



# BILLET D'ÉTAT

WEDNESDAY, 24th MARCH 2010

VI  
2010

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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 **24<sup>th</sup> MARCH 2010**, 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  
5 March 2010

**THE COMPANIES (RECOGNITION OF AUDITORS) ORDINANCE, 2010**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled “The Companies (Recognition of Auditors) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE ALDERNEY eGAMBLING (OPERATIONS IN GUERNSEY)  
(AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Alderney eGambling (Operations in Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE DISCLOSURE (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE DRUG TRAFFICKING (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Drug Trafficking (Bailiwick of Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2010**

The States are asked to decide:-

VI.- Whether they are of the opinion to approve the draft Ordinance entitled “The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

**THE CASH CONTROLS (BAILIWICK OF GUERNSEY) LAW (AMENDMENT OF DEFINITION OF CASH) ORDINANCE, 2010**

The States are asked to decide:-

VII.- Whether they are of the opinion to approve the draft Ordinance entitled “The Cash Controls (Bailiwick of Guernsey) Law (Amendment of Definition of Cash) Ordinance, 2010” and to direct that the same shall have effect as an Ordinance of the States.

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

**NEW DEPUTY CHAIRMAN OF PANEL OF MEMBERS**

VIII.- To elect, in accordance with the provisions of section 4 (2) of the Administrative Decisions (Review) (Guernsey) Law, 1986, a Deputy Chairman of the Panel of Members, who shall be one of the Deans of the Douzaines but who shall not have a seat in the States, to complete the unexpired portion of the term of office of Mr J R Domaille who has ceased to be a Douzenier, that is to the 31<sup>st</sup> May 2010.

**(N.B. The Deans of the Douzaines are Douzeniers R A R Evans, R L Heaume, J E Foster, M A Ozanne, Mrs B J Hervé, N N Duquemin, P I Le Tocq, N M Dorey, S J Bichard and G C Le Mesurier.)**

## HOME DEPARTMENT

### RESTRICTIONS ON HOMOSEXUAL ACTS

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

11<sup>th</sup> January 2010

Dear Sir

#### 1. Executive Summary

The purpose of this States Report is to seek authority from the States to amend the Sexual Offences (Bailiwick of Guernsey) Law 1983. The Home Department is concerned about the inequalities in the legislation governing the age of consent for homosexual acts and related privacy issues and possible breaches of human rights legislation.

#### 2. Advice from Her Majesty's Procureur

The Home Department have asked Her Majesty's Procureur for advice about the current position, human rights issues and whether it would be possible to deal with the homosexual age of consent and related privacy issues in respect of homosexual acts as a separate issue. Her Majesty's Procureur has provided the Department with the following advice:

##### ***“Existing Bailiwick Law***

*The age of consent in relation to heterosexual intercourse other than buggery is set out in the Loi Relative a la Protection des Femmes at des Filles Mineures 1914. Under Article 3 it is illegal for a man to have sexual intercourse with a girl under the age of 16.*

*Buggery is dealt with in the Lois relative á la Sodomie 1929 et 1948, which criminalises all acts of buggery, and acts of indecency between men, in public and in private. This Law was extended to the Bailiwick by the Loi étendant au Bailliage la Loi relative á la Sodomie 1940. This blanket prohibition on buggery was modified by the Sexual Offences (Bailiwick of Guernsey) Law 1983. Under this Law, a homosexual act between males in private, whether buggery or an act of indecency, is not an offence provided that the parties consent and have*

*attained the age of 21. Section 1 (2) of the Law stipulates that homosexual acts which involve more than two persons or which take place in public lavatories are not acts in private. Section 1 of the Sexual Offences (Amendment) (Guernsey) Law, 2000 reduced the age of 21 to the age of 18 in Guernsey, Herm and Jethou.*

*As can be seen therefore, the age of consent for heterosexual acts excluding buggery is 16 whereas the age of consent for buggery between men is 18 in Guernsey, and the definition of private acts imposes some further restrictions on homosexual acts that do not apply to heterosexual acts.*

