



# BILLET D'ÉTAT

WEDNESDAY, 31st MAY, 2006

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2006

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# ***B I L L E T D ' É T A T***

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

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 31<sup>st</sup> MAY, 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  
12<sup>th</sup> May 2006

**SOCIAL SECURITY DEPARTMENT****PROJET DE LOI - THE PUBLIC ASSISTANCE (AMENDMENT) LAW, 2006**

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

31<sup>st</sup> March 2006

Dear Sir

On 26 January 2006 (Billet d'Etat II of 2006), having considered a report from the Social Security Department dated 25 November 2005, the States approved a number of proposals concerning the reform of the office of Procureur of the Poor. The proposals require amendment of the Public Assistance Law, 1937, as amended, adding to the amendments to that Law already required in consequence of the Resolutions of the States made on 28 April 2005 (Billet d'Etat IV of 2005) concerning the extension of the Supplementary Benefit Law to cover persons formerly entitled to benefit under the Public Assistance Law.

In the course of the debate on 26 January 2006, the question arose as to whether there would be a continuing requirement for persons elected to the reformed office of Procureur of the Poor to be sworn-in by the Royal Court. It had been the understanding of the Social Security Department that the Island Douzaines wished to avoid the costs associated with the swearing-in and, therefore, would be prepared to forego that requirement. In the light of uncertainty raised in the course of debate, however, the Minister of the Social Security Department undertook to revert to the Douzaines on this single issue and to report their wishes at the same time as the Projet de Loi was brought to the States.

Having completed that exercise, the Department can report that seven of the ten parishes support the continuing requirement for the swearing-in of the Procureurs and accept that the Court fees will have to be paid by the parishes. The Parish of St Andrew does not consider it desirable, but wishes to support the majority decision of the Island Douzaine Council to have the Procureurs sworn in. The Parishes of St Sampson and the Vale have indicated that they wish to disburse their charitable funds through a non-statutory office and, therefore, will not require the election of a Procureur.

In accordance with the foregoing, the effect of the Projet de Loi, which is included in the same Billet d'État as this report, will require those elected to any office of Procureur under the Projet to be sworn-in by the Royal Court.

***Recommendation***

The Department recommends that the States approve the Projet de Loi entitled 'The Public Assistance (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.

Yours faithfully

Mary Lowe  
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:-

I.- Whether, after consideration of the Report dated 31<sup>st</sup> March, 2006, of the Social Security Department, they are of the opinion:-

To approve the Projet de Loi entitled “The Public Assistance (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 MARRIAGE FEES (GUERNSEY) (AMENDMENT) ORDINANCE, 2006**

The States are asked to decide:-

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

**THE LEGITIMACY (GUERNSEY) LAW (FEES)  
(AMENDMENT) ORDINANCE, 2006**

The States are asked to decide:-

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

**THE PUBLIC RECORDS (FEES FOR REGISTRATION AND CERTIFIED  
COPIES OF DOCUMENTS) (AMENDMENT) ORDINANCE, 2006**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Public Records (Fees for Registration and Certified Copies of Documents) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**THE BIRTHS, DEATHS AND MARRIAGE CERTIFICATES (FEES)  
(AMENDMENT) ORDINANCE, 2006**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Births, Deaths and Marriage Certificates (Fees) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**THE PREFERRED DEBTS (GUERNSEY AND ALDERNEY)  
(AMENDMENT) ORDINANCE, 2006**

The States are asked to decide:-

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

## **LADIES' COLLEGE BOARD OF GOVERNORS**

### **NEW MEMBERS**

The States are asked:-

VII.- To elect

- (1) as a member of that Board of Governors with effect from 1<sup>st</sup> June, 2006, Mr M B Riley who has been nominated in that behalf by the Education Department for election by the States;
- (2) as a member of the Ladies' College Board of Governors with effect from 1<sup>st</sup> June, 2006, Mrs S Nickolls who has been nominated in that behalf by the States appointed Governors and the Education Department nominated Governors for election by the States.

## **GUILLE-ALLÈS LIBRARY COUNCIL**

### **NEW MEMBER**

The States are asked:-

VIII.- To elect a sitting member of the States as a member of the Guille-Allès Library Council to fill the vacancy which will arise on 1<sup>st</sup> June, 2006, by reason of the expiration of the term of office of Deputy A H Adam, who is eligible for re-election.

**(NB Only a sitting member of the States who is also a member of the Education Department is eligible for election.)**

## POLICY COUNCIL

### THE UNIFORM SCALE OF FINES (BAILIWICK OF GUERNSEY) LAW, 1989

#### Executive Summary

This report proposes the enactment of legislation increasing the maximum fines which can be imposed pursuant to the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989.

#### Report

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

*“The current scale of fines provided by the above Law, as amended by Ordinances of the States in 1991 and 1998, is as follows:*

| <i>Level</i> | <i>Fine</i>   |
|--------------|---------------|
| <i>1</i>     | <i>£ 200</i>  |
| <i>2</i>     | <i>£ 500</i>  |
| <i>3</i>     | <i>£1,000</i> |
| <i>4</i>     | <i>£2,500</i> |
| <i>5</i>     | <i>£5,000</i> |

*The judiciary have, for some time now, been concerned about the present scale of fines, and the Bailiff has written to me requesting that consideration be given to increasing the maxima at all levels. The 1989 Law has not been ‘updated’ in this respect for eight years and, with the effluxion of time, the fines are now considered to be inadequate. An Ordinance should be enacted, not only to reflect the increase in the RPI that has taken place since 1998 but also to ensure that the levels of fines are sufficient to fulfil one of their principal objectives, that is to act as a deterrent to potential offenders.*

*I concur with the concerns and the conclusions of the judiciary and would, therefore, recommend that the States be asked to direct that an Ordinance be prepared further amending the Uniform Scale so that it provides as follows:*

| <i>Level</i> | <i>Fine</i>    |
|--------------|----------------|
| <i>1</i>     | <i>£ 500</i>   |
| <i>2</i>     | <i>£ 1,000</i> |
| <i>3</i>     | <i>£ 2,000</i> |
| <i>4</i>     | <i>£ 5,000</i> |
| <i>5</i>     | <i>£10,000</i> |

*I am of the opinion that no additional resources will be required from the States to implement these proposals, and there are no implications in relation to the European Convention on Human Rights.*

*The 1989 Law applies throughout the Bailiwick, and the authorities in Alderney and Sark have been notified of these proposals.”.*

### **Recommendation**

The Policy Council concurs with the view expressed by HM Procureur and recommends the States to direct the preparation of legislation to increase the maxima prescribed in the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, as set out in this Report.

L C Morgan  
Chief Minister

27<sup>th</sup> March 2006

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

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 27<sup>th</sup> March, 2006, of the Policy Council, they are of the opinion:-

1. To enact legislation to increase the maxima prescribed in the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.



## POLICY COUNCIL

### EVIDENCE IN CIVIL PROCEEDINGS ETC

#### Executive Summary

This report proposes the enactment of (a) legislation amending the rules of evidence in civil proceedings, principally the rule in respect of hearsay, to bring Guernsey law into line with developments in English law; and (b) enabling legislation by which the States, by Ordinance, may amend the rules of evidence in civil proceedings.

#### Report

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

- “1. On the 23<sup>rd</sup> February, 2000 the States considered a Policy Letter from the Advisory and Finance Committee (Billet d'État No. VI of 2000 at pp 323 et seq.) principally relating to legislation facilitating electronic commerce. The Policy Letter, at paragraph 2.2 headed 'Rules of Evidence', recommended that the rules on documentary evidence in both civil and criminal proceedings, including the liberalisation of the rules on the admissibility of copies, be reformed to permit electronic hearsay documents; but, as drafted, the Policy Letter and its recommendations, and so the propositions, went beyond documents generated electronically, to include all documents. The resolutions of the States, so far as they related to criminal proceedings, found legislative expression in the Police Powers and Criminal Evidence (Bailiwick of Guernsey Law), 2004.
2. The legislation facilitating e-commerce transactions was enacted by the Electronic Transactions (Guernsey) Law, 2000. However, that legislation was not apt to, and in the result did not, address evidential issues, and after consultation with the judiciary and the Bar, I have to recommend that legislative provisions be made as a matter of urgency, not only to give effect to the resolutions of the States on those civil evidential aspects of the February 2004 Policy Letter, but also in relation to other aspects of evidence in civil proceedings which in my opinion should be included in the legislation of a modern jurisdiction.
3. I should add that, apart from evidential matters in relation to criminal proceedings arising out of the February 2004 Policy Letter, the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2004, by Section 85, enabled the States, by Ordinance, to make provision for evidence in criminal proceedings, including the receipt of evidence and the disclosure of material in criminal proceedings, those matters which are to constitute evidence; the extent to which evidence is admissible; the manner in which evidence is adduced; the requirements to be satisfied before

*evidence may be adduced; the circumstances in which evidence may be excluded; the means by which matters may be proved; the procedural requirements for safeguards relating to the receipt of evidence; and the disclosure of material by the prosecution or the accused. Those powers are extensive and may be exercised either generally, or in relation to specific offences or circumstances or criminal proceedings. Importantly, pursuant to that power the States by Ordinance may amend or abrogate any customary rule of evidence, or any rule of evidence established by Order in Council. The States, of course, may amend by Ordinance any rule of evidence established by Ordinance.*

### ***Evidence in civil proceedings***

4. *The rules of evidence in civil proceedings are partly customary, derived from English common law principles and rules, and partly statutory of which the Loi relative au Preuves, 1865, which applies throughout the Bailiwick, remains the most important, even though now over 140 years old. Evidence being concerned with proof of facts which are necessary for the court to make or achieve its findings in relation to the parties' claims or defences, the rules of evidence are often determinative of the way in which civil proceedings are conducted.*
5. *Until fairly recent times, the rules of evidence were strictly applied, and in some respects cumbersome, and difficult of application. The growing recognition that justice would not necessarily be denied by their relaxation prompted various law reforms in England commencing with the Civil Evidence Act 1968. That process continued with the Civil Evidence Act 1972, culminating in enactment of the Civil Evidence Act, 1995, which includes those provisions relaxing the rules in respect of hearsay evidence, particularly as respects documentary evidence, referred to above on which the States have already resolved.*
6. *The administration of civil justice in Guernsey engages the Jurats as the sole judges of fact. As to whether evidence is admissible, and in relation to other matters of evidence, the Bailiff will direct or guide the Jurats. (In Alderney the lay Court is assisted on the issue of admissibility of evidence by the legally qualified Greffier. In Sark, in a case in which counsel are engaged, the Seneschal will be assisted by counsel, in exercise of their duty to the court.) The tendency in England to which I have alluded above to relax the strict rules of evidence has been driven largely by the acknowledgement that, in determining issues of fact, evidence which is relevant should not be excluded because of some technical rule, but should be admitted, and it is then for the court, in determining factual issues, to assess the weight to be given to that evidence. In the context of civil proceedings in Guernsey, the assessment of weight i.e. what weight is to be given to any piece of evidence, is a matter for the Jurats, again on direction or guidance from the Bailiff.*

7. *The manner in which civil proceedings are conducted currently operate in Guernsey is lengthened by the current strict rules of evidence since, for example, the reports and findings of experts must be introduced orally during examination-in-chief rather than submitted in written form and then the expert witness tendered for the purposes of cross-examination. The introduction of legislation in this regard should ultimately lead to savings in court time and will therefore have a financial benefit.*

8. *I therefore recommend that legislation be enacted in the following respects:*

(i) *following the precedent set out in Section 85 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2004, that the States, by Ordinance, should have the power to make provision for and in relation to evidence in civil proceedings, and for that purpose by Ordinance to amend, modify, extend or repeal, in whole or in part, any Law or rule of customary law relating to evidence in civil proceedings, including (without limitation) the Loi relative aux Preuves, 1865 insofar as that relates to such evidence; and that by any such Ordinance the States may authorise the Royal Court to make Rules of equivalent effect.*

(ii) *to develop Guernsey law*

(a) *along the lines set out in Part II of the Civil Evidence Act 1968, and in particular in respect of the admissibility of convictions and findings of paternity and adultery as evidence in civil proceedings, the conclusiveness of convictions for the purposes of defamation actions and in relation to privilege;*

(b) *along the lines set out in the Civil Evidence Act, 1972, and in particular those provisions which would confer on the Royal Court the power to make Rules with respect to expert reports and oral expert evidence, and also provision for the admissibility of expert opinion and certain expressions of non-expert opinion, and proof of foreign law; and*

(c) *by modifying the rules of evidence along the lines set out in the Civil Evidence Act 1995, in relation to hearsay in civil proceedings; proof of statements contained in documents; and proof of records of a business or public authority;*

*and in any case, with such exceptions, adaptations and modifications, and powers to the Royal Court, as are necessary or expedient to give effect locally to such provisions.*

9. *None of these proposals will have any adverse effect on expenditure or resources, and in the result will not conflict with the European Convention on Human Rights.”*

### **Recommendation**

The Policy Council concurs with the view expressed by HM Procureur and recommends the States to direct the preparation of legislation amending the rules of evidence in civil proceedings, as set out in this Report.

L C Morgan  
Chief Minister

10<sup>th</sup> April 2006

**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 10<sup>th</sup> April, 2006, of the Policy Council, they are of the opinion:-

1. To approve the amendment of the rules of evidence in civil proceedings as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## POLICY COUNCIL

### CORPORATE ANTI-POVERTY PROGRAMME: MONITORING AND UPDATE

#### Executive Summary

The Policy Council has responsibility for overseeing the development of the Corporate Anti-Poverty Programme (CAPP) and also for monitoring its effectiveness. However, the commitment for monitoring must be a corporate endeavour. The importance of working across Government within the Anti-Poverty Strategy was highlighted in *Anti-Poverty Policies – a Range of Possible Options for Guernsey*:

*Anti-poverty strategy should be the responsibility of the entire organisation and needs to be incorporated within existing corporate commitments, rather than operating as an optional, ad hoc, ‘bolt on’ to existing commitments and services. Anti poverty perspectives need to be prioritised in political management arrangements, in organisations’ staffing profiles and in the budgetary process. (Gordon, 2002: iii)*

Departments need to monitor their work streams under the CAPP, to assess objectively whether the correct measures are being taken to alleviate relative poverty in Guernsey. Monitoring processes will also ensure the most effective distribution of resources on behalf of CAPP projects, particularly in the current financial climate.

This report has been produced to inform the States about the mechanisms that are going to be used to monitor the effectiveness of the CAPP, and to show what will be measured. As 16 months have elapsed since the first CAPP update was debated in the House in December 2004 the opportunity is also being taken to inform of developments that have taken place since the end of 2004 and to amend 2006 action plans as necessary. The report also recommends a number of amendments, deletions and insertions of workstreams.

#### Background to the CAPP

The December 2004 CAPP Update States Report (Billet d’État XXIII) contained a summary of the background of the CAPP and details about how the programme was established:

*The States of Guernsey voted in favour of an anti-poverty strategy and corporate anti-poverty programme (CAPP) at their meeting of November 2003<sup>1</sup>.*

*The anti-poverty strategy and CAPP were developed in response to a March 1998 Requête on low-income earners and households, and are the result of*

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<sup>1</sup> Billet d’État XXV 2003, pp2346-2386.

*extensive research into Guernsey Living Standards carried out between 2000 and 2002 by the Townsend Centre for International Poverty Research, based at the University of Bristol.*

*The Survey of Guernsey Living Standards (SGLS) concluded that, although the majority of people in Guernsey have a high standard of living, **16% of householders had a standard of living below the standard acceptable to the majority of Islanders (i.e. they were suffering from relative poverty)**. An additional 5% of people were at risk of suffering from relative poverty. This deprivation disproportionately affected lone parents, single pensioners and large households with children. 76% of all poor households in Guernsey were either single pensioners or families with dependent children<sup>2</sup>. (Policy Council, 2004<sup>a</sup>: 1)*

Early in 2009 it is proposed to repeat the SGLS to help to identify the overall progress made by Guernsey's Anti-Poverty Strategy and to assess how effective the Corporate Anti-Poverty Programme has been at delivering that strategy.

The Anti-Poverty Strategy policy letter said that the repeat of the SGLS would be done with respect to the benchmark set in 2000/2001 and that the overall aim of the strategy was to reduce relative poverty in Guernsey by 50% with respect to this benchmark by the end of 2008. This is important to monitor the absolute success of the strategy.

## **Finance**

The present financial situation of the States is now considerably worse than it was when the CAPP was first initiated. Although States income has remained strong, expenditure has grown to levels, which are no longer sustainable. Reductions in public spending have now become very necessary. This situation is likely to become further exacerbated in the short term as a consequence of the 2008 revised tax strategy proposals. The Policy Council is very pleased to note that on several occasions the Treasury and Resources Department has committed to ongoing support for the CAPP. However, there must be serious doubts as to how much new funding may be available in the States current financial position.

Whilst Departments are trying to give the CAPP a high priority, Members will be aware that given current constraints there is likely to be little new money available for CAPP initiatives. Therefore, funding CAPP work streams at anywhere near the amounts originally envisaged will only be possible if States Departments remain committed to the objectives of the CAPP and place it as a very high priority. This may require making cuts in other services, or achieving economies of scale through the combining of similar services that might currently be delivered via two or more Departments. Even so, a realistic approach to the situation needs to be taken, **and the States needs to**

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<sup>2</sup> Copies of the four reports produced by the Townsend Centre have been deposited in the Greffe for States Members' information. See also Billet d'État XXV 2003, pp2346-2386 and the 2002 and 2003 Policy and Resource Plan

**recognise that progress in achieving the original aims and objectives of the CAPP is very likely to be slower than originally envisaged.**

The Policy Council, through the Social Policy Steering Group, intends to review the CAPP in light of the above to see what may be appropriate to take forward.

### **Continuous Review of the CAPP**

It should be noted that once Category 1 workstreams are considered by their lead Department and the Social Policy Steering Group to have been completed and they have been reported to the States in an update report, they will no longer be included in subsequent update reports.

To date the CAPP Update report has simply monitored those workstreams previously approved by the States. However, in the coming year the Group hopes to address the appropriateness of the ongoing workstreams and review what is the best way to progress the CAPP in light of current financial restraints. The Group will also look at other initiatives that could be introduced to address poverty in the Island.

### **Changes to workstreams**

Following the deletion of *the fieldwork scheme* from Action Area B, the Commerce and Employment Department has been removed from Action Area B, as the second Lead Department.

When the CAPP was originally devised under Action Area B there was a proposal that the Fieldwork Scheme, formerly operated by the Board of Industry, should be reviewed. The intention was that a temporary work scheme, more in keeping with modern day requirements would be devised. However, shortly after the CAPP received approval the Fieldwork Scheme in its existing format ceased. The scheme has subsequently been revived by the Social Security Department and now sits alongside a range of Back to Work Initiatives, featured in Action Area A, that the Department is pursuing. In the circumstances it is appropriate that this work stream be deleted from Action Area B.

The Commerce and Employment Department has however, included two additional workstreams under Action Area F on which it is Lead Department:

- ❑ Stimulate the creation of a competitive and attractive business environment
- ❑ Assist the delivery of an adaptable and well trained workforce to the workplace

The objectives of these workstreams are detailed more fully on page 918.

### **Developing a Monitoring Framework**

The report *Anti-Poverty Policies – a Range of Possible Options for Guernsey* lists monitoring and evaluation as a key priority in implementing an effective anti-poverty strategy:

*“Better information and the monitoring and evaluation of the impact and effectiveness of anti-poverty strategies should be a key priority. This should include evaluation of processual issues (the way things are done) and long-term qualitative measures (such as equity, empowerment and accessibility), alongside ‘hard’ quantitative indicators. (Gordon D et al 2002: iv)*

*The monitoring and evaluation of the impact and effectiveness of anti-poverty strategies should be a key priority. Tackling poverty depends upon a clear identification of the scale of poverty and the forms it takes (for example, in relation to the unemployed, elderly, lone parents, low waged, etc.). Evaluating the efficacy of anti-poverty strategies thus necessitates systematic collection and mapping of indicators of social and economic need, that is, the development of a ‘local poverty profile’ in order to develop suitable targets for anti-poverty work. (Gordon D et al 2002: 11).”*

Part of the responsibility that the Policy Council has for the CAPP is monitoring and evaluation. The December 2004 CAPP Update stipulated that “effective monitoring of the CAPP will involve both examining how the work streams are progressing, as well as focusing on their outcomes.” (2004<sup>b</sup>: 206)

This report is the first stage in establishing a system, which enables the measurement of core programme outcomes. The first aim of this process is to monitor the take-up and outcomes of individual initiatives under the CAPP. Secondly, the ongoing monitoring of initiatives should support an evaluation of the programme against a repeat of the Survey of Guernsey Living Standards in 2009.

The information collected will vary depending on the work streams being monitored and could range from information relating to activities and services, service users or Clients, or about outside factors that affect the work stream or overall project.

Monitoring information is collected systematically at specific times: typically daily, monthly, quarterly or annually. After a certain time, dependant on the work stream, the information collected is analysed to answer such questions as:

- How successful is the initiative/work stream?
- Have we implemented the correct procedures?
- What difference is this work stream making?

While monitoring is routine and ongoing, evaluation is an in-depth study, taking place at specific points in the life of the project. Evaluation allows the data collected during the monitoring process to be used to make judgements about the work stream or project. The process of evaluation allows Lead Departments to make changes and improvements, increase efficiency and allocate resources in a considered way. Information on monitoring best practice and the case for monitoring can be found at Appendix B.



The Policy Council's Policy and Research Unit has continued to engage with all CAPP Lead Departments to ensure that the information collected from the monitoring process is first analysed in the Lead Department to review the effectiveness of its individual work streams. This information is then fed to the Policy and Research Unit to look at ways of adding further sophistication to the evaluation and analysis process. This allows the Unit, in conjunction with the Social Policy Steering Group, to conduct an analysis of the CAPP in its entirety, from a strategic level.

The work streams in this report have been categorised by the Policy and Research Unit and the Lead Departments according to the progress that had been made in implementing each initiative.

| <b>Category Rating</b> | <b>Progression of work stream</b>   |
|------------------------|---|
| <b>1</b>               | <b>Objective of work stream in place and concluded, or objective of work stream in place and ongoing.</b> |
| <b>2</b>               | <b>Objective of work stream to be implemented in 2006</b>   |
| <b>3</b>               | <b>Commitment for proposals to come forward in 2006</b>   |
| <b>4</b>               | <b>No action to be taken in 2006</b>  |

This report lists the CAPP work streams within their designated Action Area. The category rating assigned to each work stream has also been given, followed by the proposals for monitoring in regard to those that are in place or in an advanced state of development that have been put forward by the Lead Department in consultation with the Policy and Research Unit.

**NB:** The CAPP Update report discussed at the December 2004 States meeting provided information as at 30/09/2004.

Appendix A lists all the Action areas of the CAPP. It shows the Lead and Second Lead Department of each Action Area and the work streams that come under each one. Where the work streams have not yet been implemented, (work streams classified as category 3 or category 4) it has been agreed by Lead Departments that when proposals come forward in due course, they must contain information to support a 'business case' for change, identifying the need and case for change, the intended outcome or objective and monitoring proposals to measure this.

## **Conclusion**

All Departments that lead on Action Areas of the CAPP have made a commitment to reporting to the States on its development. Departments are responsible for monitoring their CAPP Action Areas but, through the Policy Council's Social Policy Steering Group, they provide the statistics to the Policy and Research Unit to be further analysed. An extract from Sustainable Guernsey 2004, which provides an outline of the monitoring process, is appended for Members' information at Appendix B.

This report has given a brief update of the CAPP work that has progressed since the last update in December 2004 and the progress of the Action Areas is detailed in Appendix A. Progress on work carried out during 2005 has been largely provided in the individual Monitoring Frameworks under each workstream and work planned for 2006 is listed under the individual Action Plans, in order to give an overview of how the CAPP is advancing.

Also detailed in the Action Area updates are a number of changes to existing workstreams. These changes are namely the deletion of the workstream 'The former Board of Industry's fieldwork scheme' from Action Area B, the removal of the Commerce and Employment Department from Action Area B as 'second lead' Department and the addition of the two new workstreams under Action Area F, to be led by the Commerce and Employment Department. These workstreams are detailed more fully in the appropriate Action Area.

An additional consideration for this year's CAPP update has been the changing financial climate for the States of Guernsey and the implications this has had for individual Departments and their Action Plans. Reductions in public spending have now become very necessary and given current constraints there is likely to be relatively little new money available specifically for CAPP initiatives.

As such it should be recognized that progress in achieving the original aims and objectives of the CAPP as detailed in the workstreams is likely to be slower than originally anticipated. It is however, even more crucial now that Departments remain committed to the CAPP and, despite the recognized difficulties in making cuts in other services and economies elsewhere in order to fund CAPP initiatives, continue to place it as a high priority.

In the same way as this report has been submitted to the States for consideration following a full year's worth of progress and the availability of over 12 months of monitoring data, it is proposed that the subsequent CAPP update report be brought to the States in Spring 2007, following another year's development of the Programme.

## **Recommendations**

The States are recommended to note: -

- i. the updates on all the Action Areas of the CAPP;
- ii. the monitoring proposals put forward by all Lead Departments;
- iii. the deletion of the work stream 'The former Board of Industry's fieldwork scheme' from Action Area B of the CAPP;
- iv. the removal of the Commerce and Employment Department as second lead Department from Action Area B of the CAPP;

- v. the addition of the two new workstreams under Action Area F, to be led by the Commerce and Employment Department;
- vi. the timescale for providing the next CAPP Update to the States of Guernsey as set out in this report;
- vii. that with the current States financial position, progress in achieving the original aims and objectives of the CAPP is likely to be slower than originally envisaged; and
- viii. that the Policy Council through its Social Policy Steering Group, will undertake a review of the best way to progress the CAPP in light of the current financial climate.

L C Morgan  
Chief Minister

24<sup>th</sup> April 2006

## APPENDIX A

**Action Area A: Benefit and Tax Measures**

**Lead Department:** *Social Security, (First Lead) Treasury and Resources, (Second Lead).*

**Objectives:**

To provide support, including necessary financial, to those most in need in conditions of dependency, such as childhood, old age, disability and special need, but with due regard to the sustainability of the Island's resources.

To ensure that the tax and benefits systems work in an integrated way to support those suffering from, or vulnerable to, relative poverty.

To fulfil the objective that no Guernsey or Alderney resident should be denied access to health care services through lack of financial resources.

To promote the benefits available to those suffering from relative poverty, so that those concerned know where help can be obtained.

To target this assistance to meet, in particular, the needs of single pensioners and families with dependent children.

**Work Streams:**

❑ ***Single Pension Increases***

**Category 1:** Objective of work stream in place and concluded, or objective of work stream in place and ongoing.

**Progress made on work stream since December 2004 States Report:**

Greater percentage increase awarded to single pensioners from January 2005 and January 2006 (fourth year in succession.).

**Action Plan for 2006:**

SSD will examine the merits of deferred and enhanced old age pensions with a view to encouraging more people to remain in the workforce beyond the age of 65. (this action carried forward from 2005)

| Monitoring Framework |   |
|----------------------|---|
| Outcome Aim(s)       | To increase the rate of single pension relative to the combined rate for a pensioner plus dependant wife to 70% or as near to that figure as possible having regard to the sustainability of the Guernsey Insurance Fund. |

|                                 |   |
|---------------------------------|---|
| Data Source(s)                  | Pension rates approved annually by the States. Median earnings from employment, if reportable by Policy and Research Unit.  |
| Frequency of Collection         | Annual.   |
| Information to be reported      | Ratio of single pension to single pension plus increase for dependant wife.   |
| Progress against Outcome Aim(s) | In 2002, ratio was 62%. In 2006 it is 66.5%   |
| Comments                        | Expensive strategy as there are many more single pensioners than pensioner couples.<br><br>This indicator will be relevant for at least 10 years, but thereafter will increasingly lose relevance because of the individualised pension reforms that were legislated from 01 January 2004.<br><br>A good indicator would be the ratio of single pension to median earnings from employment. Policy Council looking into feasibility of reporting median income. |

- 
- ❑ *Support for higher family allowance/childcare allowance with income tax claw back*

**Category 3: Commitment for proposals to come forward in 2006**

**Progress made on work stream since December 2004 States Report:**

Little progress was made in 2005 in the area of means-testing or income-related family allowances. The limited work that was undertaken led back to renewed interest in the continued payment of family allowances in full by the Social Security Department, but with a system of clawback to take place through the income tax system. Under this model, there would be no clawback from low income families, but up to 100% clawback from high earning families. Work is in progress on the financial modelling of a clawback system, including the income thresholds and the clawback rate.

**Action Plan for 2006:**

In co-operation with the Treasury and Resources Department, the Social Security Department will endeavour to produce a fair and workable redistributive system for recommendation to the States

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- ❑ *Review Health Benefit Grants*

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing.**

**Progress made on work stream since December 2004 States Report:**

This work was completed in 2004 and did not carry forward to 2005.

**Action Plan for 2006:**

As above.

| <b>Monitoring Framework</b>     |   |
|---------------------------------|---|
| Outcome Aim(s)                  | To maintain a substantial level of subsidy in the cost of seeing a GP.  |
| Data Source(s)                  | Grant rates and standard consultation price.  |
| Frequency of Collection         | Annual.   |
| Information to be reported      | Ratio of grant to consultation price, currently 31% (£12/£38.75)  |
| Progress against Outcome Aim(s) | Adequate current position.  |
| Comments                        | Accepted that 'substantial level of subsidy' is subjective, but probably unwise to guarantee minimum ratio for the grant. |

□ *Financial help for medical expenses and disability allowance*

**Dual Rating Categories 1 and 4:** Objective of work stream in place and concluded, or objective of work stream in place and ongoing; and Commitment for proposals to come forward in 2006. NB This work stream has been split into 2 sub-streams.

**(a.) Financial help for medical expenses (Category 1)**

**Progress made on work stream since December 2004 States Report:**

Nothing further to report.

**Action Plan for 2006:**

N/A

| <b>Monitoring Framework</b> |  |
|-----------------------------|--|
| Outcome Aim(s)              | Ensure that the Medical Expenses Assistance Scheme continues to help Guernsey residents for whom the cost of medical treatment is a barrier. |
| Data Source(s)              | SSD records.   |
| Frequency of Collection     | Ongoing collection. Annual reporting.  |

|                                 |   |
|---------------------------------|---|
| Information to be reported      | Claim numbers and benefit expenditure.  |
| Progress against Outcome Aim(s) |   |
| Comments                        | MEAS expenditure rose 56% in 2004, from £77,000 to £120,000. In 2005 it was £108,000. A substantial part of MEAS is now used for clinically necessary orthodontics for children, formerly undertaken by the HSSD School Dental Clinic. Medical and Dental MEAS to be reported separately. |

**(b.) Financial help for disability allowance (Category 4)**

**Progress made on work stream since December 2004 States Report:**

No progress to report.

**Action Plan for 2006:**

No work in this area planned for 2006.

❑ ***Back to work benefits***

**Category 2: Objective of work stream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

In October 2004, the Social Insurance Law was amended to enable SSD to use Guernsey Insurance Fund moneys to administer a range of back-to-work programmes for people on benefit. The programmes include:

- short term training
- basic skills training
- voluntary work
- therapeutic work
- work trial
- gradual return to work
- back to work bonus
- job start expenses
- Community and Environmental Projects (CEPS)

A very good start has been made on these programmes. Volumes are very small and will never be large because of the intensity of staff input required. However, each single success is important and possibly life-changing for the customer. Each success is also a substantial saving to the Guernsey Insurance Fund and a returned contributor to

the economy.

Public leaflet No. 11 is now in circulation. GPs are aware of, and assisting with back-to-work initiatives. HSSD, including Castel Hospital is also aware, as are the Careers Service and Probation Service.

A work rehabilitation officer has been appointed for a one year trial period, using an established post, in order identify suitable candidates through interview and to provide practical and moral support with trial work placements. This is proving effective.

**Action Plan for 2006:**

SSD will build on its early successes. The workload, which could expand hugely if resources allowed, will continue to be constrained to what the small team can cope with.

| <b>Monitoring Framework</b>     |   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
|---------------------------------|---|-----------------------|-----------|--------------------------|----|------------------|----------|----------------------|---------|----------------|-----------|------------|----------|------------------------|-----------|
| Outcome Aim(s)                  | To assist people to move from various benefits into paid employment.  |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Data Source(s)                  | SSD, Education Department, including College of FE.   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Frequency of Collection         | Ongoing.  |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Information to be reported      | Number of customers with whom a back-to-work agreement has been reached, nature of programme and outcome.   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Progress against Outcome Aim(s) | <p>Back to work schemes have been launched and are proceeding well, albeit in low volumes. Statistics for 2005 were:</p> <table> <tr> <td>Basic skills training</td><td>13 people</td></tr> <tr> <td>Work focussed interviews</td><td>90</td></tr> <tr> <td>Therapeutic work</td><td>9 people</td></tr> <tr> <td>Back-to-work bonuses</td><td>16 paid</td></tr> <tr> <td>Voluntary work</td><td>12 people</td></tr> <tr> <td>Work trial</td><td>8 people</td></tr> <tr> <td>Gradual return to work</td><td>33 people</td></tr> </table> | Basic skills training | 13 people | Work focussed interviews | 90 | Therapeutic work | 9 people | Back-to-work bonuses | 16 paid | Voluntary work | 12 people | Work trial | 8 people | Gradual return to work | 33 people |
| Basic skills training           | 13 people   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Work focussed interviews        | 90  |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Therapeutic work                | 9 people  |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Back-to-work bonuses            | 16 paid   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Voluntary work                  | 12 people   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Work trial                      | 8 people  |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Gradual return to work          | 33 people   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |
| Comments                        | These initiatives are demanding of SSD staff resources, hence the low volumes, but the Department is convinced of their merits.   |                       |           |                          |    |                  |          |                      |         |                |           |            |          |                        |           |

□ ***Supplementary Benefit***

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**



**Progress made on work stream since December 2004 States Report:**

Greater percentage increase awarded to single householder Claimants from January 2005 (third year in succession.). General increase from January 2006.

In 2005, a random sample survey was undertaken with supplementary benefit customers in order to receive their views on the adequacy of the benefit rates. The results will help to inform the annual benefit updating proposals in September 2006.

**Action Plan for 2006:**

No further action planned for 2006.

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□ ***Restructuring Public Assistance***

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**

**Progress made on work stream since December 2004 States Report:**

A States Report on this matter was approved by the States in April 2005. From 1 July 2005, the supplementary benefit scheme was extended to include the former public assistance claimants. Action complete.

**Action Plan for 2006:**

N/A.

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□ ***Negative Income Tax (Tax Credits)***

**Category 4: No action to be taken in 2006**

**Progress made on work stream since December 2004 States Report:**

No action to be taken.

**Action Plan for 2006:**

Neither SSD nor T&R intends undertaking any work in 2006 in the area of negative income tax (tax credits) beyond continuing monitoring of the UK tax credit systems. The work in progress on clawback of family allowances through the income tax system (see above) does, however, involve some similar principles.

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□ ***Increase Benefit take-up***

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**

**Progress made on work stream since December 2004 States Report:**

SSD wrote to 19,000 customers in January 2005, informing them of a change from four

weekly payments of benefit to weekly payments. Most of these customers were pensioners or people receiving family allowances. The reverse side of the letter carried a copy of an advertisement that SSD had put into the Guernsey Press encouraging people to contact the Department if they were struggling financially.

**Action Plan for 2006:**

SSD will promote benefits with its bulk postings, where appropriate. Beyond that no further plans in this area for 2006.

| <b>Monitoring Framework</b>     |   |
|---------------------------------|---|
| Outcome Aim(s)                  | Ensure that people receive the benefits that they are entitled to.  |
| Data Source(s)                  | Responses to advertisements and bulk mailings.  |
| Frequency of Collection         | One month period following each promotion.  |
| Information to be reported      | Number of calls, claims taken, outcome.   |
| Progress against Outcome Aim(s) | From the Press advertisement and the bulk mailing, the Department received 64 enquiries, which resulted in 10 people receiving weekly supplementary benefit payments and medical cover, 2 people receiving public assistance and 6 people receiving assistance with medical costs under the Medical Expenses Assistance Scheme. |
| Comments                        |   |

## **Action Area B: Education and Employment Services**

***Lead Department: Education.***

**Objectives:**

To encourage and assist those in financial poverty, wherever possible, to improve their situation by: -

- Entering, or re-entering, the workforce
- Improving their employment prospects through education and training
- Gaining control of their financial circumstances

To promote the advice, education, training and employment opportunities available to those suffering from relative poverty, so that those concerned know where help can be obtained.

## Work Streams:

- ❑ *To promote information, advice and guidance on the support, training and employment opportunities available to those on low incomes*

### **Category 3: Commitment for proposals to come forward in 2006**

#### **Progress made on work stream since December 2004 States Report:**

A model for Adult Guidance has now been prepared by the Employment Services Sub-Group. The proposals have been informed by an extensive audit of the current services provided to clients with 'non-standard' employment needs and by a commissioned report prepared by an Adult Guidance practitioner.

The report outlines how an Adult Guidance Service might operate including identification of its core services. These include:

- Information resources
- Individual guidance
- Services to employers and training providers.

The report also recommends a fully-costed 3-year pilot programme.

Endorsement of the Proposals for an Adult Guidance Service was sought at the April 2005 Social Policy Steering Group Meeting. A number of the States Departments who had originally indicated a willingness to provide financial support for the pilot stated their intention to withdraw their support because of the need to reprioritise their expenditure.

The Education Department was asked to Review the proposals with a view to providing an Adult Guidance Service Pilot Programme at a reduced cost.

#### **Action Plan for 2006:**

Revised proposals have been approved by the Social Policy Steering Group and by the Policy Council. The service will now be introduced on a three year pilot basis, with a review after 18 months.

- ❑ *To improve provision of employment and training opportunities for people with a disability or who have a medical condition which restricts their ability to work*

### **Category 4: No action to be taken in 2006**

#### **Progress made on work stream since December 2004 States Report:**

In July 2004 the Employment Services Sub-Group reported to the CAPP Steering Group. There was not unanimous support for the proposals and some concern was

expressed about the quality of the data on which the recommendations were based. It was decided that the Treasury and Resources Department's Risk and Assurance Team would review the report and the data sources. The data was gathered and this informed the ESSG's revised report, which was produced in January 2005. The revised report was presented to the CAPP Steering and Social Policy Working Groups respectively on 09 February and 09 March 2005.

At that meeting there was no agreement that there should be a co-ordinated approach to joint working. Instead, each Department would devise monitoring arrangements for its own areas of responsibility.

During 2005 Departments that are service providers and/or users were asked to review the services they are able to provide to inform any recommendations on whether a co-ordinated delivery should be established.

**Action Plan for 2006:**

No further action has been undertaken centrally as directed by the Social Policy Steering Group

❑ *The former Board of Industry's fieldwork scheme*

**THIS WORK STREAM HAS BEEN DELETED (see page 869)**

❑ *To support those sectors of the community who have basic skills difficulties*

**Category 2: Objective of work stream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

The Corporate Anti-Poverty Programme has identified that deficiencies in basic skills can be a major drawback for those people who are vulnerable to poverty. The Education Department, through the College of Further Education, will continue to expand the learning opportunities for those people needing to improve their basic skill levels.

The provision of Basic Skills has been identified as a priority activity of the College of Further Education in its College Development Plan.

The College of Further Education management structure has been revised to ensure that there is clear responsibility for overseeing Basic Skills Course Provision within the College.

The College has continued to expand its provision for Basic Skills. Developments include:

- Enhanced links with the Social Security and Home Departments through the

establishment of formal service level agreements to provide basic skills support for the clients of these Departments.

- The States Registered Apprenticeship Scheme has implemented a screening programme for all newly registered apprentices. A basic skills programme of support is then provided during the apprenticeship if required.
- The College has expanded its full time provision to enable more students to undertake foundation and vocational skills pre-foundation courses. Learners with weaknesses in basic skills are also being provided with individualised learning plans to assist them with their basic skill levels.
- The Basic Skills provision through the Adult Education programme has been revised to ensure greater opportunities for access by the whole island population.

The College of Further Education in 2005 underwent an inspection and consideration of Basic Skills Provision. They have since received an interim report that has praised the provision this is offered. The report has identified strategies for developing the service if funding was made available.

#### **Action Plan for 2006:**

The College aims to be classified as a Dyslexia-Friendly College by the British Dyslexia Association and will be allowed to train support staff in working with students with dyslexia. The College is piloting the national Standards for being Dyslexia-Friendly for United Kingdom Colleges of Further Education in September 2006. The College has also been accredited to deliver dyslexia institute courses up to level 3 for teachers and support staff.

There is a programme of staff development to assist all staff in the identification and development of students with Basic Skills. Some members of staff have also obtained post-graduate diplomas in dyslexia and literacy.

The Financial Literacy Awareness Group is being formed to support Basic Skills Provision, and the feasibility of a Guernsey Adult Literacy Project is being investigated. The Financial Literacy Awareness Group (FLAG) is being formed to support initiatives to ensure that young people and adults in Guernsey are able to make informed judgements and to take effective decisions regarding the use and management of money. FLAG includes representation from Guernsey Financial Services Commission, Guernsey International Banking Association, The Education Department, The College of Further Education, the Guernsey Press and the Training Agency.

Consideration is being given to the College of Further Education launching the Guernsey Adult Literacy Project (GALP) in September 2006. This will be dependent upon the required resources being available. The aims of GALP will be to:

- Provide adults in Guernsey with opportunities to develop their literacy skills
- Develop a network of easily accessible learning centres
- Build a bank of resources for the teaching of literacy

- Train and develop a team of literacy facilitators
- Investigate and disseminate good practice in the teaching of literacy skills.

| <b>Monitoring Framework</b>     |  |
|---------------------------------|--|
| Outcome Aim(s)                  | <ol style="list-style-type: none"> <li>1. To measure the take-up of basic skills provision.</li> <li>2. To measure the improvements in the performance of individuals with recognised basic skills difficulties in numeracy.</li> </ol>  |
| Data Source(s)                  | <ol style="list-style-type: none"> <li>1. Student course uptake statistics.</li> <li>2. Initial diagnostic and summative assessments will be undertaken to assess the numeracy levels for College students at the commencement and end of their courses respectively.</li> </ol>   |
| Frequency of Collection         | Annual.  |
| Information to be reported      | <ol style="list-style-type: none"> <li>1. The numbers of students with basic skills difficulties profiled for basic skills provision.</li> <li>2. The tracking of individual student's attainment to evaluate any change in numeracy skill levels.</li> </ol>  |
| Progress against Outcome Aim(s) |  |
| Comments                        | The monitoring framework for numeracy has been piloted in the College Maths Workshop in 2005. The assessments demonstrated that over 100 students were working at a numeracy level of level 1 or below. Level 1 is broadly equivalent to a pre-GCSE qualification. All students had progressed in their numeracy skills and 60 had obtained a qualification equivalent to GCSE. The format will now be rolled out to ICT and literacy. |

□ ***To engage disaffected young people in education***

**Category 2: Objective of work stream to be implemented in 2005/06**

**Progress made on work stream since December 2004 States Report:**

To finalise the strategy for providing young people with access to a broad, balanced and accessible range of courses and training opportunities that will provide them with personalised and coherent programmes, which meet their individual needs and prepare them effectively for further learning, employment and later life.

**1. The 14-19 Working Party**

An across Service Working Party has been reviewing the curriculum for 14-19 year olds to:

- provide flexibility and choice in curriculum provision that supports personalised learning and encourages motivation and engagement in education
- consider the priorities established by the raising of the school leaving age in 2008.

**Completed work streams for the Academic Year 2004-05:**

1. An enhanced range of link courses has been provided by the Guernsey College of Further Education to provide 14-16 students in the secondary schools with greater access to vocational based courses.
2. A Draft Work Related Learning Policy and Guidelines is being trialed in the secondary schools to provide guidance to schools for the delivery of work related learning programmes. One of the purposes is to motivate students by helping them to see the relevance of education in their future life and prospects.
3. In partnership with other agencies and States Departments alternative curriculum programmes have been developed for some of the most disaffected 'at risk' students e.g. the Karabina Project.

**Action Plan for the Academic Year 2005-06:**

1. Review the National Curriculum (Guernsey) to provide flexibility and choice in curriculum provision, which supports personalised learning and encourages motivation and engagement in education at Key Stages 3 and 4. The National Curriculum (Guernsey) has been reviewed by the Education Department's Assessment and Curriculum Advisory Committee and will be approved in July 2006.
2. To have in place by September 2006 an agreed 14-19 Strategy (Guernsey) Statement with full implementation to be with effect from September 2008. Including finalising in schools the requirements for:
  - work related learning, careers education and guidance
  - the achievement of improved standards in functional literacy, numeracy and ICT capability.

**2. Special Educational Needs (SEN) Provision**

The priorities for the Education Department's SEN Reorganisation Programme are to ensure:

- early intervention in order to support the establishment of the necessary foundations for later success in education
- a range of SEN provision is available so all young people benefit from education, whether in mainstream, special schools or other provision.

**Completed Work streams for the Academic Year 2004-05:**

1. Pilot Nurture Groups were established at Amherst Primary School, La

Mare de Carteret Primary School, St Martin's Primary School and the Pupil Support Advisory Service in October 2004. In addition a Pre-school Nurture Group was provided at Amherst Primary.

The purpose of a Nurture Group is to provide early intervention and support for young children who have missed out on early social and learning experiences and are at risk of failing when they start school. The Nurture Groups are staffed by teachers and teaching assistants who have been provided with specialised training.

An initial evaluation of the Pilot indicates that it has proven to be successful in providing Early Years Stage children who are in need of additional support with the foundations for a more successful transition from home to school.

2. All schools have been provided with additional advice, guidance and resources to support individual school's behaviour management programmes. The resources provide strategies for whole school, classroom and individual pupil behaviour management, which also encourages parental involvement.
3. The Education Department's Policy and Procedures for Managing School Exclusions has been reviewed in preparation for changes to the procedures for the Academic Year 2005-06.

**Action Plan for the Academic Year 2005-06:**

1. Consolidate the work of the Nurture Groups. The pilot phase has been completed for all Nurture Groups. They have been evaluated as successful and meeting their aims and will continue in the schools in which they are located. Current financial constraints restrict their further expansion.
2. Pilot the Revised Procedures for the Management of School Exclusions. The Draft Exclusions document has been circulated to all schools and services for implementation. The schools will trail the policy until the end of the academic year when the final document will be reviewed and established.
3. Provide increased levels of support for secondary schools to assist with their behaviour management programmes and strategies by providing Behaviour Co-ordinator Posts in secondary schools with effect from January 2006.

By September 2006 the schools will have appointed a Behaviour Co-ordinator who will be in post in each of the four secondary schools – St Sampson's, St Peter Port, Les Beaucamps, La Mare de Carteret. Their role is to co-ordinate the management of behaviour problems in each school. Initial and on-going training will be provided for these co-ordinators as well as selected staff for St Anne's, the Grammar School and the College of Further Education.

4. As a result of the opening of Le Rondin Primary Special School



additional accommodation for the Pupil Support Advisory Service has been provided at Granville House in order to provide enhanced facilities for pupils excluded from school.

Granville House is now the interim base for pupils with behaviour, emotional and social difficulties. By September 2006 the Head of the base will be in post. During the academic year 2005/06 the premises have been improved by donating the entire building to pupils with behaviour problems and by modifying the accommodation. A school nurse has also been appointed to support students.

5. Continue to develop the plans for the opening of the Centre for Pupils with Behaviour, Emotional and Social Difficulties (BESD) on the site of the present Oakvale School when the Les Nicolles Secondary Special School opens in September 2008. During the Academic Year 2005-06 it is planned to appoint a Head of the BESD Centre, a BESD Centre Manager and a BESD Advisory and Outreach Manager.

Plans continue for the opening of Le Murier School in the academic year September 2008. The Head of BESD, and the Outreach Manager have been in post since 2006. The recruitment process for BESD Centre Manager will be commencing in the Spring Term 2006.

| <b>Monitoring Framework</b>     |   |
|---------------------------------|---|
| Outcome Aim(s)                  | 1. To have in place by September 2006 a 14-19 Strategy (Guernsey) Statement.<br>2. To have in place by September 2006 the Revised Procedures for the Management of School Exclusions. |
| Data Source(s)                  | Individual Action Plans in the Schools and Educational Services Development Plan.   |
| Frequency of Collection         | Termly  |
| Information to be reported      | Progress towards the achievement of the two outcome aims identified above.  |
| Progress against Outcome Aim(s) |   |
| Comments                        |   |

#### □ *Financial support for post-compulsory training*

#### **Category 3. Commitment for proposals to come forward in 2006**

#### **Progress made on work stream since December 2004 States Report:**

The arrangements for funding on island post-compulsory training are being reviewed.

**Action Plan for 2006:**

The Education Department has been required to make amendments to the Higher Education Funding arrangements for local students because of changes to the funding arrangements for Higher Education in England. The new funding arrangements in Guernsey are to be finalised by July 2006.

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**Action Area C: Services for Older People and People with a Disability**

*Lead Department: Health and Social Services, (First Lead) Social Security, (Second Lead).*

**Objectives:**

To provide support and services to the elderly and disabled to alleviate poverty, but with due regard to the sustainability of the Island's resources.

To target this assistance to help single pensioners.

**Work Streams:**

- ❑ *Tax and benefit initiatives for pensioners*

**Category 3: No action to be taken in 2006****Progress made on work stream since December 2004 States Report:**

No action taken.

**Action Plan for 2006:**

No action to be taken in 2006 beyond the measures already being taken under Action Area A, see page 879.

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- ❑ *Employment opportunities for people with a disability*

**Category 3: Commitment for proposals to come forward in 2006****Progress made on work stream since December 2004 States Report:**

Please see Action Area B workstream 'to improve provision of employment and training opportunities for people with a disability or who have a medical condition which restricts their ability to work', page 881.

**Action Plan for 2006:**

Departments that are service providers and/or users are reviewing the services they are able to provide to inform any recommendations on whether a co-ordinated delivery could be established. Action Plan brought forward from 2005.

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- *Improve provision of services for older people and people with a disability*

**Category 1:** Objective of work stream in place and concluded, or objective of work stream in place and ongoing.

**(a.) Service Provision for older people – specialist Health Visitor**

**Progress made on work stream since December 2004 States Report:**

The Directorate Management Team agreed the vision and philosophy in January 2005 that a specialist Health visitor role will be identified to work with older people in their own homes and assist them with the appropriate access to services.

**Action Plan for 2006:**

An advertisement will be placed for the position in 2006.

| Monitoring Framework            |  |
|---------------------------------|--|
| Outcome Aim(s)                  | Issues concerning health and social care will be identified prior to becoming a problem. |
| Data Source(s)                  | Annual report of Post Holder   |
| Frequency of Collection         | Annual   |
| Information to be reported      |  |
| Progress against Outcome Aim(s) |  |
| Comments                        |  |

**(b.) Service provision for people with a disability – Community Team**

**Progress made on work stream since December 2004 States Report:**

The Directorate Management Team agreed the vision and philosophy in January 2005. A multi professional team has been formed during 2005 including nursing, social work and occupational therapy staff. This team will also receive input from psychology and physiotherapy. The team has begun to identify service users and potential service users. A “conference” held in the autumn of 2005 to help take this work forward has now developed its own action plan.

**Action Plan for 2006:**

Job description for a psychology post being written and hopefully appointment to post will be achieved in 2006.

| Monitoring Framework |  |
|----------------------|--|
| Outcome Aim(s)       | Issues concerning health and social care will be |

|                                 |   |
|---------------------------------|---|
|                                 | identified prior to becoming a problem. |
| Data Source(s)                  | Annual report of Post Holder            |
| Frequency of Collection         | Annual                                  |
| Information to be reported      |   |
| Progress against Outcome Aim(s) |   |
| Comments                        |   |

□ *Long-term care insurance scheme (community services)*

**Category 1:** Objective of work stream in place and concluded, or objective of work stream in place and ongoing and **Category 2:** Objective of work stream to be implemented in 2006. NB: This work stream has been split into 2 sub-streams.

**(a.) Rapid Response Team (Category 1)**

**Progress made on work stream since December 2004 States Report:**

The rapid response project finished in October 2004 and staff job descriptions and profiles were written.

A rapid response team was introduced in 2005.

7.31 whole time equivalent staff were put in post and trained.

The aim was to care for patients with short-term illnesses at home, if appropriate resulting in fewer admissions to acute hospital beds.

**Action Plan for 2006**

HSSD will continue to monitor this work stream throughout 2006

| <b>Monitoring Framework</b> |   |
|-----------------------------|---|
| Outcome Aim(s)              | To ensure 75% of those referred to the rapid response team are not admitted to hospital.  |
| Data Source(s)              | Patient Administration System (PAS)   |
| Frequency of Collection     | Annual  |
| Information to be reported  | 264 clients referred<br>46 admitted to PEH<br>14 admitted to KEVII<br>10 admitted to residential home<br>196 remained at home (73.5%) |

|                                 |                                    |
|---------------------------------|------------------------------------|
| Progress against Outcome Aim(s) | Vacancy of 0.5 nurse still exists. |
| Comments                        |                                    |

**(b.) Maintenance and Transport Services (Category 2)**

**Progress made on work stream since December 2004 States Report:**

Access to, and discharge from the services have been agreed with General Practitioners and the Medical Specialist Group., with regards to the Rapid Response initiative.

In 2005 it was proposed that the following would be implemented:

- Maintenance and Transport Services for older people will be introduced.
- 2 whole time equivalent staff will be in post.
- More elderly/disabled people will be living at home following minor adaptations to properties following OT assessment – for example hand rails and bath rails.
- More elderly people will be living at home because transport is able to support them attending day services.

Two part time staff have been appointed (one whole time equivalent) and have taken on the full role. Access to the service is via a waiting list, which is currently one calendar month to join those people already receiving assistance.

**Action for 2006**

It is envisaged that the type of services offered may develop, however it is not certain at present if the finance is available.

| <b>Monitoring Framework</b>     |  |
|---------------------------------|--|
| Outcome Aim(s)                  | To keep people in their own homes and reduce residential care admissions by 5% |
| Data Source(s)                  | Managerial report  |
| Frequency of Collection         | Annual   |
| Information to be reported      | Numbers of people using the service  |
| Progress against Outcome Aim(s) |  |
| Comments                        |  |

□ ***Forums for older people/forums for people with a disability***

**Category 1: Objective of work stream in place and concluded, or objective of**

**work stream in place and ongoing.**

**(a.) Forums for older people**

**Progress made on work stream since December 2004 States Report:**

Initial research on forums began in 2004 and the establishment and use of these forums in other countries was also researched in 2005. Existing groups were identified and proposals for forums were developed.

**Action for 2006**

Forums to be set up in 2006.

**(b.) Forums for people with a disability**

**Progress made on work stream since December 2004 States Report:**

The same research, identification of established groups and development of proposals was carried out for this workstream as for the Forums for older people.

**Action Plan for 2006:**

Forums will be set up in 2006.

| <b>Monitoring Framework</b>     |   |
|---------------------------------|---|
| Outcome Aim(s)                  | To raise awareness of needs of older and disabled people and the issues relating to living in Guernsey. |
| Data Source(s)                  |   |
| Frequency of Collection         | Annual  |
| Information to be reported      |   |
| Progress against Outcome Aim(s) |   |
| Comments                        |   |

## **Action Area D: Services for Families with Children and Young People**

***Lead Department: Health and Social Services***

**Objectives:**

To provide support and assistance to families to ensure they have access to services that will promote and safeguard the welfare of their children.

The assistance and support should be targeted to single parents and larger families to

ensure that poverty does not prevent or hinder their ability to fully participate in society and enables their children to fulfil their potential.

### **Workstreams:**

- *Assistance with the cost of childcare provision*

#### **Category 4: No action to be taken in 2006**

##### **Progress made on work stream since December 2004 States Report:-**

A draft report was completed and preliminary proposals for a pilot project was prepared by Policy Unit.

##### **Action Plan for 2006**

It has been decided that the current financial situation precludes further development of this work stream at the present time as such this is not being further progressed during 2006.

