



# BILLET D'ÉTAT

WEDNESDAY, 30th JULY, 2003

XVI  
2003

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# ***BILLET D'ÉTAT***

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

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 30th JULY, 2003,** at 9.30 a.m.

**PROJET DE LOI**

entitled

**THE DOG LICENCES (GUERNSEY) (AMENDMENT) LAW, 2003**

The States are asked to decide:-

I.- Whether they are of opinion to approve the Projet de Loi entitled “The Dog Licences (Guernsey) (Amendment) Law, 2003”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE SOCIAL INSURANCE (GUERNSEY) (AMENDMENT) LAW, 2003**

The States are asked to decide:-

II.- Whether they are of opinion to approve the Projet de Loi entitled “The Social Insurance (Guernsey) (Amendment) Law, 2003”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE REGULATION OF INVESTIGATORY POWERS (BAILIWICK OF GUERNSEY) LAW, 2003**

The States are asked to decide:-

III.- Whether they are of opinion to approve the Projet de Loi entitled “The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE INCOME TAX (GUERNSEY) (AMENDMENT) LAW, 2003**

The States are asked to decide:-

IV.- Whether they are of opinion –

- (1) to approve the Projet de Loi entitled “The Income Tax (Guernsey) (Amendment) Law, 2003”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto;
- (2) considering it expedient in the public interest so to do, to declare pursuant to section 1 of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992, that the said Projet de Loi shall take effect on and after the 1<sup>st</sup> January, 2004 as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

**PROJET DE LOI**

entitled

**THE DWELLINGS PROFITS TAX (GUERNSEY) (AMENDMENT) LAW,  
2003**

The States are asked to decide:-

V.- Whether they are of opinion to approve the Projet de Loi entitled “The Dwellings Profits Tax (Guernsey) (Amendment) Law, 2003”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE EUROPEAN COMMUNITIES (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2003**

The States are asked to decide:-

VI.- Whether they are of opinion to approve the draft Ordinance entitled “The European Communities (Bailiwick of Guernsey) (Amendment) Ordinance, 2003”, and to direct that the same shall have effect as an Ordinance of the States.

**STATES ADVISORY AND FINANCE COMMITTEE**

**REVIEW OF THE PAROLE REVIEW COMMITTEE (GUERNSEY) LAW, 1989 AND  
THE PAROLE REVIEW COMMITTEE ORDINANCE, 1991 AS AMENDED**

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

9<sup>th</sup> June 2003

Dear Sir

**REVIEW OF THE PAROLE REVIEW COMMITTEE (GUERNSEY) LAW, 1989 AND  
THE PAROLE REVIEW COMMITTEE ORDINANCE, 1991, AS AMENDED**

The Parole Review Committee has written to the Advisory and Finance Committee and that letter with annexed report is appended hereto.

The Advisory and Finance Committee is grateful to the Parole Review Committee for the very detailed audit of its responsibilities in light of the requirements which are to be placed upon it as a public authority under the Human Rights (Bailiwick of Guernsey) Law, 2000.

The Committee fully supports the recommendations for amendments to the Parole Review Committee Ordinance 1991 and therefore recommends the States to agree that it be amended:

- (a) to allow a copy of the parole dossier to be made available to the prisoner, prior to the prisoner making his own submissions to the Parole Review Committee;
- (b) to permit the Parole Review Committee to give reasons for its decisions in all cases.
- (c) to allow for an automatic review of an application for parole after 12 months or 6 months prior to the earliest release date, whichever is the sooner, and to permit early or special reviews in exceptional circumstances;
- (d) to foreshorten the period for ratification or otherwise of recall orders made by Her Majesty's Procureur from seven days to 96 hours;
- (e) to allow a prisoner when applying for parole to receive legal advice and assistance in preparing his submission to the Parole Review Committee;

- (f) to allow a prisoner who has had his parole licence revoked and is recalled to prison to receive legal advice and assistance in preparing and presenting his appeal to the Parole Review Committee;
- (g) to introduce a system for advertising for persons to serve on the Parole Review Committee;
- (h) to set a retirement age of seventy years for the Chairman and members of the Parole Review Committee, unless otherwise extended, and in any case they shall retire on reaching their seventy fifth birthday;
- (i) to set a maximum term of office for members of 12 years, except where a person is appointed as Chairman from amongst the ordinary members, in which case his appointment should be limited to 16 years.

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

Yours faithfully

L. C. MORGAN

President  
Advisory and Finance Committee



*STATES OF GUERNSEY*

**PAROLE REVIEW  
COMMITTEE**

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*Sir Charles Frossard House,  
P.O. Box 43, La Charroterie,  
St. Peter Port, Guernsey,  
GY1 1FH.  
Telephone: 01481 717000  
Fax: 01481 717299*

The President  
Advisory and Finance Committee  
Sir Charles Frossard House  
La Charroterie  
St. Peter Port  
Guernsey  
GY1 1RE

28<sup>th</sup> May 2003

Dear Sir

**REVIEW OF THE PAROLE REVIEW COMMITTEE (GUERNSEY) LAW, 1989, AND  
THE PAROLE REVIEW COMMITTEE ORDINANCE, 1991, AS AMENDED**

The Parole Review Committee in consultation with Her Majesty's Procureur, the Prison Governor and the Chief Probation Officer has undertaken a full audit of the local parole legislation and practice to ensure that both are, so far as is possible, compatible with Guernsey's obligations under the European Convention on Human Rights.

Further the Committee agreed, in addition to undertaking a Human Rights audit of the legislation and practice, to broaden the remit to include a full review of how the parole process is undertaken and to identify areas of good practice elsewhere which could reasonably be incorporated in local parole practices.

The Parole Review Committee would be grateful if the complete report could be presented to the States as, in addition to recommendations which relate to obligations under the European Convention on Human Rights, it contains recommendations for areas of practice which the Committee believes are important within the context of the Committee's work and Guernsey's wider human rights obligations.

The outcome of this review is detailed in the attached report.

Finally, I wish to record the Parole Review Committee's appreciation for the advice and assistance it has received from Her Majesty's Procureur and other members of St. James Chambers, the Prison Governor and his staff, the Chief Probation Officer and her staff and the Secretary to the Parole Review Committee, in both undertaking this review and in the preparation and consideration of all applications for parole.

Yours faithfully

*Signed – D J Ozanne*

D J Ozanne  
Chairman  
Parole Review Committee



**REVIEW OF**  
**THE PAROLE REVIEW COMMITTEE (GUERNSEY) LAW, 1989,**  
**AND**  
**THE PAROLE REVIEW COMMITTEE ORDINANCE, 1991, AS**  
**AMENDED**

**Introduction and Background**

1. On 26<sup>th</sup> November 1986, following consideration of a report dated 16<sup>th</sup> October 1986 from the then States Prison Board the States resolved, inter alia
  - “1. To accept the recommendations set out in that Report with regard to a Parole Scheme for Guernsey.
  2. To request the States Prison Board to report back to the States in due course with detailed recommendations as regards:
    - (a) the constitution of the Parole Review Committee, and
    - (b) the provisions to be contained in the Ordinance to be made under the enabling Law designed to establish a Parole Scheme for Guernsey on the lines set out in that Report.
2. Subsequently the Parole Review Committee (Guernsey) Law, 1989 and the Parole Review Committee Ordinance, 1991 were enacted and Mr. Stuart Bampton was appointed by the States as the first Chairman of the Parole Review Committee.
3. The Parole Review Committee (“Committee”) was established in early 1991 and it considered the first two applications for early release on licence on 18<sup>th</sup> June 1991. Since those first two applications the Committee has considered nearly 200 further cases.
4. The work of the Committee has changed considerably over the 12 years since it first convened and these changes reflect the changing nature of cases heard before the Royal Court and, in particular, the Bailiwick’s stance in respect of persons attempting to import commercial quantities of Class A and Class B drugs.
5. The Committee comprises a Chairman and eight ordinary members. The Chairman is appointed by the States and the current Chairman, Mr. David James Ozanne, was first appointed in 1997 and was re-appointed on 28<sup>th</sup> February 2003. The Royal Court appoints ordinary members. Both the Chairman and ordinary members are independent persons, that is not sitting members of the States nor persons holding judicial office, and are chosen because of their experience and standing in the community.

6. Each application for parole is considered by four ordinary members and the Chairman. When required the Chairman has a casting vote.
7. Any person sentenced to a term of imprisonment of fifteen months or more is entitled to be considered for parole either from the one-third point in the sentence or after having served ten months whichever is the greater period. In Guernsey young offenders who are so sentenced are also eligible to apply for parole. This is not the position in the United Kingdom. In July 2002 Her Majesty's Government published a White Paper "Justice For All" and amongst the recommendations contained therein was one to extend the current provisions for adult offenders to be released under a parole licence to all young offenders sentenced for serious crimes and to require them to be so supervised until the end of their sentences.
8. Parole is a form of discretionary release which includes a period of supervision in the community under licence conditions. Before recommending early release on licence, the Committee takes into account, as a basis for best practice, the directions issued by the Parole Board for England and Wales, that is whether:
  - (1) The safety of the public will be placed unacceptably at risk. In assessing such risk the Board shall take into account:
    - (a) the nature and circumstances of the original offence;
    - (b) whether the prisoner has shown by his attitude and behaviour in custody that he is willing to address his offending behaviour by understanding its causes and its consequences for the victims concerned, and has made positive effort and progress in doing so;
    - (c) in the case of a violent or sexual offender - whether the prisoner has committed other offences of sex or violence, in which case the risk to the public of release on licence may be unacceptable;
    - (d) that a risk of violent or sexual offending is more serious than a risk of other types of offending.
  - (2) The longer period of supervision that parole would provide is likely to reduce the risk of further offences being committed.
  - (3) The prisoner is likely to comply with the conditions of his licence.
  - (4) The prisoner has failed to meet the requirements of licensed supervision, temporary release or bail on any previous occasion and, if so, whether this makes the risk of releasing him on licence unacceptable.
  - (5) The resettlement plan will help secure the offender's rehabilitation.

- (6) The supervising officer has prepared a programme of supervision and has recommended specific licence conditions.
9. The consideration of applications for early release on licence is not a resentencing process. The Committee is bound to take account not only of the offence, and the circumstances in which it was committed, but the circumstances and behaviour of the individual prisoner before and during the sentence and his plans for resettlement after release. When a prisoner is released on parole he is still in effect serving his sentence, albeit at large in the community.
10. In reaching any decision the Committee considers a person's past, present and future. It will look at the reasons underlying the offence that led to prison and any previous offending. It will also look at what has happened in prison, how the individual has behaved and spent their time, and whether it is possible to show that the risk they presented when they came into prison has reduced. The Committee is assisted in this by reports prepared by professionals who have assessed the individual, including prison staff, probation officers and sometimes psychiatrist. All their recommendations are weighed in the balance, but the Committee is not bound by any of them.
11. The Committee looks at the person as a whole, how he may have changed, and how he is likely to cope on release. No one factor is decisive. Remorse, for instance, is often part of the process of change where it involves understanding the offending and a desire not to continue. But remorse is certainly not essential for parole. The Committee has granted parole to those who maintain their innocence completely. This is because the one essential thing the Committee is looking at is risk – and whether there is a risk of any offending during the time in which the individual would otherwise be in prison. Even so, the Committee will also consider the benefit of a longer period of supervision where this would reduce risk further. Underlying all the Committee's deliberations is the question of the safety of the public.
12. The prisoner is required to comply with the conditions contained in his parole licence. These include:
- (a) placing himself under the supervision of a nominated probation officer, this includes keeping appointments with the probation officer and receiving home visits;
  - (b) being of good behaviour and leading an industrious life;
  - (c) placing restrictions on travel, that is a locally supervised prisoner cannot travel outside the Bailiwick without prior permission from the supervising probation officer;

- (d) residing where approved by his probation officer and notifying him in advance of any change of address;
  - (e) undertaking only such employment as his probation officer approves and notifying him at once if he loses his job and notifying him in advance of any proposed change of employment or occupation.
13. Additional conditions can be added, for example if the misuse of alcohol and/or drugs were a significant contributing factor in the original offence a condition requiring the prisoner to work with an appropriate agency to address such misuse can also be attached. Further, where there are identifiable victims conditions can be attached which relate to non-contact with the victims.
  14. If a prisoner fails to comply with any of these conditions the Committee can revoke his licence. When a licence is revoked the prisoner will be returned to prison for the remaining part of the original sentence.
  15. A probation officer closely supervises prisoners released under licence. Typically the prisoner will be required to keep weekly appointments with his supervising probation officer following his release. The probation officer will also visit the prisoner at home and his place of work and may require the prisoner to participate in courses which address offending behaviour. Where drug or alcohol abuse has been identified as a contributing factor to the prisoner's offending he may be required to work with an appropriate agency, such as the Guernsey Alcohol and Drug Abuse Council or Drug Concern. More recently, following the creation of the post of Criminal Justice Drug Worker, prisoners released under licence with a history of drug abuse will be required to undertake a programme of work which may include one-to-one work, group work and random drug testing.
  16. If a prisoner fails to comply with any of the conditions of his licence he will be subject to some form of sanction depending on the circumstances and seriousness of the breach. If the breach is minor the supervising probation officer will report the matter to the Chief Probation Officer who will issue either a verbal or written warning. The Committee will be informed of this action.
  17. If the breach is considered more serious or is subsequent to action by the Chief Probation Officer a report will be submitted to the Committee. On receipt of such reports the Committee will consider the case and determine whether a formal warning letter is issued or that the licence should be revoked and the prisoner recalled to prison.
  18. Additionally, if a prisoner on licence is convicted of further imprisonable offences whilst on parole the Magistrate may revoke the licence and order his return to prison. In such cases the Magistrate will advise the Committee of the matter regardless of whether he decides to revoke the parole licence himself.

19. Finally, if it appears at any time to Her Majesty's Procureur that it is expedient in the public interest to recall a prisoner released on licence to prison and it is impractical to consult with the Committee at that time he may revoke the licence and recall the prisoner to prison. In such cases Her Majesty's Procureur must advise the Committee of his action as soon as possible and the Committee must, within seven days of the revocation, consider whether or not to confirm the order. Her Majesty's Procureur's powers have only been exercised once.
20. The table below details the number of parole licences issued since 1991, the periods of supervision and the number of licences which have been revoked.

Year	Number of Applicants	Number Released on Licence	Number of Prisoners Supervised Locally	Period of Supervision	Number of Licences Revoked
1991	13	4	4	1 to 4 months	0
1992	12	5	5	2 to 12 months	0
1993	10	5	5	1 to 6 months	0
1994	8	4	4	2 to 6 months	0
1995	9	4	4	1 to 3 months	1
1996	15	7	7	1 to 9 months	0
1997	8	5	5	5 to 10 months	0
1998	9	4	1	6 to 12 months	0
1999	18	12	3	1 to 15 months	1
2000	16	12	4	6 to 21 months	1
2001	17	14	12	6 to 24 months	2
2002	21	17	9	2 to 30 months	2
2003 <sup>1</sup>	13	5	1	2 to 30 months	1
<b>TOTAL</b>	<b>197</b>	<b>98</b>	<b>64</b>		<b>8</b>

### **Reasons for Review of Current Legislation**

21. On 22 January 2001, the Human Rights (Bailiwick of Guernsey) Law, 2000 was registered in the Royal Court. When the Law comes into force people will be able to pursue their rights under the European Convention on Human Rights in the Bailiwick's courts and tribunals, instead of having to go to the European Court in Strasbourg.
22. The Law will impact on States committees and departments, other public authorities such as the Parishes and private and voluntary sector bodies that carry out public functions. Under the provisions of the Law the Committee is a public authority and so must prepare itself for implementation of the Law, so as to ensure that its policies and procedures and any legislation for which it is responsible are compatible with Convention rights.

<sup>1</sup> The 2003 figures relate to the period 1<sup>st</sup> January to 30<sup>th</sup> April 2003

23. The Human Rights Law makes it unlawful for a public authority to act incompatibly with the Convention rights and allows for a case to be brought in a Bailiwick court or tribunal against the authority if it does so. However, a public authority will not have acted unlawfully under the Law if as the result of a provision of primary legislation it could not have acted differently. Further, it requires all legislation to be interpreted and given effect as far as possible compatibly with the Convention rights and requires Bailiwick courts and tribunals to take account of Strasbourg case law.
24. The proposals for change to the Parole Review Committee Ordinance and the working practices of the Committee detailed below are the outcomes of a full review of the current parole legislation and practice. The recommendations have been reached in full consultation with the Law Officers, the Chief Probation Officer and Prison Governor and the Committee itself.

### **Proposals for Change**

25. The following sections detail ten areas which have been specifically addressed as part of the review. Each part outlines the current local legislation and practice, the practice of the Parole Board for England and Wales and recommendations for change.

#### **A. Access to Parole Dossier**

26. In preparation for every parole hearing a parole dossier is compiled. The dossier contains copies of papers relating to the offence/s for which the prisoner was sentenced, reports on his conduct whilst in custody, his fitness for release under licence and any submissions the prisoner wishes to make in support of his application. The parole dossier is the document upon which the members of the Committee make their decision as to whether the prisoner should or should not be released early under a parole licence. The prisoner does not have access to this document, although he will have either received copies of various reports contained therein or had sight of others.
27. Occasionally Her Majesty's Procureur submits confidential information to the Committee to assist in its deliberations, to the effect that the early release on licence of a prisoner would not be in the Bailiwick's interests.
28. A prisoner applying for parole in England and Wales receives a copy of the parole dossier as submitted to the Parole Board for England and Wales. If a report is withheld, the prisoner will be told that this has been done, although he will not be told what the report contains. A report can be withheld in the following circumstances:
  - (a) in the interests of national security;
  - (b) for the prevention of disorder or crime, including prison security;

- (c) to protect the interests of a third party, usually the victim; and
- (d) medical or psychiatric grounds if it is thought likely that the mental or physical health of the prisoner would be put at risk.

29. **Recommendation 1 - the Parole Review Committee Ordinance, 1991 be amended to allow a copy of the dossier to be made available to the prisoner, except as to any confidential report or information either as detailed in paragraph 28 above, or as supplied by Her Majesty's Procureur tending to indicate that it would not be in the Bailiwick's interests to release a prisoner on licence.**

#### **B. Interviewing of Parole Applicants**

30. The existing Ordinance does allow for the Committee to interview a prisoner. However it does not permit the prisoner to request such an interview. Since the commencement of the Parole Review Scheme no such interviews have taken place. The prison authorities are aware of this provision and would contact the Committee Secretary if there were an overriding reason (e.g. poor level of literacy and the prisoner cannot identify anybody he is willing to have assist him) why a prisoner was unable to make a written representation.
31. Members of the Parole Board for England and Wales interview prisoners and the interviews generally take place about three to four months before the parole eligibility date. Further, a separate panel of Parole Board for England and Wales members undertakes the interview, that is the interviewing members do not consider the application for early release on licence. The interviewing panel members submit a written report of the interview to the reviewing panel.
32. The Parole Board for England and Wales is currently reviewing the practice of interviewing following a major Home Office funded review of the parole process which concluded:

*"The findings of this research raise questions about the value of the Parole Board Members' interviews with prisoners and the reports they submit to the Board. However well Parole Board Interview Members (PBIMs) carried out their task, there was little scope for what they wrote or discovered to affect the parole decision in the majority of cases. Indeed, in relation to only one in 12 cases did a Board member say that his or her mind had been changed as a result of something in the PBIM's report."*

33. The present system, whereby prisoners make written submissions to the Committee, does not itself disadvantage any prisoner who has poor literacy skills or for whom English is not his first language. The prison authorities provide considerable assistance for such prisoners, including support from education staff in preparing parole submissions and interpreters if required.



34. The core task of the Committee is to assess the risk which the prisoner presents to the public at large. Such risk assessment is a skilled area and one in which the Probation Service provides the greatest expertise. Parole Board for England and Wales Interviewing Members undertake specialist training prior to undertaking any such interviews with prisoners. The purpose of the training is both to enable the interviewers to place the prisoner at ease and also to ensure that the interviewer controls proceedings not the interviewee. The training also covers the reporting of the interview in a balanced and unbiased manner.
35. Since the Committee was established in 1991 the names of the ordinary members have not been in the public domain so as to afford the members a degree of protection given the smallness of the local community. Clearly, if members were to interview prisoners they would no longer be able to remain anonymous. This must clearly be balanced against the need to ensure that the prisoner is afforded every reasonable opportunity to present his case to the Committee.
36. The Committee has given careful consideration to whether it should interview all prisoners applying for parole. The Committee does not believe that, at this time, it should alter either the provisions within the Parole Review Committee Ordinance or offer all prisoners an opportunity to be interviewed. In reaching this conclusion the Committee has taken account of the position in the United Kingdom, as outlined above, and as members do not have any experience in this area it would be essential that they receive appropriate training prior to interviewing parole applicants.
37. Notwithstanding this, the Committee members were of the opinion that the Committee should, once the members have received appropriate training, when considering each application for early release, decide whether there are matters which need to be clarified by interviewing the prisoner. In all such cases the prisoner will be entitled to decline to be interviewed and the Committee will draw no inference. It is not envisaged that the interview should in any way replace the written submission which the prisoners currently make.
38. Further the Committee undertakes to review this whole area once the Members have gained experience from such interviews and/or in light of any changes which the Parole Board for England and Wales may make to its procedures.
39. **Recommendation 2 – the Parole Review Committee Ordinance, 1991 be not amended as respect the interviewing of prisoners at this time.**

#### **C. Notification of Reasons for Parole Decisions**

40. The current legislation does not allow the Committee to give the prisoner any reasons in respect of decisions. This practice does not satisfy the Committee's obligations, as a public body, under the Human Rights (Bailiwick of Guernsey) Law, 2000 and therefore must be amended.



