



# BILLET D'ÉTAT

WEDNESDAY, 29th APRIL, 2009

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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 29<sup>th</sup> APRIL, 2009**, immediately after the meeting already convened for that day, to consider the items contained in this Billet d'État which have been submitted for debate.

G. R. ROWLAND  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
9 April 2009

**PROJET DE LOI**

entitled

**THE INCOME TAX (ZERO 10, ETC) (GUERNSEY)  
(AMENDMENT) LAW, 2009**

The States are asked to decide:-

I.- Whether they are of opinion:-

- (1) To approve the Projet de Loi entitled “The Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.
- (2) Considering it expedient in the public interest so to do, to declare, pursuant to section 1 of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992, that the said Projet de Loi shall have effect from the 29<sup>th</sup> April, 2009, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

**PROJET DE LOI**

entitled

**THE CHARITIES AND NON PROFIT ORGANISATIONS (REGISTRATION)  
(GUERNSEY) (AMENDMENT) LAW, 2009**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the Projet de Loi entitled “The Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE CHARITIES AND NON PROFIT ORGANISATIONS (ENABLING  
PROVISIONS) (GUERNSEY AND ALDERNEY) LAW, 2009**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the Projet de Loi entitled “The Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE COMPANIES (PANEL ON TAKEOVERS AND MERGERS)  
ORDINANCE, 2009**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Companies (Panel on Takeovers and Mergers) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

**THE BOATS AND VESSELS (REGISTRATION, SPEED LIMITS AND  
ABATEMENT OF NOISE) (AMENDMENT) ORDINANCE, 2009**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Boats and Vessels (Registration, Speed Limits and Abatement of Noise) (Amendment) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

**PUBLIC SECTOR REMUNERATION COMMITTEE**

**NEW MEMBER**

The States are asked:-

VI.- To elect a sitting Member of the States as a member of the Public Sector Remuneration Committee to complete the unexpired portion of the term of office of Deputy B L Brehaut, who has resigned as a member of that Committee, namely to serve until May 2012 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

## POLICY COUNCIL

### FISCAL POLICY FRAMEWORK

#### 1 Executive Summary

- 1.1 This report outlines and recommends the adoption of a formal fiscal framework (principally a set of parameters to guide all future States fiscal policy)<sup>1</sup> which is intended to underline the credibility of fiscal policy and provide reassurance to taxpayers about the sustainability of future States spending plans, particularly given the present outlook for States finances in the short term and the current proposals from Treasury and Resources ('T&R') to borrow to finance part of the proposed priority capital expenditure programme.
- 1.2 The T&R proposal in its Capital Prioritisation Report to use borrowing to finance public sector expenditure is common practice internationally. However, for the Bailiwick of Guernsey this method of financing is a clear departure from recent historical experience and will require a fundamental change in the mindset of policy makers, in particular a need for increased fiscal discipline. A **transparent formal fiscal framework** should better ensure this discipline and continued conservative fiscal policy of the States: a point strongly endorsed by the comments of Professor Geoffrey Wood<sup>2</sup>, special advisor to the Bank of England on financial stability, who was asked to provide an external, independent opinion on the proposed framework.

*'I am convinced that the adoption of a formal fiscal framework by the States of Guernsey is an eminently sensible course of action. I would recommend that course strongly and without any hesitation. Such a framework will provide transparency for the conduct of States fiscal policy and will entrench the discipline necessary to ensure the continuation of the cautious and prudent fiscal stance of the States.'*

*'Having reviewed the draft framework itself, I support the economic principles on which the framework is based and am of the opinion that the rules that the framework incorporates are both well designed and robust.'*

*Professor Geoffrey Wood, March 17<sup>th</sup>, 2009*

- 1.3 **The adoption of a framework in no manner commits the States to the use of borrowing** (be that by recourse to bank financing, bond issuance or any other

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<sup>1</sup> See glossary for definition of economic terms.

<sup>2</sup> Geoffrey E. Wood is Professor of Economics at Cass Business School and Professor of Monetary Economics at the University of Buckingham. He is currently a special advisor to The Bank of England on financial stability. He has been a visiting scholar at the Federal Reserve Bank of New York and has advised the New Zealand Treasury.

mechanism) but lays down a set of constraints or ‘limits’ to the level of borrowing that would be economically prudent *if the States subsequently chose to utilise this manner of financing at any point in the future*. As is described in the next section, presently no such limits exist and, irrespective of any future decisions regarding financing methods that may occur (including any taken in the May States debate on the T&R Capital Prioritisation Report), it is sensible to put in place a transparent framework to safeguard the continued conservative fiscal policy of the States of Guernsey.

1.4 This report outlines and discusses many issues related to government expenditure and borrowing to provide a full context to the presentation of a recommended fiscal framework based on the assumption of the following principles underlying fiscal policy:

1. stability is at the heart of sustainable economic prosperity;
2. fiscal policy needs to be focused on the medium term<sup>3</sup>;
3. economic and fiscal policy should be stable, transparent and predictable.

1.5 The proposed framework will imply the following limits<sup>4</sup> on fiscal expenditure of the States:

1. **the level of gross borrowing by the States may not exceed 20% of Guernsey gross domestic product;**
2. **the maximum annual operating deficit of the States may not exceed 3% of gross domestic product;**
3. **the maximum additional borrowing sanctioned in any one States term may not exceed one times the level of ‘permanent’<sup>5</sup> capital expenditure over that time period.**

## 2 Background

2.1 On February 22<sup>nd</sup> the Policy Council considered the Treasury and Resources’ (‘T&R’), Capital Prioritisation Report. This contained:

- the approach T&R had taken in conducting its prioritisation process;
- a recommendation of a specific capital programme to be part funded by borrowing from international capital markets:

<sup>3</sup> See glossary for definition of economic terms.

<sup>4</sup> Again, this policy framework **does not** pre-commit the States to borrowing as a financing option. These are merely time invariant limits to constrain all future States fiscal policy.

<sup>5</sup> See appendices one and two for an explanation of the concept of ‘permanent’.

