



# BILLET D'ÉTAT

WEDNESDAY, 29th OCTOBER, 2008

XIII  
2008

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2. The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 (Commencement) Ordinance, 2008, p. 1237
3. The Royal Court (Reform) (Guernsey) Law, 2008 (Commencement) Ordinance, 2008, p. 1237
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# ***B I L L E T D ' É T A T***

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

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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 29<sup>th</sup> OCTOBER, 2008,** at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate.

**G. R. ROWLAND**  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
10 October 2008

**THE BANKING SUPERVISION (BAILIWICK OF GUERNSEY)  
(AMENDMENT) LAW, 2008 (COMMENCEMENT) ORDINANCE, 2008**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled “The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 (Commencement) Ordinance, 2008” and to direct that the same shall have effect as an Ordinance of the States.

**THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY)  
(AMENDMENT) LAW, 2007 (COMMENCEMENT) ORDINANCE, 2008**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 (Commencement) Ordinance, 2008” and to direct that the same shall have effect as an Ordinance of the States.

**THE ROYAL COURT (REFORM) (GUERNSEY) LAW, 2008  
(COMMENCEMENT) ORDINANCE, 2008**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Royal Court (Reform) (Guernsey) Law, 2008 (Commencement) Ordinance, 2008” and to direct that the same shall have effect as an Ordinance of the States.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### DISTRIBUTION OF GUERNSEY DAIRY MILK AND MILK PRODUCTS – EXCLUSIVE RIGHTS

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

29<sup>th</sup> August 2008

Dear Sir

#### EXECUTIVE SUMMARY

1. On 27<sup>th</sup> April 2007 after consideration of a report of the Commerce and Employment Department on “Support for Dairy Farming in Guernsey”<sup>1</sup>, the States resolved, inter alia:-

*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.*

2. Since April 2007 the Department has met with representatives of the Guernsey Milk Retailers Association (GMRA) on 11 occasions to discuss licensing and related issues with a view to giving effect to this Resolution.
3. As a result of these discussions it has become clear that the main area of disagreement between the Department and the GMRA relates to whether licensed milk distributors should be granted exclusive rights to deliver Guernsey Dairy products<sup>2</sup> to retail outlets and catering establishments.

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<sup>1</sup> Billet d’Etat XIII 2007

<sup>2</sup> In this Report:

‘Milk’ refers to Guernsey Dairy branded containers of milk produced by Guernsey Dairy; whilst ‘Milk Products’ means those Guernsey Dairy branded products made from milk such as butter, cream, cheese, and ice cream, sold by Guernsey Dairy, and whether they do so now or at any time in the future.

‘doorstep customers’ refers to those people to whom Milk is delivered by the distributor as part of a specified milk delivery round, whilst ‘commercial customers’ refers to retail outlets (such as shops, supermarkets and garages) and catering establishments (such as hotels, guesthouses, restaurants, cafes and similar)

4. The Department believes that this disagreement cannot be resolved by further negotiations with GMRA. It directly affects the terms of any licence to be granted to distributors and until it is resolved the Department is not able to issue any licences. The Department has decided therefore to refer the matter back to the States.
5. The GMRA contends that, in the past, licensed milk distributors have had exclusive rights (within defined territories) to deliver all Guernsey Dairy Milk and all Milk Products, whoever they are sold to. As a consequence, they maintain that they and no one else should be able to purchase Milk or Milk Products from the Dairy to supply to doorstep or commercial customers<sup>3</sup>. The GMRA insist that any licensing process should enshrine this vision of total exclusivity.
6. The Department has, however, received unequivocal advice from the St James' Chambers that distributors do not have, and have never had, such exclusive rights.
7. Notwithstanding this advice, and for the reasons set out in this Report, the Department has offered licensed milk distributors the exclusive right to sell and deliver
  - a) Milk to both doorstep and commercial customers and
  - b) Milk Products to doorstep customerswithin the distributor's specified territory.
8. However, the Department strongly recommends that only a **non exclusive** right should be granted to milk distributors in relation to the delivery and sale of Milk Products to commercial customers, although this right to sell can be exercised anywhere on the Island and not be confined to the specified territory.
9. It is, in the Department's opinion, essential to retain the Dairy's commercial freedom to exploit opportunities to increase sales and revenues of Milk Products, thereby contributing towards its continued viability and also to offer commercial customers a proper and competitive choice of where they can source their products to enhance their own businesses and competitiveness.
10. This approach has already proved very successful for sales of Milk Products in the catering sector (cream and particularly butter) where, as a result, sales have

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<sup>3</sup> In recent discussions the GMRA has offered, as part of a wider package, to concede that supplies of catering products (butter and cream) could be non-exclusive. Negotiations on that proposal have not resulted in an agreement since it requires acceptance of GMRA's claim for total exclusivity over all other Milk Products.

increased in recent years. This, of course, increases the consumption of locally produced food products and displaces imported products.

11. Whilst sales of Milk represent more than 82% of the Dairy's gross turnover, sales of Milk Products greatly assist in covering operating costs and contributing towards fixed costs and therefore help to contain the retail price of Milk.
12. The Department is keen to see the continuation of doorstep deliveries, which it recognises are a valued and traditional part of Island life. However, the Department believes that to ensure the continued viability of the Guernsey Dairy and the dairy farming industry, it is vitally important that opportunities to promote the development of sales of Guernsey Dairy Milk Products should not be constrained in any way. The Dairy needs to retain the ability to encourage new marketing initiatives and promotions, and to reward enterprise. This can only be achieved if the Dairy has the right to sell Milk Products in whatever way it considers to be in the best interests of the industry and not to be tied to a single distribution network.
13. The Department's proposals to the GMRA greatly improve the protection of distributors' businesses as, for the first time, they will be given exclusive rights to deliver Guernsey Dairy Milk to all doorstep and commercial customers and Guernsey Dairy branded Milk Products to doorstep customers within their territory. They will also have an equal opportunity to sell Milk Products to commercial customers outside that territory, if they wish to do so.
14. The Department has been advised that its proposals, developed, and discussed at length, with the GMRA, will implement fully the resolutions of April 2007 in respect of the licensing of milk distributors. In the light of that, the Department is now asking the States to consider the key sticking point in its discussions with the GMRA, which is the extent to which it grants exclusive distribution rights over the sales of the Guernsey Dairy's range of Milk Products. With that point resolved by decision of the States, the Department believes that the issuing of milk distributors' licences should be speedily brought to a conclusion.

#### **IMPLEMENTING THE STATES RESOLUTION ON THE LICENSING OF MILK DISTRIBUTORS**

15. During the negotiating process since April 2007, the GMRA has continually maintained that distributors have exclusive rights to deliver all Milk and Milk Products to doorstep customers, retail customers, (meaning shops and garages) commercial and catering outlets, and that this represents the continuation of the historical system of licensing. The GMRA say that the wording of previously issued licences and associated documents supports this position, and that practices adopted by the Dairy in the past have effectively conferred such exclusive rights on distributors.
16. The advice to the Department from St James' Chambers is, unequivocally, that the GMRA's view is incorrect, and is based on a misunderstanding of the terms

of the old licences. Not only that, exclusivity for the delivery of Milk and Milk Products has never been granted in practice.

17. In short, the advice received is that in order to demonstrate that exclusive rights in respect of Milk and Milk Products had been given in the past, the Dairy must have agreed:
  - a) Not to sell its products direct to customers, or
  - b) Not to appoint distributors, other than the licensed distributors for its Milk Products.
18. This has not been the case, and it must be understood that exclusivity only arises by reason of an acceptance of a binding obligation by the Dairy not to sell direct or through other third parties not - as has been mistakenly thought - the agreement with (and between) the licensed distributors allotting a distributor an 'exclusive' territory. Rather, exclusive territories are simply a matter of good administrative practice and regulate matters between the licensed distributors, and not between the distributors and the Dairy.
19. It is distributors themselves who have created and participate in a market for the sale and purchase of milk rounds. In contrast, and since the inception of the system, licences have been issued free of charge by the Department (and former Agriculture Committees). This licensing function has been undertaken at no cost to distributors, and at all times licences remain the property of the Department. In effect, distributors have traded the goodwill of customers in their territories and not the licences, which themselves have no value.
20. Whether the Dairy has or has not, historically, undertaken direct sales or appointed more than one distributor for a zone does not alter its legal ability to do so. In looking at the wording of the old licences, it is quite clear that the question of whether the Dairy could still sell direct or through distributors has never been raised or considered in these terms (or at all).
21. It should further be remembered that it is only the sale of Milk, and not Milk Products, that requires a licence under The Milk and Milk Products (Guernsey) Law, 1955 ('the Milk Law'). On any reading of the Milk Law and The Milk (Control) (Guernsey) Ordinance 1958, full control over the sale of Milk is retained by the Department (as successors to previous Agriculture Committees) and it is this legislation that has been the context for all previous discussions on the issue of licences.
22. Exclusive territories were agreed solely for the purposes of rationalising the areas to be serviced by the distributors so that the areas could be serviced more efficiently.
23. The legal advice provided to the Department is summarised in Appendix 1.

