



BILLET D'ÉTAT

WEDNESDAY, 26th APRIL, 2006

VIII
2006

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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 26th APRIL, 2006,** at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
7th April 2006

PROJET DE LOI

entitled

THE LIMITED PARTNERSHIPS (GUERNSEY) (AMENDMENT) LAW, 2006

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled "The Limited Partnerships (Guernsey) (Amendment) Law, 2006" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for her Royal Sanction thereto.

**THE COMPANIES (PURCHASE OF OWN SHARES)
(TREASURY SHARES) ORDINANCE, 2006**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled "The Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

THE COMPANIES (FEES AND PENALTIES) ORDINANCE, 2006

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled "The Companies (Fees and Penalties) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

**THE REAL PROPERTY (HOUSING SCHEMES AND MISCELLANEOUS
PROVISIONS) (GUERNSEY) ORDINANCE, 2006**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled "The Real Property (Housing Schemes and Miscellaneous Provisions) (Guernsey) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

THE HEALTH AND SAFETY (GAS) (GUERNSEY) ORDINANCE, 2006

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Health and Safety (Gas) (Guernsey) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

THE BAR (AMENDMENT) ORDINANCE, 2006

The States are asked to decide:-

VI.- Whether they are of the opinion to approve the draft Ordinance entitled “The Bar (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

POLICY COUNCIL

THE REHABILITATION OF OFFENDERS (BAILIWICK OF GUERNSEY) LAW, 2002 (COMMENCEMENT, EXCLUSIONS AND EXCEPTIONS) ORDINANCE, 2006

Executive Summary

This report proposes the enactment of The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006 and provides a clause-by-clause commentary on the effect of the draft Ordinance.

Report

On 27 October 2004 the States commenced consideration of a draft Rehabilitation of Offenders Ordinance. However that Ordinance was withdrawn in the light of certain concerns expressed in the course of the debate. In withdrawing the matter the Policy Council undertook to resubmit the legislation with a full report following consultation with States departments.

That consultation has resulted in several changes being made to the Ordinance previously laid before the States. The Law Officers have helpfully provided a commentary, set out below, on the provisions of the revised Ordinance.

Introduction

The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 introduces new rules to provide for the rehabilitation of persons convicted of criminal offences, except offences for which a term of imprisonment exceeding 30 months (or a life sentence) has been imposed. The general rule is that after a period of time has elapsed since a person's last conviction, and provided he or she has not re-offended, the conviction will be treated as 'spent'. A spent conviction need not be disclosed when the offender or any other person is asked about past convictions, and the fact that a person has spent convictions is not a proper ground for turning that person down for employment, or for dismissing him from a job. Similarly, evidence about spent convictions is not generally admissible in civil judicial proceedings.

However, this wide protection is not appropriate in all circumstances. There are situations where it would be undesirable not to know the full background of an individual, or where a misleading picture may lead to harm or injustice. The Law itself creates several exceptions to the general rules: for example, evidence of spent convictions can be produced in criminal proceedings, or in adoption proceedings. It also empowers the States to provide by Ordinance for further exceptions, or to exclude or modify the application of certain of the Law's provisions.

This draft Ordinance, therefore, is intended to supplement the Law by setting out further circumstances where it is considered appropriate to restrict the general rules for rehabilitation. It also sets a date for the commencement of the Law.

Clause 1 – Commencement of Law

Specifies the date on which the Law will come into force. Note that by virtue of section 1(1)(b) of the Law, if a conviction would otherwise have become spent before commencement it is to be treated as spent with effect from commencement.

Clause 2 – General application of Ordinance

Where the rehabilitation effect of the Law is disapplied by the Ordinance, clause 2 makes it clear that this applies to all offences unless specifically stated otherwise. It also limits the application of the Ordinance to questions asked by someone in the course of his office or employment; and provides that the subject of the enquiry, and if different the person questioned, has generally to be told that spent convictions are to be disclosed.

Clause 3 – Questions relating to professions, employments, offices, occupations, etc.

This clause requires the disclosure of spent convictions for the purpose of assessing the suitability of an individual for a range of professions, employments, offices and occupations, which are set out in Schedule 1; to hold any of the licences, certificates etc listed in Schedule 2; or to be given access to certain sensitive data or unsupervised access to certain premises. There is also provision for requiring the disclosure of spent convictions for the purposes of ensuring the security of the Bailiwick.

Clause 4 – Questions relating to contact with children and vulnerable persons

Clause 4 applies where the work for which a person is being assessed relates to children or vulnerable persons. The kind of work covered is described in Schedule 3. It requires the disclosure of spent convictions when a person's suitability to foster or adopt children is being assessed, and includes anyone who lives in the same household as the prospective parent. Spent convictions must be disclosed under this clause where a person is being assessed for suitability to work with children, or in a post which would allow him or her proximity to children. The requirement also applies to anyone living or regularly working on premises where work with children takes place. Spent convictions must also be disclosed where the work is with vulnerable people, such as those who are physically or mentally impaired.

Clause 5 – Questions relating to the provision of financial and related services

This clause, together with Schedule 4, relates to work in the financial services sector and related occupations. It requires the disclosure of relevant spent convictions where a question is asked by or on behalf of the Guernsey Financial Services Commission in order to assess a person's suitability to hold a financial or related services permission, to engage in certain key roles in relation to the holder of such a permission, or to be granted consent under the control of borrowing legislation. The clause also requires the disclosure of relevant spent convictions where a question is being asked by or on behalf of a Guernsey Financial Services Commission regulated business in order to assess the

suitability of a person for a wider range of roles connected with that business. A relevant spent conviction is defined in clause 9, and includes conviction for fraud, perjury and similar offences of a dishonest nature.

Clause 6 – Excepted exclusions, dismissals etc

Clause 6 makes it possible for a spent conviction, or the non disclosure of it, to be a proper ground for dismissing or excluding a person from the occupations, employments and professions which are set out in Schedules 1 and 3. It permits dismissal or exclusion in relation to relevant spent convictions in the financial and related services roles specified in Schedule 4. It also permits any action which would otherwise be proscribed by section 7(3) of the Law, if taken for the purpose of safeguarding the security of the Bailiwick, or by the Guernsey Financial Services Commission in the discharge of its functions and with reference to a relevant spent conviction.

Clause 7 – Excepted proceedings

This clause allows for the disclosure of spent convictions in a range of proceedings which are specified in Schedule 5.

Clause 8 – Disregard of Service disciplinary convictions for certain purposes

This clause allows for the convictions specified in Schedule 6 to be disregarded for the purposes of re-starting the rehabilitation period after a fresh offence. The offences described in the Schedule are all service disciplinary offences.

Clause 9 – Interpretation

This clause assigns specific meanings to certain words and phrases in the draft Ordinance.

Clause 10 – Citation

This clause specifies the title of the Ordinance.

Schedule 1 – Professions, offices, employments and occupations

Part I lists professions, including lawyers, doctors, accountants, teachers and others, in respect of which disclosure of spent convictions may be required, and spent convictions may be a ground for exclusion etc.

Part II lists official and public appointments, and law enforcement agencies, and the Guernsey Financial Services Commission.

Part III lists certain occupations which are regulated, for example firearms dealers and drivers of taxis, buses etc.

To all of these clauses 3 and 6 equally apply.

Schedule 2 – Excepted licences, certificates and permits

This includes firearms certificates, explosives licences, gambling licences, registrations for nurseries and residential homes and work permits in Alderney and Sark, within the ambit of clause 3 (1) (d).

Schedule 3 – Work with children etc

Work with children is widely defined, and includes the provision of accommodation, care, schooling, leisure and recreational facilities where the job will allow the post holder to have contact with children. It also covers work with vulnerable persons for whom care or health services are provided.

Schedule 4 – Financial and related services

Specifies the work in connection with regulated financial services in respect of which clauses 5 and 6 apply with reference to relevant spent convictions; and also the permissions and consents which are themselves within the ambit of those clauses.

Schedule 5 – Excepted proceedings

The proceedings in which disclosure of spent convictions is permitted under clause 7 include disciplinary hearings and appeals against licence refusals etc.

Schedule 6 – Disregard of Service disciplinary convictions for certain purposes

Lists a number of service disciplinary matters which do not have the usual effect of re-starting the rehabilitation period.

Appendix

Appended to this report is a letter from the Home Department which sets out details of the additional resources which will be required once the proposed Ordinance is brought into force.

Recommendation

The Policy Council recommends the States to approve the draft Ordinance entitled “The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006”.

L C Morgan
Chief Minister

6th March 2006

APPENDIX

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

28th February 2006

Dear Chief Minister

**The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002
(Commencement, Exclusions and Exceptions) Ordinance, 2006**

Thank you for giving my Department an opportunity to comment on your States Report on the above matter.

The Members of the Department, by a majority, support the proposals for introduction of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006 as set out in your Report. However, as I have variously highlighted during earlier debates and discussions about this matter, the commencement of this new legislation will not be resource neutral for the Home Department and, in particular, the Guernsey Police.

The Department had hoped to avoid requesting additional staff by entering into a partnership agreement with the Criminal Records Bureau (“the CRB”), that is the body which undertakes such checks in England and Wales. Discussions with the CRB have commenced and are progressing well. However, the legal framework to support the processing of local disclosures by the CRB still requires some work that will not be concluded by the commencement date of 1st July 2006. New legislation is required both locally and in England and Wales. The local legislation cannot be fully completed ahead of the Safeguarding Vulnerable Groups Bill having been progressed through Parliament.

The Safeguarding Vulnerable Groups Bill is due to be published in March 2006 and will contain the provisions to establish the single list of those persons unsuitable for employment with children and/or vulnerable adults which was one of Sir Michael Bichard’s principle recommendations in his report following the tragic deaths of Holly Wells and Jessica Chapman in Soham, Cambridgeshire. The single list will encompass the various lists compiled on persons barred from working with children and vulnerable adults. The Bill also contains an extent clause which will allow Bailiwick authorities access to this new combined list.

The Chief Officer of Police therefore estimates that up to two additional staff may be necessary in the short to medium term to support the Police Disclosure Unit in processing Disclosure applications. The additional staff will be required until such time as the Department has finalized an agreement with the CRB for undertaking such checks. The need for additional staff is directly linked to the changes which flow from

Rehabilitation of Offenders Law and the Data Protection Commissioner's Code of Practice for Disclosure of Criminal Convictions in Connection with Employment. To ensure full compliance the process behind the issuing of a disclosure will be significantly altered and there will be impacts on production times as a result.

In 2005 the Disclosure Unit processed 10,000 applications and it is anticipated that the volume of such checks will increase due in part to the nature of the exceptions and also due to the publicity surrounding the "new" Disclosure Service.

The Department's proposals, which are due to be published shortly for public consultation, will enable the full use of the CRB's resources and the new Vetting and Barring Scheme currently being put together by the Department for Education and Skills as a result of the recommendations following the Bichard Enquiry. These enhanced services will ensure that no child or vulnerable person living locally is subjected to a greater degree of risk than children and vulnerable people living in the UK. Work on these areas is underway in the UK at this time under the guise of the Safeguarding Vulnerable Groups Bill and has been afforded a high priority by HM Government. It is anticipated that once progressed through Parliament the subsequent Act will resolve outstanding issues surrounding any partnership arrangement with the CRB and our proposals can be introduced.

The Department, therefore, has no alternative but to request that its 2006 budget be adjusted to allow for the additional costs of the two temporary contract posts it has identified as essential. Notwithstanding its request for additional resources to fund these two temporary posts the Department will use its best endeavours to offset the additional costs to it from the fees which the Guernsey Police charge for such checks but this will mean that the current fee structure will need to be reviewed to ensure that the charges reflect the true cost of administering the service. Without these additional temporary posts the two staff in the Guernsey Police's Disclosure Unit would be unable to efficiently or effectively carry out the required activities.

I trust that you will appreciate that the Department, in conjunction with the Guernsey Police, has done everything within its power to avoid having to request additional staff and that the reasons why it has not been possible to progress the proposed partnership arrangement with the CRB at this time is for reasons outside the Department's control.

I should be grateful if you would include my letter as an appendix to your States Report as I believe that it is essential for States Members to be fully aware of the Department's need for additional resources and the efforts it has made to manage the additional work which the introduction of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 will generate, within its existing resources.

Yours sincerely

M W Torode
Minister
Home Department

(NB The Treasury and Resources Department notes the additional costs of around £40,000 per year associated with the introduction of this legislation. The Department supports the proposal to approve the draft Ordinance.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report, dated 6th March, 2006, of the Policy Council, they are of the opinion:-

To approve the draft Ordinance entitled “The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

COMMERCE AND EMPLOYMENT DEPARTMENT

REVIEW OF PROTECTED CELL COMPANY (PCC) LEGISLATION AND INTRODUCTION OF INCORPORATED CELL COMPANY (ICC) LEGISLATION

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

13th March 2006

Dear Sir

1. Executive Summary

This report contains proposals for amendments to existing protected cell company legislation and for additional legislation providing for incorporated cell companies, a new corporate structure for the use of the financial services industry.

2. Background

The Department continues to be proactive in monitoring trends in the financial services industry globally, to ensure that Guernsey based businesses remain competitive in terms of the available infrastructure and, in particular, the legal and regulatory framework within which they operate. This includes the introduction of legislation that enables new 'products' to be brought to the market in appropriate timescales, thereby ensuring that at least a level playing field is maintained with competitor jurisdictions, and, at best, that the playing surface is improved to give Guernsey a competitive edge.

The proposals in this Report should be seen as part of a comprehensive process, which the Department has already started, to propose legislative changes to the States, included amongst which will be the complete review of Guernsey's company law. The Department's ultimate goal is to create an infrastructure in which companies can do, and will want to do, business in and with Guernsey, whilst remaining competitive in relation to other jurisdictions.

3. Introduction

The protected cell company (PCC), introduced initially in response to initiatives from the captive insurance sector, and provided by Ordinances of 1997, 1998 and 2004, is a prime example of Guernsey being innovative in financial services. This was a 'first' for

Guernsey, since when the use of PCCs has been widened to the funds sector, where they are now used extensively.

Some 30 or more competitor jurisdictions have since 1997 adopted PCCs and many have copied our legislation, and Guernsey is still very much seen as the leader in this area. Since 1997 Guernsey has refined the PCC regime by Ordinance and appropriate regulation, to enhance its attractiveness.

To date the number of PCCs established here is 168, and the number of cells in operation is 893. Local practitioners in the insurance and funds sectors, as well as local advocates and accountants, have developed their expertise in this area and are seen, internationally, as leaders in these fields.

Further enhancements to PCC legislation have recently been considered, and are presented for consideration. In addition, the Department has identified an opportunity to build on the PCC concept and introduce a new initiative for the island – the incorporated cell company (ICC) - which in some ways replicates measures recently introduced by Jersey, but develops and enhances that concept to provide greater clarity and certainty.

An ICC is a company which can form incorporated cells, unlike a PCC in which the cells are not incorporated. These incorporated cells are separate and distinct legal entities, and companies in their own right. However, they are also dependent on their ICC. The concept is similar in some respects to PCCs and cells, but the fundamental difference is that cells of a protected cell company are not legal entities separate from their PCC.

As indicated above, the PCC concept is continuing to go from strength to strength, with increased numbers of PCCs and cells being formed. Nevertheless, the Department feels that the introduction of ICCs would enhance what the financial services sector has to offer – particularly to the London market, which is a key introducer of financial services businesses into Guernsey. In particular the Department considers that ICC legislation will ensure that the sector's competitiveness is maintained against other jurisdictions. It is vital that Guernsey should not be perceived as being 'behind' its competitors, and the Department is anxious to progress these proposals without delay. I am grateful for your agreement that this Report, and the Ordinances consequent upon its approval, will be considered together by the Policy Council, and I am informed by HM Procureur that the Deputy Bailiff has agreed that both items may be taken together for inclusion in the Billet d'État for the April States Meeting.

4. Proposed amendments to Legislation

4.1 Protected Cell Companies

The Department recommends that the Protected Cell Companies Ordinance, 1997 be amended as follows:

- to provide that the assets of the core of a PCC are now insulated from liabilities incurred by its cells
- to confirm the type of shares available to them
- to clarify which types of companies can be PCCs
- to confirm that criminal liabilities fall to be apportioned on a PCC in the same way as other liabilities.

4.2 *Incorporated Cell Companies*

The Department recommends the enactment of an Incorporated Cells Ordinance which will make provision:

- for the formation and nature of an ICC
- for the formation and nature of an incorporated cell (IC)
- for the ICC to be separate and distinct from its ICs
- for the standard provisions of company law to apply to ICs and also to provide for exceptions from those provisions in appropriate cases
- for winding up on a basis that should not prejudice the 'healthy' parts of the structure
- for administration of ICCs and ICs by replicating, with the necessary changes, the provisions contained in the Companies (Guernsey) (Amendment) Law, 2005
- for alterations to the structure of an ICC, or conversions which either take an ordinary company within or without the parameters of the Ordinance.

5. Consultation

Full consultation with and between HM Procureur, the Financial Services Commission, the financial services sector and other interested parties has taken place, and all are in agreement with the need for early introduction of these proposals. I should like in particular to thank the legislative drafting team of St. James' Chambers for their prompt attention to these proposals.

6. Staffing and Financial Implications

The proposals contained in this report will have no financial impact on the Department and will be administered with existing staff.

7. Conclusions

The specific proposals contained in this report are supported by industry. The Department believes the changes are necessary in order to maintain our local island finance sector competitive.

8. Recommendations

The Department recommends the States to approve the proposals for the revision of the PCC legislation and the introduction of ICC legislation, in accordance with the principles set out in section 4 of this Report.

Yours faithfully

Carla McNulty Bauer
Deputy Minister

(NB The Policy Council supports the proposals.)

(NB The Treasury and Resources Department supports the proposals.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 13th March, 2006, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals for the revision of the Protected Cell Companies legislation and the introduction of Incorporated Cell Companies legislation, in accordance with the principles set out in section 4 of that Report.
2. To approve the draft Ordinance entitled “The Protected Cell Companies (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.
3. To approve the draft Ordinance entitled “The Incorporated Cell Companies Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

COMMERCE AND EMPLOYMENT DEPARTMENT

PLANT HEALTH AND THE CONTROL OF PLANTS AND PLANT PESTS LEGISLATION

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

7th February 2006

Dear Sir

1.0 Executive Summary

Existing plant health legislation is in need of updating. The Department proposes that it be replaced with new legislation that reflects current internationally accepted plant health standards and which is flexible enough to accommodate future changes in such standards.

In addition to implementing the latest standards, the proposed legislation will consolidate a number of existing pieces of legislation that deal with plant health and the control of plant pests and diseases into a single enactment that will provide the Department, in broad terms, with powers to:

- regulate the importation and exportation of plants, plant products, soil and fertilisers and the means and methods of their transportation,
- implement measures to control outbreaks of plant pests and diseases and to deal with the disposal of plant waste,
- introduce temporary precautionary measures to minimise the risk of plant pests and diseases spreading to the Island,
- put in place measures to control noxious and invasive plants; and
- register premises involved in activities such as plant production, processing, storage and handling.

Most of the proposals deal with the modernisation of existing powers and the consolidation of all plant health regulation into a single enactment, but some new measures are proposed where the implementation of existing legislation has demonstrated a need for such measures.

The Department will be able to administer the new legislation with existing staff and financial resources. As a number of plant health measures are already in place and as these will largely be reiterated under the new legislation, the impact of the proposals on the horticultural industry is expected to be minimal.

Interested parties have been consulted and the Department's proposals have been modified as the result of comments that were received.

2.0 Background

Much of the existing plant health legislation dates from the 1970s and 1980s and is, to varying degrees now out of step with:

- current, accepted plant health standards,
- the requirements for trade with the European Community; and
- obligations arising from the fact that the Island is a party to the International Plant Protection Convention,

and as such is in need of modernisation.

In addition, operational experience of existing powers has demonstrated a need for the enhancement or refinement of certain of those powers or the introduction of some new powers.

Rather than seek to amend the various individual pieces of legislation the Department proposes that all plant health related matters be provided for in a single enactment that will give it sufficient flexibility to react quickly to detailed changes in plant health standards in the future.

As an economic sector the horticultural industry generated exports with a value of just under £53 million in 2004 as well as providing an element of diversity to the Island economy as a whole. Updated plant health measures are necessary to safeguard this industry.

Island exports to the European Community are subject to Community plant health requirements and the Island also has obligations to have in place certain plant health measures by virtue of the fact that it is a party to the International Plant Protection Convention.