- a recommended amount of borrowing of £175 million pounds.
- 2.2 The Policy Council agreed to the recommendations of the Fiscal and Economic Policy Group ('FEPG') that, before debating the specifics of the proposals contained in T&R's report, it would be prudent for the States first to debate and adopt a formal fiscal policy framework.
  - 2.3 T&R's borrowing proposals are not without precedent. Its Capital Prioritisation report refers to previous occasions when recourse to borrowing has been made. The resolution of 1956 (Billet D'Etat III) gave power to the States Finance Committee to authorise States Committees temporarily borrowing from internal or external sources *'in any other manner approved by the States Finance Committee, for such periods and such periods, up to such amounts, at such rates of interest and on such periods as that Committee may approve'*.
  - 2.4 This mandate was itself an exercise to extend the ability of States Committees to borrow for reasons other than to fund *'capital votes'* as a resolution of 1927 (Billet VIII) had precluded committees from using borrowing to fund anything other than capital expenditure. This 1927 resolution did empower the States Finance Committee to borrow to fund capital *'as well as ... may be necessitated by the finances of the States'*.
  - 2.5 The powers delegated to the States Finance Committee by the 1956 resolution are specifically transferred to T&R in point (a), (v) of the T&R's present mandate. No specific reiteration of the mandate of the 1927 resolution is made but can be assumed to be covered by point (d) referring to exercising extant powers of the obsolete States Finance Committee. The role of the Policy Council under the present constitution includes *'to provide the States advice on matters relating to the formulation and implementation of economic and fiscal policy'*.
  - 2.6 This report is drafted under this mandate and sets out the recommendation that, especially in the absence of specific constraints contained in previous resolutions, the States adopt a Fiscal Policy Framework to provide agreed parameters for the conduct of fiscal policy and ensure a continued transparent conservative fiscal approach of the States.

### **3 Fiscal Policy**

- 3.1 There are many aspects to fiscal policy. In its most general, layman terms it can be thought of as 'government spending and taxation'.<sup>6</sup> The assumption is made here that the key roles of government are: the provision of defence (clearly for Guernsey this is provided by the UK, although a contribution is made through, amongst other arrangements, the agreement to maintain Alderney breakwater); the provision of a legal framework; provision of public goods and services;

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<sup>6</sup> See glossary.

correcting market failure and (to a varying degree dependent on the preference of the public and political direction) wealth and/or income redistribution. In meeting these duties, the state finances its activities through (compulsory) taxation which is the preserve of fiscal policy.

- 3.2 Fiscal policy in Guernsey is based on the direct assumption that the private sector is the engine of growth<sup>7</sup> and that the Government's primary role is to provide a stable, competitive environment for the private sector to thrive. The primary objective of fiscal policy is therefore to promote long term economic growth and, given monetary policy is not under the control of the States, import leakages are high<sup>8</sup>, and the inherent time delays for fiscal changes to take effect<sup>9</sup>, there is only a limited role for fiscal policy to achieve macroeconomic stabilisation. **To promote long term economic growth the most beneficial approach to fiscal policy is to ensure that it is stable, secure and competitive and transparent and to achieve this that budgets are balanced over the medium to long term.**
- 3.3 How the state raises its finances and how the burden is shared across different members of society (and the degree, if any, of income redistribution practised through the tax and benefit system) is clearly an aspect of fiscal policy but not a focus of the proposed policy framework. **The proposed framework is to provide boundaries to the fiscal 'position' ie to ensure balance and stability of States budgets and finances in the long run.**
- 3.4 It is acknowledged that there is a limited role for fiscal policy in the management of demand: that at times of *extreme* economic conditions the use of government spending (or taxation) to stimulate demand may be appropriate. **However, the recommended framework assumes that in ordinary circumstances the ability of fiscal policy to achieve macroeconomic stabilisation is limited. The direct implication of the limited role for stabilisation for a fiscal framework for Guernsey is that the States needs to ensure its finances are in a healthy and flexible position over the medium term.**

#### **4 International Fiscal Practice**

- 4.1 It is common practice for large governments to borrow funds to finance public expenditures<sup>10</sup>: the UK has run public sector deficits in 16 out of the last 20 years; the average level of government debt for the euro area is 74.7% of GDP<sup>11</sup>; and one of the key responses of Western governments (in particular the US and

<sup>7</sup> Strategic Economic Plan, Billet XIV, 2007

<sup>8</sup> See glossary.

<sup>9</sup> The common assumption is that changes in fiscal policy take around 18 – 24 months to feed through into domestic demand. The recent policy practice of the UK, EU and US governments to use monetary policy has been used as a macroeconomic stabilisation measure is predicated on the view that changes in interest rates have a much more immediate effect on aggregate demand.

<sup>10</sup> See appendix four.

<sup>11</sup> Source OECD, defined as gross financial liabilities of the public sector as a proportion of GDP.

the UK) to the economic slowdown induced by the credit crunch has been to use public sector borrowing to finance banking sector bailouts and a plethora of fiscal stimuli.

- 4.2 Whilst also it is eminently possible for large countries such as the US to run deficits for protracted periods of time<sup>12</sup>, the sustainability of public sector finances is of continual concern to international investors and taxpayers alike as large current deficits will require either less spending or increased taxation in future years. Borrowing is a perfectly orthodox method of financing but in economic terms is merely an exchange of taxes over time<sup>13</sup>: any spending over and above today's present revenues will require additional taxation in the future and there is an inherent cost to borrowing, namely the payment of interest on the capital borrowed.
- 4.3 Whilst it is rare for countries to default<sup>14</sup> fiscal profligacy imposes its own burden on governments in higher future interest payments demanded by lenders and increased taxation levels to service and pay off high levels of debt. There is also much public scepticism worldwide as to the ability of politicians to maintain strict long term fiscal discipline in the face of popularity that public spending may bring in the short term<sup>15</sup>. For these reasons during the 90s in particular attention was directed at imposing formal fiscal frameworks on governments to ensure restraint in public sector borrowing.
- 4.4 The most well known of these are the Maastricht criteria and the UK's Golden Rules and the concept of fiscal rules has been somewhat undermined by the UK's lack of adherence to its own rules.<sup>16</sup> However, the rationale underpinning fiscal rules remains and is to provide reassurance to the private sector (and by implications financial markets) of the credibility of fiscal policy and ensure that public sector deficits are neither excessive nor unsustainable<sup>17</sup> in the long run. In the words of HM Treasury *'Fiscal policy is now directed firmly towards maintaining sound public finances over the medium term, based on strict rules'*.
- 4.5 The objective of the Maastricht criteria was to bind together separate sovereign states in a common fiscal policy to ensure stability of a common currency. The objective of the UK rules were more orthodox: namely to maintain market

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<sup>12</sup> There are numerous reasons for this which will not be explored here but it should be noted that it is much easier for the US having the dollar as a 'reserve' currency (ie international investors like to hold their assets in key stable currencies) to borrow large sums.

<sup>13</sup> This is known as Ricardian Equivalence, named after the 19<sup>th</sup> century English economist, David Ricardo who first postulated this 'law'.

<sup>14</sup> The French State had a tendency to default during the 17<sup>th</sup> and 18<sup>th</sup> centuries and its poor reputation as a borrower meant it found it harder than England to finance the Napoleonic Wars. In more recent years, the Russian State effectively defaulted during the devaluation of the Rouble in 1998.

<sup>15</sup> This is a recognised phenomenon in academic circles and was first and best encapsulated by Nordhaus (1975) *The Political Business Cycle*.