41. The Parole Board for England and Wales does provide each prisoner, as part of the notification of the parole decision, reasons for its decision. It is proposed that the local legislation be amended to make a similar provision. It is envisaged that the format for the decision would be modelled on those prepared by the Parole Board for England and Wales.
42. **Recommendation 3 - the Parole Review Ordinance, 1991 be amended to permit the Parole Review Committee to give reasons for its decisions in all cases.**

**D. Subsequent Reviews Following First Hearing**

43. The current legislation permits the Committee to reach one of four decisions when considering a parole application:
  - (a) to grant early release under licence at some point between the prisoner's parole eligibility date, that is after he has served one-third of his sentence or ten months, whichever is the later, and his earliest release date, that is at the two-thirds point of his sentence;
  - (b) to review the prisoner's application at a future date which must be within six months of the original hearing;
  - (c) to refuse the application for early release on licence, that is the prisoner will not be released until the two-thirds point of his sentence;
  - (d) to defer its decision for a period not exceeding three months. This purpose of this provision is to allow the Committee to seek clarification on specific points, for example details of the proposed release plan. A deferred decision is in effect an adjournment and when the hearing is resumed options (a), (b) and (c) remain open to the Committee.
44. The members of the Committee recognize that parole provides an opportunity for a prisoner to return to the community under close supervision which can assist in the often difficult area of balancing the needs of the community to be protected and the prisoner's need to 'test' the problem solving and thinking skills he has had an opportunity to learn whilst in prison.
45. In England and Wales where an application is rejected the prisoner is automatically entitled to a review after 12 months. In addition the Parole Board for England and Wales and Home Office Sentence Enforcement Unit have the power to authorize early or special reviews in exceptional circumstances. A decision to review the case again may be made at the time of the last scheduled review, or in response to representations. This may occur, for example, where significant progress is expected within a short time. Early and special reviews will be authorized in exceptional circumstances only.

46. The Committee is uncomfortable about the absence of an opportunity for a prisoner who has his application rejected to be automatically reviewed at a later date. It recognizes the impact an absolute refusal can have on the prisoner and that it could contribute to a greater risk of re-offending once released. Equally, it recognizes that a prisoner can be encouraged and motivated to work at reducing his risk of re-offending when his application is subject to a review. Further, local prisoners could be at a disadvantage to those from the mainland. A prisoner who is normally resident in the mainland can opt for an unrestricted transfer into a U.K. prison if his application for parole through the Guernsey system is unsuccessful and so would then be eligible for further consideration for early release under the England and Wales parole system, that is at the half point of his sentence. The Committee supports a change to allow for automatic reviews broadly based on the United Kingdom provisions.
47. **Recommendation 4 – the Parole Review Committee Ordinance, 1991 be amended to allow for an automatic review after 12 months or 6 months prior to the earliest release date, whichever is the sooner, and to make provision for early or special reviews in exceptional circumstances.**

**E. Right of Appeal Against Committee Decisions**

48. The current legislation does not permit any appeal against a decision of the Committee.
49. There is no right of appeal against a decision of the Parole Board for England and Wales to refuse parole. The prisoner may make a request/complaint about the decision. However, it will only be reviewed by the Parole Board for England and Wales if there is significant information which should have been available to the Board at the time the decision was made, or if there have been significant procedural errors in the way the case was handled. The prisoner can also apply through his legal representative for a judicial review of his case. However, the court will mainly be concerned with whether the decision was a reasonable one. It is unlikely to reverse the decision, only ask the Parole Board for England and Wales to look at the decision again.
50. An appeals process does exist for prisoners who, having been released on licence, are recalled having breached the conditions of the licence (see paragraphs 54 to 58 below).
51. The Committee notes that, although a significant number of prisoners have been successful in appeals to the European Court of Human Rights with regard to infringements of their human rights following decisions of Parole Board for England and Wales, in no such cases has the absence of an appeals process, other than judicial review, been held to be an infringement of the prisoner's rights under the European Convention on Human Rights.

52. The Committee believes that given the amendments proposed in paragraph 47 above and the availability of judicial review in Guernsey there is, at this time, no overriding necessity to provide a separate appeals body. However, this matter will be kept under review.
53. **Recommendation 5 – the Parole Review Committee Ordinance, 1991 be not amended to allow for an appeals process against an original decision of the Committee, on the basis that judicial review is available.**

**F. Recall of Prisoners Released on Licence**

54. Section 4 of the Parole Review Committee Ordinance, 1991 makes provision for the recall of prisoners who breach the conditions of the parole licence (as detailed in paragraph 12 above). In most cases the Committee is approached by the supervising probation officer with a request for a licence to be recalled. In such cases the probation officer will have advised the prisoner that his recall is being recommended and he will have had sight of the report to the Committee.
55. Where a prisoner is recalled he is handed a notice which provides reasons for his recall and information regarding the appeal process which is modelled on that in use in England and Wales. The Committee will hear any such appeals as expediently as possible, usually within ten working days of a recall.
56. The Parole Board for England and Wales is responsible for considering recall action in cases where prisoners are charged with offences whilst subject to licence or otherwise breach the licence conditions. Recommendations for recall are made to the Secretary of State, who takes the final decision.
57. The current practice for the recall of prisoners should be retained, save where a licence is revoked by Her Majesty's Procureur (see paragraph 19 above). Currently such decision must be ratified or otherwise by the Committee within seven days, although in practice the Committee considers them on the next working day. Therefore, to ensure that the Committee's obligations under the European Convention on Human Rights regarding timescales are fulfilled it is proposed to foreshorten the period for ratification or otherwise from seven days to 96 hours.
58. **Recommendation 6 - the Parole Review Committee Ordinance, 1991 be amended to foreshorten the period for ratification or otherwise of recall orders made by Her Majesty's Procureur from seven days to 96 hours.**

**G. Legal Assistance and Representation**

59. The current legislation does not permit a prisoner applying for parole to be legally assisted or represented. The absence of a right to legal advice or assistance is not necessarily in itself in breach of human rights obligations. The prison and probation authorities always ensure that every prisoner can access appropriate representation, assistance and/or support when applying for parole. This may be

in the form of for example, the services of an interpreter where English was not the first language, or assistance to write a submission where literacy skills were poor.

60. Prisoners applying to the Parole Board for England and Wales are not entitled to be legally represented in parole applications but can seek legal advice and assistance to prepare for the interview with the Parole Board for England and Wales. Where a prisoner whilst on licence is recalled to prison he is entitled to legal representation at an appeal hearing.
61. The consideration of an application for parole was not a resentencing process. The decision whether a prisoner should be released is based solely on such issues as his conduct during his sentence, the work which he has undertaken to address the causes of and/or reasons for his offending behaviour, the risk of re-offending and the risk he presents to the public. The Committee regards each case on its individual merits and therefore should not be bound up in issues of precedence which may have been set in other like cases. Notwithstanding that, the Committee accepts that local prisoners should be afforded the same level of legal assistance as those in the United Kingdom, that is a prisoner should be entitled to request that a copy of his parole dossier be sent to his advocate for assistance in preparing his submission to the Committee.
62. In regard to access to legal advice and assistance where a prisoner has his licence revoked the Committee would fully support any such prisoner having access to legal advice and assistance in preparing and presenting his appeal against the revocation.
63. The Committee will continue to monitor the issue of legal advice, assistance and representation, particularly in regard to any changes which the Parole Board for England and Wales may make in this area.
64. **Recommendation 7 - the Parole Review Committee Ordinance, 1991 be amended to allow a prisoner when applying for parole to receive legal advice and assistance in preparing his submission to the Committee.**
65. **Recommendation 8 - the Parole Review Committee Ordinance, 1991 be amended to allow a prisoner who has had his parole licence revoked and is recalled to prison to receive legal advice and assistance in preparing and presenting his appeal to the Committee.**

#### **H. Appointment of Committee Chairman and Ordinary members**

66. The Chairman of the Committee is appointed by the States and the ordinary members by the Royal Court. The Committee believes that the process for appointing independent people to serve should be as transparent as possible.
67. The Parole Board for England and Wales consists of both qualified and lay members and it advertises for all vacancies. The core competencies for Parole

Board for England and Wales members are detailed in Appendix 1. Applicants submit to a detailed assessment and selection process before nominations for appointment are forwarded to the Secretary of State for confirmation.

68. By its very nature the consideration of applications for parole requires sensitivity, unbiased thinking and an ability to balance often seemingly competing issues. Therefore, if people were to be invited to apply to serve on the Committee there would need to be a similar rigorous assessment and selection process. Following such a process nominations for appointment would be made to the Royal Court, the States or other competent body.
69. In addition the Committee also considered whether a retirement age should be set for members of the Committee. The Committee considers that a retirement age should be set and that it should reflect that which currently applies to Jurats of the Royal Court, namely a member should retire having attained his seventieth birthday, unless otherwise extended, and in any case shall retire on reaching his seventy fifth birthday.
70. Further, the Committee considered whether the Chairman and members should be subject to a maximum term. The Committee believes that there is merit in setting a maximum term but is of the opinion that such a term should be sufficiently long to ensure a continuity of membership. The Committee proposes that no member should serve for longer than 12 years except where a person is appointed as Chairman from amongst the Committee, in which case his appointment should be limited to 16 years.
71. **Recommendation 9 - the Parole Review Committee Ordinance, 1991 be amended to introduce a system for advertising for persons to serve on the Committee.**
72. **Recommendation 10 - the Parole Review Committee Ordinance, 1991 be amended to set a retirement age of seventy years for the Chairman and Members of the Committee, unless otherwise extended, and in any case they shall retire on reaching their seventy fifth birthday.**
73. **Recommendation 11 – the Parole Review Committee Ordinance, 1991 be amended to set a maximum term of office for members of 12 years, except where a person is appointed as Chairman from amongst the Committee, in which case his appointment should be limited to 16 years.**

#### **I. Victim Issues**

74. The Committee does not automatically invite the victims of crimes to make any representation. However, in all cases involving children or young people the Children Board is invited under Section 2(7) of the 1991 Ordinance to make a written submission. Invariably the report from the Children Board will reflect the concerns of the victims and their families. Further, the Probation Service maintains

some contact with the victims of crimes of violence and sexual offences and, where appropriate, informs relevant parties regarding early release on licence and will request that additional conditions, as may be appropriate, be attached to the licence to ensure that the victim's need to be protected are addressed.

75. The Probation Service applies the National Probation Service's practice guidelines in all such cases. In England and Wales the guidelines apply to prisoners sentenced to a period of imprisonment of four years or more but in Guernsey they apply in all parole cases, that is any prisoner (including young offenders) sentenced to a period of imprisonment of fifteen months or more.

76. Her Majesty's Procureur has written to the Committee in the following terms:

*"I would wish to raise with you the issue of victims' reports. In my opinion, as with the sentencing process, the Parole Review Committee is entitled to have the views of victims in assessing parole. In some cases, the reports prepared for the dossier will include assessments of the effect of parole on victims and, in some cases, those assessments may include results of interviews with victims. However, the personal views of victims in relation to an application for parole may be relevant, and occasionally persuasive, and additionally may be relevant in enabling a victim to come to terms with the trauma consequent upon the crime. I accept that this is a novel, and possibly controversial, area and very careful thought needs to be given before the Parole Review Committee embarks on a process which has not been tried and tested elsewhere. That is not to say the process should not be adopted here: indeed, in a small, close knit community such as Guernsey, in which the possibility of the prisoner and victim meeting is higher, there are grounds for suggesting that the introduction of victims' statements in connection with parole may have more significance, and be more beneficial in a broader context, than on the mainland."*

77. The Home Office is undertaking a major review of the Victim's Charter which was first introduced in 1990 and subsequently revised in 1996. Under the charter the National Probation Service is required to maintain contact with the victims of serious crimes, that is crimes of violence or a sexual nature for which the offender receives a term of imprisonment of four years or more. The National Probation Service provides victims with information about prison sentences in general and how prisoners can proceed through the prison system and information about a prisoner's release, including relevant conditions that may be attached to the release.

78. It is proposed that the revised Victim's Charter will place a number of clear responsibilities on all parties in the criminal justice system, including the Parole Board for England and Wales, which will seek to acknowledge the true impact of crime on its victims and to recognize, address and support their needs. It is proposed that the following obligations will be placed on the Parole Board for England and Wales:

- (a) to consider any views which are offered by the National Probation Service in determining the conditions to be included in the release licences of prisoners serving sentences of four or more years; and
- (b) to take account of any information which relates directly to the current risk presented by the prisoner in deciding whether or not to grant or recommend parole.

79. In addition the National Probation Service will also have a number of new obligations in cases of sexual or other serious violent offences leading to a prison sentence of twelve months or more some of which will have an impact on parole matters, namely:

- (a) to offer the victim face to face contact within two months of sentence;
- (b) give information about prison sentences in general and how prisoners can proceed through the prison;
- (c) check whether the victim has any concerns or anxieties which he wishes to be taken into account when conditions for the prisoner's final release are being considered;
- (d) to explain how any information provided will be used;
- (e) to give a contact point at the victim's local Probation Office;
- (f) to ask about further contact and to make arrangements accordingly;
- (g) to maintain contact as necessary at key stages of the criminal justice process;
- (h) to inform the victim when an offender is being released;
- (i) to offer victims an opportunity to make representations about the conditions or requirements of an offender's release;
- (j) to inform the victim of any conditions or requirements attached to the offender's release which are relevant to contact with the victim and to provide any other information appropriate in all circumstances of the case.

80. The current practice by both the Guernsey Probation Service and the Committee fulfils all the requirements as detailed in paragraphs 78 and 79 above. Indeed in respect of the obligations likely to be placed on the Parole Board for England and Wales the Committee already fulfils such obligations and more, namely they are applied to all cases of sexual and other serious violent offences which the Committee considers.



81. The Committee fully supports the view presented by Her Majesty's Procureur and believes that the inclusion of victim statements may assist it in gaining a better understanding of the impact of a crime on its victims and also assessing the prisoner's level of victim awareness. However, in the same way as victim statements do not affect the length of the sentence imposed, they should not affect the Committee's final decision.
82. The provision under Section 2(7) of the Parole Review Committee Ordinance allows the Committee to seek victim statements. It is proposed to consult with the relevant agencies, including the Police, the Probation Service, the Children Board and the Guernsey Victim Support Group to agree a framework for inviting the victims of crimes to make written representations to the Committee.

#### **J. Denial of Guilt and Parole Applications**

83. When considering any application for early release on licence the Committee follows the Directions for Release of Determinate Sentence Prisoners prepared by the Secretary of State (see paragraph 8 above). The Directions do not specifically refer to a denial of guilt but this is covered under point (1) (b), namely that the Parole Board for England and Wales shall take account of whether the prisoner has shown by his attitude and behaviour in custody that he is willing to address his offending behaviour by understanding its causes and its consequences for the victims concerned, and has made positive effort and progress in doing so. Clearly a prisoner who continues to deny his guilt throughout his sentence will be unable to fulfil this point but that in itself this may not be considered to place the safety of the public at an unacceptable level of risk.
84. In May 2002 the Parole Board for England and Wales issued the following statement after the release in April 2002 of Stephen Downing who had been convicted some 25 years previously for a murder which he strenuously maintained he had not committed. The Parole Board for England and Wales was responding to some misunderstanding and concern about the position of those maintaining innocence in prison and how this affects their eligibility for parole.

*"A myth has grown up that unless prisoners admit and express remorse for the crime that they have been sentenced for, they will not get parole. This is not true. It is important to get the facts right, not least for those in prison who do maintain their innocence and who may be unnecessarily affected by the myth.*

*Firstly, legal precedent has established that it would be unlawful for the Board to refuse parole solely on the grounds of denial of guilt or anything that flows from that (such as not being able to take part in offending behaviour programmes which focus on the crime committed).*

*The Board is bound to take account not only of the offence, and the circumstances in which it was committed, but the circumstances and behaviour of the individual prisoner before and during the sentence and*



*his/her plans for re-settlement after release. It is important to understand that the Board is not entitled to "go behind" the conviction. That is the job of the appeal courts and the Criminal Cases Review Commission. The Board's remit extends only to the assessment of risk, and the bottom line is always the safety of the public.*

*A recent survey by the Board showed that 31% of those maintaining innocence were released on parole or life licence, as compared with 46% of all prisoners. While this puts paid to the myth that denial of guilt means that parole is impossible, the survey also suggests that a prisoner's chances of early release can be affected by the denial of guilt.*

*The Board is the first to recognise that its core task of assessing the risk of future harm to the public is often made more difficult when dealing with those who deny guilt. This is because there may simply be less information to go on, particularly where the prisoner has not been able to undertake some relevant offending behaviour work. Detailed reports of a wide range of offending behaviour programmes are a key source of information for Board members in working out how a prisoner operates and copes with life and therefore what the risk to the public of a future offence might be.*

*In this context it is interesting to note the results of a sample of 50 recent release cases recommended by the Board. The fifty were all serving mandatory life sentences for murder. Of these, nine had maintained their innocence in whole or in part throughout their sentence. While the circumstances of the murders, and the background of the prisoners varied enormously - from hardened criminals, to those of previous good character - there were two key factors which led to release on life licence. In all cases the individuals had spent a considerable period in "open conditions", where their response to life in the community could be closely monitored. The majority had also undertaken a variety of offending behaviour work such as anger management, assertiveness, thinking skills all of which helped the Board to assess any future risk to the public, irrespective of a denial of guilt or lack of remorse for the offence which led to the conviction.*

*Overall, the Board is painfully conscious of the psychological pressure often experienced by those who maintain their innocence in prison. It respects their position and would not wish anyone to pretend guilt simply to get parole. Equally, it is important for those people to respect and understand the Board's position, focusing always on the risk to the public in the future balanced against the needs, expectations and rights of the individual in prison."*

85. The Committee follows the position as set out in the above statement. It also recognizes the very important difference between conviction by a majority verdict in Guernsey compared to such a conviction in England and Wales. The Royal Court may convict on a simple majority whereas in England and Wales the trial judge will usually direct that a majority verdict should not be less than 10 to 2.

## **Conclusions and Summary of Recommendations**

86. To summarize, the Committee is recommending the following amendments to the Parole Review Committee Ordinance, 1991 to ensure that the Committee's obligations as a public authority under the provisions of the Human Rights (Bailiwick of Guernsey) Law, 2000 are fulfilled. The recommendations as set out have the full support of Her Majesty's Procureur, the Prisoner Governor and the Chief Probation Officer.

**Recommendation 1** - that that the Parole Review Committee Ordinance be amended to allow a copy of the parole dossier to be made available to the prisoner, prior to the prisoner making his own submissions to the Committee.

**Recommendation 2** – that the Parole Review Committee Ordinance, 1991 regarding the interviewing of parole applicants be not amended at this time.

**Recommendation 3** – that the Parole Review Committee Ordinance, 1991 be amended to permit the Parole Review Committee to give reasons for its decisions in all cases.

**Recommendation 4** – that the Parole Review Committee Ordinance, 1991 be amended to allow for an automatic review after 12 months or 6 months prior to the earliest release date, whichever is the sooner, and to permit early or special reviews in exceptional circumstances.

**Recommendation 5** – that the Parole Review Committee Ordinance, 1991 be not amended to allow for an appeals process against an original decision of the Parole Review Committee.

**Recommendation 6** – that the Parole Review Committee Ordinance, 1991 be amended to foreshorten the period for ratification or otherwise of recall orders made by Her Majesty's Procureur from seven days to 96 hours.

**Recommendation 7** – that the Parole Review Committee Ordinance, 1991 be amended to allow a prisoner when applying for parole to receive legal advice and assistance in preparing his submission to the Committee.

**Recommendation 8** – that the Parole Review Committee Ordinance, 1991 be amended to allow a prisoner who has had his parole licence revoked and is recalled to prison to receive legal advice and assistance in preparing and presenting his appeal to the Committee.

**Recommendation 9** – that the Parole Review Committee Ordinance, 1991 be amended to introduce a system for advertising for persons to serve on the Parole Review Committee.

**Recommendation 10** - the Parole Review Committee Ordinance, 1991 to be amended to set a retirement age of seventy years for the Chairman and Members of the Committee, unless otherwise extended, and in any case they shall retire on reaching their seventy fifth birthday.

**Recommendation 11** – the Parole Review Committee Ordinance, 1991 to be amended to set a maximum term of office for members of 12 years, except where a person is appointed as Chairman from amongst the Committee, in which case his appointment should be limited to 16 years.