The Department also envisages wider benefits, some direct, such as improvements to the environment from having more extensive powers to deal with a wider range of noxious and invasive plants and others indirect, as effective plant health controls mean less use of pesticides and thus less cost to gardeners and growers and less potential for the pollution of the environment.

3.0 Detailed Proposals

3.1 Plant Health Control Measures

The Department proposes that new plant health legislation should provide general powers to introduce plant health controls and that it should be able to implement detailed plant health measures, where necessary, by means of statutory instruments. This will enable the Department to react quickly to changing plant health standards and avoid the need to regularly return to the States with proposals for minor changes to primary legislation.

Included within these proposals are provisions relating to the control and elimination of specified plants that are noxious, invasive, may be a potential or actual host to a specified plant pest or disease and which could be an economic threat to commercially grown plants. The plants that would be subject to control would be specified in a Statutory Instrument.

These proposals would replace the existing noxious weeds law and would expand on the principles contained in that law allowing a wider range of types of plant to be subject to control (not just those that were noxious). At present controls can only be applied when noxious weeds are in flower and seed, in these proposals any specified plant would have to be controlled at any time.

The Department also proposes that it should be able to allow for exceptions from some of the proposed control measures to allow for trials and scientific work, the importation of small quantities of plants by an individual for non-industrial or commercial purposes and small scale plant production where the plants are intended solely for local sale, in circumstances where plant health risks were considered to be minimal.

Appendix 1 sets out the plant control measures that the Department believes should be included in the new plant health legislation.

3.2 Control of Plant Pests and Diseases

Plant pests, diseases and other harmful organisms and agents can have a significant economic effect on farming and horticultural activity as well as affecting the environment. Some diseases are spread easily and quickly and can have a considerable effect in a short space of time.

Diseases such as bacterial canker (in the past) and organisms such as Colorado beetle can severely effect commercial horticultural and agricultural production. Pests such as Bemisia whitefly and Thrips palmi have a wide host range and as such represent a significant economic threat to current plant production on the Island.

The Department believes that it should have powers to implement plant pest and disease control measures and such powers would be applied in relation to a list of notifiable plant pests and diseases which it would specify in a Statutory Instrument.

Any person finding evidence of a such a notifiable pest or disease would have a duty to report the discovery and take action (if that was practical) to isolate any infected plants.

If the presence of such a pest or disease was confirmed, the Department would have the power to restrict activities on affected premises and in the case of the most serious plant health threats, the power to order the destruction and disposal of affected plants. Any restrictions would only remain in place until a plant health risk was eliminated.

Appendix 2 sets out in more detail the control measures that the Department believes should be included in new plant health legislation.

Some of the proposed powers are already available in existing legislation, but the Department believes that these need to be further enhanced to provide it with the ability to implement comprehensive measures to control an outbreak of a notifiable plant pest or disease. Similar powers are available in legislation for the control of animal diseases.

3.3 Precautionary Measures

The preceding section deals with the powers to control specified plant pests and diseases once they have been found on the Island.

There may, however, be occasions when there is an outbreak in a neighbouring jurisdiction and because of the nature of the relevant pest or disease and the means by which it can be spread, the outbreak represents a risk to plant health on the Island.

It such circumstances the Department is of the view that it would be prudent to take precautionary measures on the Island to minimise such a risk and that it should have powers, by means of Statutory Instrument, to implement such measures. Precautionary measures would be temporary and would be removed once any plant health risk had passed.

These powers are not available in existing legislation and the Department believes that preventing the introduction and spread of a pest or disease will be more effective than having to deal with an outbreak once such a pest or disease is found on the Island.

Appendix 3 sets out in more detail the powers in relation to precautionary measures that the Department proposes should be included in new plant health legislation.

3.4 Plant Health Monitoring

In order to take a proactive role in the control of certain plant pests and diseases, the Department proposes that it should have powers to establish plant health monitoring programmes and under such programmes, plant health officers should be able to take samples from material that could be host to such a pest or disease for examination or testing.

Discovering a pest or disease at an early stage is essential in order to effectively deal with it and to ensure that any impact on industry or the environment is minimal.

In addition monitoring and surveys are essential to maintain the protected zone status that the Island enjoys in relation to certain plant pests. This status enables it to impose high plant health conditions on specified plant imports into Guernsey.

3.5 Tests Prior to Planting

In certain cases the successive planting of one type of plant can lead to a build up of harmful organisms in the soil.

The Department proposes that it should be able to direct, by Statutory Instrument, that specified plants may only be grown on land on which tests have been carried out to determine the absence of a specified harmful organism, or to determine that such an organism is only found below a specified threshold, before any planting can take place.

3.6 Access to Property

The Department proposes that a Plant Health Officer should be able to gain access to property to monitor premises for plant diseases and in an emergency, to take immediate action to eliminate or control the risk of the spread of a plant pest or disease that represents a significant plant health threat.

The staff of the Department currently have a good working relationship with the horticultural industry and enjoy the co-operation of that industry. The Department does not foresee any change in this relationship or the heavy handed use of these powers. Officers will continue to undertake plant health duties on the basis of consultation and co-operation with the industry.

The proposed powers of access are mainly intended to enable a Plant Health Officer to take action when it is important to act quickly, in an emergency, to contain or eliminate a plant health risk.

3.7 Plant Health Officers

As is currently the case, the implementation of the proposed new legislation would be carried out by authorised, trained Plant Health Officers.

3.8 Costs and Fees

The Department proposes that it should have the power to levy a charge for official inspections, documents, licences and registrations (if it chose to do so).

The cost of meeting any obligation arising from the legislation, conforming with any conditions attached to a licence or registration or arising from the seizure and detention of any plants would have to be borne by the owner of any plants or the licence holder or

person named on a grant of registration.

3.9 Seizure

In order to minimise plant health risks, it is proposed that a Plant Health Officer would have the power to seize plants etc:

- imported or exported in contravention of the legislation,
- imported, exported or held contrary to any conditions attached to a licence, permit or authorisation or a grant of registration,
- that were affected by a plant disease; or
- which represented any other serious plant health risk.

Anything seized could be:

- returned to the place of origin,
- cleansed or otherwise treated before release to the owner,
- detained pending the outcome of an investigation into any documentary irregularities or the outcome of any scientific examinations or tests; or
- destroyed or otherwise disposed of.

3.10 Appeals

It is proposed that the new legislation include provision to appeal against decisions and acts of the Department.

3.11 Repeals

The Department's proposals will lead to the consolidation of the provisions of a quite a number of pieces of existing legislation and thus this legislation (listed in Appendix 4) can be repealed.

4.0 Consultation

The Department has consulted in excess of 50 interested parties as well as the parochial authorities. There was general acceptance of the proposals which have been modified in the light of comments received.

The Law Officers of the Crown have been consulted on the proposals for legislation and the drafting of this report.

5.0 Resource Implications

The proposed legislation can be administered by existing plant health staff and within the Department's existing budget.

6.0 Conclusions

The Department believes that plant health legislation is necessary to protect commercial plant production and the environment of the Island. Preventing the spread of plant pests and diseases is important as they are difficult or impossible to eliminate once they become established.

Existing plant health legislation is now out of step with accepted international plant health standards, there are aspects of it which, in the light of operational experience, would benefit from modification and there are other areas in which powers are lacking or absent.

The Department has concluded that modern legislation is now required, replacing the various existing pieces of legislation and consolidating all plant health measures into a single enactment that will be sufficiently flexible to enable it to react quickly to changing plant health standards, to plant health risks and to control outbreaks of plant pests and diseases.

7.0 Recommendation

The Department recommends the States to approve the proposals for new plant health legislation in accordance with the principles set out in this report.

Yours faithfully

Stuart Falla
Minister

Appendix 1

Proposed powers in relation to plant control measures that could be applied to plants, plant products, soil (and other growing media), fertilisers and any other thing associated with plants.

General powers to:

- 1) regulate imports, exports, movements and transportation (by means of prohibitions, plant health conditions, licensing),
- 2) regulate the identification, marking and certification of imports and exports,
- 3) carry out inspections on imports and exports,
- 4) carry out inspections (for plant diseases) of land, buildings, equipment, vehicles and any other thing associated with plants etc (by a Plant Health Officer),
- 5) if necessary, register importers and exporters or premises involved in the production, processing, packaging, storing, transporting or selling of plants etc,
- 6) regulate the possession, cultivation or any other use of specified plants (that might represent a plant health risk),
- 7) regulate the treatment, transportation, disposal or destruction of any plant waste, diseased plant material, waste water associated with plants and anything that might have been exposed to infection or which might be host to, or harbour a plant pest or disease.
- 8) require a landowner or person responsible for any land to treat, control, destroy and dispose of any (specified) plants that were considered to be noxious, invasive, an economic threat to commercial plant production in the Islands, that could be host to or capable of harbouring any plant pest; or which represented any other form of plant health risk,
- 9) prohibit or regulate the deliberate release into the environment of any (specified) plants or plant pest or diseases,
- 10) regulate the use of any packaging or packing materials of plant origin,
- 11) if necessary, regulate the production, processing, packaging or wrapping, storage, sale or distribution, transportation and cultivation or use of any plants etc (to eliminate or minimise a plant health risk),
- 12) regulate the possession and use of plant pests and diseases (for such things as scientific and experimental work),
- 13) implement any other plant health measures that the Department considers necessary to protect plant health in the Islands or to prevent the spread of any

plant disease etc, or any other thing harmful to plants; and

- 14) provide for some derogations from plant health controls where the plant health risks are considered to be minimal.

Imports would be required to take place at approved ports (the main harbours and the Airport).

Where the Island was a recognised protected zone (by the European Community) for a specified plant pest or disease, the Department would undertake systematic surveys for the relevant disease.

The Department would have the power (if it was considered necessary to manage a plant health risk) to licence trial and scientific work and varietal selection and to register premises carrying out such work.

Appendix 2

Proposed powers to control a notifiable plant pest or disease.

1. The Department would specify, by Order, that a pest or disease was a notifiable pest or disease (or any other harmful organism or agent).
2. Anything infected with or exposed to infection could be subject to compulsory cleansing, treatment or destruction and disposal.
3. Any person who discovered or suspected the occurrence of a notifiable plant pest would be required to notify a plant health officer and, if practical take steps to isolate and prevent access to affected plants.
4. A plant health officer would be able to direct that (if practical) measures be taken to bring about the isolation of affected plants and that any specified activity on the land on which those plants were found, cease or be modified in order to minimise the risk of the spread of the notifiable pest or disease.
5. A plant health officer would be able to take samples and inspect plants, land, premises, equipment and vehicles (for signs of a notifiable plant pest or disease).
6. Where there was an outbreak of a notifiable plant disease, the Department would be able to declare premises a “contaminated place” and the surrounding area a “safety zone” and:
 - i) regulate access to contaminated places and any infected plants in such a place and access to safety zones
 - ii) regulate the movement of anything into or out of a contaminated place or safety zone (if necessary by means of permits),
 - iii) direct that any building, equipment, or any other thing that represented a plant health risk be treated, disinfected or otherwise cleansed,
 - iv) direct that any plants, including wild plants, plant products, soil, fertiliser or any other thing associated with plants including anything that was a potential host for a notifiable plant pest or disease be treated, disinfected, cleansed or destroyed,
 - v) direct that measures be taken to contain or control the discharge or flow of any water from a contaminated place or a safety zone,
 - vi) direct that samples be taken from plants for examination and testing,
 - vii) direct that a person who lived or worked on a contaminated place or a safety zone could not enter any other land or premises on which there were plants susceptible to the notifiable plant disease,

- viii) prohibit, restrict or place conditions on any planting on premises that had been declared a contaminated place or a safety zone; and
 - ix) in the case of serious notifiable plant diseases order the compulsory destruction of affected plants.
7. The Department would have the power to regulate (by Order) possession and use of plant pests and diseases as well as any affected plants, plant products, soil or fertilisers

Appendix 3

Proposed powers in relation to precautionary measures.

Powers to:

- 1) implement precautionary measures at any place of landing,
- 2) direct that specified precautionary measures be taken on premises on which susceptible plants occur,
- 3) restrict or control access to premises on which susceptible plants occur,
- 4) require higher plant health standards or require plant health guarantees in respect of susceptible plants imported from specified countries,
- 5) restrict or control the marketing, sale or transportation of specified plants; and
- 6) implement measures relating to the cleansing, disinfection, sterilisation or treatment of plants and any equipment and transporting vehicles prior to despatch to the Islands from a specified country.

Appendix 4

Enactments repealed.

Ordinances

Potatoes (Wart Disease) Ordinance, 1950
 Colorado Beetle (Export of Potatoes) Ordinance, 1952
 Road Traffic (Conveyance of Plant Material) Ordinance, 1976
 Control of Diseased Plant Material Ordinance, 1976
 Plant Pests Ordinance, 1982
 Tree Pests Ordinance, 1982
 Import and Export (Plant Health) Ordinance, 1982
 Import and Export of Trees, Wood and Bark Ordinance, 1982
 Import and Export of Trees, Wood and Bark (Amendment) Ordinance, 1982
 Import and Export (Plant Health)(Amendment) Ordinance, 1984
 Import and Export (Plant Health)(Amendment) Ordinance, 1987
 Control of Diseased Plant Material (Amendment) Ordinance, 1991
 Road Traffic (Conveyance of Plant Material)(Amendment) Ordinance, 1991
 Noxious Weeds (Amendment) Ordinance, 2001

Laws

Noxious Weeds (Guernsey) Law, 1952
 Colorado Beetle (Bailiwick of Guernsey) Law, 1956 (in so far as it relates to Guernsey)
 Export of Tomatoes (Prohibition)(Guernsey) Law, 1981

(NB The Policy Council supports the proposals.)

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

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 7th February, 2006, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals for new plant health legislation in accordance with the principles set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

COMMERCE AND EMPLOYMENT DEPARTMENT

TRADE IN ENDANGERED SPECIES

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

7th February 2006

Dear Sir

1. Executive Summary

The Bailiwick of Guernsey has been subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1976.

The Convention has been modified and adapted since it came into force and the original arrangements that were put in place in the Bailiwick to implement its provisions are no longer adequate.

The Parties to the Convention have passed a Resolution requiring specified parties and dependant territories, including the Bailiwicks of Guernsey and Jersey to enact adequate legislation for the implementation of the Convention by 30 September 2006.

This Report contains proposals for such legislation in the Bailiwick of Guernsey.

2. Background

The Convention on International Trade in Endangered Species - CITES

The Convention on International Trade in Endangered Species was signed in Washington on 1st July 1975. The United Kingdom ratified the Convention in 1976 and the Bailiwick became subject to it at that time.

The Convention regulates trade in endangered species by means of a system of import and export permits. The principal objective of the introduction of a regulated system of trade was to reduce the number of endangered animals and plants that were being taken from the wild.

Endangered species are listed in the Convention and include mammals (such as bears, elephants and tigers), birds (birds of prey and parrots), reptiles, amphibians, fish and

plants. The provisions of the Convention apply not only to living specimens, but also to parts and derived products from the relevant species such as leather goods, furs and carved wood and ivory.

Implementation of the Convention in the Bailiwick

When the Convention first applied in the Bailiwick, CITES imports were regulated under the provisions of Customs legislation and administrative arrangements were put in place to manage exports. These measures have been in place since that time.

The volume of movement of endangered species into and out of Bailiwick is relatively small (between 10 and 20 import permits and 30 and 40 export permits are issued annually) and is generally restricted to

- privately owned pets (such as parrots) and household items (often antiques),
- animals (parrots, reptiles and amphibians) as part of the pet trade; and
- temporary imports (such as displays with birds of prey).

Convention Developments

Since the Convention came into force in the mid 1970s it has been modified based on the experience of its implementation and to clarify some of its provisions. It has also been adapted to meet changes in patterns of trade in endangered species and to address challenges arising from new and different methods of exploiting such species.

Over the last few years the Convention Secretariat has been examining the means by which the Convention has been implemented in various countries and territories. It has concluded that the current arrangements in about 30 territories (including the Bailiwick) are now inadequate; and at the Conference of Parties held in October 2004, a resolution was passed requiring those territories to enact adequate legislation for the implementation of the Convention by 30 September 2006.

Since that time the Department has been working on proposals for such legislation in consultation with the Law Officers and senior officials in the Department for Environment, Food and Rural Affairs (which is responsible for the implementation of the Convention in the United Kingdom).

3. Detailed Proposals

The important elements of the Department's proposals are set out below.

3.1 Imports and Exports

In accordance with the requirements of the Convention, imports and exports of specimens of endangered species will be regulated by a system of permits which will be

issued by the Department.

In certain circumstances, particularly in the case of the movement of the most endangered species, the Department may require conditions to be met before issuing a permit or it may attach conditions to a permit to ensure that the conservation status of the relevant species is not put at risk as the result of trade.

The Parties to the Convention have passed a number of resolutions allowing for some relaxation of the import and export requirements in the case of such things as personal and household effects and antiques and to facilitate the exchange of specimens between scientific institutions for research purposes. The Department proposes that local legislation should include provision for these derogations.

3.2 Control of Certain Trade and Commercial Activities

The Convention requires that commercial trade in the most endangered species be restricted and that the movement of specimens of such species should only take place for scientific and research purposes. The Department proposes that local legislation should reflect this principle.

The Department also further proposes that illegal trade in endangered species arranged in the Bailiwick, but where specimens are moved between two places outside the Bailiwick should also be prohibited, to ensure that such illegal trade cannot be organised in Guernsey.

3.3 Scientific Advice

In certain cases, trade in endangered species might put the conservation status of the relevant species at risk. In such circumstances the Department proposes that it should seek advice on whether or not to allow such trade from an appropriate scientific body and it expects to be able to obtain that advice from the same organisations that are consulted by the Department for Environment, Food and Rural Affairs in the United Kingdom.

3.4 Registration of Scientific Institutions and Exchanges between Institutions

As indicated above there are special provisions to facilitate the exchange of specimens for scientific research and where such exchanges take place they must be between institutions that are registered by the country in which they are based.

The Department proposes that local legislation should require the registration of any such institution which may be established in the Bailiwick in the future and wished to make use of the special trade provisions.

3.5 Possession, Movement and Collection of certain Specimens

To protect the most endangered species, the Convention includes provisions for strict

controls on trade, the ownership of the relevant species (usually limited to scientific institutions) and the collection of examples from the wild.

Such controls may, for example, include prohibitions, conditions on ownership, or licences to take specimens from the wild. Insular legislation should include provisions to implement these controls.

3.6 Seizure

Where there is an infringement of the provisions of the proposed legislation the Department should have the power to seize specimens that are, for example, being traded illegally. In certain circumstances (such as if the seized specimen cannot be returned to the place of origin) the Department should be empowered, where appropriate, to re-home live animals or otherwise dispose of seized specimens.

3.7 Appeals

There will be provision in the proposed legislation for the establishment of an independent Tribunal to consider appeals against decisions of the Department (for example to refuse to issue an import or export permit, or to attach conditions to a permit).

It is proposed that the Tribunal should follow models previously approved by the States, such as the Housing Appeals Panel. This would require the States to appoint a Panel that would consist of a Chairman and Deputy Chairman with knowledge or experience of the Convention and a small group of other, non-specialist members. A Tribunal would consist of the Chairman (or Deputy Chairman) and two of the other members of the Panel.

Proposals relating to the membership of the Panel will be submitted to the States at a later date.

It is further proposed that provision will be made by or under the legislation relating to such matters as:

confidentiality of information;

oversight by the Royal Court, through power to refer issues of Law for directions

and rights of appeal on points of Law;

rules of procedure;

costs and fees; and

the powers available to the Tribunal in hearing appeals.

3.8 List of Endangered Species

The Convention lists endangered species in three appendices according to the extent to which they are at risk. It allows Parties to it to implement stricter controls, thus species listed in the lower appendices can be afforded greater protection by being listed in higher appendices in individual territories.

The EC has introduced a Regulation to give effect to the Convention and it has chosen to give higher protection to a few species, thus the list of endangered species in the Regulation is not a direct match for the Convention lists. The Community has also added a further list of species that are at risk in Europe alone, in order to monitor any trade in such species.

As almost all of the trade in endangered species in the Bailiwick is to or from the Community (mainly the UK), the Department proposes that Bailiwick legislation should refer to the Community list rather than the Convention appendices. This will make it easier for the Department to administer the proposed legislation and for members of the public to move endangered species into and out of the Island.

4. Staffing and Financial Implications.

Most of the administrative arrangements for the implementation of the requirements of the Convention have been in place for some time and the proposed legislation will have no material effect on the volume of and nature of the work that is carried out by the Department. It therefore expects to administer the proposed legislation with existing staff.