<sup>16</sup> Whilst clearly the current and projected level of UK borrowing exceeds self imposed limits, the regular changing of the date and position of the UK business cycle led many commentators to question the UK's commitment to its rules.

<sup>17</sup> Note there is a technical distinction between excessive and unsustainable.

confidence in UK fiscal policy and hence the strength of Sterling and keep the costs of future UK Government borrowing within reasonable bounds.

- 4.6 The fiscal policy framework of Jersey is somewhat broader than either the EU or UK frameworks referred to above and is more interventionist in nature, reflecting the lack of control Jersey has over monetary policy (as indeed is the case for Guernsey) which has over the last 20 years or so been used as the primary demand management tool in the EU and UK. Rather than assume a neutral framework for fiscal policy, Jersey's framework assumes a much greater role for active management of demand in the economy. The Jersey framework overtly incorporates policies aimed at reducing inflation and managing aggregate demand through release of funds to and from its Strategic Reserve.
- 4.7 Fiscal Policy frameworks are common (those of the EU, UK and Jersey have been referred to above but they are incorporated in countries as diverse as Singapore and Nigeria<sup>18</sup>) and especially in the light of the outlook for the States budget position in the short term and the proposals from T&R to borrow to finance capital expenditure, it is appropriate for Guernsey to adopt a framework of its own to reflect its own individual conservative fiscal tradition.
- 4.8 **The Policy Council does not believe that the main role of a fiscal policy framework should be as an active demand management tool** as is the case in Jersey. Rather the objective of a fiscal policy framework for Guernsey would be to provide transparency for the conduct of all future fiscal policy and promote stability in fiscal policy and ensure that levels of present and future borrowing, if agreed by the States, remain within sustainable and prudent limits.
- 4.9 The proposed Fiscal Framework, as recommended by the Policy Council, is outlined in section eight of this report. Prior to that, to first provide context, a discussion of issues related to public sector investment, fiscal frameworks and an explanation of the rationale of the recommendations of the proposed framework is provided.

## 5 Public Investment and capital expenditure

- 5.1 As the proposals presently put forward by T&R are to fund various capital expenditures through borrowing, it is salient to first review certain of the economic issues surrounding public sector capital expenditure.

*'Public investment in basic infrastructure is an essential pre-condition for capital accumulation in the private sector. Public investment in*

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<sup>18</sup> Indeed it is becoming more common for smaller jurisdictions to also adopt fiscal frameworks. The Bermudan Government recently (Feb 09) published a medium term fiscal framework which is designed to help set parameters for borrowing. Whilst it covers a range of budgetary requirements, in particular spending plans, it also includes a statutory debt ceiling which is set in the medium term at \$250m and in the long-term at a ceiling of \$1billion (about 17% of GDP). Although now a member of the EU, Malta has had a fiscal policy framework for a number of years.

*education and health facilities improves human capital formation. However, public investment is also an area where grossly unproductive white elephants can be found.'*

International Monetary Fund, Policy Pamphlet, #48 ('IMF')

- 5.2 This IMF quote succinctly encapsulates the core rationale for public sector investment. Whilst public investment in infrastructure<sup>19</sup>, education and health services as a necessary duty of the public sector in pursuit of the policy objective of sustainable and equitable economic growth is accepted as an economic fact, there is no consensus on the direct relationship between the scale of public sector investment in general (and spending in particular) and economic growth. Indeed, there have been many, many academic studies on the matter and the empirical evidence is not equivocal<sup>20</sup> although there is an argument to suggest that there is a consensus that public capital has a positive effect on the level of output<sup>21</sup>.
- 5.3 There is also no clear cut consensus on the 'correct' level of public sector investment and aside from the issue of crowding out<sup>22</sup>, the issue of the productivity or effectiveness of public sector investment is also a matter of debate. This is a particularly contentious issue, often debate being coloured by conjecture and political opinion but given the assumption that the IMF argument in favour of the principle of public sector investment is accepted, there is clearly a need to maintain, renew and improve public capital stock. Clearly ensuring appropriate accounting allowances are made for depreciation in order to facilitate the maintenance of the public sector capital stock is in order. Further than that there is little else but international and historical experience and norms to provide guidance as to possible appropriate levels of public sector investment spending for Guernsey.
- 5.4 During the nineteen nineties the average EU level of public sector investment was around 2.9% of GDP and the UK average was somewhat less at around 1.9%<sup>23</sup>. Both of these figures are low when compared to the post WWII average to the mid 1980s: for instance in the 1970s the UK averaged more than three times this level. Taking the historic measure of Guernsey national output would

<sup>19</sup> The World Bank defines infrastructure as public services (electric energy, water facilities), public works (roads) and other transportation (harbours and airports).

<sup>20</sup> Two of the seminal academic papers on the issue cited conflicting evidence. Barro, Robert J. (1991), "Economic Growth in a Cross Section of Countries," Quarterly Journal of Economics, Vol. 106, in a cross country study found no statistically significant evidence; Diamond, Jack (1989), "Government Expenditures and Economic Growth: An Empirical Investigation," IMF Working Paper, WP/89/45 found that capital spending on education, health and housing had a positive effect on growth.

<sup>21</sup> Sanchez-Robles, Blanca, (1998). "Infrastructure Investment and Growth: Some Empirical Evidence," Contemporary Economic Policy, Oxford University Press, vol. 16(1), pages 98-108.

<sup>22</sup> The concept of crowding out is whereby public sector expenditure comes at a cost of private sector expenditure. In an economy such as Guernsey which during non recessionary times operates at full or maximum employment clearly additional public sector expenditure may come at a cost of directing resources (eg labour) that otherwise might be directed to private sector activity.

<sup>23</sup> Source, Eurostat

equate to a range of annual capital spending of between £31 to £48 million per annum<sup>24</sup>.

## 6 Fiscal Frameworks

- 6.1 The Institute of Fiscal Studies states that *'borrowing without strict limits in order to finance investments can lower the attention paid when evaluating the costs and benefits of each project'*<sup>25</sup>. This provides an explanation of the rationale of why fiscal policy frameworks are often stipulated in terms of numerical limits to budget deficits and borrowing. In short they are often easier (and hence more transparent) to understand.
- 6.2 The Maastricht Criteria, qualifications for aspirant member states in the run up to the introduction of the Euro were indeed framed in this manner: outstanding debt was to be no higher than 60% of GDP and annual deficits to be less than 3%. These numerical values are, economically speaking at least, quite arbitrary<sup>26</sup>.
- 6.3 The issue of appropriate fiscal frameworks has led to much debate in academic circles over an economically sound set of principles or rules to guide fiscal policy. There is strong intellectual support for the **permanent balance rule** as proposed by Buiter and Grafe<sup>27</sup>. This rule states that the level of present net debt needs to be smaller than the present values of all future (non-interest) budget surpluses or less technically put that **all government expenditure (capital and revenue) should be in balance with income in the long run**.
- 6.4 As referred to earlier, the UK Government in 1997 also introduced its own fiscal rules: that borrowing to fund current expenditure should be zero over the business cycle and any net borrowing should only be used to fund public investment<sup>28</sup>. Whilst these rules can be seen to be very close in spirit to the permanent balance rule they are not strictly identical as the distinction between types of expenditure is made by the UK in determining the overall balance.
- 6.5 Ex UK monetary policy committee member, Willem Buiter, states that fiscal rules should be *'transparent, easy to monitor, ensure government solvency, make good economic sense even in the long run and properly accommodate initial conditions.'*

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<sup>24</sup> See figures 2 and 3, appendix two.

