BILLET D'ÉTAT

II
2005

WEDNESDAY, 23rd FEBRUARY, 2005

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2. Commerce and Employment Department – Annual Report and Accounts of the Office of Utility Regulation, p. 129.
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Printed by Guernsey Herald Ltd., Victoria Road, Guernsey.

Price £1.50

B I L L E T D'É T A T

TO THE MEMBERS OF THE STATES OF

THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY,** the **23rd FEBRUARY, 2005,** at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

DE V. G. CAREY
Bailiff and Presiding Officer

The Royal Court House
Guernsey
4th February 2005

TREASURY & RESOURCES DEPARTMENT

THE INCOME TAX (GUERNSEY) (EMPLOYEES TAX INSTALMENT SCHEME) (AMENDMENT) REGULATIONS, 2005

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

7th January 2005

Dear Sir

Executive Summary

The above Regulations, if approved by the States, will allow the Administrator to:

- obtain remittances of tax from employers more frequently than the normal quarterly due dates,
- require that the holder's photograph be imprinted on Exemption Certificates, and
- impose certain other conditions on the issue of such Certificates.

Background

The Employees' Tax Instalment Scheme ("ETI Scheme"), introduced in 1980, requires employers to deduct tax from remuneration paid to employees, and to pass that tax on to the Administrator of Income Tax. It also applies to certain payments made by contractors to labour-only sub-contractors.

The Income Tax (Guernsey) Law 1975 ("the Law"), at section 81A(4), authorises the Department to make regulations enabling the ETI Scheme to be implemented and enforced. Section 81A(5) of the Law, however, provides that such Regulations shall not have effect unless and until approved by a Resolution of the States.

The purpose of this Report, therefore, is to seek States approval in respect of several changes which the Department feels it necessary to make to the existing Regulations, in order to improve the efficiency of the ETI Scheme.

Detailed Proposals

A copy of the Guernsey Statutory Instrument, to be cited as The Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2005, is attached to this Report, and its provisions may be summarised as follows:-

(a) Paragraph 2 deals with the remittance of tax to the Administrator. In normal circumstances, this is due quarterly, by the 15 January, 15 April, 15 July and 15 October each year. The Administrator now seeks the power to enable him, where he thinks it appropriate, to obtain payment from employers at more frequent intervals, such as weekly or monthly. The need for this might arise where an employer has a poor record of compliance with his income tax obligations, or where the employer has only a temporary presence in Guernsey. In these circumstances, collection of the tax from the employer might be prejudiced if the current normal quarterly date is adhered to.

(b) In addition to payments to employees, the ETI Scheme also applies to payments made by contractors to labour-only sub-contractors. The Administrator will, subject to certain conditions, issue an ETI Exemption Certificate (commonly known as a "Gold Card") to a subcontractor who supplies the labour of others in addition to his own (a "gang leader"). This Certificate exempts the gang leader from the effects of the ETI Scheme when he receives payments, on condition that he operates the ETI Scheme on consequent payments he makes to the members of his gang. To reduce the risk of misuse, the Administrator feels it is appropriate to require that the gang leader's photograph be imprinted on the Certificate (in the same way as a photograph is required on a driving licence) and paragraph 3 of the Regulations would give him the power to do this.

(c) Similarly, and again as part of the ETI Exemption Certificate system, paragraph 4 of the Regulations will enable the Administrator to impose conditions on the issue, or continued validity of, the Certificate and to reduce the period of validity or to cancel it as appropriate.

Recommendation

Treasury and Resources Department recommends the States approve the Regulations as made.

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

Yours faithfully

L S Trott
Minister

GUERNSEY STATUTORY INSTRUMENT

2005 No. 1

The Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2005

Made	*7th January, 2005*
Approved by the States	*23rd February, 2005*
Coming into operation	*23rd February, 2005*

THE TREASURY AND RESOURCES DEPARTMENT, in exercise of the powers conferred upon it by section 81A(4) of the Income Tax (Guernsey) Law, 1975[1], as amended, and all other powers enabling it in that behalf, hereby makes the following regulations:-

Amendment of 2001 regulations.

1. The Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2001[2] are amended as follows.

2. After regulation 10(2) add the following paragraphs -

---

[1] Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; and No's. XII and XVI of 2004.

[2] G.S.I. No. 40 of 2001.

"(3) The Administrator may, if he considers that to do so would be in the interests of efficient tax collection, require tax deducted to be paid to him at more frequent intervals than those prescribed in paragraph (1).

(4) A payment made by an employer pursuant to a requirement under paragraph (3) shall, if the Administrator so requires, be accompanied by a list of the employees from whose emoluments the tax has been deducted and the tax deduction form for the period in question relating to each of his employees, whether or not any tax has been deducted or was deductible from the emoluments of that employee.".

3. After regulation 12(3)(b) add the following subparagraph -

"and (c) whether on an application for an ETI exemption certificate or on an application for the renewal of an ETI exemption certificate previously granted, appears in person and has his photograph taken by or on behalf of the Administrator, an impression of which photograph shall be printed on the ETI exemption certificate.".

4. After regulation 12(5) add the following paragraph -

"(6) In relation to an E.T.I. exemption certificate, the Administrator may, if he considers that to do so would be in the interests of efficient tax collection, and without prejudice to any other provision of these regulations -

(a) attach conditions to the issue or continued validity of the certificate, including conditions requiring tax deducted to be paid to him at more frequent intervals than those prescribed in regulation 10(1),

(b) reduce or extend a certificate's period of validity, and

(c) cancel a certificate and, if he thinks fit, publish a notice to that effect in *La Gazette Officielle*.".

Citation and commencement.

5. These Regulations may be cited as the Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2005 and shall come into force on the 23rd February, 2005.

Dated this 7th January, 2005

DEPUTY L.S. TROTT
Minister of the Treasury and Resources Department
For and on behalf of the Department

EXPLANATORY NOTE

(*This note is not part of the regulations*)

These regulations amend the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2001 by empowering the Administrator to require tax deducted by employers to be paid to him at more frequent intervals than the quarterly intervals prescribed in regulation 10(1); by requiring an applicant for an ETI exemption certificate to have his photograph taken and printed on the certificate; and by enabling the Administrator to attach conditions to ETI exemption certificates, to reduce or extend a certificate's period of validity, and to cancel a certificate.

(NB The Policy Council supports the proposals)

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 7th January, 2005, of the Treasury and Resources Department, they are of the opinion:-

In pursuance of the provisions of subsection (5) of section 81A of the Income Tax (Guernsey) Law, 1975, as amended, to approve the Regulations entitled "The Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2005" made by the Treasury and Resources Department on the 7th January, 2005.

COMMERCE AND EMPLOYMENT DEPARTMENT

ANNUAL REPORT AND ACCOUNTS OF THE
OFFICE OF UTILITY REGULATION

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

21st December 2004

Dear Sir

Executive Summary

1. The Commerce and Employment Department has resubmitted the Annual Report and Accounts of the Office of Utility Regulation (OUR) for 2003 as an appendix to this States Report rather than as an Appendix of the Billet d'État for noting, as has been the norm in the past. This is in response to a request from Deputy Bell during the October States meeting for the rules of the States of Guernsey to be suspended so that the House could debate the OUR Annual Report and Accounts.

2. In this report the Department has addressed some issues that it believes the House might wish to discuss, since no formal correspondence has been received on the matter of the OUR Report and Accounts, and therefore, it is particularly difficult for the Department to be certain that it has covered all of the issues that gave rise to the request.

Background

3. Before dealing with the Annual Report of the Director General, I would like to remind the States that:

   a) The rules of the House allow that the States may, by Resolution, suspend the rules of procedure that have been laid down by Resolution.

   b) Precedent has been that the rules are only suspended with serious reason and on critical issues. This is in order to ensure orderly debate and good use of States time.

c) The normal route to initiate a debate on an Appendix would be to lay a Requête before the States – an option which has not been exhausted.

d) It is also normal practice when seeking a debate to set out a proposition to be debated rather than just call for a general debate – but in this case no such proposition was presented.

4. Whilst the Department agreed to resubmit the report for reason of openness and transparency, it is firmly of the view that it is unnecessary to promote the report for debate. There are other clear channels of communication, which are open to members if they believe that any aspect of the work of the office needs further scrutiny.

5. The OUR Annual Report and Accounts has been in the public domain since the Billet was published in October. Prior to the States meeting, no States member indicated a desire for a debate although ample time existed to do so within the rules of the House.

6. No formal approach was made to the Commerce and Employment Department seeking a discussion on the report and accounts – which is something the Department would have welcomed as it is keen to engage with those who have concerns or seek clarification.

7. The Regulator has previously stated that she would be happy to have such discussions with any States member about the report or anything related to it but again this option does not appear to have been exhausted.

8. While the purpose of the Report is to provide the States with an opportunity to debate the OUR Annual Report and Accounts for 2003, it does raise the procedural issues referred to above. It is not the role of the Commerce and Employment Department to lead such a debate but it will be raising the matter with the House Committee.

Scrutiny

9. The report has already been scrutinised by a number of Political Bodies:

a) The Director General of the OUR met with the Board of Commerce and Employment on two separate occasions, 26 June and 10 August and presented the information in the report and accounts as well as answering questions that the Board put to her in a full and open manner;

b) The Director General also met with the Public Accounts Committee on 13 November and gave them a full presentation on her Office, the report and accounts and, once again, was pleased to answer any questions about the report and accounts;

c) The Regulator has also told the Board of Commerce and Employment and the Public Accounts Committee that she would be pleased to meet with or answer questions from the Deputies on those Boards' or any other Deputies who want to discuss any issues related to the OUR.

10. A popular question often raised through the media is "Who regulates the Regulator?" The Department hopes that these facts above will give comfort to States members but if further assurance is required then it should also be noted that the Commerce and Employment Department is also mandated to bring to the States recommendations for "States Direction" which lay down clear instructions for the Regulator.

Joint Review of Commercialisation

11. At the September meeting of the States the Minister of Treasury and Resources announced a review of the commercialisation process to be undertaken jointly with the Commerce and Employment Department. This review, which will also examine the impact of Regulation, will begin in earnest early in 2005 and will provide States members with an opportunity to raise matters of concern.

Specific issues raised by the report

12. There are specific issues within the report that Commerce and Employment Department have reviewed in greater detail. Below are some of those which merit further explanation:

OUR made a Loss of £100,000 in 2003

i) The annual report makes it very clear that the loss in 2003 was as a direct result of litigation taken against the OUR by Cable & Wireless Guernsey Ltd. This issue was highlighted in the Department's original covering letter submitted to the States in October. The high cost of the Utility Appeals Tribunal is an issue that is under active discussion with Her Majesty's Procurer and it is envisaged that, subject to States approval, the appeals structure and procedures will be streamlined to provide better value for money. This matter should be referred to the States for discussion in 2005.

High legal fees

ii) The legal costs in the accounts reflect the need for specialist legal advice required in defending the Appeal to the Tribunal by Cable and Wireless on a decision by the OUR on interconnection and access. This was the first appeal and the Tribunal required detailed legal submissions which the OUR, as the public body, had to meet. The level of detail and subsequent cost to the parties is an area that will be addressed in any new Appeals structure.

Staff costs went up by 16%

iii) The OUR employed five staff during the whole of 2003. In the previous year it did not have the full staff compliment for the full year. Accordingly, costs increased – by around £40,000.

Consultants Costs

iv) The Annual Report lists the consultants that the OUR employed during the year. The total consultancy costs went down by around £300,000 (approximately 40% of the previous years costs). This reduction is largely due to that skill base that now exists within the office of the OUR and as a consequence of the regulatory framework maturing.

Future Costs and Licence Fees

v) The OUR has been required to increase licence fees for telecommunications in 2004 and for post from 2005. The increase was required primarily to cover the litigation mentioned earlier. Full details of the fees have been published on the OUR website (www.regutil.gg) in order to ensure that this information is totally transparent. The fees are set for a period of three years and the regulator has assured the Board that with the exception of the litigation costs (of which the approval process is under review) all other expenditure is fully on target.

Achievements

vi) Whilst the Commerce and Employment Department have examined the costs of the OUR, it is important not to lose sight of what has been achieved in a relatively short space of time. The OUR's annual reports contain detail on the achievements ranging from the introduction of competition, controlling prices, preserving and improving quality and facilitating choice and innovation.

Below are some of the measures that have been taken by the OUR on behalf of local consumers:

a) In September 2002, on the launch of broadband ADSL services in Guernsey, the OUR carried out an investigation and broadband prices fell with residential customers benefiting from reductions in the order of 33%;

b) In June 2003 the OUR investigated proposed price changes for calls from fixed lines, leading to significantly larger decreases in a range of call charges; prices for peak calls to the UK rates fell

by 33% instead of the original 16% proposed, and calls to Jersey fell by 25% instead of the original 9%;

c) In March 2003 electricity prices were frozen in Guernsey and these have remained static notwithstanding inflation, representing real decreases in prices to customers;

d) Also in March 2003, following an in depth investigation, the OUR required Guernsey Post to provide a discounted mail service for post during December 2003 to compensate customers for service failures;

e) In March 2004, following an examination of Guernsey Post's application for price increases, OUR restricted many of the proposed price increases, including prices for local stamps and prices to bulk mailers;

f) Also in March 2004 customers benefited from the introduction of a pence-per-minute rate for local calls of 1.7p per minute – this compares to the flat rate charge of 6p and has the potential to represent a major saving for customers who make calls of a short duration.

Recommendations

13. The Commerce and Employment Department recommends the States to:

a) Accept the Annual Report and Accounts of the Office of Utility Regulation;

b) Note that the Treasury and Resources and Commerce and Employment Departments' joint review of commercialisation will provide a forum for debate on issues surrounding utility regulation; and

c) Note the intention of the Department to recommend to the States changes to the Utilities Appeal Tribunal

Yours faithfully

Stuart Falla
Minister

OUR
OFFICE OF UTILITY REGULATION

Office of Utility Regulation, Bailiwick of Guernsey

Annual Report and Accounts 2003

Year Ending 31st December 2003

Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
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Deputy Stuart Falla
Minister for Commerce and Employment
Raymond Falla House
Longue Rue
St Martins
Guernsey
GY4 6AF

12th July, 2004

Dear Deputy Falla,

I am pleased to submit this report on the activities of the Office of Utility Regulation for the period 1st January 2003 to 31st December 2003.

In accordance with section 8 of the Regulation (Bailiwick of Guernsey) Law, 2001, I would be grateful if you would present this report to the States of Guernsey as soon as practicable.

Yours sincerely,

Regina Finn

Director General of Utility Regulation

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Annual Report: 2003

"Change is the law of life.
And those who look only to
the past or present are certain
to miss the future"

-John F. Kennedy

Director General's Report

2003 was the second full year of operation of the OUR and saw a number of exciting developments that represent real progress in the utility sectors. The short and long term interests of consumers remained at the top of the OUR's agenda and informed the extensive work programme during the year.

The achievements of the OUR in 2003 can be attributed to the dedication, professionalism and hard work of the small team of four people in the Office. By meeting consistently high and demanding standards they have safeguarded the interests of Guernsey's economy, now and in the longer term.

In the **telecommunications sector**, competitive markets moved closer to being a reality with the removal of the last legal monopoly held by Cable & Wireless Guernsey in the mobile sector. In March 2003 Wave Telecom Ltd was granted licences to provide mobile telecommunications networks and services in the Bailiwick, including services using new 3G technology.

Guernsey is now poised to reap the benefits of competition in this key market segment when the new network goes live in 2004.

At the same time the new players in the fixed telecoms market— Wave Telecom and Newtel—started to put in place their service offerings, concentrating initially on business users. Towards the end of the year Wave Telecom announced its intention to launch competitive call services to residential users using carrier selection, bringing choice to that segment of the market.

Unfortunately, valuable time and resources in the telecoms sector were diverted during the year to deal with time consuming and costly litigation against the OUR and this impacted on the pace of developments in the telecoms sector, leading to a rescheduling of some key projects.

In March, **electricity** prices to customers were frozen to allow a window for a detailed examination of Guernsey's options for sourcing electricity in the future.

At the same time the high quality of customer standards met by Guernsey Electricity Ltd were reviewed and tightened further, and compensation for failure to meet targets was extended across all guaranteed service standards.

The Guernsey **postal service** started the year on a difficult note, with significant quality of service problems over Christmas 2002 and New Year 2003, but ended the year in a better position with the restoration and improvement of quality standards for Christmas 2003.

The OUR set new quality of service standards for all key mail streams and Guernsey Post Ltd put in place a programme for measuring and publishing its performance against these. The company submitted an application for tariff increases in November which would be decided on in 2004.

Director General's Report

In all three sectors key players consolidated and had the opportunity to focus attention on their customers' needs. But one thing is very clear; this is just the beginning of the process of adapting and adjusting to meet Guernsey's needs.

We are all familiar with the truism, things that do not change, die. The work of the OUR—described in detail in this report—has been designed to ensure that the changes that are happening globally are matched by changes in the essential utility sectors in Guernsey.

Change is essential if Guernsey is to continue to thrive and it is important not to become complacent. We have only laid the foundations and Guernsey's utility sectors must run very hard, just to stay in the one spot in terms of global standards. But exceeding those global standards is not an idle dream for Guernsey and it is something worth aiming for.

Regina Finn
Director General of Utility Regulation

The Year in Brief

January 2003

OUR publishes information note on investigation into postal quality of service in Guernsey; Consultation launched on postal quality of service (QoS) targets; Publication of notice of proposal to modify electricity licences to meet requirements of States Directions.

February 2003

Electricity licences modified to meet States Directions.

March 2003

Conclusion of OUR investigation into postal service failures over Christmas 2002; Report and detailed Directions issued to Guernsey Post Limited; OUR freezes electricity prices until 2005.

April 2003

OUR publishes finding in dispute with GPL over closure of Arcade Post Office; consultation on corporate number ranges launched; Mobile (2G and 3G) licences in Guernsey awarded to Wave Telecom Ltd come into force.

May 2003

OUR report on postal quality of service published along with decision to impose QoS targets for key mail streams in and out of Guernsey.

June 2003

New technology opportunities highlighted—OUR publishes information notes on Broadband Fixed Wireless Access licences and ENUM opportunities. Review of C&W price changes concluded; First sitting of Utility Appeals Tribunal in appeal taken by C&WG against an OUR decision.

July 2003

OUR proposes to direct C&WG to produce and publish separated accounts by specified deadlines; Proposal to direct C&WG to comply with disputed direction to include leased lines in RO published.

August 2003

C&WG directed to produce 2001 and 2002/3 separated accounts; Hearing of application for stay of OUR decision on leased lines–stay granted on basis of undertaken given by C&WG to reimburse new entrants as appropriate.

Review of C&WG Reference Offer—consultation document published on future priorities; Update on Guernsey Post Ltd's compliance with Directions; Quality of Service Targets for letter mail and customer service measures incorporated into postal licence.

September 2003

OUR consults on publication of Guernsey Electricity Ltd's separated accounts; Consultation on licensing of internet access in Guernsey launched; Consultation on quality of electricity services published.

October 2003

OUR directs C&WG to publish detailed separated accounts; Finding in Postal Dispute on insurance of parcels is published.

November 2003

Report on Reference Offer for Interconnection and Access published; OUR consults on and decides to apply the Code for access to Land and Property to Wave Telecom's mobile licenses; Guernsey Post announces proposed tariff increases—OUR publishes consultation; Utility Appeals Tribunal hears appeal by C&WG against OUR decision.

December 2003

OUR amends Direction to C&WG on publication of Regulatory Accounts—revised accounts published by C&WG; C&WG directed to reduce charges to other licensees for interconnection and access; GEL required to publish Regulatory Accounts; QoS targets for electricity tightened.

"It is important to recognise that the regulator – whether an individual or a board – has legitimacy from only two sources: first is the statute which confers powers and duties on the regulator; and second is the professionalism, openness and fairness with which the regulator discharges those duties and exercises these powers."

-Speech given by Callum McCarthy, Ofgem 2003

The Guernsey Regulatory Environment

The States of Guernsey set up the regulatory framework for telecommunications, post and electricity in various Laws and Orders that were made in 2001 and 2002. The States has also issued a number of Directions to the Director General of Utility Regulation that develop States policy in more detail. The OUR which was established in 2001, is charged with implementing that policy and regulating in the best interests of the Bailiwick.

Legislation

The principal piece of regulatory legislation is the **Regulation of Utilities (Bailiwick of Guernsey) Law, 2001** which establishes the Office of Utility Regulation (OUR), sets out the governing principles of the Office, and allows the States to assign further functions to the Office over time. Three other key laws are:

- The Telecommunications (Bailiwick of Guernsey) Law, 2001;
- The Post Office (Bailiwick of Guernsey) Law, 2001; and
- The Electricity (Guernsey) Law, 2001.

Each law sets out in more detail the powers and functions of the Director General in the relevant sector. Secondary legislation has been enacted by the States on a number of issues including commencement ordinances for each of the laws, exclusion of liability ordinance and the Utility Appeals Tribunal Ordinance which sets up an appeals mechanism for decisions of the OUR.

Where empowered to do so the Director General has also introduced regulations and orders and these, along with directions, decisions and the large body of published documentation on the OUR website, record the implementation of the legislative and policy framework for regulation of utilities in Guernsey.

Texts of all relevant legislation are available from the OUR website at **www.regutil.gg**

States Directions

The Regulation Law provides that the States of Guernsey may give **States Directions** to the Director General on certain specific issues in each of the sectors. These include directions on:

- The identity of the **first licensee** in each sector to be granted a licence with a universal service obligation;
- The scope of a **universal service** or minimum level of service that all customers in the Bailiwick must receive;
- Any special or **exclusive rights** that should be granted to any licensee in any of the sectors; and
- Any requirements on licensees that might be needed for Guernsey to comply with any of its **international obligations**.

The Guernsey Regulatory Environment

The States debated and agreed policy directions in relation to all three sectors in 2001. In response to a request from the States of Guernsey, the OUR provided a detailed report on the electricity sector so that the States could consider and decide on further policy directions in 2003 in relation to electricity.

The full text of the directions that were in place in 2003 is included in **Annex A** to this report in accordance with section 8 of the Regulation Law.

The Office of Utility Regulation

The OUR was set up in October 2001 to regulate the three sectors of electricity, post and telecommunications independently from government and the players in the market, and in line with States policy and the provisions in the Laws. The Regulatory Laws require the Director General to be independent, fair and impartial, in carrying out her functions and to do so in a manner that is timely, transparent and objective and consistent with States policy directions.

OUR Team

OUR is located in its own separate offices in Hirzel Court in St Peter Port and, although small, continues to be independently run and staffed with its own computer network, telephone system and services.

During 2003 the Office had four core staff in addition to the Director General and continued its use of external specialist technical expertise to complement in-house resources and to handle specific projects.

Regina Finn

Appointed by the States of Guernsey as Director General of Utility Regulation in October 2001, Regina has led and managed the independent OUR in the formative years of utility regulation in Guernsey, regulating the telecommunications, post and electricity sectors.

Regina spent the previous year working as an adviser to the States in the establishment of the regulatory framework for utility sectors and setting up the OUR. Before moving to Guernsey, Regina was Head of Market Operations and Deputy Director of the telecommunications regulator in Ireland and has spent over ten years in the regulation of communications sectors.

Jon Buckland

Jon joined the OUR in October 2001 shortly after it was established. Jon has lead responsibility for the regulatory work programme in the postal sector, developing quality of service standards and setting postal price controls. He also supports OUR's projects in the telecoms and electricity sectors.

Prior to joining OUR, Jon was a Strategy and Economics Manager at the Independent Television Commission (ITC) and previously he worked for a number of consultancies specialising in environmental economics primarily in the water sector advising water companies, Ofwat, Environment Agency, European Commission, EBRD and the World Bank. Jon has a BSc in Economics and Politics from the University of Bath and is currently completing his MBA with the University of Warwick.

The Office of Utility Regulation

John Curran

John worked with OUR when it was initially set up in 2001 and returned in April 2003 after spending eight months as regulatory adviser with the Australian telecoms incumbent, Telstra.

John has a strong background in telecommunications regulation and leads on key telecoms projects in OUR ranging from interconnection, licensing and dispute resolution to key international contacts. He also contributes, with the rest of the team to the postal and electricity projects.

Before joining OUR John worked for six years in communications regulation in Ireland, four in telecommunications and two dealing with broadcasting and cable TV. He started his career in the Irish Civil Service having studied Electronic Engineering at Galway Institute of Technology.

Sean McComish

Sean joined OUR in October 2001 and has worked on key economic projects particularly in the electricity and telecommunications sectors. As well as taking the lead in the development of the strategic review of electricity policy, he also plays a key role in the economic analysis underpinning OUR's price control regime, as well as economic issues in relation to competition analysis.

Before joining the OUR he worked for two years at the Independent Television Commission (ITC) as a Strategy and Economics Manager, specialising in the economics associated with licence valuation and competition law. Sean holds an honours and masters degree in Economics, as well as postgraduate qualifications in Competition Law, and is currently studying for his MBA with the University of Warwick.

Nicola Whittaker

Nicola became part of the OUR team in May 2002 and since then has managed the small Office and provided support to all the team assisting with projects across all sectors.

Nicola also manages all communications with the media, and as Customer Care Manager, is responsible for responding to and investigating complaints against OUR Licensees.

Before joining the OUR Nicola worked as an Environmental Consultant and holds a degree in Environmental Management and Technology.

It is OUR policy to operate with a small core team of **professional staff** and bring in short term, expert resources as needed to meet the objectives and work programme of the Office. This ensures that the Office works efficiently and effectively and keeps its skills and expertise up to date with knowledge transfer from experts in their fields.

During 2003, the following consultants and **external specialists** worked with the OUR on a range of specific projects, as well as in providing general support for the OUR work programme:

- **322 Consulting** and **Jay Lakshman** worked as part of the OUR team on key telecommunication work items including interconnection, pricing and service levels.
- **Andersen Management International** (AMI) were engaged in 2002 and continued to work in 2003 on the evaluation and award of 2G and 3G mobile telecommunications licences in Guernsey.
- **Brockley Consulting Ltd** provided assistance in the review of Guernsey Post Ltd's application for tariff increases.
- **Design & Implement Ltd** continued to support the OUR work in the electricity sector during the year.
- **GOS Consulting Ltd** advised on a wide range of telecommunication projects including interconnections, Reference Offer review, regulatory accounts and others.
- **Mott MacDonald** were engaged by the Board of Industry and OUR to assist in the strategic review of Guernsey's electricity sector.
- OUR's legal advice during 2003 was provided by **Babbe Le Pelley Tostevin** and **Landwell Solicitors**.

The input and support of the OUR's wide network of experts was fundamental in achieving the Offices' objectives during the year.

OUR Communication

OUR operates in a transparent and open way, and seeks to consult with as wide a range of stakeholders as possible on all key decisions. The OUR website (**www.regutil.gg**) is heavily used as a means of communicating with the operators within the regulated industries and with interested members of the public on a fair and open basis. All consultation documents are published on the site as well as being made available in hard copy on request, and responses, where not confidential, are also made available. OUR publishes all decisions with reasons and a commentary on the views received.

The Office of Utility Regulation

The website has continued to be invaluable and an efficient method of conducting public consultations and disseminating information with **40 papers** published in 2003. A full list of all the documents published in 2003 is at **Annex B**.

The Director General and OUR staff also held public meetings and presentations during the year, principally in the postal sector, as well as speaking to various interest groups including, GSCCA, GILA and Chambers of Commerce.

The Director General and her staff also met and had discussions with a wide range of individuals and companies that are interested in or affected by the regulatory regime and OUR continues to be pleased to have an ongoing open communication process.

Contacts continued to be strong with UK regulators who have a major influence over matters relating to telephone numbers and frequency spectrum in the Bailiwick, as well as regulators and policy makers in a wide range of other jurisdictions.

OUR Work Programme

The OUR publishes its indicative work programme on its website and updates this regularly. However the Office also has to be able to react to specific issues that may arise and have a high priority for consumers or the market and the work programme is therefore flexible and can be adjusted as necessary.

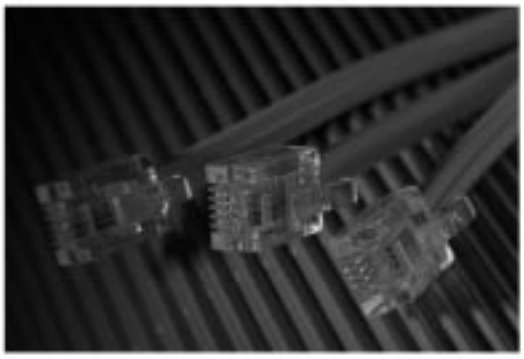
During 2003, the OUR work programme was affected by a case taken against the Office by Cable & Wireless Guernsey Ltd. The case was initially lodged in July 2002 and was heard during 2003 with the final decision due to be published early in 2004. Throughout 2003 a considerable amount of time had to be spent by the small team in managing and defending the case. As a result of this the OUR work programme saw some slippage.

In addition, the legal costs of the case were considerable in 2003, using up all reserves and diverting resources from other planned projects. The work programme and budget of OUR along with licence fees for the period 2004-2006 were revised in 2004 to take this into account.

Telecommunications: Overview

The Global Telecoms Market

Following the turmoil of 2002, which saw a host of high profile global telecoms companies seek Chapter 11 protection in the US, 2003 was marked by signs that things might be starting to improve in the global telecoms market. In January 2003, NTL announced that it had completed its restructuring while in December **Global Crossing** – the first major casualty of the telecoms bust – announced that it too had completed its turnaround. In October the US Courts cleared MCI's (formerly MCI Worldcom) restructuring plan which cleared the way for the company to emerge from Chapter 11 in 2004.



There were other signs that telecoms market may have turned a corner with the big European players showing encouraging evidence of recovery. **Duestche Telecom** announced that it had returned to profitability, driven by its mobile business. In November 2003 BT announced a 26% increase in profits for the 6 months to September 2003, reflecting the fact that incumbents have remained particularly resilient during the downturn. A major focus for all telecoms companies in 2003 was debt reduction. Cable & Wireless, the parent of Cable & Wireless Guernsey Ltd, exited the US market and refocused its remaining businesses throughout the world.

Mobile business remained strong with most operators consolidating their customer bases, particular in the high penetration markets, and focus turning to measures to increase ARPU (average revenue per user). The main UK mobile operators, Vodafone, O2 and T-Mobile all announced increased revenue, profit figures and subscriber numbers, though growth was at lower levels than previous years. Not surprisingly all mobile players have sought to expand on the massive success of SMS with the introduction of **picture messaging**, **polyphonic ringtones** and other consumer driven services. It is estimated that in 2003 over 20 billion text messages were sent over the 4 UK networks, a 25% increase on 2002, with 111 million text messages sent on New Years Day 2004 alone.

On the legislative side, the main development was the coming into force of new European Directives covering the communications market. Six new directives have now replaced the 20-odd directives that existed before July 2003. The focus has shifted away from the traditional telecommunications market to the electronic communications market which embraces converging technologies and includes the rapidly growing IP and data sectors.

In the UK, the new regulatory body for the communication market, Ofcom, took over the roles of the five separate regulatory agencies that existed prior to 29 December 2003, including Oftel, ITC and the Radiocommunications Agency.