### ***Human Rights Law***

*The position adopted by the European Court of Human Rights in respect of the regulation of sexual activity is that there should be no discrimination on the grounds of gender or sexual orientation, and that the legal position with regard to consent should be the same for young men and young women, whatever their sexual orientation. Against that background, the only way in which the current position could be defended would be to demonstrate that discrimination in this area is objectively justified. It is clear from the case law that the moral or religious opinions of individuals on these matters cannot amount to objective justification in law. Rather it would have to be demonstrated that the cultural and social mores of Guernsey are sufficiently different from those of the United Kingdom and the rest of Europe to justify a discriminatory approach to the law relating to sexual activity. In my view this would be extremely difficult to establish.*

### ***Legislative Amendments***

*Bailiwick legislation in respect of sexual offences is the subject of an ongoing review, with the aim of introducing new sexual offences legislation that is up to date and comprehensive. It would obviously be preferable to deal with all amendments to the Bailiwick's legislation on sexual offences at the same time in the new legislation. However, because there are various difficult issues relating to sexual offences that have yet to be resolved, it is not currently possible to introduce comprehensive new legislation. My understanding is that the Home Department wishes therefore to put in place changes to the provisions governing the age of consent and related privacy issues in respect of homosexual acts now.*

*This can be done by amending the 1983 Law in its application to Guernsey. It would involve changing the age of consent in sections 1 and 3 as amended from 18 to 16 and repealing section 1 (2).*

*I would recommend this course of action as the most straightforward way to achieve the Home Department's aim of dealing with these issues now."*

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

There should be no resource implications as a consequence of these legislative amendments.

### **4. Law Officers consultation**

The Law Officers support the legislative amendments proposed in this States Report.

### **5. Recommendations**

The Department recommends the States to approve the amendments to the Sexual Offences (Bailiwick of Guernsey) Law 1983, changing the age of consent in section 1 and 3 as amended from 18 to 16 and repealing section 1 (2) as outlined above.

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:-

IX.- Whether, after consideration of the Report dated 11<sup>th</sup> January, 2010, of the Home Department, they are of the opinion:-

1. To approve the amendments to the Sexual Offences (Bailiwick of Guernsey) Law 1983, changing the age of consent in section 1 and 3 as amended from 18 to 16 and repealing section 1 (2) as outlined in 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

### INSURANCE BUSINESS LAW AMENDMENTS

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

27<sup>th</sup> January 2010

Dear Sir

#### **Executive Summary**

Following discussions between the Commerce and Employment Department (“the Department”) and the Guernsey Financial Services Commission (“the Commission”) the Department (“the Department”) proposes amending the *Insurance Business (Bailiwick of Guernsey) Law*, 2002, which is administered by the Commission.

The purpose of the amendments is to make a number of technical amendments to the Law to remove differences between the Insurance Business Law and other laws which are not administered by the Commission that contain compulsory third party insurance provisions. These differences have recently been identified during a review of insurance legislation at the Commission. While not critical the Department considers the amendments to be desirable to ensure that the Insurance Business Law and the other laws which contain compulsory third party insurance provisions are consistent.

#### **Background**

A wide variety of laws in the Bailiwick require persons to hold some form of approved compulsory third party insurance (“the third party laws”) (for example the Road Traffic (Compulsory Third Party Insurance) (Guernsey) Law, 1936). Whilst these laws are not themselves administered by the Commission, some of them require the Commission to specifically approve individual insurers and to maintain a list of such approved insurers.

While there are also some differences between the third party laws, the general approach is that the approved insurers must be either licensed by the Commission under the Insurance Business Law or otherwise exempt from holding such a licence under that Law. Each of the third party laws has minor differences, which means that while the Commission is not responsible for administering the third party laws, the Commission must consider the interaction between each law and the Insurance Business Law when administering its own regulatory regime. The third party laws have been enacted and amended at different times over many years and for a variety of different reasons. As a result there are now inconsistencies of wording between the Insurance Business Law and these various other laws.



A particular issue is the meaning of “exempt insurers” under the Insurance Business Law and how those are defined in the third party laws. The difference in the meaning of “exempt insurer” under the Insurance Business Law and the third party laws results in the Commission having to consider different definitions in applying the Insurance Business Law and approving providers of third party insurance. It is those differences which these amendments will address.

