind the numerous issues regarding the Milk Law, that it will in all likelihood recommend its repeal.”* The Law Officers were asked for their comments and advice on these proposals to present to the Board.

6.4.67 The Board next considered this issue at its meeting on **26th July 2005**. It approved a dairy farm related policy package to go out for consultation with the farmers. The Board made a conscious decision not to raise the concerns that it had with the Milk Law and the possibility that it would be recommending its repeal in its consultation with the farmers. This was due to the recognition that if such an announcement was made, it would in effect be announcing the fallibility of the Law and could result in the importation of milk before the Board had had the opportunity to implement its package of measures.

6.4.68 At its meeting on **9th August 2005**, the Board considered a briefing paper on the Dairy Management Board proposals and the consultation process on the Dairy Farm Contracts, both of which had previously been considered by the Board, but this now sought to bring them together into a more cohesive policy for the dairy industry.

6.4.69 The Board decided that it would not proceed with the Dairy Management Board’s proposals that had previously been agreed in principle. **Instead, it decided at this meeting on 9th August 2005 to adopt the approach that has since been announced and is now under review.**

6.4.70 The Chief Officer wrote to Her Majesty’s Procureur on 26th August to inform him of the Board’s amended position.

6.4.71 At its meeting on the **6th September 2005**, the Board noted that as soon as the Department announced that the Milk Law was indefensible, it was at this point that the Law became ineffective. It would then be inappropriate to threaten legal action under the Law should milk be imported into the Island.

6.4.72 The Minutes of the Board’s meeting on **20th September 2005** state that the Board was informed that the Law Officers had advised that to recommend the

repeal of the Milk Law would render the Law impotent. The Law Officers had therefore recommended the removal of control of the retail price as the first step and to retain the Law in the interim before taking it to the States to approve its repeal (due by the end of 2005). The Board approved the revocation of the Order that sets the retail price.

6.4.73 August 2005 to September 2005 Consultation/Announcement of Proposals.

The *Dairy Industry Consultation* document on the dairy farming aspects of the policy proposals was sent out to farmers on 26th August 2005.

6.4.74 In its letter to all roundsmen dated 24th September 2005, the Department announced that it had completed its review of policies directed towards the agricultural sector and informed them of the proposals due to be implemented from 30th October 2005. It also wrote to shops and all States Members informing them of the proposals.

6.5 THE DEPARTMENT'S PLANNING FOR POSSIBLE CONSEQUENCES

6.5.1 In respect of its recommendation to repeal the Milk Law, the Department did not feel that there were any aspects of the legislation that *"could not otherwise be achieved through a more up-to-date commercial relationship between farms and the Dairy."*

6.5.2 The Department felt that the obligations in respect of milk production by dairy farms would be better managed as a more commercial arrangement using a milk production contract with the Dairy. This would deal with such matters as quota and the price for milk produced. Environmental and animal welfare commitments would be handled by essentially a separate Dairy Farm Management Contract with the Department.

6.5.3 The Department stated that the aspects of the Law relating to hygiene and public safety have been superseded by Laws administered by the Health and Social Services Department and enforced by that Department's Environmental Health Section.

6.5.4 The Department does not predict any significant changes as a consequence of its proposals. The main possible outcomes it has considered are set out below.

Effect on Roundsmen

6.5.5 The Department has stated that the new system would mean that shops would choose either to continue to use the services of a roundsman or would collect their milk direct from the Dairy. The Department foresees that the main effect the new arrangement would have on roundsmen is that it would:

"require them to enter into negotiations in a normal business manner with the shops to whom they provide a service. It is the milk retailers' stated position that they are independent businessmen and the Department took the view that the changed circumstances would be a matter for them to deal with."

Doorstep Delivery

- 6.5.6 The Department had decided that the subsidy of doorstep deliveries was no longer appropriate and was seeking to implement a single gate price that would generate additional revenue for the Dairy. In addition, therefore, it also proposed to remove control of the retail price to allow roundsmen to retain their profit margin by charging a little extra for doorstep deliveries. The Department states that:

“The Department was quite clear that deliveries of milk to doorsteps would, in all likelihood, cost more once these policies were enacted. However, it judged that it was reasonable for members of the public to make what would be a relatively modest payment”

- 6.5.7 The Department has acknowledged the value of the doorstep service to the elderly or disabled, but points out that not all elderly or disabled people elect to have doorstep deliveries and instead choose to buy milk along with their weekly shopping. The opportunity for social contact with the milkman is limited as the majority of deliveries are undertaken in the early hours of the morning before people are awake and the demands of a round would preclude much time to stop and talk. Not all elderly people are financially challenged, but even if the cost of delivery added as much as 5p to a litre then the Department points out an average single person who consumes 3 litres a week would only be paying 15p extra a week or £7.80 per annum. As a comparison, the Department makes the point that the weekly delivery charge for the Guernsey Press is £1 a week. It also highlights the fact that any additional charges for delivery would still compare favourably with the cost of milk in 2000, which was around 90p a litre.

- 6.5.8 In any event, the Department fully expected the doorstep delivery service to continue:

“Milkmen would continue to deliver to doorsteps, albeit charging a small delivery charge of a few pence per litre”

- 6.5.9 The Department argues that there is a natural move away from doorstep sales due to consumer habits and lifestyle changes that will cause some decline of doorstep deliveries, irrespective of its proposed changes to the system. According to the Department, in the past some 70% of milk consumed in the Island was delivered to the doorstep but recent years has seen a trend away from doorsteps to the shops which now account for over 50% of sales. The Department believes that nowadays, rather than having a surplus of milk, consumers having their milk delivered will order to satisfy their basic needs, which they will then supplement with additional purchases from shops. It believes that as more people are working and might be unhappy for milk to sit on their doorstep for much of the day, this also contributes to a decline in doorstep sales.

- 6.5.10 The Department believes that its proposals provide an opportunity for

roundsmen to reverse the trend away from doorstep sales:

“convenience of doorstep deliveries is considered a powerful argument to take that service. With only half of milk sales being made ‘on the doorstep’ there is a large market opportunity for increased business for roundsmen.”

- 6.5.11 The Department argues that its proposals will not result in the death of doorstep deliveries and it sees no reason why these cannot continue as long as there is demand for this service. It points out that the reaction of the public in response to these measures suggests strong customer support for the continuation of doorstep deliveries and a willingness to pay a small premium for this service over the retail price in the shops.

Milk Consumption

- 6.5.12 The Department is not expecting a drop in the local consumption of milk as a result of its proposals. Even if there was a move away from doorstep sales, the Department has stated that:

“The Department and the Dairy no longer believes in the argument that a greater percentage of doorstep sales means a greater consumption of milk.”

Retail price

- 6.5.13 The Department has predicted:

“A possible drop in retail price of milk in major stores as a result of the commercial imperative for competitive pricing.”

- 6.5.14 The Department has stated that the low retail price *“in itself will be a protection to the industry from imports and will be a very positive outcome for consumers.”*

Importation

- 6.5.15 The Department has judged that it is unlikely that there will be any importation of milk:

“major stores would continue to buy Guernsey milk, recognising that this represented a more cost effective solution than having to purchase direct from the U.K. or France, meet the freight costs, provide cold storage, engage distribution staff and so on...The extremely low cost of milk in some U.K. supermarkets is either the result of deliberate loss leaders (i.e. milk is sold for under its purchase price simply as a means of attracting the customer) or it is as a result of deals between the larger supermarket chains who are able to enjoy substantial discounts because of the volumes they take. Our research suggests that it was unlikely that Guernsey companies, even the larger ones, would have access to such discounts.”

- 6.5.16 At the public hearing, Deputy Falla stated that the Department’s research had

indicated that the gate price might have to be as low as 40p to rule out the possibility of importation if competing on price alone.

6.5.17 Deputy Falla confirmed that, if the Department's judgement that retailers will not import milk is incorrect, then it would approach retailers that were importing and try to dissuade them from doing so. If this did not work and the importation could be shown to be significantly and adversely affecting the industry, then it would seek safeguard measures from the E.U. to ban importation. If the Board were unable to obtain satisfactory safeguard measures and if it judged that it needed greater financing to lower the gate price to give greater discouragement to imports then it would approach the States to request more financing.

6.5.18 The Department also expects there to be customer resistance to imports. It points out that this theory appears to be supported by the strong public reaction to the perceived threat to the industry when its proposals were announced in September 2005:

"Although some consumers will be persuaded by price, there is evidence that there could well be an adverse reaction to those shops who chose to acquire and sell significant amounts of imported milk over Guernsey milk – which could have implications for their reputation locally and seeing people vote with their feet."

6.5.19 The Department believes that customer resistance to imports will occur due to:

"the competitive retail price of local milk, its high quality, its freshness and because of loyalty to an excellent locally produced product."

Dairy Sales

6.5.20 As the Department is predicting that the consumption of local milk will remain consistent with current levels, it does not believe there will be a loss in sales at the Dairy. In response to the Panel's questions it has provided figures for the effects of a 5% reduction in sales volume, which would result in the Dairy operating at a loss of approximately £67,758 per annum.⁸

6.6 PERFORMANCE, MONITORING AND REVIEW MEASURES

6.6.1 The Panel requested details of the Department's criteria for success and how its proposals would be reviewed. In its letter dated 24th October 2005, the Department stated that its performance indicators would be:

- Conservation and enhancement of the countryside
- Viable dairy farming industry
- States-run Dairy generating operating surpluses without unwarranted price

⁸ Based on current figures.

rises:

“At its lowest level, viability [of the Dairy] is taken to be that the Dairy covers all of its costs of operation and makes adequate provision for re-investment.”

- A drop in the retail price of milk in major stores
- Little, if any, change in milk consumption

6.7 OTHER ISSUES

The Department’s Relationship with Roundsmen

- 6.7.1 The Department states that the physical boundaries of Island milk rounds are not fixed by the Dairy, but have developed over time by agreement between roundsmen. The Department maintains that it does not attempt to protect any existing roundsman’s territory or get involved in any territorial disputes.
- 6.7.2 A sample copy of a roundsman’s licence was supplied by the Department at the Panel’s request. The Department noted that the wording is now out of date and states that references to zones have only ever been indicative.
- 6.7.3 The Department states that its relationship with the milkmen is solely to issue them with a licence under the terms of the legislation and after that it is purely a business arrangement in which the Dairy sells them the milk at a set discount from the retail price. A licence is issued when a person advises the Dairy that they are to engage in milk retailing and they satisfy the criteria. The only criteria are that they provide a suitable letter of credit and that they do not have a criminal record.
- 6.7.4 The Department advises that its routine in recent years has been to carry out the necessary checks and advise the roundsman that he has been duly licensed, but not to issue a document.
- 6.7.5 The Department states that it does not get involved in the buying and selling of rounds, or in the process of setting the purchase price for the round, which is purely driven by the market.

Consultation and Communications

- 6.7.6 In respect of the proposed changes to the farm contracts, the Guernsey Farmers’ Association were involved in the process of reviewing farming policy through representation on the Dairy Farming Review Group between 2003 and November 2004. The Association was also involved with the Department in discussions following the issue of the *Dairy Industry Consultation* document, which included the conclusions of the Dairy Farming Review Group. The Department did not inform farmers or their representatives, however, concerning the proposed changes to distribution and the recommended repeal of the Milk

Law.

6.7.7 At the public hearing, Deputy Falla acknowledged that the dairy industry consists of three main elements: production, processing and distribution. He defined ‘consultation’ as *“working with those that are likely to be affected or almost certainly affected in coming out with a solution that is likely to be robust enough to take the challenges of time thereafter.”*

6.7.8 The Department has stated that, on this occasion, it felt it could not consult on the proposals fully due to commercial sensitivity:

“One of the dilemmas was, that if we expose these parties to the deficiencies in the Milk Law...then the reaction was likely to take place, there was real danger in a chain reaction taking matters beyond our control. One or more parties, whether a single milkman, or one of the big retailers, or others, could capitalise on this knowledge and take pre-emptive action to import milk or adopt a new pricing strategy, or get one step ahead of the competition, before a pragmatic way of addressing this issue could be constructed.”

6.7.9 The Department *“resolved that all parties should be told at the same time. Despite that, and in recognition of the effect this would have on roundsmen, the President of the Guernsey Milk Retailers’ Association was invited to a meeting on the morning of Sunday 25th September at which time the matter was discussed at length with the Minister and senior staff.”*

6.7.10 Copies of letters that had been posted to milk retailers the previous day were supplied to the President of the Guernsey Milk Retailers’ Association at that meeting.

6.7.11 The Department states that when its Minister and senior staff met with the President of the Guernsey Milk Retailers’ Association on Sunday 25th September 2005, it was:

“made clear that retailers should consider the consequences of these changes and that the Department would be pleased to discuss these matters further, bearing in mind that there was a minimum of a five-week notice period before the introduction of proposals.”

6.7.12 At the public hearing, Deputy Falla stated that, whilst he could not see what alternative approach might have been adopted, the area that he felt that the Department would wish to revisit, in the light of experience, would be communications. He also stated that the Department could consider ways to encourage more cohesion between the different elements of the industry (farmers, Dairy and retailers). He noted that one positive aspect of the reaction to the announcement of the Department’s proposals has been that the farmers and retailers have improved communications and are now working in harmony. He stated that he hoped this will continue.

7 STAKEHOLDER REPRESENTATIONS

7.1 This section is a factual collation of the information provided to the Panel by the general public, roundsmen and farmers' groups. The Panel is not responsible for the factual accuracy of the comments made and recorded here.

7.2 PUBLIC RESPONSES

7.2.1 In its media releases and in an advertisement placed in the Guernsey Press for three consecutive days, the Scrutiny Committee invited public comments on its Review of the Commerce and Employment Department's decision to revoke control over the retail price of milk and its recommendation to repeal the Milk Law. The Committee also wrote to all States Deputies individually to outline the Terms of Reference of the Review and to invite their contributions.

7.2.2 The Committee has received over 160 responses. This includes approximately 20 responses from individual roundsmen and 4 farmers.

7.2.3 Some of the roundsmen also included further comments in writing from their customers expressing support for the roundsmen and delivery service. These have not been counted as individual submissions to the Committee but instead these views have been considered under the one submission.

7.2.4 This does not, however, negate the strength of feeling evident in those comments and expressions of support from the public presented to the Panel through the roundsmen. This included a petition presented to the Panel by the G.M.R.A. members signed by **6,644** people.

7.2.5 This section provides a general indication of the views expressed in the public responses. Percentages have been provided to indicate recurring points where a consensus could be clearly identified.

7.2.6 Of the 163 respondents, approximately 94% disagreed with the Department's proposals; 4% did not express a particular conclusion or expressed mixed views; and 2% expressed agreement with the proposed measures.

7.2.7 **The responses expressing discontent with some or all of the Department's proposals can be summarised as follows:**

7.2.8 Approximately 36% of respondents expressed concern for the continued **viability of doorstep deliveries**. Over half of these were concerned about the effects that this would have on **vulnerable people**, for example, the elderly or disabled. It was felt that if doorstep deliveries were no longer viable then this would deprive them of a service that is essential to their independence and welfare. The concern was also expressed that where doorstep deliveries might still be viable, the additional charges necessary would unfairly disadvantage vulnerable people reliant on this service. Some queried whether this would potentially result in an increased burden on social services.

- 7.2.9 Some respondents also expressed concern for the viability of **small shops**, which might be unfairly disadvantaged in trying to compete with the larger supermarkets.
- 7.2.10 Approximately 35% expressed strong concern for the future of the **Guernsey cow**. Many felt that the Guernsey cow and its products are synonymous with the **heritage** of the Island and its unique identity. A common view was that the Guernsey cow is a worldwide breed and it would seem anomalous not to protect the breed on its namesake Island.
- 7.2.11 Approximately 30% expressed concern for the effects on the livelihood of local **farmers** if milk is imported.
- 7.2.12 Approximately 21% were worried that the proposals would have a detrimental effect on Guernsey's **countryside** as the farmers provide essential stewardship, management and protection of it. It was felt that this might have a knock on effect for green space, diversity of animals, birds and plants and that much of this might be lost due to pressures to put the land to other uses.
- 7.2.13 A few respondents felt that if the Guernsey cow was lost and if the countryside was diminished as a result, this would have a detrimental effect on the Island's **tourism**.
- 7.2.14 Some felt that a reduction or removal of the doorstep delivery service would result in **less consumption of milk**. Of more significant concern to respondents was that any importation of milk would result in **less consumption of local milk**.
- 7.2.15 Many were worried for the future of on-island milk processing and questioned the **viability of the Dairy** if retailers could import milk and bypass on-Island production.
- 7.2.16 Other **environmental impacts** as a result of importing milk were mentioned, for instance the fuel used in freighting. A couple of respondents also pointed out that the packaging used by the Dairy is bio-degradable but imported milk would result in less environmentally friendly packaging e.g. plastic being imported and requiring disposal.
- 7.2.17 Several respondents felt that imported milk would be of **poorer quality** than the milk currently produced by the Dairy and would not be as fresh. Some queried whether this would have a resulting effect on **health** if the local industry was no longer viable and the Island relied on imports. Several respondents commented that they would want to know where the product had come from and would not have the same **confidence** in quality with imported milk. With regard to public health, a couple of respondents queried whether the repeal of the Milk Law would allow farmers to sell milk without it being processed at the Dairy and whether there are other regulations in place to ensure that milk is not sold that could be considered unfit for human consumption.

- 7.2.18 A few respondents felt these measures would result in a **bigger market share for large retailers** (supermarkets) who would, as a result, be able to by-pass the roundsmen (wholesaler). This would allow them to have more price control and put pressure on the Dairy to sell at a lower price. Some queried whether this would simply bring about an alternative anti-competitive situation in which the larger retailer would have all the power. Some expressed the belief that although the retail price might be driven down, perhaps with supermarkets using it as a loss leader product, this would only be in the short-term as once larger retailers had the monopoly and the local industry was no longer viable, they would be able to charge a higher price with a captive market for imported milk.
- 7.2.19 Some pointed out that **other supporting industries** to farming might also be affected, for instance agricultural suppliers/garages for machine maintenance, vets, etc
- 7.2.20 A few respondents believed that it is essential to produce milk on-Island as this is a staple food and important to the Island's **self-sufficiency**. Some queried what would happen if the Island became isolated for any reason and whether the appropriate body for consideration of emergency situations had been properly consulted on the proposals. If Guernsey did not have its own milk production and processing, some respondents questioned what the effect would be should Foot and Mouth disease occur in the U.K. again. The reliability of imports was questioned, particularly given the unpredictability of the weather that would affect sea or air freight.
- 7.2.21 Several respondents were unhappy with the idea of having to follow **E.U. regulations**, which was the reason given by the Commerce and Employment Department through the media for repealing the Milk Law. Many queried why Guernsey should have to abide by any E.U. regulations when the Island is not part of the E.U. or the U.K. Those who acknowledged the Island's obligations as a signatory to Protocol 3, queried the interpretation taken by the Commerce and Employment Department of these obligations and believed that more should have been done to seek exemption from them (e.g. derogation). It was pointed out that support measures available to agriculture in the European Community are not applied to local farmers and the benefits of our E.U. agreements to the Island was questioned.
- 7.2.22 Two respondents were concerned about the effect on **local employment** should the local dairy industry become unsustainable. It was felt that this would be a significant loss to job diversity on the Island.
- 7.2.23 One respondent believed that importation of milk might undermine efforts locally to maintain the **purity of the local breed**, as farmers would wish to import more productive herds.
- 7.2.24 The view was expressed by a few respondents that there appeared to be **conflicting objectives** in the Commerce and Employment Department's apparent policy to open up the milk industry to market forces and remove support compared with its stated objective of supporting the building industry.

One respondent also queried whether the Department had as an objective to seek diversification of industries to prevent over-reliance on the finance industry and believed that these measures would conflict with such an objective by undermining the dairy industry.

- 7.2.25 One respondent was concerned about the effects of these proposals on Guernsey's **relationship with Jersey** as these decisions could affect their relationship with the E.U. and their dairy industry.
- 7.2.26 Approximately 22% of respondents mentioned that they strongly disagreed with the manner in which the Commerce and Employment Department had announced the proposed changes with **no apparent consultation**. Most felt that the parties involved in the dairy industry that would be affected should have been consulted. Many felt that the Department should also have opened the issue to public consultation before making decisions and some queried how any decisions could be implemented without referral to the States first.
- 7.2.27 Some also queried the apparent **haste** of the Department in introducing changes and questioned why more notice could not have been given.
- 7.2.28 **Those that expressed agreement with all or some of Commerce and Employment Department's proposals stated the following reasons:**
- 7.2.29 It is inappropriate to allow a government protected retail price fixing arrangement on the sale of milk. The current system gives roundsmen exclusive distribution rights and therefore creates a monopoly. **Free competition** should be allowed and the market should rule. The retail price could reflect the service and quality of the product. A premium should be paid for doorstep deliveries over milk purchased in the shops and perhaps for local milk, as a superior product, over imported milk.
- 7.2.30 De-regulation would result in a **lower retail price**.
- 7.2.31 De-regulation of the retail price of milk and importation of milk would increase **consumer choice**.
- 7.2.32 One respondent felt that the proposals would **save taxpayers' money** as consumers could purchase milk directly from farmers or purchase imported milk and therefore the taxpayer would no longer have to finance the Dairy.

7.3 REPRESENTATION FROM ROUNDSMEN (G.M.R.A.)

- 7.3.1 The Panel considered written and verbal (at the public hearing) submissions from Mr John Mahy, on behalf of the Guernsey Milk Retailers' Association (G.M.R.A.). Some of the written information has been prepared by Ozannes Advocates on behalf of the G.M.R.A. The views expressed in these submissions have been taken as representative of the milk retailers currently licensed by the Commerce and Employment Department to sell milk, referred to as 'roundsmen' in this Report.

Consultation

- 7.3.2 The roundsmen stated they were completely excluded from the policy development process. There was no consultation with the G.M.R.A. whatsoever, despite the Department indicating in its letter dated 19th July 2005 that there would be. Instead the Department sent a letter, dated 24th September 2005, to the G.M.R.A. and individual roundsmen informing them of the decisions reached. Representatives of the Department met with the President of the G.M.R.A. on Sunday 25th September, to explain the contents of the letter in person. The proposals had also been announced in the media on the 26th September, before some roundsmen had received the letter. The proposals were due to be introduced from the end of October 2005.
- 7.3.3 The G.M.R.A. has pointed out that there is no established route for the Department to consult with the industry. The G.M.R.A. and G.F.A. used to be represented on a 'Dairy Committee' but this was disbanded a few years ago.
- 7.3.4 Following the announcement of the Department's proposals, the G.M.R.A. and G.F.A. have now met and discussed the potential effects of the proposals on their respective share of the industry and have a better understanding of their inter-relationship.

Consequences

- 7.3.5 Any changes to delivery, price, supply, purchase or retail of milk in Guernsey will have an effect on G.M.R.A. members. The G.M.R.A. stated that **businesses have already been adversely affected and de-valued** due to a lack of confidence in the sector caused by the Department's proposals.
- 7.3.6 Roundsmen are issued a licence to sell milk by the Department. The licences specify the areas or shops to which the holder is permitted to sell. The G.M.R.A. maintains that this dictates the customer base of the holder and ensures that individual rounds are protected with only one supplier to any particular area or shop. The G.M.R.A. states that this protection constitutes the 'goodwill' of the milk round, which largely dictates the value at which the current milk retailers have had to purchase their rounds.
- 7.3.7 The G.M.R.A. believes the changes to the system would inevitably mean some **loss of business** for roundsmen and that this will be felt by all G.M.R.A. members. Those currently delivering to shops would lose this business as shops move to buying directly from the Dairy, or if they retain the delivery, then they would have to renegotiate their commission. The G.M.R.A. states that most rounds include shops that would be able to source their milk directly from the Dairy under the Department's proposals.
- 7.3.8 The G.M.R.A. believes that supermarkets will reduce the retail price of milk and some consumers will switch from doorstep delivery to purchasing from a shop as a result. In order to remain competitive, roundsmen will be unable to increase

prices to remaining customers and their margins will fall, which will result in a **reduction in the number of businesses**. The G.M.R.A states that this has been in evidence over recent years in which there has been a fall from 40 retailers to 30, over a period in which there has been a 1% rise in delivery price over five years i.e. a drop of margin in real terms.

- 7.3.9 The G.M.R.A. stated that the roundsmen provide **secondary benefits to society that will be lost if doorstep sales are reduced** or no longer viable, for instance this would mean less regular contact with the **vulnerable in the community**, particularly the frail and the elderly. It also stated that there would be greater **environmental harm** from people making more journeys to the shops to purchase milk.
- 7.3.10 The G.M.R.A. stated that if doorstep deliveries are reduced then this would result in a **reduction in sales for the Dairy**, as more milk is purchased at the doorstep than if consumers went to the shop. Doorstep customers order regular amounts and will often have a surplus. Those that buy their milk from shops will judge the amount they require and make it last until they next go shopping. The G.M.R.A. believed that this might account for the reduced consumption per head in Jersey, which is lower than Guernsey as it does not have such a comprehensive delivery network. The consumption per head, per annum, was stated as being 33% less in Jersey. The G.M.R.A also states that the U.K and Jersey both saw a reduction of retail outlets supplying milk once price deregulation was allowed.
- 7.3.11 The G.M.R.A. believes that the Dairy will also lose sales due to the **importation of milk** and that the Department's proposed gate price is too high to discourage imports. The G.M.R.A.'s initial research indicated that milk could be imported for 43.3p to 47.3p a litre, approximately 8p less than the proposed gate price, before any negotiation for additional bulk discounts.
- 7.3.12 The G.M.R.A. believes the Department's assumption that customers would remain loyal to the local product is naïve and that, in particular, commercial customers such as hotels and caterers would be swayed by price and are likely to move to imported milk if it is cheaper.
- 7.3.13 Should shops import milk and set prices freely then the G.M.R.A. states that its members, and perhaps even the G.M.R.A. itself as a collective, may be forced to do likewise in order to compete.
- 7.3.14 The roundsmen have expressed concerns similar to those put forward by the farmers for the future of the whole industry as a result of the Department's proposals. The G.M.R.A. has echoed the analogy used by the farmers that the industry could be likened to a three-legged stool made up of the farmers (production), the Dairy (processing) and the roundsmen (distribution) and that changes in distribution have a knock on effect to the other sectors of the industry. It also predicted that importation of milk and the subsequent loss of sales would completely disrupt the economic balance of the industry and, as a result, **local dairying might not survive**.

- 7.3.15 In agreement with the concerns expressed by the farmers and the general public, the G.M.R.A. has stated that should the industry decline or be lost then an alternative would have to be found for the **protection of the Guernsey countryside**. Guernsey will be dependent on imports and vulnerable at times of disease when food import bans are in place (e.g. Foot and Mouth Disease). The **breed of Guernsey cow will suffer** and a **local quality product could be lost**.

Solution

- 7.3.16 The roundsmen have not yet come up with an alternative solution for ensuring the viability of the industry, which the G.M.R.A. states is due to the fact that they have had little opportunity to do so. It believes, however, that if there were open debate of the issues then the G.M.R.A. would be of great assistance in coming to a solution. The G.M.R.A. has suggested consideration might be given to transferring responsibility for the pricing mechanism for milk from the Department to an independent body, similar to the Office of Utility Regulation.
- 7.3.17 The G.M.R.A. believes that consumers are happy with the current price and product (Guernsey milk only). Customers have historically been used to paying considerably higher prices without complaint. The G.M.R.A. would wish to keep the status quo, or, if this is not possible, to at least be consulted and involved in coming up with a solution.
- 7.3.18 The G.M.R.A. believes that there would be a good case to make to Brussels for derogation from Protocol 3 and that the failure of other territories should not deter Guernsey from making its own case.

G.M.R.A. conclusions

- 7.3.19 The G.M.R.A. maintained that the Department's actions have deprived them of their possessions (by de-valuing their rounds) and are, as a consequence, in breach of Human Rights legislation. Further, the G.M.R.A. stated that the Department has failed in its duty to avail itself of all the appropriate information before reaching its decisions and failed to consult with affected parties who have a reasonable expectation that they would be consulted.
- 7.3.20 The G.M.R.A. also cited a particular case where the Dairy apparently became involved in the buying and selling of an individual round in order to recoup debts owed to the Dairy by the seller.
- 7.3.21 The G.M.R.A. believes, in no uncertain terms, that the Department has failed as a public body to discharge its responsibilities appropriately.

7.4 REPRESENTATION FROM FARMERS (G.F.A. and R.G.A.H.S.)

- 7.4.1 The Panel considered written and verbal (at the public hearing) submissions from Mr Julian Ogier, Guernsey Farmers' Association (G.F.A.) and Mr Ray Watts, Royal Guernsey Agricultural and Horticultural Society (R.G.A.H.S.).

The submissions summarised below are taken to represent the views of the local dairy farming community.

Consultation

- 7.4.2 The G.F.A. were fully consulted by the Department in the formulation of the policies outlined in the document entitled *Dairy Industry Consultation – 2005 Review of Dairy Industry Related Policies* (August 2005). This consultation related to the proposed changes to the farmers' contracts and farming related policies and did not include any discussion of the proposed changes to the distribution system or repeal of the Milk Law. The first time that the farmers had heard about these proposals was through the media coverage following the Department's announcement of them.
- 7.4.3 One positive outcome of the proposals identified by the farmers has been the recent communication between themselves and roundsmen, which has resulted in an increased understanding of their respective share of the industry.