24. The Department offered, following a suggestion that came from the GMRA, to simply reissue the “old” form of milk distribution licence to distributors. This is, of course, the easiest way to give effect to the States Resolution of April 2007.
25. When making this offer the Department advised the GMRA that this would not give the exclusive rights to distributors that they believe such licences confer. This offer has not been accepted by the GMRA.
26. Taking the legal advice into account, and notwithstanding the fact that (on the basis of that advice) the Department has no obligation to grant any exclusive rights to distributors, it has, however, offered them the exclusive right to deliver and sell:
  - a) Milk to both doorstep and commercial customers and
  - b) Milk Products to doorstep customers,  
within the distributor’s specified territory; and
  - c) A non-exclusive right to sell Milk Products to commercial customers whether or not in the specified territory.
27. The reasons why the Department felt able to make this offer are that since the Milk legislation requires distributors to hold a licence to sell Milk, and as both the retail price and the Dairy gate price are currently controlled, there are no commercial reasons for wishing to introduce competition in the distribution of Milk (except to maintain service standards).
28. Further, since the distributors are providing a service for delivery of milk to doorstep customers, there is a commercial opportunity for both the distributor and the Dairy to sell Milk Products alongside Milk to those doorstep customers. Doorstep delivery is a convenience for many people and this should extend to Milk Products. It is proposed that service standards would be dealt with by service level obligations that the Department has sought to introduce into the Licence system.
29. However, there are implications that arise from making this offer. Currently the offer to GMRA has not been made subject to any limitation on the time that the exclusivity of these rights would continue, as would usually be the case when exclusive obligations are granted. It is believed that there is merit in considering a limitation to the grant of exclusive rights to a period of, say, five years, perhaps with a commitment to renew them for further periods of five years if the system is working well. This will give:
  - the Department an opportunity of assessing purchasing trends and the effectiveness of its distribution methods;



- an effective means of enforcing service standards; and
  - certainty for distributors in assessing the value of their businesses, since they will have a commitment for a specific period of the exclusivity rights.
30. What the Department is not prepared to recommend, is an exclusive right to distributors to deliver Milk Products to commercial customers for the reasons set out below.

### **THE OPERATIONAL NEEDS OF THE GUERNSEY DAIRY**

31. The Dairy is currently trading at a modest profit month on month following gate price rises that came into force on 2nd December 2007, and which had been the subject of recommendations to the Department from the independent Milk Price Review Panel.
32. The Dairy's annual turnover is approximately £5.5 million and sales of milk at the Dairy's gate price of 67.48p per litre, (compared to the fixed retail price of 88p per litre paid by customers), represents 82% of its sales by value (see Appendix 2 for gate prices for all Guernsey Dairy products and Appendix 3 for Guernsey Dairy sales information).
33. The Department expects the Dairy to cover all of its operational expenses (including the purchase of all raw milk from Island dairy farmers) from its sales. In the past, the Dairy's sales revenue has also provided sufficient cash reserves for investment in equipment. However, in the last few years the Dairy has been forced to use its cash reserves to fund its operating expenses and it now has to contemplate borrowing to finance investment in equipment and uses an overdraft facility to a limited degree to fund its cash flow. The Dairy and the Department would like to see it trade out of this current low point, so that it is again fully self-funding.
34. The market for Milk has remained static for many years (Appendix 3 - Chart 1) and significant change is not projected. Sales of other products have varied over the years, but the main trend in recent years has been a fall in the local sales of retail products and a rise in the sales of catering products.
35. Significantly, the Dairy has applied commercial incentives to the latter from 2005, and now supplies catering butter to a wholesale business that is not a licensed milk distributor. As a direct result of the incentives to supply and use locally produced catering products given by the bulk discount and "Trade Counter" schemes, (facilities used both by GMRA members and by non-GMRA distributors) imports of butter from Jersey have been displaced and total sales enhanced; a trend which could be reversed if these schemes were to close.

36. The consumption of reduced cream milk (low fat and skimmed) represents more than 85% of Dairy sales by volume and is increasing year on year (See Appendix 3 - Table 3 and Chart 2). Thus the challenge for the Dairy is to continue to find new and profitable sales outlets for the significant volumes of cream it has available; either sold as cream or processed into butter, which has a longer shelf life. The Dairy also inevitably has excess milk, which is used to manufacture cheese. If the Dairy cannot sell all of its cream or butter locally, it only has the option of exporting. Cheese exports are not profitable and so, at present, the Dairy only manufactures cheese for the local market.
37. Against this background the Department considers it essential that the Dairy is able to continue to have the commercial freedom to trade with businesses which are keen to be actively involved in the sale of its Milk Products. In 2007 the independent Milk Price Review Panel made a strong recommendation that the Dairy should apply even more focus on the sales of these products as they are a key area with potential for sales growth.
38. In this context, most Islanders could not fail to have been aware of the efforts of a particular family dairy farming business, which is working with the Dairy to develop and sell its products to the public. This enterprising business has demonstrated that it is possible to raise the profile of our products locally and has had the result of stimulating sales and awareness. It is this type of initiative that should be encouraged.
39. In discussions between the Department and the GMRA, the Association has made it clear that distributors are working as hard as they can to sell Guernsey Dairy retail products. The Department agrees that it is in their interest to do so, to maximise the profits of their businesses. However, as shown in Table 1 below, despite these efforts, the volume of sales of such products (by distributors) has generally declined since 2002.
40. On the other hand (and as shown in Table 2 below) a more commercial approach by the Dairy (through the introduction of a trade counter in 2004 and the bulk discount scheme<sup>4</sup> in 2005) has resulted in an increase in sales of cream and a significant increase in sales of butter.

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<sup>4</sup> Since its introduction, the bulk discount scheme for catering products has been available to all trade customers of the Dairy. It does not exclude or discriminate against licensed milk distributors who are able to, and in some cases do, take advantage of the price discounts that can be obtained subject to standard conditions.

**Table 1: Retail Milk Product Sales in Guernsey**

<b>Product (unit)</b>	<b>2002 (base value)</b>	<b>2003 % base value</b>	<b>2004 % base value</b>	<b>2005 % base value</b>	<b>2006 % base value</b>	<b>2007 % base value</b>
Retail Butter (kg)	100	81	85	86	96	95
Retail Cream (ltrs)	100	105	112	108	98	94
Block Cheese (kg)	100	53	49	31	51	23
Pre-Pack Cheese (kg)	100	114	105	87	104	96

**Table 2: Catering Product Sales**

<b>Product (unit)</b>	<b>2002 (base value)</b>	<b>2003 % base value</b>	<b>2004 % base value</b>	<b>2005 % base value</b>	<b>2006 % base value</b>	<b>2007 % base value</b>
Catering Butter (kg)	100	334	189	293	353	374
Catering Cream (ltrs)	100	106	115	110	108	108

*Note on Table 1 and 2: The figures for the actual litres and kilograms of these products sold are given in Appendix 3 Table 2. For ease of interpretation, the tables here show percentage changes since 2002, which is set as the base year ("100"). For instance the 2007 sales for Catering Butter ("374") indicates sales have increased by 274% over the 5 year period to 2007. However, in fact, the main increase has been since 2005 after the incentive of the bulk discount scheme was introduced.*

41. It has been claimed that increased sales through the trade counter have been at the expense of sales by distributors. However, even if an allowance is made for "displaced" sales, the fact remains that there has been a net increase in overall sales volumes.
42. The Department firmly believes that there is clear evidence to show that where the Dairy is able to adopt a more commercial approach, it has been able to increase its sales of Milk Products.
43. The Department also firmly believes that conceding exclusive delivery rights in respect of Milk Products to commercial customers as requested by the GMRA, will stifle such an approach in an area where there is potential for growth. Given the trend of declining sales through distributors (Table 1 above) this could lead to a reduction in Dairy income.

44. The financial position of the Dairy will not be best served if it is bound to an exclusive arrangement in future years as this will leave it with no options should that arrangement prove not to be successful.