- *Introduce a community development project similar to 'Sure Start' initiatives in the UK*

#### **Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**

##### **Progress made on work stream since December 2004 States Report:-**

The Community Development Project is run by NSPCC, with the Manager of the Guernsey branch also being the manager of the project. The project has had a slow start that was dominated in the first year by the search for new premises for the NSPCC and the second year by recruitment of staff. The Project Manager set up a multi agency operational group initially, which gave direction to the project and identified areas of need.

The Senior Manager, Community and Maternity Services, Services for Children and Young People's Directorate, HSSD, the manager of Health Visitors and School Nurses and the NSPCC Area Manager and Project Manager met in September 05, revisited the original outcomes of the project and updated them. This Group is now overseeing the project and draws on other agencies for assistance.

The target area has been redefined as St Peter Port South. This prevents duplication of work with the family centre located on the Bouet, and this more focused catchment area includes the location of much privately rented accommodation, where families are often living in cramped, poor quality conditions. The Survey of Guernsey Living Standards Report on Phase Two: Poverty and Standard of Living in Guernsey (2002), also identified that families living in privately rented accommodation, are the most needy.

The project is now based in the new NSPCC premises, which is located in the Bordage at the heart of the area. They run a number of drop-in sessions for children and their carers. They also provide a service to vulnerable families living in the St Peter Port area.

The project is now fully staffed and funding from the project has assisted in setting up the pre-school Nurture Group at Amherst School. Although this is outside the new defined area, it is proposed it will continue during the School Year 2005-2006.

The project was refocused and launched November 2005, with a clear identity that is separate from current NSPCC work. Three workers are now employed and are working full time on the project to address the agreed outcomes.

An action plan, devised by the Project Manager, has been included as a table shown on page 898. This was revisited with a multi disciplinary group in October 2005.

As a result of this meeting, it was decided that the two following areas would be developed initially:

- A joint Health Visitor/NSPCC/Speech and Language team approach would be made to look at the needs for children requiring specialist speech and language. This team has met regularly, and a plan has been developed to identify children in need of early intervention and to provide services to meet those needs. Health Visitors have identified 27 families in the St. Peter Port South Area where children will benefit from this intervention. A pilot project of six sessions is starting in May 2006 for a maximum of 10 children.
- A programme aimed at targeting and meeting the needs of young mothers within the area was started. There are approximately 30 young mothers under the age of 21 years within the catchment area, many of whom are vulnerable and isolated. A drop-in run by the Health Visiting Service and NSPCC aimed at this group started in February 2006 and is attended by 8 young parents with their children.

A facilitated day was organised for the manager and workers of the project, in unison with HSSD staff on 13<sup>th</sup> October 2005, to look at revising an action plan in relation to the overall strategy and outcomes.

The following findings of The Survey of Guernsey Living Standards Report on Phase Two: Poverty and Standard of Living in Guernsey (2002) support the outcomes of the Community Development:-

- Poor housing conditions are reported to be affecting the health of more than one in 20 people
- People who live in disadvantaged circumstances have poorer health than those who are more affluent
- Those reporting that they were 'sometimes' poor most frequently reported social isolation. By contrast, those reporting that they were poor 'all the time' most



frequently reported depression

- People with a lower income tend to have worse social support available.
- The 'poorest' suffer twice as much time stress as the rest of the population

#### **Action Plan for 2006:**

The States of Guernsey and TSB Lloyds Trust have provided funding to the end of 2006

The service will continue to develop dependant on the needs of the children and families involved. The future of the project from 2007 onwards is currently under discussion.

| <b>Monitoring Framework</b> |  |
|-----------------------------|--|
| Outcome Aim(s)              | <p><b>To develop, with the involvement of the community, a range of high quality, sustainable services for children under 5 and their families;</b></p> <p><b>In relation to improving social and emotional development outcomes:</b></p> <ul style="list-style-type: none"> <li>▪ By reducing the numbers of children on the child protection register within the target area.</li> <li>▪ By reducing the proportion of children 0 – 3 that are re-registered within 12 months on the Child Protection Register.</li> <li>▪ By having agreed and implemented culturally sensitive ways of caring for and supporting mothers with postnatal depression.</li> <li>▪ By ensuring that the project contacts 100% of families with young children in the designated area within 6 weeks of birth.</li> </ul> <p><b>In relation to improving health outcomes:</b></p> <ul style="list-style-type: none"> <li>• Island wide health promotion issues will be supported through the drop in, with the utilisation of relevant agencies for example GASP</li> <li>• By ensuring that parenting support and information are available for all parents by giving guidance on breast-feeding, hygiene and safety.</li> <li>• By achieving a 10% reduction in children 0 – 3 admitted to hospital as emergencies with, a respiratory infection or severe injury/accident.</li> </ul> <p><b>In relation to improving children's ability to learn by:</b></p> |

|                            |   |
|----------------------------|---|
|                            | <ul style="list-style-type: none"> <li>▪ Achieving a 5% reduction in the numbers of children 0 – 3 requiring specialist speech and language intervention.</li> <li>▪ By ensuring that there is access to good quality play and learning opportunities for all with emphasis on the importance of play.</li> <li>▪ By increasing the use of libraries by parents with young children</li> <li>▪ By 75% of families reporting an improvement in the quality of services providing family support.</li> <li>▪ By ensuring parent representation on the Project.</li> <li>▪ By developing local targets to link the Community Development Project with employment agencies in St Peter Port</li> <li>▪ By assisting to close the gap in the availability of accessible/affordable childcare for 0-3 year olds.</li> </ul> <p><b>To break the cycles of deprivation and exclusion that have a detrimental impact on the life changes of children and young people.</b></p> |
| Data Source(s)             | Statistical information from HSSD, NSPCC and the Education Department.  |
| Frequency of Collection    | Annually. This information is currently being collated by the NSPCC.  |
| Information to be reported | <p>All base line information will be collected from 01.10.05</p> <p>The agreed measures will be monitored and evaluated on a yearly basis:-</p> <ul style="list-style-type: none"> <li>• The weight/height of babies at birth living in the designated area;</li> <li>• The numbers of mothers with post natal depression and its severity within the area.</li> <li>• The results of developmental screenings of the under 5's living in the designated area;</li> <li>• Numbers of children with speech and language disorders in the area.</li> <li>• The results of children with special needs identified when starting school;</li> <li>• Dental health when starting school;</li> </ul>  |

|                                 |  |
|---------------------------------|--|
|                                 | <ul style="list-style-type: none"> <li>• Breastfeeding rates.</li> <li>• A&amp;E attendance by children from the designated area.</li> <li>• Numbers of children admitted to Frossard Ward with respiratory problems.</li> <li>• The numbers of projects operating and the numbers of service users;</li> <li>• Feedback from service users;</li> <li>• Numbers of children on the child protection register</li> <li>• Number of Children re-registered within 12 months</li> </ul> |
| Progress against Outcome Aim(s) | Improved nutrition amongst the under 5's;<br>Children entering school healthy and ready to learn;<br>Fewer low weight babies.  |
| Comments                        |  |

### ACTION PLAN FOR FAMILY SUPPORT SERVICE N.S.P.C.C. 7<sup>TH</sup> JUNE 2005

NB: As a result of discussions at the meeting in October 2005, two new priorities were set as a result of the information from the actions set out below; these are detailed in the text.

| Action  | Response   | Who   | By when                                | Completed                           | Evidence   |
|---|--|---|--|-------------------------------------|--|
| 1. Recruit Family Support Team  | Family Support Team recruited May 05. Administrative post outstanding. There are problems with recruitment and we are seeking to market adjust this post |   | August 05                              | Team recruited except Administrator | Family Support Team in post                          |
| 2. Team induction and confirmation in post                                      | All new team members undertake an N.S.P.C.C. induction and competency process to ensure they are working to N.S.P.C.C. standards                         | Mick Dunbar   | December 05                            |                                     | All staff are confirmed in post                      |
| 3. Developing third drop-in   | New team have worked together to develop third drop-in on a Thursday afternoon   | Jackie Furness, Aimie Dye, Jane Le Conte and Alison Wakefield | Drop-in starts 9 <sup>th</sup> June 05 |                                     | Number of children and parents and carers attending  |
| 4. Developing a parenting programme to support Nursery Nurture Group at Amherst | Programme develops with Chris Hughes, Team Leader at Health Visiting Services  | Aimie Dye and Chris Hughes                                    | Starting on 10 <sup>th</sup> June 05   |                                     | Programme complete, feedback from parents and carers |
| 5. Run crèche to support number 4   | Crèche set-up at Amherst School  | Jane Le Conte and Alison Wakefield                            | 10 <sup>th</sup> June 05               |                                     | ? children attending                                 |

| <b>Action</b>  | <b>Response</b>  | <b>Who</b>                    | <b>By when</b> | <b>Completed</b> | <b>Evidence</b>   |
|--|--|-------------------------------|----------------|------------------|---|
| 6. Develop referral criteria for Family Support                                  | This was developed during a half day team development day to ensure clarity of purpose, and that all staff are familiar with who should be referred to us                            | Family Support Team           | Completed      |                  | Referral criteria produced  |
| 7. Distribute referral criteria to key referring agencies                        | Currently in typing  | Mick Dunbar                   | July 05        |                  | Key agencies understand referral criteria and refer families and children appropriately   |
| 8. Co-working with Health Visitor Services                                       | There has been a background of development meetings with both the Manager of the Health Visiting Service and team members to develop common understanding and a basis for co-working | Debbie Pitman and Mick Dunbar | July 05        |                  | Working together on an individual or group work programme, service delivery protocols agreed, service delivery based on a need let approach |
| 9. Questionnaire developed to ascertain needs from parents and carers            | Questionnaire developed  | Jackie Furness                | Completed      |                  | Questionnaire developed   |
| 10. Questionnaire distributed by Health Visiting Services and other key agencies | This requires preparation with Health Visiting Manager and team  | Mick Dunbar, Debbie Pitman    | July 05        |                  | All families in the catchment area receive a questionnaire and explanation from Health Visiting Services.                                   |

| <b>Action</b>   | <b>Response</b>   | <b>Who</b>          | <b>By when</b> | <b>Completed</b> | <b>Evidence</b>   |
|---|---|---------------------|----------------|------------------|---|
| 11. Questionnaire distributed to current drop-ins                           | Work completed on questionnaire, we are ready to action | Jackie Furness      | July 05        |                  | Families in drop-in will receive questionnaire  |
| 12. Analysing feedback from questionnaire and developing needs led services | Work in progress  | Family Support Team | August 05      |                  | Parents and carers' contribution to a Needs Questionnaire would have been translated into services with their agreement |
| 13. Service Development as part of action plan                              | Work not yet underway                                   | Family Support Team | September 05   |                  | Services identified by families are operational with evaluation built in  |

□ *Develop family centres*

**Category 4: No action to be taken in 2006**

**Progress made on work stream since December 2004 States Report:**

No further progress has been made on the development of a third family centre, as financial restraints have meant that the plans cannot be taken forward. Two family centres, one on the Bouet, and one on Les Genats, continue to provide a service.

**Action Plan for 2006**

The two existing family centres will continue to develop and provide services. Plans for a third family centre will not be progressed due to more pressing priorities within HSSD.

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□ *Review of Childcare Legislation*

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**

**Progress made on work stream since December 2004 States Report:**

An implementation programme is in progress to ensure the introduction of the new legislation during 2007. A number of working groups have been established, in particular, an inter-agency group to take forward the implementation of the duty on states departments to work together, and the development of an integrated plan for children's services.

**Action plan for 2006**

A detailed project plan for the implementation has been drawn up by the Project Manager. This sets out actions and timescales to ensure that the targets are met. The main objectives for the project to deliver are:

- Children Law and all related secondary legislation and Guidance approved and implemented
- The Child Youth and Community Tribunal and Children's Convener both implemented
- Safeguarder Service implemented
- States departments working together in implementation of new duties to children and families
- Implementation training completed and ongoing training arrangements in place.

The aim is to present a Plan for Services for Children and Young People to the States in January 2007.

A communication strategy is in place to ensure that information about the changes are

known within the states and to the public.

| <b>Monitoring Framework</b>     |  |
|---------------------------------|--|
| Outcome Aim(s)                  | New legislation in force, and implemented  |
| Data Source(s)                  | Draft Project agreed by the States and Privy 'Council and implementation dates stated in the legislation.                          |
| Frequency of Collection         | Quarterly reports to HSSD Board.   |
| Information to be reported      | Progress on the drafting and on implementation programme. A programme of public information on progress is to start in April 2006. |
| Progress against Outcome Aim(s) | Currently on course for the Draft Project to be presented to the States in September 2006 with implementation from July 2007.      |
| Comments                        |  |

□ *Involve young people in decisions that affect their lives*

**Category 2: Objective of work stream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

Plans to take this forward were discussed in 2005, particularly in relation to the development of services for children

**Action Plan for 2006**

Consultation with children and young people is taking place during March/April 2006 to seek their views on the priorities for services for children and young people, and what the top priorities should be within the planning for services for children and young people across the states. It is intended that the plan for services for children and young people will contain mechanisms for the ongoing consultation and involvement of children and young people.

□ *Youth Service Play Scheme*

**Category 4: No action to be taken in 2006**

**Progress made on work stream since December 2004 States Report:**

This has not been a priority for further development during 2005

**Action Plan for 2006**

There are no plans to progress this currently due to other priorities within the HSSD.



## **Action Area E: Crime Reduction Initiatives**

***Lead Department: Home.***

### **Objectives:**

To help young people who are vulnerable to criminal activity.

To target areas in the Island where those people susceptible to poverty feel vulnerable to crime.

To smooth the transition from custody to community such that poverty is not a reason to re-offend.

### **Work Streams:**

#### **□ *Youth Inclusion Programmes***

#### **Category 2: Objective of workstream to be implemented in 2006**

##### **Progress made on work stream since December 2004 States Report:**

Youth Inclusion Programmes are for 13 – 16 year olds who are engaged in crime or who are identified as being most at risk of offending, truancy or social exclusion. The aim is to reduce youth crime in neighbourhoods via multi-agency referral approach. Some schemes will be run during the school holidays.

The Karabiner project began in May 2004 and is funded jointly by the Drug Strategy and Social Security. It is currently piloting schemes for this target group up to age 18. Early recommendations show that Karabiner style programmes should be extended and developed.

The Youth Justice Steering Group reported in 2005 on proposals for Youth Justice in the Bailiwick. This proposed a multi disciplinary approach including Police, Children Services, Education, Probation and Children's mental health.

##### **Action Plan for 2006:**

A five-year action plan will be developed involving a multi-agency approach. This will have a phased introduction to allow for cultural changes to take place within the agencies involved.

By the end of 2006, three Karabiner project programmes will have been completed, these will have been monitored and evaluated with recommendations for further programmes to be implemented.

Youth inclusion programmes will be further considered once a framework for Youth Justice delivery is finalised, building on the work being piloted by the Youth Service.

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□ *Develop drug and alcohol rehabilitation programmes in prison*

**Category 1:** Objective of work stream in place and concluded, or objective of work stream in place and ongoing.

**Progress made on work stream since December 2004 States Report:**

All new prisoners in the prison are assessed for need in regard to drug and alcohol use and continue to be offered appropriate interventions.

The Bailiwick Alcohol Strategy contains proposals to integrate delivery of drug and alcohol services in the prison. The Bailiwick Alcohol Strategy was approved by the States in October 2005.

**Action Plan for 2006:**

One of the proposals agreed as part of the Bailiwick Alcohol Strategy is to tender for a Drug and Alcohol worker based in the Prison to develop and deliver drug and alcohol rehabilitation programmes and provide continuity of care for released prisoners.

The tender for the Substance Misuse Worker will be going out in April 2006, with the intention that that Worker will be in post by July 2006.

Continue to assess and refer prisoners for medical and/or psychosocial interventions, and to improve uptake of those assessed as needing work.

| Monitoring Framework       |   |
|----------------------------|---|
| Outcome Aim(s)             | <ol style="list-style-type: none"> <li>1. To provide appropriate interventions for substance abusers linked to risk/needs assessment.</li> <li>2. 10% increase in the numbers of those assessed as requiring further intervention (medical and/or psychosocial), and those receiving it.</li> </ol> |
| Data Source(s)             | <ul style="list-style-type: none"> <li>• Prison database for frequency of intervention</li> <li>• Prison Healthcare assessments</li> <li>• Drug Concern initial assessments on all prisoners</li> <li>• Drug Concern annual statistics.</li> </ul>  |
| Frequency of Collection    | Annual 1 <sup>st</sup> January – 31 <sup>st</sup> December.   |
| Information to be reported | <ul style="list-style-type: none"> <li>• Numbers assessed</li> <li>• % requiring interventions based on risk need analysis</li> <li>• Numbers receiving interventions</li> <li>• Numbers declining interventions – and the reasons for non-compliance</li> </ul>                                    |

|                                 |  |
|---------------------------------|--|
| Progress against Outcome Aim(s) | <p>Drug Concern carried out 31 assessments, 3 required no further action, 2 declined further interventions with 26 requiring ongoing work.</p> <p>In 2005, Drug Concern carried out interventions with 60 individuals for a total of 417 sessions</p> <p>GADAC carried out interventions with 22 individuals for a total of 81 sessions.</p> |
| Comments                        | <p>The involvement of agencies such as Drug Concern, GADAC and Alcoholics Anonymous have enabled prisoners to take part in either one to one or group work as appropriate. Links are being fostered with Narcotics Anonymous to provide a service in prison during 2006 hopefully.</p>   |

- 
- ❑ *Enable continuity of care and smooth transition between prison and community to ensure that drug and alcohol rehabilitation is maintained.*

**Category 2: Objective of work stream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

Negotiation continues in regard to medical treatment services in the community for those with offending behaviour linked to substance abuse. The CDAT (Community Drug and Alcohol Team) is developing, and works closely with Drug Concern – links are developing with Prison Healthcare.

The current service level agreements with agencies providing services to the prison are reviewed annually and have been developed to provide an improved service.

**Action Plan for 2006**

Under the Bailiwick Drug Strategy, Treatment Services continue to be a developmental priority, to provide appropriate treatment for drug using offenders, prior to, through, and after, a custodial term. These services are being developed and monitored by the Drug Strategy in partnership with the Health Department (Community Psychiatrist Nurse/treatment) and Home Department (Criminal Justice Drugs Service/Probation).

The Bailiwick Alcohol Strategy will be integrated with the Drug Strategy and appropriate treatment and aftercare services researched and implemented.

The Bailiwick Drug & Alcohol Strategy will go before the States in late 2006/early 2007 and will suggest integrated services. This process has already begun with the treatment service (CDAT) and the forthcoming Drug & Alcohol Worker in the Prison. As per action for 2006 in previous workstream.

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□ *Greater focus on rehabilitation of young offenders*

**Category 2: Objective of workstream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

- Interagency Group of Police, Probation, Youth Justice social workers and CAMHS (Child and Adolescent Mental Health Service) trained in Restorative Justice cautioning and conferencing in October 2004.
- Protocol was agreed for multi-agency approach to Restorative conferencing with Juveniles up to age 17 in November 2004.
- Monitoring and review process put in place to measure the effectiveness of the Youth Justice approach with young people.
- Multi-agency training in standard assessment tool ASSET to be used by all agencies to measure the risk/needs of all young people who come before the Youth Offending Panel. The training to use this tool took place in April 2005 and protocols are currently being drawn up.

**Action Plan for 2006:**

The Following are under consideration: -

- Multi agency working along the lines of youth offending teams in the UK which have proven to be effective in intervening appropriately to divert young people from prosecution and custody and so reduce antisocial behaviour.
- Reintroduction of Restorative Cautioning and Restorative Justice approach with young people. Reintroduced in 2005 to include a shared responsibility approach. A robust Restorative Justice scheme is now in place using the expertise of the Police, Probation Service, Education, CAMHS, Youth Justice. Victim satisfaction is reported as being high.
- Appropriate remand management schemes. New legislation interlinks to allow remand management strategy, which intervenes in key areas of young people's lives. This is seen as a critical area and is still under discussion.

For those young people going into custody the Prison is developing:-

- Social skills training. Probation Service and Prison staff are working together to deliver "Choices and Challenges" training which has been consolidated into a two week course – thus providing more continuity for prisoners. Choices and Challenges has taken over from the Rehabilitation and Reasoning training previously offered.
- Shorter cognitive behavioural/Offending Behaviour programmes designed for young people;
- Continuously developing the YO regime to allow appropriate activities to be provided for Young Prisoners. There is now a bespoke wing for young prisoners, which is separate from the adult population. This allows more

intensive work from staff, giving space to engage with the young prisoners and to carry out casework. An anti-bullying policy is now in draft form and is being worked towards. A Child Protection Policy is being developed. Risk Management meetings include Child Protection and anti-bullying issues.

- Staff training in dealing with adolescent persons.

□ *Improve education, training and employment opportunities for prisoners*

**Category 2: Objective of workstream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

In July 2004 the Employment Services Sub-Group reported to the CAPP Steering Group. There was not unanimous support for the proposals to appoint an Adult Guidance Worker and some concern was expressed about the quality of the data on which the recommendations were based. It was decided that the Treasury and Resources Department's Risk and Assurance Team would review the report and the data sources. The data was gathered and this informed the ESSG's (Employment Services Sub-Group) revised report, which was produced in January 2005. The revised report was presented to the CAPP Steering and Social Policy Working Groups respectively on 09 February and 09 March 2005.

**Action Plan for 2006:**

Departments that are service providers and/or users are reviewing the services they are able to provide to inform any recommendations on whether a co-ordinator of delivery should be established.

Education continues in the Prison, but is hampered by lack of teacher resources. Funding is also problematic, particularly with regard to the cost of distance learning courses for prisoners. The Library facilities also need to be improved. A good working relationship exists with the College of Further Education. Action Plan brought forward from 2005.

□ *Expand offending behaviour programmes in prison*

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing.**

**Progress made on work stream since December 2004 States Report:**

A two-week intensive Offending Behaviour course has been successfully piloted in the prison. This will be repeated, if circumstances allow, enabling short-term prisoners to benefit from programmes prior to release.

**Action Plan for 2006:**

- Increasing collaboration between the Prison and Probation Services to deliver appropriate offending behaviour programmes to those in prison and on supervision.

| <b>Monitoring Framework</b>     |   |
|---------------------------------|---|
| Outcome Aim(s)                  | 1. To provide appropriate Cognitive Behavioural programmes (CBP)/Offending Behaviour Programmes (OBP) to prisoners serving longer sentences with risk/needs analysis commensurate with programmes offered.  |
| Data Source(s)                  | <ul style="list-style-type: none"> <li>• Prison database</li> <li>• Sentence planning documentation</li> <li>• Probation LSI'R scores</li> <li>• Probation database</li> </ul>  |
| Frequency of Collection         | Annual 1 <sup>st</sup> January – 31 <sup>st</sup> December  |
| Information to be reported      | <ul style="list-style-type: none"> <li>• Number of people identified as requiring CBP's</li> <li>• Number of people identified as being suitable or having a priority</li> <li>• Number of people attending CBP's</li> <li>• Number of participant hours undertaken on CBP's</li> <li>• Number of women receiving one-to-one interventions.</li> </ul>  |
| Progress against Outcome Aim(s) | <p>4 programmes delivered in 2005</p> <p>“Reasoning &amp; Rehabilitation” attended by 8 male prisoners</p> <p>“Choices and Challenges” attended by 16 male prisoners and three female prisoners</p> <p>The course for female prisoners was facilitated by the Probation Service. This is the first time such a course was delivered for female prisoners.</p> <p>Financial resources at the Prison allow for 4 courses per year and places on the courses are allocated on a priority needs basis. This is established via a Probation Service Risk analysis, sentence planning and length of sentence.</p> <p>Two prisoners transferred to UK prisons for Sex Offender Treatment Programme</p> |
| Comments                        | <ul style="list-style-type: none"> <li>• Some people are not suitable candidates for CBP's</li> </ul>   |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• Prisoners requiring Sex Offender Treatment Programmes (SOTP's) are sent to UK prisons to complete the course – thus the needs of this group are met</li> <li>• The CBP needs of women prisoners are met on a one-to-one basis due to the small numbers of women in prison.</li> </ul> |
|--|--|

- *Develop appropriate programmes in prison that target short term prisoners and young offenders*

**Category 1:** Objective of work stream in place and concluded, or objective of work stream in place and ongoing.

**Progress made on work stream since December 2004 States Report:**

A two-week intensive Offending Behaviour course has been successfully piloted in the prison.

Close working relationship between Prison staff and Probation Service with co-delivery of “Choices and Challenges” courses for both adult and young offenders.

Development of drugs awareness sessions from Drug Concern

**Action Plan for 2006:**

‘Choices and Challenges’ courses for short term prisoners and those on Community Supervision to be repeated – funding allowing. Condensing the length of the course enables those on shorter sentences to participate and benefit from the “Choices and Challenges” training.

Continuing other programmes that meet the assessed need of individuals, including drugs awareness and one-to-one sessions.

Prisoners are able to participate in Drugs Awareness courses if they are assessed as requiring that.

| <b>Monitoring Framework</b> |  |
|-----------------------------|--|
| Outcome Aim(s)              | <ol style="list-style-type: none"> <li>1. To provide appropriate programmes to short term prisoners and young offenders with risk/needs analysis commensurate with programmes offered.</li> <li>2. 5% increase in numbers assessed as needing programmes and numbers successfully completing.</li> </ol> |
| Data Source(s)              | <ul style="list-style-type: none"> <li>• Prison database</li> <li>• Sentence planning documentation</li> </ul>   |

|                                 |   |
|---------------------------------|---|
|                                 | <ul style="list-style-type: none"> <li>• Probation LSI'R scores</li> </ul>  |
| Frequency of Collection         | Annual  |
| Information to be reported      | <ul style="list-style-type: none"> <li>• Number of people identified as requiring interventions</li> <li>• Number of people identified as being suitable or having a priority</li> <li>• Number of people attending programmes</li> <li>• Number of participant hours undertaken on programmes</li> </ul> |
| Progress against Outcome Aim(s) | <p>See the Progress comments in previous section</p> <p>The "Choices and Challenges" has been consolidated into a concentrated and continuous 2-week delivery that engages prisoners both morning and afternoon, Monday to Friday.</p>  |
| Comments                        | The outcome is dependent on the funding being available to run these courses.   |

□ *Develop resettlement schemes*

**Category 2: Objective of workstream to be implemented in 2006**

**Progress made on work stream since December 2004 States Report:**

Sentence planning in the prison extended to all prisoners.

- Sentence Planning is done jointly by the Prison and Probation services and is being extended to include post custodial resettlement plans.
- Mandatory post custodial supervision for all offenders serving over 12 months was implemented with the Supervision of Offenders (Bailiwick of Guernsey) Law 2004.
- Extended sentences for all sex offenders and serious violent offenders will be introduced under the same law.
- With regards the Post Custodial Supervision & Supervision of Offenders Law, Guernsey has a comparative scheme to the UK's NOMS (National Offender Management System) and works closely with the Probation Service.

**Action Plan for 2006:**

Following consideration by the Criminal Justice Policy Working Group an increase in community sentences is planned to take place in 2006, following approval by the States in 2005.

Now renamed Custody Planning. Prisoners who are identified with a high likelihood of a long sentence are assessed for need at a much earlier stage – usually pre-trial and



plans made for their sentence. This work is carried out in partnership with the Probation Service.

□ ***Improve Community Policing***

**Categories 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**

**Progress made on work stream since December 2004 States Report:**

Community Policing is an operational style of policing designed to tackle a range of criminal and anti-social problems generally associated with a particular area. This method of policing often involves trained Police Officers being dedicated to work within one location for an extended period and enables them to build a rapport with the community that positively fosters a harmonisation of effort to tackle problems at local level. These Officers are not generally used for reactive policing; therefore, this policing method is a heavy drain on the Organisation's resources.

In 1997 the States of Guernsey recognised the value of Community Policing and agreed to invest in this and other areas by increasing the Force establishment by 28 Officers. However, despite vigorous recruiting programmes the total number of Officers employed within the Force still remains at the same level as when the increase was approved, thus hampering the further development of a community policing ethos.

**Action Plan for 2006:**

Continue to develop outcomes from 2005. Development is reliant on staffing levels, which have been under capacity in 2005.

| <b>Monitoring Framework</b> |   |
|-----------------------------|---|
| Outcome Aim(s)              | <ol style="list-style-type: none"> <li>1. Increase surgeries at the Bridge to monthly basis</li> <li>2. 25% increase in number of surgeries held in other parts of the Island</li> <li>3. 10% increase in the amount of hours spent in community areas by Beat Officers (resources allowing)</li> <li>4. 10% increase in reported satisfaction with the Police Service</li> </ol> |
| Data Source(s)              | <ul style="list-style-type: none"> <li>• The Policing Plan</li> <li>• Guernsey Police Public Survey</li> </ul>  |
| Frequency of Collection     | Quarterly – but reported annually – 1 <sup>st</sup> January – 31 <sup>st</sup> December   |
| Information to be reported  | <ul style="list-style-type: none"> <li>• The number of Officers assigned to permanent community beat areas</li> </ul>   |

|                                 |  |
|---------------------------------|--|
|                                 | <ul style="list-style-type: none"> <li>• The number of surgeries set up by area</li> <li>• The number of members of the public attending surgeries</li> <li>• Crime rates by area</li> </ul>   |
| Progress against Outcome Aim(s) | A community presence in the form of surgeries have been regularly set up with four surgeries set up at the Bridge; three in St Martins, three in St Peters and one at Admiral Park. However, the Police Service has not been able to develop the community beats as hoped, as the Police Service continues to operate under strength (currently 13%) |
| Comments                        |  |

□ ***Encourage the enhancement of the role of neighbourhood watch***

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing.**

**Progress made on work stream since December 2004 States Report:**

A further area, La Vrangue, St Peter Port, has been added to the Neighbourhood Watch list bringing the total number of schemes to eight.

The Problem Oriented Policing Team has conducted a survey of residents of Les Genats Estate and the results are favourable regarding establishing a Neighbourhood Watch area there. The Crime Prevention Officer is now seeking a meeting of several of the interested residents in an attempt to find a co-ordinator.

The Crime Prevention Officer continues to liaise on a regular basis with the established Neighbourhood Watch co-ordinators and a newsletter is circulated to them on a quarterly basis.

The Crime Prevention Officer has also attended meetings of the States Tenants Association Group in an effort to recruit new Neighbourhood Watch areas.

During 2005 it was hoped to survey representative groups of residents involved in some or all of the schemes to establish whether they consider them in real terms to be effective. However no work was been developed in this area due to lack of officer resources.

| <b>Monitoring Framework</b> |  |
|-----------------------------|--|
| Outcome Aim(s)              | 1. To work with members of the community to develop crime-fighting initiatives within their areas of residence or work in order to improve the quality |

|                                 |  |
|---------------------------------|--|
|                                 | <p>of life for those persons living or working within the area covered by the watch.</p> <p>2. Increase in the number of areas taking up the Neighbourhood Watch Scheme.</p>   |
| Data Source(s)                  | Crime Prevention Officer.  |
| Frequency of Collection         | Quarterly – but reported annually – 1 <sup>st</sup> January to 31 <sup>st</sup> December   |
| Information to be reported      | <ul style="list-style-type: none"> <li>• The number of Neighbourhood Watches established</li> <li>• Surveys to determine their effectiveness</li> <li>• A correlation of reported crime year on year comparisons</li> <li>• Crime comparison results</li> </ul>  |
| Progress against Outcome Aim(s) | The Police Service continues to develop Neighbourhood Watch schemes throughout the island. There was an increase of six areas during 2005. There are now 14 “Watch” areas in total. The crime levels at these individual locations have not been calculated, however there was an increase in the overall reported crime rate of around 11% from 2004. |
| Comments                        |  |

□ *Develop a more inclusionary crime policy*

**Category 3: Commitment for proposals to come forward in 2006**

**Progress made on work stream since December 2004 States Report:**

A public survey has been undertaken which has sought to identify the amount of under reporting of criminal activity in Guernsey together with areas of concern the public have in relation to the policing of the Island. A 33% return on the survey has been achieved and the results are currently being analysed.

The Guernsey Police sought to further develop a consultative process with the Public Consultative Group during 2005 however no work has been developed in this area due to lack of officer resources.

The role of the Community Police Officer, by seeking to involve the community in a problem-orientated approach to crime reduction, is also seen as a vital and pro-active tool. The Guernsey Police also sought to further develop this partnership approach during 2005 however, this project has been suspended due to lack of officer resources.

**Action Plan for 2006:**

The Police in consultation with other stakeholders will seek to identify problem areas within the community and by a partnership approach will work to improve the quality of life in that particular area.

□ ***Improve the security of individual homes of low-income households***

**Category 1: Objective of work stream in place and concluded, or objective of work stream in place and ongoing**

**Progress made on work stream since December 2004 States Report:**

During 2004, 22 written reports, 11 of which were on domestic properties and 11 on business properties, were completed. In addition, 18 other properties were visited and relevant security advice, which did not require a written report, was given. So far this year the Crime Prevention Officer has completed 9 written surveys, 5 of which were for domestic properties and 4 for business properties. In addition the Officer has proactively visited large number of properties including several small retail outlets to advise on security matters and in particular how to deal with offences of attempted robbery.

In September 2004 the Crime Prevention Officer successfully completed an Architectural Liaison Officer's Course and is now qualified to advise at the planning stage of applications. The Officer regularly receives planning application forms from the Environment Department and it is the Officer's intention to be more involved in this field in an effort to assist in designing crime out at a very early stage.

**Action Plan for 2006:**

The Crime Prevention Officer will continue to provide free security surveys for householders.

The Police Architectural Liaison Officer will continue to view all applications not just those for new buildings, and where appropriate will comment on proposals with an emphasis on seeking to design out potential crime problems.

During 2006 work will continue to further develop the input and influence of the Architectural Liaison Officer.

Whilst the Crime Prevention Officer is seeking to be fully involved with these initiatives it is regrettable that due to increasing workloads other areas of responsibility have had to be taken on, which will inevitably on occasions draw the Officer away from involvement in these initiatives.

| <b>Monitoring Framework</b> |   |
|-----------------------------|---|
| Outcome Aim(s)              | To improve home security and lessen the fear of crime by: |

|                                 |  |
|---------------------------------|--|
|                                 | <ol style="list-style-type: none"> <li>1. A 5% increase from previous year in the number of surveys undertaken (resources permitting)</li> <li>2. A 5% increase from the previous year in the numbers of plans advised on (resources permitting)</li> </ol>  |
| Data Source(s)                  | Crime Prevention Officer<br>Police Architectural Liaison Officer   |
| Frequency of Collection         | Quarterly – but reported annually – 1 <sup>st</sup> January – 31 <sup>st</sup> December  |
| Information to be reported      | <ul style="list-style-type: none"> <li>• The number of security surveys undertaken in relation to both domestic and business premises.</li> <li>• The number of plans advised on by the Architectural Liaison Officer</li> </ul>   |
| Progress against Outcome Aim(s) | This work continues with 26 surveys taking place in 2005 (14 domestic and 12 business)<br>The Architectural Liaison Officer has advised on 5 plans:<br>Grande Bouet Development<br>6 <sup>th</sup> Form College<br>Admiral Park<br>Proposed new school – St Sampson<br>Proposed new College of Further Education |
| Comments                        |  |

## Action Area F: Fiscal and Legislative Measures

### *Commerce and Employment, (Lead).*

#### **Objectives:**

To review and investigate legislation and fiscal initiatives (excluding the use of Income Tax and Social Security measures) to support the objectives of the States Anti-Poverty Strategy.

The Commerce and Employment Department recently published its Business Plan detailing the workstreams that are being pursued in order to continue to build confidence in the economy. There can be no doubt that the standard of living of all Island residents – including those suffering from relative poverty – is intrinsically linked to the strength of the local economy. The work of the department is to stimulate conditions which lead to the creation of well-paid jobs through the development of

business. This is summarised in the key primary economic objective adopted by the Department:

Creating those conditions which are likely to increase the primary and secondary benefits to the community of business activity whilst, at the same time, increasing the opportunity for the working population to migrate into higher paid jobs.

The Business Plan includes a number of elements that contribute directly to the Corporate Anti Poverty Programme (CAPP) and the Department will be working with the Social Policy Steering Group during 2006 to integrate these elements into the existing CAPP. The relevant elements from the Department's Business Plan are outlined at the end of this section.

## **Workstreams:**

### ❑ *Credit union investigation*

#### **Category 3: Commitment for proposals to come forward in 2006**

##### **Progress made on work stream since December 2004 States Report:**

Provision of a credit union had not been identified as an area of priority for 2005.

##### **Action Plan for 2006:**

Early examination of this concept has suggested that a Credit Union may not be an effective model for supporting debt management in Guernsey. During 2006 the Department will focus on completing that evaluation and examining, with other parties, what alternative support could be made available.

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### ❑ *Equity release schemes*

#### **Category 4: No action to be taken in 2006**

##### **Progress made on work stream since December 2004 States Report:**

This was not identified as an area of priority for 2005.

##### **Action Plan for 2006:**

To continue to monitor developments in the UK.

---

### ❑ *Investigation into introducing minimum wage legislation*

#### **Category 3: Commitment for proposals to come forward in 2006**

##### **Progress made on work stream since December 2004 States Report:**

Since the presentation of the last report, Commerce and Employment has monitored the number of complaints that have been brought to its attention that would be generally

categorised under a heading of “minimum wage provision”.

**Action Plan for 2006:**

Evaluation of the potential benefit of introducing legislation will be concluded during 2006. Following that evaluation, the Department will bring forward its recommendations.

---

□ *Investigation into regulation of loans companies*

**Category 3: Commitment for proposals to come forward in 2006**

**Progress made on work stream since December 2004 States Report:**

This issue has not been developed since the presentation of the last report.

**Action Plan for 2006:**

As part of its Business Plan, the Commerce and Employment Department has committed to reviewing existing legislation and regulation that seeks to protect consumers. The regulation of loan companies will be reviewed as part of this process.

---

□ *Fuel and energy costs*

**Category 3: Commitment for proposals to come forward in 2006**

**Progress made on work stream since December 2004 States Report:**

The Board established a working party, which was tasked with evaluating the introduction of a competition regime for the Island. The working party has now presented its findings to the Department. The issue of energy costs with regard to electricity (a regulated utility) has been a key focus for the Commerce and Employment Department and the Office of Utility Regulation (OUR) during 2005 and this will continue through 2006.

**Action Plan for 2006:**

The Department is currently working with interested parties in order to recommend an appropriate way forward with respect to competition legislation for the Island. The Department expects to present its recommendations for consideration by the States before the summer recess. It is too early to ascertain whether the issue of fuel costs could be considered under any new proposal, but the Department has committed to reviewing existing legislation and regulation that seeks to protect consumers as part of its Business Plan and fuel costs may also be considered as part of that process.

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**Future CAPP workstreams:**

As mentioned at the beginning of this section, the Department’s Business Plan includes a number of elements that contribute directly to the CAPP and the Department will be

working with the Social Policy Steering Group during 2006 to integrate these elements into the existing Programme. The relevant elements from the Department's Business Plan are outlined below:

□ ***Stimulate the creation of a competitive and attractive business environment.***

Prevent or rectify market failure and protect against damaging practices by:

- Re-evaluate existing legislation and regulation that seeks to protect consumers, employees and employers.
  - Investigate appropriateness of competition legislation (through the Competition Working Party).
  - Recommend to the States appropriate changes to the regulation of utilities (through the NAO review of commercialisation and regulation).
  - Consider other sectors where regulation by the OUR may add value.
- 

□ ***Assist in the delivery of an adaptable and well-trained workforce to the workplace.***

Establish a Workforce Development Plan:

- Promote lifelong learning, continuous professional development and flexible learning programmes through the Workforce Development Plan.
- Investigate and promote the use of methods to incentivise skills development.
- Identify and promote best practice in workforce training and development.

Increase “participation” by enabling all those who can work, to work.

- Develop and promote family friendly employment policies.
- Remove disincentives to working beyond retirement age.
- Investigate the case for minimum wage legislation.
- Develop incentives and other initiatives to reduce unemployment.
- Develop policies to bring into employment those who through disability, disadvantage or other reasons may be excluded from employment.

The Commerce and Employment Department intends to work together with the Social Policy Steering Group in developing its detailed Action Plans and Time Scales for these initiatives.



## **Action Area G: Corporate Housing Programme**

### ***Co-ordinated by Housing.***

The Housing Department's proposals for the 2006 Action Plans can be found in its States Report entitled 'Corporate Housing Programme – 2006 Action Plans'. The CHP is being monitored in a separate project from the CAPP monitoring project.

## APPENDIX B

***Extract taken from Sustainable Guernsey 2004:******Stage 1- Objectives***

*The overall aim of the Anti-Poverty Strategy is to reduce relative poverty in Guernsey by at least 50% with respect to the benchmark set by the Survey of Guernsey Living Standards (SGLS)<sup>3</sup> in 2000/2001 by the end of 2008. There are also a number of secondary objectives. The six action areas of the Corporate Anti-Poverty Programme (in conjunction with the previously States approved Corporate Housing Programme (CHP)) are aimed at achieving these objectives.*

***Stage 2- Implementation***

*The Anti-Poverty Strategy policy letter contained a section on 'Effective Monitoring' of the strategy and the associated Corporate Anti-Poverty Programme (CAPP).*

*The policy letter stated that "the progress of each action area and future action plans will be presented in the annual Policy and Resource Plan, which is likely to take place in December for 2004."*

*This process will provide an opportunity to review annually progress against programme objectives and the strategy, assess timescales and milestones, and evaluate the programme's priorities.*

***Stage 3 - Delivery and Outcomes***

*The policy letter added that monitoring the outcomes of the strategy, i.e. examining whether the objectives of the strategy are being met, would take place at two different levels.*

*First, the take-up and outcomes of individual initiatives would be monitored and, second, the success of the CAPP as a whole would be determined and evaluated against a repeat of the Survey of Guernsey Living Standards early in 2009.*

*Indeed the States of Guernsey resolved "To direct the States Advisory and Finance Committee to commission a repeat of the Survey of Guernsey Living Standards early in 2009 and to report back to the States on the findings."*

*Since the 'transfer of functions' legislation instigated by the Review of the Machinery of Government has come into effect, this responsibility has fallen to the Policy Council.*

*The remainder of this section provides further details of a framework under which these outcomes could be monitored, divided into three subsections: -*

*a) Monitoring the overall effectiveness of the CAPP; b) Monitoring the take-up and*

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<sup>3</sup> The Survey of Guernsey Living Standards was carried out by the Townsend Centre for International Poverty Research, based at the University of Bristol – see Billet d'État XXV 2003, pp2346 – 2386 for further details.

outcomes of individual initiatives; c) Monitoring the views of those on low incomes.

### ***Monitoring the overall effectiveness of the CAPP***

*Early in 2009 a repeat of the SGLS will be conducted in order to help to identify the overall progress made by Guernsey's Anti-Poverty Strategy and how effective the corporate Anti-Poverty Programme is at delivering that strategy. The Anti-Poverty Strategy policy letter said that the repeat of the SGLS would be done with respect to the benchmark set in 2000/2001 and that the overall aim of the strategy was to reduce poverty in Guernsey by 50% with respect to this benchmark. This is important to monitor the absolute success of the strategy.*

To monitor relative poverty, the number of people living in households with incomes below 60% of contemporary median equivalised household income could be used, or the SGLS could be repeated with respect to a new benchmark, based on the items and services considered essential by the population of Guernsey in 2009. Discussions are currently on going with regard to both of these options (see section on further research below).

### ***Monitoring the take-up and outcomes of individual initiatives***

*Although monitoring the overall effectiveness of the Anti-Poverty Strategy is important, the results will not necessarily show which individual initiatives in the strategy are working well, which initiatives need altering or are not cost effective, and where extra help or resources need to be targeted. There are potentially a large number of indicators that could be used, for example the annual increase in the single pension relative to the couple's pension and relative to the Retail Prices Index, or the take-up and/or success rate for new initiatives. The next task is to identify which indicators are both easy to calculate and will provide useful information.*

### ***Monitoring the views of those on low incomes***

*Last, but certainly not least, it is important to monitor the attitudes of those on low incomes, i.e. whether they feel the initiatives contained in the strategy are helpful or of benefit to them. If the proposers of the strategy do not work with those on low incomes, the strategy and Corporate Anti-Poverty Programme will not succeed.*

### ***Further research***

*Over the next year the above framework for monitoring the Anti-Poverty Strategy and Corporate Anti-Poverty Programme will be refined. Further work will focus on: -*

- *Further research into repeating the SGLS. Repeating the Survey of Guernsey Living Standards with respect to the benchmark set in 2000/2001 is essential for evaluating the overall success of the anti-poverty strategy. Further investigation into whether to repeat the SGLS with respect to both the 2000/2001 benchmark and a 2009 benchmark (to continue to monitor relative poverty), and the statistical significance of the results, is underway. Discussions will shortly be taking place with Professor Gordon at the Townsend Centre for International Poverty Research. These discussions will also focus on reviewing the methodology used in the 2000/2001 survey and whether this can be improved*

*any further, for example cost: benefit analysis of using a larger sample size;*

- *Investigating whether monitoring the number of people living in households with incomes below 60% of contemporary median equivalised household income can be efficiently and effectively put into practice, and associated research. The UK has much larger research resources than the States of Guernsey's Policy and Research Unit. If this data cannot be obtained on an annual basis, the Household Expenditure Survey, which is carried out every five years, may be the most cost effective local survey for providing this information. Determining whether it is optimal to consider using both a repeat of the SGLS against a 2009 benchmark and the number of people living in households with incomes below 60% of contemporary median equivalised household income to measure the number of households suffering from relative poverty, or whether it would be sufficient and more cost effective to carry out just one or the other.*
- *Establishing a monitoring framework for individual initiatives within the Anti-Poverty Strategy by establishing and refining a shopping list of potential indicators, and establishing if, and how, this data may be collected.*
- *Monitoring the views of those on low incomes.*
- *Reporting on the progress made under each CAPP Action Area during 2004, and presenting the CAPP Action Plans for 2005, in the 2004 Policy and Resource Plan. (Policy Council, 2004<sup>b</sup>: 206)*

**(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 24<sup>th</sup> April, 2006, of the Policy Council, they are of the opinion:-

1. To note the updates on all the Action Areas of the Corporate Anti-Poverty Programme.
2. To note the monitoring proposals put forward by all Lead Departments.
3. To note the deletion of the work stream 'The former Board of Industry's fieldwork scheme' from Action Area B of the Corporate Anti-Poverty Programme.
4. To note the removal of the Commerce and Employment Department as second lead Department from Action Area B of the Corporate Anti-Poverty Programme.
5. To note the addition of the two new workstreams under Action Area F, to be led by the Commerce and Employment Department.
6. To note the timescale for providing the next Corporate Anti-Poverty Programme Update to the States of Guernsey as set out in that Report.
7. To note that with the current States financial position, progress in achieving the original aims and objectives of the Corporate Anti-Poverty Programme is likely to be slower than originally envisaged.
8. To note that the Policy Council through its Social Policy Steering Group, will undertake a review of the best way to progress the Corporate Anti-Poverty Programme in light of the current financial climate.

## **POLICY COUNCIL**

### **THE GUERNSEY FINANCIAL SERVICES COMMISSION: 2005 ANNUAL REPORT**

The Financial Services Commission (Bailiwick of Guernsey) Law, 1997, as amended, requires the Commission to prepare an annual report and accounts for submission by the Policy Council to the States.

The Policy Council recommends that the States appoint the firm of PricewaterhouseCoopers CI LLP as auditors of the Guernsey Financial Services Commission for the year ending 31 December 2006.

The Policy Council recommends the States:

- (1) to note the Report;
- (2) to approve the accounts of the Guernsey Financial Services Commission for the year ended 31 December 2005;
- (3) to appoint the firm of PricewaterhouseCoopers CI LLP as auditors of the Guernsey Financial Services Commission for the year ending 31 December 2006.

L C Morgan  
Chief Minister

24<sup>th</sup> April 2006

**(NB The Guernsey Financial Services Commission 2005 Annual Report, which is appended to this Report, is published separately)**

**(NB The Public Accounts Committee has approved the proposal relating to the appointment of auditors.)**

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 24<sup>th</sup> April, 2006, of the Policy Council, they are of the opinion:-

1. To note that Report.
2. To approve the accounts of the Guernsey Financial Services Commission for the year ended 31<sup>st</sup> December 2005.
3. To appoint the firm of PricewaterhouseCoopers CI LLP as auditors of the accounts of the Guernsey Financial Services Commission for the year ending 31<sup>st</sup> December 2006.

## TREASURY AND RESOURCES DEPARTMENT

### EXEMPT COLLECTIVE INVESTMENT SCHEMES: PROPOSAL TO STREAMLINE ADMINISTRATION OF THE EXEMPTION PROCESS

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

4<sup>th</sup> April 2006

Dear Sir

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

- 1.1. This report proposes alterations to the way that the Administrator of Income Tax deals with applications by collective investment schemes (“schemes”) for exemption under the Income Tax Law. If put into effect this should have consequent administrative savings not only for the Income Tax Office but also for those setting up schemes in Guernsey (principally through reductions in legal etc. fees).

The opportunity is also being taken to formalise into the legislation a long-standing Statement of Practice issued by the Administrator.

#### 2. **Background**

- 2.1. Under section 40A of the Income Tax Law the States may provide, by Ordinance, that schemes which comply with certain conditions may be exempt from tax.
- 2.2. The relevant Ordinance that is currently in force is The Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989 (“the Ordinance”) supplemented by The Income Tax (Exempt Bodies: Offshore Insurers) Ordinance, 1992 (“the 1992 Ordinance”).

These provide for five categories of exemption:

- **Category A** – A unit trust which provides facilities for participation by members of the public, under a trust established in Guernsey which derives its profits or income from the acquisition, holding, management or disposal



of property (an exemption is extended also to any company which is in the beneficial ownership of such a unit trust).

- **Category B** – An investment company registered in Guernsey, the activities of which consist wholly or mainly in the acquisition, holding, management or disposal of property and the objects of which provide facilities for participation by members of the public in the profits or income of the company (and exemption is similarly extended to any company which is a wholly owned subsidiary of such a company).
- **Category C** – This is the same as Category B except it relates to companies which are registered outside of Guernsey.
- **Category D** – A company which does not fall within Category A, B or C and is not registered under the Protection of Depositors Ordinance (now Banking Supervision (Bailiwick of Guernsey) Law, 1994) or the Insurance Business Law. (It is under Category D that the majority of such companies are exempted from income tax, this being the category that deals with privately owned companies – what used to be known as “Corporation Tax Companies”).
- **Category E** – This was introduced by the 1992 Ordinance and relates to the exemption of offshore insurers (the principal type of company exempted under this category being captive insurance companies).

This report deals solely with applications made under Categories A, B and C.

- 2.3. In order to qualify for exemption under Category A, B and C the scheme concerned has to satisfy certain conditions.

The only condition which is relevant to this Report is that, in relation to Category B and C companies, under Schedule 2 of the Ordinance, the principal part of the capital of the companies has to be derived from the issue of preference shares which are, or at the option of the company are, liable to be redeemed (in the case of Category C companies, the shares have to be equivalent to preference shares if that term is not recognised in the territory in which the company is incorporated).

- 2.4. The Ordinance provides that when making an application for exemption the applicant scheme has to provide;

- details of the investment policy to be pursued;
- a copy of its constitutive documents (Trust Deed or Memorandum and Articles of Association);
- a copy of the Prospectus or similar document to be issued to investors; and

- any other particular as the Department considers necessary to enable it to determine whether the exemption should be granted.

In practice this will include copies of any agreements entered into by the scheme and could include, for example, managerial agreements, investment advisory agreements, administration agreements, custodian agreements, placing agent agreements, registrar agreements, secretarial agreements, etc..

### 3. **Administration Issues**

- 3.1. It is not uncommon for the Administrator to receive documents in connection with an application for exemption, even in a “run of the mill” case, that are 3-4 inches thick.

Just the storage of the documents which have to be provided with an application, within the Income Tax Office, is a significant practical issue. In practice, the majority of the contents of the documents provided are not actually required in order to determine that the scheme qualifies for exemption from tax. Not only does the requirement for submission of these documents cause storage problems within the Income Tax Office but also there is the cost to the scheme of producing the documents and submitting them to the Income Tax Office, as well as the cost to the public purse of examination of the documents within the Income Tax Office.

- 3.2. By contrast, if a company wishes to make application for exemption under Category D of the Law then it is able to do so without submitting any documentation other than a certificate confirming that it complies with the conditions of the Ordinance. Applications under Category E are made in a similar way. It is probably reasonable to say that if there was any reputational risk to Guernsey from any of the exempt bodies that this is most likely to occur in relation to those exempt under Category D (which are commonly in private ownership) rather than those under Categories A, B and C (which are generally established by financial institutions). It is ironic, therefore, that those making applications under Categories A, B and C are required to provide more information than those making applications under Category D. It is considered desirable to reduce this level of bureaucracy, if at all possible.
- 3.3. Furthermore, if a body wishing to make application for exemption under Category A, B or C is also required to be authorised by the Guernsey Financial Services Commission as a Class A, Class B or Class Q scheme, or to obtain consent under the Control of Borrowing (Bailiwick of Guernsey) Ordinances 1959 to 1989, then, in essence, the same documents that are provided to the Administrator for exemption from Income Tax have also to be provided to the Guernsey Financial Services Commission and many of the checks carried out by the Commission duplicate those undertaken by the Administrator.

- 3.4. The time scale for the formation and commencement of operations of schemes is often tight. The necessity to submit documents to both the Commission and the Administrator in order to obtain a licence/consent and exemption from income tax often leads to the deadline running very close or, occasionally, not being reached. If it was possible to improve the efficiency of the process to obtain exemption from income tax this can only be advantageous for Guernsey's fund industry both within the Island and in the international arena.
- 3.5. When the conditions for exemption, particularly for Category B and Category C companies, were first legislated in the mid-1980s, the fund industry in Guernsey was very different to that which currently exists. If the Administrator rigorously applied the requirement that the capital structure of the scheme be based on preference, or similar, shares, many of the schemes currently licensed/given consent by the Guernsey Financial Services Commission would not qualify for exempt status. That would have been to the very significant detriment of the Guernsey fund industry.

#### 4. **Conclusions**

- 4.1. In order to reduce to reduce the administrative costs (and bureaucratic burden) for a scheme in obtaining exemption under Category A, B and C, the Department proposes that the States revise the 1989 Ordinance to enable applications under Categories A, B and C to be made in the form of a declaration and that if the Department is satisfied that the conditions of exemption are satisfied, exemption may then be granted without the necessity for voluminous documentation to be submitted as a matter of course.
- 4.2. It is probable that, from time to time, the Administrator may wish to seek additional information in relation to an application for exemption and so it is proposed that the power to call for such information be retained. This would result in most applicants not having to provide any documentation other than the "self certification" application.
- 4.3. As a concession, the Administrator issued a Statement of Practice, several years ago, to the effect that so long as all other conditions of eligibility laid down in the Ordinance are satisfied then a Category B or C company could obtain exemption from tax notwithstanding that it did not source the majority of its capital from the issue of preference, or similar, shares.
- 4.4. If the Ordinance is to be revised in relation to administrative matters, the Department considers it appropriate to formalise that Statement of Practice within the Ordinance itself
- 4.5. The Department also proposes, therefore, that the Ordinance be revised to remove the condition that Category B and C companies have to obtain the majority of their capital from the issue of preference, or similar, shares in order to obtain exemption from income tax.

- 4.6 The EU Code of Conduct on Business Taxation (“the Code”) did not identify the granting of exemption from tax under Categories A, B or C as a so called harmful measure. The present system of granting exemption under Categories A, B and C will therefore continue regardless of any proposed changes to the general corporate tax regime.
- 4.7 In formulating these proposals, the Administrator has consulted with, and has received the support of, the Guernsey Financial Services Commission and the Guernsey Bar Council

### **Recommendations**

The Department recommends the States:-

- (i) To approve the changes for exemption from tax for collective investment schemes under Categories A, B and C as set out in this Report: and
- (ii) To direct the preparation of such legislation as may be necessary to give effect to their above decision.