It is noted that this issue affects the administration of third party insurance by a number of relevant authorities in the Bailiwick. It does not affect the validity of insurance policies taken out under these Laws. Nor does it affect the validity of decisions made by the Commission or any other body under the laws containing third party insurance provisions.

### **The Proposed Amendments**

There are a range of options that the Department has considered. The first option is to amend the various third party laws to ensure a consistent definition of “exempt insurer” is applied across all of those laws. The alternative, and preferred, option is to amend the Insurance Business Law to expand the definition of exempt insurer in that Law. This option is the simplest approach as it will remove the inconsistencies between the laws by a single piece of legislation and it will not cause the Commission to change its policy on administering the approval of the providers of compulsory third party insurance. The latter option is both legislatively and administratively expedient as the Insurance Business Law includes a general power for the States to amend it by Ordinance. The Commission supports this course of action.

### **Consultation**

The Law Officers have been consulted and raise no objection to the proposal.

### **Legislation**

An Ordinance will be required to amend the Insurance Business Law.

### **Recommendation**

The Department recommends that the States resolve:

- (a) To approve the recommendations outlined in this Report; and
- (b) To 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:-

X.- Whether, after consideration of the Report dated 27<sup>th</sup> January, 2010, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the recommendations outlined in 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

### LIMITED PARTNERSHIP REVIEW

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

1<sup>st</sup> February 2010

Dear Sir

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

1.1. As part of the ongoing review of Guernsey's commercial laws, the Commerce and Employment Department ("the Department") is proposing a range of amendments to the Limited Partnerships (Guernsey) Law, 1995 ("the Law"). The main purpose of the proposals is to increase the flexibility of Guernsey limited partnerships, introduce innovations designed to maintain Guernsey's competitive advantage, and to ensure the Law remains at the forefront of commercial legislation.

1.2. In summary the main recommendations are as follows:

- Transfer the functions for administering the Law from HM Greffier to the Registrar of Companies.
- Introduce mechanisms to enable formation of limited partnerships on-line similar to that which already occurs in the Companies (Guernsey) Law, 2008 ("the Company Law").
- Align the provisions on names of limited partnerships with those in the Company Law.
- Relax the restriction on limited partnerships adopting legal personality.
- Clarify the protection for limited partners who engage in certain activities with respect to the limited partnership such as participating in an oversight committee.
- Introduce innovations such as limited partnership migrations and conversions, and to introduce "protected cell" limited partnerships.

## **2. Background**

- 2.1. Presently Guernsey has more than 1000 limited partnerships on its register. Generally limited partnerships are used by the investment funds industry as they offer limited liability for investors yet offer the flexibility of partnerships with lower compliance costs than a Company and tax transparency for investors. Under the limited partnership model the general partner is responsible for administering the partnership and taking business decisions. The general partners remain responsible for the debts and liabilities of the partnership. The limited partners enjoy the protection of limited liability as they are “passive investors” who do not participate in the management of the partnership.
- 2.2. Guernsey’s current limited partnership law was introduced in 1995. The Law has been widely used and is generally considered a success. It provides a useful alternative to the Guernsey company and is particularly attractive for investment business.
- 2.3. The Law is presently administered by HM Greffier. However in 2008 when the Company Registry was established HM Greffier appointed the Registrar of Companies as a Deputy Greffier to enable the Registry to administer the Law alongside the Company Law. This allowed the Registry to take over operational responsibility for the files and the administration of the Law. It was always the intention of the Department to transfer the functions for administering the Law to the Company Registry. Because it is necessary to amend the Law to facilitate this transfer, the Department took the opportunity to review the Law as a whole.

## **3. General Provisions for the Transfer of Functions**

- 3.1. The primary need to amend the Law is to transfer the legal responsibility for administering the Law to the Registrar of Companies. In addition further amendments will be necessary to facilitate the transfer and permit the Company Registry to provide an on-line services such as:
  - Introducing a provision permitting the Registrar to hold the register of limited partnerships in an electronic form.
  - Giving the Registrar power to prescribe fees by regulations following consultation with the Commerce and Employment Department.
  - Including a provision to permit the Registrar to issue standard forms and guidance on the register of limited partnerships.
  - Introducing a general power for the Registrar to correct administrative errors in the limited partnership registry minimising the need to use Court proceedings for non-contentious matters wherever possible.