## COMPETITION

45. As has already been stated, the Department is prepared to grant exclusive rights to distributors to deliver all Milk and also for Milk Products to doorstep customers. However, the non-exclusive right to sell Milk Products to any commercial customer should not be underestimated.
46. Dairy records show that, typically, something in the region of 90% (by value) of sales of Guernsey Dairy Milk and Milk Products to shops by licensed milk distributors relates to sales of Milk alone. And in some cases it is as much as 97%. If the greater part of a distributor's business therefore involves the sale of Milk, then the exclusive rights offered by the Department will give additional protection to a very substantial proportion of that business.
47. With this degree of protection, the Department believes, as a matter of principle, that it is reasonable for the remainder of a distributor's business to be subject to competition. This should not be seen as a threat, but as an opportunity to compete with any other business for sales of Milk Products to commercial customers.
48. It has been put forward on behalf of the GMRA in the past that ...*"milk retailers (sic) are independent business people who bear the risks and rewards of their own business"*. The Department agrees with this statement, and sees no reason why, except for the regulated arrangements in relation to Milk and the specific opportunities for Milk Products to doorstep customers, GMRA members should not be able to compete, as is the case with any other business, on price and quality of service.
49. Shops will continue to deal with licensed milk distributors regarding the delivery of Milk, and the distributors are therefore well positioned to develop these established contacts to sell Milk Products subject only to providing a quality service and a competitive price.

## SUMMARY

50. The GMRA believes that distributors have exclusive rights to deliver all Guernsey Dairy Milk and Milk Products.
51. Notwithstanding the legal advice it has received (that licensed distributors do not have such exclusive rights), the Department has offered to grant licensed milk distributors:

- a) an exclusive right to deliver all Milk to both doorstep and commercial customers within the specified round and
  - b) an exclusive right to deliver Milk Products to doorstep customers within the specified round, and
  - c) a non-exclusive right to sell Milk Products to commercial customers whether or not in the specified round.
52. The Department is not prepared to recommend that distributors are granted exclusive rights to deliver Guernsey Dairy branded Milk Products to commercial customers because it believes that the Dairy must retain the ability to sell its products as it believes to be appropriate to maximise its income from this source and to promote Guernsey Dairy products.
53. Income from the sale of Milk Products makes a valuable contribution to the overall income of the Dairy and hence reduces pressure to increase the retail price of Milk. Furthermore, any sales of local products will displace imported products.
54. The clear and firm advice received by the Department is that its proposals will fully implement the States resolution of April 2007. (see paragraph 1)

## **CONSULTATION**

55. Since April 2007, the Department has met on 11 occasions with representatives of the GMRA, as outlined in this report.
56. Whilst the matters under discussion in this report affect details of the licences of milk distributors, the Department has kept the Guernsey Farmers' Association farmers informed of progress, in general terms, over this period.
57. It has also consulted with St James' Chambers over all of its proposals and for the drafting of the new format Licence and Regulations documents.

## **RECOMMENDATIONS**

58. The Department recommends the States to:-
- (i) agree that the Department (acting through Guernsey Dairy) should grant exclusive rights to licensed milk distributors to deliver:
    - a) Guernsey Dairy Milk to doorstep customers, and commercial customers within specified rounds; and
    - b) Guernsey Dairy branded Milk Products to doorstep customers in those rounds.

- (ii) agree that the Department (acting through Guernsey Dairy) should **not** grant exclusive rights to licensed milk distributors to deliver Guernsey Dairy Milk Products to commercial customers.
- (iii) agree that the Department (acting through Guernsey Dairy) should grant non-exclusive rights to licensed milk distributors to deliver Guernsey Dairy Milk Products to commercial customers and not limited to specified rounds.

Yours faithfully

C S McNulty Bauer  
Minister

**APPENDIX 1****LEGAL ADVICE TO THE DEPARTMENT OVER EXCLUSIVITY AND IMPLEMENTATION OF THE 2007 AMENDED RESOLUTION**

This Appendix contains a summary of the legal advice received from St James' Chambers.

**1. What makes a licence exclusive?**

A distribution agreement (or in this case the Licence) only becomes an exclusive right to distribute if the Supplier (i.e. the Dairy) accepts an obligation either

- not to appoint another distributor to sell the products within a specified territory allocated to a distributor or
- not to sell the products itself in that area.

**The documents**

The old format Licence is based on a number of specified territories (covering the whole of the Island) consisting of a geographical area or named commercial outlets (or both) that the Dairy has previously agreed with GMRA and that GMRA members have agreed between themselves. A named distributor is licensed to sell milk within a specified territory. That named distributor also agrees as a condition of the Licence not to sell milk or milk products except within that specified territory.

Exclusivity will only arise if the Dairy enters into an obligation in the Licence with the Distributor not to appoint a further distributor in the same area or to sell its products directly into that area. Otherwise there is nothing to prevent the Dairy from having more than one distributor within the same territory or itself selling its products in that territory.

Since the Dairy has given no such undertaking in any of the old licence documents, the Distributor does not have any legal right to prevent the Dairy from appointing another distributor to service that specified area or from selling direct to any customer within the area allocated to him, and he is therefore not an exclusive distributor.

Equally there is no such obligation given by the Dairy in the 1991 Regulations. The obligation given by the distributor to sell the milk and dairy products only within his allocated area is inserted:-

- for the benefit of the Dairy and its end customers, to ensure that there is an orderly distribution of its products and geographical spread, and
- for the benefit of the distributors to avoid 'poaching' in their area.

This obligation is therefore not directed to the question of exclusivity but for the benefit of the Dairy and distributors to ensure proper organisation of the distribution network across all the territory.

Exclusive obligations are usually accompanied by a series of other obligations such as

- a limitation on the period for which such exclusive rights are to operate,
- a requirement for the distributor to give advance notice of likely orders for subsequent sales periods, (demand forecasting),
- the distributor entering into obligations to purchase minimum quantities and requirements to carry out marketing initiatives, (to incentivise sales)
- discounts for bulk purchases, service level agreements for customers, and so on.

These obligations are included because the supplier, if granting exclusive rights, is then wholly dependent upon its distribution network to make its sales.

Without those obligations the distributors may not be incentivised either by being able to make bigger profits the more products are sold (the carrot) or by being made subject to remedies (the stick). Those remedies might include the supplier appointing other distributors to operate within the territory and thereby converting the arrangement into a non exclusive licence. The supplier's concern is for maximising sales and ensuring that its customers have good access to its products.

The old licences have none of these other obligations.

### **Custom and Practice**

Has there been exclusivity by 'custom and practice'? The answer is clearly no.

The Dairy has in fact demonstrated in practice that the previous arrangement with the milk distributors is non-exclusive since it has sold catering products direct through the trade counter and has appointed non licensed distributors to sell its dairy products to commercial outlets. The issue of whether the Dairy can **only** sell through the licensed milk distributors is one that has probably not ever been addressed with the commercial implications that inevitably follow, until now.

The evidence is that the issue of exclusivity was not in the minds of those persons who drafted the 1991 Regulations, or the old format licence. The drafting of those documents retain control over the Dairy's commercial decisions to the relevant States body. This is consistent with the way in which The Milk and Milk Products (Guernsey) Law, 1955 and The Milk (Control)(Guernsey) Ordinance 1958 approaches the regulation of milk and milk products which retains full control over the sale and handling of these items within the States and in particular (following reorganisation) the Commerce & Employment Department.



It is clearly a very significant step commercially for the Dairy to state that it will voluntarily accept a restriction in the future only to sell through the milk distributors. It is also worth noting that the logical outworking of the GMRA argument is that this restriction would operate without any limit in time in the future – in other words the Dairy will irrevocably commit to selling all its products through the licensed distributors.

**2. Do the new Licence and Regulations comply with the States Resolution of April 2007?**

The amended resolution stated:

*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*

The system of licensed milk retailers previously administered by the Dairy did not amount to an exclusive arrangement. The characteristics of the previous system were:

- Licences issued to distributors;
- Licences relating to specified rounds,
- Licences specifying geographical areas and commercial outlets.

Both these characteristics are carried through in the newly drafted licence and accompanying regulations.

It is true that the proposed regulations include a number of new provisions. These are directed at ensuring service level obligations, such as the storage of the milk and milk products, product recall matters, administration within the Dairy, and also provide for a new and recognised role for the GMRA in reviewing any changes to the regulations and for dealing with any disputes within the milk distribution network.

Accordingly it is considered that the proposed new arrangements do not differ from the previous system.

There is one major respect in which the new licence positively benefits and protects the distributors in a way that the earlier licences did not. Notwithstanding that the previous arrangements were completely non-exclusive for all products, the new licence gives the milk distributors:

- Exclusivity within their rounds in relation to milk – whether doorstep, commercial or retail outlets (in other words the Dairy will not appoint other

distributors in relation to milk in their areas nor will it seek to sell milk itself directly to customers in the specified area); and

- Exclusivity for dairy products to consumer customers (i.e. their doorstep customers) within their territory.