Telecommunications: Overview

The Guernsey Telecoms Market

2003 saw the final piece of the liberalisation jigsaw being put in place in the Guernsey telecommunications market, with the licensing of a second operator to provide mobile networks and services. In March 2003, following a competitive tender process, **Wave Telecom** was issued with licences to provide both 2G and 3G services and is the only licensee in the Bailiwick to hold licences for both technologies. With this step, all segments of the Guernsey telecoms market are open to competitive entry.

The year also saw the first hearing of an appeal against a decision of the OUR before the **Utility Appeals Tribunal** in October 2003. The appeal, brought by Cable & Wireless Guernsey against a decision of the OUR in relation to the development of the interconnect regime, was heard over two days with both Wave Telecom and **Newtel Solutions** joined as interveners. A decision was expected early in 2004.

Cable & Wireless Guernsey published its first set of Regulatory Accounts in October 2003 – the first time such accounting information has been made publicly available from any of the utility companies in Guernsey. The accounts, covering financial years 2001 and 2002/03, were published following lengthy delays and after a formal Direction from the OUR.

2003 also saw significant changes to the Directory Enquiry service market in the UK with the introduction of several new Directory Service providers in September 2003. As a result new services also became available in the Bailiwick although by the end of 2003 this had been limited due to constraints on the Cable & Wireless Guernsey network. However these will be removed early in 2004 with the result that Bailiwick users will have access to a much wider range of service providers.

Price changes to be introduced by **Cable & Wireless Guernsey** in July 2003 including increases in charges for local calls and line rentals and decreases in calls to the UK and internationally, resulted in the OUR undertaking an investigation of the possible impact the changes may have on the company's price control compliance. Following the initiation of the investigation Cable & Wireless Guernsey announced further changes resulting in significant drops in the costs of national and international calls.

www.wavetelecom.com

www.newtelsolutions.com

www.cwguernsey.com

www.utilityappeals.org.gg

Telecommunications: Activity Report

Introduction

2003 was a significant year for the OUR and the telecoms market in the Bailiwick and was marked by a series of firsts. It saw the completion by the Office of the liberalisation of the entire telecoms market with the opening to competition of the mobile market and the award of the **first 3G licence in the Channel Islands**.

The first set of **Regulatory Accounts** by any of the licensed utilities were published when Cable & Wireless Guernsey made its regulatory accounts for 2002/03 available on its website.

There was also the first hearing by the Utility Appeals Tribunal of an **appeal** against a decision of the OUR. The appeal, taken by Cable & Wireless Guernsey in July 2002, was heard in October 2003 before a three person tribunal.

The OUR continued its work on the core work areas such as the development of the interconnection and access regimes and the ongoing monitoring of Cable & Wireless Guernsey's compliance with its price control requirements. To enable it to carry out work in the areas of numbering and frequency spectrum, the OUR continued to maintain a close working relationship with **Oftel** and the **Radiocommunications Agency** in the UK (both of which became part Ofcom in December 2003).

Fixed Telecoms Market

With the fixed telecoms market fully opened to competition the OUR concentrated on creating an environment to enable the development of that competition and to **facilitate innovation** by new and existing licensees.

Consultations were held on a number of new initiatives being considered in other markets. These included developments in Corporate Numbering that were considered by Oftel in April 2003 (**OUR 03/11**) and ENUM (Electronic Numbering) – a new numbering scheme being considered and trialled that can allow an individual to be contacted using only one set of contact details, but using any of several different communications devices (**OUR 03/16**).

In September 2003 the Office consulted on whether to consider a separate licensing scheme for ISPs that are solely involved in such services with a view to facilitating the development of that segment of the market while taking into account rapid technological developments such as the spread of voice over IP (**OUR 03/27**).

In June the OUR also announced the availability of licences for Broadband Fixed Wireless Access in Guernsey (**OUR 03/14**). The licences, which are awarded by the Radiocommunications Agency in the UK (now Ofcom), allow for the construction of a wireless network which companies could use to make the "last-mile" connections between users' premises and a telecommunications network without using the incumbent fixed network.

Telecommunications: Activity Report

Mobile Telecommunications Licensing

A competition for mobile licences had been launched at the end of 2002 and the first quarter of 2003 was taken up with examining an application by **Wave Telecom** for licences for both 2G and 3G mobile services. The Director General, with the assistance of Anderson Management International (AMI), concluded her review of the application in March 2003 and awarded Wave Telecom both a 2G and a 3G mobile license.

The award of the 3G licence represents the **first 3G mobile licence** awarded in the Bailiwick and the Channel Islands and marks the final stage of the liberalisation of the Guernsey telecoms market that commenced in October 2001. Now all sectors of the telecoms market are open to competitive market entry. By the end of 2003 Wave Telecom had commenced the construction and roll-out of its network with services due to be launched in the 2nd Quarter of 2004.

Third-generation protocols in mobile telephony support much higher data rates, measured in Mbits/second, intended for applications other than voice. 3G will support broadband and bandwidth-hungry applications such as full-motion video, videoconferencing and full Internet access.

-Marconi

Interconnection and Access

In August 2003 the OUR initiated a review of the Reference Offer (RO) for interconnection and access that Cable & Wireless Guernsey is required to make available to new entrants (**OUR 03/22**). The first RO had been prepared in July 2002 and the Director General wished to see whether it still met the needs of the new entrants one year on. In addition the Director General took the opportunity in this review to open a debate on further competition enhancing measures such as the possible introduction of **Carrier PreSelection** and **Number Portability**. In November 2003 the report on this consultation was published (**OUR 03/32**) which required Cable & Wireless Guernsey to make certain amendments to the RO and present these to the market in early 2004.

Separate to the review of the text of the RO, the OUR also looked to introduce charges for the interconnection and access services contained in the RO that would be compliant with the Telecoms Law. The initial charges were set in July 2002 by the OUR partly based on benchmark rates in other countries. However the Telecoms Law requires that charges for such services should be "*transparent, cost oriented and that promote efficiency and sustainable competition and maximise consumer benefit*".

Cable & Wireless Guernsey was requested to prepare rates that would comply with this requirement. In November 2003 it submitted revised charges for the RO services. Following a review of these, the Director General did not accept that they were in compliance with the Law and following a further benchmarking exercise by the OUR in December 2003 directed that the company cut its interconnection and access charges by between 15% and 20% (**OUR 03/38**).

Following this direction the OUR commenced a full review of the C&WG submission and plans to report on this in the second quarter of 2004.

Telecommunications: Activity Report

Regulatory Accounts

A considerable amount of effort was spent in 2003 on getting the first sets of Cable & Wireless Guernsey's Regulatory Accounts published. These covered the years 2001 and 2002/03, and the accounts for 2002/2003 were published in October 2003 following a series of Directions by the Director General (**OUR 03/18, OUR 03/20, OUR 03/29, OUR 03/31, OUR 03/36**).

Following the publication, the accounts were found to contain a number of technical breaches of the OUR Guidelines which were published in March 2002. Cable & Wireless Guernsey rectified those breaches and the accounts were republished. In addition the Director General set out the level of information that Cable & Wireless Guernsey will be required to publish when its 2003/04 accounts are published.

At the end of 2003 the Director General had commenced a detailed review of the Regulatory Accounts and aims to complete this review in the 2nd quarter of 2004.

Price Control

Work on monitoring Cable & Wireless Guernsey's compliance with its price control obligations continued in 2003. The price control, which had been introduced in 2002, sets price controls on Cable & Wireless Guernsey across four main baskets of products in the fixed telecoms market in which the company has a dominant position.

In addition to this regular compliance work the OUR initiated a separate interim investigation of Cable & Wireless Guernsey's compliance in June 2003 (**OUR 03/15**). This was prompted by an announcement by the company of a wide range of changes to its prices – both in terms of the charges for certain services and the structure of the charging – which it was proposing to introduce in July 2003. Because of the number of changes, the magnitude of some of the individual changes and the complexity of the overall changes, the OUR carried out a detailed examination to forecast compliance with the price control and to examine compliance with other aspects of Cable & Wireless Guernsey's licence.

The investigation confirmed that Cable & Wireless Guernsey was clearly at significant risk of not being in a position to comply with its price cap obligations for the period (**OUR 03/17**). The company accepted the validity of the OUR's concerns and consequently decided to introduce further price changes in July 2003. This resulted in further price reductions for certain call times and certain other changes to the proposals announced previously.

Utility Appeals Tribunal

Following the launch of an appeal against a decision of the Director General in July 2002, 2003 saw the first sitting of the Utility Appeals Tribunal. The Tribunal, which was set up under the Regulation of Utilities Law, sat three times in 2003. In June 2003, almost a year after the appeal was first lodged by Cable & Wireless Guernsey, it held its first sitting which concentrated on directions as to case management. A further directions hearing was held in July 2003.

The full hearing of the appeal took place in October 2003 over two days. By the end of the year a decision had not yet been handed down by the Tribunal.

Guernsey Post Customer Charter

- Make posting facilities easily accessible and appropriate to the community need.
- Make letter deliveries to each local address 6 days a week.
- Collect and despatch mail from all posting facilities 6 days a week.
- Publish clear and current information on competitively priced, secure and reliable services.
- Report on our performance, against the standards set out in the Customer Charter.
- Monitor customer satisfaction with our services and seek improvements in all areas.
- Provide easily accessible, consistently professional, courteous and considerate service.
- Provide our Customer Service contact details in all communications, throughout the retail network and on roadside boxes.
- Respond swiftly and efficiently to customer enquiries and complaints.
- Exercise the utmost integrity in providing services.

Post: Overview

World Postal Markets

The postal services market represents an important part of the wider communications and logistics market. Companies and individuals who buy postal products often have several choices available to them for transmitting items or communicating information, for example email and telecommunications, and for larger postal items freight and logistics services. The development of new technology continues to widen this choice of substitutes.

Despite these competitive threats mail volumes have consistently grown over time and changes in demand seem to be linked to the general performance of the global economy. One estimate puts the value of the global letters market at £113bn.

Across Europe, postal markets are **liberalising**, albeit slowly in some countries. Privatisation has been flagged or is rumoured for many postal operators and alliances and mergers are the norm. Despite the growth in mail over time, the traditional letter mail volumes are showing declines, while new products, technology and innovation are all providing opportunities for traditional postal operators, in their home markets and outside.

Within the UK, approximately 28 billion items are handled by all operators in the market. Developments in the UK postal market are particularly important for Guernsey as Royal Mail is Guernsey Post Ltd's largest trading partner. Royal Mail which used to enjoy a statutory monopoly, still retains well over 99% of the letters market in the UK, remaining by far the dominant player in that market.

Postcomm, the licensing authority and regulator in the UK has awarded 14 interim licences to 13 operators since its establishment and to date four long term licences have granted to new operators including Express Dairies, Hays, TPG Post UK, and UK Mail. These new operators have been targetting niche services for business customers but have yet to make large in roads into Royal Mail's market share and together, they accounted for only 0.27% of the licensed letter market in 2002/03.

Royal Mail made a £3 million profit before tax in the first half of the financial year representing the first time in five years it has been in the black at the half year. Part of the reason for this resulted from Royal Mail's 1p increase in basic First and Second class stamps in May in accordance with its **price control** set by Postcomm. This drove the profit on operations in the letters business to £161 million in the first half of the year, although these half yearly figures excluded the effect of the industrial action that occurred in the autumn of 2003.

Post: Overview

Guernsey Postal Market

While Guernsey is small, these global changes, and particularly changes in the UK seriously affect the Guernsey postal market due to the large volumes of mail that Guernsey sends to the UK and internationally. This includes business and private mail. At present all such mail is handed by **Guernsey Post** to **Royal Mail** in the UK for onward delivery and so the UK market is of particular interest to Guernsey.

2003 proved to be a turbulent year of change for Guernsey Post, with changes in senior management and the Board. The company implemented a series of change management projects designed to improve the company's operations and address deficiencies particularly in quality of service, identified by an investigation by the OUR in January 2003.

It was also the first full year of operations at the new postal headquarters - Envoy House – using the new mechanised sorting equipment which involved changes in work practices and methods.

Most significant during the year was the renegotiation by Guernsey Post of its contractual arrangements with Royal Mail. Until recently the arrangement between Royal Mail and Guernsey Post had been that whilst Guernsey Post delivered all mail received from Royal Mail and Royal Mail in turn delivered all mail received from Guernsey Post, the companies did not in fact charge each other but assumed that the costs "balanced out". This was based on the assumption that the same amount of mail flows in each direction. However, there is in fact significantly more mail going from Guernsey to the UK than vice versa.

As a result, the Royal Mail move to charge for the actual volumes of mail in each direction resulted in **significant increases** in charges to Guernsey Post for the services provided by Royal Mail. The effect of this was seen in Jersey where Jersey Post, which is in a similar position, increased rates with local mail increasing from 23p to 29p, Jersey to UK increasing from 29p to 30p. **Jersey Post** flagged that 2004 would see more price increases in postal services due to the Royal Mail charges.

However Guernsey Post is subject to a different regulatory regime and any price increases for its postal services have to be assessed by the OUR. In November Guernsey Post submitted a tariff change application to the OUR and a final decision on this would be made in 2004.

Post: Activity Report

Introduction

The year began with an investigation into the service failure experienced by postal customers during Christmas 2002 which led to a series of directions from the Director General requiring Guernsey Post to implement remedial measures to improve the company's operational performance.

During 2003 the Director General was able to build upon the research and analysis carried out in the previous year and, following extensive consultation with interested parties, introduced formal **quality of service** measures and targets for Guernsey Post which came into effect in 2003.

The OUR helped Guernsey Post to develop its regulatory accounting system and the format of its business plan in time to be able to make its crucial application to change its postal tariffs. In November the company submitted its proposals for **tariff changes** which was then issued by the OUR for public consultation and assessed independently by the OUR. A decision on the company's proposals would be made early in 2004.

The OUR also concluded two investigations into Guernsey Post Limited following disputes between the company and its customers.

Investigation of December 2002 Service Failure

In January, the OUR issued an Information Note (**OUR 03/01**) which described its investigation into the quality of postal services in Guernsey in light of the disruption to postal customers within the Bailiwick over Christmas 2002. The OUR's investigation focused on three main areas:

- the significant delays in the delivery of post over the period of December 2002/January 2003 with a backlog of mail in excess on 350,000 items;
- the failure by Guernsey Post to provide consistent postal delivery to all addresses in the Bailiwick six days a week since commercialisation (although data available from November 2000 showed the Post Office Board did not provide a daily service to addresses in the Bailiwick either); and
- the company's inadequate customer complaint handling procedures and information provision both during the service difficulties and in general.

The investigation report (**OUR 03/06**) was published in early March and concluded that the problems were due to a general failure to properly forecast, plan and manage a range of functions in the company. These problems were compounded by the inability of the management and workforce to jointly agree and secure sufficient cooperation from the workforce, at a reasonable cost, to provide the necessary labour to guarantee either the basic level of service, or to cope with the service difficulties encountered at Christmas 2002.

Post: Activity Report

Within this environment the company also had inadequate project planning and management systems in place leading to decisions on a number of issues being based on insufficient information, in particular with respect to the move to Envoy House just before the Christmas peak periods which triggered the service failure. Finally the OUR noted a failure of the corporate governance systems to identify the problems in the company, scrutinise decisions adequately and identify the need for remedial action in a timely fashion.

Having found Guernsey Post in breach of its licence the Director General gave notice of a number of detailed proposed directions which fell under three broad headings; preventative and remedial measures, universal postal service targets and redress to customers. Upon receipt of written representations and objections the Director General issued a final set of directions (**OUR 03/09**) to the company and monitored the company's compliance with the directions over the year.

The Director General was very pleased to be able to confirm Guernsey Post's compliance with all of the Directions (**OUR 03/25**), ultimately leading to a much improved and smoother service delivery at Christmas 2003.

Quality of Service

A major work programme item for the OUR during 2003 was consultation on the quality of postal services in Guernsey and the development, setting and monitoring of targets for key mail services used by postal customers in the Bailiwick.

At the beginning of the year, over 30 people attended an OUR public presentation (**03/02**) on the "Quality of Service for Postal Services in Guernsey". A separate workshop was held for bulk mailers who have an interest in specific postal services that are used by their businesses.

Taking the feedback from these meetings into account, in January, the OUR issued a consultation paper (**03/04**) looking at what performance indicators best reflected the Quality of Service required by postal customers within the Bailiwick. The paper also considered how the proposed quality of service for those indicators should be measured, what targets should be set for each quality of service indicator and how the information should be published.

In May, a decision (**03/12**) on the quality of service consultation was published. Three types of quality of service indicators and targets were introduced.

- **End to end delivery times** and reliability of the mail from the customers' perspective: This measure of service was considered the most significant and of greatest interest to the majority of customers. In line with international best practice, targets were set using the J+n formula (where J is date of deposit and n the number of days to delivery) for six main mail flows.

- **Guernsey Post's internal operations**: These targets allow Guernsey Post to measure how well it is handling mail before it is handed to Guernsey Post's partners (mainly Royal Mail) for onward delivery and upon receipt of mail from its trading partners, allowing any local service problems to be isolated and addressed.
- **Key customer facing functions**: This included key performance indicators such as complaint resolution times and number of misdeliveries.

A direction (03/24) was issued in August to the company which formalised the requirement on Guernsey Post to comply with the specific targets set out in the earlier decision notice. The company was required to publish its performance against the quality of service targets and measures every six months and the first report would be published by the end of April 2004, whilst the company would continue to provide the OUR with regular quarterly updates.

Disputes

In December 2002 the OUR had received a request for dispute resolution concerning the closure of the **Arcade Post Office** ("Arcade") by Guernsey Post. The complainant believed that the Arcade facility was heavily used by the elderly and disabled members of society and consequently, the absence of this facility within St Peter Port would be of serious detriment to these customers.

The OUR investigation concluded (03/10) that in closing the Arcade, Guernsey Post was not in breach of its Licence Conditions and not in breach of its Universal Service Obligation. However during the course of the investigation it became clear that Guernsey Post did not collect sufficiently accurate and reliable data to measure what services were provided at the Arcade and the customer groups that used them. The complaint therefore led to a direction to Guernsey Post to develop a project plan and timetable for the development of a customer statistic compilation programme at all its post offices.

In June 2003 the Board of Industry's **Trading Standards Services** ("TSS") forwarded a complaint concerning a compensation claim disputed by Guernsey Post. The complaint was referred to OUR after a satisfactory outcome was not achieved following arbitration by TSS. The complainant claimed to have purchased insurance from Guernsey Post for a parcel containing an electrical item which was posted to the UK and was received at its destination in a damaged condition.

The OUR investigation concluded that there was not sufficient evidence to reject the complainant's claim for compensation and noted that there was some lack of clarity in Guernsey Post's procedures. Guernsey Post was directed (03/30) to award compensation to the complainant in the amount for which the complainant has produced a receipt. However, the OUR acknowledged the attempts taken by Guernsey Post to resolve the dispute and in particular the company's proposal to introduce new procedures to clarify Guernsey Post's parcel acceptance process.

Post: Activity Report

Postal Tariff Change Application

In November Guernsey Post submitted an application to make certain changes to its prices in 2004. The Guernsey Post application was put out to public consultation (**OUR 03/34**) during which time the OUR met with a number of stakeholders to help to inform the assessment of the company's proposals.

Guernsey Post noted that the principal driver for the company's request for tariff changes was a change to a number of its core costs including: Royal Mail's decision to renegotiate the contractual arrangements between **Royal Mail** and some Crown Dependencies, including Guernsey; increases in the costs of the company's other suppliers particularly airlines and shipping companies; and changes in the company's cost base following mechanisation.

The Director General's decision on the **postal tariff application** was announced early in 2004 following the OUR's own economic modeling and analysis of the company's proposals.

www.guernseypost.com

World Electricity Markets

In 2003, electricity moved centre stage when a number of spectacular outages across the developed world sent clear warning signals: the competitively priced, secure supplies of energy that have helped underpin economic growth in recent decades cannot be taken for granted.

The first and most severe outage was in North Eastern America and Canada on 14 August 2003. This was followed by various **power cuts** in Europe which saw London lose its power in the rush hour, blackouts throughout the majority of Italy and outages in parts of Scandinavia. The heat wave in France meant that EdF, the country's integrated power supplier, had to resort to warnings of power cuts as it struggled to cool its nuclear reactors. In Japan, **Tokyo Electric Power** (Tepco) had to shut 17 nuclear power stations due to safety concerns leaving Tokyo and other parts of Japan vulnerable to blackouts.

Although there was no single technical reason for the problems faced by various countries, it is clear that many problems are due to insufficient investment in transmission and/or generation capacity. This is largely because incentives to invest have been limited either due to political or regulatory uncertainty or the fact that electricity prices had been driven down to such an extent that investment over a 25-30 year time horizon was not viable.

Even the UK, which is generally seen to be a world leader in the development of competitive energy markets, has yet to solve the conundrum of generating market incentives to invest in reserve electricity margins without impinging on the competitive process for wholesale trading in electricity.

The events of 2003 have led to a shift in the mood across the energy sector in the developed world. Concern is growing that despite the existence of mothballed plant, longer term demand for power may not be met unless **investment incentives** can be improved. Greater emphasis is being placed on longer term planning and supply security rather than simply on liberalised markets producing competitive prices in the short to medium term.

The need for this investment, along with the cost of comprehensive EU legislation relating to emissions taxes, imply that retail prices are likely to increase in the coming years and western economies, that are heavily dependent on fuel costs, will have to face up to that reality.

Electricity: Overview

Guernsey Electricity Market

Guernsey's electricity market is not unaffected by international developments and particularly those in mainland Europe because, through the **Channel Island Electricity Grid** (CIEG), Guernsey's power system is connected to the systems in Jersey and France.

In recent years Guernsey has been importing the majority of its energy from France at marginal prices that are competitive when compared to the cost of generating on-island. This has led to short term environmental and technical benefits as on island emissions have reduced.

But developments in Europe suggest that attaining such benefits at competitive cost may become harder to achieve as time goes by. This is of great importance for how Guernsey sources its future energy needs and, along with security of supply issues, mean that Guernsey needs a clear yet flexible and transparent policy direction for the development of generation sources of energy into the future.

This issue and its potential impact on electricity prices underpinned much of OUR's work stream for the electricity sector throughout 2003.

www.electricity.gg

www.energy.gg

www.e-si.co.uk

Electricity: Activity Report

Introduction

In 2003, following a consultation on price control for electricity in Guernsey, it became clear that a strategic review of the direction of Guernsey's generation sector was needed to develop a clear policy framework for Guernsey on issues such as independence, environmental concerns, **security of supply** and overall cost of electricity to the consumer and the economy. This review was started in 2003 so as to inform policy development in 2004 and price setting in 2005.

The States of Guernsey also issued further States Direction to OUR in relation to the supply of electricity to end customers and OUR made some adjustments to the licensing regime to implement a statutory monopoly in this sector for a number of years, subject to review.

Guernsey Electricity's quality of service results were also reviewed and revised and work continued work on the development and publication of Guernsey Electricity's regulatory accounts.

The Strategic Direction of Guernsey's Generation Sector

In March 2003, the OUR published a decision notice on the regulation of retail prices charged by Guernsey Electricity Ltd **(OUR 03/07). Prices were frozen** at their 2002 level for a variety of reasons including the need to clarify States policy objectives in key areas such as environmental impact, security and independence, and the level of costs that is considered necessary to fund efficient investment that meets those policy objectives.

Electricity plays a pivotal role in underpinning Guernsey's economic competitiveness and it is sensible to set electricity prices so as to ensure the provision of electricity from the "least cost" economic investment portfolio. However, as can bee seen from electricity markets worldwide, there are other considerations such as security of supply and **environmental impact** which could increase costs but which might be politically and socially desirable. The OUR is concerned to ensure that the right balance is struck for the social and economic wellbeing of the Bailiwick.

For this reason the OUR approached the Board of Industry in 2003 to seek clarification on Sates policy. The Board, in May 2003, formally requested the Director General to research and assess the relative costs and benefits of the electricity generating options facing Guernsey to identify the impact of key strategic policy decisions on the market and on electricity prices to customers. The OUR and Board of Industry engaged **Mott MacDonald** to assist in this work.

This work started immediately and is due to be concluded in mid 2004, with a report being presented to the Department of Commerce and Employment (previously the Board of Industry). If there is a need for any **States policy decisions**, it is expected that the Department will bring the appropriate issues to the States for debate and decision.

Although the strategic review was commenced early in 2003, it is clear from events in the global market later in that year and the fact that European electricity prices are expected to increase, that the decision to consider the future strategic direction at this time is particularly timely for Guernsey.

Electricity: Activity Report

Licensing

In 2002 the States of Guernsey had requested that the Director General investigate Guernsey's retail electricity market and report back on the feasibility of introducing competition into this market in the future. The Director General reported to the BoI in November 2002 (**OUR 02/35**) and concluded that there was little scope for customer savings to be made that would provide for meaningful price based competition in electricity retailing in the short term. Furthermore, the cost of implementing that competition would be likely to be equal to, or greater than the level of potential savings to customers, thus negating the price benefits.

The States considered the OUR report at its meeting in January 2003 and resolved to issue States Directions to the Director General that;

- exclusive conveyance and supply licences be issued to Guernsey Electricity for the period ending 31st January 2012, on the proviso that the issue could be re-examined prior to this point, particularly if there were any changes in the OUR's underlying assumptions, and
- the generation market remain open to competitive entry.

The States Direction was issued at the end of January and the full text is in Annex A to this report. The OUR went on to modify Guernsey Electricity's licence to implement the Direction, publishing a notice of this in February 2003, OUR (**OUR 03/05**). Guernsey Electricity now holds exclusive licences to convey and supply electricity in Guernsey.

Quality of Service and Consumer Protection

Because the structure of the electricity market in Guernsey makes the development of competition unlikely in the short term, Guernsey Electricity effectively holds a monopoly or heavily dominant position across the entire electricity supply chain. Where there is a lack of competitive pressures, one area that is important to monitor is the quality of service provided to consumers as they have no alternative supplier to choose from.

Following commercialisation in February 2002, and in accordance with its licence, Guernsey Electricity published service standards across 17 quality of service indicators ranging from restoration of supplies to charges and payments. By the end of the year Guernsey Electricity had introduced compensation for failure to meet a number of publicised quality of service targets including replacing faulty service fuses, providing connections for new customers, faults relating to prepayment meters, changing meters and investigating voltage complaints within agreed time frames.

"Quality regulation must be regularly monitored and reviewed. Standards should be periodically adjusted if necessary. "

— Council of European Energy Regulators (CEER)

In order to ensure that these measures adequately protected consumers OUR issued a consultation paper in September 2003 (**OUR 03/28**) looking at:

- Extending the range of service standards and setting targets for additional services which Guernsey Electricity would be required to achieve;
- Tightening the targets for existing service standards;

- Changing the status of some standards from an overall standard to a guaranteed standard such that customers could claim compensation if Guernsey Electricity failed to achieve the required standard; and
- Changing the compensation regime in light of international best practice.

The report on this consultation was published in December 2003 (**OUR 03/40**) and resulted in various new service standards being included, as well as targets, **compensation levels** and the level of guaranteed standards all being brought into line with international best practise via a raft of measures effective from the 1st April 2004.

As well as increasing the formal level of consumer protection via the tightening of the service standards and the compensation regime in Guernsey, OUR also began a further work stream with Guernsey Electricity in order to set up a Consumer Council. This would provide a forum for both residential and business customers to discuss any areas relating to Guernsey Electricity's standard of service with a panel comprising of independent representatives.

Accounting Separation

The OUR consulted in September 2003 on the publication of Guernsey Electricity's regulatory accounts (**OUR 03/26**). **Regulatory accounts** differ from statutory accounts in that they separate the business into its various components and are focused on the cost and revenues that accrue to the regulated businesses/services. They provide significantly more detail than statutory accounts and are used worldwide by regulators to address concerns regarding the potential abuse of a dominant position or market power.

Guernsey Electricity's regulatory accounts are split into its generation, conveyance and supply and non-core businesses. This is particularly important to ensure that Guernsey Electricity's core business of generation, as well as conveyance and supply, are not cross-subsidising the company's non-core operations, for example sale of white goods.

In order to provide stakeholders with a high degree of transparency regarding the operation of Guernsey Electricity's business, the Director General proposed that Guernsey Electricity's regulated accounts should be **published in their entirety** and after consulting on this issue concluded that there was no substantive reason not to publish them in full. A report was published in December 2003 (**OUR 03/39**), along with a direction to Guernsey Electricity to publish its 2002/2003 regulatory accounts and all future regulatory accounts in full on its website and also to make hard copies available on request.

Annual Report: 2003

The Bailiwick of Guernsey

- **Guernsey.** Population around 60,000 and consist of the parishes of; Castel, Forest, St Andrew, St Martin, St Peter Port, St Pierre du Bois, St Sampson, St Saviour, Torteval and Vale.
- **Alderney**. 5 km long and 3 km wide with a population of 2,294.
- **Sark.** Population of 610 has a total area of only 5.45 km2 and is some 4.8 km long and 2.4 km wide at its widest point.
- **Herm** Herm is only 2.4 km long and less than 1k wide covering an area of just 2km2.
- **Jethou.** Located immediately south of Herm and has an area of approximately 18 44 acres, the island is not open to the public.
- **Brecqhou**. Located just west of Sark. It is politically a part of Sark and privately owned.
- **Lihou.** Connected to Guernsey by a causeway which is accessible at low tide.

Alderney and Sark

Inclusion and Equity

The Bailiwick of Guernsey comprises a number of islands including Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou. Both **Alderney** and **Sark** have their own independent parliaments separate from the States of Guernsey.

Alderney and Sark come within the regulatory regime for telecommunications and postal services and the Law explicitly recognises the inclusion of these islands. Both islands operate separate electricity arrangements from those in Guernsey and the OUR does not have any jurisdiction in the other islands.

The development of the regulatory regime for post and telecommunications during 2003 affected Alderney and Sark as significantly as Guernsey. The OUR remains conscious of the special position of the other islands and the fundamental importance of communications services, and this was taken into account in particular in the postal quality of service investigation and when considering price changes in post and telecommunications services.

Telecoms Pricing

Because of the overarching ethos of the regulatory regime and States policy on universal services, the inhabitants of Alderney and Sark were affected by exactly the same price changes as Guernsey in 2003. The effect of the OUR investigation which led to even lower prices for some UK and international calls was also extended to those islands.

Postal Services

Regrettably the postal service disruptions of Christmas 2002 also affected residents of Alderney and Sark and the OUR took this into account when concluding its investigation. The extensive consultation on quality of postal services in 2003 recognised the specific transport network to the islands and the effect this had on mail delivery. The island's postal service targets were therefore integrated into the overall Bailiwick targets to ensure that the **quality of service** throughout the islands would be **uniform**.

Mobile Telecommunications Competition

When licensing a second mobile telecommunications operator in the Bailiwick the OUR explicitly included obligations on the new licensee – Wave Telecom – to roll out all of its services to all of the Bailiwick. This will ensure that the residents of Alderney and Sark have the benefit of being able to chose from competing mobile operators as well as the benefit of new innovative **3G services**, as customers in Guernsey.

The OUR will continue to regulate in the interests of all customers of utility services, including post and telecommunications customers in Alderney and Sark

Annual Report: 2003

Financial Statements and Report for the Period 1 January 2003 to 31 December 2003 for the Public Utilities Regulation Fund

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Foreword to the Accounts

2003 was the second full calendar year of operation for the Office of Utility Regulation. During that period the fees payable to the Office of Utility Regulation were paid into the Public Utilities Regulation Fund which was initially established in 2001. Fees were collected from licensees in the three regulated sectors of telecommunications, post and electricity.