**APPENDIX 1****CORE COMPETENCIES FOR MEMBERS OF THE PAROLE BOARD FOR  
ENGLAND AND WALES FOR ENGLAND AND WALES****Analysis:**

- Read and interpret complex information
- Interpret information from different sources
- Detail conscious but able to select relevant material
- See links between items

**Judgement and decision-making:**

- Logical reasoning
- Structured approach - be able to follow procedure
- Follow oral argument
- Risk assessment - balance evidence, keep to facts and apply objectivity
- Independent thinker - prepared to state and support own decision

**Written and oral communication:**

- Draft clearly, accurately and concisely
- Comprehensive coverage of information
- Aware of chronology of events
- Convey points clearly both in writing and speaking
- Able to interview and question effectively, drawing out information from prisoners and others, which is relevant to risk assessment
- Able to speak confidently in public and to a small audience

**Planning and organising ability:**

- Able to plan own time carefully
- Able to cope with a large volume of work and tight timescale

**Working with others:**

- Open and honest.
- Listening skills - check own understanding and that others understand you
- Stamina, drive and commitment
- Open to others' views
- Prepared to challenge, and able to argue a position
- Prepared to be challenged
- Flexibility

Aware of and committed to equal opportunities, and aware of the relevance of human

rights.
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The States are asked to decide:-

VII.- Whether, after consideration of the Report dated the 9<sup>th</sup> June, 2003, of the States Advisory and Finance Committee, they are of opinion:-

1. That the Parole Review Committee Ordinance, 1991, as amended, shall be further amended as follows:-
  - (a) to allow a copy of the parole dossier to be made available to the prisoner, prior to the prisoner making his own submissions to the Parole Review Committee;
  - (b) to permit the Parole Review Committee to give reasons for its decisions in all cases.
  - (c) to allow for an automatic review of an application for parole after 12 months or 6 months prior to the earliest release date, whichever is the sooner, and to permit early or special reviews in exceptional circumstances;
  - (d) to foreshorten the period for ratification or otherwise of recall orders made by Her Majesty's Procureur from seven days to 96 hours;
  - (e) to allow a prisoner when applying for parole to receive legal advice and assistance in preparing his submission to the Parole Review Committee;
  - (f) to allow a prisoner who has had his parole licence revoked and is recalled to prison to receive legal advice and assistance in preparing and presenting his appeal to the Parole Review Committee;
  - (g) to introduce a system for advertising for persons to serve on the Parole Review Committee;
  - (h) to set a retirement age of seventy years for the Chairman and members of the Parole Review Committee, unless otherwise extended, and in any case they shall retire on reaching their seventy fifth birthday;
  - (j) to set a maximum term of office for members of 12 years, except where a person is appointed as Chairman from amongst the ordinary members, in which case his appointment shall be limited to 16 years.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATES ADVISORY AND FINANCE COMMITTEE**

**PROGRESS REPORT IN THE DEVELOPMENT AND IMPLEMENTATION OF A  
STATES EGOVERNMENT STRATEGY**

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

19<sup>th</sup> June 2003

Dear Sir

I enclose a copy of a report from the eGovernment Steering Group on the progress made to date in the development and implementation of a States eGovernment Strategy.

The report explains how the Steering Group was set up by the Committee as a cross committee body involving both politicians and officers and how it has made a major contribution to driving forward eGovernment thinking and initiatives across the States. The report contains a number of proposals that the Committee has endorsed and is now placing before the States for approval.

In its covering letter on the Audit Commission's report on ICT in the States of Guernsey (Billet XIX of 2001), the Committee stated:

*"... as acknowledged by both the external consultants and the Audit Commission, the principal strategic factor limiting the exploitation of ICT in the States is the present committee structure and the resulting fragmentation in the delivery of services."*

Apart from seeking approval for specific actions, the proposals in the Steering Group's report seek to bring under corporate authority some elements of the ICT network and systems, which is necessary if real progress is to be made on progressing an eGovernment approach. The proposals also seek recognition that the provision of ICT resources and skills needs to be considered and managed in a similar way to the other essential resources of finance, land and labour.

Thus the proposals in the Steering Group's report will address many of the weaknesses identified in the Audit Commission's report whilst fitting in with the restructuring of the committee system approved by the States following the Review of the machinery of Government.

The Advisory and Finance Committee therefore recommends the States to agree the proposals set out in that report

Yours faithfully

L. C. MORGAN

President  
Advisory and Finance Committee



# **eGovernment Steering Group**

Report to  
Advisory and Finance Committee  
June 2003



# 1. Introduction

- 1.1 In October 2002, political and staff representatives from a cross section of States committees were invited by the Advisory and Finance Committee to participate in an eGovernment Workshop the goals of which were:
  - To understand where Guernsey sits in relation to eGovernment initiatives in other jurisdictions;
  - To review current eGovernment activities and challenges in Guernsey;
  - To develop a common understanding of what is required to establish and support an e-enabled culture within the States;
  - To identify and launch specific, flagship eGovernment projects that will benefit stakeholders;
  - To define a governance model for oversight of the development of eGovernment.
- 1.2 The first four goals were achieved during the Workshop and follow up sessions. Discussions on the last goal in relation to governance (i.e. leadership, responsibility etc) for eGovernment strategy and its implementation raised all of the issues applicable to the difficulties of developing and implementing corporate policies within the constraints of a committee system and government by consensus.
- 1.3 It was recognised that A&F holds political responsibility for developing eGovernment strategies and holds a budget for implementing eGovernment initiatives through the Corporate IT Fund. The Workshop concluded that the most effective way of delivering eGovernment was through a cross committee Steering Group.
- 1.4 The participants in the Workshop considered that the process had brought them up to a common understanding of the current position of the States in relation to eGovernment and what needed to be done to take it forward. They had also made a commitment to implementing a number of flagship eGovernment projects.
- 1.5 The Advisory and Finance Committee subsequently invited the Workshop participants to form the basis for the eGovernment Steering Group under the Chairmanship of the Vice President of the Committee who had been one of those participants. A full list of those comprising the Steering Group is attached as Annex 1.
- 1.6 This Report to the Advisory and Finance Committee from the eGovernment Steering Group:
  - comments on the progress of the flagship projects initiated during the Workshop;
  - comments on other relevant projects and issues, including future arrangements for driving eGovernment forward; and

- puts forward a number of proposals that it recommends the Committee should present to the States along with this Report.
- 1.7 The eGovernment Steering Group is not claiming that it has yet developed a fully-fledged eGovernment Strategy, that is an on-going task that the Group is committed to completing. It has however made practical progress in some areas and identified some principles that need to be pursued whatever final strategy may be formulated.
- 1.8 Before going into detail it would be useful to define some terms. The convention used in this Report is that eGovernment and “joined up government” must sit under the umbrella of a States-wide ICT Strategy with the aim of using ICT to achieve the corporate objectives of:
- Improving the efficiency and delivery of services by individual departments;
  - Improving the efficiency and delivery of services through inter-departmental working;
  - Improving public access to services and communication between the States, the community and the outside world;
  - Contributing to the development of an e-enabled community through leading by example.
- 1.9 These objectives underpinned the Review of the Machinery of Government which, through the reduction in the number of committees, or departments as they are to be renamed, provides an opportunity to rationalise and improve the use of all States’ resources including ICT.
- 1.10 The organisation and management of ICT resources will need to fit in with the new departmental structure and reflect the trend towards decentralisation of responsibilities but with firm corporate coordination from the central departments. This poses particular challenges for ICT networks and systems.

## **2. Improving Service Delivery and Communication**

- 2.1 On the basis that the effective use of ICT can potentially improve service delivery and communication the Steering Group recognised that it was important that, ultimately, all relevant States policies, services, projects and legislation needed to be “eGovernment friendly”. In this sense policies, services, projects and legislation should present no barriers to, and preferably should encourage the use of, ICT for access to information and the delivery of services.
- 2.2 Legacy policies, services, projects and legislation will need to be reviewed and revised to achieve this objective as an ongoing exercise by the new Departments. The Steering Group considers however that an assessment of eGovernment friendliness should be added to the assessment of financial, staffing and other considerations that is undertaken on all proposals presented to the States.

### **Recommendation1**

**The Advisory and Finance Committee should introduce an assessment mechanism to ensure that all future proposals presented to the States, including those for the introduction of legislation, are eGovernment friendly.**

- 2.3 One of the flagship projects originating from the eGovernment Workshop was to promote to committees the new corporate Web Portal which had been procured and installed by the Advisory and Finance Committee's Information Services Department (ISD) and to seek to encourage committees to commit themselves to targets for providing some services on-line within a stated deadline.
- 2.4 The new corporate Web Portal, which became operational at the end of March 2003, provides a number of major advantages over the previous States' web site:
- With a minimum of training staff within each committee/department are able to enter and update information accessed through the portal in a flexible format but within a corporate style. This will avoid the need for individual committees/departments to spend considerable internal resources or contract in expensive external consultants to produce a bespoke web presence;
  - Using a common approach to indexing information, it can be accessed from a number of perspectives enabling it to be made more user friendly for browsers with varying areas of interest. For example, information relevant to new arrivals to the Island will be put onto the portal by a number of different committees/departments but if correctly indexed could be accessed by a single key stroke;
  - Not only can information be accessed, but the portal has the potential to enable on-line transactions and interaction/communication with departments and appropriate applications.
- 2.5 A Web Services Sub Group chaired by Deputy Mary Lowe was formed to initiate this project and the first action was to survey States committees on their aspirations and requirements from the portal. The main points to emerge from the survey were:
- General support for a new interactive portal;
  - Recognition that online payments, booking etc is a requirement but concerns were raised about the security of such transactions;
  - There was a reluctance by some Committees to phase out their own "client facing sites";

- Acceptance that the Internet portal is one (and only one) communication tool, experience from other jurisdictions indicate that a clear and simple paper publication was also required;
  - A wish to keep an open mind and evaluate other communication tools i.e. interactive digital TV through Sky and Easy SMS through mobile phones.
- 2.6 The eGovernment Steering Group recognises that committees/departments currently have autonomy on in-house ICT systems including web access and are not therefore obliged to use the new corporate Web Portal.
- 2.7 If the States is to present a corporate or “joined up” image to the world at large however, the Internet is a point of access and communication that will become increasingly important and such a corporate image will not be presented if multiple and separate Internet portals and web pages are implemented by individual committee/departments. Additionally, the attraction of the new corporate Web Portal will be devalued, and therefore less extensively used, if some States information can only be accessed through separate committee/departmental portals and does not form part of the corporate indexing arrangements.
- 2.8 It is recognised however that whilst the corporate Web Portal is flexible enough to be configured to present and index information on the “governmental” activities, policies and services of the States in a corporate style, some States’ activities, the promotion of the Island as a tourist or commercial location for instance, may require a different more marketing orientated web presence. Such exceptional circumstances may need to be catered for outside of the corporate Web Portal but with appropriate links to it.
- 2.9 Apart from the indexing arrangements, content management is important not only to reinforce the corporate image but also to avoid incorrect, misleading or contentious information being presented and to avoid any litigation arising from such material. Whilst the corporate Web Portal enables committees/departments to enter and update their own information there will need to be central coordination and guidance on the content of such information. ISD is working on developing content management procedures but these will be difficult to implement if there are numerous separate committee/departmental portals and web presences.
- 2.10 If the Internet is to become an increasingly important point of access and communication with the States it is necessary to ensure that that access is secure and that resources are not wasted by developing individual applications rather than benefiting from the economies of scale of a corporate approach.

- 2.11 Because of the benefits to the States as a whole of committees/departments using the new corporate Web Portal for their Internet presence the Steering Group considers the States should agree that committees/departments must use the new corporate Web Portal unless there are exceptional circumstances that dictate otherwise.

#### **Recommendation 2**

**The Advisory and Finance Committee should recommend the States to agree that, unless there are exceptional circumstances that dictate otherwise, committees/departments must use the new corporate Web Portal as their point of access to and from the Internet and that any alternative arrangements must be endorsed at political level between the committee/department concerned and the Advisory and Finance Committee before implementation.**

**Current non-corporate Web Portal points of access to the Internet should be subject to review under the above principles and, unless an exceptional case, phased out as soon as practicable.**

- 2.12 The advent of credit and debit cards has enabled businesses to accept payments in new ways either face to face, or “on-line” over the phone or the Internet. With payments by debit card the full amount is debited from a customer’s bank account to the business, payments by credit card go through an intermediary that deducts a commission of the order of 1 percent from the payment made to the business.
- 2.13 Payments over the Internet using either credit or debit cards is now accepted practice in many private sector businesses and forms the core of Internet businesses such as Amazon.com. Some Internet traders apply a surcharge to payments by credit card.
- 2.14 Payment to the States using debit or credit cards is a relatively new facility and practice varies. The Treasury and Traffic Committee for instance accept both debit cards and credit cards on face-to-face transactions but credit card transactions attract a surcharge to cover the lost commission, the Treasury will also accept telephone transactions on the same basis. The GSSA and Board of Health accept debit card payments face to face, over the telephone and over the Internet but not credit cards.
- 2.15 The GSSA facility involves the use of a third party that has provided the software, security and bank transfer arrangements for an annual fee. The GSSA accounts are run separately to those of the Treasury and general revenue departments and the scale of GSSA operations makes a standalone debit card Internet payment facility feasible.
- 2.16 It is recognised that, in the short term, accepting payments by credit card without making a surcharge would reduce States’ income and

could be considered to result in other payees subsidising credit card payees but a relatively small number of transactions will be involved. It would also be wasteful for individual general revenue departments to develop standalone debit card Internet payment facilities which requires a revision of internal business practices that extends way beyond the attributes of the Internet Portal.

- 2.17 A corporate approach using the attributes of the Treasury's SAP accounting suite of programmes that extends to all general revenue departments would bring economies of scale on software and business practices development. It would also put the States in a far stronger negotiating position in respect of minimising the commission lost on credit card transactions. The Treasury is currently investigating the extension of facilities for on-line payments.
- 2.18 On-line payments can in the long term bring efficiencies to States procedures, improve choice and the service to customers and be a driver for increased use of the Internet to communicate and transact with the States. The Steering Group considers that a priority should be given to the corporate development of systems to enable the acceptance of on-line payments to the States over the Internet with the aim of clearing any obstacles to accepting both credit and debit card payments as soon as possible.

### **Recommendation 3**

**The Advisory and Finance Committee should seek States' endorsement for development of a corporate system to enable the acceptance of on-line payments to the States over the Internet with the aim of clearing any obstacles to accepting both credit and debit card payments within a year.**

**Committees/departments must use the corporate system for the receipt of on-line payments to the States over the Internet and, where necessary, should be encouraged to develop their own internal business practices to integrate with the corporate system for on-line payments.**

- 2.19 Another of the flagship projects originating from the eGovernment Workshop relates to the concepts of:
- Creating a central database holding basic information on citizens that would be capable of being shared amongst committees that required such data and which is currently replicated in numerous individual databases;
  - Providing various means of achieving the secure electronic identification of citizens that would facilitate on-line transactions that may require different levels of identification: e.g. granting access to a citizen to view personal confidential information (accounts records etc) held by individual departments, applying for driving licenses etc.



- 2.20 To initiate this project a Data Access Sub Group was formed under the Chair of Deputy Andrew Sauvarin and on which the Data Protection Commissioner was invited to sit to ensure that data protection issues were fully considered. The purpose of establishing a central database holding basic information on citizens (more particularly of anyone who needed to communicate or transact with the States) is twofold.
- 2.21 It would provide the ability to create links with existing databases that already hold non-controversial basic information on citizens (such as name, address, date of birth, gender etc.) so that, in future, this information could be validated, held and updated centrally. This would avoid duplication of data held by committees/departments in individual databases where that information may vary in content and currency and it would also provide a driver to encourage a more corporate approach to developing databases and applications that make use of the centrally held basic information.
- 2.22 For the community it would offer the potential of a one-stop shop for advising the States of changes to basic information such as change of address and begin the culture change that “any business” could be conducted with “any officer” in a more joined up way.
- 2.23 Traditional means of communication with customers use additional information; such as face-to-face contact or documentary evidence to verify identity. Whilst for some purposes a person’s name adequately identifies them, additional verification of identity will be needed in order to undertake more complex transactions. If this process can be undertaken once only and on a unique personal identity number, commonly referred to as PIN, is assigned, then this PIN can be used to validate all sorts of transactions without the need to repeat the primary validation process. This process is familiar to anyone who has used on-line banking.
- 2.24 Validation of identity is of particular importance if the States wishes to develop the Internet as a means of communicating and transacting with the community. Whilst at the most basic level it may not matter who made an enquiry or an on-line payment to the States as long as it was the correct amount and paid into the right account, validation is paramount where the customers are enabled to interrogate their outstanding balances across the States as a whole and pay some or the entire amount outstanding or renew licenses etc. Citizens will also be enabled to view other records and communicate with the States in a way that fulfils statutory requirements.
- 2.25 The level of validation and the security of the PIN may vary depending on the importance of the transaction, so it is possible that more than one mechanism may need to be devised to accommodate the needs of differing application areas.

2.26 It is recognised that the establishment of a central database of basic information and the creation of a unique electronic identifiers for citizens and any one else who has to communicate or transact with the States (be they individuals or another legal entity) raises confidentiality and data protection issues. These issues face the government of every jurisdiction that wishes to exploit the full potential of the Internet and they can be overcome.

2.27 The Data Access Sub Group intends to pursue this project within the principles that:

**Personal data held by the States is confidential and shall only be used for the purpose for which it was obtained unless:**

- **Authorised in Law to do otherwise; or**
- **Authorised by the provider of the information to do otherwise.**

2.28 The main phases of the project envisaged by the Sub Group are:

- To look at how these problems have been addressed in the private sector and in other public sector jurisdictions;
- To use dummy data or a data set of basic information on citizens that is already in the public domain and carry out a pilot to allocate PIN codes to such data;
- To investigate how PIN codes may be accessed by existing databases operated by individual committees/departments;
- To identify what legislation may be required to permit such codes to be applied to personal data in existing databases operated by individual committees/departments under statutory conditions;
- To develop statutory codes of practice on confidentiality and the use of unique identifiers and basic information on citizens which will be monitored and enforced by the Data Protection Commissioner;
- To investigate how a unique identifier along with other security measures to provide a means to enable individuals to carry out secure transactions and communication with the States.

#### **Recommendation 4**

**The Advisory and Finance Committee should approach the States for endorsement of the above approach to establishing a central database of basic information on citizens and the allocation of unique identifiers as set out above.**



- 2.29 Having established work streams to promote the use and full exploitation of the new Internet Portal and to promote a corporate approach to data sharing and applications, the eGovernment Steering Group turned its attention to another pre-requisite for exploitation of the Internet: that of network security. To initiate this project a Network Security Sub Group was formed under the chair of Deputy Hunter Adam.
- 2.30 With the joining up of individual local networks and applications across the committees/departments of the States and an increasing extent and depth of access through the Internet it is essential that the States network is reliable and secure. An insecure network creates the opportunity for unauthorised persons gaining access to confidential information, sabotaging systems or abusing the system for their own ends. This could have both disruptive consequences and deter citizens from trusting the Internet to communicate and transact with the States.
- 2.31 Whilst there is no evidence of the first two types of security breaches having happened, the States network has been subject to the third, in one instance by using it to “spam” inappropriate messages around the world.
- 2.32 As a result of one of these breaches an IT security company, Vagon International Limited, was commissioned to ascertain how it had occurred and what needed to be done to reduce the possibility of it happening again. Following receipt of the Vagon report a number of tactical issues were addressed but structural problems were also identified:
- The lack of a coherent Computer Security Policy;
  - The lack of a central control point for the network leading to various departments changing system configuration without consultation.
- 2.33 These problems stem from the autonomy that committees/departments have on ICT and hence the distribution of ICT resources and responsibilities across the States. The States’ network between sites is effectively managed jointly between the Board of Health and the Advisory and Finance Committee through ISD. However, local networks in each individual committee/department are connected to the States network and in many cases have their own ad hoc connections to the Internet. Any breach of security in the local networks, be it through hacking or the introduction of a virus, could infect any of the other systems connected to the States network.
- 2.34 At staff level the Board of Health and ISD have been working together to develop coherent computer security policies to be applied to the States network.
- 2.35 A parallel issue to network security is resilience and disaster recovery policies. The work undertaken by the Board of Health and ISD has improved technical resilience but the Audit Commission has identified

deficiencies in ICT disaster recovery policies across the States that will need to be rectified if the reliability of internal processes and eGovernment activities is to be guaranteed.

- 2.36 The 2002 Policy and Resource Planning Report included proposals which were approved by the States and gave the Advisory and Finance Committee increased authority over the States network but, because of concerns about possible objections from individual committees, fell short of giving full authority and responsibility for the whole network and for the supervision of computer security policies.
- 2.37 Because of the importance of network security and reliability to the development of eGovernment, the Network Security Sub Group and the main Steering Group now feel that full authority over the States ICT network should be given to the Advisory and Finance Committee through ISD and that it be given the necessary resources to undertake this responsibility as soon as is practicable. The issue of resources is also referred to in a later section of this Report.
- 2.38 The Steering Group also believes that some priority should be given to the development of ICT disaster recovery policies.

#### **Recommendation 5**

**The Advisory and Finance Committee should approach the States for endorsement that responsibility for the management of the States ICT network and for computer security throughout the States should rest with the ISD function within Treasury and Resources following the restructuring of the States and that ISD should be provided with the necessary resources to fulfil this responsibility.**

**The Advisory and Finance Committee should commission the development of ICT Disaster Recovery policies using internal and/or external resources as appropriate.**

- 2.39 One of the now essential tools of communication over the States' network and over the Internet is e-mail. Most, if not all, States' committees/departments have standardised to Microsoft Exchange but there are currently some 15 individual e-mail systems on their own servers spread around the States. This is wasteful in terms of software licence payments; hardware use and staff time spent supporting these standalone systems. It also means that e-mail systems are not standardised to a single version of software and accessible seamlessly through a "global" States directory. There are also the security risks of ad hoc connections to the Internet referred to above and a lack of resilience and backup for standalone servers.
- 2.40 Many of the standalone e-mail systems are supported on a part time basis by in house staff or through contracted in resources. This fragmented approach acts against the States building up and applying skills and experience that can fully exploit the attributes of the e-mail

system. As more and more reliance is put on e-mail it will be necessary to develop security and validation processes that will be difficult to achieve with current arrangements.