It will be necessary to provide administrative support for a Tribunal to hear appeals and the Department can provide such support with its existing staff.

The Department estimates that the running costs of a Tribunal will be £500 for a half day, on the basis that Tribunal members will be entitled to claim the attendance rate applicable to non-States Members, and including an allowance for the hire of any facilities or equipment that may be required for a hearing. This estimate does not take account of any cost of providing Departmental staff to provide administrative support for a Tribunal; nor, on the other hand, of any potential to recoup expenses through fees and/or costs.

The Department believes, however, that the circumstances that are likely to lead to an appeal will be rare and that any costs can be funded from within its existing budget.

5. Consultations.

The Department has consulted the Authorities in Alderney and Sark and they have indicated that they wish the proposed legislation to extend to those Islands.

The Law Officers of the Crown have been consulted on the proposals for legislation and the drafting of this report.

6. Recommendation.

The Department recommends the States to approve the proposals for the introduction of legislation on trade in endangered species in accordance with the principles set out in section 3 of this report.

Yours faithfully

Stuart Falla
Minister

(NB The Policy Council supports the proposals.)

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

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 7th February, 2006, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals for the introduction of legislation on trade in endangered species in accordance with the principles set out in section 3 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

HOME DEPARTMENT

CRIMINAL LAW REFORM

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

21st February 2006

Dear Sir

1. Executive Summary

The purpose of this report is to amend and update the Bailiwick's criminal laws to ensure that the Islands maintain a robust framework to deal appropriately with offenders and that the administration of criminal justice is both timely and effective. Further, the report recommends that a number of existing common law offences are enshrined in statutory provisions to take account of common law and associated developments in the United Kingdom.

2. Proposals from Her Majesty's Procureur

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

“Introduction

1. *In recent years the States have enacted legislation to counter the threat posed to the Bailiwick and the international community by financial crime and terrorism, and review of law reform in those areas is a continuing process. However, I have also been conducting a general review of the criminal law of the Bailiwick, and I have come to the conclusion that, in a number of areas, further action is required to improve our legislative regime.*
2. *Whilst the criminal law of Guernsey was originally derived from the customary law of Normandy, by the 19th century as the custom had become anachronistic, irrelevant to developing social circumstances and attitudes, and increasingly difficult to use in practice, English law began to substantially influence our criminal law. Following a Royal Commission in 1848, Guernsey has usually, but not invariably, adopted English common law as it has related to criminal matters. However, the courts have not done so where local circumstances have justified variance.*

3. *During the 20th century, England put into statute form much of its common law relating to crime. The resulting legislation has often amended and added to the common law. The Guernsey courts, although not strictly bound by English decisions, have almost invariably treated them as being of persuasive authority, and applied them. English criminal law is now primarily statutory, and the judges in England, in developing the law, are interpreting legislation rather than developing the common law on a case by case basis. Guernsey has passed a number of Orders in Council replicating mainland statutes (e.g. the Theft Act 1968 was enacted locally as the Theft (Bailiwick of Guernsey) Law, 1983) but in various areas Guernsey law has remained uncodified by statute and relatively undeveloped.*
4. *Although it is possible for judges of the Royal Court and the Guernsey Court of Appeal to develop our common law, this is merely an incremental process, and there will be instances when it will not be practicable or sensible for them to attempt to revise outdated common law principles radically, that being a function for the legislature, i.e. the States. There is, therefore, room for doubt as to what constitutes the present state of some of our criminal law, the touchstone of which should, so far as is possible, be certainty.*
5. *Importantly, the lack of up-to-date legislation in some areas has meant that persons deserving of criminal sanctions have escaped prosecution because our common law does not extend to their conduct. In Guernsey's well-developed and sophisticated society, such omissions are unacceptable.*
6. *I have excluded from the scope of this reform sexual offences, which are presently under review by an informal group under the aegis of the Home Department including officers of that Department, St. James' Chambers and the law enforcement agencies, and which will form the subject of a separate Report to the States in due course. However, some aspects of reform relating to sexual offences are dealt with below.*
7. *After careful consideration I have decided to recommend that the States enact legislation as follows.*

Attempts

8. *Under the common law it is an offence for a person to attempt to commit a crime. The common law relating to attempts as developed by the courts in England in some respects became unworkable. Prior to 1975 it was not a defence to a charge of attempting to commit a crime to prove that it was practically impossible to commit the complete offence. For example, a pickpocket could be convicted for attempted theft if the intended victim's pocket turned out to be empty. In 1975 the House of Lords gave a judgment that had the effect of restricting the prosecution's ability to charge a person with an attempt when, in the circumstances of the case, it was impossible to commit the*

full offence. That decision, if not binding, would be persuasive in Guernsey's courts. The English Law Commission therefore examined the whole question of attempting to commit offences and, as a result of its work, there was passed the Criminal Attempts Act 1981, which reintroduced the possibility of a person being convicted of attempting to commit a crime when, in the circumstances, it was impossible to commit the complete offence.

9. *The lack of similar legislation has caused some problems in Guernsey. For example, there have been a number of cases where drug couriers have attempted to import what they believed was a Class "A" drug, such as Ecstasy, when in fact the tablets in their possession turned out to be Class "C" prescription drugs. Clearly, in cases such as these, it would be preferable for the courier to be charged with attempting to import Class "A" drugs, and to receive a penalty commensurate with the seriousness of the intended offence.*
10. *I have therefore reached the conclusion that our law relating to criminal attempts should be put on a statutory basis to mirror the provisions of the Criminal Attempts Act 1981.*

Conspiracy

11. *In the mid 1970's the English Law Commission conducted a comprehensive review of the law relating to conspiracy to commit offences. It noted that one of the difficulties of conspiracy at common law had been its scope, in potentially extending to conduct that would not be criminal if committed by a person acting alone. A number of English judicial decisions during the 1970s restricted the ability to charge a person with conspiracy when the conduct alleged, if committed by an individual, would not have amounted to a criminal offence. The Law Commission took the view that the law was in an unsatisfactory state, and that legislation was required to make it certain that conspiracy charges were restricted to conduct tantamount to existing criminal offences, whether at common law or under statute, and the law relating to conspiracy, apart from conspiracies concerning fraud, was put on a statutory footing.*
12. *Also under common law there is no maximum penalty for conspiracy. In Guernsey it is therefore possible for the courts to impose a penalty in excess of the maximum for the substantive offence which the defendant was conspiring to commit. For example, in Guernsey, under the Theft (Bailiwick of Guernsey) Law, 1983, the maximum penalty for theft is 10 years imprisonment. Those convicted of conspiracy to steal can, under common law, be imprisoned for life. The Law Commission recommended that the penalty for conspiracy to commit an offence should be the same as for the substantive offence mentioned in the conspiracy charge. Its recommendations were enacted in Part 1 of the Criminal Law Act, 1977. I recommend that similar legislation be enacted for the Bailiwick.*

Aiders and abettors etc.

13. *Under the common law a person who carries out the actual actions that constitute the elements of a crime is referred to as a principal "in the first degree". A person who assists the principal offender but whose actions fall short of committing all the elements of the alleged offence, or a person who encourages ("counsels") the principal offender, are classified as principals "in the second degree".*
14. *In many cases where there is a "second degree" offender who aids, abets, counsels or procures the commission of an offence, his actions are so intermingled with those of the person who actually completes the crime that it would be more appropriate for him to be charged and dealt with as if he were a principal offender. While there might be a possibility of charging a "second degree" offender with conspiracy, this is not always appropriate.*
15. *Section 8 of the Accessories and Abettors Act 1861, as amended, states that a person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be tried, indicted and punished as a principal offender. In addition, section 44 of the Magistrates' Courts Act 1980 introduced the same principle for those who are secondary parties to an offence that is triable before a Magistrate's Court. I am of the opinion that similar provisions should be enacted locally.*

Suicide

16. *At common law it is an offence to attempt to commit suicide. This offence was abolished in England by the Suicide Act 1961. I can think of no justification whatsoever for this offence to remain part of the common law of Guernsey, and I therefore recommend that it is abolished. However, I also recommend that it be an offence locally for a person to aid, abet, counsel or procure the suicide of another person, or an attempt by another to commit suicide. This would mirror section 2 of the Suicide Act 1961. In England the maximum penalty for this offence is 14 years imprisonment.*

Homicide

17. *In 1949 a Royal Commission was appointed to examine the question of capital punishment. The Commission also looked at certain aspects of the law relating to homicide. The Commission completed its report in 1953 and certain recommendations were enacted in the Homicide Act 1957.*

The Law Commission have recently published a consultation document on the English law of homicide, which in some respects has developed unsatisfactorily. Any extensive reform of the law of homicide will be controversial, and legislative change likely to be a long drawn-out process. I am firmly of the opinion that Guernsey law should now be put on the same footing as current

English law, modified to take account of common law developments; and that if or when England amends its legislation, Guernsey should consider the result and determine whether, and if so to what extent, to follow. Meanwhile the changes I recommend as necessary or desirable are as follows.

(a) Constructive malice

In England, prior to the passing of the Homicide Act 1957, under common law a person could be found guilty of murder if:-

- (i) he intended to kill or cause grievous bodily harm to a person and death occurred as a result of his actions;*
- (ii) a person's death was caused as a result of an act of violence done in the course or furtherance of a crime; or*
- (iii) a person's death was caused by a person resisting an officer of justice or resisting or preventing a lawful arrest.*

By 1953 it was widely accepted among the English judiciary and those responsible for law enforcement policy that there was no justification for a person to be found guilty of murder when there was no distinct intention to kill or cause grievous bodily harm. As a result, the 1957 Act requires that the prosecution prove that, in every case of murder, there was an intention to kill or at least cause grievous bodily harm.

(b) Diminished responsibility

Under common law it is possible for a person to be found not guilty of murder by reason of insanity. When such a verdict is entered, the accused is detained indefinitely at Her Majesty's Pleasure. The English common law made no allowance for those persons who kill while suffering from an abnormality of the mind which substantially impairs their mental responsibility for their actions but which falls short of insanity as defined by law (the M'Naghten Rules). As a result persons who fell into this category were liable to imprisonment for life for murder.

The 1957 Act introduced the concept of diminished responsibility. If the defence adduces evidence to show that a defendant was suffering from such an abnormality of the mind at the time of the killing, a verdict of manslaughter can be entered. This English statutory defence has been allowed to be argued by the Royal Court extra-statutorily, but I recommend, for the avoidance of doubt, that the English position be statutorily confirmed locally. Although the maximum penalty for manslaughter is life imprisonment, the courts can, and frequently do, impose a lesser penalty.

(c) Provocation

For many years the common law acknowledged that a person may be found not guilty of murder if it was shown that the defendant was provoked into killing. On the recommendation of the Royal Commission, the matters that an English jury have to consider in deciding whether a person was provoked were put into statute form. However, in a recent case in the Privy Council on appeal from Jersey, the Privy Council recommended that the law relating to provocation should be reviewed. In bringing forward proposals to reform the law of provocation, it would be desirable to take account of the development in English law as the result of the aforementioned case.

(d) Suicide pacts

At common law where there is an agreement between two persons that one will kill the other and then take their own life, and the person that kills the other survives, the survivor is guilty of murder. Under the provisions of the Homicide Act 1957 if the defence can prove that a person charged with murder was acting in pursuance of a suicide pact, the jury may return a verdict of manslaughter.

18. *I am firmly of the view that provisions similar to those in the Homicide Act 1957 to which I have referred should be introduced locally, as developed by statute. Whilst murder is, fortunately, rare in these Islands, it is the most serious charge a person may face and it is not right that our criminal law should remain relatively undeveloped. In reproducing the provisions of the 1957 Act (indeed as respects the other statutes referred to in this report) account will be taken in drafting our legislation of developments as the result of judicial decisions.*

Public Order

19. *Guernsey is still a relatively peaceful place. However, in recent years the courts have had to deal with a growing number of cases of public disorder particularly those occurring in Town late on Friday and Saturday nights. Minor outbreaks of disorder can be dealt with by prosecuting offenders for disorderly behaviour contrary to section 1(i) of the Summary Offences (Bailiwick of Guernsey) Law, 1982. More serious cases fall to be dealt with by the common law offences of affray, rout, unlawful assembly and riot.*
20. *In England, public order offences under the common law were replaced by statutory offences contained in the Public Order Act 1986. There have therefore been no English judgments relating to the common law for some 20 years. I have reached the conclusion that it is advisable that our public order legislation be placed on a statutory footing based upon provisions of the Public Order Act 1986. I am of the opinion that the following public order offences contained in the Act would be relevant locally:*

(a) Threatening behaviour

The offence of disorderly behaviour allows the Magistrate's Court to punish offenders who commit minor acts of disorder with fines or imprisonment of up to 3 months. The offence is not suitable for dealing with more serious acts of violence or threats that would merit a sentence in excess of 3 months. That behaviour would be covered if section 4 of the Public Order Act 1986 were replicated locally to make a person guilty of an offence if he:-

- (i) uses towards another person threatening, abusive or insulting words or behaviour, or*
- (ii) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,*

with intent to cause that person to believe that unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(b) Affray

Section 3 of the Public Order Act 1986 creates the statutory offence of affray. It is aimed at dealing with serious acts of violence. A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety. The maximum penalty in the United Kingdom is 3 years imprisonment.

(c) Violent disorder

Under section 2 of the 1986 Act, where 3 or more persons who are present together use or threaten unlawful violence and the conduct of them taken together is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety they are guilty of violent disorder. The maximum penalty in the United Kingdom is 5 years imprisonment.

(d) Riot

Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them taken together is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety they are guilty of riot. The maximum penalty in the United Kingdom is 10 years imprisonment.

Road Traffic

21. *The roads in Guernsey have become extremely busy. Unfortunately, a number of those who use the roads show little respect for the safety of others. I am of the opinion that the following warrant reform by the States:-*

(a) Drink driving

In 2003 166 persons were arrested for drink driving; of these, 53 were over twice the legal limit, and 18 thrice over. In 2004 the number of arrests totalled 233 with 74 twice, and 25 thrice, over the limit. In 2005, the number of arrests totalled 207, with 59 twice, and 15 thrice, over the limit. These figures reveal that a substantial number of those arrested must have been fully aware they had drunk so much that they were well over the prescribed limit. Clearly, many drivers are not deterred by the provisions of the drink driving legislation.

The chance of accidents occurring increases substantially when individuals drive whilst over the prescribed limit. In the United Kingdom, to deter people from driving with excess alcohol and to adequately punish those who drive badly whilst over the prescribed limit and kill others, the Road Traffic Act 1988 was amended to create the offence of causing death by careless driving when under the influence of drink or drugs. Under section 3A of the Act a person is guilty of an offence if they cause the death of another by driving without due care and attention, or without reasonable consideration for other persons using the road, and:-

- (i) he is, at the time when he is driving, unfit to drive through drink or drugs, or*
- (ii) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit, or*
- (iii) he is, within 18 hours of driving, required to provide a specimen of breath, blood or urine for analysis but without reasonable excuse fails to provide it.*

The maximum penalty for those who commit this offence in the United Kingdom is 14 years imprisonment.

In order to increase the level of deterrence against drink driving in Guernsey, I recommend that the offence set out in section 3A of the Road Traffic Act 1988 of causing death by careless driving whilst under the influence of drink or drugs, etc, should be introduced locally.

Under the provisions of the Road Traffic (Drink Driving) (Guernsey) Law, 1989 if a person is in hospital in an unconscious state and is suspected by the police of drink driving, there is no power to obtain a specimen of blood for analysis

until the person regains consciousness and consents to a sample being taken. As a result it is possible that crucial evidence required to prove driving with excess alcohol may be lost.

In the United Kingdom, the Road Traffic Act 1988 has been amended so that when an unconscious patient is suspected of drink driving, a police surgeon may, if there is no risk to the patient's health, take a specimen of blood for analysis. Once the patient's condition has improved, the legislation requires that he be asked whether he consents to the analysis of the specimen. If he does not consent then he is guilty of an offence, but the sample cannot be analysed.

I believe that it is wrong for a person to escape prosecution for a drink driving offences because it is not possible for the police to obtain a specimen for analysis. I therefore recommend that the Law of 1989 be amended to allow for the taking of blood samples from unconscious hospital patients suspected of drink driving and the creation of an offence as described in the previous paragraph. I suggest that the penalty for this offence be the same as for the current offences under the Road Traffic (Drink Driving) Law, 1989, that is, 3 months imprisonment or a fine not exceeding level 5 on the uniform scale (or both) in the Magistrate's Court, or 12 months imprisonment or an unlimited fine (or both) on indictment.

(b) Power of Royal Court to disqualify

In a recent appeal case an issue arose in connection with the Road Traffic (Drink Driving) (Guernsey) Law, 1989, as amended. In circumstances when a person fails to provide a specimen of breath, blood or urine for analysis, and the case is dealt with by the Magistrate's Court, the legislation makes it clear that a convicted person may be imprisoned, fined and disqualified for a period of at least 12 months. However, drink driving offences can also be tried before the Royal Court and, under the current legislation, when a person fails to provide a specimen, and the case is dealt with by the Royal Court, an anomaly exists whereby the Royal Court has no power to impose a disqualification.

I recommend that the Road Traffic (Drink Driving) (Guernsey) Law, 1989 be amended to allow for the Royal Court to impose a disqualification in the circumstances described above.

(c) Penalties for dangerous driving

The maximum penalty in Guernsey for causing death by dangerous or reckless driving contrary to the Vehicular Traffic (Causing Death by Driving) Law, 1957 is 5 years imprisonment, and the maximum penalty for reckless or dangerous driving under the Vehicular Traffic Ordinance of 1929, as amended, is 3 months imprisonment. The equivalent penalties on the mainland under the Road Traffic Offenders Act 1988 are 14 years and 2 years respectively. The courts in Guernsey have, in recent years, had to deal with some quite appalling driving,

particularly associated with very high speeds. In order to protect the public, deter potential offenders and adequately punish those apprehended by the police I recommend that the sentencing powers of the Guernsey courts be brought into line with those in England.

In disqualifying a motorist convicted of drink driving, the courts are entitled, if special reasons are adduced by the defendant and accepted, not to suspend the defendant from holding a driving licence. However, the Road Traffic (Drink Driving) (Guernsey) Law, 1989 gives no discretion to the court: so, if special reasons are found, then the court can only impose a fine. I recommend that Section 8 of the 1989 Law be amended to enable the courts, in sentencing a person found guilty of a drink driving offence, even if special reasons are found, to suspend that person if otherwise his driving conduct merits some period of disqualification.

Forgery and Counterfeiting

22. *All crimes of forgery and counterfeiting have been in statute form in England for many years. The current legislation is contained within the Forgery and Counterfeiting Act 1981. In Guernsey, in connection with matters that do not relate to the counterfeiting of currency, forgery is still an offence under common law. Although the common law offence of forgery is very similar to that contained within the 1981 Act, the English legislation does contain several useful provisions that are not dealt with by the common law. For example, at common law there are no offences of copying a false instrument or using a copy of a false instrument.*
23. *As far as currency offences are concerned, the States of Deliberation have enacted the Currency Offences (Guernsey) Law, 1950. The purpose of the Law was to enable the United Kingdom to ratify on the Bailiwick's behalf the 1929 International Convention for the Suppression of Counterfeiting Currency. The 1950 Law replicates many provisions of the Counterfeit Currency (Convention) Act 1935 and the Coinage Offences Act 1936. The Acts of 1935 and 1936 were repealed by the Forgery and Counterfeiting Act 1981. Part 2 of the 1981 Act deals with the same subject matter as the Acts of the 1930s but its text is easier to understand and it also reflects the realities of the modern world.*
24. *I have reached the conclusion that the common law offence of forgery should be put on a statutory basis and the other offences contained within the Forgery and Counterfeiting Act 1981 that deal with non-currency matters should be replicated locally. In addition, I am of the opinion that Guernsey should follow England and repeal the existing currency provisions and enact legislation similar to Part 2 of the 1981 Act.*
25. *I therefore recommend that legislation be introduced to cover the following offences:-*

Part 1

- (i) *forgery;*
- (ii) *copying a false instrument;*
- (iii) *using a false instrument;*
- (iv) *using a copy of a false instrument;*
- (v) *having possession of an instrument knowing or believing it to be false with the intention it will be used to induce somebody to accept it as genuine and by reason of so accepting it another person will do or not do some act to his own or another person's prejudice;*

Part 2

- (vi) *counterfeiting notes and coins;*
- (vii) *passing counterfeit notes and coins;*
- (viii) *possession of a counterfeit note or coin with intent to pass or tender it as genuine or to deliver it to another with the intention that that person shall pass or tender it as genuine;*
- (ix) *possession of anything for the purpose of making a counterfeit note or coin; and*
- (x) *making, sale or distribution of any imitation of a coin in circulation in the Bailiwick or the United Kingdom.*

Property in the possession of the police

26. *It is a common occurrence for property to come into the hands of the police or customs whether as a result of their enquiries or by a person handing in what appear to be items that have been lost. Normally, there is no problem and the property is returned to its lawful owner. However, when ownership is disputed, it is potentially time consuming and expensive for a remedy to be obtained through existing court procedures.*
27. *In England there is a statutory procedure to be followed should it not be possible to reach an agreement concerning the ownership of property in the possession of the police. The relevant legislative provision is the Police (Property) Act 1897. Any person with a claim against property held by the police is able to apply to the local magistrates' court for an order that the property in question be handed over to them by the police. I therefore recommend that legislation based upon the 1897 Act be enacted locally so that*

the Magistrate's Court can summarily make a ruling on ownership of property in the possession of the police or customs.