In addition the Department proposes introducing a restriction on who may form limited partnerships. Presently there is no restriction in the Law on who may

form limited partnerships although in practice they are primarily formed by Advocates. In order to ensure consistency with the Company Law it is proposed to introduce a provision restricting who may form limited partnerships similar to that in the Company Law. It is proposed that the Department will also be able to prescribe by regulation those businesses that will be authorised to form limited partnerships.

- 3.2. The Department proposes that only businesses which are regulated or supervised by the Guernsey Financial Services Commission will be permitted to form limited partnerships.

#### **4. Restrictions on the name of a Limited Partnership (Section 5 of the Law)**

- 4.1. It is proposed that the restrictions on the names that can be used by a limited partnership should be relaxed to permit the name of any partner to be included in the name of the limited partnership. Presently section 5 of the Law prevents the name of a limited partner being used as the name (or part of the name) of the limited partnership. The fact that a fund promoter cannot use its name as part of the name of the limited partnership has caused difficulties for fund promoters. Fund promoters are often major investors in a limited partnership and other investors expect the promoter to invest alongside other investors. Permitting the fund promoter to use its name as part of the name of the limited partnership provides comfort to investors that the promoter is investing in the fund and is a helpful marketing tool. No other jurisdiction has a similar restriction to that contained in the Law and there seems to be little, if any, protection afforded to third parties as a result of this restriction.
- 4.2. It is also proposed to make other amendments on limited partnership names to bring the provisions in line with the provisions on names in the Companies Law, in particular:
  - Introducing a provision to prohibit the use of names that contravene the Trade Marks (Bailiwick of Guernsey) Ordinance, 1994.
  - Giving the Registrar the power to require a limited partnership to change its name.
  - Introducing a system of reservation of names.

#### **5. Separate Legal Personalities of Limited Partnerships (Section 9A of the Law)**

- 5.1. It is proposed to include in the Law the ability for a limited partnership to convert between incorporated and unincorporated status during its lifetime. At present a limited partnership can elect separate legal personality at the time of registration on a “once and for all” basis.
- 5.2. The conversion will not change the liability of the limited or general partners. The general partner remains liable for the debts of the limited partnership

regardless of whether the partnership has separate legal personality or not. However for the avoidance of doubt, the Law will ensure that the rights of third parties will not be affected by a decision of the limited partnership to adopt separate legal personality during its life.

## **6. Clarifying the position of Limited Partners (Section 12 of the Law)**

- 6.1. Limited partners who engage in the management of the partnership lose the protection afforded by limited liability. However, there are circumstances where limited partners ought to be able to take a more active role in the partnership without losing the protection of limited liability.
- 6.2. To ensure that limited partners can provide effective oversight of the partnership, and to improve corporate governance generally the Department proposes expanding section 12 of the Law to increase the activities that a limited partner can do without losing the protection of limited liability, for example, by participating in an oversight committee.

## **7. Clarification of the role of General Partners (Section 13 of the Law)**

- 7.1. The general partner is responsible for the ongoing management of the partnership and is liable for the debts of the partnership. In an investment context the general partner is the person who ordinarily makes the investment decisions. There is some uncertainty about whether or not a general partner must contribute to the capital of the partnership. In order to remove this uncertainty it is proposed to amend the Law to ensure that a person may be admitted to a limited partnership as a general partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obliged to make a contribution to the limited partnership.
- 7.2. Where a contribution is made it is also proposed to permit that contribution to be in a form other than capital – for example the service, future service, or a loan commitment.

## **8. Amalgamations for Limited Partnerships**

- 8.1. It is proposed to introduce a new part of the Law permitting the amalgamation and consolidation of limited partnerships. The general process would be as follows:
  - A limited partnership will be able to merge with any other business entity including a company, another limited partnership, or a general partnership.
  - The proposal will need to be approved by a resolution approved by 75% of the partners (both limited and general). To be finalised the application will need to be filed with the Registry and an appropriate filing fee be paid.