- 2.41 The Steering Group considers that a necessary supplement to the proposal to place responsibility for the management of the States' ICT network and for computer security throughout the States with the ISD function within Treasury and Resources is that such responsibility should extend to e-mail systems across the States.

#### **Recommendation 6**

**The Advisory and Finance Committee should approach the States for endorsement that responsibility for the management of a corporate e-mail system should rest with the ISD function within the Treasury following the restructuring of the States.**

- 2.42 Throughout the above paragraphs reference has been made for simplicity to the States' network, this refers primarily to the network connecting the various general revenue departments but there are other networks including the Guernsey Grid for Learning (GGfL) and networks linking into UK Law enforcement and health service agencies that have particular security requirements.
- 2.43 The provision of telcoms links for the GGfL are being provided by Cable & Wireless until the end of 2004 under the Millennium Promise that it inherited from Guernsey Telecoms. ISD is working with the Education Council to identify the best corporate approach to providing an all embracing States infrastructure over which specific applications such as the GGfL and other specialist ones can be provided if necessary through "virtually" separate networks with appropriate levels of security and control built in to meet particular needs such as those of the police and Board of Health.
- 2.44 In addition consideration is being given to contracting out some aspects of network management to an organisation with the necessary skills, experience and 24 X 7 cover whilst retaining some functions and overall responsibility with ISD. The necessary specification for a tendering exercise will be prepared.

### **3. Other Corporate ICT Projects**

- 3.1 This report has given an update on the three flagship eGovernment projects initiated by the Steering Group but there are a number of other projects in train across the States that constitute or will support eGovernment initiatives.

## **SAP**

- 3.2 SAP is a corporate procurement and finance system implemented by the Treasury across all the general revenue departments of the States (SAP being the trading name of the German company that developed the software). A number of add on SAP modules are available and consideration is currently being given to installing the Human Resources module which will allow integration of personnel and payroll functions into the core modules.
- 3.3 SAP is used by many large international organisations whose activities are spread across numerous sites and numbers of operating divisions and it is more than able to meet the needs of the States. Whilst there is some trade off between simplicity of use and the ability to meet the complex needs of multi-functional commercial organisations, SAP is a state of the art application whose attributes are continually being developed.
- 3.4 The implementation of SAP, or a similar state of the art system was necessary to replace inadequate previous systems, but it is also a prerequisite to developing eGovernment initiatives involving financial transactions across the States. Because of the technical and security requirements of SAP, its implementation has also driven major developments of the corporate network.

## **Guernsey Grid for Learning (GGfL)**

- 3.5 The Guernsey Grid for Learning has been developed by the Education Council and is the Bailiwick's network infrastructure that supports learning. The project began in 1999 and now supports 3000 workstations and 10,000 users at over 30 sites with a comprehensive range of curriculum applications.
- 3.6 Each school and education service has modern networked computers each with permanent broadband access to the Internet. The main facilities are e-mail, filtered Internet access, firewall security, remote systems monitoring as well as a complete range of content for learners and teachers.
- 3.7 Although technically complex, all workstations and network servers are maintained by a managed service providing reliable access for students and leaving teachers free to teach. The summer of 2003 will see the launch of a web based learning environment for the GGfL, which will recognise every teacher and learner when they log on and present them with content appropriate to their needs.
- 3.8 The GGfL parallels the UK Government's National Grid for Learning initiative which has seen all local education authorities provide networked computers, content and training for maintained schools to improve teaching and learning through the use of ICT.



### **Guernsey Digimap**

- 3.9 In the mid 1990s it was recognised that existing Island mapping had become inaccurate and out of date. A working group comprising staff of the IDC, Cadastre, and ISD, led by the Department of Engineering was established to research opportunities for delivering a new state of the art computerised map of the Island which could also be used as a basic tool for storing and sharing geographic related data. It soon became apparent that about 80% of all available data was geographically relatable and the mandate of the project team was expanded to provide a corporate solution with an aim to:-

“improve the effectiveness of the Guernsey Bailiwick’s administration systems by developing and maintaining a comprehensive mapping information service, which would deliver cost effective solutions, enabling the integration and sharing of geographically related data among authorised users within the public and private sectors of the community”

- 3.10 The resultant Guernsey Mapping Information Project was completed in 1997 and delivered the following products:

- Digital Map – seamless cartographic map data;
- Orthophoto – seamless digital aerial photography;
- Cadastral Layer of Land parcels;
- Gazetteer of property addresses.

- 3.11 The following year a business partner, Digimap Ltd, was appointed to market and sell the products under licensed agreement with the Advisory and Finance Committee. Digimap Limited also provides training and software support services. The ‘Digimap’ as the product is commonly known, is now licensed to 35 States Departments and 49 private sector users.

- 3.12 More recently the Guernsey Digimap partnership has been working with eGovernment on large-scale corporate solutions such as:

- Creating the States Digimap system, enabling all States employees on the internal network to have access to basic GIS data, Maps, Address details, Census data, Property conveyance information and much more;
- Collaboratively working with the Greffe and the Cadastre, to provide better quality services related to land and property;
- Collaboratively working with Integrated Skills Ltd, to produce the new IRIS (Island Roadworks Information System) on behalf of the States Traffic Committee. This ‘Map’ based system will enable better coordination of the workings that affect the Island’s road network.

- 3.13 The Guernsey Digimap partnership is considered to be an efficient and effective business arrangement that can usefully be developed to deliver integrated corporate eGovernment services throughout the Island community.

#### **4. ICT Resources**

- 4.1 Inevitably, the work of the eGovernment Steering Group comes up against the issue of ICT resources both for progressing eGovernment initiatives and for supporting existing systems. The Group believes that it should comment on resource issues.
- 4.2 Progress has been made with developing the ICT infrastructure to support eGovernment but it would be wrong to consider that technology drives eGovernment. Technology is an enabler and it will require changes to internal business processes, some of them fundamental, to make real progress in exploiting the potential for eGovernment and make a major contribution to achieving corporate objectives.
- 4.3 ICT and eGovernment developments must therefore be firmly integrated into other corporate initiatives and processes such as Policy and Resource Planning.
- 4.4 In the July 2002 Policy and Resource Planning Report the States approved a transfer of £1.2m into the Corporate IT Fund principally to fund eGovernment initiatives and the transfer of a further £0.5m is recommended in the 2003 Report. The sums drawn down from the fund and forward commitments to date are shown in Annex 2 attached.
- 4.5 In this instance lack of financial resources is not currently a barrier to developing ICT and eGovernment initiatives but of course each eGovernment initiative should be subject to a cost benefit analysis. The barriers to developing initiatives are: the resources and time available to managers to assess and implement the changes necessary to business systems and processes to facilitate eGovernment; and the availability of ICT skills and resources.
- 4.6 In simple terms, access to ICT skills and resources can be achieved in a number ways:
- ICT staff directly employed by departments;
  - Drawing on the corporate ICT staff employed by A&F in the ISD;
  - Contracting in on an ongoing basis ICT expertise from local or off Island companies;
  - Contracting in on a project by project basis ICT expertise from local or off Island companies.
- 4.7 Each committee differs in the way it accesses ICT skills depending on size and past practice. Health and GSSA for instance are big enough to justify a quite large in-house ICT department. GSSA however have contracted-in major resources to undertake its Technical Migration project. Sir Charles Frossard House and the Royal Court complex rely

heavily on ISD which itself contracts in staff from local companies on an on going basis.

- 4.8 ICT skills are not always a “one size fits all”. Whilst there are general skills that can be applied to generic software and applications, some projects require skills and experience on a one off or limited time basis and it makes sense to contract in these types of skills.
- 4.9 ICT skills are a very marketable commodity in a competitive job market and the States, like every Island employer has to cope with this and try to fit ICT employees into the pay and grading structure that apply to all Established Civil Servants.
- 4.10 A recent joint initiative from the Civil Service Board and ISD has resulted in an increased focus on “growing our own” ICT expertise and making more resources available at the centre to support individual committees and corporate projects.
- 4.11 The IT Training Scheme involves 8 posts the establishment for which remains with the Civil Service Board. All placements are centralised with ISD which also covers the trainees’ salaries and is responsible for placements. In this way ISD can ensure that trainees receive a well-rounded training whilst making a real contribution to the development of ICT across the States.
- 4.12 It must be remembered however that merely maintaining and supporting existing ICT systems absorbs the major proportion of existing ICT staff leaving a limited amount that can be allocated to new eGovernment initiatives. This is likely to continue to be the case and many eGovernment initiatives will need to contract-in expertise to progress them. The restructuring of the States should however enable a rationalisation of ICT staff so that bigger departments will benefit from economies of scale,
- 4.13 Under this restructuring ISD will be integrated into Treasury and Resources that will also hold corporate responsibility for finance, human resources and property. The Steering Group considers that ICT should have a similar status as these other essential resources in terms of corporate influence, coordination and control. This should include the development of the “Head of Profession” concept that has been successfully implemented with finance staff to ensure the coordinated use of career/skills development of such staff and to assist in achieving a more corporate approach to the specifications and procurement of ICT systems.
- 4.14 For these reasons the Steering Group considers that the defining of ICT roles within the new Departments and appointments to fulfil those roles should be given a priority alongside that given to financial roles in the implementation of the Machinery of Government restructuring.

### **Recommendation 7**

**Now that the States has approved the restructuring of committees into larger departments the Advisory and Finance Committee should undertake a review of the availability of ICT staff in those departments and how they may need to be supplemented by additional posts, resources provided from the centre or contracted-in resources and a priority be given to making appointments to the senior ICT posts.**

**In the detailed defining of the role and responsibilities of Treasury and Resources, the exercise of corporate ICT responsibilities should be given similar status to that of finance, human resources and property and the creation of a recognised Head of Profession role.**

## **5. Taking eGovernment Forward**

- 5.1 Section 1 of this report details how the eGovernment Steering Group was set up as a cross committee body and subsequent sections refer to the method of working through sub-groups that was adopted. This method of working has taken forward a number of initiatives but the Steering Group considers that, to progress these initiatives to completion in a way that delivers value for money, additional project management disciplines and resources need to be injected. The Steering Group will be bringing forward to the Advisory and Finance Committee project plans with specified outcomes and targets for each project and proposals, where necessary, for the contracting-in of additional resources funded from the Corporate IT Fund.
- 5.2 The Steering Group has also considered how eGovernment might be dealt with under the revised structure approved by the States and how a seamless transition from current arrangements may be achieved. The Steering Group anticipates that whilst eGovernment will be the responsibility of the Policy Council, it will continue to be an appropriate issue to be dealt with by a sub-group of the Council. Treasury and Resources will need to play an integral role in the sub-group through its responsibility for ISD.
- 5.3 Until recently the full Steering Group has met monthly to take an active interest in overseeing work of the sub-groups that in turn have met frequently to play an active role in developing the flagship eGovernment projects. This was appropriate during the initiation phase of the projects and it harnessed the enthusiasm and commitment of the Steering Group. It was however becoming cumbersome and recently, a "management board" consisting of the Chairman of the Steering Group, the political chairs of the three sub-groups and senior Advisory and Finance staff has met to coordinate the work of the sub-groups.



- 5.4 This will free up the full Steering Group to give more attention to strategic eGovernment issues whilst receiving quarterly updates on flagship projects. The introduction of additional project management disciplines and resources referred to above will also enable the sub-groups to adopt more of a management board approach with a less hands on involvement in individual projects.
- 5.5 The Steering Group believes that the structure set out above will work during the transition period of the restructuring of the States and can be adopted and adapted by the Policy Council as it sees fit.
- 5.6 One of the strategic issues that the Steering Group has yet to tackle is how the States can use eGovernment initiatives as part of a wider initiative to contribute to the development of an e-enabled community, which is one of the corporate objectives referred to in para 1.8, including increasing access to, and ability to use the Internet.
- 5.7 It has been argued that the States should lead by the example of providing all its members with PCs and Internet connections so that they may access States publications and committee papers as well research specific topics. This is somewhat of a chicken and egg situation whereby the current volume of general and committee specific States papers available on-line does not justify the universal issue of PCs and connections but an increase in the volume may not be achieved until more members rely on on-line communications to reduce paperwork.
- 5.8 The Steering Group is aware that some individual committees that place a large proportion of their papers in a secure extranet find it cost effective to issue their members with PCs and connections to cut down on the volume of papers distributed. The Steering Group considers that this ad hoc approach should continue until States members' usage of, and reliance on, the Internet increases to the extent where a general policy of issuing PCs and Internet connections can be seen to be justified.

## **6. Conclusions**

- 6.1 The eGovernment Steering Group was formed to assist the Advisory and Finance Committee in the development and implementation of an eGovernment Strategy. This report presents the progress that has been made to date but recognises that more work has yet to be done to produce a coherent strategy.
- 6.2 The report also recognises that eGovernment is not an end in itself, it is one of many means of achieving the overall States objectives of improving the efficiency of services, public access to those services and the communication between the States and citizens.
- 6.3 Whilst the use of ICT can play a major part in improving the efficiency of departmental working, interdepartmental working and the use of the Internet to transact and communicate with citizens, technology is not the driver for these improvements, it is the facilitator. Achievement of

improvements will need the investment of political and management time, energy and resources to review and revise internal business processes to enable them to better exploit the potential of ICT.

- 6.4 Because of other calls on political and management time, energy and resources, the revision of internal business processes is likely to be a major limiting factor on major eGovernment initiatives. The introduction of the SAP procurement and financial system involved a team which varied in size according to the stage reached in the project over a period of some two years but for a considerable time involved 11 persons working exclusively on the project.
- 6.5 The States has already committed considerable financial resources to maintain and develop ICT systems both at departmental level and through the Corporate IT Fund. Finance is unlikely to be a major limiting factor on eGovernment initiatives at least in the short to medium term.
- 6.6 The imminent restructuring of the States into a smaller number of larger departments should enable a rationalisation of ICT staff resources. There is, however, a national shortage of ICT skills and the States is competing against local businesses and demands in the UK for this scarce commodity. Whilst the States will need to maintain a critical mass core of in-house ICT staff resources, this will inevitably need to be supplemented by bought or contracted-in resources to make up any shortfall and work on specialist applications.
- 6.7 The Steering Group considers that the ICT responsibilities sitting with Treasury and Resources, after restructuring, should be afforded a similar status to that of other essential resources such as finance and HR whereby there is clear authority over corporate ICT infrastructure and applications with departments being responsible for their internal systems. The Steering Group also considers the role of Head of Profession of ICT should be introduced to ensure that an individual is responsible for and has authority to ensure that the States' requirements for the development and co-ordination of ICT skills are met.
- 6.8 The Steering Group has brought forward to the Advisory and Finance Committee the recommendations set out above. These recommendations should not be seen as a criticism of what has been achieved so far on ICT and eGovernment. The Steering Group has been impressed by the initiatives that were already underway and the progress that has been made towards more joined up working.
- 6.9 The Steering Group considers however that more impetus and a more focussed definition of authority on ICT needs to be given to drive forward achieving the potential benefits of eGovernment.

6.10 The eGovernment Steering Group therefore requests the Advisory and Finance Committee to endorse the recommendations contained in this report and to put the following propositions to the States:

1. The Advisory and Finance Committee shall introduce an assessment mechanism to ensure that all future proposals presented to the States, including those for the introduction of legislation, are eGovernment friendly.
2. Unless there are exceptional circumstances that dictate otherwise, committees/departments must use the new corporate Web Portal as their point of access to and from the Internet and any alternative arrangements must be endorsed at political level between the committee/department concerned and the Advisory and Finance Committee/Treasury and Resources before implementation.

Current non-corporate Web Portal points of access to the Internet should be subject to review under the above principles and, unless an exceptional case, phased out as soon as practicable.

3. A corporate system to enable the acceptance of on-line payments to the States over the Internet shall be developed with the aim of clearing any obstacles to accepting both credit and debit card payments within a year.

Committees/departments must use the corporate system for the receipt of on-line payments to the States over the Internet and, where necessary, should be encouraged to develop their own internal business practices to integrate with the corporate system for on-line payments.

4. A central database of basic information on citizens and the allocation of unique identifiers shall be developed as set out in para 2.28 of this report.
5. Responsibility for the management of the States ICT network and for computer security throughout the States shall rest with the ISD function within Treasury and Resources following the restructuring of the States and ISD shall be provided with the necessary resources to fulfil this responsibility.

The Advisory and Finance Committee shall commission the development of ICT Disaster Recovery policies using internal and/or external resources as appropriate.

6. Responsibility for the management of a corporate e-mail system shall rest with the ISD function within Treasury and Resources following the restructuring of the States.

- 7 The Advisory and Finance Committee shall undertake a review of the availability of ICT staff in the departments resulting from the restructuring of the States and shall identify how those staff may need to be supplemented by additional posts, resources provided from the centre or contracted-in resources.

A priority shall be given to making appointments to the senior ICT posts in the restructured departments.

In the detailed defining of the role and responsibilities of Treasury and Resources, the exercise of corporate ICT responsibilities shall be given similar status to that of finance, property and human resources and a recognised Head of Profession role shall be established.

- 8 Funding for the initiatives set out in this report shall be from the Corporate IT Fund.

Deputy J E Langlois

Chairman

eGovernment Steering Group

## Annex 1 eGovernment Steering Group - Members

### Advisory & Finance Committee

Deputy John Langlois	Vice president
George Sauvage	Chief Officer, Operations and Policy
Dave Clark	States Treasurer
Jane Needham	Director of Audit
Neil Turner	Head of ISD
Gill Symes	Purchasing Co-ordinator
Dave Wakeford	GTS/States Digimap
Ian Wainwright	eGovernment Analyst A&F

### Board of Health

David Hughes	Chief Executive
Jim Harley	Finance Director
Mark Huntington	Head of IM&T

### Board of Industry

Deputy Kevin Prevel	Vice President
	(also a member of the Board of Health)
Mr Stephen Jones	Board Member
Nigel Lewis	Chief Executive
Stuart Le Maitre	Deputy Chief Executive

### Civil Service Board

Deputy Aandrew Sauvarin	President
Brian Castle	Chief Executive

### Education Council

Deputy Hunter Adam	Member
Sue Ryde	Assistant Director
Rob Couch	GGfL Coordinator

### Guernsey Social Security Authority

Deputy Mary Lowe	Authority Member
Graham Smale	Deputy Chief Executive
Tim Bean	Manager, Contributions

### States Traffic Committee

Deputy Pat Mellor	President
Alastair Ford	Acting Chief Executive
Alysa Martel	Deputy Chief Executive

### Mentors

Richard Silverton	C&W London
Kate Cartwright	SAP



## 7. Annex 2 Corporate IT Fund

Opening Balance - £1,573,451

Project	Commitment	Expenditure to Date
	£	£
Data Protection – online registration	6,750	19,200
Workflow Pilots	45,000	27,490
Alderney Broadband link	45,000	24,018
Corporate Active Directory Root	14,000	
Grefe Daybook computerisation	16,000	9,444
Internet Proxy Server	30,000	31,407
Website and content management system	41,000	31,763
SCFH-BoH High Speed link	65,000	45,095
IT Training Scheme transition salary costs	75,000	1,316
Land and Property Information via States Intranet	105,000	95,747
Network Security Audit	19,000	18,287
Cadastre System replacement	70,000	17,940
Network Upgrades	25,000	31,554
Corporate Web Server	27,500	20,800
Cable and Wireless network planning	5,000	3,800
One-Stop Kiosks, GSSA, Housing, ITA	12,355	
Electrical Upgrades – re Business Continuity	15,000	
GSSA/Income Tax returns	50,000	
	=====	=====
<b>Total</b>	<b>£665,605</b>	<b>£377,066</b>

Figures as at end of May 2003, proposals in 2003 Policy and Resource Plan include an additional £500,000 for the Corporate IT Fund.

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 19th June, 2003, of the States Advisory and Finance Committee, they are of opinion:-

To agree the proposals set out in the eGovernment Steering Group Report.

## **STATES BOARD OF INDUSTRY**

### **SUNDAY TRADING**

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

16<sup>th</sup> June 2003

Dear Sir

### **SUNDAY TRADING**

#### **Introduction**

Following the introduction of the Sunday Trading Ordinance, 2002 earlier this year, the Board of Industry has identified a number of issues concerning Sunday trading that need to be addressed.

The original intention of preparing this report was to explain to the States the issues that had arisen, the reasons underpinning them and to seek relatively minor changes in the legislation to resolve the problems that they have created. However, the need to amend a new Ordinance so soon after its introduction has underlined to the Board the problems that will always exist in trying to administer Sunday trading restrictions in a fair and consistent manner throughout the Island. Accordingly, the Board decided by a majority that the presentation of this report provided a further opportunity to re-open the question of deregulation and to invite the States, once again, to consider whether or not the existing legislation should be repealed.

This letter is therefore divided into two parts. The first part deals with the anomalies that have been identified and proposes how they might be dealt with. The second part deals with the wider principle of deregulating trading on a Sunday.

#### **Part I**

##### **Background**

The Ordinance approved by the States on 25<sup>th</sup> September 2002 was a best attempt to encapsulate in law the Sunday trading regime approved by a majority of States members and which sought to maintain controls on Sunday trading but to remove anomalies that existed under the 1974 Ordinance.



In presenting previous proposals to the States, the Board has repeatedly stated that there are only two approaches to Sunday trading that will be entirely fair – i.e. total deregulation or total prohibition.

Any attempt to make legislation which sits between these two extremes is bound to be fraught with difficulties, and some provisions are bound to be seen as unfair by parties who are thereby restricted in their activities. It is not surprising, therefore, that the new legislation has given rise to some unforeseen anomalies.