Regulation of utilities requires a keen understanding of all the facets of the industries and an ability to combine expertise in law, engineering, accounting, audit, economics and business analysis to develop innovative and practical solutions to facilitate market development.

During 2003 the Office was staffed by four fulltime officers as well as the Director General. The Office occasionally used temporary staff for additional support and employed consulting expertise during the year to enable it to carry out its functions.

The OUR faced exceptional legal costs during 2003, amounting to £313,975, more than a five fold increase over legal fees in 2002. These fees were primarily as a result of the first case taken against a decision of the OUR which was heard by the Utility Appeals Tribunal.

Public Utilities Regulation Fund

Fund Information

DIRECTOR GENERAL:	Ms R Finn
OFFICE ADDRESS:	Suites B1&B2 Hirzel Court St Peter Port Guernsey GY1 2NH
AUDITORS:	Chandlers Limited Chartered Accountants Anson Court La Route des Camps St Martin's Guernsey

Public Utilities Regulation Fund

Report of the Director General for the Period 1 January 2003 to 31 December 2003

I have pleasure in submitting the annual report and audited financial statements for the Public Utilities Regulation Fund for the period ended 31st December 2003.

Principal Activities

The Office of the Director General of Utility Regulation was established in 2001 under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. The functions of the Office relate to the regulation and licensing of the telecommunications, electricity and postal industries. The Office is funded by income received from the regulated industries and some funding from the Board of Industry.

Review of Business

The results of the year and the financial position of the Fund are as shown in the annexed financial statements.

Statement of the Director General's Responsibilities

The Director General is responsible for preparing the financial statements for each financial year which give a true and fair view of the state of affairs of and the income or deficit of the Public Utilities Regulation Fund for that period. In preparing those financial statements the Director General is required to:

- Select suitable accounting policies and then apply them consistently;
- Make judgements and estimates that are reasonable and prudent;
- Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Fund will continue in operation.

The Director General is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the Fund and to ensure that the financial statements comply with the applicable accounting standards. The Director General is also responsible for safeguarding the assets of the Fund and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

In accordance with Section 13 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, the Director General shall keep all proper accounts and records in relation to those accounts and shall prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of the Office of the Director General.

The Law also requires the Director General to have the accounts audited annually by auditors appointed with the approval of the Board of Industry. The Director General, with the approval of the Board of Industry, has appointed Chandlers Limited as the auditors to the Public Utilities Regulation Fund.

The audited accounts shall be submitted to the Board of Industry which shall in turn submit them together with the auditors' report thereon to the States with the Director General's annual report

Auditors

The auditors, Chandlers Limited, have indicated their willingness to continue in office.

Regina Finn
Director General of Utility Regulation
12th July 2004

Public Utilities Regulation Fund

Report of the Independent Auditors to the Members of the Public Utilities Regulation Fund

We have audited the financial statements of Public Utilities Regulation Fund for the year ended 31 December 2003 on pages thirty nine to forty two. These financial statements have been prepared under the historical cost convention and the accounting policies set out therein.

This report is made solely to the Fund's members, as a body, in accordance with The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. Our audit work has been undertaken so that we might state to the Fund's members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Fund and the Fund's members as a body, for our audit work, for this report, or for the opinions we have formed

Respective responsibilities of the Director General and auditor

As described on page thirty seven the Fund's Director General is responsible for the preparation of financial statements in accordance with applicable law and United Kingdom Accounting Standards.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and United Kingdom Auditing Standards.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001. We also report to you if, in our opinion, the Report of the Director General is not consistent with the financial statements, if the Fund has not kept proper accounting records, if we have not received all the information and explanations we require for our audit, or if information specified by law regarding the Director General's remuneration and transactions with the Fund is not disclosed.

We read the Report of the Director General and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with United Kingdom Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Director General in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Fund's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In the opinion the financial statements give a true and fair view of the state of the Fund's affairs as at 31 December 2003 and of its deficit for the year then ended and have been properly prepared in accordance with The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

Chandlers Limited

Chandlers Limited
Chartered Accountants
Anson Court
La Route des Camps
St Martins, Guernsey
Dated: 12th July 2004

Public Utilities Regulation Fund

Income and Expenditure Account for the Year Ended 31 December 2003

	Notes	2003 £	2002 £
INCOME			
License fees		793,886	732,381
Grants		-	287,359
Bank interest		8,319	1,125
		802,205	1,020,865
EXPENDITURE		905,142	915,887
(DEFICIT)/SURPLUS FOR THE YEAR ENDED 31 DECEMBER 2003		(102,937)	104,978
TRANSFER TO CONTINGENCY RESERVE		102,937	(104,978)
NET OPERATING SURPLUS FOR THE YEAR/PERIOD		-	-

The Fund has no other gains or losses for the current or preceding financial year other than those stated in the Income and Expenditure Account.

The notes form part of these financial statements

Public Utilities Regulation Fund

Balance Sheet 31 December 2003

	Notes	2003 £	2003 £	2002 £	2002 £
FIXED ASSETS:					
Tangible assets	4		32,185		43,634
CURRENT ASSETS:					
Debtors	5	8,294		170,972	
Cash at Bank		185,147		270,890	
		193,441		441,862	
CREDITORS: Amounts falling due within one year	6	158,468		315,401	
NET CURRENT ASSETS:			34,973		126,461
TOTAL ASSETS LESS CURENT LIABILITIES:			67,158		170,095
RESERVES:					
Contingency reserve			67,158		170,095
			67,158		170,095

Regina Finn

Director General of Utility Regulation

Dated: 12th July 2004

The notes form part of these financial statements

Notes to the Financial Statements for the Year Ended 31 December 2003

1. ACCOUNTING POLICIES

Accounting convention

The financial statements have been prepared under the historical cost convention.

Income

Income represents net invoiced licensed fees and grants received from the States of Guernsey.

Tangible fixed assets

Depreciation is provided at the following annual rates in order to write off each asset over its estimated useful life.

Office Equipment	-20% on cost
Fixtures and Fittings	-20% on cost
Computer Equipment	-20% on cost

2. OPERATING (DEFICIT)/SURPLUS

The operating deficit (2002—operating surplus) is stated after charging:

	2003	2002
	£	£
Depreciation—owned assets	11,634	11,597
Auditors' Remuneration	2,200	2,000

3. TAXATION

Under Section 12 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 the fund is exempt from Guernsey Income Tax

Public Utilities Regulation Fund

4. TANGIBLE FIXED ASSETS

	Office Equipment	Fixtures and Fittings	Computer Equipment	Totals
	£	£	£	£
COST:				
At 1 January 2003	35,891	3,065	19,028	57,984
Additions	185	-	-	185
At 31 December 2003	36,076	3,065	19,028	58,169
DEPRECIATION:				
At 1 January 2003	8,886	707	4,757	14,350
Charge for Period	7,215	613	3,806	11,634
At 31 December 2003	16,101	1,320	8,563	25,984
NET BOOK VALUE:				
At 31 December 2003	19,975	1,745	10,465	32,185
At 31 December 2002	27,005	2,358	14,271	43,634

5. DEBTORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2003	2002
	£	£
Grants	-	152,678
Licence fees due	-	10,000
Prepayments	8,294	8,294
	8,294	170,972

6. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

	2003	2002
	£	£
Bank Loans and overdrafts	-	7,093
States Loan	-	150,000
Trade creditors	129,274	84,584
Accruals	29,194	73,724
	158,468	315,401

Public Utilities Regulation Fund

Detailed Income and Expenditure Account

	2003		2002	
	£	£	£	£
INCOME:				
Post Office revenue	120,000		120,000	
Telecoms revenue	493,886		447,381	
Electricity revenue	180,000		165,000	
Grant—Board of Industry	-		287,359	
		793,886		1,019,740
OTHER INCOME:				
Bank interest		8,319		1,125
		802,205		1,020,865
EXPENDITURE:				
Salaries & Staff Costs	315,781		271,297	
Consultancy Fees	189,344		506,820	
Legal Fees	313,975		56,787	
General Overheads	71,625		69,204	
		890,725		904,108
		(88,520)		116,757
FINANCE COSTS				
Interest—States of Guernsey loan	2,582		-	
Bank charges	201		182	
		2,783		182
		(91,303)		116,575
DEPRECIATION				
Office Equipment	7,215		7,178	
Fixtures and Fittings	613		613	
Computer Equipment	3,806		3,806	
		11,634		11,597
		(102,937)		104,978

This page does not form part of the statutory financial statements

Annex A: States Directions; Telecoms

States Directions to the Director General in relation to telecommunications that were in force during 2003 are set out below in accordance with Section 8(2) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

Telecommunications: Universal Service Obligation

The States resolved to give the following direction to the Director General of in accordance with Section 3(1)(c) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

All users in the Bailiwick shall have available to them the services set out below at the quality specified, independently of geographical location and, in the light of local and national conditions, at an affordable price:

Access at Fixed Locations:

- all reasonable requests for connection to the public telephone network at a fixed location and for access to publicly available telephone services at a fixed location shall be met by at least one operator;
- the connection provided shall be capable of allowing users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit Internet access;

Directory enquiry services and directories:

- at least one subscriber directory covering all subscribers of direct public telephone service providers shall be made available to users and shall be updated regularly and at least once a year;
- at least one telephone directory enquiry service covering all listed subscribers' numbers shall be made available to all users, including users of public pay telephones;

Public Pay telephones:

- public pay telephones shall be provided to meet the reasonable needs of users in terms of the geographical coverage, the number of telephones and the quality of services.

Special measures for disabled users and users with special needs:

- these provisions shall also apply to disabled users and users with special social needs, and specific measures may be taken by the Regulator to ensure this.

Annex A: States Directions; Telecoms

Telecommunications: First Licensee

The States resolved to give the following direction to the Director General in accordance with section 3(1)(a) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The Director General of Utility Regulation shall issue the first licence to contain a telecommunications Universal Service Obligation to Guernsey Telecoms Limited, the company established to take over the functions of the States Telecommunications Board pursuant to the States agreement to the recommendations of the Advisory and Finance Policy letter published in this Billet.

Telecommunications: Special or Exclusive Rights

The States resolved to give the following direction to the Director General in accordance with Section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The provision of telecommunications networks and services in the Bailiwick of Guernsey shall be opened up to competition at the earliest possible time consistent with the Regulation of Utilities (Bailiwick of Guernsey) Law 2001.

In accordance with section 3(1)(b) of that Law, the States directs the Regulator to decide the duration of any exclusive or special privilege granted to any licensee in relation to the provision of telecommunications networks and/or services with a view to ensuring that competition is introduced into all parts of the market at the earliest possible time.

The Regulator may decide on different terms for privileges granted in different markets or segments of the market. In any case, the States directs that the term of any such rights shall not exceed three years at most from the date of this Direction.

Annex A: States Directions; Post

States Directions to the Director General in relation to post that were in force during 2003 are set out below in accordance with Section 8(2) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

Post: Universal Service Obligation

The States resolved to give the following direction to the Director General in accordance with section 3(1)(c) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The following universal postal service shall be provided by at least one licensee throughout the Bailiwick of Guernsey at uniform and affordable prices, except in circumstances or geographical conditions that the Director General of Utility Regulation agrees are exceptional:

- One collection from access points on six days each week;
- One delivery of letter mail to the home or premises of every natural or legal person in the Bailiwick (or other appropriate installations if agreed by the Director General of Utility Regulation) on six days each week including all working days;
- Collections shall be for all postal items up to a weight of 20Kg;
- Deliveries on a minimum of five working days shall be for all postal items up to a weight of 20Kg;
- Services for registered and insured mail.

In providing these services, the licensee shall ensure that the density of access points and contact points shall take account of the needs of users.

"access point" shall include any post boxes or other facility provided by the Licensee for the purpose of receiving postal items for onward transmission in connection with the provision of this universal postal service.

Post: First Licensee

The States resolved to give the following direction to the Director General in accordance with section 3(1)(a) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The Director General of Utility Regulation shall issue the first licence to contain a postal Universal Service Obligation to Guernsey Post Limited, the company established to take over the functions of the States Post Office Board pursuant to the States agreement to the recommendations of the Advisory and Finance Policy letter published in this Billet.

Annex A: States Directions; Post

Post: Special or Exclusive Rights

The States resolved to give a direction to the Director General in accordance with section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Post Office Limited the exclusive right to provide postal services in the Bailiwick to the extent that such exclusive right is necessary to ensure the maintenance of the universal postal service specified by States' directions under section 3 (1)(c) of that Law; and

To request the Director General to review and revise the award of exclusive rights from time to time with a view to opening up the Bailiwick postal services market to competition, provided that any such opening up does not prejudice the continued provision of the universal postal service.

Annex A: States Directions; Electricity

States Directions to the Director General in relation to post that were in force during 2003 are set out below in accordance with Section 8(2) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

Electricity: Universal Service Obligation

The States did not make any Directions in relation to a Universal Service Obligation in the electricity markets, as it noted that the provisions of the Electricity Law adequately protected the interests of users by ensure a Public Supply Obligation would be in place.

Electricity: First Licensee

The States resolved to give the following direction to the Director General in accordance with section 3(1)(a) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

The Director General of Utility Regulation shall issue the first licence to contain an electricity Universal Service Obligation to Guernsey Electricity Limited, once that company is established to take over the functions of the States Electricity Board.

Electricity: Special or Exclusive Rights

Conveyance

The States resolved to give a direction to the Director General in accordance with section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Electricity Limited an exclusive electricity conveyance licence in respect of the conveyance of electricity in Guernsey for a period of 10 years once that company has been formed.

Subsequently, the States resolved to give a direction to the Director General to issue an exclusive licence to Guernsey Electricity Ltd for conveyance activities subject to any exemptions granted by the Director General under section 1(2) of the Electricity (Guernsey) Law, 2001 for the period ending 31st January 2012.

Generation

The States made no resolution giving a direction to the Director General in relation to the period of exclusivity of any generation licence to be granted under the Electricity (Guernsey) Law, 2001.

Supply

The States resolved to give a direction to the Director General in accordance with section 3(1)(b) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 to award to Guernsey Electricity Limited (once that company has been formed) an exclusive electricity supply licence in respect of the supply of electricity in Guernsey for a period of one year.

Annex A: States Directions; Electricity

The States also resolved to request the Director General to investigate the impact of the introduction of competition into the electricity supply market further and to provide a recommendation and advice to the Board of Industry on the introduction of such competition.

The States subsequently resolved to give a direction to the Director General to issue an exclusive licence to Guernsey Electricity Ltd for supply activities subject to any exemptions granted by the Director General under section 1(2) of the Electricity (Guernsey) Law, 2001 for the period ending 31st January 2012.

Annex B: Documents Published in 2003

03/01 Postal Quality of Service in Guernsey—Information Notice

03/02 Quality of Service for Postal Services in Guernsey—Public Presentation 23rd January 2003

03/03 Notice of Proposal to Modify the Licences issued to Guernsey Electricity Ltd under Section 2(1) of the Electricity (Guernsey) Law 2001

03/04 Guernsey Post Quality of Service—Consultation Paper

03/05 Notice of Modification to Licences issued to Guernsey Electricity Ltd under Section 2(1) of the Electricity (Guernsey) Law, 2001

03/06 Report on Findings of OUR Investigation and Notice of Proposal to issue Directions to Guernsey Post Ltd under Section 31 of the Post Office (Bailiwick of Guernsey) Law, 2001

03/07 Price Regulation of Electricity—Report on the Consultation Paper and Decision Notice

03/08 States Directions to the Director General of Utility Regulation—Information Notice

03/09 Postal Services in Guernsey—Notice of Directions in Accordance with Section 31 of the Post Office (Bailiwick of Guernsey) Law, 2001

03/10 Guernsey Post Ltd: Investigation into the closure of the Arcade Post Office— Summary of Finding in Dispute D01/02

03/11 Consultation Document on the Allocation of Corporate Number Ranges in response to a Consultation issued by the UK telecoms regulator (Oftel)

03/12 Guernsey Post Ltd: Quality of Service—Report on the Consultation, Decision Notice and Direction

03/13 Corporate Numbering: Oftel Consultation on New Options for Businesses—Information note on Extension of Deadline

03/14 Broadband Fixed Wireless Access; Opportunities to apply for Licences in the Bailiwick of Guernsey—Information Note

03/15 Telecommunications Price Changes by Cable & Wireless Ltd—Information Note

03/16 ENUM: Accessing multiple Customer Services through Telephone Numbers: Opportunities for Guernsey—Information Note

03/17 Telecommunications Price Changes by Cable & Wireless Guernsey: Conclusion of Interim Investigation—Information Note

03/18 Cable & Wireless Guernsey: Separated Accounts: Notice of Proposal to issue a Direction to Cable & Wireless Guernsey Ltd under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/19 Cable & Wireless Guernsey: Reference Offer: Notice of Direction to Cable & Wireless Guernsey Ltd in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

Annex B: Documents Published in 2003

03/20 Cable & Wireless Guernsey: Separated Accounts: Notice of Direction to Cable & Wireless Guernsey Ltd under Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/21 Cable & Wireless Guernsey: Reference Offer: Information Notice with regard to Proposal to issue a Direction to Cable & Wireless Guernsey Ltd in accordance with Section 27 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/22 Review of Cable & Wireless Guernsey's Reference Offer for Interconnection and Access—Consultation Document

03/23 Publication of Cable & Wireless Regulatory Accounts—Consultation Documents

03/24 Guernsey Post Ltd: Quality of Service—Notice of Direction to Guernsey Post Ltd under condition 14.1 of its Licence to provide Postal Services

03/25 Update on Guernsey Post Ltd's compliance with Directions—Information Notice

03/26 Publication of Guernsey Electricity Ltd's Regulatory Accounts—Consultation Document

03/27 Licensing of Internet Access in the Bailiwick of Guernsey—Consultation Document

03/28 Guernsey Electricity Ltd Quality of Service—Consultation Document

03/29 Publication of C&W Guernsey's Regulatory Accounts—Direction to Cable & Wireless Guernsey Ltd in accordance with condition 27.1 of Cable & Wireless Guernsey's Fixed Telecommunications Licence and Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

03/30 Guernsey Post Ltd: Investigation into Dispute D01/03—Summary of Finding

03/31 Publication of C&W Guernsey's Regulatory Accounts: Notice of Proposal to amend a Direction to Cable & Wireless Guernsey Ltd

03/32 Review of Cable & Wireless Guernsey's Reference Offer for Interconnection and Access—Report on the Consultation and Decision Notice

03/33 Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001—Proposed Application of the Code to Wave Telecom Ltd.

03/34 Guernsey Post Ltd's Proposed Tariff Changes—Consultation Paper

03/35 Decision under the Telecommunications (Bailiwick of Guernsey) Law, 2001—Application of the Code to Wave Telecom Ltd's 2G and 3G Mobile Licences

03/36 Publication of Cable & Wireless Guernsey's Regulatory Accounts—Amendment to a Direction to Cable & Wireless Guernsey Ltd

03/37 Guernsey Post's Proposed Tariff Increases—Information Notice: Notice of Extension of Deadline for Responses to Consultation Paper

Annex B: Documents Published in 2003

03/38 Reference Offer for Interconnection and Access: Rates—Direction to Cable & Wireless Guernsey Ltd in accordance with Section 10(3) of the Telecommunications (Bailiwick of Guernsey) Law, 2001

03/39 Publication of Guernsey Electricity Ltd's Regulatory Accounts: Direction to Guernsey Electricity Ltd in accordance with Condition 16 of Guernsey Electricity's Licence and Section 5 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

03/40 Guernsey Electricity Ltd Quality of Service—Report on the Consultation

(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:-

II.- Whether, after consideration of the Report dated 21st December, 2004, of the Commerce and Employment Department, they are of the opinion:-

1. To accept the Annual Report and Accounts for 2003 of the Office of Utility Regulation.

2. To note that the Treasury and Resources and Commerce and Employment Departments' joint review of commercialisation will provide a forum for debate on issues surrounding utility regulation.

3. To note the intention of the Commerce and Employment Department to recommend to the States changes to the Utilities Appeal Tribunal.

EDUCATION DEPARTMENT

REORGANISATION OF SECONDARY EDUCATION
STAGE 1 : THE BUILDING OF LES NICOLLES SECONDARY SCHOOL AND CO-LOCATED SECONDARY SPECIAL EDUCATION SCHOOL

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

12th January 2005

Dear Sir

Executive Summary

Purpose of the States Report

1. The report seeks the States' approval for the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles at a total cost not exceeding £46,974,000 (£47,814,000 less £840,000 for demolition works approved in July 2004).

   - To fund this project, the States are asked to approve the transfer of £12,750,000 from the Capital Reserve to the capital allocation of the Education Department. This will be added to the Education Department's existing capital allocation balance of £23.30 million. A further £12.75 million will need to be allocated in January 2006, subject to affordability and availability, to complete the project.

   - The States' approval will be needed to give authorisation for the Treasury and Resources Department to accept tenders for contractors and other professional services required to progress this project.

2. Approval for the construction of these two schools will allow the reorganisation of secondary education from four schools to three to commence and enable the raising of the school leaving age (ROSLA) from 15 to 16 in 2008. It will also continue the reorganisation of special education.

3. These approvals are sought to comply with the resolution of the States in February 2004 to progress Phases 1 and 2 of the former States Education Council (SEC) rebuilding programme to be funded within a yearly allocation of £12.75 million per annum, subject to affordability and availability, until 2008, and follow on from the States' resolution in July 2004 to commence site demolition work at Les Nicolles.

4. In addition this report seeks States' approval to increase the size of the originally planned pool at Les Nicolles from a four-lane facility to one incorporating six lanes, together with provision of additional changing facilities and some limited spectator seating. This is to meet the most pressing needs of competitive swimming as identified by the Culture and Leisure Department and will thereby considerably relieve the pressure on the pool at Beau Sejour.

5. The approval required to progress the requirements of the Culture and Leisure Department for larger swimming pool facilities at Les Nicolles is:

- to approve the inclusion of a 6 lane rather than a 4 lane swimming pool within the new secondary school and new special needs secondary school at Les Nicolles at a total **additional** cost to the overall project not exceeding £1,000,000, such sum to be funded by the Culture and Leisure Department.

Background

Previous States Resolutions

The Future of Secondary and Tertiary Education in the Bailiwick of Guernsey – Billet d'État VII 2001

6. The Education Development Plan programme was the result of reorganisation resolutions approved, following amendment, by the States in **May 2001.** The States directed the SEC to:

- *retain the Grammar School as an 11-18 school incorporating a Sixth Form Centre*

- *report back to the States as soon as may be with proposals to develop three new High Schools, such proposals to include outline costs for the complete redevelopment*

- *report back to the States with proposals to develop an improved College of Further Education on its existing site or such alternative site as the Council considers appropriate, such proposals to include costs for the complete development*

- *raise the school leaving age to 16 by the beginning of the academic year 2008/9 or sooner if resources and curriculum arrangements permit.*

A Site Development Plan for the Reorganisation of Secondary, Post-16 and Special Needs Education in the Bailiwick of Guernsey – Billet d'État VI 2002

7. In **April 2002** the States considered the SEC follow-up policy letter and approved, inter alia, the following resolutions:

   - *to approve in principle the outline proposals for the reorganisation of secondary, post-16 and special needs education in the Bailiwick of Guernsey*

   - *to approve in principle the Council's proposals for the relocation of education facilities, alterations to premises and construction of new buildings as set out in its Site Development Plan.*

Progressing the Education Development Plan: 1. Phasing Programme 1 of the Plan. 2. The Forest Special Needs Centre. 3. The Site for the new North Schools – Billet d'État III 2003

8. At its meeting held on **26th February, 2003**, the States resolved to approve, subject to the final recommendations of the Strategic Review, the SEC proposals for the phasing for the building projects in Programme 1 of the Education Development Plan. The States also resolved to authorise the SEC to proceed with Phase One of the rebuilding programme, subject to the States' approval of individual projects.

9. At the same meeting the States also agreed *to approve the use of Les Nicolles Vinery site by the States Education Council for the construction of a new secondary school and a new Special Needs secondary school.*

10. The States agreed to progress the Plan by authorising the Advisory and Finance Committee to transfer a sum of £32,000,000 from the Capital Reserve to the capital allocation of the SEC for that purpose. An additional £2,000,000 was added to the £4,000,000 previously allocated in April 2002 to cover the initial planning costs of Phases One and Two of the programme.

11. The States agreed to note that, for planning purposes only, the SEC, in conjunction with the Advisory and Finance Committee, would work on the basis of a minimum of £15,000,000 per annum being made available from 2004 for the purposes of progressing the remaining phases of Programme 1 (the secondary, post-16 and Special Needs rebuilding programme) of the Education Development Plan.

12. The SEC emphasised in the February 2003 policy letter that the phasing proposals it laid before the States had been designed to ensure that throughout the five phases of the Plan the educational needs and demands of the Island would continue to be met, and that adequate facilities would be available at all times and able to be staffed appropriately.

Progressing the Education Development Plan : 1. Programme 1 (Rebuilding) Funding and Phasing. 2. Construction of Additional Post-16 Facilities – Billet d'État II 2004

13. In **February 2004** the States approved, inter alia, the following resolutions:

- *to transfer the sum of £12,750,000 from the Capital Reserve to the capital allocation of the States Education Council for the purposes of continuing Phases One and Two of the Council rebuilding programme (Programme 1);*

- *to note that the Treasury and Resources Department will have due regard to the need to work on the basis of transferring annually from January 2005 to January 2008, subject to the affordability and availability of funds, the sum of £12,750,000 in January each year to the capital allocation of the Education Department for the purposes of completing Phases One and Two of the Department rebuilding programme (Programme 1).*

14. The SEC stated that:

> *by using the remaining balance of capital allocation together with future annual allocations of £12.75 million to achieve the Phase One and Two projects, the Council will be able to meet the immediate strategic education objectives of:*
>
> 1. *the raising of the school leaving age to 16 by 2008/9*
>
> 2. *reorganising Special Needs Education*
>
> 3. *addressing the critical post-16 shortage of accommodation problems at the College of Further Education and the Grammar School.*
>
> *It should be noted, however, that these objectives will have to be achieved partly through temporary works on the Les Beaucamps, La Mare de Carteret and St. Peter Port Secondary sites pending the completion of the remaining Phases Three to Five.*

The funding and programming of Phases Three to Five can be reviewed towards the end of Phase Two and, depending on the financial position of the States, decisions can then be taken on how to fund the next phases.

The Education Council intends to come back to the States early in 2005 with the next project proposals for Les Nicolles and Les Beaucamps.

Education Development Plan – Programme 1 – Les Nicolles Site Demolition Work Billet d'État XII 2004

15. In **July 2004** the States approved the demolition and removal from the Les Nicolles site of two 7 acre glasshouses, several small buildings, sheds, oil and water storage tanks, boilers and flues including all foundation and support work and associated drainage in order to leave the site level and clean.

The Education Department stated that it "*intends to come back to the States later this year with the next proposals for Les Nicolles and Les Beaucamps*".

Progress to date in achieving the Education Development Plan objectives

16. During the **February 2004** States debate, the Education Department confirmed that its priority was the delivery of the Phase 1 and 2 building projects of the Education Development Plan by 2008 in order to achieve the following Education objectives:

- addressing the critical shortage of accommodation at the College of Further Education and Grammar School for post-16 students;
- closing St. Peter Port Secondary School to reduce the secondary schools from four to three and permitting the raising of the school leaving age to 16 in 2008
- commencing the reorganisation, modernisation and improvement of the College of Further Education;
- completing the Special Educational Needs reorganisation.

17. In the **February 2004** debate the States agreed, and reinforced this in **July 2004**, that the earlier funds previously allocated to the Education Development Plan together with a further £12.75 million per year, subject to affordability and availability, until 2008, would fund the building projects necessary to achieve these objectives.

18. The construction projects which follow in Phases 3 to 5 together with the related reorganisation of existing facilities would achieve the remaining objectives of the Education Development Plan:

- providing the additional Primary School facilities required in the North of the Island;
- completing the reorganisation, consolidation and rebuilding of the College of Further Education;
- completing the rebuilding of Les Beaucamps Secondary School and constructing a new La Mare de Carteret Secondary School and Primary School.

19. The Education Department has accepted that the programming and funding for these remaining projects will need to be kept under review and that it is likely that, depending on the financial position of the States, decisions will only be able to be taken to progress these projects close to 2008.

20. The reorganisation of Special Education is now well underway. Le Rondin is scheduled to open as a Primary School and Centre in September 2005. It will, in addition to the Primary School, be the headquarters for several SEN central services and also house the Child Development Centre which will be manned by the Health and Social Services Department.

21. Once the Les Nicolles Secondary Special School is open, Oakvale will be able to be converted for use as a centre for pupils with behavioural, social, and emotional difficulties. This will then complete the reorganisation of school age Special Needs facilities and only the new facilities for post-compulsory school age special needs students at the CFE will remain to be built.

22. The Sixth Form Centre at the Grammar School is due to open to the Island's Sixth Formers in September 2005. The College Hall and additional Performing Arts teaching spaces for the College of Further Education on the St. Peter Port Secondary site is due to be started on site in March 2005 with an expected opening date towards the end of 2006.

23. The final element in the reorganisation of Secondary, Post-16 and Special Education approved in 2002 is now ready to be started – the reorganisation of Secondary Education. In Phase 1 and 2 this means that the building of Les Nicolles Secondary School and the first stage of the rebuilding of Les Beaucamps School will need to be undertaken.

Reorganisation of Secondary Education

Background

24. In 1996 the SEC announced a thorough review of the structure of secondary and post-16 education as part of its Five Year Plan for surveying States Education in Guernsey. An extensive review followed incorporating a public questionnaire, independent reports and various policy letters.

25. Following the April 2002 States' approval for the reorganisation of secondary, post-16 and special needs education in Guernsey, the planning for the new secondary schools commenced. Working in conjunction with the Advisory and Finance Committee, an Option Appraisal report was produced on the site objectives of the April 2002 policy letter, the construction of new buildings over a 10 year period. This was then developed into a phased solution to divide EDP1 into manageable and affordable phases which ensured the educational needs and demands could be met and that adequate facilities were available and able to be staffed effectively throughout the reorganisation process. The phasing was designed to be flexible to enable bringing forward or deferring phases depending on availability of funds.

26. The Option Appraisal confirmed the Education Council's view that EDP1 could not be seen as a series of individual or divisible construction projects, but had to be planned as a complex reorganisation of education services for pupils and staff.

27. The Strategic Review report that followed in Spring 2003 analysed the philosophy, design, programme and cost implications in the light of detailed research and consultation.

Development of the Design Brief

28. The detailed design background was set out in the April 2002 policy letter. Since the end of 2002, along with the other EDP1 projects, the design of the secondary schools has been progressed in more detail.

29. In the UK the Department for Education and Skills (DfES) produces building bulletins which give guidance on the range of minimum area standards for different types and sizes of schools. The guidance is given with the "intention not to set constraints but to ensure that minimum standards are protected". These bulletins are periodically revised in the light of changing curriculum and teaching practice.

30. The accommodation specification for a Guernsey Secondary Modern School has traditionally been higher than for an equivalent size UK school. This is because Guernsey has maintained more favourable pupil-teacher ratios (to which the UK is now trying to move) and this means that more classes can be offered, in a broader

range of subjects, with fewer children in a class and much more individualised attention for pupils who have difficulties with learning. Being able to set children according to their abilities in different subjects also helps children to reach their potential. As a consequence Guernsey's GCSE results have always been significantly higher than the UK's even though approximately 17% leave at 15 without gaining any qualifications.