<sup>25</sup> Bloom, N, Bond, S, (2001) 'UK investment: high, low, rising, falling?' Institute of Fiscal Studies

<sup>26</sup> Whilst the numerical values may be somewhat arbitrary the concept and rationale of having them in place clearly is not.

<sup>27</sup> Buiter, W, Grafe, C, (2004) 'Patching up the pact. Suggestions for enhancing fiscal sustainability and macroeconomic stability in an enlarged European Union', Economics of Transition, Vol 12 (1), 67-102.

<sup>28</sup> Clearly with the credit crunch and subsequent actions to remediate its negative effects these rules have been temporarily (if not permanently) suspended.

- 6.6 The mathematical exposition of the borrowing rule associated with the permanent balance rule is somewhat involved. However, in short it can be presented as follows:

*'the share of government spending as a proportion of GDP plus the growth and inflation adjusted costs of public debt (as a proportion of GDP) can be no more than the share of taxes in GDP'.*

- 6.7 **Practically speaking this requires all expenditure to be classified similarly and asserting that, over time, expenditure should not exceed income. This sets public expenditure at effectively a 'normal', 'steady state' or 'anchor' level in terms of share of national output.** Deviations (and hence borrowing) from this level are allowed in the short run to fund times of exceptional need for expenditure or in times of reduced income. This satisfies Keynesian views of the need for the use of fiscal policy as a demand management tool and also the 'classical' view that the most efficient level of taxation is one that is constant over time<sup>29</sup>. This is consistent with the view of the Policy Council that there is little role for fiscal policy as a demand management tool in ordinary times and that the primary role of fiscal policy is to support stability in the medium term (as outlined in section 4.8).

## 7 Explaining the specific rationales behind the proposed framework

- 7.1 The key rationale behind adoption of a fiscal policy framework, as has been stated elsewhere in this report is to ensure transparency in the conduct of fiscal policy, maintain strict fiscal discipline and continued conservative fiscal policy of the States. Enshrined within the framework outlined in the next section is the assumption that fiscal stability is a key requisite to macroeconomic success for an economy and together with an internationally competitive tax regime provides the best fiscal platform for future economic growth.
- 7.2 The rationale also is that the States should follow sound economic practice and that it should adopt the permanent balance approach as advocated specifically by Buiters and Grafe. This rule has the benefit of economic soundness, transparency and is consistent with a continued conservative fiscal approach of the States. This approach does allow for temporary mismatches between spending and income ie deficits. As was stated earlier there is nothing inherently unorthodox in governments using borrowing to finance public sector expenditures. This is a reasonable approach during times of *extreme* volatility in the business cycle or in the instances of temporary mismatches between desired and/or necessary public capital expenditures and income. Prudence of the past in building up of reserve funds to accommodate times of exceptional need or extraordinary items should

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<sup>29</sup> All taxes create distortions or inefficiencies. A full textbook explanation would not be appropriate or indeed possible here but the 'classical' view is that a constant ie unchanging rate of taxation reduces such inefficiencies to a minimum.

continue and therefore the States should commit to maintenance of the contingency reserve at its post zero ten level in the long run<sup>30</sup>.

- 7.3 Numerical limits to borrowing and deficits have been defined by using the mathematics behind the permanent balance rule. These numerical limits are somewhat lower than those enshrined by the EU and the UK in terms of absolute levels of borrowing. This reflects the lower size of the public sector (and hence tax take) in Guernsey and in any event it is harder and less advisable for smaller, vulnerable states to commit to large liabilities.
- 7.4 Whilst the spirit of the UK approach of only allowing debt to be accumulated to fund capital expenditure is incorporated, the proposed framework is more stringent in that there is no distinction between expenditures for the debt position and limits are set in reference to the permanent position of the States and not by a reference to (an arbitrary) positioning of an economic cycle. As an additional stringency strict time limits to both agreeing and instigating remedial measures to address forecasts of fiscal positions outside of the framework both from the time of their identification and their occurrence.
- 7.5 Following the **permanent balance rule** means the States will need to have robust forecasts of all future expenditure and income and an accurate picture of the position of the Guernsey economic cycle and also defined levels of ‘normal’ level of public spending (which has been defined in terms of the long run historic average for Guernsey) and the appropriate long run level of public sector investment (which has been calculated by reference to both historic EU, UK and Guernsey norms). It would be naïve to presume that these forecasts will provide anything more than a reasonable steer to future fiscal outcomes but it is in the spirit ‘that it is better to be approximately right rather than precisely wrong’<sup>31</sup>.
- 7.6 One of the features lacking for Guernsey is a series of independent forecasts of the economy and the States budgetary outturns. In larger countries such as the UK there is a mini industry of economists analysing and producing independent forecasts of such issues. **It would greatly assist public credibility for Guernsey’s fiscal policies if a route was found for such forecasts to be published in an independent or ‘quasi’ independent manner.** It is also intended that the Policy Council (in addition to the steps outlined in 7.7 below) will shortly begin to produce a series of objective econometric forecasts for the Guernsey economy.

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<sup>30</sup> In June 2006 the States resolved that up to half of the Contingency Reserve (interest and capital) may be used to fund the shortfall in public sector expenditure during the first phase of the implementation of the Economic and Taxation strategy (ie Zero Ten). Point 7.5 above, recommends that the residual balance be maintained (as a proportion of Guernsey GDP) as a long run (ie ‘permanent’) level to continue to provide a similar ‘reserve’ for future contingencies. The implication is that any subsequent use of the reserve as a temporary financing option would therefore require replenishment back to that level in subsequent years.

<sup>31</sup> Warren Buffet. *Attrib*

- 7.7 It is therefore proposed that in this spirit the Policy Council will produce an annual report (either internally or commissioned externally) to be published in tandem with T&R budgetary forecasts. The most credible route would be to appoint a small independent panel of experts in a similar manner to Jersey who would provide outside expert opinion that would be published and on the record on the subject of whether policy was being conducted within the framework. The rationale being that this will provide transparency and independence of mind to the view of whether or not long run permanent balance is being maintained.