The Licence does not however give exclusivity in dairy products to retail or commercial outlets. This ensures competition in relation to the supply of these customers with the resultant pressure to seek improved sales, drive down the prices at which these outlets can acquire the products (and so enable business customers themselves to compete), and also to protect the Dairy management's ability to sell milk products in the manner which they feel is in the best interests of the future of the Dairy.

## **APPENDIX 2**

### **GUERNSEY DAIRY PRODUCT PRICES (As at 1<sup>st</sup> September 2007)**

Product Line	Dairy Gate Price (per unit)	Retail Price – if fixed *
Milk - Low Fat 1/2 litre	£0.3874	£0.49
Milk – Low Fat 1Ltr	£0.6748	£0.88
Milk – Low Fat Pergal (NB: 1 Pergal = 13.6 litres)	£9.1770	£11.97
Milk - Full Cream 1/2 Ltr	£0.3874	£0.49
Milk - Full Cream 1 Ltr	£0.6748	£0.88
Milk - Organic Low Fat milk - 1/2 litre	£0.5774	£0.68
Milk - Full Cream Pergal	£9.1770	£11.97
Milk - Skimmed 1./2 Ltr	£0.3874	£0.49
Milk - Skimmed 1Ltr	£0.6748	£0.88
Double Cream 142gm	£0.49	-
Double Cream 284gm	£0.88	-
Whipping Cream 142gms	£0.42	-
Extra Thick Cream 284 gms	£0.95	-
Double Cream 1/2 pot ( NB: 1"Pot" = 4 pints)	£2.34	-
Double Cream Pot	£4.29	-
Whipping Cream 1/2 Pot	£2.05	-
Whipping Cream Pot	£3.76	-
Retail Salted Butter 250gm	£0.72	-
Retail Unsalted Butter 250gm	£0.82	-
Catering Salted Butter 250g (< 499kg)	£0.68	-
Catering Unsalted Butter 250g (< 249kg)	£0.78	-
Bulk Butter Salted (10kg)	£24.00	-
Bulk Butter Unsalted (10kg)	£28.00	-
Bulk Butter Salted (25kg)	£60.00	-
Bulk Butter Unsalted (25kg)	£70.00	-

Butter Portions (1 x 200 portions)	£4.75	-
Mild Cheese Block - available in either 2.5 or 5kg blocks (price per kg)	£4.06	-
Mature Cheese Block - available in either 2.5 or 5kg blocks (price per kg)	£5.50	-
Extra Mature Cheese Block available in either 2.5 or 5kg blocks (price per kg)	£7.75	-
Guernsey Mild Cheese V/P 240g	£1.15	-
Guernsey Mature Cheese V/P 240g	£1.48	-
Guernsey Extra Mature Cheese V/P 240g	£1.95	-

\* Note: Retail Milk prices are set by the Department using powers contained in the The Milk (Control) (Guernsey) Ordinance 1958. Following the States' approval of recommendations from the Department in its April 2007 Report on the Dairy industry, an independent panel was established ("The Milk Price Review Panel"), which reviews dairy industry costs and returns annually and makes recommendations to the Department in respect of setting the Producer Price (i.e. the price paid per litre to farmers for raw milk), the Dairy's Gate Price, and the fixed Retail Price. The Department is committed to accept the Panel's recommendations other than in the most exceptional situation. No other Dairy product prices are controlled.

### **APPENDIX 3**

#### **GUERNSEY DAIRY SALES INFORMATION**

**Table 1: Dairy Turnover by product (2007 figures)**

<b>Product</b>	<b>% of Dairy Turnover(value)</b>
Milk	82.46
Retail cream	2.00
Catering cream	2.22
Retail butter	2.98
Catering butter	4.27
Retail cheese	2.11
Catering (block) cheese	0.32
Retail ice cream	0.49
Catering ice cream	0.99
Waitrose exports (retail butter)	2.16

**Table 2 Sales of Guernsey Dairy Products (total weights and volume)**

<b>Product (unit)</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Retail Butter (kg)	65,406	52,879	55,453	56,316	62,893	61,944
Catering Butter (kg)	23,926	80,023*	47,262	70,175**	84,567	89,449
Retail Cream (lts)	38,878	40,668	43,615	42,116	38,225	36,383
Catering Cream (lts)	75,274	79,637	86,216	83,091**	80,989	81,000
Block Cheese (kg)	11,645	6,176	5,745	3,667	5,928	2,691
Pre-Pack Cheese (kg)	20,362	23,160	21,434	17,769	21,226	19,551
Cream for CICAL (lts)***	66,000	76,000	97,000			

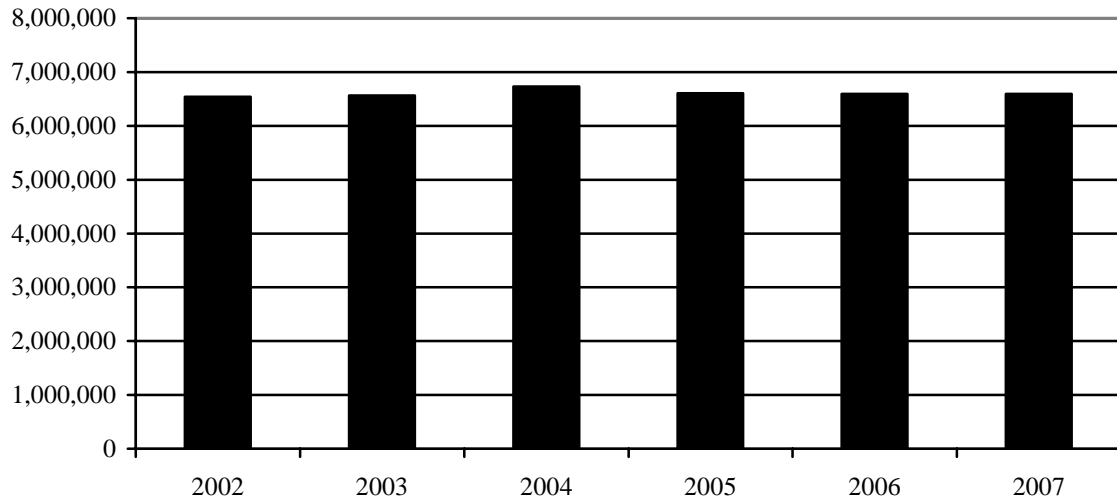
**Notes**

- \* Sales enhanced as large quantities were exported to the UK to a non premium bulk purchaser. This was done to clear the Dairy's stock of butter close to its sell by date.
- \*\* The "trade counter" started during 2004 and the bulk discount scheme was added in 2005.
- \*\*\* In the past the Dairy had a very useful local sales outlet for cream which was used by Channel Islands' Cream Liqueurs (CICAL) to manufacture Guernsey Cream Liqueur. However, in 2005 the company, which was by then no longer locally owned, decided to move its manufacturing base to the UK and source its cream from there also. It was in response to this change that the Dairy developed its Trade Counter and bulk discount scheme for catering products.

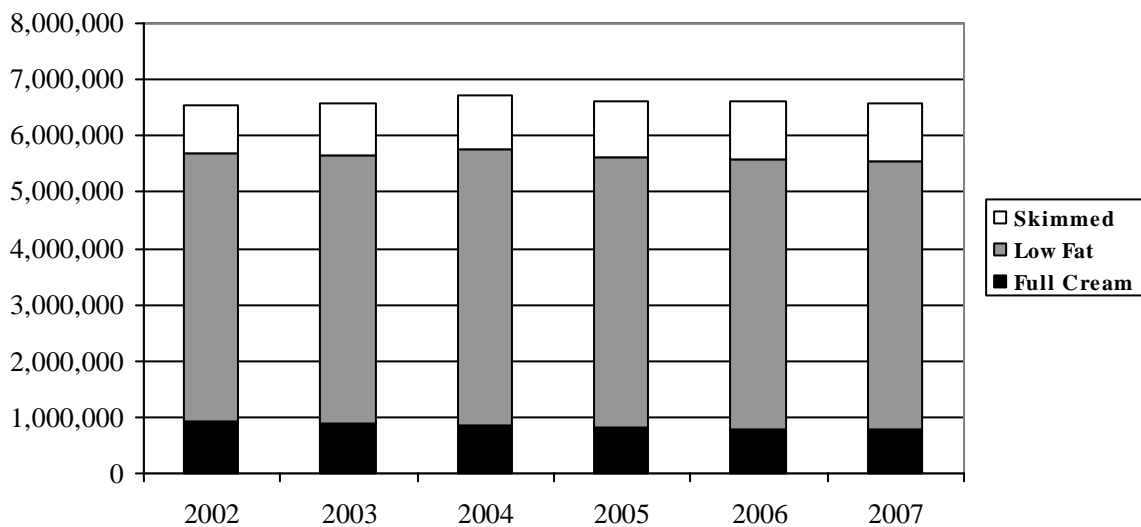
The Dairy has developed a useful market for retail butter in the last two years and exported some 50 tonnes to Waitrose in 2007. This is sold at a good price making the same return for the Dairy as local sales of the same product. However, this outlet will always have some risks for the Dairy because it is a very small producer.