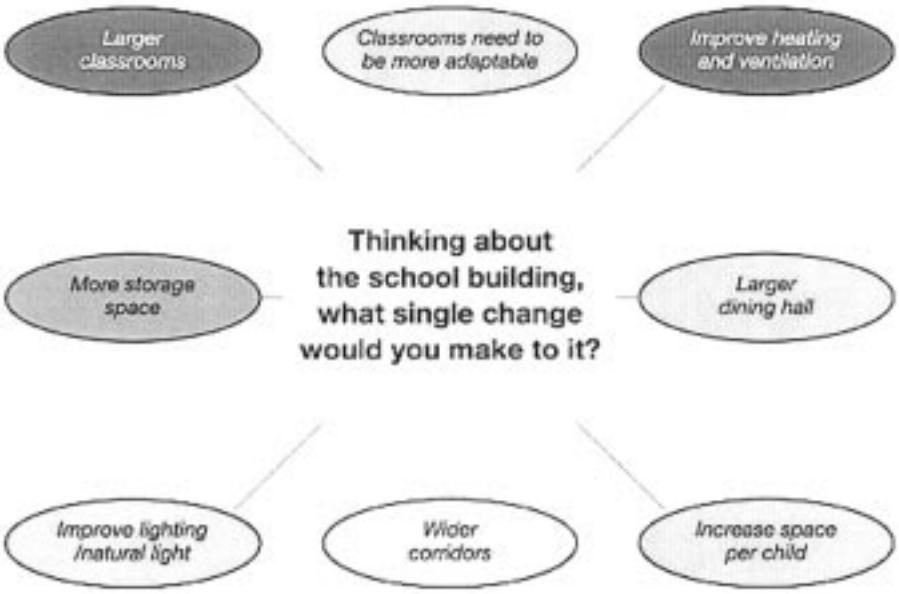
31. In addition, the UK formulae are based on a comprehensive school model of secondary education which educates pupils of all abilities in one school. The Guernsey system selects the top 25% of the ability range to attend either the Grammar School or the Colleges and, therefore, the secondaries provide a range of accommodation facilities more geared towards vocational, creative and practical courses and use a wide variety of teaching styles to engage the interest of pupils who often have difficulties in learning or who are disaffected by school.

32. Such differences make the UK DfES formulae useful only as a basic starting point for defining an accommodation schedule, particularly as there are fundamental doubts now being expressed in the UK about the adequacy of the UK area guidelines in meeting the space requirements that schools actually need to function well.

33. These doubts are supported by the conclusions from the 2003 UK Audit Commission report 'PFI in Schools' which studied and compared Public Finance Initiative (PFI) and traditional procurement of schools on the basis of cost and quality and lessons for the future.

34. Some representative quotes from that 2003 UK Audit Commission report follow that demonstrate the concerns with the UK guidelines:

> "29 .....But a common concern expressed during visits was that DfES standards, and the budget set by the DfES PFI 'toolkit', needed to be updated to reflect the demands of the modern curriculum, the needs of today's children and the growing expectation that schools will become more of a community resource. PFI providers are required to meet the outputs agreed in the contract specification – but if these are based on outdated ideas of what constitutes best practice, then problems will persist. Lack of space was the most commonly cited problem. Some schools argued, for example, that they needed two halls because the growing use of pupil testing meant that a hall could be unavailable for other purposes for significant periods.
>
> "32. .....**Exhibit 7. Changes that users would most like to make to their new school buildings**
>
> The themes tended to be about size, layout and environmental control.



The darker the box is shaded, the more users mentioned that factor.

Source: MORI survey of 94 users of eight PFI and ten traditionally-funded schools, using an interview questionnaire based on a design evaluation tool developed by CIC

35. Against this background of uncertainty, and in consultation with the Advisory and Finance Committee, the SEC decided to progress the detailed design through consultation and research in both UK and Island schools. Curriculum requirements were analysed in both, and a series of visits to UK traditional and Private Finance Initiative (PFI) new and refurbished schools was made to research the required teaching spaces and to learn from the good and bad experiences in the UK and locally.

36. For each aspect of EDP1, where such indicators are available, the practice of benchmarking to UK and other jurisdictions' comparators has been applied. Therefore, as the design was developed in detail, and in consultation with the Advisory and Finance Committee, an independent review was commissioned of the number of teaching spaces required to meet the Guernsey curriculum in so far as it could be predicted for the future on the basis of the present curriculum in the secondary schools. Capita Strategic Education Services, one of the leading education consultancies in the UK, looked again at the curriculum requirements defined by the Headteachers and produced a variety of curriculum models and the accommodation requirements for each. The Capita analysis confirmed the requirement for the teaching spaces defined in the detailed design brief.

37. The Education Department has, therefore, after detailed evaluation of the design of new schools in the UK and research into the published documentation, and after consultation with the Headteachers, arrived at an area brief for the Les Nicolles Secondary School above the minimum area guidelines set out in the DfES building bulletins and for the reasons set out in the following paragraphs.

38. It has arrived at this design specification in the knowledge that all its existing secondary schools in Guernsey have had to be significantly extended over the years in order to cope with the changing requirements of the curriculum. As the new buildings are planned to have a functional life of at least 50 years it is essential that space is not so tightly constrained as to require further extensions in the near future when the curriculum changes again.

39. The Department is aware that many of the classrooms in the existing secondary schools and the Grammar School are regarded as too small for effective teaching by the teachers in the schools. It therefore has planned that the classrooms at Les Nicolles will be able to accommodate up to thirty pupils, as many classes in the secondary schools already operate near the 30 pupil level in order to allow the pupils with greater learning difficulties to be taught in smaller classes.

40. The Department has also recognised that the planned community use of the facilities and the intention that children from the co-located Special School will be able to use the facilities will mean that additional corridor and storage space have to be provided to allow for multiple users of the buildings and the safe storage of equipment. It has allowed for more facilities for meeting rooms and interview rooms and for the larger numbers of peripatetic teaching staff and Health and Social Services staff who visit the schools compared with their UK equivalents. The circulation space is enhanced to provide additional learning areas for small groups to be taught. This is in recognition of the different styles of teaching already in use in its secondary schools which encourage less whole class teaching and more individualised group work – as required in the 14-19 Tomlinson Curriculum proposals recently published and in the Building Schools for the Future guidelines to provide for "a range of preferred learning styles including direct teaching, individualised learning, small group work, resource and research based learning".

41. The school is also larger because of its extensive dual use sporting facilities, especially the swimming pool which would not generally be included in the specification of a UK school. The pool has been designed in consultation with the Culture and Leisure Department and is intended for use by pupils at the Special Needs school and by community groups as well as the proposals in the mainstream school. This requires additional changing and locker facilities.

42. The States has approved the raising of the school leaving age from 15 to 16 to take effect no later than 2008. While this will have a negligible impact on the Colleges

and the Grammar School as nearly all their pupils stay on to take public examinations, in the Secondary Schools up to 25% of the pupils leave at Easter or Summer in the year before their GCSE exams. The UK had a disastrous experience when it raised the school leaving age because of a failure to provide adequate facilities for those who were obliged to stay on for the first time. The accommodation planning for the new schools with its emphasis on space, security and different ways of teaching and working with pupils is part of the Department's strategy for ensuring a successful transition to the new leaving age of 16.

43. The design team is continuing to value engineer the project with the intention of achieving more economies in the project. However, the Department believes the expansion of areas against the DfES minimum guidelines is necessary and proven by the experience and research of its teachers. For example, the DfES guideline is for corridor widths of a minimum of 1.9m. The Grammar School's corridors are mainly 2.4m wide whereas Les Nicolles is designed to be 2.1m except where the corridors widen and form the "break-out spaces" for other learning activities, as they do at the Forest Primary School. Similarly the majority of classrooms are designed to be of the standard size of 55m² with only a few being at the larger size of 60m². Very many of the classrooms in the existing secondary schools are around 52m² and they have proved too small for effective modern styles of teaching. The gym, hall and pool are all standard sizes for the functions they fulfil.

44. The Education Department will not achieve the completion of its reorganisation plans for secondary education until the new secondary schools are built at Les Beaucamps and at La Mare de Carteret. However, St Peter Port secondary school will be able to be closed once Les Nicolles is completed and once the first phase of the rebuilding of Les Beaucamps is achieved.

45. This States Report, therefore, seeks approval for the first stage of the reorganisation of secondary education to be achieved by the building of the new Secondary and Secondary Special Education Schools at Les Nicolles.

46. Approval of the proposals for Les Nicolles will progress the Education Development Plan by enabling:

- the closure of Oakvale. This will allow:

  the number of Special Educational Needs schools to move from three to two; and

  work to commence on the conversion of Oakvale into a Centre for children with social, emotional and behavioural difficulties;

- additional pupil capacity to be provided at Les Nicolles. This will allow the:

relocation of St Sampson's Secondary School pupils to Les Nicolles to relieve the current overcrowding at the school. It will also

start the process of closure of St Peter Port Secondary School to allow the College of Further Education to cope with the current overcrowding at the College by expanding temporarily into the existing school buildings until the new College facilities can be constructed;

- **the conversion of St. Sampson's Secondary School** to allow the infant school on the site to become a primary school.

47. The reorganisation is an immense task and will take a number of years to carry out involving and affecting a significant number of people. Certainty on the completion date for construction of **both** Les Nicolles and Phase A of Les Beaucamps secondary schools will be required before all the reorganisation schedule for the closure of St Peter Port Secondary School can proceed in detail.

48. Against this background, meetings were held with the Treasury and Resources Department in the summer of 2004 to determine the best phasing of the two projects. The most appropriate approach is for both secondary facilities to be opened at the same time to allow the closure of St Peter Port School before the raising of the school leaving age in 2008. This would permit the full relocation of staff and pupils to be completed. The Education Department had been working with the Treasury and Resources Department and its predecessor Committee to achieve the completion of the two projects in 2007.

49. In conjunction with the Treasury and Resources Department numerous options for phasing the construction work on the Les Nicolles project have been considered as part of the detailed design. This consideration has continued in more detail during the spring / summer of 2004. The options considered in more detail centred around:

- building the Special Educational Needs school first followed by the mainstream secondary school;

- building the Special Educational Needs School first followed by a number of stages for the mainstream secondary school over a number of years e.g. foundations; shell; fit out.

50. The conclusion was that it is far more cost effective to contract Les Nicolles as a whole rather than splitting it up into stages over a number of years.

51. In August 2004, after considering a Commerce and Employment Department update of the local construction industry economic model for various phasing options of

Les Nicolles and Les Beaucamps Phase A building projects, it was agreed with the Treasury and Resources Department to defer some of the programme and progress on the basis of completion of Les Nicolles in 2007 and Les Beaucamps in 2008.

52. The Education Department understands that the States might wish to consider the projects at Les Nicolles and Les Beaucamps separately in view of the many demands on its resources, and, therefore, brings the Les Nicolles project forward for States approval at this time. The Les Beaucamps project approvals will be placed before the States later in 2005 after prioritisation of the States' capital projects is undertaken.

Les Nicolles

Description of Facilities

53. The mainstream school will be organised on the basis of six forms of entry and will cater for a maximum of 720 pupils. The Special Educational Needs school (SEN) will be co-located and share some facilities, including the sports hall and swimming pool. Up to 130 pupils covering the whole range of learning difficulties and disabilities will attend the secondary special school. Some children may stay on until the age of 19 if they do not transfer to the College of Further Education.

54. The SEN school will provide educational facilities for the full range of children with special educational needs including those with the following Special Needs:

- moderate and severe learning difficulties;
- severe medical needs and learning difficulties;
- physical disabilities and learning difficulties;
- visual impairments and learning difficulties;
- hearing impairments and learning difficulties;
- language and communication difficulties, including the autistic spectrum disorders;
- profound and multiple learning difficulties.

55. The States' decision in July 2004 to approve the clearance and demolitions prior to a contractor commencing the schools' construction work on the site in Spring next year will reduce the overall project cost by reducing the unknowns and hence the

risks and costs associated with the poor site conditions and hence the financial risk allowances to be made by the main contractor.

56. The main demolition works are progressing well and are expected to take some six to nine months in order that they are completed before the building construction starts. An enabling works contract starting February / March 2005 will raise the levels at the site in readiness for the main building works from August 2005. These enabling works will help reduce the financial risk allowance for the project.

57. The Education Department has maintained a continuing dialogue with the working party formed by the St Sampson's Douzaine to consider the details of the development. Feedback from this working party, public meetings held in October 2003 and September 2004 and subsequent discussions with neighbours has helped formulate the traffic management strategy for the area surrounding Les Nicolles. Dialogue is continuing and the results of a questionnaire sent to neighbours seeking feedback on traffic matters in the area will be sent to the Traffic Section of the Environment Department for that Department to determine the traffic proposals for the area.

58. The works for the Les Nicolles schools include a new foul drain running along the length of the proposed new site road extending to Les Effards. This will help facilitate possible future private connections into the main foul drainage system. Education has been working closely with the Public Services Department to co-ordinate the drainage works to minimise any possible disruption to local residents and enable the Public Services Department to connect private properties in this area to the main drain as soon as possible.

Building Design

59. The building design is required to meet the needs of a wide range of physical, and intellectual abilities. The objective of the design is to create a building that will meet the current requirements of both schools and be adaptable to meet future educational needs.

60. While the two schools are to have separate identities, emphasis has been placed on providing an inclusive environment that allows facilities in both schools to be shared. Pupils in the mainstream school with special needs will have access to specialist facilities in the special needs school while pupils in the special needs school with particular abilities or interests will be able to participate at times in the mainstream school. Les Beaucamps and La Mare de Carteret new secondary schools will also be designed to be accessible by special needs pupils. However, an increased level of access is incorporated into the Les Nicolles design due to the wider range of Special Educational Needs arising from the co-location of the two schools. This allows for wheelchair users to pass each other without difficulty. In

addition, at junctions and door entrances the corridor width is further increased to assist pupils with mobility difficulties to manoeuvre independently amongst larger groups of able bodied children. The lifts are also large to allow for children in wheelchairs to use them, and to take, when necessary, children on beds.

61. The relationships between the two schools and the shared sports facilities underpin the whole design. Attention was given to the degree to which the co-location of the two schools could provide additionally for each, allowing a degree of shared use of performance, assembly, social and dining areas. The design addressed the links between the individual curriculum areas and departments. Circulation both between the schools and within the schools was examined. The design team examined the degree to which the community could have access to the school facilities without compromising the security of the building or the safety of pupils.

62. The schools will be situated on an east–west axis on the site. The mainstream school will have a curved circulation spine with general teaching spaces leading from it and separate areas for science, ICT, art and design technology. The mainstream secondary school will provide the following accommodation:

- General and practical teaching classrooms
- SEN classrooms
- Staff and administration accommodation
- Swimming pool
- Library
- Drama studio
- Assembly hall
- Dining space and kitchen
- Sports hall, gym and associated changing
- 2 grass pitches
- 1 artificial grass pitch
- Hard games courts
- Hard play areas.

63. The SEN school has been designed as a series of wings dedicated to each Key Stage and enclosing outside spaces. The key accommodation at the SEN School is as follows:

- General and practical teaching classrooms
- Sensory curriculum rooms
- Medical and therapy facilities
- Library
- Independent living unit
- Assembly hall and gym
- Dining space and kitchen
- Hydrotherapy pool
- Staff and administration accommodation
- Outdoor education classroom
- Sensory outdoor areas
- Hard games courts
- Hard play areas.

64. The mainstream secondary school incorporates a construction area of approximately 11,000m² and the Special Educational Needs School an area of approximately 3,800m² giving a total construction area of some 14,800m² with a total budget of £47,814,000 including £840,000 for demolition works already approved in July 2004. The SEN school pupils and staff will have full access to the facilities contained within the mainstream school including sports facilities, assembly, social and dining areas. The schools are designed on the basis of both single and two-storey accommodation with the two-storey accommodation predominantly forming the mainstream school. In the mainstream school it should be noted that the sports hall, main hall, swimming pool and entrance foyer, which occupy almost a third of the mainstream building area, do not lend themselves to two-storey accommodation, either functionally or economically.

65. The palette of materials for the Les Nicolles Schools takes account of the Island building styles vernacular. Materials have been selected on the basis of appearance, durability, maintenance and capital and ongoing revenue cost.

66. The project is also intended to achieve a 'good' to 'very good' rating using the environmental assessment measure developed by the Building Research Establishment. This embraces, among other issues, environmental impact, CO^2

emissions, use of renewable/recyclable materials, water consumption and storm and foul water disposal and reduction of environmental pollution from the manufacture or disposal of building material and from the building in use.

67. The external spaces provide for both informal recreational and formal sport activities and play and outdoor learning opportunities.

68. The boundary and other planting will increase the site's biodiversity and biomass significantly. These areas will add visual amenity, seasonal interest and create a valuable educational resource. As the landscape matures it will provide shade and shelter to the external spaces whilst ameliorating the site's exposed location.

69. One of the key project issues at Les Nicolles is the provision of a new access road to the site. The States purchased the site before it was allocated for the Education Council's use in the February 2003 States meeting. Better access is required as the site only afforded one access to the highway network via a single width track onto Le Bordage. The east of the site is bordered by an access road, which connects Baubigny Road to the Prison site. There are legal restrictions over the use of this road following a Royal Court Tribunal of Enquiry dated 27th February, 1986. The Strategic Review design and costs were only able to allow for creating one point of entry to the site via Les Effards as no other solutions or opportunities were known at the time.

70. Les Effards Road and Baubigny Road are, however, narrow carriageways. A footway is provided along one side of Les Effards Road for most of its length, but this stops adjacent to the proposed school access. There is no footway through Bordage Road, and the road is only some 4.5m wide with no verges through this area. There is very little footway along Baubigny Road.

71. The Project and Client Teams have been focusing on securing suitable vehicle and pedestrian access, commensurate with a new 720 pupil secondary school and new 130 pupil secondary special needs school at the site.

72. The strategy for the new school access has, therefore, been based on a new road linking Bordage Road with Baubigny Road to take traffic at peak times off the surrounding areas. Traffic calming measures are proposed on the adjacent roads to slow traffic on the approaches to the school and enhance safety for pedestrians and cyclists.

Future Stages of the Development

73. To facilitate this access the purchase of some adjoining parcels of land has been agreed and a number of other options are being pursued with the Treasury and Resources Department to achieve appropriate access.

74. The design of the project has now reached RIBA Stage E, Detailed Design. Design development has been underway since July 2003 and the Education Department agreed the building layouts in principle in January 2004, subject to States approval.

75. The Treasury and Resources Department has agreed to the issue of tenders and consultant fees up until the end of January 2005 which will allow the Design Team to complete the detailed design as specified in RIBA Stage E and to commence Stage F for a limited period.

76. Following the Stage D submission to the Treasury and Resources Department in June 2004, the forthcoming key phases of the project programme are as follows:

- Enabling Works — February 2005 – August 2005
- Construction — September 2005 – May 2007
- Decant and Training — June 2007 – August 2007
- School Opening — September 2007

77. The key deadline for this project is the occupation and operation of the two Les Nicolles schools by September 2007. In consultation with the Treasury and Resources Department a JCT 98 Two Stage Design and Build Form of Contract has been recommended in order that this occupation date is met. This also aids the design process as the selected contractor will be engaged at an early date and will be available to work alongside the Design Team to ensure that best value and best practice are achieved.

Revenue Implications

78. In the April 2002 policy letter the States resolved "*to direct the Advisory and Finance Committee when recommending to the States revenue allocations for the States Education Council for 2003 and subsequent years, to take account of the additional costs associated with the Site Development Plan.*

79. As determined in the Option Appraisal and confirmed in the Strategic Review, the creation of a new modern school estate will necessitate a review of the methodology for operation of the schools.

80. A maintenance policy will be prepared for the new estate and will be used by the project team for each development to prepare a planned preventative maintenance schedule.

81. This will form part of a maintenance plan for each development confirming the type, expected cost, type of expertise required and permitted intervals of

maintenance work. The schedule can assist in establishing the required maintenance budget for the life of the building.

82. In the longer term the reorganisations should yield staff cost efficiency savings. However, in the short term, with the phasing and deferral of projects, increased costs will be incurred until EDP1 is completed.

83. The Education Department's annual policy planning estimates take account of the increased number of pupils and teaching staff due to demographic growth and the raising of the school leaving age in 2008. Existing staff from St. Sampson's Secondary School will be redeployed to the secondary school at Les Nicolles, along with some of the staff from St. Peter Port Secondary School, which is scheduled under the proposals in this Report to close in July 2008.

84. In addition, the school will need a new post of Premises Manager to be shared with the secondary special education school on the same site. The new school buildings will be more complex than any existing school buildings with a technical infrastructure. The school site is large and complex compared to the other sites, and a Premises Manager will facilitate the community use of the buildings and grounds and the efficient management and maintenance of the whole site.

85. A Resources Manager (Bursar) type post will most likely be required at the school. The Bursar will be able to perform many non teaching duties traditionally undertaken by teachers and this is consistent with UK initiatives, including Time for Standards and workforce re-modelling, which the Education Department is developing. The development of both the roles may involve some negotiation with the Professional Associations.

86. Additional time is also likely to be needed for cleaning requirements and administration and technical support, to cope with the increased number of students and the ICT and technical equipment in the larger school. In the longer term, when St. Peter Port School is demolished, it may be possible to reduce the existing number of non teaching staffing establishment that will be required in the three larger secondary schools. However, this establishment will be needed in the interim period as the implementation date of each new school varies.

87. With provision for energy, maintenance contracts etc. the additional annual revenue costs at today's values are presently estimated and summarised as follows:

	£
Non-teaching staff costs	54,300
Maintenance contracts etc	300,000
Heat, light and water	129,000
General supplies etc	10,000

88. The non-staff costs are provisional estimates of the total buildings maintenance and energy costs. Such existing school premises costs at St. Sampson should reduce when the existing St. Sampson's School buildings are reduced and converted into a primary school.

89. The provision of a larger swimming pool will necessitate slightly larger plant which will increase the above energy costs by about £10,000.

90. In addition, as mentioned above, a planned preventative maintenance schedule will be produced during the construction period and used with the Treasury and Resources Department to determine an ongoing schedule of planned preventative maintenance. During the initial design development, costs have been investigated for maintenance and running costs. Detailed costs to operate and maintain the building to an appropriate standard are being evaluated. The building is designed to achieve a minimum life of 50 years with low-maintenance durable materials being selected. The programme of the first major maintenance refurbishment is designed as lasting a minimum 15 years in order to manage and reduce costs wherever possible. Once the design is finalised, these detailed costs will be confirmed with the Treasury and Resources Department.

91. These revenue estimates are very approximate at this early stage. Work will continue to identify possible rationalisation of both staff and other costs. The Education Department will continue to work with the Treasury and Resources Department to identify and manage all the Revenue budget implications.

Swimming Pool Facilities

92. In preparing the proposals the Education Department has taken the opportunity to consult fully with the Culture and Leisure Department having regard for the principle of establishing dual use sporting facilities and maximising the efficiency of States properties.

93. The Culture and Leisure Department has been aware for some time that the present facilities at Beau Sejour for swimming are far from sufficient to cater for the 2000+ local people who wish to train or compete in the sport every week.

94. Arising from this, the Culture and Leisure Department carried out a detailed consultation process with both the Guernsey Sports Commission and the Guernsey Amateur Swimming Association with a view to establishing how best to construct a pool which, as well as meeting the needs of the school, would relieve the pressure on the Beau Sejour pool by satisfying demand and allowing every opportunity for personal development for those participating at a competitive level.

95. Having carefully considered the various needs and operational issues associated with the running of a swimming pool, it was agreed that the most effective and efficient arrangement would be for the Beau Sejour pool to be made available for casual public swimming whilst the various swimming clubs would make use of the school pool under the control of their officials out of school hours.

96. In order to satisfy fully the various demands, the ideal scenario would be to construct a 25 metre 8 lane competition pool with warm down facility together with spectator seating to accommodate large galas involving overseas teams that could visit the Island.

97. Unfortunately, given the constraints of the site and the considerable additional costs of providing such a facility, the Culture and Leisure Department has accepted that this is not a realistic option owing to the financial constraints of the States.

98. However, having discussed the possible alternatives in some detail with the project team, the Culture and Leisure Department is pleased that it would be possible to increase the size of the originally planned pool from a four lane facility to one incorporating six lanes. This change, together with provision of additional changing facilities and some limited spectator seating, will meet the most pressing needs of the sport and considerably relieve the pressure on the pool at Beau Sejour.

99. The Education and Culture and Leisure Departments presented these proposals to the Treasury and Resources Department. The Treasury and Resources Department recommended that, on the basis of this being the best value way of increasing the Island swimming facilities, the States be asked to approve funding for the Culture and Leisure Department to provide for the extra cost of these facilities at Les Nicolles.

Consultations with Environment Department – Planning

100. The Education Department's officers and consultants continue to be grateful for the many meetings with officers of the Planning Section of the Environment Department relating to the development of the eight separate sites in the Plan.

101. The Department has taken on board the comments received at staff level. The letter from the Environment Department dated 24th November, 2004 is appended (Appendix 1), so that the Environment Department's concerns on the planning application including a four lane swimming pool are reported to the States. The design for a six lane pool will not differ substantially from the four lane pool design and a separate planning application will be submitted in due course for the six lane swimming pool effects.

102. From this correspondence it is clear that the Environment Department has some reservations on planning grounds to the proposals for:

1/ access from Baubigny Road – use Prison Access Road;
2/ development of the area to the south of Les Effards;
3/ the new road, parking and fencing;

and further work is required to determine the traffic measures required and the funding of the essential measures.

1/ Access from Baubigny Road – Use Prison Access Road

103. The Education Department and its advisors have considered in extensive detail the available options for access from Baubigny road. The use of the Prison access road has been considered alongside a number of other options for access along the Baubigny road.

104. Each of the options has been considered in terms of safety, achievability, functionality and cost. Such consideration has involved consultation with Planning, Traffic, Home Affairs - Prison, Board of Administration, Advisory and Finance Committee, Housing Authority and Board of Health and their successor Departments.

105. The Treasury and Resources Department has taken forward negotiations with land owners to achieve appropriate access to the site.

106. The Prison access road option is last on the list of priorities when all the issues are considered

- Whichever option is achieved, the key issue will be safety. The current Prison Road access does not provide a safe access onto Baubigny Road. The traffic engineers have confirmed that the entrance would need to be widened to improve visibility due to the narrow entrance and the bend on Baubigny Road prior to the Prison Road. The Prison Road would need widening to allow for 2 way traffic and a pedestrian pavement. This road option requires the longest length of new roadway and an additional road junction would be required to separate the Prison traffic from the public traffic.

- To resolve the sight lines and capacity issues, surrounding land would need to be purchased from at least two parties to reduce the boundary walls to increase the visibility from the junction and it is likely that the existing road at that junction would need widening.

- The existing Prison access road would also need upgrading. Even if these purchases were possible, the existing bend and lack of pavements on Baubigny Road means that this option remains the most unsafe option being considered.

- In addition the Prison access road would require the relocation of the school buildings and external facilities to allow for the extended road connection to the Prison Road. This would create additional design costs and is likely to result in the loss of external playing fields equivalent to one football pitch.

107. It is also understood that there are legal restrictions over the use of this road following a Royal Court tribunal of enquiry. The Committee for Home Affairs has written to the Education Council objecting to the principle of sharing the Prison Access Road, inter alia, for security reasons. Arrangements for occasional use, for example for delivery of materials and access for maintenance purposes, have been provisionally agreed with the Prison Governor. For these reasons the Prison access road option is last on the list of priorities when all the issues are considered.

108. Whichever access route is achieved, the type of traffic measures required will be determined by the Traffic section of the Environment Department.

109. The Education Department will continue to work with the Environment Department to minimise any effect on the Conservation Area.

110. The Treasury and Resources Department is continuing negotiations with a number of land owners. Even if these negotiations prove unsuccessful, because of the overall disadvantages in using the Prison Road it is unlikely to be used.

2/ Development of the area to the south of Les Effards

111. The Education Department will reconsider the current proposals and work with the Environment Department as far as is practical to preserve these areas.

3/ The new road, parking and fencing

112. Every effort will be made to address these issues to achieve an adequate quality and character to the development of the site. However the use of the land above the new site road is for the Treasury and Resources Department to determine as it is not required by the Education Department and will be handed back to the States.

113. The Education Department will continue to ensure that best practice is applied and all technical requirements are met.

4/ Traffic Measures

114. In addition to the planning issues the Environment Department has commented on various traffic measures.

115. The design team appointed to develop the plans has included highway consultants and landscape consultants and their advice has been formed in consultation with the

Environment Department's Traffic Section and incorporated into the proposals. These currently include, for example, traffic lights to provide safe traffic and pedestrian crossing at the junction with Baubigny Road and further safety measures on Les Effards, Bordage and Baubigny Roads.

116. Following the direction from the Treasury and Resources Department and in common with other States projects, provision has been made in the project budget for the site new road and traffic measures on the site and on the immediate surrounding roads.

117. Conflicting advice has been received on whether any works on roads in the surrounding network are essential as a result of the Les Nicolles development or could be considered necessary regardless of this development. The Education Department will need to be advised by the Environment Department and if traffic measures are required as a direct result of the Les Nicolles development the Treasury and Resources Department will need to consider how any additional budget can be met as, on the advice of the Treasury and Resources Department, provision for such wider network road works has not been made within EDP1 budgets. The level of funding required cannot be determined at this stage. Some measures are likely to require a trial period before the detailed requirements can be determined.

118. The Education Department will continue to work with the relevant Departments to achieve appropriate traffic measures.

119. All changes will be subject to being safe, practical and functional. If the cost of the Environment Department proposals is outside of the current budget provisions, the changes will be subject to Treasury and Resources Department approval.

120. The Education Department acknowledges that, as with its development of Le Rondin, Sixth Form Centre and College Hall sites, the plans for the Les Nicolles site will be subject to modification in discussion with the Environment Department.

121. **The States are, therefore, asked:**

- **to approve the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in this Report at a cost not exceeding £46,974,000 (£47,814,000 less £840,000 for demolition works approved in July 2004);**

- **to transfer the sum of £12,750,000 from the Capital Reserve to the capital allocation of the Education Department to be added to the Education Department's existing capital allocation balance of £23.30**

million plus the planned £12.75 million allocation in January 2006, subject to affordability and availability, for the purpose of funding the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in this Report;

- **to authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these works;**

- **to approve the inclusion of a 6 lane swimming pool as set out in this Report rather than a 4 lane swimming pool within the new secondary school facilities at Les Nicolles at a total additional cost to the overall project not exceeding £1,000,000;**

- **to authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these additional works;**

- **to authorise the Treasury and Resources Department to transfer an appropriate amount from the Capital Reserve to the capital allocation of the Culture and Leisure Department for the purposes of carrying out these additional works;**

- **to authorise the Treasury and Resources Department to approve a capital vote not exceeding £1,000,000 for these additional works, such sum to be charged to the capital allocation of the Culture and Leisure Department.**

Funding

122. In approving the February 2003 policy letter, the States resolved to note that the Education Council, in conjunction with the Advisory and Finance Committee, and for planning purposes only, would work on the basis of a minimum of £15 million per annum being made available from 2004 for the purposes of progressing the remaining phases of Programme 1 for the Education Development Plan.