Yours faithfully

L S Trott  
Minister

**(NB The Policy Council supports the proposals.)**

The States are asked to decide:-

XIII.- Whether, after consideration of the Report dated 4<sup>th</sup> April, 2006, of the Treasury and Resources Department, they are of the opinion:-

- 1. To approve the changes for exemption from tax for collective investment schemes under Categories A, B and C as set out in that Report.
- 2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**TREASURY AND RESOURCES DEPARTMENT  
and  
COMMERCE AND EMPLOYMENT DEPARTMENT**

**REVIEW OF COMMERCIALISATION**

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

5<sup>th</sup> April 2006

Dear Sir

**1. Executive Summary**

The impact on the community of the decision in 2001 to commercialise the former States Trading Boards of electricity, post and telecoms, and to subject them to independent statutory regulation by the Office of Utility Regulation, has been the subject of a formal review jointly commissioned by the Commerce and Employment and Treasury and Resources Departments.

That review, based on extensive work undertaken by the National Audit Office supplemented by an examination of the Regulatory Law by European Economics, is presented in this report and indicates that:

- the model of commercialisation adopted by the States was appropriate; but
- the regime has not been without its costs, and in particular, the regulatory burden has been high; however
- there is significant scope for addressing the problems identified by the review and that this is a preferable course to one involving radical changes to the current arrangements.

The report recognises that while four years have passed since the introduction of commercialisation/regulation, this still represents the early stages of a regime which continues to mature. The package of measures recommended by the report will hasten that process.

Key changes recommended include the OUR adopting a more risk based approach, and at all times acting in accordance with the established principles of Better Regulation. This will include greater use of a lighter touch.

Changes to the Regulation of Utilities (Bailiwick of Guernsey) Law 2001 are identified, which, amongst other things, will improve the ability of the States to make more specific “States Directions” and will repackage the existing appeals mechanism in favour of an approach that could reduce the costs of litigation.

Opportunities for clarifying the role of the Treasury and Resources Department as shareholder have been identified and various related work streams proposed. In relation to governance of the OUR, the need for an independent Audit and Remuneration Committee has been identified, as has a new mechanism for appointing a Director General to ensure continuity in the event that the current incumbent leaves the post at short notice.

The report also comments on the review of the Universal Service Obligation for postal services which is currently being undertaken.

Both the Commerce and Employment and Treasury and Resources Departments believe that approval of this report will confirm responsibilities relating to States trading companies and create an improved regulatory environment and, with all parties working constructively within that environment, significant benefits to the community will be delivered.

## **2. Introduction**

In May 1998 (Billet X of 1998) the Advisory and Finance Committee reported to the States on the then current arrangements for the provision of postal, telecoms and electricity services and outlined an approach to “commercialise” those activities.

The report contained a reference to what might be considered to be the objectives of commercialisation:

*“... the current status of the utility Boards as committees of the States is inhibiting them from operating in the most efficient, economic and effective manner ... the revised arrangements ... retains States ownership of the utilities but will provide a framework which enables them to seize the opportunities for improved performance whilst providing the checks and balances necessary to ensure that the consumer and community as a whole continue to have access to essential services at a price and standard which reflects the benefits of that improved performance.”*

The provision of postal, telecoms and electricity services was commercialised with effect from October 2001 for post and telecoms (Billet XVIII of 2001) and February 2002 for electricity (Billet XXIV of 2001).

The commercialisation process involved transferring responsibility for the provision of these utility services from three States Committees (operating on a self funding basis) to (initially) three States Trading Companies each 100% owned by, but operating at arms

length from, the States. The shareholder role for each company is undertaken by the Treasury and Resources Department under guidance from the States.

As each Trading Company is operating in a monopoly or market dominant situation, consumer interests in terms of prices, levels and standards of service etc. are protected through the Office of Utility Regulation (OUR), an independent statutory body, operating under Direction from the States.

The Commerce and Employment Department is responsible for advising the States on strategic issues relating to the utilities, certain functions under the Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (the 2001 Regulation Law) and for bringing forward any proposals for amendments to that Law.

In May 2002 the States agreed to the sale to Cable and Wireless of the States Trading Company Guernsey Telecoms Limited however the new telecoms provider continued to be subject to the requirements of the 2001 Regulation Law as exercised by the OUR.

Given that commercialisation was a major change, it was always intended that a review of the process would be undertaken once the new structures and processes had settled down and matured. In September 2004, however, there remained public concern about the performance of Guernsey Post Limited over Christmas 2002 and financial losses.

Against this background the Treasury and Resources and Commerce and Employment Departments embarked on a joint review of commercialisation.

Following a tendering process the National Audit Office (NAO), acting as an independent consultancy, was commissioned to undertake the research and consultation phase of the review. The full report from the NAO is appended to this report.

A further report was commissioned from Europe Economics (EE), a consultancy specialising in utility regulation, to undertake a supplementary study of the ethos of the regulatory legislation and to compare it with that of other jurisdictions. A copy of the report from Europe Economics is also appended to this report.

This report to the States draws extensively on the results of those two studies and also refers to the Report of the Commerce and Employment Department on Electricity Generation Investment Options for Guernsey that was considered by the States at its November meeting (Billet XX of 2005).

As the NAO states in its covering letter, relevant extracts of its report were shown to the OUR and utilities to confirm underlying facts and figures. The Europe Economics report was also provided to these parties and this report makes use of some of the feedback received.

There is unanimity between the Commerce and Employment Department and the Treasury and Resources Department on all of the conclusions and recommendations in this report. The two Departments are referred to jointly as the “Departments” hereafter.

### 3. Overall Conclusions of the NAO

The overall conclusions of the NAO (NAO para 4) are that:

- The States of Guernsey has adopted an appropriate model to meet the objectives of commercialisation in the three industries examined. The objectives of commercialisation can be achieved if the model is operated properly;
- However, in post and electricity improvements need to be made to the operation of the model. In particular, greater clarity is needed in the respective roles of shareholder, policy maker and operational management;
- Regulation has facilitated the benefits of commercialisation and is essential in all three industries, but it has come at a high cost. There are various ways in which the regulatory burden could be reduced.

#### 3.1 The Costs and Benefits of Regulation

Billet XVIII of 2001 contains a report from the Board of Industry setting out proposals for a regulatory framework. It is worth noting that in its comments on that letter, the Advisory and Finance Committee highlighted that:

- the direct costs of regulation recovered from licence fees in the initial year of regulation represented **less than 1% of the current turnover of the Trading Boards;**
- in a relatively short time, efficiencies gained from commercialisation should more than cover these fees;
- additional costs related to producing detailed and transparent financial information should not be considered as a cost of regulation – **rather an essential prerequisite to the efficient management of commercialised undertakings.**

Although it is acknowledged that many States members are concerned about the cost of regulation, this 1% of turnover has become something of a benchmark for assessing the direct costs of regulation, i.e. the costs to the OUR recovered through licence fees. While the NAO points out (paras 1.18 and 1.34) that Guernsey does not enjoy economies of scale of regulation that would exist in the UK and that costs were inevitably higher in the initial set up phase, nevertheless this benchmark has been achieved.

Whilst the licence fee for Cable and Wireless for 2004 increased to 1.6% (and for 2006 has fallen to 1.4%) of its turnover in order to recover the costs of an appeal, the overall direct costs of regulation have consistently remained at below 1% of the total turnover of the regulated utilities.



Since the introduction of commercialisation and regulation, the utilities have publicly expressed concern that in addition to the licence fees, additional internal costs have been generated which they attribute to the information requirements of the OUR but which the OUR believes should be considered as information which any commercial operation will need for its efficient management – the point addressed by the Advisory and Finance Committee in 2001.

In a self-regulating environment as existed prior to commercialisation, the incentive to produce such financial information – for example to establish which services might be cross subsidised – was not as great as under external regulation. It was inevitable, therefore, that additional costs would be incurred in introducing systems to capture and collate the information required. The differing point of view between the utilities and the OUR arise because there is no clear definition of what costs should be considered as the cost of compliance (NAO paras 1.31, 3.51 and 4.13).

In particular, the NAO states (NAO para 5.51) that Guernsey Electricity's estimate that it costs the company £500,000 a year to meet the OUR's demands, must be treated with some caution.

Nevertheless a question remains – Have the demands from the OUR for information gone beyond what could be reasonably required, and are they out of proportion to the benefit derived by consumers?

The OUR estimate that without the regulatory constraint that it has applied charges for all the utilities would cost consumers an additional £22m over a four-year period. A significant benefit to consumers of independent regulation.

Assessing benefit in this way is, to a certain extent, too simplistic as it suggests an adversarial negotiating process where the aim is for the OUR to reduce the utilities opening proposals by as much as possible. What should happen is for there to be constructive dialogue between the parties to reach an agreed position that best satisfies a complex set of short, medium and long-term considerations. Only if an agreed position cannot be reached should there be a need to go to the potentially expensive route of appeal.

Nonetheless, the benefits to consumers of independent regulation of prices need to be taken into account when considering the direct and indirect costs of regulation.

### **3.2 Perceptions of Performance**

There is a perception in some quarters that, following commercialisation, the utilities (with the possible exception of electricity) are offering reduced value for money and reduced levels of service to customers.

The NAO report considers that this perception is incorrect (NAO paras 1.27, 2.28, 2.29, 2.31 & 3.11) but that it arises due to varying reasons for each utility.

For telecoms it may arise because pre-commercialisation there was a large degree of cross subsidisation of services (business customers subsidising residential customers) that could not continue in the competitive environment needed to stimulate the economy. Whilst such cross subsidisation has been reduced by Cable & Wireless for most fixed line services, with the exception of Broadband, the Island receives a very competitive tariff.

Although more recently there has been public acknowledgement that performance of Guernsey Post has improved, the public still recall the poor experience over Christmas 2002. This perception is reinforced by recent local price increases, which, while attributed to commercialisation, do in fact result from increased charges imposed by Royal Mail. In this respect, when local charges are compared with Jersey, which is in exactly the same position with Royal Mail, Guernsey compares favourably.

### **3.3 The Maturing of the Regulatory Regime**

The NAO report comments (NAO Figure 3) that the development of the regulatory regime is still in its “early stages” with costs reflecting the need to put in place systems to produce regulatory information. It suggests that as the regime matures there is a need to move to a more risk based and lighter touch approach and that there is evidence that this is beginning to happen. It also suggests a “timely and cost effective” appeals process is an integral part of regulation.

The NAO report (NAO para 1.35) defines a risk-based approach as:

*“Under a risk-based approach, the regulator would explicitly assess the risks to consumers and commit to adopting a different regulatory approach depending on the level of risk. The start point of this process is to assess all the risks and rank them in descending order. It is the regulator’s responsibility to address each risk in turn from most to least severe until resources are exhausted. At the margin, the regulator would adopt a proactive position on very high-risk issues and not intervene in issues with a very low risk. ... it would improve transparency and enable a more proportionate approach if the assessments of risks to consumers were explicitly stated.”*

This report discusses below how such an approach may be facilitated.

### **3.4 Telecoms**

In relation to telecoms, the NAO report states (NAO following para 13):

- The objectives of commercialisation have been or are being achieved for telecoms. We do not believe that any significant changes are needed to the commercialisation model as far as telecoms is concerned;
- There is a continued and ongoing need for a regulator of telecoms in Guernsey. Regulation has been an essential element of commercialisation and has brought benefits to consumers;

- Regulation of telecoms in Guernsey is costly. A substantial element of this cost is inevitable because of the limited economies of scale in a small island economy. However, the Office of Utility Regulation should seek to reduce the cost by taking a more risk-based approach to its work and concentrating its regulatory efforts on measures that will bring the greatest benefit to Guernsey consumers and businesses over the longer term.

The issues relating to States Trading Companies discussed later in this report do not apply to Cable and Wireless. The NAO report (NAO para 1.17) does however refer to a requirement for the company invest in e-commerce related projects and how that commitment had been met at the time of drafting that report. The States will be aware that Cable and Wireless have recently committed to the installation of an additional telecoms cable linking the UK, Guernsey and France that will substantially increase the capacity and resilience of links to global networks. It has been agreed that on the basis that the cable is operational by the end of 2007, the requirement for investment in e-commerce will have been met and, in financial terms greatly exceeded.

### **3.5 Regulation of Post and Electricity**

The NAO report presents conclusions and makes a number of recommendations which apply to the regulation of both post and electricity (NAO after paras 21 & 31):

- There is a continuing need for a regulator of post and electricity in Guernsey. Regulation has been an essential element of commercialisation and has brought benefits;
- A number of alternative models for regulation have been examined but the NAO does not believe that any are superior to the current model (para 4.36);
- The OUR should seek at all times to act in accordance with the principles of Better Regulation (as identified by the UK's Better Regulation Task Force). It should apply flexibility to ensure that the requirements are appropriate and proportionate to Guernsey's needs and size. The OUR needs to ensure that its requirements are only those that are essential for the efficient operation of the regulatory regime and that no unnecessary additional information requirements or costs are imposed;
- The OUR should make clear to Guernsey Post and Guernsey Electricity why demands are being made so as to increase the transparency of the process;
- The OUR should adopt a more risk-based approach to its regulation of Guernsey Post and Guernsey Electricity. It should only get deeply involved in matters that are fundamental to the well being of consumers and the Island as a whole. Other issues should be given a light touch. Such an approach could reduce further the cost of regulation.

### 3.6 Comments Specific to the Regulation of Electricity

The NAO report states (NAO (K) after para 31):

- The OUR and Guernsey Electricity should take immediate steps to improve their working relationship. A clear, open dialogue and cooperative relationship would help each party to understand the other's needs and concerns. The current adversarial relationship is not acceptable and can only be of detriment to consumers. The OUR should work with Guernsey Electricity to seek to reduce the regulatory burden on the company. Guernsey Electricity should respond positively by accepting the need for regulation and appreciating the different roles that the shareholder and regulator undertake.

The NAO report comments (NAO paras 3.40 & 3.41) that Guernsey Electricity believes that a separate regulator is unnecessary whilst it remains 100% States owned and the States is able to give the shareholder guidance on pricing policies. The NAO does not accept this viewpoint and believes that the shareholder and regulator have quite separate and important roles that are essential features of the commercialisation model.

The NAO report comments (NAO para 3.49) that there are signs that relationships between the OUR, Cable and Wireless and Guernsey Post are improving, but this does not appear to be the case with Guernsey Electricity. The NAO considers that until Guernsey Electricity accepts the need for regulation and understands the role of the regulator and the OUR reassures the company of the need for the information it requires, there will continue to be difficulties with the model in the electricity sector.

GEL commissioned Professor Stephen C Littlechild, the former UK Director General of Electricity Supply, to "examine electricity regulation in Guernsey and to consider possible modification".

The Departments disagree with Professor Littlechild's conclusion that responsibility for the regulation of GEL should be transferred from the OUR to the Treasury and Resources Department. Irrespective of whether or not the Treasury and Resources Department could devote the necessary resources to adequately undertake the role, if it did, it would undermine the separation of roles that underpins the commercialisation model. GEL has been advised of this view but, none the less, has asked that Professor Littlechild's report be published alongside those of the NAO and Europe Economics.

Professor Littlechild's report repeats some of the GEL assertions on regulatory costs and impact, which the NAO report suggests, need to be treated with caution. The OUR also disputes some of Professor Littlechild's assertions. It is obvious however that one way or another Professor Littlechild's report would find its way into the public domain and the Departments have agreed that it be published without further comment and without implying endorsement of its contents.

### 3.7 Conclusions on Regulation

The Departments believe that commercialisation and (in the case of telecoms)

privatisation of the utilities have brought benefits to the community. Independent regulation has made a net contribution to that benefit and, whilst the utilities continue to operate in a monopoly or market dominant situation, independent regulation is essential to protect the interests of consumers.

**Approval of the proposals in this report to the States will confirm the status and responsibilities of all the parties involved in the commercialisation model and create an improved legislative environment for a pragmatic and risk based approach to regulation that can bring improved benefits to the community.**

**It is up to all those parties to demonstrate to the community that they can work within this environment to deliver those benefits or the Departments will need to consider whether more radical remedial action may need to be taken.**

The Departments have gone on to consider how the benefits derived from independent regulation may be increased.

On a separate but associated issue, the Commerce and Employment Department is currently preparing a report to the States on competition issues in general, and specifically on measures to prevent abuse of the markets for goods and services in Guernsey. The Department believes that this will require the introduction of new legislation but that efficiencies in the administration of such legislation could be achieved through the sharing of resources with the OUR. In this way benefits could be derived from economies of scale, redistribution of effort and minimising the additional costs of administering the new legislation.

#### **4. Improving the Regulatory Process**

The conclusions and recommendations of the Europe Economics report (EE paras 6 & 7) are:

- Utility regulation in Guernsey has experienced worse problems concerning relationships and costs than one would have expected to see, even recognising that any new policy as radical as commercialisation and the introduction of an independent regulator will inevitably cause some disturbance and resentment as previous methods are replaced;
- Although these problems doubtless sprang in part from personalities, the legislation probably did make matters worse than they need have been. There are therefore some changes to the legislation that should be considered, in order to improve the prospects for a more cost-effective regime.

The Europe Economics report goes on to consider four specific issues:

- How alternatives to the current structure of the OUR might impact on the ethos of regulation;

- Whether or not the statement of the duties of the OUR requires revision;
- The powers of the States to give Directions to the OUR;
- The appeals process.

#### **4.1 The Structure of the OUR**

The Europe Economics report discusses (EE paras 2.1 to 2.6) the pros and cons of having a single Director General of regulation or a committee/collegiate structure as in Jersey and the UK and the terms for the appointment of the Director General.

It concludes (EE paras 11 & 12) that for Guernsey, the balance of advantages, including cost, favour the current structure of a single Director General and does not see any reason to vary the current terms of appointment for that post.

The Departments endorse that conclusion.

#### **4.2 Duties of the OUR**

The Europe Economics report (EE Table 2) sets out the six duties of the OUR as set out in the 2001 Regulation Law and identifies how in other jurisdictions similar requirements are categorised as either primary or secondary duties for various utilities. The report also discusses (EE paras 2.16 to 2.19) some duties that appear in the legislation of other jurisdictions but which are not explicit in the 2001 Regulation Law.

The NAO report also comments (NAO Figure 3) on the differing priorities for each utility:

- Electricity: security of supply;
- Post: the Universal Service Obligation; and
- Telecoms: the development of competition.

It is to be expected that this difference in priorities might impact on the “weight” of regulation necessary but the 2001 Regulation Law currently implies a “one size fits all” approach.

The OUR has commented that that it has always approached the duties set out in the 2001 Regulation Law in a manner that it believes is most appropriate for the individual sectors. The Departments believe, however, that there should be a mechanism within the Law to enable the States to confirm the priorities for each sector in order to give the OUR statutory backing and encouragement to pursue an appropriate, and possibly different, “risk based” approach to each utility. This is addressed below in the section dealing with States Directions.

**The Europe Economics report (EE para 2.17) suggests that whilst, the “principles of Better Regulation” are explicit in the Laws of some jurisdictions but only implicit in the 2001 Regulation Law, this could be addressed by the addition of a duty to “regulate in a way that is proportionate to Guernsey” and the Departments endorse this recommendation.**

The 2001 Regulation Law stipulates that one of the functions of the Director General is to exercise his powers “with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with States Directions”.

**The Departments believe that the functions would reflect the principles of Better Regulation and facilitate a more “risk based” approach by the addition to the above clause of the words “accountable, proportionate, consistent and targeted only at cases in which action is needed”.**

### **4.3 The Scope for States Directions**

The Europe Economic report (EE paras 2.20 to 2.47) reviews the scope for States Directions to the OUR contained in the 2001 Regulation Law and contrasts this with the scope for government directions in other jurisdictions. It also refers to the scope for States guidance to be given to the Guernsey Financial Services Commission.

The report concludes (EE paras 16 to 18) that the scope for issuing states Directions is lower than equivalent international practice and should be reviewed whilst taking care not to create a situation of too much regulatory uncertainty or States intervention in operational decisions by the OUR.

The report (EE para 2.40) gives some examples of possible issues on which it would be appropriate for the States to give Directions to the OUR. An actual example is the decisions of the States on the report of the Commerce and Employment Department on Electricity Generation Investment Options for Guernsey (Billet XX of 2005). Those decisions set out the States strategy on the security and source of supply of electricity but currently the 2001 Regulation Law does not enable this strategy to be enshrined in Directions to the OUR.

**The Departments believes that the scope for the States to give Directions to the OUR should be widened and include the setting of priorities for the exercise of duties in respect of each individual utility.**

**The Department considers that to minimise regulatory uncertainty and to reduce the risk of interference in operational decisions of the OUR, the 2001 Regulatory law should be amended to extend the scope for the States to give Directions of a strategic or general nature by Ordinance.**

The process for enacting or amending an Ordinance is relatively speedy whilst giving more opportunity for mature reflection than would expanding the scope for giving Direction solely by means of a States resolution.

#### 4.4 The Appeals Process

One aspect of the cost of regulation that has caused concern is the cost of appeals. In this respect, both parties costs in an appeal by Cable & Wireless in July 2002 are estimated to total over £0.5m. An appellant has to absorb its costs in appealing and the costs of the OUR are recovered through licence fees.

The Europe Economic report (EE paras 20 & 21 and 3.1 to 3.14) discusses two aspects of the appeals process:

- The OUR's processes for announcing Decisions that may subsequently be subject to appeal; and
- The body that hears the appeal and its processes which is currently the Utility Appeals Tribunal made up three members drawn from a panel of off-island individuals with relevant expertise of regulated utilities. Decisions of the Tribunal are appealable to the Royal Court.

In relation to the first aspect both the NAO (NAO para 4.24) and Europe Economics (EE para 21 (a)) comment that the OUR has changed its processes to mitigate against an appeal by publishing draft decisions for consultation and being prepared to engage in alternative dispute resolution processes. In 2005 an issue appealed by Guernsey Post was successfully resolved through mediation thereby avoiding a full Tribunal hearing.

**The Departments commend these initiatives by the OUR and recommend that the States should also endorse them.**

The Europe Economics report (EE para 3.14) also suggests that utilities should be given longer to consider whether or not to lodge an appeal once a final decision has been announced. There is a concern that that current requirement to lodge an appeal within 14 days gives little time to assess the implications of a Decision of the OUR, little time for seeking clarification from the OUR that may avoid the need for an appeal and therefore encourages utilities to immediately commission legal assistance in framing an appeal "just in case".

**The Departments are proposing that the time limit for lodging an appeal is increased to 28 days after publication of a Decision by the OUR.**

Coupled with the new OUR practice of publishing draft Decisions and the option of mediation, the extension of the time limit for lodging an appeal should ensure Appeals are pursued only where there are fundamental, irreconcilable differences.

The Europe Economics report (paras 3.1 to 3.14) explains that there are broadly two grounds on which a utility may appeal a Decision of the OUR:

- Technical matters, i.e. the financial or business implications of a Decision for which the Tribunal requires a certain level of technical expertise in the utility ;



and

- Points of Law or process that requires a certain level of legal expertise to resolve and which a Tribunal may itself choose to refer to the Royal Court.

The Cable and Wireless appeal covered issues of both law and fact (NAO Figure 17) but the issues of law were dealt with by the Tribunal and not referred to the Royal Court. It seems unlikely that any future appeal will ever be based solely on a technical matter or solely on a matter of law and using two bodies, the Tribunal and the Royal Court, to determine different aspect of the same appeal may be a recipe for conflict and high costs.

The choice may seem to be between using the existing Tribunal approach but strengthened by the addition of legal expertise or the Royal Court which would be able to draw on the technical expertise already available from the Panel members. The Europe Economic report (para EE 3.14) “on balance” favours improving the operation of the Tribunal by the measures already described above and by giving the Tribunal only a limited time, 3 months, in which to complete its work.

However, a Commerce and Employment Department consultation exercise with the utilities and the Chairman of the Utilities Appeal Tribunal solicited a mixed response.

One party felt that appeals to the Royal Court might be just as costly as the current process; a number suggested the introduction of a mediation process (as has been done) and the involvement of a member of the Guernsey Bar in an appeal hearing. Another party favoured referring all appeals to the Royal Court. The Chairman of the Tribunal accepted that the Cable and Wireless appeal did dwell on legal matters and he would not oppose appeals being heard by Royal Court that would need expert advice. However, he did not see how this would reduce the costs of dealing with complex issues and documentation.

The balance of those consulted favoured retaining the Tribunal but with the addition of legal expertise.

Having discussed the matter with HM Procureur and based on its experience with other forms of Tribunal however, the Departments are recommending that the Royal Court hear appeals in future.

Whilst in the past a Tribunal made up of “lay experts” may have provided a quick and cost effective way of resolving disputes, the Cable and Wireless appeal demonstrates how nowadays all the parties involved rely on advocates to either advise on, prepare or present their cases and sometimes all three. Matters of Law or Human Rights inevitably are raised and the Tribunal itself may require access to legal advice.

Even if it is strengthened by the addition of a member of the local Bar, a Tribunal which is only convened occasionally to hear a specific appeal and whose make up of off-island technical experts varies to meet the nature of each appeal is not best equipped to

deal with such disputes and prevent extraneous legal issues overriding the technical aspects of the appeal. The Royal Court is far more experienced and able to deal with such disputes.

HM Procureur has advised that the use of assessors in judicial proceedings is not completely unknown to Guernsey's legal system - for example, similar arrangements exist in relation to marine accidents and have been included in Intellectual Property legislation. He has advised that the Royal Court comprised of the Bailiff (in practise likely to be a Lieutenant Bailiff) sitting in an appropriate case with up to two assessors, is a practical option.

**The Departments are therefore recommending the appeals against decisions of the OUR in future be referred to the Royal Court constituted as set out above.**

#### **4.5 Governance and Staffing of the OUR**

In addition to general comments on regulation the NAO report (NAO after paras 4.19 and 4.11) made two specific recommendations:

- That States Internal Audit and representatives of the States Public Accounts Committee should have automatic rights of access to the books and records of the OUR. This would ensure that there is proper and independent oversight of the operations of the OUR in line with best practice elsewhere; and
- Contingency Plans should be drawn up to cover a situation where staff numbers at the OUR fall below the minimum necessary for it carry out its statutory functions.

The Departments consider that the States should be as consistent as possible in the degree of oversight exercised over independent statutory bodies. The most obvious comparison is with the Guernsey Financial Services Commission (GFSC) but that body comprises a body of Commissioners appointed by the States rather than a single Director General of the OUR appointed by the States.

The OUR has recently appointed an independent Audit and Remuneration Committee to oversee the internal controls in place by the office and to review the remuneration of staff other than the Director General whose salary, under the 2001 Regulation Law, is determined by the Commerce and Employment Department. The Commerce and Employment Department informally sought the advice of the Public Sector Remuneration Committee when setting salary of the current Director General and, on the assumption that the States approves proposals to revise the mandate of that Committee, this practice will be formalised.

The Audit and Remuneration Committee will also oversee the appointment of the external auditors and will have the freedom to bring any matters of concern to the attention of any relevant party, such as the Commerce and Employment Department or Public Accounts Committee.

The Departments commend the action of the OUR in appointing an independent Audit and Remuneration Committee and for consulting the Department on the membership of that Committee.

Given that decision making at the OUR is concentrated in one individual however, the Departments consider that it should have the right to appoint one member of the Audit and Remuneration Committee, who may be a States Member, and the right to approve the other members on the recommendation of the Director General.

**The Departments are recommending that the 2001 Regulation Law be amended to require the appointment of an independent Audit and Remuneration Committee the membership of which shall be determined as described above.**

Following discussions with the OUR, the Departments consider that existing arrangements to secure replacement/additional staff on a temporary contract basis should the need arise are adequate and they recognise the problems of succession planning within limited staff numbers.

The Departments are however concerned that the 2001 Regulation Law cannot function without a Director General in post and that only the States can make that appointment. In unforeseen circumstances where an immediate appointment is necessary (such as due to sudden incapacity or resignation of an incumbent) it could take some time to find a suitable replacement and bring forward proposals to the States for his or her appointment. In the meantime the utilities would be freed from any regulatory constraints.

The 2001 Regulation Law does provide for the Director General to appoint a Deputy to exercise his powers during any period of unavailability, such as holidays, but that provision does not apply if the Director General vacates his post.

**The Departments are recommending that this provision should be amended to enable the Deputy to immediately take over the powers of the Director General should the Director General vacate his post before a successor has been appointed and exercise such powers until the States appoints a successor.**

In its report to the States on the reappointment of Mr John Curran as Director General of the OUR for a further year (Billet XX of 2005) the Commerce and Employment Department stated:

*“If the outcome of the debate on the review of commercialisation does not result in any significant changes to the responsibilities of the OUR or any other matters affecting the role of Director General, the Commerce and Employment Department intends to subsequently recommend to the States that Mr Curran’s appointment be extended for a further 3 years until 31<sup>st</sup> January 2010. If significant changes do result from the debate then the Department will review the implications on the Director General’s role and bring forward appropriate recommendations to the States.”*

**On the assumption that the States will approve the other proposals in this report relating to the responsibilities of the OUR the Departments are recommending the States to appoint Mr Curran for the period ending 31<sup>st</sup> January 2010.**

## **5. The Commercialisation Model**

The NAO report comments (NAO after paras 2.43 and 3.53):

- The objectives of commercialisation can be achieved for post and electricity and the commercialisation model adopted is sound if executed properly;
- Full privatisation or a return to full States control would not bring any advantages over the current model. Merging Guernsey Post and Jersey Post and merging Guernsey Electricity and Jersey Electricity would bring clear efficiency savings but there would also be a number of risks and drawbacks. Although a detailed examination of this option has been outside the scope of the review, the NAO believes that this and other potential merger options are worth exploring further by the States.

Whilst the possibility of merging the postal and electricity operations of Guernsey and Jersey at some time in the future, or other merger options, should not be discounted, neither of the Departments consider that such a review should be given priority at this time.

### **5.1 The Shareholder Role – Treasury and Resources**

The NAO report comments (NAO after paras 2.9 and 3.8):

- The Treasury and Resources Department, acting as the Shareholder on behalf of the States, needs to set overall objectives for Guernsey Post and Guernsey Electricity. It also needs to make clear what sort of financial return it expects the business to achieve and must set a clear dividend policy for the company;
- The States of Guernsey should review its guidance to the Treasury and Resources Department as shareholder to ensure that there is no overlap or ambiguity, and to address any new developments that may have occurred in the first few years of commercialisation.

Under the States Trading Company ordinance the States Trading Companies are obliged to submit to the shareholder a strategic plan setting out its future policies, targets and other intentions. This requirement has been fulfilled annually and the Treasury and Resources Department has been quite satisfied with the adequacy of the plans submitted to date.

At the time of commercialisation the States agreed Guidance on exercising the role of shareholder for each States Trading Company, which in respect of electricity was

subsequently slightly amended. The current Guidance is shown in Appendices 3A & B of the NAO report.

**In ongoing discussions with both States Trading Companies the Treasury and Resources Department will, however, confirm the content required in strategic plans, review the current Guidance against the principles set out in Appendix 3 of the NAO report and, if necessary, will bring proposals to the States to revise that Guidance as necessary.**

## **5.2 Capital Structure and Returns to Shareholder**

The NAO report comments (NAO after paras 2.55 and 3.66):

- Consideration should be given to rebalancing the capital structure of Guernsey Post and Guernsey Electricity to include an element of corporate debt and for future investment to be financed from borrowing rather than the build up of cash reserves. These moves would bring the scrutiny and due diligence of a corporate lender to bear on Guernsey Post and Guernsey Electricity and give the companies the flexibility to plan for future investment when it is most needed.

In December 2005 the OUR announced what was in effect an interim decision on electricity prices to give time for some points of principle on the financial structure of Guernsey Electricity Limited to be resolved. Whilst these principles have so far not become an issue in relation Guernsey Post Limited they may do so in the future. With the benefit of hindsight these points of principle should have been addressed more fully at the time of commercialisation.

The review of these complex principles will be undertaken with the full involvement of the Treasury and Resources Department, the Commerce and Employment Department and Guernsey Electricity Limited. Once that review is completed the two Departments will consider if there is any need to revise the present arrangements.

Notwithstanding the above, the Departments believe that the interests of the consumer are not best served by encumbering the States Trading Companies with unnecessary debt and the associated costs of servicing that debt. The long established policy of building up reserves to fund capital expenditure (the “save to spend” principle) remains valid.

## **5.3 Comments Specific to Guernsey Electricity Limited**

The NAO report comments (NAO after 3.28, 3.32 and 3.37):

- The Treasury and Resources Department needs to make clear to Guernsey Electricity what information it expects from the company to enable it to fulfil its monitoring role as shareholder. It should also agree with the company the sorts of circumstances in which it would wish to be involved in strategic decisions;

- There should remain in place clear accounting separation between core and non-core activities. Guernsey Electricity should seek guidance from the shareholder as to which activities it should participate in;
- The importance of energy to the economy and the long term issues involved mean that the States has a key role to play in formulating a clear energy strategy for the Island. An agreed energy strategy would reduce business uncertainty for Guernsey Electricity and allow better planning of future needs and revenues. It would also give Guernsey Electricity and the OUR a clear framework against which to make their own operational decisions.

**The Treasury and Resources Department will, however, cover these issues in the discussions to be held with Guernsey Electricity Limited on the adequacy or otherwise of strategic plans and the current States Guidance to the shareholder.**

#### **5.4 Comments Specific to Guernsey Post Limited**

The NAO report comments (NAO after 2.15 and 2.22):

- If the Treasury and Resources Department wishes to continue to appoint political observers to the Board of Guernsey Post, it should set out clearly the roles and responsibilities of such observers in line with good corporate governance. Without a clear exposition of roles and responsibilities there is a real danger that the Department will get drawn into the day-to-day management and commercial decisions of the company;
- The Universal Service obligation for postal services should be subject to review and a consultation process with the aim of clarifying the social obligations on the company's activities.

At the September 2004 States meeting when the undertaking of the review of commercialisation was announced, the Minister, Treasury and Resources Department also advised that, in the light of the remaining widespread concerns about the problems over Christmas 2002 and the substantial trading loss suffered by Guernsey Post limited:

*“... two members of my Department will attend all meetings of the full Board of Directors. This arrangement will enable the Treasury and Resources Department to gain a better understanding of the situation faced by the company in terms of the trading and regulatory environment it is operating within and for the Company to fully understand objective political concerns.”*

That arrangement continues and has contributed to an improved understanding between the Board of the company and the body fulfilling the shareholder role. The position of the two Departmental representatives is analogous to the position of non-States members who sit on States Departments and may participate in debate but do not have a vote.

Future trends in local postal charges and the implications on the finance of Guernsey Post remain unclear whilst negotiations with Royal Mail on the regime it intends to apply to Guernsey and the other Crown Dependencies continue against a background of uncertainty about what effects the liberalisation of the UK postal market will have.

**The Treasury and Resources Department will however review the arrangement to send “observers” the Board meetings in the light of the greatly improved performance of Guernsey Post that has gone a long way to restoring public confidence in the company and in the light of the outcome of debate of this report.**

The Universal Service Obligation (USO) sets out the minimum standards of service that should be provided across the Island by Guernsey Post Limited and was agreed by the States as Directions to the OUR in September 2001 at the time of commercialisation. In December 2005 the OUR published a Report on the Consultation and Decision Notice on Guernsey Post’s Tariffs and announced that a review would be undertaken of the cost implications of flexing the current extent of the USO. That review is now underway, the consultation period ended on the 17<sup>th</sup> March and the Commerce and Employment Department is awaiting the conclusions and recommendations of the OUR.

**Should it be felt desirable to change the current extent of the USO the Commerce and Employment Department will bring forward appropriate recommendations to the States.**

## **6. Conclusions and Recommendations**

On the basis of the extensive review of commercialisation and regulation undertaken by the NAO and with the detailed examination of the Regulatory Law by Europe Economics, it is evident that:

- the commercialisation of post and electricity and the privatisation of telecoms and its associated regulation, have largely met the objectives set by the States in 2001;
- in general, both the models of commercialisation and regulation have proved appropriate for Guernsey;
- while the costs of regulation have been higher than expected, nevertheless, the overall benefits to the consumer and the community arising from these changes have, in general, far outweighed the disadvantages;

Those problems that have been identified with either the Regulatory Law or the relationship between the States and its commercialised utilities of post and electricity, can be rectified by a package of measures, including changes to legislation set out in this report.

## 7. Recommendations

The States is therefore recommended to:

Agree that the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 be amended to:

1. Add a duty for the Director General of Regulation to “regulate in a way that is proportionate to Guernsey circumstances”.
2. Add to the functions of the Director General of Regulation a requirement to exercise his functions and powers in a way that is “accountable, proportionate, consistent and targeted only at cases in which action is needed”.
3. Enable the States, by Ordinance, to give Directions to the Director General of Regulation of a strategic or general nature including the priorities for the exercise of his duties in respect of each utility.
3. Increase the time limit for lodging an appeal from 14 days to 28 days after publication of a Decision by the Director General of Regulation .
- 4 Delete the provisions for appeals against Decisions of the Director General of Regulation to be referred to a Tribunal and replace with provision to refer such appeals directly to the Royal Court.
5. Require the establishment of an independent Audit and Remuneration Committee for the Director General of Regulation one member of which, who may or may not be a States Member, shall be appointed by the Commerce and Employment Department and the other members approved by the Department on the recommendation of the Director General.
6. Provide for the Director General of Regulation to appoint a Deputy who can immediately take over the powers of the Director General should the Director General vacate his post before a successor has been appointed and to exercise such powers until the States appoints a successor.

General:

7. Endorse the initiatives undertaken by the OUR to mitigate against an appeal by publishing draft decisions for consultation and by, where possible, engaging in mediation on any disputes over Decisions.
8. Appoint Mr John Curran as Director General of Utility Regulation in accordance with the provisions of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 for a period of three years commencing 1 February 2007.
9. Note that the Treasury and Resources Department will confirm with the States



Trading Companies the content required in strategic plans, review the current States Guidance to Shareholders against the principles set out in Appendix 3 of the NAO report and, if necessary, bring proposals to the States to revise that Guidance.

10. Note that the Treasury and Resources Department will confirm with the States Trading Companies the information it requires to undertake its role as shareholder, what level of strategic decisions it expects to be involved in and which non-core activities each company should be involved in.
11. Note that a review of the current Universal Service Obligation for postal services, including a full consultation process with interested parties, is underway and that, if necessary, the Commerce and Employment Department will bring forward appropriate recommendations to revise the obligation.
12. Agree that approval of the proposals in this report will confirm the status and responsibilities of all the parties involved in the commercialisation model and create an improved legislative environment for a pragmatic and risk based approach to regulation that can bring improved benefits to the community.

Yours faithfully

Lyndon Trott  
Minister  
Treasury and Resources Department

Stuart Falla  
Minister  
Commerce and Employment Department

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December 2005

## **STATES OF GUERNSEY: REVIEW OF COMMERCIALISATION AND REGULATION**

I am writing formally to submit the National Audit Office report on commercialisation and regulation in Guernsey, the final version of which was delivered to your officials in September 2005.

As well as drawing on the NAO's extensive knowledge and many years' research of the commercialisation and regulation models adopted in the UK and overseas, the review examined a wide variety of evidence from many different sources:

- We undertook semi-structured interviews with key stakeholders, including the Commerce & Employment and Treasury & Resources Departments; the Office of Utility Regulation, Cable & Wireless Guernsey, Guernsey Electricity and Guernsey Post; companies that have entered the market; consumer groups, trade associations and other interested parties; and the relevant departments and utilities in Jersey.
- We wrote to all States Members asking for their views on commercialisation and regulation. We also wrote to over 40 organisations, including competitors and customers of the utility companies, consumer groups, business organisations, trade associations and unions.
- We placed a series of advertisements in the Gazette Officielle inviting members of the public to give their views to us. The advertisement included an email address, where readers could send their comments.
- We commissioned Organization Development Ltd (ODL) to convene two focus groups each containing 11 "opinion formers" drawn from commerce and industry. The groups were given a series of topics on commercialisation and regulation to discuss.
- We commissioned ODL to undertake a telephone survey of 200 randomly selected members of the public. The survey uncovered public views on the price, choice and quality of service offered by the commercialised utilities. It also investigated the views of the public on regulation.

We showed our report in draft to senior officials of the Commerce & Employment and Treasury & Resources Departments. We also showed relevant extracts of the report and discussed our findings and conclusions with the Office of Utility Regulation, Cable & Wireless Guernsey, Guernsey Electricity and Guernsey Post. This enabled the parties involved to confirm the underlying facts and figures. Where appropriate, we have also incorporated in the final report the comments received on our findings and conclusions. However, the final report is the NAO's.

We were very pleased to have been given the opportunity to undertake this work. I hope that the report and its recommendations will provide the States with a solid foundation for debating and taking forward the complex issues surrounding commercialisation and regulation in Guernsey.

Yours sincerely

Richard Eales

**NAO Director**

**(NB The NAO report, which was submitted with this letter, is published separately.)**



## **SUPPLEMENTARY STUDY OF ETHOS OF REGULATORY LEGISLATION**

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**28 November 2005**



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### **Disclaimer**

This report was prepared solely for the information and use of the Department of Commerce and Employment. No third parties shall have a right to rely on the report. The report was prepared by Europe Economics after due and careful enquiry, based on information in the public domain, information provided by the Department of Commerce and Employment and other information provided in interviews with stakeholders which Europe Economics relied on and did not independently verify. Europe Economics expressly disclaims any warranties with respect to the information, findings and conclusions stated in the report.



## EXECUTIVE SUMMARY

### Introduction

- 1 This report responds to a commission from the Department of Commerce and Employment to Europe Economics. The full report (45 pages including appendices) includes background research and details of interviews which were given in confidence, but this executive summary was drafted on the basis that it may receive wider circulation.
- 2 Our terms of reference asked whether the “perceived problems in relationships and levels of cost that arise from the implementation of the regulatory regime derive from the “ethos” that is enshrined in the 2001 Regulation of Utilities Law in terms of the role and responsibilities of the OUR”.
- 3 In addressing this question, we were asked to review the main differences between the relevant legislation in Guernsey, Jersey and the UK and the relevant EU Directives; and comment on how the differences may influence the relationship between regulatory authorities and the utilities and the costs to both parties.
- 4 We were also asked to comment on the current proposal to revise the appeal process under the 2001 law; and to suggest what, if any, changes to the local legislation might be considered in order to achieve a more cost-effective regulatory regime. A further point we were asked to consider is whether change should be made to the law setting out the scope of potential States’ Directions so as to allow the States to change the OUR’s primary and secondary duties with regard to each sector as circumstances make appropriate, without recourse to primary legislation.
- 5 The review rests on desk research, and a series of meetings or telephone discussion on 12-14 October 2005. The material reviewed includes the regulatory legislation for telecommunications, post and electricity in Guernsey, the UK and Jersey and interviews were conducted with people from senior positions in:
  - (a) C&W Guernsey
  - (b) Newtel
  - (c) Wave Telecom
  - (d) Guernsey Post
  - (e) Guernsey Electricity
  - (f) The States legal services
  - (g) The OUR



## Conclusions and Recommendations

- 6 Utility regulation in Guernsey has experienced worse problems concerning relationships and costs than one would have hoped to see, even recognising that any new policy as radical as commercialisation and the introduction of an independent regulator will inevitably cause some disturbance and resentment as previous methods are replaced.
- 7 Although these problems doubtless sprang in part from personalities, the legislation probably did make matters worse than they need have been. There are therefore some changes to the legislation that should be considered, in order to improve the prospects for a more cost-effective regime.
- 8 Following our initial comparative research we highlight in our analysis a consideration of the following questions:
  - (a) The impact of the structure of regulatory bodies. In particular, we consider whether the move towards collegiate or committee-based structures and the arrangements setting the accountability, length of tenure and appointment for the bodies affect the ethos of regulatory bodies.
  - (b) The impact of the clarity and hierarchy of regulatory duties. We consider whether a differentiation between primary and secondary duties increases regulatory certainty. We also assess the impact of the clarity and precision of the statement of regulatory duties.
  - (c) The impact of the powers the respective governments have to give directions to the regulators.
  - (d) The impact and efficiency of the appeal process.

### The structure of the regulatory body

- 9 There are a number of potential advantages of having a collegiate or committee-based structure of regulation, in particular greater regulatory certainty. It is therefore possible that in having a single Director General, the OUR is in a situation where there is likely to be more conflict between the regulator and stakeholders than if the role of regulator were shared amongst more than one individual.
- 10 However, the advantages of having a single regulator should also be considered, and it is our view that for the population of Guernsey, the advantages of having a Director General such as lower costs, clear accountability, a close attachment of the decision maker to the office and the potential to act more quickly outweigh the advantages of having a collegiate regulatory system. We also consider that in a small economy such as Guernsey there are benefits in having a single regulator who is able to take advantage of the potential synergies available in regulating more than one industry.





- 11 We therefore do not recommend that the OUR should be turned into a Commission, as in Jersey or the UK.
- 12 We see no reason to suggest alteration of the term of appointment of the OUR Director General.

### **The clarity and hierarchy of regulatory duties**

- 13 The OUR's primary duties in the *2001 Regulation of Utilities Law* are common to the three sectors (post, telecommunications and electricity), with no hierarchy stating in what order the objectives should be pursued and no distinction between primary and secondary duties. The absence of a hierarchy of duties is unusual and the need to balance the duties is likely to make decision-making more difficult than necessary. Moreover, having a common set of legislation for each of the utilities makes it harder to justify pursuing different objectives in each sector. The lack of a clear understanding of regulatory duties is likely to impact on the regulated companies, increasing their regulatory risk, and may have contributed to some of the conflict between the OUR, utilities and consumers.
- 14 We recommend that the OUR's duties should be made more precise, and differentiate between each of the three regulated sectors. At present there are six objectives, with no guidance to the OUR on how it should assess one against the other where they conflict. By distinguishing between the sectors it would be possible to give clearer guidance and to distinguish between primary and secondary duties. (For example, in telecommunications the duty to promote competition and to try to ensure that the island can enjoy world-class service is probably paramount; whilst in post and electricity the priority is probably to ensure that the universal service is provided to a reasonable standard and at an efficient level of cost.) There should be separate sets of primary and secondary duties for each of the sectors.
- 15 The OUR should also be given an explicit duty, applicable to all three sectors, to have regard to the costs of compliance, and to adopt regulatory methods appropriate to the size of Guernsey.

### **States directions**

- 16 The regulatory legislation in the UK and Jersey that was reviewed in each case contained different provisions for the respective governments to make directions to the regulators. Our review of the legislation indicated that the scope for issuing States directions to the utility regulator in Guernsey is currently narrower than the equivalent international practice. It is also narrower than applies in Guernsey with regard to the financial sector. Changing primary legislation is time-consuming and complex to achieve. All these factors suggest that it would be appropriate to give the States somewhat wider powers to issue directions.
- 17 As decisions are made on the precise primary and secondary duties of the OUR with regard to each regulated industry, we recommend that the circumstances in which the States can issue directives should be reviewed. The revised legislation should include



provision for the States to change the priority that the OUR must afford to each of its duties.

- 18 However, care should be taken so as not to create a situation of too much regulatory uncertainty, or one in which it would be possible for the States to intervene in operational decisions by the regulator. The right balance might be achieved by allowing changes to the priority of the respective duties to be made only at specified times, for example every five or ten years. Another possibility would be to require directions to be made through secondary legislation, requiring the process of Ordinance rather than Resolution.
- 19 We recommend that consideration should be given to the best way of broadening the scope of potential States directions to the OUR, so that directions could specify the relative priority to be given to different statutory duties but not extend to detailed intervention into the OUR's operational decisions.

### **The appeal process**

- 20 The current appeals process involves appeals being made to the Utility Appeals Tribunal. There have been a number of criticisms of this process including that the first appeal was much too drawn out and expensive. If the Tribunal were replaced by a system in which appeals were heard by the Guernsey courts, this would mean that those dealing with appeals were familiar with circumstances in the island, and the judges could be provided with technical and economic advisors. However, the panel used in the current appeals system consists of people with relevant expertise in economic and industrial matters, expertise which is likely to prove valuable in future appeals, and we believe it to be important that the issues which are fundamental to many aspects of regulation (including the efficient levels of price, and the basis for competition) are decided on the basis of economic and industrial considerations. We therefore recommend that the existing appeals process should be reformed to ensure that it becomes more cost effective, rather than be changed to allow appeals to go directly to the Royal Courts. (If the ground for appeal were to be purely procedural, the Tribunal should not be used, but a judicial review sought from the courts).
- 21 In order to improve the cost-effectiveness of the appeals procedures, and to improve the process of regulation more generally, we recommend:
  - (a) The OUR's processes should be made more deliberate and measured, allowing longer for some stages (e.g. for considering whether to appeal after a decision has been made) and formalising recent practice in others (e.g. in always publishing for comment a draft decision after a consultation). Moves have already been made by the OUR in the last year in this direction.
  - (b) The time available to the Tribunal to decide on an appeal should be limited (probably to three months). This would prevent members allowing the proceedings to explore every detail of the issues; they should be able to focus on the statements put before them. If our other recommendations, for a more measured and certain process, including publication of draft decisions and a longer period after a decision and before

*Executive Summary*

an appeal must be lodged, are accepted, then there will already have been enough time for the OUR and the regulated business to fully understand and prepare their position papers. Three months would then be a proportionate amount of time for the Tribunal to reach its conclusion. This time limit would ensure no repetition of the excessively costly first appeal process.



# 1 SUPPLEMENTARY STUDY OF ETHOS OF REGULATORY LEGISLATION

## Introduction and Background

- 1.1 In the course of the study by the NAO, Review of Commercialisation, comments were received suggesting that some of the perceived problems in relationships and levels of cost that arise from the implementation of the regulatory regime derive from the “ethos” that is enshrined in the *2001 Regulation of Utilities Law* in terms of the role and the authority/responsibilities of the OUR.
- 1.2 The Commerce and Employment Department wished to explore this contention and therefore commissioned Europe Economics to carry out this supplementary study, the terms of reference for which were as follows:
  - (a) To review the 2001 Regulation of Utilities Law and the individual utilities laws as appropriate and compare them with corresponding legislation in the UK and Jersey.
  - (b) To provide a commentary on any principle differences between the legislation in the three jurisdictions, particularly in relation to the roles and authority/responsibilities of the regulatory authorities.
  - (c) To comment on how any differences may influence the relationship between the regulatory authorities and the utilities and the costs to both parties of working within the regime.
  - (d) To comment on the current proposal to revise the appeal process under the 2001 Law.
  - (e) To suggest what, if any, changes to the local legislation might be considered in order to achieve a more cost effective regulatory regime. This was to include a consideration of whether the States’ directions should be changed to allow States to change the primary and secondary duties of each sector as circumstances made appropriate, without recourse to primary legislation.
- 1.3 In carrying out this study we were asked to take into account the fact that the Guernsey Laws were drafted along EU lines.

## Scope of the Study

- 1.4 The study involved the following research and analysis:



- (a) A review of the utilities regulation in the electricity, postal and telecommunications sectors in Guernsey, Jersey and the UK. The main issues we examined are the differences in duties, powers, regulatory structures and appeals procedures of the respective regulators. We also reviewed other background material, including the discussion paper “Pan-channel Island Market for Telecommunications”.<sup>1[1]</sup>
- (b) A brief review of the European Union energy, telecommunications and postal frameworks to identify any comparisons with the wider European frameworks.
- (c) Interviews with senior representatives from the OUR and regulated businesses in Guernsey, to assess their views and experiences of the regulatory regime.

### Key areas of analysis

- 1.5 Following our initial comparative research (given in appendix 1) we highlight in our analysis a consideration of the following questions:
  - (a) The impact of the structure of regulatory bodies. In particular, we consider whether the move towards collegiate regulatory bodies and the arrangements setting the accountability, length of tenure and appointment for the bodies affect the ethos of regulatory bodies.
  - (b) The impact of the clarity and hierarchy of regulatory duties. In particular we consider whether a differentiation between primary and secondary duties increases regulatory certainty. We also assess the impact of the clarity and precision of the statement of regulatory duties.
  - (c) The impact of the powers the respective governments have to give directions to the different regulators.
  - (d) The impact of the appeal process.

### Report Structure

- 1.6 The report is structured as follows: Section 2 provides a comparative analysis of the regulatory frameworks. Section 3 is a review of the appeals process. Appendix 1 sets out the legal review of the regulatory frameworks for the relevant utilities in Guernsey, the UK and Jersey, and the European Union. Appendix 2 is a note of the meetings held.

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<sup>1[1]</sup> Cable & Wireless, 17 October 2005.



## 2 A COMPARATIVE ANALYSIS OF THE FRAMEWORKS

### Impact of the Structure of the Regulatory Body

#### Director/Decision-making board

- 2.1 The OUR has a single Director General vested with regulatory powers. This structure is different to that of the UK regulators reviewed and the Jersey regulator JCRA<sup>2[2]</sup> which each have decision-making boards (commissions or committees).
- 2.2 It can be argued that the type of structure where decision making is concentrated around one individual can create the following problems:
  - (a) The power of the law is concentrated in a single Director (or Director General) and there is therefore a greater risk that the discretion of the individual holding this position may impact on decision making. This may imply a risk of less predictable decision-making, which increases regulatory uncertainty.
  - (b) The concentration of decision-making may increase incentives for market players to lobby the Director or engage in regulatory gaming.
  - (c) There is a risk of discontinuity in decision-making when a new Director is appointed.
  - (d) There is a risk that the ethos of the regulatory body may be shaped too much by the personality and attitudes of the Director.
- 2.3 Since about 1998 the UK has adopted a standard structure for the main regulatory bodies, with regulatory authorities or commissions being established, in contrast to the earlier practice of vesting regulatory powers in a single regulator. This change was intended to depersonalise regulation and reduce the antagonistic nature of some regulatory debates.
- 2.4 However, differences in population size mean that the comparison of the regulatory structure in Guernsey with that in the UK is perhaps not an appropriate one. Guernsey has a population of 65,000 compared to the UK's 60 million. Jersey as a fellow channel island (population 90,000) would appear to be a more appropriate comparator.
- 2.5 Since its establishment in 2001 there have been a number of criticisms of the JCRA committee structure including its cost and lack of accountability. An internal audit report in 2004 to assess the controls in place to ensure the accountability of the grant paid by the States to the JCRA assessed the current controls as "poor".<sup>3[3]</sup> Another point to note when

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<sup>2[2]</sup> Jersey Competition Regulatory Authority.

<sup>3[3]</sup> Jersey Competition Regulatory Authority: Internal Audit Report, May 2004.



comparing the structure of the OUR is the JCRA's competition law enforcement responsibilities, which create for it a greater workload compared to that of the OUR.

- 2.6 It is important that the potential advantages of having a committee structure are balanced with the practicality of having a regulatory committee in Guernsey. As well as the obvious cost advantages of not having to recruit and maintain a committee of several members, the general advantages of having a single regulator include:
- (a) It is easier to have clear accountability for decisions taken.
  - (b) The person responsible for decisions is closely attached to the regulatory office. There is a danger that part-time members of a committee may become detached from the office of the regulator.
  - (c) In certain circumstances there might be a need for the regulator to act quickly and decisively, which should be easier if there is a single regulator.
  - (d) There are possible synergies available through having a single regulator who can apply experience from having dealt with a large number of cases or across different sectors.
- 2.7 Point d) is of particular relevance to smaller economies such as Guernsey which have a single regulatory body for more than one industry. As smaller economies have fewer participants, regulatory issues should be fewer and less complex so that it is more feasible to have a single regulator dealing with a larger proportion of cases or across more than one industry.
- 2.1 It is our view that for the population of Guernsey, the advantages of having a single Director General outweigh the advantages of having a decision making board.

### **Length of appointment**

- 2.2 The OUR Director General holds a term of office not exceeding five years.
- 2.3 In the UK the terms of office of the respective regulators are as follows:
- (a) Postcomm (post): 3-5 years, except for the Chief Executive who is on a rolling contract.
  - (b) GEMA (electricity): specified terms of at least 5 years.
  - (c) Ofcom (telecommunications): 3-5 years for non-executive members.
- 2.4 In Jersey, members of the JCRA board are appointed for a period not exceeding 5 years.
- 2.5 The longer a regulator has in power, the greater potential he has for carrying out larger policies with greater impact. The term of office of the OUR Director General is similar to that of the other regulators reviewed, however, unlike the other regulators who will have



some continuity due to staggered replacement of board members, in Guernsey there is a discontinuity when the term of the single regulator comes to an end.

- 2.6 We see no reason to suggest alteration of the term of appointment of the OUR Director General.