The Dairy does not assume that the sales growth seen thus far with Waitrose will be maintained and, in the very competitive dairy products markets, it is felt that this may be severely squeezed by pressure from major brands in the future.

Exports of butter that are not to retail outlets are possible, but are not profitable as the buyers pay a base market price and this does not cover production and shipping costs. This form of export trade is undesirable, but inevitable if sales fall.

**Chart 1: Retail Sales of Guernsey Dairy Milk**Total Sales of Liquid Milk 2002 - 2007 (litres / year)**Table 3: Annual Milk Sales by Milk Product Type (litres)**

Milk Product	2002	2003	2004	2005	2006	2007
Full Cream	914,686	883,989	865,755	828,710	787,143	780,401
Low Fat	4,763,576	4,785,653	4,911,771	4,800,157	4,800,320	4,777,349
Skimmed	865,146	897,190	952,182	977,703	1,008,686	1,034,683
<b>Total Sales</b>	<b>6,543,408</b>	<b>6,566,832</b>	<b>6,729,708</b>	<b>6,606,570</b>	<b>6,596,149</b>	<b>6,592,433</b>

**Chart 2: Annual Sales By Milk Product Type (litres per year)**

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

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

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated 29<sup>th</sup> August, 2008, of the Commerce and Employment Department, they are of the opinion:-

1. That the Commerce and Employment Department (acting through Guernsey Dairy) should grant exclusive rights to licensed milk distributors to deliver:
  - a) Guernsey Dairy Milk to doorstep customers, and commercial customers within specified rounds; and
  - b) Guernsey Dairy branded Milk Products to doorstep customers in those rounds.
2. That the Commerce and Employment Department (acting through Guernsey Dairy) should **not** grant exclusive rights to licensed milk distributors to deliver Guernsey Dairy Milk Products to commercial customers.
3. That the Commerce and Employment Department (acting through Guernsey Dairy) should grant non-exclusive rights to licensed milk distributors to deliver Guernsey Dairy Milk Products to commercial customers and not limited to specified rounds.

## HOME DEPARTMENT

### DEFINITION OF “AGENT” IN PREVENTION OF CORRUPTION LAW

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

15<sup>th</sup> September 2008

Dear Sir

#### 1. **Executive Summary**

The purpose of this supplementary States Report is to seek authority from the States for the drafting of an appropriate Ordinance under the provisions of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 to amend the list of persons and office holders who are defined as “agents” under the Law.

The proposed amendment will further demonstrate Guernsey’s compliance with the Council of Europe Convention on Corruption.

#### 2. **Proposals from Her Majesty’s Procureur**

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

##### **“Introduction**

*The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 was approved by the States of Deliberation in September 2003 and came into force on 19 January 2004. The enactment of the Law will enable the Council of Europe Convention on Corruption to be ratified on behalf of the Bailiwick and demonstrates the Bailiwick’s desire to contribute to measures designed to eliminate the pernicious and destabilising mischief of corruption.*

##### **Addition to the Convention and proposed action**

*The Prevention of Corruption Law lists in some detail the persons and office holders who are agents for the purposes of the Law and who should not accept corrupt payments etc or be approached by another and offered any such payment.*

*Since the Law came into force, a Protocol was added to the Convention in May 2003 and further offices have been created in the Bailiwick which are not currently included in this legislation. In addition, some clarification of the persons who currently fall into the description of agents in our Law is required.*

*The persons who would be added or in respect of whom a clarification would be made are:*

(i) *under section 2(1)(b) -*

*In Guernsey: a Judge or Deputy Judge of the Magistrate's Court, any Acting Magistrate and any Juré-Justicier Suppléant;*

*In Alderney, the President or Vice President of the States of Alderney, any Juge Délégué or any person appointed under section 9 of the Government of Alderney Law, 2004 and the Greffier appointed under section 20(1) of the Government of Alderney Law, 2004; and*

*In Sark, any Deputy Seigneur, Lieutenant Sénéchal of Sark or Assistant Constable of Sark.*

(ii) *under section 2(1)(c) -*

*A member of a public assembly exercising legislative or administrative powers in any other country or territory;*

*A mayor of a municipality in any other country or territory;*

*A lay person who has the responsibility of deciding on the guilt of an accused person in criminal proceedings in any other country or territory; and*

*A lay person who has the responsibility of deciding on matters of fact, law or both in civil or administrative proceedings in any other country or territory.*

(iii) *under a new section 2(1)(d) to be inserted –*

*A company or other body corporate.*

*The Law contains a provision that allows the States to amend the list of agents by way of Ordinance. I should therefore be grateful if the States could be asked to authorise the drafting of an Ordinance so that, for the purposes of the Law, the appropriate offices are included and the relevant clarifications are effected so that ratification can take place. Such an amendment will enable the Bailiwick to demonstrate further its compliance with the Convention and the Protocol.*



**Human rights and cost**

*In my opinion my proposal if enacted, will not contravene the provisions of the European Convention on Human Rights or require any extra public expenditure.”*

The Home Department has consulted the Judiciary and the Chief Officers of Police and Customs and Immigration Service regarding these proposals. The proposals have the Department’s full support.

**3. Resources**

The Home Department believes that the proposals contained within this Report should not require any additional resources.

**4. Conclusion**

In the circumstances outlined above, the Department recommends the States:

To approve the Department’s proposals that an appropriate Ordinance be drafted under the provisions of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 as set out in Her Majesty’s Procureur’s letter; and

To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

G H Mahy  
Minister

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

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

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 15<sup>th</sup> September, 2008, of the Home Department, they are of the opinion:-

1. To approve the Home Department's proposals that an appropriate Ordinance be drafted under the provisions of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 as set out in Her Majesty's Procureur's letter quoted in section 2 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## HOME DEPARTMENT

### ANTI-MONEY LAUNDERING AND COMBATING OF THE FINANCING OF TERRORISM LEGISLATION

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

15<sup>th</sup> September 2008

Dear Sir

#### **1. Executive Summary**

This States Report proposes that the tipping off offences in the Bailiwick's main anti-money laundering legislation, which prevent an investigation by law enforcement into money laundering or terrorist financing from being prejudiced, should be amended so that the offence explicitly applies when a suspicion report might be made, not only after it has been made.

The above proposal will assist the Bailiwick to meet the anti-money laundering and combating of the financing of terrorism (AML/CFT) standards of the Financial Action Task Force (FATF), compliance with which will be assessed by the IMF in the near future.

#### **2. The recommendations from Her Majesty's Procureur**

HM Procureur has written to the Home Department in the following terms:

*“Discussion by the FATF at plenaries in February and June of this year about its assessments of the AML/CFT legislation of Singapore and Hong Kong respectively means that the tipping off offences in the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999, the Drug Trafficking (Bailiwick of Guernsey) Law 2000, and the Disclosure (Bailiwick of Guernsey) Law, 2007 should be amended in order to meet the FATF's standards.*

*All of these laws contain tipping off offences. This is the offence of disclosing information on any matter which is likely to prejudice any investigation which might be conducted following the making of a report of suspicion or the communication of information or any other matter to a police or customs officer concerning a report.*

*The FATF considered that the legislation of Singapore and Hong Kong should state that the tipping off offence should apply when consideration is being given to making a report of suspicion and not only after it has been made. In the absence of a court ruling as to whether the offence in the Bailiwick is triggered when a report is being made and in light of the FATF's views on Singapore's and Hong Kong's legislation, I consider that the Bailiwick's legislation should be amended to explicitly state that the tipping off offence can occur if a person knows, or suspects, that a disclosure may be made.*

*The Guernsey Financial Services Commission supports the above amendments. At the request of my Chambers, the Commission has consulted with GIBA with regard to the above proposals. GIBA has confirmed to the Commission it has no objection to them."*

### **3. Cost/Resources**

The Commission has advised the Home Department that additional staff will not be required by businesses or by the Commission in respect of the above proposals.