Consequences

- 7.4.4 The introduction of the quota system in 2000 created a great deal of uncertainty in the industry. Since then, the farmers feel that a reasonable level of stability has been built up over the last 5 years and farmers had been confident of their future and the significant investment that they had made in their businesses. The farmers felt that the Department has mishandled its current proposals and, as a result, has created **uncertainty and instability**. The fear is that these proposals could undo a great deal of what has been achieved over the last five years and **damage the local farming industry beyond any form of possible recovery**.
- 7.4.5 The farmers feel that changes to the distribution and sale of milk will **affect their livelihoods** as well as the roundsmen's:
- "The... [dairy] industry must be likened to the traditional 3-legged milk stool. The Production of milk, the Processing of milk, and the Retailing of milk. Each leg represented by one of these. Break one and the stool becomes useless."*
- 7.4.6 Members of the G.F.A. have expressed their concern that any loss of the current market, either by the decline of the doorstep delivery or due to a third party importing milk, will eventually result in the **loss of farms and loss of cattle and a possible risk to the breed**.
- 7.4.7 Any loss of market share would result in **a reduction of the viability of farms** as the Dairy would be forced to reduce the quantity processed as demand fell, which would in turn put pressure on local farmers to produce less.
- 7.4.8 In particular, unrestricted **importation** of milk would open local farmers to competition in a world market. Given the high cost of labour, machinery and farm services, the G.F.A. state that it would not be realistic for local dairy farmers to compete. It believes that commercial farming on the current scale,

maintaining the land that is currently in the custody of the industry, would not be possible.

- 7.4.9 The President of the G.F.A. stated at the public hearing that the decline of the industry could happen very quickly and that recovery would be extremely slow, if not impossible:

“...these animals are eating away at money every single day and as soon as we start losing money, as you saw when there was the introduction of the milk quota, cows get shot...it has taken us four years to build up our numbers back to where we wanted them from a reduced breeding herd.”

- 7.4.10 Farmers are the custodians of the countryside and manage the environment. Consequently, if the dairy industry declines then this will **change the traditional Guernsey landscape**. The States will have to find an alternative way of protecting and managing its countryside and this is likely to cost more money than the current investment in the dairy farming industry to provide these services.

- 7.4.11 The R.G.A.H.S. is a founder member of the World Guernsey Cattle Federation and the Secretariat of the Federation is based in the Island. The Society believes that the local herd is *“...a unique gene pool that is of vital importance to sustainability of the global Guernsey breeding through the supply of genetic variation.”* The farmers are concerned that these proposals might result in the **loss of the breed**.

- 7.4.12 Another strong reason for protecting the breed is the **health status** of the Island’s cattle, which the R.G.A.H.S. states is one of the healthiest populations anywhere in the world, free of diseases such as Anthrax, Foot and Mouth, Tuberculosis, Brucellosis, Warble Fly, Enzootic Bovine Leucosis (E.B.L) and Bovine Spongiform Encephalopathy (B.S.E).

- 7.4.13 The farmers believe that the quality of local milk is far higher than imported (higher butterfat and protein levels). A local industry is also traceable and therefore consumers can be assured of the source and quality of the product. It also has a more reliable delivery system (not reliant on transport and a shorter journey from cow to consumer) and can be delivered to the consumer fresher than imported milk. The loss of the local industry would result in the **loss of a traceable quality product**.

Solution

- 7.4.14 Mr Watts had previously met informally with U.K advisors, and had understood their advice to be to “keep your head down”. The farmers’ representatives contributing to this Review have stated that they believed the sensible policy to be to continue to enforce local laws and wait until challenged, but to prepare for when or if a challenge happens. The understanding from previous advice had been that such a challenge would be extremely unlikely to arise from the E.U., as Guernsey is such a small community and its actions would not have any

impact on E.U. considerations.

- 7.4.15 The farmers have not yet come up with an alternative solution for ensuring the viability of the industry.

- 7.4.16 The farmers expect the Department to seek to protect the industry against imports, firstly by exploring the possibility of renegotiating Protocol 3 or seeking derogation from the responsibilities that would endanger the local industry. The G.F.A. also wished for the Department to fully explore the possibility of 'safeguarding' measures. The R.G.A.H.S. has provided information on the importance of the breed and believes that this would support a case for derogation, particularly given the significance the E.U. is currently putting on maintaining minor breeds.

- 7.4.17 The farmers do not understand the explanations so far provided by the Department as to why it has chosen to 'precipitate' change and are not convinced that this was necessary. The G.F.A. has accepted that if a legal barrier cannot be implemented to prevent imports then a low gate price at the dairy must be the only other option. This would be achieved by reducing costs of production, processing and distribution and continuing the States subsidy. The farmers expect to be consulted on this before measures are finalised and implemented.

- 7.4.18 The farmers are concerned that the G.M.R.A. estimates the gate price would have to be lower than 50p a litre in order to compete on price with imports. The G.F.A. has questioned whether the Department has a backstop if imports do come into the Island and the States Dairy cannot reduce the gate price as they struggle to balance the books.

8 CONCLUSIONS

8.1 THE DEPARTMENT'S OBJECTIVES

- 8.1.1 The Department has stated objectives and has provided background information relating to its wider policies for the future of the agricultural industry in response to the Panel's questions on these specific proposals. Consequently, the Panel has considered many aspects that it subsequently concluded are beyond the scope of this Review.
- 8.1.2 The Panel recognises that this Scrutiny Review has been carried out prior to the presentation of the Department's full strategy and before implementation of any of its proposals. Where the Panel has commented that the proposals have not addressed particular objectives, this is not intended as criticism. The Panel expects that the Department will explain its wider package of policies, particularly relating to environmental issues, consumer interests, protection of the Guernsey cow and ensuring the Island's self-sufficiency in locally produced liquid milk, in its pending States Report.

Commercial (6.2.2-3 / 6.4.54-6 / 6.4.62 / 6.5.1)

- 8.1.3 The Department has stated two objectives relating to the commercial success of the Dairy (as shown in sections 6.2.2 and 6.2.3). The objective of the Dairy Management Board (D.M.B.) proposals, which the Board had agreed to follow in principle at its meeting on 14th June 2005, was to maximise profit to the Dairy.
- 8.1.4 When the Board revised its proposals at its meeting on 9th August 2005, the main criterion in setting the gate price at 56p per litre appears to have been to ensure that the Dairy remained commercially viable (defined as meeting all operational costs, farmers payments and generating an operating surplus).
- 8.1.5 It is clear that the Dairy Management Board wished to operate more commercially and the Department discussed possible governance changes to allow this at its meeting on 14th June 2005. The current proposals would allow a more commercial relationship with farmers and retailers.
- 8.1.6 **The Panel believes maximising profit to the Dairy was the fundamental objective behind the Department's proposals.**

Competition, Reduced Government Interference and Bureaucracy

(6.2.4-5/6.2.21-3/6.4.25/6.4.46/6.4.48)

- 8.1.7 At its meeting on 9th August, the Department considered its proposals for milk distribution against the policy principles of its *Building Confidence* document. It had also had time to consider the Law Officers initial advice, which highlighted the administrative difficulties with the current legislation.

- 8.1.8 The repeal of the Law would withdraw legislative control and make the industry open to market forces and competition. It would also remove the obligation on the Department to issue licences to retailers and put the relationship of the Department with both retailers and farmers on a purely commercial footing. It would remove the 'monopoly' currently enjoyed by the roundsmen and the legislative protection of the Dairy's *de facto* monopoly position.
- 8.1.9 The extract of the Minutes of the 9th August meeting reflects that the revised proposals were, amongst other things, intended to allow for market conditions to determine the distribution process and price of milk. The Department has a stated objective of driving the retail price down through competition.
- 8.1.10 The Department has also made a comparison to the situation in Jersey, which the Department stated has removed its regulation of the retail price having found it to be in conflict with its Competitions Law.
- 8.1.11 The Department has stated a specific objective to adopt a pricing policy to enable doorstep roundsmen to set the price of milk to their customers, which would be a consequence of the introduction of competition. The Department's stated objective of reducing the retail price of milk is also an expected outcome of competition.
- 8.1.12 Ultimately, the Department has stated that its proposals were decided upon as a "*market-based solution*" to reorganising the industry.
- 8.1.13 **The Department has stated that it had the objective of removing unnecessary bureaucracy and has stated its policy principle, underlying all of its work, to reduce States 'interference' and create a 'competitive environment' and free market. The Panel believes these principles are the foundation of these proposals.**

Retail Price Reduction (6.2.5)

- 8.1.14 The Department's decision to keep the gate price as low as possible would allow roundsmen to retain similar profit margins without significantly increasing the retail price. It appears the Department did not consider alternatives, such as retaining some form of price control, to ensure a low retail price. The proposals give the retailers complete control over the retail price instead of the Department and there is no safeguard or fall-back position in evidence if the Department proves to be incorrect in its assumption that the retail price will fall due to competition.
- 8.1.15 **Reducing the retail price of milk appeared to be a secondary consideration in the development of these proposals and an expected side effect as a result of competition. There appears to be little planning or contingency in place for how the Department intends to achieve this objective if the retail price goes up.**

Discourage Importation of Milk (6.2.6)

- 8.1.16 The Department appeared to have regard to keeping the gate price as low as possible to compete with U.K prices and deter imports but its principal criteria for setting the gate price had to be the commercial viability of the Dairy. There is little evidence of planning for the eventuality that milk might be imported.
- 8.1.17 **The Panel has concluded that safeguarding the industry from competition from imported milk was a secondary consideration of the Department in formulating its proposals.**

Contribution to Wider Objectives

- 8.1.18 **Viability of the Dairy Industry and Environmental Objectives** (6.2.9-16)
The Department has, in its responses to the Panel's questions and in its communications to the public, linked its proposals to its objectives of maintaining the viability of the dairy industry in order to protect the countryside.
- 8.1.19 The environmental connection to these proposals is that the Department intends to direct the savings made in distribution towards paying more to farmers for milk. This is to meet its objective to maintain farm incomes, as the additional milk payment will offset the implemented charges for farm services.
- 8.1.20 There would clearly be benefits to the industry in economising in every stage of the supply chain. Directing savings towards farmers and production also directs the benefits of this towards the custody of the countryside and environmental contracts. The Department has suggested that the surplus income generated should eventually be aimed at reducing the net States subsidy available to the industry.
- 8.1.21 The Panel understands that the Department intends to make environmental improvements through the farmers' contracts but this is not within the scope of this Review. It is not clear from the information provided to the Panel how the Department intends to address its environmental objectives. For instance, how it intends to mitigate threats facing the farming industry, such as the inheritance of farms and increasing costs. There are currently twenty farms and seemingly any reduction in the farming industry would jeopardise the ability of the Dairy to meet production requirements (it already has to import milk to cover a shortfall in winter months.) Even assuming continued States financial support, there are clearly other factors, outside the scope of this Review, which will need to be addressed to ensure the viability of the industry.
- 8.1.22 **Protection of the Guernsey Cow and the Island's Self-Sufficiency In Liquid Milk** (6.2.17-19)
The Department has stated objectives relating to the protection of the Guernsey cow and for the Island's total requirement in milk consumption to be met from the Guernsey breed on local farms. It is not clear from the information provided to the Panel how the Department intends to address these objectives.

8.1.23 Reduce States Subsidy (6.2.20)

The Department has confirmed its belief in the necessity for subsidy of the dairy industry, in return for farmers' environmental services. It has clearly stated its intention to work on a 'partnership principle'⁹ with the industry and to cut States subsidy if possible. The Department did not consider the possibility of requesting more finances from the States to protect the industry or seeking to maintain the current level of subsidy longer-term.

8.1.24 The motivation for the Department's proposal to introduce charges for farm services was to reduce the annual £2million States subsidy.

General Conclusions on the Department's Objectives

8.1.25 The Department's commercial focus for the operation of the Dairy, its efforts to seek to drive efficiencies and value for money in all elements of the dairy supply chain and its ultimate objectives to maintain farm incomes and reduce States subsidy of the industry, are all positive examples of the Department seeking to deliver its mandate and further States objectives.

8.1.26 The public reaction to these proposals demonstrates the strong concern for safeguarding the dairy industry as a part of the Island's heritage and cultural identity and for the maintenance of the traditional countryside. The Department has stated that its proposals address these concerns in contributing to its objective of securing the future viability of the dairy industry. In seeking to remove legislative protection of the industry, whether that protection is real or perceived, these proposals might be regarded as a threat to meeting this objective. However, if successful, generating more profit for the Dairy would contribute to these wider aims.

8.1.27 These proposals do not stand alone in meeting the Department's objectives (outlined in section 6.2) and the Department has stated that this is because they are part of a wider package of policies that it intended to put to the States in November 2005 and will now revise following this Review. As its proposed changes to distribution are an integral part of its overall policies for the dairy industry, the Panel suggests that the Department was premature in seeking to implement them in advance of the States debate.

8.2 COMPATIBILITY WITH STATES POLICIES

Environment (6.3.2)

8.2.1 The Department's stated objectives in relation to safeguarding the environment fit with the 2006 Policy and Resource Plan objective:

"To conserve and enhance the countryside, including maintaining and improving biodiversity by protecting and enhancing habitats".¹⁰

⁹ The Commerce and Employment Department's *Building Confidence* document

¹⁰ Section 13.48, 2006 Policy and Resource Plan, Strategic Objective 8

- 8.2.2 **The Department's pending States Report on the future of the industry is expected to explain how these proposals, intended to maintain farm incomes, fit with the Department's overall strategy to contribute to the States strategic environmental policy.**

Distribution (6.3.3)

- 8.2.3 The increased discount for doorstep delivery was approved by the States in February 2000. This policy was to acknowledge the increased time and effort taken in doorstep deliveries compared to bulk deliveries.
- 8.2.4 The February 2000 Policy Letter stated that *"a retailing system is essential in order to maintain the highest possible level of sales of liquid milk."* It stated that the milk rounds at the time were sustained by income generated from sales to commercial customers and that those rounds with mostly doorstep deliveries were struggling. The former Board therefore wished to provide a greater discount to support doorstep deliveries as it believed that the volume of milk sales would fall if household deliveries ceased to operate.
- 8.2.5 **The Department's proposals are a departure from the policies previously approved by the States in 2000 in relation to the distribution of milk.**

Competition Policies (6.2.23 / 6.4.45)

- 8.2.6 The Department concluded that the current administration of the dairy industry (in particular the legally protected position of the Dairy, the 'monopoly' held by roundsmen, subsidy of doorstep deliveries and retail price control) is inappropriate. Its proposals sought to change this situation and instead implement a free market. If a Competition Law is introduced then it might be that the Department would be forced to make these changes to the current system as it is likely, as with Jersey, that it would not comply with such a Law. At the present time, however, there is no Competition Law in Guernsey and, therefore, no contravention.
- 8.2.7 The Department has stated that the Milk Law was written at a time when *"the idea of consumerism and concerns for a free market and competition were not on the public agenda."*
- 8.2.8 **The Department's recommendation to repeal the Milk Law would leave the future of the industry to market demand and competition. This pre-empts the Department's separate review of Competitions policies, which the Department has stated is currently still in the formative and consultation stage. The Panel does not feel that the Department has yet made its case that a free market would be in the best interest of protecting the future of the dairy industry and the States investment in it. This will be a matter for the States of Guernsey to decide.**

8.3 **THE DEPARTMENT'S DEVELOPMENT PROCESSES**

Drivers for Change (6.4.1-9)

- 8.3.1 In linking the proposed changes to distribution to its intended changes to the farmers' contracts, the Department committed itself to reporting back to the States by the end of 2005.
- 8.3.2 **The Department faced time pressures to complete its review of the dairy industry to report to the States by the end of 2005.**
- 8.3.3 The Department states that pressure from businesses for change was an instigating factor.
- 8.3.4 **The Panel notes the approaches to the Dairy by a local supermarket buyer were made after the Dairy Management Board had already formulated its proposals for change. The Panel is therefore not convinced that pressure from local businesses was a key driver of the proposals.**
- 8.3.5 The Department suggested that it was facing pressure from the States for financial restraint that led it to seek economies in all elements of the milk supply chain. It later made it clear that it had not had specific directions in this respect but had acted from an innate feeling of responsibility for good management.
- 8.3.6 **The Department's review of Dairy operations, farmers' contracts and the distribution system to identify measures for improving 'value for money' is what might be expected of good government in today's climate of financial restraint.**
- 8.3.7 **It is entirely appropriate for the Department to review the protection and commission currently available to roundsmen. It is not the responsibility of government to 'subsidise' private business. It is the responsibility of the Department to review the service provided by the roundsmen, the Dairy and dairy farmers to ensure it represents value for money to the States in return for its investment in the industry.**

Background to the Proposals (6.4.28-32)

- 8.3.8 The package of policies agreed by the States in 2000, put forward and implemented by the former Agriculture and Countryside Board, appears to have been broadly successful in managing the production of milk to meet demand, bringing down the retail price, improving animal welfare, reducing pollution, managing the countryside and encouraging bio-diversity. It had also successfully discouraged the importation of milk.
- 8.3.9 Although the implementation of changes, particularly the introduction of milk quotas, was clearly a difficult process for farmers, the farming community had recently reached a level of stability and confidence in the industry.

- 8.3.10 **It is apparent that upon its inception in May 2004, the Commerce and Employment Department inherited the care of a reasonably stable industry and a set of implemented policies that seemed to be working to good effect. At the same time, however, the Department inherited an administration of the dairy industry that had been built up over the years based on habit and misconceptions.**

The Milk Law (6.4.10-51 / 6.4.56-9 / 6.4.71-2)

- 8.3.11 A mitigating factor for the misconceptions over the provisions of the Law and its apparent mismanagement over time is the fact that the market has changed considerably since the context in which the 1955 Law and 1958 Ordinance were written. One problem arising from this is that the administrative practices have created a monopoly situation for roundsmen. The Law provides for the licensing of 'retailers' to buy milk from the Dairy and sell it direct to the consumer. It had not accounted for the emergence of supermarkets and for the traditional retailer (roundsman) to effectively take on the role of a wholesaler in supplying larger retailers. Both the roundsmen and the shops could be deemed to be in breach of the Law in making these transactions.
- 8.3.12 The definitions in the legislation have created further ambiguity. The Panel notes that the wording of the 1958 Ordinance indicates that its provisions, including the setting of the retail price and the licensing of retailers, should only be applied to whole milk and so would not cover skimmed or low fat milk. Therefore, it might be that the legislation only covers a very small and reducing part of the market for fresh milk.
- 8.3.13 There is also uncertainty surrounding the 1955 Milk Law as to whether or not it protects the industry against competition from imported milk. The common belief was that the Law prevented imports. The former Agriculture and Countryside Board had introduced measures in 2000, by way of States subsidy of £2million per annum, to reduce the retail price of milk to discourage challenge to the industry. The importation of milk might have been inevitable if the price had not been brought down to a competitive level with the U.K, thus the former Board avoided public challenge to its authority.
- 8.3.14 The Ordinance provides that milk cannot be sourced from anywhere else except the Dairy without the Department's permission. The effect of this provision is a *de facto* ban on importation. Neither the 1955 Law nor the 1958 Ordinance ban the importation of milk. It is the administration of this provision, rather than the legislation itself, that has the potential to go against E.U. obligations if used to prevent importation of milk.
- 8.3.15 The Department has stated that the Law Officers have advised that it would not be possible to take out an injunction under the legislation to prevent someone from importing milk.¹¹

¹¹ 0/4/06 - The Law Officers' Chambers has provided clarification that the advice given to the Department was that it was unlikely that the Law Officers would bring a prosecution for a breach of the Milk Law.

- 8.3.16 In the public hearing, Deputy Falla stated the situation that has arisen resembles the story of the ‘Emperor’s New Clothes’. The analogy certainly seems fitting; the legislation does not protect the monopoly of the milkmen as distributor, does not protect the industry from competition through imports and it seems should not even be applied to the majority of milk sold but only to whole milk. As long as everybody continued to believe that it did protect the industry as it stood, the system worked. Perhaps it was only a matter of time before it became exposed. The Department has stated that honesty and integrity meant that it could not ignore the fundamental flaws that had come to light in the legislation and its administration and therefore, like the boy in the story, decided to announce its fallibility.
- 8.3.17 Unfortunately rather than providing everyone with insight into the facts of the matter, the Department’s announcement that the Milk Law needed to be repealed only served to add to the confusion.
- 8.3.18 The written legal advice received by the Department that has been forwarded to the Panel supports the Department’s statement that ‘do nothing’ was simply not an option. It was the way in which the distribution system was being operated and not necessarily the legislation itself that required change. In fact, the legal advice suggests options for changing the system without repealing the 1955 Law.
- 8.3.19 On 31st May 2005 the Department’s Board recognised that the Milk Law required to be reviewed. On 12th July 2005 the Board agreed to repeal the Milk Law. There is no evidence that the Law was in fact reviewed before the decision to repeal was made.
- 8.3.20 In its briefing paper for the Panel entitled *Simply Milk*, the Department asks, “*If Guernsey had restructured to provide a better deal locally which reflected apparent European trends, why seek to repeal the Milk Law?*” The paper goes on to make reference to the domestic administration of the distribution system and the Department’s relationship with roundsmen.
- 8.3.21 The issue of whether or not the Law is defensible in terms of E.U. obligations was a secondary consideration in the Department reaching its decision to recommend the repeal of the Milk Law. The Department did not pursue consideration of these issues in its correspondence with the Law Officers. Whilst it met with White & Case, the States advisers on European matters, on 22nd July 2005, no notes of that meeting were taken. It is regrettable that a meeting of this nature took place without a formal record being made of the advice given.
- 8.3.22 The Department has talked about the likelihood of challenge to the current system. The implication appeared to be that it expected a challenge to the legislation in respect of the importation of milk. In fact, on the basis of the information provided, the likelihood of a challenge from the E.U. or from a retailer wishing to import milk seems to have been insignificant and the only

issue of challenge to the distribution system might have arisen if a store wished to challenge the monopoly of roundsmen being licensed by the Department for delivery. This is a domestic issue that could be resolved without the repeal of the legislation.

- 8.3.23 **The Department had little choice but to review the distribution system in the light of the legal advice it received. It is clear that the Department had inherited a flawed administration of the distribution system and it sought to take positive steps to lead change to rectify this.**
- 8.3.24 **The Department suggested that there would be no choice but to repeal the Law due to the Island's E.U. obligations under Protocol 3, but has not provided any evidence to support this assertion. It is the Department's ability to regulate imports provided for in the 1958 Ordinance and not the Law itself that is potentially against the Island's commitments to the E.U.**
- 8.3.25 **The Department clearly recognised that the legislation was outdated and in need of review and it is logical that such a review should start with questioning whether there is a need for legislative regulation of the industry at all. The Department decided that the legislation was defunct and that a free market should be introduced. The Panel believes the Department did not give proper consideration to the potential benefits of retaining legislative control or consider any alternative solutions to meet its objectives.**

The Department's Solution

- 8.3.26 Setting a single gate price would remove the administrative difficulties involved in operating two separate charges depending on the end customer (doorstep or large shop). Setting the gate price at 56p (from 55p for 'direct billing' customers or 52.48p for doorstep delivery) would mean the Dairy retaining more profit than at present.
- 8.3.27 Under the current system, the Department is responsible for both the gate price and the retail price and therefore is dictating the 'commission' available to roundsmen. The removal of retail price control would mean that roundsmen could set their own margins, enabling the additional cost for the doorstep service to be paid by the customer receiving the benefit of it and the retail price to be set according to market forces.
- 8.3.28 This in turn would provide a better 'fit' with the Department's policies for encouraging competition and minimising States interference in the market. The removal of the retail price and with it the necessity to licence retailers would change the Department's relationship with roundsmen to a purely commercial arrangement in selling them milk through the Dairy. Likewise, the removal of the Milk Law would make the contract arrangements with the farmers purely commercial in buying milk from them. Environmental services would be dealt with under a separate contract.

- 8.3.29 A commercial arrangement would reduce the administration and bureaucracy required, for instance in considering applications from roundsmen for a licence.
- 8.3.30 The creation of a free competitive market in which the 'monopoly' of the Dairy is no longer protected in Law and the Department is no longer controlling the retail price would allow the Dairy to operate more commercially.
- 8.3.31 If the Department's judgement is correct, competition will keep the retail price down and will therefore counteract the upward pressure on prices and benefit the consumer.
- 8.3.32 The Dairy would deliver savings through operational reorganisation and from the higher gate price, which would enable it to pay a higher price to farmers for milk. The farmers would continue to receive the current level of funding, based on a better-targeted environmental contract, but within the States' current financial commitment of £2million. Charges would then be introduced for farm services to be more in line with the 'partnership principle'¹² but would be counterbalanced by the higher product payment at the Dairy, so that the net income available to farmers would not be reduced.
- 8.3.33 With a higher income from savings at the Dairy, the increased gate price and farm services payments, the retained profit after Dairy operational costs and payment for milk to farmers could then be used to reduce the net States subsidy of £2million.
- 8.3.34 In the Department's judgement, the Milk Law repeal and end of the retail price fixing arrangement would remove any question of successful challenge from the E.U. and move closer to Protocol 3 obligations. It would also anticipate compliance with any Competition Law should one be introduced in the future.
- 8.3.35 **The Department's solution is a logical consequence of the administrative difficulties that it faced and could achieve its objectives to improve the profitability of the Dairy, move to a more commercial operation and maintain farm incomes whilst achieving a reduction in States subsidy.**

8.4 CONSEQUENCES

- 8.4.1 The Panel has attempted to bring together and summarise the possible consequences of these proposals having considered the views of the G.M.R.A, farmers, public and the Department, noting the differences or consensus of opinions expressed.

Effect on Roundsmen (6.5.5 / 7.3.5-8 / 7.3.19)

- 8.4.2 It seems a likely outcome that those distributors currently supplying large account customers will lose this business or will have to renegotiate a much reduced commission based on their new position as deliverymen and no longer as *de facto* wholesalers.

¹² Commerce and Employment Department's *Building Confidence* document

- 8.4.3 It is possible that large retailers might be happy with maintaining the status quo, although this does not seem likely, particularly in the longer term. The Department states that a buyer for a large retailer had already approached the Dairy asking for changes to the current delivery system.
- 8.4.4 Roundsmen with doorstep deliveries will be paying more for their milk from the Dairy (approximately 4p more per litre than currently). With the removal of the retail price control they would be able to maintain their level of commission by passing on the additional cost to the consumer. This would depend on the price sensitivity of customers and the effects of competition in driving down the retail price. For example, customers of doorstep deliveries could reasonably be expected to pay a premium for the delivery service provided over and above the cost of milk available from a shop. It is unclear how much extra the consumer would pay before they might be encouraged to switch from doorstep delivery to buying from the shops. With the removal of the retail price control, shops might lower the price to the consumer, which in turn might force roundsmen to lower their prices.
- 8.4.5 In removing the compulsion to purchase milk from the Dairy, if roundsmen could source their milk sufficiently cheaper elsewhere they would also have this option open to them to retain their profit margins. In addition, there might be options for roundsmen to further diversify their current deliveries to supplement their business e.g. by delivering other products, as some roundsmen already do.
- 8.4.6 It has not been confirmed whether there is sufficient demand for doorstep deliveries, either currently or with scope to extend to new customers, to support the current number of roundsmen and replace any reduction in business through the loss or renegotiation of deliveries to large retailers. It is also unclear what profit margin, or commission, would be required to make a milk round a viable business proposition and therefore what 'slack' there might be for individual roundsmen to respond to competition should this drive the retail price down.
- 8.4.7 The removal of the perceived protection of individual rounds might invite competition from new entrants to the market. There might also be more competition between roundsmen and some redistribution of particular 'territories'.
- 8.4.8 The G.M.R.A believes that the loss of business will not be limited to a few roundsmen, but that all of its members will be affected. The Department does not expect a decline in distribution as a consequence of its proposals. It acknowledges that whilst some businesses might lose out as a result of the introduction of competition, this might also introduce opportunity for some roundsmen to expand their doorstep delivery businesses.

Doorstep Deliveries (6.5.6-11 / 7.3.9-10)

- 8.4.9 The G.M.R.A. states that Guernsey has a higher consumption rate per head than Jersey because of its more comprehensive doorstep delivery network. The

former Agriculture and Countryside Board also clearly believed that a greater percentage of doorstep sales meant a greater consumption of milk¹³, but the current Department is no longer convinced by that argument.

- 8.4.10 Roundsmen feel that the proposals will result in a decline of doorstep deliveries and consequently a downturn in milk sales. The Department considers that its proposals will not lead to a decline in doorstep deliveries, although it believes that a natural trend away from doorstep sales might continue due to changing consumer habits.

Consumer Benefits (6.5.13-14 / 7.2.18 / 7.2.30)

- 8.4.11 It could also be argued that introducing competition to the market provides other benefits to the consumer, for example by virtue of the fact that businesses would now have to make efforts to attract custom resulting in possible 'added value' to services.
- 8.4.12 The proposals might result in a reduction in the retail price of milk. This could occur if the larger retailers choose to pass on part of their increased profit margin (gained if they purchase milk directly from the Dairy) to the consumer. It is possible that competition between larger retailers could drive down the retail price in shops. Conversely, it is possible that stores will put the retail price up or that there is little variation in retail price.

Importation of Milk (6.5.15-19 / 7.3.11-13)

- 8.4.13 The repeal of the Milk Law would remove barriers, whether real or perceived, to the importation of milk, as potential importers would no longer technically have to apply to the Department for permission to buy or sell milk. The Department believes that retailers will not import milk, or at least not in a quantity that would jeopardise the local industry. It argues that the Law could not have prevented imports anyway, although it has acknowledged that it has now raised the profile of possible importation by publicly declaring the Law indefensible. It has stated that imports will not be an attractive option in any case, as it believes the pricing at the Dairy is suitably competitive and consumers would be loyal to the local product.
- 8.4.14 Given the importance of discouraging imports to safeguard the future of the industry, it would be reasonable to assume that the proposed gate price would have been rigorously tested against pricing in the U.K and other European countries that would be potential competitors. It is not evident from the supporting information provided to the Panel by the Department that much thought was given to this. Rather, it appeared as though the gate price was set to maintain the profitability of the Dairy whilst allowing an increased payment to farmers to offset reduced subsidy. At the public hearing, however, the Minister gave assurances that calculations had been done and that these indicate that the gate price would have to be around 40p to compete on price alone. This appears

¹³ As stated in its August 2000 Policy Letter

to fit with the calculations provided by the G.M.R.A. that suggest a litre of milk could be imported to dockside for 43.3p to 47.3p and might be less through the negotiation of bulk discounts.