## **Impact of the Statement and Hierarchy of Statutory Duties**

### **Hierarchy of regulatory duties**

- 2.7 The OUR has a list of six objectives which it has a duty to promote (and where they conflict, to balance). This is unlike the UK and Jersey regulators reviewed each of which has a primary duty followed by a list of other duties which must be fulfilled subject to the primary duty.
- 2.8 It can be argued that there are advantages in a regulator having a hierarchy of duties, these include:
- (a) Greater regulatory certainty. The hierarchy of duties will provide clear signals for market players and legal clarity.
  - (b) Clarity of policy steer. The hierarchy of duties will assist the regulatory body in refining its own approach to regulation.
- 2.9 Having a clear principal objective does not necessarily mean that decisions on how to reach the objective will be non-contentious, but decisions will be easier than when there are multiple objectives to be balanced.
- 2.10 When there are multiple objectives, such as those of the OUR, and the objectives include value judgements such as “to lessen, where practicable, any adverse impact of utility activities on the environment” and “secure, so far as practicable, the provision of utility services that satisfy all reasonable demands for such services”, it is difficult for a regulator to make decisions without making a judgement on which objective is more important.
- 2.11 A clear understanding of the regulator’s duties is an essential element in companies’ ability to assess regulatory risk. The UK approach of distinguishing primary and subsidiary duties which has evolved over the years now appears to have settled into a reasonably stable framework. The present Guernsey approach leaves more uncertainty about how the balance between objectives might be struck and how this could change from case to case. Having a single regulator is likely to further increase this uncertainty as it appears to give greater discretion to the individual regulator.
- 2.12 It can also be argued that the situation in Guernsey where the OUR appears to possess a large amount of discretion in the pursuit of its objectives is likely to lead to less transparent decision making, contributing to the potential for greater conflict between the regulator, utilities and customers.





- 2.13 Having a common set of duties for each sector could lead to a situation where the utilities in one sector complain if they are treated differently to the utilities in another sector, for example in relation to competition. As well as making it easier to design legislation to address issues in a particular industry, separate sets of duties provide a clearer justification for different emphasis on different objectives in each sector.<sup>4[4]</sup>
- 2.14 It is our view that there should be separate sets of duties for each of the three regulated sectors, with each set of duties being divided into primary and secondary duties.

**Content and wording of duties**

- 2.15 Whilst it is difficult to compare precisely the duties of the OUR with those of the other regulators due to the different wording in the statutes, table 2.1 below identifies where regulators have the same or a similar duty to one of the Bailiwick objectives.

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<sup>4[4]</sup> Although in our interview with the Director General he said that in practice the OUR has applied the principles differently in the three industries.

**Table 2: Comparison of UK and Jersey Regulator's duties**

| <b>OUR objective</b>   | <b>Postcomm</b> | <b>GEMA</b> | <b>Ofcom</b> | <b>JCRA – post</b> | <b>JCRA – telecom</b> |
|--|-----------------|-------------|--------------|--------------------|-----------------------|
| to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services;   | Primary         | Primary     | Primary      | Secondary          | Secondary             |
| to secure, so far as practicable, the provision of utility services that satisfy all reasonable demands for such services within the Bailiwick, whether those services are supplied from, within or to the Bailiwick;                                    | Primary         | Primary     | Secondary    | Primary            | Primary               |
| to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick;  | Secondary       |             | Secondary    |                    |                       |
| to introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions; | Secondary       | Primary     | Primary      | Secondary          | Secondary             |
| to improve the quality and coverage of utility services and to facilitate the availability of new utility services within the Bailiwick; and   | Secondary       |             | Secondary    |                    |                       |
| to lessen, where practicable, any adverse impact of utility activities on the environment;   |                 | Secondary   |              |                    |                       |

2.16 From the legal review we can note that:

- (a) The duties that the regulators all have in common are (1) the introduction, maintenance and promotion of competition, (2) to protect the interests of consumers, and (3) to secure the provision of a utility service that satisfies all reasonable demands for the service.
- (b) Duties that several of the other regulators have but that the Bailiwick does not include: (1) the need to allow licence holders to finance their activities (although this is implicit in securing the provision of services) , (2) the need to take into account the needs of vulnerable groups in society (although this may be read into the duty to protect the interests of consumers) and (3) the need to promote efficiency and economy (although this too could be read in to the duty to protect the interests of consumers).



- 2.17 The UK telecommunications legislation includes a duty for Ofcom in performing its principal duty to have regard to “the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”. These duties are known as the principles of better regulation. We were asked to comment on if there was a case for including these in OUR law. As these principles are really just emphasising the regulator’s duty to apply what is generally regarded as good regulatory practice, we feel that they would be sufficiently included in a duty that obliged the OUR to regulate in a way that is proportionate to Guernsey.
- 2.18 It can be argued that the more general wording of the duties in Guernsey set around welfare and competitiveness aspirations creates opportunities for wider interpretation and therefore generates greater legal and regulatory uncertainty. This may also act to reinforce the greater discretion available to the Director General.
- 2.19 As noted earlier, the greater the apparent discretion available to the Director the more regulatory conflict there is likely to be. Although it would be beyond the scope of the present report to recommend specific changes to the wording of the duties, perceived discretion could be reduced if there were separate, more precisely worded sets of duties for OUR with regard to each sector, and we recommend that revised duties be prepared on these lines.

## Directions

- 2.20 Part II section 3 of the *Regulation of Utilities (Bailiwick of Guernsey) Law, 2001* sets out the four circumstances in which the government (the States) can issue directions:

3. (1) The States may, on the recommendation of the Board of Industry made after consultation with the Director General, by Resolution give to the Director General directions (referred to in this Law as "States' Directions") specifying -

- (a) the identity of the person to whom the first licence containing a universal service obligation is to be awarded under a Sector Law;
- (b) any special or exclusive rights to be awarded to any licensee, and the term of such rights, which in the case of telecommunications networks or telecommunications services shall not exceed a period of 5 years;
- (c) the scope of any universal service obligation; and
- (d) any requirements to be imposed on licensees in the light of any international obligations to which the Bailiwick may from time to time be subject;

and, in exercising his functions and powers, the Director General shall comply with States' Directions except where to do so would be in contravention of the duty imposed on him by section 2 or any of his functions and powers.

- 2.21 The ways in which the respective governments can direct the reviewed regulators is summarised as follows.



## **Jersey**

- 2.22 The JCRA is accountable to the Economic Development Committee (EDC), a States of Jersey committee.

### *Telecommunications*

- 2.23 The EDC may, if it considers it desirable in the public interest to do so, give directions to the Authority in respect of the principles, procedures or policies to be followed by the Authority in relation to the implementation of any social or environmental policies in respect of telecommunications.
- 2.24 The EDC may also give guidance (as distinct from directions) to the Authority in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under the telecommunications law.

### *Post*

- 2.25 The EDC may, if it considers it desirable in the public interest to do so, give directions to the Authority in respect of the principles, procedures or policies to be followed by the Authority in relation to a) the implementation of any social or environmental policies in respect of postal services or b) philatelic services.
- 2.26 The EDC may also give guidance to the Authority in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under the postal services law.

## **UK**

### *Post*

- 2.27 The Secretary of State can make directions regarding licence conditions, as well as which modifications should be referred to the Competition Commission.
- 2.28 In relation to Postcomm's duty to keep the provision of postal services under review, the Secretary of State may give directions as to what matters Postcomm is to have regard to in performing this duty.
- 2.29 In relation to the exercise of its functions, the Secretary of State can give directions to Postcomm if it considers it necessary or expedient to do so a) in the interests of national security, or in the interests of encouraging or maintaining the UK's relations with another country or territory, or b) to discharge or facilitate the discharge of an international obligation, to attain or facilitate the attainment of any object considered necessary in view of the government being a member of an international organisation or party to an international agreement, or to enable the government to become a member of such an organisation or party to such an agreement.



### *Electricity*

- 2.30 The Secretary of State can direct the Director<sup>5[5]</sup> on matters which he should have regard in determining the order of priority in which matters should be brought under review in the performance of the Director's duty to keep under review activities relating to the supply of electricity. (This direction is similar to that which the Secretary of State can give to Postcomm regarding its duty to keep postal services under review.)
- 2.31 The Secretary of State can also issue guidance (not binding) on social and environmental policies which the Authority must "have regard" to.

### *Telecommunications*

- 2.32 The Secretary of State can give directions to Ofcom to carry out its functions in accordance with directions for the purposes of a) national security, b) the interests of relations with a government or country outside the UK, c) securing compliance with international obligations of the UK, or d) in the interest of the safety of the public or public health. (These directions are similar to the second set of directions which the Secretary of State can give to Postcomm.)

### *Guernsey financial services regulation*

- 2.33 The provision for directions to be issued in Guernsey's financial services regulation is broader than that of its utilities regulation.
- 2.34 The *Financial Services Commission (Bailiwick of Guernsey) Law, 1987* as amended allows the Policy Council to give to the Commission:
- a) written guidance of a general character; and
  - b) written directions of a general character, concerning the policies to be followed by the Commission in relation to the development and supervision of finance business in the Bailiwick and the manner in which any function of the Commission is to be carried out.

### *Comment*

- 2.35 The effect of the scope of directions is similar to that of duties in that the broader the scope for the government to issue directions, the greater regulatory uncertainty will be.
- 2.36 If governments have wide-ranging powers there is the risk that this may create incentives for stakeholders to lobby for political intervention in regulatory decisions. This could

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<sup>5[5]</sup> These directions come from the Electricity Act 1989, which was drafted in terms of there being a Director General before the Director's roles were taken over by the Gas and Electricity Markets Authority.



create a situation of increased politicization of regulatory debate and greater pressure on regulators.

- 2.37 Having any sort of power for political direction detracts to some extent from regulatory independence and there is a danger that with too large a scope for directions the regulator may be seen as (and in fact become) an extension of the political process. On the other hand, circumstances can change, and there is a limit to the amount of independence from government that is appropriate for the regulator of key sectors of the economy.
- 2.38 Against this general background, we were asked to comment on whether changes should be made to the law governing States directions to allow the States to change the primary and secondary duties of each sector as circumstances make appropriate, without recourse to primary legislation.
- 2.39 None of the regulatory legislation relating to utilities that we reviewed contains explicit provisions for a government to issue directions that change a regulator's primary or secondary duties. Our understanding would be that for changes to be made to the regulators' duties the respective governments would have to enact primary legislation, and that this would also apply to Guernsey.
- 2.40 However, the ability of other governments to issue directions for the reviewed utility regulators appear to be significantly broader than those of Guernsey's. For example, the government in Guernsey does not have the power to issue directions in relation to the implementation of social or environmental policies, a provision which is included in the JCRA's legislation; it cannot make directions regarding licence conditions, a provision included in the Postcomm regulation; and it does not have the power to issue directions in the interest of the safety of the public or public health, a provision included in the Ofcom regulation. The ability of the Guernsey Policy Council to give directions to the Commission with regard to the regulation of financial services is broad.
- 2.41 As well as the provisions for directions being narrower than in the other legislation reviewed, the Guernsey legislation appears to be out of date with the first circumstance in which the States can give direction being specific to the time of privatisation.
- 2.42 Due to the constitutional nature of Guernsey, with its reliance on the UK for the enactment of primary legislation, it is of particular importance that its legislation does not place an excessively onerous requirement to resort to the enactment of primary legislation.
- 2.43 While there is a definite need for a regulator's independence to be recognised for it to be effective, we feel that, in comparison with the other regulators, the current legislation in Guernsey is overly restrictive in terms of its provisions for directions.
- 2.44 We also note the strong precedent in the Guernsey financial sector, the regulation of which allows for directions of a general character concerning the policies to be followed by the Commission (see above for full wording). So far as we are aware, this provision has worked without problem.



- 2.45 We suggest that the States directions should be changed to include provision for the States to require changes to the priority that the OUR should give to each of its objectives. We recommend that this alteration should be made alongside our suggestion that each sector should have its own set of duties.
- 2.46 However, to prevent a situation of too much regulatory instability, provision could be made for the priority of duties to be changed only at certain times, for example, every five or ten years. It will also be important to ensure that the scope for States directions does not become too wide, for example by extending into the operational decisions of the OUR.
- 2.47 Consideration would need to be given as to at what level any changes in regulation should be enacted. We see advantages in the directions setting the OUR's priorities for objectives being made at the level of secondary legislation.

## **European Frameworks**

- 2.48 Whilst Guernsey is not bound by the European Union regulatory framework in the way that the UK is, it has sought to develop its regulation in a manner consistent with EU regulation.
- 2.49 In theory, the European regulatory framework is consistent across the utilities discussed as each framework represents an interpretation and harmonisation of the principles of the European Treaty, in particular Articles 82 and 86.
- 2.50 As European law is generally held to be superior to UK law (in the sense that if there is a conflict the EU law prevails), the UK regulatory approach is only legal to the extent to which it conforms with the broader EU framework. It would therefore not be sensible to compare UK and EU frameworks as one overrides the other.
- 2.51 A more useful comparison is perhaps that of regulatory approach, and here it can be argued that the interpretation of the EU framework made by UK regulators could create a different regulatory ethos than that in other EU Member States. In particular this could derive from greater emphasis placed in UK regulatory practice on the promotion of competition and the promotion of efficiency.
- 2.52 Guernsey does not include the explicit promotion of cost efficiency (production at lowest possible cost) in the statutory duties of the OUR and this may act to defuse a number of potential regulatory conflicts.
- 2.53 The defined objectives of the European Energy Frameworks include “f) to ensure that there are adequate incentives to invest, reduce costs, improve quality and innovate and to prevent serious disruptions of service or supply.” This objective can allow for the existence of “natural monopolies” where competition might work against consumers by inhibiting investment in a product with a limited market.
- 2.54 We found nothing in the principles of the EU legislation that would be inconsistent with the recommendations developed in this report.



### 3 APPEALS

- 3.1 The current appeals process in Guernsey allows for persons aggrieved by a decision of the OUR to appeal to the Utility Appeals Tribunal (UAT), which is made up of three members appointed from the Utility Appeals Panel (UAP).

#### *The Department for Commerce and Employment review*

- 3.2 Our terms of reference ask us to review the recommendations made in January 2005 by the Department for Commerce and Employment with regard to the appeals process.
- 3.3 Since its establishment the UAT has determined the Cable & Wireless Guernsey appeal. The DCE review suggested that:
- (a) The appeal focussed mainly on points of law, rather than the technical matters which the tribunal members had expertise in. These issues could have more sensibly have been dealt with by a lawyer.
  - (b) The different appeal levels, e.g. allowing referrals from the UAT to Royals Courts, may waste time and money.
  - (c) The UAT spent too much time dealing with the issues of the appeal.
  - (d) The total cost of the appeal was too high.
- 3.4 The DCE report considers two options: (1) a revised UAT and (2) the Royal Court.
- 3.5 The main conclusion reached by the Department in January 2005 was that with the objective of making the appeals process more efficient and cost effective the legislation should be amended to provide for all appeals to be dealt with by the Royal Court.
- 3.6 Since that time, another appeal was planned, by Guernsey Post. This was averted and successful recourse made instead to professional mediation services.
- 3.7 In our interviews with stakeholders, criticisms of the appeal process included that the grounds for appeal were unclear and that the time limit for appealing against OUR decisions was too short.

#### *Comparisons with other jurisdictions*

- 3.8 The appeals processes of the reviewed regulators are summarised in Table 3.1.



**Table 3.1: Comparison of Regulators Appeals processes**

|                 | <b>Telecommunications</b>   | <b>Post</b>  | <b>Electricity</b>   |
|-----------------|---|--|--|
| <b>Guernsey</b> | OUR<br>Tribunal<br>-> Royal Court (questions of law)<br>-> Court of Appeal  | OUR<br>Tribunal<br>-> Royal Court (questions of law) -><br>Court of Appeal | OUR<br>Tribunal<br>-> Royal Court (questions of law) -><br>Court of Appeal               |
| <b>Jersey</b>   | JCRA<br>-> Royal Court  | JCRA<br>-> Royal Court   |  |
| <b>UK</b>       | Ofcom<br>Tribunal<br>-> Competition Commission (price<br>control descriptions)<br>-> Court of Appeal or Court of<br>Session (points of law) | Postcomm<br>Competition<br>Commission                                      | GEMA<br>CC (refs by Director)<br>CC (certain codes of<br>decision specified by<br>order) |

*UK appeals*

- 3.9 The UK does not provide a very clear model. The reference of licence modifications to the Competition Commission has been effective but is expensive. It has mostly been used to challenge price caps where there is a substantial impact on company profitability at stake. But even so, the degree of disagreement between company and regulator has to be very great before this route is used. It is also an unusual form of appeal in that, technically, it is initiated by the regulator not the company. From time to time there has been discussion of developing a less onerous appeal route, but this has never got very far.
- 3.10 The new procedure for appeals against energy code decisions is a lighter touch approach designed to be limited and quick.
- 3.11 There is an issue to be explored about what is covered by an appeal. Judicial Review is principally about challenging the process followed by the regulator. Competition Commission references are about the effect of regulatory proposals on the public interest. The new energy appeals are about interpretation of the facts. So far, apart from the Judicial Review cases, legal issues have not been a major factor in UK cases (although this has not prevented lawyers from becoming heavily involved). In contrast legal debate seems to have been a major concern in the first appeal in Guernsey, for reasons that are not altogether clear.
- 3.12 There is also an issue about who should have right of appeal. In the UK it is the regulated/licensed company. But there have been complaints from consumer groups that they should also be able to appeal regulatory decisions which impact on customers.



### *Appeals*

- 3.13 Utility issues tend to be fairly specialised and this has led to the use of specialised panels and tribunals. The Competition Commission has a separate panel of members on which it can draw for utility cases.
- 3.14 On balance, we see greater advantage in improving the operations of the Guernsey UAT than in substituting it by the courts. Such improvements would be facilitated by improvements in the OUR processes, some of which are already in train. Thus it should become standard practice for OUR decisions to be published in draft; so that the assessments it has made can be challenged if necessary before an appeal needs to be considered. There should then be a longer time after decisions have been finalised before the undertakings affected need to give notice of appeal; and once formal appeal has been made, the UAT should be given only a limited period in which to complete its work. It would thus be required largely to build on the work already done, by OUR and by the regulated undertakings, which should by that stage have been able to identify the main issues for consideration.



## APPENDIX 1: LEGAL REVIEW

### Guernsey

#### Electricity, Post and Telecommunications

A1.1 The Office of Utility Regulation (OUR) is the regulatory agency for the three utility sectors of telecommunications, post and electricity in Guernsey.

##### *Regulatory structure*

A1.2 The OUR was established in 2001 under the *Regulation of Utilities (Bailiwick of Guernsey) Law, 2001* and is headed by a States of Guernsey appointed Director General. The Director General has a core team of full time staff.

A1.3 The Director General holds office for a term not exceeding five years, and a person may be appointed for more than one term.

##### *Key duties*

A1.4 Part II section 2 of *The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001* sets out the following objectives which the States and Director General each have a duty to promote (and when they conflict to balance) when exercising their respective functions and powers:

(a) to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services;

(b) to secure, so far as practicable, the provision of utility services that satisfy all reasonable demands for such services within the Bailiwick, whether those services are supplied from, within or to the Bailiwick;

(c) to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick;

(d) to introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions;

(e) to improve the quality and coverage of utility services and to facilitate the availability of new utility services within the Bailiwick; and

(f) to lessen, where practicable, any adverse impact of utility activities on the environment;

and, in performing the duty imposed by this section, the States and the Director General shall have equal regard to the interests of the residents of all islands of the Bailiwick.



### *Key powers and functions*

#### A1.5 The functions of the Director General shall be:

- (1)(a) to advise the States generally in relation to utility activities through the office of the Board of Industry;
  - (b) to grant and renew, or to refuse to grant and renew, licences in a manner consistent with States' Directions and the provisions of this Law and any relevant Sector Law;
  - (c) to monitor, enforce, modify, suspend, revoke or consent to the surrender of licences in a manner consistent with States' Directions and the provisions of this Law and any relevant Sector Law;
  - (d) subject to subsection (3) [the States directions], to determine and to prescribe the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and the interest and penalties payable in the event of default in the due payment of fees or levies;
  - (e) to receive and to conduct inquiries and investigations (which may include inspections of any part of a utility network) and to hear complaints by any person regarding utility activities; and
  - (f) to exercise such other functions as may be assigned or transferred to him by or under any Sector Law and any other enactment.
- (2)The Director General shall exercise his functions and powers with fairness, impartiality and independence and in a manner that is timely, transparent, objective and (subject to the exception set out in section 3(1)) consistent with States' Directions and the provisions of this Law and any relevant Sector Law.<sup>6[6]</sup>

#### A1.6 The Director General may, having regard to sections 2, 3 and 4 of the Law, do anything he considers necessary or expedient for the purpose of exercising his functions and powers, and without prejudice to the generality of the foregoing have the power:

- (a) to determine the conditions to be included in a licence;
- (b) to require the production of such documents, accounts or information from applicants for licences, licensees and other interested persons in relation to utility activities within such time periods or at such intervals as the Director General may require;
- (c) subject to any provision to the contrary in this Law or any Sector Law, to publish information, reports and other documents;

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<sup>6[6]</sup> The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 Part III(4). Section 3(1) refers to the States Directions.



(d) subject to the provisions of States' Directions, to determine which universal service obligations may be imposed on a licensee and on what conditions, and how and by whom such obligations should be funded;

(e) to give directions to a licensee concerning utility activities in cases where he is authorised to do so by or under this Law, any Sector Law or any condition of a licence;

(f) where provided for in any Sector Law, to determine when and in respect of which utility activities a person may be made exempt from an obligation to obtain a licence;

(g) to impose any direction, requirement or other sanction under this Law or any Sector Law;

(h) to appoint any person or body to advise him in relation to the exercise of any of his functions and powers; and

(i) to institute proceedings for injunctions under section 6.

(2) The Director General may, having regard to the provisions of sections 2, 3 and 4, for the purposes of exercising his functions and powers -

(a) acquire, lease, encumber, dispose of, exchange, invest or otherwise allocate any movable or immovable property and any interest in it and raise capital from banks and other financial institutions whether in the Bailiwick or elsewhere by way of mortgage, overdraft or otherwise, with or without security; and

(b) enter into any contract, including any contract of insurance, or make any arrangement with any person.

(3) The Director General may sue and be sued as Director General.<sup>7[7]</sup>

A1.7 Under section 6 the Director General may apply to the Royal Court for an injunction against a person if there is a reasonable likelihood that they will contravene: a provision of the Sector Law requiring people to have licences for utility activity; (ii) a condition of a licence; or (iii) a direction or requirement of the Director General under a Sector Law; or if a person has been guilty of such a contravention and there is likelihood the contravention will continue or be repeated.

### *Directions*

A1.8 Part II section 3 of the *Regulation of Utilities (Bailiwick of Guernsey) Law, 2001* sets out the four circumstances in which the government (the States) can issue directions:

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<sup>7[7]</sup> The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 Part III(5).



3. (1) The States may, on the recommendation of the Board of Industry made after consultation with the Director General, by Resolution give to the Director General directions (referred to in this Law as "States' Directions") specifying -

(a) the identity of the person to whom the first licence containing a universal service obligation is to be awarded under a Sector Law;

(b) any special or exclusive rights to be awarded to any licensee, and the term of such rights, which in the case of telecommunications networks or telecommunications services shall not exceed a period of 5 years;

(c) the scope of any universal service obligation; and

(d) any requirements to be imposed on licensees in the light of any international obligations to which the Bailiwick may from time to time be subject;

and, in exercising his functions and powers, the Director General shall comply with States' Directions except where to do so would be in contravention of the duty imposed on him by section 2 or any of his functions and powers.

### **Telecommunications**

A1.9 Under the Regulation of Telecommunications (Bailiwick of Guernsey) Law, 2001 the OUR is responsible for the licensing of telecommunications operators, and directing licensees in relation to interconnection and access. The Director General may also, by direction, establish technical standards relating to telecommunications networks.

### **Post**

A1.10 Under the Post Office (Bailiwick of Guernsey) Law, 2001 the OUR is responsible for licensing postal activities in Guernsey. The Director General also has the power to designate postal services as reserved postal services.

### **Electricity**

A1.11 Under the Electricity (Guernsey) Law, 2001 the OUR is responsible for licensing operators. The regulated activities include generation, conveyance and supply of electricity. The Director General may also make regulations relating to supply and safety.

### **Appeals**

A1.12 The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, Part V sections 14-17 set out the appeals process. A Utility Appeals Panel (UAP) would be set up, from which a Utility Appeals Tribunal (UAT), consisting of three members would be appointed. Appeals from decisions of the OUR can be made to the Utility Appeals Tribunal (UAT) by persons aggrieved by a decision of the Director General made in the exercise of his functions and powers. This provision includes allowing "interested parties" such as consumer groups to make submissions to the Tribunal.



A1.13 The *Regulation of Utilities (Utility Appeals Tribunal) Ordinance 2001* and *The Utility Appeals (Rules of Procedure) Order 2002* set out the rules relating to the Utility Appeals Tribunal.

A1.14 A person who feels aggrieved by a decision of the UAT on a question of law can, subject to sections 16(1)(2-3) of the *Regulation of Utilities (Bailiwick of Guernsey) Law, 2001*, appeal to the Royal Court. The Tribunal may itself also refer legal issues to the Royal Court for determination, either before or during the hearing of an appeal. Appeals from decisions of the Royal Court made on appeals under section 16 would with leave of the Court of Appeal lie to the Court of Appeal.

## UK

A1.15 Since 1998 a standard structure has been adopted for the main regulatory bodies. Regulatory authorities or commissions have been established made up of a Chairperson and a number of members appointed by the Secretary of State. This is in contrast to the earlier practice of vesting regulatory powers in a single regulator. This change was intended to depersonalise regulation and reduce the antagonistic nature of some regulatory debates.

A1.16 Fair Deal for Consumers, the Government Green Paper in 1998 which led to the reorganisation of regulators, identified some of the problems of having an individual regulator. These included: the risk of unpredictable and unaccountable decision making arising from the concentration of too much discretion on an individual, and the risk of discontinuity in decision making when new appointments were made.

## Post

A1.17 The UK postal regulator is the Postal Services Commission known as Postcomm set up under the *Postal Services Act 2000*.

### *Regulatory structure*

A1.18 Postcomm's policies are steered by a board of seven independent commissioners. The Commission consists of a Chairman, who works for 3 days a week, 5 non-executive members who each work about 40 days a year, and a full-time Chief Executive. All except the Chief Executive are appointed by the Secretary of State of the Department of Trade and Industry (DTI). The Chief Executive (CE) is appointed by the other six Commissioners with the approval of the Secretary of State of the DTI.

A1.19 The Chairman and other non-executive Commissioners are on fixed term contracts of 3-5 years, whereas the CE, who is on loan from DTI, is on a rolling contract. The appointment dates of the Commissioners are staggered to assure some continuity.

A1.20 All seven Commissioners are jointly responsible for the decisions of the Commission.



### *Key duties*

- A1.21 Postcomm's primary duty is to seek to ensure customers continue to be able to enjoy a "universal postal service". The universal postal service consists of the delivery and collection at least once every working day of mail (not exceeding 20 kilograms in weight) and the provision of a registered post, all at affordable prices that are uniform throughout the UK.
- A1.22 Subject to this, Postcomm is also charged with furthering the interests of users of postal services by promoting effective competition between postal operators. In doing so, Postcomm must have regard to the interests of those who are disabled or chronically sick, are of pensionable age, are on low incomes and who reside in rural areas.
- A1.23 Subject to both the duties above, Postcomm has a further duty to exercise its functions in a manner which it considers is best calculated to promote efficiency and economy on the part of postal operators.
- A1.24 Finally, in performing all its duties, Postcomm shall have regard to the need to ensure that licence holders are able to finance the activities authorised or required by their licences.

### *Key powers*

- A1.25 Postcomm's primary power is to license postal operators within the licensed area which is for postal items weighing less than 350g and costing less than £1. It can also propose amendments to licences.
- A1.26 Postcomm has to provide advice to the Secretary of State at the DTI on the extent of the reserved area for postal services. (i.e. how far there should be a restriction to competition in the postal market).
- A1.27 Postcomm is charged with providing advice on the future of the post office network.
- A1.28 Postcomm regulates Royal Mail's prices through licence changes and can adjudicate on access to infrastructure prices.

### *Directions*

- A1.29 There are a number of circumstances set out in the *Postal Services Act 2000* under which the Secretary of State can issue directions to Postcomm.
- A1.30 The Secretary of State has the power to make several directions regarding licence conditions set out in Part II of the Act. Regarding the modification of licences, under section 14(5) the Secretary of State may, within a specified period, make directions to the Commission regarding which modifications should be referred to the Competition Commission.
- A1.31 Concerning the review of information, section 44(2) of the Act states that the Secretary of State "may give directions indicating considerations to which the Commission is to have





particular regard in deciding the order of priority in which matters are to be reviewed in performing its duty” to keep under review the provision of postal services.

A1.32 Under section 101 of the Act the Secretary of State may give such directions as he considers appropriate to the Commission in relation to the exercise of its functions if he considers it necessary or expedient to do so-

(a) in the interests of national security or in the interests of encouraging or maintaining the United Kingdom's relations with another country or territory,

(b) in order-

(i) to discharge, or facilitate the discharge of, an international obligation,

(ii) to attain, or facilitate the attainment of, any other object which the Secretary of State considers it necessary or expedient to attain in view of Her Majesty's Government in the United Kingdom being a member of an international organisation or a party to an international agreement, or

(iii) to enable Her Majesty's Government in the United Kingdom to become a member of such an organisation or a party to such an agreement.

### *Appeals*

A1.33 Postcomm has concurrent authority with the Office of Fair Trading to apply and enforce certain competition rules.

A1.34 If no agreement can be reached between Royal Mail and Postcomm on major regulatory decisions such as price control then they can be referred to the Competition Commission.

A1.35 The Competition Commission is the last resort for Postcomm decisions. However, appeals under the Competition Act can go to the Competition Appeals Tribunal and process issues can go to Judicial Review.

### **Electricity**

A1.36 Responsibility for UK energy regulation lies with the Gas and Electricity Markets Authority (GEMA) set up under the *Utilities Act 2000*. GEMA took over roles previously exercised by the DGGS and DGES. GEMA operates through the Office of gas and electricity markets, known as Ofgem, with responsibility for regulating gas and electricity.

### *Regulatory structure*

A1.37 GEMA consists of a panel of individuals appointed by the Secretary of State for specified terms of not less than five years. The panel consists of a Chairman and no fewer than two other directors and contains both non-executive and executive members. Non-executive members bring a range of experience and expertise, from work in industry and social policy. Executive members consist of Ofgem's Chief Executive and Managing Directors.



## Appendix 1: Legal Review

A1.38 Ofgem is responsible for day-to-day operations and implementing policy, while the Gas and Electricity Markets Authority is responsible for the statutory responsibilities under the Gas, Electricity and Utilities Acts and developing strategy and policy.

### Key duties

A1.39 Section 13 of the *Utilities Act 2000* states “The principal objective of the Secretary of State and the Gas and Electricity Markets Authority ... in carrying out their respective functions under this Part is to protect the interests of consumers in relation to electricity conveyed by distribution systems, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.”

A1.40 In carrying out the functions to further the principal objective, the Secretary of State and the Authority shall have regard to the need to secure all reasonable demands for electricity are met and the need to secure that licence holders are able to finance the activities which are subject to their obligations. They must also have regard to the interests of the disabled or chronically sick, those of pensionable age, those on low incomes and those who reside in rural areas.

A1.41 The Secretary of State and Authority shall carry out their respective functions to promote efficiency and economy on the part of persons authorised to distribute or supply electricity conveyed by distribution systems. They shall protect the public from dangers arising from the generation, transmission, distribution or supply of electricity and secure a diverse and viable long-term energy supply and have regard to the effect on the environment.

A1.42 Additional duties imposed by the *Sustainable Energy Act 2003* and *Energy Act 2004* are to contribute to the achievement of sustainable development, and to have regard to best regulatory practice with particular reference to activities being transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

### Key powers

A1.43 GEMA's main power is to grant licenses to electricity operators, and modify, refuse and revoke licenses. It determines license conditions and sets standards of performance for electricity suppliers and distributors. Under the *Electricity Act 1989* GEMA has the power to determine certain disputes between customer and licence holders.

A1.44 GEMA has concurrent authority with the Office of Fair Trading to apply and enforce certain competition rules.

### Directions

A1.45 Section 47 of the *Electricity Act 1989* sets out the circumstances in which the Secretary of State can direct the Director:

47.—(1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so—



(a) to keep under review the carrying on both in Great Britain and elsewhere of activities to which this subsection applies; and

(b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;

and this subsection applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat.

(2) The Secretary of State may give general directions indicating—

(a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1)(a) or (b) above; and

(b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

A1.46 In addition, section 14 of the *Utilities Act 2000* allows the Secretary of State to issue guidance on social and environmental policies. The Authority has to “have regard” to any such guidance.

### *Appeals*

A1.47 Section 11 of the *Electricity Act 1989* allows for the modification of licences if the holder consents to the modification. Before making modifications the Director shall give notice and shall consider any representations or objections which are made and not withdrawn.

A1.48 The Director may make a reference to the Competition Commission requiring the Commission to investigate and report on whether any matters specified in the reference relating to the generation, transmission or supply of electricity in pursuance of a licence, operate or might be expected to operate against the public interest. And if this is the case, whether the effects adverse to the public interest could be remedied or prevented by modifications of the conditions of the licence.

A1.49 In addition, the *Energy Act 2004* section 173 allows for appeals to be made to the Competition Commission by persons, or bodies representing persons, whose interests are materially affected against certain decisions made by GEMA on Gas and Electricity Industry Codes. The permission of the Competition Commission is required for bringing an appeal under the section. The Act sets out the grounds on which permission for an appeal may be granted, and gives the Secretary of State powers to designate by order what codes come within the scope of the appeals procedure and what sort of decisions are excluded.

A1.50 The *Electricity and Gas Appeals (Designation and Exclusion) Order 2005* designates the codes to which the right of appeal will apply. Some decisions taken by GEMA in respect



of the designated codes are excluded by the order. Article 12 of the Order also allows GEMA to exclude a decision from the right of appeal where the delay caused by an appeal would be likely to have a material adverse effect on the availability of gas or electricity.

## Telecommunications

A1.51 The regulator for the UK communications industries is Ofcom, with responsibilities across television, radio, telecommunications and wireless communications services.

### *Regulatory structure*

A1.52 Ofcom has a board with a non-executive Chairman and both executive and non-executive members. The executive runs the organisation and answers to the Board. The Board consists of six non-executive members including the Chairman, and three executive members including the Chief Executive.

A1.53 The Chairman and non-executive members of the Board are appointed jointly by the Secretaries of State for Trade and Industry, and for Culture, Media and Sport for a period of between three and five years. The Chief Executive of Ofcom is appointed by the Chairman and the independent non-executive members, the other executive members are appointed by the Board of Ofcom on the recommendation of the Chief Executive.

## Key duties

A1.54 Under the *Communications Act 2003*, section 3, Ofcom's principal duty in carrying out its functions is to, "(a) to further the interests of citizens in relation to communications matters; and (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition".<sup>8[8]</sup>

(3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to-

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed<sup>9[9]</sup>; and

(b) any other principles appearing to OFCOM to represent the best regulatory practice.

(4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances-

(a) the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom;

<sup>8[8]</sup> Communications Act 2003 section 3(1).

<sup>9[9]</sup> These principles are known as the five Principles of Good Regulation.



- (b) the desirability of promoting competition in relevant markets;
- (c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- (d) the desirability of encouraging investment and innovation in relevant markets;
- (e) the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- (f) the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
- (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
- (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
- (i) the needs of persons with disabilities, of the elderly and of those on low incomes;
- (j) the desirability of preventing crime and disorder;
- (k) the opinions of consumers in relevant markets and of members of the public generally;
- (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas;
- (m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.<sup>10[10]</sup>

### Key powers

A1.55 The general powers of Ofcom are set out in part 1 section 1 of the *Communications Act 2003*. Ofcom “may do anything which appears to them to be incidental or conducive to carrying out of their functions, including borrow money”<sup>11[11]</sup>. However, Ofcom are not to borrow money except when they have the consent of the Secretary of State. Ofcom’s powers include, in particular:

- (a) power to undertake research and development work in connection with any matter in relation to which they have functions;

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<sup>10[10]</sup> Communications Act 2003 section 3(2).

<sup>11[11]</sup> Communications Act 2003 section 1(3).



- (b) power to promote the carrying out of such research and development by others, or otherwise to arrange for it to be carried out by others;
- (c) power to institute and carry on criminal proceedings in England and Wales or Northern Ireland for an offence relating to a matter in relation to which they have functions; and
- (d) power, in such cases and in such circumstances as they may think fit, to make payments (where no legal liability arises) to persons adversely affected by the carrying out by OFCOM of any of their functions.<sup>12[12]</sup>

A1.56 In addition, Ofcom has the power under section 371 of the *Communications Act 2003*, to enforce the *Competition Act 1998* against parties to anticompetitive agreements (including decisions or concerted practices) or engaged in conduct abusing a dominant position, in relation to "activities connected with communications matters". This power is to be exercised concurrently with the OFT. Ofcom also has powers under the *Enterprise Act 2002* to refer market sectors to the Competition Commission for investigation.

#### *Directions*

A1.57 Section 5 of the *Communications Act 2003* states that it is the duty of Ofcom to carry out its functions specified in part 2 of the Act and their functions relating to the management of the radio spectrum, in accordance with general or specific directions as may be given to them by the Secretary of State. Section 5(3) sets out the purposes for which the Secretary of State may give directions in relation to these functions:

- (3) The Secretary of State's power to give directions under this section shall be confined to a power to give directions for one or more of the following purposes-
  - (a) in the interests of national security;
  - (b) in the interests of relations with the government of a country or territory outside the United Kingdom;
  - (c) for the purpose of securing compliance with international obligations of the United Kingdom;
  - (d) in the interests of the safety of the public or of public health.
- 4) The Secretary of State is not entitled by virtue of any provision of this section to direct OFCOM to suspend or restrict-
  - (a) a person's entitlement to provide an electronic communications network or electronic communications service; or
  - (b) a person's entitlement to make available associated facilities.

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<sup>12[12]</sup> Communications Act 2003 section 1(5).



### *Appeals*

- A1.58 Appeals against decisions by Ofcom can be made to a Tribunal. Section 192 of the *Communications Act 2003* outlines the process by which a person may appeal against a decision to which the section applies. The appellant can appeal against decisions they consider to be wrong based on an error of fact, an error of law or incorrect exercise of discretion.
- A1.59 Section 193(2) states that in relation to appeals relating to price control to the extent that they are matters of description specified in the rules, Tribunal rules must provide for these matters to be referred by the Tribunal to the Competition Commission for determination.
- A1.60 Section 196 states that a decision of the Tribunal on an appeal under section 192(2) may itself be appealed to the Court of Appeal or to the Court of Session. An appeal must relate only to a point of law arising from the decision of the Tribunal. An appeal under section 196 requires the permission of the Tribunal or the court to which it is to be made.

## **Jersey**

### **Post and Telecommunications**

- A1.61 The Jersey Competition Regulatory Authority (JCRA) was established under the *Competition Regulation Authority (Jersey) Law 2001*. The JCRA is an independent body accountable to the Economic Development Committee (EDC) with responsibility for promoting competition and consumer interests through economic regulation and competition law. In the field of economic regulation, its responsibility currently covers the telecommunications and postal sectors. As regards competition law, the JCRA will be responsible for administering and enforcing the Competition (Jersey) Law when it comes into full effect on 1 November 2005. The JCRA also advises the EDC and other government committees on issues relating to competition and economic regulation.

### *Regulatory structure*

- A1.62 The Board consists of a Chairman, an executive director, a part-time director and two non-executive directors.
- A1.63 The Chairman is appointed by the States, on the recommendation of the Economic Development Committee. The Executive Director is appointed by the Economic Development Committee, in consultation with the Chairman. The non-Executive directors are appointed by the Economic Development Committee, in consultation with the Chairman. Members are appointed for a period not exceeding five years and upon expiry of the period are eligible for reappointment.



## Post

### Key duties

- A1.64 The JCRA and Committee's duties are set out in sections 8-14 of the *Postal Services (Jersey) Law 2004*. Under the *Postal Services (Jersey) Law 2004* the JCRA and Committee's primary duty is to perform its functions to ensure, "(a) that (so far as in its view is reasonably practicable) such postal services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising; (b) that the company, to the extent that it is or is to be licensed under this Law, has sufficient financial resources to discharge, during the period when this sub-paragraph is in force, its liabilities under securities issued by the company to the States".<sup>13[13]</sup>
- A1.65 Subject to the duty above, JCRA has the duty to perform its functions so as to protect and further the interests of users of postal services and wherever it considers it appropriate to promote competition between persons involved with commercial activities connected with Jersey postal services.
- A1.66 Subject to the primary duty, JCRA also has the duty to promote efficiency, economy and effectiveness, further the economic interests of Jersey and impose a minimum of restriction on commercial activities connected with postal activity in Jersey.<sup>14[14]</sup> The JCRA needs to also have regard to the need to ensure those engaged in commercial activities have sufficient financial and other resources and have regard to special needs of the disabled or people with limited financial resources or particular needs.
- A1.67 The Economic Development Committee might, if it considers it in the public interest to do so, give the JCRA written directions in respect of the principles, procedures or policies to be followed in relation to the implementation of social and environmental policies in respect of postal services or philatelic services, or any other matter relating to the performance of the JCRA of its functions under the Law.
- A1.68 The Committee will not give directions or guidance without first consulting the JCRA, but it will be the duty of the JCRA to comply with any direction and to consider any guidance given.

### Key powers

- A1.69 The JCRA's main power is to grant licenses authorising people to convey letters. It can also modify conditions contained in licences and refuse/revoke licences.

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<sup>13[13]</sup> *Postal Services (Jersey) Law 2004* part 3 8(1).

<sup>14[14]</sup> This duty means that there should be a prejudice towards deregulation, for example, in the designation of reserved postal services. (This is consistent with the EU Treaty Article 86).





### *Directions*

A1.70 Article 9 sets out the circumstances in which the EDC may direct or guide the Authority:

(1) The Economic Development Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written directions in respect of the principles, procedures or policies to be followed by the Authority in relation to

(a) the implementation of any social or environmental policies in respect of postal services; or

(b) philatelic services.

(2) The Economic Development Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written guidance in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under this Law.

(3) It shall be the duty of the Authority in carrying out any of its functions to comply with any such direction and to consider (without necessarily complying with) any such guidance.

(4) The Economic Development Committee shall not give directions or guidance under this Article without first consulting the Authority.

(5) The Economic Development Committee shall notify the States of the directions and guidance given by it under this Article and of any comments received by it from the Authority about the directions and guidance.

### *Appeals*

A1.71 The Appeals process is set out in sections 25-26 of the *Postal Services (Jersey) Law 2004*. Applicants can appeal to the Royal Court against the exercise of a specified regulatory function, whether or not the exercise has taken effect.

### **Telecommunications**

A1.72 The JCRA and Committee's duties are set out in part 3 articles 7-9 of the *Telecommunications (Jersey) Law 2002*.

### *Key duties*

A1.73 The duties of the JCRA regarding the telecommunications sector are of the same form as those regarding the postal sector.

A1.74 The JCRA and Committee each have a primary duty, "to perform its functions under this Law in such manner as it considers is best calculated to ensure that (so far as in its view is reasonably practicable) such telecommunication services are provided, both within Jersey and between Jersey and the rest of the world, as satisfy all current and prospective demands for them, wherever arising."



- A1.75 Subject to the duty above, the Committee and JCRA each have the duty to perform their functions so as to protect and further the interests of users of telecommunications services and apparatus and wherever it considers it appropriate to promote competition between persons involved with commercial activities connected with Jersey postal telecommunications.
- A1.76 Subject to the primary duty, JCRA also has the duty to promote efficiency, economy and effectiveness, further the economic interests of Jersey and impose a minimum of restriction on commercial activities connected with telecommunications in Jersey. The JCRA needs to also have regard to the need to ensure those engaged in commercial activities have sufficient financial and other resources and have regard to special needs of the disabled or people with limited financial resources or particular needs.
- A1.77 The Economic Development Committee might, if it considers it in the public interest to do so, give the JCRA written directions in respect of the principles, procedures or policies to be followed in relation to the implementation of social and environmental policies in respect of telecommunications, or any other matter relating to the performance of the JCRA of its functions under the Law.
- A1.78 The Committee will not give directions or guidance without first consulting the JCRA, but it will be the duty of the JCRA to comply with any direction and to consider any guidance given.

#### *Key powers*

- A1.79 The JCRA's main power is to grant licences for the running of telecommunications systems as specified in the licence. It can also modify conditions contained in licences and refuse/revoke licences.
- A1.80 The JCRA can approve apparatus and persons where approval is required as a condition of the licence.
- A1.81 The JCRA can, for any purposes connected with investigating offences under the *Telecommunications (Jersey) Law 2002*, require people to produce to the JCRA specified information.

#### *Directions*

- A1.82 Article 8 sets out the circumstances in which the EDC may direct or guide the Authority:

(1) The Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written directions in respect of the principles, procedures or policies to be followed by the Authority in relation to the implementation of any social or environmental policies in respect of telecommunications.

(2) The Committee may, if it considers that it is desirable in the public interest to do so, give to the Authority written guidance in respect of the principles, procedures or policies to



be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under this Law.

(3) It shall be the duty of the Authority in carrying out any of its functions to comply with any such direction and to consider (without necessarily complying with) any such guidance.

(4) The Committee shall not give directions or guidance under this Article without first consulting the Authority.

(5) The Committee shall notify the States of the directions and guidance given by it under this Article and of any comments received by it from the Authority about the directions and guidance.

### *Appeals*

A1.83 The Appeals process is set out in article 12 of the *Telecommunications (Jersey) Law 2002*. Applicants can appeal to the Royal Court against the exercise of a specified regulatory function, whether or not the exercise has taken effect.

### **Electricity**

A1.84 The *Electricity (Jersey) Law 1937* sets out the powers conferred by the state to the Jersey Electricity Company Ltd.

A1.85 If there are any objections to the powers conferred and these cannot not be resolved by agreement the question at issue can be referred by means of a representation by the aggrieved party for decision to the Inferior Number of the Royal Court.

## **European Regulatory Frameworks**

A1.86 The EU regulatory frameworks are all based on the Treaty which balances the rights of EU citizens to receive services of general and general economic interest with the internal market.

### **Energy**

A1.87 The defined objectives of the energy frameworks are:

- (a) To introduce competition, wherever this would increase economic welfare.
- (b) To ensure the provision of defined levels of certain services at affordable prices.
- (c) To ensure an adequate level of consumer protection.
- (d) To protect customers and suppliers from abuse of dominant positions.
- (e) To achieve the optimal use of costly infrastructure, including infrastructure across national borders.



- (f) To ensure that there are adequate incentives to invest, reduce costs, improve quality and innovate and to prevent serious disruptions of service or supply.
- A1.88 Liberalisation of the electricity and gas markets is governed by common rules set out in two Directives and associated Regulations. Directive 2003/54/EC sets out common rules for the internal market in electricity and Directive 2003/55/EC sets the corresponding rules for the natural gas market. The implementation date for both Directives was 1 July 2004.
- A1.89 The Directives provide for the phased opening of electricity and gas markets to competition. Both markets must be fully open to competition – that is all customers must be free to choose their supplier – by 1 July 2007. Markets must be open to competition for all non-household customers by 1 July 2004. Both Directives also contain provisions relating to public service obligations and customer protection.
- A1.90 Member States are required under both Directives to, *“designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent from the interests of the electricity/gas industry. They shall, through the application of this Article, at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market.”*
- A1.91 The Directives specify aspects of the market to be monitored by these regulators. The regulators are required to approve, at least, the methodologies used for setting tariffs for connection and use of networks. They are also required to deal with complaints relating to connection and use of networks. Member States are also required to have regulatory mechanisms in place to avoid abuse of dominance and predatory behaviour.
- A1.92 Each regulator would have powers and duties specified in national legislation. These should ensure that the regulatory authorities meet the independence requirements of the Directives and allow the regulators to carry out the monitoring, approval and complaint handling activities specified in Articles 23 and 25 of the electricity and gas Directives. They should also be adequate to allow the regulators to ensure compliance with the provisions of the Regulations.

## Post

- A1.93 The Amended Postal Directive, (Directive 1997/67 as amended by Directive 2002/39) remains essentially a framework harmonisation setting general principles for the regulation of the sector, with the details of national regulation left to Member States and the Independent National Regulators. The key aims of Community policy in this area are:
  - (a) To ensure that EU citizens continue to receive a universal postal service.
  - (b) To improve the quality of postal services.
  - (c) To work towards the internal market for postal services.



- (d) In line with these objectives the Directives harmonise the national application of the regulatory principles set through Articles 82 and 86 of the European Treaty, i.e. that any regulatory intervention to protect an incumbent universal service provider should be justified by the net costs of this provision.

A1.94 Whilst the Community framework harmonises general regulatory principles the level of Community harmonisation remains at a general level, reflecting the fierce debates over the nature of Community postal regulation and the reluctance of Member States to cede control of such a politically sensitive sector.

### Telecommunications

A1.95 The telecommunications framework is set through Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive). The "Framework Directive" forms part of the "Telecommunications Package". This new regulatory framework which consists of this Directive plus four specific Directives, namely the Directive on the authorisation of electronic communications networks and services (the "Authorisation Directive"); Directive on access to, and interconnection of, electronic communications networks and associated facilities (the "Access Directive"); Directive on the universal service (the "Universal Service Directive"); Directive concerning the processing of personal data (the "Directive on Privacy and Electronic Communications"). Added to this list, there is also the recent Decision on a regulatory framework for radio spectrum policy (the "Radio Spectrum Decision").

### Key duties

A1.96 The objective of the Framework Directive is to establish a harmonised framework for the regulation of electronic communications networks and services.

A1.97 It lays down a number of duties on Member States regarding National Regulatory Authorities (NRAs):

- (a) *Independence.* Member States must guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services.
- (b) *Right of appeal.* At national level effective mechanisms must allow any user or undertaking providing electronic communications networks or services the right of appeal to an independent appeal body in the event of any disputes with a national regulatory authority.
- (c) *Impartiality and transparency.* Member States must ensure that national regulatory authorities exercise their powers impartially and transparently. They must also ensure that the national regulatory authorities make arrangements for consultation of the interested parties if they intend to take measures which could have a significant impact on the market.



A1.98 To promote competition in the provision of electronic communications networks and services, the first tasks of the NRAs are:

- (a) ensuring that users derive maximum benefit in terms of choice, price and quality;
- (b) encouraging investment in infrastructure and promoting innovation; and
- (c) encouraging efficient use and management of radio frequencies and numbering resources.

A1.99 The NRAs must also contribute to development of the internal market by, *inter alia*:

- (a) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services;
- (b) ensuring that there is no discrimination in the treatment of undertakings providing electronic communications networks and services; and
- (c) co-operating with each other and with the European Commission to ensure the development of consistent regulatory practice and consistent application of the new regulatory framework for the telecommunications sector.

A1.100 The final task of the national regulatory authorities is to promote the interests of the citizens of the EU by, *inter alia*:

- (a) ensuring that all citizens have access to a universal service, as specified in Directive 2002/22/EC ("universal service");
- (b) ensuring the availability of simple and inexpensive dispute resolution procedures; and
- (c) contributing to ensuring a high level of protection of personal data and privacy ("Directive on Privacy and Electronic Communications").

**ELECTRICITY REGULATION IN GUERNSEY**  
**A Report prepared for Guernsey Electricity Limited**

**Stephen C Littlechild**  
**(Former UK Director General of Electricity Supply)**

**6 February 2006**

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## **Electricity Regulation in Guernsey**

### **Main points of Report**

Guernsey Electricity (GEL) has asked me, as former UK electricity regulator, to examine electricity regulation in Guernsey and to consider possible modifications.

I have looked at three causes of concern in the electricity sector.

- The roles of Treasury and Resources Department (T&R) and the Office of Utility Regulation (OUR) overlap and some actions have been mutually inconsistent.
- OUR's actions have often been unduly onerous or unreasonable.
- The annual cost of regulation (£900,000) is greater than initially expected (£350,000), and in electricity it is 10 to 20 times the per capita cost in the UK.

Transferring regulation of GEL from OUR to T&R would resolve all three problems.

- It would produce a non-bureaucratic, low cost yet effective system of regulation.
- Other solutions may not effectively address the three present concerns.

Modifications to the regulatory framework would address the issue of regulatory actions.

- The OUR should be given a new duty to regulate in a way proportionate to the size and circumstances of Guernsey.
- Regulatory activities should be targeted only at cases in which action is needed.
- Possibilities for reducing the scope, intensity, intrusiveness and cost of regulatory activities should be actively pursued.
- The Utility Appeals Tribunal should continue but be given a limited time to determine an appeal, whereas appeal to the Royal Court would be more costly.

Reducing OUR's budget would address concerns about the cost and nature of regulation.

- A States general Direction could require the OUR to reduce its costs of operation.
- In view of the surprising absence of control of OUR's budget, T&R or Commerce and Employment Department should consider setting a budget for OUR.
- Electricity regulation is feasible within the initial £350,000 overall OUR budget.

Transferring regulation of GEL from OUR to T&R would be the best solution in Guernsey because it would resolve all three problems and because other measures cannot be guaranteed to do so. Failing this, the other measures set out herein would improve the situation.

## **Executive Summary**

### **PART ONE INTRODUCTION AND BACKGROUND**

#### **1. Introduction and background**

- 1.1 Guernsey Electricity has asked me, as former regulator of the UK electricity industry, to examine the nature and experience of electricity regulation in Guernsey and to consider possible modifications to it.
- 1.2 In 2001, the three States Boards (of electricity, posts and telecommunications) were commercialised to give them freedom to adopt more commercial practices. They were also subject to regulation by the Office of Utility Regulation (OUR).
- 1.3 The 2001 proposal for the regulatory framework commented that the initial costs of regulation would be less than 1 per cent of the turnover of the Boards. However, in 1999 the States originally envisaged a non-bureaucratic form of regulation with the Director General of Utility Regulation as the only member of staff and a total annual budget of about £350,000.
- 1.4 The States are presently reviewing commercialisation and regulation.
- 1.5 This Report looks at three potential causes of concern:
  - the overlap in roles between the States and the regulatory body with respect to States-owned commercialised entities
  - the actions of the OUR with regard to electricity regulation, and
  - the actual costs of regulation, both in total and for the electricity sector in particular.

### **PART TWO THE CAUSES OF CONCERN ABOUT REGULATION**

#### **2. Overlap of roles of States and OUR**

- 2.1 The OUR and the States each have the same range of objectives under the Regulation of Utilities Law 2001. In particular, both must protect the interests of customers with respect to prices. The OUR has exercised these functions, including via the price control process.
- 2.2 The States have given formal guidance to the Treasury and Resources Department (T&R) as shareholder of GEL. This includes the duty to set financial performance targets to deliver improved efficiency whilst drawing a balance between a commercial return and the effect on the community of any resulting increase in charges. T&R has exercised its role by requiring GEL to provide Five Year Plans updated on an annual basis, and by requiring prices to reflect a lower rather than higher rate of return on assets.
- 2.3 The responsibilities of OUR and T&R have overlapped considerably. There are parallel lines of regulation to ensure that a commercialised body acts in the public interest. In practice, the two organisations have exercised their responsibilities in

ways that have sometimes been mutually inconsistent on major decisions, notably with respect to tariffs in the electricity sector.

### **3. OUR's implementation of electricity regulation**

- 3.1 Although commercialisation has been a success in Guernsey, GEL has several concerns about the implementation of electricity regulation. These include the unduly detailed and onerous nature of regulation, the associated costs and time requirements, the uncertainty and undue restrictions resulting from certain regulatory decisions, and the blurring of responsibilities.
- 3.2 In my view, the OUR has adopted an unduly heavy-handed approach to electricity regulation. Some of its actions might be reasonable elsewhere, but seem inappropriate in Guernsey. Others of its actions are not normal regulatory practice and it is difficult to see the justification for them here. Yet other actions would be unreasonable whatever the size and nature of the sector being regulated.
- 3.3 In contrast, OUR does not seem to have acted inconsistently with normal regulatory practice in regulating the postal sector, not least in generally accepting price increases proposed by GPL. This has not been the case with GEL.