Nevertheless, the Board believes that the experience of working with the new Ordinance in the first few months of this year has demonstrated that most of the requirements of the States for a new, more flexible system have been adequately met with the exception of the items identified in this report.

In addition to the items discussed below there have been a number of other aspects of the new Sunday Trading Ordinance which have been aired publicly, but which the Board does not believe require changes to the Ordinance. Rather they are a symptom of a new and unfamiliar administrative system bedding down. As the Parishes have become more familiar with the system and traders have understood the need to apply for licences and the application process involved, most of those problems have now disappeared.

The anomalies that require to be addressed are as follows:

- Sale of tobacco, tobacco products and smokers' requisites.
- Category "M" – Miscellaneous Shops.
- Roadside stalls.
- Constitution of Appeals Tribunal.

**(i) Sale of tobacco, tobacco products and smokers' requisites**

The sale of tobacco, tobacco products and smokers' requisites has long been permitted on a Sunday and this category of goods was specifically exempted from control under paragraph (c) of the Schedule to the 1974 Ordinance.

The Board, in preparing the new legislation, had no intention of preventing the sale of such products on a Sunday but this item was inadvertently overlooked at both the policy and law drafting stages. It is proposed that the Ordinance should be amended to rectify this matter by repeating the exemption contained in the 1974 Ordinance.

**(ii) Category "M" Miscellaneous Shops**

On 7<sup>th</sup> February 2003 the Sunday Trading Appeals Tribunal met to consider an appeal by the proprietor of Movie Zone against a decision of the parish of St Sampson's not to grant a Category M licence for a shop at Les Banques. Movie Zone was able to open lawfully on a Sunday without a licence for the hiring of videos, DVDs and similar products but sought a licence to enable it to sell those products on a Sunday. The proprietor of the shop put forward the

argument that his business satisfied the requirements of Category M on the basis that it was a business:

“(a) *involving the sale of—*

(ii) *items for use in connection with any recreational activity undertaken or pursued in or in the vicinity of the shop, provided that the shop is located in the vicinity of a beach or cliff”.*

[Para. (a) (ii) of Statutory Category M in the Second Schedule to the 2002 Ordinance].

He argued that videos, DVDs etc are items used in connection with a recreational activity and that as his shop was over the road from Belle Greve Bay, it was located in the vicinity of a beach.

The Tribunal, which upheld the appeal, based its decision on a literal interpretation of the existing Ordinance.

Such an outcome was never the intention of the revised Sunday trading regime. It was always intended that the recreational items should be associated with an outdoor activity, typically undertaken on or in the immediate vicinity of a beach or cliff.

In its original discussions with the parishes, the Board agreed that the type of kiosk found adjacent to popular beaches such as Vazon, Petit Bot, Fermain etc could be open for the sale of refreshments, beach balls, kites, buckets and spades, newspapers and little else. In adopting a general description it was also recognised that there were a number of such shops located adjacent to cliffs on headlands such as Icart and Jerbourg.

The question arose, however, in relation to a small number of shops which were adjacent to a beach but which in addition to the range of goods sold by a typical beach kiosk also sold convenience groceries, postcards, greeting cards and souvenirs, newspapers and one or two other products. A typical example is the Cobo Village Centre. It was with this in mind that the Board created Category M – Miscellaneous Shops.

In the light of the decision in the Movie Zone case, the Board, following discussions with H M Procureur, has come to the conclusion that the current description of the criteria for entitlement to a Category M licence is not precise enough and does not reflect the spirit of the States decision or indeed the Board’s intention as set out in its policy letter of September 1999. As a consequence of extending the interpretation of the Tribunal in the case, it would be possible for a shop, which is in the vicinity of a cliff path or beach to claim entitlement to a licence on the basis, for example, that it sold televisions; items which are unquestionably enjoyed by consumers as recreational items. If the same shop were further inland it would not be entitled to a licence..

The Board proposes that the Ordinance should be amended in order to tighten up eligibility for a licence on the basis that Category M licences are intended for traders supplying goods reasonably related to outdoor recreational activities usually associated with beaches and cliffs and providing the shop is in the **immediate** vicinity of a beach or a cliff. The new description will also require such shops to have a predominant range of **two or more** types of the goods referred to in paragraphs (i), (ii), (iii) and (iv) in the description rather than **one or more** of the types of goods as provided for in the current description. The current words “one or more” allow for a single use (such as videos) which was not the intention.

Additionally the Board wishes to alter the wording of the existing Ordinance to better reflect the original policy intentions. In this regard it is proposed that an amended Ordinance in paragraph M (a) (i) of the Second Schedule should include “cleaning materials or toiletries” in order to mirror the wording of a Category B licence.

The Board believes that in amending this category it should be on the basis that such an amendment is without prejudice to the rights of existing licence holders. Given that the proposed change in Category M will mean that premises such as Movie Zone will not meet the revised description, the Board believes that the rights relating to the shop under the current licence should continue to be respected until expiry of that licence (i.e. 31<sup>st</sup> December 2003).

The Board has reviewed the Category M licences currently in force and believes that only two or three shops may be affected in this way.

The Board has given consideration to whether some extended form of “grandfather rights” could be incorporated into the legislation but came to the conclusion that this would be inappropriate. In reaching this conclusion, the Board does have some sympathy with any business which currently has a licence but will not be entitled to one under the new Category M description. However, this must be balanced against the fact that if a particular trader’s rights were extended in perpetuity, then this would provide an unfair position for that shop against competitors. Furthermore, these shops have not had to invest in any alterations in order to trade on a Sunday and therefore there is no question of them seeking to recoup such investment.

**(iii) Roadside Stalls**

The introduction of the 2002 Sunday Trading Ordinance has largely achieved one of its objectives and that is to achieve consistent decision making across the parishes.

If there is one, albeit minor, inconsistency it is in regard to roadside stalls.

Whilst it was not the intention of the Board that this traditional activity, which has become a feature of the Island, should be controlled by legislation, the 2002 Ordinance does not include a specific exemption for these activities.

The existing Ordinance exempts from the need to obtain a licence in those instances where there is a sale at a farm, growing property, allotment or similar place, of produce produced thereon. However the exemption does not extend to instances where goods are bought-in for resale, instances where non-agricultural or horticultural products are sold nor even if goods are grown at one place on the Island but sold at another.

Some parishes have received applications for, and granted licences to roadside stalls selling flowers, plants or vegetables. In these instances, licences have been granted under Category L – Plant Centres. However this category was designed for a completely different use and is associated with a horticultural holding or garden retail operation selling plants in a manner and on a scale beyond that of the roadside stall.

Having consulted with H M Procureur, he has confirmed to the Board that in his opinion a roadside stall, at which no personal service is rendered to a customer, is not a shop which is open for the serving of customers and therefore not an activity that falls within the control of the Sunday trading legislation. He has cited English law precedents which he believes Guernsey courts would almost certainly follow. He has also stated that, “I certainly would not consider prosecuting the proprietor of a roadside stall in such circumstances, for causing it to be open for the serving of customers without a licence, under the provisions of the legislation as they stand at the moment”.

In the light of this advice, the Board has advised the parishes that they do not need to require operators of unmanned roadside stalls to acquire Sunday trading licences.

**(iv) Constitution of the Tribunal**

Against the background of arranging the recent Appeals Tribunal and following further discussions with H M Procureur, the Board has come to the conclusion that a tribunal drawn from members of the Board presents a number of challenges.

In practical terms, in the Movie Zone case, the President of the Board, whose role it is to select the tribunal felt that he had to exclude three members of the Board who are Deputies of St Sampson’s – the parish against which the appeal was made. Furthermore, he chose to exclude one of the non-States members who is a recently elected Douzenier to another parish which left three remaining Board members including himself. Although he decided to chair the meeting he did so with some reluctance because of his own position as a St Peter Port Douzenier could call into question the independence of the tribunal’s judgement.

The Board could envisage other circumstances in which it might not have been possible to choose three members of a tribunal from the seven members of the Board and maintain the independence required. Furthermore, H M Procureur has advised that the perceived lack of independence of the tribunal could itself give rise to an appeal to the Royal Court.

The Board proposes, therefore, that the constitution of the tribunal should be changed and that the provisions of the Ordinance should be amended to mirror to a large extent those relating to the tribunal established under the Regulation of Utilities Legislation i.e. a separate panel of potential tribunal members is created and a chairman elected by the States whose role it is to select the tribunal members on any particular case.

Subject to States approval of the new Ordinance, the Board will draw up a panel of potential members and identify a chairman and report to the States at the earliest opportunity.

## **Part II – The Principle of Sunday Trading**

The Board has acknowledged throughout this letter that, despite the anomalies that have been identified, the new Sunday trading arrangements represent an improvement over those that were in force up to the time of the introduction of the Sunday Trading Ordinance, 2002. Nevertheless, a majority of the Board are firmly of the opinion that:

- Notwithstanding the changes proposed in this report, the very nature of the current Sunday trading regime is such that it will give rise to further anomalies in future;
- any system that relies ultimately for the granting of licences by ten sets of administrators (the parishes) is bound, in time, to produce inconsistencies; and
- in any event a restrictive regime of this type lends itself more to the nineteenth century (when the principles underpinning this legislation were first developed) than to a sophisticated community in the twenty-first century.

With these thoughts in mind, a majority of the Board favours deregulation and believes that the Sunday Trading (Guernsey) Law, 1973 should be repealed thereby removing all restrictions on retailing on a Sunday and that market conditions should be allowed to prevail.

While the Board encourages further consideration of this issue it does not propose to repeat here the arguments for and against Sunday trading which it has set out at length in policy letters in recent years and which have been aired publicly on numerous occasions.

The Board is also conscious that the States has, in the recent past, been evenly divided on this issue. It is with this in mind that while it is recommending that the Law should be repealed, nevertheless it is including an option in the recommendations which, if that proposal fails, will allow States members, if they so wish, to go on to approve in principle the amendments to the Sunday Trading Ordinance, 2002.

## **Legal Process**

States members will be aware that a decision to repeal a law does not mean that that law ceases to exist the following day. There is sometimes a lengthy process whereby

further legislation must be approved before the law is finally repealed. The Law Officers have advised that if the States resolves to repeal the Law then it will be necessary for an Order in Council to be obtained and this could take some considerable time.

The longer the delay between the formal repeal of the Law and the making of the States decision, the greater the chance for confusion as some shopkeepers will seek to operate without a licence and consumers will expect that there are no longer any restrictions on Sunday retailing.

It is against this background that the Board proposes a two-stage approach.

1. The Sunday Trading Ordinance, 2002 is repealed at the earliest opportunity (subject to the workload of the Law Officers this could be presented to the States as early as September); and
2. in due course to repeal The Sunday Trading (Guernsey) Law, 1973, the umbrella legislation under which the Ordinance sits.

The effect of this approach would be that there will be no controls on Sunday trading from the day the Ordinance is repealed but the ability of the States to introduce such controls by Ordinance under the 1973 Law will remain until such time as that is repealed.

### **Recommendations**

The Board recommends the States to either:

1. deregulate Sunday trading by repealing the current Sunday trading legislation; or
2. agree that the Sunday Trading Ordinance, 2002 should be amended in the manner described in Part I of this report;

I would be grateful if you would lay these matters before the States with appropriate propositions including one directing the preparation of such legislation as may be necessary to give effect to whichever approach is adopted by the States.

Yours faithfully

JOHN ROPER

President,  
States Board of Industry

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

25<sup>th</sup> June 2003

Dear Sir

**Sunday Trading**

I refer to the policy letter dated 29<sup>th</sup> May 2003 submitted by the President of the Board of Industry on the above subject.

The Committee is well aware that the issue of deregulating Sunday trading has proved to be controversial over a number of years, with States Members views tending to be polarised either for or against such a policy. The Committee believes that this is an issue for the individual consciences of States Members.

However, in the event that the States do decide to retain controls over Sunday trading, the Committee unanimously supports the amendments to the Sunday Trading Ordinance, 2003 that are proposed in the Board of Industry's policy letter, and recommends them for adoption by the States.

Yours faithfully

L. C. MORGAN

President  
States Advisory & Finance Committee

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated the 16<sup>th</sup> June, 2003, of the States Board of Industry, they are of opinion:-

1A. To deregulate Sunday trading by repealing the current Sunday trading legislation.

**OR**

1B. That the Sunday Trading Ordinance, 2002, shall be amended in the manner described in Part 1 of that Report.

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



**STATES TRAFFIC COMMITTEE****INTEGRATED ROAD TRANSPORT STRATEGY – PAY PARKING**

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

13 June, 2003

Dear Sir,

**INTEGRATED ROAD TRANSPORT STRATEGY – PAY PARKING****1. INTRODUCTION**

In March, 2003, the States approved the Committee's policy letter on an integrated road transport strategy for the Island (Billet d'Etat IV of 2003). It resolved that the Strategy's main objective should be to reduce the level of car usage in the Island, in particular by encouraging the use of alternative forms of transport, discouraging unnecessary car travel and promoting more responsible use of the car.

In approving the above, the States also resolved that legislation should be prepared for the introduction of pay parking at:

- the long-stay parking places only (5 and 10 hour) at the Odeon, Salarie and North Beach car parks;
- other on-street long-stay parking places (5 and 10 hour) in St Peter Port. These charges would not be applied in all on-street areas, but only those where the Committee had not introduced additional residents' parking schemes.

The States also resolved that the above legislation should enable the States to set the levels at which charges were fixed by Ordinance.

The purpose of this policy letter is therefore to put forward proposals for consideration by the States for the levels at which pay parking charges should be set by Ordinance.

## 2. BACKGROUND

Pay parking forms one element of a set of integrated policies included in the Strategy that work together towards achieving its objectives. It is a vital tool in achieving these objectives and in influencing the behaviour of the travelling public. In this respect, the principal purposes of pay parking are:

- to encourage commuters to switch to the six alternatives available to them, these being public transport, cycling, motorcycling, walking, car sharing or the use of “compact” or alternatively powered vehicles (for which free parking will be made available);
- in the case of those areas where on-street charges will be introduced, to discourage commuters from parking in designated residential streets to avoid pay parking at the Odeon, Salarie and North Beach.

The Strategy also recognises that future improvements to the Island’s park-and-ride infrastructure are unlikely to be an attractive alternative for commuters if long-stay parking continues to be free in Town.

The States has also agreed that the Committee should: continue improving the scheduled bus services and the associated network infrastructure; report back to it with proposals for a free school bus service for all pupils; report back with options for improvements to the Island’s park-and-ride infrastructure; and, pursue opportunities to introduce traffic calming schemes and improved facilities for vulnerable road users, with an emphasis on measures around the Island’s schools.

The net revenue that pay parking raises will be essential to assist in at least partly funding many aspects of the capital and revenue costs of the Strategy, particularly the measures set out above. The Committee believes that it is essential that the net income should be used to fund these initiatives.

Without the revenue from pay parking, then it will not be possible to introduce many elements of the Strategy approved by the States **without a significantly greater call on general revenue.**

## 3. PARKING CHARGES – FACTORS FOR CONSIDERATION

There are a number of factors the Committee believes should be taken into consideration in setting the levels of parking charges:

- the charges will need to be set at such a level that they provide an incentive for commuters to consider the alternatives open to them;

- the total charge for an 8 hour day will need to exceed the standard return bus fare of £1, whilst also being sufficiently high to provide a reasonable incentive for commuters to consider whether every journey they make should be by car, or whether they might, even occasionally, use the bus or some other alternative.

For those commuters who feel that they can switch to bus travel on a regular basis, then the incentive will be even stronger, as they can then take advantage of multi-journey tickets that enable them to travel for between 20p and 35p per journey (ten journeys can be bought in advance for £3.50, thirty for £7.50 and fifty for £10.00);

- the additional expenditure that the Committee will incur in improving the bus services, offering free school buses and improving other alternatives.

For instance, the Committee's initial and provisional estimates are that a minimum of at least £250,000 per annum in additional revenue subsidies will be required for the further improvements to the bus services, in particular for commuters, that will be introduced before pay parking.

Previous initial assessments of a free school bus service have suggested that at least fifteen additional buses and drivers would be required at peak periods to manage the increased demand, operating costs would increase by around £150,000 annually and additional capital expenditure on vehicles in the region of £1 million would be required;

- the capital cost of installing pay parking systems at the off-street car parks. This will depend on the type of system eventually chosen, but has previously been estimated as being in the region of £80,000 per car park. It is likely that a scratch card type system will be adopted for any on-street charges that are introduced, thereby minimizing the cost involved.

The Committee has noted that parking charges in Jersey are now 45p per hour (£3.60 for a day of eight hours). At Guernsey Airport, a day's parking costs £4. Spaces at the Harbour for day-trippers are available during the summer for £3 per day. The Committee has reviewed the daily charges in other jurisdictions within easy reach of the Island. Whilst charges can vary from car park to car park, in Southampton the charge is generally £5.50. In Exeter it is generally £4.20.

The Committee has also given further consideration to the arrangements that should be put in place overnight and during the weekends. Long-stay spaces on Sundays and Bank Holidays will be free. Furthermore, whilst it accepts that there is a fair amount of commuter traffic on Saturdays, the most significant and problematic levels occur between Mondays and Fridays. It therefore does not propose that charges should be made on Saturdays. Overnight parking will be

free. This means that Town residents will be able to use the long-stay areas throughout the weekend and overnight without charge.

Free long-stay parking will be made available for motorcyclists and the drivers of very small “compact” cars, as well as alternatively powered vehicles.

The Committee would like to have some flexibility to introduce differential rates of pay parking, depending on the location of the car park concerned. For instance, charges in areas further from the Town centre might be set at a lower level than those at the North Beach and Odeon. It is therefore recommending that the States establishes the **maximum** rate that should be charged, but that the Committee be given the authority to reduce these in some areas in line with the above.

#### 4. PROPOSED PARKING CHARGES

The Committee is recommending that the **maximum** parking charges should be set at 40p per hour, equating to £3.20 for a stay of eight hours. This would leave it room to offer reduced rates as part of a differential pricing policy below this level, but sufficiently higher than a standard return bus fare of £1. The revenues this will generate will depend on the nature of any differential system that is introduced, but purely by way of example, might be as follows:

- North Beach and Odeon: 611 spaces at £3.20 per day: £492,710
- Salarie: 446 spaces at, say, £2.40 per day: £269,740
- On-street, say 500 spaces at, say, £2.00 per day: £252,000

The Committee has not yet determined how many on-street spaces will be subject to pay parking. This will depend on the number of spaces that fall within the residents’ parking schemes the States has agreed it should introduce in due course. However, there are approximately 1,000 on-street 5 and 10 hour long-stay spaces (including the Castle Emplacement) and, for the purpose of the above example only, it has been assumed that half of these will be pay parking.

Under the above scenario, which it is accepted assumes full occupancy of the spaces throughout the day, the revenue raised will be just in excess of £1,000,000 per annum. The Committee proposes that this income should accrue to the States’ general revenue and that a subsequent adjustment should be made to its future capital and revenue budgets to fund the other initiatives set out in the Strategy that the States has agreed.

#### 5. RECOMMENDATIONS

Following consideration of this report, the Committee recommends the States to:

- (i) approve that the maximum charge for long-stay parking should be 40p per hour;
- (ii) enable the Committee to establish, by Order, differential rates of parking charges for different car parks at levels beneath the maximum rate set agreed by the States and as set out in (i) above.

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

PATRICIA MELLOR

President  
States Traffic Committee

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

20th June 2003

Dear Sir

**Integrated Road Transport Strategy – Pay Parking**

I refer to the States Traffic Committee's policy letter on the above subject.

The Committee has no comments to make on the proposals, other than to note that the States Traffic Committee is complying with the States Resolutions of March 2003 in referring to the States its proposals for the levels at which pay parking charges should be set by Ordinance at the present time.

Yours faithfully

L. C. MORGAN

President  
Advisory and Finance Committee

The States are asked to decide:-

X.- Whether, after consideration of the Report dated the 13<sup>th</sup> June, 2003, of the States Traffic Committee, they are of opinion:-

1. That the maximum charge for long-stay parking shall be 40p per hour.
2. To enable the States Traffic Committee to establish, by Order, differential rates of parking charges for different car parks at levels beneath the maximum rate set agreed by the States and as set out in proposition 1. above.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

**STATES WATER BOARD**  
**REVISION TO WATER CHARGES**

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

13<sup>th</sup> June 2003

Dear Sir,

**REVISION TO WATER CHARGES**

**Introduction**

The Water Board brought to the States in May 2003 a policy letter that set out, in summary, the steps that had been taken over the past year to develop a comprehensive Business Plan and the resulting request for additional funding. After meeting considerable opposition towards the idea of increasing water charges in one single stage the President of the Water Board withdrew the policy letter on the understanding that he would return to the States shortly with a proposal to increase charges in a phased manner over a 3 year period. During debate members of the House had indicated their willingness to support such a recommendation.

This policy letter clarifies the Water Board's position and recommends increases to water charges so that clean, safe water supplies can be maintained, both now and into the future.

The following proposal has been discussed thoroughly and agreed with the Advisory and Finance Committee.

So as to ensure clarity of understanding on the various financial issues Appendix 1 shows examples of the proposed charges as they would affect the average customer.

**The Water Board's requirement for increased funding**

In May 2002 the Board initiated a thorough review of the Water Board's activities, the outcome of which was the Business Plan which was approved by the Water Board in December 2002. The plan has subsequently been presented to, and noted by, the Advisory and Finance Committee.



It is recognised that as more detailed work continues at the Water Board, so the plan will need to cope with changes brought about by influences beyond the Water Board's control. New standards, not only of water quality, will have to be accommodated and the Water Board's funding must be flexible. Global climatic conditions, pollution, increased water quality standards and the introduction of traffic charges are all examples of such change.