## 8 The proposed fiscal policy framework

### Principles

The principles underlying fiscal policy in Guernsey are that:

- stability is at the heart of sustainable economic prosperity;
- fiscal policy needs to be focused on the medium term;
- economic and fiscal policy should be stable, transparent and predictable.

### Objective

Consistent to these underlying principles the overarching objective of the fiscal framework is that fiscal policy should achieve the economic position of **‘long run permanent balance’** ie that income and expenditure should match over the medium term to ensure continued conservative fiscal policies of the States of Guernsey.

### Framework

1. Assuming a long run **permanent balance** position implies the acceptance of long run ‘permanent’, ie normal, levels for taxation and public spending including public sector capital investment: these long run levels provide ‘norms’ for future plans and are calculated with reference to historic or international empirical experience.
2. Deviations, and hence any fiscal deficits, from these long run norms are only acceptable if they are of a temporary nature, ie in the instances of a mistiming of income and increased capital expenditure requirements or those caused by severe swings of the economic cycle.
3. To ensure that balance is achieved in the medium term forecasts of all future revenue and expenditures will be continually generated to ensure that any revenue shortfalls are matched by future surpluses.

4. Any borrowing to fund temporary mismatches between expenditure requirements and revenue income will be restricted by strict conservative limits to ensure the sustainability of Guernsey's long term finances and the international credit rating of the States. **Gross debt can only be accumulated to fund capital investment.**
5. Any use of the contingency reserve as an alternative to borrowing will require the replenishment of the reserve in subsequent years to maintain reserves to an agreed level<sup>32</sup>.

The above framework implies the following **limits to fiscal expenditure** of the States<sup>33</sup>:

1. that the level of gross borrowing by the States may not exceed 20% of Guernsey gross domestic product;
2. that the maximum annual operating deficit of the States may not exceed 3% of gross domestic product;
3. that the maximum additional borrowing sanctioned in any one States term may not exceed one times the level of 'permanent' capital expenditure over that time period;

*and that the assumed 'norms' for permanent capital expenditure and taxation to be 3.0% and 21% of gross domestic product respectively.*<sup>34</sup>

- **To ensure adherence to this framework the undertaking is made to ensure that identified deficits will be addressed within 5 years of their appearance, economic conditions permitting, and that measures to counter identified structural deficits are agreed within two years of their identification.**
- **To provide credibility to this framework, and a degree of objectivity to the likely path of States finances, each year the Policy Council will publish a report to the States, separate to Treasury and Resources annual budgetary process, to provide an objective analysis on the conduct of fiscal policy.**

## **9 Resource Implications**

- 9.1 If adopted there may well be a likely requirement for additional staff time (less than one full time equivalent) to implement the framework. The additional tasks would be provision of secretariat facilities to the independent panel, support for analytical and forecasting activities, and assistance in drafting of reports. Clearly appointing an independent panel of experts to support the conduct of this policy would also require a dedicated budget allocation in the region of £50,000.

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<sup>32</sup> See 7.2

<sup>33</sup> See appendix three.

<sup>34</sup> See appendix two.

**10 Recommendations**

- 10.1 That the States endorse and adopt the Fiscal Policy Framework as described by section 8 of this Report.

L S Trott  
Chief Minister

23<sup>rd</sup> March 2009

## Glossary

- Active fiscal policy:** a term used to describe the deliberate use of fiscal policy (ie through regular changing of taxes or public expenditures) to manage aggregate demand in an economy.
- Aggregate demand:** the total level of demand in an economy – usually assumed to consist of total spending by government, total private sector investment, total consumption expenditures by individuals and net exports (ie value of exports minus value of imports).
- Borrowing:** the practice of recourse to accepting funds from a third party to finance expenditure, most commonly by recourse to bank finance or through issuance of bonds.
- Business cycle:** describes the tendency of an economy to have periods of above average growth followed by below average growth (often called upswings, downturns or alternatively ‘boom and bust’)
- Capital expenditure:** Expenditure on capital goods – ie goods that are not intended for immediate consumption but provide intermediate services, usually having a long (5 years plus) lifecycle.
- Demand management:** describes the attempt by policymakers to manage aggregate demand in an economy by either monetary policy or fiscal policy.
- Econometric:** applying quantitative methods (specifically regression analysis) to provide empirical estimates of economic relationships.
- Fiscal framework:** a set of time invariant parameters to guide the conduct of fiscal policy.
- Fiscal policy:** a generic term referring to all government policy pertaining to spending (and where and when applicable borrowing) and taxation.
- Fiscal position:** a term describing the public sector budget in reference to whether it is in balance, in surplus or in deficit.
- Gross borrowing:** for the purposes of clarity for the fiscal framework this is defined as States borrowing minus the residual capital balance in the sinking fund.
- Gross domestic product (‘GDP’) :** the total value of goods and services produced in an economy (usually reported on an annual basis).
- Import leakage:** a term referring to the fact that economies can ‘leak’ money by buying imports, usually relevant to economies with a high degree of import penetration.

Import penetration:	the degree to which imports comprise the total domestic spending in an economy.
Long run:	Taken in this report to be the 15+ year horizon. Although often used interchangeably (and technically erroneously) by economists with the medium term.
Long run 'norms':	long run steady state levels, in the concept of this report used to refer to long run normal levels of public expenditure, public sector capital investment and the level of taxation (by reference to the share of GDP)
Macroeconomic:	economics pertaining to the large scale, ie at the aggregate level of the economy.
Medium term:	taken in this report to be the 5 – 15 year horizon.
Monetary policy:	policy that is related to monetary issues, in current context usually taken to be the central bank's (in the UK, The Bank of England) policy with respect to setting of interest rates with respect to controlling inflation.
National output:	the value of goods and services produced by an economy, for many practical purposes can be thought of as the same as GDP.
Passive fiscal policy:	a term used to describe the deliberate lack of the use of fiscal policy to manage aggregate demand in an economy.
Permanent balance:	the concept that in the long run public expenditure should equal and not exceed public revenues (ie taxation) requiring current deficits to be followed by future surpluses.
Public capital stock:	the total amount of publicly owned capital goods, ie buildings, roads, schools, computer infrastructure etc.
Public goods and services:	goods and services provided by the state.
Quantitative easing:	phrase used to describe the specific present policy of expanding the money supply by the central bank buying government bonds from banks - intended to act as a stimulus to demand through increased lending activities of financial sector, whilst novel in current near zero interest rate environment, this procedure is the traditional route to attempting to control the money supply.
Short term:	Taken in this report to be the 5 year horizon.
Stabilisation policy:	another term for demand management, called 'stabilisation' as it assumes that an economy is subject to a business cycle and hence describes 'stabilising' the swings of the cycle.

## Appendices

### Appendix 1: A non-technical explanation of the ‘permanent balance’ rule

The concept of permanent balance is in fact very simple.