### **4. The costs of regulation**

- 4.1 The OUR's total cost of regulation in Guernsey has been about £900,000 per year, of which electricity regulation accounts for £180,000, about one fifth of the total. The OUR has five professional staff, so pro rata one member of staff is involved in electricity regulation.
- 4.2 GEL's total costs of regulation, including its own costs, are about double the cost of the licence fee. The total cost of regulation per electricity customer has been £13.53 per year, of which £6.40 is the cost of the OUR and £7.13 is GEL's cost of responding to this.
- 4.3 OUR's costs have been within the 2001 comment that its initial costs would be less than 1 per cent of the turnover of the licensees. However, under the States' original 1999 assumptions, the cost of regulation would have been £2.50 or £5.05 per customer per year, depending on the benchmark chosen.
- 4.4 The cost of electricity regulation in the UK is about £20m per year, or about £0.72 per electricity customer.
- 4.5 On a per capita basis, the cost of electricity regulation in Guernsey is some ten to twenty times the cost in the UK.
- 4.6 The same is true of the distribution price control reviews in the two countries.

## **PART THREE PROPOSED SOLUTIONS TO THE PROBLEMS**

### **5. Removing the overlap of regulation**

- 5.1 It would not be appropriate or realistic to remove a role for the States as shareholder. However, it would be straightforward to provide that the Regulation

of Utilities Law 2001 did not apply to specified commercialised entities that remained in States ownership.

- 5.2 All OUR's present responsibilities could in practice be covered by T&R. There is scope for enhancing the T&R's present processes, for example by publication of a draft Five Year Plan for public comment and other consultation procedures.
- 5.3 There might be concerns that this would be a backward step, but there is no reason to believe that T&R would fail to regulate commercialised entities properly because of government ownership. The proposed approach would not preclude the introduction of private capital in due course if the States so decided.
- 5.4 Other developed small island countries have adopted a variety of apparently satisfactory ways of supervising their electricity sectors without setting up independent utility regulation authorities.

## **6. Modifying the framework of regulation**

- 6.1 Europe Economics' Report on the Ethos of Regulation has looked at four possible ways of improving regulation. This report looks in turn at those proposals.
- 6.2 If OUR continues to be headed by an individual regulator, it would be worth considering the possibility of the Director General appointing a panel of senior business people to advise him on price controls and other significant issues.
- 6.3 The OUR should be given a new duty to regulate in a way proportionate to the size and circumstances of Guernsey. In addition
  - a. regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
  - b. regulatory activities should be targeted only at cases in which action is needed.
  - c. regulatory activities should promote and not discourage flexibility, initiative, innovation and responsiveness to customer preferences within the regulated sector; and
  - d. possibilities for reducing the scope, intensity, intrusiveness and cost of regulatory activities should be actively pursued.
- 6.4 Giving the States powers of direction to OUR may not be a solution to the present problems of regulation but may have a useful role to play.
- 6.5 The Utility Appeals Tribunal should not be abolished, but should be given a limited time (perhaps 3 months) in which to determine an appeal. It would be conducive to more considered regulation if the OUR's determinations were not binding in the absence of agreement by the licensee. In this case the obligation to appeal would lie with the OUR.
- 6.6 If a new Competition Authority were established in Guernsey to enforce a new competition law, this could usefully supercede the OUR in regulating the States-owned commercialised sectors. Alternatively, incorporating the OUR within the same organisation as the Competition Authority would increase the range of expertise that could be brought to bear in utility regulation and enable utility issues to be seen in context.

## **7. Reducing the cost of regulation**

- 7.1 If the States are given a power to give general Directions to the OUR, one of their first Directions could usefully require the OUR significantly to reduce its direct costs of operation. In view of the lack of control on the OUR budget, Treasury and Resources Department, or Commerce and Employment Department as sponsor Department of the OUR, should consider setting and enforcing an appropriate budget for utility regulation.
- 7.2 As to the level of this budget, it would be possible to discharge the main tasks of electricity regulation within the original total OUR budget of £350,000 envisaged by the States in 1999. This would mean a budget of about £70,000 for electricity instead of £180,000.

## **PART FOUR SUMMARY AND RECOMMENDATIONS FOR POLICY**

### **8. Summary and recommendations for policy**

- 8.1 Three factors have contributed to the problematic nature of utility regulation in Guernsey:
- the overlap in roles between the States (T&R) and the regulatory body (OUR), as applied to States-owned commercialised entities
  - the heavy-handed actions of the OUR with particular regard to electricity regulation, and
  - the actual costs of regulation, both in total and for the electricity sector in particular.
- 8.2 Transferring regulation of GEL (possibly with GPL) from OUR to T&R would resolve all three problems at a stroke. Modifying the regulatory framework would address the problems of unreasonable regulatory actions. Reducing OUR's budget would address concerns about the cost of regulation and, indirectly, about its heavy-handed nature.
- 8.3 Transferring regulation of GEL from OUR to T&R would be the best solution for the particular circumstances of Guernsey. It would solve all three problems whereas other measures cannot be guaranteed to do so. Failing this, the other suggested measures would improve the situation. The three sets of measures are not mutually exclusive. That is, transferring regulation of GEL from OUR to T&R would not preclude the implementation of the other measures if the States wished to address any problems of regulation in the other two sectors.

## **PART ONE INTRODUCTION AND BACKGROUND**

### **1. Introduction and background**

#### **1.1 Introduction**

Guernsey Electricity Ltd (GEL) has asked me, as former regulator of the UK electricity industry, to examine the nature and experience of electricity regulation in Guernsey and to consider possible modifications to it.

Part One of this Report sets out relevant background, including the policies of commercialisation and regulation by the Office of Utility Regulation (OUR), and the ongoing States review of these topics. It identifies three potential sources of concern about regulation. These are

- the confusion and overlap in roles between the States (T&R) and the regulatory body (OUR), as applied to States-owned commercialised entities
- the actions of the OUR with particular regard to electricity regulation, and
- the actual costs of regulation, both in total and for the electricity sector in particular.

Part Two explains and evaluates these three concerns in turn.

- First, it looks at the roles and responsibilities of the States and the OUR and identifies some areas of overlap and mutual inconsistency for those commercialised entities that remain under States ownership.
- Second, it examines the way in which electricity regulation has actually been conducted, and outlines and evaluates some concerns of GEL.
- Finally, it compares the costs of regulation in Guernsey, particularly of electricity regulation, against the costs envisaged in the initial States policy and against experience in the UK.

Part Three proposes ways of addressing each of these concerns.

- A way of addressing the first concern is to transfer regulation of one or both of the States-owned commercialised entities from OUR to Treasury and Resources Department. This would remove the overlap between the roles and responsibilities of the States and OUR. It might be appropriate to enhance certain aspects of present supervision (e.g. in terms of public consultation processes).
- A way of addressing the second concern is to modify the statutory framework of regulation, including OUR's statutory duties, in order to facilitate the principles of Better Regulation in the circumstances of Guernsey. It is also possible to improve the present appeals mechanism involving the Utility Appeals Tribunal, rather than abolishing it. There is some discussion of the relationship with a possible Competition Authority.

- A way of addressing the third concern is to reduce the budget for regulation so as to encourage a less bureaucratic approach that is nonetheless consistent with discharging all the regulatory duties.

Part Four concludes that transferring the regulation of States-owned industries from the OUR to T&R would be the most effective way to deal with all three concerns at once. Failing this, the other two sets of measures would be conducive to ameliorating the situation. (The three sets of measures are not mutually exclusive, and could be applied to OUR's regulation of post and telecoms in the event that OUR no longer regulated the electricity sector.)

## **1.2 Background**

From the granting of the initial licence in 1898, electricity supply in Guernsey was provided by private ownership (initially Edmundsons and later the Guernsey Electric Light and Power Company). At first, any change in allowed price required a new law to change the original licence. Later, in 1917, provision was made for arbitration in the event that the company and the States were unable to agree a revised price. During the depression of the 1920s there was pressure to reduce prices, to which the company was unable to accede. The States bought out the company in 1933 to form the States Electricity Board.

During the late 1990s the States reviewed the status of the Electricity, Post Office and Telecommunications Boards. They came to the view that the status of these undertakings, as committees of the States, had inhibited their efficiency. They concluded that a change of status would give freedom to adopt more commercial style practices (for example, with respect to manpower limits and conditions of employment). In May 1998 the States agreed in principle to the commercialisation of the Guernsey Electricity, Posts and Telecommunications Boards, and to set up a system of regulation for all three Boards. They also decided to privatise the Telecommunications Board.

The Regulation of Utilities Law 2001 established the Office of the Director General of Utility Regulation, which was set up in October 2001. Subsequent laws commercialised the three Boards. Guernsey Telecoms Ltd and Guernsey Post Ltd (GPL) were set up on 1 October 2001. The Electricity (Guernsey) Law 2001 created Guernsey Electricity Ltd, which began operation on 1 February 2002 with all the assets and liabilities of the States Electricity Board (except for the revaluation of some properties). The successor companies to the three Boards were given licences that include various obligations and restrictions, including any controls on prices.

## **1.3 What kind of regulation was originally envisaged in Guernsey?**

In May 1998, when the States agreed in principle to the commercialisation of the Guernsey Electricity, Posts and Telecommunications Boards, they charged the Board of

Industry with recommending a system of regulation. Having taken advice and consulted, the Board of Industry set out its views and made its recommendations.<sup>1</sup>

The regulator would initially set price and service targets (in a way that would provide the owner with a reasonable return) and where appropriate manage the introduction of competition. The regulator would have a high level of independence.

There was a summary description of the process envisaged for regulating prices. The licensee would propose prices with justifications including a full statement of costs. The regulator would review this with reference to international practice and the conditions that apply in Guernsey, then would either accept or make a revised proposal on price. If the licensee did not agree it could utilise the appeals mechanism, though “this is not in the interests of the operator or the regulator and in most cases agreement can be expected to be reached”.

Amongst other things, “the Board sought a structure that was as simple as this complex subject could allow; and minimises resources and bureaucracy; ...” It recognised that the Island was simply too small to have individual regulators for each sector supported by a large bureaucracy of specialist staff. It therefore recommended “a single Director General of regulation (DG), supported by specialist consultancies, drawing on the advice of a specialist panel”. The Board also suggested the appointment of a consumer advisory panel..

It was necessary to have some mechanism of appeal against the regulator’s decisions. In the absence of anything corresponding to the Monopolies and Mergers Commission in the UK, an independent panel of experts could be set up with quasi-judicial powers.

The Board emphasised again the “key features of a regulatory approach which involve a single DG and advice from a set of specialist consultancies”. They would include “a non bureaucratic structure which can obtain specialist input on any area as and when required; a cost-effective solution with the DG managing the input of specialists on an on-call basis; and a focal point for regulation and routes for local opinion to be taken account of”.

The costs of regulation would be met by licence fees. “The main areas of expenditure would be the cost of specialist consultancy, the DG’s salary and the funding of any work commissioned by an advisory panel, and office accommodation.” The annual cost was likely to vary, with a period of intensive activity in the first year with heavy reliance on the consultancies. However, “the average cost of regulation could be in the region of £350,000 per annum.” This would “represent just 0.56% of the collective annual turnover (£62m) of the three Trading Boards.

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<sup>1</sup> *Regulation of Trading Organisations*, Report in a letter of 20 December 1999 from States Board of Industry to President, States of Guernsey, supported by President of States Advisory and Finance committee letter of 21 December. The States used the Report to support a number of decisions including “to approve the system of regulation as set out in that Report”. *Billet d’Etat* II 2000, 20 January 2000, pp. 6-26.



When the Advisory and Finance Committee put to the States the final proposal for the detailed implementation of the regulatory regime, it said that the Committee would fund the ‘shadow regulation period’ before implementation, and that the proposal made some allowance for further support taken from general revenue during the initial period of regulation. It commented as follows on the costs of regulation.

“Based on information provided by the Board, the direct costs of regulation recovered from license fees in the initial year of regulation represents less than 1% of the current turnover of the Trading Boards. If not immediately, then within a relatively short time the efficiencies gained from commercialisation should more than cover these fees. Any additional costs related to producing detailed and transparent financial information should not be considered as being a cost of regulation but as being an essential pre-requisite to the efficient management of the commercialised undertakings the core activities of which will be the provision of monopoly services.”<sup>2</sup>

The letter also said that “regulation must not only be effective but also deliver value for money and both bodies [Committee and Board of Industry] will carefully monitor those costs to ensure that this is the case”.

#### **1.4 States’ Review of commercialisation and regulation**

Two States Departments now have primary responsibilities for the commercialised utilities, namely Treasury and Resources Department (T&R) and Commerce and Employment Department (C&E). These departments have undertaken to review the outcomes of the commercialisation process and report back to the States on the results of the Review. They decided that the research and consultation processes should be undertaken independently, and in November 2004 put this out to tender.<sup>3</sup>

The objectives of the exercise were, inter alia, to enable the States to consider whether it wished to revise any elements of the commercialisation model, or to revise any of the practices that have been adopted within it. The Review would include an assessment of how effectively roles have been undertaken and policies have been implemented for the Strategic Direction for regulation and the implementation of regulation. The review would be undertaken by a combination of inputs, including a consultation process with stakeholders including the commercialised companies.

As a follow up to the initial work, in September 2005 C&E commissioned a supplementary study of the Ethos of Regulatory Legislation.

Comments received suggested that some of the perceived problems in relationships and levels of cost that arise from the implementation of the regulatory regime derive from the ‘ethos’ that is enshrined in the 2001 Regulation

<sup>2</sup> Letter of R C Berry, Member, Advisory and Finance Committee to The President, States of Guernsey, 30 August 2001, p. 1271

<sup>3</sup> States of Guernsey – Invitation to submit proposal, Review of Commercialisation and Regulation, C&E, 25 November 2004. C&E subsequently commissioned a report from the National Audit Office (NAO). This report has not yet been made public, but I have seen a draft of that part referring to the electricity sector.

of Utilities Law in terms of the role and the authority/responsibilities of the OUR.<sup>4</sup>

C&E commissioned Europe Economics (EE) to carry out this study.<sup>5</sup> I have been given access to a draft of EE's report.

In November 2005 the OUR announced a Review of the License Texts of all the operators. It said that its review was "aimed at ensuring that regulation in Guernsey is proportionate and cost-effective".<sup>6</sup> Although this is potentially useful, and indicates the OUR's support for the principles of better regulation, it does not seem to provide a route for addressing those problems of regulation identified in the present report.

### 1.5 The present report

Guernsey Electricity Ltd (GEL) asked me, as former regulator of the UK electricity industry, to advise it on the OUR's recent price control process. In the light of the outcome of that process, and bearing in mind the States' review, it then asked me to examine the nature and experience of electricity regulation in Guernsey and to consider possible modifications to it.

My terms of reference do not extend to reviewing the principles and experience with respect to commercialisation. But I note that, in general, commercialisation in Guernsey seems to have been a success. All three commercialised entities have thereby been able to increase efficiency, flexibility and speed of decision-making. It is therefore important to ensure that regulation is consistent with this policy.

Independent regulation is generally accepted as necessary when a utility is privatised. But the appropriate role and method of regulation of a commercialised entity that remains in States ownership are less clear, especially for smaller countries. Experience internationally suggests certain problems. Here in Guernsey, the NAO has identified several concerns. Europe Economics says that

"Utility regulation in Guernsey has experienced worse problems concerning relationships and costs than one would have hoped to see, even recognising that any new policy as radical as commercialisation and the introduction of an independent regulator will inevitably cause some disturbance and resentment as previous methods are replaced.

EE's Report continues

"Although these problems doubtless spring in part from personalities, the legislation probably did make matters worse than they need have been. There are therefore some changes to the legislation that should be considered, in order to improve the prospects for a more cost-effective regime."<sup>7</sup>

<sup>4</sup> Review of Commercialisation, Supplementary Study of Ethos of Regulatory Legislation, Introduction and Terms of Reference, C&E, 2 September 2005.

<sup>5</sup> *Supplementary study of ethos of regulatory legislation*, draft report, Europe Economics, 28 November 2005.

<sup>6</sup> Media Release, Office of Utility Regulation, 29 November 2005 and associated letters to licensees.

<sup>7</sup> *Supplementary study of ethos of regulatory legislation*, draft report, Europe Economics, 28 November 2005, paras 6, 7.

It is understandable that the States and the OUR are each concerned to ensure that lessons are learned from experience, and that principles of better government are properly implemented.

The present Report explores three potential causes of concern. These are

- the potential overlap in roles between the States and the regulatory body, as applied to States-owned commercialised entities
- the actions of the OUR with particular regard to electricity regulation, and
- the actual costs of regulation, both in total and for the electricity sector in particular.

Part 2 analyses these three concerns in turn. Part 3 looks at possible solutions.

## PART TWO THE CAUSES OF CONCERN ABOUT REGULATION

### **2 Overlap of roles of States and OUR**

#### **2.1 The duties and functions of the Office of Utility Regulation**

The Regulation of Utilities Law 2001 establishes the office of the Director General of Utility Regulation. It provides that in exercising their functions, the States and the Director General shall each have a duty to promote (and where they conflict, to balance) a series of objectives, which may be summarised as follows for the electricity sector:

- to protect the interests of consumers in respect of prices, quality, service level, permanence and variety of electricity supply
- to secure service provision to satisfy reasonable demands for electricity supply
- to ensure that electricity activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of Guernsey
- to introduce, maintain and promote effective competition
- to improve the quality and coverage of electricity services and to facilitate the availability of new electricity services, and
- to lessen, where practicable, any adverse impact of electricity services on the environment.

The Director General has various functions, including to advise the States generally in relation to utility activities through the office of the Department of Commerce and Employment (formerly the Board of Industry), to grant and renew licences, to monitor, enforce and modify licences, to levy fees, to receive and conduct inquiries and investigations on electricity activities.

In order to perform these duties the Director General has various powers, including to determine licence conditions, require the production of information and documents from licensees, determine universal services obligations to be imposed upon the licensee, and impose directions, requirements and sanctions.

The Director General, acting through the Office of Utility Regulation (OUR), has discharged these duties and exercised these functions through a series of investigations, decisions and reports. For example, in the electricity sector, the OUR has required GEL to provide information about its costs and future expenditure programmes and to introduce separate businesses and accounts; specified minimum standards for quality of supply; carried out or initiated investigations into future generation policy; carried out price control reviews; and determined maximum prices that GEL is allowed to charge.

#### **2.2 The duties and functions of the States as shareholder**

As just noted, the Regulation of Utilities Law 2001 provides that in exercising their functions, the States shall have the same duties as the regulator to promote (and where they conflict, to balance) the set of objectives summarised above.

The functions and powers of the States are of course different from those of the regulator. Nonetheless, insofar as the States act with respect to the commercialised entities, they have to be guided by the same objectives, though they may have to take into account other considerations as well.

The States have required the directors of the States trading companies to submit a strategic plan to the Committee (now T&R), and have specified in some detail what it should contain.<sup>8</sup>

6. (1) The directors of a States trading company shall, at such times or intervals as the Committee may require, submit to the Committee a strategic plan setting out:
  - (a) the financial and other targets to be achieved by the company in the carrying out of utility activities;
  - (b) the description and extent of the activities which the company proposes to carry out for which the company does not need a utility licence;
  - (c) the financial and other targets to be achieved by the company in the carrying out of the activities referred to in paragraph (b);
  - (d) the policies to be pursued by the company in the carrying out of utility activities and the activities referred to in paragraph (b);
  - (e) the company's proposals for any significant investment or divestment;
  - (f) any other significant matter or issue relating to the company's future plans in which the shareholders of the company would have a legitimate interest; and
  - (g) any other matter or issue which the Committee requires to be addressed by the plan.

T&R on behalf of the States has exercised its role as shareholder by requiring GEL to provide Five Year Plans each autumn, updated on an annual basis. These Plans cover operational and capital expenditure and pricing policies. In addition, the chairman and managing director of GEL are required to present a quarterly update including financials and any other major matter. T&R is able to comment on these Plans and to indicate any preferences or requirements on the companies. T&R also takes further action as it deems appropriate. GEL's statutory accounts and its regulatory accounts are published annually.

The same Ordinance (s. 7) provides that the States may give guidance of a general nature on the policies they wish the Committee to pursue in exercising its functions. With respect to the electricity sector, the States have given formal and specific guidance to T&R (formerly Advisory and Finance Committee) as shareholder of GEL.<sup>9</sup> The substance of this guidance is the following.

1. The business of GEL is the generation, distribution and supply of electricity (sometimes called core activities) and other related (non-core) activities.
2. Sufficient on-Island generation must be maintained to meet total demand in case of

<sup>8</sup> States Trading Companies (Bailiwick of Guernsey Ordinance) 2001. GEL's Articles of Association have a similar obligation to prepare, agree and be bound by a strategic plan.

<sup>9</sup> The States of Guernsey, Billet d'Etat XXIV, 2001, 15 December 2001, Annex 3, p. 1612.

interruption to the cable link with France.

3. GEL is not to apply for a Telecoms licence.
4. Financial performance targets for GEL shall be set to 1) deliver improved efficiency in core activities, whilst drawing a balance between seeking a commercial return and the effect on the community of any increase in charges that may result, and 2) achieve as soon as possible a commercial return in non-core activities.
5. There are to be no sales of essential property or buildings without permission.
6. Policies for the provision of services will have regard to the Economic, Social and Environmental policies of the States as set out in their Strategic and Corporate Plan.
7. GEL shall comply with best practice on corporate governance, financial management and controls.

These provisions and policies have a parallel in posts as well as electricity. The States have given formal guidance to T&R as shareholder of GPL.<sup>10</sup> It is understood that Treasury has two observers attending board meetings of GPL. I have not examined how T&R has exercised its responsibilities in this sector.

### **2.3 Overlap and inconsistency in regulatory activities in practice**

T&R (on behalf of the States) and the OUR thus each have responsibilities with respect to monitoring and regulating the performance of commercialised States-owned entities. In particular, both organisations have responsibilities with respect to pricing (to balance the interests of shareholder and customers), operational efficiency and longer term capital expenditure. Both have to look to public, social and environmental considerations as well. And quite apart from these formal duties, T&R on behalf of the States has a clear interest in similar considerations as OUR - for example, in efficiency and price restraint by utilities in order to foster a healthy economy in Guernsey.

Both organisations have exercised these responsibilities, and their interests clearly overlap. To illustrate, the contents page of GEL's Five Year Plan 2005- 10, drawn up for discussion with its shareholder T&R, listed the following wide variety of topics:

security and reliability of supply, protecting the local environment, marine current turbines, the nature of commercialisation, laws and regulations, stakeholders, financial strategy, electricity market exposure, non-core business activities, plans and projects, customers and markets, regulation and the shareholder, technology, people, the long term vision, corporate governance, service standards, and financial results.

All these topics are also covered by OUR's regulatory duties and actions, and have featured in its statements and decisions on the electricity sector.

The extent to which this overlap leads to consistent or inconsistent decisions will therefore depend to a significant extent on the way in which these responsibilities are exercised. In the case of GEL, the OUR and T&R seem to have exercised their

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<sup>10</sup> The States of Guernsey, Billet d'Etat XXVIII 26 September 2001, States Advisory and Finance Committee - the future provision of Telecoms and Postal Services, p. 1241.

responsibilities in ways that have sometimes been mutually inconsistent in major respects.

Attitudes to pricing policy provide a clear and repeated illustration of this. In September 2002 GEL's Strategic Five Year Plan put to T&R envisaged a possible price increase in October 2003 to meet increases in costs. T&R did not object to this. But in March 2003 OUR imposed a price freeze on GEL until the end of 2004.<sup>11</sup>

During 2005, GEL put to T&R a range of possible rates of return and corresponding price increases to meet the increasingly severe cost pressures on the company. T&R indicated that in present circumstances a 1% return on the book value of the company's assets would more appropriately balance the interests of the shareholders and customers than a higher return. This would imply a path of price increases as subsequently proposed by GEL.

In September 2005 OUR took a different position.<sup>12</sup> It rejected a return of 1% on assets as being too low, and instead said that a return of 4.8% was appropriate. However, it also rejected the book value of the company's assets as the appropriate base, and determined instead that the assets had zero regulatory value because they did not belong to the company. Combining these two elements, OUR initially proposed a decrease in prices (in real terms) rather than an increase. Later, in December 2005, it determined that there should be an interim real price increase but significantly less than accepted by T&R.<sup>13</sup>

There have been similar differences with respect to other matters. For example, in considering GEL's Five Year Plan, T&R was able to consider whether the proposed operating expenditures were consistent with delivering improved efficiency in core activities. It was able to consider whether the five year capital expenditure programme was consistent with the generation self-sufficiency obligation and the Economic, Social and Environmental policies of the States. It saw no reason to object to the Five Year Plans, though it could have done so if it considered this appropriate. In contrast, OUR rejected various aspects of GEL's proposed operating costs and efficiency improvements and its proposed capital expenditure programme.

At this stage, this is not to take a view on whether T&R or the OUR were right or wrong in their judgements and decisions. It simply establishes that there has been duplication/overlap and inconsistency between the two bodies with respect to some major decisions in the electricity sector.

In the telecommunications sector there is no such overlap and inconsistency of actions since the company was privatised and the States are no longer the shareholder in this sector. In the postal sector it is not apparent that OUR has generally taken decisions that conflict with the views of T&R. A later section looks in more detail at regulation of GPL.

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<sup>11</sup> Price Regulation of Electricity Services: Report on the Consultation Paper and Decision Notice, OUR 03/07, March 2003.

<sup>12</sup> Review of Guernsey Electricity Limited's Price Control: Draft Decision, OUR 05/23, September 2005.

<sup>13</sup> Price Control on Guernsey Electricity Limited: Decision Notice, OUR 05/31, December 2005.

### **3 OUR's implementation of electricity regulation**

#### **3.1 GEL's concerns about electricity regulation in Guernsey**

GEL has several concerns about the way that regulation has developed in the electricity sector in Guernsey. These include the unduly detailed and onerous nature of the regulatory requirements imposed on the company, the associated costs of regulation and the time that it takes, the uncertainty and undue restrictions resulting from certain regulatory decisions, and the blurring of responsibilities for actions within the sector.

GEL has put to me the following examples to illustrate its concerns:

- GEL has to prepare one set of business plans for its shareholder T&R, and another set for the regulator OUR. The company's underlying assumptions are the same, but the required format and timescale are different. The views that OUR and T&R have given about prices, operational expenditures and capital investment have been different and often inconsistent. This duplication and inconsistency have increased GEL's costs and workload, introduced uncertainty and blurred responsibilities.
- The OUR required GEL to introduce separate businesses for its core activities of generation, conveyance and supply, and for its non-core activities, and to allocate its staff and assets to these separate businesses. This was required even though the company is relatively small, and some staff and assets are used in two or more businesses. Moreover there is agreed to be little prospect of competition, which would be an important reason for requiring separate accounts.
- The OUR required GEL to produce separate regulatory accounts. These were required even for the year ending 31 March 2002 when the company had been trading for only two months. These accounts were not needed or used for management purposes and it is not apparent that they have subsequently been used for regulatory purposes.
- The OUR required GEL to produce a Statement of Opportunity setting out how electricity was supplied in Guernsey. This Statement was intended to allow potential competitors to assess the market. This was a costly exercise. In the event the Statement was of little relevance to conditions in Guernsey. Moreover, the OUR initially required this Statement to be updated every three months, which added further unnecessary cost. The OUR subsequently agreed that the Statement could be updated and published annually, and is presently considering whether it could be provided on demand within a reasonable timeframe.



- In 2002 the OUR produced a 15 year Excel business model of GEL's business and required GEL to provide data to populate it. This required an extreme level of detail e.g. the names and salary levels of each member of staff who would be employed (or redundant) in each of the next 15 years. The OUR later initiated an extension of the 15 year model to 25 years with the same level of detail. The OUR model comprised 18 workbooks containing 194 worksheets and is estimated to contain some 2 to 3 million cells, of which about 600,000 (over half a million) were required to be populated by GEL. The file size was a total of some 154 MB, which is approximately 12 times larger than GEL's customer details file required to serve its entire customer base of over 28,000 customers. The purpose of the model was said to be to allow the OUR to understand the company's financial position for many years ahead. However, this model did not correspond to the company's own business planning and could not be prepared without numerous artificial assumptions. The company was never comfortable with the model and regarded the data provision as unduly time-consuming.
- The long term nature of the OUR's model inevitably required GEL to make major assumptions on the likely future pattern of generation investment, long-term capital expenditure planning, the development of 'green energy', and the future path of tariffs. OUR required these assumptions even though they lay well beyond GEL's own business plans, and even though GEL considered it premature to commit to such assumptions given the uncertainty of other relevant parameters. The OUR subsequently decided that it would not accept this assumed future investment path, since it did not have the status of being backed by States policy. Initially the OUR decided to establish a working party to recommend a policy to the States, without consultation with GEL. Later it dropped this proposal.
- The Board of Industry (subsequently the Commerce and Employment Department) and the OUR engaged consultants Mott MacDonald to carry out a review of the generation/import options available to GEL, and used regulatory powers to require GEL to cooperate. The consultants were apparently required or encouraged to use the OUR's new model mentioned above, even though they had access to a widely used and thoroughly tested model (ASPLAN). This report took over eighteen months to prepare. The conclusions and recommendations are based upon electricity and oil prices that are not just already out of date, but which did not consider a wide enough uncertainty range to encompass what has already happened in the way of escalating fuel prices.
- This project also served to blur the lines of responsibility for ensuring the adequacy of plant and network in Guernsey. Prior to commercialisation, GEL had a clear mandate to this effect. That would have remained the case, but the project left it wholly unclear as to who was supposed to be planning the future of GEL's plant and network: GEL, the OUR or the States?

- OUR announced on 7 March 2003 that it was freezing GEL's prices until 31 December 2004. The company had not applied for any tariff increase or suggested that it would do so in the immediate future. This limited GEL's ability to respond to changing market conditions.
- When it made this announcement, the OUR indicated that it would re-examine these tariffs for changes to have effect from 1 January 2005. During 2004 GEL became uncomfortable that the OUR was not actually proceeding with this process. This was a matter of concern because by that time there was a need for price rises as a result of the upward movement in world energy prices. In addition, GEL needed to renegotiate an existing fixed-price import contract with EdF with effect from 1<sup>st</sup> December 2005, which would necessitate further price increases. Accordingly, GEL had to stimulate OUR's work in this area. In the event, OUR did not allow revised prices until January 2006, one year later than it originally committed to.
- In the course of GEL's recent price control review, OUR made many assumptions that GEL regarded as unreasonable. Of particular concern was the unjustified assumption that the fixed assets and cash balances of the company did not actually belong to GEL (and hence to the States) but to the customers of the business. This and other assumptions implied real price reductions instead of price increases, which was inappropriate and unreasonable in circumstances of increases in fuel costs and prices worldwide.
- In its final determination, OUR decided to suspend its previous proposal for a three year price control, and to implement instead a limited price increase valid for fifteen months while the issue of the opening asset value was considered further.<sup>14</sup> OUR's final determination thus failed to resolve many of the issues that it had raised in the price control review, and introduced unnecessary uncertainty as to the level and basis for prices, and the conduct of regulation, in the period thereafter. It also means that GEL will be forced to make losses of about £1 million and £1.5 million in 2005/6 and 2006/7, respectively.

### 3.2 Evaluation of GEL's concerns about electricity regulation

Are GEL's concerns about regulation broadly what one might expect in a newly-regulated environment? Or, as Europe Economics has suggested, do its concerns go beyond this? The next step is to consider in more detail the way in which the OUR has exercised its responsibilities, with primary reference to the electricity sector and GEL. Is there reason to be concerned at the specific nature of those decisions?

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<sup>14</sup> "He [the DG] proposes to establish an expert panel to examine all of the relevant evidence available and for its consideration of the issues identified by this current price control to further inform the OUR's future price control." *Price Control on Guernsey Electricity Limited: Decision Notice*, Office of Utility Regulation, Document No: OUR 05/31, December 2005, p. 30.

In some respects the decisions and processes of the OUR may seem similar to the decisions and policies adopted in the regulation of the UK electricity sector, and indeed regulation in other sectors and countries. In some cases, however, there is a question whether such decisions and policies are appropriate in Guernsey, which is of the order of one thousand times smaller than the UK. In other cases there is a question whether the decisions and processes would be reasonable in any size of country. I take in turn the examples cited by GEL.

- Separate businesses and accounts and regulatory accounts: in the UK the separation of generation, distribution and supply businesses together with separate accounting was fundamental to the operation of the regulatory regime. Important reasons were to promote competition, to facilitate the setting of separate price controls, and to avoid cross-subsidy. However, in Guernsey competition has been ruled out in certain respects and in other respects is at present considered unlikely. So there is a question whether the degree of separation and separate accounting and the costs involved were proportionate to the circumstances in Guernsey.
- Statement of Opportunity: in the UK, the National Grid's Seven Year Statement was invaluable for new entrant generators in the UK. However, economic conditions make such entry unlikely in Guernsey, hence it is not obvious that the Statement of Opportunity is relevant there. It is not clear that the time, cost and effort required to establish the Statement is reasonable. Even if the Statement is required to be provided, there seems no reason for the OUR to require GEL to update it every quarter. As noted, OUR has now reconsidered this requirement.
- Business Plans: it is normal to request a regulated company to provide its business plan as a basis for discussing price controls. It is also normal to discuss with the company beforehand what kind of data can realistically be provided. Here, the OUR seems to have adopted a more onerous approach than applied in the UK. In my own experience, for example, regulators in the UK and elsewhere do not insist on the provision of detailed data down to the level of individual employees. Nor do they find it necessary or reasonable for price control purposes to ask for detailed data much beyond about 5 years ahead, let alone 15 or 25 years. Where longer-term calculations are needed to evaluate certain capital expenditures, this can be done without such detailed and extensive modelling as the OUR required.
- Generation planning and imports: nowadays, it is not envisaged that regulation will extend to long-term planning, and in practice electricity regulators do not typically become involved in the detailed planning of generation strategies. Where appropriate this is left to the competitive market; in other circumstances this could be a matter for the government as the entity responsible for energy policy, or for a government-owned electricity

company. It is therefore not surprising that OUR's unduly detailed intervention here has blurred lines of responsibility for ensuring adequate electricity capacity in Guernsey.

- Price freezes and short-term price controls: regulators may implement price controls for a variety of durations depending on the circumstances. For example, it would be normal to distinguish between the different businesses of a regulated company and to consider a short-term control for the possibly volatile supply business activities, while providing a long term control for the usually stable distribution business activities. Sometimes temporary price freezes or short-term controls might be appropriate, but they are typically a last resort. It would not be normal for a price freeze to be imposed without a substantial justification of the need for it. It would not be normal for a short term price control to be imposed at the last minute after a consultation process aimed at a long term control, particularly when the issue that prompted this change of tack (the claimed uncertainty about ownership of assets) was one raised by the regulatory body itself rather than an unexpected exogenous event.
- Ownership of assets: suddenly and without prior discussion, OUR assumed that GEL's assets actually belong to its customers, and not to the States, so that for regulatory purposes its initial asset value is zero. This is a radically different approach to the valuation of initial asset value compared to what other regulators have done. There seems no basis for OUR's assumption, nor any evidence that it took the obvious precaution of checking this assumption with the States before or after making it. Nor is there any basis in the OUR's claim that actions of the UK regulator PostComm provide a precedent, since the circumstances are quite different. It is difficult to see that OUR's action here constitutes reasonable conduct, and it has imposed considerable cost and uncertainty on the company.

I am aware that the OUR has not yet had the opportunity to comment on this analysis of the above issues. However, most of these examples (and certainly the most serious one) are based on OUR's account as documented in the public record.

I conclude that the various examples noted above do indeed give reason to believe that the OUR adopted an unduly heavy-handed policy of regulation in the electricity sector. Some of its actions – for example, with respect to separate businesses and accounting and the Statement of Opportunity - might be reasonable elsewhere, but seem inappropriate for a country of the size and nature of Guernsey. Others of its actions – for example, the inappropriate long-term generation planning, the price freeze and the sudden short-term price control – are not normal and it is difficult to see the justification for them here. Yet other actions – for example the required detail and duration of the business plans and particularly the assumption the company does not own its assets - would be unreasonable whatever the size and nature of the sector being regulated.

### 3.3 Regulation of Guernsey Posts Ltd

There is a similar overlap of responsibilities between OUR and T&R with respect to the postal sector as there is with the electricity sector. An obvious question is whether the problems that have occurred in the electricity sector have also occurred in the postal sector, and if not why not. I am not in a position to examine the actions of T&R or the relationship between organisations within this sector. Nevertheless, the following brief summary and evaluation of OUR's main decisions with respect to the price control on GPL, based entirely on the OUR's published reports, suggests that there may have been fewer problems in the postal sector because OUR may have treated the two organisations differently.

On 3 November 2003 GPL requested an increase in postal rates as from 1 June 2004. The requested increases were 27 per cent for inland letters and nearly 20 per cent for overseas and other services. In support, GPL submitted a six year business plan. OUR considered that this did not cover a long enough period but was prepared to accept it. OUR carried out modelling exercises, sought more information, and engaged independent consultants. In March 2004 OUR decided to allow a price increase of 18 per cent for inland letters and accepted GPL's other proposed increases.<sup>15</sup> These would apply for 21 months (1 June 2004 to 31 March 2006), during which OUR would examine further the relevant cost and other factors.

OUR said that it evaluated GPL's Net Present Value (NPV) of revenues against its net cash outlays over this period, following Postcomm's practice in the UK, and also evaluated the proposals against an allowed rate of return on GPL's regulatory asset value. It took GPL's opening asset value as the regulatory asset base. It said that the allowed price increases covered the allowed rate of return, by implication whichever method of calculation was used (and drew the parallel with Postcomm's approach in the UK).

In early September 2005 GPL requested a tariff increase for one year from 1 April 2006 to 31 March 2007, which would be the start of a process of rebalancing over the period to 2009. This included an increase of 11.5 per cent in inland letter rates, and increases for other services ranging from about 5 per cent to about 20 per cent. GPL evidently presented relevant cost information to the end of the 2007/8 financial year, which appears to be for three years ahead. OUR looked at GPL's projected operating and capital costs.<sup>16</sup> It explained that its policy would be to set allowed tariff increases in line with an allowed return on GPL's regulatory asset base.

There is no indication that OUR took GPL's initial asset value to be anything other than the initial book value that it had assumed in the previous price control determination. OUR concluded that on balance the requested tariff increases were reasonably in line with these costs, and it allowed in full the proposed tariff increases for regular letter and parcel services. (It deferred consideration of requested increases in bulk mailing charges,

<sup>15</sup> *Guernsey Post's Proposed Tariff Changes*, OUR 04/02, March 2004.

<sup>16</sup> *Guernsey Post's Proposed Tariff Changes: consultation paper*, OUR 05/22, September 2005, *Guernsey Post's Tariff Changes*, OUR 05/30, December 2005.

observing that GPL was still in contract discussions on this matter and that circumstances had changed since the original application.)

It seems that OUR's decisions have necessitated some additional work and costs by the postal company GPL. For example, OUR held that GPL's six year forward plan was not a sufficient basis for approving its tariffs and has required further information. In some respects, too, OUR's decisions have introduced uncertainties analogous to those in the electricity sector. For example, OUR initially allowed postal tariff increases for a matter of months only, pending further information and further study of various aspects of the business.

However, in other key respects OUR does not seem to have taken such questionable and unreasonable decisions in posts as it has in electricity. For example

- a. OUR largely accepted GPL's 2003 application for 27% and 20% price increases (to the extent of 18% and 20%) but in contrast froze GEL's prices in May 2003 even without the company making an application to increase them. This meant that GEL was unable to increase prices in late 2003 and 2004 at a time when (in the company's view) exogenous cost increases made a tariff increase increasingly appropriate.
- b. OUR accepted a 6 year business plan from GPL despite arguing that a longer period plan was necessary, but insisted on a 15 year business plan from GEL and then a 25 year business plan.
- c. OUR accepted GPL's 2005 application for 11.5% and other price increases but rejected GEL's proposed four year path of tariff increases starting at 9.8 per cent in 2005, which had been accepted by T&R on the basis of a 1 per cent return on investment. OUR initially proposed an increase of 2.9 percent for GEL (which in real terms represented a price reduction of 0.9 per cent). In the event, the OUR allowed a tariff increase of 5.5 per cent from 1 January 2006 and a subsequent increase of RPI+1.7 per cent from 1 April 2006, where these increases were determined on a basis that even OUR accepted was ad hoc.
- d. Even though OUR did not use the regulatory value method to set GPL's prices, it apparently accepted the book value of GPL's assets as the initial regulatory value, presumably not doubting that the company owned the assets. In contrast, OUR set the regulatory asset value of GEL's initial assets to zero on the basis that the company did not own the assets.
- e. Whereas OUR calculated GPL's allowed prices based on the net cashflow method and also on the regulatory asset method, and indicated that the allowed prices covered both methods of calculation, OUR apparently did not calculate GEL's allowed prices on both these methods and consequently did not ensure that the allowed price increase covered both methods of calculation: in fact it fell far short of the price implied by the regulatory asset method.

This brief account suggests that OUR has treated GEL differently from GPL. It would appear that OUR has largely accepted the approach, calculations and price increases proposed by GPL. OUR's stated reasons for its actions in the postal sector do not seem inconsistent with normal regulatory practice. In contrast, OUR has largely rejected the approach, calculations and price increases proposed by GEL. In important respects OUR's stated reasons for doing so are inconsistent with normal regulatory practice. In the light of OUR's actions, it is not surprising that more serious problems have been experienced in electricity than in posts.

## 4 The costs of regulation

### 4.1 Costs and staffing of OUR

This section shows the costs of OUR since its inception. The cost of regulation is only one aspect of concern, of course, but it is a relatively tangible and measurable one. Subsequent sections look at the additional regulatory costs incurred by GEL, and contrast the actual costs of regulation in Guernsey with the costs that were envisaged at the time when regulation was first proposed, and with the costs of regulation in the UK.

Table 1 shows the income and costs of the OUR since its inception in autumn 2001.

Table 1 Extracts from OUR Income and Expenditure Accounts (£000)

| Calendar year             | 2001 (Oct-Dec) | 2002        | 2003         | 2004        |
|---------------------------|----------------|-------------|--------------|-------------|
| <b>INCOME</b>             |                |             |              |             |
| Post Office revenue       | 30             | 120         | 120          | 120         |
| Telecoms revenue          | 75             | 447         | 494          | 553         |
| Electricity revenue       | -              | 165         | 180          | 180         |
| Grant – Board of Industry | 62             | 287         | -            | -           |
| OUR Conference revenue    | -              | -           | -            | 12          |
| Bank Interest             | 0              | 1           | 8            | 4           |
| <b>Total Income</b>       | <b>167</b>     | <b>1021</b> | <b>802</b>   | <b>865</b>  |
| <b>EXPENDITURE</b>        |                |             |              |             |
| Salaries and staff costs  | 81             | 271         | 316          | 350         |
| Consultancy fees          | -              | 507         | 189          | 253         |
| Legal fees                | -              | 57          | 314          | 91          |
| OUR conference costs      | -              | -           | -            | 12          |
| Utility Appeals Tribunal  | -              | -           | -            | 51          |
| General Overheads         | 19             | 69          | 74           | 77          |
| Finance costs             | -              | 0           | 3            | 0           |
| Depreciation              | 3              | 12          | 12           | 12          |
| <b>Total Expenditure</b>  | <b>102</b>     | <b>915</b>  | <b>905</b>   | <b>892</b>  |
| <b>Surplus/(Deficit)</b>  | <b>65</b>      | <b>105</b>  | <b>(103)</b> | <b>(23)</b> |

Source: OUR *Annual Reports*

On average, the OUR costs about £900,000 per year. The electricity industry (GEL) has paid a licence fee of £180,000 per year since 2003, equal to about one fifth of the OUR's



total income.<sup>17</sup> OUR has four professional staff plus the Director General.<sup>18</sup> Pro rata, therefore, there is one full time equivalent professional member of staff for the electricity sector. OUR also hires professional consultancy and legal advice, the costs of which to date have exceeded salaries and staff costs by more than one third. The exceptional legal costs in 2003 were primarily as a result of the first case taken against a decision of the OUR which was heard by the Utility Appeals Tribunal. Excluding these exceptional legal fees, consultancy and legal costs would be of the same order again as internal salary and staff costs.<sup>19</sup>

## 4.2 GEL's costs of regulation

The costs and licence fee charged by the OUR are only one element of GEL's total regulatory costs. It has to pay for additional costs of auditing the regulatory accounts and for outside consultancy advice. In addition, there are costs of its own internal staff time devoted to regulatory issues, over and above what would be required as a consequence of commercialisation. Table 2 shows that, in aggregate, GEL's total regulatory costs over the last three years have been about double its licence fees.

Table 2 GEL's costs of regulation

| Financial year                     | 2002/3 | 2003/4 | 2004/5 |
|------------------------------------|--------|--------|--------|
| Regulatory costs (£'000)           |        |        |        |
| - Licence fee                      | 180    | 180    | 180    |
| - Audit fee (regulatory accounts)  | 6      | 6      | 6      |
| - Consultancy fees and other costs | 11     | 2      | 178    |
| Total external costs               | 197    | 188    | 364    |
| Internal costs                     | 111    | 130    | 152    |
| Total regulatory costs             | 308    | 318    | 516    |
|                                    |        |        |        |
| Number of customers                | 27,844 | 28,201 | 28,255 |
| Units sold (GWh)                   | 296    | 306    | 317    |
| Sales of electricity (£m)          | 23.8   | 24.5   | 25.3   |

Source: GEL *Regulatory Accounts, Notes to the Financial Statements*. These regulatory costs are part of the Finance and Administration expenses in the published accounts. Also Key Statistics.<sup>20</sup>

<sup>17</sup> *License fees for Telecommunications, Post and Electricity Licences in Guernsey*, Information Note, OUR 04/08, June 2004.

<sup>18</sup> Whether this is the final number envisaged is unknown. A press report says that "Under States Guidelines, the OUR can employ up to seven staff." (*Guernsey Press*, 26 October 2004)

<sup>19</sup> It is possible that additional consultancy costs associated with regulation, such as the cost of the Mott MacDonald consultancy report, were funded separately by one of the States departments hence are not included in the OUR's costs set out in its accounts.

<sup>20</sup> Note: the electricity licence fee has been £15,000 per month starting February 2002, hence the total was £165,000 in OUR's calendar year 2002 but £180,000 in GEL's financial year 2002/3.

Dividing GEL's licence fee by its number of customers in the relevant year (and adjusting to a full year equivalent in 2002) shows that the cost of the OUR licence fee per GEL customer was £6.46 in 2002, £6.38 in 2003 and £6.37 per customer in 2004. The average is £6.40.

GEL's total costs of regulation including the licence fee amounted to £11.06 per customer in 2002/3, £11.28 in 2003/4 and £18.26 in 2004/5.

On average to date, the total cost of regulation in Guernsey has been £13.53 per electricity customer per year. Of this, £6.40 has been calculated as the cost of the OUR, leaving £7.13 for GEL's cost of responding to this.

### **4.3 Comparison of OUR costs and Board of Industry proposals**

How should these costs and the staffing be evaluated? When the OUR was set up, reference was made to its costs not exceeding 1 per cent of licensees' turnover. As far as electricity is concerned, the regulatory costs have been within this. The cost of GEL's licence has been £180,000 per year, whereas 1 per cent of its turnover would be about £250,000 per year.

However, OUR's costs and staffing are clearly higher than the Board of Industry envisaged and proposed in 1999. It spoke then of the total cost of regulation being about £350,000 per year. In practice the total cost has actually been about £900,000.

The OUR's costs of electricity regulation have been about one fifth of the total costs of the OUR. If the electricity licence fee had been one fifth of a total regulatory cost of £350,000 it would have amounted to £70,000 per year. In practice the electricity licence fee has been £180,000.

The Board of Industry also referred to total cost being just 0.56% of total turnover in the three Boards. Electricity turnover in 2004/5 was £25,284,000, so 0.56% of that would be £141,600 per year. Again, the actual licence fee of £180,000 is in excess of this.

The implication of the Board of Industry assumptions is that average cost per electricity customer might now be £2.50 or £5.05 per year, depending on whether the benchmark is the £350,000 total budget or 0.56% of total turnover. In fact the cost per electricity customer is now £6.37 per year.

### **4.4 The costs of UK electricity regulation**

How do the costs of electricity regulation compare to those in other countries? The DG of OUR has said that "benchmarked against other sector specific regulators in the UK, the OUR compares very favourably with those agencies".<sup>21</sup> In 2004/5 the electricity and gas regulatory body Ofgem had a staff of 306 and a total cost of £ 35.9m. Table 3 gives some details.

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<sup>21</sup> OUR *Annual Report* 2005, p. 6

Table 3 Ofgem's income, costs of objectives and staffing

| Year                                | 2002/3 | 2003/4 | 2004/5 |
|-------------------------------------|--------|--------|--------|
| INCOME                              |        |        |        |
| Licence fees £m                     | 46.3   | 45.0   | 45.4   |
| Less to DTI for Energywatch         | (13.1) | (12.4) | (13.3) |
| Net fee income                      | 33.2   | 32.6   | 32.1   |
| After other adjustments             |        |        |        |
| Operating income                    | 38.3   | 36.7   | 35.8   |
|                                     |        |        |        |
| COSTS (by Ofgem Objective)          |        |        |        |
| Creating and sustaining competition | 22.0   | 18.8   | 18.0   |
| Regulating network monopolies       | 11.8   | 11.1   | 11.2   |
| Security of supply                  | *      | 2.6    | 1.6    |
| Voice in Europe                     | *      | 1.0    | 1.4    |
| Protect the environment             | 2.9    | 2.5    | 2.9    |
| Fuel poverty                        | 0.6    | 0.7    | 0.8    |
| Total costs                         | 38.3   | 36.7   | 35.9   |
| Allocated to electricity 56.4%      |        | 20.7   | 20.2   |
|                                     |        |        |        |
| Ofgem staff                         | 312    | 309    | 306    |
| Allocated to electricity 56.4%      |        | 174    | 173    |

Source: Ofgem *Resource Accounts 2004-05* pp. 4, 21, 26; 2003-04 pp. 22, 28, 33

\* Objectives varied over time, and later accounts restated amounts from earlier years.

To be comparable with OUR, Ofgem costs must be adjusted for the costs of energywatch. The latter organisation is the primary vehicle for consumer representation and customer complaints. In Guernsey, the comparable organisation appears to be the Trading Standards Service of the Department of Commerce and Employment (formerly the Board of Industry). This is the organisation to which both OUR and GEL refer customers with complaints.<sup>22</sup> It is therefore appropriate to exclude the costs of energywatch in this comparison.

Again for comparability, Ofgem's costs must be adjusted to reflect the costs of regulating electricity only, since gas is not regulated in Guernsey. There are some 28m electricity customers in the UK and some 22m gas customers. Ofgem allocates 56.4% of its costs to electricity licensees and 43.6% to gas licensees.<sup>23</sup> This gives an attributed cost of UK electricity regulation of £20.7m in 2003/4 and £20.2m in 2004/5. Dividing by 28m

<sup>22</sup> "Customers who are unable to resolve a complaint they have with their utility provider directly with the company, can contact Trading Standards Service who will act impartially and attempt to find a fair outcome for all the parties involved." OUR *Annual Report 2005*, p. 35. See also section on Customer Complaint Handling Process on GEL website.

<sup>23</sup> *Licence fee cost recovery principles*, Ofgem, February 2002, Appendix 2.

customers, the average cost of electricity regulation was £0.72 per electricity customer in 2004/5.

The corresponding numbers of staff would be 174 and 173 in the two successive years. Ofgem does not give figures for professional staff. It seems that the mean or median proportion in developed countries would be a little over 60 per cent of total staff.<sup>24</sup> This implies a professional staff of about 105 in the UK.

#### **4.5 Comparison of costs of regulation in Guernsey and UK**

GEL's customer base of about 28,000 is about one tenth of one percent of the UK's. So a pro-rata cost of UK regulation in a country the size of Guernsey would be about £20,000 annual cost with 0.1 staff. In Guernsey, the OUR's licence fee to cover the cost of electricity regulation is £180,000 and the OUR's equivalent professional staff as calculated above is 1 for electricity. Both these figures are about ten times the level observed in the UK.

Further examination of Ofgem's accounts shows that half of its costs and nearly half its staff are associated with the objective of creating and sustaining competition. In practice this has negligible relevance in Guernsey. The same applies to Ofgem's objective of providing a leading voice in Europe. The objective of helping to protect the environment is relevant in Guernsey, but it does not involve comparable complexity and costs as it does with the taxation and regulatory schemes in the UK.

To adjust for these three differences, suppose those three items are reduced by 90 per cent of their UK level, that is by  $0.9 \times (18.0 + 1.4 + 2.9) = £20\text{m}$  in 2004/5. This gives an adjusted total UK regulatory cost of £15.8m. Multiplying by 56.4% yields an attributed cost of £8.9m for electricity. The pro-rata cost for Guernsey would be £8900 annual cost, one twentieth of GEL's present licence fee.

On a similar basis, reducing staff numbers by 169 (90 per cent of the staff associated with the objectives less relevant to Guernsey) gives an adjusted staff level of 137, or an estimated 84 professional staff. Multiplying by 56.4% yields an estimated 47 professional staff in electricity regulation doing comparable tasks as in Guernsey. The pro-rata professional staffing level for Guernsey's electricity regulation would be 0.047 professional staff. Again this is one twentieth of OUR's present attributed staffing level.

Admittedly, in place of competition in generation and supply, OUR needs to monitor these activities more closely and set price controls on them. This takes time and resources. A more moderate conclusion would therefore be that, on a pro rata basis, OUR's costs are somewhere between ten and twenty times those of Ofgem.

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<sup>24</sup> "Modelling the costs of energy regulation: Evidence of human resource constraints in developing countries", Preetum Domah, Michael Pollitt and Jon Stern, DAE Working Paper WP 0229, CMI Working Paper 11, University of Cambridge, October 2002, Table 2.

#### 4.6 Comparison of costs of price control reviews

Is the picture any different for the specific activity of setting a price control? Consider the setting of that component of the price control that relates to the distribution network, which applies in both countries. Ofgem has recorded its costs of the most recent Distribution Price Control Review, including both internal staff and external consultants, as being £3.350 m in 2003/4 and £2.354 m in 2004/5.<sup>25</sup> This is an average of £2.852 m per year for two years. On a pro rata basis, this would correspond to an average of £2852 per year in Guernsey, again for two years.

OUR has not published costs of individual activities. The price control review has been by far its major project - almost its only project - in the electricity sector over the past two years. (In addition, work and decisions on this project evidently started in the previous year and will continue into this year.) The distribution network component must have been a significant part – say one third - of that price control work.<sup>26</sup> So OUR's costs associated with the distribution network element of its recent price control review accounted for about one third of the OUR licence fee for the last two years, namely about £60,000 per year.

Thus, the distribution part of OUR's electricity price control review probably cost of the order of £60,000 per year for each of two years, whereas on a pro rata basis the cost of the UK's distribution price control was under £3000 per year. In other words, the cost of the distribution price control review in Guernsey seems once again to have been about twenty times the comparable cost in the UK.

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<sup>25</sup> Ofgem *Resource Accounts 2003-04* p. 4, 2004-05 p. 4.

<sup>26</sup> This component would include, for example, analysis of the initial value of assets, determination of the cost of capital, assessment of network operating costs and scope for efficiency improvements, consideration of related capital expenditure projects, and so on. Other (non-distribution) components would include generation planning, the importation of electricity and retail supply.

## PART THREE PROPOSED SOLUTIONS TO THE PROBLEMS

### 5 Removing the overlap of regulation

#### 5.1 Alternative possibilities for removing the duplication/overlap in regulation

The NAO has found a lack of clarity on objectives, roles and responsibilities in the electricity sector in Guernsey. Chapter 2 has established in some detail and with respect to some major decisions that there is presently overlap and inconsistency between the OUR as formal utility regulator and the Treasury and Resources Department as representative of the States as shareholder. The main features of the overlap are that T&R and the OUR are each required to satisfy themselves as to the key features of the performance and activities of commercialised entities. Specifically, both organisations are responsible for satisfying themselves on pricing policy, operational costs and efficiency, and longer term capital investment plans of GEL (and GPL). This not only involves duplication of effort, it also opens up the real possibility of inconsistency and conflict. In practice, the outcome seems to have differed between posts and electricity. With respect to posts, there has been relatively little inconsistency between the decisions and views of the OUR and those of GPL and, by implication, with those of its shareholder T&R. With respect to electricity, this is not the case.