- 8.4.15 If competition between larger stores drove the retail price down then smaller retailers, or the G.M.R.A. might be forced to consider importing milk at cheaper prices in order to be able to continue to compete on price.
- 8.4.16 The Department has pointed out that the local product is of a much higher quality than potential imports and also has strong consumer loyalty and so would not have to compete solely on price. The Department has judged that a differential of somewhere between 8p to 12p a litre would not be attractive enough for retailers or the hospitality industry to consider importing. The G.M.R.A has stated that the gate price would have to be lower to discourage imports.

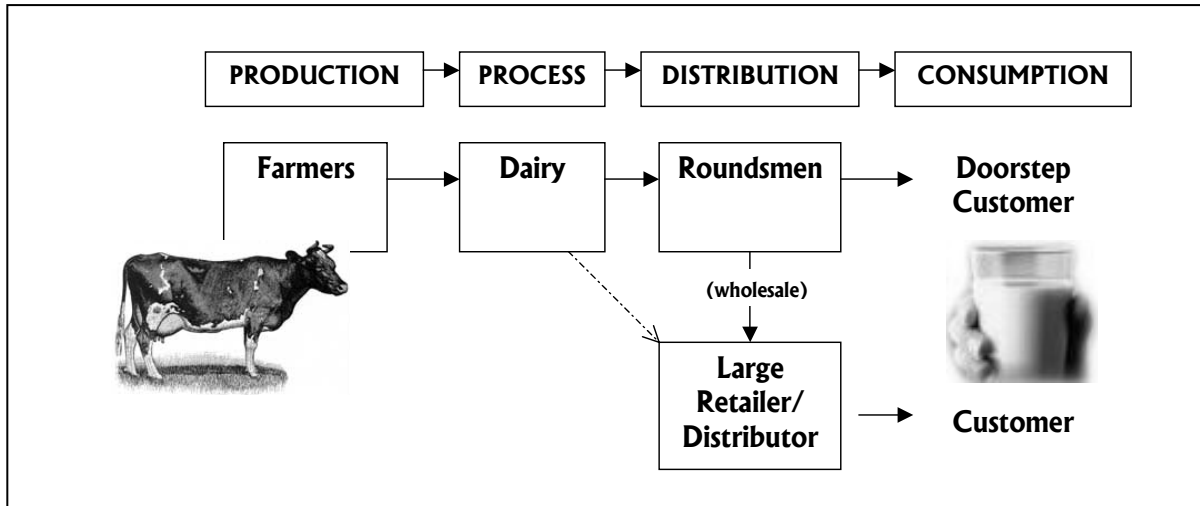
Effect on Farmers (7.4.4-5)

- 8.4.17 According to the Guernsey Farmers' Association, confidence in the farming industry has been shaken by the Department's recent proposals. The changes being made to the distribution system will not immediately or directly affect farmers. If the Department is correct, the changes will help to maintain farm incomes.
- 8.4.18 It is a possibility that the Dairy will lose sales from the reduction or demise of doorstep deliveries, or possibly, with potentially more significant impact, as a result of competition from imported products. If the Dairy begins operating at a loss, this will add to pressure on the farmers' contracts. Farmers would be producing more milk than the Dairy would be able to sell and so their quotas might be reduced as a result.
- 8.4.19 When quotas were introduced in 2000 to control the overproduction of milk there was a corresponding reduction in farm businesses. The herd costs the farmer money to feed so in response to the reduction in demand many cows were culled, to a point where there was under production. The Guernsey Farmers' Association has stated that it has taken some time for farms to recover from the culling that took place and the herd genetics and development of the breed had also suffered as a result of the reduced cattle numbers. The operation of the quota system has now reached a level where production is roughly meeting demand¹⁴. The Association has stated that possible reductions in demand now could lead to a similar reaction to 2000 and a reduction of working farms and of the herd.
- 8.4.20 Farmers might question how the proposed new commercial relationship with the Dairy will protect them from future reductions in what the Dairy is prepared or able to pay them.

¹⁴ There are seasonal variances that lead to overproduction in summer and underproduction in the winter months, which is balanced by the Dairy importing milk from Jersey.

Dynamics of the Dairy Industry

- 8.4.21 Currently, the Commerce and Employment Department, through its control of the Dairy, licensing of the roundsmen, its setting of farmers' payments, the gate price and the retail price, has the balance of control in the relationships between the different stages of the supply chain from cow to consumer. Some of this control is defined in legislation. With this comes responsibility for the sustainability of the dairy industry and for the public investment in it (i.e. best value for the £2 million subsidy.)



Dairy Industry Supply Chain

- 8.4.22 The repeal of the Milk Law would mean that farmers would no longer be obliged to sell their milk to the Dairy. As production currently only just meets the demands for local consumption, should the amount of milk provided to the Dairy fall then it would not be able to meet local demand. In reality, however, it is unlikely that the farmers would have any alternative market for selling their milk except the Dairy.
- 8.4.23 The removal of the legislation would also mean that the Dairy would no longer have a protected *de facto* monopoly position, although it seems unlikely that any alternative milk processing solution would be viable.
- 8.4.24 Under the current proposals, whilst the roundsmen's dominance of distribution would be removed, larger stores would be in a stronger position. The proposals would provide larger stores with more bargaining power to drive down the gate price at the Dairy (as bulk purchase customers who could otherwise choose to import milk), which in turn would put pressure on farmers' incomes and threaten the viability of the industry.
- 8.4.25 Relinquishing control of the retail price to market forces and removing legislative regulation would change the dynamics of the industry.

Other Possible Consequences

- 8.4.26 A reduction of the industry would mean a loss of environmental and countryside management. The cost to the community in retaining these services would rise considerably and there would be increasing pressure to use the land for more economical pursuits. The reduction and possible loss of the Guernsey breed and the traditional identity of the countryside would also be detrimental to the Island's heritage and identity.
- 8.4.27 The reduction or demise of the local dairy industry would also mean the Island would not be self sufficient in liquid milk. In 1955 when the Milk Law was implemented it is likely that the necessity for self-sufficiency would have been acute in people's minds following the Occupation. Recently, the Foot and Mouth outbreak in the U.K, making the importation of dairy products particularly problematic, might highlight the benefits of having a local supply of milk meeting local consumption needs. If the Island became more reliant on imported milk, and consequently more reliant on regular transport links, the Guernsey Farmers' Association maintains this would mean a loss of reliability in the supply and of quality in the product. The consumer would lose the reassurance of a traceable product.
- 8.4.28 The possible consequences of the Department's proposals are perhaps best illustrated by the concerns expressed by the public, roundsmen and the farming community in response to the announcement of these changes. Section 7 summarises the representations made to the Panel from these stakeholders.
- 8.4.29 If the Commerce and Employment Department is correct in its assessment that its proposals will not adversely affect sales of milk through the Dairy then the fears expressed by the G.M.R.A., farmers and members of the public concerning the future of the industry as a direct result of these proposals are unfounded. However, if there is a downturn in milk sales through the Dairy, then the possible consequences are serious and potentially lead to the demise of the dairy industry.

General Conclusions on the Department's Planning for Consequences

- 8.4.30 The Department would relinquish control of the retail price and so would place the emphasis on a competitive gate price to keep out imports. It has not provided comfort as to how it would withstand upward pressure on prices in the future or how it would counteract the dominance of stores who would now have more power to put pressure on the Dairy to lower the gate price.
- 8.4.31 The calculations provided by the Department indicate that a loss of just 5% of sales would mean the Dairy would no longer be breaking even (predicting a loss of £67,758)¹⁵ (see 6.5.20). Therefore, the Dairy cannot afford any significant loss of market share.

¹⁵ This is based on current figures. Document 7 Commerce and Employment Department submission dated 10th November 2005.

- 8.4.32 The Department has stated that if its judgement that retailers will not import milk is incorrect, then it would approach retailers that were importing and try to dissuade them from doing so. If this did not work and the importation could be shown to be significantly and adversely affecting the industry, then it would seek safeguard measures from the E.U. to ban importation. If the Board were unable to obtain satisfactory safeguard measures and if it judged that it needed greater financing to lower the gate price to give greater discouragement to imports then it would approach the States to request more funding.
- 8.4.33 The farmers' representatives gave a clear indication at the public hearing that they did not feel the market could withstand competition from imports and that if their profit margins were squeezed then the decline of the industry would be rapid and it would not be long before it would be beyond the point of recovery.
- 8.4.34 The Department has stated that it cannot guarantee that removing the Milk Law will not lead in time to the substantial importation of milk, price wars, the loss of doorstep deliveries and ultimately the demise of the dairy industry. It has judged that this will not happen, but states that it is a case of "time will tell".
- 8.4.35 **The Department's solution hinges on its judgement that there will not be a drop in milk sales through the Dairy, which is based on its assumptions that the distribution system will not be adversely affected by its proposals and that milk will not be imported. Given the high impact of the possible consequences of these proposals, the Panel believes that the industry, public and States Members will need more information than has so far been provided to support the Department's assessment that these potential consequences are not likely to happen.**
- 8.4.36 **If the Dairy does become unprofitable to the point below which it is no longer financially viable to operate, the Department's suggested fallback position is unlikely to provide any comfort to the industry. If losses were due to competition from imports the Department has stated it would seek a safeguard against imports from the European Commission, which would be a lengthy procedure that might be too late to prevent the decline of the dairy industry. The repeal of the legislation would remove the Department's ability to discourage imports through regulation of the retail price, which was the seemingly successful policy adopted by the former Agriculture and Countryside Board since 2000.**
- 8.4.37 **The Panel believes that the Department has not sufficiently considered options for mitigating the risks and for a fallback position if it is proven wrong.**

8.5 PERFORMANCE, MONITORING AND REVIEW MEASURES (6.6)

- 8.5.1 The Panel was not convinced by the list of performance indicators provided by the Department in that it appeared to be a list of expected outcomes and would need to be more refined to ensure that they are S.M.A.R.T (specific, measured, agreed, realistic and timed) performance measures.

- 8.5.2 **The Panel does not believe that the Department has sufficiently planned for measuring and monitoring the performance of its proposals. It expects that this will be addressed in the Department's forthcoming States Report on the future of the industry.**

8.6 **OTHER ISSUES**

The Department's Relationship with Roundsmen (6.7.1-5/7.3.3/7.3.6/7.3.20)

- 8.6.1 There is clearly confusion over the licensing of the roundsmen. The approach that the Department states the Dairy has adopted in recent times has been to regard its relationship with roundsmen as purely a business arrangement. The licensing process is a simple application and check for criminal convictions and the Dairy no longer issues a written licence.
- 8.6.2 The Department maintains that it is not involved in any way in the buying or selling of rounds or in defining the territory of rounds. The G.M.R.A. cites a particular case, which has been the subject of recent publicity, where the Dairy allegedly became involved in the buying and selling of an individual round in order to recoup debts owed to the Dairy by the seller.
- 8.6.3 The Department maintains it does not protect rounds from other entrants, or get involved in territorial or contractual disputes where these might arise. Where a dispute arises between a roundsman and a larger retailer as his customer, the only involvement that the Department states it would have is to ensure that milk continues to be delivered to the shop. The G.M.R.A. has stated its members thought their licences protected their territory. The licences that used to be issued to roundsmen (these are no longer issued by the Department), indicated the area or shops that the holder delivers to, which the roundsmen have taken as providing them with exclusive rights for supply to those customers. The Department has stated that the wording on the licences is now out of date and that references to zones have only ever been indicative.
- 8.6.4 The G.M.R.A has pointed out that roundsmen have traditionally been referred to as 'milk retailers' and the Department has used the term 'roundsman' only recently. This reflects the Department's receipt of legal advice that it is no longer appropriate to consider the roundsmen as the only milk retailers to be licensed under the terms of the legislation, which should include all retailers who sell milk.
- 8.6.5 The Panel has not investigated the 'licensing' of roundsmen or considered in detail the distribution structure, as these aspects are operational rather than policy and are beyond the scope of this Review.
- 8.6.6 **It is apparent that there is misunderstanding between the Department, its predecessors and roundsmen as to what their relationship is and what the terms of being licensed are. Little has been done to clarify the situation.**

Consultation and Communications (6.7.6-12/7.3.2-4/7.4.2-3)

- 8.6.7 The Panel is not aware of any conclusions reached following the consultation process that the Department carried out with the Guernsey Farmers' Association, in relation to the farm contracts. This aspect is beyond the scope of this Review, although the Panel understands that the G.F.A. is broadly in agreement with the proposed changes to the farming contracts. The Panel assumes that the Department will report to the States on this matter in its pending States Report.
- 8.6.8 The G.F.A. has stated that it was not consulted over the suggested changes to the distribution system or the repeal of the Milk Law and this has been accepted by the Department.
- 8.6.9 The supporting information provided by the Department has demonstrated that commercial considerations at the Dairy, through consultation with the Dairy Management Board, were an instigating factor in formulating policy.
- 8.6.10 The Department did not carry out any consultation with the milk roundsmen in advance of proposing changes to the distribution system and the repeal of the Milk Law, despite having indicated in its letter dated 19th July 2005 that it would consult with them on proposed changes following its review of the 'agricultural sector'.
- 8.6.11 The Department did not consult with the end retailers/shops in formulating the proposals.
- 8.6.12 There was no public consultation as part of the policy formulation process.
- 8.6.13 It is evident that the Department's staff sought the Law Officers' views on the original Dairy Management Board proposals and that the advice received, which was that the current application of the Law in the operation of the distribution system was untenable, was taken into account. It does not appear that further advice was sought from the Law Officers on the Department's revised proposals or to consider alternative solutions.
- 8.6.14 The Department did consult with White & Case, advisors with legal expertise in European matters, on 22nd July 2005. No notes were taken of the advice received and it is unclear how it might have influenced the Department's policy proposals, if at all.
- 8.6.15 Other jurisdictions might have been consulted, in particular the U.K Department for Environment, Food and Rural Affairs (DEFRA). The Panel understands that such matters would have to be addressed through the U.K Department for Constitutional Affairs (D.C.A) and would also have to involve the Policy Council. Other possible consultees might have included counterparts in other islands such as Jersey and the Isle of Man. The Department could have also consulted with the Environment Department on its environmental objectives and with the Treasury and Resources Department on the future of States funding of the industry.

- 8.6.16 It appears that the Department did not consult with any other parties, such as other States Departments or jurisdictions, in formulating its proposals.
- 8.6.17 Farmers and roundsmen have recently opened up communications having been united by the perceived threat to the dairy industry from these proposals. Conversely, communication between these groups and the Commerce and Employment Department has clearly deteriorated over the past twelve months. The information provided at the public hearing from the Guernsey Farmers' Association and the Guernsey Milk Retailers' Association indicates that their working relationship with the Dairy is particularly difficult.
- 8.6.18 **The Department did not carry out a consultation process on these specific proposals. The Panel does not accept that commercial considerations prevented any form of consultation with those affected.**
- 8.6.19 **These proposals represent a significant business change for roundsmen in particular, requiring sensitivity in communicating and introducing changes, which the Panel has found to be lacking in the Department's handling of this situation.**

Implementation (6.4.73-4/6.7.11/7.3.2)

- 8.6.20 The Department noted the importance of introducing changes gradually in its June 2005 Policy Review document:

“experience has shown that it is not change that is the problem, but the speed of change, and that everyone involved in the industry needs time to adjust and adapt to change so that they do not find it too disorientating.”

- 8.6.21 This statement is at odds with the manner in which the Department decided to precipitate changes to the distribution system.
- 8.6.22 **The Panel does not consider five-weeks notice of these changes adequate. It believes the Department should have provided to those affected a full explanation of its proposed changes well in advance of implementation and provided an opportunity for comment and feedback.**
- 8.6.23 **The Panel believes that the Department should consider options for a phased introduction of any changes or implementing a transitional period. It should also consider measures to assist those affected to adjust to the changes.**

Fragmentation of the Industry

- 8.6.24 The Department appears to have given a reasonable amount of consideration to its support of the farming industry, illustrated in documents provided to the Panel, *Dairy Farming – Policy Review 2005* and *Dairy Industry Consultation – 2005 Review of Dairy Industry Related Policies*. These documents did not

include consideration of distribution and roundsmen were not included in the consultation process. (6.7.6)

- 8.6.25 The Department's review of distribution appears to be purely from the commercial perspective of the Dairy. The Department did not include the farmers in its communications about the proposed changes to distribution, perhaps on the assumption that they would not be affected.
- 8.6.26 The Department's focus has been on dairy farming, which is understandable given that this is where the States subsidy is intended to be directed for delivery of the States environmental objectives. It appears however that the Department has not fully considered the inter-relationships between the stages of the supply chain, which the farmers' representatives have compared to three legs of a stool, each dependant on the other.
- 8.6.27 **The Panel is not convinced that the Department has succeeded in considering the dairy industry as a cohesive whole. In bringing these proposals forward ahead of its wider strategy, the Department has segregated distribution. It has not yet demonstrated its consideration of how a comprehensive delivery network can be maintained or even improved to support the profitability of the Dairy, the income of the farmers and safeguarding of the countryside.**

The Department's Mandate

- 8.6.28 **Environment versus commerce**
The Panel believes that making the dairy industry an exemption from its presumption against subsidy and States interference might be difficult for the Department to align with its other objectives and policies. The case for doing so (furthering environmental aims) is at odds with the commercial criteria the Department appears to usually apply for directing its support to industry.
- 8.6.29 There appears to be a conflict between the Department's environmental objectives and its mandate for the creation of a dynamic and diversified economy. The environmental aspirations behind the States subsidy were inherited by the Department by virtue of the fact that it operates the Dairy and buys milk from the farmers, who are the principal custodian of the countryside. The simplest mechanism for the States to achieve its environmental objectives, therefore, is to manage them through the contracts with farmers for the supply of milk.
- 8.6.30 This connection and its management was perhaps more fitting to the mandate of the former Agriculture and Countryside Board because the Commerce and Employment Department has a broader focus. The difference is perhaps self-explanatory in the titles. If it were not for this business arrangement, safeguarding the countryside and encouraging biodiversity would probably not form a part of the usual business of the Commerce and Employment Department.

8.6.31 The industry's contribution to the economy, whilst providing diversification, is heavily subsidised and, if considered in purely economical terms, the £2million States subsidy and resources taken up by the industry in labour and land would achieve greater returns invested in a higher net worth industry. The Department might find it difficult to relate work streams of the former Agriculture and Countryside Board to its mandate (such as expanding environmental contracts beyond the dairy industry, animal welfare and the possibility of legislation for GM crops)

8.6.32 Commercial Dairy versus industry support

The Panel believes there is a tension between the Department's responsibility for the commercial operation of the Dairy and its role to support the well being of the industry as a whole. The original proposals of the Dairy Management Board put to the Commerce and Employment Board in June 2005 (outlined in section 6.4.54) were indicative of how a commercial approach to running the Dairy might be implemented. The Commerce and Employment Department's responsibility for the operation of the Dairy means it has an objective to maximise the Dairy's profit, which is what the Dairy Management Board's proposals set out to achieve. Conversely, the Department also has responsibility for the viability of the whole industry, the States financial investment in it in the form of subsidy and for meeting the needs of the consumer. The Department appears to have been mindful of this when it finalised its current proposals, rejecting those put forward by the D.M.B.

8.6.33 The Department has to ensure that what is good for the industry is not lost to operational or commercial considerations for the Dairy. It has to align the potentially conflicting interests of the environment and business and act as both operator and regulator of these interests. The Panel recognises that finding a balance between these conflicting issues might, on occasions, prove to be very difficult.

8.6.34 The Panel considers there is potential for a gap in States environmental policy formulation due to the difficulty for the Commerce and Employment Department in aligning some of the inherited responsibilities of the former Agriculture and Countryside Board with its wider mandate.

8.7 SUMMARY OF CONCLUSIONS

8.7.1 Overall, the Department's willingness to tackle a clearly difficult situation that it inherited and initiate change has been positive. Its proposed solution would also appear to be sound, but it is difficult to fully assess this in the absence of the bigger picture. It is the Department's haste to bring these changes forward ahead of its wider strategy, its plan for implementation and its communication of its intended strategy that the Panel has found to be flawed.

8.7.2 As the Department has not yet implemented any of its proposals and will be presenting its overall package for the future of the dairy industry to the States in due course, it has the opportunity to reconsider its proposals in the light of the strong public reaction to them and the issues arising from this Review process.

9 RECOMMENDATIONS

The following recommendations are based on the Panel's findings. Cross-references are provided to relevant sections of the Report.

- **The Commerce and Employment Department is recommended to:**
 - 1 Consider delaying implementation of any of its proposals listed in section 5 of this Report until after the States of Guernsey debate on the future of the Dairy industry. (8.1.27/8.2.5)
 - 2 Define the requirements for roundsmen and retailers in their dealings with the Dairy and their relationship with the Department (which currently includes licensing requirements). (8.6.6)
 - 3 Seek to improve communication and ongoing consultation with the industry (8.6.19)
 - 4 Explain proposed changes to the distribution system to roundsmen and farmers and take into account what effects these might have to their businesses and the industry. (8.6.22)
 - 5 Take a phased approach to the introduction of any proposed changes that the States might approve. (8.6.23)
 - 6 Provide supporting information for its judgement that there will not be a drop in milk sales through the Dairy, which is based on its assumptions that the distribution system will not be adversely affected by its proposals and that milk will not be imported. (8.4.35)
 - 7 Give further consideration to how it intends to mitigate any adverse consequences and to establishing a fallback position if it is proven wrong. (8.4.37)
 - 8 Seek further legal advice and carry out a comprehensive assessment of where legislative control of the industry might be required and of the deficiencies identified in the current legislation that need addressing. (8.3.24/8.3.25)
- **The Panel advises that the Commerce and Employment Department liaise with the Policy Council to give consideration to:**
 - 9 The appropriateness of the Commerce and Employment Department's dual roles as operator and regulator and the potential for conflict between its operational responsibility for the Dairy and its responsibility for policy formulation for the future of the dairy industry. (8.6.33)

- 10 Reviewing the mandate of the Commerce and Employment Department with regard to its responsibility for administering environmental policy and to identify how this fits with corporate policy. (8.6.34)

APPENDIX A

**COMMERCE AND EMPLOYMENT
DEPARTMENT AND POLICY COUNCIL'S COMMENTS**



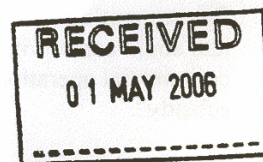
COMMERCE AND EMPLOYMENT

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

Alderney Representative Cox
Chairman, Milk Proposals Scrutiny Review Panel
Scrutiny Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

28th April 2006

Commerce and Employment
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Dear Richard

SCRUTINY REVIEW MILK DISTRIBUTION PROPOSALS

Thank you for your letter of 20th April giving the Department the opportunity to comment on the report of the Scrutiny Panel on proposals for change to the sale and distribution of milk and our recommendations in relation to the Milk Law.

When the Scrutiny Committee first announced the appointment of a Panel to investigate these matters, the Commerce and Employment Department welcomed the opportunity that would provide for a full examination of all the relevant issues. At the conclusion of that process, and having had the benefit of reviewing your report, the Department remains of the opinion that this has proved a valuable exercise.

In the light of your report, the Board will be modifying its approach to the States on the whole interrelated issue of milk, the Dairy and the future of the agricultural industry.

It is not the intention of the Department to comment on the process of the review other than to say that there are lessons to be learnt for the future conduct of such policy development exercises and in particular when Scrutiny decides to intervene in an issue which is inextricably bound up with a wider policy report (in this case on the future of the Agricultural Environment Scheme) which report is not yet in the public domain.

The Department believes that many of the points raised by the Panel in its report will be addressed when the States report is laid before the States later this year. With this in mind, it is not the Department's intention to respond to all of the issues raised in this letter. However, there are one or two general points which the Department would wish to make.

Acknowledged Problem

Firstly, the Department draws comfort from your conclusion at 2.2.9 i.e. "the Department had little choice but to review the distribution system in the light of the legal advice it received. It

POLITICAL RESPONSIBILITIES

Primary Industries, Industry and Commerce, Financial Services, Visitor Economy, External Transport, Health and Safety, Industrial Relations, Trading Standards

is clear that the Department had inherited a flawed administration of this distribution system and it sought to take positive steps to lead change to rectify this”.

We welcome endorsement of the fact that the Department did not seek change for changes sake but was faced with an interrelated set of real and pressing issues that could not be ignored and demanded a response.

Furthermore, we are greatly encouraged by your final concluding paragraph (8.3.35) i.e. “The Department’s solution is a logical consequence of the administrative difficulties that it faced and could achieve its objectives to improve the profitability of the Dairy, move to a more commercial operation and maintain farm incomes whilst achieving a reduction in States subsidy”.

No Simple Solution

The Department is also encouraged that the Panel and the Committee recognise the inherent and inescapable complexities of this subject and acknowledges that the choices for action are by no means simple ones. Indeed, it is interesting to note that when invited to comment on what action should be taken in the future, neither the Guernsey Farmers’ Association nor the GMRA were able to offer a clearly thought out alternative solution.

Pace of Change

The distillation within the Panel’s report of the concerns and uncertainties about change expressed by the public, consumers, roundsmen, farmers and others has given the Department cause to reflect on the approach that it took to addressing these matters.

As a result of that reflection and with the benefit of the hindsight it so clearly provides the Department has concluded that:

- reform, though necessary, is always difficult and can be painful;
- acceptance of the need for change and adapting to new circumstances takes time; but,
- regrettably the approach adopted by the Department simply did not provide sufficient time for the proposed changes to be understood and fully embraced.

At the end of this process the Department remains of the view that changes associated with the Milk Law and distribution are inevitable and necessary – but it acknowledges that both the pace of change and the route to change could have been planned more effectively and sensitively.

Specific Recommendations

1. Delaying Implementation

In terms of your particular recommendations, the Department has indeed delayed implementation of its proposals prior to reporting to the States. Furthermore, it is already moving to take some of the actions (e.g. in relation to communication and

consultation) suggested in the report and feels free to build bridges with the various parties – now that the investigation period has come to an end.

2. Mandate

Finally, the Department intends to liaise with the Policy Council in relation to Items 9 and 10 i.e. suggestion that there is potential conflict within the Department's mandate arising from dual roles as operator and regulator in this sector.

I am bound to say, however, that underpinning these statements there appears to be a belief on the part of the Panel and the Committee that as a matter of principle Departments should not be charged with simultaneously operating and delivering services championing a particular sector or group, making policy and acting as a regulator. If this is the case, then that argument can be applied to a number of other areas of activity clearly within the mandate of Commerce and Employment and indeed describes the situation prevailing in a number of other States departments.

In the light of the far-reaching nature of this issue, the Department looks to the Policy Council for a lead and expects the Council to respond to your Committee on this matter. It does not intend to address this particular issue within its forthcoming report on the agricultural industry but would note that, as described in paragraphs 8.3.8 to 8.3.10, the holistic approach to the industry, maintained by the Department since 2004 has, on the evidence, been successful.

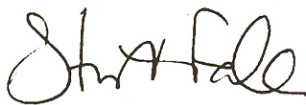
Conclusion

In conclusion, I would echo the words in the report in part 2.2.23 of the Executive Summary i.e. "overall, the Department's willingness to tackle a clearly difficult situation that it inherited and initiate change has been positive. Its proposed solution would also appear to be sound, but it is difficult to fully assess this in the absence of the bigger picture".

The frustration that has been felt both by the Scrutiny Panel and indeed the Department throughout these proceedings has been that without that bigger picture, as set out in the forthcoming comprehensive report on the industry, the part played by the Dairy, the Milk Law and related matters cannot be fully comprehended. Whilst Scrutiny initiated this action for sound reasons, it does highlight that taking such action in advance of a policy being fully debated and decided by the States creates its own difficulties. In the event, it is likely that all parties will have learnt valuable lessons from this exercise.

The Department looks forward to the debate on this matter and in this respect it is grateful to your Committee for agreeing to publish in your report in the Billet for debate alongside the Department's report on the future of the agricultural industry.

Yours sincerely



Stuart Falla
Minister



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THE STATES OF GUERNSEY



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Deputy B R de Jersey
Member
Scrutiny Committee
Sir Charles Frossard House
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St Peter Port
GY1 1FH

// May 2006

Dear Deputy de Jersey

Scrutiny Review - Milk Distribution Proposals

Thank you for your letter dated 19th April 2006 inviting comment from the Policy Council on the above Report.

The Policy Council considered the Scrutiny Committee's Report, together with the response dated 28th April 2006 from the Minister, Commerce & Employment Department, at its meeting held on 8th May 2006.

The Policy Council is pleased to see the results of a review carried out by the Scrutiny Committee, and believes that both the Committee and the Commerce and Employment Department will have learnt much from this experience.

The Policy Council is happy for you to publish this letter in response to the Report. It does, of course, reserve its position to comment further, if so desired, when the Report is incorporated into a Billet for debate by the States.