## **Finance**

At the centre of any utility business lies its capital expenditure programme. Understanding asset performance and its management is crucial to the on going success of all major utilities.

Over the last decade the whole of the UK water industry has had to spend substantial sums of money developing their asset infrastructure and maintenance plans.

There is not a full and detailed understanding of the Water Board's assets here in Guernsey, however, as can be seen from the Business Plan there is a commitment to develop such systems, but it will take time. The Board does have the advantage of Digimap and the States' commitment to the use of this corporate system to aid this process.

The Water Board's Capital Development Programme is therefore detailed and precise in most areas with a small proportion, in the later years of the programme, needing more detailed input. Staff, most of whom have been working in the States Water Board for many years, have used their extensive knowledge and experience to put together the comprehensive list of schemes and projects that go to make up the Capital Programme which is incorporated into the Business Plan.

The Water Board's 10 year Capital Programme (2003 to 2013) of essential works can be broken down into the following principal headings, as shown in Appendix 3 and summarised below:-

### Water Resources (Totalling £5.87m)

Replace / upgrade raw water pipelines.  
 Replace / upgrade raw water pumping stations.  
 Provision of more pumping stations.

### Water Treatment (Totalling £10.98m)

Up-grade St Saviours & Juas water treatment works using new membrane technology where appropriate.  
 New water treatment works at Longue Hougue and St Andrews.

Distribution (Totalling £10.89m)

Water main rehabilitation - relining using the latest 'no-dig' technology.

Renew or replace failing pipelines.

Metering – including innovative reading techniques (still under review).

Management & General (Totalling £6.93m)

Development of new systems using appropriate new technology.

Centralise Water Board operations into one new headquarters at the St Andrews Reservoir site.

Routine plant, vehicle and equipment replacement.

The cost of the essential works shown in the principal headings is £34.67m less capital income, resulting mainly from developer contributions and the sale of assets, of £1.49m providing a net capital cost of £33.18m.

The Water Board has examined carefully each element of the Capital Programme, including the revenue impacts, both increases and savings, and concluded that sensible provision has been made. Bearing in mind the previous under investment at the Water Board the scope for significant savings are severely limited, but nevertheless they have been included in the Business Plan under the heading of Revenue Expenditure (see Appendix 3).

**In order to sustain the water business the level of capital expenditure must rise from its present level of around £2m to about £3m per year. There are definitely no 'luxury' items, all are essential if the island's water supply business is to be sustained. Failure to make the necessary provision for essential investment in the business will result in increased disruption to the island's water supply and adversely affect the community which it supports. The Board would not be fulfilling its duties or responsibilities as mandated by the States if it did not bring to the House a proposition to improve the current situation.**

**Funding**

The Water Board has sought advice from both the Advisory and Finance Committee and the States Treasurer as to how best to fund the Board's Capital Programme. It has been agreed that the Water Board may borrow up to £4.3m in total and pay this sum back by 2024. The Water Board will pay interest at the normal variable States Treasury rates (see Appendix 2).

**This borrowing requirement is about double that of the initial proposal put forward by the Water Board in May 2003 and beyond the Board's previously agreed borrowing limit of £2 million, with the payback similarly increased by about 10 years.**

## Charges

Currently water charges normally rise by the annual increase in R.P.I. as at the previous September in accordance with the States Water Supply (Amendment) (Guernsey) Law, 1997 and this legislation would need to be replaced to take account of any increases that are approved.

The following schedule shows the proposed charges for customers paying on a Rateable Value basis, based on an example annual increase in R.P.I. of 4%. The schedule shows the current charges (2003) together with an example of the charges in subsequent years; 2004, 2005 and 2006. These are calculated by applying the annual increase in R.P.I. to the previous year's charge and **then** adding 10% of the 2003 charge. For the year 2007 and beyond, the Water Board propose returning to the States for these charges in 2006.

### Schedule 1

#### Quarterly Charges

(Assumes Annual R.P.I increases of 4%)

#### Unmeasured Supplies

R.V.	2003	2004	2005	2006	
	£	£	£	£	
0-19	32.10	36.59	41.26	46.12	
20-29	39.10	44.57	50.26	56.18	
30-39	46.10	52.55	59.26	66.24	
40-49	53.10	60.53	68.26	76.30	
50-59	60.00	68.40	77.14	86.23	
60-69	67.00	76.38	86.14	96.29	
70-79	74.00	84.36	95.13	106.34	
80-89	81.00	92.34	104.13	116.40	
90-99	87.90	100.21	113.01	126.32	
100+	22.00	25.08	28.28	31.61	Plus of Rateable Value
	69%	79%	89%	99%	

For customers with an R.V. of 100+ the calculation of payment is currently RV times 69% plus £22 = the quarterly charge.

Example of how charges are calculated for the average RV customer in the above schedule:-

2003 charge = **£53.10**

2004 charge = **£53.10** x 4% (R.P.I) = **£2.12** + [10% of £53.10 = **£5.31**] = **£60.53**

2005 charge = **£60.53** x 4% (R.P.I) = **£2.42** + [10% of £53.10 = **£5.31**] = **£68.26**

2006 charge = **£68.26** x 4% (R.P.I) = **£2.73** + [10% of £53.10 = **£5.31**] = **£76.30**

(An example of an average annual household charge is shown in Appendix 1).

### **Metered Charges**

The Water Board has considered carefully the issue of charging and concluded that the fairest way to charge all customers is based upon the amount of water which they use, thus universal metering is favoured in the long term. The Board is actively promoting this by the issue of free meters. Charges should reflect the fact that metered customers use less water and thus charges will encourage voluntary switching to meter, where it is physically possible to do so. Some customers e.g. those on common supply pipes may not be able to go onto a meter without some modifications to the pipework. Such cases will need to be assessed on an individual basis to determine whether or not it is economically viable to move to metered supplies.

The following schedule shows an example of the proposed charges for customers paying for the water that they use by measured quantity through a meter, again based on an annual increase in R.P.I of 4%:-

**Schedule 2**  
**Quarterly Charges**  
**(Assumes Annual R.P.I increases of 4%)**

**Metered Supplies**

	£	£	£	£
<b>Size of Meter</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
15mm	13.00	14.82	16.71	18.68
20mm	19.50	22.23	25.07	28.02
25mm	21.60	24.62	27.76	31.03
40mm	24.30	27.70	31.24	34.92
50mm	25.70	29.30	33.04	36.93
75mm	27.00	30.78	34.71	38.80
100mm	29.70	33.86	38.18	42.68
 Per 1000 litres (one CubicMetre)	 1.00	 1.14	 1.29	 1.44

Example of how charges are calculated for the average domestic metered (15mm) customer in the above schedule:-

2003 charge = **£13.00**

2004 charge = **£13.00** x 4% (R.P.I) = **52 pence** + [10% of £13.00 = **£1.30**] = **£14.82**

2005 charge = **£14.82** x 4% (R.P.I) = **59 pence** + [10% of £13.00 = **£1.30**] = **£16.71**

2006 charge = **£16.71** x 4% (R.P.I) = **67 pence** + [10% of £13.00 = **£1.30**] = **£18.68**

Example of how charges are calculated for the 1000 litres of water (1 cubic metre) in the above schedule:-

2003 charge = **£1.00**

2004 charge = **£1.00** x 4% (R.P.I) = **4 pence** + [10% of £1.00 = **10 pence**] = **£1.14**

2005 charge = **£1.14** x 4% (R.P.I) = **5 pence** + [10% of £1.00 = **10 pence**] = **£1.29**

2006 charge = **£1.29** x 4% (R.P.I) = **5 pence** + [10% of £1.00 = **10 pence**] = **£1.44**

(An example of an average household charge is shown in Appendix 1).

**Proposals**

In order to finance the essential expenditure that has been identified within the Business Plan the Water Board has calculated that water charges should rise above the increase in R.P.I by 3 annual increments of 10% of the 2003 charge from 1<sup>st</sup> January 2004.

As the proposed increase exceeds that provided for in the States Water Supply (Amendment) (Guernsey) Law, 1997, it will be necessary for the States to approve an Ordinance.

**Recommendations**

The States Water Board recommends the States:-

1. To approve with effect from 1<sup>st</sup> January 2004, annual increases for each of the three years 2004, 2005 and 2006 in line with the annual increase in R.P.I as at the previous September plus 10% of the 2003 charge.
2. To report back to the States in 2006 on the proposed charges for 2007 and beyond.

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

Yours faithfully

M. E. W. BURBRIDGE

President  
States Water Board

## Appendix 1

1. Example of an average annual domestic household with a Rateable Value in the band £40-£49 paying for their water without a meter.

Annual charge:-

2003	£53.10 per quarter x 4 = £212.40 per year or <b>58.2 pence per day</b>
2004	£60.53 per quarter x 4 = £242.12 per year or <b>66.3 pence per day</b>
2005	£68.26 per quarter x 4 = £273.04 per year or <b>74.8 pence per day</b>
2006	£76.30 per quarter x 4 = £305.20 per year or <b>83.6 pence per day</b>

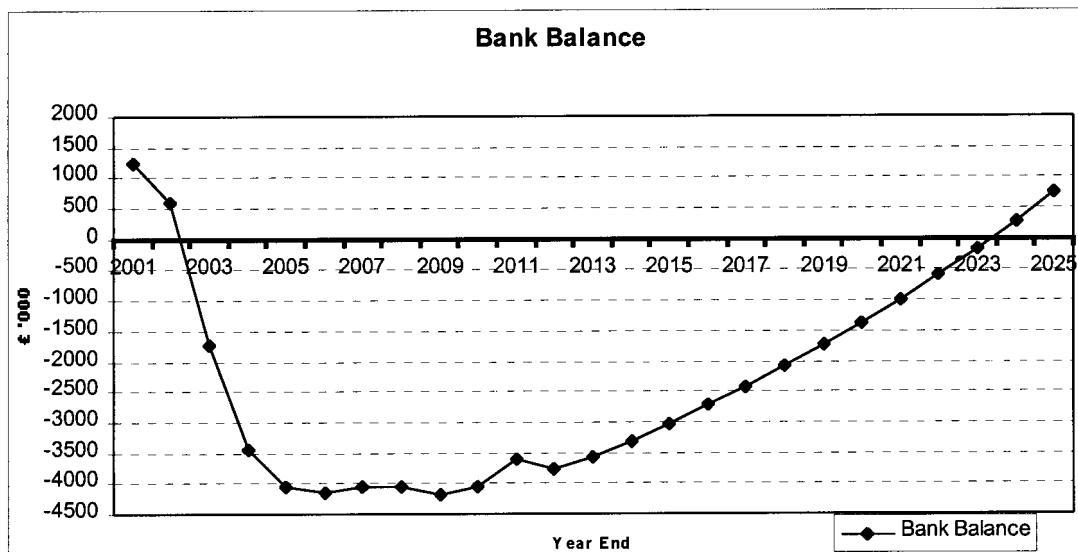
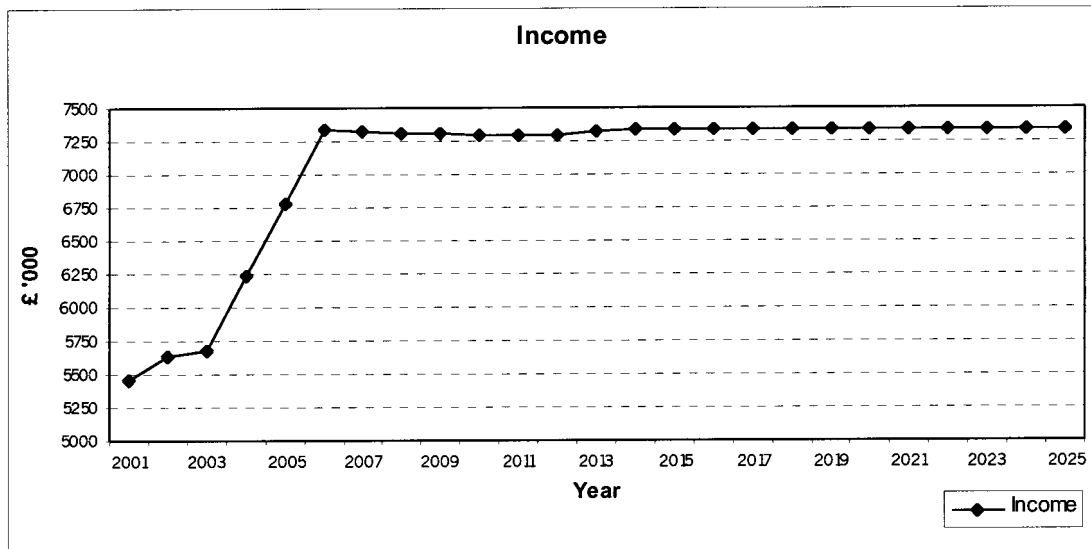
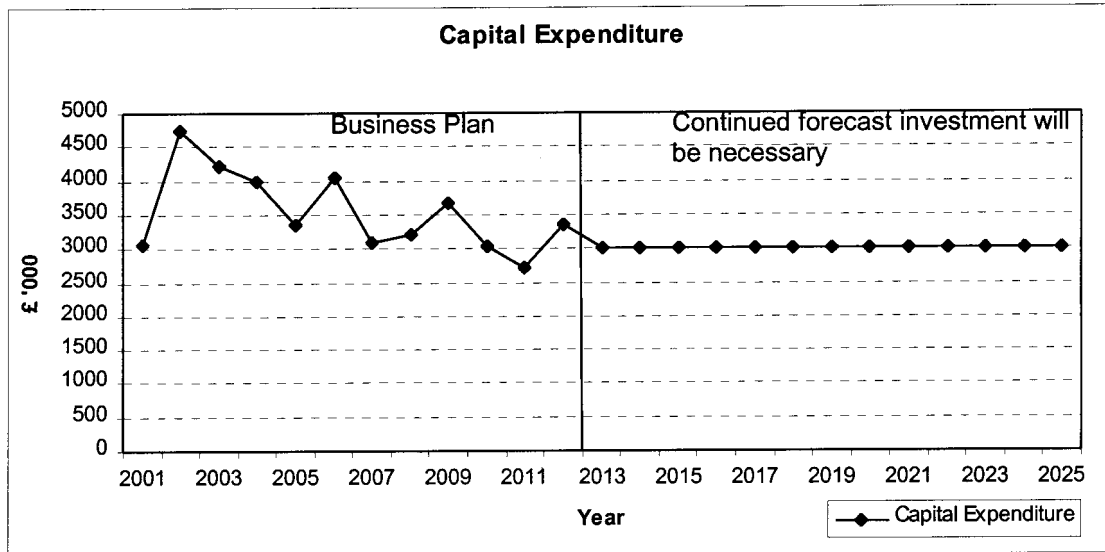
2. Example of a domestic household with a meter, using the average amount of water

Annual charge:-

2003	£13.00 per quarter x 4 = £52 + 134,000 litres @ 0.1 pence per litre = £186 per year, or <b>51 pence per day</b> .
2004	£14.82 per quarter x 4 = £59.28 + 134,000 litres @ 0.114 pence per litre = £212.04 per year, or <b>58.1 pence per day</b> .
2005	£16.71 per quarter x 4 = £66.84 + 134,000 litres @ 0.129 pence per litre = £239.7 per year, or <b>65.7 pence per day</b> .
2006	£18.68 per quarter x 4 = £74.72 + 134,000 litres @ 0.144 pence per litre = £267.68 per year, or <b>73.3 pence per day</b> .



## Appendix 2



## Appendix 3

VARIATION TO SOURCE AND DEPLOYMENT OF FUNDS AS SHOWN IN APPENDIX 3 OF BUSINESS PLAN												£ '000's
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL	
<b>Water Resources</b>												
St Andrew's Reservoir development	250	50										
Raw Water mains replacement					250	250		650	650	700		
Belle Greve Pumping Station						900	1,000					
Raw Water Pumping Stations improvements			100	100								
Quarry stabilisation	120											
Convert Kings Mills to Pumping Station										500		
Streamflow monitoring	10	10	10	10	10	10	10	10	10	10		
Irrigation Pipework System upgrade	50		50		100							
Preliminary works for Desalination				50								
Unallocated												
<b>Sub total</b>	<b>430</b>	<b>60</b>	<b>160</b>	<b>160</b>	<b>360</b>	<b>1,160</b>	<b>1,010</b>	<b>660</b>	<b>660</b>	<b>1,210</b>	<b>5,870</b>	
<b>Water Production</b>												
<b>Treatment works</b>												
Upgrade St Savours WTW	1,000	1,500										
Build new Longue Hougue WTW				1,200	1,300							
Build new St Andrew's WTW									1,200	1,100		
Upgrade Juas WTW							500	1,500				
Reservoirs & Towers	50	130										
SCADA / Instrumentation	50	50	50	50	50	50	50	50	50	50		
Pumps replacement	100	100	100	100	100	100	100	100	100	100		
Unallocated												
<b>Sub total</b>	<b>1,200</b>	<b>1,780</b>	<b>150</b>	<b>1,350</b>	<b>1,450</b>	<b>150</b>	<b>650</b>	<b>1,650</b>	<b>1,350</b>	<b>1,250</b>	<b>10,980</b>	
<b>Water Distribution</b>												
Water mains rehabilitation	1,300	1,370	480									
Water mains replacement	220	220	220	368	518	1,406	1,606	318	318	598		
Mains development	263	100	100	100	100	100	100	100	100	100		
Metering		105	79	79	53	53	53	53	53			
Meter Box installation	50	50										
District Metering			20	20	20	20	20	20	20	20		
Unallocated												
<b>Sub Total</b>	<b>1,833</b>	<b>1,845</b>	<b>899</b>	<b>567</b>	<b>691</b>	<b>1,579</b>	<b>1,779</b>	<b>491</b>	<b>491</b>	<b>718</b>	<b>10,893</b>	

Table continued on following page

VARIATION TO SOURCE AND DEPLOYMENT OF FUNDS AS SHOWN IN APPENDIX 3 OF BUSINESS PLAN											£ '000's
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL
<b>Management &amp; General</b>											
<b>Property</b>											
St Andrew's build new Headquarters	350	75	1,900	1,700	300						
Disaster Recovery Office											
Office Equipment & Furniture etc	25	25	25	25	25	25	25	25	25	25	
Plant & Equipment	75	30	30	60	30	45	60	30	30		
Vehicles	100	100	130	100	100	100	100	100	100	100	
<b>Information Technology</b>											
Hardware	50	50	50	70	50	50	50	70	50	50	
Software	165					100					
<b>Communications</b>											
Link to St Andrews		25									
Private Mobile Radio					100						
Unallocated											
<b>Sub Total</b>	<b>765</b>	<b>305</b>	<b>2,135</b>	<b>1,955</b>	<b>605</b>	<b>320</b>	<b>235</b>	<b>225</b>	<b>205</b>	<b>175</b>	<b>6,925</b>
<b>Income</b>											
Sale of Properties				(750)							
Mains Developer contributions	(66)	(25)	(25)	(25)	(25)	(25)	(425)	(25)	(25)	(25)	
Sale of Moveable Assets	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	
<b>Sub Total</b>	<b>(71)</b>	<b>(30)</b>	<b>(30)</b>	<b>(780)</b>	<b>(30)</b>	<b>(30)</b>	<b>(430)</b>	<b>(30)</b>	<b>(30)</b>	<b>(30)</b>	<b>(1,491)</b>
<b>CAPITAL EXPENDITURE</b>											
REVENUE IMPACT OF CAPITAL (R.I.C.):	<b>4,157</b>	<b>3,960</b>	<b>3,314</b>	<b>3,252</b>	<b>3,076</b>	<b>3,179</b>	<b>3,244</b>	<b>2,996</b>	<b>2,676</b>	<b>3,323</b>	<b>33,177</b>
SAVINGS	(3)	(13)	(23)	(1)	(44)	(13)	(8)	(13)	(8)	(4)	(130)
ADDITIONS	39	128	101	132	66	82	72	63	62	-	745
NET R.I.C.	36	115	78	131	22	69	64	50	54	(4)	615
<b>REVENUE EXPENDITURE</b>	<b>3,821</b>	<b>3,871</b>	<b>3,885</b>	<b>3,953</b>	<b>3,941</b>	<b>3,952</b>	<b>3,959</b>	<b>3,977</b>	<b>3,974</b>	<b>3,970</b>	<b>39,303</b>
INTEREST PAYABLE (5%)	31	130	188	206	205	203	206	206	192	185	1,752
<b>TOTAL EXPENDITURE</b>	<b>8,009</b>	<b>7,961</b>	<b>7,387</b>	<b>7,411</b>	<b>7,222</b>	<b>7,334</b>	<b>7,409</b>	<b>7,179</b>	<b>6,842</b>	<b>7,478</b>	<b>74,232</b>
<b>INCOME</b>	<b>5,677</b>	<b>6,239</b>	<b>6,782</b>	<b>7,331</b>	<b>7,318</b>	<b>7,312</b>	<b>7,306</b>	<b>7,300</b>	<b>7,294</b>	<b>7,300</b>	<b>69,859</b>
CASHFLOW SURPLUS / (DEFICIT)	(2,332)	(1,722)	(605)	(80)	96	(22)	(103)	121	452	(178)	(4,373)
<b>CASH SURPLUS (DEFICIT) at YEAR END</b>	<b>(1,734)</b>	<b>(3,456)</b>	<b>(4,061)</b>	<b>(4,141)</b>	<b>(4,045)</b>	<b>(4,067)</b>	<b>(4,170)</b>	<b>(4,049)</b>	<b>(3,597)</b>	<b>(3,775)</b>	
Notes: All prices @ 2002 ptb											
Probable Cash Surplus 31/12/02 £598K											
Assumes 10% Increase in Water Charges in 2004, 2005 & 2006											
It is Estimated that the Board will return to a Cash Surplus Position again by the End of 2024											
No account has been taken of the possible future requirement of a Desalination Plant											

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

25<sup>th</sup> June 2003

Dear Sir

**Revision to Water Charges**

I refer to the letter dated 13<sup>th</sup> June 2003 addressed to you by the President of the States Water Board on the above subject.