An obvious question is whether it is possible to remove the overlap in governance by removing the role of one of the two authorities in question. Is it possible to remove or reduce the States' role as shareholder? It would seem infeasible or at least inappropriate to pretend that the States are not the shareholder, or to prevent them from exercising their duties as a shareholder. Some might argue that the States could or should act purely commercially, abandon its policy of balancing commercial returns against the interests of consumers and the community, and leave all such considerations to the OUR. But this is not the position that the States have taken to date. Moreover, in a small island community like Guernsey, it is unrealistic to suppose that the States could or would ignore the wide variety of social and other non-commercial considerations attached to utility pricing and investment.

However, it would not be difficult to refocus the role of the OUR on specified companies and not on others. The Regulation of Utilities Law 2001 (s 22) provides that "utilities services means postal services, telecommunications services and electricity services, and such other services as the States may by Ordinance direct". It would be simple to give the States the option to exclude any of these specified utility services, for a specified or unspecified period of time. In practice, it would only consider doing so in case of commercialised entities that remained in States ownership – or at least while that utility was still majority-owned or controlled by the States of Guernsey. OUR would thus continue to regulate the telecommunications sector. Whether the OUR should cease to regulate the postal sector is for consideration by others: the argument here concerns OUR's regulation of the electricity sector.

To the extent that ‘regulation’ was required for electricity, it would in effect be the responsibility of T&R department, which for the most part would operate essentially as it does at present. A few additional arrangements might usefully complement this arrangement. The remainder of this chapter outlines how T&R could do this, considers some possible objections to this proposal, and looks at international experience in other small islands.

## **5.2 T&R and the functions of regulation**

In practice, the activities carried out by regulators can be grouped into about half a dozen categories. An examination of these categories in the case of electricity shows that, in the absence of regulation by OUR, all OUR’s present responsibilities could in practice be covered by T&R without any significant increase in the volume of T&R’s activities.

### **1. Strategic issues**

Energy policy issues such as renewable energy, environmental emission controls and diversity of supply are clearly important. But they are presently the responsibility of the States rather than the OUR, and would remain so. Where a licensee is in private ownership the States may find it convenient to give effect to their decisions by placing a direction on the OUR, which in turn presently has power to impose directions on the licensees. But this is unnecessary where a licensee remains in States ownership. As noted earlier, it is not normal or helpful for a regulator to engage in long-term planning of the electricity system, an activity for which regulatory bodies are typically not qualified.

### **2. Setting, monitoring and enforcing price controls**

The OUR has set price controls covering most aspects of GEL’s business. These have involved reviews of most of GEL’s business activities including the distribution network, generation and retail supply. T&R too reviews GEL’s activities and prices and indicates its preferences. T&R could therefore continue as at present to require a commercialised entity to propose a Five Year Plan, renewed and updated annually. This would include, importantly, the planned investment programme, business plan and operating expenses, the pricing policy and all strategic risks facing the company. Where appropriate T&R would indicate any desired changes to the Plan – for example, to reflect a more challenging efficiency target or a different balance of shareholder and customer interest compared to what GEL had proposed.

It might be said that T&R’s reviews have hitherto not involved scrutiny of fine detail. From time to time, therefore, T&R might wish to take advice from technical, economic and financial consultants. Approving medium-term price controls could be an area where such advice would be appropriate.

There is scope for enhancing the present role of T&R to accommodate some of the practices of modern regulation. For example, a public consultation procedure on the price control review could be envisaged. GEL might be required to publish its draft Plan (at

least the non-confidential elements thereof) for public comment. T&R would take these into account. T&R might be required to issue a draft response for public comment before finalising and publishing its acceptance of the final Plan. Monitoring and enforcement of the price controls would be consistent with T&R's present role as shareholder.

### 3. Quality of service

OUR presently sets standards for quality of service. It would be relatively straightforward to use UK standards as the basis for Guernsey, unless there were good reason not to, as I understand is indeed the case at present. If desired, T&R could invite views of the OUR on specified issues – for example, on matters particularly relating to consumers, although it is not clear that T&R needs any outside assistance in taking a view on appropriate service standards for Guernsey. It would be for T&R to specify the context and scope of OUR's advice and to decide how to take the OUR's views into account. Since quality of service has been addressed already, however, it seems unlikely to be a major issue in the years ahead. .

### 4. Consumer complaints

Trading Standards Service (TSS) of the Department of Commerce and Employment presently deals with customer complaints if the customer has not already agreed the matter with GEL. That would continue. If TSS fails to resolve a complaint, present provisions are that a case may be referred to the User Council and then to OUR. If desired, T&R could be given the ability to refer the case to the OUR, which at present can if necessary issue an order on the company, but this seems unnecessary since T&R could settle the complaint itself as shareholder. In fact, there have been very few customer complaints, and to date TSS has been used only once in the last four years.

### 5. Other matters

Other regulatory tasks presently discharged by the OUR include representation, interviews, media appearances etc. These would be a matter for T&R department, which already as shareholder has to present and account for its decisions on commercialised entities.

At present the OUR has to spend time and costs dealing with appeals against its decisions. These can be expensive: it is said that the telecommunications appeal cost about £2 m. If regulation via OUR did not apply to the States-owned commercialised sectors then there would be no need to incur the time and costs of appeals against OUR decisions.

To summarise, T&R could discharge all OUR's present regulatory responsibilities with respect to electricity, with little additional workload. It could call on technical and other consultancy advice as appropriate. It could commit to a consultation process comparable to that of the OUR. It could even ask OUR's advice on certain issues if it wished to do so. But there would be no real need for OUR as far as electricity regulation was concerned.



### **5.3 Possible concerns about removing OUR regulation**

There might be concern that removing OUR regulation from the electricity sector, and relying wholly on T&R to regulate GEL, would have several disadvantages. Surely independent regulation is a step forward, and transferring regulation to T&R would be a backward step? However, consideration of experience and circumstances in Guernsey suggests that such a fear is not justified.

Let us first be clear that the proposal is not that GEL should be de-commercialised and taken back into full States operation and control, with a political board running the business, as was the case before commercialisation. Commercialisation itself has been a success, and the proposed arrangements would build upon this. Electricity would continue to be provided by GEL as a limited liability company with an independent Board of Directors. Arrangements would continue essentially as at present, except that the present role of OUR as regulator would be removed and T&R would take on any necessary regulatory responsibilities.

Consequently, this does not mean that GEL would no longer be regulated. Nor would GEL be free to take all its own decisions, responsible to nobody. GEL would henceforth be regulated by T&R.

Would T&R, on behalf of the States as shareholder, be reluctant for political reasons to accept or encourage more efficient management and reductions in staffing? This argument does not carry weight in Guernsey. GEL has already achieved notable efficiencies in manpower and other areas since commercialisation. T&R has every reason to welcome reductions in costs and the reductions in utility prices that they make possible.

Would the States refuse price increases or hold prices below cost, again for political reasons? Experience again shows that this is not the case. T&R did not oppose the need for a price increase in October 2003 and it accepted the need for GEL significantly to increase its prices beginning in 2005. Nor can it be said that customers would be unprotected because T&R would agree to unreasonable increases in GEL's tariffs. On the contrary, T&R opted for GEL to earn only a 1 per cent return on assets, far below the commercial rate. And as a States-owned company in a small island community, GEL itself is not likely to want to charge excessive prices.

In fact, T&R's record on electricity pricing is more defensible than OUR's. OUR froze electricity prices without justification in March 2003, proposed a real price reduction rather than a real price increase when international fuel prices were rising sharply, and eventually conceded a lower price increase than T&R had accepted was appropriate to reflect rising costs. At the same time, it can hardly be said that customers would be better protected by OUR when it proposed that GEL set charges to earn a return on assets higher than T&R preferred.

Would regulation by T&R mean more government intervention in investment and operating decisions? On the contrary, it is arguable that OUR's interventions have increased the politicisation of decision-making on operational decisions such as purchasing of electricity and on long-term planning of generation adequacy, whereas one of the arguments for commercialisation was to reduce such interference.

Would T&R lack the necessary expertise to evaluate GEL's capital expenditure plans? There is no reason why it should, since it could hire technical and economic consultancy advice as OUR and C&E have done.

The NAO has expressed various concerns about previous arrangements between T&R and GEL – for example, with respect to clarity of roles, adequacy of dividend targets in stretching the company, communications between the two parties, energy strategy and non-core activities. I understand that T&R and GEL have already resolved some of these, for example those involving communications. To the extent that problems still remain, they need to be and can be resolved whatever the role for regulation. Transferring regulation from OUR to T&R would not exacerbate such problems. In fact, it might facilitate clarification of roles and responsibilities if OUR were removed from the picture.

Another concern might be that removing OUR regulation from the States-owned commercialised entities would preclude or make more difficult the introduction of private capital if the States subsequently decided that this was appropriate. However, this should not present a problem. The proposed regulation by T&R is consistent with private shareholders having a minority or controlling stake in a commercialised entity in which the States have a majority shareholding. If the States decided to sell majority ownership and control of the company to private investors, then the company could revert to regulation by the OUR as in the telecommunications sector at present. At that point T&R, in consultation with OUR, could put in place price control and other arrangements to facilitate a natural transition to continuing regulation by OUR. Some arrangement of this kind would in any case have to be made in the event of private capital being introduced. The clarification of GEL's asset valuation and associated issues, proposed as part of the completion of the recent price control review, would probably go a long way to facilitating any transfer of regulation back to OUR if the States were to envisage private capital.

Would the benefits of independent regulation be lost? As suggested above, it is not at all clear what benefits OUR has in fact provided. Moreover, independent regulation also has costs and these costs may outweigh any benefits. Regulation is costly to provide, and also imposes costs on regulated companies in terms of resources, diverted management time, and additional uncertainty. It can reduce initiative and responsiveness to change, and blur responsibilities. More staff can tend to make more work for regulation. It can divert skilled resources from more valuable and productive use elsewhere in the economy. There are increasing concerns about excessive regulation, not only in Guernsey. For example, in the UK the NAO found that most of the UK distribution companies considered that most of the price control information requested by Ofgem was

unnecessary.<sup>27</sup> Hence the Better Regulation Task Force principles that require, amongst other things, that regulation be proportionate and introduced only where necessary. These possibilities are explored in the next chapter. For the present, the main point is that independent regulation also has disadvantages, and is not necessarily the most sensible approach in all circumstances.

#### 5.4 Evidence from overseas including other small island countries

Independent regulation is accepted as appropriate for privatised utilities. In general it has proved successful with the privatised utilities in the UK. It has also proved a useful component in the privatisation and reform of the utility sectors in several larger developed countries such as Australia and Scandinavia. But it has proved rather costly in smaller countries, since there seems to be a minimum scale of operation of an independent regulatory body. (See Appendix Two) International evidence on the impact of regulation is also somewhat qualified.<sup>28</sup> Is independent regulation therefore appropriate and proportionate for government-owned utilities in a small country? In general, other small countries have not been convinced. Instead, they have found other solutions.

About a dozen countries seem broadly comparable with Guernsey with respect to population, per capita income, number of electricity customers and size of electricity system. About half of these are embedded in larger countries, and often take their electricity supply from outside, hence have no real role for regulation.<sup>29</sup> Five small countries are also islands comparable to Guernsey (see Table 4).

The electricity systems in these islands have various different modes of ownership: public, municipal, private and mixed. They are ‘regulated’ in a variety of ways. There is the Jersey Competition Regulatory Authority (JCRA); the government as owner in the Isle of Man; the Price Control Commission in Bermuda; and government regulation via licence in the Cayman Islands (though separate but light-touch regulation is to be introduced there as part of a more general commercialisation process).

The Faroe Islands are a little different in that they comprise 17 separate inhabited islands, but since 1977 a single company SEV has been supplying all the islands. It is run and presumably ‘regulated’ by representatives of the municipalities. “The board of SEV

<sup>27</sup> Asked what proportion of the requested information was necessary, 1 distribution company said 51 to 75%, 5 said 26 to 50% and 4 said 25% or less. National Audit Office, *Pipes and Wires*, Fig 33, p. 40.

<sup>28</sup> For example, one recent survey concludes that “regulation often has many undesirable consequences”. J Luis Guash and Robert W Hahn, “The costs and benefits of regulation: implications for developing countries”, *The World Bank Research Observer*, vol. 14 No. 1, February 1999, pp. 137-158. Another recent survey concludes that “Thus far, for electricity, there are some preliminary indications of a positive effect of regulation but nothing conclusive.” Jon Stern and John Cubbin, “Regulatory Effectiveness: the impact of regulation and regulatory governance arrangements on electricity industry outcomes”, World Bank Policy Research Working Paper 3536, March 2005, p. 44.

<sup>29</sup> Otherwise-comparable small countries that are not islands are Liechtenstein (population 33,717, GDP \$25,000), Monaco (32,409, \$27,000), San Marino (28,880, \$34,600), Andorra (70,549, \$26,800) and Gibraltar (27,884, \$27,900).

consists of seven members from all islands elected by the 78 agents located around the country. The board hires a director and the administrative staff.”<sup>30</sup>

None of these countries has an independent Utility Regulatory Authority per se. Yet as far as one can gather, the electricity systems in these islands are as modern as in Guernsey and operating just as satisfactorily. There seems to be no indication of problematic relationships between these electricity organisations and whatever part of government is responsible for supervising them.<sup>31</sup> These supervisory bodies are generally engaged in supervising numerous entities, rather than focused on one or a few utility sectors. This suggests that relatively few resources are devoted to the regulation of electricity in particular. Moreover, the apparent lack of any need to provide details (at least on the web) of the operation, staffing and costs of utility regulation is in itself an interesting point. Utility regulation in all these small islands seems to be accomplished in a low-key yet effective way. It provides reassurance to customers on prices and quality of service, and achieves good service and new investment, but does not seem to be costly or burdensome. It suggests that there are other ways of achieving satisfactory regulation that could be of relevance in Guernsey too.

Table 4 Electricity systems in comparable small island countries

| Country      | Population | GDP per capita | Electricity Sector |            |             |                            |                           |
|--------------|------------|----------------|--------------------|------------|-------------|----------------------------|---------------------------|
|              |            |                | Customers          | Production | Consumption | Capacity including imports | Ownership                 |
|              |            | \$US 2003      |                    | GWh 2002   | GWh 2002    | MW                         |                           |
| Guernsey     | 65,228     | 40,000         | 28,255             | 54+264     | 296         | 116+60                     | Public                    |
| Jersey       | 90,812     | 40,000         | 44,348             | (France)   | 630         | 208+145                    | 62% Public<br>38% Private |
| Isle of Man  | 75,049     | 28,500         | >40,000            | 132+274    | n.a.        | 177 + 45                   | Public                    |
| Bermuda      | 65,365     | 36,000         | 33,239             | 643        | 598         | 180                        | Private                   |
| Faroe Isles  | 46,962     | 22,000         | n.a.               | 220        | 205         | n.a.                       | Municipal                 |
| Cayman Isles | 44,270     | 32,300         | 21,000             | 411        | 382         | 123                        | Private                   |

N.a.: not available

<sup>30</sup> <http://www.randburg.com/fa/sev.html>, 20 January 2006.

<sup>31</sup> The Cayman Island electricity company refers to extensive discussions in agreeing its new licence but the issues seem to have been resolved satisfactorily.

## **6 Modifying the framework of regulation**

### **6.1 Modifications to OUR's statutory obligations**

Europe Economics (EE) was asked to examine the ethos of regulatory legislation in Guernsey. It focused on four main issues:

- a) the structure of regulatory bodies, and specifically whether there should be a move from an individual regulator to a committee-based body;
- b) clarity, hierarchy and content of regulatory duties;
- c) powers of governments to give directions; and
- d) the impact and efficiency of the appeal process.

I have considered how the EE's recommendations on each of these issues might help to resolve the regulatory problems identified above, and then made some additional proposals.

### **6.2 Structure of regulatory body**

In general I agree with the pros and cons identified by EE, and with the recommendation to stay with a single Director General rather than to introduce a committee structure. However, in the present context I would put more weight on the role of a committee structure in moderating extreme positions taken by an individual regulator that might be unreasonable or inappropriate. Such a safeguard needs to be given particular weight in present circumstances. For example, it seems unlikely that the OUR could have imposed such burdensome requirements on GEL, or assumed that the company did not own its assets, if the regulator had first to persuade a local board of the wisdom of these actions.

To avoid the more bureaucratic committee structure, I suggest that consideration be given to the following approach that I first used in the context of the price control review for the National Grid Company in the UK, and later extended to other price control reviews. I appointed a panel of three senior businessmen to advise me on what it was reasonable to put to and expect of the regulated companies (for example, in the way of efficiency improvements or other changes). The companies no doubt recognised this in the arguments they put forward. At the same time, the companies found the approach reassuring because they knew that practical businessmen like themselves were involved in the regulatory decision-making process at the highest level (although of course responsibility for the regulatory decisions rested firmly with the regulator). A third benefit was that the meetings between company and regulator, which were attended by the business advisors, were more constructive than they otherwise might have been. The approach proved very successful, including in the views of the companies, and was repeated until the structure of regulation was itself changed. It seems to me that this approach could be beneficial in Guernsey too.

### 6.3 Regulatory duties

EE suggests that the lack of hierarchy of OUR's duties and their commonality across all three regulated sectors is likely to have made decision-making more difficult than necessary, increased regulatory risk and may have contributed to some of the conflict between the OUR, utilities and consumers. It recommends differentiating between primary and secondary duties and between each of the three regulated sectors.

Although there are clearly differences between the three sectors, I should be surprised if the OUR was not able to take account of this in its decision-making. So I am not convinced that the present duties are likely to have caused the problems mentioned. If a Direction does require the OUR to give particular priority or weight to a particular duty, it will be important to ensure that this does not simply mean an additional burden of regulation with respect to that duty, without recognising the need to reduce the burden of regulation with respect to other duties. It might therefore be helpful for any such Direction to provide that any priority should be without prejudice to the Better Regulation duties discussed below. Indeed, in present circumstances there would be merit in a Direction making the Better Regulation duties a priority for the OUR and the States with respect to all the sectors presently regulated.

I strongly agree with EE's recommendation that the OUR should be given an explicit duty, applicable to all three sectors, to have regard to the costs of compliance and to adopt regulatory methods appropriate to the size of Guernsey. In understanding the present situation, it is fair to say that there has been some lack of clarity in the general framework, and probably (as the NAO and EE reports suggest) some conflicts of personalities. Nevertheless, the bottom line is that the actual regulatory process and decisions have generally been 'over the top'. Getting a more appropriate regulatory approach is therefore the key to solving all the problems. I am pleased to note that the OUR itself is now looking at ways in which it can improve its procedures.

The proposed new duty will certainly help here, but is open to the question: what exactly does it mean to regulate in a way proportionate to Guernsey? I would therefore urge that the new duty includes, in addition, an explicit statement of the principles of Better Regulation that are now incorporated within the regulatory duties in the UK. Specifically, they require that "any person exercising a regulatory function must have regard to the principles that

- b) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- c) regulatory activities should be targeted only at cases in which action is needed."

Even these useful additional principles do not quite capture the importance of the point that, in the present context of Guernsey, 'proportionate' should mean a reduction in the scale and intrusiveness and cost of regulation. To this end, it would be helpful to supplement the above clauses by two additional clauses:

- d) regulatory activities should promote and not discourage flexibility, initiative, innovation and responsiveness to customer preferences within the regulated sector; and
- e) possibilities for reducing the scope, intensity, intrusiveness and cost of regulatory activities should be actively pursued.

Incidentally, I assume that this additional duty, like the present ones, will apply equally to the States as to the Director General. This of course would be desirable.

#### **6.4 Powers of government to give directions**

EE notes that the scope for the States to give directions to OUR is narrower in Guernsey than in the UK or elsewhere and suggests that there should be scope to give directions to change the priority that OUR should afford to each of its duties. It warns against creating too much regulatory uncertainty or enabling the States to intervene in operational decisions by the regulator, and suggests allowing changes to the priority of the regulatory duties only every five or ten years

I appreciate that it may be convenient for the States to be able to give general directions to the OUR. However, I too place weight on EE's concerns about regulatory uncertainty and the dangers of intervention in regulatory decisions. It is not clear that limiting changes to once every five or ten years is consistent with responding to whatever circumstances might indicate a reordering of duties. I am therefore not inclined to see government powers of directions as a solution to the present problems of regulation, though they might have a useful role to play.

#### **6.5 The appeal process**

At present, licensees aggrieved by a decision of the OUR can appeal to the Utility Appeals Tribunal (UAT). The Department of Commerce and Employment has suggested that it would be more efficient and cost effective for appeals to be dealt with by the Royal Court. EE concludes that there would be greater advantage in improving the operation of the UAT than in substituting the Royal Court, for example by limiting the time available to the UAT to resolve cases. I agree with this. A legal route is likely to be more expensive and may not focus adequately on the economic as opposed to legal issues involved. It may be helpful to set out my views at greater length.

There has been understandable concern at the cost and time taken by the present utility appeals process, particularly in view of the experience of Cable and Wireless in 2002. The intention of the OUR to publish draft decisions for comment before a final decision will help to resolve issues that might otherwise have gone to appeal. Use of a mediation process could be helpful in some circumstances, although it is not necessarily suitable for all types of regulatory dispute. Moreover, the accepted view in the UK (I understand in Guernsey too) is that it is inappropriate for the regulator to negotiate with licensees, as opposed to hearing what they have to say and then making a decision. Increasing the time for lodging an appeal from 14 to 28 days will allow a more considered response, though

whether it will reduce the number of appeals is not obvious. I am therefore not optimistic that the above procedures, whilst probably useful, will really address the issue of a satisfactory appeal process.

Consider now the possibility of referring all appeals to the Royal Court, possibly with technical or other assessors. I would not wish to rule out the possibility of recourse to the Royal Court for primarily legal issues, including judicial review. However, I am concerned that if this were the only route for appeal it would lead to an excessive and often inappropriate emphasis on legal issues. This would be even more costly and time-consuming than the present process, which alternatively could be improved, as the EE report explains.

In my experience, and consistent with a point made by EE, the issues most likely to arise in utility regulation appeals are generally not legal ones but rather are matters requiring economic and business judgement. A common question would be: is this price control proposal a reasonable one to impose on the company, and if not what is? A legal approach would ask whether due process has been followed, whether relevant information has been overlooked, whether anything is inconsistent with the facts in the case, whether it is possible that a reasonable regulator could have come to the decision in question based on the evidence before him or her, and so on. Although such questions may sometimes be relevant, the more likely and relevant set of questions concerns the substance and magnitude of the regulator's judgements. For example, would this or that assumed efficiency improvement be more appropriate in the future circumstances of the licensee, how should the weighted average cost of capital be calculated in the licensee's particular circumstances, are particular items of capital expenditure justified in view of future possible demand and supply scenarios and if so how soon, and so on. Experts can often shed light on these questions, but there are generally no right or wrong answers - these are questions where even experts may legitimately differ. What is required above all is a judgement whether, all things considered, the regulator has 'got it about right' or has been a little too severe (or too lenient), and if so a judgement on what would be 'about right'.

I would therefore suggest that it would be premature to remove the possibility of appeals to the Utility Appeals Tribunal in the majority of cases. Steps can be taken to avoid the problems that have previously been experienced. For example, the EE report proposes giving the Tribunal only a limited time (3 months) in which to complete its work. This would be sensible, and consistent with the approximately three-month period provided for appeals against Code modifications in the UK energy sector. In the case of modification references to the UK Competition Commission, it is up to the Director General to specify the time in which the report is to be completed. The parties then can and do organise their material and processes to meet this timetable.

There is no reason why legal issues should dominate Tribunal appeals, or why the parties should think that advocates are the most effective presenters of their case. If there is a concern that members of the Tribunal are not sufficiently familiar with the conditions and approach appropriate to Guernsey, then it is open to the States to appoint appropriate



people to the Tribunal. It is certainly not the case that the UK Competition Commission limits its membership to technical experts and specialists in utility regulation: on the contrary, part of its strength has always been the diversity of its membership, not least the participation of the non-specialist business person.

To summarise, I strongly agree with the conclusion of EE, which I am told is also the view of the three regulated utilities, that it would be better to improve the operation of the Utility Appeals Tribunal by making it more cost-effective, than to refer all appeals to the Royal Courts.

I would make one further suggestion. At present the regulator has the power to impose any modification to the license that he or she considers necessary or expedient. In the absence of appeal by the licensee, the modification stands. This puts the regulator in a stronger position, and the licensee in a weaker one, than in the UK. There, the regulator may propose a change to a licence, but if the licensee declines to accept, then in the absence of appeal by the regulator, the modification does not stand. This puts an additional pressure on the regulator to ensure that its proposals are reasonable. In present circumstances, it would seem appropriate to consider adopting the UK practice in this matter.

## **6.6 A possible Competition Commission**

It is understood that the Department of Commerce and Employment is “carrying out an investigation into whether the island needs a competition law”. (*Guernsey Press* 15 Nov 2005) If a new Competition Authority were set up to enforce such a law, would it be sensible for the OUR and utility regulation (or at least electricity regulation) to be part of it, and if so in what way?

There are two possibilities here. One is that regulation by a Competition Authority should replace regulation by the OUR, at least with respect to States-owned entities. The other is that utility regulation should continue as now, but that a combined Competition and Regulatory Authority should be responsible for both sets of activities.

Electricity is in fact regulated in the first way in Jersey. Jersey Electricity has been a Public Company since 1924 and is listed on the main London Stock Exchange. The Jersey Government owns 62% of the ordinary share capital of the Company whilst the remainder is owned by a diversity of institutional and private investors. The States of Jersey set up the Jersey Competition Regulatory Authority (JCRA) in 2001 as an independent body with responsibility for promoting competition and consumer interests through economic regulation and competition law. In the field of economic regulation, its responsibility currently covers the telecommunications and postal sectors. It is also responsible for administering and enforcing the Competition (Jersey) Law 2005. Although there is no electricity sector-specific regulation, the JCRA can still act if Jersey Electricity abuses its monopoly position. To date the JCRA has not needed to intervene in the electricity sector.

Replacing sector-specific electricity regulation by a Competition Authority would avoid the costs of a regulatory office and reduce regulatory uncertainty since there would be less of a role for regulation. It would therefore reduce the costs of compliance by the company, and increase the company's flexibility and responsiveness to new situations.

If there were sufficiently serious concerns about the actions of the electricity company, then the Competition Authority could investigate. It would have resources to do so, though initially it would have little accumulated expertise in the electricity sector. If it did find abuse of a monopoly position it would have to consider how to deal with this. Whether a one-off remedy would suffice is unclear. If the monopoly position is permanent then a permanent remedy may be called for. There may be advantage in a price control framework as a means of clarifying what prices it would be reasonable or unreasonable for the company to charge. Any such price controls would need to be monitored and updated from time to time. The Competition Authority would need to allocate staff and resources to do this, including perhaps by means of consultancy advice.

All this might suggest that the situation would tend to become the same as under regulation. Against this, however, a States-owned body would be unlikely to want to act anti-competitively, at least with respect to seeking excessive prices and profits. It is also argued in this report that T&R could adequately regulate States-owned entities. In special circumstances there might need to be a Competition Authority investigation from time to time to reassure those concerned (including customers and companies, politicians and commentators). Even a States-owned company might welcome some external guidance. However, this would not be the normal situation, and there would be advantage in waiting to see whether price controls or some other form of regulation are required, rather than presuming that they are from the start. Thus, replacing the OUR by a Competition Authority, at least for States-owned entities, would have merit in the context of Guernsey.

Combining the OUR with a Competition Authority would not have the above advantages but it would have at least two other related advantages compared to the present situation. First, the authority would have a broader range of staff and responsibilities. This would increase flexibility of regulatory resource use and increase the range of expertise available with respect to each aspect, including electricity regulation. This is particularly relevant if a rigorous slimming down of the present regulatory body is envisaged. Importantly, where appropriate and on the most critical issues, it would enable the person primarily responsible for electricity regulation to discuss the matter with a wider range of colleagues to inform the decision-making process. In some measure, then, this would provide some of the advantages of a regulatory committee over an individual Director General, without the additional cost and bureaucracy that a regulatory committee would entail.

Second, a combined Regulation and Competition Authority provides a wider context against which to assess the need for action in any particular sector. Specifically, an organisation responsible for the health of a large proportion of the market sector in Guernsey might be less inclined to see any problems in the electricity sector as overwhelmingly serious, needing detailed and continuous intervention. It might be more

inclined to see them as presenting issues from time to time that need to be dealt with expeditiously along with many other issues in the more or less competitive market as a whole. There will be many other issues to deal with: the fortunes and reputation of the Authority will not depend so heavily on electricity regulation as the OUR does. This would seem more consistent with the view of regulation set out by the States in 1999.

## 7. Reducing the cost of regulation

### 7.1 Improved budgetary control

Although the costs of the OUR, at about £900,000 per year, have remained within 1 per cent of the aggregate turnover of the licensed companies, as mentioned in the Advisory and Finance Committee letter of 2001, this is rather higher than the States' 1999 estimate of £350,000. On average, as shown in a previous chapter, the OUR's electricity regulation costs the Guernsey electricity customer £6.40 per year. Per capita, this is ten to twenty times the cost of electricity regulation in the UK. There is no reason to expect the per capita benefits of regulation to be any higher in Guernsey than in the UK. The Committee was therefore right to say that regulation should also deliver value for money, and should in due course be reviewed. In my view, regulation is not presently delivering benefits to justify this level of expenditure and involvement, and indeed cannot be expected to do so.

How is this best accomplished? One of the States' first general Directions could usefully require the OUR significantly to reduce its direct costs of operation, in parallel with the proposed new duty to regulate proportionate to the circumstances of Guernsey.

Is a regulatory body likely to respond significantly to this? There is room for doubt here. The statutory duties on a regulator are quite broad and serious. The regulator is appointed to protect the interests of consumers in respect of prices, quality and variety of service; to secure as far as practicable that the provision of services meets reasonable demands; to ensure that these activities are carried out so as best to serve the economic and social development and well-being of Guernsey; and many more. These are far-reaching objectives. The regulator is provided with equally far-reaching functions and powers to enable the fulfilment of these objectives. It is perhaps not surprising that a regulator might feel the need to investigate all these issues in some depth, and that a considerable staff and minimum scale of activity is required in order to discharge these duties, and to convince others that they are being properly discharged.

It is therefore important to consider what additional steps can be taken to ensure that the costs (and the scale) of regulation are indeed reduced to a more appropriate level. In this context I am concerned to learn that there is no direct budget limit on the OUR, so that it can incur whatever costs it chooses to, and simply charge these to the licensees. I appreciate that it may not be appropriate to have the OUR subject to an annual vote on its allowed budget. However, is there no other way by which the States can exercise responsibility or express their concern on this matter? In the UK, the Treasury has responsibility for approving the budget of Ofgem. Should not Treasury and Resources Department, or Commerce and Employment Department as sponsor Department of the OUR, be expected to set and enforce an appropriate budget for utility regulation?

## 7.2 The feasibility of a smaller budget for regulation

What size of budget is appropriate for utility regulation in Guernsey? Various different benchmarks might be considered. A pro rata calculation based on UK experience might be unduly severe. For present purposes it seems sensible to work with the estimate suggested by the Board of Industry in 1999, namely £350,000 and one full time professional staff (the DG) to regulate the three sectors. This would imply a licence fee of £70,000 for electricity with one fifth of a professional staff member's time. This involves somewhat more than the pro rata cost in the UK. However, it reflects the considered original opinion of the Board of Industry in 1999, informed by its advisers (KPMG), as to what kind of regulation would be appropriate for Guernsey.

How would the regulatory budget be made up? On the basis of the OUR accounts for 2004 (total cost about £900,000 for five staff and three sectors), assume that staffing costs are reduced to about one fifth and other costs to about one half, so as to give a total cost of £350,000. The revised provision for electricity regulation is then assumed to be one fifth of the budget of the whole regulatory body. The provisions for the other sectors have also been reduced pro rata.

Table 4 Possible smaller regulatory budget (£'000)

|                          | Total body | Electricity |
|--------------------------|------------|-------------|
| <b>INCOME</b>            |            |             |
| Post Office revenue      | 70         |             |
| Telecoms revenue         | 210        |             |
| Electricity revenue      | 70         | 70          |
|                          |            |             |
| <b>Total Income</b>      | <b>350</b> | <b>70</b>   |
|                          |            |             |
| <b>EXPENDITURE</b>       |            |             |
| Salaries and staff costs | 70         | 14          |
| Consultancy fees         | 140        | 28          |
| Legal fees               | 50         | 10          |
| General Overheads        | 50         | 10          |
| Other                    | 40         | 8           |
|                          |            |             |
| <b>Total Expenditure</b> | <b>350</b> | <b>70</b>   |

The main tasks of electricity regulation, in Guernsey as elsewhere, have been set out in an earlier section. This showed how T&R could discharge these tasks. Appendix One contains a more detailed exposition of how a smaller regulatory agency could discharge them, including by the use of consultancy advice. (This calculation is of potential relevance to the T&R solution too.) The conclusion is that it would indeed be possible for a regulatory body to carry out the statutory functions of electricity regulation within a reduced budget equal to the level initially envisaged by the States.

## PART FOUR SUMMARY AND RECOMMENDATIONS FOR POLICY

### 8.1 Introduction and concerns

Guernsey Electricity has asked me, as former UK electricity regulator, to examine electricity regulation in Guernsey and to consider possible modifications.

I have looked at three potential causes of concern;

- The confusion and overlap in roles and responsibilities between the States and the OUR with respect to States-owned commercialised entities
- The actions of the OUR with particular regard to electricity regulation, and
- The costs of regulation, both in total and for the electricity sector in particular.

There is substance in all these concerns:

- Some actions of T&R on behalf of the States and the OUR as regulator seem to overlap and to have been mutually inconsistent.
- The OUR's actions have in some cases been heavy handed, inappropriate in Guernsey, unduly onerous and unreasonable in any country.
- The cost of regulation is greater than initially expected in 1999 and ten to twenty times the cost per capita in the UK.

This Report has examined three ways of addressing these concerns.

### 8.2 Analysis of measures to address these concerns

- 1) Transferring regulation of one or both of the States-owned commercialised entities (GEL and GPL) from OUR to T&R Department would resolve all three problems at a stroke (at least for the electricity sector).
  - This is not claimed to be the most appropriate method of regulation for privately owned enterprises, or in larger countries. But there is reason to believe that it would be a more satisfactory outcome for a States-owned company in a small island economy, and in the particular circumstances of Guernsey.
  - There must also be some doubt whether in practice other solutions would effectively address the above three concerns. The OUR may continue to exercise an inappropriately intrusive role in the business decisions of States-owned utilities, and the States cannot be expected to withdraw from active involvement. This would lead in practice to a continued overlap and confusion over responsibilities as well as excessive regulatory cost.
  - Given the size, nature and present circumstances of Guernsey, transferring regulation of States-owned entities to T&R seems more likely to produce a stable, non-bureaucratic and low cost yet effective system of regulation.
- 2) Modifying the regulatory framework would address the problems of unreasonable regulatory actions. The principle proposals are
  - That the OUR appoint a panel of senior business persons to advise it on price control reviews and other important interactions with licensees;

- That the OUR should be given a new duty, which could usefully be made a priority, to implement the principles of Better Regulation, and specifically
  - To regulate in a way proportionate to the size and circumstances of Guernsey and to have regard to the principles that
    - a. regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
    - b. regulatory activities should be targeted only at cases in which action is needed.”
    - c. regulatory activities should promote and not discourage flexibility, initiative, innovation and responsiveness to customer preferences within the regulated sector; and
    - d. possibilities for reducing the scope, intensity, intrusiveness and cost of regulatory activities should be actively pursued;
  - That the role of the Utility Appeals Tribunal be retained but that it be given a limited time (say 3 months) in which to determine an appeal; and
  - That if a determination of the OUR is not accepted by the licensee then it should not be implemented, hence it would be a matter for the OUR, and not the licensee, to appeal the matter to the Tribunal.
- 3) Reducing OUR’s budget would address concerns about the cost of regulation and, indirectly, about its heavy-handed and onerous nature.
- If the States were given the power to give general Directions, one of its first general Directions could usefully require the OUR significantly to reduce its direct costs of operation;
  - In the surprising absence of any control on the OUR budget, Treasury and Resources Department, or Commerce and Employment Department as sponsor Department of the OUR, should consider setting and enforcing an appropriate budget for utility regulation;
  - It would be feasible to carry out the statutory functions of electricity regulation within a reduced budget consistent with the level (total £350,000) initially envisaged by the States in 1999. This would imply a budget of about £70,000 per year for electricity regulation instead of £180,000.

### 8.3 Recommendations

Transferring regulation of States-owned commercialised entities from OUR to T&R could be expected to work well. It would solve all three problems, at least with respect to electricity, and is therefore recommended. This would not preclude the implementation of other measures, such as those suggested above, to deal with any problems of regulation in other sectors. Alternatively, if regulation is not transferred from OUR to T&R, application of these other measures would be helpful in resolving the problems of electricity regulation in Guernsey.

## APPENDIX ONE

### A.1 Allocation of regulatory time and resources within a reduced budget

Section 5.2 outlines the main regulatory tasks presently undertaken by OUR with respect to electricity, and shows how T&R could deal with them relatively straightforwardly. Alternatively, section 7.2 suggests that an independent regulator might undertake the same five tasks within a lower budget than the present one.

How much time might each of these tasks require? Some would be relatively constant from year to year, others would vary considerably depending, in particular, on whether a price control is in course of being set. With a professional staff person devoting one fifth of his or her time to deal with them, total  $1/5 \times 250 = 50$  working days per year, the average number of days per year on each task might be allocated as follows.

1. Strategic issues: 5 days per year on average, more in years when relevant policy is being formulated or revised, less in other years.
2. Price controls
  - a) Distribution network price control: 60 days in a year when the price control is being reviewed (perhaps spread over parts of two years in practice), 4 days in the other four years, average 15 days per year.
  - b) Generation and supply: assume the same as for the distribution network control (although there might alternatively be two shorter price control periods per five years), average 15 days per year.
3. Quality of service: 2 days per year on average, more in price control years when standards might be reviewed, less in other years.
4. Consumer complaints: 2 days per year on average.
5. Other matters: 10 days per year on average.

What would be the cost of each of these activities in terms of other resources? The main item apart from salary and staffing costs is consultancy fees. These are budgeted to total £28,000 per year, or £140,000 over five years. The main use of these would be in connection with the price control reviews. Possible allocations would be as follows:

- Technical report on the distribution network and limited financial advice, both including discussion with the regulator as required: £50,000 once per five years.
- Technical reports on generation and economic reports on purchasing and supply, including discussion with the regulator as required: £50,000 once per five years or about half that twice per five years.
- Ad hoc advice as needed on implementation of price control and on other issues, average £8000 per year for five years, total £40,000.

The regulator would have the ability to vire between these categories and (within approved guidelines) within other categories of expenditure.



This is of course a much-reduced kind of regulation compared to present practice. It is designed to enable one staff member to monitor and where necessary guide or restrain the company, but as one of several regulatory tasks covering other sectors too. It is not intended to be detailed and intrusive. It is intended to reflect the kind of regulation originally envisaged in Guernsey at the time of commercialisation.

## APPENDIX TWO

### A.2 International comparisons

Have other countries actually created independent utility regulation authorities on a small scale? One study looks at a sample of 60 energy regulatory bodies in developed and developing countries (or states and provinces therein).<sup>32</sup> Their size ranged from 5 to 946 total staff, of which from 2 to 600 were professional. Among developed countries, the median regulatory office has 51 staff, of which 31.5 are professional, in order to deal with 3 sectors. The authors conclude that “there is a very substantial ‘fixed cost’ element in electricity regulation. ... [E]ven for small countries with limited electricity systems, our estimates suggest that the number of regulatory staff required is around 30 including 15 professional staff”.

This conclusion seems on the high side for smaller developed countries. For the nine developed countries in their sample with fewer than 1 million electricity customers, the number of professional regulatory staff ranged from 2 to 24, regulating 1 to 6 sectors. The median size was 10 professional staff to regulate 3 sectors. The two smallest of these nine sample countries had around 100,000 electricity customers each. These were Barbados (2 professional staff to regulate the electricity sector alone) and the Bahamas (5 professional staff to regulate 3 sectors). This suggests that it is possible to regulate 3 sectors in some of the smaller developed countries with about 5 professional staff rather than 15.

Guernsey has about one quarter as many electricity customers as the two smallest countries mentioned, yet it has a comparable size of professional staff. Since the per capita costs of regulation are much higher in smaller countries, this raises the question whether the benefits of regulation outweigh the costs of regulation in small countries in general, and in Guernsey in particular. The potential benefits of regulation cannot be assumed to be any greater in a smaller country than a larger one.<sup>33</sup> Some have suggested that developing countries, in particular, might have to forego the benefits of privatisation or commercialisation that is thought to necessitate regulation.<sup>34</sup> This does not seem a

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<sup>32</sup> “Modelling the costs of energy regulation: Evidence of human resource constraints in developing countries”, Preetum Domah, Michael Pollitt and Jon Stern, DAE Working Paper WP 0229, CMI Working Paper 11, University of Cambridge, October 2002.

<sup>33</sup> A variety of factors are likely to impact on the potential benefits of regulation, including the nature of the previous or alternative regime, the actual and potential extent of competition, the stability of the general economic framework, and so on. But it seems unlikely that electricity utilities in smaller countries would be able to make larger percentage reductions in their operating or capital costs in each sector their businesses than utilities in larger countries. If anything, indeed, the assumptions made by UK regulators might suggest the opposite. OUR’s Table 4 shows that regulators have assumed less scope for efficiency improvements in Northern Ireland distribution and Scottish Transmission than in comparable organisations in England and Wales.

<sup>34</sup> Domah, Pollitt and Stern 2002, op.cit. note that developing countries may not be able to afford the costs of regulation, or will not have sufficient qualified people to run the regulatory offices. Stern 2000 expresses concern that this might necessitate deferring policies of reform such as commercialisation, privatisation and competition. In a developed country such as Guernsey, inability to attract qualified staff does not seem to be such a problem.

critical factor in Guernsey. However, discussion in the text shows that other developed small island countries have avoided this problem by adopting other forms of regulation, rather than by creating a separate regulatory body for government-owned enterprises.

**(NB By a majority, the Policy Council supports the proposals.)**

The States are asked to decide:-

XIV.- Whether, after consideration of the Report dated 5<sup>th</sup> April, 2006, of the Treasury and Resources Department and the Commerce and Employment Department, they are of the opinion:-

1. To agree that the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 be amended to:
  - (a) add a duty for the Director General of Regulation to “regulate in a way that is proportionate to Guernsey circumstances”;
  - (b) add to the functions of the Director General of Regulation a requirement to exercise his functions and powers in a way that is “accountable, proportionate, consistent and targeted only at cases in which action is needed”;
  - (c) enable the States, by Ordinance, to give Directions to the Director General of Regulation of a strategic or general nature including the priorities for the exercise of his duties in respect of each utility;
  - (d) increase the time limit for lodging an appeal from 14 days to 28 days after publication of a Decision by the Director General of Regulation;
  - (e) delete the provisions for appeals against Decisions of the Director General of Regulation to be referred to a Tribunal and replace with provision to refer such appeals directly to the Royal Court;
  - (f) require the establishment of an independent Audit and Remuneration Committee for the Director General of Regulation one member of which, who may or may not be a States Member, shall be appointed by the Commerce and Employment Department and the other members approved by the Department on the recommendation of the Director General; and
  - (g) provide for the Director General of Regulation to appoint a Deputy who can immediately take over the powers of the Director General should the Director General vacate his post before a successor has been appointed and to exercise such powers until the States appoints a successor.
2. To endorse the initiatives undertaken by the OUR to mitigate against an appeal by publishing draft decisions for consultation and by, where possible, engaging in mediation on any disputes over Decisions.

3. To appoint Mr John Curran as Director General of Utility Regulation in accordance with the provisions of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 for a period of three years commencing 1 February 2007.
4. To note that the Treasury and Resources Department will confirm with the States Trading Companies the content required in strategic plans, review the current States Guidance to Shareholders against the principles set out in Appendix 3 of the NAO report and, if necessary, bring proposals to the States to revise that Guidance.
5. To note that the Treasury and Resources Department will confirm with the States Trading Companies the information it requires to undertake its role as shareholder, what level of strategic decisions it expects to be involved in and which non-core activities each company should be involved in.
6. To note that a review of the current Universal Service Obligation for postal services, including a full consultation process with interested parties, is underway and that, if necessary, the Commerce and Employment Department will bring forward appropriate recommendations to revise the obligation.
7. To agree that approval of the proposals in that Report will confirm the status and responsibilities of all the parties involved in the commercialisation model and create an improved legislative environment for a pragmatic and risk based approach to regulation that can bring improved benefits to the community.
8. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

**HOME DEPARTMENT****eGAMBLING DISASTER RECOVERY SERVICES IN GUERNSEY**

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

13<sup>th</sup> March 2006

Dear Sir

**1. Executive Summary**

The purpose of this report is to propose enactment of legislation by way of an Ordinance or the amendment of an existing Ordinance to allow eGambling businesses based elsewhere in the world to conduct Disaster Recovery (“DR”) from Guernsey, regulated by the Alderney Gambling Control Commission (“the Commission”) under its licensing regime.

**2. Background**

The Home Department and the Commerce and Employment Department have been approached by the States of Alderney with a request for the Guernsey gambling legislation to be extended to allow eGambling operators from around the world to use Guernsey for DR purposes. The States of Alderney has been advised by the Commission, which is charged to:

*“... keep under review the extent and character of gambling in the Island of Alderney.”*

The eGambling industry has moved from being an emerging industry to a “maturing” one. This development includes the eGambling industry seeking to develop business continuity and disaster recovery as an essential aspect of their business plans. A large number of these companies have established themselves public companies rather than the privately owned status which typified the industry during its “infancy”.

Further, there are an increasing number of companies in the process of moving to the public market where a high value is being placed on the operator’s ability to recover quickly and almost seamlessly from a disaster. The Commission’s research clearly indicates that eGambling operators have a strong preference for conducting DR in a

jurisdiction which has, at least, the same or a better reputation than the jurisdiction where they operate their primary business.

The Commission has indicated to the States of Alderney that for Alderney to be able to offer this type of service it should offer a significant opportunity to further develop its standing as an eGambling base. Further, the Commission believes that there would be economic benefits for Guernsey companies acting as “disaster recovery hosts”.

In 1997 the States of Guernsey approved the Gambling (Amendment) (Guernsey) Law, 1997 which provides for the States to prescribe by Ordinance the circumstances in which “gambling with strangers”, which will usually be involved in eGambling, may be permitted.

In May 2004 the States approved The Alderney Internet Gambling (Temporary Relocation) Ordinance, 2004. This Ordinance essentially permits any entity licensed by the Commission to undertake internet gambling activities in Alderney, to undertake the same activities in Guernsey only in situations where there occurs a denial of access to, or service from, facilities in Alderney arising from unforeseen or uncontrollable external circumstances.

In May 2005, the States approved the Alderney Internet Gambling (Location of Computer Servers) Ordinance, 2005. This Ordinance permits an entity licensed by the Commission, to host its servers in Guernsey. The rationale for introducing this Ordinance was to provide entities licensed by the Commission with the benefit of the more resilient telecommunication infrastructure in Guernsey. The issues regarding resilient telecommunication infrastructure apply equally to Alderney’s ability to offer DR hosting facilities as it does to primary servers.

The Department is aware that both the Isle of Man and Jersey have, in recent months, made public announcements to the effect that they encourage eGambling companies from around the world to set up and conduct their DR activities there. The Department believes that it is essential for Guernsey to support Alderney, which has established itself as one of the preferred jurisdictions for eGambling providers, in continuing to develop and strengthen this area of its economy.

### **3. The Business Case for Permitting DR-Hosting in Guernsey**

In addition, the Department, in consultation with the Commerce and Employment Department, has identified three important reasons for permitting companies to conduct DR from Guernsey:

- Operators that conduct DR in Guernsey will as a matter of course populate their DR servers with the same information that is being processed by their primary servers. This potentially results in high levels of traffic between the primary site and the DR site resulting in the use of considerable amounts of bandwidth;
- Operators that conduct DR in Guernsey will also as a matter of course host their DR servers in premises approved by the Commission, such as the co-location

facilities that are currently being offered by several telecommunication and hosting providers on the Island. This will result in these companies potentially selling large amounts of data centre rack space; and

- Experience elsewhere has shown that operators often wish to ‘test the water’ in a particular jurisdiction by commencing with DR first with a view to later on moving its primary business to the DR site. This offers long-term prospects for Alderney and Guernsey in that companies who would initially conduct DR here, may later on switch their primary business to Alderney/Guernsey and conduct their DR activities where their primary businesses are currently located.

Following from the above, allowing DR within the eGambling sector to take place in Guernsey as well as Alderney, will have positive commercial implications for the telecommunication and hosting providers, but will also open the jurisdiction up for operators who are interested in an Alderney licence, but who are still uncertain about the practicalities associated with operating from Guernsey, that is, resilience, latency, business environment, regulatory framework, etc.

#### **4. Legislative Framework**

As indicated above the 1971 Law, in particular as amended in 1997, enables the States, by Ordinance, to prescribe the circumstances in which eGambling may be permitted. The Department believes there are mutual benefits to both Guernsey and Alderney in ensuring the viability of the Alderney eGambling industry by allowing international operators to conduct their DR in Guernsey.

The Department believes that, given the considerable experience and skill which the Commission has developed in licensing and regulating eGambling operators, the conduct of eGambling DR in Guernsey should be undertaken by and within the regulatory framework of the Commission to ensure that there is no difference in the probity checks for those companies operating their primary eGambling business within Alderney and those seeking to be able to transfer their operation to Alderney in the event of a disaster. The Department believes that this approach should not result in any adverse impact on Guernsey’s reputation. In addition, the Alderney Gambling Ordinances will need to be amended to permit this area of eGambling business and to extend the duties of the Commission to effectively regulate this activity.

#### **5. Potential Benefits and Risks for Guernsey**

The Home Department concurs with the views expressed by the Commerce and Employment Department that there are sound economic reasons for supporting Alderney’s request in this way as it will be to the benefit of both Islands if DR can be conducted from Guernsey. It is evident that such an arrangement will be to the commercial benefit of all telecommunication, hosting and IT support service providers, while it will render further support to the already thriving eGambling industry in Alderney. Further, the additional traffic through Guernsey could generate greater competition in this area of the telecommunications market which would have benefits to all internet users.



It acknowledges that the Island has always been cautious to avoid attracting business to Guernsey that may damage the Island's reputation or adversely affect the local finance industry. Any operator applying to host DR under these proposals would be subject to the licensing regime of the Alderney Gambling Control Commission and would have to pass the Commission's 'fit and proper' tests as provided for in the Alderney legislation. The Department has received confirmation from the principal representative bodies within Guernsey's finance sector and the Guernsey Financial Services Commission that they foresee no negative impact on the Island's international reputation as a well-regulated and controlled offshore finance jurisdiction if these proposals are approved.

Further, it is recognised that the Alderney Commission has built up a regulatory regime that is well respected and that Alderney has attracted positive international acknowledgement for its regulation, especially with regards to matters such as age verification of players to prevent abuse by under age gamblers. It is as a result of these policies that Alderney has managed to attract highly reputable eGambling operators from the United Kingdom and United States.

## **6. Resources**

The Department has been advised, by all the parties involved in this investigation, that there will be no resource implications or costs to the States of Guernsey. The costs will be met commercially, that is through the licence fees paid by operators and the telecommunications providers.

## **7. Consultation with Commerce and Employment Department**

The Department has worked closely with the Commerce and Employment Department and is grateful to that Department for undertaking to consult with appropriate representatives of the finance industry on this matter. The Commerce and Employment's letter is appended to this Report.

## **8. Consultation with Her Majesty's Procureur**

The Department has worked in close consultation with Her Majesty's Procureur throughout this review and the proposals for new legislation and the timetable for its implementation has his full support.

## **9. Conclusion**

In conclusion the Department recommends the States:

- To approve the Department's proposals for the gambling legislation to allow for eGambling operators from other jurisdictions to host and conduct disaster recovery from Guernsey; and

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

Yours faithfully

M W Torode  
Minister

***APPENDIX***

**COMMERCE AND EMPLOYMENT DEPARTMENT**

The Minister  
Home Department  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
GY1 1FH

8 March 2006

Dear Deputy Torode

**EGAMBLING DISASTER RECOVERY SERVICES IN GUERNSEY**

Thank you for your letter of 6<sup>th</sup> March 2006 enclosing a copy of the States Report drafted by your Department after close consultation with various parties, including officers of my Board.

I am pleased to confirm that the Guernsey Financial Services Commission has raised no objections to the proposed amendments to the Alderney Internet Gambling (Location of Computer Servers) Ordinance, 2005.

I also confirm that the Commerce and Employment Department supports the proposals as set out in the latest version of the States Report.

Yours sincerely

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:-

XV.- Whether, after consideration of the Report, dated 13<sup>th</sup> March, 2006, of the Home Department , they are of the opinion:-

1. To approve the Home Department's proposals for the gambling legislation to allow for eGambling operators from other jurisdictions to host and conduct disaster recovery from Guernsey.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**STATUTORY INSTRUMENTS LAID BEFORE THE STATES**

**THE STATES HOUSING (RENT AND REBATE SCHEME) (GUERNSEY)  
(AMENDMENT) REGULATIONS, 2006**

In pursuance of Section 3(1) of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Rent and Rebate Scheme) (Guernsey) (Amendment) Regulations, 2006, made by the Housing Department on 1<sup>st</sup> March, 2006, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the States Housing (Rent and Rebate Scheme) (Guernsey) Regulations, 2005 by making changes to certain elements of the States Rental Formula, the relevant tariffs and dependent child allowances.

The regulations come into force on 6<sup>th</sup> May 2006.

**THE STATES HOUSING (STATUTORY TENANCIES) (GUERNSEY)  
(AMENDMENT) REGULATIONS, 2006**

In pursuance of Section 2 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Statutory Tenancies) (Guernsey) (Amendment) Regulations, 2006, made by the Housing Department on 5<sup>th</sup> April, 2006, are laid before the States.

EXPLANATORY NOTE

These regulations amend the States Housing (Statutory Tenancies) (Guernsey) Regulations, 2005 by adding new circumstances for termination of States tenancies (contained in regulation 1(b), which makes amendments to provide for the Chief Officer to decide that the tenant no longer meets the criteria for eligibility under the States Housing Allocation Policy and regulation 1(c), which makes amendments to provide for the Chief Officer, where authorised, to dispose of, demolish or redevelop a property). The regulations also amend Schedules 2 (Terms and Conditions of Statutory Tenancy), Schedule 3 (Particulars of Tenancy Agreement) and Schedule 5 (Notice to Quit).

The regulations come into force on 6 May 2006.

**THE STATES HOUSING (TRIBUNAL AND APPEALS) (GUERNSEY)  
(AMENDMENT) REGULATIONS, 2006**

In pursuance of Sections 1 to 5 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2006, made by the Housing Department on 5<sup>th</sup> April, 2006, are laid before the States.

## EXPLANATORY NOTE

These regulations amend regulation 16 of the States Housing (Tribunal and Appeals) (Guernsey) Regulations, 2005 by providing that appeals against relevant decisions of the Housing Department, or Guernsey Housing Association, include decisions made in consequence of a review of the occupancy of the property where the tenant is no longer considered eligible to meet the eligibility criteria in the States Housing Allocation Policy, or Guernsey Housing Association's Allocation Policy.

The regulations come into force on 6<sup>th</sup> May 2006.

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST)  
(PHARMACEUTICAL BENEFIT) (AMENDMENT NO 2)  
REGULATIONS, 2006**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No 2) Regulations, 2006, made by the Social Security Department on 19<sup>th</sup> April, 2006, are laid before the States.