There should be no additional Law Enforcement staff or increase to any costs as a consequence of these legislative amendments, which are intended to make existing offences fully consistent with FATF recommendations.

### **4. Alderney and Sark**

The Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark are content with the legislation proposed in this States Report.

### **5. Conclusion**

The Department recommends the States

To approve the amendments to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and the Disclosure (Bailiwick of Guernsey) Law, 2007, as set out in Her Majesty's Procureur's letter; and

To direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

G H Mahy  
Minister

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

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

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 15<sup>th</sup> September, 2008, of the Home Department, they are of the opinion:-

1. To approve the amendments to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and the Disclosure (Bailiwick of Guernsey) Law, 2007, as set out in Her Majesty's Procureur's letter quoted in section 2 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**COMMERCE AND EMPLOYMENT DEPARTMENT**

**ANTI-MONEY LAUNDERING LEGISLATION FOR FIRMS OF LAWYERS,  
ACCOUNTANTS AND ESTATE AGENTS**

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

17<sup>th</sup> September 2008

Dear Sir

**Executive Summary**

1. The proposals in this States Report seek to complete the Bailiwick's compliance with the global anti-money laundering (AML) and combating of financing of terrorism (CFT) standards of the Financial Action Task Force (FATF) with regard to firms - including sole practitioners - of advocates, solicitors, notaries, accountants and estate agents (together known as prescribed businesses) in the Bailiwick in connection with a range of activities specified by the FATF.
2. In summary, these activities are:
  - involvement by estate agents in the buying and selling of real property (freeholds and leaseholds);
  - preparation for, or the carrying out of, transactions by firms of lawyers and accountants for a client in relation to the purchase or sale of real property; the management of client assets; and involvement with the creation, operation, management or administration of companies and trusts.
3. The AML/CFT framework already comprises regulations issued by the States of Guernsey Policy Council, which require prescribed businesses not subject to a de minimis exemption in the regulations to register with the Guernsey Financial Services Commission (the Commission) and to introduce risk based customer due diligence measures. The regulations allow firms to reduce or simplify the measures they take for low risk customers. This approach should avoid disproportionate demands on businesses and on low risk customers (for example, locally resident customers who have a simple relationship of a type expected by

the business). Conversely, the regulations require businesses to carry out enhanced customer due diligence measures for high risk customers. In addition, the Commission has issued a Handbook to firms, also based on a risk based approach – the handbook contains AML/CFT rules and guidance for firms.

4. The AML/CFT framework for prescribed businesses which meets the FATF standards will be completed by the law proposed in this States Report – the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the Prescribed Businesses Law). The law will allow the Commission to apply a wider range of sanctions for breaches of the rules in the handbook than is available in the regulations. In addition to sanctions, the Prescribed Businesses Law will also include important ancillary provisions, for example, provisions which will allow the Commission to be able to obtain information and documents outside an on-site inspection, appeals against decisions of the Commission, and provisions on confidentiality and the disclosure of information.

### **Prescribed Businesses**

5. Global standards on AML and CFT are set by the FATF. The Recommendations and Special Recommendations of the FATF lay down AML/CFT standards to be followed by firms of lawyers, notaries and other legal professionals, and firms of accountants and estate agents when carrying out specified activities. These firms are called “prescribed businesses” for the purposes of the law proposed in this States Report.
6. The Policy Council has issued regulations which apply to prescribed businesses, and which require them to register with the Commission and to put in place risk-based policies, procedures and controls on AML/CFT. They allow simplified or reduced customer due diligence for low risk customers and require enhanced customer due diligence for high risk customers. The Commission has also issued a Handbook containing risk based AML/CFT rules and guidance for prescribed businesses.
7. The proposals in this States Report seek to complete the Bailiwick’s compliance with the Recommendations and Special Recommendations of the FATF in respect of prescribed businesses. The proposals cover the introduction of a new Bailiwick-wide law covering firms (including sole practitioners) of legal professionals, accountants and estate agents - the Prescribed Businesses Law.
8. Subject to the exemption referred to below, firms of legal professionals, accountants and estate agents (firms) currently undertake prescribed business in the following circumstances:

#### ***“Estate agency***

Things done by a person in the course of a business pursuant to instructions received from another person (‘a client’) who wishes to

dispose of or acquire an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest):

- (a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

***Legal and accountancy services***

The business of lawyer, notary or other independent legal professional, or accountant, when they prepare for or carry out transactions for a client in relation to the following activities:

- (a) the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest);
- (b) the management of client money, securities or other assets;
- (c) the management of bank, savings or securities accounts;
- (d) the organisation of contributions for the creation, operation, management or administration of companies;
- (e) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities.

An ‘independent legal professional’ does not include legal professionals employed by:

- (a) public authorities, or
- (b) undertakings which do not by way of business provide legal services to third parties.

An ‘accountant’ means any person who by way of business provides accountancy services.”

9. It is firms undertaking the above activities which are required to register with the Commission under the regulations and which are subject to the Commission’s AML/CFT Handbook.



10. Following consultation with industry, a de minimis provision was introduced into the Regulations so that, for example, very small firms which meet the exemption criteria are not required to register with the Commission under the Regulations and are not subject to the Commission's AML/CFT Handbook. They will also not be subject to the law proposed in this States Report.

### **Regulations and handbook**

11. The Regulations and the Handbook issued by the Commission require firms to adopt a risk based approach to their policies, procedures and controls in relation to AML/CFT, taking into account customers, products and services and the provision of those services. They provide that firms should take risk into account when determining the extent of their customer due diligence measures. The Regulations and the Handbook allow firms to reduce or simplify the measures they take for low risk customers. This approach should avoid disproportionate demands on businesses and on low risk customers (for example, locally resident customers who have a simple relationship of a type expected by the business). Conversely, the Regulations and the Handbook require businesses to carry out enhanced customer due diligence for high risk categories of customer, product or transaction. The Regulations and the Handbook also contain provisions for the ongoing monitoring of business relationships – high risk customers, products and transactions are subject to a higher level and frequency of monitoring. This risk based approach is the central philosophy of the Regulations and the Handbook.
12. The Handbook contains rules and guidance. The FATF requires a significant amount of the standards for legal professionals, accountants and estate agents to be required either by law or regulation or by other enforceable means – guidance is usually not enforceable. Hence, rules have been established for a number of elements in the Handbook. The overall approach of the draft Handbook is therefore a combination of Commission rules, which are subject to regulatory sanction, and guidance which presents ways of complying with the Regulations and the rules.

### **FATF expectations**

13. The FATF expects jurisdictions to ensure that effective, proportionate and dissuasive sanctions are available to deal with persons covered by the FATF Recommendations that fail to comply with national AML/CFT requirements. In the Guernsey context, criminal sanctions will be expected for breaches of the Regulations and a range of administrative sanctions specified in legislation expected for breaches of the rules in the Handbook. Sanctions should be available in relation not only to firms but also to their directors and senior management.
14. It is proposed that an appropriately wide sanctions framework for breaches of the rules by firms and their senior management (including partners), will be

achieved through the Prescribed Businesses Law. In addition to sanctions, it is proposed the Prescribed Businesses Law should include important ancillary provisions, for example, provisions which will allow the Commission to be able to obtain information and documents, appeals provisions, provisions on confidentiality, provisions on the disclosure of information and provisions such as the service of notice which will allow the law to be effective. The contents of the proposed law are summarised below.

### **Information, documents and inspectors**

15. Although the Regulations give the Commission the ability to undertake on-site inspections, and to obtain information and documents at that stage, to assess compliance by firms with the Regulations and the Handbook, the Commission also needs information and documents to be provided to it outside on-site inspections for these purposes. It is proposed such a power should be included in law, together with the ability for firms to appeal against a notice by the Commission to provide information and documents. It is proposed the ability to obtain information and documents should extend to the investigation of suspected breaches of the AML/CFT legislation including, for example, a breach of the requirement of the Regulations for firms to be registered and suspected breaches of conditions imposed by the Commission. It is also proposed the Commission should be able to require verification of information and documents provided to it.
16. If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting a notice by the Commission requiring information or documents has not been met or the information or documents provided are not accurate or complete, it is proposed he should be able to grant a warrant authorising any officer of the police, together with any other person named in the warrant, to enter and search premises in relation to documents, to take copies or extracts from any documents and to require persons named in the warrant to answer questions, make explanations and to state where relevant documents may be located.
17. None of the powers of the Commission to obtain information or documents should override legal professional privilege.
18. It is also proposed the Commission should have the ability to appoint inspectors, potentially at the cost of the firm, in order to ascertain compliance with the Bailiwick's AML/CFT legislation and the Handbook. For example, inspectors could be appointed to ascertain compliance with the Regulations. A firm would be able to appeal to the Court against any appointment of inspectors. No sum in respect of the costs, fees and expenses for an investigation by inspectors should be recovered by the Commission where the Court is satisfied that the sum is not reasonable in amount, not reasonably incurred or where the Commission has acted unreasonably, frivolously or vexatiously in incurring the sum.