As set out previously, the Committee has liaised with the Water Board over its long-term business plan, and in particular the need for the Water Board to raise extra revenue to fund its essential capital programme. The Committee is very supportive of the Board's business planning process as this has highlighted the problems that have resulted from a long period of underinvestment in this essential part of the Island's infrastructure, while at the same time identifying the work which is required to bring the island's water supply and distribution up to modern standards.

The Committee is very concerned that such a vital part of the Island's infrastructure must be placed on a sound and resilient basis for the future. A permanent supply of good quality water to meet the Island's needs now and in the future is absolutely essential to the continued well being of this community. The Board has clearly demonstrated in its 10 year Business Plan that, to protect this position, there is a need for significant investments to be made in the years ahead. The well researched business plan also shows the problems that result when charges are kept unrealistically low, leading to inadequate provision being made for essential future capital needs. The Committee believes that as a general principle charges should be increased regularly rather than delaying increases until such time as the charges have to be elevated by large amounts.

The Water Board's original policy was withdrawn at the May States Meeting, following significant opposition and confusion during the debate. The Water Board is now returning with proposals to phase in its proposed increases over the next three years. Although this approach is in accordance with the general feeling of the States in May, it will result in the Board having to substantially increase its borrowings and lengthen the period of time it will take to clear the debt. The additional interest costs incurred will have to be passed on to the consumer, and it may well be that the Board or its successor will have to return to this House for additional financial instructions.

As set out in its letter of comment on the Board's original policy letter, while the Advisory & Finance Committee would normally be most reluctant to support recommendations which result in price increases significantly above the increase in

RPI, the Committee does believe that the current proposals from the States Water Board are well justified exceptions to this norm.

In all the circumstances, the Committee supports the Water Board's revised proposals, and recommends them for adoption by the States.

Yours faithfully

L. C. MORGAN

President  
Advisory and Finance Committee

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated the 13th June, 2003, of the States Water Board, they are of opinion:-

1. To approve with effect from the 1<sup>st</sup> January, 2004, annual increases for each of the three years 2004, 2005 and 2006 in line with the annual increase in RPI as at the previous September plus 10% of the 2003 charge.
2. To direct the States Water Board to report back to the States in 2006 on the proposed charges for 2007 and beyond.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

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

**REPORT OF THE REVIEW BOARD FOR 2002**

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

30th May 2003

Dear Sir

In accordance with the provisions of Section 8 of the Administrative Decisions (Review) (Guernsey) Laws, 1986 to 1993, I have the honour to submit a report on the complaints received by the States Supervisor during the year ended 31<sup>st</sup> December 2002.

Section 1 of the Law provides that all applications for a matter to be reviewed by a Review Board shall be made to the States Supervisor except where the matter complained of relates to the States Advisory and Finance Committee or its staff, in which case application is made to Her Majesty's Greffier. No such complaint has been received by Her Majesty's Greffier during 2002.

I should be grateful if you would be good enough to lay this report before the States together with a proposition requesting acceptance.

Yours faithfully

J. E. LANGLOIS

Chairman  
Panel of Members



**THE ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAWS, 1986 TO 1993****REPORT OF COMPLAINTS RECEIVED****by the States Supervisor****during the year ended 31<sup>st</sup> December 2002****INDEX****Respondent****Serial Numbers  
(See following pages)**

States Board of Administration	1
States Education Council	2
States Island Development Committee	3
States Cadastre Committee	4
States Board of Administration	5

## **PART 1 – SUMMARY OF COMPLAINTS**

### **1. Mr. S Collins v. States Board of Administration**

A complaint that the Board of Administration had refused to grant permission for Mr. Collins to employ an overseas national as a Restaurant Manageress at the Belle Vue Hotel, Alderney for a four-year period.

The States Supervisor referred the matter to the Chairman of the Panel of Members and a Review Board was convened (for details see Part II No. 1).

### **2. Mrs. X v. States Education Council**

A complaint that the Education Council had refused to pay the complainant's son's school fees

The States Supervisor referred the matter to the Chairman of the Panel of Members and a Review Board was convened (for details see Part II No. 2).

### **3. Mr. and Mrs. A v. States Island Development Committee**

A complaint that the Island Development Committee had decided not to grant an application for permission for a change of use of the hotel to provide retirement homes.

Not referred to a Review Board because the complainant had a right of appeal in a court of law in relation to the matter from which the complaint arose.

### **4. Mr. B v. States Cadastre Committee**

A complaint that the Cadastre Committee had refused to reassessment the rateable value of a property for the Year of Charge 2002 at the domestic rate rather than the higher tourist establishment rate.

Not referred to a Review Board because the complainant had a right of appeal in a court of law in relation to the matter from which the complaint arose.

### **5. Mrs. Bacon v. States Board of Administration**

A complaint that the Board of Administration had used concrete kerbing stones rather than granite setts at the junction of La Ruelle Lane and the re-aligned Route des Frances, St. Saviour.

The States Supervisor referred the matter to the Chairman of the Panel of Members. A Review Board was held in January 2003 (details of this case will be listed in the 2003 Report).

**PART II – REVIEW BOARD DECISIONS**

**NO. 1**

**Mr. S. COLLINS**

**against the**

**STATES BOARD OF ADMINISTRATION**

**Constitution, Venue and Representation**

The Review Board was constituted as follows:

Douzaine Representative R A R Evans (Chairman)  
Deputy O D Le Tissier  
Deputy B M Flouquet

The parties were heard in public at Les Cotils Christian Centre on 11<sup>th</sup> January 2002.

Mr. Collins was represented by Advocate F Haskins.

The Board of Administration was represented by Deputy R C Berry, O.B.E., President, Mr. R T Kirkpatrick, Chief Executive, Mr. B Richings, Chief Officer, Customs and Immigration Department, Mr. P J Taylor, Assistant Chief Officer, Head of Immigration, Crown Advocate R McMahon (Board of Administration's legal representative)

**Substance of the Complaint**

The substance of the complaint relates to the decision of the Board of Administration not to grant permission for Mr. Collins to employ an overseas national as a Restaurant Manageress at the Belle Vue Hotel, Alderney for a four-year period.

**The Case**

The Review Board was advised that Mr. Collins was unable to attend in person as he had been taken ill but Advocate Haskins said her client wished the matter to proceed but she asked the Review Board to bear in mind that she may be unable to answer any matters of fact which may arise.

Advocate Haskins outlined the background to her clients' application for a Review Board and, in particular, the two decisions of the Board of Administration which her client was advised of on 26<sup>th</sup> June and 18<sup>th</sup> September 2001.

Advocate Haskins said the Belle Vue Hotel was owned and run by the Collins family and was open all year. The owners had experienced difficulties in recruiting staff for the hotel and, in particular, for the post of restaurant manager. She outlined the steps Mr. Collins had taken to fill this post locally and some of the difficulties associated with attracting staff from outside Alderney.

She explained that Miss Brooks was a 26-year-old Australian who had entered the UK on 1<sup>st</sup> July 1999 as a working holidaymaker and had been granted a two-year visa. She said Miss Brooks was of impeccable character and had previously been a police officer in Australia. Miss Brooks had been employed as a chambermaid in March 2000 and had been very quick to pick up the hotel's working practices and had become a key employee. It was for these reasons that Mr. Collins had decided to train her as restaurant manager.

Advocate Haskins asked the Review Board to consider whether an absolute requirement for three years relevant previous experience was fair as it did not make any allowance for an individual's aptitude or ability in a post.

Advocate Haskins referred to and read a letter from the States of Alderney Policy and Finance Committee, dated 22<sup>nd</sup> November 2001, which supported Mr. Collins' appeal and made reference to particular difficulties which Alderney employers were experiencing in recruiting staff. Advocate Haskins acknowledged that this letter had not formed part of the submissions made to the Board of Administration in June or September 2001 but added that the Board should have been aware of such recruitment difficulties.

Advocate Haskins said the Board had, in its letter of 26<sup>th</sup> June 2001, stated that its reason for rejecting the application was that it was "... totally outside the Board's work permit policy." She said the subsequent reconsideration and the Board's letter of 18<sup>th</sup> September 2001 gave no indication that the Board had considered any further evidence or the employment situation in Alderney but had solely looked at the application within the context of its policy. She said the Board had discretionary powers under Section 132 of The Immigration (Guernsey) Rules 1999, namely,

**"Extension of stay for work permit employment**

132. An extension of stay for work permit employment may be granted for a period not exceeding the period of employment approved by the Board of Administration (up to a maximum of 12 months) provided the Lieutenant Governor is satisfied that each of the requirements of paragraph 131 is met. An extension of stay is to be subject to a condition restricting the applicant to employment approved by the Board of Administration."

Advocate Haskins said the Board had not had regard for the particular employment difficulties, which appertain to Alderney, and the Board's policy was too closely linked to the hotel and catering industry in Guernsey. She submitted that the Board must have regard to the law and cited the case of *Associated Provincial Picture House Ltd v. Wednesbury Corporation* [1948] (1K.B. 223 per Lord Greene M.R. at page 228-229 and 233-234) namely:

"... When discretion of this kind is granted the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles which the court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of discretion. If in the statute conferring the discretion, there is found expressly or by implication matters which the authority exercising the discretion ought to have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters."

Advocate Haskins acknowledged that it was lawful for the Board to have a policy with regard to the issue of work permits but that it should not adhere slavishly to that policy and cited the case of *R. v. Findley* [1985] (1A.C. 318 per Lord Scarman at page 335G-336F), namely:

335

- G "My Lords, I have no doubt that *Tilley's* case [1981] 1 W.L.R. 854 was correctly decided. And it may be, though I express no opinion on the point, that the statutory duty in that case admitted of no policy other than that every case must be considered individually. But the duty of the Secretary of State in this case is, as I have already shown, a very complex one. Indeed, the
- H complexities are such that an approach based on a carefully formulated policy could be said to be called for. There is, as I understand the law, nothing to prevent such an approach, where it is appropriate.

- 336 The legitimacy of adopting a policy in the exercise of an administrative discretion has been recognized by the courts. In a tribunal case *Bankes L.J.* had this to say, *Rex v. Port of London Authority, Ex parte Kynoch Ltd.* [1919] 1 K.B. 176, 184:
- A

- B "In the present case there is another matter to be borne in mind. There are on the one hand cases where a tribunal in the honest exercise of its discretion has adopted a policy, and, without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him, unless there is something exceptional in his case. I think counsel for the applicants would admit that, if the policy has been

- C adopted for reasons which the tribunal may legitimately entertain, no objection could be taken to such a course. On the other hand there are cases where a tribunal has passed a rule, or come to a determination, not to hear any application of a particular character by whomsoever made. There is a wide distinction to be drawn between these two classes."

In *British Oxygen Co. Ltd. v. Board of Trade* [1971] A.C. 610, Lord Reid saw "nothing wrong with that" and added, at p. 625:

- D "What the authority must not do is to refuse to listen at all. But a ministry or large authority may have had to deal already with a multitude of similar applications and then they will almost certainly have evolved a policy so precise that it could well be called a rule. There can be no objection to that, provided the authority is always willing to listen to anyone with something new to say – of course I do not mean to say that there need be an oral hearing."
- E The question, therefore, is simply: did the new policy constitute a refusal to consider the cases of prisoners within the specified classes? The answer is clearly "no." Consideration of a case is not excluded by a policy which provides that exceptional circumstances or compelling reasons must be shown because of the weight to be attached to the nature of the offence, the length of
- F the sentence and the factors of deterrence, retribution, public confidence, all of which it was the duty of the Secretary of State to consider."

Advocate Haskins said the Board of Administration had failed to apply these principles and had taken account of wider policy matters and had adhered slavishly to irrelevancies. She maintained the Board had not taken into account the differences between the hotel and catering employment markets in Guernsey and Alderney and, in particular, recruitment difficulties. She said the Board had ignored the efforts Mr. Collins had made to recruit a restaurant manager from within the United Kingdom. She said the Board's letter of 6<sup>th</sup> September 2001 acknowledged the need to consider,

"... such things as industry labour needs and skills requirements whilst balancing these against the pressure, from around the world, to migrate to the United Kingdom and Islands with the possible abuse of a work permit system to gain entry."

Advocate Haskins added that the letter of 22<sup>nd</sup> November 2001 from the States of Alderney Policy and Finance Committee stated that the continued success of the Belle Vue Hotel was of great importance to the Island and therefore as Miss Brooks' rôle as restaurant manager was key to the continued success of the hotel the two were inextricably linked because if the viability of the hotel suffered because Miss Brooks was unable to continue her employment then the economy of Alderney would also be adversely affected.

Advocate Haskins said the Board's references to pressures to migrate to the United Kingdom or abuses of the work permit system were irrelevant. First there was no evidence to support a view that persons were seeking to migrate to Alderney, indeed she suggested that the contrary was more accurate. Second, the Board had shown no evidence that Miss Brooks was abusing the work permit system. Third, she said the Board's discretion to impose conditions to a work permit would have minimized any such perceived risks.

Advocate Haskins maintained that the Board had, in its reconsideration of Mr. Collins' application, done nothing more than consider its policy and as Miss Brooks did not fit the policy guidelines it had refused the application. She said the Board had failed to take into account the unique conditions which apply in Alderney and so had fettered its discretion. Therefore the decisions of the Board were seriously flawed.

Advocate Haskins referred to a memorandum of 17<sup>th</sup> September 2001 from the Chief Officer, Customs and Immigration Department to the Chief Executive, Board of Administration which she said indicated that the Board was operating its policy unlawfully. She said the statement, that,

“... The hotel may be open all year round but I do not think it was unreasonable, in its original decision to allow Miss Brooks to remain until the end of summer, to assume that the hotel would be busier in the summer and, therefore, have greater demands for staff during this period.”

was unsupported by any evidence.

Advocate Haskins said the Board had the power to consider work permit applications from Alderney on different criteria from those applied in Guernsey, that is by imposing conditions on a work permit restricting a person's employment to Alderney. She said that the Board's memorandum of 17<sup>th</sup> September 2001, namely,

“... The very nature of immigration legislation and policy discriminates in many ways on the grounds of nationality and it cannot be anything other than such. The Bailiwick of Guernsey, like any other country of the world, has the right to determine who will come here and what they will be permitted to do whilst here. If the Board could not discriminate, then it would find itself in the position of having to admit any nationality within its policy that wanted to work here or, alternatively, admit no one. Neither option would be in the overall interest of the Bailiwick. It is a fact that certain nationalities pose a greater immigration risk than others. It is for this reason that the Board resolved, for example, not to allow the employment of Chinese nationals within the horticulture industry. A further example of this is in the imposition by Her Majesty's Government of a visa requirement on certain nationalities and not others.”,



may be a breach of Article 14 of the European Convention on Human Rights and asked what “immigration risk” was posed by an Australian and, in particular, this Australian.

Advocate Haskins accepted the legal framework by which it made immigration decisions, namely the Immigration Act 1971 (as extended) but said neither the guidelines nor the Board’s Hotel and Catering Industry Work Permit Policy were set in stone, rather they were for “guidance” and “contained statements of general policy” and should not be regarded any more strongly. She referred the Review Board to the case of *Reg. V. Immigration A.T., Ex p. Alexander*, namely,

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H “They must be construed sensibly according to the natural means of the language which is employed. The rules give guidance to the various officers concerned and contain statements of general policy regarding the operation of the relevant immigration legislation.”.

In addition the basis on which discretion must be applied is set out as follows,

11-004 “The underlying rationale of the rule against fettering discretion is to ensure that two perfectly legitimate administrative values, those of legal certainty and consistency, may be counteracted by another equally legitimate administrative value, namely that of responsiveness.”.

Advocate Haskins maintained that in this case this had not been done.

Advocate Haskins said the Board held that there was a need for consistency in how it administered immigration policy but suggested that this was contrary to natural justice to try and apply immigration policy universally across the United Kingdom and the Crown Dependencies. She said the differences between the Outer Hebrides and Central London with regard to employment needs illustrated the absurdity of the position taken by the Board. Advocate Haskins said it was an accepted principle that planning matters were administered differently between urban and rural areas and she believed that a similar approach should be adopted in the administration of immigration matters having regard for the employment needs of the local area. She said the Guernsey and Alderney economies and employment markets were very different and there was no evidence that, in rejecting Mr. Collins’ appeal, the Board had had regard to such differences.

In closing, Advocate Haskins said the Board claimed to have taken account of all matters when reconsidering Mr. Collins’ application in September 2001, however it did not indicate to Mr. Collins where his supporting evidence was insufficient or flawed, although it had stated that the evidence was insufficient to rebut the Board’s previous decision. She said the Board had not provided the evidence to support its decision. Advocate Haskins said the Board had, therefore, in her opinion breached Article 6 of the European Convention on Human Rights in that Mr. Collins had not had a fair hearing as he should have been informed of the insufficiencies in his

submission and given an opportunity to resubmit his case. Therefore the Board's decision was flawed.

Douzaine Representative Evans asked Advocate Haskins under which part or parts of Section 3 of the Administrative Decisions (Review) (Guernsey) Laws, 1986 to 1993 she was making her application. Advocate Haskins said under Sections (3) (b), (c), (d) and (e).

Crown Advocate McMahon opened on behalf of the Board of Administration and said whilst the review may appear to centre on employment matters this was not the case. The central issue, and that on which the Board had had to consider Mr. Collins' application for a work permit for Miss Brooks, was one of immigration and the application of the Immigration Act 1971 (as extended) to the Bailiwick of Guernsey. The application was considered against the legal backdrop for the employment of overseas nationals.

The Act applies to the whole of the United Kingdom and was extended to all the Crown Dependencies to provide harmonization on immigration matters for the whole of the United Kingdom so decisions made in Guernsey do have an impact on the Outer Hebrides and vice versa. Therefore when the Act (as extended) is applied to the Bailiwick the Board is constrained by the requirements of the Act itself and therefore the decisions of the Board are in line with those made in the United Kingdom and the other Crown Dependencies.

Crown Advocate McMahon said a person granted a work permit by the Board permitting them to work in Alderney would have an automatic right to travel throughout the Common Travel Area and the Board's decision not to grant Mr. Collins' application for a work permit for Miss Brooks must be considered in this context.

He said Miss Brooks had entered the United Kingdom in July 1999 as a working holidaymaker and there was a subtle but important difference between this group and a working person. He quoted Section 95 of The Immigration (Guernsey) Rules 1999, namely,

## **“WORKING HOLIDAYMAKERS**

### **Requirements for leave to enter as a working holidaymaker**

95. The requirements to be met by a person seeking leave to enter the Bailiwick of Guernsey as a working holidaymaker are that he:

- (i) is a Commonwealth citizen; and
- (ii) is aged 17-27 inclusive or was so aged when first given leave to enter in this capacity; and
- (iii) is unmarried or is married to a person who meets the requirements of this paragraph and the parties to the marriage intend to take a working holiday together; and

- (iv) has the means to pay for his return or onward journey; and
- (v) is able and intends to maintain and accommodate himself without recourse to public funds; and
- (vi) is intending to take employment incidental to a holiday but not to engage in business, provide services as a professional sportsman or entertainer or pursue a career in the Bailiwick of Guernsey; and
- (vii) does not have dependent children any of whom are 5 years of age or over or who will reach 5 years of age before the applicant completes his working holiday; or commitments which would require him to earn a regular income; and
- (viii) intends to leave the Bailiwick of Guernsey at the end of his working holiday; and
- (ix) if he has previously spent time in the Bailiwick of Guernsey as a working holidaymaker, is not seeking leave to enter to a date beyond 2 years from the date he was first given leave to enter in this capacity; and
- (x) holds a valid entry clearance for entry in this capacity.”.

Crown Advocate McMahon explained that this category of visa was a specific concession for Commonwealth citizen who were single, aged between 17 and 27 years of age who were seeking to spend an extended ‘holiday’ in the United Kingdom and the visa allowed them to work and so support their travel plans. He said there was an anticipation that such a person would work for approximately fifty percent of the time and travel the rest of the time. He emphasized that it was not to allow such a visa holder to pursue a career in the United Kingdom.

He said this was the status under which Miss Brooks had entered the United Kingdom and had started working at the Belle Vue Hotel in April 2000 but it was unclear at what stage she moved from being a waitress to the post. The expectation of the Immigration and Nationality Department was that Miss Brooks would leave in July 2001 when her working holidaymaker visa expired. He said that it was only through her employment at the Belle Vue that Miss Brooks had gained the relevant experience on which Mr. Collins based his application for an extended work permit.

Crown Advocate McMahon referred to Section 128, namely,

## **WORK PERMIT EMPLOYMENT**

### **Requirement for leave to enter the Bailiwick of Guernsey for work permit employment**

128. The requirements to be met by a person coming to the Bailiwick of Guernsey to seek or take employment (unless he is otherwise eligible for admission for employment under these Rules or is eligible for admission as a seaman under contract to join a ship due to leave British waters) are that he:

- (i) holds a valid Board of Administration work permit; and
- (ii) is not of an age which puts him outside the limits for employment; and is capable of undertaking the employment specified in his work permit; and
- (iii) does not intend to take employment except as specified in his work permit; and
- (iv) is able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- (v) intends to leave the Bailiwick of Guernsey at the end of his approved employment unless he meets the requirements of paragraph 134.