Forfeiture of property used for the purposes of crime

28. *Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 gives the courts in England and Wales the power to order the forfeiture of items used or intended for use in the commission of crime. The power to order forfeiture extends to motoring offences that are punishable with imprisonment, for example drink driving. In considering whether to make an order, the courts are required to have regard to the value of the property and the likely financial and other effects on the offender of the making of the order (taken together with any other order the court contemplates making). In my view, a similar local statutory power would be useful in order to adequately punish the convicted and to hinder the commission of future offences.*
29. *The Act of 2000 also states that the Police (Property) Act 1897 should apply to any property in the possession of the police which is the subject of forfeiture orders to allow for innocent owners to apply for the return of property that was used by others in the course of crime without their consent. A similar provision for property in the possession of the police or customs would complete the local legislative regime in this area.*

Incitement and commission of sexual offences abroad

30. *There has been substantial coverage in the media about the activities of paedophiles who travel overseas in order to exploit children for sexual purposes. In 1996 when the United Kingdom first considered legislation to deal with this problem, statistics were cited that put the number of child prostitutes in Thailand between 100,000 and 200,000; in the Philippines 40,000 to 60,000 (two thirds of whom were boys); and in Sri Lanka at 30,000. There was evidence that persons were travelling to those countries with the aim of exploiting child prostitutes.*
31. *The Sexual Offences (Conspiracy and Incitement) Act 1996 allows for the prosecution of those who incite the commission of sexual offences abroad. The legislation is targeted at those who made arrangements in the United Kingdom for child sex tours abroad.*
32. *Then, by way of the Sex Offenders Act 1997, the United Kingdom went a stage further by allowing the prosecution in the United Kingdom of those persons who commit sexual offences abroad. Both pieces of legislation require that before a prosecution can be launched the conduct alleged must both have been an offence in the jurisdiction where it took place and one of a list of sexual offences contrary to United Kingdom law, for example, rape or unlawful sexual intercourse.*

33. *I am of the opinion that legislation should be enacted to deter Bailiwick residents from engaging in child sex tourism. Indeed, it would be unfortunate if paedophiles sought to reside in the Bailiwick to escape the rigour of the legislation in force in the United Kingdom. I therefore recommend that legislation equivalent to the Sexual Offences (Conspiracy and Incitement) Act 1996 and the extraterritorial provision of the Sex Offenders Act 1997 be enacted locally.*
34. *I should mention again that a review is currently proposed of the whole range of sexual offences, in respect of which Bailiwick legislation is in some respects inadequate and archaic and non-compliant with the European Convention on Human Rights. Furthermore, reform of Bailiwick law in relation to sexual offences is necessary to bring it into line with the UK's Sexual Offences Act 2003 if effective and enforceable sex offender monitoring is to be established locally.*

Prosecution statements connected with sexual offences

35. *As a matter of routine, copies of statements made by prosecution witnesses are given to defendants or their advocates. Some of these statements contain explicit details of sexual offences. It became apparent in the 1990s that in a number of cases improper use had been made of statements made by victims of alleged sexual offences for pornographic purposes, particularly by persons on remand selling them to fellow prisoners.*
36. *To reduce the chances of statements being improperly used the United Kingdom passed the Sexual Offences (Protected Material) Act 1997. This Act ensures that the use of statements made in connection with sexual offences is controlled. For example, an unrepresented defendant, if remanded in custody, only has access to prosecution statements under the supervision of prison staff and, if on bail, under the supervision of a police officer at a police station. When a person is represented by a solicitor an undertaking has to be given by the solicitor to the prosecuting authorities that the material must not be handed over to the defendant to keep and any access to it by the defendant has to be properly supervised.*
37. *It is an offence for a defendant to have possession of any restricted material otherwise than in the circumstances permitted by the legislation, or for him to give the material or reveal its contents to another person. An offence is also committed when a person lawfully in possession of any restricted material reveals its contents to a person other than the defendant or in circumstances that are not provided for by the Act. The maximum penalty for both offences is two years imprisonment and or a fine of unlimited amount.*
38. *In order to reduce the possibility of improper use of statements made in connection with sexual offences, I recommend that the States be asked to enact legislation based upon the Sexual Offences (Protected Material) Act 1997.*

Threats to kill and administering a noxious substance

39. *In England, the common law relating to assaults was put into statute form by the Offences Against the Person Act 1861. Guernsey has not introduced similar legislation, and the Bailiwick's law concerning assaults is still mainly dependent upon our common law. I have carefully considered whether it would be appropriate to introduce legislation similar in all respects to the 1861 Act. However, as the law relating to offences against the person is currently under review in England, I have concluded that it would be prudent to wait and see whether the United Kingdom enacts new legislation. The Offences Against the Person Act 1861 did, however, supplement the common law in certain specific instances and there are some offences I believe would be of use locally.*
40. *Under section 16 of the Act it is an offence for a person without lawful excuse to make a threat to another person that the other person will be killed. For those found guilty of the offence the penalty in the United Kingdom is 10 years imprisonment. There have recently been cases in Guernsey where threats to kill have been made. It has been possible in most cases to deal with the makers of the threats by using offences that are currently available locally, but the true nature of the offender's conduct has not been properly reflected in the charge before the court. In view of this, I recommend the enactment locally of an equivalent to section 16 of the Offences Against the Person Act 1861.*
41. *Furthermore, some years ago a group of employees in Guernsey took to putting sleeping tablets in their supervisor's hot drinks. They were eventually discovered but escaped prosecution due to the lack of appropriate legislation. Under section 23 of the Offences Against the Person Act 1861 it is an offence maliciously to administer poison or any other noxious or destructive thing so as to endanger life or inflict grievous bodily harm; and under section 24 maliciously to administer poison, etc, with intent to injure, aggrieve or annoy another. The offences are punishable in the United Kingdom with imprisonment for 10 and 5 years respectively. I recommend that similar offences be introduced to ensure that instances of poisoning and administering other noxious substances with intent to endanger life or injure etc. can be punished by the courts.*

Articles with a blade, and penalty for possessing an offensive weapon

42. *Before he retired the former Chief Officer of Police informed St. James' Chambers that in recent years his officers had discovered many individuals carrying knives in public places. The Guernsey police remain concerned about persons carrying knives and a number of them routinely patrol wearing body armour.*
43. *Under section 1(1) of the Summary Offences (Bailiwick of Guernsey) Law, 1982 it is an offence to possess an offensive weapon in a public place. Certain types*

of knives such as "flick knives" are in law automatically regarded as offensive. However, most knives are not treated by law in this way and to obtain a conviction for possessing an offensive weapon it is necessary for the prosecution to show that a knife is being carried with the intention of causing injury to a person. However, it is not always possible for the prosecution to prove that a knife is being carried with that intention. In my opinion it is clearly against the public interest for individuals to carry knives when there is no good reason for them to do so.

44. *In England, the problem of persons carrying knives in public was addressed by section 139 of the Criminal Justice Act 1988. It is an offence in England for a person to have an article with a blade or point in a public place. As far as folding pocket-knives are concerned they are only caught by the offence if the cutting edge of the blade is more than 3 inches long. The maximum custodial penalty in the United Kingdom is 6 months imprisonment if tried by the magistrates' courts and 2 years imprisonment if tried on indictment .*
45. *I believe that it is essential that local legislation should deter persons from carrying knives when there is no need for them to do so and give the courts adequate powers to deal with such conduct. In view of this I recommend that the offence of having an article with a blade or point in a public place be introduced locally.*
46. *I realise that there may be some concern that those involved in, for example, building work or recreational fishing may run the risk of being routinely prosecuted for this offence as their activities invariably involve the use of knives. However, an offence would not be committed if the person in possession of the knife could show that he had good reason or lawful authority for having the knife in his possession. Therefore, a person who relies upon a knife as part of the tools of his trade or for bona fide recreational purposes would not be prosecuted if they were found to have a knife in their possession when travelling to or from, or when at, a place of work or recreation if the manner in which it was being carried or used was consistent with its use by a person engaged in the relevant line of work or recreation. Similarly, a person who had bought a kitchen knife and was carrying it home from the shop would clearly have good reason.*
47. *Currently the maximum penalty for possessing an offensive weapon in Guernsey in a public place is 3 months imprisonment. In England the equivalent offence under section 1 of the Prevention of Crime Act 1953 was originally punishable with a maximum of 2 years imprisonment. This was increased to 4 years in 1996. To increase the deterrent effect of the offence, I recommend that the offence of possessing an offensive weapon be removed from the 1982 Summary Offences Law and re-enacted with a maximum penalty of 5 years imprisonment if tried on indictment and 12 months if dealt with by the Magistrate's Court.*
48. *In addition, under section 139A of the Criminal Justice Act 1988, it is an offence*

to have an article covered by the provisions of section 139, or an offensive weapon, on school premises. The maximum custodial penalty is 6 months imprisonment in the magistrates' courts or, if the defendant is tried on indictment, 2 years for possession of an article contrary to section 139 or 4 years for possession of an offensive weapon. Under section 139B of the 1988 Act the police have the right to enter schools to search for knives and offensive weapons. I recommend that similar provisions be introduced locally.

Corporal punishment

49. *In the 1970s the European Court of Human Rights ruled that the use of judicial corporal punishment was contrary to the European Convention on Human Rights. The Corporal Punishment (Guernsey) Law, 1957 is still in force. Although, a sentence of corporal punishment has not been imposed by any of the Bailiwick's courts since the European Court's ruling it would be embarrassing for the Bailiwick if, during any future human rights review by international organisations such as the United Nations, it was noted that in law corporal punishment could be used to punish offenders. I therefore recommend that the 1957 Law be repealed.*

Threatening witnesses

50. *Unfortunately it is becoming increasingly common in criminal cases for defendants or their associates to intimidate witnesses. Intimidation is not limited to the period before and during a trial. It also occurs once court proceedings have come to an end.*
51. *Under common law any person who intimidates a witness before or during a trial can be prosecuted for perverting the course of justice. At common law those who intimidate a witness after a trial can be committed to prison for contempt of court. Contempt proceedings do not truly reflect the conduct that is being punished.*
52. *Section 51 of the Criminal Justice and Public Order Act 1994 introduced two offences. The first makes it an offence to intimidate a witness or potential witness with intent to cause the investigation or the course of justice to be obstructed, perverted or interfered with. The second makes it an offence for a person to do an act that harms, or to threaten to do an act that would cause harm, knowing or believing that the victim assisted in an investigation or gave evidence. The maximum penalty for both offences following trial on indictment is 5 years imprisonment, an unlimited fine or both or, after summary trial, 6 months imprisonment, a fine of up to £5,000 or both.*
53. *Whilst the common law offence of perverting the course of justice is still regularly used in England, and therefore the subject of regular judicial scrutiny, the offence under the 1994 Act is wider and covers the intimidation of witnesses and potential witnesses up to the time they finish giving evidence. I have*

therefore decided to recommend that the intimidation offence should be replicated locally, taking account of developing English case law in this area.

54. *I also recommend that the offence of harming or threatening to harm a former witness or a person who assisted in an enquiry should be introduced.*

Intimidation

55. *There have been a number of instances in recent years in which police or customs officers and their families have been threatened as a result of an officer's involvement in certain investigations. Given the size of Guernsey and the other islands in the Bailiwick, those involved in the administration of justice and law enforcement have to live within the small and closely knit community they serve. It is not possible, for example, for a detective at the end of his working day to get into his car and drive 15 or 20 miles to his residence well away from the place he polices. Given the increase in serious crime, particularly involving drugs, I fear that instances of intimidation may become more common.*
56. *In the Republic of Ireland, in the legislation that created the Criminal Assets Bureau which has the task of depriving criminals of the proceeds of their crimes, an offence was created to enable the prosecution of those who intimidate members of the Bureau and their families. I recommend that similar legislation be enacted in the Bailiwick to make it an offence, punishable with up to 10 years imprisonment, for a person to utter, send threats or in any way intimidate or menace any person involved with the administration of justice or law enforcement. I suggest that the provision, if enacted, should deal with intimidation aimed at the judiciary, the Jurats, the Law Officers, H.M. Greffier, H.M. Sheriff and H.M. Sergeant, and all those employed by them and by the police and customs, and their respective families.*

Protection of Emergency Workers

57. *Occasionally, some members of our community have chosen to obstruct the good work of our emergency services. In the United Kingdom such events have become common. To some extent current legislation and common law gives some protection to those working to serve the community in emergencies. For example, those who assault or obstruct the police can be punished with up to 2 years imprisonment under the provisions of the Offences Against Police Officers (Bailiwick of Guernsey) Law, 1963 (as amended). The current law does not, however, cover all eventualities. It is important that as much as possible should be done to deter malicious and misguided members of the public from interfering with the work of the emergency services.*
58. *I recommend that legislation be enacted to make it an offence to:-*
- (i) *assault, obstruct or hinder an emergency worker who is responding to*

emergency circumstances;

- (ii) *assault, obstruct or hinder a person assisting an emergency worker; or*
- (iii) *assault, obstruct or hinder an emergency worker who is a member of the ambulance service or a health worker working on emergency matters with an accident and emergency department.*

If such legislation were introduced locally it would ensure that those who assault and obstruct our emergency services are properly punished and those who are, for whatever reason, tempted to do so, are deterred.

59. *I propose that the following emergency workers should be covered by the legislation - police officers (including special constables), customs officers, full or part time members of a fire service maintained in any part of the Bailiwick, full or part time members of any ambulance or first aid service maintained in any part of the Bailiwick, prison officers, any person appointed as harbourmaster for any harbour in the Bailiwick (and any person employed to assist him), members of the crew of any vessel operated by the Royal National Lifeboat Institution (or any person who musters the crew of such a vessel or attends to its launch), medical practitioners, nurses, midwives or veterinary surgeons, and members of Her Majesty's Forces.*

Forfeiture under the Customs and Excise Law

60. *Those who are found to be importing drugs into the Bailiwick are usually charged under section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 with the fraudulent evasion of the prohibition against the importation of controlled drugs. Section 77 does not include a power for a court to order that anything improperly imported be forfeited and destroyed. However, the Royal Court has for many years, without challenge, when a person is convicted of an offence contrary to section 77, routinely ordered the forfeiture of drugs seized by the law enforcement authorities. Although the view has been taken that forfeiture orders in cases involving section 77 are permitted under common law, I believe that it would be better, for the avoidance of doubt, for the courts to be given express power to order forfeiture and destruction. In my opinion the most appropriate way to achieve this is to follow the example of section 27 of the Misuse of Drugs Act, 1971, as amended, and add a power to section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 to enable the courts to order the forfeiture of drugs in all drug trafficking cases.*

Assisting offenders and concealing an offence

61. *At common law it is an offence to be an accessory after the commission of a crime. As a result of the Criminal Law Act 1967 the offence was replaced in*

England by one of assisting an offender. The offence is similar to the one at common law and a person is guilty of an offence if, knowing or believing that another person is guilty of a crime, he without lawful authority or reasonable excuse does an act with intent to impede the other person's arrest or prosecution. The maximum penalty in on the mainland is 10 years imprisonment.

62. *At common law it is an offence to withhold information from the authorities in exchange for some sort of payment. This offence was also put into statutory form by the 1967 Act with a maximum penalty of 2 years imprisonment.*
63. *Given the increase in serious crime, particularly that connected to drugs, it is quite possible that there will be instances when assistance will be given to serious criminals to evade capture; and payments may also be given to ensure that a person does not help the law enforcement authorities. Given also that the common law offences have been in statutory form in England for 36 years, I recommend that similar legislation be introduced locally.*

Amendment to Terrorism Law

64. *Paragraph 14 of Schedule 8 to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 allows the authorities to require from air and shipping lines information relating to passengers or crew, or vehicles belonging to passengers or crew, arriving in the Bailiwick. The equivalent provision in the Terrorism Act 2000 also permits requests to be made for the disclosure of information about goods being carried. The Act also permits information to be required concerning out-going ships and aircraft. In order to ensure that our local law enforcement authorities have powers equal to those in the United Kingdom, I recommend that Schedule 8 to the Bailiwick's Law be amended to match the equivalent legislation in force in the United Kingdom.*
65. *In practice, information required under the 2002 Terrorism and Crime Law is provided to the authorities by airlines and shipping companies in electronic form. However, to put this on a statutory footing, and to ensure that this practice continues, particularly as new carriers may gain access to the Bailiwick, I recommend with the support of the Chief Officers of Customs and Police that the Terrorism and Crime Law be amended specifically to allow the authorities to require information in electronic form.*
66. *During the preparation of these proposals, my office was informed by the Chief Officer of Customs that, together with the Chief Officer of Police, he is following with interest the Home Office's work on the possibility of introducing technology that will assist in, for example, establishing the true identity of a traveller at the time of checking-in to travel. It is possible that the United Kingdom will legislate to give effect to this "e-borders" initiative. It is therefore possible that the States may be asked to promulgate legislation on the lines of whatever is enacted in the United Kingdom in connection with any new*

procedures introduced as a result of the work being conducted by the Home Office.

Increase in penalties relating to indecent photographs of children

67. *In England under the Protection of Children Act 1978 persons who take, make, distribute, show, possess with a view to distributing, show, or advertise the distribution or display of, indecent photographs or pseudo-photographs of a child are liable if tried and convicted on indictment to imprisonment for 10 years, an unlimited fine, or both or, if tried and convicted summarily, to 6 months imprisonment, a fine of £5,000, or both. In Guernsey, under the Protection of Children Law, 1985, the penalties for the equivalent offence are 3 years imprisonment, an unlimited fine or both for conviction on indictment or 3 months imprisonment, a fine of £2,500 or both for conviction summarily.*
68. *For the offence of possessing an indecent photograph or pseudo-photograph of a child, section 160 of the Criminal Justice Act 1988 provides for a maximum penalty on conviction on indictment of 5 years imprisonment, an unlimited fine or both or, on summary conviction, 6 months imprisonment, a fine of 5,000 or both. In Guernsey, the equivalent offence can only be tried summarily with an available penalty of 6 months imprisonment, a fine of £5,000 or both.*
69. *The penalties in England were revised in 2000. I am of the opinion that effectively to punish those convicted of these offences locally and to deter potential offenders, the penalties locally for cases heard on indictment should be increased to the same levels as in force in England. Given that the Magistrate's Court in Guernsey has jurisdiction to impose up to 12 months imprisonment, I recommend that the maximum summary penalty for making, etc, indecent photographs of children, and for possession, should be increased in the Bailiwick to 12 months imprisonment. I also recommend that the offence of possession be triable on indictment as well as summarily, as in England, with the penalties indicated in paragraph 68.*

Admission of written statements

70. *The Administration of Justice (Bailiwick of Guernsey) Law, 1991 provides in section 1(1) that in any criminal proceedings other than committal proceedings a written statement by any person shall (subject to certain formal safeguards) be admissible in evidence to the like extent as oral evidence. This is an extremely useful provision which avoids the need for a witness to attend court to give evidence in person about a matter which is not in dispute (for example, an account of property stolen in a burglary, or scientific evidence as to the composition of a particular drug). However, section 1(1) of the 1991 Law excludes committal proceedings. Therefore, in committal proceedings, it is still necessary to expend court time and witness time in proving matters that are entirely non-controversial and as to which the prosecution and defence are not in dispute. I therefore recommend that section 1(1) of the 1991 Law be*

amended so as to include committal proceedings. I also recommend that the 1991 Law be amended so as to enable its provisions to be amended by Ordinance rather than Projet de Loi, thereby enabling the States to respond promptly to any emerging requirement.