19. It should be an offence for a person suspecting that a notice requiring information or documents is to be issued or that an inquiry or investigation is to be carried out to falsify, conceal, destroy or dispose of information or documents.

### **Sanctions**

20. With regard to sanctions it is proposed the Commission should have the ability to:
- (a) issue confidential, private reprimands;
  - (b) impose fines up to a maximum of £200,000 for each firm and each individual of the level of senior manager and above for material breaches of the Regulations and the rules in the Handbook;
  - (c) make public statements about firms and individuals of the level of senior manager and above.

These sanctions will complement the provisions of the Regulations for the Commission to impose conditions.

21. It is proposed the law should require the Commission, in deciding whether or not to impose a fine or to make a public statement, to take into consideration the following factors:
- (a) whether the contravention or non-fulfilment was brought to the attention of the Commission by the person concerned;
  - (b) the seriousness of the contravention or non-fulfilment;
  - (c) whether or not the contravention or non-fulfilment was inadvertent;
  - (d) what efforts, if any, have been made to rectify the contravention or non-fulfilment and to prevent a recurrence;
  - (e) the potential financial consequences to the person concerned, and to the third parties including customers and creditors of that person, of publishing a statement; and
  - (f) the action taken by the Commission under this section in other cases.

These factors are identical to those in other legislation administered by the Commission.

22. All decisions by the Commission to apply a sanction should be subject to statutory appeal provisions. Adverse decisions by the Commission, such as the imposition of a sanction, are subject to statutory and non-statutory checks and

balances. If a prescribed business disagrees with the conclusion of the Division of the Commission administering the Handbook that a person should be subject to a sanction, that person has access to a Decisions Committee of the Commission before any sanction is issued. The Decisions Committee will, if it issues an adverse decision, issue it as a decision of the Commission. A Committee comprises three Commissioners. Individuals and firms will have the opportunity to make representation to the Decisions Committee if they disagree with the proposed issue of a sanction. In addition, any adverse decision by the Committee would be appealable to the Royal Court through the prescribed businesses law. The Commission proposes that the grounds of appeal would be:

- (a) the decision was ultra vires or there was some other error of law;
- (b) the decision was unreasonable;
- (c) the decision was made in bad faith
- (d) there was a lack of proportionality; or
- (e) there was a material error as to the facts, or as to the procedure.

These grounds of appeal are identical to those in other legislation administered by the Commission.

- 23. The Commission should not itself have the ability to suspend or revoke a firm's registration as it will only be the supervisor for AML/CFT purposes and, for suspension or revocation to have any meaningful effect, it would need to prevent a firm from carrying out some or all of its business activities. It would not be appropriate for the Commission to be provided with these sanctions, which are available for use in respect of regulated financial services businesses. Instead, it is proposed the new law should, where necessary, require the involvement of the Court in considering whether or not such strong sanctions should be applied – see paragraphs 24 and 25 below.
- 24. It is important that the Guernsey authorities are able, where necessary, to prevent firms undertaking prescribed business from operating in the Bailiwick. As a consequence, it is proposed the legislation should provide that the Commission may apply to the Court to wind up the firm or to grant an injunction preventing the firm from carrying out business in the Bailiwick where this appears to be necessary:
  - (a) on the ground that the business has contravened a material particular of the Bailiwick's AML/CFT legislation or the rules in the Handbook;
  - (b) to counter financial crime and the financing of terrorism in the Bailiwick or elsewhere.

25. Where there are material breaches of compliance with the AML/CFT legislation, it is proposed the Court should be able to sanction directors and senior management as well as firms. The Court should be able to disqualify any such person employed by the firm from performing any function, any specified function or any specified description of function where that person is considered by the Court to be other than fit and proper due to breaches of the AML/CFT framework.

### **Disclosure of information**

26. Any non-public information and documents received by the Commission in exercising its role as AML/CFT supervisor will be confidential by virtue of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987. The Financial Services Commission Law also provides gateways for the disclosure of information. There are criminal offences which apply to the Commission and Commission staff for the wrongful disclosure of information. In line with other legislation administered by the Commission, it would be appropriate for the AML/CFT legislation proposed in this paper to state that, subject to specific legal gateways, it will be an offence for the Commission to disclose information without the consent of the person from whom it was obtained. It is proposed the legislation should list how the Commission can disclose information. This would include the disclosure of information to assist other supervisors and for the prevention, detection, investigation and prosecution of crime. It is also proposed the provisions would include the disclosure of information to the Registrar of the Chambre de Discipline, the independent disciplinary body for advocates established by the Bar (Bailiwick of Guernsey) Law, 2008.

### **Miscellaneous**

27. It is proposed the legislation should contain the normal general provisions included in other laws administered by the Commission, that is those relating to: criminal proceedings; the exclusion of liability of the political authorities in the Bailiwick and the Commission (including their members, officers and servants) unless anything is done or omitted to be done in bad faith; notice of documents; admissibility of evidence; definitions; the publication of public notices; and the citation of the law.

### **Consultation**

28. The above proposals take account of input on proposals made by the Commission from a steering group of practitioners drawn from a range of prescribed businesses. In addition, following that input, the Commission consulted on the above proposals with firms of lawyers, accountants and estate agents in the Bailiwick. The proposals take account of comments made in the consultation; in particular the law will include the exemption referred to above.
29. The Law Officers have been consulted and raise no objection to the proposals.

**Alderney and Sark**

30. The Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of Sark have considered and support the proposals contained in this Report.

**Recommendation**

31. The States are asked to:
- (a) Approve the proposals in this States Report, and
  - (b) Direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

C S McNulty Bauer  
Minister

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

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

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 17<sup>th</sup> September, 2008, of the Commerce and Employment Department, they are of the opinion:-

- 1. To approve the proposals as set out in that Report.
- 2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATUTORY INSTRUMENTS LAID BEFORE THE STATES****THE INCOME TAX (LOANS TO PARTICIPATORS)  
(EXEMPTIONS) REGULATIONS, 2008**

In pursuance of Section 66A (4) (d) of the Income Tax (Guernsey) Law, 1975, as amended, the Income Tax (Loans to Participators) (Exemptions) Regulations, 2008, made by the Treasury and Resources Department on 10<sup>th</sup> July, 2008, are laid before the States.

**EXPLANATORY NOTE**

These Regulations specify exemptions from the charging regime for qualifying loans established by Chapter XII of Part IV of the Income Tax (Guernsey) Law, 1975.

**THE INCOME TAX (DEEMED DISTRIBUTIONS)  
(EXEMPTIONS) REGULATIONS, 2008**

In pursuance of Section 62A (4) of the Income Tax (Guernsey) Law, 1975, as amended, the Income Tax (Deemed Distributions) (Exemptions) Regulations, 2008, made by the Treasury and Resources Department on 10<sup>th</sup> July, 2008, are laid before the States.

**EXPLANATORY NOTE**

These Regulations specify exemptions from the charging regime for deemed distributions established by Chapter VIIIA of Part IV of the Income Tax (Guernsey) Law 1975, as amended by the Income Tax (Zero 10) (Guernsey) Law, 2007 and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL  
BENEFIT) (AMENDMENT NO. 5) REGULATIONS, 2008**

In pursuance of section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 5) Regulations, 2008, made by the Social Security Department on 3<sup>rd</sup> September, 2008, are laid before the States.

**EXPLANATORY NOTE**

These Regulations add to and remove from 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.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (FINANCIAL SERVICES  
BUSINESSES) (BAILIWICK OF GUERNSEY) (AMENDMENT)  
REGULATIONS, 2008**

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, made by the Policy Council on 8<sup>th</sup> September, 2008 are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 which impose requirements on financial services businesses for the purpose of forestalling and preventing money laundering and terrorist financing.

The principal amendment is to add a new Part IIIA to require financial services businesses which are regulated under the main regulatory laws and which also provide money or value changing services or money or currency changing services to register with the Guernsey Financial Services Committee ("the Commission"). The Commission is required to maintain a list and information concerning financial services businesses registered under that Part.

These Regulations also -

- (a) add a new offence at regulation 16A in relation to the provision of false or misleading information in connection with an application for registration under Part IIIA or other requirements under the Regulations, and
- (b) amend the provisions relating to introduced business to provide for lawyers or accountants to act as introducers subject to certain conditions being met.