## EXPLANATORY NOTE

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

**THE HEALTH SERVICE (MEDICAL APPLIANCES) (AMENDMENT)  
REGULATIONS, 2006**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Medical Appliances) (Amendment) Regulations, 2006, made by the Social Security Department on 19<sup>th</sup> April, 2006, are laid before the States.

## EXPLANATORY NOTE

These Regulations further amend the Health Service (Medical Appliances) Regulations, 1990, as amended, by allowing ring pessaries to be prescribed as a medical appliance.

*APPENDIX I*

**HOME DEPARTMENT**

DATA PROTECTION ANNUAL REPORT, 2005

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

21<sup>st</sup> March 2006

Dear Sir

I enclose the annual report from the Data Protection Commissioner setting out the activities of his office for the year ended 31 December 2005.

The report is prepared in accordance with the Commissioner's responsibilities under paragraph 5 of Schedule 5 to the Data Protection (Bailiwick of Guernsey) Law, 2001.

The Report also includes a statement of accounts as required by paragraph 3(b) of the above Schedule to the Law.

The Home Department is pleased to support the work of the Commissioner and his office and recognises that high standards of data protection continue to be essential in ensuring the international reputation of the Bailiwick in this field.

Section 52(b) of the Law requires the report to be laid before the States. I should therefore be grateful if you would arrange for its publication as an Appendix to the May 2006 Billet d'Etat.

Yours faithfully

M W Torode  
Minister

Enc

# BAILIWICK OF GUERNSEY



## DATA PROTECTION COMMISSIONER REPORT FOR 2005





## *MISSION STATEMENT*

*The Data Protection Office will encourage respect for the private lives of individuals by:*

- *promoting good information handling practice,*
- *enforcing data protection legislation and*
- *seeking to influence national and international thinking on privacy issues.*

*Front Cover: "A private walk" along the Moulin Huet cliff path on the south coast of Guernsey.  
Downloaded from [www.guernseyimages.com](http://www.guernseyimages.com)*

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*The Data Protection Commissioner's Annual Report for 2005***FOREWORD**

I am pleased to present my fifth report on Data Protection within the Bailiwick of Guernsey and, since September 2006 will mark the end of this five year term of office, I have taken the opportunity in this report to reflect on significant historical developments, both within the Bailiwick and elsewhere.

The Data Protection (Bailiwick of Guernsey) Law, 2001 was commenced in August 2002, following which the European Commission published a declaration of the adequacy of the data protection régime within the Bailiwick in 2003. By facilitating the transfer of personal data from within the European Union to the Bailiwick, this provided a competitive trading opportunity over other territories.

The Privacy and Electronic Communications Regulations came into force in 2004 and inter alia ensured that the Bailiwick could not be used as a source of spam email or nuisance phone calls. Work is continuing internationally to target the foreign sources of such unpleasant and harmful material.

A number of weaknesses have been identified that limit the effectiveness of current legislation and it is anticipated that these will be addressed during 2006.

Whilst I have concentrated my efforts over the past five years in raising awareness of Data Protection within the local community and promoting compliance by local organisations, I have also endeavoured to raise the international profile of the Bailiwick by active participation in international conferences and working groups.

The numerous calls for advice and requests for training that we receive are testaments to the success of this domestic policy and the fact that a major international working group has chosen to meet in Guernsey in 2007 may similarly be seen as a positive outcome of that foreign policy.

Further constraints on public expenditure are anticipated in the coming years and, whilst the costs of the office may be ameliorated by a modest increase in Notification fees, future expenditure will also need to be contained. Indeed, effectiveness and benchmarking of supervisory authorities are topics that will be discussed at the British Isles, Irish and Islands' liaison meeting in the coming year.

I am fortunate to have the support of a small but dedicated team in this office, which has built up considerable expertise in this complex area of work and provides invaluable assistance and contributes in no small way to our effectiveness. I must also acknowledge the excellent support received from the staff of the Home Department and the legal advice and assistance that I have received from the Law Officers of the Crown.

Much has been achieved in these last five years and I can confidently predict that Data Protection is well prepared to face the challenges of the future.

A handwritten signature in black ink, appearing to read 'Peter Hain', with a long horizontal line extending from the end of the signature.

*Data Protection Commissioner, March, 2006.*

## **DATA PROTECTION LEGISLATION**

### **Historical Perspective**

The 12<sup>th</sup> July 2005 was the twenty first anniversary of the passage of the first Data Protection Act in the United Kingdom. At a commemorative conference held in Manchester, the outgoing Deputy Commissioner, Francis Aldhouse, set out a brief history of the development of Data Protection and its regulation in the UK.

He pointed out that it is a common misconception that Data Protection was somehow foisted on the British Isles by “faceless European bureaucrats”. In fact, as early as 1972 the Younger Committee<sup>1</sup> had foreseen the need for legislation for the protection of personal privacy. That Committee had also proposed 10 principles for the protection of personal information. Rather than enact specific legislation at that time, various other measures were adopted, including the licensing of private detectives, the outlawing of covert surveillance and a new tort of disclosing or using information that had been unlawfully obtained.

In 1975, the UK Government published a White Paper “Computers and Privacy”<sup>2</sup> in which the arguments were set out for legislation to ensure that: “... *computer systems in which personal information is held are operated with appropriate safeguards for the privacy of the subject of that information.*” The Lindop Committee was established in 1976 to advise on the form of future legislation, to develop the “Younger Principles” and to prepare the way for a statutory authority. The Lindop Committee presented a detailed report to Parliament in December 1978.<sup>3</sup>

Meanwhile, elsewhere in the world, the earliest Data Protection legislation had been made in Hessen in 1970, followed by the first national laws, the Swedish Act of 1973 and the United States Privacy Act of 1974. In addition, the Council of Europe developed Convention 108<sup>4</sup>, which was opened for signature in January 1981.

The proposals from the Lindop Committee and the added impetus of ratification of “Convention 108” formed the basis for the UK Data Protection Act, 1984.

The 1984 Act was superseded by the Data Protection Act, 1998, which had been drafted in order to comply with European Directive 95/46/EC<sup>5</sup>. That Directive was intended to impose common standards of Data Protection across the European Union in order to facilitate the operation of the single market and had required all Member States to transpose its standards into domestic legislation within three years of its adoption.

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<sup>1</sup> Great Britain, Parliament (1972) **Report of the Committee on privacy**. [Chair Rt. Hon. Kenneth Younger] Cmnd. 5012 London, HMSO

<sup>2</sup> Great Britain, Home Office (1975) **White paper: Computers and Privacy**. Cmnd 6353 London, HMSO

<sup>3</sup> Great Britain (1978) **Report of the Committee on Data Protection**. [Chair Sir Norman Lindop] Cmnd 7341 London, HMSO

<sup>4</sup> Council of Europe (1981) **The Convention [108] for the protection of Individuals with regard to Automatic Processing of Personal Data**. Strasbourg, CoE

<sup>5</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 **on the protection of individuals with regard to the processing of personal data and on the free movement of such data**. OJ L281,31

*The Data Protection Commissioner's Annual Report for 2005*

The operation of this Directive was reviewed by the European Commission<sup>6</sup> in May 2003 and again in February, 2004 and, whilst a new Directive is not in prospect, there are indications that Member States will be required to ensure that their domestic legislation accords more closely with its terms. Whether this results in amendments to the UK legislation, or merely involves changes to the enforcement régime, remains to be seen.

## **Development of Legislation within the Bailiwick**

Guernsey responded to the need for compliance with the standards being adopted by our major trading partners by enacting the Data Protection (Bailiwick of Guernsey) Law, 1986, which was drafted in similar terms to those of the UK Act of 1984.

The passage of this legislation enabled the United Kingdom Government ratification of the Council of Europe Convention 108 to be extended to the Bailiwick.

The European Directive 95/46/EC imposed stricter conditions on the transfer of personal data to those territories in which the protection of personal data was not deemed to be “adequate”. It was believed that the absence of a positive determination of “adequate protection” might jeopardise the development of international business in the Bailiwick, as a large amount of such business was conducted with organisations in the UK and in other Member States of the European Union.

It became clear during discussions with the UK Data Protection Registrar and the Home Office officials that it would not be feasible merely to amend the 1986 Law to ensure adequacy within the meaning of the Directive, so the decision was taken by the Advisory and Finance Committee to recommend to the States the drafting of new legislation, again modelled as closely as possible on the legislation in the UK.

As a consequence of the work undertaken by the former Commissioner and his predecessor, Guernsey took the lead amongst the Crown Dependencies in the drafting of Data Protection legislation, and the Data Protection (Bailiwick of Guernsey) Law, 2001 was registered in Guernsey on 29<sup>th</sup> April, 2002 a year before similar legislation in the Isle of Man and some three years before the passage of similar legislation in Jersey.

The Data Protection Law was commenced on 1<sup>st</sup> August 2002 and one month later at the opening of 24<sup>th</sup> International Conference of Data Protection and Privacy Commissioners held in Cardiff, Yvette Cooper, Parliamentary Secretary at the Lord Chancellor's Department, announced during her keynote speech that the European Commission would be pressed for an early decision on the adequacy of the Guernsey régime.

This milestone was achieved over a year later on 21<sup>st</sup> November 2003<sup>7</sup>, when the European Commission published its decision recognising the adequacy of the protection of personal data in the Bailiwick of Guernsey.

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<sup>6</sup> [http://europa.eu.int/comm/justice\\_home/fsj/privacy/lawreport/index\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/privacy/lawreport/index_en.htm)

<sup>7</sup> European Communities, **Commission Decision of 21 November 2003 on the adequate protection of personal data in Guernsey** (2003/821/EC) OJ L 308, pp 27-28

## **Privacy and Electronic Communications**

In 1991, the International Working Group on Data Protection in Telecommunications<sup>8</sup> presented a report to the 13<sup>th</sup> International Conference of Data Protection and Privacy Commissioners that was held in Strasbourg. That report highlighted the Data Protection issues in telemarketing and led to the adoption six years later within the European Union of Directive 97/66/EC<sup>9</sup> on the protection of personal data within the telecommunications sector. This Directive was implemented within the UK by the passage of the Telecommunications (Data Protection and Privacy) Regulations 1998, which came into effect at the same time as the 1998 Data Protection Act. No such regulations were implemented within the Bailiwick when the 2001 Law was commenced, as it was known at that time that the Telecommunications Directive was about to be superseded.

Associated with the 1998 Regulations were the Telephone and Fax Preference Services, operated by the Direct Marketing Association, whereby individual subscribers in the UK were able to join opt-out lists that signified their objection to the receipt of unsolicited marketing calls. Whilst Bailiwick residents were able to take advantage of registration on the Preference Services, the Regulations themselves did not extend to the Bailiwick, so it was possible for direct marketing operations which did not conform to the Regulations to become established locally.

A significant flaw in the 1997 Directive arose from the rapid growth in marketing by email and SMS. Accordingly that Directive was repealed and replaced by Directive 2002/58/EC<sup>10</sup>, which addressed all forms of electronic communications; the associated Regulations were enacted in the UK in 2003.

In 2004, the States of Guernsey approved a policy letter from the Advisory and Finance Committee proposing that similar regulations be enacted in Guernsey in the form of The European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Guernsey) Ordinance, 2004. Equivalent Regulations were also made in Alderney and Sark.

The passage of these Regulations has ensured that the general standards of personal data protection afforded within the Bailiwick have remained fully in conformance with those in the United Kingdom and the rest of the European Union.

## **Rehabilitation of Offenders**

The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 was not brought into effect in 2005 as had originally been intended. The need for additional consultation on the Commencement, Exclusions and Exceptions Ordinance had delayed its introduction, but it is expected to be brought into effect during 2006. Associated with this Law will be the commencement of section 56 of the Data Protection Law, which will prohibit the use of enforced subject access to circumvent the provisions of the Rehabilitation of Offenders

<sup>8</sup> <http://www.datenschutz-berlin.de/doc/int/iwgdp/index.htm>

<sup>9</sup> Official Journal of the European Communities L 24. 30.01.1998 p.1

<sup>10</sup> Official Journal of the European Communities L 201. 31.07.2002 p. 37.

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Law. A number of individuals have complained to this office over the protracted delay in the commencement of this Law.

The Commissioner published revisions of the Draft Code of Practice on the Disclosure of Criminal Convictions in connection with Employment during 2004 and it is intended that a final version of this Code of Practice will be published once the definitive version of the Ordinance has been approved and further clarification has been forthcoming as to the future role of the UK Criminal Records Bureau in the disclosure process locally.

### **Updating the Law**

One of the benefits of a relatively early enactment of the Data Protection legislation within the Bailiwick was the achievement of correspondingly early declaration of adequacy by the European Commission. However, those jurisdictions in which the enactment of the legislation had been delayed were able to address weaknesses that had been identified as a result of the experiences in enforcement elsewhere.

The main potential areas for change involve a clarification of the applicability of the Law to States Departments and the Crown, an extension of the ability to serve an Information Notice and a proposal to increase the fees for Notification, together with some minor “cosmetic and typographical” changes.

The Commissioner has completed a report on these matters for the Home Department and it is anticipated that proposals to update the local legislation will be presented by the Home Department to the States during 2006.

The subject access provisions of the Data Protection law are limited to requiring the disclosure to an individual [data subject] of personal data relating to that individual. This is normally interpreted as information held on electronic media indexed by personal attributes of that individual (such as name, address, account or ID number, etc.) Such a definition is adequate for most private sector organisations, but is not always appropriate for information held by public bodies.

Much of the information relating to decisions made by government departments is not always structured by reference to individuals or may still be held in manual files and accordingly may not necessarily be accessible to an individual member of the public under Data Protection Law.

This limitation of access to government information is remedied in most democratic societies by the enactment of freedom of information legislation. There has been little political pressure to date for such legislation to be enacted within the Bailiwick. Indeed, provided that the government departments adopt an enlightened attitude to the publication and disclosure of the information that they hold, the need for such legislation could well be lessened.

## **DATA PROTECTION ISSUES**

### **Public Security**

The fight against serious organised crime and international terrorism has prompted many countries to adopt special measures in an endeavour to combat these threats.

This situation has highlighted the need to strike the right balance between the improvement of security on the one hand and the limitation of individual privacy on the other.

The terrorist attacks that have been witnessed in the last few years have shown that the threat of terrorism remains very real, but at the same time it should be remembered that even in such circumstances the fundamental rights of citizens should, wherever possible, be respected and observed.

Accordingly, there has been some tension between the European Data Protection Commissioners and the Member States and the European Commission over the proportionality and effectiveness of the counter terrorism measures that are being put in place.

A specific example is provided by the European Directive concerning the mandatory retention of communications records by the telecommunications companies. This information, which is primarily collected for billing purposes, is required by the law enforcement authorities in order to gain evidence of the activity and location of terrorist suspects. In their Opinion, adopted on 21<sup>st</sup> October 2005<sup>11</sup> the European Commissioners considered that the mandatory retention period for such data should be minimised and that such private and confidential data should be disclosed only on a case by case basis on judicial authority.

Within the Bailiwick, any interception of communications by the law enforcement authorities has historically been subject to judicial oversight and it is the Commissioner's view that any proposals that would seek to gain access to communications data should include similar safeguards.

### **The Protection of Children and Vulnerable Adults**

There are few more emotive topics than the protection children and vulnerable adults from abuse and the revelations from some disturbing cases in the UK led to calls for better data sharing between the various support agencies to identify such cases at the earliest possible stage. The Commissioner recognises the importance of preventing and dealing with such abuse cases and the need for adequate information sharing to take place, especially between the authorities in the Bailiwick and their counterparts in the UK.

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<sup>11</sup> Opinion 113/2005 on the Proposal for a Directive of the European Parliament and of the Council on the Retention of Data Processed in Connection with the Provision of Public Electronic Communications Services and Amending Directive 2002/58/EC (COM(2005)438 final of 21.09.2005)



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However, he shares the concern of the UK Commissioner over proposals to establish a national database of all children as outlined in the Children Act of 2004. This could well be viewed as a disproportionate response and give real concerns as to how the information in such a database would be kept secure and up to date as would be required by Data Protection legislation.

Furthermore, there is considerable uncertainty and potential for detriment with the use of 'cause for concern' indicators and a real risk that the privacy of children and parents in general will be compromised.

### **Identity Cards**

The UK Government has pressed ahead with plans to implement a comprehensive Identity Card system and supporting National Identity Register, despite a number of calls for a re-evaluation of the technical basis upon which the project has been founded.

The London School of Economics undertook a major project on the ID Card system and published a controversial report that was severely critical of the government proposals<sup>12</sup>.

Many of the objections have been on economic, technical or political grounds and, whilst the possession of an ID card remains voluntary, there can be only limited objections from a Data Protection standpoint. However, should it ever be proposed that possession of the card become mandatory to enable access to government services or entitlement to benefits, those concerns would become more significant. The UK Information Commissioner has endeavoured to inform the debate on this issue stressing the problems with the extent and relevance of the information that it is proposed to hold, the access controls on the data and the need for Data Protection safeguards to be given greater prominence.

In particular, the UK Information Commissioner has specifically criticised the plan to store an excessive amount of personal and biometric data in the National Identity Register (NIR), which is the central database that has been proposed to support the ID Card scheme. The data trail that would be generated by each check of an Identity Card against the NIR could enable a detailed picture of the private life of an individual to be built up, particularly if such data were combined with information from CCTV surveillance, automatic vehicle number plate recognition systems or satellite-based congestion charging schemes.

Undoubtedly, once the legislation on Identity Cards has received parliamentary approval in the UK, there will be pressure on the Bailiwick authorities to introduce a similar scheme. The Commissioner would not necessarily be opposed to the principle of an Identity Card system but would strongly recommend that any such scheme were designed from the outset such that the privacy rights and freedoms of individuals were adequately safeguarded. In particular, he would be opposed to the excessive sharing of personal data relating to Bailiwick residents onto the NIR.

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<sup>12</sup> The Identity Project – an assessment of the UK Identity Cards Bill and its implications; LSE June 2005.

## **Exporting Personal Data**

The eighth Data Protection principle states that: *“personal data shall not be transferred to a country or territory outside the Bailiwick unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of their personal data.”*

Any transfer to a country within the European Economic Area is deemed to be compliant with the eighth principle as is a transfer to anywhere that has been designated as providing adequate protection by a decision of the European Commission. To date adequacy decisions have been made for: Argentina, Switzerland, Guernsey, the Isle of Man, Canada and those US entities that have self-certified compliance under the “Safe Harbour” scheme.<sup>13</sup>

Transfers elsewhere need to be assured of protection in other ways: for a transfer to another organisation that will be acting as a data controller or data processor than it will normally be necessary to incorporate standard clauses into the contractual agreement between the parties. These can be onerous and time consuming to implement; alternatively, multi-national corporations may choose to implement specific arrangements, such as internal rules, codes of practice, etc, collectively known as “Binding Corporate Rules” [BCR] to cover transfers to subsidiaries that may be located anywhere in the world.<sup>14</sup>

Once these BCR have met the approval of one European Data Protection authority, then they may be used to legitimise transfers throughout branches of the corporation located in different Members States and Third Countries. The earliest successful examples of the implementation of BCR have been achieved by Daimler-Chrysler (Germany) and General Electric (the UK).

In 2005, the Commissioner published a specific Guidance Note on Exporting Personal Data in response to the numerous questions and enquiries that had been received on this particular subject.

## **Unsolicited Telemarketing**

The Commissioner continues to receive complaints from residents about the receipt of nuisance telephone calls and junk faxes and generally advises the recipients of such calls to register with the Corporate Telephone Preference Service (CTPS), Telephone Preference (TPS) or Fax Preference Service (FPS)<sup>15</sup>, or in some cases will undertake the registration process on behalf of the complainant.

By the end of 2005, the number of Bailiwick telephone numbers registered on the TPS exceeded 4,000 and the number of registration on the FPS was a little over 1,000. About 10% of these registrations had been undertaken by the Office in response to requests from members of the public.

<sup>13</sup> <http://www.export.gov/safeharbor/>

<sup>14</sup> [http://europa.eu.int/comm/justice\\_home/fsj/privacy/docs/wpdocs/2005/wp108\\_en.pdf](http://europa.eu.int/comm/justice_home/fsj/privacy/docs/wpdocs/2005/wp108_en.pdf)

<sup>15</sup> [www.tpsonline.org.uk](http://www.tpsonline.org.uk) and [www.fpsonline.org.uk](http://www.fpsonline.org.uk)

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The UK telecommunications regulator OFCOM has proposed further regulations in the UK in respect of marketing calls, especially “silent calls” that result from automatically dialled calls which are subsequently not completed.<sup>16</sup> These regulations would require marketing companies to provide a call return facility and/or a recorded announcement identifying the originator of such calls.

Whilst the Preference Services and the proposed OFCOM regulations appear to be reasonably effective in regulating unwanted marketing calls originating from within the British Isles, they would appear to be of limited effectiveness in dealing with calls that originate from abroad – especially those from the USA. The main problem with such calls is that their origin cannot easily be identified as they normally do not contain any calling line identification (CLI) that is visible to the recipient; hence it is not practical to deal effectively with any complaints. It would appear unlikely that there could be international agreement over any requirements that all direct marketers should include CLI information within their unsolicited calls.

The International Working Group on Data Protection in Telecommunications is considering this issue and in particular whether it would be practical to propose that a Telephone Service Provider (TSP) should offer a means whereby subscribers who receive an unwanted marketing call were able to dial a short code; this would not only cancel the call, but also automatically log the internal CLI which, although hidden from the subscriber, should normally be available to the TSP.

Such a scheme would enable a record of persistent offenders to be rapidly built up by the TSP as the date, time and identity of the caller and the called number could be readily recorded and used to support the complaint handling process, especially on an international basis.

## **RFID**

Radio Frequency Identification Devices<sup>17</sup> have been hailed by many retailers as the “holy grail of supply chain management”, as they enable the identification and tracking of individual items from initial manufacture all the way to sale and eventual deployment.

RFID technology has a wide range of potential applications and has already been used in razor blades, world cup tickets and passports and in high value goods that may need tracing for theft detection or preventative maintenance purposes.

The elements of this technology that give particular cause for privacy concerns include:

- unobtrusiveness – unlike bar codes, RFID chips may be placed unobtrusively within items and may be read remotely, customers have no easy way of knowing whether an object contains an active RFID chip or not;
- item level tagging – because each item is individually tagged and identified, its purchase may be associated with an individual and unless the chip is deactivated,

<sup>16</sup> **Statement of policy on the persistent misuse of an electronic communications network or electronic communications service** <http://www.ofcom.org.uk/consult/condocs/misuse/>

<sup>17</sup> <http://www.epic.org/privacy/rfid/>

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it may be read after purchase, essentially enabling the movements of that individual to be tagged.

These issues were originally raised by the International Working Group on Data Protection in Telecommunications in a report to the 2003 International Conference of Data Protection Commissioners<sup>18</sup>, which resolved that whenever RFID tags are in the possession of individuals, they should have the opportunity to disable the tags and destroy the data they contain.

Systems based on these devices are now beginning to be widely implemented and it is evident that the publicity associated with the privacy risks of RFID has had a beneficial impact on deployment strategy that has been employed for this technology.

Near Field Communications (NFC)<sup>19</sup> links the technologies of RFID and Bluetooth used in mobile phones. Potential applications for NFC, whilst offering a “number of exciting technological possibilities”, threaten to be even more privacy invasive than RFID.

The applications of technologies are still in their infancy and it will be necessary for the privacy aspects of both RFID and NFC to be kept under review.

## **Spam**

In 2001, junk e-mail accounted for approximately 10% of all e-mail traffic; by 2005 this had risen to nearly 60% with over 40% of this emanating from the USA.

Spam is not merely privacy invasive, but can pose a real threat as frequently the junk e-mails carry with them a virus that can infect an individual's computer or a ‘phishing’ request that is designed to steal personal details such as account numbers, passwords or credit card details.

Concerted action through Directive 2002/58/EC appears to have reduced the activities of spammers located within Europe and the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing Act), introduced in the USA in 2004, is beginning to have a positive effect, according to the report published by the Federal Trades Commission in December 2005.<sup>20</sup>

The report notes the success of the London Action Plan on International Spam Enforcement Cooperation, which now spans five continents with 33 government agencies from 23 participating countries as well as 24 private sector entities being involved.

The report also reveals that 50 successful prosecutions were made in the USA in 2004 and 2005 and that there are firm indications that the amount of spam is at last beginning to decrease.

More effective international action is anticipated by the passage of the US SAFE WEB Act (Undertaking Spam, Spyware And Fraud Enforcement with Enforcers beyond Borders) which would facilitate worldwide cooperation by the FTC.

<sup>18</sup> [www.privacyconference2003.org](http://www.privacyconference2003.org)

<sup>19</sup> <http://www.nfc-forum.org/home>

<sup>20</sup> **Effectiveness and Enforcement of the CAN-SPAM Act** A report to Congress, FTC, December 2005 <http://www.ftc.gov/reports/canspam05/05122canspamrpt.pdf>

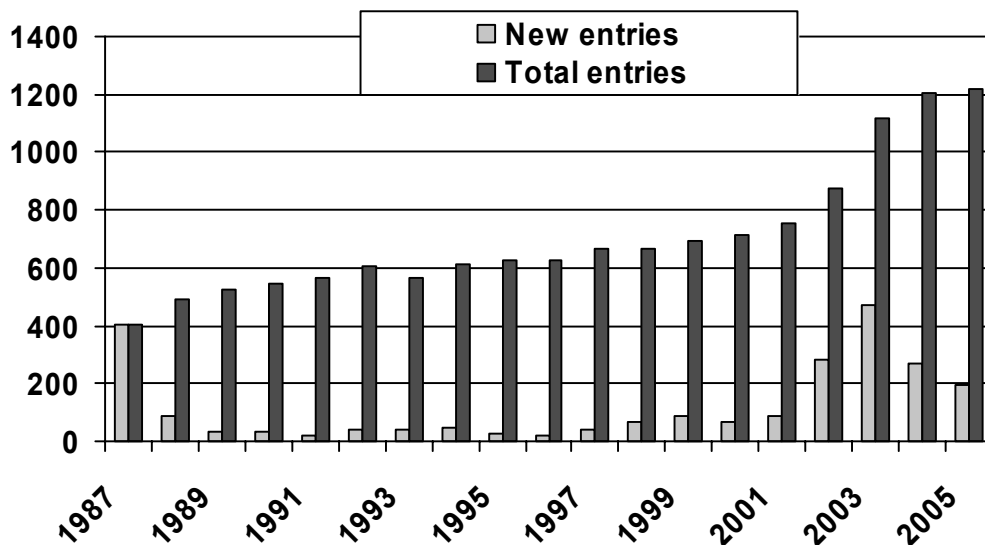
## **NOTIFICATION**

The Law requires Data Controllers to “Notify” the Commissioner of their processing of personal data. This Notification is on an annually renewable basis and covers all processing that is not exempt.

Exemptions from Notification exist for manual data, certain charitable and not-for-profit organisations and for the processing of data associated with the core business purposes of accounts, staff administration and marketing.

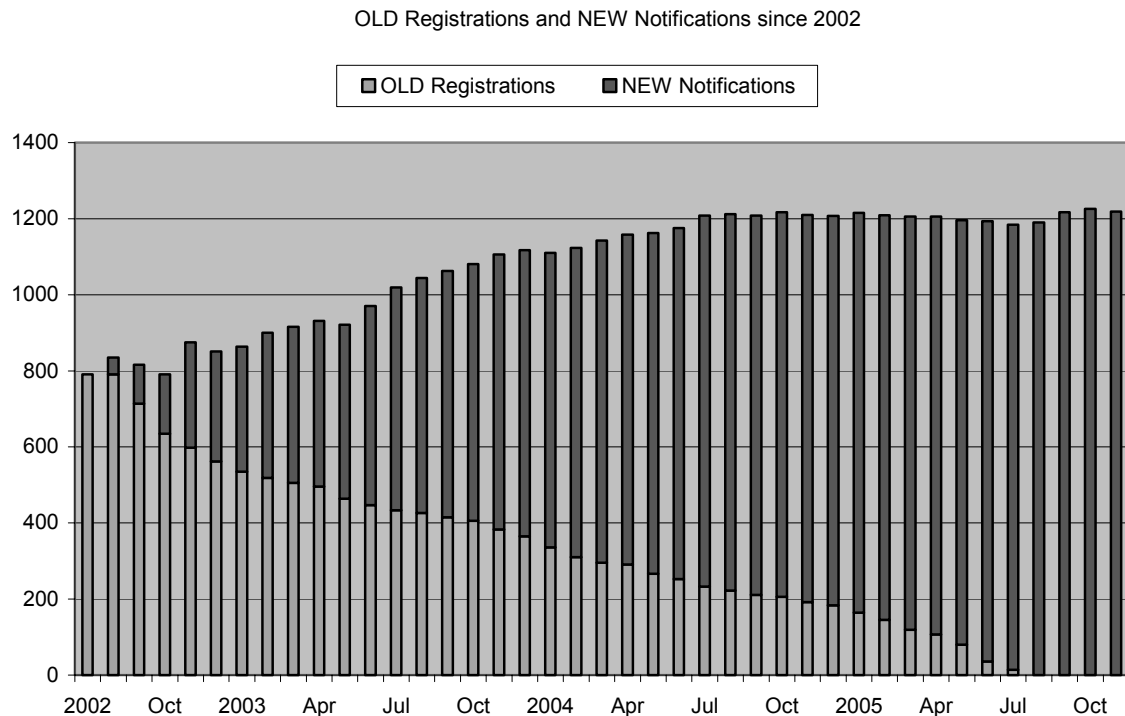
The chart below illustrates the rise in register entries since Registration under the 1986 Law commenced in October, 1987. As expected, the number of Notification entries appears to have stabilised at around 1200, which is 50% more than the number of Registrations that had been made by the end of the previous legislation in 2002 and three times the number of Registrations that had been made at its commencement in 1987.

**GROWTH IN DATA PROTECTION REGISTER ENTRIES**



The chart overleaf depicts the monthly decrease in triennial Registrations under the old (1986) Law and the corresponding growth in annual Notifications under the new (2001) Law, since its commencement in August 2002; this chart demonstrates that all the Registrations had either been closed or replaced by Notifications, as expected, by the end of July 2005.

At the end of December, 2005 there were 1219 Notifications on the register whilst 791 Registrations and 146 Notifications had been closed since 2002.

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The entire Notification process may be completed online at <http://www.dpr.gov.gg>. This site is used both by those wishing to create and maintain their own Notification entries and by the staff of the Data Protection Office.

Statistics gathered over the past two years show that approximately 40% of the site accesses were for downloads of manuals and information, 18% for administration purposes and the remainder (42%) for online notification activities.

The Notification system and web site were developed by Eduserv Technologies Limited and were based on a similar system developed by Eduserv for the Information Commissioner's Office.

The system went into live operation in July 2002, one month before the commencement of the Law. Once the initial teething troubles had been resolved, the system proved to be extremely reliable with almost no significant down time having been recorded during normal working hours throughout the whole of this three and a half year operational period. Statistics collated by Eduserv show that during 2005 there was one unplanned outage lasting 50 minutes when there was a major failure of communications links in the Bath area – otherwise the site has shown 100% availability.

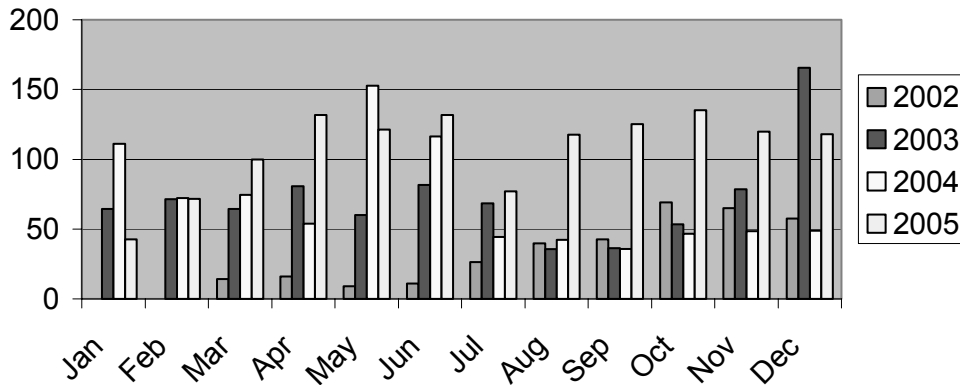
A total of 44 software issues were logged during the first 6 months of operation from August to December 2002; 46 issues were logged during 2003, 29 during 2004 and just 19 for the whole of 2005, all but three of which had been resolved by the end of the year.

The chart below shows the variation in the average daily activity on the online Notification site between 2002, when Notification commenced and the end of 2005; the vertical axis represents the average daily rate of successful requests for pages of data from the site each month.

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The variations in activity generally correspond with the number of new Notifications and renewals that are dealt with in each month. Activity appears to be much more evenly spread throughout the year than previously, now that all notifications are renewed on an annual basis.

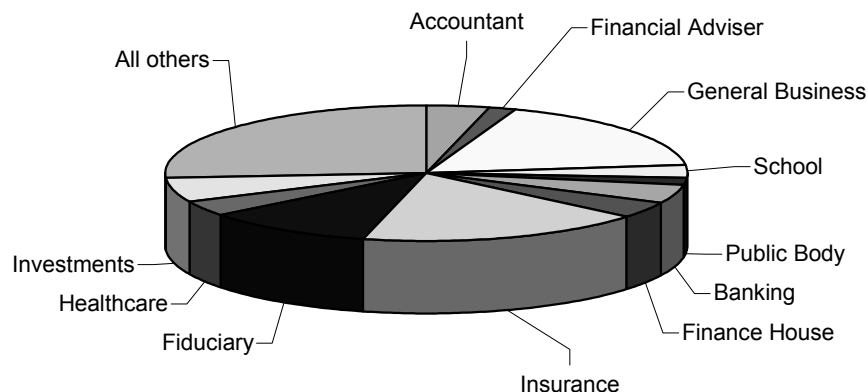
**Comparison of Notification Site Activity  
between 2002 and 2005**



The Notification process requires data controllers to indicate the nature of their business activity. This requirement not only simplifies the process, as it allows for the generation of a standardised draft Notification based on a template, but also enables an indicative record to be maintained of the number of Notifications by industry sector.

The chart depicted below shows the cumulated distribution of notifications at the end of 2004 by industry sector, continuing a similar pattern to that of previous years.

**Notifications by Sector in 2005**



The largest proportion of Notifications used the General Business template (23%), followed by Insurance (19%), Fiduciary (13%), Investments (7%), Banking (6%), Healthcare (5%), Accountant and Finance House (both 4%), schools and public bodies (both 3%), financial advisers (2%), whilst 'All Others' comprised 12%.

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Exemptions from the need to notify may be claimed by those whose processing is limited to the core business purposes of accounts & records, staff administration and a limited amount of marketing to existing clients.

An exemption is also available to most voluntary organisations, charities and to those whose processing is limited to manual data. However, once CCTV is used by an organisation for the prevention and detection of crime, the exemption from notification is lost.

Organisations that are exempt may choose to notify voluntarily, thereby relieving themselves of a responsibility to provide information on request under section 24 of the Law. The number of voluntary notifications rose by 4 to 47, (4% of the total).

In 2003, the Data Protection Office commenced the compilation of a list of those organisations that had informed the Commissioner that they were exempt from notification and by the end of that year 303 organisations were so listed. The exempt list was primarily designed to assist in monitoring compliance and to avoid pestering those who had advised us that they were exempt.

During 2004 a further 144 organisations informed the Office of their exempt status making a total of 447 exempt controllers.

Some previously exempt organisations notified during 2005 as their circumstances had changed and a few others were added to the list, such that the total number of exempt organisations fell by 6 to 441. This represents 26% of the overall total [of 1660 exempt and notified organisations].

The online notification system was enhanced, with the assistance of the Treasury and Resources Department, in December 2005 to provide a link to the States of Guernsey Online Payment portal that allows for the online payment of the notification fee using a debit or credit card.

Online access to the Commissioner's bank account will facilitate acceptance of payments made via BACS as well as those by direct debit and by cheque.

It is intended that renewal reminders issued in future will advise data controllers of these new alternative payment options.

During 2005, 286 organisations paid by annual Direct Debit (approximately 23%).

1061 organisations (87%) provided an email address for communication purposes; this was used for the issue of automatic renewal reminders to the 702 organisations with an email address who did not renew by Direct Debit; of those, 183 (26%) required a second reminder to be sent by conventional post.

The most common reason for this was that the email address originally provided for the administrative contact had changed since notification.

Nevertheless, the use of automated email reminders and Direct Debits continues to reduce substantially the administrative effort involved in the notification process. It is to be hoped that this effort should reduce still further once online payments and payments by BACS as well as by Direct Debit become more widely adopted.



*The Data Protection Commissioner's Annual Report for 2005****STAFFING AND STAFF DEVELOPMENT***

The Office of the Data Protection Commissioner comprises three people: the Commissioner and Assistant Commissioner, both of whom work full time and the Personal Assistant to the Commissioner, who works part-time.

The Commissioner is a statutory public appointment, but members of his staff are seconded from the Home Department of the Civil Service and are wholly responsible to him.

The Assistant Commissioner devotes the majority of her time to compliance activities, responding to enquiries from individuals and organisations and running training courses for the public and private sector.

The Personal Assistant undertakes all of the administrative activities for the office including the processing of notifications and the reconciliation of the accounts.

The Commissioner remains of the view that, whilst his office remains responsible only for the Data Protection Law and the associated Privacy Regulations, the current establishment of one full time Assistant and one part time Personal Assistant represents a satisfactory level of staffing resource, which enables him to discharge his responsibilities under the Law.

The use of external consultancy has again been limited to the provision of expert legal advice in those cases where it was not possible for such advice to be sought from the Law Officers.

The Commissioner is keen to encourage the academic, technical, administrative and professional development of his staff and to that end supports their attendance at training courses and relevant conferences and other forms of personal development.

The Commissioner remains a member of the E-commerce and IT Advisory Group of the Training Agency and the Guernsey Digimap Management Board and attends the seminars and workshops organised by the Agency and the local section of the British Computer Society. He was invited to speak at a conference organised by the Jersey Commissioner to publicise the Jersey Data Protection legislation in January, 2005.

The Assistant Commissioner has also attended some Training Agency seminars, in addition to participating in the DP Forum and continuing her legal studies with the Open University. She also furthered her knowledge by attending conferences in the UK organised by the Direct Marketing Association and by 'Data Protection Law and Policy'.

During 2005, the Personal Assistant enhanced her training by attending a specialised course dealing with the administration and content management of the Data Protection pages within the [www.gov.gg](http://www.gov.gg) government web site.

*The Data Protection Commissioner's Annual Report for 2005***RAISING AWARENESS**

There is a continual need to ensure that individuals are made aware of their rights under the Law and organisations that process personal data are made aware of their responsibilities.

The Awareness campaign for 2005 has included the following activities:-

- Delivering presentations and training
- Involvement in working groups
- Making use of the media.
- Giving compliance advice
- Developing the Internet web site

In addition, the Office has assisted in sourcing the provision of external training specialists for a number of organisations.

**Delivering presentations and training**

The Commissioner and Assistant Commissioner delivered a number of talks and presentations throughout the year to many professional associations and organisations in the public and private sectors. These included: schools, finance institutions, law firms and retail businesses.

The total audience reached in this way was around **916**, compared with 564 in 2004 and 770 in 2003.

The Training Agency ran the first local course leading to the award of the ISEB Certificate in Data Protection and a further course is planned for 2006.

**Involvement in Working Groups**

The Commissioner and Assistant Commissioner have been invited to participate in the newly-formed States Data Guardians Group, which should meet early in 2006.

**Making use of the media**

**15** articles or letters relating to Data Protection were published in the local press in 2005, (compared with 28 in 2004, 22 in 2003 and 19 in 2002) covering topics such as:

- Nuisance telephone calls;
- Inaccurate information, including ex-directory numbers, appearing in the Wave telephone book;
- Alleged denial of access to personal data by a States Department;
- ID Cards;
- The “Montreux Declaration” of the 2005 International Conference;
- The impact of the Jersey Data Protection legislation.

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## **Guidance Notes Published by the Commissioner**

The number of Guidance Notes published by the Commissioner during the year rose to **23**, compared with 20 in 2004, 18 in 2003 and 17 in 2002.

All of the existing publications were revised and the new A5 publications published in 2005 were:-

- Dealing with Subject Access Requests
- Exporting Personal Data
- Guidance for States Departments.

A full list of available publications is given below.

|   |
|---|
| <b>Baby Mailing Preference Service:</b><br><i>How to stop the receipt of unwanted mail about baby products</i>  |
| <b>Be Open...with the way you handle information:</b><br><i>How to obtain information fairly and lawfully</i>   |
| <b>CCTV Guidance and Checklist</b><br><i>Explains how to comply with the law in relation to the use of CCTV</i>   |
| <b>Charities / Not-for-Profit Organisations</b>   |
| <b>Data Controllers:</b><br><i>How to comply with the rules of good information handling</i>  |
| <b>Dealing with Subject Access Requests</b>   |
| <b>Disclosures of vehicle keeper details</b><br><i>Explains when vehicle keeper details can be disclosed</i>  |
| <b>Exporting Personal Data</b>  |
| <b>Financial Institutions</b>   |
| <b>Mail, telephone, fax and e-mail preference service</b><br><i>How to stop the receipt of unsolicited messages.</i>  |
| <b>No Credit:</b> <i>How to find out what credit references agencies hold about you and how you can correct mistakes</i>  |
| <b>Notification – a Simple Guide</b>  |
| <b>Notification – a Full Guide</b>  |
| <b>Notification Exemptions</b>  |
| <b>Personal Data &amp; Filing Systems</b> <i>Guidance on what makes information “personal” and explains which manual records are covered by the Law</i>                             |
| <b>Privacy Statements on Websites – a Guidance</b>  |
| <b>Respecting the Privacy of Telephone Subscribers</b>  |
| <b>The Data Protection Law and You:</b> <i>A Guide for Small Businesses</i>   |
| <b>Spam – How to deal with spam</b>   |
| <b>States Departments – a Guidance</b>  |
| <b>Trusts and Wills – a Guidance</b>  |
| <b>Violent warning markers: use in the public sector</b><br><i>How to achieve data protection compliance in setting up and maintaining databases of potentially violent persons</i> |
| <b>Your rights under the Law:</b> <i>A Guidance for Individuals</i>   |

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The Assistant Commissioner circulated this literature to a number of public, private and voluntary organisations throughout the Bailiwick and they are all available in PDF format for viewing or download from the Commissioner's web site.

Approximately **1,664** hard copies of the literature were distributed during 2005, compared with 1,500 copies in 2004, 4,000 in 2003 and 500 in 2002. Notification Guidance Handbooks were sent out to those data controllers whose registrations under the 1986 law were about to expire.

In addition, copies of the more detailed guidance on the Privacy and Electronic Communications Regulations and the monitoring of staff at work that had been produced by the UK Information Commissioners Office were made available.

### **Developing the Internet Web Site**

During 2005, all of the information that had previously been published on: [www.dataprotection.gov.gg](http://www.dataprotection.gov.gg) was restructured and published on the Guernsey Government portal: [www.gov.gg/dataprotection](http://www.gov.gg/dataprotection).

The Commissioner acknowledges the support received from the Information Technology Unit of the Treasury & Resources Department in enabling this transformation to be achieved in an efficient and effective manner.

This new site uses content management technology which supports improved techniques for the location of information by end users and better facilities for the upload and maintenance of the information on the site by the staff of the Office.

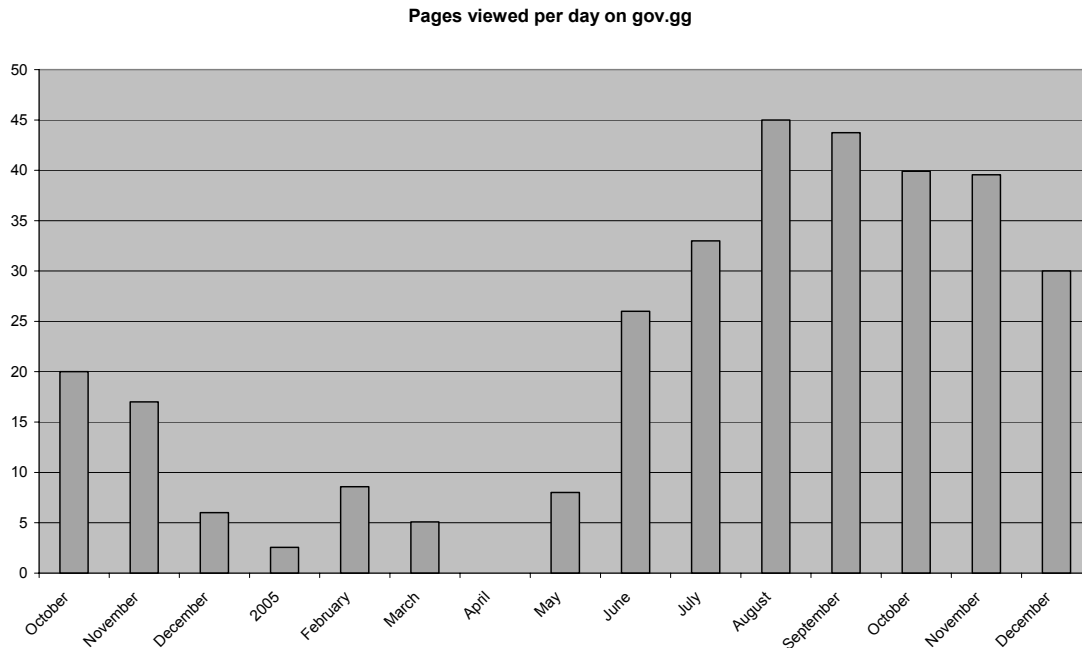
In particular, in response to feedback from users, the Guidance Notes pages have been restructured into three pages, covering General Guidance, Guidance for Individuals and Guidance for Organizations and shortcuts to the Notification site: [www.dpr.gov.gg](http://www.dpr.gov.gg) have been reinstated.

Users of the former site are automatically redirected to the new site, which showed a steady growth in popularity following the completion of the changeover at the end of May 2005; prior to that time the new site had been running in parallel with the old site.

A chart of the average number of pages viewed per day between October 2004 and December 2005 is shown overleaf (unfortunately no statistics were available for the month of April 2005). Currently, it would appear that about 30 pages per day are being accessed, the most popular being the Guidance Notes pages.

It is reasonable to presume that the provision of ready access to information on the web site has reduced need for many people to make routine enquiries for information from the Data Protection Office.

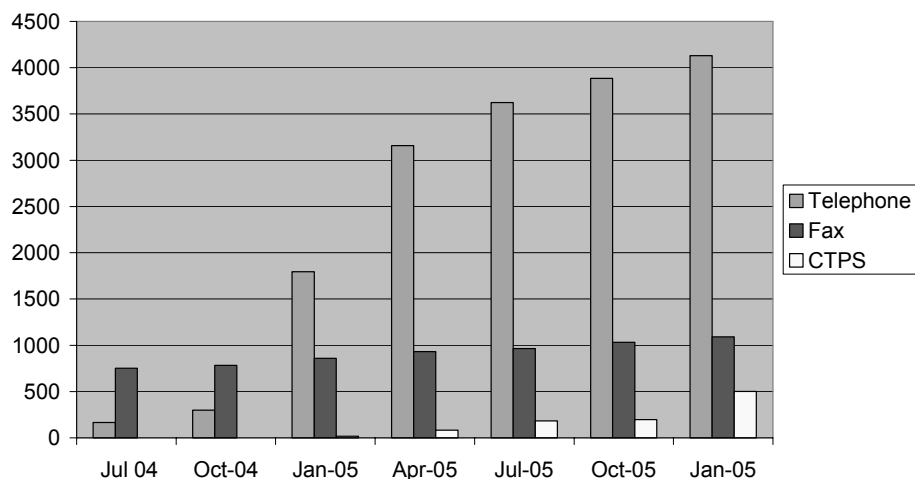
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### Registrations with the Preference Services

Further publicity was given to the use of the Preference Services for reducing the receipt of unwanted telephone calls and junk faxes by means of dedicated pages in both the Cable & Wireless and Wave Telecoms phone books. By the end of 2005, the number of registrations for the TPS by private subscribers exceeded 4,000 for the first time and registrations on the Corporate TPS rose to 501, compared with 1,796 and only 19 at the end of 2004. Registrations with FPS rose from 860 to 1,092 during the same period.

### Registrations for Preference Services



## **ENFORCEMENT**

The Law provides for a number of offences:-

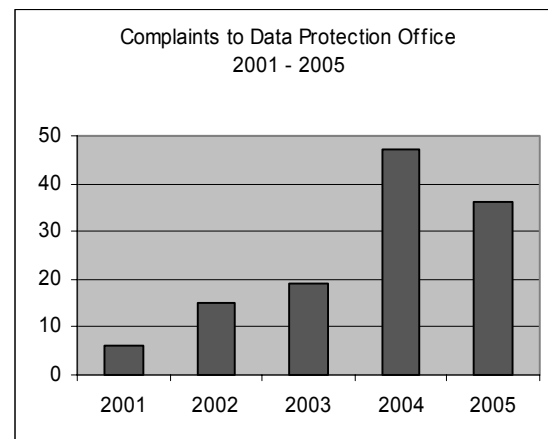
- a) Failure to notify or to notify changes to an entry;
- b) Unauthorised disclosure of data, selling of data or obtaining of data;
- c) Failure to comply with a Notice issued by the Commissioner.

The Commissioner may serve an Enforcement Notice where he has assessed that a controller is not complying with the principles or an Information Notice where he needs more information in order to complete an assessment. With the advent of the Privacy in Electronic Communications Regulations, the Commissioner's power to issue Notices has been expanded to cover non-compliance with those Regulations.

### **Complaints**

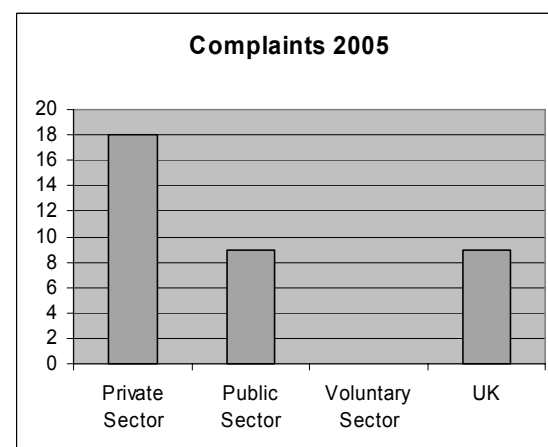
There were a total of 36 complaints received by the Commissioner during 2005.

This compares with a peak of 47 that were received in 2004 and relatively smaller numbers that were processed in prior years, as is shown opposite.



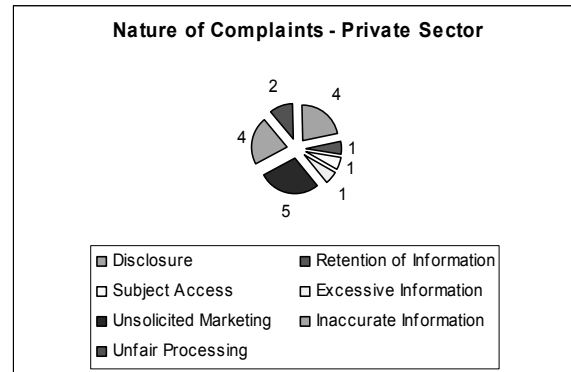
The breakdown of complaints received in 2005 and depicted opposite, shows that 18 related to the private sector, 9 to the public sector, none to the voluntary/charitable sector and 9 to UK organisations.

The 9 complaints against UK organisations, which were largely concerned with unsolicited marketing and junk faxes, were referred to the UK Information Commissioner's Office.

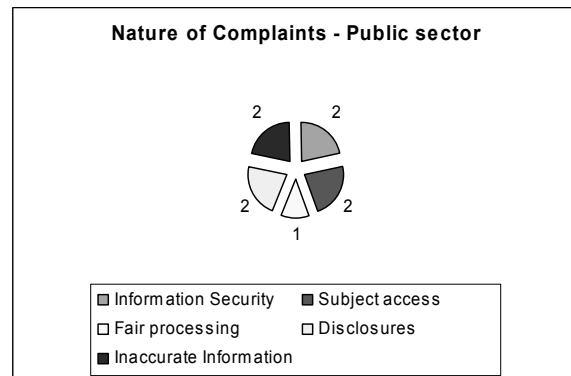


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A breakdown of the complaints against the private sector can be seen opposite. The greatest number of complaints was concerned with unsolicited marketing (5), followed by inaccurate information and disclosure (4), unfair processing (2), retention of information and subject access (1).



The 9 complaints against the public sector were evenly split between subject access, information security, inaccurate information and disclosure (2), followed by one complaint of unfair processing.



## Case Studies

A selection of these complaints is detailed below in the form of Case Studies.

### Case Study 1

An Independent Financial Adviser complained to the Commissioner that one of his clients had been approached by an insurance agent who had previously provided services to this client. The client confirmed this complaint and stated that the “rogue” agent had details of a personal pension plan.

On investigation it was established that details of the personal pension plan had been obtained from a UK based Insurance Company by the “rogue” agent impersonating an employee of one of the UK Company’s local agents. It appeared that information had been procured contrary to Section 55 of the Data Protection Law which would constitute the offence commonly referred to as “blagging”.

The “rogue” agent resigned and stated that he had acted without the consent of his employer. The matter was referred to the Law Officers, who concluded that, as the relevant data controller was established in the UK, any criminal offence would have been committed in contravention of the UK Act.

Accordingly, the matter was referred to the UK Information Commissioner.

**Case Study 2**

The Commissioner received a complaint that a States Department had not made information available in response to a subject access request made under Section 7 of the Law.

In order to investigate the matter, the Commissioner requested details of information held by the Department, but this request was refused.

The Commissioner was concerned by this apparent lack of cooperation from the Department and subsequently served an Information Notice on the Department in accordance with Section 43 of the Law.

The Department responded by threatening to appeal the Notice, claiming weaknesses in the Notice and alleged anomalies in the Law in relation to its applicability to States Departments. A supplementary Information Notice was issued against the relevant Minister.

The legality of this Notice was also challenged, but a resolution of the matter was ultimately reached by the Department “voluntarily” providing the Commissioner with access to the information that he had requested.

The Commissioner completed his assessment and found that in his opinion there were weaknesses in the way that the Department had handled the subject access request and that the Department held information that was eligible for disclosure to the complainant.

The Commissioner recommended that improvements were made to the departmental procedures such that they conformed to his published guidance on: “Dealing with Subject Access Requests”. The complainant resubmitted his subject access request and in response the Department disclosed certain information to him. This did not constitute all of the information that had been identified by the Commissioner.

However, as it appeared that the complainant was seeking this information in order to initiate legal proceedings against the Department, the Commissioner decided not to take further enforcement action but that it was up to the complainant to take court action under Section 7(9) of the Law if he felt that the Department had failed fully to comply with his subject access request. This case raised a number of ambiguities in relation to the applicability of the Law to States Departments and the Commissioner will be recommending that these issues are addressed by proposed amendments to the legislation.



**Case Study 3**

An individual complained to the Commissioner's office about the circulation of "Notes" of a meeting that had occurred. These "Notes" made reference to family members and comments were made about child protection and welfare issues. The "Notes" were circulated to all who had attended the meeting as well as to other professionals from the educational, health and social work fields.

The complainant had been aware that the meeting had happened but had failed on a number of occasions to obtain a copy of the "Notes". Eventually later after much insistence, a copy of the "Notes" was made available and their content caused much distress to the complainant.

An internal investigation conducted by the Data Controller concerned concluded that the "Notes" were inaccurate and that they should have been given the status of "Minutes" rather than "Notes". A letter of correction was sent to each recipient to attach to their copy of the "Notes".

The Commissioner's Office asked the Data Controller to ensure that all the recipients confirm in writing whether they had attached the letter of correction to the "Notes", destroyed the "Notes" or returned them to their author.

The Commissioner found that the Data Controller had issued Guidelines to staff concerning the conduct of meetings especially in regard to child protection matters. The Guidelines were found to be satisfactory, but this particular meeting had not been conducted in accordance with those Guidelines.

This case identified a number of breaches of the data protection principles.