Yours sincerely

L C Morgan
Chief Minister

DOCUMENTS LODGED AT THE GREFFE

Submissions of the Commerce and Employment Department, including:

States Agriculture and Milk Marketing Board Policy Letter 13th December 1999 – *Review of the Agricultural industry on Guernsey*

States Agriculture and Countryside Board Policy Letter 18th August 2000 – *Policy Review 2000 - Support for Dairy Farming and the Countryside in Guernsey*

Commerce and Employment Department *Dairy Farming – Policy Review 2005* - June 2005 (an internal policy document)

Commerce and Employment Department *Dairy Industry Consultation – 2005 Review of Dairy Industry Related Policies* - August 2005 (sent to all farmers as part of the Department's consultation process)

Commerce and Employment Department Briefing Paper entitled *Simply Milk* - 24th October 2005

Copy of letters dated 24th September 2005 sent to 'direct billed' account holders; the G.M.R.A; and individual roundsmen. Copy of letter sent to all States Members dated 23rd September 2005.

Copy of example licence for Milk Retailer.

Document entitled *Dairy Viability*

List of legislation relating to milk.

Extracts of Commerce and Employment Department Board Minutes of meetings and supporting information.

Time Line of Policy Development

Guernsey Milk Retailers' Association Submission November 2005, including:

Copies of correspondence between the G.M.R.A members and the Department May 2005 – September 2005.

General correspondence with:

- Commerce and Employment Department
- Guernsey Milk Retailers' Association (G.M.R.A)
- Guernsey Farmers' Association (G.F.A.)
- Royal Guernsey Agricultural and Horticultural Society (R.G.A.H.S.)
- Policy Council
- Treasury and Resources Department
- Environment Department

Submissions by individuals (made anonymous to ensure compliance with Data Protection)

Transcripts of the Hearing (in four sessions)

GLOSSARY OF TERMS

‘ <i>de facto</i> ’	Existing in fact whether with lawful authority or not.
‘DEFRA’	The U.K Department for Environment, Food and Rural Affairs
‘The Department’	Commerce and Employment Department
‘Derogation’	Seeking to ‘opt out’ of part or all of Guernsey’s obligations under Protocol 3.
‘Direct billed’	Large retailers or traders/consumers (e.g. Morrisons, Le Riches, Co-Op, Board of Health, etc) that are supplied by the milk retailer acting as wholesaler but where the Dairy manages the accounts of the milk retailer by charging the account holder directly for the milk supplied and paying the milk retailer his commission.
‘D.M.B.’	Dairy Management Board
‘Gate price’	The price set by the Dairy for purchase of its processed milk.
‘G.F.A.’	Guernsey Farmers’ Association
‘G.M.R.A.’	Guernsey Milk Retailers’ Association
‘The proposals’	The Commerce and Employment Department’s recent proposals as outlined in Section 5, which are the subject of this review.
‘Protocol 3’	Protocol 3 to the United Kingdom’s Treaty of Accession to the European Community sets out the special relationship which Guernsey (and Jersey and the Isle of Man) have with the European Union. Under that Protocol the Islands are part of the customs territory of the Community. The Common Customs Tariff, levies and other agricultural import measures therefore apply to trade between the Islands and non-member countries and there is free movement of goods in trade between the Islands and the Community.
‘Retail price’	The cost of milk to the consumer from any retail outlet (including doorstep delivery).
‘R.G.A.H.S.’	Royal Guernsey Agricultural and Horticultural Society
‘Roundsmen’	The milk retailers (represented by G.M.R.A.) currently licensed under the legislation to buy milk from the Dairy and sell it.
‘Safeguard Measure’	A measure sought from the European Commission defined by the Commerce and Employment Department as “ <i>A specific and time limited ability to restrict free trading in a particular agriculture area, if the territory can demonstrate that there is a clear and imminent threat of an import that would have a damaging effect on their Island or its economy</i> ”

(NB The Policy Council supports the proposals.)

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

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 23rd February, 2007, of the Scrutiny Committee, they are of the opinion:-

1. To note that Report and the Scrutiny Committee's Review Report.
2. To note the Scrutiny Committee's intention to continue to monitor progress on its Review recommendations.

COMMERCE AND EMPLOYMENT DEPARTMENT

REVIEW OF SUPPORT FOR ISLAND DAIRY FARMING

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

23rd February 2007

Dear Sir

SECTION 1

EXECUTIVE SUMMARY

- 1.1 The proposals contained in this Report are designed to secure the future of Guernsey's traditional countryside through continued targeted support of dairy farms, a modernisation programme for the Guernsey Dairy, and continuing with the current milk distribution system based on independent roundsmen delivering to shops and doorsteps, or more usually to both.
- 1.2 The Report also builds firmly on the conclusions of the Scrutiny Review of Milk Distribution Proposals published in May 2006 and accepts that the Milk Law 1955 should be retained and the 1958 Milk Ordinance updated. The Department also addresses the apparent conflict between the provisions of the 50 year old legislation and the Island's commitment to the EC in relation to trade in agricultural goods as set out under Protocol 3.
- 1.3 In relation to milk processing and distribution, the Department proposes a modernisation plan for the Guernsey Dairy under the leadership of a new Dairy Management Board tasked with continuing the process of improving efficiency and properly resourcing what is effectively a commercial food processing factory.
- 1.4 The Department is committed to the continuation of the established network of milk rounds whereby ¹independent businessmen deliver milk to both shops and doorsteps. This will be achieved through a combination of minor modifications

¹ Throughout this Report, the Department has adopted use of the term "Roundsmen" to describe persons distributing milk to doorsteps and shops (and represented by the Guernsey Milk Retailers Association). In so doing, it recognises the Guernsey Milk Retailers Association's preference for the term "Milk Retailers" but in order to avoid confusion it has decided to adopt the convention established by the Scrutiny Committee in their report on this matter.

to the Ordinance and the adoption of supportive commercial trading policies within the Guernsey Dairy.

- 1.5 Recognising that 50% of milk is now sold through shops, the Department sets out the basis for the relationship between the Guernsey Dairy and large commercial customers.
- 1.6 The Department plans to put the process of establishing the Retail Price of milk, the Dairy Gate Price to distributors and the Producer Price paid to farmers in the hands of a new, independent Milk Price Review Panel.
- 1.7 In relation to dairy farms, the Department believes that the £2m Dairy Farm Management Scheme, agreed by the States in 2000, should continue in place – but be modified to make it better targeted and to raise environmental and welfare standards still further.
- 1.8 The Department wishes to remove much of the invisible subsidy that goes into the dairy industry in the form of free or very low cost farm services from the States. Charges for farm services supplied by the Department will in future be met by farmers on a partnership basis. This will be phased in and will, in time, lead to annual savings of at least £116,000.
- 1.9 These measures will, it is hoped, secure our traditional landscape, protect the dairy farm sector, encourage future development and succession within the businesses that make up that sector and provide confidence in the future for milk roundsmen. In time, the measures should also result in lower costs to the States.

TABLE OF CONTENTS

<u>SECTION 1</u>	<u>EXECUTIVE SUMMARY</u>
<u>SECTION 2</u>	<u>BACKGROUND TO THE REPORT AND THE SCRUTINY REVIEW</u>
2.1	States commitment to Review Support for Dairy Farming
2.2	The Case for States Intervention in the Dairy Industry
2.3	Roles and Responsibilities within the Milk Sector
<u>SECTION 3</u>	<u>THE GUERNSEY DAIRY AND THE MILK DISTRIBUTION SYSTEM</u>
3.1	The Island's Milk Laws
3.2	The Impact of Protocol 3
3.3	Making a Special Case to the European Commission
3.4	Distribution of Milk – Options for Intervention
3.5	Proposed Model for the Milk Distribution System
3.6	Creating a Milk Price Review Panel
3.7	Dairy Management Board
3.8	Reviewing the Current Retail Price of Milk
3.9	Summary of Proposals
<u>SECTION 4</u>	<u>SUPPORT FOR DAIRY FARMING</u>
4.1	Introduction and Background
4.2	Dairy Farm Contracts and Milk Supply
4.3	Support Schemes and Subsidised Services
4.4	Dairy Farming and the Environment
4.5	Business Succession within the Dairy Industry
4.6	Summary of Proposals
<u>SECTION 5</u>	<u>DRAFTING INSTRUCTIONS FOR AMENDMENTS TO THE MILK (CONTROL) (GUERNSEY) ORDINANCE 1958</u>
<u>SECTION 6</u>	<u>RESPONDING TO THE SCRUTINY REVIEW</u>
6.1	The Dairy Industry and Competition Law
6.2	Potential Conflict of Roles
6.3	Phased Approach to Change
6.4	Scrutiny Recommendations – a Checklist
<u>SECTION 7</u>	<u>CONSULTATION</u>
<u>SECTION 8</u>	<u>RESOURCE IMPLICATIONS</u>

SECTION 9 **SUMMARY OF CONCLUSIONS**

RECOMMENDATIONS

APPENDIX I **Summary of the Existing Principal Provisions of the Milk
(Control) (Guernsey) Ordinance 1958 (As Amended)**

APPENDIX II **Strategic Land Use Plan 2006 Extract re “Countryside”**

SECTION 2

BACKGROUND TO THE REPORT AND THE SCRUTINY REVIEW

This Section sets the scene and provides the background necessary to consider the proposals contained in the Report. It examines:

States Commitment to Review Support for Dairy Farming.

The Case for States Intervention in the Dairy Industry.

Roles and Responsibilities within the Milk Sector.

2.1 States Commitment to Review Support for Dairy Farming

- 2.1.1 On 9th February 2000, the States, having considered a report entitled “Review of the Agricultural Industry on Guernsey” dated 13th December 1999 from the then States Agricultural and Milk Marketing Board, agreed in principle to the introduction of a Subsidy Scheme for dairy farmers and resolved, inter alia:

“To direct the States Agricultural and Milk Marketing Board to present a review of the Subsidy Scheme and the future of the farming industry to the States by 31st December 2005”.

- 2.1.2 The States subsequently approved a detailed Subsidy Scheme on 27th September 2000 dependent on dairy farmers adhering to a detailed Farm Management Contract.
- 2.1.3 As successor to the Agricultural and Milk Marketing Board/Agriculture and Countryside Board, the Commerce and Employment Department concluded its review of the dairy industry by September 2005 with the intention of submitting a report to the States by December of that year to fulfil the Resolution.
- 2.1.4 A draft report was sent to the Policy Council which contained proposals urging the States to continue supporting the Island’s dairy industry in recognition of the important contribution it made to:
- the traditional countryside based on small open fields;
 - the supply of locally produced milk and milk products; and
 - the maintenance of the Guernsey breed of cattle which has a unique place in our heritage and Guernsey’s international identity.
- 2.1.5 Any starting point for a review of agriculture in Guernsey must be the legislation on which it is based. Accordingly, in examining the background and scope of the 1955 Milk Law, the Department was concerned to learn that:

- much contained within the 50-year old Milk Law, and in particular the associated Ordinance, was no longer fit for purpose;
- milk roundsmen appeared to be buying and selling rounds on the assumption that their asset was in some way protected by the legislation when in fact this was not the case;
- the protected status of the monopoly state run Dairy and the restrictions on free trade enshrined in the Law appeared to be in direct conflict with the commitment that the Island entered into in respect of free trade in agricultural products when Guernsey's relationship with the European Community was established by Protocol 3;
- the Law Officers had advised that, if challenged, it was unlikely that aspects of the Law could be defended; and
- the possibility of such a challenge appeared to be increasing as a result of events in both Jersey and the Isle of Man (who have similar legislation) which had prompted dialogue between those islands and the European Commission.

2.1.6 The Department concluded that it would be quite wrong to pretend that such a fragile situation did not exist and to ignore it. Rather, it believed that, unless the States was proactive and exercised control over changes to the approach to milk distribution, then the future of the industry could well be shaped by actions taken by others. It was against this background that it decided to recommend repeal of the Law. Furthermore, the Department believed it had a duty to ensure that all parties engaged in the distribution and retailing of milk did not base their business on the false premise that they were protected in law.

2.1.7 Indeed, the Department's position appears to have been borne out by the Scrutiny Committee which appreciated at (2.2.9) *"The Department had little choice but to review the distribution system in the light of the legal advice it received. It is clear that the Department had inherited a flawed administration of this distribution system and it sought to take positive steps to lead change to rectify this"*.

2.1.8 Furthermore, the Committee acknowledged the interrelated set of real and pressing issues that demanded a response i.e. at (8.3.35) *"The Department's solution is a logical consequence of the administrative difficulties that it faced and could achieve its objectives to improve the profitability of the Dairy, move to a more commercial operation and maintain farm incomes while achieving a reduction in States subsidy"*.

2.1.9 While the Department was acting with the best possible intentions, it fully accepts, with the benefit of hindsight and the advantage of the thorough

Scrutiny Reivew, that the proposed pace of change and the manner in which it was announced did not take full account of the genuine concern that was subsequently expressed by the public, States members, milk roundsmen, farmers and others.

2.1.10 Above all, it now recognises that the pace of that change needs to be different and that clear and regular consultation with interested parties is essential.

2.1.11 The Department and many others have learnt a great deal over the last 12 months and it has applied itself to rectifying the deficiencies of process that were identified. It has achieved this through greater consultation with interested parties. While this process has unfortunately created further delays in the submission of the Report it has resulted in a better understanding of the viewpoints of all stakeholders and has led the Department to adapt its position in direct response to the various views and opinions expressed.

2.1.12 Against this background, the Board does not propose to concentrate in this Report on the background to its decision in 2005 or a defence of the conclusions it reached at the time. Such matters are dealt with fully within the Scrutiny Report. Rather it wishes to put forward a set of proposals which it believes balances the often conflicting and competing interests of the consumer, the taxpayer, the Guernsey Dairy, the milk roundsmen, the farmers and the shops.

2.1.13 In approaching this task the Department believes that the States will come to share its own experience that there exists no solution with which all parties will be entirely happy.

2.1.14 This Report is wider in scope than that prepared in 2005. In addition to addressing dairy farming, the Report covers the connection between Guernsey Dairy and the system of distribution of milk and dairy products to its customers. It gives full consideration to a number of options for the future of the Island's Milk Laws and in particular their retention, changed as necessary to suit industry needs.

2.1.15 Before addressing those specific issues, it is necessary to examine the basis for States intervention in the dairy industry.

2.2 The Case for States Intervention in the Dairy Industry

2.2.1 In general terms the degree of States intervention in various sectors of the Island's economy has reduced dramatically over the years from the heyday in the 1970s and 80s when a significant proportion of the public purse and large numbers of States employees were dedicated to supporting both the horticultural and tourism industries.

2.2.2 At the beginning of the 21st century the changing attitudes towards such support are reflected in the Department's general approach to working with sectors of Island business set out in its Building Confidence document i.e. any States support should aim to:

- encourage entrepreneurs;
- ensure that any support is well targeted to those who deliver the sought after benefits;
- lower bureaucratic burdens;
- create a business-friendly and competitive environment;
- neither interfere with nor drive business change;
- protect the interests of consumers;
- presume against subsidy wherever possible; and
- adopt a partnership principle where appropriate.

2.2.3 However, Building Confidence also recognises the existence of strong secondary benefits (social, cultural, heritage and environmental) arising from certain sectors where a special case can be made for closer States involvement.

2.2.4 It is the unique part that Dairy Farming plays in shaping the appearance of our countryside and the extent to which that countryside reflects our heritage and identity that now underpins States support for the industry.

2.2.5 However, current intervention is not simply based on this philosophy alone but is shaped by the "protection" afforded by the Milk Laws and which are largely the product of history.

A Brief history of Dairy Farming in Guernsey

2.2.6 In the 1950s there were more than 300 individual farms, most quite small, and thus a significant number of jobs and businesses were at stake.

2.2.7 At that time, milk was purchased almost exclusively on the doorstep before the advent of supermarkets or in-store refrigeration, the European Community did not exist, and the current ideas of consumerism and concerns for a free market and competition were not on the public agenda.

2.2.8 It was recognised, however, that if dairy farming in Guernsey was to embrace higher milk quality standards, new food hygiene regulations, and maintain the purity of the Guernsey breed, it was unlikely to be achieved if left to an industry

consisting of hundreds of small fiercely independent farmers perhaps with less than a dozen cows each.

2.2.9 Thus began the States intervention through the creation of legislation for the milk industry, forcing producers to act in certain ways and supply all their milk to a single state run Dairy. Furthermore, over the years, the States developed a range of farm services to support the industry including artificial insemination, the operation of a subsidised slaughterhouse, the provision of farming advice, grants, loans and so on.

2.2.10 By way of contrast, in 2007 there are now 21 dairy farms farming virtually the same amount of land as in the 1950s and although the number of cattle has reduced (from 2,000 milking cows to 1,500), output has doubled as a result of improved husbandry and breeding.

2.2.11 In the intervening years the basis for States intervention changed. Farmers had become more businesslike and sophisticated to the point during the 1990s when many farmers had adopted increasingly intensive productive methods i.e.

- importing more and more cattle feed and fertiliser;
- chasing ever greater production, to compensate for falling returns and faltering financial viability;
- adopting a type of farming which threatened the environment, water quality and animal welfare, as well as impoverishing the Guernsey Dairy through overproduction

2.2.12 These changes prompted a new form of intervention as set out in the two major Policy Reports submitted by the Agricultural and Milk Marketing Board/Agriculture and Countryside Board in 2000.

2.2.13 In approving those Reports, the States accepted that the revised basis for government intervention was as follows.

- the community cherished its heritage landscape characterised by narrow lanes and small fields bounded by earth banks which contained the Golden Guernsey Cow;
- that landscape was a direct product of the historical pattern of dairy farming; but
- small fields, difficult access through small entrances in narrow lanes, scattered use of fields and the fact that only 20% or less of the land was actually owned by farmers, meant that;

- without some form of intervention by the States, farmers would be unlikely to survive given the challenges and economics of farming in Guernsey combined with the relatively low yield of the Guernsey breed and high labour costs. Furthermore, their businesses could not support meeting the full unsubsidised costs of various essential services nor would they survive if the Producer Price for milk was reduced to the average paid in the UK where most farmers can enjoy economies of scale.

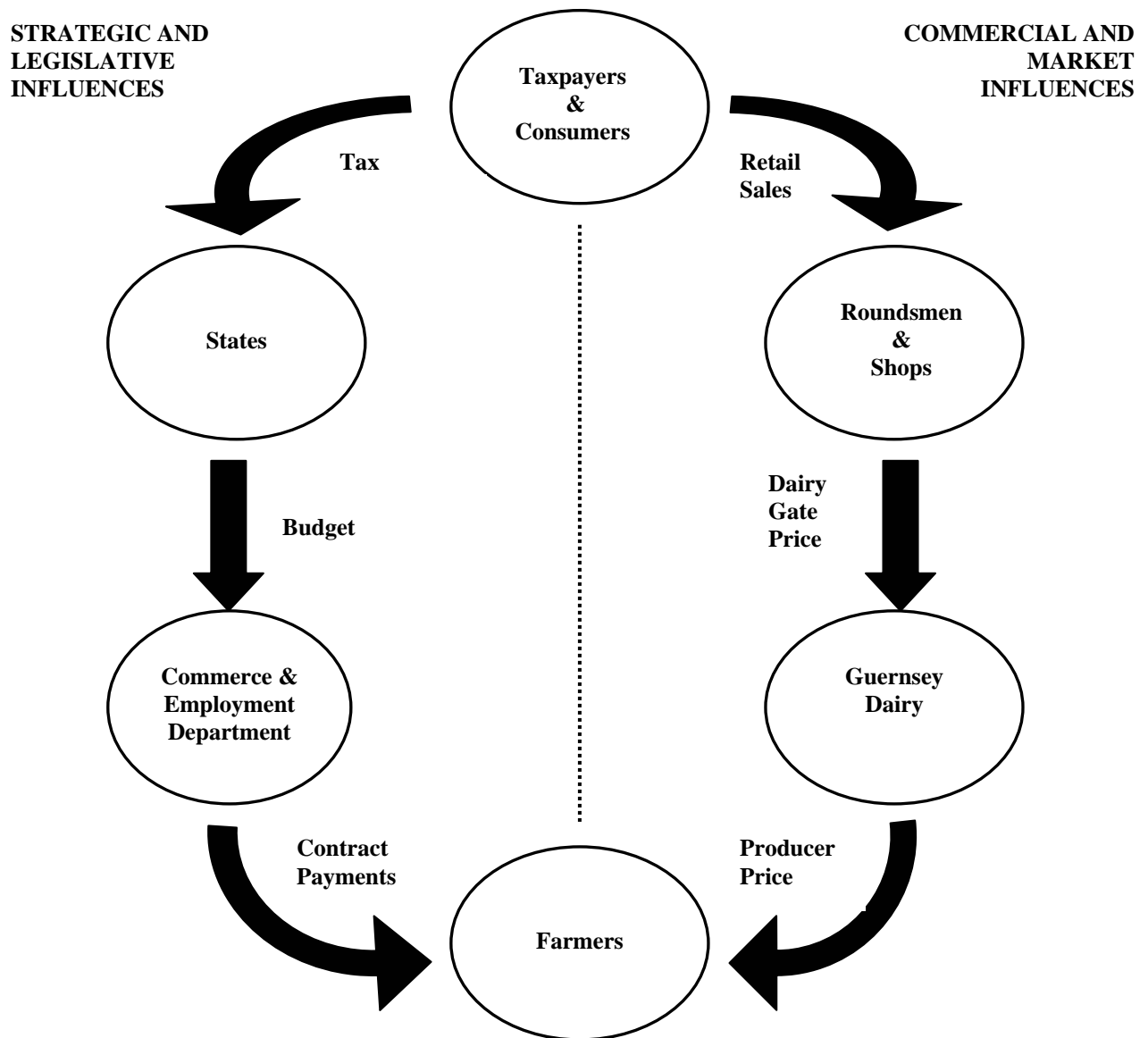
2.2.14 As a consequence of these new principles the States agreed that future income from dairy farms would largely come from three sources:

- a **Producer Price** from the Guernsey Dairy under a commercial Milk Supply Contract;
- payments made by the States under a **Dairy Farm Management Contract** requiring compliance with a new Animal Welfare Code and measured countryside management undertaken by the farm in accordance with agreed Farm Action and Farm Waste Management Plans; and
- the provision of certain **subsidised Farm Services** such as animal health testing, milk recording, artificial insemination, slaughterhouse and incineration.

2.2.15 A further driver for change and States intervention was the likelihood that the increasing retail price of milk, which was then approaching £1 a litre, would sooner or later create a situation that could lead to imports given the widening gap between the Guernsey price and that available generally within the UK.

2.3 Roles and Responsibilities within the Milk Sector

2.3.1 Any proposals for future intervention in the Dairy Industry will be set in the context of the existing network of relationships between the various stakeholders. Accordingly that network is illustrated by the following diagram which summarises those relationships and indicates the flow of money within the system:



2.3.2 The diagram divides responsibilities into two areas. On the left-hand side is government undertaking a largely strategic and legislative role.

2.3.3 On the right-hand side is the **commercial** outward facing production and distribution system influenced by the **market**.

Strategic Dimension

2.3.4 Monies received from the taxpayer are used by the States to fund that part of Commerce and Employment's budget which supports farmers in three ways:

- the Dairy Farm Management Contract designed to secure countryside management and animal welfare benefits (£2 million per annum);

- the provision of subsidised farm services. (AI, Milk Recording etc); and
- development and enforcement of farm related regulation such as animal health and animal disease matters.

2.3.5 The Department is concerned primarily with maintaining a package of strategic, policy, legislative and financial measures aimed at maintaining the countryside through a “viable” dairy industry.

2.3.6 It is the Department (and not, as is sometimes mistakenly portrayed, the Guernsey Dairy) which takes the major decisions affecting the future of farmers and the distribution system. The Department is also empowered by the Ordinance to set the Retail Price of Milk if it wishes to do so.

Commercial Dimension

2.3.7 Farmers sell milk to the Guernsey Dairy at a producer price, but rely on the combination of the subsidy from the States and the income from selling milk to the Guernsey Dairy to create a viable business. Indeed, in addition to supporting dairy farm businesses, the annual £2 million subsidy has the major effect of reducing the producer price paid to farmers. It therefore contributes to containing the retail price of milk and protecting the dairy industry.

2.3.8 The Guernsey Dairy purchases raw milk from the farmers at the producer price and processes the milk for retail sale, and produces a small range of dairy products (butter, cream, cheese and ice cream). The Guernsey Dairy’s prime focus is neither strategic nor legislative, but rather the efficient running of a food processing operation to ensure costs are reduced to a minimum consistent with breaking even and generating a small surplus to fund future capital investment.

2.3.9 The milk roundsmen buy milk from the Guernsey Dairy at a discount and supply doorsteps at the fixed retail price. Shops also sell milk at the fixed retail price, receiving it from the roundsmen for a commission agreed between the two parties that varies from business to business. Both the Guernsey Dairy and the roundsmen also supply the catering trade.

2.3.10 Consumers purchase milk at the fixed retail price either directly from the roundsmen, on the doorsteps or through shops.

2.3.11 Further details of the role played by the Guernsey Dairy in supporting the network of traditional roundsmen and the basis for intervening in future is set out in detail in Section 3, while Section 4 makes the case for continued support for dairy farming.

SECTION 3

THE GUERNSEY DAIRY AND THE MILK DISTRIBUTION SYSTEM

This section goes to the heart of the issues reviewed by the Scrutiny Committee and examines:

- the relationship between the Guernsey Dairy and the distribution network;
- options for intervention in the system by the States; and
- the inevitable tensions which arise when a system of milk distribution established by law in the 1950s attempts to cope with the challenges of operating in a commercial market in the 21st Century.

It concludes by recommending a pragmatic approach by the Department which:

- (a) balances the conflicting interests of a number of parties;**
- (b) retains the Milk Law;**
- (c) updates the Milk Ordinance by amendment;**
- (d) retains the current distribution system through independent roundsmen; but**
- (e) provides added protection to their businesses through a series of targeted commercial trading policies.**

SUMMARY OF CONTENTS

The Islands Milk Laws

The Impact of Protocol 3

Making a Special Case to the European Commission

Distribution of Milk – Options for Intervention

Proposed Model for the Milk Distribution System

Creating a Milk Price Review Panel

Dairy Management Board

Reviewing the Retail Price of Milk

Before considering the Department's proposals in detail, it is necessary to explore the legal context in which the distribution system is set.

3.1 The Island's Milk Laws

3.1.1 The relationship between both farmers as suppliers and roundsmen as distributors is governed in part by the Milk Laws, which are:

- The Milk and Milk Products (Guernsey) Law 1955 and supporting secondary legislation; which is
- The Milk (Control) (Guernsey) Ordinance 1958 (As Amended).

3.1.2 This legislation includes powers in relation to:

- the delivery and acceptance of milk at the Guernsey Dairy;
- the payment to farmers for milk;
- the retail sale of milk; and
- the retail sale of imported milk.

3.1.3 Consequently, milk cannot be sold to a retailer, other than by the States owned Dairy or someone granted a licence by the Dairy. There are no direct legal restrictions on the **importation** of milk. Milk may be imported for a person's own consumption or for manufacturing purposes.

3.1.4 As explained earlier, the Milk Laws were introduced at a time when it was considered both necessary and proper to protect the Island's industry, to implement basic food hygiene standards and to ensure the countryside would be maintained by dairy farming and the supply of milk would be guaranteed.

3.1.5 Although it has been modified over the years to allow for such things as the introduction of milk packaging and dairy hygiene schemes, the underlying principles of the Milk Ordinance have remained largely unchanged. A summary of the provisions of the Ordinance is set out in Appendix I.

3.2 The Impact of Protocol 3

3.2.1 In 1973, Guernsey (together with Jersey and the Isle of Man) established their relationship with the developing European Economic Community (to become the EC) under the provisions of **Protocol 3 to the Treaty of Accession of the United Kingdom and Northern Ireland to the European Communities**.

3.2.2 In terms of agriculture, Protocol 3 can, to a great extent, be regarded as a trading agreement. The arrangement is that the Island is within the common customs

union of the Community (which at that time was of considerable importance as it allowed horticultural exports to the UK to continue without having to pay Community import tariffs) and in return it must apply Community rules on trade in agricultural goods.

- 3.2.3 The rules for trade in agricultural goods within the EC have been progressively harmonised. This means that goods that meet the (production and hygiene) standards that are set out in those rules can be freely traded between Member States.
- 3.2.4 In the early 1990s, the rules for milk and milk products were harmonised. In the UK this meant that the effective monopoly resulting from direct government involvement in milk distribution through the UK Milk Marketing Board had to end.
- 3.2.5 This development had great significance for the local dairy industry as, in accordance with the provisions of Protocol 3, the Island was obliged to allow the importation of milk and milk products that conformed with the EC rules on trade in these products. It also meant that any dairy products exported from the Island also had to comply with those trade rules.
- 3.2.6 As a result of these moves it became increasingly clear that local barriers to trade in milk did not sit comfortably with EC expectations.
- 3.2.7 The policy package approved by the States in 2000 and implemented by the Agriculture and Countryside Board in 2001 when farm contracts were created, had within it two very important aims:
 - To control overproduction of milk, which was making it practically impossible for the Guernsey Dairy to break even; and
 - To bring about a situation where the retail price of milk was substantially reduced from the 92p per litre, which existed at the time, to a level which would be comparable with the UK milk prices and therefore remove the incentive for imports to be brought in.
- 3.2.8 The significance of the second of these actions was that there was increasing uncertainty that the Milk Ordinance alone could be relied upon as a long term means of resisting importation of milk. Alternative approaches were required.
- 3.2.9 Following the Scrutiny Review, the Board no longer proposes the repeal of either the Milk Law or the Milk Ordinance.
- 3.2.10 In particular, although it has in the past received approaches from large shops, who, for commercial reasons, were at that time seeking a relaxation of the current arrangements, it is clear from the recent consultation that all the major retailers are relatively comfortable with the status quo. They have formally

advised that they are happy to continue receiving supplies of milk from the Guernsey Dairy through independent roundsmen, and that they are largely content that the fixing of some form of price under the law should continue.