The Summary Offences (Bailiwick of Guernsey) Law, 1982

71. *This Law prescribes a number of minor criminal offences triable summarily, and replaced a Law of 1856. The offences covered include begging, drunken and disorderly conduct, tampering with moorings, soliciting for purposes of prostitution, allowing a mischievous or ferocious dog to wander, being found lying drunk, and offences in connection with straying animals. I am of the opinion that the States, by Ordinance, should have power to amend the 1982 Law; and also to prescribe new summary offences, i.e. these only punishable in the Magistrate's Court.*

Summary of recommendations

72. *In summary, I therefore recommend that the States' approval be sought for legislation which will:-*

- (i) put on statutory footing the law relating to attempts, conspiracy and aiders and abettors, etc (paragraphs 8 to 15);*
- (ii) revise the law as to suicides (paragraph 16);*
- (iii) revise the law of homicide (paragraphs 17 and 18) by*
 - (a) abolishing constructive malice in murder cases;*
 - (b) confirming the defence of diminished responsibility in murder cases;*
 - (c) codifying the law of provocation in murder cases;*
 - (d) providing for a verdict of manslaughter in cases where killing takes place as part of a suicide pact;*
- (iv) create public order offences concerning threatening behaviour, affray, violent disorder and riot (paragraphs 19 and 20);*
- (v) amend various road traffic legislation (paragraph 21) by*
 - (a) creating an offence of causing death by careless driving when under the influence of drink or drugs and allowing the taking of a blood sample for analysis when a person is unconscious and is suspected of having committed a drink driving offence;*

- (b) enabling the Royal Court to impose a disqualification in certain drink driving cases;*
- (c) increasing the penalties that can be imposed in connection with cases involving dangerous driving;*
- (d) enabling the court, when sentencing a person convicted of a drink driving offence, even though special reasons have been found for not imposing the mandatory suspension, to impose a suspension;*
- (vi) create offences in relation to forgery and counterfeiting (paragraphs 22 to 25);*
- (vii) provide for the court to determine ownership of property in the hands of the police (paragraphs 26 and 27);*
- (viii) allow the courts to order forfeiture of property used to commit offences (paragraphs 28 and 29);*
- (ix) create offences in relation to child sex tourism (paragraphs 30 to 33);*
- (x) control the use of statements made in connection with sexual offences (paragraphs 35 to 38);*
- (xi) create offences relating to threats to kill and the administration of noxious substances (paragraphs 39 to 41);*
- (xii) create an offence of having a blade in a public place and make the possession of an offensive weapon an indictable offence (paragraphs 42 to 47);*
- (xiii) create an offence of having an offensive weapon on school premises (paragraph 48);*
- (xiv) abolish corporal punishment as a judicial penalty (paragraph 49);*
- (xv) create offences relating to the threatening of witnesses (paragraphs 50 to 54);*
- (xvi) create offences in relation to the intimidation of witnesses and those involved in the administration of justice (paragraphs 55 and 56);*
- (xvii) create offences for the protection of emergency workers (paragraphs 57 to 59);*
- (xviii) allow for the forfeiture of goods that are the subject of a charge under*

section 77 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 (paragraph 60);

- (xix) create an offence of assisting an offender (paragraph 61);*
- (xx) create an offence of withholding information in exchange for a payment (paragraph 62);*
- (xxi) amend schedule 8 to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (paragraph 64);*
- (xxii) enable the authorities to request information under that Law from airlines, etc, in electronic form (paragraph 65);*
- (xxiii) increase the penalties in the Bailiwick for taking, making, etc, and possessing indecent photographs and pseudo-photographs of children to the same level for equivalent offences in England and to make possession of indecent photographs of children an indictable offence (paragraphs 67 to 69);*
- (xxiv) allow the admission of written statements in committal proceedings and the amendment of the Administration of Justice (Bailiwick of Guernsey) Law, 1991 by Ordinance of the States (paragraph 70).*

73. *As regards penalties, where I have not specifically indicated the proposed level of penalties in this report, it is my intention that penalties equivalent to those which may be imposed under English legislation should be applied, subject only to variations to take account of local circumstances. However, as is customary, the precise level of penalty for each offence (apart from those specifically indicated) will be a matter for the Law Officers' discretion to be dealt with in the course of drafting the legislation.*

Human Rights

74. *I am satisfied that the proposals outlines in this letter if enacted by the States will be compliant with the European Convention on Human Rights.*

Further Developments

75. *In addition to sexual offences, it is anticipated that the States may be asked to consider recommendations for legislation as a result of for example, the work of the Criminal Justice Policy Working Group which is chaired by H.M. Comptroller.*

76. *Also, perhaps surprisingly, there is no definition of fraud for purposes of the criminal law of fraud, and indeed no customary law offence of simple 'fraud'. Offences of dishonesty are usually prosecuted under the Theft (Bailiwick of*

Guernsey) Law, 1983, which is based on equivalent English legislation (which repealed and replaced earlier larceny legislation), but the broader offence of fraud is usually prosecuted as a conspiracy to defraud. It has long been felt amongst English practitioners and academics that the offence of fraud ought to be put on a statutory footing and be prosecutable other than in the context of a criminal conspiracy. In 2002 the Law Commission reported on the reform of fraud, which was followed in 2004 by a Home Office Consultation Paper on proposals for legislation, including amendments to the mainland theft legislation. I am closely monitoring these legislative developments in England with respect to fraud, particularly given the importance of the financial services sector to Guernsey's economy, and the desirability of ensuring that those who perpetrate or are accessories to frauds in or from Guernsey are subject to criminal sanction. Depending upon the way in which reforms to the law on fraud are progressed on the mainland, I shall be recommending the early enactment of equivalent legislation.

77. *I should be grateful if you could arrange for these proposals to be placed before the States at the earliest opportunity with the appropriate recommendations, including one directing the preparation of the necessary legislation.”*

3. Home Department’s Response

The Department fully supports Her Majesty’s Procurer’s recommendations for amending the Bailiwick’s criminal laws. It is grateful for the considerable time and effort which Her Majesty’s Procurer, his staff and the Chief Officers of the Police and Customs and Immigration Services have put into preparing such detailed and comprehensive proposals.

The Department believes that the proposals will make a positive contribution to the achievement of the States Corporate Agenda, particularly in respect of the prevent and detection of crime and the prosecution of offenders, which is to ensure that:

“The States of Guernsey will strive to prevent all types of criminal activity in or from the Bailiwick and to pursue all criminal activity that may occur, including the provision of assistance to international law enforcement agencies and to build and protect a safe, just and tolerant society for the people of the Bailiwick.”

In the implementation of this strategy, the Home Department has undertaken to seek to:

- Reduce serious and organised crime, particularly money laundering, financial crime, drug trafficking and illegal immigration.
- Increase people’s sense of security and quality of life in relation to personal threats from, for example, acquisitive crime or crimes of violence.
- Reduce the rates of re-offending through appropriate response to people who have entered the Criminal Justice system.

4. Resources

The Department has consulted with the Chief Officers of Police, Customs and Immigration, Probation and the Prison Governor. Whilst it believes that the proposals should be resource neutral, at this stage it is unable to provide a definitive answer before the proposed amended legislation has been drafted. The Department accepts that whilst few new offences *per se* are proposed Her Majesty's Procureur is recommending creating a statutory basis for attempts, conspiracy offences and aiding and abetting offences and this may have some impact on the resources of the law enforcement agencies.

Further, whilst the Department is committed to working with the Treasury and Resources Department to prioritise and, wherever possible reduce, spending it firmly believes that the resources for the law enforcement agencies must be maintained to enable them to combat all forms of crime and, in particular serious and organised crime, because, as stated above, the prevention and detection of crime is a key pillar of the States Corporate Agenda.

5. Alderney and Sark

The Department has advised the Authorities in Alderney and Sark that the proposals are for new criminal legislation and amendments to existing criminal provisions and therefore will, in accordance with usual practice be drafted as Bailiwick legislation.

6. Conclusion

In conclusion the Department recommends the States:

To approve the Department's proposals for amending the legislation, as summarized in paragraph 72 of Her Majesty's Procureur's letter; and

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

Yours faithfully

M W Torode
Minister

(NB The Policy Council supports the proposals.)

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

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 21st February, 2006, of the Home Department, they are of the opinion:-

1. To approve the Home Department's proposals for amending the criminal law, as summarized in paragraph 72 of Her Majesty's Procureur's letter quoted in section 2 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**THE DRIVING LICENCES (GUERNSEY) THEORY TEST REGULATIONS
(AMENDMENT) REGULATIONS 2006**

In pursuance of section 4A of the Driving Licences (Guernsey) Ordinance, 1995, as amended, The Driving Licences (Guernsey) Theory Test Regulations (Amendment) Regulations, 2006, made by the Environment Department on 7th March, 2006, are laid before the States.

EXPLANATORY NOTE

These Regulations increase the fee payable for a Theory Test in line with the annual percentage increase in the Guernsey Retail Prices Index as at 31st December, and implement this change from 1st April, in this and subsequent years.

TREASURY AND RESOURCES DEPARTMENT

GUERNSEY POST LIMITED - SUBMISSION OF ANNUAL ACCOUNTS

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

14th February 2006

Dear Sir

Under Section 8 of the States Trading Companies (Bailiwick of Guernsey) Ordinance 2001, the year end accounts of Guernsey Post Limited are required to be published as an appendix to a Billet d'Etat.

I therefore submit the Report and Financial Statements of Guernsey Post Limited for the year ended 30 September 2005.

The Treasury and Resources Department is, of course, very pleased to see the significant operational and financial improvement in the Post Office in recent years. A Profit of £1.5m (allowing a dividend to the States of Guernsey of £391,000 as well as the payment of tax) is a considerable success. The contribution of all those involved is to be commended. However, the significant future challenges facing the Post Office also need to be recognised.

The Treasury and Resources Department supports the Board's intention to change its year-end from the 30 September to 31 March (coincidentally the same as Guernsey Electricity) as it better fits the business cycle.

I should be grateful if you would include this matter as an Appendix to the April 2006 Billet d'Etat.

Yours faithfully

L S Trott
Minister

Guernsey Post Limited
Report and financial statements
30 September 2005

Guernsey Post Limited

Directors:

D R Jehan (Chairman)
M R Hall (Managing Director)
J Domican
M Johnson
J Kitts
R A Perrot
D T Roberts

Auditors:

KPMG Channel Islands Limited
Chartered Accountants

Registered office:

Envoy House
La Vrangue
St Peter Port
Guernsey
GY1 1AA

Guernsey Post Limited

Chairman's Statement

Following a difficult financial year ending September 2004, recovery has been achieved and performance has been excellent during the financial year ending September 2005. Profits earned have more than made up for the decrease in shareholder funds experienced over the previous two years. The financial success of the past year has allowed the Board of Directors to propose a dividend for the first time in three years. A dividend payment policy of 25% of pre-tax profits has been agreed with Treasury & Resources and it is gratifying for the Company to be in a position to provide a return on investment to its shareholder, The States of Guernsey. The proposed dividend is £391,000. In addition, the Company will pay Income Tax at the standard rate.

Our quality of service measured against targets set by the regulator (the OUR), is at an all time high. It is the quality of service that most directly impacts on the Company's customers and I hope that the high standards of performance that are being achieved, are helping to win back the community's confidence in Guernsey Post. There is still room for improvement in particular areas such as mis-deliveries and errors in redirection and the Company, with the help of its staff, is striving to improve its performance in these areas.

Despite the Company's recovery during the past year, its future is by no means assured as many real challenges continue to face the organisation.

- The continuing swingeing increases in charges from Royal Mail, our main trading partner:

The Company is negotiating with Royal Mail and other mail service providers to achieve best prices and service levels for mail leaving the Bailiwick for delivery worldwide. The opening up of the UK postal market to competition and the general liberalisation across the postal world is creating opportunities for us to exploit. There will be new operators, greater network options and not least, a movement from weight-based charging of packages to a sized-based regime. These impending changes are particularly important in supporting the Island's bulk mail businesses which have to compete in the global market-place.

- Ensuring our Retail activity is achieving the fine balance of meeting the Licence Obligations, serving our communities whilst not being a drain on limited resources:

The Board is undertaking a full Strategic Review in this area to ensure a viable future for the post office network.

- Maintaining the performance of our Philatelic business:

This activity continues to be a major profit earner for Guernsey Post. The market is becoming increasingly competitive and innovative and we need to respond appropriately to maintain our share of business.

- Competing on price and quality in the Express Parcels Market :

We must ensure that value-added postal services are available to Guernsey's business users to allow them to achieve timely and secure communications with their business partners across the world, in a cost effective manner.

- Working with the regulatory demands of the OUR.

The OUR has recently approved an increase in public tariffs from April 2006 for a period of 12 months. A further tariff review is required following this period. Additionally the OUR has signalled the need for a thorough review of the Universal Service Obligation. The OUR acts as a quasi-competitor to the Company for its licensed products and the challenges this creates, along with pressures of productivity improvements and cost increases from third party suppliers, present the Company and its management, with real challenges. Standing still as a business is not an option.

- Funding of the staff pension scheme

The situation relating to the funding of the public service pension scheme, of which our staff are members, has been publicly aired and will be a major issue of debate by the States of Deliberation during the coming year. Suffice to say that at this stage the Board of Directors is following developments with great interest.

The Board has decided to change its year-end to better align the Company's business cycle with its financial reporting year. From 2006 the year-end will be 31st March at which time a financial report covering an 18 month period from 1st October 2004 to 31st March 2006 will be presented.

The success of the current year and the turnaround from loss to profit is pleasing to report and reflects the hard work and dedication shown by all the employees of Guernsey Post. May I take this opportunity to thank them all for the contribution they have made to the greatly improved performance both in financial terms and quality of service of Guernsey Post.

Dudley R Jehan
Chairman

Guernsey Post Limited

Managing Director's report

Guernsey Post's return to profitability was underpinned by a strong operating performance: the operating loss of £824k suffered in 2003-4 was turned into an operating profit of £711k in 2004-5. At the same time the quality of Guernsey Post's services was further improved.

There was no price increase during the financial year, prices being frozen, in line with the Office of Utility Regulation (OUR) price control period. However, the full flow through of the June 2004 increase assisted in offsetting the substantial increases in the cost of the Royal Mail contract. In addition, profitability was secured through:

- rigorous application of the financial and management control systems, introduced since 2003;
- increases in the volume and hence revenues from bulk mail packet traffic;
- maintenance of the philatelic business earnings performance;
- and efficiency improvements across the organisation – in postal operations, retail, and administration.

The return to profitability – and the savings achieved – were not, however, at the expense of quality of service. On the contrary, the Company performed better against higher OUR targets than in the previous year. It met 18 out of 23 of the enhanced targets. Of the 5 not met, 3 were de minimis failures and the other 2 require further cooperation from delivery partners.

Highlights were:

- local letters collected and delivered in the Bailiwick achieved 95.2% next-day delivery over the year compared with the OUR target of 90% and an achievement of 91.6% in 2003-4;
- standard mail to the United Kingdom achieved 81.3% next-day delivery against a target of 70% and an achievement of 73.2% the previous year;
- standard mail from the United Kingdom to the Bailiwick achieved 78.4% next-day delivery against a target of 70% and 65.3% the previous year;

But:

- bulk mail for delivery in the United Kingdom in up to 3 days after posting narrowly failed the OUR target, achieving 89.3% against a target of 91% (for April to September 2005), but this was a substantial improvement on the Autumn and Winter of 2004-5, when the service was badly affected by network changes in Royal Mail. Further improvements are being vigorously pursued.

The OUR has set new and higher targets for 2005-6.

Guernsey Post also achieved an even better performance for the delivery of local mail at Christmas 2004 than the record in 2003: 93.8% of local mail was delivered the next day against 92.6% the previous December. This included the local mail posted at the

discounted price of 20p – the largest discount (6p) ever voluntarily offered by Guernsey Post.

Moreover, outside of Christmas, Guernsey Post's prices continued to be some of the lowest on offer in Europe. During the year it cost 26p for local to local mail up to 100gm in Guernsey, compared with, for example, 32p in Jersey, 30p in the United Kingdom (up to 60gm only), 64p in Germany (up to 50gm only), and 81p in France.

Thus with rising quality of service and prices held low, Guernsey Post is enhancing its value for money for its customers, has returned to providing a dividend for its shareholder, is retaining a profit for future investment as well as playing its full intended role in furthering the economic interests of the Bailiwick. This is a highly satisfactory performance in which all of Guernsey Post's managers, staff and its unions should continue to take great pride. Very many thanks to all of them.

Mike Hall

Managing Director

Guernsey Post Limited

Directors' report

The directors present their report and the audited financial statements for the year ended 30 September 2005.

Principal activities

The company's principal activity is the provision of a postal service for the Bailiwick of Guernsey through a postal network and retail counter operation. The company also markets its postage stamps and other philatelic products to stamp collectors worldwide.

Results

The results for the year are shown in the profit and loss account on page 10.

Dividend

The directors recommend the payment of a dividend, based on 25% of the pre-tax earnings, of £391,000 (2004: £Nil), being £0.017466 per share (2004: £Nil).

Fixed assets

Fixed asset movements for the year are disclosed in note 5 to the accounts.

Directors

The directors of the company who were appointed and held office during the year were as follows:

J Domican
 M R Hall
 T W S Holder (Resigned 31 December 2004)
 D R Jehan
 M Johnson (Appointed 1 July 2005)
 J Kitts (Appointed 27 April 2005)
 R A Perrot
 D T Roberts
 D J Warr (Resigned 11 February 2005)

In accordance with the Articles of Association, R A Perrot is due to retire by rotation, and being eligible offers himself for re-election at the forthcoming AGM.

Guernsey Post Limited

Directors' report - continued

Statement of responsibilities

The directors are responsible for preparing financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period and are in accordance with applicable laws. In preparing those financial statements the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed subject to any material departures disclosed and explained in the financial statements; and
- prepare the financial statements on the going concern basis, unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with The Companies (Guernsey) Law 1994. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Auditors

A resolution for the reappointment of KPMG Channel Islands Limited as auditors of the company at a remuneration to be determined by the Board from time to time is to be proposed at the forthcoming Annual General Meeting.

M R Hall
Director

D R Jehan
Director

KPMG Channel Islands Limited
 Grange Place
 The Grange
 Guernsey, Channel Islands
 GY1 4LD

Independent auditors' report to the members of Guernsey Post Limited

We have audited the financial statements on pages 10 to 23.

This report is made solely to the Company's members, as a body, in accordance with section 64 of The Companies (Guernsey) Law, 1994. Our audit work has been undertaken so that we might state to the Company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of directors and auditors

The directors are responsible for preparing the directors' report and, as described on page 6, the financial statements in accordance with applicable Guernsey law and UK accounting standards. Our responsibilities, as independent auditors, are established in Guernsey by law, the UK Auditing Practices Board and by our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with The Companies (Guernsey) Law, 1994 and Section 10(1) of The Post Office (Guernsey) Law, 1969. We also report to you if, in our opinion, the directors' report is not consistent with the financial statements, if the company has not kept proper accounting records, or if we have not received all the information and explanations we require for our audit.

We read the other information accompanying the financial statements and consider whether it is consistent with those statements. We consider the implications for our report if we become aware of any apparent misstatements or material inconsistencies with the financial statements.

Basis of audit opinion

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

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

Opinion

In our opinion the financial statements give a true and fair view of the state of the Company's affairs as at 30 September 2005 and of its profit for the year then ended and have been properly prepared in accordance with The Companies (Guernsey) Law, 1994 and Section 10(1) of The Post Office (Guernsey) Law, 1969.

KPMG Channel Islands Limited

Chartered Accountants
 22nd February 2006

Guernsey Post Limited

Profit and loss account

for the year ended 30 September 2005

	<i>Notes</i>	2005 £	2004 £
Income		23,894,484	21,393,449
Expenses		<u>(23,183,916)</u>	<u>(22,217,654)</u>
Profit/ (Loss) on ordinary activities before other income	2	710,568	(824,205)
Other income			
Interest receivable	3	800,125	549,429
Rents receivable		<u>54,478</u>	<u>82,018</u>
		854,603	631,447
Profit/(Loss) on ordinary activities before taxation		1,565,171	(192,758)
Taxation charge	4	<u>80,729</u>	<u>-</u>
Profit/(Loss) for the financial year		1,484,442	(192,758)
Dividend		<u>391,000</u>	<u>-</u>
Retained profit/(loss) for the financial year	10	£ <u>1,093,442</u>	£ <u>(192,758)</u>

All activities derive from continuing operations.