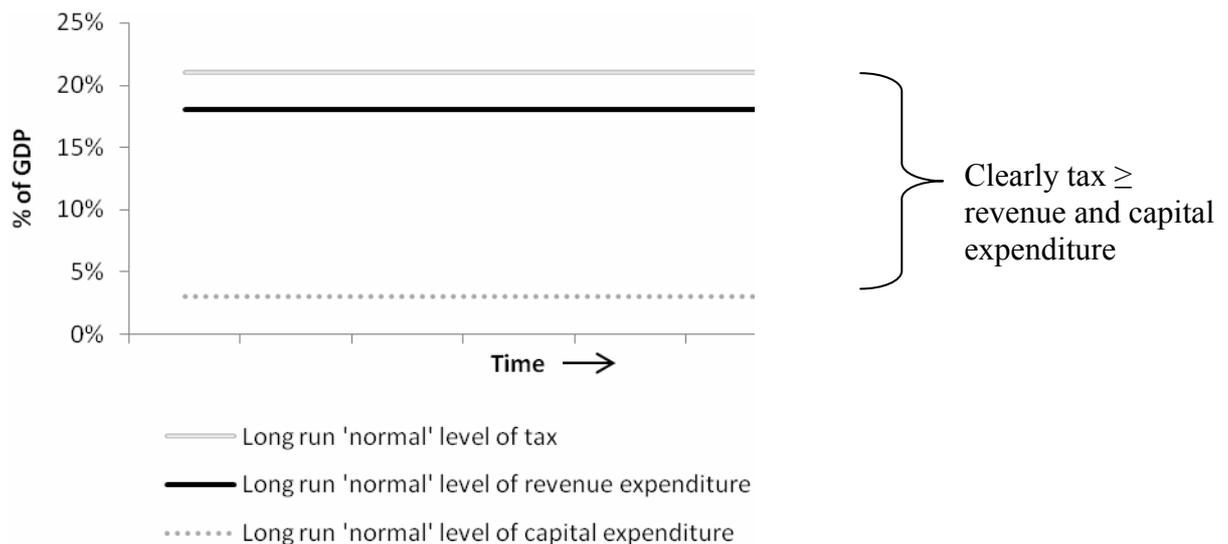
The starting point is that as a general rule expenditure by the States is less than or equal to States revenues. There is no distinction between revenue or capital expenditure as irrespective of the type of expenditure, spending more than revenues **is not a long run sustainable position.**

This then is the assumed ‘steady state’ or **normal** fiscal position of the States.

It is assumed that there exists a normal level of States capital expenditure and a normal level of taxation (both defined in terms of share of national GDP). The **normal** level of revenues (ie tax) must equal or exceed the level of **normal** level of capital and revenue expenditure.

In these normal times the implication of the rule can be graphically illustrated quite simply:

**Figure 1: Illustration of the long run**



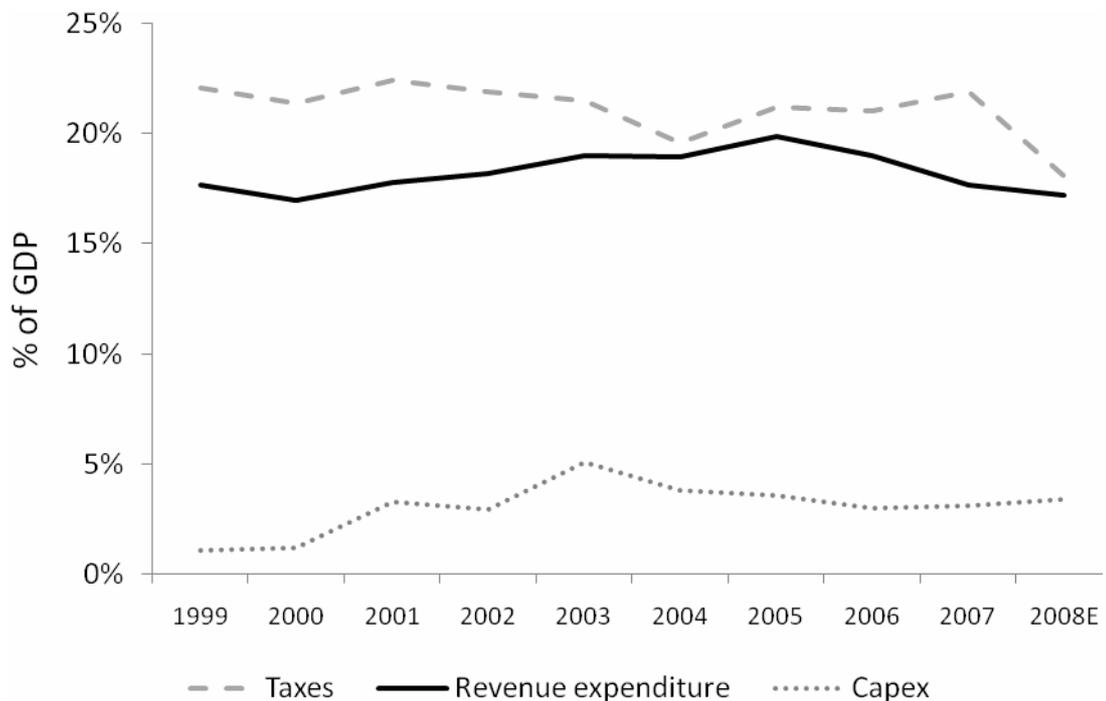
Deviations from the long run normal levels are permissible but only within the parameters set out in the framework.

For whatever reason, it is assumed that on occasion there may be a need to borrow to finance capital expenditures. The permanent balance rule states that if this is the case then the maximum level of borrowing permissible must ensure that this normal level of tax covers both normal levels of capital and revenue expenditure **plus** the cost of servicing any debt (ie interest and capital repayments). Appendix 3 describes this further.

## Appendix 2: Long run ‘norms’

The concept of permanent balance adopted by the proposed framework implies the concept of steady state values (in terms of shares of GDP) for public expenditures and taxation. These steady state values are assumed to be unchanging in the medium term or long run and hence are labelled long run ‘norms’ (ie for steady state read normal or ‘permanent’). Figure 2 below sets out the level of States revenue income, revenue expenditure and capital expenditure<sup>35</sup> as a proportion of GDP. Guernsey’s GDP has historically been calculated as profits, wages plus other income from capital. In recent years, GDP has also been calculated by reference to the international (ESA) standard methodology. Published figures only exist on a reliable basis for a handful of years on this new methodology and are published in parallel to the historic methodology which continues to be the lead in the national accounts published in Guernsey Facts and Figures. Given this and that the public is most familiar and comfortable with the historic methodology figures, these have been used to calculate these long run steady state or ‘norms’.