- 3.2.11 In these circumstances it is likely that any threats to import milk will come from outside of the Island rather than from within.
- 3.2.12 The Department remains of the view that while maintaining current legislation is its preferred option, the continued existence of the provisions of the Milk Ordinance as a basis for the current arrangements cannot be guaranteed indefinitely. The Department still believes that, ultimately, the legislation could be repealed, and a viable dairy industry maintained, within a set of policies which would give some protection.
- 3.2.13 In proposing the retention of the Ordinance, however, the Department believes that there are a number of amendments necessary to ensure that the Ordinance better suits current industry needs. These are dealt with in the body of this report and then summarised in Section 5 which deals with amendments to the Milk Ordinance.
- 3.2.14 Given the clearly expressed view that the protection to the industry afforded by the Milk Law, the obvious question, in the context of Protocol 3, is whether arrangements within the industry could be strengthened by negotiating some form of special arrangement with Europe.

3.3 Making a Special Case to the European Commission

- 3.3.1 The Department shares the frustration shown by a number of contributors to the Scrutiny Review and sympathises with views expressed in the media that arrangements designed to regulate trade in agricultural products in large Member States throughout the European Community do not necessarily sit comfortably with the unique set of circumstances in a tiny island with just 21 farmers serving a population of 60,000 people.
- 3.3.2 From this starting point there has developed a view in some quarters that it is simply a matter of persuading the Commission that different considerations should apply to the Island.
- 3.3.3 There have been calls for “derogations” (i.e. making a case for an opt out clause) or to invoke EU “safeguard measures”. The options available to the Island are set out below:

Amendment of Protocol 3

- 3.3.4 The Island could seek to renegotiate the terms of, or to amend, Protocol 3, however this would require the unanimous approval of all the Member States of

the Community (now considerably greater in number than when the Protocol was agreed).

- 3.3.5 Such action would considerably raise the profile of the Island in the Community and the outcome is unpredictable.

Safeguard Measures

- 3.3.6 Protocol 3 includes a provision that enables the Island to apply for “safeguard measures” where the application of Community trade rules lead to economic difficulties. However safeguard measures cannot be applied for in anticipation of difficulties, those difficulties must first occur before an application can be made.
- 3.3.7 In addition, if such measures were granted, they would be time limited, to allow the Island to make adjustments to its economy to allow the normal EC trade rules to operate. Thus safeguard measures would only be a temporary solution, possibly lasting for as little as five years.

Derogation from EC Trade Rules for Milk and Milk Products

- 3.3.8 The Island could apply for a derogation from the Community rules on trade in milk and such action has been contemplated in the past. However, an application was not progressed on the advice of the (then) Ministry of Agriculture, Fisheries and Food in the UK, because it felt that the arguments put forward would not carry any weight with the European Commission.
- 3.3.9 In the 1980s the Isle of Man successfully negotiated temporary “protection” from EC rules for its beef and sheepmeat sectors. That protection was time limited and the Isle of Man has had to make repeated requests for it to be continued, the latest being in 2006.
- 3.3.10 The application was successful, but the comments of the European Commission were:

The Commission highlights its concern that the efficiency of and orientation to the market of the sectors can be questioned as the meat sector experiences monopolistic tendencies that tend to lead to relatively high consumer prices and low producer prices.

It fears that this would go against the developments of the common agricultural policy (CAP) and may not be sustainable in the longer term. It is the Commission’s view that the special regime should not be extended indefinitely. Accordingly, the Commission proposes to extend the current temporary special import regime for the last time until 31st December 2010 in order to allow an orderly restructuring of the sheepmeat and beef industry on the Isle of Man.”

- 3.3.11 Given the recent experience of the Isle of Man and the stance of the Commission, the Department believes that an application for a “milk derogation” is unlikely to succeed.

Consultation with External Relations Group

- 3.3.12 Given the international dimensions raised by these options and the potential impact on the Island of any approach to Europe in relation to Protocol 3 obligations, the matter was been referred to the External Relations Group of the Policy Council.
- 3.3.13 The ERG, having consulted with H M Procureur, agrees with the Department’s analysis that Guernsey’s options are very limited and attempts to renegotiate Protocol 3 or to seek a derogation are likely to be unsuccessful and could be damaging to the Island. Furthermore, it concurs that in the event of a challenge to the law, whether through the courts or otherwise, the Island could seek a safeguard measure. However, the Group recognised that, if successful, it would provide a short term solution only.

3.4 Distribution of Milk – Options for Intervention

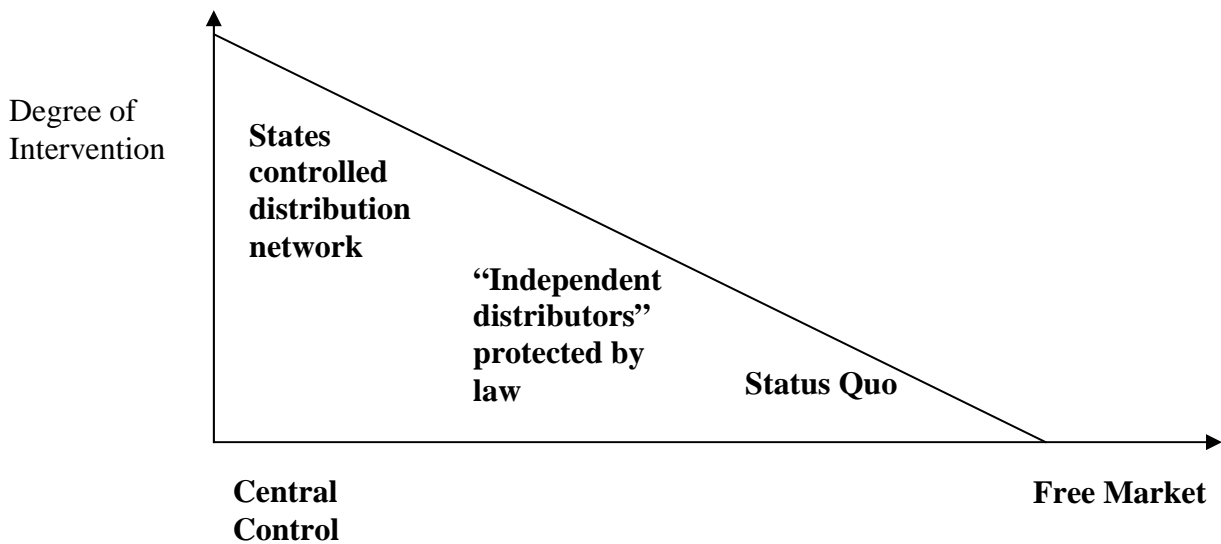
- 3.4.1 The current system whereby milk is delivered to both shops and households by independent roundsmen has evolved in response to a number of influences over the past 50 years. Any judgement as to whether it represents the most efficient, effective, convenient or appropriate system will depend entirely on the viewpoint of different parties:
- 3.4.2 Many **consumers** value the convenience of milk delivered to the door (particularly as the price is identical to milk bought from shops). However, others prefer to purchase milk as part of their “weekly shop”. Others may well be influenced by price rather than the manner in which milk is obtained and will simply seek the cheapest option.
- 3.4.3 Large **shops**, in expressing contentment with the current arrangements, nevertheless identified what they described as “inefficiencies in the distribution system” and suggested scope for improving the relationship between themselves, the distributors and the Guernsey Dairy.
- 3.4.4 **Roundsmen**, as independent businessmen, are naturally keen to protect the viability of their business and the investment they have made, in terms of both time and money. They seek to preserve the perceived asset value of their rounds and, when leaving the industry, wish to make a profit or at least recoup their initial outlay on the goodwill they purchased.
- 3.4.5 Any **Dairy** run as a commercial enterprise will seek to minimise costs and maximise surpluses.

3.4.6 Finally others within the community will take a wider view, valuing the doorstep distribution network as something which brings an important dimension to the lives of some vulnerable people, particularly the elderly.

3.4.7 Given these different viewpoints it is unlikely that all parties will agree on the optimum distribution network. The level of intervention by the States in the Guernsey context will therefore need to recognise the differing needs of these various parties.

3.4.8 In examining the question of intervention there is effectively a continuum as follows:

MILK DISTRIBUTION CONTINUUM



Complete State Control

3.4.9 Under this arrangement the States would have exclusive control of distribution with direct deliveries by the Guernsey Dairy to shops and doorsteps using its own fleet of vehicles driven by staff who are States employees.

Comment

3.4.10 The Department sees neither merit nor political appetite for a system of complete state control of the distribution network. The Department has never sought to achieve this.

3.4.11 Indeed, transferring responsibility for distribution from independent businessmen to direct employees would not only reduce the incentive to operate effectively but would take away from roundsmen the businesses they have established over the years and which have some value. Furthermore this

approach has not been cost effective elsewhere (until relatively recently doorstep deliveries in Jersey were undertaken by direct employees at considerable expense).

- 3.4.12 Such intervention also flies in the face of the principles established by the Department for intervention in business (set out in Building Confidence and repeated in the Scrutiny Report) and travels in the opposite direction to the general States approach to reducing costs and staff numbers.

Independent Distributors – fully protected by Law

- 3.4.13 This next logical step along the continuum is distribution via independent roundsmen who have their business risks reduced and the value of their rounds protected through legislation. Indeed, during the discussions with the GMRA, the Association explored this option with the Board. Under such an arrangement, roundsmen would be given exclusive rights to an established round with the mix of doorsteps and shops, and their precise geographical zone, specified on a licence and protected by law.
- 3.4.14 A further option would be to enshrine the role of the GMRA in law. In these circumstances roundsmen would not be able to operate unless they were members of the GMRA which could withdraw membership if they felt a roundsman was “unsuitable” or contravened the Association rules.
- 3.4.15 Roundsmen would be given exclusive rights to deliver both milk and distribute all milk products produced by the Guernsey Dairy (i.e. milk, cheese, butter, cream etc).

Comment

- 3.4.16 There is no doubt that such an approach would be attractive to some roundsmen given the reduction of business risk and the certainty that rounds would be protected from the predations of other roundsmen. It would provide a solid base for selling the business on in future.
- 3.4.17 However, from the Department’s viewpoint, such an approach does not reflect the principles that the Department has established in terms of intervening within the world of commerce. Certainty that the doorsteps and shops in a particular round will be protected could also create complacency and act as a major disincentive to good performance and meeting the needs of customers.
- 3.4.18 Above all, however, such an approach could fly in the face of some of the principles likely to be included in the forthcoming competition law and carries with it the real danger of a serious legal challenge from:
- shops who, while currently content to deal with their roundsmen, may not wish to be forced to do so by law in future; and

- roundsmen themselves who, for whatever reason, may not wish to be forced to join a single Association such as the GMRA.

3.4.19 Furthermore, such a rigid system would, in the Department's view, struggle to cope with the dynamics of a constantly changing market. This is best illustrated by the pending development of the Leale's Yard site.

Leale's Yard – a Case Study

3.4.20 Currently the Leale's Yard area has a mixture of derelict buildings and small businesses under notice to vacate.

3.4.21 The GMRA advises that some half a dozen or more roundsmen have an interest in the rounds on the periphery of this area all of whom would wish to secure the phenomenal increase in trade that is bound to result with the establishment of a large supermarket and private residences.

3.4.22 Any new trade on this site will inevitably mean a reduction in business elsewhere as people who buy from the new store will cease to purchase from other shops or indeed move from doorstep deliveries to this new outlet. Given that this large site does not fall into any single established "zone", under the proposed legislative protection it would fall to the Dairy to determine which roundsmen would achieve the prize of a substantial increase to his business, and a huge increase in the value of his goodwill.

3.4.23 Given the value of business at stake, disgruntled roundsmen could challenge the decision while the new retail outlet, if unhappy with the choice of roundsman, could also mount a challenge.

3.4.24 In the Department's view such an approach is bureaucratic, costly, time consuming, unnecessary and one which government is ill equipped to perform. It illustrates the value of maintaining the status quo whereby these issues are resolved by the businesses concerned.

Free Market

3.4.25 Under this scenario, intervention by the Guernsey Dairy in the distribution of milk would be limited to ensuring that those engaged in distribution were fit and proper persons to do business with the Guernsey Dairy and to deliver a branded product to customers. Beyond that, how this was done, where this was done, and whether shops chose to collect from the Guernsey Dairy, purchase all their supplies from single roundsmen, arrange for the Guernsey Dairy to deliver direct or any other arrangement, would be established by the market on the basis of whatever makes commercial sense. In a similar, "hands off" approach the final retail price would be determined by the market.

Comment

- 3.4.26 This is exactly the position that exists in the United Kingdom following EU legal action to force HM Government to dismantle the former UK Milk Marketing Board and the associated monopoly arrangements.
- 3.4.27 The Board fully accepts that the free market approach carries with it uncertainty and potential consequences for both the Guernsey Dairy, for roundsmen, and the future of the dairy industry.
- 3.4.28 While clearly the Department favoured such an approach at the time of formulating its proposals in 2005, and remains of the view that a free market would not necessarily bring about the demise of doorstep deliveries nor the imminent collapse of the industry, nevertheless, for the reasons set out elsewhere in this report and in the light of the lessons learnt from the Scrutiny Review, it has modified its proposals. **Accordingly, it does not propose to adopt a free market approach to distribution.**

Preferred Option

- 3.4.29 The Board has concluded that, in all the circumstances and in recognition of the established network of independent roundsmen, it favours a hybrid system which:
- offers increased security for roundsmen;
 - stops short of the free market approach; and
 - is some distance from either complete State control or roundsmen having exclusive rights enshrined in law.
- 3.4.30 This approach is set out in detail in the next section. States members will of course be free to suggest any amendments to move that approach along the continuum either towards a free market view or in the reverse direction towards closer States intervention.

3.5 Proposed Model for the Milk Distribution System

Should Distributors be Licensed?

- 3.5.1 Part IV of the Milk Ordinance addresses “The Control of Distribution and the licensing of retailers” and provides:

“10. Except under and in accordance with the conditions of a licence granted by or on behalf of the Committee for the purpose of this Part of this Ordinance, a person shall not sell by retail any milk: ...”

3.5.2 On this basis, both roundsmen who sell milk “by retail” on the doorsteps and shops should hold a licence. In practice, however, to the best of the Department’s knowledge, licences have only ever been issued to roundsmen rather than shops.

3.5.3 The Department’s position in relation to licences is summed up well by Section 6.7 of the Scrutiny Report which states:

“6.7.3 The Department states that its relationship with the milkmen is solely to issue them with a licence under the terms of the legislation and after that it is purely a business arrangement in which the Dairy sells them the milk at a set discount from the retail price. A licence is issued when a person advises the Dairy that they are to engage in milk retailing and they satisfy the criteria. The only criteria are that they provide a suitable letter of credit and that they do not have a criminal record.

6.7.4 The Department advises that its routine in recent years has been to carry out the necessary checks and advise the roundsman that he has been duly licensed, but not to issue a document.

6.7.5 The Department states that it does not get involved in the buying and selling of rounds, or in the process of setting the purchase price for the round, which is purely driven by the market”.

3.5.4 The Department accepts that there have been times in the past when the Guernsey Dairy took a much closer interest in the business of milk delivery, than is currently the case. This interest may well have led some roundsmen to assume that the “licence” provided far greater security, in terms of protecting the sanctity of their rounds, than was actually provided for in law.

3.5.5 The Department proposes to:

- (a) Remove the requirement within the Ordinance to “licence” roundsmen and shops and alter this to a new system as follows:
 - (i) The Ordinance will create a Register of Distributors.
 - (ii) The Guernsey Dairy will only directly supply milk to distributors inscribed in the Register.
 - (iii) Entry in the Register will follow the current process of ensuring that a distributor is fit for purpose by ensuring that the Guernsey Dairy is not exposed to the risk associated with a poor credit record and ensuring that the public is protected from someone with a criminal record.

- (b) Automatically register all existing roundsmen under the new system.
- (c) Make it clear to existing and future “registered distributors” that the inscription in the Register is unconnected to any geographical area or a specific collection of shops and/or doorsteps – it is simply authority to distribute.
- (d) Assist roundsmen in retaining shops as part of their established business by requiring the Guernsey Dairy to adopt a series of supportive Commercial Trading Policies (see paragraphs 3.5.16 to 3.5.19).

Management of Milk Rounds (Zones)

3.5.6 Over the years a relatively fixed pattern of rounds (or zones) has become established through:

- the initiative and marketing skills of roundsmen in the early days; and
- the subsequent buying, selling and amalgamating of rounds or parts of rounds.

3.5.7 As might be expected the picture is constantly changing as new housing estates are developed, existing doorstep customers give up, as shops close, or as new supermarkets spring up.

3.5.8 Although to some extent rounds are based on geographical areas, some serve shops or clusters of houses in different parts of the Island while others simply concentrate on single large supermarket or supply catering establishments.

3.5.9 As a result of the Scrutiny Review and dialogue with the GMRA, it became evident that there exists:

- a desire for clarity as to the role of the Guernsey Dairy in relation to the establishment and protection of rounds; and
- an assumption, in some cases, that the sanctity of rounds were in some way protected by law.

3.5.10 The facts are that:

- (a) the layout and make up of rounds has never been covered by the Milk Ordinance, which makes no provision for States intervention in this area;
- (b) in the past the Guernsey Dairy has assisted the GMRA in certain aspects of round management and has on occasions been invited to intervene in territorial disputes; furthermore

- (c) some “licences” were issued which specified a particular zone. However, in terms of doorstep deliveries, such specifications were only in the most general terms e.g. “Castel” or “St Peter Port”. Indeed, more than one licence would be issued for some parishes but without specifying the precise roads, housing estates, etc although “shops” tended to be listed.
- (d) in the past the Guernsey Dairy has attempted to record on a map the pattern of rounds on a road by road basis as a public information exercise i.e. to advise a potential doorstep customer of the roundsman operating in their road. Such maps have never formed part of the licence.
- (e) some years ago the Guernsey Dairy Management Board took a conscious decision to distance itself from such involvement and to cease issuing licences in this form.

3.5.11 The Department accepts that it is commercially sound for milk rounds with a high percentage of doorstep deliveries to be based on geographic areas. It also recognises that the value of “goodwill” each round attracts will be higher if a prospective purchaser could be shown that the make up of that round is in some way “protected” from predation by other roundsmen. It is this issue, which the GMRA calls “exclusivity” that has been at the heart of discussions with the Association. The Department firmly believes that it is not the role of the States to intervene in such matters. Rather the market-based approach to the development of rounds which has worked well over the years should be allowed to continue without interference by the States. Furthermore, it considers that it is inappropriate for either the Department or the Guernsey Dairy to intervene on behalf of the States in matters affecting the buying and selling of what are private independent businesses nor should the States become involved in policing and enforcement of territorial disputes.

3.5.12 However, it does accept that this area is often misunderstood and accordingly it will be instructing the Dairy Management Board to create, in consultation with the GMRA, an explanatory document which sets out in clear terms the relationship with the roundsmen and the commercial trading policies that apply to them.

3.5.13 In mapping out the commercial relationship between roundsmen and the Guernsey Dairy, it will, amongst other things, make it clear that:

3.5.14 The Guernsey Dairy will not intervene in:

- territorial disputes (that is a matter to be resolved between roundsmen – with the assistance of the GMRA should they so choose);
- the setting or protecting of rounds;

- valuation of those rounds prior to sale; however

3.5.15 The Guernsey Dairy will provide:

- basic historic sales information to prospective purchasers of rounds – with the agreement of the vendor – to enable them to make an objective assessment of the value of the round;
- details of payment terms, collection arrangements at the Guernsey Dairy and related items.
- an explanation of the extent to which the activities of the roundsmen are governed by the Milk Ordinance.

Underpinning Milk Rounds with Commercial Trading Policies

3.5.16 It is clear from the Scrutiny Review and subsequent discussions with the GMRA that at the heart of the milk roundsmen's concerns is that the value of their businesses would be undermined if shops were to obtain milk by dealing directly with the Guernsey Dairy.

3.5.17 Responding to their concerns the Department has instructed the Guernsey Dairy to adopt the following Commercial Trading Policies designed to protect the value and viability of milk rounds and to effectively maintain the status quo:

- (a) **The Guernsey Dairy will not deliver milk to shops.**
- (b) **The Guernsey Dairy will not permit the direct collection of milk by shops from its premises.**
- (c) **However, the Guernsey Dairy will recognise that a shop is entitled to purchase a round from an existing roundsman as part of the normal process of buying and selling rounds but would not support a chain of shops buying a single shop as a means of gaining access to milk supplies for all its outlets.**
- (d) **The Guernsey Dairy will only supply milk to roundsmen in commercial quantities.**

3.5.18 This last policy recognises that the Guernsey Dairy would be bound to approve an application for entering into the proposed Register of Distributors from any person who is able to qualify as credit worthy and who lacks a criminal record – even though that person may only seek to deliver to a handful of doorsteps or serve a single, small shop. By insisting on trading in commercial quantities potential roundsmen are likely to seek to purchase all or part of existing rounds.

- 3.5.19 Having stated that the Guernsey Dairy is not in the business of direct supply of milk to shops – nevertheless it is essential that a dialogue with shops continues.

Relationship between the Dairy and its customers

- 3.5.20 Although proposed Commercial Trading Policies confirm the status quo, whereby large shops continue to be served by independent roundsmen, in his report to the Department Dairy Consultant Alan Hinton advised that dialogue between the Guernsey Dairy and the shops should be encouraged. He stated:

“It is quite clear there is a lack of involvement by the Dairy in the retailers’ business and very little dialogue between the retailers and the Dairy. The retailers have indicated that this is a major problem to them.

(N.B. In this context “retailers” refers to major shops).

This situation cannot be allowed to continue - “if you are not talking to your customers, someone else will”. The Dairy cannot rely on the status quo lasting forever, and more products which could be produced in Guernsey will be imported”.

- 3.5.21 While the GMRA have expressed a preference to regard large shops as “their” customers alone, and to preclude the Guernsey Dairy from talking to them – it was clear from the Department’s own consultation with shops that dialogue is indeed both sought and necessary.

- 3.5.22 Accordingly, the Department will instruct the Dairy Management Board to liaise with shops on such issues as:

- in-store merchandising;
- product development; and
- electronic data transfer.

- 3.5.23 The dialogue will not be about granting shops direct access to deliveries. However, in the event that a large shop seeks either to import milk or to adopt approaches which are seen to undermine the established distribution arrangements, the Department will, as it has successfully in the past, use its powers of persuasion to seek a satisfactory outcome before contemplating alternative solutions.

Catering Trade

- 3.5.24 While there appears to be general support for Guernsey milk and other local dairy products amongst doorstep customers and the larger shops – different considerations apply within some areas of the catering trade.

- 3.5.25 There is evidence that many, but not all, catering establishments focus on price rather than country of origin of products. They will often prefer to use the cheapest ingredients (milk, cream, butter, cheese) rather than elect to use the Guernsey range. Under the legislation they are completely free to so choose – the laws concentrate on Milk not Dairy Products. It is this set of circumstances that drives the catering sector to source alternate products and potentially to challenge milk imports.
- 3.5.26 In recent years Guernsey Dairy has lost sales of cream, butter and cheese to cheaper UK products – often imported and supplied to the catering trade by established milk roundsmen. To respond to this trend Guernsey Dairy adopted what is a common commercial approach, by establishing a Trade Counter offering volume based discounts on bulk purchases by individual customers of these products. Although sales increased, some roundsmen, who are not in a position to buy in bulk, have felt disadvantaged. The Department intends that the new Dairy Management Board (Section 3.7) should review this approach and, if appropriate, refer aspects of the matter to the proposed Milk Price Review Panel (Section 3.6).

3.5.27 Accordingly, the Department proposes to work with the GMRA, customers, and the Dairy Management Board to develop and promote a total catering package aimed to increase sales and secure the support of the catering industry.

Consultation with Shops

- 3.5.28 The Department wrote to all shops that retail milk asking for their comments on milk distribution and milk retailing. In addition, the Departmental Working Group held face-to-face discussions with representatives from five companies involved in retail, in some case in a very major way, in the Island.
- 3.5.29 These were very helpful discussions and made it clear that, although these businesses support the minimisation of States involvement and the legislative burden wherever possible, they were inclined to support the current arrangements as they recognised the value of protecting the dairy industry, local dairy products, and the Island's familiar and traditional countryside.
- 3.5.30 What was equally apparent was that none of the retailers spoken to wished to engage in milk importation at the present time and nor did they wish to become embroiled in retail price competition for milk. However, they all took the view that they would be forced to respond if a competitor chose to import milk or cut prices or both. All commented that the distribution service they received from local roundsmen was satisfactory and that its relative flexibility was an advantage to them.

3.5.31 One consequence of revisiting the relationship with shops is a review of the practice of “Direct Billing”.

Direct Billing

3.5.32 When the Milk Laws were drafted in the 1950s, food was either delivered to the doorstep (milk, bread, fish, meat etc) or purchased from small grocery stores or specialist traders. The concept of the supermarket was unknown.

3.5.33 As larger shops began to appear, those responsible for the management of the Guernsey Dairy took steps to protect roundsmen from what was then seen as a potential challenge for small traders in dealing with large shops, particularly in relation to managing cash flow. This led to the concept of **direct billing**, whereby:

- large retailers are supplied with milk delivered to them by a roundsman; but
- the Dairy manages the account on behalf of the roundsman; by
- charging the shop directly for the milk supplied; and
- paying the roundsmen his commission.

3.5.34 In 2001, for the first time, separate discounts were established for doorstep deliveries (currently 17.52 pence per litre) and direct billed deliveries (currently 15 pence per litre).

3.5.35 The effect of this practice is that:

- roundsmen on direct billing enjoy improved cash flow (the Guernsey Dairy pays promptly); but
- the Guernsey Dairy carries the risk and burden of recovering the money from the shop; and
- the Guernsey Dairy meets the cost of managing the account.

3.5.36 Because only 12 of the 31 roundsmen are involved with direct billing, this free service is not available to all.

3.5.37 The Department and the GMRA are agreed that direct billing on this basis is neither commercially sound nor necessary in the 21st century. Accordingly, it is proposed to:

- Cease direct billing.

- Create a single factory gate price for milk purchased by roundsmen.

3.5.38 The resultant changes in discount rate could, at current rates, represent an additional annual cost to the Guernsey Dairy in excess of £65,000.

3.5.39 While Direct Billing will be discontinued both shops and roundsmen have asked whether the Guernsey Dairy can continue to assist with the sending of invoices to large shops on behalf of roundsmen, provided that:

- the cost of this work is recovered at a commercial rate; and
- it would not involve the Guernsey Dairy paying the roundsmen on behalf of the shops.

3.5.40 The Department has agreed to explore this approach.

3.6 Creating a Milk Price Review Panel

3.6.1 Having noted the Scrutiny Committee's concerns about the dual role of Commerce and Employment as an operator and regulator, and having explored the issue with farmers and roundsmen the Department has sought a new mechanism for price fixing which sits at arms-length from the Board.

3.6.2 It proposes the creation of a **Milk Price Review Panel** along the following lines:

Mandate

3.6.3 To determine the following milk prices at various points in the supply chain:

- (a) **The retail price** (whether minimum retail price or fixed retail price as provided within the Ordinance).
- (b) **Factory gate price** (i.e. the price at which milk is purchased by distributors).
- (c) **The producer price** (i.e. the price paid by the Guernsey Dairy to farmers).
- (d) Such **other prices** or rates as the Commerce and Employment Department may from time to time request the Panel to determine.

3.6.4 It is important to note that the Milk Price Review Panel would not fix the commission paid by shops to roundsmen as this is a commercial arrangement between those two parties.

Constitution

- A chairman and not less than two ordinary members. All of whom will be appropriately qualified and experienced persons who are independent of the milk sector i.e. who are neither farmers, roundsmen, retailers, nor States members.
- The Chairman to have the casting vote.
- The Panel to be appointed by the Commerce and Employment Department following consultation on the proposed membership with milk sector stakeholders.

Process

- 3.6.5 The Milk Price Review Panel is expected to review prices annually. It will develop its own procedures, but will invite evidence based submissions from all stakeholders i.e. the GMRA, the Guernsey Farmers' Association, shops, consumer organisations, the Guernsey Dairy.
- 3.6.6 It will present its conclusions to the Commerce and Employment Department, **which is fully committed to endorse its findings, except in exceptional circumstances.**
- 3.6.7 In this respect, under the current Milk Ordinance, it is only the Commerce and Employment Department which can legally determine these prices. In the case of the retail price, the Department is required to make a States Order.
- 3.6.8 The Law Officers have advised that there are sufficient powers within the Milk Law to enable a Milk Price Review Panel to be established by Ordinance. A Panel created by law will clearly enjoy a measure of independence that will not be available to a body created in a less formal fashion. However, not only will the creation of a legally based Milk Price Review Panel delay its introduction, but it would, in all likelihood, produce the same result as the approach envisaged by the Board, but at a much higher cost.
- 3.6.9 From past experience the Board believes that it can find suitably independent and qualified persons to sit on an informal Price Review Panel and who will be willing to give of their time for modest remuneration. However, the moment a statutory body is created, those same members will have to have regard to the possibility that their decisions will be appealed against and that they personally may face an expensive and time consuming litigation. Accordingly, the resources needed by the Panel are likely to increase and the remuneration they seek to balance the risk that they are taking will be much higher.
- 3.6.10 In the approach envisaged by the Board, although to all intents and purposes the Panel will be determining price, technically, they will be acting in an **advisory**

capacity and it will be for the Commerce and Employment Department to take the final decision and for that Department to be actionable in the event of any legal challenge.