123. In February 2004 the States noted that owing to the more detailed information that was available the annual amount required to achieve the Phase One and Phase Two project objectives was £12.75 million per annum from 2004 until 2008.

124. By using the then remaining balance of capital allocation together with future annual allocations of £12.75 million the reorganisation could be achieved. As discussed elsewhere in this Report, the reorganisation of secondary education requires certainty on the intended dates of opening the new facilities and the States in February 2004 noted the intention of the SEC to "*come back to the States early in 2005 with the next project proposals for Les Nicolles and Les Beaucamps*.".

125. Against this background the States in February 2004 approved the allocation of £12.75 million each year until January 2008 and approved the first year allocation of £12.75 million.

126. **In accordance with the States' Resolution in February 2004 the States is asked to approve the allocation of the next amount of £12.75 million from the Capital Reserve to the capital allocation of the Education Department for the construction of the schools at Les Nicolles.**

127. **This will be funded from the Education Department's existing capital allocation balance of £23.30 million plus the £12.75 million allocation for 2005 recommended in this Report and a further £12.75 million allocation in January 2006, subject to affordability and availability, all in accordance with the States resolutions of February 2004.**

128. Each of the EDP1 projects has included extensive value engineering work. The design brief has been set on a long term best value basis and each option determination as the design has developed has involved consideration of the long term cost of each option: for example, the benefits of spending more at the outset to save long term on disruption / cost, or to spend less initially and repair and replace a number of times during the life of the building.

129. Identifying possible savings has been approached by applying the three standard categories of Design Quality Indicators (DQI's) to ascertain any possible savings against the effect on:

- Impact – the visual effect;
- Build Quality – the durability;
- Functionality – ability to deliver e.g. curriculum, community use in next 50 plus years.

130. The first two indicators are more objective and are easier to measure. The last item of functionality is more difficult to measure objectively and an assessment is required of the effect on delivery compared to the present and likely future curriculum needs

131. This general approach has been combined with a number of value engineering workshops for each project to challenge the choices and options to ensure best value. Experienced people who have been independent of the relevant design team have led many of these workshops. As a result many millions have been cut from the overall budget of the EDP1 projects.

132. In order to make a direct comparison of the cost £/m^2 for each school with a similar type of building in the UK, there were a number of factors to consider. Firstly, the UK DfES base cost for a secondary schools is calculated on a Greenfield site basis and any site abnormals are costed separately. However, Les Nicolles is a brown field site and both the site and building abnormals are included within the overall construction cost. Therefore, these had to be extracted and the cost is then adjusted further to take into account the Guernsey location factor.

133. The base build costs, when adjusted to take into consideration the location factor for Guernsey, for both schools are comparable being about the same or marginally lower than the UK DfES base build costs.

134. In addition the Treasury and Resources Department has alongside the Education Department commissioned and held value engineering workshops on the Les Nicolles project. The conclusion of Treasury and Resources Department advisors from such review was that the Les Nicolles project costs represented good value and few savings could be adopted unless wholesale reductions in the area of the scheme in respect of the mainstream secondary school were able to be made.

135. The special needs school costs and areas were considered to be reasonable. The area of the special needs school was found to be 569m^2 below an equivalent UK school due to sharing of accommodation with the mainstream school.

136. Two external reviews have been commissioned, the first of which confirmed the accommodation brief put forward by the Education Department as necessary to provide for the curriculum offered in Guernsey secondary schools.

137. The second review produced a reduced area brief, but acknowledged this would not allow the current Guernsey curriculum to be accommodated.

138. The Education Department is determined to make the best use of its available resources and will continue to work to achieve savings. The design process agreed with the Treasury and Resources Department and its predecessor committee places emphasis on identifying and achieving savings all the way through the initial specifications and block layout designs through to working with the contractor on the detailed design. Any savings realised will be able to go towards future projects and reduce the overall need for funds from the limited Island resources.

139. The present funding position including these proposals can be summarised as follows:

Date	**Description**	**Credit**	**Vote**	**Balance Committed**
		£ million	**£ million**	**£ million**
April 2002	Initial funding for planning and implementing projects	4.0		4.0
February 2003	Additional funding for planning and implementing projects	2.0		6.0
February 2003	Allocation from Capital Reserve	32.0		38.0
February 2003	Le Rondin Special Needs Centre		13.9	24.1
July 2003	Capital Allocation	1.0		25.1
February 2004	Phase A of College of FE		8.13	16.97
February 2004	Grammar School Sixth Form facilities		5.58	11.39
February 2004	Allocation from Capital Reserve	12.75		24.14
July 2004	Clearance and demolition of structures and foundations on Les Nicolles site		0.84	23.30
Current Proposals	Allocation from Capital Reserve (States February 2004)	12.75		36.05
	Construction of a Secondary School and a Secondary Special Educational Needs School		46.97	(10.92)
January 2006	Capital Allocation (conditional approval States February 2004)	12.75		1.83
Commitments to Jan 2006	Central project and Education administration costs		3.30	(1.47)

140. Further approaches will be made to the States to complete the remaining Phase 1 and 2 projects to achieve Phase A of Les Beaucamps and the raising of the school leaving age, complete the Special Educational Needs reorganisation with the opening of the BESD Centre on the Oakvale site and initial planning for the remaining Phases at La Mare de Carteret Schools and St. Sampson's Primary School.

141. The timing of each project has been carefully considered with the Commerce and Employment Department to minimise the impact of each of the schemes upon the local construction industry.

142. As previously discussed in this Report, it was concluded with the Treasury and Resources Department that it is more cost effective to contract Les Nicolles as one construction project rather than splitting it up into stages over a number of years. As shown in the table above this results in a theoretical overdrawn balance during 2005 as a result of funding EDP1 by a set amount each year. This is in accordance with the States approvals in February 2004 to progress Phases 1 and 2 of EDP1 by annual allocations.

143. There will not be an actual overdrawn cash balance in 2005 as the cash flow of each project has been managed to ensure that the actual cash balances are maximised. The overall cash balance will be in credit and will only go into 'overdraft' for a number of months towards the end of 2006 which at the maximum will be less than £2million. However, if further funding of £12.75 million is allocated for 2006, as was conditionally approved by the States in February 2004, there will be no overdraft on the project.

144. As emphasised in its previous States Reports, the Education Department will continue to schedule the EDP1 projects to align with the availability of funds, and will work with the Treasury and Resources Department to report back to the States annually confirming progress and programme, recommending funding allocations and requesting project approvals.

Future Timetable

145. The Education Department expects to report to the States later in 2005 on Stage 2 of the reorganisation of secondary education with the building of Les Beaucamps Phase A to achieve the capacity required to raise the school leaving age.

146. It is intended to report to the States in 2006 to take forward the Oakvale conversion into a BESD centre. This will complete the Special Educational Needs reorganisation.

147. In line with the States approvals in February 2004 the Education Department is concentrating on achieving the fundamental 2008 Project Education reorganisation objectives within the funding approved.

148. The Post 16 developments have commenced with the immediate capacity needs being addressed through the new Sixth Form Centre and College Hall. The development and consolidation of the College of Further Education will continue after 2008 as funds are made available.

149. Similarly, after achieving the reorganisation of secondary education in 2008 the proposals for the building works at the La Mare de Carteret and Les Beaucamps schools will need to be addressed.

150. Alongside the Phase 1 and 2 Project the Education Department is continuing to work with the Treasury and Resources Department in carrying out maintenance works on the overall estate. Substantial works were carried out during the 2004 Easter and Summer school holidays. Planning the maintenance works alongside Programme 1 for the Education Development Plan will continue to ensure that the appropriate priorities are applied across the whole of the estate.

151. Each of the Design Teams has been working with the Education Department and its Client Representative Team, King Sturge, to develop the designs, assess costs and programme the works efficiently. Meetings have been held with local contractors, and discussions have taken place on the coordination of the Education projects with the other States capital projects being planned.

152. The Education Department has continued to work with the Treasury and Resources Department and the Commerce and Employment Department to best match the Education Department obligations of capacity, fitness for purpose and condition in order to minimise the impact of each of the schemes upon the construction industry and affordability of the States as a whole.

153. The Education Department is currently providing more detailed information to the Commerce and Employment Department on the Le Rondin and the Sixth Form Centre project tenders that were in line with Education Department projections of cost. Such detailed analysis will assist the Commerce and Employment Department in developing the local construction industry economic model.

Recommendations

154. The Education Department therefore recommends the States:

1. (1) to approve the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in this Report at a cost not exceeding £46,974,000;

(2) to transfer the sum of £12,750,000 from the Capital Reserve to the capital allocation of the Education Department to be added to the Education Department's existing capital allocation balance of £23.30 million plus the planned £12.75 million allocation in January 2006, subject to affordability and availability, for the purpose of funding the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in this Report;

(3) to authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these works;

2. (1) to approve the inclusion of a 6 lane swimming pool as set out in this Report rather than a 4 lane swimming pool within the new secondary school facilities at Les Nicolles at a total additional cost to the overall project not exceeding £1,000,000;

(2) to authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these additional works;

(3) to authorise the Treasury and Resources Department to transfer an appropriate amount from the Capital Reserve to the capital allocation of the Culture and Leisure Department for the purpose of carrying out these additional works;

(4) to authorise the Treasury and Resources Department to approve a capital vote not exceeding £1,000,000 for these additional works, such sum to be charged to the capital allocation of the Culture and Leisure Department.

Yours faithfully

M A Ozanne
Minister

Appendix 1

Les Nicolles Planning Submission Feedback

Letter from the Environment Department 24 November, 2004

Minister
Education Department
Grange Road
St Peter Port
Guernsey
GY1 1RQ

Our ref: PAPP/2004/3408

Prop. ref: B009280000-P03

24th November 2004

Dear Deputy Ozanne

DEVELOPMENT BY STATES DEPARTMENTS-
STATES RESOLUTIONS OF 1.8.1991(BILLET D'ÉTAT XX, 1991)

PROPOSAL: Construction of new secondary and special educational needs schools, access road, sports pitches and car parks.

LOCATION: LES NICOLLES VINERY, BAUBIGNY ROAD/LES EFFARDS, ST. SAMPSON.

FOR: States Education Department

I refer to your consultation in respect of the above development, received on 14th September 2004, which was considered by the Board of the Environment Department at its meeting on 23rd November 2004.

I am pleased to inform you that the Department has decided to raise no objection in principle within the terms of the relevant States Resolutions of 1991 to the proposed construction of a new secondary school and special educational needs school at Les Nicolles.

However, a number of aspects of the submitted proposals are of concern to the Environment Department as planning authority, and the Department requests that the matters referred to below are addressed and resolved by the Education Department in conjunction with this Department prior to the proposed development being commenced.

1. The proposals for access from Baubigny Road:

The Department is of the view that access to the site from Baubigny Road should utilise the eastern part of the existing Prison Access road, with appropriate improvement and junction control to be agreed, so avoiding the need to demolish a section of the existing

high granite roadside wall and to construct a new junction to obtain access to the north of Baubigny Farm, as currently proposed.

In this respect, the eastern part of the proposed schools site, adjacent to Baubigny Road, is within a Conservation Area designated in the Urban Area Plan. Policy DBE7 states that development within, or affecting the setting of, a Conservation Area will only be permitted if it conserves or enhances the character and appearance of the area, in terms of size, form, position, scale, materials, design and detailing. Particular attention will be given to the removal of unsightly and inappropriate features and the retention of features that contribute to the character of the area.

The submitted proposals for the eastern part of the new link road through the site involve the demolition of a significant part of an existing high granite wall on Baubigny Road in order to obtain access to the north of Baubigny Farm. Although the wall would be partially reconstructed on a new alignment on completion of the junction, and the submitted site appraisal report indicates that the impact of traffic lights or a filter in turn would be less than were a roundabout to be installed, the proposed development would nevertheless have a significant and adverse effect on the traditional character of the Conservation Area.

The submitted consultation refers to the alternative of using part of the existing Prison Access road from its junction with Baubigny Road to take access to the schools site. However, a number of arguments are put forward in the site appraisal report against the use of the Prison Access road. These relate to alterations that it is indicated would be required to the road and junction, potentially requiring purchase of additional land, comparative sight lines from the junctions, possible implications for demolition or alteration of adjacent buildings or walls, implications for the layout of the schools site, need for construction of an additional length of road, legal restrictions on use of the Prison road and concerns of the Home Department regarding such use.

It appears that your Department is reluctant to consider use of the Prison Access road when an alternative, apparently more convenient option exists. As described above, however, a new junction as proposed to the north of Baubigny Farm would have a considerable adverse impact on the Conservation Area and would conflict with the intentions of Policy DBE7 of the Urban Area Plan. The technical concerns expressed in the site appraisal report regarding the use of the Prison Access road do not appear insurmountable having regard to the information submitted and the independent highway engineering advice in relation to this matter that has been received by this Department from Guernsey Technical Services. Arguments concerning legal restrictions and the attitude of the Home Department also appear less than convincing given that the current proposals include various accesses (to the SEN school site, to a substation and to the south of the playing fields) from the Prison Access road.

The Department requests that further consideration is given to the issue of access at the Baubigny end of the proposed new link road with a view to achieving the use of the eastern part of the existing Prison Access road and not requiring the demolition of the existing high granite wall and construction of a new junction within the Conservation Area on Baubigny Road.

2. The proposals for development within the Area of Landscape Value to the south of Les Effards:

Two areas of the proposed schools site are designated within Areas of Landscape Value in the Urban Area Plan. The more substantial of these is at the northern end of the site adjacent to Les Effards, within which it is proposed to construct the northern part of the proposed new link road along with a proposed gas tank compound, caretaker's house and future overflow parking, as well as access thereto. Particular representations regarding this issue have been received from nearby residents.

Urban Area Plan Policy CO4 states that the most valuable landscapes in the Urban Area are designated as Areas of Landscape Value, and that the special qualities of these landscapes could easily be destroyed or damaged by insensitive development. In order to preserve the landscape character of these areas, new development will be restricted to cases where they are unobtrusive and the need for the development in the proposed location has been established.

Having regard to the provisions of Policy CO4 of the Urban Area Plan, and the relevant comments of local residents, the Education Department is requested to reconsider its proposals for this area in order to protect the Area of Landscape Value from unnecessary and insensitive development.

The other area of the proposed schools site which is designated within an Area of Landscape Value, and is also within a Site of Nature Conservation Importance, is at Hougue Nicolle to the south. Whilst this does not appear to be subject of specific development proposals at the present time, there is a note on the submitted landscape drawing referring to "Science Faculty terraced gardens Phase 2". The Department would take this opportunity to remind the Education Department of the sensitivity of the Hougue Nicolle area should future development be proposed which might affect this area.

3. Proposals for the link road, parking and enclosure at the site:

In respect of the site layout generally, the principal areas of concern relate to the proposed new road and car parking proposals, and to proposed means of enclosure within the site.

The proposed road would be 6m in width with a pavement of at least 2m wide on the school side. Staff car parking is located immediately to the front of the buildings, with parents' drop-off and pick-up area to the west of this. Security fencing is proposed along the southern side of the road, and continuing around the schools site. An area of land to the north of the road, which is not currently proposed to be used in the schools development, is annotated on the submitted plans as "area of land to be returned to States ownership".

The proposals for the road, parking and enclosure are considered particularly unsympathetic in relation to their impact on the character of the landscape and the resulting appearance of the site. The scale and long sweeping curves of the proposed road and drop-off car park are not compatible with enhancing the underlying character of the landscape or with the grain of adjacent development patterns. The parking and drop-

off/pick-up areas themselves would be dominated by Bitmac surfacing with little opportunity for landscaping. The proposed use of roundabouts would exacerbate these concerns and result in open views into the site.

The typical details of fencing, hard surfacing, and tree selection do not suggest that these elements will help to merge the proposed development into the landscape or otherwise ameliorate it. In particular, much of the proposed road frontage is shown as enclosed by 8ft high steel bar railings, together with 5ft high timber paling fencing on top of an earth bank. The buildings are shown as being set in a large expanse of tarmac, relieved only by limited areas of mown grass, small pavement trees, and an area of concrete paving at the entrances. The proposed tarmac also extends in a band averaging more than 50m wide across the south side of the main secondary school, beyond which is further fencing around various games courts. The layout consequently appears to be unrelated and unsympathetic to the character of the surrounding landscape. The tree species that are suggested - Alders, Willows, Fastigiate Oak and Birch, and Himalayan Birch and Tibetan Cherry within the courtyards - would make little contribution to improving the ambience of the school, or to its landscape setting.

A possible alternative approach that could overcome these concerns would be to review the necessary width of the road and to position it slightly closer to the buildings with set-down points only on the schools side. Staff car parking could then be relocated to the northern side of the road, with an appropriate crossing, and the area to the front of the buildings planted extensively to provide a high quality "campus" setting for the new schools. It is understood from our recent meeting, when this possible revision was discussed, that you would personally support such an approach.

This approach would require use of the area of land to the north of the present line of the road as part of the schools development. However, given the concerns regarding the proposals for development within the Area of Landscape Value adjacent to Les Effards and the more general issues relating to the overall character and layout of development set out above, it is considered that the inclusion of this land within the schools site is essential to achieving an adequate quality and character of development on this site.

With regard to the proposals for security fencing, particularly to the front of the schools, the current proposals are not considered acceptable in terms of the resulting appearance and impact of the development. These proposals appear to go far beyond what is intended at other school sites. The Department is firmly of the view that the design approach should be reconsidered with a view to dispensing with the more prominent and intrusive security fencing currently proposed and in order to create an attractive landscaped setting to the front of the schools.

4. Other comments arising from consultation:

In addition to the above, I enclose for your information and consideration copies of reports received from the Director of Transport Services and Director of Environmental Services, Guernsey Technical Services and from Guernsey Water, as well as copies of letters of representation received from third parties in response to publication of the consultation in the Guernsey Press.

A number of specific issues raised by the Department's consultees relating primarily to traffic and water considerations will need to be taken into account in the further development of the scheme. Further details regarding the design of the buildings, materials to be used and landscaping of the site will also be required for consideration by the Department in due course, prior to development commencing.

Regarding the responses by consultees, the comments made by the Director of Transport Services, Guernsey Technical Services, will clearly need to be considered in conjunction with the points regarding access and layout made above. The Department concurs with the view of the Director of Transport Services that the off-site works to the surrounding road network proposed in Arup's Transport Assessment figures 4.1 to 4.4 and figure 7.7 are essential in order to fulfil the primary aim of achieving safe walking routes to school. I will write to you under separate cover regarding the issue of funding for the off-site traffic measures that are required to either mitigate the effect of the traffic generated directly by the schools development or to manage it effectively.

The comments made by the Director of Environmental Services, Guernsey Technical Services, and Guernsey Water will also need further consideration by your Department, in the context of Urban Area Plan Policies WWM4 and WWM5. In this respect, the Department notes that the submitted Site Investigation Report refers to the high groundwater levels at the site and the potential for flooding especially to the south and south east of the site.

The proposal also has to be considered under the Building (Guernsey) Law, 1956. In this respect, you are requested to submit full working drawings of the proposal for the Department's consideration and approval under the Building Law and Regulations before the scheme is implemented.

Yours faithfully

Deputy B M Flouquet
Minister

(NB The Policy Council

- **endorses the views of the Treasury and Resources Department in its letter of 18th January 2005**

- **supports the Education Department's proposals in respect of the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles**

- **by a majority, supports the Education Department's proposals in respect of the inclusion of a 6 lane swimming pool within the new secondary school facilities at Les Nicolles)**

(NB The comments of the Treasury and Resources Department are set out on the following pages)

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

18th January 2005

Dear Sir

Les Nicolles Secondary School and Co-located Secondary Special Education School.

The Treasury and Resource Department acknowledges that the Education Department's proposals for the development of a Secondary School and co-located Secondary Special Education School at Les Nicolles are in line with previous States Resolutions. The Department also acknowledges that they form an important part of the future of secondary and tertiary education in the Island and they are a key part of the development and progression of the Education Development Plan (EDP).

The Treasury and Resources Department recognises that, in order to progress with the previous States Resolutions, a school for 720 pupils with six forms of entry is required in the north of the Island, and that this project needs to go ahead in order to progress the re-organisation of this first stage of the proposals for Education approved by the States in April 2002.

However, this important project cannot be progressed without bringing to Members attention the fact that in approving a project with expenditure of around £50 million (including a 6 lane swimming pool, essential related land purchases and any offsite works necessary to carry out the project) it commits a large portion of the money currently available for future States capital projects.

Members must therefore be aware of the fact that if they support this important step in the EDP programme, the future scope for other capital projects (including other education related projects) outside of the existing States commitments (for the new clinical wards at the Princess Elizabeth Hospital and the Corporate Housing Programme) will be limited, especially if the States is unable to restrain ongoing revenue expenditure.

Following the transfer of £10m at the beginning of January 2005, the Capital Reserve stands at £60m. In order to fund this development the Education Department will require a transfer from the Capital Reserve of £12.75m with immediate effect and a further £12.75m in January 2006. The remainder of the required funding has already been provided to the Department as part of previous approaches to the States. If the States approves these two

proposed transfers it will mean that since April 2002 the EDP project will have received funding of **£77.25m**. Provided that no other withdrawals are made, by January 2006, the balance on the Capital Reserve is predicted to be £35m (after an estimated £5m interest for 2005).

As has been advised on previous occasions, 2005 is the year when the demand on the construction industry is expected to be at its peak. The proposed timing of the project will mean that the majority of the construction work will be carried out during 2006 and 2007, thereby avoiding the period of greatest demand.

Ideally, from a construction industry perspective, a further delay to 2007/2008 would be preferable, but this would not enable the EDP to be delivered in the timeframe set previously by the States.

In addition to the significant capital costs of this project, there are also associated ongoing revenue costs, including revenue maintenance, non-teaching staffing, services and supplies and an estimate for planned preventative maintenance. Although difficult to accurately quantify at this stage, the ongoing revenue costs are estimated to be of the order of £800,000 per year.

Although, as set out in the Report, the Education Department has carried out extensive work and consultation with interested parties, there are still a number of issues that remain to be resolved. These include further consultation with the Environment Department over access, traffic management and conservation matters and with the Public Services Department on foul and waste water drainage. Some of these issues may result in additional expenditure.

As Members would expect, although it is very supportive of the aims of the EDP programme, the Treasury and Resources Department will continue with its constructively robust examination of all aspects of the phases (including the appropriateness of the size standards of the schools) of the EDP at every stage.

The Department is, of course, acutely aware of the very limited financial resources and the competing demands for those resources. This means that the need to deliver value for money on all projects has never been greater. The Treasury and Resources Department will therefore bring this matter back to the States if it does not believe that value for money is being obtained.

Yours faithfully

L S Trott
Minister

Capital Reserve Reconciliation

		£m
Balance 1 January 2004		55.5
Appropriation (2004 Budget)		7.0
Withdrawals:		
EDP 2004	12.75	
John Henry Court	2.9	
PEH parking	0.8	
HSSD accommodation	1.1	
		(17.6)
Interest 2004		5.8
Balance 31 December 2004		50.7
Appropriation 2005 budget		10.0
Alderney Quay		(4.0)
Les Nicolles Pool		(1.0)
EDP 2005 (Feb 2005)		(12.75)
EDP 2006 (Jan 2006)		(12.75)
Interest 2005 (estimate)		5.0
January 2006		35.2

Notes:

- The above residual balance on the Capital Reserve is before any appropriation in the 2006 Budget (December 2005).
- The residual balance of £35.2m is available to fund the PEH Critical Care Wards project (estimated £25m to be sought from States in 2006) and additional funding to part fund the Corporate Housing Programme (£5m).

The States are asked to decide:-

III.- Whether, after consideration of the Report dated 12th January, 2005, of the Education Department, they are of the opinion:-

1. (1) To approve the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in that Report at a cost not exceeding £46,974,000.

(2) To transfer the sum of £12,750,000 from the Capital Reserve to the capital allocation of the Education Department to be added to the Education Department's existing capital allocation balance of £23.30 million plus the planned £12.75 million allocation in January 2006, subject to affordability and availability, for the purpose of funding the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in that Report.

(3) To authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these works.

2. (1) To approve the inclusion of a 6 lane swimming pool as set out in that Report rather than a 4 lane swimming pool within the new secondary school facilities at Les Nicolles at a total additional cost to the overall project not exceeding £1,000,000.

(2) To authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these additional works.

(3) To authorise the Treasury and Resources Department to transfer an appropriate amount from the Capital Reserve to the capital allocation of the Culture and Leisure Department for the purpose of carrying out these additional works.

(4) To authorise the Treasury and Resources Department to approve a capital vote not exceeding £1,000,000 for these additional works, such sum to be charged to the capital allocation of the Culture and Leisure Department.

INHERITANCE LAW REVIEW COMMITTEE

FIRST REPORT

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

10th December 2004

Dear Sir

Executive Summary

This States Report

- *Reviews inheritance by or through an illegitimate person and recommends that all discrimination in inheritance to both immoveable and moveable property against illegitimate children should be removed but that the change should not be retrospective and that there should be legislative provision for proof of paternity.*

- *Reviews the difficulties which can arise when heirs to immoveable property cannot be ascertained and proposes a scheme by which, without interfering with customary law principles of inheritance, real property may be administered and sold and good title given and obtained, notwithstanding some uncertainty as to the ownership of the property, through the appointment of an administrator by the Royal Court.*

- *Proposes that, in future, both immoveable and moveable property may be disposed of by a single will and that the requirement that a will which disposes of immoveable property whether or not it also disposes of moveable property need not be witnessed by two Jurats.*

- *Proposes that where purchasers have bought from heirs whether by will or intestacy in good faith but without requiring the appointment of an administrator by the Royal Court (as outlined above) the period of prescription should be reduced from 20 years to 6 years to bring it into line with the period proposed in the scheme for administration of immoveable property in uncertain ownership.*

- *Reviews the right of retrait lignager in Guernsey and proposes its abolition.*

A. Introduction

1. At its meeting on 30th April, 2003, the States established the Inheritance Law Review Committee, consequent upon consideration of a Policy Letter (Billet d'État No. VI of 2003, at p822) identifying various areas in which reform might be considered necessary or desirable. The Committee has met on a number of occasions, and now presents to the States its First Report, which deals with proposals for law reform in relation to two areas identified in the Policy Letter pursuant to which the Committee was established, being

   1. removal of discrimination in inheritance against illegitimate children; and

   2. provision of a scheme for administration of real property in any case of unascertained heirs, which the Committee recommends extending to cases where a purchaser requires sellers of inherited property to give certainty of title;

   and as a result of its deliberations on those areas, and inheritance issues generally, the further areas of

   3. reform of the law relating to the formalities for making wills;

   4. an amendment to the law of prescription in relation to immoveable property; and

   5. abolition of the right of *retrait lignager.*

   The work of the Committee has not concluded, and in due course further reports on other matters relating to Guernsey's laws of inheritance, including simplification of the complex rules of intestate succession to both moveable and immoveable property and consideration of testamentary freedom, will be submitted to the States for consideration.

2. Before dealing with the Committee's proposals in relation to removal of discrimination in inheritance against illegitimate children, it is worthwhile bearing in mind that the percentage of children who are born illegitimate in Guernsey is currently (2003) 34.6%, and this figure shows no sign of abating, having increased from 19.4% in 1990. If the present rate of increase in illegitimate births is maintained, in about 2008 one half of all births in Guernsey will be out of wedlock. It is not for the Committee to identify the reasons why this should be so, but the Committee ventures to suggest that, irrespective of the legal (human rights) issues identified below, reform is overdue and necessary for the simple reason that so many children are nowadays born illegitimate.

3. In considering this Report, the States should be aware of the distinctions between real, or immoveable, property, which comprises land, houses, buildings

and everything so attached to land as to be considered part of it; and personal, or moveable, property, which comprises all types and descriptions of property that are not real or immoveable; e.g. cash, bank accounts, shares, cars, furniture, rights in insurance policies, etc. The distinction is important because different rules of inheritance apply to each type of property. In this Report, the expressions 'moveable' and 'immoveable' will be used.

B. Intestate succession by or through an illegitimate person

4. In summary, the present position of inheritance by or through an illegitimate child in Guernsey law is as follows:

   A. On an intestacy to immoveable and moveable property,

      (i) illegitimate persons are excluded from inheriting even if there are no legitimate heirs;

      (ii) the only persons who can be heirs of an illegitimate person are the legitimate issue of that person; and so neither the mother nor the father, nor the brothers or sisters, nor any other relation of an illegitimate person, can inherit from him or her;

      (iii) no claim to be an heir, and so entitlement to inherit, will be valid if the relationship is deduced or traced through an illegitimate person.

   B. In a will whether of immoveable or moveable property someone has the same right to make provision for an illegitimate person as he or she would have if the illegitimate person had been born in lawful wedlock; and

   C. an illegitimate person can make a will in the ordinary way.

5. As its first task, the Committee considered that part of the Policy Letter which dealt with illegitimacy and intestate inheritance (i.e. where the testator left no valid will). In particular the Committee noted that the European Court of Human Rights, in *Marckz v Belgium*, has ruled that Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), read in conjunction with Article 14, protects a person's right to his family life, including inheritance rights, whether he or any member of his family is legitimate ***or illegitimate***. Although an application made in 1992 by illegitimate Guernsey children to the European Commission of Human Rights (in *Reoch v United Kingdom*) complaining that Guernsey law relating to their inheritance from their mother was unfairly discriminatory to them as illegitimate was declared inadmissible - because it was presented out of time - the Committee has been advised, and accepts, that had the application not been out of time, the complaint would have been upheld, and Guernsey would have been

required to change its laws. The Committee is therefore of the firm opinion that reform of this aspect of Guernsey law is now imperative.

6. The Committee also noted that Article 9 of the European Convention on the Legal Status of Children Born Out of Wedlock ("the Illegitimacy Convention") provides that a child born out of wedlock shall have the same rights of inheritance in the estate of his or her father and mother, or any member of his or her father's and mother's family, as if he or she had been born in lawful wedlock. In 1977, the States rejected proposals by the Advisory and Finance Committee to reform intestate inheritance in respect of illegitimacy, and since that date the Illegitimacy Convention has been extended to Guernsey, subject to a reservation that Article 9 should not apply except in relation to testate succession (i.e. where there is a valid will). The resulting Law of Inheritance (Guernsey) Law, 1979 allowed the disposal of immoveable property by will to illegitimate children, and enabled a testator to direct that his illegitimate children should be treated as legitimate for the purposes of their succession to the "légitime" (which is that portion of a person's moveable estate which automatically passes to his or her children), but did not deal with inheritance on an intestacy, where there is no valid will. The present reservation to the Convention expires in May 2006, and it is therefore necessary that at least this aspect of Guernsey law be reformed before that date.

7. The Committee recognises that, in consequence of the ECHR and also of the Illegitimacy Convention, the question is not whether reform of inheritance in relation to illegitimate persons on intestacy should take place, but the extent of such reform. The matters to be considered involve not only the rights of illegitimate children to inherit upon the intestacy of a parent, or of a parent to inherit from his or her illegitimate child, but also the rights of any person to inherit from any other person where the relationship is deduced or traced through a person whose parents were not married. The Committee considers that all forms of discrimination against any person in the event of intestacy by reason of the illegitimacy of any person should be eliminated, if only because such a significant proportion of persons are born, and remain, illegitimate.