He said this Section provided guidance on how an Immigration Officer at the point of entry or considering an application to stay applies the Law and the Section was applied differently for various categories of employment. He said the Board's policy in respect of hotel and catering staff was broadly in line with that applied elsewhere in the United Kingdom and it, as such, was regularly revised. For example following the Home Office's decision to reduce the period of previous experience in a like post from 5 years to 3 years the Board had resolved to amend its own guidelines. This decision reflected the need for the Board's guidelines and policy to reflect that of the United Kingdom as once somebody has entered the common travel area they are free to move.

Crown Advocate McMahon said that any government operates within policy and guidelines otherwise every decision would start with a blank sheet of paper. The policy was the start point and not the end point as suggested by Advocate Haskins. Rather the law was the end point, as judgment and discretion had been taken away.

Referring to Advocate Haskins' view that the Board had applied the guidelines and policy slavishly he suggested that if this had been the case the Board would not have granted an exceptional extension to Miss Brooks' visa for three months to allow her to stay at the Belle Vue Hotel for the peak of the season. He suggested this three month extension did afford Mr. Collins an opportunity to make alternative arrangements. He asked what endeavours Mr. Collins had made to replace Miss Brooks during this period.

Turning to Mr. Collins' application for an extension to Miss Brooks' visa he said the first request was received on 7<sup>th</sup> June 2001, just over three weeks before her visa was due to expire, stating that Miss Brooks had,

“... commenced work with us [the Belle Vue Hotel] in March of last year 2000, and has now decided to stay on for another year...”.

He said Mr. Collins' letter of 11<sup>th</sup> June 2001 provided the factual basis for consideration as a special case. The Board's policy requires 3 years relevant experience and he suggested that the 15 months experience Miss Brooks had gained was well short of the required minimum and that

the further an applicant was from the minimum the weaker was the case for special consideration. In respect of Mr. Collins' efforts to recruit a restaurant manager he wondered how widely the 'net' had been cast and in which, if any, of the specialist hotel and catering papers he had placed advertisements. Crown Advocate McMahon said such omission of detail illustrated the slimness of the factual background submitted by Mr. Collins. In rejecting Mr. Collins' application the Board was mindful that it was approaching a busy period for hotel establishments and tried to assist Mr. Collins by granting a temporary three month extension.

Referring to the Board's letter of 6<sup>th</sup> September 2001 Crown Advocate McMahon said it provided greater detail regarding the decision and went further than a slavish adherence to policy as suggested by Advocate Haskins. He said the members of the Board of Administration were informed about Alderney and its economy and employment situation through the local media, it was not an alien jurisdiction. The Board had direct evidence from its own experience of working in the Island and had used this local knowledge, gained over many years, to inform its decisions. Therefore the strength of the references to the Board's policy reflected how far Miss Brooks' relevant experience was from the Board's policy not an adherence to the policy as had been suggested.

Crown Advocate McMahon said the Board's reconsideration of the application does not demonstrate a fettering of the decision, the three month temporary permit demonstrated that. The policy itself clearly shows a presumption to grant a work permit if the criteria are met, Miss Brooks was well outside those criteria and therefore neither the law nor the policy had been applied unjustly or improperly.

He said that immigration policy by its very nature is discriminatory, for example the common travel area allows EU passport holders free movement across the EU, whilst to travel to some countries, leave alone to work, additional visas are required. Therefore, if there has been any discrimination in this case it is because of the Immigration Act, 1971 (as extended) and not the actions of the Board. He added that Article 14 of the European Convention on Human Rights was not a stand-alone article.

Referring to the decision of the Board Crown Advocate McMahon asked the Review Board whether the Board members could be regarded as a reasonable body of persons, he submitted they were; had they considered all the facts placed before them, he submitted they had; had they exercised fair judgment against the evidence, he submitted they had; and their decisions were unanimous. He added that natural justice did not require an oral hearing so long as the evidence can properly be given by written submissions.

In summary, Crown Advocate McMahon said it should not be 'astonishing' that the Board's policy varies for different nationalities or types of employment. The Board's policy closely reflected that of the United Kingdom and the minimum periods of relevant experience were the starting points not the end points. He said any EU national could seek employment in Alderney without the requirement for a work permit under the provisions of the Immigration Act 1971 (as

extended) and he was not aware of any evidence to suggest that Alderney was ‘unattractive’ to all EU nationals.

Deputy Berry added that the EU countries offered a potential employment pool of some 360 million people.

Deputy Le Tissier asked the President of the Board of Administration how the decisions in respect of Miss Brooks were reached.

Deputy Berry said if Miss Brooks’ application had fallen within the Board’s policy and/or guideline it would have been approved at senior officer level without formal reference to the Board. However, as it did not the matter was referred to the Board and a full report on the matter was circulated to the Board members prior to their consideration of the case. The senior officer for immigration matters had attended the Board meeting to answer any questions which Board members may have had. Deputy Berry added that such procedures were adopted when considering all such applications.

Advocate Haskins said Crown Advocates McMahon’s submissions had not rebutted her arguments that the Board’s decision was flawed and the Board had adhered slavishly to the policy and, in particular, the requirement for 3 years relevant experience. She submitted that in this case the ability of Miss Brooks to learn the job had not been taken into account as Mr. Collins had clearly shown that Miss Brooks was very capable as a restaurant manager and had very quickly become a key employee. Advocate Haskins submitted that previous experience should only be a guide, but in this case appeared to have been a principal deciding factor.

With reference to Crown Advocate McMahon’s concerns that if Guernsey applied an immigration policy different from that applied in the United Kingdom it could become a backdoor for illegal immigration Advocate Haskins maintained that by attaching conditions to the work permit this could easily be prevented.

Advocate Haskins reiterated that at no stage had her client been advised that the evidence submitted in support of the application was insufficient and asked what more could he say beyond that Miss Brooks was a key employee.

After careful consideration of all the evidence placed before the Review Board it unanimously decided that none of the decisions or actions of the Board of Administration which were the subject of the complaint fell within any of the provisions of Section 7(3) of The Administrative Decisions (Review) (Guernsey) Laws, 1986 to 1993.

The complaint was, therefore, dismissed.

**NO. 2**

**Mrs. X**

**against the**

**STATES EDUCATION COUNCIL**

**Constitution, Venue and Representation**

The Review Board was constituted as follows:

Deputy R C Berry O.B.E. (Chairman)  
Deputy M M Lowe  
Douzenier R L Heaume

The parties were heard in public at Les Cotils Christian Centre on 12<sup>th</sup> April 2002.

Mrs. X was present and assisted by Douzenier P Ferguson.

The Education Council was represented by Deputy M A Ozanne, President, States Education Council and Mr. D Neale, Director of Education

**Substance of the Complaint**

The substance of the complaint relates to decision of the Council not to provide Mrs. X with any financial assistance for her son in respect his fees at Elizabeth College whilst he is under compulsory school leaving age.

**Chairman's Opening Remarks**

The Chairman outlined the procedure for the hearing and directed the media not to report any facts which could identify the complaint's son as he was a minor. The Director of Education asked the Chairman to place a further restriction on the reporting of actual placings in the 11+ exams. This request was agreed and the media directed accordingly.

**The Case**

Douzenier Ferguson presented Mrs. X's case and said her sole purpose in making the complaint was to use her best endeavours to secure a stable school career for her son. He said Mrs. X was now separated from her husband but he was aware of the proceedings and had indicated his support.



Douzenier Ferguson said Mrs. X's case was fully stated in the papers which had been circulated to the Review Board and he did not believe it was necessary to restate the case in full but would be happy to answer any questions.

The President of the States Education Council explained the Council's rules and procedures for providing education in the Island and said its underlying was objective to strive to ensure that each child was afforded the most appropriate educational support within its mandate. He said the Council took the view that the child's needs must come first.

The Director of Education provided the following detailed explanation of the Council's actions and responsibilities in this case. He said that by resolution of the States, the Council pays an annual Block Grant to Elizabeth College. There is no other financial assistance provided to fee-payers at Elizabeth College until after they reach the end of compulsory schooling when a small means-tested grant is available, as at all the other States schools.

The College's income consists of fee income from parents of fee-paying pupils and the Block Grant. The Block Grant pays the Special Place holders' fees and subsidizes the fees of fee-payers by approximately £1,700 per pupil per annum.

A free place as a Special Place holder is decided on the Eleven Plus series of tests. The Guernsey Eleven Plus process is exhaustive, rigorous, impartial, standardized and compatible with best English practice.

25% of eligible pupils are allocated Special Places at either the Grammar School or one of the Colleges. By a 1998 States resolution, 23 places per year at Elizabeth College are allocated to pupils by the Council as part of this 25%. All 23 Special Place holders in Mrs. X's son's year are still at the College.

The highest scoring 23 boys whose parents have asked for an Elizabeth College place will be selected to attend the College. He said that Mrs. X's son was placed significantly below the lowest pupil in the Eleven Plus rank order who was offered a place at the Elizabeth College and therefore did not qualify as a Special Place holder.

Primary Schools grade their pupils as Grammar, Borderline or Secondary before the Eleven Plus tests to allow parents to have some idea of how likely it is that their child might reach Special Place standard. This grading is based on the teachers' assessment of their pupils' work over the years.

Mrs. X's son was graded as being most suited to a Secondary School place. This was borne out by his SAT results which were average. There was full knowledge of his dyslexia by the school and he had received two years support from the Dyslexia Day Centre.

Pupils who fall into the borderline zone, i.e. just above and just below the 25% percentile, have their work looked at by a Borderline Panel consisting of a senior education officer, the head teacher of the Grammar School and a head teacher of one of the four secondary schools. The boy was placed significantly below the borderline zone.

Schools can ask for pupils outside the borderline zone to be considered by the panel if they consider that the test results are seriously lower than the pupil's term work would suggest. This was not the case with Mrs. X's son.

The Director of Education said that neither Mr. nor Mrs. X has appealed against their son's Eleven Plus result but that Mrs. X had appealed against her son's placement. Mrs. X then advised the Education Council that she was sending her child to school in England, but he registered at his allocated secondary school. During the first term Mrs. X attempted to get her son transferred to another secondary school, but she failed to follow up on the Council's willingness to discuss this option.

The Director of Education said he understood that the Elizabeth College refused to offer a place to Mrs. X's son at the age of 11.

In regards to Mrs. X's son's dyslexia he said that neither the Grammar School nor Elizabeth College provide structured systematic support. The Grammar School is focused on meeting the needs of the most able pupils who can work without needing learning support but the Secondary Schools have trained Special Educational Needs teachers to work with children with learning disabilities.

The Director of Education said that Mrs. X's son's headmaster was fully aware of Mrs. X's concerns and had indicated that her son had settled into the school and appeared appropriately placed according to his abilities, effort, and attainment. Further the headmaster was prepared to seek extra help for her son and had made arrangements for the educational psychologist to assess him in preparation for his SAT's tests.

The Director of Education said that the sequence of events related by Mrs. X missed two key aspects:

- a] The Council was prepared to consider the requested move to the Grammar School using the procedure established when such a request is made.
- b] This process was underway and notified to Mrs. X when she unilaterally decided to seek a place at Elizabeth College.

The Director of Educations said the Council is under no obligation to meet a parent's wishes on the placement of his/her child if to do so is not **“compatible with the provision of efficient instruction and training and the avoidance of unreasonable expenditure by the States”**.

He said, in addition to these two issues, three further points needed to be taken into account, namely,

- a] Funding a place at Elizabeth College would be incompatible with the provision of efficient instruction and training insofar as Mrs. X's son is not apparently receiving help for his dyslexia there.
- b] It is incompatible with the avoidance of unreasonable expenditure by the States in so far as he was considered correctly placed by the Eleven Plus procedure and by his teachers at his allocated secondary school and possible placement at the Grammar School would still be cheaper than paying the fees for Elizabeth College.
- c] The Council has to assure itself that any placement is in accordance with these principles. A parent's unilateral decision to select a fee-paying school cannot impose a retrospective duty on the Council to pay the fees. (This has already been tested in previous Review Board hearings).

The Council is, therefore, under no obligation to support financially a fee-paying pupil whose placement is solely through the decision of the parent without prior consultation with the Education Council.

Mrs. X's son was fairly assessed against other pupils on a standardized basis. To pay for his placement at Elizabeth College would suggest to all parents fee-paying at the Colleges that further assessments should be made of their children in order for them to receive help with their fees. Furthermore, all pupils based above Mrs. X's son in the Eleven Plus rank order could legitimately ask for a reassessment and subsequently support for a fee-paying place.

#### **Questions from Review Board members**

The members of the Review Board asked both parties a number of questions to clarify the sequence of events, procedures adopted by the Education Council and the following of communications between Mrs. X and the Council's staff. A number of the questions related to Mrs. X's actions in early August 2001 following receipt of the Education Council's offer to arrange a meeting to discuss her son's education needs between Mr. and Mrs. X, the headmasters from his allocated Secondary School and the Grammar School and representatives of the Council itself.

#### **Questions from Mrs. X to the Education Council and vice-a-versa**

The Director of Education raised a number of points with Mrs. X regarding her decision making process relating to her son's change of school and the relationship between herself, Mr. X and the headmaster and staff at her son's allocated secondary school.

Mrs. X asked a number of questions relating to the Council's approaches to informing parents about the 11+ process and the selection of pupils for special places.

### **Closing Remarks – States Education Council**

Deputy Ozanne said the Council and its staff had sought to act in Mrs. X's son's best interests and that to him it appeared that her son may not have been fully consulted over the decision to move him to the Elizabeth College. He said it appeared her son was happy at his allocated secondary school and had settled in well.

He concluded that the offers, which the Council had made to Mr. and Mrs. X, were the best that were available within the States sector and reiterated that the Council had no provision to offer any pupil a place at the Elizabeth College outside those places available within the 11+ system. He said Mrs. X's decision to move her son to the Elizabeth College had been made whilst arrangements were being made for a meeting for all parties to discuss her son's education needs.

The Director of Education emphasized that had Mrs. X asked at the outset about the likelihood of assistance with fees for her son to attend the Elizabeth College the Council staff would have left her in no doubt that there was no provision for any such financial support.

### **Closing Remarks – Douzenier P Ferguson on behalf of Mrs. X**

Douzenier Ferguson said for any parent there would always be a sense of urgency in matters involving children and their education and this is reflected in Mrs. X's actions in August 2001 to place her son at in a school which she believed would more appropriately meet his needs and interests.

He expressed concern that Mrs. X's recollection of the sequence of events and that presented by the Education Council showed marked differences. He also commented on the apparent lack of staff cover for key staff during the August period.

### **The Review Board's Findings**

After careful consideration of all the evidence placed before the Review Board it unanimously decided that none of the decisions or actions of the Education Council which were the subject of the complaint fell within any of the provisions of Section 7(3) of The Administrative Decisions (Review) (Guernsey) Laws, 1986 to 1993.

The complaint was, therefore, dismissed.

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated the 30<sup>th</sup> May, 2003, of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Law, 1986, they are of opinion:-

To accept that Report.

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

The Royal Court House,  
Guernsey.  
The 4<sup>th</sup> July, 2003.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 31ST DAY OF JULY, 2003

The States resolved as follows concerning  
Billet d'Etat No. XVI dated 4th July, 2003

Meeting adjourned from 30th July, 2003

**PROJET DE LOI**

entitled

**THE DOG LICENCES (GUERNSEY) (AMENDMENT) LAW, 2003**

- I. To approve the Projet de Loi entitled "The Dog Licences (Guernsey) (Amendment) Law, 2003", and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE SOCIAL INSURANCE (GUERNSEY) (AMENDMENT) LAW, 2003**

- II. To approve the Projet de Loi entitled "The Social Insurance (Guernsey) (Amendment) Law, 2003" and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE REGULATION OF INVESTIGATORY POWERS  
(BAILIWICK OF GUERNSEY) LAW, 2003**

- III. To grant leave to the President of the States Advisory and Finance Committee to withdraw this Article.

## **PROJET DE LOI**

entitled

### **THE INCOME TAX (GUERNSEY) (AMENDMENT) LAW, 2003**

- IV. (1) To approve the Projet de Loi entitled "The Income Tax (Guernsey) (Amendment) Law, 2003", and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto;
- (2) considering it expedient in the public interest so to do, to declare pursuant to section 1 of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992, that the said Projet de Loi shall take effect on and after the 1st January, 2004 as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

## **PROJET DE LOI**

entitled

### **THE DWELLINGS PROFITS TAX (GUERNSEY) (AMENDMENT) LAW, 2003**

- V. To approve the Projet de Loi entitled "The Dwellings Profits Tax (Guernsey) (Amendment) Law, 2003", and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

### **THE EUROPEAN COMMUNITIES (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2003**

- VI. To approve the draft Ordinance entitled "The European Communities (Bailiwick of Guernsey) (Amendment) Ordinance, 2003" and to direct that the same shall have effect as an Ordinance of the States.

## **STATES ADVISORY AND FINANCE COMMITTEE**

### **REVIEW OF THE PAROLE REVIEW COMMITTEE (GUERNSEY) LAW, 1989 AND THE PAROLE REVIEW COMMITTEE ORDINANCE, 1991 AS AMENDED**

- VII. After consideration of the Report dated the 9th June, 2003, of the States Advisory and Finance Committee:-
1. That the Parole Review Committee Ordinance, 1991, as amended, shall be further amended as follows:-
    - (a) to allow a copy of the parole dossier to be made available to the prisoner, prior to the prisoner making his own submissions to the Parole Review Committee;
    - (b) to permit the Parole Review Committee to give reasons for its decisions in all cases.

- (c) to allow for an automatic review of an application for parole after 12 months or 6 months prior to the earliest release date, whichever is the sooner, and to permit early or special reviews in exceptional circumstances;
  - (d) to foreshorten the period for ratification or otherwise of recall orders made by Her Majesty's Procureur from seven days to 96 hours;
  - (e) to allow a prisoner when applying for parole to receive legal advice and assistance in preparing his submission to the Parole Review Committee;
  - (f) to allow a prisoner who has had his parole licence revoked and is recalled to prison to receive legal advice and assistance in preparing and presenting his appeal to the Parole Review Committee;
  - (g) to introduce a system for advertising for persons to serve on the Parole Review Committee;
  - (h) to set a retirement age of seventy years for the Chairman and members of the Parole Review Committee, unless otherwise extended, and in any case they shall retire on reaching their seventy fifth birthday;
  - (i) to set a maximum term of office for members of 12 years, except where a person is appointed as Chairman from amongst the ordinary members, in which case his appointment shall be limited to 16 years.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **STATES ADVISORY AND FINANCE COMMITTEE**

### **PROGRESS REPORT IN THE DEVELOPMENT AND IMPLEMENTATION OF A STATES EGOVERNMENT STRATEGY**

- VIII. After consideration of the Report dated 19th June, 2003, of the States Advisory and Finance Committee:-

To agree the proposals set out in the eGovernment Steering Group Report,

- (i) subject to the modification that the assessment mechanism proposed at paragraph 6.10.1. of that Report shall aim to ensure that proposals presented to the States are as eGovernment friendly as reasonably practicable, always bearing in mind that the proposals' fitness for their purpose must take precedence over such considerations; and
- (ii) subject to the clarification that the option will be maintained for citizens to communicate and carry out transactions with the States by non-electronic means and without having to quote their "unique identifiers" proposed in paragraph 6.10.4 of that Report.



IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 1ST DAY OF AUGUST, 2003

The States resolved as follows concerning  
Billet d'Etat No. XVI dated 4th July, 2003

Meeting adjourned from 31st July, 2003

**STATES BOARD OF INDUSTRY**

**SUNDAY TRADING**

IX. After consideration of the Report dated the 16th June, 2003, of the States Board of Industry:-

1. TO NEGATIVE THE PROPOSITION to deregulate Sunday trading by repealing the current Sunday trading legislation.
2. that the Sunday Trading Ordinance 2002 should be amended in the manner described in Part 1 (i) of the Report;
3. TO NEGATIVE THE PROPOSITION that the Sunday Trading Ordinance 2002 should be amended in the manner described in Part 1 (ii) of the Report;
4. that the Sunday Trading Ordinance 2002 should be amended in the manner described in Part 1 (iii) of the Report;
5. that the Sunday Trading Ordinance 2002 should be amended in the manner described in Part 1 (iv) of the Report;
6. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

**STATES TRAFFIC COMMITTEE**

**INTEGRATED ROAD TRANSPORT STRATEGY – PAY PARKING**

X. After consideration of the Report dated the 13th June, 2003, of the States Traffic Committee:-

TO NEGATIVE THE PROPOSITION that the maximum charge for long-stay parking shall be 40p per hour.

## **STATES WATER BOARD**

### **REVISION TO WATER CHARGES**

- XI. After consideration of the Report dated the 13th June, 2003, of the States Water Board:-
1. To approve with effect from the 1st January, 2004, annual increases for each of the three years 2004, 2005 and 2006 in line with the annual increase in RPI as at the previous September plus 10% of the 2003 charge.
  2. To direct the States Water Board to report back to the States in 2006 on the proposed charges for 2007 and beyond.
  3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

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

#### **REPORT OF THE REVIEW BOARD FOR 2002**

- XII. After consideration of the Report dated 30th May, 2003, of the Review Board constituted under the Administrative Decisions (Review) (Guernsey) Law, 1986:-
- To accept that Report.

D. R. DOREY  
HER MAJESTY'S DEPUTY GREFFIER