**Figure 2: Long run ‘norms’ for Taxes, Revenue Expenditure and Capital Expenditure as a Share of Guernsey GDP.**



<sup>35</sup> Figures provided by Treasury and Resources.

Figure 3 provides a more detailed breakdown for the historical level of capital expenditure, illustrating the cyclical nature of States capital expenditure in the past.

**Figure 3: States Historic Capital Expenditure as Proportion of GDP**

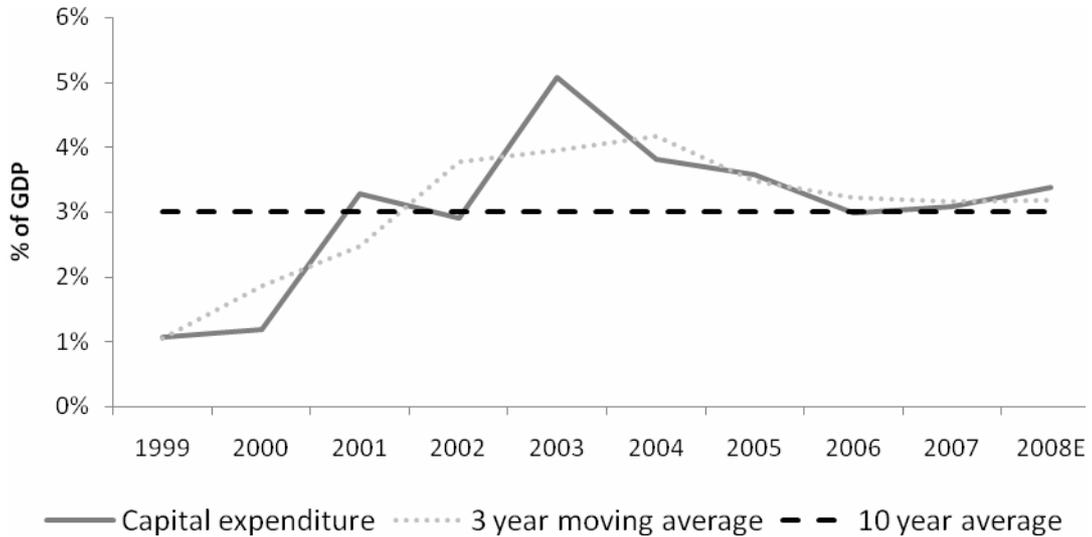
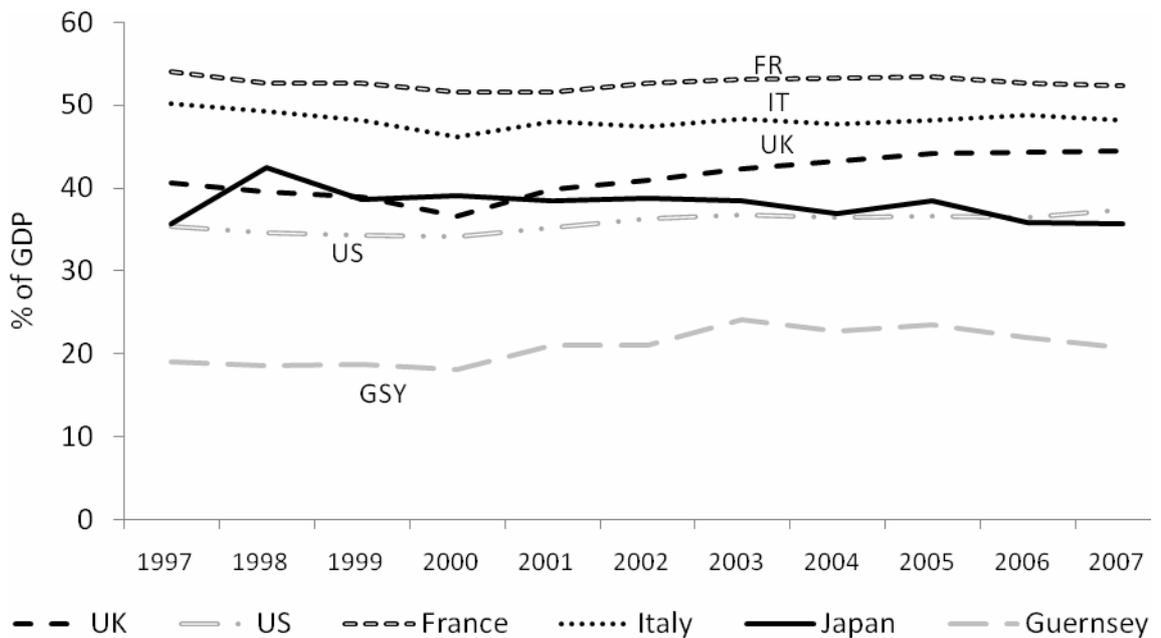


Figure 4 provides an international comparison of total government expenditures (as a proportion of GDP) for five leading OECD countries. This illustrates that Guernsey’s spending by government is much lower by comparison. This lower figure comes about due to a combination of factors: Guernsey’s much lower expenditure on social security is the biggest factor, zero defence spending is another.

**Figure 4: Government spending as a proportion of GDP, Guernsey and five leading OECD members.**



### Appendix 3: Implied numerical limits of framework

All the below limits have been calculated with reference to the historic methodology in calculating Guernsey national accounts. The reason is twofold: historic data greater than five years is only available on that basis; the second is that these figures still remain the lead methodology in the published national accounts (see Guernsey facts and figures) and they are those that the public are used to seeing and will trust.

#### 1 Debt levels

The maximum level of gross debt has been calculated by reference to the permanent balance rule as follows:

$$\text{Taxes as proportion of GDP} \geq \text{spending as proportion of GDP} + \text{interest payments as proportion of GDP}$$

On this basis and with reference to historical levels of spending and taxes for Guernsey (see appendix 1) this equates to a maximum allowable level of gross debt to be 20% of GDP.

#### 2 Annual deficits

The maximum annual operating deficit of the State may not exceed 3% of gross domestic product<sup>36</sup>.

#### 3 Additional borrowing in any one States term

From appendix 2, it is demonstrated that according to T&R the 10 year historic average for States capital expenditure as a proportion of GDP is 3.0%. Limiting additional borrowing sanctioned in any one States term to **not exceed one times the level of 'permanent' ie normal level of capital expenditure** roughly equates to around half the maximum overall limit (as referred to above).