The sixth principle states that personal data should be processed in accordance with the rights of individuals. Such rights include the right to access one's personal data and to prevent any processing that causes damage or distress and the right to have inaccurate personal data corrected or deleted.

The fourth principle states that personal data must be processed accurately.

The seventh principle states that appropriate technical and organizational measures must be taken to process personal data. The issue of appropriate Guidelines to ensure that accurate and secure processing of information occurs is dictated by this principle.

It is the duty of all data Controllers not merely to have in place appropriate Guidelines, policies and procedures but also to ensure that staff are made aware of them so that they may be incorporated into everyday practices.

**Case Study 4**

A financial institution (Company A) complained to the Commissioner that a client had been contacted, without consent, by a past employee offering services from a new financial company (Company B). The contact had been by means of an unsolicited email.

Company A claimed that the past employees may have taken information with them to use for the benefit of Company B to market its clients. The Commissioner advised that the recipient of the email (the client) should make the complaint and a written complaint was duly received.

Based on the information received it appeared that a section 55 offence of the Law may have been committed by the past employees if there had been a disclosure of personal information without the consent of the Data Controller (Company A) to Company B.

In addition, it was considered that if an unsolicited email had been sent for the purposes of direct marketing this would constitute a breach of section 20(2) of the European Communities (Implementation of Council Directive on Privacy and Electronic Communications) (Guernsey) Ordinance, 2004. It is obligatory to obtain consent from clients before they are marketed by email.

Company A produced evidence that it had provided guidance to its employees in regard to the processing of clients' information; this evidence comprised staff training records, contracts of employment, continuing Confidentiality and Declaration of Secrecy in respect of information obtained during the individual's employment with the bank.

As there was an alleged criminal offence under section 55, the Commissioner approached the Law Officers to request the Police to undertake an investigation.

The Police interviewed the Director of Company B, his partner and another person (C) who had all once worked together at Company A. The Director and C had dealt with the client while working at Company A. They considered that they had had a good working relationship with him, had socialized with him and considered him to be a friend. They stated that during a dinner appointment they spoke about this client and considered that he might be a potential client for Company B.

Once the client was made aware of the criminal investigation, he withdrew the complaint against his "two friends" as he did not wish for them to be prosecuted.

As the client withdrew the complaint and it appeared that he may have been pressurized into making it, the Commissioner was advised not to pursue any further action against Company B. Company A was advised by the Commissioner to ensure that in future clients were fully informed as to the nature of any complaint that they were being asked to make.

This case highlights some issues of which all Data Controllers should be aware and take note.

To send an unsolicited email for the purpose of direct marketing is a breach of the Electronic Communications Regulations. The Commissioner would require such practice to cease. In the event that any Data Controller would ignore this instruction the Commissioner would issue an Enforcement Notice to ensure compliance. To ignore an Enforcement Notice is an offence.

Employees owe a duty of fidelity to their employers and so any information they obtain in the course of their employment must not be used outside the organization for personal benefit or for any detriment to others. This applies to information retained in the employee's memory as well as information in tangible form that can be removed by the employee. Any resulting disclosure of personal information without the consent of the Data Controller would be an offence under section 55 of the Data Protection Law.

**Case Study 5**

Some Sark residents claimed that the circulation of minutes of an informal meeting violated their privacy and that of their children. As it had taken place without the knowledge of the Committee responsible (the Data Controller) any disclosure of information without the consent of the Data Controller by its staff would constitute an offence under section 55 of the Data Protection Law. For this reason the Commissioner treated the complaint as a Request for Assessment.

After an assessment of the minutes he concluded that they did contain the personal information of some adults and children.

Although there had been an attempt to conceal the identity of the children mentioned some complainants stated that many people could recognize the children because Sark is a small community.

Some complainants claimed that they suffered distress as confidential information concerning their children was now in the public domain. It was also claimed that some of this information had not even been made known to the parents. One claimed of being approached by a significant number of people asking if the information in the minutes was true.

Another complainant claimed that the minutes were widely distributed and not kept confidential. The Chairman of the meeting informed the Commissioner that the intention had been to keep the minutes confidential and to circulate them only to members of staff and the Committee.

It was established that the minutes had been faxed from a local pub.

The Commissioner requested the Law Officers to assess the findings with a view to prosecution. This request was refused on the grounds that it would not be possible to find out with any certainty who had faxed the minutes.

**Case Study 6**

An Alderney resident claimed that a member of the Policy and Finance Committee had disclosed information about him to a third party. This information related to the possession of a work permit.

On enquiry the Commissioner was informed that work permits are administered by the Policy and Finance Committee. They appear as a standard item on the agenda of the monthly Committee meeting; it is within the remit of the Chief Executive to make a decision on individual applications but he will at times ask the Committee to decide.

Any applications granted by the Chief Executive are not considered to be confidential from the Committee. The Chief Executive will give information about the work permit status of an individual to a Committee member upon request if there is a justifiable reason.

Moreover it is an offence under the Employment Permits (Alderney) Law, 1975 for a person to make a misrepresentation to an employer that he does not need a work permit.

In this particular case the Committee member had reason to suspect that the complainant was making such a misrepresentation, and took steps to insure that the Law was being complied with. In doing so he did not contravene the Data Protection Law as section 29 of this law provides for disclosures to be made in connection with the prevention and detection of crime. In addition the complainant did not suffer any detriment as he was merely advised to make a retrospective application.

The Employment Permits Law provides for an Inspector to be appointed by the Chief Executive to ensure that only individuals in possession of a work permit, or exempt from having one, are employed. An Inspector has now been appointed and this should remove the need for Committee members to police the work permit legislation personally.

**INTERNATIONAL LIAISON****International Conference of Data Protection Authorities**

The 27<sup>th</sup> International Conference of Data Protection and Privacy Commissioners was held in the Montreux Convention Centre, Switzerland, from 14<sup>th</sup> to 16<sup>th</sup> September 2005.

The theme of the conference was: “The protection of personal data and privacy in a globalised world: a universal right respecting diversities.”

The Commissioner and the Assistant Commissioner participated in this conference, which was attended by over 300 delegates from the major countries in the world. The Commissioner was invited to chair one of the sessions, entitled: “What can organisational and evaluation techniques offer to guarantee Data Protection?”

Other topics covered during the two days of the public conference sessions included:

- Humans and the web – a civilizatory view;
- One law of Data Protection in different legal, economic, political and cultural systems: utopia or reality?
- The principles of Data Protection – an adequate answer to the internet?
- New invasive technologies – are new Data Protection standards needed?
- The economy facing a vast variety of Data Protection rules – towards a simplification of regulations and procedures?
- 10 years after the adoption of the EU Directive 95/46/EC – what are the experiences, what are the prospects?
- The importance of self-regulation in the implementation of the Data Protection principles;
- The effectiveness of Data Protection supervision;
- The regulation of trans-border flows facing globalisation;
- How can the requirements of Data Protection be reconciled with the fight against terrorism?
- The role of the private sector in Data Protection to fulfil public tasks – when private companies become “Big Brother”;
- Bio-banks and related challenges;
- Political marketing - towards a code of conduct?
- The contribution of international organisations to the enforcement of Data Protection law;
- Police cooperation in a federal state.

The public conference concluded on 15<sup>th</sup> September and was followed by a closed session, restricted to Commissioners from accredited countries and territories – essentially those with Data Protection or privacy legislation that complied with accepted international standards.

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The closed session of the conference endorsed three resolutions:

- On the use of Personal Data for political communication;
- On the use of Biometrics and
- The Montreux declaration.

The Commissioner was a joint sponsor and co-author of the “Montreux Declaration” which was addressed to international bodies and reiterated the need for concerted international action to improve the protection of personal data throughout the world.

Full details of the presentations given at the conference and the text of the resolutions are available at: [www.privacyconference2005.org](http://www.privacyconference2005.org)

The Commissioner intends to participate in the 28<sup>th</sup> Conference, which is planned to be held in Argentina in November 2006 and Canada has offered to be the host for the 29<sup>th</sup> conference in September 2007.

### **European Spring Conference**

The annual Spring Conference of European Data Protection Authorities took place in Krakow, Poland on 25<sup>th</sup> – 26<sup>th</sup> April 2005. It was attended by representatives of EU level bodies and national delegates from 34 countries, including all the Member States of the EU. The Bailiwick was represented by the Assistant Commissioner.

The Commissioner first participated in the Spring conference that was held in Bonn in 2002 and the Assistant Commissioner attended the 2003 conference in Seville.

The 2005 conference was mainly devoted to the 10<sup>th</sup> anniversary of the adoption of European Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Sessions and discussion took place on the following:

- The impact of the Directive on personal data protection in the EU and Third Countries;
- Whether any amendments of the Directive were necessary;
- How decisions of the European Court of Justice impact on the application of the Directive;
- How the Directive may be interpreted in a world of advancing technology, increasing terrorism and social and cultural changes;
- Transfer of personal data to third countries (i.e. any country outside the EEA);
- The rights of individuals to access their personal data;
- Methods of increasing the awareness of individuals about data protection.

As is customary, a short meeting of the European Commissioners was also held during the International Conference of Data Protection Commissioners in Montreux and was attended by the Commissioner.

The Assistant Commissioner is planning to attend the 2006 European Spring Conference, which is due to be held in Budapest.

*The Data Protection Commissioner's Annual Report for 2005***International Working Group on Data Protection in Telecommunications (IWGDPT)**

This Working Group was originally formed in 1983 on the initiative of the Berlin Commissioner to study the impact on privacy of the growth in telecommunications and to recommend actions to the annual international conference of Data Protection and privacy Commissioners. The Working Group normally meets twice per year – each spring at the invitation of one of the member countries and each autumn in Berlin.

The Commissioner participated in both meetings of this Working Group, which were held in Funchal and Berlin.

35 delegates from 24 countries attended the meeting in Funchal from 31<sup>st</sup> March to 1<sup>st</sup> April 2005 and 46 delegates from 26 countries attended the meeting which took place in Berlin from 6<sup>th</sup> – 7<sup>th</sup> September 2005.

The major topics covered in the meetings were:

- Geo-location technology;
- Privacy and public key infrastructure;
- Data Protection and electronic voting;
- E-health and privacy;
- E-government;
- Privacy aspects of web-based services (e.g. Google Mail);
- Privacy and copyright management;
- Developments with Spam;
- Personal data in WHOIS databases;
- IP telephony;
- RFID;
- Web-logging;
- Peer to peer computer networks;
- Telecommunications-related Video-surveillance;
- Voice analysis/stress detection technology;
- Electronic wristbands;
- Working group on internet governance;
- Satellite technology (e.g. Google earth);
- The Council of Europe media division.

Papers adopted and published by the Working Group are available online at:

<http://www.datenschutz-berlin.de/doc/int/iwgdpt/index.htm>

The Commissioner plans to attend the next meetings of the Working Group in Washington (April 2006) and Berlin (Autumn 2006) and the Working Group has accepted an invitation from the Commissioner to meet in Guernsey in April 2007.

## **Liaison between the British, Irish and Islands' Data Protection Authorities**

These meetings originated from the regular liaison meetings between the UK, Irish, Isle of Man, Guernsey and Jersey Authorities which took place when these Islands were drafting their original data protection legislation in the 1980's. The meetings continued whilst revised legislation compliant with the European Directive was being contemplated, drafted and subsequently implemented in the UK, Ireland and the Islands.

In 2004, membership was broadened to include the island authorities from the EU accession territories of Cyprus and Malta, which had received special assistance from the Irish and UK Commissioners with their preparations for enacting data protection legislation that was compliant with European standards.

It has been found that many common problems arise in small communities and that these relatively informal meetings help to ensure a consistency of approach and a greater understanding of the application of the Data Protection principles to these similar situations.

The annual liaison meeting was held in Cyprus in May 2005 and was attended by the Commissioner and the Assistant Commissioner.

The agenda included:

- The restructuring of the UK Information Commissioner's activities;
- Simplification of Privacy / Fair Processing Notices;
- Update on Binding Corporate Rules
- International Travel Issues (PNR, biometric travel documents, etc);
- The Privacy and Electronic Communications Directive and its applicability to the various territories;
- Powers of the Commissioner in relation to government departments.

There was no meeting in the Autumn, but the UK Commissioner hosted a one-day special conference on "Data Protection – the next 21 years?", which was held in Manchester in November 2005 and was attended by the Commissioners from Guernsey, Jersey, the Isle of Man and Ireland, together with representatives of the public and private sectors in the UK, and a small number of European counterparts.

This conference included presentations and discussion groups covering:

- Changes to the operating environment in the future;
- Data protection challenges and reform options in post-liberal democracies;
- Better compliance by data controllers;
- Better powers for the Information Commissioner;
- Better remedies for the individual.

It is planned that the next meeting of the Authorities will be held in the Spring of 2006 in the Isle of Man.



*The Data Protection Commissioner's Annual Report for 2005***Liaison with the UK Government**

Regular meetings used to be held between the Data Protection authorities from the Islands, the UK Commissioner's office and the Whitehall officials responsible for advising on UK Government policy. These meetings commenced in the 1980's firstly at the Home Office, secondly at the Lord Chancellor's Department and thereafter at the Department of Constitutional Affairs.

The meetings were particularly valuable during the drafting stages of Data Protection legislation and prior to the adequacy assessments by the European Commission.

There were no formal meetings held in 2005 between the Islands' authorities and the officials responsible for dealing with Data Protection policy within the Department for Constitutional Affairs, but contact has been maintained and informal discussions held during regional and international conferences which have been attended by all parties.

In particular, the opportunity was taken during the conference held in Jersey in January 2005 concerning the Data Protection (Jersey) Law 2005, to discuss current developments with the Jersey Commissioner and the official from the Department of Constitutional Affairs, who was a guest speaker at that conference.

In addition, the Commissioner has been briefed on the UK Government's response to the European Commission's review of the Data Protection Directive; there have been no indications that any amendments to the UK legislation are currently being planned.

**Data Protection Forum**

The Data Protection Forum is a UK-based association which provides a focus for the collection, formulation and exchange of information on data protection.

Membership comprises a cross section of those involved with data protection and includes private sector members from financial services, retail, accountancy, travel, charities and public sector members from the police, local authorities, universities, as well as lawyers, consultants and consumers.

The Forum is based on the idea that co-operation between organisations in all areas would be advantageous and so aims to bring together companies, public sector and consumers to discuss privacy and personal data issues in order that mutual assistance and support may be provided.

Meetings are normally held in London four times a year and information is provided on a dedicated website ( [www.dpforum.org.uk](http://www.dpforum.org.uk) ).

In June, 2005 the Commissioner was invited to deliver a presentation to some 200 members of the Forum and spoke on the topic of "exporting personal data". The meeting was held at British Airways Waterside headquarters near Heathrow.

Afterwards, the Commissioner shared a "Question-Time style" panel with his fellow Commissioners from the UK, Republic of Ireland, Jersey, the Isle of Man and New Zealand. The audience responded with a set of many varied and topical questions but, in contrast to Question Time, there was much discussion but little dissent within this panel!

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This meeting was widely reported, including an article in the British Airways staff magazine (see below).

### Expert visit on data protection

BRITISH Airways hosted a meeting of data protection experts this week at the airline's Waterside headquarters.

Five information commissioners – experts in the field of data protection – formed the panel of the event where they presented to and took questions from an audience of privacy professionals from organisations in the UK, including BA, and public and private sectors.

They are all members of the Data Protection Forum, a UK-based organisation that BA is also a member of, promoting best practice for the protection of personal data.

"Personal data" is information relating to a living individual who can be identified from the data. Examples within the airline

of personal data are people on-line records and passenger name records. Personal data is subject to the UK Data Protection Act and similar legislation in many other countries.

Sarah Bains and Paul Byrne of Im Information security represent BA on the forum, and at the event Sarah was elected chairman of the organisation – which provides information on current privacy issues as well as opportunities to discuss practical approaches to compliance.

Sarah said: "Data protection awareness and compliance within BA is key to assuring that all personal data is kept safe and secure and processed in accordance with privacy legislation and guidelines."

Also present were 20 of BA's

own data protection coordinators who work throughout the airline, managing queries from their departments and assisting Sarah and Paul on compliance matters.

The event coincided with a programme of data protection awareness within BA to highlight elements including data retention, disposal, classification and completion of mandatory computer-based training by all managers and staff handling personal data.

If you would like to know who the data protection co-ordinator is for your area, please see the intranet – "Company Procedures/ Are You Managing Risk?/ Information Security/ Law inc Data Protection/ Data Protection Coordinators."



*Ready, steady, shred: Richard Thomas, UK information commissioner; Dr Peter Harris, data protection commissioner, Guernsey; Iain McDonald, data protection supervisor, Isle of Man; Emma Martins, data protection registrar, Jersey; Marie Shroff, New Zealand privacy commissioner; Geoff Watt, director safety, security and risk management and Gordon Penfold, head of Im business development.*

Following this event, the regulatory authorities which attended were given honorary membership of the Forum and it was suggested that such an event might be repeated in the future.

The Bailiwick was represented at the September and December meetings of the Forum by the Assistant Commissioner. It is considered that attendance at these meetings provides benefits which include:

- networking with key people involved in data protection, in many cases from parent companies with offices in Guernsey ;
- the opportunity to influence data protection policy-making;
- raising the awareness of pertinent issues and future trends that may affect both the public and private sectors.

### Information Privacy Expert Panel

The Commissioner was invited to become a member of the British Computer Society [BCS] Information Privacy Expert Panel [IPEP], which is a small group of up to 16 members that was formed to provide expert guidance on Data Protection and Privacy matters to the BCS Security Forum Strategic Panel and onwards to Government, industry, the media and the general public.

The IPEP includes members from academia, the public and private sectors and has considered various topics, including the UK Government proposals on Identity Cards and data sharing initiatives within the public sector.

The Commissioner attended two meetings of this panel in 2005 and has been invited to attend four meetings in 2006. The cost of attendance at these quarterly meetings of the IPEP and at any related meetings is borne by the BCS.

**OBJECTIVES FOR 2006**

The primary objectives for 2006 will encompass the following areas:-

- ***Legislation***

The Statutory Code of Practice on the Disclosure of Criminal Convictions in connection with Employment will be completed to tie in with the commencement of the Rehabilitation of Offenders Law and section 56 of the Data Protection Law.

Advice will be given to the States on the need for changes to the local Data Protection legislation.

- ***Adequacy***

Work will continue to ensure that the European Commission's adequacy finding for the Data Protection régime in the Bailiwick is respected and that international data transfers comply with the eighth Data Protection principle.

- ***British Isles and International Liaison***

The liaison with the Jersey Commissioner, the Isle of Man Supervisor, the UK and Irish Commissioners, the Commissioners from Cyprus and Malta and the maintenance of contact with officials from the UK Department of Constitutional Affairs will continue.

Participation in relevant UK, European and international conferences will continue as a means of enhancing the international recognition of the independent status and regulatory prowess of the Bailiwick and ensuring that local knowledge of international developments remains up to date.

- ***Raising Awareness***

The media will be used to continue the awareness campaign and a further series of seminars and talks for the public and private sectors will be mounted.

Collaboration with the Training Agency will continue over the organisation of courses leading to formal qualifications in data protection, such as the ISEB Certificate.

Promotion of relevant training using UK specialists will be done, with training being targeted separately to financial sector organisations, other private sector organisations and the public sector.

The publication of new literature and the review and revision of existing literature will be undertaken as the need arises.

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Promotion of the Telephone and Fax Preference Services and periodic surveys to determine their use and effectiveness will be undertaken.

- ***Compliance***

Targeted compliance activities will be organised to increase the notification level of local organisations. More rigorous enforcement will take place, including consideration of prosecution of non-compliant organisations.

The monitoring of websites and periodic surveys to assess compliance with data protection legislation and the privacy regulations will be done.

- ***Government***

Close liaison with the States of Guernsey Government departments will continue with the aim of promoting data sharing protocols and the further development of subject access procedures.

- ***Conference organisation***

The preliminary organisation of the meeting of the IWGDPT in Guernsey in April 2007 will be completed, together with an investigation of the feasibility of holding a Data Protection conference immediately preceding that meeting.

*The Data Protection Commissioner's Annual Report for 2005***FINANCIAL REPORT**

The Data Protection Office is funded by a grant from the States of Guernsey that is administered by the Home Department. This grant is based on a budgetary estimate of expenditure prepared annually by the Commissioner.

In accordance with Section 3 of Schedule 5 of the Law, all fees received are repaid into the General Revenue Account.

The Data Protection Office's Income and Expenditure, which are included within the published accounts for the Home Department, have been as follows:

|  |                        |                        |
|--|------------------------|------------------------|
| <b><u>INCOME</u></b>                     | <b>2005</b>            | <b>2004</b>            |
|  | <b>£</b>               | <b>£</b>               |
| Data Protection Fees <sup>1</sup>        | 41,686                 | 37,622                 |
| <b><u>EXPENDITURE</u></b>                |                        |                        |
| Rent                                     | 16,276                 | 15,526                 |
| Salaries and Allowances <sup>2</sup>     | 137,251                | 129,782                |
| Travel and Subsistence                   | 9,751                  | 7,366                  |
| Furniture and Equipment <sup>3</sup>     | 14,237                 | 13,107                 |
| Publications                             | 2,609                  | 2,199                  |
| Post, Stationery, Telephone              | 4,253                  | 3,881                  |
| Heat Light, Cleaning                     | 4,874                  | 5,054                  |
| <b>TOTAL EXPENDITURE</b>                 | <b>£189,251</b>        | <b>£176,915</b>        |
| <b>EXCESS OF EXPENDITURE OVER INCOME</b> | <b><u>£147,565</u></b> | <b><u>£139,293</u></b> |

**NOTES**

<sup>1</sup> Fees were £35 per notification or renewal of a notification.

Income includes accrued income (on a monthly basis) from previous years: £1,543.75 being the final accrual of the triennial registrations from January to July 2002 and £18,144.58 from annual notifications and renewals throughout 2004.

The cash received for 2005 was £42,665 (£35,875 in 2004) representing receipts for the 1219 annual notifications and renewals that were processed during 2005.

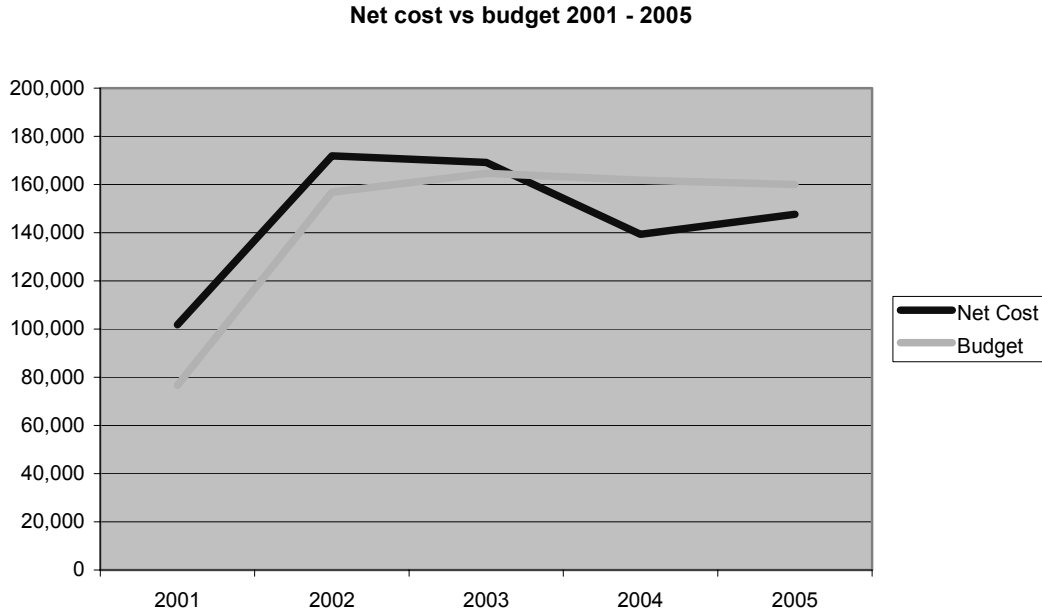
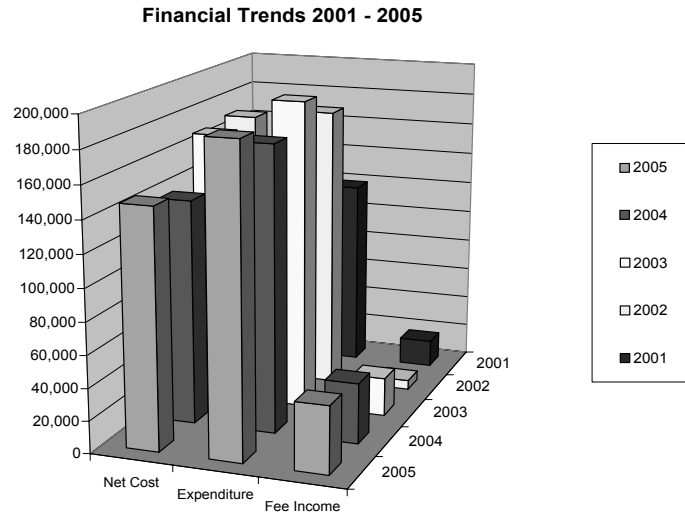
<sup>2</sup> This includes an amount of £6,270 for consultancy (£6,315 in 2004) concerned with the provision of legal advice that was not available from the Law Officers.

<sup>3</sup> This includes an amount of £3,048 for replacement of the four year old file server and a one-off payment of £1,200 towards the implementation of online payments system, but

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no balancing allowance for the return of the old equipment to the ITU for potential use elsewhere.

The financial trends in income and expenditure since 2001 are shown graphically below.



Expenditure for 2005 was kept under strict control and the net cost of the Office again remained below the authorised budget for the year. Whilst there remains little scope for any further reduction in expenditure, it is intended that proposals will be put to the States

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in 2006 for a modest increase in Notification fees, which should reduce the net cost and mean that all of the non-salary costs of the Office should be fully recovered through fees.

The Office was subject to an Internal Audit in October. This had been requested by the Commissioner, who was keen to ensure that the Office should be audited at least once during each Commissioner's normal term of office. The auditors were requested in particular to recommend improvements to operating procedures; the resulting report assessed the Office as "satisfactory", with 9 recommendations on procedural matters being made. Of those, five were accepted and implemented, two were partially accepted and two rejected as impractical at present.

One of the recommendations that was accepted related to the recording and reporting of any materially significant gifts or hospitality and it was agreed that a statement would in future be included in each Annual Report.

In accordance with that recommendation, it is confirmed that no gifts or hospitality were received by the Commissioner or his staff during 2005.

**APPENDIX****THE DATA PROTECTION PRINCIPLES**

1. Personal data shall be processed fairly and lawfully and special conditions apply to the processing of sensitive personal data.
2. Personal data shall be obtained for one or more specified and lawful purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are processed.
4. Personal data shall be accurate and kept up to date.
5. Personal data shall not be kept for longer than necessary.
6. Personal data shall be processed in accordance with the rights of data subjects.
7. Technical and organisational measures shall be taken against unauthorised or unlawful processing and against accidental loss or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the Bailiwick unless the destination ensures an adequate level of protection for the data.



### **THE PRIVACY AND ELECTRONIC COMMUNICATIONS REGULATIONS**

1. Telecommunications services must be secure and information processed within such services must be kept confidential.
2. Traffic data should not be retained for longer than necessary and the detail of itemised billing should be under subscriber control.
3. Facilities should be provided for the suppression of calling line and connected line information.
4. Information on the subscriber's location should not generally be processed without consent.
5. Subscribers may choose not to appear in directories.
6. Automated calling systems may not be used for direct marketing to subscribers who have opted out.
7. Unsolicited faxes may not be sent to private subscribers unless they have opted in or to business subscribers who have opted out.
8. Unsolicited marketing calls may not be made to subscribers who have opted out.
9. Unsolicited email marketing may not be sent to private subscribers and must never be sent where the identity of the sender has been disguised or concealed.
10. The Data Protection Commissioner may use enforcement powers to deal with any alleged contraventions of the Regulations.

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Further information about compliance with the Data Protection (Bailiwick of Guernsey) Law 2001 can be obtained via:

E-mail address: [dataprotection@gov.gg](mailto:dataprotection@gov.gg)  
 Internet: [www.dataprotection.gov.gg](http://www.dataprotection.gov.gg)  
 Telephone: +44 (0) 1481 742074  
 Fax: +44 (0) 1481 742077



Post: Data Protection Commissioner's Office  
 P.O. Box 642  
 Frances House  
 Sir William Place  
 St. Peter Port  
 Guernsey  
 GY1 3JE

## GUERNSEY RETAIL PRICES INDEX

### 3.1% annual change as at 31st March 2006

**At the end of March, Guernsey's annual rate of inflation, as measured by changes in the Retail Prices Index, was 3.1%, a decrease from 3.3% at the end of the previous quarter.**

RPI X, the rate of inflation that excludes mortgage interest payments stands at 2.8%

**Table 1**

The Index Figures at the end of March 2006 were:

126.6 (Dec 1999=100)  
 150.3 (Mar 1994 =100)  
 203.1 (Dec 1988 =100)  
 271.4 (Dec 1983 =100)  
 430.9 (Dec 1978 =100)

| Period    | %   | Period  | %    |
|-----------|-----|---------|------|
| 3 Months  | 1.7 | 2 Years | 7.9  |
| 6 Months  | 1.9 | 3 Years | 12.4 |
| 9 Months  | 2.2 | 4 Years | 17.7 |
| 12 Months | 3.1 | 5 Years | 21.2 |

**Thursday**  
**20th April 2006**

**Issued by:**  
**Policy and Research Unit**  
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**St Peter Port**  
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**GY1 1FH**

#### **Matters affecting the RPI during the last 12 months**

The major contributing groups to the March 2006 RPI include Housing (1.1%), Fuel, Light & Power (0.5%), Fares and Other Travel (0.4%) and Food Bought for Consumption away from Home (0.3%).

The Housing group is the largest contributor to the RPI at 1.1% out of 3.1%. Its impact has decreased slightly since the previous quarter (1.3% in December 2005) but has fallen considerably since the first half of 2005. This was due to a decrease in the cost of servicing a mortgage, caused by falling interest rates in the third quarter of 2005. Elsewhere within the Housing Group, there were increases in water rates and occupier rates.

Increases in the price of oil have resulted in annual changes to the Fuel, Light and Power group (0.5%), Motoring (0.3%) and Fares and Other Travel (0.4%).

Both Leisure Goods (TVs, games consoles, etc) and Clothing & Footwear had a downward effect on the RPI. They contributed -0.1% and -0.5% respectively to the index.

#### **Matters affecting the RPI during the last three months**

The main contributors to inflation over the last three months include increases in petrol, diesel, oil and electricity.

### **Annual % Changes for each quarter**

**Table 2**

|      | March | June | September | December |
|------|-------|------|-----------|----------|
| 1992 | 4.6   | 4.1  | 3.6       | 3.2      |
| 1993 | 2.3   | 1.5  | 1.8       | 1.4      |
| 1994 | 2.9   | 2.3  | 2.0       | 2.4      |
| 1995 | 3.0   | 3.5  | 4.0       | 3.6      |
| 1996 | 2.5   | 2.1  | 2.0       | 2.8      |
| 1997 | 3.1   | 4.0  | 4.4       | 4.7      |
| 1998 | 4.1   | 4.0  | 4.0       | 3.2      |
| 1999 | 2.1   | 2.2  | 1.8       | 2.4      |
| 2000 | 3.8   | 4.4  | 4.5       | 3.9      |
| 2001 | 3.3   | 2.3  | 2.6       | 1.9      |
| 2002 | 2.9   | 3.3  | 3.9       | 4.4      |
| 2003 | 4.7   | 4.3  | 3.3       | 3.9      |
| 2004 | 4.2   | 4.5  | 5.2       | 4.9      |
| 2005 | 4.6   | 4.6  | 3.8       | 3.3      |
| 2006 | 3.1   |      |           |          |

**RPI enquiries -**  
**Tel: 01481 717012**  
**Fax: 01481 717157**  
**Internet: [www.gov.gg](http://www.gov.gg)**  
**[policy.research@gov.gg](mailto:policy.research@gov.gg)**

## GUERNSEY RETAIL PRICES INDEX - MARCH 2006

### PERCENTAGE CHANGES IN GROUP INFLATION AND THEIR CONTRIBUTION TO OVERALL INFLATION

**Table 3** GUERNSEY INFLATION RATE (+3.1%)

|                       | Weight | Quarterly %Change | Annual %Change | % Contribution |
|-----------------------|--------|-------------------|----------------|----------------|
| Food                  | 127    | 0.1               | 1.1            | 0.2            |
| Alcoholic Drink       | 52     | 4.0               | 3.8            | 0.2            |
| Tobacco               | 19     | 3.1               | 4.0            | 0.1            |
| Housing               | 216    | 1.9               | 4.3            | 1.1            |
| Fuel, Light and Power | 41     | 4.8               | 10.1           | 0.5            |
| Household Goods       | 79     | 2.2               | 2.1            | 0.2            |
| Household Services    | 33     | 0.2               | 1.2            | 0.0            |
| Clothing & Footwear   | 56     | 1.8               | -8.1           | -0.5           |
| Personal Goods        | 49     | 0.7               | 3.4            | 0.2            |
| Motoring Expenditure  | 85     | 1.6               | 3.2            | 0.3            |
| Fares/Other Travel    | 33     | 2.8               | 9.5            | 0.4            |
| Leisure Goods         | 63     | 0.8               | -1.2           | -0.1           |
| Leisure Services      | 92     | 1.3               | 2.2            | 0.2            |
| Food Away from Home   | 55     | 0.1               | 5.6            | 0.3            |
| Overall               | 1000   |                   |                |                |
| All Items             |        |                   |                |                |

**Weight** is the proportion of the total index represented by each group. **Contribution** shows the effect of price changes in relation to the relative weight of the groups.

### Retail Prices Index (RPI)

The RPI is a measure of inflation in Guernsey. It can be defined as "an average measure of change in the prices of goods and services bought for the purpose of consumption by the vast majority of households" (RPI Technical Manual, Office for National Statistics, 1998).

Goods and services that consumers purchase have a price, and these will vary over time. The RPI is designed to measure such changes. Imagine a very large shopping basket (over 2100 items) comprising all the different kinds of goods and services bought by a typical household. As the prices of individual items in this basket vary, the total cost of the basket will vary - the RPI is a measure of the change from quarter to quarter in this total cost.

No two households spend their money in exactly the same way and this basket of goods is compiled using spending pattern data from the Household Expenditure Survey. This is carried out every five years, hence the RPI index base is reset to 100 e.g. Dec 1999 = 100, Mar 1994 = 100 etc. The RPI while not applying precisely to any one household or person, will be close to the experience of inflation for the great majority of households.

# GUERNSEY RETAIL PRICES INDEX - MARCH 2006

Figure 1

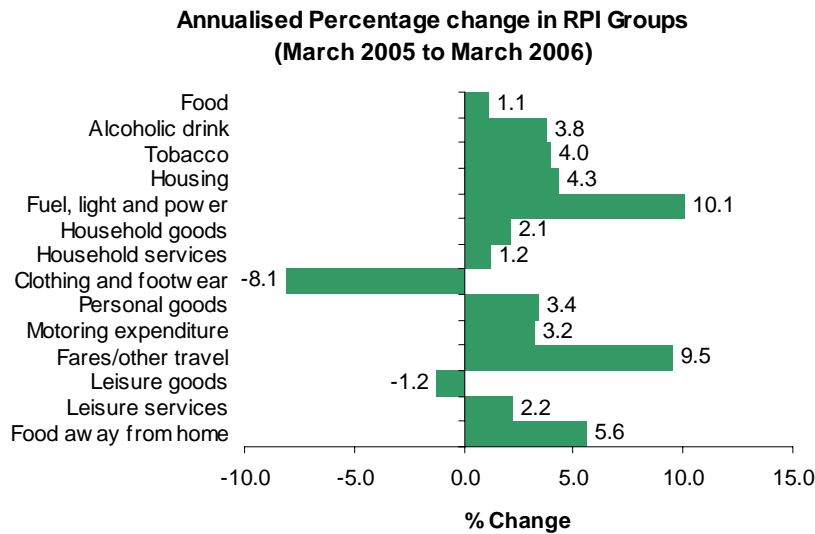


Figure 2

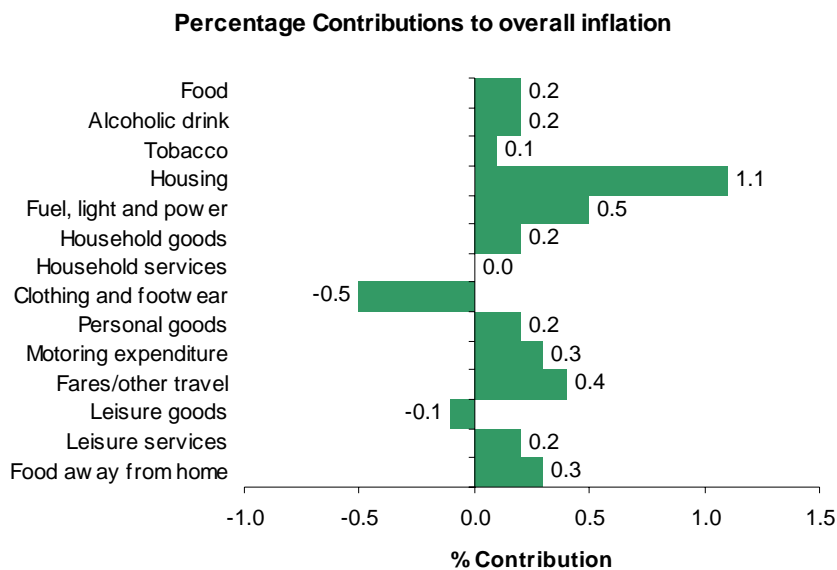
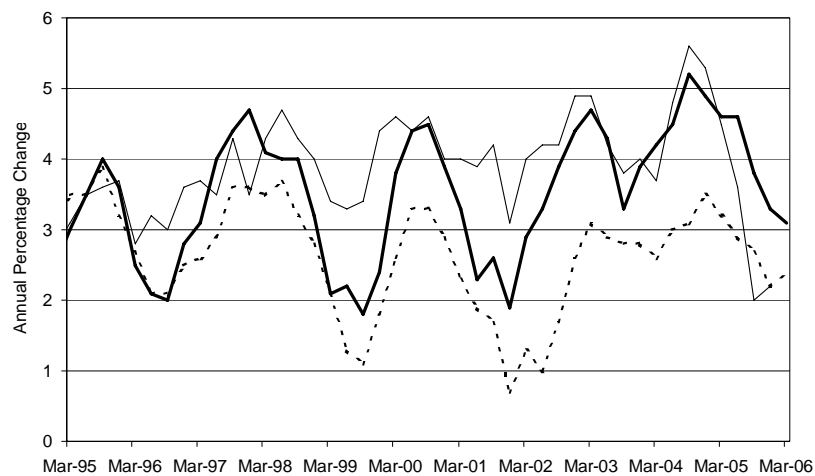


Figure 3

## Annual Rate of Headline Inflation - Guernsey, Jersey and the UK



Note that the Jersey RPI was unavailable at the time of publication

## GUERNSEY RETAIL PRICES INDEX - MARCH 2006

### RPI comparison with Jersey and the UK

Guernsey and Jersey tend to run at a higher rate than the UK, however in recent quarters the Jersey RPI has fallen to similar levels to that of the UK. The chart on page 3 (Figure 3) shows that inflation in Guernsey followed the general trends of the UK inflation rate, albeit at a higher level.

**Table 4**

|      |      | Annual Movements |       |          |       |          |       | Quarterly Movements |      |        |
|------|------|------------------|-------|----------|-------|----------|-------|---------------------|------|--------|
|      |      | Guernsey         |       | UK       |       | Jersey   |       | Guernsey            | UK   | Jersey |
|      |      | Headline         | RPI X | Headline | RPI X | Headline | RPI X | Headline            | RPI  |        |
| 1998 | Mar  | 4.1              | 2.3   | 3.5      | 2.6   | 4.3      | 3.8   | 0.9                 | 0.5  | 1.7    |
|      | June | 4.0              | 2.3   | 3.7      | 2.8   | 4.7      | 4.1   | 0.9                 | 1.6  | 1.2    |
|      | Sept | 4.0              | 2.6   | 3.2      | 2.5   | 4.3      | 3.9   | 1.0                 | 1.0  | 0.9    |
|      | Dec  | 3.2              | 2.2   | 2.8      | 2.6   | 4.0      | 3.9   | 0.4                 | 0.0  | 0.2    |
| 1999 | Mar  | 2.1              | 2.6   | 2.1      | 2.7   | 3.4      | 3.6   | -0.2                | -0.2 | 1.1    |
|      | June | 2.2              | 3.1   | 1.3      | 2.2   | 3.3      | 3.6   | 1.0                 | 0.9  | 1.1    |
|      | Sept | 1.8              | 3.0   | 1.1      | 2.1   | 3.4      | 3.6   | 0.4                 | 0.5  | 0.9    |
|      | Dec  | 2.4              | 2.8   | 1.8      | 2.2   | 4.4      | 4.3   | 1.1                 | 0.7  | 1.1    |
| 2000 | Mar  | 3.8              | 3.1   | 2.6      | 2.0   | 4.6      | 4.3   | 1.2                 | 0.3  | 1.3    |
|      | June | 4.4              | 3.6   | 3.3      | 2.2   | 4.4      | 4.0   | 1.6                 | 1.6  | 1.0    |
|      | Sept | 4.5              | 3.5   | 3.3      | 2.2   | 4.6      | 4.2   | 0.7                 | 0.4  | 1.1    |
|      | Dec  | 3.9              | 3.8   | 2.9      | 2.0   | 4.0      | 3.4   | 0.5                 | 0.3  | 0.5    |
| 2001 | Mar  | 3.3              | 2.9   | 2.3      | 1.9   | 4.0      | 3.6   | 0.6                 | 0.0  | 1.4    |
|      | June | 2.3              | 2.7   | 1.9      | 2.4   | 3.9      | 3.8   | 0.8                 | 1.3  | 0.9    |
|      | Sept | 2.6              | 3.1   | 1.7      | 2.3   | 4.2      | 4.2   | 0.8                 | 0.1  | 1.3    |
|      | Dec  | 1.9              | 2.9   | 0.7      | 1.9   | 3.1      | 3.6   | -0.1                | -0.7 | -0.6   |
| 2002 | Mar  | 2.9              | 3.8   | 1.3      | 2.3   | 4.0      | 4.4   | 1.6                 | 0.6  | 2.3    |
|      | June | 3.3              | 3.6   | 1.0      | 1.5   | 4.2      | 4.4   | 1.0                 | 1.0  | 1.1    |
|      | Sept | 3.9              | 3.8   | 1.7      | 2.1   | 4.2      | 4.2   | 1.4                 | 0.8  | 1.3    |
|      | Dec  | 4.4              | 3.8   | 2.9      | 2.7   | 4.9      | 4.5   | 0.4                 | 0.5  | 0.1    |
| 2003 | Mar  | 4.7              | 4.3   | 3.1      | 3.0   | 4.9      | 4.8   | 1.9                 | 0.8  | 2.4    |
|      | June | 4.3              | 3.8   | 2.9      | 2.8   | 4.2      | 4.6   | 0.6                 | 0.8  | 0.4    |
|      | Sept | 3.3              | 3.1   | 2.8      | 2.8   | 3.8      | 4.4   | 0.4                 | 0.7  | 0.9    |
|      | Dec  | 3.9              | 3.4   | 2.8      | 2.6   | 4.0      | 4.0   | 1.0                 | 0.5  | 0.3    |
| 2004 | Mar  | 4.2              | 3.2   | 2.6      | 2.1   | 3.7      | 3.5   | 2.2                 | 0.6  | 2.1    |
|      | June | 4.5              | 3.1   | 3.0      | 2.3   | 4.8      | 3.4   | 0.9                 | 1.2  | 1.5    |
|      | Sept | 5.2              | 2.9   | 3.1      | 1.9   | 5.6      | 3.3   | 1.1                 | 0.8  | 1.7    |
|      | Dec  | 4.9              | 2.9   | 3.5      | 2.5   | 5.3      | 3.4   | 0.7                 | 1.0  | 0.0    |
| 2005 | Mar  | 4.6              | 3.2   | 3.2      | 2.4   | 4.5      | 2.7   | 1.9                 | 0.2  | 1.3    |
|      | June | 4.6              | 3.3   | 2.9      | 2.2   | 3.6      | 2.5   | 0.9                 | 0.9  | 0.6    |
|      | Sept | 3.8              | 3.6   | 2.7      | 2.5   | 2.0      | 1.9   | 0.3                 | 0.6  | 0.1    |
|      | Dec  | 3.3              | 3.0   | 2.2      | 2.0   | 2.2      | 2.2   | 0.2                 | 0.5  | 0.2    |
| 2006 | Mar  | 3.1              | 2.8   | 2.4      | 2.1   | *        | *     | 1.7                 | 0.4  |        |

\* Jersey RPI figure to be published on 26th April 2006

### RPI X

A single measure of inflation may not meet all user's needs. Following the Office for National Statistics' Review of the Island's RPI, one recommendation was for the Policy and Research Unit to publish the RPI X. RPI X literally means RPI **eXcluding mortgage interest payments**; the RPI is calculated again after this item has been removed.

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**IN THE STATES OF THE ISLAND OF GUERNSEY**

**ON THE 31ST DAY OF MAY, 2006**

The States resolved as follows concerning Billet d'État No. X  
dated 12th May, 2006

**SOCIAL SECURITY DEPARTMENT**

**PROJET DE LOI**

entitled

**THE PUBLIC ASSISTANCE (AMENDMENT) LAW, 2006**

I.- After consideration of the Report dated 31st March, 2006, of the Social Security Department:-

To approve the Projet de Loi entitled “The Public Assistance (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 MARRIAGE FEES (GUERNSEY) (AMENDMENT) ORDINANCE, 2006**

II.- To approve the draft Ordinance entitled “The Marriage Fees (Guernsey) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**THE LEGITIMACY (GUERNSEY) LAW (FEES)  
(AMENDMENT) ORDINANCE, 2006**

III.- To approve the draft Ordinance entitled “The Legitimacy (Guernsey) Law (Fees) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**THE PUBLIC RECORDS (FEES FOR REGISTRATION AND CERTIFIED  
COPIES OF DOCUMENTS) (AMENDMENT) ORDINANCE, 2006**

IV.- To approve the draft Ordinance entitled “The Public Records (Fees for Registration and Certified Copies of Documents) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**THE BIRTHS, DEATHS AND MARRIAGE CERTIFICATES (FEES)  
(AMENDMENT) ORDINANCE, 2006**

- V.- To approve the draft Ordinance entitled “The Births, Deaths and Marriage Certificates (Fees) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**THE PREFERRED DEBTS (GUERNSEY AND ALDERNEY)  
(AMENDMENT) ORDINANCE, 2006**

- VI.- To approve the draft Ordinance entitled “The Preferred Debts (Guernsey and Alderney) (Amendment) Ordinance, 2006” and to direct that the same shall have effect as an Ordinance of the States.

**LADIES’ COLLEGE BOARD OF GOVERNORS**

**NEW MEMBERS**

- VII.- To elect

- (1) Mr. M. B. Riley as a member of that Board of Governors with effect from 1<sup>st</sup> June, 2006, who has been nominated in that behalf by the Education Department for election by the States;
- (2) Mrs. S. Nickolls as a member of the Ladies’ College Board of Governors with effect from 1<sup>st</sup> June, 2006, who has been nominated in that behalf by the States appointed Governors and the Education Department nominated Governors for election by the States.

**GUILLE-ALLÈS LIBRARY COUNCIL**

**NEW MEMBER**

- VIII.- To re-elect Deputy A. H. Adam as a member of the Guille-Allès Library Council with effect from 1<sup>st</sup> June, 2006.



## **POLICY COUNCIL**

### **THE UNIFORM SCALE OF FINES (BAILIWICK OF GUERNSEY) LAW, 1989**

IX.- After consideration of the Report dated 27<sup>th</sup> March, 2006, of the Policy Council:-

1. To enact legislation to increase the maxima prescribed in the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **POLICY COUNCIL**

### **EVIDENCE IN CIVIL PROCEEDINGS ETC**

X.- After consideration of the Report dated 10<sup>th</sup> April, 2006, of the Policy Council:-

1. To approve the amendment of the rules of evidence in civil proceedings as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **POLICY COUNCIL**

### **CORPORATE ANTI-POVERTY PROGRAMME: MONITORING AND UPDATE**

XI.- After consideration of the Report dated 24<sup>th</sup> April, 2006, of the Policy Council:-

1. To note the updates on all the Action Areas of the Corporate Anti-Poverty Programme.
2. To note the monitoring proposals put forward by all Lead Departments.
3. To note the deletion of the work stream 'The former Board of Industry's fieldwork scheme' from Action Area B of the Corporate Anti-Poverty Programme.
4. To note the removal of the Commerce and Employment Department as second lead Department from Action Area B of the Corporate Anti-Poverty Programme.

5. To note the addition of the two new workstreams under Action Area F, to be led by the Commerce and Employment Department.
6. To note the timescale for providing the next Corporate Anti-Poverty Programme Update to the States of Guernsey as set out in that Report; and to direct the Policy Council to include in that Update:
  - (a) estimated costings for all original workstreams not yet implemented plus any additional workstreams which have since been identified;
  - (b) its comments on the advantages and disadvantages of implementing each of those workstreams and on their estimated effectiveness in meeting the States approved target of halving relative poverty in Guernsey.
7. To note that with the current States financial position, progress in achieving the original aims and objectives of the Corporate Anti-Poverty Programme is likely to be slower than originally envisaged.
8. To note that the Policy Council through its Social Policy Steering Group, will undertake a review of the best way to progress the Corporate Anti-Poverty Programme in light of the current financial climate.

## **POLICY COUNCIL**

### **THE GUERNSEY FINANCIAL SERVICES COMMISSION: 2005 ANNUAL REPORT**

XII.- After consideration of the Report dated 24<sup>th</sup> April, 2006, of the Policy Council:-

1. To note that Report.
2. To approve the accounts of the Guernsey Financial Services Commission for the year ended 31<sup>st</sup> December 2005.
2. To appoint the firm of PricewaterhouseCoopers CI LLP as auditors of the accounts of the Guernsey Financial Services Commission for the year ending 31<sup>st</sup> December 2006.

**TREASURY AND RESOURCES DEPARTMENT**

**EXEMPT COLLECTIVE INVESTMENT SCHEMES:  
PROPOSAL TO STREAMLINE ADMINISTRATION  
OF THE EXEMPTION PROCESS**

XIII.- After consideration of the Report dated 4<sup>th</sup> April, 2006, of the Treasury and Resources Department:-

1. To approve the changes for exemption from tax for collective investment schemes under Categories A, B and C as set out in that Report.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**K. H. TOUGH**

**HER MAJESTY'S GREFFIER**

**IN THE STATES OF THE ISLAND OF GUERNSEY**

**ON THE 1ST DAY OF JUNE, 2006**

(Meeting adjourned from 31<sup>st</sup> May, 2006)

The States resolved as follows concerning  
Billet d'État No. X dated 12<sup>th</sup> May, 2006

**TREASURY AND RESOURCES DEPARTMENT  
and  
COMMERCE AND EMPLOYMENT DEPARTMENT**

**REVIEW OF COMMERCIALISATION**

XIV.- After consideration of the Report dated 5<sup>th</sup> April, 2006, of the Treasury and Resources Department and the Commerce and Employment Department:-

1. To agree that the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 be amended to:
  - (a) add a duty for the Director General of Regulation to “regulate in a way that is proportionate to Guernsey circumstances”;
  - (b) add to the functions of the Director General of Regulation a requirement to exercise his functions and powers in a way that is “accountable, proportionate, consistent and targeted only at cases in which action is needed”;
  - (c) enable the States, by Ordinance, to give Directions to the Director General of Regulation of a strategic or general nature including the priorities for the exercise of his duties in respect of each utility;
  - (d) increase the time limit for lodging an appeal from 14 days to 28 days after publication of a Decision by the Director General of Regulation;
  - (e) delete the provisions for appeals against Decisions of the Director General of Regulation to be referred to a Tribunal and replace with provision to refer such appeals directly to the Royal Court;
  - (f) require the establishment of an independent Audit and Remuneration Committee for the Director General of Regulation one member of which, who may or may not be a States Member, shall be appointed by the Commerce and Employment Department and the other members approved by the Department on the recommendation of the Director General; but to provide for External Auditors of the Office of Utility

Regulation to be appointed by the States on the recommendation of the Public Accounts Committee;

- (g) provide for the Director General of Regulation to appoint a Deputy who can immediately take over the powers of the Director General should the Director General vacate his post before a successor has been appointed and to exercise such powers until the States appoint a successor;
  - (h) ensure that the Public Accounts Committee can examine whether public funds are being applied for the purposes intended by the States, through rights of direct access, on reasonable notice, to the records, accounts, premises and staff of the Office of Utility Regulation;
  - (i) require that the Public Sector Remuneration Committee be consulted for advice on the remuneration and conditions of service applicable to all employees.
2. To endorse the initiatives undertaken by the OUR to mitigate against an appeal by publishing draft decisions for consultation and by, where possible, engaging in mediation on any disputes over Decisions.
  3. To appoint Mr John Curran as Director General of Utility Regulation in accordance with the provisions of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 for a period of three years commencing 1 February 2007.
  4. To note that the Treasury and Resources Department will confirm with the States Trading Companies the content required in strategic plans, review the current States Guidance to Shareholders against the principles set out in Appendix 3 of the NAO report and, if necessary, bring proposals to the States to revise that Guidance.
  5. To note that the Treasury and Resources Department will confirm with the States Trading Companies the information it requires to undertake its role as shareholder, what level of strategic decisions it expects to be involved in and which non-core activities each company should be involved in.
  6. To note that a review of the current Universal Service Obligation for postal services, including a full consultation process with interested parties, is underway and that, if necessary, the Commerce and Employment Department will bring forward appropriate recommendations to revise the obligation.
  7. To agree that approval of the proposals in that Report will confirm the status and responsibilities of all the parties involved in the commercialisation model and create an improved legislative environment for a pragmatic and risk based approach to regulation that can bring improved benefits to the community.
  8. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

## **HOME DEPARTMENT**

### **eGAMBLING DISASTER RECOVERY SERVICES IN GUERNSEY**

XV.- After consideration of the Report, dated 13<sup>th</sup> March, 2006, of the Home Department:-

1. To approve the Home Department's proposals for the gambling legislation to allow for eGambling operators from other jurisdictions to host and conduct disaster recovery from Guernsey.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

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

#### **THE STATES HOUSING (RENT AND REBATE SCHEME) (GUERNSEY) (AMENDMENT) REGULATIONS, 2006**

In pursuance of Section 3(1) of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Rent and Rebate Scheme) (Guernsey) (Amendment) Regulations, 2006, made by the Housing Department on 1<sup>st</sup> March, 2006, were laid before the States.

#### **THE STATES HOUSING (STATUTORY TENANCIES) (GUERNSEY) (AMENDMENT) REGULATIONS, 2006**

In pursuance of Section 2 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Statutory Tenancies) (Guernsey) (Amendment) Regulations, 2006, made by the Housing Department on 5<sup>th</sup> April, 2006, were laid before the States.

#### **THE STATES HOUSING (TRIBUNAL AND APPEALS) (GUERNSEY) (AMENDMENT) REGULATIONS, 2006**

In pursuance of Sections 1 to 5 of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, the States Housing (Tribunal and Appeals) (Guernsey) (Amendment) Regulations, 2006, made by the Housing Department on 5<sup>th</sup> April, 2006, were laid before the States.

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST)  
(PHARMACEUTICAL BENEFIT) (AMENDMENT NO 2)  
REGULATIONS, 2006**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No 2) Regulations, 2006, made by the Social Security Department on 19<sup>th</sup> April, 2006, were laid before the States.

**THE HEALTH SERVICE (MEDICAL APPLIANCES) (AMENDMENT)  
REGULATIONS, 2006**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Medical Appliances) (Amendment) Regulations, 2006, made by the Social Security Department on 19<sup>th</sup> April, 2006, were laid before the States.

S. M. D. ROSS

HER MAJESTY'S DEPUTY GREFFIER