## **9. Migrations and Conversions**

- 9.1. The Law will permit migrations of limited partnerships in a process that is similar to that in the Companies Law.
- 9.2. The Companies Law recently introduced a mechanism to permit companies to convert from one type of company to another. It is proposed to introduce a system whereby other entities may convert into limited partnerships, and vice versa. This will permit companies and other entities to convert to limited partnerships through a single statutory process.
- 9.3. Guernsey would be one of the first jurisdictions to offer migrations and conversions of limited partnerships. Again the approval of the Guernsey Financial Services Commission would be required for the migration or conversion of a limited partnership engaged in finance business.

## **10. Protected Cell Limited Partnerships**

- 10.1. It is also proposed to introduce “protected cell” limited partnerships based on Guernsey’s protected cell company legislation. This will allow a limited partnership to create cells into which it can segregate rights, powers, or duties with respect to specified property or obligations of the limited partnership. The provisions also permit each segment to have a separate business or investment objective.
- 10.2. Before the creation of a particular cell of the limited partnership it will be a requirement to file a resolution with the Registrar. The consent of the Guernsey Financial Services Commission will also be required before a protected cell limited partnership could be formed. The Department is currently reviewing the restrictions on the use of PCCs to consider whether they could be used for non-financial services business. To facilitate this the Department would be permitted to relax the restriction by regulation depending on the result of that consultation.

## **11. Other Amendments**

- 11.1. In addition to the above the Department proposes a range of other minor amendments to the Law including:
  - Clarifying that limited partnerships may carry on any lawful business whether or not for profit,
  - Permitting limited partnerships to choose to exist in perpetuity should they so choose,
  - Remove references to the Control of Borrowing Ordinance which has now been repealed,
  - Clarifying language with respect to dissolution of the limited partnership to ensure that the partnership is wound up prior to dissolution,

## **12. Registry Costs**

- 12.1. The Department does not envisage that these proposals will require significant capital investment by the Company Registry. The information technology systems presently used by the Registry are capable of administering the limited partnership registry. The Registrar has advised that these proposals will require some investment in the registry systems however that can be managed within the Registry's present budget and no additional funding will be required.
- 12.2. The Registrar has also advised that the present staffing levels at the Registry are adequate to administer the limited partnership register and no further staff will be required as a result of these proposals.

## **13. Consultation**

- 13.1. HM Greffier has been consulted and fully supports the proposals. The Department is also grateful to HM Greffier for his assistance in permitting the Company Registry to manage the limited partnership register since the introduction of the Company Law.
- 13.2. The Law Officers have been consulted and raise no issue with the proposals.
- 13.3. The Department conducted a consultation exercise with the finance industry. The industry supported the Department's proposals and suggested a number of other potential changes, many of which have been included in this report. The Department also intends to consult with industry on the draft legislation once it has been prepared by the Law Officers.

## **14. Legislation**

- 14.1. A Projet de Loi will be required to amend the Law.

## **15. Recommendation**

- 15.1. The Department recommends that the States resolve:
  - (a) To approve the changes as outlined in this Report; and
  - (b) To 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:-

XI.- Whether, after consideration of the Report dated 1<sup>st</sup> February, 2010, of the Commerce and Employment Department, they are of the opinion:-

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

## **HOME DEPARTMENT**

### **AMENDMENTS TO LEGISLATION GOVERNING DISCLOSURE OF SUSPICION OF MONEY LAUNDERING AND TERRORIST FINANCING**

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

3<sup>rd</sup> February 2010

Dear Sir

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

The purpose of this States Report is to seek authority from the States for a number of amendments to improve both compliance with international standards and the effectiveness of the Bailiwick's legislative regime in respect of disclosure of suspicion of money laundering and countering terrorist financing.

The International Monetary Fund ("IMF") are due to complete an evaluation in May of the Bailiwick's compliance with the recommendations of the Financial Action Task Force. As part of the preparations for that evaluation the Law Officers and the Home Department have been reviewing the legislative regimes in light of developments in the IMF's evaluation process.