There are no recognised gains and losses or other movements in reserves for the current financial year.

The notes on pages 13 to 23 form part of these financial statements.

Guernsey Post Limited

Balance sheet
at 30 September 2005

	Notes	2005 £	2004 £
Assets employed			
Tangible fixed assets	5	16,216,660	16,643,575
Investments	6	2	2
Current assets			
Stock		124,238	135,317
Debtors	7	2,508,153	2,698,273
Cash at bank and in hand		<u>9,281,524</u>	<u>16,589,295</u>
		11,913,915	19,422,885
Creditors: amounts falling due within one year	8	<u>(4,031,519)</u>	<u>(13,094,637)</u>
Net current assets		<u>7,882,396</u>	<u>6,328,248</u>
Total assets less current liabilities		24,099,058	22,971,825
Provision for liabilities and charges	9	<u>(33,792)</u>	-
Total net assets		£ <u>24,065,266</u>	£ <u>22,971,825</u>
Financed by			
Share capital	10	22,386,258	22,386,258
Revenue reserve	10	<u>1,679,008</u>	<u>585,567</u>
		£ <u>24,065,266</u>	£ <u>22,971,825</u>

These financial statements were approved by the Board of Directors on

Signed on the Board's behalf on 31st January 2006:

M R Hall
Director

D R Jehan
Director

The notes on pages 13 to 23 form part of these financial statements.

Guernsey Post Limited

Cash flow statement

for the year ended 30 September 2005

		2005 £	2004 £
	<i>Notes</i>		
Net cash outflow from operating activities	12	(7,786,586)	3,251,529
Returns on investments and servicing of finance			
Interest received		800,125	549,429
Rent received		<u>54,478</u>	<u>82,018</u>
Net cash inflow from returns on investments and servicing of finance		854,603	631,447
Taxation		-	352,064
Capital expenditure			
Payment to acquire tangible fixed assets		(387,227)	(508,466)
Proceeds from sales of tangible fixed assets		<u>11,439</u>	<u>6,909</u>
Net cash outflow from capital expenditure		<u>(375,788)</u>	<u>(501,557)</u>
Increase / (Decrease) in cash	12	£ (7,307,771)	£ <u>3,733,483</u>

The notes on pages 13 to 23 form part of these financial statements.

Guernsey Post Limited

Notes to the financial statements

1. Accounting policies

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the company's financial statements.

Basis of preparation

These financial statements have been prepared under the historical cost convention, and in accordance with applicable United Kingdom generally accepted accounting principles.

Income

Sales of stamps and the crediting of franking machines are accounted for on a receipts of funds basis. All other income is accounted for on an accruals basis.

Expenses

Postal operations expenses are charged as incurred. No provision is made for any charges which may be incurred in handling or delivering mail in respect of stamps and franking machine credits sold but unused at the balance sheet date.

Deferred Taxation

Provision for deferred taxation is made in full on timing differences which result in an obligation at the balance sheet date to pay tax at a future date, at rates expected to apply when they crystallise based on current tax rates and laws. Deferred tax assets are only recognised to the extent that it is regarded as more likely than not that they will be recovered. Deferred tax assets and liabilities are not discounted.

Pension costs

The costs of the defined benefit scheme are charged to the profit and loss account over the period during which the company benefits from the employees' services. Surpluses or deficiencies are spread over the expected average remaining working lifetime of employees in proportion to their expected payroll costs. The pension disclosures under Financial Reporting Standard 17 ('FRS17') are provided as a separate note to these accounts. The requirement to make provision under FRS17 is not applicable within the current reporting period which started prior to January 2005. See Note 14

Stock

The cost of definitive stamps, including the non-value indicator self-stick range, is written off over the expected sales life of each type of stamp, which is unlikely to exceed three years. Commemorative stamp costs are fully written off in the year of issue.

Other stocks are valued at the lower of cost and net realisable value.

Guernsey Post Limited

Notes to the financial statements - continued

1. Accounting policies – continued

Tangible fixed assets

Tangible fixed assets are stated at cost less depreciation. Depreciation is not provided on freehold land, but is provided on other fixed assets and is calculated at the following rates so as to write off the cost of tangible fixed assets over their estimated useful lives using the straight-line method. A full years depreciation is charged in the year of acquisition.

	Estimated life in years	Depreciation % per annum
Freehold land	N/A	Nil
Freehold buildings	30 – 50	2 – 3.3
Furniture and fittings, office equipment and postal machinery	3 – 10	10 – 33.3
Transport	5	20

Investment in subsidiary

Investment in subsidiary is stated at cost. The subsidiary has not been consolidated on the basis that it is dormant, and non-consolidation does not have a material impact on these financial statements.

2 Profit/loss on ordinary activities before other income

Operating profit/(loss) is after charging:	2005	2004
	£	£
Payroll costs	9,716,099	9,622,625
Auditors' remuneration		
Audit fee	10,000	10,046
Other services	9,850	7,000
(Profit)/ loss on disposal of fixed assets	(9,803)	62,782
Depreciation	812,506	851,213

Average full time equivalent employee numbers for the year were as follows:

	2005	2004
Operations staff including activities allied to operations	228	234
Other staff	<u>58</u>	<u>59</u>
Total	<u>286</u>	<u>293</u>

3. Interest receivable

	2005	2004
	£	£
States Treasury	775,146	518,493
Other	<u>24,979</u>	<u>30,936</u>
	£ <u>800,125</u>	£ <u>549,429</u>

Guernsey Post Limited

Notes to the financial statements - continued

4. Taxation (credit)/charge

The actual tax charge differs from the expected tax charge computed by applying the standard rate of Guernsey income tax of 20% as follows:

	2005	2004
	£	£
<i>Current taxation:</i>		
Expected tax (credit)/charge	313,034	(38,552)
Timing differences	27,153	49,063
Effect of transitional provision	(149,237)	(8,979)
Unutilised losses brought forward	<u>(144,013)</u>	<u>(1,532)</u>
Current year tax (credit)/charge	46,937	-
<i>Deferred taxation:</i>		
Timing differences:	<u>33,792</u>	_____ -
Actual tax (credit)	£ <u>80,729</u>	£ _____ -

The basis of assessment of trading income to Guernsey tax is changing from a prior year basis to a current basis from 2006. The trading profits shown in these accounts are subject to transitional provisions under the Taxes & Duties (Provisional Effect) (Guernsey) Law 1992.

The profits chargeable to tax for the Year of Charge 2005 will be the average of the adjusted profits for the 2004 and 2005 accounting periods.

The company's tax charge has been significantly reduced this year due to the utilisation of tax losses brought forward. All of these tax losses have now been utilised.

With effect from the 2006 year end the Company will make full provision for tax, based on the tax rate applicable to the Company, on its current year taxable profits.

Guernsey Post Limited

Notes to the financial statements - continued

5. Tangible fixed assets

	1 October 2004 £	Additions £	Written off/ disposals £	30 September 2005 £
<i>Cost</i>				
Freehold land	2,505,000	-	-	2,505,000
Freehold buildings	11,934,102	167,612	-	12,101,714
Furniture and fittings	197,392	7,696	(93,647)	111,441
Office equipment	1,017,181	34,331	(28,460)	1,023,052
Postal machinery	3,041,127	17,845	(1,381)	3,057,591
Transport	<u>661,779</u>	<u>159,743</u>	<u>(144,221)</u>	<u>677,301</u>
	£ <u>19,356,581</u>	<u>387,227</u>	<u>(267,709)</u>	£ <u>19,476,099</u>
<i>Depreciation</i>				
Freehold land	-	-	-	-
Freehold buildings	501,815	243,078	-	744,893
Furniture and fittings	201,121	10,622	(93,443)	118,300
Office equipment	749,652	87,042	(28,460)	808,234
Postal machinery	767,564	394,791	-	1,162,355
Transport	<u>492,854</u>	<u>76,973</u>	<u>(144,170)</u>	<u>425,657</u>
	£ <u>2,713,006</u>	<u>812,506</u>	<u>(266,073)</u>	£ <u>3,259,439</u>
<i>Net book value</i>	£ <u>16,643,575</u>			£ <u>16,216,660</u>

6. Investment in subsidiary

	2005 £	2004 £
Independent Delivery Solutions Limited	£ <u>2</u>	£ <u>2</u>

Independent Delivery Solutions Limited is a 100% owned dormant subsidiary.

7. Debtors

	2005 £	2004 £
Trade debtors	2,251,413	2,057,052
Other debtors	136,087	537,698
Prepayments and accrued income	<u>120,653</u>	<u>103,523</u>
	£ <u>2,508,153</u>	£ <u>2,698,273</u>

Guernsey Post Limited

Notes to the financial statements - continued

8. Creditors

	2005 £	2004 £
Amounts falling due within one year		
Trade creditors	1,532,140	10,730,991
Other creditors	1,626,867	2,199,093
Accruals and deferred income	434,575	164,553
Taxation payable	46,937	-
Dividend payable	<u>391,000</u>	<u>-</u>
	£ 4,031,519	£ 13,094,637

9. Provision for Liabilities and Charges

	2005 £	2004 £
Deferred taxation		
As at 1 October	-	-
Profit and Loss account charge	<u>33,792</u>	<u>-</u>
As at 30 September	£ <u>33,792</u>	£ <u>-</u>
Which comprises of:		
Capital allowances in excess of depreciation	33,792	-
Unrelieved tax loss for tax purposes	<u>-</u>	<u>-</u>
	£ <u>33,792</u>	£ <u>-</u>

Contingent Assets and Liabilities

The Company has made a claim in the German courts against Siemens, the supplier of certain mechanisation equipment, on the basis that the performance specification achievable is not consistent with that defined in the purchase contract. This case is currently progressing through the legal system, having been subject to the assessment of an independent expert, and at the balance sheet date neither the opinion of the expert nor the subsequent judgement has been made and this remains the situation.

The success of the claim cannot be accurately assessed prior to the delivery of the independent expert's opinion. In the event that the Company was required to pay the statutorily defined legal costs of Siemens this is likely to be around €12,000 (£8,350). The cost of the Company's legal representatives may amount to a further €20,000 (£14,150).

At 30th September 2004 there were no material contingent liabilities.

Guernsey Post Limited

Notes to the financial statements - continued

10. Share capital and reserves

	2005 £	2004 £
Share capital		
22,386,258 ordinary shares issued at £1 (authorised 40,000,000 ordinary shares)	£ <u>22,386,258</u>	£ <u>22,386,258</u>
Revenue reserves:		
At 1 October	585,566	778,325
Retained profit / (loss) for the year	<u>1,093,442</u>	<u>(192,758)</u>
At 30 September	£ <u>1,679,008</u>	£ <u>585,567</u>
Shareholder Funds		
At 1 October	22,971,824	23,164,583
Retained profit / (loss) for the year	<u>1,093,442</u>	<u>(192,758)</u>
At 30 September	£ <u>24,065,266</u>	£ <u>22,971,825</u>

11. Controlling party

12. Reconciliation of operating (loss)/profit to net cash inflow from operating activities

	2005 £	2004 £
Operating profit/(loss)	710,568	(824,205)
Depreciation charges	812,506	851,213
(Profit)/Loss on disposal of fixed assets	(9,803)	55,873
(Increase) /Decrease in stock	11,078	(19,643)
(Increase)/Decrease in debtors	190,120	(186,279)
Increase/(Decrease) in creditors	<u>(9,501,055)</u>	<u>3,374,570</u>
Net cash inflow/(outflow) from operating activities	£ <u>(7,786,586)</u>	£ <u>3,251,529</u>

Reconciliation of net cash inflow/(outflow) to movement in net funds

	2005 £	2004 £
Decrease in cash balances	(7,307,771)	3,733,483
Net funds at 1 October 2004	<u>16,589,295</u>	<u>12,855,812</u>
Net funds at 30 September 2005	£ <u>9,281,524</u>	£ <u>16,589,295</u>

Guernsey Post Limited

Notes to the financial statements - continued

13. Capital commitments

At 30 September 2005 the company had no authorised future capital expenditure (2004: Nil)

14. Pension Fund

The employees of the company are members of the States of Guernsey Superannuation Scheme. This is a defined benefits pension scheme funded by contributions from both employer and employees at rates which are determined periodically on the basis of actuarial advice, and which are calculated to spread the expected costs of benefits payable to employees over the period of these employees' expected service lives.

In respect of the year ended 30 September 2005 the contribution rates were 9% and 6% for employer and employee contributions respectively.

The report by the actuaries on the valuation of the Superannuation Fund at 31 December 2004 indicated that a deficit existed. The employer's contribution rate to the Fund will increase with effect from January 2006 from 9% to 14%. However the employee contribution will remain at 6%.

In accordance with SSAP 24 the total amount of superannuation contributions for the year from 1 October 2004 to 30 September 2005 was £549,061 (2004: £497,471). As at 30 September 2005 the amount of contributions due but not paid to the Fund were £48,783 (2004: £40,332).

In accordance with the transitional requirements of FRS 17 the company has used actuarial calculations provided by the actuaries to identify its share of underlying assets and liabilities of the Scheme and to identify the implications of any surplus/(deficit) on the company, as at 30 September 2005. The calculations have been carried out by a qualified independent actuary, based on the results of the 31 December 2004 actuarial valuation, and allowing for the change in total salaries for active members. The actuary has estimated asset figures based on the information available to him at the current time and revisions may be made by the actuary following further information which becomes available from the States of Guernsey in respect of the company's actuarial account within the States of Guernsey Superannuation Scheme.

Summary of Financial Assumptions:

	At 30 September 2005	At 30 September 2004
Discount rate	4.9%	5.5% pa
Inflation	2.9%	2.9% pa
Increases to deferred benefits during deferment	3.0%	3.0% pa
Increases to pensions in payment	3.0%	3.0% pa
Increases to salaries	4.4%	4.4% pa

The assumptions used by the actuary are the best estimates chosen from a range of possible actuarial assumptions which, due to the timescale covered, may not necessarily be borne out in practice.

Guernsey Post Limited

Notes to the financial statements - continued

14. Pension Fund - continued

The tables below set out a summary of the estimated market value of the assets as at 30 September 2005 and September 2004 together with the expected return on assets.

Category	Market Value at 30 September 2005		Expected return On assets % pa
	£'000	%	
Equities	14,066	78.4	7.25
Bonds	3,610	20.1	4.50
Cash and net current assets	<u>265</u>	1.5	4.50
Total	<u>17,941</u>	100.0	6.70

Category	Market Value at 30 September 2004		Expected return On assets % pa
	£'000	%	
Equities	11,312	76.5	7.75
Bonds	3,132	21.2	4.90
Cash and net current assets	<u>334</u>	2.3	4.50
Total	<u>14,778</u>	100.0	7.10

The fair value of the schemes assets, which are not intended to be realised in the short term and may be subject to significant change before they are realised and the present value of the scheme's liabilities, which are derived from cash flow projections over long periods and thus inherently uncertain, were:

	Values as at 30 September 2005 £'000	Values as at 30 September 2004 £'000
Value of the scheme assets	17,941	14,778
Present value of the scheme liabilities	20,823	20,043
Resulting deficit	(2,882)	(5,265)
Related deferred tax asset	<u>576</u>	<u>-</u>
	<u>(2,306)</u>	<u>(5,265)</u>

No Deferred tax asset was recognised in the 30 September 2004 figures as the company was loss making.

Guernsey Post Limited

Notes to the financial statements - continued

14. Pension Fund – continued

The following amounts would be reflected in the profit and loss account, balance sheet and the statement of total recognised losses on implementation of FRS 17.

Balance Sheet presentation

	30 September 2005 £'000	30 September 2004 £'000
Net assets excluding pension liability	24,065	22,972
Pension liability	<u>(2,306)</u>	<u>(5,265)</u>
Net assets including pension liability	<u>21,759</u>	<u>17,707</u>

Reserves note

	30 September 2005 £'000	30 September 2004 £'000
Profit and loss reserve excluding pension liability	1,679	586
Pension reserve	<u>(2,306)</u>	<u>(5,265)</u>
Profit and loss reserve including pension liability	<u>(607)</u>	<u>(4,679)</u>

Analysis of the amount that would be charged to operating profit

	1 October 2004 to 30 September 2005 £'000	1 October 2003 to 30 September 2004 £'000
Current service cost	1,081	1,101
Past service cost	—	—
Total operating charge	<u>1,081</u>	<u>1,101</u>

Guernsey Post Limited

Notes to the financial statements - continued

14. Pension Fund – continued

Analysis of the amount that would be credited to other finance income

	1 October 2004 to 30 September 2005	1 October 2003 to 30 September 2004
	£'000	£'000
Expected return on pension scheme assets	(1,068)	(952)
Interest on pension scheme liabilities	<u>1,095</u>	<u>975</u>
Net return	<u><u>27</u></u>	<u><u>23</u></u>

Analysis of the amount that would be recognised in a statement of total recognised gains (STRGL)

	1 October 2004 to 30 September 2005	1 October 2003 to 30 September 2004
	£'000	£'000
Actual return less expected return on pension scheme assets	1,511	97
Experience gains and loss arising on the scheme Liabilities	3,384	465
Changes in assumptions underlying the present value of the scheme liabilities	<u>(1,953)</u>	<u>-</u>
Actuarial gain recognised in the STRGL	<u>2,942</u>	<u>562</u>

Movement in deficit during the year

	1 October 2004 to 30 September 2005	1 October 2003 to 30 September 2004
	£'000	£'000
Deficit in scheme at beginning of the year	(5,265)	(5,200)
Movement in year:		
Current service cost	(1,081)	(1,101)
Contributions	549	497
Past service costs	-	-
Other finance income	(27)	(23)
Actuarial gain/loss	<u>2,942</u>	<u>562</u>
Deficit in scheme at end of the year	<u>(2,882)</u>	(5,265)

Guernsey Post Limited

Notes to the financial statements - continued

14. Pension Fund – continued

History of experience gains and losses

	1 October 2004 to 30 September 2005	1 October 2003 to 30 September 2004	1 October 2002 to 30 September 2003	
	£'000	£'000	£'000	
	%	%	%	
Difference between the actual and expected return on scheme assets:				
Amount (£)	1,511	97	1,234	
Percentage of scheme assets	8%	1%	9%	
Experience gains and losses on scheme liabilities:				
Amount (£)	3,384	465	(2,375)	
Percentage of the present value of the scheme liabilities	16%	2%	(13)%	
Total amount recognised in statement of total recognised gains and losses:				
Amount (£)	2,942	562	(3,053)	
Percentage of the present value of the scheme liabilities	14%	3%	(17)%	

15. Related party transactions

R A Perrot, a director of the Company, is also a partner in Ozannes, a local law firm. Guernsey Post received legal services on a number of issues throughout the year transacted on an arm's length basis. The charges incurred by the company payable to Ozannes during the year ended 30 September 2005 were £76,799 (2004: £13,246).

D T Roberts and J Domican, both being directors of the Company, have had during the year a controlling influence, as defined by FRS 8, in Postal & Logistics Consulting Worldwide Limited (PLCWW) although D T Roberts' controlling influence ceased from 2 September 2005. Guernsey Post Limited received postal operations consultancy (and in 2004 staff services) during the year transacted on an arm's length basis. The charges incurred by the company payable to PLCWW during the year ended 30 September 2005 were £15,325 (2004: £103,753).

Through the normal course of its business activity the Company both purchases and provides services to its shareholder or entities under the controlling influence of the shareholder body. These entities include States Trading Companies, companies whose equity is wholly owned by the States, States departments and Boards operated by the States. All such transactions have been on an arm's length basis. The total value of the sales for the year ended 30 September 2005 account to less than 2% of total turnover (2004; 2%). The total value of purchases for the year amounted to 2.6% of total expenses (2004; 2%).

The States also provides, through its treasury department, management of the Company's liquid funds in excess of short term needs. At 30 September 2005 the balance held was £8,413,536 (2004: £15,438,390).

EDUCATION DEPARTMENT

VAUVERT PRIMARY SCHOOL – VALIDATION REPORT

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

22nd February 2006

Dear Sir

I enclose a summary of the Vauvert Primary School Validation Report, together with the Education Department's response and would be grateful if you would arrange for them to be published as an appendix to the Billet d'État for April 2006.

Copies of the full report will be made available for any member of the public to inspect at both the school and the Education Department.