The opportunity has also been taken to clarify certain provisions and update references to legislation.

These Regulations also amend the definition of "financial services business" in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (regulation 2).

The main amendments are to -

- (a) delete the services businesses set out in paragraph 19 of Part I from the description of activities which are financial services business, and
- (b) amend the list of activities in Part II of the Schedule which are not financial services businesses for the purposes of the Law and the 2007 Regulations.



The existing exemption for lawyers and accountants carrying on incidental activities has been removed and new exemptions have been added for certain restricted types of business at new paragraphs 27 to 29.

The opportunity has also been taken to make other minor clarificatory amendments to the Schedule.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME)  
(LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS)  
(BAILIWICK OF GUERNSEY) REGULATIONS, 2008**

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, made by the Policy Council on 8<sup>th</sup> September, 2008 are laid before the States.

**EXPLANATORY NOTE**

These Regulations impose requirements on prescribed businesses for the purpose of forestalling and preventing money laundering and terrorist financing. Prescribed businesses are businesses undertaken by lawyers, accountants and estate agents.

They contain new obligations relating to carrying out risk assessments in relation to a prescribed business as a whole and each business relationship it has with a client (regulation 3), more precise requirements relating to the identification of persons on whose behalf transactions are carried out or who have effective control over clients (regulation 4), the timing of client due diligence (regulation 7), provisions relating to the maintenance of client accounts (regulation 8), the monitoring of business relationships (regulation 11) and ensuring compliance and corporate responsibility for compliance (regulation 15).

Part I of the Regulations contains the requirements relating to risk assessment, Part II the requirements relating to client due diligence including where enhanced due diligence must be carried out or where reduced or simplified due diligence may be carried out. Part III contains the requirements on prescribed businesses to ensure their compliance with the Regulations, on record keeping and on internal reporting of suspicious transactions and employee training. Part IV provides for registration with the Commission of all prescribed businesses and for the payment of a registration fee and annual fees designed to cover the Commission's administrative costs. Part V extends certain provisions of the Criminal Justice (Proceeds of Crime) Law, 1999, as amended, to prescribed businesses. It also deals with offences and penalties, limitation of the Commission's liability and interpretation.

A Court must take into account rules and guidance contained in the Guernsey Financial Services Commission's Handbook for Prescribed Businesses on Countering Financial Crime and Terrorist Financing in determining whether a prescribed business has complied with these Regulations.

**IN THE STATES OF THE ISLAND OF GUERNSEY  
ON THE 29<sup>th</sup> DAY OF OCTOBER, 2008**

**The States resolved as follows concerning Billet d'État No XIII  
dated 10<sup>th</sup> October 2008**

**THE BANKING SUPERVISION (BAILIWICK OF GUERNSEY)  
(AMENDMENT) LAW, 2008 (COMMENCEMENT) ORDINANCE, 2008**

I.- To approve the draft Ordinance entitled "The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 (Commencement) Ordinance, 2008" and to direct that the same shall have effect as an Ordinance of the States.

**THE PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY)  
(AMENDMENT) LAW, 2007 (COMMENCEMENT) ORDINANCE, 2008**

II.- To approve the draft Ordinance entitled "The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 (Commencement) Ordinance, 2008" and to direct that the same shall have effect as an Ordinance of the States.

**THE ROYAL COURT (REFORM) (GUERNSEY) LAW, 2008  
(COMMENCEMENT) ORDINANCE, 2008**

III.- To approve, subject to the following amendment, the draft Ordinance entitled "The Royal Court (Reform) (Guernsey) Law, 2008 (Commencement) Ordinance, 2008" and to direct that the same shall have effect as an Ordinance of the States.

**AMENDMENT**

For clause 1 substitute the following clause -

**"Commencement of Law of 2008.**

**1.** With the exception of section 2(1)(b), the provisions of the Royal Court (Reform) (Guernsey) Law, 2008 shall come into force on the 29<sup>th</sup> October, 2008."

# IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 30<sup>th</sup> DAY OF OCTOBER, 2008

(Meeting adjourned from 29<sup>th</sup> October 2008)

**The States resolved as follows concerning Billet d'État No XIII  
dated 10<sup>th</sup> October 2008**

## COMMERCE AND EMPLOYMENT DEPARTMENT

### DISTRIBUTION OF GUERNSEY DAIRY MILK AND MILK PRODUCTS – EXCLUSIVE RIGHTS

IV.- After consideration of the Report dated 29<sup>th</sup> August, 2008, of the Commerce and Employment Department:-

1. That the Commerce and Employment Department (acting through Guernsey Dairy) should grant exclusive rights to licensed milk distributors to deliver:
  - a) Guernsey Dairy Milk to doorstep customers, and commercial customers within specified rounds; and
  - b) Guernsey Dairy branded Milk Products to doorstep customers in those rounds.
2. That the Commerce and Employment Department (acting through Guernsey Dairy) should **not** grant exclusive rights to licensed milk distributors to deliver Guernsey Dairy Milk Products to commercial customers.
3. That the Commerce and Employment Department (acting through Guernsey Dairy) should grant non-exclusive rights to licensed milk distributors to deliver Guernsey Dairy Milk Products to commercial customers and not limited to specified rounds.
4. That the above Resolutions, and all rights granted pursuant to them, shall have effect until the end of 2015, and that the distribution model shall be reviewed as part of a comprehensive report on the future of all aspects of the dairy industry, to be prepared by a working party appointed by the Policy Council, and presented to the States of Deliberation by no later than the end of 2013.

## **HOME DEPARTMENT**

### **DEFINITION OF "AGENT" IN PREVENTION OF CORRUPTION LAW**

V.- After consideration of the Report dated 15<sup>th</sup> September, 2008, of the Home Department:-

1. To approve the Home Department's proposals to that an appropriate Ordinance be drafted under the provisions of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 as set out in Her Majesty's Procureur's letter quoted in section 2 of that Report.
- 1.A That the descriptions of persons who are to be included in the definition of "agents" by virtue of the Ordinance referred to in Proposition 1 shall include the Treasurer and the Deputy Treasurer of Sark and a non Chief Pleas member of a Chief Pleas Committee.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **HOME DEPARTMENT**

### **ANTI-MONEY LAUNDERING AND COMBATING OF THE FINANCING OF TERRORISM LEGISLATION**

VI.- After consideration of the Report dated 15<sup>th</sup> September, 2008, of the Home Department:-

- 1 To approve the amendments to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and the Disclosure (Bailiwick of Guernsey) Law, 2007, as set out in Her Majesty's Procureur's letter quoted in section 2 of that Report.
- 2 To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **COMMERCE AND EMPLOYMENT DEPARTMENT**

### **ANTI-MONEY LAUNDERING LEGISLATION FOR FIRMS OF LAWYERS, ACCOUNTANTS AND ESTATE AGENTS**

VII.- After consideration of the Report dated 16<sup>th</sup> September, 2008, of the Commerce and Employment Department:-

1. To approve the proposals as set out in that Report.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

**THE INCOME TAX (LOANS TO PARTICIPATORS)  
(EXEMPTIONS) REGULATIONS, 2008**

In pursuance of Section 66A (4) (d) of the Income Tax (Guernsey) Law, 1975, as amended, the Income Tax (Loans to Participators) (Exemptions) Regulations, 2008, made by the Treasury and Resources Department on 10<sup>th</sup> July, 2008, were laid before the States.

**THE INCOME TAX (DEEMED DISTRIBUTIONS)  
(EXEMPTIONS) REGULATIONS, 2008**

In pursuance of Section 62A (4) of the Income Tax (Guernsey) Law, 1975, as amended, the Income Tax (Deemed Distributions) (Exemptions) Regulations, 2008, made by the Treasury and Resources Department on 10<sup>th</sup> July, 2008, were laid before the States.

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL  
BENEFIT) (AMENDMENT NO. 5) REGULATIONS, 2008**

In pursuance of section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 5) Regulations, 2008, made by the Social Security Department on 3<sup>rd</sup> September, 2008, were laid before the States.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (FINANCIAL SERVICES  
BUSINESSES) (BAILIWICK OF GUERNSEY) (AMENDMENT)  
REGULATIONS, 2008**

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, made by the Policy Council on 8<sup>th</sup> September, 2008 were laid before the States.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME)  
(LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS)  
(BAILIWICK OF GUERNSEY) REGULATIONS, 2008**

In pursuance of section 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, made by the Policy Council on 8<sup>th</sup> September, 2008 were laid before the States.

**K H TOUGH**  
Her Majesty's Greffier