#### **2. Proposals from Her Majesty's Comptroller**

Her Majesty's Comptroller has written to the Department in the following terms:

*"In 2007, by way of amendments to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("Terrorism Law") and the enactment of the Disclosure (Bailiwick of Guernsey) Law, 2007 ("Disclosure Law"), the Bailiwick introduced positive obligations to report suspicions of money laundering and terrorist financing. In the course of a recent review of the disclosure regime by members of St James Chambers and representatives of the law enforcement agencies, some amendments to the provisions governing the formalities of disclosure in both Laws have been identified as necessary in order to comply with international standards and good enforcement practice. I advise that these amendments should be effected without delay.*

*The review also highlighted the fact that, because the two Laws provide for protection from claims of breach of confidentiality or a similar duty in respect of*

*disclosures, there is now no need for some of the protective provisions contained in the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995, the Money Laundering (Disclosure of Information) (Alderney) Law, 1998, and the Money Laundering (Disclosure of Information) (Sark) Law, 2001 (collectively referred to as the “Money Laundering Laws”), duplicating that level of protection, to be retained.*

*In the interests of clarity and consistency, I advise that the Money Laundering Laws should be repealed, and that the provisions of those Laws that are not already replicated elsewhere be preserved through making appropriate amendments to the Terrorism Law and the Disclosure Law.*

### ***The Formalities of Disclosure***

*International standards require reports of suspicion to be made to a designated specialist financial intelligence unit. The Bailiwick’s specialist unit is the Financial Intelligence Service (“FIS”), a service jointly staffed by police and customs officers and currently located in the police station. The Terrorism Law and the Disclosure Law provide that the disclosure obligations in those Laws are met by reporting to a police officer in a form prescribed by Home Department regulations. The regulations that the Department has issued state that a disclosure should be made to the FIS. However, concern has been expressed by the law enforcement agencies and by the Financial Services Commission that, on the face of both Laws, a disclosure to any police officer would suffice to fulfil this statutory obligation. Accordingly, this could lead to confusion for members of the public who might believe that they had discharged their obligations by making a disclosure to a police officer who has no connection to, or experience of, financial investigation. This point has even more force in the light of ongoing changes to law enforcement structures which include the relocation of the FIS within the dedicated Financial Investigation Unit of the Customs Service. Therefore it is proposed that the Terrorism Law and the Disclosure Law be amended by inserting a definition of the Financial Investigation Unit and identifying that Unit as the appropriate recipient of all disclosures under the two Laws.*

### ***The Money Laundering Laws***

*The Money Laundering Laws provide that no obligation of secrecy, confidence or similar restriction on disclosure is broken by disclosing any reasonable suspicion or belief to certain named parties that any money or other property is, or is derived from or represents, the proceeds of criminal activity. This overlaps with the protective provisions in the Terrorism Law and the Disclosure Law which specify that disclosures under those Laws do not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise. However, the protection under the Money Laundering Laws is wider in that it also extends to disclosure of any information or document relating to the money or property in question,*

*any transaction concerning it, the parties to any such transaction and any fact or matter upon which any such suspicion or belief is based.*

*In order to ensure that the framework of the Bailiwick's disclosure regime is clear, consistent and comprehensive, I strongly recommend that the Money Laundering Laws should be repealed but that, at the same time, the Terrorism Law and the Disclosure Law be amended to incorporate the wider protective provisions currently set out in the Money Laundering Laws."*

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

There should be no additional Law Enforcement staff or increase to any costs as a consequence of these legislative amendments.

### **4. Consultation**

Prior to the finalisation of HM Comptroller's views expressed above the Guernsey Financial Services Commission consulted the financial sector, and the Law Officers Chambers have taken full account of the comments received as a result of that consultation.

The States of Alderney and Chief Pleas of Sark are content with the amendments to legislation proposed in this Report.

The Law Officers support the legislative amendments proposed in this States Report.

### **5. Recommendations**

The Department recommends the States to approve all of the amendments outlined above to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Disclosure (Bailiwick of Guernsey) Law, 2007 and the repeal of the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995, the Money Laundering (Disclosure of Information) (Alderney) Law, 1998, and the Money Laundering (Disclosure of Information) (Sark) Law, 2001 and direct the preparation of such legislation as may be necessary to give effect to proposals set out in this Report.