Yours faithfully

M A Ozanne
Minister

**ISLANDS' FEDERATION FOR THE EVALUATION OF SCHOOLS
(IFES)**

Summary of the Validation Report

VAUVERT PRIMARY SCHOOL

GUERNSEY

October 2005

SUMMARY OF THE OCTOBER 2005 VALIDATION REPORT

VAUVERT PRIMARY SCHOOL

Vauvert Primary is an urban area school situated on the outskirts of St. Peter Port. It was created in 1997 with the amalgamation of the former infant and junior schools.

There are 342 pupils on roll, 159 boys and 183 girls, aged from 4 to 11.

They are taught by 20 full time staff, including the headteacher.

There are 17 classes, with an average class size of 20.1 and a pupil teacher ratio of 17.1.

Background

The validation team consisted of six inspectors. Five were Ofsted inspectors from the UK and one was an IFES trained headteacher from Jersey. The team met informally with staff at the school on Sunday and then spent four days inspecting the school.

The school provided comprehensive documentation and its self-review report in advance of the visit, having spent a year working on its self-evaluation activities. Additional information, such as children's work, and portfolios of other evidence, was made available to the team during the week. Many staff had attended the Education Department's IFES Internal Evaluator training course on how to carry out a self-review. The evidence base to validate the school's findings was collected through:

- * scrutiny of a range of whole school and subject documentation, including School Improvement Plans since the last inspection, portfolios, minutes of meetings and SATs results; information and evidence about standards and progress had been provided from the last three years;
- * observation of 98 whole or part lessons;
- * examination and discussion of teachers' planning;
- * attendance at assemblies and some extra curricular activities;
- * examination of pupils' current and previous work;
- * approximately 15 hours of planned discussions with teachers and other staff, pupils and parents;
- * observation of pupils on arrival and departure from the school and at other times around the buildings and grounds;
- * scrutiny of 20 letters and 100 returns from the confidential parental questionnaire.

At the end of the week, subject leaders received an oral feedback on their areas of responsibility, and the team's main findings were reported to the headteacher and his deputy, and then to the Director of Education.

Main Findings

- * Despite the difficulties caused by the departure to the Education Department of its successful former headteacher, a large turnover of staff, and an interregnum between headteachers, the school has made progress in a number of areas since the last inspection in 1999.
- * Staff have worked hard to complete their self-review. The internal report provides a valuable and timely assessment of strengths and areas for development which the newly appointed headteacher and his senior management team (SMT) can use to draw up the next School Improvement Plan (SIP).
- * The headteacher has worked hard and effectively since his appointment in January to provide clear educational direction for the school, to develop teamwork, to delegate responsibilities where appropriate, to resolve some internal tensions and to encourage staff development. He is already winning the confidence of staff and parents.
- * Behaviour during the week was of a high standard. The head and his staff have established a warm, caring and supportive ethos within which children feel secure and encouraged to do their best. The working environment in classrooms and open areas is greatly enhanced by colourful and interesting displays of children's work and other information.
- * During the inspection week, 98 lessons were observed. Of these, 90% were judged to be of at least satisfactory standard in the quality of teaching and learning, and 37% were either good or excellent. This compares favourably with the validation of 1999 when the figures were 85% and 32% respectively.
- * Particular strengths were seen in some of the teaching and learning of mathematics, ICT, music, literacy, history and PSHE. In PE, good standards are being achieved in swimming, boys' and girls' football, netball and tag rugby.
- * Effective use is being made of teachers' specialist expertise, particularly at KS2 in music, science, PE, mathematics, French and ICT. Very good support is provided by the school's teaching assistants.
- * The best lessons are well structured and timed. They are characterised by careful planning to cater for all levels of ability, clear learning objectives, good relationships, opportunities for independent work, purposeful assessment and encouragement, and appropriate use of interactive whiteboards and ICT.
- * Weaker lessons tend to be over-prescriptive, too reliant on worksheets, and do

not effectively challenge higher attaining pupils. There are inconsistencies in practices for assessment, marking, target setting, collection of evidence for portfolios, the presentation and dating of work, and the use of the plenary at the end of lessons.

- * Staff work hard and undertake their duties conscientiously. Several phase coordinators and subject leaders provide examples of good practice, and have participated in relevant in-service training and professional development.
- * SATs scores at KS2 show significant improvements in Levels 4+ and 5 in mathematics and English, and are higher than the Guernsey average. The school is intending to strengthen its detailed analysis of SATs results and other data in order to improve target setting.
- * The headteacher is aware of the need to strengthen classroom monitoring to ensure that existing good practice is shared, that there is more consistency in the application of whole school policies, and that curriculum continuity is maintained.
- * Sound provision is made for children with special educational needs (SEN). The SENCO is aware of the need for continued communication and liaison between the various support agencies, particularly the Learning Support Service, and for improved differentiation and support in lessons for children of all abilities. The school is rightly planning for greater attention to be paid to its more gifted and talented children.
- * The school provides a broad curriculum which is enhanced by several extra-curricular activities. Planning processes have improved, and all areas now have a subject leader. The provision and application of ICT has improved considerably, especially in the use of interactive whiteboards.
- * The headteacher needs to ensure that the curriculum is more effectively managed and monitored as there are some inconsistencies in existing timetables and practices in some classes which need to be addressed in order to guarantee curriculum balance and continuity,
- * The school makes satisfactory provision for pupils' spiritual and cultural development. Provision for social and moral development is good.
- * Returns from the parental questionnaire (Appendix A) reveal that most parents are pleased with the work of the school. Over 95% of respondents report positively on the school's values and attitudes, and state that their child is happy at school, is making good progress, behaves well and is expected to achieve his or her best.
- * The school benefits from its good working relationship with parents and the local community. Parent volunteers assist with such things as outside visits, sporting events, sewing, cooking, art and swimming. The PTA has generously

raised extra funding for playground improvements and other equipment.

- * There is a broad range of formal and informal systems of communication with parents and further refinement are planned. Annual written reports have been improved to include information about performance in all subjects.
- * The school's practices in assessment, marking, presentation and the setting of homework are inconsistent. The school is rightly intending to strengthen its monitoring and management structures and systems to address these issues.
- * The school meets existing requirements for the provision of the National Curriculum (Guernsey), the Code of Practice for SEN, the RE Agreed Syllabus and Acts of Worship, performance management, and the induction of newly qualified teachers (NQTs). It has suitable pastoral arrangements for children's support, guidance and welfare.
- * Attendance is generally good, but some children's punctuality in the mornings is unsatisfactory.
- * There are appropriate arrangements for regular, minuted meetings between staff. It is encouraging that the headteacher is already planning changes to bring more rigour into systems of management and communication. He intends to clarify and strengthen roles and responsibilities within senior management and those for phase co-ordinators and subject leaders.
- * Good provision is made for the induction of new parents and children into the Foundation Stage. The newly appointed staff have made a good start, and the co-ordinator has a clear vision for developing practice. The majority of children are on track to achieve many aspects of the Early Learning Goals, particularly in personal, social and emotional development, reading and writing, and physical development.
- * The school office and financial systems are efficiently administered, and a new computerised management system is soon to be introduced. Subject leaders are to be given some responsibilities for managing their own budgets which will be linked to priorities within the next SIP.
- * The school accommodation and site are very well cleaned and maintained. New signposting for visitors has been erected to help compensate for the unsatisfactory location of the existing office. The school works hard to maximise use of its available accommodation and the cramped outside space.
- * The school is adequately resourced to meet the requirements of the NC (Guernsey). Provision for ICT is excellent, through the two ICT suites and the large number of laptops and interactive whiteboards. The school is in a strong position to integrate the use of ICT across the curriculum.

Key Issues that the School Needs to Address

- * The school's self-evaluation report correctly identifies a number of areas for attention in the post-VSSE SIP and these are endorsed by the validation team. In particular, the headteacher and his SMT should :

continue to build upon the sound practices established during the period of self-review;

review and improve the efficiency of existing management structures;

update senior and middle management roles and responsibilities to bring more rigour into the practice of overseeing the curriculum and monitoring the quality of teaching, learning and attainment;

establish regular systems for classroom observations, and for the review of work and presentation in books, folders, portfolios and elsewhere;

update whole school policies as necessary; review the implementation of those for teaching and learning, ARR, marking and homework;

continue to address differentiation and the matching of work to all levels of ability, enhancing the role of the SENCO; use assessment data more effectively to set precise targets for children, particularly the most able; provide more opportunities for independent learning;

consider the establishment of specific curriculum task teams to lead and oversee initiatives identified in the next strategic SIP, making the most effective use of available staff expertise;

continue to develop the use of ICT to strengthen teaching and learning.

The school is responsible for drawing up an action plan after receiving the Report, showing what it is going to do about the issues raised and how it will incorporate them in the school's Improvement Plan.

A follow-up visit to the school will be made in spring 2007 in order to monitor and discuss the progress the school has made, and a written report will be made to the Director of Education.

**RESPONSE TO THE VALIDATION REPORT
ON
VAUVERT PRIMARY SCHOOL**

The Education Board and staff of Vauvert Primary School welcome and accept the Validation Report of October 2005.

The report commends the hard work of the staff in completing their self-review and acknowledges that the school's internal report provides "a valuable assessment of strengths and areas for development".

The Board notes with satisfaction that SATs scores at Key Stage 2 show significant improvements in Level 4 and 5 in Mathematics and English and that they are higher than the Guernsey average. The validators found that teaching and learning had improved significantly overall and the quality of teaching had improved. They praised the work in many areas, particularly maths, ICT, music, literacy, history and PSHE. The standards achieved in PE are recognised as good which is pleasing given the limited facilities of the school site. The valuable contribution made by the school's teaching assistants is acknowledged.

The report praises the behaviour during the validation week and notes that the staff have established a warm, caring and supportive ethos. The quality of the displays of children's work and information is cited as enhancing the working environment.

The value of a good start to school is immense and the validators reported that the school made good provision for the induction of new parents and children into the Foundation Stage.

The working relationships with parents and the local community are seen as a strength with volunteers assisting the school in many activities. Over 95% of respondents to the parental questionnaire were positive about the school's values and attitudes reporting that their child is happy at school, making good progress, behaves well and is expected to achieve his or her best.

Key areas for development identified by the school's internal and the validators reports are:

- Continue to build upon the sound practices during the period of self-review;
- Refine senior and middle management roles and responsibilities;
- Establish regular systems for classroom observations, and for the review of work;
- Update whole school policies as necessary; review the implementation of those for teaching and learning, marking and homework;
- Continue to improve the matching of work to all levels of ability; provide more opportunities for independent learning;
- Establish specific curriculum teams to lead and oversee initiatives;
- Continue to develop the use of ICT to strengthen teaching and learning.

PUBLIC ACCOUNTS COMMITTEE**ST SAMPSON'S PUMPING STATION AND FIRE MAIN HEARING**

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

3rd March 2006

Dear Sir

In September 2005, the States of Guernsey debated the overspend on the St. Sampson's Pumping Station and Fire Main. After four hours of debate on the four reports within Billet D'Etat XIV of 28 September 2005 on pages 1488 to 1599 inclusive, the overspend of £950,160.37 was sanctioned. The reports were from the Public Services Department, W. S. Atkins, Wheelers Partnership and Beckett Rankine Partnership.

Much of the time spent in debate might have been saved if the Public Accounts Committee (PAC) had been afforded the opportunity to carry out an investigation and present a report on the events leading up to the overspend prior to the matter coming to the States.

Notwithstanding this, the Public Accounts Committee held a hearing in December 2005, into the events leading to the overspend. The Committee has no wish to re-open the debate but is desirous of making the following comments arising from the evidence presented at the December hearing.

The events leading to the overspend relate directly and/or indirectly to the actions and inactions of a number of entities: the then Public Thoroughfares Committee (PTC), the former Guernsey Technical Services (GTS), specialist advisors and the contractor.

Some of those present at the time preceding and during the contract and their successors provided answers to questions put by members of the Public Accounts Committee and the following observations are based on those answers and whatever documentary evidence that has been made available to the Public Accounts Committee.

Former Public Thoroughfares Committee

Dealing firstly with the written evidence available to the PAC, it was found that important details were omitted from the minutes of the Public Thoroughfares

Committee. This lack of a clear ‘audit trail’ did not assist in determining the reasons for those decisions taken and the advice provided to politicians involved in the events. Technical advisors to the Public Thoroughfares Committee and those directly associated with the Public Thoroughfares Committee have, by the nature of things, different recollections.

It was evident that the political committee (PTC) **with which lay the ultimate responsibility for the project**, did not assume overall control of the project. There was no project group or project sponsor set up to liaise with the project administrator or project engineer. Although it is fair to say that at the time of the project’s inception the post of project sponsor was NOT an accepted position in States’ contracts.

The political committee (PTC) on becoming aware of escalating costs and perceived poor or non-performance of the contract by the contractor, chose to withhold a payment properly certified by the project administrator. This was considered by the Committee to be in breach of the ICE 5th Contract conditions. Whether or not the PTC were advised of this breach is undiscoverable within the documents and evidence provided to the PAC. However a breach of contract by one party can leave that party open to legal action by the other. Unless a possibly inexperienced political body takes specialist advice on a major course of action it may lay itself open to litigation. Here it is worth noting that a specialist contract lawyer is now available to those involved in civil engineering/construction/other contracts undertaken by States’ bodies.

Finally in relation to the Public Thoroughfares Committee it was evident that because of differing opinions between committee members it was found difficult for the whole committee to concentrate on driving the project forward to the ultimate benefit of the States and the Island.

Former Guernsey Technical Services

Turning next to the professional advice provided to the PTC by Guernsey Technical Services.

It would seem from the evidence provided to the PAC that GTS performed the majority of their duties as required. Sadly there is no evidence to clarify what advice GTS provided or did not provide to the PTC. Nor is there evidence that the PTC asked for general or more particularly specific advice on any subject.

What is indisputable is that GTS took advice from a company specialising in tunnelling and based their design on that advice. It is further apparent that when presenting their designed scheme to the PTC, GTS asked for an independent overview of the scheme. For reasons not directly ascertainable, but probably arising from differences within the Public Thoroughfares Committee membership, this request was denied. Even if such a review had taken place it should be noted that the final outcome of the contract may or may not have been different.

GTS provided the design, the project administration, project manager and technical

advice for the project. This is normal practice. However it should be accepted that either the department with ultimate responsibility for the project or an intermediary such as a project board and/or a specialist project sponsor provide a definite link between the contractor and the sponsoring political department.

GTS, when asked why the ICE 5th Edition form of contract was used when it had been superseded, replied that it was a contract that had been previously used *i.e.* conditions having been adjusted to Guernsey law and known by local contractors. It was further claimed that a design and build form of contract, where much of the risk was placed on the contractor, was considered unsuitable.

Before leaving GTS, the Public Accounts Committee is concerned that the investigative report commissioned from the Becket Rankin Partnership into the overspend resulted in the rapporteurs spending only some forty five minutes with those from GTS directly involved in the project.

Specialist Advisors

As previously mentioned Guernsey Technical Services took professional advice from an established contractor which suggested that from its experience driving a tunnel below the sea bed would be the best way forward. It may be of interest that when these advisors were in fact asked to price the work, their costing was similar to the eventual out turn cost.

In addition, GTS commissioned a geological survey of the site and what was independently stated to be a comprehensive geological report on envisaged site conditions, was provided to all those who tendered for the work. This being so the PAC is unable to ascertain why claims for 'unforeseen ground conditions' from the contractor were entertained. The suggestion that the contract used for these works could be regarded as confrontational was accepted at the hearing.

Contractor

Finally to the contractor. It would seem that, although stating that if the contract was varied from tunnel to open trench form, it would cost the PTC no more, the contractor was able to claim further costs.

This cannot be a fault of the contractor, rather a fault of the contract administrator. It became evident from the evidence available to the Public Accounts Committee that no proper and full change control mechanism was in place even though the contract used provided for this. By this the PAC means that whenever there is a change suggested to the contract and/or specified method/s of providing the required result, it should not be agreed until both parties, the employer and the contractor, have agreed in writing the cost. The PAC accepts that there are occasions when a decision on change has to be made immediately. However, the results of such decisions must always be clarified to all parties as soon as possible after the decision. Furthermore when both parties have agreed that a change in method or work is acceptable, it is confirmed that any such

change will not affect any milestones in the agreed critical path programme.

I would reiterate that the Public Accounts Committee has no wish to reopen debate on this matter and would therefore be grateful if you would attach this letter as an appendix to a Billet D'Etat.

Yours faithfully

Leon Gallienne
Chairman

POLICY COUNCIL

REPORT ON INTERNATIONAL CONVENTIONS AND AGREEMENTS FOR THE PERIOD FROM 1ST OCTOBER, 2003 TO 31ST DECEMBER, 2005 *(in accordance with Resolution VIII (2) of Billet d'État IV 1987)*

PART I - OUTSTANDING MATTERS FROM PREVIOUS REPORTS

(Note: Those consulted are shown as the post 1st May 2004 Departments although some of the consultations may have taken place with the Departments' predecessor Committees.)

1. United Nations Convention on the Rights of the Child

Object: To make provision for the implementation of 54 wide-ranging articles concerning the right of the child, several of which involve human rights and fundamental freedoms.

Consultation: H.M. Procureur
H.M. Government
Commerce and Employment Department
Education Department
Health and Social Services Department

Action: In October 2004 following consideration of a report of the Health and Social Services Department the States resolved, *inter alia*, to direct the Policy Council to consider whether this Convention should be extended to Guernsey. On 26th October 2005, having considered a report of the Policy Council, the States resolved that the Convention be extended to Guernsey at the first most convenient opportunity.

2. Treaty between the United States of America and the United Kingdom on Mutual Legal Assistance in Criminal Matters

Object: To improve the effectiveness of the Law enforcement authorities of both countries in the investigation, prosecution and combating of crime through co-operation and mutual legal assistance in criminal matters and to reaffirm the Contracting Parties' determination to enhance assistance in the fight against crime as set out in an earlier Agreement.

Consultation: H.M. Procureur
Financial Services Commission

Action: The general question of this Treaty is still under review. A separate Agreement relating to the sharing between the representative jurisdictions of assets which have been confiscated as being the proceeds of drug trafficking was concluded on 29th July, 1996.

3. **World Declaration on the Survival, Protection and Development of Children and Plan of Action for Implementing the aforesaid World Declaration in the 1990's**

Object: To undertake a joint commitment, and to make an urgent universal appeal, to give every child a better future.

Consultation: H.M. Procureur

Action: The issues involved are closely related to those under consideration in relation to the U.N. Convention on the Rights of the Child (see Part I No. 1). The decision to request extension of the Convention to Guernsey will associate the Island with the World Declaration.

4. **Convention for the Protection of the Marine Environment of the North East Atlantic**

Object: To provide that the Contracting Parties shall take all possible steps to prevent and eliminate pollution and shall take the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected.

Consultation: H.M. Procureur
Commerce and Employment Department
Health and Social Services Department
Public Services Department

Action: The issues involved are linked to the control of environmental pollution and the implementation of the Waste Strategy Assessment. The environmental Pollution (Guernsey) Law, 2004 was registered in the Royal Court on 4th October, 2004 but has not yet entered into force. A decision regarding the

extension of the Convention to Guernsey will be made once the Law has commenced.

5. **Extradition Treaty between the United Kingdom and the Republic of India**

Object: To make more effective the co-operation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders and in the recognition that concrete steps are necessary to combat terrorism.

Consultation: H.M. Procureur

Action: This matter is still under consideration.

6. **United Nations Convention on Biological Diversity**

Object: To conserve the maximum possible biological diversity for the benefit of present and future generations and for its intrinsic value by ensuring that the use of biological resources is sustainable; and by securing economic and legal conditions favourable for the transfer of technology necessary to accomplish this objective.

Consultation: H.M. Procureur
H.M. Government
Commerce and Employment Department
Environment Department

Action: Despite extended consultation with H.M. Government, the Insular authorities have not been able to ascertain precisely what legislation implements this Convention in the U.K. However information received from the U.N. World Conservation Monitoring Centre may assist in assessing the implications of extending the Convention to Guernsey. Consideration will also be given as to what habitats protection legislation would be required should extension of the Convention to Guernsey be sought.

7. **Agreement establishing the World Trade Organization**

The Agreement establishing the World Trade Organization comprises three separate parts: the General Agreement on Tariffs and Trade, 1994 (GATT); the General Agreement on Trade in Services (GATS) and the Agreement on Trade-

Related Aspects of Intellectual Property Rights (TRIPS). It puts the GATT on a formal footing.

a. The General Agreement on Tariffs and Trade, 1994

Object: To increase market access by reducing or eliminating trade barriers. This objective was met by reductions in tariffs, reductions in non-tariff support in agriculture and the elimination of bilateral quantitative restrictions.