3.6.11 The Department believes that in approving this Report the States will be endorsing the requirement for the Department to adopt the decisions of the Milk Price Review Panel and this, in turn, will provide confidence amongst the milk sector stakeholders – without the need for new primary legislation.

Precedent

3.6.12 This approach parallels the arrangements which exist for the Milk Supply Panel formed in 2000 to determine the allocation of litres (quotas) to farmers. The Milk Supply Panel is chaired by an experienced farmer who is also a professor of agriculture at a UK university, he is assisted by a respected Jersey farmer and a local retired accountant. The Panel enjoys the confidence of both the industry and the Board in making decisions which have a major effect on the viability of farms. Both the Agriculture and Countryside Board and the Commerce and Employment Department have always endorsed the Panel's findings.

3.7 Dairy Management Board

3.7.1 The Department believes that the key to successfully implementing a modernisation programme for the Guernsey Dairy lies in the creation of a new Dairy Management Board.

3.7.2 Over the years, the Island has been well served by the Guernsey Dairy, which has consistently produced high quality milk and a small range of dairy products. However, it is evident from independent reviews by two dairy industry specialists that there is significant scope for modernising many aspects of the operation.

3.7.3 Consultant Alan Hinton produced two operational reviews for the Department, addressing:

- Distribution, sales and marketing, and the relationship with farmers as suppliers; and
- The management and staff structure of the Guernsey Dairy.

3.7.4 The first report was sent to States members and milk sector stakeholders in November 2006.

3.7.5 The second report remains confidential to the Department, given its focus on staffing and industrial relations issues.

- 3.7.6 Consultant John Bird has produced a technical report on the processing plant and associated quality control regimes.
- 3.7.7 The Department believes that all three reports form a sound basis for developing a **modernisation programme** which will, amongst other things:
- significantly improve operating efficiency; and
 - secure the future of the Guernsey Dairy as a viable trading operation.

Corporate Governance

- 3.7.8 In the past, the Agriculture and Countryside Board created a Dairy Executive which included representatives of both farmers and roundsmen. Clearly, the value of such direct engagement with industry representatives lies in the link that is forged between the producers (farmers), the distributors (roundsmen), and the processor (the Dairy). However, there is an inevitable tendency for those appointed by the various sector groups to seek to champion their specific interests rather than take the more objective and balanced approach which is usually the hallmark of Directors of an enterprise such as the Guernsey Dairy.
- 3.7.9 More recently, the Commerce and Employment Department appointed a Dairy Management Board consisting of a single political member of the Board, meeting with two experienced businessmen as non-States members. The Dairy Management Board had addressed some fundamental issues, but its opportunity to progress and implement change was severely curtailed by the Scrutiny process and the subsequent review.
- 3.7.10 In proposing the creation of a new Dairy Management Board, the Department is seeking to strike the appropriate balance between:
- running what is effectively a commercial food processing factory, operating within a competitive market; and
 - managing a facility which is set firmly within the context of government intervention in the dairy industry and which is seen as an important part of the infrastructure designed to maintain our traditional countryside.

Constitution

- 3.7.11 The Department proposes that a Dairy Management Board consisting of:
- **Chairman:** A suitably qualified and experienced independent Chairman who is not a States member.
 - **Political membership:** Two States members from the Commerce and Employment Department.

- **Non-States members:** Two suitably qualified and experienced non-States members.

3.7.12 For the reasons previously stated, the Department does not favour seeking the appointment of non-States members, or a Chairman, who are engaged in either distribution or production of milk.

3.7.13 It is fully recognised that such a Board will need to function as a Sub-Committee of the Department and that, as such, the rules set out in Section 16 of the rules governing the “Constitution and Operation of States Departments and Committees” will apply, including Rule 2:

“The membership of Sub-Committees shall be determined by resolution of the Department or Committee, but only voting members of the Department or Committee should be entitled to vote on any matter before the Sub-Committee.”

3.7.14 In these circumstances the Dairy Management Board will need to seek consensus, but in the event of disagreement, the votes of the two political members carry the day. Depending on the issue, they may choose to refer the matter to the Commerce and Employment Board for resolution.

3.7.15 The Department is taking the unusual step of proposing the appointment of a non-States Chairman to what is effectively a States Sub-Committee. It believes that a Chairman with experience of the commercial world will be well placed to lead a programme of change in what is effectively a stand-alone business.

Dairy Management Board meeting “in council”

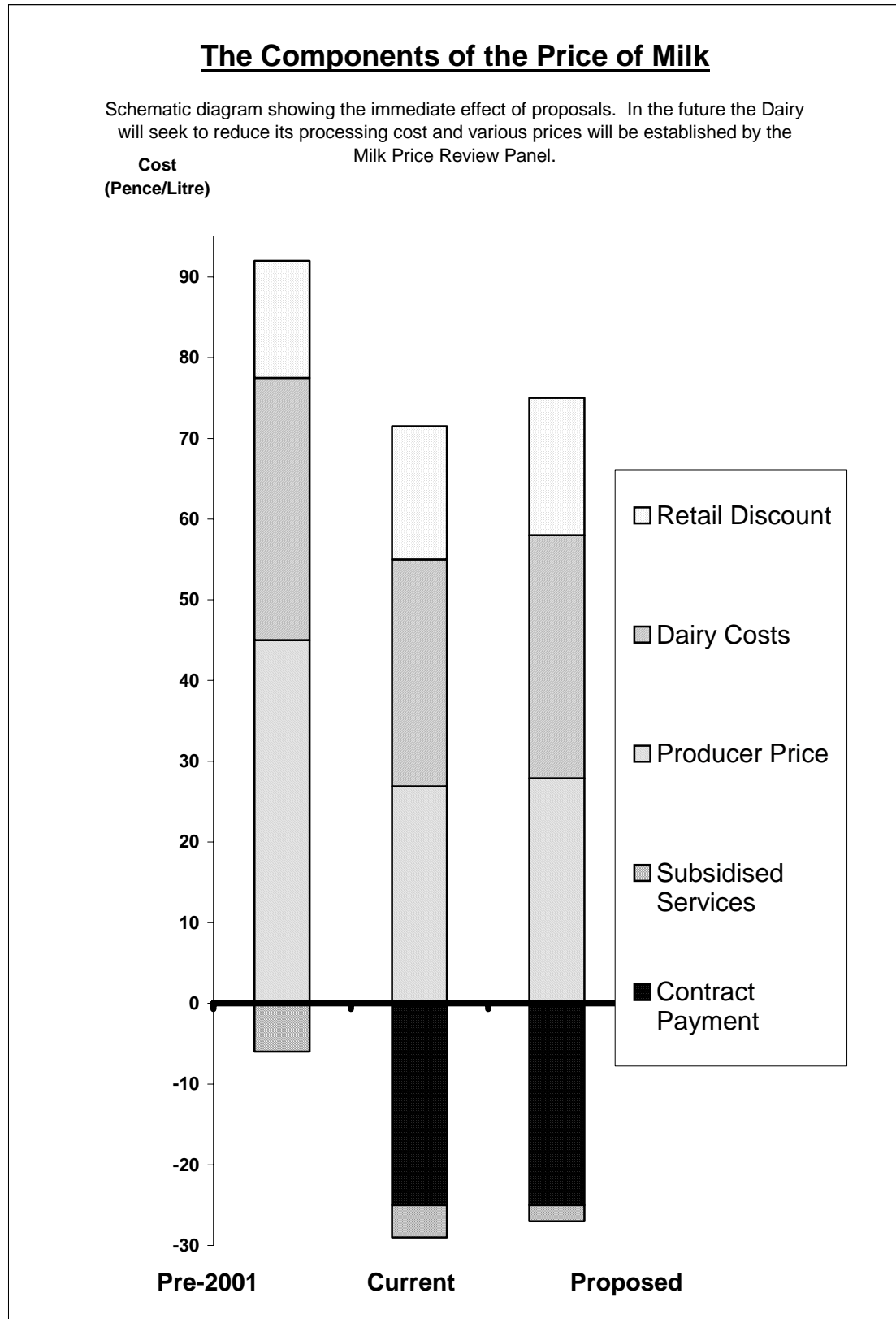
3.7.16 While it is not proposed that either farmers or roundsmen should serve on the Executive Board, nevertheless, it is fully accepted that direct engagement with all interested parties by the new Board is essential. In these circumstances, the Department has created the concept of the Dairy Management Board meeting from time to time “in council”, i.e. it will be expanded to hold special meetings, at least twice per year, to which it will invite representatives of the roundsmen, the farmers, the larger shops and consumers. Its purpose will be to explore at such meetings wider strategic issues of interest to all parties, to present the Dairy Business Plan and generally ensure that issues of concern to the various sector groups are raised – although, in all likelihood routine operational issues will have been addressed at other regular meetings between the Guernsey Dairy management and these parties.

3.8 Reviewing the Current Retail Price of Milk

3.8.1 The Island’s milk legislation empowers the Department to set a retail price for milk. The retail price has always been determined as the total of:

- The price paid to farmers (= “producer price”).
- The cost of processing and packing (= “Dairy costs”).
- The shops and roundsmen discount (= “Retail discount”).

3.8.2 The introduction of the Dairy Farm Contract System in 2001 created an alternative source of income for farmers and the Dairy was able to cut the price paid for raw milk. As a result of this the retail and gate prices were reduced (see Graph 1). The retail price initially came down to 66p per litre on 1st January 2001 and has risen to 70p per litre, a price established in April 2004 and not altered since.

Graph 1

3.8.3 In the ordinary course of events, it is likely that early in 2006 the Department would have taken steps to increase the retail price of milk, to reflect the financial position of the Guernsey Dairy and the interests of other stakeholders.

3.8.4 The Department decided, however, to defer such a price increase until the Scrutiny Review was published and the States had the advantage of considering this comprehensive report on all aspects of the industry. Nevertheless, the need for an increase in price has become acute. Indeed, in the absence of such a price rise, the Guernsey Dairy will need to borrow funds from the Treasury to ensure the cash flow is maintained by July 2007. While the Department has proposed the creation of a Milk Price Review Panel to address these issues, it does not believe that it would be prudent to await the establishment of such a Panel before recommending an increase in price.

3.8.5 Accordingly, the Department is recommending that with effect from 1st May 2007, the retail price of milk be increased from the current 70p to 75p per litre. The additional 5p will be shared appropriately between the producer price, roundsmen's commission, and the Dairy. A Statutory Instrument to this effect will be made once the States has considered this report. The basis for this price rise is cost arising from:

- Increased costs at the Dairy, particularly in respect of energy, materials and labour (all of the Dairy);
- A likely increase in farmers' producer price for raw milk, which has been held at its current level for three years;
- Recognition that the current commission for roundsmen, which forms the basis of their income, was last increased in 2001 for "direct billed" accounts and in 2003 for doorstep ("non direct billed") accounts.

3.8.6 In making these proposals, the Department has decided to defer implementing the decision to cease direct billing until 1st January 2008. This will:

- cushion the impact of such a proposal on Dairy cash flow (it could cost the Dairy £65,000 per annum);
- will give time for those who currently enjoy this service to make adjustments; and
- will provide time to negotiate with roundsmen and some of the larger shops, alternative arrangements that have been sought in terms of direct invoicing.
- provide an opportunity for the Milk Price Review Panel to consider the impact of the removal of direct billing on the costs of the Dairy, the

income of the roundsmen, and the retail price of milk, and to make recommendations accordingly to the Department.

Minimum Retail Price

- 3.8.7 Under the Milk Ordinance, the Department has the choice of establishing either a fixed retail price (as at present), or some other price control, such as a minimum retail price, or not to fix the retail price in anyway.
- 3.8.8 The Board is proposing a departure from the traditional approach of fixing a single retail price, by establishing a minimum price which:
- establishes the minimum rate at which milk can be sold; but
 - provides sufficient “headroom” for shops to levy an additional charge; and
 - provides roundsmen with an opportunity to generate greater income from doorstep deliveries to compensate for the additional effort of serving customers in small amounts with significant effort, compared to single drop deliveries in large quantities to shops.
- 3.8.9 In adopting such an approach, while the Department believes that this allows some flexibility in the market, which currently does not exist, **it does not believe that it will make a major change to the price of milk for most people.**
- 3.8.10 The major shops are unlikely to sell at other than the minimum retail price for fear of their competitors taking custom from them, although it is possible that the small corner shops, where most products are already at a premium, could take advantage of this change.
- 3.8.11 The roundsmen have also indicated that they do not believe that it would be wise to charge a higher rate for doorstep deliveries, as it could well drive the price sensitive customers to purchase from shops. The Department accepts that this may well be the case although some roundsmen already make a small administration charge. No roundsman would be forced to levy a higher charge on doorstep deliveries, but every roundsman will have a **choice** so to do if they believed that it was appropriate for their business. In this connection the Milk Ordinance currently prevents roundsmen from making delivery charges. Given the proposed approach the Department plans to remove such restrictions by amending the Ordinance.

3.9 Summary of Milk Distribution Proposals

Milk Distribution, Sales and Marketing

- To retain the Island's Milk Law and seek to amend the Milk Ordinance to better reflect the current situation in the industry and to remove anomalies.
- The process of revision of the Ordinance would also retain the provisions that purport to bring about a ban on the import of liquid milk to the Island.
- Amendment of the Ordinance to alter the current licensing arrangements for retailers, replacing it with a Register of Distributors.
- Introducing a system for supplying commercial quantities of milk, with all existing roundsmen automatically registered in the new system.
- To establish a Milk Price Review Panel to act as an independent review body on matters leading to the setting of the producer price, the Guernsey Dairy gate price, and the MRP.
- Current "direct billing" arrangements with shops should cease from 1st January 2008.
- The Guernsey Dairy would revert to a single gate price for milk. The level to be the subject of recommendation by the Milk Price Review Panel.
- The Department would retain controls over the retail price of milk and intends to introduce a minimum retail price (MRP) in the future.
- All matters to do with zoning and the business relationship between roundsmen and shops, such as delivery arrangements and a wholesale price, would remain the exclusive responsibility of roundsmen.
- To regard approval of this Report as States endorsement of a number of Guernsey Dairy commercial trading policies which will govern the relationship with distributors. Specifically the Guernsey Dairy will:
 - not undertake deliveries to shops;
 - not, unless the shop purchases a milk round, establish a trade account for shops to buy milk from the Guernsey Dairy.

In so doing, the Guernsey Dairy would ensure that a chain of shops could not, by buying, say, a single corner shop, gain access to milk supplies for all of its outlets.

- To establish a new Dairy Management Board with greater and more explicit delegation of powers to run the Guernsey Dairy on a day-to-day basis.
- The Dairy Management Board would be required to operate a “Council” arrangement whereby, at regular intervals, it met representatives of key stakeholders for the discussion of broader and strategic matters affecting the milk industry and processing and sales.
- The Dairy Management Board would have responsibilities to ensure that it had effective, bilateral, operational communications with roundsmen, shops and farmers etc.
- Develop marketing initiatives, in association with the GMRA, with particular emphasis on the improvement of sales of local dairy products to catering establishments and the encouragement of doorstep sales.
- In amending the Milk Ordinance, remove any restrictions on roundsmen charging for delivery to doorsteps, thereby allowing the making of a delivery charge – as a matter of choice by the roundsmen.

The above proposals seek to meet the following objectives:

- To clarify the situation and correct anomalies in the law.
- To give recognition and a measure of protection to rounds and their value.
- The Department to remain outside the commercial relationship between roundsmen and shops.
- To seek to enhance the more vulnerable sales routes, that is doorsteps and catering.
- To protect the market against retailers’ (i.e. shops) price wars.
- To give independent oversight on pricing decisions.
- To improve communications within the industry.

SECTION 4

SUPPORT FOR DAIRY FARMING

4.1 Introduction and Background

4.1.1 The States' approach to supporting the unique service performed by the Island's dairy farmers in maintaining our countryside and heritage has been firmly established by States approval in 2006 of the Strategic Land Use Plan. Section 13 deals with **"Countryside"** and sets out Strategic Policies 34, 35 and 36. This section of the Strategic Land Use Plan is reproduced as Appendix 2.

4.1.2 It is worth repeating here that, under the heading "Rural development", the Strategic Land Use Plan states:

"13.164 "A viable farming industry is essential to the protection of countryside character and quality. Agriculture makes use of approximately 10,000 verges of land, which represents 26% of the total land area and 65% of open land. Farming practices have a significant impact on the countryside and Island wildlife. Farmers therefore have a vital role in environmental management as part of the farming business.

13.166 The particular role of farmers and farming practices in fulfilling this policy has been recognised through contractual payments to farmers who farm in an environmentally sensitive way. The Farm Management Contract promotes a less intensive form of farming which:

- Ensures the installation of equipment to prevent farm pollution.*
- Develops farming practices that sustain the environment.*
- Maintains hedgerows, trees, earth banks, water courses, wetland areas and other natural or historic features.*
- Promotes nature conservation and biodiversity.*

13.167 The dual purpose of supporting viable businesses and environmental management to maintain and enhance the countryside should therefore benefit the farming industry, the rural environment and the Island Community."

4.1.3 The Department is convinced that the package of measures agreed by the States in 2000 continues to represent the most effective mechanism for delivering corporate policies designed to preserve and enhance the countryside and to

maintain the Guernsey breed. Accordingly, this section of the report deals with “fine tuning” of those measures to rebalance funding in some areas and seek better value for money in others.

A Framework of objectives for Support and Involvement in Dairy Farming

- 4.1.4 The Department fully accepts the conclusion of the National Audit Office Report – “Industry Support Schemes in Guernsey” – to the Public Accounts Committee into States support for industry, that there must be a framework of clear objectives underpinning the support for the Dairy industry in coming years. This framework of objectives is set out below.

- **Business Viability**

To maintain a viable dairy farming sector which continues to farm existing areas of land, produces sufficient milk for the Island’s needs and represents an attractive proposition for both existing farmers and the next generation.

- **Conservation and Enhancement of the Countryside**

To maintain the policy direction currently in place that seeks to conserve the traditional appearance of the Guernsey countryside and encourage relatively extensive production techniques. These are likely to produce increased biodiversity and reduced environmental pollution.

- **Animal Welfare**

To encourage the adoption of good animal welfare standards on dairy farms.

- **Targeting States Support**

In continuing the States’ commitment to provide targeted financial support to the industry, efforts will be made to contain and, where possible and reasonable, reduce the net cost to the States of this support without jeopardising the sector’s stability and viability.

- **Manageable Change**

To phase any changes over a sufficient period to allow clear opportunities for adjustment in business and farming practices where necessary.

- 4.1.5 Before considering the future of dairy farming and farm contracts, it is necessary to determine whether the arrangements agreed in 2000 have fulfilled their objectives.

Dairy Farming and Farm Contracts since 2000

4.1.6 There is no doubt that the package of changes agreed by the States in 2000 were radical and challenging for the industry but, following careful analysis and independent auditing, it is evident that they have largely succeeded in correcting many of the problems faced at the time, i.e.

- The 20% overproduction of milk has been eliminated although winter production levels are currently not high enough to meet Island needs and a limited amount of milk is imported from Jersey. Nevertheless, total production is now close to Island needs.
- The trend to intensify production has been halted and nitrate pollution of watercourses has been drastically curtailed. Slurry spreading has been banned in the three months from October to December and all farms now have adequate slurry handling and storage arrangements.
- All dairy farmers operate in accordance with audited animal welfare standards.
- All dairy farms protect and enhance the farmed countryside following the development of the individual Farm Biodiversity Action Plans which form part of the Farm Management Contract.

4.1.7 Those Plans have produced tangible results in the form of:

- Wildlife friendly hedge management and wildlife margins around the edge of fields that were previously cropped and grazed.
- Hay and wild flower meadows sensitively managed.
- Tree planting, installation of bird boxes etc.

4.1.8 This list is not exhaustive and represents just some of the work routinely undertaken by dairy farmers to enhance our countryside.

4.1.9 In addition to meeting the objectives set six years ago, these arrangements have brought much needed stability and confidence to the Dairy industry. Accordingly, the Department sees no case for disrupting that success and stability by change for change's sake, rather

- **it is in the Island's and the industry's benefit to leave in place those policies and approaches that have merit and have proved to work well; and**

- **to carefully modify others, only where change can bring improved outcomes for the Island and the industry.**

4.1.10 The relationship between Dairy Farm Contracts and milk supply, and the modifications to the current package that the Department and the industry consider are necessary, are now discussed in more detail.

4.2 Dairy Farm Contracts and Milk Supply

Dairy Farm Management Contracts

4.2.1 Central to the mix of dairy farming policies over the last five years, has been the Dairy Farm Management Contract which sets a milk production quota for all dairy farms and has, through this mechanism, controlled over production and produced a stable business environment for farmers.

4.2.2 The other key aspect of Farm Management Contracts is that all farms have to comply with conditions covering:

- Farm waste management.
- Stocking density.
- Protection of countryside features such as banks, ponds, hedges.
- The sensitive management of farmed land.
- Developing and following a “Farm Biodiversity Action Plan”.
- Animal welfare standards.

4.2.3 These elements are an important aspect of the package of support, with the States encouraging enhancement of the environment and conservation of the countryside, reduced pollution which would increase biodiversity, (but which also protects the Island’s water supply), and good animal welfare practices. In other words, a more “extensive”, form of dairy farming than was becoming the pattern during the 1990s is now encouraged and supported.

Measuring Success

4.2.4 All farms have been audited, at least annually, by independent and knowledgeable auditors on all aspects of farmer’s contract commitments. No farms have failed their audits and, in many cases, the basic requirements have been exceeded.

4.2.5 The environment and conservation work has been the subject of an independent review by Environment Guernsey (the contracting arm of La Societe

Guernesiasse) commissioned by the Department in 2005. The review concluded that dairy farms were indeed fulfilling the specifications of their Farm Biodiversity Action Plans and that the nature of the environmental work undertaken was entirely appropriate.

4.2.6 The Island has therefore received the environmental and animal welfare benefits that it requested.

Annual Contract Payment and the Price of Milk

4.2.7 Under the Dairy Farm Management Contract system, the States set aside an annual budget of some £2 million to make payments (Dairy Farm Management Payments – DFMPs) to farmers carrying out the contract conditions as set out in their contract documents. The fund has been paid at the rate of 25 pence per litre of milk supplied to the Guernsey Dairy up to the farmer's quota.

4.2.8 It is important to re-emphasise that the introduction of this payment in 2001 was linked to a sizeable cut in the payment made to farmers by the Dairy for raw milk, and a comparable reduction in the retail price of milk from 92p per litre to 66p per litre in 2001. The Department fully supports the decision of the, then, Agriculture and Countryside Board to do this, as it represents the best available method to discourage imports of milk by making local milk available at a price comparable with UK milk prices.

4.2.9 The Department believes that the Dairy Farm Contract Scheme has proved to be a success and, by creating an alternative source of income for farmers who comply with specifications covering animal welfare, environmental conservation, and farm waste handling (to reduce pollution), has enabled the retail price of milk to be held down. Milk now retails 22p per litre less than the price in 2000, which was 92p.

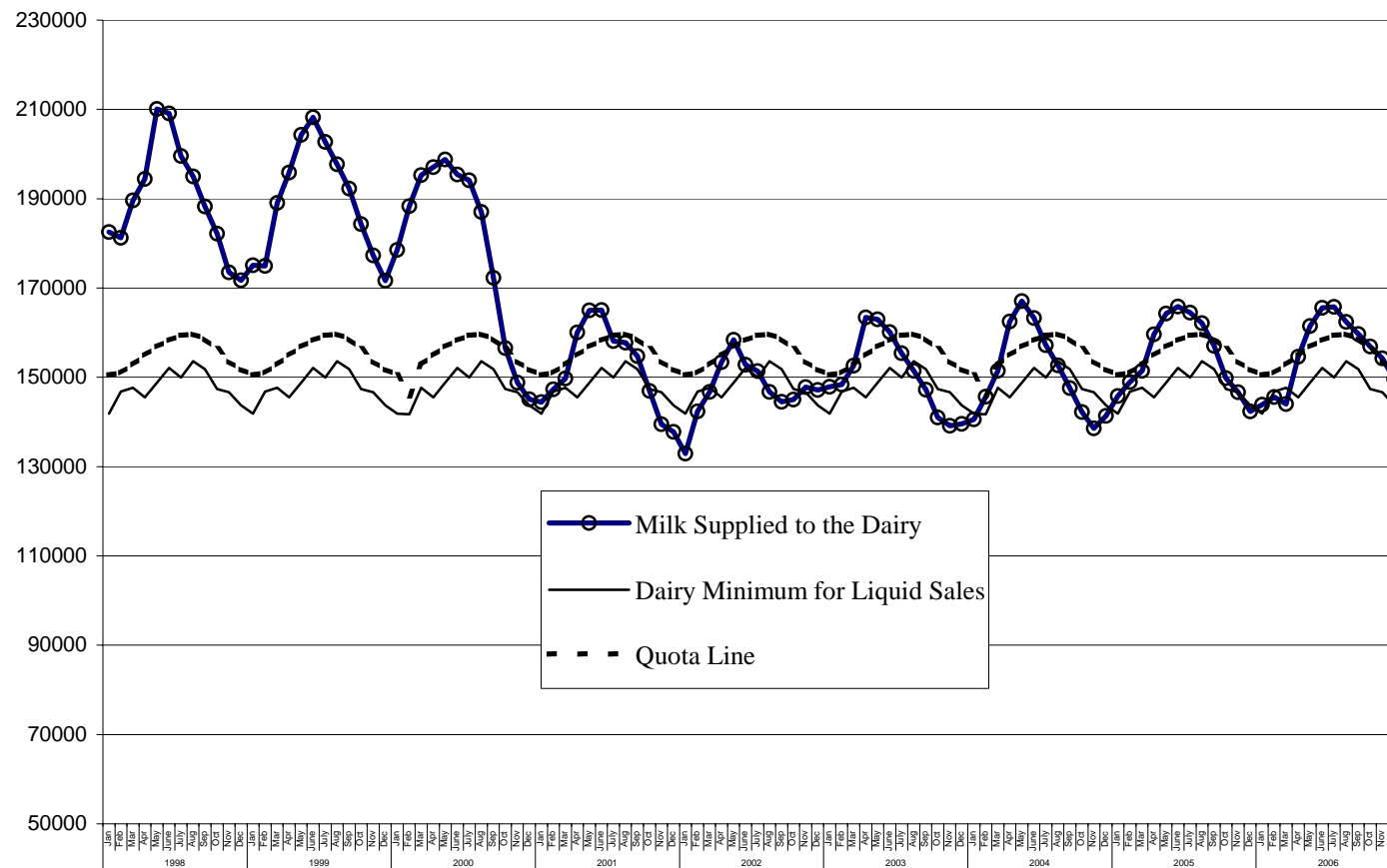
4.2.10 The Scheme has an annual budget of £2.025 million and is unchanged since 2001. The Department proposes that the Farm Contract Scheme and its associated budget should be retained at the current level, with the annual vote established in the future by the normal budgetary process.

Island Milk Supply (See Graph 1)

4.2.11 Under the new contract system, milk supply dropped initially to 7.5 million litres from the previous level of some 9.8 million litres per year. The total volume has now increased back to the 8 million litre target, although every year the Guernsey Dairy has gone through a period in the winter months when local production has not been sufficient for its needs and a small amount of imports have been bought from Jersey.

Graph 2: Milk Production Pattern - 1998 to 2006

Litres per week



Refining Dairy Farm Management Contracts

- 4.2.12 Having established and agreed with the Guernsey Farmers Association (GFA) that the current system should be continued, it was also agreed that a number of simplifications and fine tunings to that system should be applied.
- 4.2.13 Currently, there is a single Dairy Farm Management Contract which embraces
- arrangements for the supply of milk in accordance with a set quota per farm;
 - compliance with animal welfare standards;
 - compliance with anti-pollution measures (largely concerned with storage and spread of slurry); and
 - conservation, management and enhancement of the countryside through fulfilling a Farm Action Biodiversity Plan.
- 4.2.14 In future the relationship between the various parties to the Dairy Farm Management Contract should be clarified by splitting that contract into two.
- Part I: A contract between the farmers and the **Department** dealing with animal welfare standards/compliance with anti-pollution measures/conservation management and enhancement of the countryside; and
 - Part II: A **Milk Supply Contract** between dairy farmers and the Guernsey Dairy to deal with all matters to do with supply and the seasonal pattern of milk production.
- 4.2.15 The current system of farm milk quotas should be retained, but kept under constant review, to ensure that it continues to be an appropriate mechanism to both manage and incentivise the industry.
- 4.2.16 The Guernsey Dairy will work with the industry to increase year round production, possibly with the introduction of bonuses to stimulate production in the winter months.
- 4.2.17 The environment and animal welfare elements of the contract shall be re-examined to ensure that the success of the first five years of these policies is built upon.
- 4.2.18 The Department will look to introduce greater flexibility in contracts that will allow farmers to take on enhanced standards and receive a higher contract payment than those who prefer to achieve a good but basic standard. The latter would receive a lower payment than the current 25p per litre. This is likely to

result in some form of two tier and points based farm contract system in 2008 and beyond.

4.2.19 The Department proposes that the Dairy Farm Contract System vote should continue at its current level with future levels of funding being agreed through the normal budgetary process. The current level of funding in this vote is £2.025 million, which is unchanged since 2001.

4.2.20 Establishing the final form and detail of these changes will be done in full consultation with dairy farmers in the coming months.

4.2.21 Specifically, the proposed timetable would be as follows:

2007: Detailed consultation with farmers

2008-2009: Any new schemes to be gradually introduced over this two-year period and shadow audited for compliance in such a way as to allow farmers to make necessary adjustments to their procedures to ensure they are fully compliant by 1st January 2010, when all new schemes will be operational and audited.