8. The Committee considered the provisions of the *Real Property (Succession) (Sark) Law, 1999* ("*the 1999 Law*") which, while it applies only to succession to immoveable property in Sark, provides a useful precedent in that it deals with the abolition of the exclusion of illegitimate children from inheritance, both where the child is the prospective heir and where a person is inheriting from or through an illegitimate child. Section 3 of *the 1999 Law* provides as follows:-

> "3. (1) Any rule of law or custom by or pursuant to which, for the purposes of succession to [Sark immoveable property], an illegitimate person is, by reason of his illegitimacy, distinguished from a legitimate person, is. . . . abolished."

9. It is proposed that a similar provision form the basis of the reform of the law relating to the succession to property, whether immoveable, or moveable, in Guernsey. Such provision would apply to the intestate succession of a person dying after the date of commencement of the new Law, or to the légitime (legal entitlement of descendants to a portion of the moveable property which applies notwithstanding the provisions of the will) in the estate of a person whose will was made after the date when the new Law were approved by the States: it would not have retrospective effect.

10. The *1999 Law* also makes provision for proof of paternity in section 18(3) as follows:-

"(3) For the purposes of this Law –

(a) the fact that a person is named as the father of an illegitimate child in the child's birth certificate or in an official register of births shall constitute prima facie evidence of paternity;

(b) a finding in affiliation proceedings that a person is the father of an illegitimate child shall constitute conclusive evidence of paternity;

(c) the Court may make a declaration of paternity on the application of a person claiming to be entitled to succeed to a property or, with the leave of the Court, any other interested person, provided that no such application shall, except with the leave of the Court (which shall only be granted in exceptional circumstances), be commenced after the expiration of one year beginning on the date of the death of the person in respect of whose property the application is made;

(d) the burden of proving paternity shall be on the person seeking to establish the fact."

11. It is further proposed that, with one amendment, similar provision be made in relation to Guernsey law, except that the period after death during which an application for a declaration of paternity should be made should be six years rather than one year. This period ties in with the period of administration of real property proposed below in paragraph 24(8), and with the Committee's recommendation for reduction of the prescriptive period relating to inherited immoveable property proposed below in paragraph 35. The proposed amendment will make it clear that in relation to all children, the birth certificate is only prima facie evidence of paternity. There is a rebuttable presumption that the child of a married woman is the child of her husband.

12. The Committee also considered the problem of succession to the property of an illegitimate person on intestacy where the paternity of that person is unclear. The *1999 Law* deals with this problem in Sark by providing that, in relation to

the succession to the estate of a deceased illegitimate other than by his descendants i.e. in a collateral succession (e.g. brothers and sisters) or an ascendant succession (e.g. parents or other ancestors), the property of the illegitimate person shall be returned along the deceased's maternal line. The rationale for this rule in a Sark context was partly to limit the class of relations from amongst whom one person only, as is the case in inheritance to Sark immoveable property, was restricted, so rendering more certain the potential class, and partly because of a belief that the moral claim of the maternal line may, often will, be stronger than that of the paternal line. However, in relation to Guernsey, the Committee prefers the approach of the United Kingdom in section 18 of the *Family Law Reform Act, 1987* which provides that, for the purposes of the distribution of the estate of an intestate, a person whose father and mother were not married to each other at the time of his birth (and who is not subsequently legitimated by their marriage) shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown. This approach enables the father's line to benefit if the father is, or was, a presence in the life of the illegitimate person or can be identified. Where the father is unknown, the presumption will apply and the father's line can be ignored for the purposes of the succession. Where the father is known, then the rules of inheritance to immoveable and moveable property will apply in the customary way. (Simplistically, if the property was immoveable property inherited by the mother, it will return along the maternal line, and if by the father along his line, but if the property was immoveable property acquired by purchase or by will, or was moveable property, it will fall to be inherited by the next of kin in point of degree, irrespective of line.

13. Finally, the Committee recommends that the States, by Ordinance, should be able to make provision for evidence of parenthood for purposes of inheritance claims and proceedings: for example, by the use of DNA testing, and for such claims and proceedings generally.

C. Unascertained Heirs to Immoveable Property

14. As mentioned above, under Guernsey law, the rules of inheritance to immoveable property are different from those relating to moveable property. These differences extend beyond the possibility of the immoveable property and moveable property of a deceased person being inherited by different heirs, but include quite different rules relating to the administration of the immoveable property and moveable property of the deceased. Furthermore, a will made in Guernsey cannot dispose of immoveable property and moveable property by the same document. A will of immoveable property made in Guernsey must be signed by its maker in the presence of two Jurats, whereas a will of moveable property merely needs to be signed by the maker in the presence of two witnesses in the ordinary way. This rule is relaxed if the will is made outside the Bailiwick of Guernsey. Proposals for reform of these rules are set out below in D.

15. One crucial difference between inheritance to immoveable property and inheritance to moveable property is this: moveable property which comes to be inherited must be administered by someone, usually one or more executor(s) named in the will, but where no executor is named, or the executor predeceased the testator, or the executor declines to act, or where there is no will, an administrator is appointed. In each case, the executor or administrator takes an oath before the Ecclesiastical Court to administer, i.e. collect and distribute the moveable estate of the deceased person, in accordance with the will or as on an intestacy. The position with immoveable property, however, is quite different, and it is in this area that Guernsey law is, perhaps, deficient. Under a principle of Guernsey customary law of great antiquity, immoveable property is inherited by the person or persons entitled to inherit it, whether by will or on an intestacy, at the precise moment of the death of the person from whom they inherit. The principle is known as *le mort saisit le vif*, which literally means "the death passes title to the living". Succession to the Crown (which is based on Norman law) likewise occurs immediately on the death of the reigning monarch, and is founded on the same rule. The purpose of the rule was, and remains, to ensure that there is no break in continuity of ownership, and it must be remembered that, in Guernsey, it was not possible to make a will of immoveable property until 1840. Even now, since 1954, when extensive reforms to the laws of inheritance were enacted, there are restrictions on the ability of a person owning Guernsey immoveable property on disposing of that property by will if he or she has legitimate or, since 1979, illegitimate children. (The immoveable property must be inherited by his or her spouse, or by any one of more of his or her children and remoter descendants, including illegitimate and stepchildren.)

16. In consequence of this rule, there is at present no place in Guernsey law for administration of the Guernsey immoveable property of a deceased, i.e. no executor or administrator can be appointed. The most that can be done is that where the deceased owner had no children or descendants, he may leave the immoveable property to the executor or administrator of his will of moveable estate on trust for sale, the proceeds of sale accruing to his moveable estate, but this is not administration in the sense meant in this Report.

17. In these circumstances, situations can and do arise in Guernsey in which a person who owns Guernsey immoveable property dies, either intestate or having made a will, and for whatever reason the heirs (i.e. those entitled on an intestacy) or legatees (i.e. those entitled to benefit under the will of the deceased) to that property are not known, either fully or partially, or cannot be otherwise identified or found. One or more of the presumptive heirs (i.e. those heirs who, for the time being, have the best claim to inherit, but whose claim may be defeated by there emerging a closer heir. For example, a married man's presumptive intestate heir to his immoveable property may be his brother for so long as he has no child, but once his child is born, he or she becomes his heir absolute – no closer heir could arise, although further children may be born with equal, absolute, rights.) may have predeceased the owner, or die after the owner but without being aware of their having inherited immoveable property in

Guernsey, and their share, in turn, becomes inherited by their heirs according to Guernsey law, unless they have made a will which, by its terms, is valid to dispose of inherited immoveable property.

18. In some such cases where no heirs exist, or at least none are known, the Crown will intervene and apply to the Court to take possession of the immoveable property in pursuance of its right of escheat (i.e. the right to take possession of immoveable property where a person dies intestate as to immoveable property without heirs.) In practice, this has proved satisfactory in those cases in which, after diligent inquiry, no heirs have been identified or found, but there are cases in which heirs are known, or reasonably believed or presumed, to exist but no amount of worldwide advertising and searching produces even a presumptive heir. In those circumstances, the Crown in taking possession of the immoveable property does so at some risk, because, if an heir is subsequently identified or found, the claim of that heir would override the claim of the Crown, at least until 20 years possession by the Crown has elapsed so as to give full prescriptive title.

19. This position is manifestly unsatisfactory. There have been several recent instances of properties in Guernsey falling into disrepair, or even ruin, for want of certain heirs, although in some cases informal management of the property has occurred and, e.g. rents collected which are applied towards repair and maintenance. However, in such cases because the true owners may be unknown, or at least remain unidentified or unlocated, the property cannot be sold, at least without risk to the buyers. Also, title insurance may not be readily available.

20. The Committee is of the firm opinion that uncertainty as to ownership of immoveable property is a mischief which should be corrected. Although the numbers of instances of uncertain ownership are few, legislation should be put in place to provide a means by which, despite uncertainty of ownership, immoveable property may be sold and good title given to a purchaser, and the proceeds of sale retained for a period (six years is proposed) pending further inquiry as to heirs, and distribution after a period.

21. Given the operation of the rule *le mort saisit le vif*, the Committee believes that the removal of any bar to inheritance by an illegitimate person gives rise to an increased possibility of immoveable property being uncertainly owned. Even where the sellers of inherited property are certain as to their title to the property, they may have greater difficulty in proving their title to a purchaser and/or to a purchaser's banker who is lending money to finance the purchase. One example will suffice.

22. A bachelor owns immoveable property in Guernsey. He has sisters who may believe that as their brother never married he had no descendants. Unknown to them, and possibly to him, he may have fathered an illegitimate child. Under the present law of Guernsey, the bachelor's Guernsey immoveable property would be lawfully inherited by his sisters who could make good title to a purchaser. Under the law as it is proposed to be amended giving rights to illegitimate

children, the title of any illegitimate child of the bachelor to his property would be better than that of his aunts, i.e. his father's sisters. The only person who could make good title to the bachelor's property to a purchaser would be the illegitimate child. In consequence, a person who had purchased the property from the sisters, they believing it to be owned by them, would not in law have good title to the property, and the illegitimate child's claim against the purchaser would be successful, at least if brought within the relevant prescriptive period. The purchaser's only remedy would be against the sisters who had wrongly, albeit in good faith, sold the property to him. By the time a claim were made, the sisters could e.g. have spent the proceeds. (The foregoing is a simple and not abstract example: others, more complex could be devised.)

23. The Committee has set out below a scheme by which, without interfering with the customary law principles of inheritance, real property may be sold, and good title given and obtained, notwithstanding some uncertainty as to the ownership of the property.

24. The scheme is as follows:

(1) Upon there arising in respect of any Guernsey immoveable property uncertainty as to current, but not former, ownership – and in this context "uncertainty" means

(a) where no heirs have been identified, but there is reason to believe that heirs exist;

(b) where some, but not all, of the heirs have been identified;

(c) whether or not identified as to all, where some or all of the heirs cannot be found after proper and extensive enquiries; or

(d) in any other case, where ownership on an intestacy is uncertain for whatever reason, including where a prospective purchaser from heirs or legatees is doubtful as to their title, or where the prospective sellers are doubtful as to their title;

the Royal Court may grant an administration order to an administrator appointed in respect of that immoveable property. The class of persons who may apply for an administration order are

(a) the Law Officers of the Crown; or

(b) any one or more of the identified, and at that stage either absolute or presumptive, heirs who have attained the age of majority;

(c) the guardian of an absolute or presumptive heir who is under a disability (i.e. who is a minor or otherwise under guardianship).

(2) In the legislation, the States would have power by Ordinance to add to the list of persons who may make application. The involvement of the Law Officers arises for three reasons: firstly, as *parties publiques*, i.e. representing the public interest (and it is not in the public interest that immoveable property remains in uncertain ownership); secondly, because immoveable property escheats to the Crown for want of heirs; and thirdly, for the more practical reason that if no heirs have been identified or found, then some person must initiate the process of administration. In any case in which the Law Officers were not the applicants, they would have the right to be heard on any application.

(3) The person in whose favour an administration order may be made would be

(a) the Law Officers;

(b) the applicant for an administration order, provided he were ordinarily resident in Guernsey;

(c) an advocate of the Royal Court;

(d) with the approval of the Law Officers, any other person.

The rôle of administrator is a position which carries with it fiduciary responsibilities to the heirs, whether identified or not, and also obligations to the Royal Court. These responsibilities and obligations are described below. Although it is considered right that any identified heir should be eligible to be appointed administrator (provided he is ordinarily resident in Guernsey so as to be within the jurisdiction of the Royal Court), the Committee is of the view that no other person should be so eligible without the approval of the Law Officers, who can independently and impartially assess the suitability of a person to act as administrator, except that an advocate of the Royal Court, who would be well acquainted with the obligations which such a rôle would carry with it, and who have obligations to the Royal Court by virtue of the oath sworn on admission to the Bar, should be eligible to be appointed without such approval. The Law Officers could also be appointed in an appropriate case, e.g. where no-one volunteered for appointment as administrator.

(4) The effect of an administration order would be to vest title to the immoveable property in the administrator as trustee for the persons entitled. This will ensure that only the administrator can sell the property. An ascertained heir who, for example, may know that he has some interest in the property but does not know the extent of that interest because other heirs have not been fully identified, would not be able to

sell or charge or otherwise deal with his interest once an administrator has been appointed.

(5) The purpose of an administration order would be to enable the administrator to sell the immoveable property, and the purchaser from the administrator would be guaranteed good title to the property for all purposes and in all circumstances. For example, if the true heir to the property emerged shortly after the administrator had sold the property, the purchaser's title would be indefeasible, i.e. unchallengeable. The rights of the heir would be against the administrator for the proceeds of sale, provided his or her claim were made during the relevant period of six years.

(6) Pending sale the administrator would have full powers of administration of the property, including leasing it, without prior reference to the Royal Court, but the legislation would provide that on any issue of doubt or difficulty the administrator could apply to the Royal Court for directions, or for authority for any proposed course of action. The administrator would be able to apply to the Royal Court to borrow against the security of the property, and the legislation would provide that no charge could attach to immoveable property during its administration without Royal Court approval.

(7) The administrator would have the powers and obligations of a trustee. The primary duties of the administrator would be to administer the property prudently (*en bon père de famille*) and to sell the property. If would not be desirable if the administrator, having been appointed, continued to manage the property indefinitely without it being sold. However, a delay prior to sale may be necessary, e.g. because the property is informally occupied, and time would be required to enable the occupants to leave and to find alternative accommodation, or desirable, perhaps to undertake further researches with a view to establishing or locating the true heirs; or because market conditions warranted a delay. For the avoidance of doubt, the administrator's duties would include a duty to account for the conduct of his administration, both to those persons entitled to the proceeds of sale of the property and also to the Royal Court, if required. The legislation would include some amendments to the Trusts (Guernsey) Law 1989 in order to give effect to the above.

(8) Once the property were sold, the administrator would be obliged to hold the proceeds of sale for a period of six years, and then to distribute the proceeds unless the Royal Court orders that he may distribute the proceeds sooner. This six year period is chosen as being the period within which an illegitimate claimant may commence proceedings. Invariably in circumstances where the heirs are unknown extensive enquiries would have been made, and advertising undertaken, prior to the

application to the Royal Court for the appointment of an administrator, as to the heirs to the property, but circumstances can and do arise in which heirs emerge after extensive enquiries have been made. Accordingly, one of the duties of the administrator, chargeable as an expense against the proceeds of sale of the property, would be to take all reasonable and practicable steps to identify the heirs, and when those enquiries were exhausted to make an application to the Royal Court to distribute the proceeds, either to those heirs absolutely entitled, or those of the heirs presumptively entitled (presumptively because there may be closer heirs who simply have not been identified), and an order of the Royal Court authorising distribution would amount to a complete discharge to the administrator, i.e. he would not be liable if a closer heir subsequently emerged after the six year period had elapsed. Because the process should involve the administrator actively seeking to identify or find heirs, but not to an unreasonable extent, it is necessary that his functions be under the general supervision of the Royal Court. Pending the authorisation of the Royal Court to distribute the net proceeds of sale, the administrator would be responsible for investing and managing the funds. There will be circumstances where the administrator is confident that the heirs have all been identified and should be entitled to apply to the Royal Court, at an early date, to distribute the funds. An example would be where a widower has died intestate survived by legitimate issue all of whom are known, but nonetheless an administration order has been obtained for the sole purpose of proving good title to a purchaser who has to ensure that his purchase could not be challenged by, for example, an illegitimate child whose existence is unknown to the purchaser (and may also be unknown to the legitimate children). The Royal Court, in authorising distribution, will need to be satisfied that all reasonable steps have been taken by the administrator to identify or locate the heirs, i.e. those entitled to the proceeds of sale, and that there had been no inaction in administration. If the Royal Court were to authorise early distribution i.e. within six years of the date of sale of the property, it would be without prejudice to any claim by unascertained heirs who would have the right to recover all or part of the proceeds of sale from the heirs to whom they were distributed. (A similar situation arises in Guernsey in relation to the distribution of moveable property by the executor or administrator of the moveable estate).

(9) An administrator would have the right to retire and a new administrator be appointed in his place by the Royal Court. Retirement of an administrator would necessarily involve his accounting to the new administrator, and to the Royal Court, for the conduct of his administration to date. The administrator would have the right to reasonable fees for acting as such, as if he were a professional person on the same basis as if he were employed by the administrator to provide professional services on the administrator's behalf. The Royal Court would have the power to disallow any fees of unreasonable amount or

which have been unreasonably incurred. The administrator, of course, would be allowed his out of pocket expenses, provided they were reasonably incurred and of reasonable amount.

D. Reform of the law prescribing the formalities for making Wills

25. During the course of the Committee's consideration of the matters referred to in Parts B. and C. of this Report, the Committee concluded that many people who have not needed to make a will of immoveable property to date should be encouraged to make such a will once these proposals have been enacted, in order to assist their heirs in proving and conveying good title to their property after their death. The Committee became aware of some concern that the requirement that a will of immoveable property made in Guernsey must be made before two Jurats, and separately from that of moveable property, might prove to be a deterrent, though it must be acknowledged that a person who decides not to make a will merely because of the inconvenience of attending the court by signature should not attract sympathy. Importantly in the case of an elderly or infirm person, the Jurats will always attend at the Princess Elizabeth Hospital or nursing home, or wherever, to attest a will. However, the Committee in considering this concern broadened the scope of its review, as follows.

26. Until the Occupation, a will of Guernsey immoveable property made outside Guernsey had to be made separately from a will of moveable property. In those days, the ability to make a will of immoveable property was severely restricted, whereas the rules applicable to inheritance to moveable property, and the formalities for making wills of moveable property, were largely settled and, subject only to the 1979 Law, remain effective today. Because of the absence from Guernsey during the Occupation of a significant proportion of the population, legislation was introduced, made permanent after the Liberation, by which a person could make a will outside the Bailiwick leaving Guernsey immoveable property and moveable property by the same document.

27. It strikes the Committee that if it is lawful for a will made outside Guernsey to dispose of immoveable and moveable property by the same document – and it ought to be borne in mind that, after some sixty years, no significant difficulties with that law have emerged – then the Committee ought to recommend to the States that a will disposing of immoveable property and moveable property by the same document made in Guernsey should be equally as valid. There would, in fact, be a better policy reason for excluding wills made outside Guernsey, because frequently they are made by, or with the assistance of, lawyers who have no knowledge of Guernsey law, in particular the operation of the maxim *le mort saisit le vif*, whereas wills made in Guernsey almost invariably involve consulting with advocates who, being aware of the rules, prepare the document appropriately to reflect the different ways in which immoveable property and moveable property devolve.

28. A will of immoveable property is almost invariably, but is not bound to be, registered on the death of the testator, and so becomes a public document. There may be instances in which a testator does not wish that part of his will dealing with his moveable property to become public – and in this respect copies of wills of moveable property are retained by the Ecclesiastical Court, but are not ordinarily open to public inspection – and in such circumstances a person ought to be able to continue to make separate wills, as at present.

29. Accordingly, the Committee recommends as follows:

    (i) A will made in Guernsey disposing of immoveable property and moveable property by the same document shall not, on that ground alone, be deemed invalid, i.e. a person may make such a will.

    (ii) A person may continue to make his will of immoveable property separate from his will of moveable property.

    (iii) A will disposing of immoveable property whether or not also disposing of moveable property, is validly made if attested by two witnesses who may, but need not be, Jurats.

E. Prescription

30. It will be appreciated that, in the foregoing proposals for a scheme of administration of real property in any case in which the heirs are uncertain, a period of six years is recommended as being the period within which the administrator should retain the proceeds of a sale of immoveable property. The reason for imposing a time limit is because of the inconvenience and expense attendant on an administrator retaining the proceeds indefinitely, pending the possibility which will often be remote or non-existent, of heirs with a better claim to the property, and so to the proceeds of sale emerging. There has to be certainty and finality, and so the issue is that of providing a reasonable period within which claims might be made, and thereafter providing certainty of distribution of the proceeds.

31. The administrator, following sale, will hold the proceeds of sale for six years for the benefit of those persons who would have been lawfully entitled to the property on the death of the owner. This is important because the rules of inheritance to immoveable property are different from those to moveable property, and following sale the immoveable property will have become moveable property, i.e. money in the hands of the administrator.

32. Certainty of ownership of the immoveable property concerned in the hands of its purchaser will have been provided by the statutory scheme, and it is also necessary to provide for certainty of distribution of the proceeds at some stage, to enable closure of administration. As mentioned above, the period within which a claim may be made by an illegitimate person to immoveable property in

Sark was set at one year, for various reasons, but, of course, the circumstances in Sark as regards Sark immoveable property are quite different. In Sark, there exists a fixed number of *tenements* and freeholds, both being immoveable property, which are by Sark law impartable and indivisible. Furthermore, the nature of Sark's small community is such that the existence of e.g. an illegitimate heir is more likely to be known to family, friends or other persons. Again, ownership of a tenement carries with it the right to a seat in Chief Pleas, and a lengthy period of uncertainty of ownership is clearly undesirable where whoever is, or is held or found to be the actual owner, has a right to participate in government.

33. In Guernsey, the ordinary period of prescription in relation to immoveable property is twenty years, fixed by the *Loi relative aux Prescriptions, 1909*, which provides that a person who enjoys possession, adverse to the true owner, in good faith of immoveable property for twenty years acquires a prescriptive title, and the claim of the true owner is thereby extinguished. Claims of, or reliance on, prescriptive title are fortunately extremely rare, but during the course of its deliberations the Committee concluded that, for modern times, a period of twenty years might be too long. The ease, rapidity and extent of modern communications alone makes knowledge of events and circumstances much more widespread. Information is vastly more accessible, e.g. by the internet. Whilst a general review of the law relating to prescription was beyond the mandate of the Committee, the Committee's recommendations will impact to a limited extent upon the law of prescription.

34. The Committee asks the States to note that one effect of its proposals will be that, by using a scheme of administration of immoveable property, which is necessarily limited to any case (put broadly) of uncertainty as to inherited ownership. not only is good title guaranteed to the purchaser but the true owner(s)' claim(s) to the proceeds of sale is/are limited to six years. However, there will be cases in which no uncertainty exists, either on the part of the owners (sellers) or the prospective purchasers of immoveable property, and in good faith that immoveable property may be sold and purchased. In such a case prescription will operate but under the present law for a period of twenty years, not the six years provided by a scheme of administration. It may be argued that the longer period should be operative in those circumstances, to enable claimants to the property to emerge, but it must be acknowledged that it would only be in the rarest of circumstances case that a person might emerge after twenty years as opposed to six. It is the Committee's view that the benefits – social, financial, economic – of finality and certainty after a shorter period of six years outweigh any disadvantage 'cured' by a longer period of prescription.

35. Accordingly, irrespective of the scheme for administration, there is an argument that the period of prescription operative in any case in which purchasers have bought from heirs, whether by will or on an intestacy in good faith, but who have not required an administrator to be appointed – probably because everybody believed that ownership was certain – that the prescriptive period in

such circumstances should be reduced from twenty to six years. If the States accept the foregoing recommendation, any period of prescription that had commenced to run prior to the coming in force of the new law, would not be counted in the period, unless the period of twenty years elapses before the period of six years from the date of the new law has elapsed. In other words, existing twenty year prescriptive periods that are running in such cases will be preserved if they result in the longer prescriptive period having elapsed within the six year period, whereas any period that has already commenced to run, which would otherwise expire after the six year period, will be reduced to six years. The States are asked to note that this is only a limited amendment to the law of prescription to bring the period into line with its proposals for administration.

36. It will be noted above that no distribution of the proceeds of sale may be made by the administrator without the approval of the Royal Court, which may give such directions on the application as it determines to be appropriate in that case. Where the only known heirs at the time of application are heirs presumptive, the court may direct that they be paid the proceeds of sale between them in such proportions as appears appropriate, having regard to the rules of inheritance to immoveable property. Occasionally, during the course of administration an absolute heir, i.e. one whose entitlement cannot be overridden, will have emerged and, of course, that heir will be entitled to the proceeds. Any such heir who emerges after six years will have forfeited his right to claim the proceeds. In any case in which no heir has emerged, the court may properly direct the Crown to take the proceeds. Here lies an important point. There will be cases – indeed some have already occurred – when the Crown exercises its customary right where a person dies without heirs to take possession of the immoveable property, and eventually to sell that property. In those circumstances the Crown retains the proceeds of sale indefinitely. In such cases there is always a risk that an heir might emerge, and on him or her proving to the Crown's satisfaction sufficient kinship, the Crown would ordinarily pay over the proceeds of sale. Nothing in the foregoing proposals will alter that position.

37. The States will appreciate that the range of circumstances in which uncertainty as to heirs arises are very varied, depending as they do on the circumstances of the deceased's life. It is only when the Crown is reasonably sure that there are no heirs that it will take possession of immoveable property; and then only after extensive enquiries.

F. Retrait Lignager in Guernsey

38. The right of *retrait lignager* is the right which the customary law gives to a blood relative of a seller of immoveable property to be constituted owner in place of the purchaser, in consequence of which the relative becomes the owner of that property in place of the purchaser, provided he reimburses the purchaser the full amount of his purchase price, and certain of his expenses in connection with the purchase, including treizième and legal costs. The person exercising the right of *retrait* is called the *retrayant.*

39. *Retrait* became established in Norman customary law relatively late[1], and does not appear before the 13th century. Despite the fact that England adopted Norman customary inheritance law after the Conquest - succession to the English Crown is still based on Norman customary law - *retrait* never featured in English law. Throughout France, *retrait* was abolished by the revolutionary decrees which swept away the provincial customary laws, and *retrait* was not reinstated by the Code Civil in the early 19th century. *Retrait* was abolished in Jersey in 1834 because it was "unjust".

40. *Retrait* survives in Guernsey, but since 1924 much modified and restricted in its operation, and also in Alderney, in the same restricted form as in Guernsey (except that the operative period is 3 months, not 1 month). *Retrait* continues to be available as part of Sark customary law to the full extent admitted in Normandy, provided the claim is made within forty days of the sale.

41. The Committee is advised, and has accepted for purposes of this report, that *retrait* <u>might</u> breach the European Convention of Human Rights ("ECHR"), in interfering with private property rights where there is no public interesr justification for so doing. It must be remembered that the right of *retrait* only arises when a property has been sold (not is about to be sold), and the effect of a person successfully exercising the right is to

    (a) nullify the agreement concluded between the seller and the purchaser;

    (b) destroy the purchaser's title to the property by depriving him of ownership, even thought the purchaser is compensated for the purchase price and expenses incurred (but not all expenses), and so unless and until the *retrait* period has passed, any purchaser's title is, effectively, conditional;

    (c) to deprive the purchaser of his or her purchased home: in this respect, it must be remembered that the purchaser who loses a new home by *retrait* may have sold his or her former home, or have contracted to do so.

42. *Retrait* has not been without its critics. As mentioned above, its unjust operation led to its abolition in Jersey in 1834, and in France by the Code Civil. In 1841, Advocate Peter Jeremie, who became Guernsey's Comptroller, wrote of *retrait*

> "In truth, the system itself is fundamentally vicious, and if tolerated, should be restricted to heirs in a direct line and to real property inherited. What advantages can compensate for the evils it entails, for the bad feeling it creates....."

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[1] It has, however, an honourable history and biblical references to the right may be found in the Old Testament (Leviticus ch. 25, v. 25, and Jeremiah ch. 32, vv 7 et seq.).

In Guernsey in 1924, the States recognised that the right then subsisting could not continue to be justified, and the right was severely restricted. In 1972, Sir John Loveridge, former Bailiff of Guernsey, in giving judgement in a disputed *retrait* case, expressed the view that it was extremely difficult to justify its continuation.

The purpose of the right was originally to preserve property within the family, because property was the source of family prosperity at a time when agriculture was the principal economic activity. That position does not apply nowadays. The economic and cultural reasons for *retrait* have largely disappeared.

43. The Committee is of the view that *retrait* cannot be justified in modern times. It is unacceptable, and possibly in contravention of the ECHR, for a person whose relationship to a seller of immoveable property arises by some chance accident of kinship to have the right to deprive a purchaser of property that he has, by then, bought and into which he may have moved with his family. In this respect, any relative of the seller who wants the property is freely able to negotiate with the seller to buy the property in the ordinary way, i.e. in the market, but in practice persons have exercised the right of *retrait* after someone else, i.e. the purchaser, who has negotiated in good faith, and who reasonably expects the property to have become his, has concluded agreement.

44 In revising and restricting the law relating to *retrait* in 1924, the States of Guernsey drew a distinction between *propres*, that is immoveable property inherited, and *acquêts*, that is immoveable property purchased. The reason for this is simple: by definition, an *acquêt* must have been purchased (or acquired by will) by the seller himself, and on any reasonable view such a property could not be regarded (except on the most old-fashioned notion) as 'family inheritance'. This is why Advocate Jeremie felt that if *retrait* were to be retained, it should only apply to inherited property: see paragraph 40. above.

45. However, Guernsey law provides that both *propres* and *acquêts* are subject to *retrait*, but as respects *acquêts* for a more limited class of close relatives as potential *retrayants*. The only persons who are entitled to *retrait* an *acquêt* are the descendants of the seller, i.e. children, grandchildren, etc., whereas the only persons who may *retrait* a *propre* are, besides the descendants of the seller, the seller's brothers and sisters and nephews and nieces. One consequence of the Guernsey legislation is to make the class of potential *retrayants* readily identifiable.

46. In summary: under Guernsey law, those who can *retrait* are – in the case of a *propre* – the children and remoter descendants, brothers, sisters, nephews and nieces of the seller; in the case of an *acquêt* – the children and remoter descendants of the seller.

47. If the Committee's proposals for illegitimate children are approved, the classes of persons able to exercise the right of *retrait* would necessarily have to be

extended to include illegitimate persons.

48. In Guernsey since 1st January, 1970 there have only been 9 instances of *retrait* out of many thousands of sales (6 in the 1970s, 2 in the 1980s, and 1 in the 1990s, suggesting that use of the right is diminishing). In Alderney in the same period there has been no instance of *retrait*. In Sark there have been 4 instances of *retrait* out of far fewer sales.

49. The Committee is of the view that *retrait* in its present form cannot be retained, and should be completely abolished, and relatives of a seller should take their opportunity in the market, like everybody else. The Committee could not identify any public interest, or advantages or benefits, to Guernsey's community, taken as a whole, in retaining the right, which is pernicious and unfair in operation. No harm will be done to Guernsey - its economy, its culture, its land tenure, its environment - by abolition of *retrait*, because any relative of a seller is, of course, able to negotiate to buy in the ordinary way.