To increase the legal security of the new levels of access. This has resulted in strengthened and expanded rules, procedures and institutions.

To implement a phased reduction in tariffs on a wide range of goods.

To reduce non-tariff barriers.

To provide a new framework of rules on subsidies and trade restrictions.

To provide for a free global textile trade.

To bring agriculture fully within the GATT for the first time. This includes the conversion of all restrictions on trade to tariffs which are transparent. A minimum reduction in every tariff of 15%. A guarantee that at least 3% of domestic agricultural product markets will be open to imports. Controls will be introduced on domestic support and export subsidies.

The Multifibre Agreement will be phased out and trade in textiles will be re-integrated into the GATT system over a ten year period.

Anti-dumping rules will be strengthened and clarified.

To provide for more rapid and effective settlement of trade disputes.

Consultation: H.M. Procureur
H.M. Government
Financial Services Commission
Commerce and Employment Department
Culture and Leisure Department
Education Department
Health and Social Services Department

Public Services Department
Jersey and Isle of Man authorities

Action: This matter is still under consideration.

b. General Agreement on Trade in Services.

Object: To introduce the principles of the GATT regarding multilateral trade rules to services, including the principles of national treatment, most-favoured-nation, transparency and progressive liberalisation.

To liberalise trade in a wide range of services as a basis for freer trade in the future.

To guarantee existing levels of access in many areas.

Consultation and Action: As in a. above.

c. Agreement on Trade-Related Aspects of Intellectual Property Rights.

Object: To introduce a set of agreed multilateral rules requiring basic protection of intellectual property rights including the principles of national treatment and most-favoured-nation.

Consultation: H.M. Government
H.M. Procureur
Commerce and Employment Department
Jersey authorities

Action: The States have agreed to the enactment of new intellectual property rights legislation and consideration will now be given to the possible extension of this Agreement to Guernsey.

8. **Agreement on Government Procurement**

Object: To broaden and improve the 1979 Agreement on Government Procurement (as amended in 1987) on the basis of mutual reciprocity and to expand the coverage of the Agreement to include Service Contracts.

Consultation: H.M. Procureur
Commerce and Employment Department
Culture and Leisure Department
Education Department

Health and Social Services Department
Public Services Department
Committee for Home Affairs

Action: This matter is still under consideration.

9. **Council of Europe Convention relating to questions of copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite**

Object: To promote the broadest possible harmonisation of the Law of the Member States, and the other States party to the European Cultural Convention, on copyright and neighbouring rights with regard to new technical developments in the field of broadcasting by satellite notably the need to safeguard the rights and interests of authors and other contributors when protected works and other contributions are broadcast by satellite. To consider further legal aspects of broadcasting by satellite from the viewpoint of copyright law and neighbouring rights.

Consultation: H.M. Procureur
Commerce and Employment Department
Home Department

Action: The States have agreed to the enactment of new intellectual property rights legislation and consideration will now be given to the possible extension of this Agreement to Guernsey.

10. **International Convention for the Prevention of Pollution from Ships (MARPOL)**

Object: To achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances.

Consultation: H.M. Government
Alderney and Sark
H.M. Procureur
Public Services Department

Action: The possible extension of the Convention will be considered once the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (registered in the Royal Court on 10th May, 2004) has been brought into force.

11. **United Nations Convention on Contracts for the International Sale of Goods**

Object: The Convention provides a uniform law for international sales of goods. It provides common ground between the parties to a contract. For example, it could be used where a seller and an overseas buyer are unable to agree on which of their national laws should apply to their contract.

Consultation: H.M. Procureur
Financial Services Commission
Commerce and Employment Department

Action: Not to be extended to Guernsey.

12. **Council of Europe Framework Convention for the Protection of National Minorities**

Object: To specify the legal principles which States undertake to respect in order to ensure the protection of national minorities.

Consultation: H.M. Procureur

Action: This matter remains under consideration.

13. **Agreement between the United Kingdom and Canada regarding the Sharing of Forfeited or Confiscated Assets or their equivalent funds**

Object: To enable the Parties to share confiscated criminal proceeds where the non-confiscating country has made a significant contribution to the investigation.

Consultation: H.M. Procureur

Action: H.M. Government has been asked to investigate the possibility of a separate Guernsey/Canada agreement being negotiated.

14. **Council of Europe Convention on Cyber Crime**

Object: To deter actions directed against the confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data by providing for the criminalisation of such conduct and to

facilitate the detection, investigation and prosecution of such criminal offences at both the domestic and international level.

Consultation: H.M. Procureur

Action: This matter is still under consideration.

15. **Agreement between the United Kingdom and Romania on the Return and Readmission of Persons Present without Authorization**

Object: To improve co-operation between the two contracting parties in order to contribute to the prevention and combating of illegal cross-border migration and to facilitate readmission and transiting in cases of expulsion of persons whose entry or residence on their territories is illegal.

Consultation: H.M. Procureur
Home Department

Action: This matter is still under consideration.

16. **Convention on the Conservation of Migratory Species of Wild Animals : Agreement on the Conservation of Albatrosses and Petrels**

Object: To set out management requirements for the Conservation of Albatrosses and Petrels both in the Marine and Terrestrial Environments.

Consultation: H.M. Procureur
Commerce and Employment Department

Action: This matter is still under consideration

17. **Agreement between the United States of America and the United Kingdom regarding the Sharing of Forfeited or Confiscated Assets or their Equivalent Funds**

Object: To improve the effectiveness of law enforcement in both countries in the investigating, prosecution and suppression of crime and in the tracing, freezing, seizure and forfeiture or confiscation of assets related to crime and to create a framework for sharing the proceeds of the disposition of such assets.

Consultation: H.M. Procureur

Action: H.M. Government has been asked to investigate the possibility of a separate Guernsey/U.S.A. agreement being negotiated.

18. **UNESCO Convention on the means of prohibiting and preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.**

Object: To stop and prevent the illicit import, export and transfer of cultural property; to set up national services for the protection of the cultural heritage; to introduce an export certificate system; to impose penalties for the infringement of prohibitions and to protect adequately archaeological sites.

Consultation: H. M. Procureur
Culture and Leisure Department

Action: Not extended to Guernsey as the advantages of so doing would be very limited in exchange for which the Island would take on onerous obligations with resource implications.

19. **Cartagena Protocol on Biosafety to the Convention on Biological Diversity**

Object: The Protocol's overall objective is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focussing on transboundary movements. (The term genetically modified organism (GMO) is more commonly used in the EC than the term LMO, but the two terms mean the same.)

Consultation: H.M. Procureur
H.M. Government
Commerce and Employment Department
Environment Department

Action: The issues involved are closely related to those under consideration in relation to the Convention on Biological Diversity (See Part I No 6) and will be examined when a decision is reached with regard to that Convention.

20. **International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001**

Object: To reduce or eliminate adverse effects on the marine environment and human health caused by anti-fouling systems and to encourage the continued development of anti-fouling systems that are effective and environmentally safe.

Consultation: H.M. Procureur
Commerce and Employment Department
Public Services Department

Action: Not extended to Guernsey in view of its limited application (i.e. only to vessels over 24 metres long but less than 400 gross tonnes).

21. **Optional Protocol to the United Nations Convention on Torture**

Object: To prevent torture and inhuman treatment through visits by national and international independent monitoring committees to places of detention in signatory states.

Consultation: H.M. Procureur
Health and Social Services Department
Home Department

Action: In 1987 the States resolved that where international agreements involved questions of human rights and fundamental freedoms the terms of such agreements should be laid before the States. In pursuance of that resolution a report will be made to the States regarding this Protocol in due course.

PART II - NEW MATTERS CONSIDERED SINCE PREVIOUS REPORTS

22. Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) – extension of area covered by the Agreement

Object: To extend the area covered by the ASCOBANS agreement to include the North-East Atlantic and the Irish Sea and to change the name of the agreement to the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas.

Consultation: H.M. Procureur
Commerce and Employment Department
Environment Department

Action: Extension to Guernsey agreed.

23. European Space Agency Convention

Object: To integrate the European National Space Programmes into a European Space Programme as far and as fast as reasonably possible and to pursue and to strengthen European co-operation, for exclusively peaceful purposes, in space research and technology and their space applications, with a view to their being used for scientific purposes and for operational space application systems.

Consultation: H.M. Procureur
Commerce and Employment Department

Action: Not extended to Guernsey as there would not have been any particular local advantage in so doing.

24. International Maritime Satellite Organization (INMARSAT)

Object: To make provision for the space segment necessary for improving maritime communications and, as practicable, aeronautical communications, thereby assisting in improving communications for distress and safety of life, communications for air traffic services, the efficiency and management of ships and aircraft, maritime and aeronautical public correspondence services and radiodetermination capabilities.

Consultation: H.M. Procureur
Commerce and Employment Department
Public Services Department
Jersey authorities

Action: Not extended to Guernsey as there would not have been any particular local advantage in so doing.

25. **World Health Organization Framework Convention on Tobacco Control**

Object: To develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes; to require Contracting States to establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control; to adopt and implement effective legislative and administrative measures for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke; to protect public health policies from commercial and other vested interests of the tobacco industry.

Consultation: H.M. Procureur
Heath and Social Services Department

Action: Extension to Guernsey agreed.

26. **Draft Treaty between the United Kingdom and the Republic of Brazil on Mutual Legal Assistance in Criminal Matters**

Object: To provide for mutual legal assistance in criminal matters without regard to whether the conduct that is the subject of investigation, prosecution or proceeding would be punishable under the legislation of both parties, except for search, seizure, restraint and confiscation.

Consultation: H.M. Procureur

Action: This matter is still under consideration.

27. **International Convention on Load Lines**

Object: To establish uniform principles and rules with respect to the limits to which ships on international voyages may be loaded

having regard to the need for safeguarding life and property at sea.

Consultation: H.M. Procureur
Public Services Department

Action: Not extended to Guernsey as there would be no practical application in so doing.

28. **Draft Agreement on the Working Arrangements between the United Kingdom and the Republic of Vietnam relating to Intercountry Adoptions**

Object: To establish safeguards to ensure that intercountry adoptions between the parties only take place in the best interests of the child and with respect to his international rights as recognised in international law; to establish a system of co-operation between the parties to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children.

Consultation: H.M. Procureur
Health and Social Services Department

Action: This matter is still under consideration.

29. **Council of Europe Convention on Contact Concerning Children**

Object: To determine general principles to be applied to 'Contact Orders', to fix appropriate safeguards for children having contact outside of their own country and to establish co-operation between central and judicial authorities to promote and improve contact.

Consultation: H.M. Procureur
Health and Social Services Department

Action: In October 2004 following consideration of a report of the Health and Social Services Department the States resolved, inter alia, to direct the Policy Council to consider whether this Convention should be extended to Guernsey. On 26th October 2005, having considered a report of the Policy Council, the States resolved that the Convention be extended to Guernsey if and when the United Kingdom has ratified it and the necessary domestic legislation is in place.

30. **International Convention on Civil Liability for Bunker Oil Pollution Damage 2001**

Object: To ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea.

Consultation: H.M. Procureur
Public Services Department

Action: Extension to Guernsey agreed as and when appropriate domestic legislation has been enacted.

31. **Stockholm Convention on Persistent Organic Pollutants (POPs)**

Object: To protect human health and the environment from persistent organic pollutants by prohibiting or limiting their production and export; by taking measures to reduce or eliminate releases from unintentional production and by taking measures to reduce or eliminate releases from stockpiles or wastes.

Consultation: H.M. Procureur
Commerce and Employment Department
Health and Social Services Department
Home Department

Action: This matter is still under consideration.

32. **Agreement between the United Kingdom and the Republic of Uzbekistan on the International Road Transport of Passengers and Goods**

Object: To regulate and develop the international carriage of passengers and goods by road in order to promote the development of trade and economic relations between the two countries.

Consultation: H.M. Procureur
Commerce and Employment Department#
Environment Department

Action: Not extended to Guernsey as there would be no practical application in so doing.

33. **Agreement between the United Kingdom and the Republic of Kazakhstan on International Road Transport**

Object, Consultation and Action: as in 32 above

34. **Agreement between the United Kingdom and the Republic of Iran on the International Carriage of Passengers and Goods by Road**

Object, Consultation and Action: as in 32 above

35. **UNESCO Convention against Doping in Sport**

Object: To encourage and coordinate international cooperation towards the elimination of doping in sport by outlining specific actions on anti-doping in sport that parties shall take; enhance cooperation on anti-doping efforts amongst State parties, the sporting movement and the World Anti-Doping Agency; ensure the implementation of a world anti-dumping code; foster international cooperation to protect all those practising sport from doping and promote international exchange of information on doping in sport.

Consultation: H.M. Procureur
Culture and Leisure Department

Action: Extension to Guernsey agreed.

36. **European Convention on the Adoption of Children - DENUNCIATION**

Object: The United Kingdom is denouncing the Convention as it is incompatible with the Adoption and Children Act which allows unmarried couples to adopt jointly.

Consultation: H.M. Procureur
Health and Social Services Department

Action: This matter is still under consideration.

37. **Hague Convention on the Protection of Cultural Property in the event of Armed Conflict and its two Protocols of 1954 and 1999**

Object: To provide a system of general and special protection of cultural property in situations of international and non-international

armed conflict. Cultural property is defined for this purposes as “movable and immovable property of great importance to the cultural heritage of every people”.

Consultation: H.M. Procureur
Culture and Leisure Department

Action: This matter is still under consideration.

38. **Council of Europe European Landscape Convention**

Object: To recognise landscapes in law and to establish and implement landscape policies aimed at landscape protection, management and ‘landscape planning’ (i.e. active design) through the adoption of specific measures; to establish procedures for public participation in defining and implementing landscape policies and integrate landscape into regional and town planning policies and to cooperate on the landscape dimension of international policies.

Consultation: H.M. Procureur
Environment Department

Action: This matter is still under consideration.

39. **Hague Convention on Civil Aspects of Child Abduction**

Object: To provide speedy, economical and well-established procedures for the return of children to their country of habitual residence, where they have been wrongfully removed without the knowledge or consent of those with custody rights.

Consultation: H.M. Procureur
Health and Social Services Department

Action: In October 2004 following consideration of a report of the Health and Social Services Department the States resolved, inter alia, to direct the Policy Council to consider whether this Convention should be extended to Guernsey. On 26th October 2005, having considered a report of the Policy Council, the States resolved that the Convention be extended to Guernsey once the necessary domestic legislation is in place.

40. **European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children**

Object, Consultation and Action: as in 39 above.

41. **Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (also known as the Hague Convention for the Protection of Children)**

Object: as in 39 above but its scope is wider in that it also deals with Public Law issues, most notably Child Protection.

Consultation: H.M. Procureur
Health and Social Services Department

Action: In October 2004 following consideration of a report of the Health and Social Services Department the States resolved, inter alia, to direct the Policy Council to consider whether this Convention should be extended to Guernsey. On 26th October 2005, having considered a report of the Policy Council, the States resolved that the Convention be extended to Guernsey if and when the United Kingdom has ratified it and the necessary domestic legislation is in place.

42. **Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption**

Object: To provide minimum agreed international standards for adoption of children across national boundaries, with the goal of protecting children, birth parents and prospective adopters from abuses such as child trafficking.

Consultation: H.M. Procureur
Health and Social Services Department

Action: In October 2004 following consideration of a report of the Health and Social Services Department the States resolved, inter alia, to direct the Policy Council to consider whether this Convention should be extended to Guernsey. On 26th October 2005, having considered a report of the Policy Council, the States resolved that the Convention be extended to Guernsey once the necessary domestic legislation is in place.

PART III - REPORTS SUBMITTED BY GUERNSEY

In November 2003 the United Kingdom submitted a periodic report on the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, part two of which relates to the Crown Dependencies.

In November 2004 the U. N. Committee against Torture considered the aforementioned Report.

Copies of the Report and the Committee's conclusions and recommendations, and other reports published by the United Nations Human Rights Committee, are available, free of charge, on request from the Head of Constitutional Affairs at Sir Charles Frossard House.

Copies have also been deposited at the Royal Court Library and with the Citizens' Advice Bureau, Guille-Allès Library, Priaulx Library, Alderney Library and Sark Library.

L C Morgan
Chief Minister

7th March 2006

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 26th DAY OF APRIL 2006

The States resolved as follows concerning Billet d'État No VIII
dated 7th April, 2006

PROJET DE LOI

entitled

THE LIMITED PARTNERSHIPS (GUERNSEY) (AMENDMENT) LAW, 2006

I.- To approve the Projet de Loi entitled "The Limited Partnerships (Guernsey) (Amendment) Law, 2006" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for her Royal Sanction thereto.

**THE COMPANIES (PURCHASE OF OWN SHARES)
(TREASURY SHARES) ORDINANCE, 2006**

II.- To approve the draft Ordinance entitled "The Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

THE COMPANIES (FEES AND PENALTIES) ORDINANCE, 2006

III.- To approve the draft Ordinance entitled "The Companies (Fees and Penalties) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

**THE REAL PROPERTY (HOUSING SCHEMES AND MISCELLANEOUS
PROVISIONS) ORDINANCE, 2006**

IV.- To approve the draft Ordinance entitled "The Real Property (Housing Schemes and Miscellaneous Provisions) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

THE HEALTH AND SAFETY (GAS) (GUERNSEY) ORDINANCE, 2006

V.- To approve the draft Ordinance entitled "The Health and Safety (Gas) (Guernsey) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

THE BAR (AMENDMENT) ORDINANCE, 2006

VI.- To approve the draft Ordinance entitled "The Bar (Amendment) Ordinance, 2006" and to direct that the same shall have effect as an Ordinance of the States.

POLICY COUNCIL

THE REHABILITATION OF OFFENDERS (BAILIWICK OF GUERNSEY) LAW, 2002 (COMMENCEMENT, EXCLUSIONS AND EXCEPTIONS) ORDINANCE, 2006

VII.- After consideration of the Report, dated 6th March, 2006, of the Policy Council:-

To approve the draft Ordinance entitled “The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

COMMERCE AND EMPLOYMENT DEPARTMENT

REVIEW OF PROTECTED CELL COMPANY (PCC) LEGISLATION AND INTRODUCTION OF INCORPORATED CELL COMPANY (ICC) LEGISLATION

VIII.- After consideration of the Report dated xx March, 2006, of the Commerce and Employment Department:-

1. To approve the proposals for the revision of the Protected Cell Companies legislation and the introduction of Incorporated Cell Companies legislation, in accordance with the principles set out in section 4 of that Report.
2. To approve the draft Ordinance entitled “The Protected Cell Companies (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.
3. To approve the draft Ordinance entitled “The Incorporated Cell Companies Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**K. H. TOUGH
HER MAJESTY’S GREFFIER**

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 27th DAY OF APRIL 2006

(Meeting adjourned from 26th April)

The States resolved as follows concerning Billet d'État No VIII
dated 7th April, 2006

COMMERCE AND EMPLOYMENT DEPARTMENT

**PLANT HEALTH AND THE
CONTROL OF PLANTS AND PLANT PESTS LEGISLATION**

IX.- After consideration of the Report dated 7th February, 2006, of the Commerce and
Employment Department:-

1. To approve the proposals for new plant health legislation in accordance with
the principles set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect
to their above decision.

COMMERCE AND EMPLOYMENT DEPARTMENT

TRADE IN ENDANGERED SPECIES

X.- After consideration of the Report dated 7th February, 2006, of the Commerce and
Employment Department:-

1. To approve the proposals for the introduction of legislation on trade in
endangered species in accordance with the principles set out in section 3 of
that Report.
2. To direct the preparation of such legislation as may be necessary to give effect
to their above decision.

HOME DEPARTMENT

CRIMINAL LAW REFORM

XI.- After consideration of the Report dated 21st February, 2006, of the Home
Department:-

1. To approve the Home Department's proposals for amending the criminal law,
as summarized in paragraph 72 of Her Majesty's Procureur's letter quoted in
section 2 of that Report.

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

STATUTORY INSTRUMENT LAID BEFORE THE STATES

**THE DRIVING LICENCES (GUERNSEY) THEORY TEST REGULATIONS
(AMENDMENT) REGULATIONS 2006**

In pursuance of section 4A of the Driving Licences (Guernsey) Ordinance, 1995, as amended, The Driving Licences (Guernsey) Theory Test Regulations (Amendment) Regulations, 2006, made by the Environment Department on 7th March, 2006, were laid before the States.

K. H. TOUGH
HER MAJESTY'S GREFFIER