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:-

XII.- Whether, after consideration of the Report dated 3<sup>rd</sup> February, 2010, of the Home Department, they are of the opinion:-

1. To approve all of the amendments, outlined in that Report, to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Disclosure (Bailiwick of Guernsey) Law, 2007.
2. To approve the repeal of the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995, the Money Laundering (Disclosure of Information) (Alderney) Law, 1998, and the Money Laundering (Disclosure of Information) (Sark) Law, 2001.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### LIBERATION DAY PUBLIC HOLIDAY 2010

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

16<sup>th</sup> February 2010

Dear Sir

#### **Executive Summary**

On the 30<sup>th</sup> September 2009 the States approved a recommendation from the Commerce and Employment Department that made Monday 10<sup>th</sup> May 2010 a Public Holiday in addition to Sunday 9<sup>th</sup> May. (Billet d'Etat XXIV pages 1828 - 1830).

On 8<sup>th</sup> February 2010 members of Policy Council expressed the view that they believed that May 10<sup>th</sup> 2010 should in fact be an alternative Public Holiday to 9<sup>th</sup> May 2010 and not an additional Public Holiday.

The Department has agreed to the Policy Council's request to present this report seeking States approval that Sunday 9<sup>th</sup> May 2010 should not be designated as a Public Holiday in accordance with the Public Holidays Ordinance, 1994.

#### **Liberation Day 2010**

On the 30<sup>th</sup> September 2009 the States approved a recommendation from the Commerce and Employment Department that made Monday 10<sup>th</sup> May 2010 a Public Holiday, in addition to Sunday 9<sup>th</sup> May, which was already so designated in the Public Holidays Ordinance 1994.

In the States Report (Billet d'Etat XXIV 2009) the Department stated:-

*"It [the Department] recognises,... that in 2010, Liberation Day will celebrate the 65<sup>th</sup> anniversary of Liberation and the 70<sup>th</sup> anniversary of the evacuation of Islanders. It will also fall on a Sunday. Given the significance of the 2010 celebrations, the Department recommends that the States provide by Ordinance that Monday 10<sup>th</sup> May 2010 is a Public Holiday."*

The Department's Report was submitted to the Policy Council in August 2009 and the published Billet d'Etat (Billet d'Etat XXIV) recorded that both the Policy Council and the Treasury and Resources Department had "... *no comment on the proposals.*"

Subsequent to the States' decision, the Public Holidays Ordinance 2009 was made by the Legislation Select Committee on 16<sup>th</sup> December 2009 and laid before the States on 27<sup>th</sup> January 2010.

The wording of the original resolution designated Monday 10<sup>th</sup> May, 2010 as an additional Public Holiday, with "Liberation Day" itself, Sunday the 9<sup>th</sup> May, remaining as a Public Holiday as set out in the Public Holidays Ordinance, 1994.

The Policy Council drew to the Department's attention to the unintended consequence of the States resolution which resulted in there being two Public Holidays, Sunday the 9<sup>th</sup> and Monday 10<sup>th</sup> May 2010 and the impact it would have on the public and private sectors.

This impact is that the contracts of employment of some employees entitle them to an additional day's paid leave ("a day off in lieu...") when "Liberation Day" falls on a Sunday or an enhanced rate of pay if they work on that day; or in some cases both. The unintended consequence of Sunday 9<sup>th</sup> May remaining designated as a Public Holiday is that some employees would retain these contractual entitlements, in addition to the intended Public Holiday on Monday 10<sup>th</sup> May 2010. In the current financial climate, this has significant cost implications on government and unquantifiable and unknown costs on the private sector.

The Department, whilst very cognisant of the significance of the 9<sup>th</sup> May 2010 as the 65<sup>th</sup> Anniversary of Liberation Day, and in no way wishing to undermine its significance, recognises the Policy Council's concerns and therefore seeks States approval that Sunday 9<sup>th</sup> May 2010 should not be designated as a Public Holiday as set out in the Public Holidays Ordinance, 1994.

### **Consultation**

The Department carried out an extensive consultation in respect of Liberation Day Public Holiday arrangements in June and July 2009.

The Department consulted with St James Chambers during the preparation of its States Report in September 2009 and again in respect of this Report.

### **Recommendation**

The Department asks the States, if it is so minded, to:

- (a) approve that Sunday 9<sup>th</sup> May 2010 shall not be a Public Holiday; and

- (b) direct the preparation of the necessary legislation to give effect to the proposal.