50. The Committee considered whether the right of *retrait lignager* should be restricted to *propres* i.e. inherited immoveable property only, and so whether the class of persons entitled to exercise the right should comprise only the children or descendants (including illegitimate such persons, as it would have to) of the seller; but after careful and anxious consideration, concluded that retention of *retrait* in even such a limited form could not nowadays be justified, even if it were human rights compliant, and so, the Committee recommends that *retrait* be abolished and that the legislation in this respect should take effect on the day next following the expiration of one calendar month from the date on which the Order in Council is registered, thereby preserving any right of *retrait* which may subsist on that date

G. Recommendations

The Inheritance Law Review Committee recommends

1. That all discrimination in inheritance to both Guernsey immoveable and moveable property against illegitimate children should be removed and that the law should be reformed as set out in Section A of this Report.

2. That a scheme of administration of Guernsey immoveable property by which, without interfering with the customary law principles of inheritance, such property may be administered and sold and good title given and obtained, notwithstanding some uncertainty as to the ownership of the property, be introduced in Guernsey as set out in Section B of this Report.

3. (a) That a will made in Guernsey disposing of Guernsey immoveable property and moveable property by the same document shall not, on that ground alone, be deemed invalid.

(b) That a person may continue to make his will of Guernsey immoveable property separate from his will of moveable property.

(c) That a will disposing of Guernsey immoveable property whether or not also disposing of moveable property, is validly attested by two witnesses who may, but need not be, Jurats.

4. That the *Loi relative aux Prescriptions, 1909* be amended to provide that the period of prescription operative in the case where purchasers have bought from heirs, whether testate or intestate, in good faith but have not required an administrator to be appointed, be reduced from 20 years to 6 years.

5. That retrait lignager be abolished in Guernsey.

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

Yours faithfully

J A Pritchard
Chairman

(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:-

IV.- Whether, after consideration of the Report dated 10th December, 2004, of the Inheritance Law Review Committee, they are of the opinion:-

1. That all discrimination in inheritance to both Guernsey immoveable and moveable property against illegitimate children shall be removed and that the law shall be reformed as set out in Section A of that Report.

2. That a scheme of administration of Guernsey immoveable property by which, without interfering with the customary law principles of inheritance, such property may be administered and sold and good title given and obtained, notwithstanding some uncertainty as to the ownership of the property, be introduced in Guernsey as set out in Section B of that Report.

3. (a) That a will made in Guernsey disposing of Guernsey immoveable property and moveable property by the same document shall not, on that ground alone, be deemed invalid.

   (b) That a person may continue to make his will of Guernsey immoveable property separate from his will of moveable property.

   (c) That a will disposing of Guernsey immoveable property whether or not also disposing of moveable property, is validly attested by two witnesses who may, but need not be, Jurats.

4. That the *Loi relative aux Prescriptions, 1909* be amended to provide that the period of prescription operative in the case where purchasers have bought from heirs, whether testate or intestate, in good faith but have not required an administrator to be appointed, be reduced from 20 years to 6 years.

5. That retrait lignager be abolished in Guernsey.

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

PUBLIC ACCOUNTS COMMITTEE

CONTROLLING EXPENDITURE ON OFF-ISLAND PLACEMENTS

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

23rd December 2004

Dear Sir

Executive Summary

1. Guernsey sends adults and children with social or mental health problems, serious disabilities or learning difficulties to the UK when adequate treatment, support or specialist educational provision is not available on the island. Sometimes adequate treatment or support is available on island but is not appropriate; for example, with a single acute mental health ward, it is not possible to accommodate an abuser and the abused.

2. The cost to Guernsey of off-island placements has been rising steeply over recent years and increased from £1.84 million in 1998 to £4.85 million in 2003 (Figure 1). The number of placements increased by 75 per cent over the same period (from 60 to 105). In 2003, Guernsey spent more than twice as much on off-island placements as the Isle of Man and nearly three times as much as Jersey. In 2004, it is estimated that Guernsey's total expenditure on off-island placements is likely to be £4.95 million.

Figure 1: The cost of off-island placements, 1996 to 2003

Year	Cost of off-island placements (£ million)	Number of off-island placements	Average cost of each placement (£000)
1998	1.84	60	30.7
1999	2.09	65	32.1
2000	2.98	74	40.2
2001	3.41	77	44.3
2002	4.30	80	53.7
2003	4.85	105	46.0
Increase	163 percent	75 per cent	50 per cent

3. Improving quality standards, tighter UK regulation and an increasing demand for facilities have all driven up charges generally; and the treatment costs at specialist centres have been particularly high. Demand for specialist treatment has also increased, partly because cases are being identified and diagnosed earlier and partly because there has been a growth in the number of complex disabilities and disorders (such as severe autism) which cannot presently be catered for in Guernsey.

4. We note that the rising cost of off-island placements had led to discussions at staff level between the committees concerned and the Treasury; and had prompted a review by the National Audit Office on behalf of the former States Audit Commission.[1] The National Audit Office review built on a number of initiatives which were already under discussion or development following staff level discussions.

5. On the basis of the National Audit Office report, we took evidence from the Chief Officers (and supporting staff) of the Health & Social Services Department, the Education Department, and the Treasury & Resources Department to examine what is being done to contain costs and whether suitable facilities can be cost-effectively developed on island. As a result of our examination, we consider that better value for money from expenditure on off-island placements can be achieved by:

   - closer control of costs through pooling the budget for off-island placements and monitoring expenditure more carefully against the budget;

   - more effective scrutiny of proposals for off-island placements through the use of multi-disciplinary panels;

   - the development of better facilities on island where it is cost-effective to do so.

6. We are encouraged by the measures now in hand to exercise closer and more effective control over the authorisation, monitoring and review of off-island placements. The centralisation of funding and the appointment of a multi-disciplinary panel should help to ensure that proposals are presented on a consistent basis and are subject to detailed scrutiny and challenge before approval. The changes should also encourage a wider, more considered approach to the subject, one that addresses the need for Guernsey to develop cost effective care, support and treatment facilities of its own and seeks to identify areas where savings can be achieved and costs driven down.

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[1] A copy of the National Audit Office report is attached.

7. Our detailed conclusions at paragraph 0 below are intended to help drive these changes forward.

(A) Controlling and Monitoring Off-Island Expenditure

8. Until May 2004 four committees were involved in the authorisation and funding of off-island placements: the Board of Health; the Children Board; the Education Council; and the Guernsey Social Security Authority (Figure 2).

Figure 2: Responsibilities for off-island placements

Committee responsible until May 2004	Expenditure on off-island placements in 2003 (£million)	Type of placement	Age group	New Departmental responsibility
Board of Health	2.29	Mental health problems (including alcohol, drug-related and eating disorder cases)	Adults or Children	Health & Social Services Department
		Learning disabilities	Adults or Children	
Children Board	1.15	Behavioural or disruptive problems affecting the home or community.	Children	
Guernsey Social Security Authority	0.68	Social placements: fixed-term placements for psychiatric and social rehabilitation and open-ended placements for individuals with disabilities, serious psychological problems and/or serious behavioural problems.	Adults	
Education Council	0.73	Complex learning difficulties including autism, behavioural difficulties, severe sensory impairment affecting educational needs.	Children	Education Department

9. In its report, the National Audit Office found that this fragmentation of accountability had led to a number of problems:

- First and foremost, there was no consistency of approach across the four committees and the absence of any over-arching strategy had given rise to a variety of different procedures and practices.

- The boundaries between the Committees were not always clear or logically defined and responsibilities sometimes overlapped.

- Each of the four Committees had different methods of funding off-island placements. Whilst this had some benefits and may have been appropriate when the arrangements were introduced, events have moved on and a new approach is now needed.

- The involvement of three committees in child cases had led to a complicated and inefficient re-charging of costs.

- The total cost of off-island placements was not being brought together. In addition, except for Education, the total cost of travel and subsistence expenditure was not known; and no Committee had sought to estimate the substantial staff costs, professional and administrative, of dealing with off-island placements.

10. Measures have since been taken or are in train to address some of these problems. The machinery of government re-structuring in May 2004 has brought together the Board of Health and the Children Board into the new Health & Social Services Department; and it is intended that the budget for off-island placements of the former Guernsey Social Security Authority (now the Social Security Department) will be transferred to the Health & Social Services Department from 2005. Pooling of the Education and Health & Social Services budgets for off-island placements is also to take place in 2005. Precise details of the budget merger and its timing, including the accountability arrangements and the procedures for authorising expenditure, have not yet been concluded. A mechanism will also be needed to enable additional funds to be requested, should this be necessary to meet Departments' statutory obligations.

11. This rationalisation of the funding arrangements offers several potential benefits. It should promote a more strategic, co-ordinated, approach to off-island placements; especially if multi-disciplinary panels are appointed to examine all cases and authorise or refuse support on a consistent basis (see below.) Creating a pooled budget should also allow better use to be made of limited funds; give a more complete picture of the cost of off-island placements; and eradicate much of the internal re-charging that currently takes place.

12. The full cost of off-island placements must take account of travel and subsistence expenses as well as the charges for treatment and educational provision. These expenses have not been fully recorded in the past, but amounted to at least £187,000 in 2003 and probably substantially more. Travel costs for education placements have ranged from £877 for a young person who was able to travel independently to an annual cost of up to £12,000 per placement, with the average cost per placement being £4,000. Most children return from their placements every three weeks in order to maintain contact with

their families; and the majority require an escort – usually a parent – whose travel costs are met by the Education Department. There is also a substantial cost in staff resources in managing these placements.

(B) Scrutinising Proposals for Off-Island Placements

13. No common system has been in operation in Guernsey to ensure that all proposals for off-island placements are submitted in a standard form and meet laid down criteria, such as need, consideration of alternatives and expected outcomes. This has led to an inconsistency of approach. Each of the four Committees – and their successor Departments – has operated different procedures for examining proposals and authorising placements and the depth of scrutiny has varied from one Committee to another. Many of the cases approved by the Board of Health and the Guernsey Social Security Authority were authorised solely on the strength of a recommendation from a consultant psychiatrist.[2] There was little or no external oversight or support, and staff of the Board and the Authority did not have the professional expertise to challenge medical decisions and recommendations. This increased the risk of inappropriate cases being allowed through. There has also been concern among specialist staff in Guernsey that current procedures have not encouraged a holistic approach to the treatment of children, that is the whole child is treated rather than specific symptoms or problems. Education placements are made on the recommendation of the Principal Educational Psychologist following a multi-agency assessment process.

14. No comprehensive attempts have been made to identify how successful off-island placements have been or to track people who have completed a placement in order to measure its long-term success. Assessments can be difficult when cases cannot readily be compared with each other. But without such monitoring it has been hard to weigh up the merits of different establishments and to know whether sending people off-island is as effective as other methods of provision.

15. Use of a multi-disciplinary panel, involving specialists and administrative staff, is generally standard practice in UK local authorities for reviewing and determining the needs of people with mental health problems and learning difficulties. Collaboration between health care, social work and education professionals, specialists, managers and budget holders, is seen as key to ensuring that care needs are considered in the round and are fully met.

16. An inter-agency working party was set up in 2003, prior to the National Audit Office report being commissioned, to improve cross-committee liaison on off-island placements. The working party suggested the introduction of a multi-disciplinary panel to consider all requests for placements. Such a panel would include clinical advisors and managers and would have the authority to accept or

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[2] Because of their expertise, consultant psychiatrists will continue to have a key role to play in the decision-making process on whether or not to refer a patient off-island.

reject requests for off-island placements on the basis of a full discussion amongst experts. The proposal to establish a multi-disciplinary panel system has been well received by the Departments directly involved and by the Treasury & Resources Department and is expected to be implemented by early 2005.

17. As well as bringing a range of expert views to bear on specific cases, including the drawing up of preparatory reports, a multi-disciplinary panel would be expected to provide advice and analysis on general issues, such as the appropriate treatment of drug and alcohol cases and the comparative advantages and disadvantages of providing care locally. It will also be in a position to evaluate off-island success rates. Detailed issues have still to be decided, however, including the need for more than one panel in order to deal separately with children and adults and different client groups.

(C) Developing Better Facilities on Island

The high number of off-island placements

18. Guernsey has been sending many more people off-island than other similar jurisdictions. In 2003 Guernsey sent 55 adults and 50 children off-island (23 of which were for educational reasons), the Isle of Man sent 35 adults and 9 children, and Jersey sent 17 adults and 9 children (Figure 3). These large differences are partly explained by the different circumstances in the three jurisdictions. Both the Isle of Man and Jersey have developed services on island for a range of cases which in Guernsey would necessitate an off-island placement. For example, a Jersey charity has established specialist facilities to deal with alcohol and substance abuse. However, we do not have any information on the cost or quality of the treatment on island in the other jurisdictions so it is difficult to make a full comparison between Guernsey and elsewhere.

Figure 3: Number and cost of off-island placements in Guernsey, the Isle of Man and Jersey, 2003

Jurisdiction	Number of off-island placements in 2003			Total cost of off-island placements in 2003 £ million
	Adults	Children	Total	
Guernsey	55	50	105	4.85
Isle of Man	35	9	44	2.38
Jersey	17	9	26	1.77

Note: Isle of Man figures are estimates for 2003-04.

19. As a proportion of its child population, Guernsey has been sending more children to the UK than most English local education authorities have been

sending children out of their areas. In the UK, as in Guernsey, it is generally considered that people are best supported within their own area: family contacts are more easily maintained, cases can be kept under closer review; and costs are less. In the UK. there has been a trend away from out of area placements, with their higher costs and the problems associated with a lessening of control, towards a greater investment in local services.

20. Several reasons have been advanced for the high Guernsey figures: the lack of suitable treatment facilities on island; the fewer specialists in mental health problems; and the lack of active support groups. It must also be accepted that the options open to a small self-governing island are different from those available to a large local authority in the UK. Although the aim is to treat people in Guernsey wherever possible, the best interests of a client can sometimes be served only by sending him or her to the UK for specialist treatment or support.

The high cost of treatment off-island

21. In Guernsey the average cost of a placement rose by 50 per cent between 1998 and 2003, from £30,700 to £46,000. Demand for places in the UK has tended to outstrip supply and this has pushed up charges generally and put Guernsey in a weak negotiating position to secure placements at a reasonable price. Guernsey has often had to send people to expensive private establishments. Although Departments research the suitability of treatment centres and specialist educational provision, the standards of care and the prices charged, few vacancies are generally available and Departments rarely have the luxury of a choice. Most placements are expensive. At the lower end of the scale a specialist education placement shared between the Health & Social Services Department and the Education Department is costing £24,000 a year. At the upper end of the scale some adult placements are currently costing as much as £700 a day.

22. There have been particular concerns over the cost of treating alcohol, drug-related and eating disorder cases in the UK. Such cases cost Guernsey £563,000 in 2003, including £272,000 for the treatment of 12 people at a specialist independent hospital. Board of Health clinicians and specialists have commented on the inappropriateness of such centres for the treatment of some of Guernsey's alcohol cases. Through a private charity, Jersey has developed its own services at Silkworth Lodge for treating alcohol and drug problems and Guernsey is now using these facilities, including pre-treatment assessment, rather than establishments in the UK. Silkworth Lodge is also providing post-treatment after-care.

23. All off-island placements are kept under close and regular review to ensure that the required standards of care are being delivered. This work is time-consuming and costly because staff from Departments must travel to placement centres in the UK. Savings could probably be achieved by outsourcing some of the monitoring visits, as Jersey has done, though care would need to be taken that

departmental staff did not then lose the professional benefits gained from contact with the patient and treatment centre or pupil and educational provision.

The scope for developing facilities in Guernsey

24. It is generally accepted amongst practitioners that better results are usually achieved by helping people in their own locality. This may not always be appropriate or achievable in particular cases and certain disorders and disabilities may require specialist treatment that could never be provided cost-effectively in Guernsey. Some people will always need to be cared for off-island. Nevertheless, the presumption must be that, wherever possible, people should be treated in Guernsey.

25. There is scope for Guernsey to develop facilities for certain categories of people who are currently sent to the UK. Progress is being made in a number of areas:

- The Health & Social Services Department is assessing the need to expand and improve the present limited respite facilities. Better and larger respite facilities would help to reduce the number of children placed off-island by relieving the pressure on families in supporting children with complex difficulties.

- Steps are also being taken to develop better on-island facilities for dealing with alcohol and drug problems. A specialist nurse has been appointed as part of the drug strategy and when Albecq ward at the Castel hospital is replaced, the new ward will have single rooms and a layout which facilitates separation of the sexes and of people with differing mental health problems. The Department's mental health strategy also envisages that facilities will be developed for some people who are currently sent off island. The Department will be reviewing the service received from Silkworth Lodge in Jersey and will make a decision as to whether to continue to use that facility or whether a similar service should be developed in Guernsey.

- The Education Department is to replace its existing special needs facilities with two special needs schools that will cater for pupils with moderate and severe learning difficulties, sensory and physical difficulties and language and communications difficulties. Le Rondin, which will open in September 2005, will take children aged from 3 to 11. Les Nicolles, which will not open before 2007, will take children and adolescents aged from 11 to 19. On the opening of Les Nicolles, the current Oakvale school building will be re-developed to cater for pupils with social, emotional and behavioural difficulties. This may avoid the need to send some children off-island. It is too early to say what impact these schools will have in reducing the number of off-island placements for educational reasons, although it is to be hoped that improved and increased resources will lessen the need.

Conclusions

26. Our conclusions are as follows:

a) **We strongly endorse the proposal to create a pooled ring-fenced budget for off-island placements**. This arrangement should foster a more consistent, strategic approach to placements and allow better use to be made of limited funds. It would also enable the full costs of off-island placements to be identified, and this, in turn, should lead to better, more informed decisions. It is important, therefore, that there should be no delay in working out the precise details of the budget merger, including the accountability arrangements and the procedures for authorising expenditure. Ideally, the new budget should be in place at an early stage of the 2005 financial year.

b) **The total cost of off-island placements, including travel and subsistence expenditure, must be brought together and monitored**. This would improve financial control and allow significant trends to be identified and acted upon as necessary. Departments also need to be aware in broad terms of how much staff time is spent dealing with off-island placements and what this effort costs, both in cash terms and the impact on the delivery of other services.

c) **We fully support the proposal to establish multi-disciplinary panels to examine and decide upon all proposals for off-island placements.** Such an arrangement is essential to ensure that proposals are submitted on a consistent basis and that all address necessary criteria. Consideration must be given to need, alternatives, expected outcomes, and how the placements are to be reviewed and by whom. Collaboration between specialists, health care, social work and education professionals, and administrative staff would also enable care needs to be considered in the round and promote a holistic approach to treatment and education. We would also expect the panels to address thematic issues, such as the appropriate treatment of drug and alcohol cases, and provide advice and guidance to those directly concerned.

d) **Given the pivotal role envisaged for the panels, it is important that the lines of accountability and responsibility are clearly defined and that the authority of the panels for making decisions is understood and accepted by the parties concerned.** The outstanding matters relating to the functions, organisation and appointment of the panels need to be resolved quickly so that the new arrangements can be in place and up and running by early 2005.

e) **We look to the multi-disciplinary panels to achieve better control over expenditure on off-island placements**. Concerted efforts need to

be made to contain and reduce the cost of off-island placements. Savings generated by tighter control of the number of new cases approved each year could be used to develop better facilities in Guernsey, where these can be justified on grounds of cost and better care. The need for off-island placements would thus be reduced still further.

f) **Where there is no option but to send people off island we look to the panels to seek ways of reducing the costs of doing so**. Establishments should be subject to careful screening and validation of costs. Possibilities for achieving greater control over fee rates should also be considered, including service level agreements, ongoing contracts, joint commissioning with another authority, and outsourcing the commissioning of placements. Savings might also be achieved by outsourcing some of the monitoring visits, although consideration would need to be given to the relative benefits and disadvantages of outsourcing. For example, care would have to be taken that departmental staff did not then lose the benefits of contact with the patient and treatment centre or the pupil and specialist school.

g) **The multi-disciplinary panels should also take a leading role in identifying where facilities can be cost-effectively developed in Guernsey to obviate the need for expensive off-island placements.** We recognise that there is sometimes no alternative to sending a patient for treatment or a pupil for education in the UK, either because of the special nature of the case or because the necessary facilities cannot be provided cost-effectively on island. Wherever possible, however, patients should be treated in Guernsey. In the right circumstances the standard of care is likely to be higher and achieve better results; and treatment and support costs and travel and subsistence expenses would generally be much lower. Consideration of the development of facilities on-island should be supported by a fully costed business proposal.

h) **We welcome what is now being done to develop facilities in Guernsey for certain categories of adults and children who are currently sent to the UK.** Such initiatives include the Education Department's plans for new special needs schools and the Health & Social Services Department's plans for better respite facilities and improved facilities for treating drug and alcohol problems. It is too early to say what impact these initiatives will have in reducing the number of off-island placements. Some of the facilities will not be available for a year or more and substantial expenditure is committed to long-term placements which it will only be possible to reduce over a period of time.

i) **We consider that the panels should seek to evaluate the outcome of off-island placements, both in the short and longer term.** This will not be easy, but as information builds up on schools and treatment centres and success rates, the panels would be in a much better position

to assess the comparative advantages and disadvantages of providing care locally.

j) **The Departments concerned should draw up an action plan to respond to the conclusions in this Report and that of the National Audit Office.** We would expect to review the proposed arrangements in one year's time, with a more detailed review in three years to see what has been achieved.

Comments of the Scrutiny Committee

27. We asked the Scrutiny Committee whether in its view any of the issues raised have implications for future policy development. The Scrutiny Committee told us that it supports the report's conclusions and has asked the Public Accounts Committee to provide it with any future reports on the success or otherwise of the proposed multi-disciplinary panel and funding arrangements.

28. The Scrutiny Committee is concerned to ensure that in all areas of policy an integrated corporate approach is adopted, that strong evidence exists to support existing policy and that monitoring and benchmarking are undertaken to measure the effectiveness of policy. The Scrutiny Committee added that its own initial research had revealed a lack of supporting evidence and an absence of a corporate approach in other areas of policy and service delivery across the States.

29. The Scrutiny Committee stated that it expected any future policy review to have evidence made available to support the policy, or any proposed change of policy. It also stated that it would bear the reports' findings in mind when considering other interrelated initiatives including the development of the drug and alcohol strategy, and developments in the provision of education and health services as new schools and other facilities are brought into service.

Departments' comments

30. The Board of the Education Department told us that it was happy to endorse the conclusions reached in the Report and had asked its officers to work with the other two Departments in progressing the recommendations. The Board considers that separate panels should sit for different categories of off-island placement and that it would be preferable for an independent chairperson to be appointed to chair each panel. The Board also notes that further comparative data from the other two insular authorities would be useful in developing the planning for the establishment of the panels.

31. The Health & Social Services Department said that it supported the recommendations and its staff were working towards implementation. The Department had a few comments as follows:

- The Department's increase in costs during 2004 appears to be less than RPI as a percentage and it believed that some of this was certainly due to the vigilance of its staff in trying to keep down expenditure, whilst continuing to ensure that local residents receive appropriate care and treatment.

- The Department believes that some of the increase in costs over the years relates to better capture of data rather than real increases in expenditure.

- Whilst comparisons with the Isle of Man and Jersey are useful, the Department noted that it cannot be certain whether the costs are truly comparable. For example, the islands may have treated travel costs associated with off-island placements differently.

- At the moment, the Department does not know what additional resources may be required in order to track and monitor long term progress following treatment off island but is considering this issue. It is also investigating outsourcing UK visits but, again, there could be a resource implication.

Recommendations

32. The Public Accounts Committee recommends the States:

    a) To note the report.

    b) To recommend the relevant Departments to review their policies and procedures in relation to off-Island placements in response to the Report's conclusions, and to request the Public Accounts Committee to monitor such action taken by these Departments and to report back when appropriate.

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

Yours faithfully

Rhoderick Matthews
Chairman

(NB The National Audit Office Report, which is appended to this Report, is published separately.)

(NB The Policy Council supports the proposals)

(NB The Treasury and Resources Department supports the proposals)

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 23rd December, 2004, of the Public Accounts Committee, they are of the opinion:-

1. To note the Report.

2. To recommend the relevant Departments to review their policies and procedures in relation to off-Island placements in response to the Report's conclusions, and to request the Public Accounts Committee to monitor such action taken by these Departments and to report back when appropriate.

ORDINANCE LAID BEFORE THE STATES

THE BAR (AMENDMENT) ORDINANCE, 2005

In pursuance of the provisions of the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, as amended, the Bar (Amendment) Ordinance, 2005, made by the Legislation Select Committee on the 12th January, 2005, is laid before the States.

PUBLIC ACCOUNTS COMMITTEE

INTER-ISLAND CO-OPERATION

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

23rd December 2004

Dear Sir

Executive Summary

1. Against a background of increasing fiscal pressures, the Bailiwick of Guernsey needs to explore whatever opportunities may exist to secure greater value for money. Jersey faces similar financial challenges. Although each island has a distinct identity, there are also many similarities – historical, economic and governmental. There must therefore be many opportunities for Guernsey and Jersey to work more closely together to their mutual advantage. Costs could be reduced through economies of scale; specialist functions could be shared; and new systems or projects on both islands could be developed in tandem to promote compatibility and to avoid duplication of effort.

2. We therefore took evidence from the Chief Minister and the Chief Executive of the States of Guernsey on the scope for further co-operation between the islands. We had earlier taken evidence on this issue from the Institute of Directors in Guernsey and Jersey, who had submitted a paper to us.[1]

3. We are pleased to note that progress has already been made in developing effective working relationships between Guernsey and Jersey, both at Ministerial and Chief Officer level. For example, a meeting of Guernsey's Policy Council and Jersey's Committee of Presidents took place on 15 November 2004 to discuss a range of issues aimed at developing closer co-operation between the two islands. Specifically it was agreed to:

   - work together on transport policy for sea routes;

[1] A copy of the submission from the Institute of Directors is attached.

- explore the possibilities for developing new air transport links with mainland Europe using either of the islands' airports as a hub;

- consider proposals for a joint appointment of a Director of Civil Aviation for the Channel Islands;

- adopt a joint approach in discussions with the UK government about extending the UK national lottery to the Channel Islands;

- jointly fund a study of the costs, benefits and implications of a shared energy from waste plant based in one of the islands;

- examine the potential for a joint appointment of an Auditor General who would operate in both islands;

- explore trade links and transport routes with France;

- give consideration to the possibility of joint representations being made to the French government on the proposed extension of the Flamanville power station.

4. Our examination suggested that this co-operation could be extended still further and might be expected to deliver substantial savings and other benefits in the medium to longer term. However, the difficulties must not be underestimated. Hitherto, co-operation has not been managed in a structured or systematic way; rivalry between the two islands has sometimes inhibited progress; individual relationships have not always been easy or constructive; and opportunities for fruitful collaboration have sometimes been lost because they were not identified and acted upon in good time. These problems are not insuperable, but they need to be tackled with commitment and determination if the fiscal and other advantages afforded by co-operation are to be fully secured.

5. We consider that the following measures are necessary:

- A firm high-level commitment must continue to be made to the principle of increasing co-operation between Guernsey and Jersey.

- Co-operation needs to be managed pro-actively and in a structured way. The scope for effective collaboration must be systematically assessed so that all worthwhile opportunities and ideas are identified and evaluated at an early stage.

- The benefits and achievements of collaboration should be made more widely known, both to encourage similar ventures and to build up trust and confidence between the two islands. A culture change is necessary

so that co-operation comes naturally and is automatically considered whenever Guernsey and Jersey share common interests.

- There should be a readiness to share information and experiences.

6. Our detailed conclusions at paragraph 0 below are directed towards achieving these ends.

(A) Making co-operation work in practice

7. Co-operation between Guernsey and Jersey is not a new idea. Over recent years the two islands have worked closely together in a number of ways and there has been a fruitful exchange of information and ideas. There is an annual inter-Island meeting; policy and common problems have been discussed at ad hoc meetings between respective committees, departmental heads, Ministers and Chief Officers; and Guernsey and Jersey (and the Isle of Man) have co-operated effectively on the international stage, for example by making joint representations to the UK Government, the European Union and the OECD on finance industry issues.

8. Other linkages have arisen at the initiative of individual government departments, civil servants and politicians. Some links are based on good working and personal relationships; others are more procedural in nature, such as joint buying by the two health departments and the sharing of specialist functions and equipment. Work is also going on at staff level to benchmark activities, which would allow meaningful comparisons to be made between Guernsey and Jersey. Provided that differences in systems are highlighted and fully understood, this exercise should enable both islands to identify areas where performance is apparently falling short and to take corrective action.

9. Much more could be achieved, however. Co-operation between Guernsey and Jersey has not been approached in any organised way and no machinery exists to foster co-operation and to help it work better in practice. Collaboration has been piecemeal rather than systematic and opportunities to make substantial economies and efficiency savings have not been recognised. A clearer and stronger focus on identifiable areas is required if the many obstacles impeding successful co-operation are to be overcome. The real benefits will be achieved when dialogue comes down a level to operational management.

10. Although Guernsey and Jersey are both committed to co-operation in principle, the strength of that commitment in individual cases has depended upon the personalities involved. Where the chemistry has been right between the different parties, co-operation has succeeded. Where there has been little mutual trust and understanding, attempts to co-operate have struggled and failed or been still-born. Competition between the two islands is healthy but it has sometimes gone too far and created a barrier to working together effectively.

11. The tensions and misunderstandings alluded to above need to be addressed. Examples of successful co-operation, and the savings achieved, should be made more widely known. Success would then breed success. Appropriate lessons should be learned where co-operation has not worked. Over time, such measures would help to create a better climate for co-operation, one in which the head of a particular function in Guernsey would *automatically* contact his opposite number in Jersey (and vice versa) to discuss common problems and to consider joint ways of doing things. Although the two islands compete in many areas - and each will want to preserve its identity and do what it believes to be in its best interests overall - a willingness to give and take may sometimes be necessary to secure the benefits offered, for example, by centralising functions, sharing resources or combining purchasing power.

12. Co-operation will not always be possible. In some ostensibly similar areas Jersey and Guernsey have developed very different policy approaches. In other areas the IT and support systems and the legal framework of the two islands are not compatible. Co-operation therefore always needs to be considered at a very early stage of any new project or development before decisions are taken that would make such co-operation difficult or impossible in the future.

(B) Specific areas where better co-operation might bring benefits

13. Co-operation can take various forms, ranging from everyday contacts and the sharing of ideas and information to the joint involvement of the two islands in the delivery of particular activities and functions. The paper submitted by the Institute of Directors (IOD) suggested a number of areas where greater co-operation between Guernsey and Jersey would improve efficiency and effectiveness and reduce costs. We examined these suggestions with the IOD representatives and with the Chief Minister and the Chief Executive.

14. As the IOD recognised, co-operation will be much easier to secure in some areas than others. Some functions such as procurement could be managed jointly in some areas without any great difficulty. The Guernsey and Jersey health authorities already buy some of their supplies centrally. There seems no reason in principle why other departments and public sector bodies in the two islands should not do the same, combining their purchasing power to reduce overheads and to secure goods and services more cheaply. It might be necessary to standardise some products if this can be justified by the savings made.