4.2.22 This timetable recognises the relatively long planning cycle within dairy farming, given that it can take three years from conception of a cow to its inclusion in the herd as a productive animal.

4.3 Support Schemes and Subsidised Services

The Cost of Provision of Dairy Industry Farm Services

4.3.1 Services provided by the Commerce and Employment Department, and other schemes (aside from farm loans), are worth in excess of £400,000 per annum to the dairy farming industry. This constitutes a degree of invisible subsidy to farms, and is drawn from States revenue funding. (See table 1).

Table 1

Service Area	Annual Cost of Provision (£)	Annual Fees/Income from the Dairy Industry (£)
Audits & Performance Data	21,000	0
AI Service	117,000	29,000
Milk Recording	57,000	0
Animal	8,000	0
Identification/Registration	12,000	0
Herd Health Testing		
Sub Total (1)	215,000	29,000

Incinerator	109,000	1,000
Slaughter House	41,000	3,000
Cull Cow Compensation*	57,000	n/a
BSE Compensation**	0	n/a
Sub Total (2)	207,000	4,000
Total (1 + 2)	422,000	33,000

**Payment of £150 per culled cow that cannot enter the human food chain because of BSE restrictions. Note this is not a support scheme, but is a statutory obligation to recompense an animal owner when that animal is slaughtered in compliance with Island animal health legislation.*

***Payment of £600 per animal diagnosed as having BSE and compulsorily slaughtered. There have been no cases of BSE since 2003.*

4.3.2 The Department shares the view of its predecessor Committees, that

- access to most of the farm services listed above is essential for the continued success of Guernsey's dairy industry; but
- given the scale of dairy farming on the Island, few, if any of these services, could stand alone as viable propositions provided by the private sector; and furthermore
- if farmers were to be asked to meet the full cost of these services, this would have a significant impact on the viability of their businesses.

4.3.3 Accordingly, the Department believes that it may well be inevitable, for so long as the dairy industry is valued for its wider contribution to the Island, that the States will be involved in providing essential services at a subsidised cost. Nevertheless, it believes that there remains scope for recovering a greater percentage of the cost from the industry than at present, and for introducing efficiencies.

4.3.4 That scope for improvement is now considered under the respective Farm Service headings.

The Guernsey Cattle Breed and Partnership Services

4.3.5 The Guernsey dairy farm industry is built on the distinctive Guernsey Breed which is the only breed available to local farmers. The Guernsey breed, the traditional countryside, and the high quality dairy products are a key part of the way residents and visitors view the Island and contributes to our international identity.

4.3.6 The brown and white Guernsey cow and its products (principally milk, cream, and butter) are symbolic ("iconic") of the Island and this important part of our international personality has been recognised in all forms of promotion of the Island and by past Boards, literally for generations.

4.3.7 A number of the services made available by the Department can be considered as part of a partnership between the States and dairy farmers to maintain our distinctive cattle breed. **It is the Department's view that the principle of joint funding should apply in these areas.**

4.3.8 The Department considers that the following services are partnership services:

- Audits and Performance Data
- Artificial Insemination Service
- Milk Records Service
- Animal Identification and Database.
- Herd Health Testing

4.3.9 As can be seen from Table 1 above, the industry currently pays a very small proportion of the cost of provision of these services by way of fees.

4.3.10 The Department believes that in time these fees should be increased towards a 50% cost recovery that will give a truer joint funding arrangement and will reduce States subsidy in this area while maintaining the viability of farms.

4.3.11 In line with its commitment to manage the introduction of change, the Department intends to increase fees over a two year transitional period seeking in 2008 to achieve 30% cost recovery on these services. In 2009 the target will be 40% and in 2010 and thereafter, 50%.

4.3.12 The Department intends to consult fully with farmers on the charging mechanism to be adopted with the proviso that, as well as it being considered fair and reasonable, it must be effective and efficient. Furthermore, alongside the commitment to increased charges, the Department will work to reduce the cost of providing services in consultation with farmers.

Other Services and Support

The Slaughterhouse and Carcase Incinerator

4.3.13 The Department operates the Island's Slaughter House, which handles a small number of animals destined for human consumption, and the Animal Incinerator at Longue Hougue which safely disposes of animal waste (and animals unfit for consumption). These services are used for a range of livestock, but the predominant use is by the dairy industry.

- 4.3.14 The animal waste incinerator has proved an essential facility which is efficiently run by a private contractor. The Department has no plans to change the current arrangements, other than in respect of charging – however, the long term future of the facility may be affected by plans for the development of Longue Hougue as a waste disposal site.
- 4.3.15 The Department is conscious that while the existing Slaughter House is fit for purpose for producing meat for the local market, it falls below EC minimum standards required if locally slaughtered meat was to be exported. That said, live exports are still feasible although unlikely as market prices and regulatory requirements would mean that less than 30% of exports would be profitable to any degree. In most cases it simply will not work financially.
- 4.3.16 The Department's predecessor, the Agriculture and Countryside Board, worked for a number of years to try and replace the existing Slaughter House in St Peter Port with one sited elsewhere. All these efforts were thwarted by the lack of a suitable site. The Department is committed to seeing this matter resolved at the earliest opportunity, but it too is constrained by the lack of a suitable site in the short term.
- 4.3.17 As a result of previous searches for a site it is considered that establishing a new facility at Longue Hougue currently represents the most practical option for the Department. However, it also recognises the difficulties of addressing this issue until the future of Longue Hougue and associated competing uses are resolved.
- 4.3.18 The Department believes that the cost of operating these facilities should, as much as possible, be the responsibility of the users and it considers that, within reason and accepting the issue of scale of the industry, **prices should be set in the future at a realistic commercial level for these services.**
- 4.3.19 This issue is not considered further in this Report but will be the subject of a separate review, as will the continuation of payments under the Island's Cull Cattle Scheme, which is the equivalent of the Over Thirty Months Scheme (OTMS) run in the UK. The local Scheme was introduced ten years ago following medical advice that cattle over 30 months of age should not be slaughtered for human consumption due to the concerns about meat with BSE entering the food chain. The Scheme compensates farmers for the loss of income previously obtained by older cattle for meat. The Scheme currently has a budget of £57,000 per annum.

Farm Loans

- 4.3.20 Currently there is a total fund of some £700,000 for farm loans of which approximately half is on loan with farmers. The remainder is available for allocation to qualifying projects. Following the States decision in 2000, the Department is constrained in that it can only advance loans to projects aimed at pollution reduction. A small number of these projects have gone ahead over the

last five years and these may continue to go ahead in the future. However, in the longer term, it is possible that farmers would need to increase cattle housing and slurry storage etc (i.e. “infrastructural projects”) to enable the industry to continue to produce the milk the Island needs from a smaller number of farms.

- 4.3.21 With this possibility in mind, the Department requests that it is given the freedom to negotiate amended conditions for the issue of farm loans with Treasury and Resources as, from time to time, it deems it necessary and appropriate.**

Organic Conversion Support Scheme

- 4.3.22 This Scheme was introduced in 2001 with the aim of giving financial support during the two and a quarter year period of conversion of farmed land from conventional dairy farming to Soil Association accredited organic standards.
- 4.3.23 The objective of the creation of this Scheme was to support farms wishing to convert to dairy farming using organic standards and which answered a call from Islanders for the availability of organically produced milk in Guernsey. The support made under this Scheme was a payment per vergee, which compensated the farmer during the conversion period at a time when yield can be reduced by 10 or even 15%. This occurs because artificial fertilisers use is discontinued and natural fertility mechanisms, such as the use of clover, need to be built up in the soil. During the conversion period, milk cannot be sold as organic and thus the farmer cannot receive a premium from the market. This Support Scheme has made conversion to organic dairying a viable opportunity.
- 4.3.24 The Scheme has been successfully used and the Island now has an enthusiastic organic dairy farmer who has successfully converted his land and is now in production.
- 4.3.25 It should be noted that this Scheme does not exist to stimulate conversion, but rather, by making up the income shortfall, it facilitates the change for farmers who decide that organic production fits their interests and business plan.
- 4.3.26 The Department wishes to reaffirm its commitment to support conversion to organic milk production as this supplies a clear market need and also is strongly supportive of non-intensive production methods and land management practices.
- 4.3.27 The Department wishes to maintain the vote for this Scheme in the future, but until such time as another farmer wishes to consider and commit to organic conversion, it would not expect to put any funding within the vote.**
- 4.3.28 In future, should that situation arise, it would deal with the funding for this vote through the normal budgetary process.**

Farm Waste System Grant Scheme

- 4.3.29 In February 2000 the States gave its approval to the establishment of a new approach, mentioned elsewhere in this Report, which required farmers to control the spreading of slurry during the wet winter months. For most farmers the practical requirement was that they would install a slurry management system with a tank capable of holding four months' slurry until such time as the weather conditions were suitable in January to start spreading again.
- 4.3.30 The requirement to do this had been developed in close consultation with the then States Water Board to reduce the risk of nitrogen pollution of Island watercourses. The mechanism to bring this in place has been the Dairy Farm Contract, and the purpose of the Farm Waste System Grant Scheme was to provide up to 50:50 funding for the installation of slurry stores on farms.
- 4.3.31 In the event the Scheme was kept open until October 2004, the start of the first non-spreading period and was very successful in encouraging the wide uptake of slurry management facilities in the industry. Some farms chose to use slurry management procedures other than the construction of stores, however they also had to have them fully approved in a farm waste management plan to comply with Dairy Farm Management Contract conditions.
- 4.3.32 The Scheme closed as set out above and the Department has no plans to reopen it at the present time.

Habitat Enhancement Pilot Scheme

- 4.3.33 In anticipation of reviewing the approach to the environmental aspects of Dairy Farm Contracts, the Department ran, for two years in 2004 and 2005, a pilot scheme to examine whether there was merit in the payment of small grants to specifically require landowners (by agreement) to manage land in a certain way.
- 4.3.34 For instance, land was sown with crops which were not harvested but produced seed heads for winter feeding of migratory birds. Another example was the sensitive management of wet meadows. This Scheme was interesting and did inform the further debate with the Guernsey dairy farmers when discussing possible ways forward with the Contract Scheme.
- 4.3.35 In the event it was agreed that the specific and small grants system, whilst not unsuccessful, did not lead to a possible route for a new Farm Contract system. Discussions and agreement moved along the lines, touched on elsewhere in this Report, for a points based, two-tiered approach. The Scheme was not run in 2006 and the Department has no plans at present to consider opening it again.

4.4 Dairy Farming and the Environment

Developing Future Strategy – Response to the Scrutiny Committee

- 4.4.1 Before concluding the review of support for dairy farmers, consideration should be given to the process for developing countryside management strategies and policies in future. In particular, it is necessary to address Recommendation 10 of the Scrutiny Committee that

“... the Commerce and Employment Department liaise with the Policy Council to give consideration to...

10. Reviewing the mandate of the Commerce and Employment Department with regard to its responsibility for administering environmental policy and to identify how this fits with corporate policy.”

- 4.4.2 The Commerce and Employment Department does not believe that it enjoys any exclusive right to develop and apply environmental policy. However, it does have a role to assist and encourage industry to comply with corporate environmental policy, as set out in the Strategic Land Use Plan (see Appendix II).
- 4.4.3 Given its knowledge, understanding and engagement with all sectors of the economy, the Commerce and Employment Department is well placed both to encourage and, in some cases, ensure implementation of corporate environmental policy – in the case of agriculture, through both economic levers (subsidies – in particular the Dairy Farm Management Contract Scheme – and grants) and legislation. It is also in a position to act as an intermediary between industry and the States, where there are real issues in the application and timing of new corporate environmental policies where the impact on businesses and jobs may not have been fully appreciated by those developing such policies in the first place.
- 4.4.4 A good example in the agricultural context is the provision of slurry storage:

Research by the former Water Board indicated that the Island’s groundwater was being unduly polluted by nitrates arising, in part, from the spreading of slurry during the wet winter months. The Water Board used the Water Laws at its disposal to prohibit the spreading of slurry during specified months in the winter. This presented real practical problems to farmers, who were facing outlays up to and exceeding £100,000 to build suitable four-month slurry storage. Such investments represented a major impact on viability, while adding nothing to the bottom line of their businesses. In these circumstances the Commerce and Employment Department was able to work with both the Water Board and the farming community to apply a combination of grants and

technical advice to ensure compliance with these new arrangements. A case of an environmental policy established by one States Department being furthered by another Department best placed to do so.

- 4.4.5 The remit for the Department in assisting the dairy industry on behalf of the States in the application of corporate policies was summarised well in the Agriculture and Countryside report approved by the States in September 2000.

“1.4 Fulfil the objectives of keeping dairy farming as a viable business opportunity and ensuring that its activities have a positive effect on the countryside”.

Furthermore,

“1.5 The Board proposed that the community could reasonably expect these policies would produce a countryside that should be:

- *pleasing to look at;*
- *rich in wildlife;*
- *producing the highest quality foodstuffs; and*
- *managed by environmentally responsible farmers who respect past heritage and integrate the care and protection of that countryside into every day farming activities.*

- 4.4.6 In the view of the Department and its predecessor, its intervention in the agricultural industry is based on the philosophy that both countryside management and the more commercial aspects of the dairy farming business are inextricably linked. A policy recognised and repeated in the Strategic Land Use Policy.**

- 4.4.7 Put starkly:

- Farming driven simply by the profit motive without regard to the impact on the environment would neither maintain the countryside we value nor enjoy the public support and States funding essential to secure its viability.
- On the other hand, a regime in which farmers were forced to focus on producing a managed countryside with no regard for the viability of holdings and which failed to produce a reasonable return would soon deter existing businesses from continuing farming and would not encourage the next generation to start.

4.4.8 It would, of course, be perfectly feasible to reduce potential conflict if separate States Departments or other agencies were each separately made responsible for just one of the following components of agriculture:

- Setting environmental policy for countryside management.
- Auditing compliance with that policy.
- Operating the Guernsey Dairy.
- Regulating the Guernsey Dairy.
- Provision of an animal breeding plan.
- Ensuring compliance with animal welfare standards
- Providing technical advice and farm services etc.

4.4.9 The Department is not convinced that, in an island of this size and with the current government structure of ten Departments, any attempt to divide responsibility for component parts of the industry in this way would be appropriate or cost effective.

4.4.10 Rather:

- It is less bureaucratic and simpler for farmers to engage with one States Department – the Commerce and Employment Department; and
- Countryside management does not take place in as a vacuum, rather it has been developed through consultation with others.

In this respect a Countryside Advisory Panel was established some six years ago to assist the, then, Agriculture and Countryside Board in preparing a suitable countryside policy to underpin the environmental contract.

The CAP included representatives of:

- The Island Development Committee
- The local Farming and Wildlife Action Group
- The farming community
- Local environmental organisations with conservation expertise including La Societe Guernesiaise, the National Trust and the RSPB.

- Farming sits squarely within the context of all planning policies influencing the rural environment in general and the countryside in particular and the role of Commerce and Employment in developing the contract with farmers is simply to assist in delivering compliance with those policies.

4.4.11 If a new and different countryside policy is developed by the Strategic Land Planning Group of the Policy Council or Environment Department then the Commerce and Employment Department's role would be to ensure that any environmental contracts agreed with farmers are compatible with those plans.

4.4.12 In this respect, it is envisaged that strategic policy which impacts on the countryside will, in future, be developed in the following ways:

- Direct engagement with the farming industry through the Farm Contract Management Forum (elected representatives of farmers meeting with departmental representatives) which has already been established;
- Direct engagement with relevant States Departments, on the specific application of new policies e.g. Environment Department or Public Services Department, in relation to further water related issues; and
- Engagement with the Strategic Land Planning Group of the Policy Council on how best to address major and complex and strategic issues in which the Department has an interest, but which have a much wider impact, for example the concept of strategic farm sites (see later).

4.4.13 The Department recognises, however, that in addition to the development of policy as described above, there is a case for finding a mechanism which draws a much wider range of opinions into a discussion about other strategic issues connected with the countryside. One such subject is improving public access. Another is how best to ensure that farmers continue to enjoy access to the land they require and have some freedom to manage it appropriately even though it may not be in their direct ownership.

4.4.14 The Department has an open mind as to whether these areas are best addressed by a group created within Commerce and Employment or through joint working with the Environment Department or indeed through the auspices of some other established or new group formed by the Policy Council. It expects to explore these issues with the Policy Council and the Environment Department following States approval of this Report.

Extending Countryside Management Beyond Dairy Farming

4.4.15 One of the opportunities envisaged by the Agriculture and Countryside Board in reporting to the States in 2000, was the possibility at some time in future of

extending the States subsidy available to dairy farmers to other users of agricultural land.

4.4.16 Although dairy farming accounts for the greater use of agricultural land, it is conceivable that the existence of grants tied to environmental contracts could encourage arable farmers, market gardeners, horse owners and organisations such as the National Trust and La Societe Guernesiaise to work in closer partnership with the States.

4.4.17 Given the principles emphasised by the Department in this letter, that

- such involvement as it has in the administration of environmental policies is tied firmly to the fact that it has a direct and economic relationship with the sector involved, i.e. dairy farming; and
- bearing in mind that it does not have a similar relationship with those who use farm land outside of the dairy industry (e.g. market gardening, horses etc); and
- taking account of the current financial position of the States:

- (a) It does not recommend that this option is pursued at this time; and
- (b) In any event believes that this is a wider corporate environmental issue which should be explored at strategic level through the Government Business Plan.

4.5 Business Succession within the Dairy Industry

4.5.1 A review of strategies for the future of the dairy industry would not be complete without a comment on succession. The reduction in the number of farms from hundreds in the 1950s to just 21 today, is due in part to the changing economies of farming and increasing use of technology and mechanisation which allow fewer farmers to manage greater numbers of stock. However, it is also due in part to the fact that the historical pattern of farming found in Guernsey and elsewhere, whereby son followed father into the business, is largely a thing of the past. The sons and daughters of farmers now have a wide choice of alternative means of making a living either within the Island or further afield. That is not to say that there are no farmers' children taking on the family business, but they are very few in number.

4.5.2 Although there have been one or two new entrants to dairy farming in Guernsey in recent years, the barriers to entry are now extremely high. Farmers today have to fulfil a wide range of animal welfare requirements unheard of in the 1950s, provide expensive slurry storage and, above all, find a suitable site on which to establish a new farm or secure the substantial funds needed to purchase an existing farm.

4.5.3 It is against this background that the Department believes that there needs to be a thorough review of those issues that impact on the future attractiveness of dairy farming in Guernsey. Such review will need to examine:

- Maintaining farming as a viable and attractive business proposition for the next generation of farmers.
- Raising awareness amongst potential farmers of the rewards and opportunities that a successful career in farming locally can produce.
- Exploring with the industry and the Environment Department whether there is a case for changing the Island's planning laws to prevent the loss of certain key farm sites from the industry in future (that is, the concept of "strategic sites").
- Exploring measures to improve the long-term availability of land for farming (some 80% of the land that is dairy farmed, is not owned by the farmer).

4.5.4 The purpose of raising these issues in this report is simply to signpost this strategic challenge which, following extensive consultation and input from the proposed Working Group, will be dealt with as a separate issue in the future.

4.6 Summary of Proposals

4.6.1 Section 4 of this Report summarises the achievements of the Farm Contract Scheme since its commencement in 2001. Having reviewed these the Department is convinced, and has the agreement of the dairy farmers, that its benefits justify its continuation, but with some fine tuning to ensure that the system encourages a good uptake of environmental management techniques on the farm and a good standard of animal welfare.

4.6.2 In line with the approach outlined in this Report, the Department will work with the industry in the coming months to fine tune these proposals.

4.6.3 With regard to contracts, it proposes the following:

- Simplification and refinement of the Dairy Farm Contract system, retaining farm milk quotas but keeping them under review.
- Separation of the current Dairy Farm Management Contract into a Dairy Farm Management Contract and a Milk Supply Contract. The latter would be made specifically between farms and the Dairy and would deal with all matters to do with the supply and seasonal pattern of milk production.

- Review of the environmental and animal welfare elements of the Dairy Farm Management Contract to create greater flexibility for farmers and which will reward those who take on enhanced standards. In so doing they will qualify for a higher contract payment.
- Consultation with farmers on all changes and phasing-in of the modified arrangements over 2008 and 2009 with their full implementation by 2010.
- Increasing charges for a number of farm services, which would result in movement towards a 50:50 cost recovery. The process of establishing the charging system would be by consultation with the industry, however the key principle will be the establishment of partnership funding in the future.
- Consideration of the future of the Slaughterhouse, the carcase incinerator, and the Island's Cull Cattle Compensation Scheme and preparation of appropriate reports to the States.
- Retaining the Farm Loans Scheme that exists at present, but providing freedom to negotiate amended conditions for the issue of farm loans with Treasury and Resources as, or when necessary, to support the development needs of the industry.
- Retaining the Organic Milk Conversion Support Scheme vote in place, but anticipating that any decisions to fund that particular vote in the future to be made through the normal budgetary process.

SECTION 5

DRAFTING INSTRUCTIONS FOR AMENDMENTS TO THE MILK (CONTROL) (GUERNSEY) ORDINANCE 1958

- 5.1 This Section develops proposals contained in this Report which require amendments to legislation and aims to provide clear drafting instructions for the Law Officers.
- 5.2 The Milk and Milk Products (Guernsey) Law, 1955 (as amended) is an enabling enactment that provides powers to introduce detailed arrangements in relation to milk etc by means of Ordinances. The Department is not proposing any amendments to this Law.
- 5.3 The Milk (Control) (Guernsey) Ordinance 1958 to 1996 (often referred to as the “milk law”) has been made under the 1955 Law and as stated above, it sets out the detailed regulations regarding milk and milk products in Guernsey.
- 5.4 As explained earlier in this report, the Department originally proposed that the Ordinance be repealed, but in the light of the concerns that were expressed at the time that this proposal was announced, and at the subsequent Scrutiny Committee hearings, the Department is no longer proposing such action.
- 5.5 It believes, however, that some aspects of the Ordinances need to be updated as the oldest provisions date from the 1950s and they no longer adequately reflect all of what are now accepted practices and standards in the dairy industry.
- 5.6 The Department proposes the following changes:

- (a) Delivery of Milk to the Guernsey Dairy

Generally the Ordinance provides for all milk (with a few minor exceptions) to be delivered by farmers to the Guernsey Dairy. However, some farmers are interested in diversifying their businesses and setting up on-farm facilities for the manufacture of milk products (one farmer already manufactures ice cream).

The Department supports such enterprise and accordingly proposes to amend the Ordinance to allow a farmer to retain milk for the on-farm manufacture of dairy products. The Department proposes that this should be subject to its prior approval to ensure that adequate supplies of milk (for the Island’s liquid milk and milk products needs) are still received at the Guernsey Dairy. It does **not** intend that whole milk be processed on farms and marketed in competition with the Guernsey Dairy.

(b) Classification of Milk

The Ordinance requires all milk received by the Guernsey Dairy to be classified. In practice it is subject to a range of industry standard tests to determine its hygienic quality. The Department proposes that the Ordinance be amended to reflect modern testing standards and protocols.

(c) Payments to Farmers for Milk

Payments to farmers are currently based on whether milk is required for the Islands liquid milk needs (for which the “top” price is paid and this applies to most milk) or whether it is surplus to such requirement (in which case a lower price is paid). Payments can also be varied seasonally to encourage even production throughout the year and a series of penalties can be applied for milk that does not meet accepted hygiene standards (according to the tests described above).

The Department proposes that these principles remain, but that the provisions relating to payments be amended such that the Guernsey Dairy could:

- pay a bonus for “superior” quality milk (to maintain the impetus of increasing milk hygiene standards);
- make payments based on the constituents of milk (there are no immediate plans to do this, but some constituents have a commercial value when used in the manufacture of dairy products and there is growing evidence that some may have health benefits); and
- reduce payments for milk that is used for the manufacture of the least valuable milk products (at present, for example, the Guernsey Dairy may have to pay a relatively high price for milk which is then used for products that are sold on the export market and which only yield a small return. This proposal would only affect a small volume of milk delivered to the Guernsey Dairy).

(d) Delivery Charges

At present milk roundsmen can only make a delivery charge subject to the prior approval of the Department. It is proposed that the provision relating to Departmental approval be repealed which would make it considerably easier for milk roundsmen to make a such charge.

This would not compel them to make a delivery charge, the option to do so would be a business decision for each individual, and not the Department.

(e) Milk Recording Subsidy

There are provisions in the Ordinance for the optional payment of a subsidy for milk recorded herds. The Department proposes that these provisions be repealed as the package of support for the dairy industry is now orientated around individual contracts as described elsewhere in this Report.

(f) Licensing

Under the current licensing rules in the Ordinance, any person who sells milk by retail must be licensed. Thus roundsmen who deliver to households require a licence, but any who deliver solely to shops do not, as it is the shops that sell the milk at the retail price and it is the shops themselves that also require a licence.

It has, however, been the practice for some time that all roundsmen have a licence (regardless of where they deliver milk), but shops do not.

The Department proposes that the Ordinance be amended to provide that the Guernsey Dairy will only supply milk for distribution to persons entered in a new “Register of Distributors”

Qualification for entry into the Register will be compliance with the existing policies, i.e. it will consider the creditworthiness and any criminal record of an applicant. The Register will **not** specify any zones (the extent of a milk round) or any shops or other commercial premises that are within such zones.

5.7 The amendments proposed by the Department will **maintain**:

- the provisions which give the Department the power to set a retail price for milk;
- the provisions that regulate the retail sale of imported milk (which amount to an effective ban on such imports).

SECTION 6

RESPONDING TO THE SCRUTINY REVIEW

The Department's response to most of the main issues raised by the Scrutiny Review is to be found throughout this report. However, this section deals with three additional questions posed by the Review, and concludes with a summary of the Department's responses to the specific Scrutiny Committee recommendations. The three areas not previously covered include:

- The Dairy Industry and Competition Law;
- Potential Conflict of Roles; and
- Phased Approach to Change

6.1 The Dairy Industry and Competition Law

6.1.1 The Scrutiny Committee's report makes a number of references to the pending introduction of Competition Law. At 8.2.6 they state:

“If a Competition Law is introduced then it might be that the Department would be forced to make these changes to the current system as it is likely, as with Jersey, that it would not comply with such a law.”

6.1.2 Section 6 of The Competition and Trading Standards (Enabling Provisions) (Guernsey) Law, 2007 gives powers to the States to make provision by Ordinance for “exceptions, exemptions and derogations” from any “prohibition, restriction or regulation” in relation to anti-competitive practices or abuse of a dominant position referred to in Section 1 of the same Law. Such exceptions can be agreed in the public interest, as a matter of public policy, for the benefit of consumers, or even on social, community, economic, ethical and other grounds.

6.1.3 This mirrors similar provisions in Jersey legislation whereby, in this case, the Jersey Economic Development Committee may exempt anti-competitive arrangements and possible abuse of a dominant position if it has satisfied itself that there are exceptional and compelling reasons of public policy that make it desirable to do so.

6.1.4 In addition, Guernsey's proposed Competition Law, as agreed in principle by the States, is based on a slightly different model to that of Jersey. Under the Guernsey arrangements, it will be a matter for the States, by Resolution, to direct that an investigation should be carried out into a specified market sector.

6.1.5 In establishing the agenda for topics for review, the States will, as a matter of public policy, be expected to take particular note of the special circumstances

surrounding the dairy industry. The extent to which competition law and policy should or should not apply to the dairy industry would therefore be entirely in the hands of the States.

6.2 Potential Conflict of Roles

6.2.1 In making its recommendations, the Scrutiny Committee advised the Commerce and Employment Department to “liaise with the Policy Council to give consideration to:

9. *The appropriateness of the Commerce and Employment Department’s dual roles as operator and regulator and the potential for conflict between its operational responsibility for the Dairy and its responsibility for policy formulation for the future of the dairy industry.*

In writing to the Chairman of the Review Panel, on 28th April 2006 (the full letter is appended to the Scrutiny Report) the Department stated:

“Mandate”

“Finally, the Department intends to liaise with the Policy Council in relation Items 9 and 10, i.e. suggestion that there is potential conflict within the Department’s mandate arising from dual roles as operator and regulator in the sector.

I am bound to say, however, that underpinning these statements there appears to be a belief on the part of the Panel and the Committee that, as a matter of principle, Departments should not be charged with simultaneously operating and delivering services, championing a particular sector or group, making policy and acting as a regulator. If this is the case, then that argument can be applied to a number of other areas of activity clearly within the mandate of Commerce and Employment and indeed describes the situation prevailing in a number of other States Departments.

In the light of the far-reaching nature of this issue, the Department looks to the Policy Council for a lead and expects the Council to respond to your Committee on this matter. It does not intend to address this particular issue within its forthcoming report on the Agricultural Industry, but would note that, as described in paragraphs 8.3.8 to 8.3.10 a holistic approach to the industry, maintained by the Department since 2004 has, on the evidence, been successful.

6.2.2 While the Board continues to hold this view however it also believes that it has properly addressed the Scrutiny Committee concerns, in Section 3 of this Report, by:

- Establishing a clear framework which separates strategic/policy/legislative activities from the outward facing market-led commercial side of operating the Guernsey Dairy.
- Proposing the creation of a Milk Price Review Panel as an independent and transparent mechanism for establishing retail, gate and producer prices.

6.3 Phased Approach to Change

6.3.1 The Scrutiny Committee recommended that the changes proposed by the Department in 2005 should be phased in some way to give various interested parties time to make necessary adjustments to their businesses. However, in the event, and against the background of the Scrutiny Review and the Department's work since that date, it has now been decided not to recommend repeal of the Milk Law nor abandon the setting of the retail price. In these circumstances there is no requirement to phase in the changes originally envisaged.