Yours faithfully

C S McNulty Bauer  
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:-

XIII.-Whether, after consideration of the Report dated 16<sup>th</sup> February, 2010, of the Commerce and Employment Department, they are of the opinion:-

1. To approve that Sunday 9<sup>th</sup> May 2010 shall not be a Public Holiday.
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 HEALTH SERVICE (BENEFIT) (LIMITED LIST)  
(PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2010**

In pursuance of Section 35 of the Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) Regulations, 2010, made by the Social Security Department on 25<sup>th</sup> January, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations add to the limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners.

**THE LAND PLANNING AND DEVELOPMENT (FEES)  
(AMENDMENT) REGULATIONS, 2010**

In pursuance of Section 89 (4) of the Land Planning and Development (Guernsey) Law, 2005, the Land Planning and Development (Fees) (Amendment) Regulations, 2010, made by the Environment Department on 28<sup>th</sup> January, 2010, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Land Planning and Development (Fees and Commencement) Ordinance, 2008 to change the required fee to accompany an application for planning permission for the placing on land of a moveable structure from £125 for each such structure to £42 for each such structure subject to a maximum of £85 per application.

**THE DATA PROTECTION (BAILIWICK OF GUERNSEY) LAW, 2001  
(COMMENCEMENT) ORDER, 2010**

In pursuance of section 66 (4) of the Data Protection (Bailiwick of Guernsey) Law, 2001, the Data Protection (Bailiwick of Guernsey) Law, 2001 (Commencement) Order, 2010, made by the Home Department on 1<sup>st</sup> February, 2010, is laid before the States.

EXPLANATORY NOTE

This Order brings sections 54(1)(b) and (3) and 56 of the Data Protection (Bailiwick of Guernsey) Law, 2001 into force from 1<sup>st</sup> March 2010 so that from that date the whole of the Law will be in force.

### **THE DATA PROTECTION (CROWN APPOINTMENTS) ORDER, 2010**

In pursuance of section 66 (4) of the Data Protection (Bailiwick of Guernsey) Law, 2001, the Data Protection (Crown Appointments) Order, 2010, made by the Home Department on 1<sup>st</sup> February, 2010, is laid before the States.

#### **EXPLANATORY NOTE**

The Data Protection (Bailiwick of Guernsey) Law, 2001 imposes certain obligations on data controllers to give data subjects information about the processing of their personal data and access to those personal data. By virtue of section 27(2) of that Law, the provisions imposing these obligations are referred to as “the subject information provisions.

This Order exempts from the subject information provisions processing of personal data for the purposes of assessing any person’s suitability for certain offices to which appointments are made by Her Majesty.

### **THE DATA PROTECTION (NOTIFICATION AND NOTIFICATION FEES) (AMENDMENT) REGULATIONS, 2010**

In pursuance of section 66 (4) of the Data Protection (Bailiwick of Guernsey) Law, 2001, the Data Protection (Notification and Notification Fees) (Amendment) Regulations, 2010, made by the Home Department on 1<sup>st</sup> February, 2010, are laid before the States.

#### **EXPLANATORY NOTE:**

These Regulations amend the Data Protection (Notification and Notification Fees) Regulations, 2002 so as to increase the prescribed fee for a notification and for retention on the register, under sections 18(5) and 19(4) of the Data Protection (Bailiwick of Guernsey) Law, 2001, from £35 to £50.

### **THE DATA PROTECTION (REFERENCES TO COMMITTEES OF THE STATES) (MISCELLANEOUS AMENDMENTS) ORDER, 2010**

In pursuance of section 66 (4) of the Data Protection (Bailiwick of Guernsey) Law, 2001, the Data Protection (References to Committees of the States) (Miscellaneous Amendments) Order, 2010, made by the Home Department on 1<sup>st</sup> February, 2010, is laid before the States.

#### **EXPLANATORY NOTE:**

This Order amends various Data Protection orders to substitute references to “committees of the States” for references to “departments of the States and committees of the States of Alderney and the Chief Pleas of Sark” to reflect a similar amendment to the Data Protection (Bailiwick of Guernsey) Law, 2001 under which the Orders are made.