15. Similar economies of scale might be achieved by merging common administrative functions. This presents difficulties due to differences in each island in established practice, but there may well be a number of discrete, routine operations that could be centralised. The IOD suggested central billing as an obvious area for consideration; there could be others.

16. Savings could also be achieved if Guernsey and Jersey were able to make resources available to each other. Sharing of certain specialist functions by the

two health authorities already takes place. Expensive pieces of equipment are located on one island or the other but are made available to both. This approach avoids duplicating capital and operating expenditure and allows equipment to be bought that might otherwise be too expensive. There are probably other areas where this approach could be successfully adopted. However, the costs of moving people between the islands in order to share facilities must not be overlooked.

17. The potential benefits of co-operation are not confined to the direct saving of costs. The IOD's suggestions included the development of a more consistent transport policy across the Channel Islands; sharing the burden of drafting legislation on matters that affect both islands; simplifying the regulatory framework; and giving more attention to the effectiveness of joint representation in dealing with external governments and agencies. We did not examine these ideas in detail or attempt to weigh up their pros and their cons as many of them stray into matters of policy. We list them here simply to illustrate the many ways in which co-operation could be pursued and what might be achieved. This diversity shows how important it is that co-operation should be pursued in a structured way. Opportunities for effective co-operation might otherwise be lost or overlooked.

Conclusions

18. Our conclusions are as follows:

a) **Co-operation between Guernsey and Jersey should be actively encouraged at a high level and examples of successful co-operation made more widely known**. This would re-invigorate the subject and encourage Chief Officers and their staffs to adopt a more pro-active approach. There will have to be a commitment by all to ensure that co-operation is of benefit to all parties.

b) **Co-operation needs to be actively and systematically managed and co-ordinated.** Although the two islands have worked closely together in a number of areas, this co-operation has been piecemeal and largely the result of individual initiatives. Central guidance and direction are needed. Arrangements also need to be made to promote and develop co-operation; to build on past successes; to identify and evaluate opportunities and ideas at an early stage; and to take stock of progress. *Responsibility for securing greater co-operation should be formally assigned to someone* to drive the approach forward and to help to ensure that the full potential benefits are realised.

c) **The obstacles to successful co-operation also need to be addressed.** In the past, attempts to co-operate have sometimes failed because competitive rivalry has soured into suspicion and distrust. The reasons for past failures should be examined to draw out appropriate lessons and

to ensure that things are done better in future. Relationships would then improve on the back of increasing success.

d) **The suggestions made by the Institute of Directors for developing co-operation should be evaluated.** The IOD identified a number of areas where co-operation could be expected to save money and improve efficiency and effectiveness. Although co-operation would be much harder to secure in some areas than others, all the ideas are worthy of further consideration and are suggestive of the wide range of opportunities that are available.

e) **Individual departments and public sector bodies should consider the scope in each of their own areas for greater co-operation with Jersey.** This would help to identify where the two jurisdictions could achieve efficiency savings and reduce costs and cut out unnecessary duplication of effort. In the longer term, there might also be opportunities to bring administrative systems into line with each other and to develop more consistent practices.

Comments of the Jersey Shadow Public Accounts Committee

19. Mr Tim Dunningham and Deputy Sarah Ferguson, the joint Chairmen of Jersey's Shadow Public Accounts Committee, provided the following comment:

> "We fully support the conclusions of this report by the Guernsey PAC. There are many areas of commonality between the two Islands and we believe there must be real scope for efficiencies and economies of scale from working together more closely. We are keen to work closely with our PAC counterparts in Guernsey and, as a first step, have met with members of the Guernsey PAC on 25th November to share experiences and identify opportunities for potential joint projects in the future. We are particularly pleased to note that the possibility of a joint Auditor General for both Islands was identified at the inter-Island political meeting on 15th November. The Shadow PAC will enthusiastically assist in evaluating whether this option could be pursued in practice. The Shadow PAC also intends to keep a watching eye over the progress made by both Islands in taking forward the useful suggestions made in this report and at the inter-Island meeting on 15th November 2004.

Comments of the Scrutiny Committee

20. The issues raised in this report are concerned with the effectiveness of co-operation between Guernsey and Jersey. However, as some of the issues raised have implications for future policy development, we asked the Scrutiny Committee for its comments.

21. The Scrutiny Committee told us that it supports the report's conclusions. For its part the Scrutiny Committee is forging links with Jersey's shadow scrutiny committees and when reviewing or monitoring policies or service delivery it will seek evidence that the advantages and disadvantages of working with Jersey have been fully considered. The Committee stressed that while an overall policy of closer co-operation must be encouraged real benefits will only arise if both islands work proactively and adopt a pragmatic operational approach. The Committee trusts that the Policy Council and Jersey's Committee of Presidents will take the lead on this matter. The Committee will be monitoring developments in this important area.

I should be grateful if you would include this matter as an Appendix to the February Billet d'Etat.

Yours faithfully

Rhoderick Matthews
Chairman

SUBMISSION
to the
STATES OF GUERNSEY
PUBLIC ACCOUNTS COMMITTEE
by the
INSTITUTE OF DIRECTORS
GUERNSEY & JERSEY BRANCHES

CO-OPERATION BETWEEN GUERNSEY AND JERSEY

1 INTRODUCTION

This briefing paper sets out some thoughts and ideas on the benefits that might accrue from increased co-operation between Guernsey and Jersey, and how those benefits might be achieved.

1.1 Why increased co-operation between Guernsey & Jersey should be considered?

At a time when both island governments are coming under increasing fiscal pressures, and there are concerns that such pressures will continue for the foreseeable future, it is beholden on all those concerned with the well-being of our communities to consider opportunities for alleviating such pressures.

1.2 Why might co-operation be possible?

Being only twenty or so miles apart the two islands are easily accessible to each other, such accessibility having been significantly improved in recent years through the use of information technology.

More importantly, however, is the fact that the islands have similar histories, similar economic profiles and similar governmental structures.

1.3 Potential benefits of co-operation

Benefits of co-operation can come about through economies of scale, the strength of joint representation of Channel Island interests in the external world, or simply the sharing of ideas and information.

1.4 Why does the IoD feel it has something to offer in this area?

The IoD is a representative organisation of the business community. By it's very nature it is made up of people who run businesses. Such people, directors, constantly have to manage the resources of their businesses in the most efficient and cost effective way possible. The IoD therefore believes that it can make a useful contribution to this issue. The IoD recognises that running a business is not necessarily the same as running a government or a community. However there are similarities in many areas and these are the ones that this paper will focus on.

2 EXISTING SITUATION

Many links already exist between the two islands, both in the private sector and between the islands' two governments.

2.1 Private sector

There are an increasing number of Channel Island companies which are either forming links between the islands, or expanding into the other island. Some well known recent examples are C.I.Traders, which has extensive retail and property interests in both islands, and Carey Olsen, which was recently created from the merging of two old established Guernsey and Jersey legal practices.

It is the economic benefits of such linkages that are the drivers behind this inter-island activity, as the efficiencies resulting from larger organisations, and two island markets instead of one, become increasingly obvious and possible.

2.2 Public sector

There is already a significant amount of co-operation between the States of Jersey and the States of Guernsey at all levels. For example, Jersey and Guernsey have recently made joint representations to the UK government on finance industry issues and the health departments of both islands share facilities and, in some cases, carry out joint buying.

3 FOUNDATIONAL ISSUES

3.1 Existing links

The existing linkages between the two islands as outlined above would appear to be a good foundation upon which to build – an increasing number of pan-Channel Island companies staffed by people in both islands who are starting to see themselves as working for Channel Island companies, and the many existing links between the States of Guernsey and Jersey, indicating that there are already many people signed up to the benefits of working with the "other island".

3.2 A Channel Island Federation

In discussions regarding Jersey and Guernsey co-operation, the concept of a Channel Island Federation has sometimes been mentioned. The IoD believes that this is not a viable proposition in the foreseeable future and should not be part of the agenda. Such a concept would be a confusion and an impediment to co-operation – our identities as separate Bailiwicks are too strong.

3.3 Culture and Trust

Culture and trust are of fundamental importance to the success of inter-island governmental co-operation. Without the right culture and trust progress will be slow and sporadic at best.

3.3.1 Where are we at present?

Up until now co-operation has been ad-hoc, with links springing up at the initiative of individual government departments, civil servants and politicians. Some links are based on good working and personal relationships, while others are more procedural in nature e.g. shared buying by the health authorities. Other links have failed or struggle because mutual trust and understanding is absent, the interests of both islands are too divergent, or simply that sufficient will on both sides is not present.

3.3.2 What is needed?

If we are to move on to the next stage of co-operation we will need to develop, as well as commitment from the top, a culture of co-operation, sharing and trust between politicians and civil servants. There will be a need to move away from a mutual suspicion that sometimes pervades relations, particularly at the political level.

To achieve this the following will need to exist:

- An equal feeling in both islands that increased co-operation is desirable
- The willingness to face head-on the problems of co-operation that have existed and do exist, and to deal with them
- An understanding and development of the culture necessary to underpin increased co-operation.
- The setting up of a strategic structure within which, and through which, co-ordinated action can occur

Perhaps a starting point is to learn from the successes of co-operation that have occurred and continue to occur, and to hold them up as examples of what is possible.

4 POSSIBLE AREAS OF CO-OPERATION AND HOW TO ACHIEVE THEM

What benefits might arise from co-operation?

What areas of activity are conducive to efficiencies and cost saving?

4.1 Areas where co-operation would seem to be relatively easy to achieve

The areas considered in this section are very similar to functions in the business world where efficiency of operation and cost control are imperatives.

4.1.2 Joint buying

The health authorities of both islands, as has already been mentioned, co-operate to some measure in the joint buying of supplies. It would seem reasonable to suggest that such a concept could easily be extended to other parts of the pubic sector.

4.1.3 Sharing of back-office activities

Many private sector business groups that have a number of operational sites and companies operate central administration functions, particularly in respect of accounting, human resource, IT and billing functions. It is not being suggested here that all these areas are equally conducive to centralisation across the two islands. However central billing would seem to be an obvious area for consideration. There are a number of areas in both islands' public sectors, such as water, electricity, post and motor tax, which have large databases processing large volumes that may receive benefits from the economies of scale that flow from centralisation.

Obviously such functions have developed their own specific characteristics in each island and any move towards centralisation would require compromise from both parties. There may also be the need for trade-offs in dealing with the issue of which island would host which centralised function.

One could also conceive that such functions need not, in fact, be carried out in either island, but be out-sourced out of the Channel Islands if it could be demonstrated that further benefits, such as additional economies of scale, could be achieved.

4.1.4 Sharing of specialist functions

The health authorities are a good example of the sharing of specialist functions where expensive pieces of health equipment are located in just one island and a reciprocal agreement has been reached with the other island. This obviously avoids the duplication of expenditure in both islands or, because of the cost, the lack of a facility in either island.

Such a concept of specialist sharing might be applicable to a number of other applications e.g. the new post of financial services ombudsman.

4.2 Areas where co-operation would seem possible but perhaps less easy to achieve

4.2.1 Legislative drafting

Recently, very similar data protection legislation has been developed in both islands. Could there have been a cost saving here, and perhaps also a time saving given that our legal draughtsmen seem to be so hard pressed?

The drafting of Intellectual Property legislation has also been mentioned as an area where joint co-operation could have been achieved. Although this may have been possible, this is an area where commercially competitive considerations between the two islands may have overridden efficiency considerations.

4.2.2 Trading companies

Between them the islands' two electricity companies have two managing directors, two chief engineers and two finance directors. Given that these two companies are dealing with one identical commodity, 85% of which comes from France, it is conceivable that there could be savings through the shared running of both organisations.

The water trading companies of both islands also offer an example of possible saving from joint management. It is understood that the chief executive of the Guernsey Water Board is someone who has run far larger, multi-site water operations in the UK than that which would be created from a single Channel Island operation.

A comparable business example is Securicor, which now has one managing director and one finance director running a Securicor business in both islands.

4.2.3 Information Technology

The IoD understands that there is very little linkage between the two governments' IT departments. It probably goes without saying that there are no doubt IT compatibility issues within each government let alone between governments. Nevertheless the IoD would be surprised if there were no opportunity for co-operation.

4.3 Areas where co-operation may be more problematic but nevertheless worth reviewing

4.3.1 Utility Regulation

Although conceptually an obvious area for co-operation, the regulatory framework and offices of both islands have developed and are developing in different and divergent ways, and the opportunity for significant co-operation and cost saving may have been missed.

4.3.2 Financial Service Commission

Again, as with Utility Regulation, although there is close contact between the islands' Commissions, with some shared initiatives occurring, the concept of organisational integration would offer some serious challenges and the cost savings might not be as significant as in other areas. Although the Commissions do have many activities that are similar in nature they are not necessarily conducive to economies of scale, with much work tending to be specialist in nature rather than back-office administration.

4.3.3 Transport Authority

Of the three areas covered in this section, a joint transport authority may be the most possible, although perhaps the driver here is not so much cost saving as the promise of a rational transport policy across the whole of the Channel Islands, and a co-ordinated and strengthened representation to the UK government on transport matters.

4.4 Other areas

4.4.1 External representation

Because of the constitutional similarities of the two islands as well as the importance of the finance industry to both islands, joint representations to the UK, the EU and the OECD have been possible and rewarding. This has occurred despite the commercial competition that exists between the two islands' financial industries. Perhaps this co-operation can be used as an example and a template for future joint initiatives in dealing with external governments and agencies.

4.4.2 "Green field" areas

Integration of existing areas of activity where co-operation may be possible is problematic because such activities have already been developed with their own separate *modus operandi*, which may not always be conducive to integrating with a similar operation in the other island.

"Green field" areas, on the other hand, have no such problem as they do not have any existing separate identity. To illustrate this point let us assume that both Jersey and Guernsey both adopted a sales tax. If this were to occur it would appear to be sensible to explore whether there is benefit in not only ensuring that the mechanisms and the policy approach that would underpin such a tax be complementary, if not identical, for the benefit of business in both islands, but that the administration of such a tax be centralised in one of the islands, rather than the duplication of functions in both islands.

5 CONCLUSION

The desirability of inter-island co-operation of the nature discussed in this paper results mostly from the fiscal pressures being experienced by both island governments.

The basic concept of co-operation has already been accepted, as demonstrated by the number of existing links between the two governments.

What is being suggested here is an extension of this concept of co-operation into a more strategically co-ordinated relationship between the two islands. It has been argued that there is a range of areas that are to a greater or lesser degree conducive to co-operation between Guernsey and Jersey. However, to give co-operation the best chance of success and to obtain maximum benefit from any co-operative initiative, such activities have to be embedded in a strategic and operational framework which is underpinned by a culture of co-operation and trust.

It has to be recognised, however, that notwithstanding the potential benefits of co-operation, Guernsey and Jersey are competitors. Given this it is therefore a matter of developing a framework and an environment within which, while at the same time maintaining competitive positions, the infrastructural foundations of business and the public sector benefit from the mutual co-operation of the islands.

The concept of working together should become part of the economic and governmental strategic frameworks of both islands. Such an action would embed the concept of co-operation within the institutional core of government action. However this issue is approached and developed the IoD accepts that this is a medium to long-term proposition and not one that will give results overnight. Nevertheless, the IoD believes that it is a proposition worth pursuing.

Institute of Directors Guernsey & Jersey Branches
July 2004

APPENDIX II

HOUSE COMMITTEE

RECORD OF MEMBERS' ATTENDANCE AT MEETINGS OF
THE POLICY COUNCIL, DEPARTMENTS AND COMMITTEES

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

12th January 2005

Dear Sir

On 28 January 2004 the States resolved, inter alia:

> *"That Departments and committees shall maintain a record of their States Members' attendance at, and absence from, meetings, including sub-committee meetings and the reasons for absence given shall also be recorded.*
>
> *"That the records of States Members' attendance at, absence from and reasons for absence from meetings, shall be made available to the House Committee to monitor and to take such action as it sees fit within its powers and the records shall also be available for inspection by the public.".*

The report deviates from the States resolution in two respects. Firstly, at the request of the Policy Council statistics relating to attendance at meetings of the States of Deliberation have been included. Secondly, statistics relating to Sub-Committees were not available for inclusion in this report. They will, however, be included in subsequent reports. It should be noted that States Members carry out many duties apart from attendance at meetings.

The House Committee would be grateful if the Policy Council would agree to publish this report, in respect of statistics provided by H. M. Greffier, Departments and Committees for the six months ended 31 October 2004, as an appendix to a Billet d'État.

Yours faithfully

D P Le Cheminant
Chairman

PART I - REPORT BY DEPARTMENT/COMMITTEE

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	Absent from Island		Other
					States business	Personal business/ holiday	
POLICY COUNCIL							
L. C. Morgan	15	11	1			3	
B. M. Flouquet.	15	12	1	1	1		
S. J. Falla, MBE	15	11				3	1 States business
P. R. Sirett	15	15					
M. A. Ozanne	15	12	1			2	
P. J. Roffey	15	15					
M. W. Torode	15	13				2	
D. B. Jones	15	14				1	
W. M. Bell	15	12	1		1	1	
M. M. Lowe	15	15					
L. S. Trott	15	14				1	
Alternate Members:							
M. E. W. Burbridge	2	2					
M. H. Dorey	1	1					
D. P. Le Cheminant	2	2					
C. S. McNulty Bauer	3	3					
C. N. K. Parkinson	1	1					
F. W. Quin	2	2					
COMMERCE AND EMPLOYMENT DEPARTMENT							
S. J. Falla, MBE	12	11				1	
C. S. McNulty Bauer	12	8	2			2	
L. R. Gallienne	12	9	3				
M. G. O'Hara	12	10				2	
D. W. Staples	12	10	1			1	
CULTURE AND LEISURE DEPARTMENT							
P. R. Sirett	5	3	1		1		
C. H. Le Pelley	5	3		1			1 other States Committee
M. G. O'Hara	5	3				2	
J. Honeybill	5	5					
C. S. McNulty Bauer	5	4					1 prior meeting
EDUCATION DEPARTMENT							
M. A. Ozanne	10	10					
W. J. Morgan	10	8	1			1	
D. A. Grut	10	8	2 *				* 1 left for funeral
A. H. Adam	10	10					
D. P. Le Cheminant	10	9				1	
ENVIRONMENT DEPARTMENT							
B. M. Flouquet	19	18		1			
I. F. Rihoy	19	15	2	1		1	
C. D. Brock	19	14	1	2		2	
J. M. Le Sauvage	19	17	2				
D. de G. De Lisle	19	18		1			

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	Absent from Island		Other
					States business	Personal business/ holiday	
HEALTH AND SOCIAL SERVICES DEPARTMENT							
P. J. Roffey	12	12					
D. A. Grut	12	10	1			1	
A. H. Adam	12	11				1	
B. L. Brehaut	12	11	1				
D. E. Lewis	12	11				1	
HOME DEPARTMENT							
M. W. Torode	9	8				1	
F. W. Quin	9	9					
G. Guille	9	9					
S. J. Maindonald	9	7	1		1		
G. H. Mahy	9	9					
HOUSING DEPARTMENT							
D. B. Jones	12	11				1	
M. H. Dorey	12	9	2			1	
L. R. Gallienne	12	11				1	
B. L. Brehaut	12	7	4				1 attend other Dept
J. A. B. Gollop	12	10	1			1	
PUBLIC SERVICES DEPARTMENT							
W. M. Bell	5	4			1		
M. E. W. Burbridge	5	5					
A. H. Brouard	5	5					
R. J. Le Moignan	5	4	1				
T. M. Le Pelley	5	4				1	
SOCIAL SECURITY DEPARTMENT							
M. M. Lowe	11	11					
D. P. Le Cheminant	11	10				1	
G. H. Mahy	11	10	1				
D. E. Lewis	11	11					
S. J. Ogier	11	10		1			
TREASURY AND RESOURCES DEPARTMENT							
L. S. Trott	24	23				1	
C. N. K. Parkinson	24	23				1	
J. P. Le Tocq	24	14	4			5	1 bad weather away
M. H. Dorey	24	22	1			1	
J. Honeybill	24	19	1			4	
HOUSE COMMITTEE							
D. P. Le Cheminant	4	4					
C. H. Le Pelley	4	3	1				
G. Guille	4	4					
S. J. Falla, MBE	4	2	2				
E. W. Walters	4	3	1				

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	Absent from Island		Other
					States business	Personal business/ holiday	
LEGISLATION SELECT COMMITTEE							
C. H. Le Pelley	6	6					
P. R. Sirett	6	6					
J. A. B. Gollop	6	6					
T. M. Le Pelley	6	5				1	
A. H. Brouard	6	5				1	
PUBLIC ACCOUNTS COMMITTEE							
R. R. Matthews	11	10	1				
L. R. Gallienne	11	8	1			2	
C. D. Brock	11	7				3	1 no reason
B. J. Gabriel	11	9	2				
S. J. Ogier	11	7	2				2 no reason
PUBLIC SECTOR REMUNERATION COMMITTEE							
J. P. Le Tocq	7	6	1				
A. H. Adam	7	7					
G. H. Mahy	7	6	1				
J. Honeybill	7	4				3	
B. L. Brehaut	7	7					
SCRUTINY COMMITTEE							
J. A. Pritchard	11	11					
S. J. Maindonald	11	6	1	1		3	
B. R. de Jersey	11	8	1			2	
B. J. Gabriel	11	10				1	
R. H. F. Cox	11	7	2			2	
J. A. B. Gollop	11	8				3	
E. W. Walters	11	9	1			1	
M. E. W. Burbridge	11	10				1	
R. J. Le Moignan	11	9				2	
INHERITANCE LAW REVIEW COMMITTEE							
J. A. Pritchard	2	2					
C. H. Le Pelley	2	2					
P. R. Sirett	2	2					

PART II - REPORT BY MEMBER/ELECTORAL DISTRICT

Summary of Attendances at Meetings of The Policy Council, Departments and Committees

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	Absent from Island		Other
					States business	Personal business/ holiday	
ST PETER PORT SOUTH							
L. C. Morgan	15	11	1			3	
B. J. Gabriel	22	19	2			1	
J. A. B. Gollop	29	24	1			4	
C. S. McNulty Bauer	20	15	2			2	1
B. L. Brehaut	31	25	5				1
M. E. W. Burbridge	18	17				1	
ST PETER PORT NORTH							
L. R. Gallienne	35	28	4			3	
J. Honeybill	36	28	1			7	
R. R. Matthews	11	10	1				
J. A. Pritchard	13	13					
C. D. Brock	30	21	1	2		5	1
W. J. Morgan	10	8	1			1	
D. E. Lewis	23	22				1	
ST. SAMPSON							
L. S. Trott	39	37				2	
D. P. Le Cheminant	27	25				2	
S. J. Maindonald	20	13	2	1	1	3	
S. J. Ogier	22	17	2	1			2
I. F. Rihoy	19	15	2	1		1	
R. J. Le Moignan	16	13	1			2	
VALE							
G. H. Mahy	27	25	2				
P. J. Roffey	27	27					
D. B. Jones	27	25				2	
M. M. Lowe	26	26					
G. Guille	13	13					
B. R. de Jersey	11	8	1			2	
D. W. Staples	12	10	1			1	
CASTEL							
S. J. Falla, MBE	31	24	2			4	1
M. H. Dorey	37	32	3			2	
E. W. Walters	15	12	2			1	
J. P. Le Tocq	31	20	5			5	1
B. M. Flouquet	34	30	1	2	1		
A. H. Adam	29	28				1	
T. M. Le Pelley	11	9				2	

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	Absent from Island		Other
					States business	Personal business/ holiday	
WEST							
D. A. Grut	22	18	3 *		1		* 1 left early for funeral
M. A. Ozanne	25	22	1			2	
D. de G. De Lisle	19	18		1			
C. H. Le Pelley	17	14	1	1			1 other States Committee mtg
P. R. Sirett	28	26	1		1		
A. H. Brouard	11	10				1	
SOUTH-EAST							
M. W. Torode	24	21				3	
C. N. K. Parkinson	25	24				1	
W. M. Bell	20	16	1		2	1	
F. W. Quin	11	11					
J. M. Le Sauvage	19	17	2				
M. G. O'Hara	17	13				4	
ALDERNEY REPRESENTATIVES							
P. F. Walter, MBE, MC	0						
R. H. F. Cox, TD	11	7	2			2	

PART III – REPORT OF ATTENDANCE AT MEETINGS OF THE STATES OF DELIBERATION

NAME OF MEMBER	TOTAL NUMBER OF DAYS (or part)	DAYS ATTENDED (or part)
ST PETER PORT SOUTH		
L. C. Morgan	11	11
B. J. Gabriel	11	11
J. A. B. Gollop	11	11
C. S. McNulty Bauer	11	11
B. L. Brehaut	11	10
M. E. W. Burbridge	11	11
ST PETER PORT NORTH		
L. R. Gallienne	11	10
J. Honeybill	11	8
R. R. Matthews	11	11
J. A. Pritchard	11	11
C. D. Brock	11	11
W. J. Morgan	11	10
D. E. Lewis	11	11
ST SAMPSON		
L. S. Trott	11	11
D. P. Le Cheminant	11	11
S. J. Maindonald	11	11
S. J. Ogier	11	11
I. F. Rihoy	11	11
R. J. Le Moignan	11	10
VALE		
G. H. Mahy	11	11
P. J. Roffey	11	11
D. B. Jones	11	11
M. M. Lowe	11	11
G. Guille	11	11
B. R. de Jersey	11	11
D. W. Staples	11	10
CASTEL		
S. J. Falla, MBE	11	10
M. H. Dorey	11	11
E. W. Walters	11	11
J. P. Le Tocq	11	9
B. M. Flouquet	11	9
A. H. Adam	11	11
T. M. Le Pelley	11	11

NAME OF MEMBER	TOTAL NUMBER OF DAYS (or part)	DAYS ATTENDED (or part)
WEST		
D. A. Grut	11	11
M. A. Ozanne	11	8
D. de G. De Lisle	11	10
C. H. Le Pelley	11	11
P. R. Sirett	11	11
A. H. Brouard	11	11
SOUTH-EAST		
M. W. Torode	11	11
C. N. K. Parkinson	11	11
W. M. Bell	11	8
F. W. Quin	11	11
J. M. Le Sauvage	11	11
M. G. O'Hara	11	11
ALDERNEY REPRESENTATIVES		
P. F. Walter, MBE, MC	11	10
R. H. F. Cox, TD	11	10

Resolutions

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 23rd DAY OF FEBRUARY, 2005

The States resolved as follows concerning Billet d'État No II
dated 4th February, 2005

TREASURY & RESOURCES DEPARTMENT

THE INCOME TAX (GUERNSEY) (EMPLOYEES TAX INSTALMENT SCHEME) (AMENDMENT) REGULATIONS, 2005

I.- After consideration of the Report dated 7th January, 2005, of the Treasury and Resources Department: -

In pursuance of the provisions of subsection (5) of section 81A of the Income Tax (Guernsey) Law, 1975, as amended, to approve the Regulations entitled "The Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2005" made by the Treasury and Resources Department on the 7th January, 2005.

COMMERCE AND EMPLOYMENT DEPARTMENT

ANNUAL REPORT AND ACCOUNTS OF THE
OFFICE OF UTILITY REGULATION

II.- After consideration of the Report dated 21st December, 2004, of the Commerce and Employment Department: -

1. To accept the Annual Report and Accounts for 2003 of the Office of Utility Regulation.

2. To note that the Treasury and Resources and Commerce and Employment Departments' joint review of commercialisation will provide a forum for debate on issues surrounding utility regulation.

3. To note the intention of the Commerce and Employment Department to recommend to the States changes to the Utilities Appeal Tribunal.

EDUCATION DEPARTMENT

REORGANISATION OF SECONDARY EDUCATION
STAGE 1: THE BUILDING OF LES NICOLLES SECONDARY SCHOOL AND CO-LOCATED SECONDARY SPECIAL EDUCATION SCHOOL

III.- After consideration of the Report dated 12th January, 2005, of the Education Department:-

1. (1) To approve the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in that Report at a cost not exceeding £46,974,000.

(2) To transfer the sum of £12,750,000 from the Capital Reserve to the capital allocation of the Education Department to be added to the Education Department's existing capital allocation balance of £23.30 million plus the planned £12.75 million allocation in January 2006, subject to affordability and availability, for the purpose of funding the construction of a new Secondary School and a new Special Educational Needs Secondary School at Les Nicolles as set out in that Report.

(3) To authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these works.

2. (1) To approve the inclusion of a 6 lane swimming pool as set out in that Report rather than a 4 lane swimming pool within the new secondary school facilities at Les Nicolles at a total additional cost to the overall project not exceeding £1,000,000.

(2) To authorise the Treasury and Resources Department to approve the issue and acceptance of tenders and other professional services in connection with these additional works.

(3) To authorise the Treasury and Resources Department to transfer an appropriate amount from the Capital Reserve to the capital allocation of the Culture and Leisure Department for the purpose of carrying out these additional works.

(4) To authorise the Treasury and Resources Department to approve a capital vote not exceeding £1,000,000 for these additional works, such sum to be charged to the capital allocation of the Culture and Leisure Department.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 24th DAY OF FEBRUARY, 2005

(Meeting adjourned from 23rd February, 2005)

The States resolved as follows concerning Billet d'État No I
dated 7th January, 2005

INHERITANCE LAW REVIEW COMMITTEE

FIRST REPORT

IV.- After consideration of the Report dated 10th December, 2004, of the Inheritance Law Review Committee:-

1. That all discrimination in inheritance to both Guernsey immoveable and moveable property against illegitimate children shall be removed and that the law shall be reformed as set out in Section B of that Report.

2. That a scheme of administration of Guernsey immoveable property by which, without interfering with the customary law principles of inheritance, such property may be administered and sold and good title given and obtained, notwithstanding some uncertainty as to the ownership of the property, be introduced in Guernsey as set out in Section C of that Report.

3. (a) That a will made in Guernsey disposing of Guernsey immoveable property and moveable property by the same document shall not, on that ground alone, be deemed invalid.

   (b) That a person may continue to make his will of Guernsey immoveable property separate from his will of moveable property.

   (c) That a will disposing of Guernsey immoveable property whether or not also disposing of moveable property, is validly attested by two witnesses who may, but need not be, Jurats.

4. That the *Loi relative aux Prescriptions, 1909* be amended to provide that the period of prescription operative in the case where purchasers have bought from heirs, whether testate or intestate, in good faith but have not required an administrator to be appointed, be reduced from 20 years to 6 years.

5. That retrait lignager be abolished in Guernsey.

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

7. To publish the legislation for consultation before it is laid before the States in the form of a Report.

PUBLIC ACCOUNTS COMMITTEE

CONTROLLING EXPENDITURE ON OFF-ISLAND PLACEMENTS

V.- After consideration of the Report dated 23rd December, 2004, of the Public Accounts Committee:-

1. To note the Report.
2. To recommend the relevant Departments to review their policies and procedures in relation to off-Island placements in response to the Report's conclusions, and to request the Public Accounts Committee to monitor the action taken by the relevant departments in response to the Report's conclusions and to report back when appropriate.

ORDINANCE LAID BEFORE THE STATES

THE BAR (AMENDMENT) ORDINANCE, 2005

In pursuance of the provisions of the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, as amended, the Bar (Amendment) Ordinance, 2005, made by the Legislation Select Committee on the 12th January, 2005, was laid before the States.

S. M. D. ROSS
HER MAJESTY'S DEPUTY GREFFIER