6.3.2 Nevertheless, the Department accepts that businesses need time to adjust to change and it believes that the following timetable is an appropriate programme which will see the new arrangements proposed in this Report in place by the beginning of January 2008. In setting out this timetable it should be appreciated that it could be varied, shortened or extended depending on progress made with the drafting of legislation and consultations generally.

Timetable for Implementation

1st May 2007	- New Dairy Management Board created.
1st June 2007	- Milk Price Panel created.
May to December 2007	- Discussions with GMRA and farmers on practical aspects of new arrangement.
November 2007	- Milk Ordinance to States.
January 2008	- Revision to Milk Ordinance implemented. - Direct Billing to cease

6.4 Scrutiny Recommendations – A Checklist

All of the major issues raised as a result of the Scrutiny Review have been addressed in this document. However, for completeness, listed below are the specific Scrutiny Committee recommendations and the Department's response in brief.

- (a) **Consider delaying implementation of any of its proposals listed in Section 5 of this report until after the States of Guernsey debate on the future of the dairy industry.**

Department Response – All these proposals were put on hold, pending production of this report.

- (b) **Define the requirements for roundsmen and retailers in their dealings with the Guernsey Dairy and their relationship with the Department (which currently includes licensing requirements).**

Department Response – This has been fully addressed in this report and, if agreed by the States, the new relationship with retailers will be codified in a new document produced by the Guernsey Dairy, setting out its commercial trading terms with roundsmen.

- (c) **Seek to improve communication and ongoing consultation with the industry.**

Department Response – The consultation that has taken place over the last 14 months with all parties and the arrangements for the Dairy Management Board to meet “in council”, plus other mechanisms for consultation set out in this report, will deliver this objective.

- (d) **Explain proposed changes to the distribution system to roundsmen and farmers and take into account what effects these might have on their businesses and industry.**

Department Response – This has been at the heart of the communication and consultation that has taken place, and the product of those discussions are set out in this report.

- (e) **Take a phased approach to the introduction of any proposed change that the States might approve.**

Department Response – The need for a phased approach assumed repeal of the Milk Laws which is no longer proposed. A timetable for change is set out in the previous subsection (6.3).

- (f) **Provide supporting information for which judgement there will not be a drop in milk sales through the Guernsey Dairy, which is based on the assumptions that the distribution system will not be adversely affected by its proposals and the milk will not be imported.**

Department Response – Effectively this recommendation challenged the Department to make a more detailed case for the 2005 decision to repeal the Milk Law. However given that, in the light of the Scrutiny process, the Board

has reflected upon its initial decision and is now proposing a different direction, which underpins and supports the status quo, it does not intend to add to the evidence already submitted to the Scrutiny Review and contained in the Scrutiny Report.

- (g) **Give further consideration to how it intends to mitigate any adverse consequences and to establish a fall back position if it is proven wrong.**

Department Response – Again, this is linked to the decision, now withdrawn, to repeal the Milk Law in 2005.

There is, however, the wider issue of the stance the Department might take in the event that the Milk Law is challenged either in court or by the importation of milk. The Department's response would be to seek an immediate "safeguard measure" from the EU.

- (h) **Seek further legal advice and carry out a comprehensive assessment of where legislative control of the industry might be required and of the deficiencies identified in the current legislation that need addressing.**

Department Response – This has been fully addressed in this report and has resulted in proposals to retain the Milk Law, to amend the Ordinance and to provide further measures of support to the distribution sector by a set of commercial trading policies at the Guernsey Dairy which have been endorsed by the States. The Department continues to believe that the best available mechanism to protect the industry from imports is not legislation but is to maintain a price of milk that is similar to that for equivalent products in the UK.

- (i) **The appropriateness of the Commerce and Employment Department's dual roles as operator and regulator and the potential for conflict between its operational responsibility of the Guernsey Dairy and its responsibility for policy formulation for the future of the dairy industry.**

Department Response – This has been addressed in Section 6.2, with the conclusion that the new strategic framework coupled with delegation of powers to the Dairy Management Board and the addition of an independent Milk Price Review Panel will address these issues.

- (j) **Reviewing the mandate of the Commerce and Employment Department with regard to its responsibility for administering environmental policy and to identify how this fits with corporate policy.**

Department Response – The Department has also addressed this issue in Section 4.4 and has come to the conclusion that there exist pragmatic arrangements to deal with this, in a way that ensures compliance both with corporate policy and the land planning policies managed by the Environment Department.

SECTION 7

CONSULTATION

7.1 Following the publication of the Scrutiny Committee's Report in May 2006, the Department consulted widely with a number of interested parties and those consultations are summarised below:

- GMRA – 6 meetings between the GMRA Executive and representatives of the Board between July 2006 and February 2007 with meetings between the full Board and the Executive on 12th December 2006 and 20th February 2007.
- Frequent meetings at operational level between Senior Executives of the GMRA and the Dairy Management.
- Detailed consultation between the GMRA and Dairy Consultant Mr Alan Hinton.
- Extensive consultation with farmers through a four-man working group appointed by the farmers, engaging with senior staff of the Department, and written consultation with farmers on the various proposals, plus an industry workshop attended by 14 farmers in November 2006.
- Meetings between the Guernsey Farmers Association and Dairy Consultant Mr Alan Hinton.
- Face to face meetings with representatives of 5 large shops in early October 2006.
- A questionnaire sent to all shops that retail milk, plus the Chamber of Commerce and the Guernsey Consumer Group.
- Meetings between the larger shops and Dairy Consultant Mr Alan Hinton.
- Discussions at staff level with Policy Council staff.
- Consultation with the External Relations Group.
- Consultation with the Environment Department.
- Consultation with H M Procureur.
- Discussions with staff, with representatives of the TGWU and the PSRC.

- 7.2 In section 8.6.15 of the Scrutiny Committee Report, it is suggested that other jurisdictions might have been consulted, in particular the UK Department for the Environment, Food and Rural Affairs (DEFRA). It also suggests that useful discussions might have taken place with the Isle of Man and Jersey.
- 7.3 Regular dialogue takes place both at officer and political level with Jersey and indeed a number of common problems have been discussed between the Commerce and Employment Department and its counterpart the Jersey Economic Development Department. Furthermore, there is close liaison between the Guernsey and Jersey Dairies, assisted by the fact that the Department's Dairy Consultant, Mr Alan Hinton, also advises the Jersey Dairy.
- 7.4 In relation to the Isle of Man, there are informal officer level contacts, but the context of the Isle of Man is completely different, with its emphasis on beef and sheep rather than a dairy industry. In addition, its scale and its relationship with the UK provide different considerations.
- 7.5 Finally, although informal staff contact is maintained with officers of DEFRA, it is not considered at this stage that dialogue on these developing proposals at a government level would be particularly helpful.

SECTION 8

RESOURCE IMPLICATIONS

- 8.1 The proposals contained in this report will allow the Department to support a viable dairy industry at a lower net cost to the Island. No additional staff will be required and it is anticipated that, in time, reductions in staffing levels will take place. A modest sum is likely to be expended on the operation of the Milk Price Review Panel which will be met from the existing Commerce and Employment Budget.
- 8.2 The Department is recommending the continuation of the Dairy Farm Management Contract Scheme which has an annual budget of £2.025 million.

SECTION 9

SUMMARY OF CONCLUSIONS

9.1 Without continuing States support to the dairy industry, the future of the Island's countryside and the unique part it plays in maintaining our identity and heritage, will be placed in jeopardy.

9.2 The measures contained in this report are designed to:

- maintain the viability of dairy farms, while further developing the role played by farmers in managing the countryside in an environmentally friendly manner; and
- balance the requirements of the Guernsey Dairy to operate on commercial principles and to improve efficiency while, at the same time, recognising that the Guernsey Dairy exists as a unique body within the boundaries created by the Milk Laws and its role as a major piece of dairy industry infrastructure; and
- secure the future of the existing milk distribution system with particular regard to the relationship between the Guernsey Dairy, roundsmen and shops.

Milk Distribution, Sales and Marketing

- To retain the Island's Milk Law and seek to amend the Milk Ordinance to better reflect the current situation in the industry and to remove anomalies.
- The process of revision of the Ordinance would leave, untouched, the existing provisions that have the effect of bringing about a ban on the import of liquid milk to the Island.
- Amendment of the Ordinance to alter the current licensing arrangements for retailers, replacing it with a Register of Distributors.
- A workable trade account system for commercial quantities of milk would be put in place, with all existing roundsmen automatically registered in the new system.
- To establish a Milk Price Review Panel to act as an independent review body on matters leading to the setting of the producer price, the Guernsey Dairy gate price, and the MRP.

- Current “direct billing” arrangements with shops would cease w.e.f. January 2008.
- The Guernsey Dairy would revert to a single gate price for milk.
- All matters to do with zoning and the business relationship with shops, such as delivery arrangements and a wholesale price, would remain the exclusive responsibility of roundsmen.
- The Department would retain controls over the retail price of milk and intends to introduce a minimum retail price (MRP) in the future.
- To regard approval of this Report as States endorsement of a number of Guernsey Dairy commercial trading policies which will govern the relationship with distributors. Specifically the Guernsey Dairy will:
 - not undertake deliveries to shops;
 - not, unless the shop purchased a milk round, establish a trade account for shops to buy milk from the Guernsey Dairy.

In so doing, the Guernsey Dairy would ensure that a chain of shops could not, by buying, say, a single corner shop, gain access to milk supplies for all of its outlets.

- To establish a new Dairy Management Board with greater and more explicit delegation of powers to run the Guernsey Dairy on a day-to-day basis.
- The Dairy Management Board would be required to operate an “In Council” arrangement whereby, at regular intervals, it met representatives of key stakeholders for the discussion of broader and strategic matters affecting the milk industry and processing and sales.
- The Dairy Management Board would have responsibilities to ensure that it had effective operational communications with roundsmen, shops and farmers etc.
- Develop marketing initiatives in association with the GMRA with particular emphasis on the improvement of sales of local dairy products to catering establishments and the encouragement of doorstep sales.
- In amending the Milk Ordinance, remove any restrictions on roundsmen charging for delivery to doorsteps, thereby allowing the making of a delivery charge – as a matter of choice by the roundsmen.

9.3 The above proposals seek to meet the following objectives:

- To clarify the situation and correct anomalies in the law.
- To give recognition and a measure of protection to rounds and their value.
- The Department to remain outside the commercial relationship between roundsmen and shops.
- To seek to enhance the more vulnerable sales routes, that is doorsteps and catering.
- To protect the market against retailers' price wars.
- To give independent oversight on pricing decisions.
- To improve communications within the industry.

Support to Dairy Farmers

- 9.4 It is proposed to build on the package of measures approved by the States in 2000 and which have served the Island well and transformed the industry over the last five years.
- 9.5 Specifically, the farm contract system should be retained at a continuing cost of £2 million per annum, but modified to produce:
- (a) A specific and separate Milk Supply Contract between farmers and the Guernsey Dairy.
 - (b) To consider an approach to stimulate greater winter production of milk and to maintain production at the annual quota target of 8.1 million litres.
 - (c) A specific and separate Dairy Farm Management Contract between farmers and the Department designed to ensure farmers manage the countryside in an environmentally friendly manner.
 - (d) A revision of the environment and animal welfare elements of the Dairy Farm Management Contract to raise standards and introduce flexibility.
 - (e) The phased introduction of increased charges for Farm Services eventually on a 50/50 partnership basis.
 - (f) Continued support of the Guernsey cattle breed.
 - (g) The freedom to negotiate amended conditions to the existing Farm Loans Scheme with the Treasury and Resources Department.

Strategic Signposts

- 9.6 The report highlights the need to address strategic issues surrounding succession within the farming industry, security of tenure and continued access to farm sites.
- 9.7 In addition, the need for a new slaughterhouse on an alternative site is also raised.

Response to Scrutiny Review

- 9.8 The Department believes that its report addresses all of the major issues raised by the Scrutiny Committee Review and a summary of the responses, in relation to the ten recommendations set out in the Scrutiny Committee's Report, are described in Section 6.4.

RECOMMENDATIONS

The Department recommends the States to:

- (a) Approve the Department's preferred model for the distribution of milk through independent roundsmen to shops and doorstep customers based on amendments to The Milk (Control) (Guernsey) Ordinance 1958 and underpinned by Guernsey Dairy commercial trading policies set out in Section 3.5 of this Report,
- (b) Agree that licences to distribute milk will be replaced with a Register of Distributors on the basis set out in Section 3.5 and will not be based on the concept of specified rounds protected by the States.
- (c) Endorse the Department's proposal to establish a Milk Price Review Panel as a non-statutory body as set out in Section 3.6.
- (d) Endorse the Department's proposal to establish a Dairy Management Board as a States Sub-Committee as set out in Section 3.7.
- (e) Note the proposals to establish a new minimum retail price for milk.
- (f) Agree to the amendment of The Milk (Control) (Guernsey) Ordinance 1958, (as amended) as set out in Section 5 such that its provisions more closely provide for the statutory control required by the Dairy industry.
- (g) Note the success of the Dairy Farm Contract system since 2001 and the Department's intention to modify and simplify it, in consultation with the industry, as set out in Section 4.2 of this report.

- (h) Note the Department's commitment to further reductions in the net cost of support for dairy farming and to agree to the continuation of the current level of revenue funding for the Dairy Farm Management Scheme. Future levels of this vote to be established by the normal budgetary process, as set out in section 4.2 of this report.
- (i) Note the Department's intention to decrease the subsidy for various farm services by the phased introduction of 50:50 charging, based on partnership principles, as set out in Section 4.3 of this report.
- (j) Agree that the Department may in future vary the conditions and rules affecting the Farm Loans Scheme in consultation with the Treasury and Resources Department, as it believes is appropriate and necessary in the light of the industry's developing needs, as set out in section 4.3 of this report.

Yours faithfully

Stuart Falla
Minister

APPENDIX I

Summary of the Existing Principal Provisions of the Milk (Control) (Guernsey) Ordinance 1958 (As Amended)

1. Except for some minor allowances, all cows milk must be delivered to the Department (Guernsey Dairy).
2. All milk delivered to the Guernsey Dairy must be tested and classified.
3. Milk must come from registered farms and from health tested animals.
4. The Department fixes the price paid to farmers for milk. It may:
 - specify different prices for milk that is required for the Island's needs and such milk which is surplus to those needs;
 - apply a seasonal variation in price; and
 - apply penalties for milk that does not meet specified quality standards.
5. The Department may pay a subsidy for all milk recorded cattle.
6. The Department may set the retail price by Order and can set a different price for different classes or description of milk.
7. No artificial transactions may be entered into or charges (such as delivery charges) applied (that effects the price of milk) without the authorisation of the Department.
8. Retail price Orders must be laid before the States.
9. A retailer may not buy or obtain milk from a person other than the Department (unless it approves otherwise) and only the Department may supply retailers.
10. A person may not sell milk by retail other than under the authority of a licence issued by the Department (and subject to any conditions attached to a licence).

(Sale by retail means sale to any person for a purpose other than resale and includes sales to caterers and manufacturers. Thus sales to doorstep customers and sales by shops require a licence, but deliveries to shops for resale do not).
11. There are a number of provisions regarding the administration of the licensing system that deal with such matters as what happens to licences if a licence holder ceases business or dies.

12. A licensed retailer may not sell milk by retail unless it is in a container and has been packaged by the Department (Guernsey Dairy).
13. Milk may not be supplied to, or obtained by, a manufacturer other than with the authorisation of the Department.
14. A person may not buy or obtain milk to sell by retail (other than from the Department or a licensed retailer), any milk which has not been produced in the Island. Only the Department can sell or supply milk which has not been produced in the Island to any retailer.

(Thus anybody can import milk, but imported milk can only be sold by retail if it has been imported by the Department).

APPENDIX II

Strategic Land Use Plan 2006 Extract

13.161 COUNTRYSIDE

Landscape

- 13.162 The Island contains a variety of different landscapes ranging from coastal landscapes of cliffs and bays, to the lowland landscapes of marais and hougues, and the upland landscapes of valleys and escarpments. The distinctive character for each of these different areas must be maintained and enhanced, and new development should contribute to that character.

Strategic Policy 34

Priority may be given to protecting and enhancing the quality and amenity of the Island's landscapes.

Wildlife and nature conservation

- 13.163 The Island contains a wide variety of ecological habitats. These range from unimproved grassland and orchid meadows to reedbeds and water filled quarries. The protection and enhancement of ecological habitats will maintain the diversity of the countryside and encourage visitors.

Strategic Policy 35

The Environment Department should seek to identify landscapes of particular ecological importance, and to ensure the protection and enhancement of such areas by encouraging appropriate management schemes.

Rural development

- 13.164 A viable farming industry is essential to the protection of countryside character and quality. Agriculture makes use of approximately 10,000 verges of land, which represents 26% of the total land area and 65% of open land. Farming practices have a significant impact on the countryside and Island wildlife. Farmers therefore have a vital role in environmental management as a part of the farming business.
- 13.165 The policy of the States is that the rural environment should be conserved and enhanced. This means taking pro-active steps to avoid damaging the countryside while promoting practices that support nature conservation and maintain its character. To manage and conserve its value the countryside needs viable agricultural businesses which promote

and protect the rural environment. Acceptable forms of rural development should be accommodated, but recognising that this must not be at the unreasonable expense of landscape, nature conservation, historic interests or the land needed for farming activities. All agencies involved in rural areas should be encouraging the continuation of good land management and practices which conserve the qualities of landscape, nature conservation and heritage.

13.166 The particular role of farmers and farming practices in fulfilling this policy has been recognised through contractual payments to farmers who farm in an environmentally sensitive way. The farm management contracts promote a less intensive form of farming which:

- Ensures the installation of equipment to prevent farm pollution.
- Develops farming practices that sustain the environment.
- Maintains hedgerows, trees, earth banks, water courses, wetland areas and other natural or historic features.
- Promotes nature conservation and biodiversity.

13.167 The dual purpose of supporting viable businesses and environmental management to maintain and enhance the countryside should therefore benefit the farming industry, the rural environment and the Island community.

Strategic Policy 36

The character, appearance and amenity of the countryside will be improved and enhanced by:

- **The integrated development of viable farming business linked to nature conservation and environmental management.**
- **Locating new development within the existing built-up area wherever possible.**
- **Preventing development which does not need to be located in the countryside.**
- **Encouraging opportunities to extend and improve wildlife habitats on farmland, for example through additional tree planting, retaining and creating new hedgerows, and creating new wetlands.**

- **Protecting agricultural land from irreversible development wherever possible.**
- **Considering development proposals in the countryside on the basis of their environmental, economic and agricultural implications, and how they can enhance countryside quality.**

(NB The Policy Council supports the report and its proposals. In doing so the Council acknowledges that it would be desirable to find a long-term solution to the shortcomings of the aspects of the current legislation which seek to protect the Island's dairy industry from milk imports. Further discussions are being held with the Law Officers and the Council's EU advisers in this regard.)

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

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 23rd February, 2007, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the Commerce and Employment Department's preferred model for the distribution of milk through independent roundsmen to shops and doorstep customers based on amendments to The Milk (Control) (Guernsey) Ordinance 1958 and underpinned by Guernsey Dairy commercial trading policies set out in Section 3.5 of that Report.
2. That licences to distribute milk will be replaced with a Register of Distributors on the basis set out in Section 3.5 of that Report and will not be based on the concept of specified rounds protected by the States.
3. To endorse the Commerce and Employment Department's proposal to establish a Milk Price Review Panel as a non-statutory body as set out in Section 3.6 of that Report.
4. To endorse the Commerce and Employment Department's proposal to establish a Dairy Management Board as a States Sub-Committee as set out in Section 3.7 of that Report.
5. To note the proposals to establish a new minimum retail price for milk.
6. To amend The Milk (Control) (Guernsey) Ordinance 1958, (as amended) as set out in Section 5 of that Report such that its provisions more closely provide for the statutory control required by the Dairy industry.
7. To note the success of the Dairy Farm Contract system since 2001 and the Commerce and Employment Department's intention to modify and simplify it, in consultation with the industry, as set out in Section 4.2 of that Report.
8. To note the Commerce and Employment Department's commitment to further reductions in the net cost of support for dairy farming and to agree to the continuation of the current level of revenue funding for the Dairy Farm

Management Scheme. Future levels of this vote to be established by the normal budgetary process, as set out in section 4.2 of that Report.

9. To note the Commerce and Employment Department's intention to decrease the subsidy for various farm services by the phased introduction of 50:50 charging, based on partnership principles, as set out in Section 4.3 of that Report.
10. That the Department may in future vary the conditions and rules affecting the Farm Loans Scheme in consultation with the Treasury and Resources Department, as it believes is appropriate and necessary in the light of the industry's developing needs, as set out in section 4.3 of that Report.
11. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

PANEL OF MEMBERS

(constituted by The Administrative Decisions (Review) (Guernsey) Laws, 1986-1993)

REPORT OF THE REVIEW BOARD 2006

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

12th March 2007

Dear Sir

Section 8 of The Administrative Decisions (Review) (Guernsey) Laws, 1986-1993 requires me to submit an annual report on the complaints received by the Chief Executive of the States and HM Greffier.

Section 1 of the Law provides that all applications for a matter to be reviewed by a Review Board shall be made to the Chief Executive of the States except where the matter complained of relates to the Policy Council and its staff, in which case application is made to Her Majesty's Greffier.

I have to report that no complaints have been received by either the Chief Executive of the States or HM Greffier during 2006.

Yours faithfully

William M Bell
Chairman

The States are asked to decide:-

X.- Whether after consideration of the Report, dated 12th March, 2007, of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Laws, 1986 - 1993, they are of the opinion:-

To note that Report

ORDINANCE LAID BEFORE THE STATES**THE MOTORCYCLE LICENCE PLATES
(GUERNSEY AND ALDERNEY) ORDINANCE, 2007**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Motorcycle Licence Plates (Guernsey and Alderney) Ordinance, 2007, made by the Legislation Select Committee on the 5th March, 2007, is laid before the States.

STATUTORY INSTRUMENT LAID BEFORE THE STATES**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST)
(PHARMACEUTICAL BENEFIT) (AMENDMENT NO 2) REGULATIONS, 2007**

In pursuance of Section 35 of the Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No 2) Regulations, 2007, made by the Social Security Department on 7th February, 2007, are laid before the States.

EXPLANATORY NOTE

These Regulations add to a limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners or dentists, as the case may be.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 25th APRIL, 2007

**The States resolved as follows concerning Billet d'État No XIII
dated 5th April 2007**

PROJET DE LOI

Entitled

THE ROAD TRAFFIC (PARKING FEES AND CHARGES) (ENABLING PROVISIONS) (GUERNSEY) LAW, 2007

- I.- To approve the Projet de Loi entitled "The Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law, 2007" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

THE CONTROL OF INTOXICATING LIQUOR (DESIGNATED PUBLIC PLACES) ORDINANCE, 2007

- II.- To approve subject to the following amendment, the draft Ordinance entitled "The Control of Intoxicating Liquor (Designated Public Places) Ordinance, 2007" and to direct that the same shall have effect as an Ordinance of the States.

AMENDMENT

In the draft Ordinance entitled The Control of Intoxicating Liquor (Designated Public Places) Ordinance, 2007 (printed on page 10 of the Brochure to the Billet d'État), in section 1(3) delete "(other than a sealed container)" and after section 1(3) insert the following subsection -

- “(4) Subsection (3) does not apply to intoxicating liquor in a sealed container unless the police officer reasonably believes that the person concerned intends to consume the liquor in a designated public place.”

with the following subsections being re-numbered accordingly.

**THE SOCIAL SECURITY (RECIPROCAL AGREEMENT WITH IRELAND)
ORDINANCE, 2007**

- III.- To approve the draft Ordinance entitled “The Social Security (Reciprocal Agreement with Ireland) Ordinance, 2007” and to direct that the same shall have effect as an Ordinance of the States.

TREASURY AND RESOURCES DEPARTMENT

NEW MEMBER

- IV.- To elect Deputy G Guille as a member of the Treasury and Resources Department to complete the unexpired portion of the term of office of Deputy C N K Parkinson, who has resigned as a member of that Department, namely to serve until May 2008 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

SCRUTINY COMMITTEE

NEW MEMBER

- V.- To elect Alderney Representative W Walden as a member of the Scrutiny Committee to complete the unexpired portion of the term of office of Deputy E W Walters, who has resigned as a member of that Committee, namely to serve until May 2008 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

ORDINANCE LAID BEFORE THE STATES

**THE MOTORCYCLE LICENCE PLATES
(GUERNSEY AND ALDERNEY) ORDINANCE, 2007**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, the Motorcycle Licence Plates (Guernsey and Alderney) Ordinance, 2007, made by the Legislation Select Committee on the 5th March, 2007, was laid before the States.

STATUTORY INSTRUMENT LAID BEFORE THE STATES

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST)
(PHARMACEUTICAL BENEFIT) (AMENDMENT NO 2) REGULATIONS,
2007**

In pursuance of Section 35 of the Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No 2) Regulations, 2007, made by the Social Security Department on 7th February, 2007, were laid before the States.

K H TOUGH
HER MAJESTY'S GREFFIER

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 26th APRIL, 2007

**The States resolved as follows concerning Billet d'État No XIII
dated 5th April 2007**

PUBLIC SERVICES DEPARTMENT

PERSONAL WATERCRAFT – REGISTRATION NUMBER DISPLAY REQUIREMENTS

- VI.- After consideration of the Report dated 9th February, 2007, of the Public Services Department:-
1. To approve the preparation of legislation to ensure that, in the future, authority is delegated directly to the Public Services Department to amend by Order registration number display requirements, as set out in the Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance 1970.
 2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HEALTH AND SOCIAL SERVICES DEPARTMENT

REGULATION OF HEALTH AND MEDICAL PROFESSIONS - REGISTRATION OF NURSES AND MIDWIVES

- VII.- After consideration of the Report dated 14th February, 2007, of the Health and Social Services Department:-
1. To approve the enactment of a general enabling Law which will create specific statutory powers for the States to regulate health and medical professionals and control the provision of health, medical and related services in Guernsey and Alderney in accordance with the best modern practices and standards.
 2. That the Nurses, Midwives and Health Visitors Ordinance, 1987 be repealed, and replaced with new legislation made under the new Law referred to in proposition 1 and as described in that Report.
 3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

SCRUTINY COMMITTEE

SCRUTINY REVIEW OF MILK DISTRIBUTION PROPOSALS

VIII.- After consideration of the Report dated 23rd February, 2007, of the Scrutiny Committee:-

1. To note that Report and the Scrutiny Committee's Review Report.
2. To note the Scrutiny Committee's intention to continue to monitor progress on its Review recommendations.

S M D ROSS
HER MAJESTY'S DEPUTY GREFFIER

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 27th APRIL, 2007

**The States resolved as follows concerning Billet d'État No XIII
dated 5th April 2007**

COMMERCE AND EMPLOYMENT DEPARTMENT

REVIEW OF SUPPORT FOR ISLAND DAIRY FARMING

IX.- After consideration of the Report dated 23rd February, 2007, of the Commerce and Employment Department:-

1. To approve, subject to Resolution 2, the Commerce and Employment Department's preferred model for the distribution of milk through independent roundsmen to shops and doorstep customers based on amendments to The Milk (Control) (Guernsey) Ordinance 1958 and underpinned by Guernsey Dairy commercial trading policies set out in Section 3.5 of that Report.
2. That the system of licensed milk retailers should continue, based on the concept of specified rounds as previously administered through the Dairy, and with licences specifying geographical areas and commercial/retail outlets as appropriate.
- 2A To direct the Commerce and Employment Department, as part of or alongside the work referred to at Section 3.5.27 of that report, to re-visit the purpose of the trade counter and address the discrimination against milk roundsmen in preventing them from purchasing dairy products other than liquid milk at the price available to other users of the trade counter.
3. To endorse the Commerce and Employment Department's proposal to establish a Milk Price Review Panel as a non-statutory body as set out in Section 3.6 of that Report, with its first task being to address the allocation of the proposed 2007 price rise with effect from the date when that price rise takes effect.
4. To endorse the Commerce and Employment Department's proposal to establish a Dairy Management Board as a States Sub-Committee as set out in Section 3.7 of that Report.
5. TO NEGATIVE THE PROPOSITION to note the proposals to establish a new minimum retail price for milk.
6. To amend The Milk (Control) (Guernsey) Ordinance 1958, (as amended) as set out in Section 5 of that Report such that its provisions more closely provide for the statutory control required by the Dairy industry.

7. To note the success of the Dairy Farm Contract system since 2001 and the Commerce and Employment Department's intention to modify and simplify it, in consultation with the industry, as set out in Section 4.2 of that Report.
8. To note the Commerce and Employment Department's commitment to further reductions in the net cost of support for dairy farming and to agree to the continuation of the current level of revenue funding for the Dairy Farm Management Scheme. Future levels of this vote to be established by the normal budgetary process, as set out in section 4.2 of that Report.
9. To note the Commerce and Employment Department's intention to decrease the subsidy for various farm services by the phased introduction of 50:50 charging, based on partnership principles, as set out in Section 4.3 of that Report.
10. That the Department may in future vary the conditions and rules affecting the Farm Loans Scheme in consultation with the Treasury and Resources Department, as it believes is appropriate and necessary in the light of the industry's developing needs, as set out in section 4.3 of that Report.
11. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

PANEL OF MEMBERS

(constituted by The Administrative Decisions (Review) (Guernsey) Laws, 1986-1993)

REPORT OF THE REVIEW BOARD 2006

- X.- After consideration of the Report, dated 12th March, 2007, of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Laws, 1986 - 1993:-

To note that Report

S M D ROSS
HER MAJESTY'S DEPUTY GREFFIER