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<sup>36</sup> The economic definition of deficits is:

Primary deficit = government spending – government revenues

Secondary (total) deficit = (government spending + interest) – revenues

States budgets have historically been presented as:

1. Routine revenue income – routine expenditure = revenue surplus / (deficit)
2. Revenue surplus – routine capital expenditure = operating surplus / (deficit)
3. Operating surplus / (deficit) – allocations (ie transfers to reserves) = overall surplus / (deficit)

All the above limits are based in reference to shares of GDP. For ease of understanding, in terms of **today's** money and **today's** GDP<sup>37</sup> these would equate numerically as follows (assuming Guernsey GDP to be £1.66bn according to States Statistical Unit's historic methodology):

Maximum outstanding gross debt:	£333m
Maximum annual operating deficit:	£50m
Maximum additional borrowing in any one States term:	£200m
<i>Long run normal levels of taxation (at 21%)</i>	<i>£350m</i>
<i>Long run historic level of public capital expenditure (at 3.0%)</i> <i>(see appendix 2)</i>	<i>£50m</i>

Clearly, these limits are time invariant. For comparison, these are shown with reference to GDP 5 years ago (and 10 years ago) in money terms of 5 years ago and 10 years ago.

### **2003**

Maximum outstanding gross debt:	£1338m
Maximum annual operating deficit:	£40m
Maximum additional borrowing in any one States term:	£160m

### **1998**

Maximum outstanding gross debt:	£1016m
Maximum annual operating deficit:	£30m
Maximum additional borrowing in any one States term:	£120m

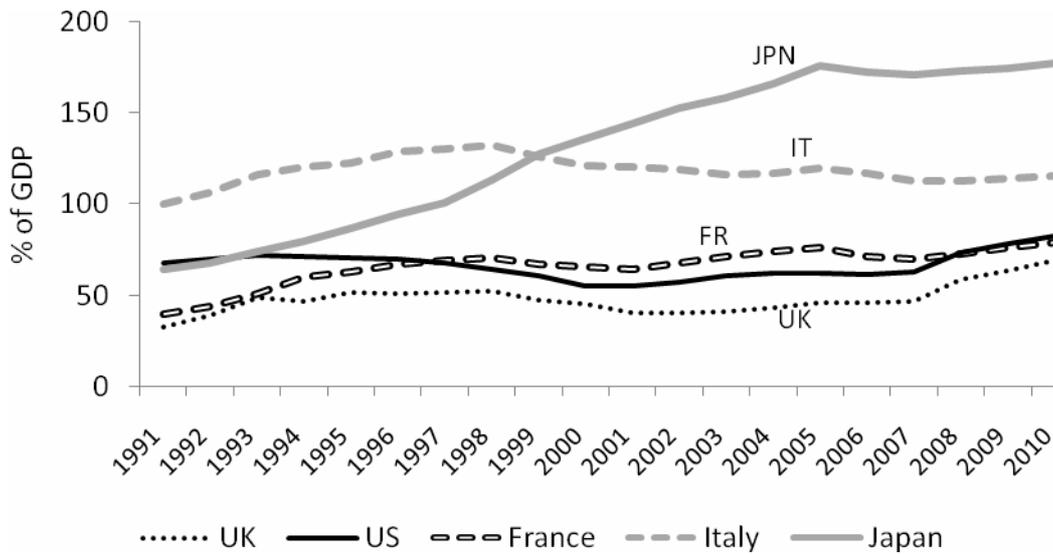
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<sup>37</sup> Clearly over time these numerical values will change due to economic growth and inflation. However, the values in terms of 'share of GDP are time invariant'.

#### Appendix 4: International fiscal practice

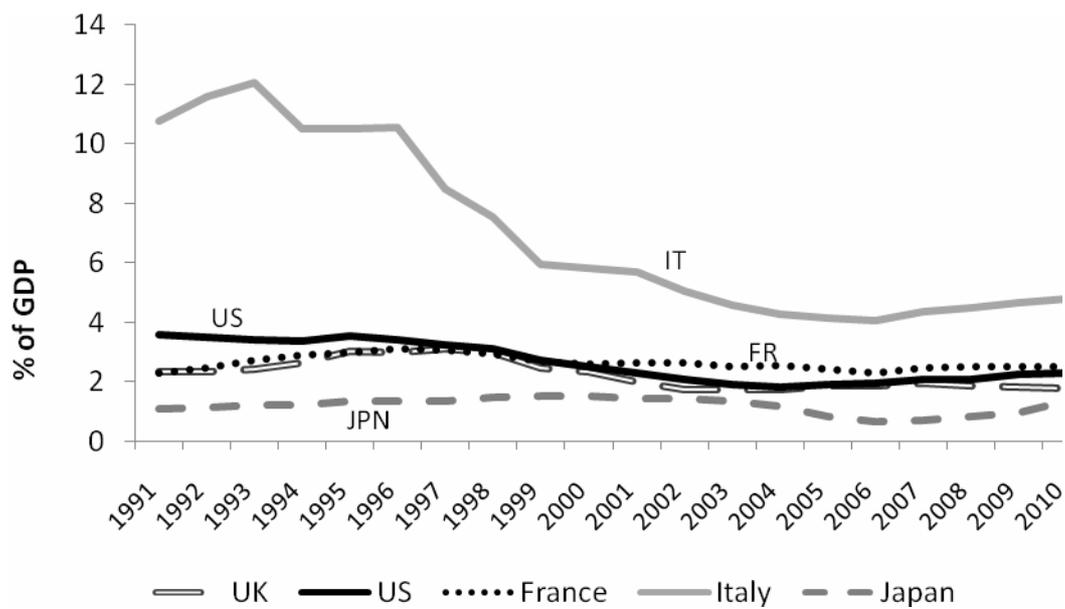
Most developed western economies have accumulated outstanding public debts (source OECD).....

**Figure 5: Outstanding public debt of five leading OECD members**



....which creates a budgetary requirement to fund interest payments.

**Figure 6: Debt interest payments for five leading OECD members**



## Appendix 5: References

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

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 23<sup>rd</sup> March, 2009, of the Policy Council, they are of the opinion:-

To endorse and adopt the Fiscal Policy Framework as described by section 8 of that Report.

## **POLICY COUNCIL**

### **STUDENTS ATTENDING COURSES OF HIGHER AND FURTHER EDUCATION OFF-ISLAND AND THE FINANCIAL CONTRIBUTION WHEN PARENTS ARE SEPARATED OR DIVORCED**

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

This Report sets out the progress that has been made with respect to implementing the requirements of the amendment, which was moved by Deputy Brouard and approved by the States at their October 2007 meeting, directing the Policy Council to report to the States by no later than July 2008, with proposals, including (if necessary or expedient) proposals to amend the Matrimonial Causes legislation and/or Education legislation, to ensure that separated or divorced parents should contribute towards the costs of their biological children's further and higher education.

A Report was prepared by April 2008 in conjunction with the former Education Department and was originally on target for the July 2008 States meeting. In preparing that Report the Policy Council carried out further research into this situation and liaised with the Education Department and with the Law Officers of the Crown. It concluded that whilst it would be lawful to take the income of an absent partner into consideration when assessing a student's entitlement to a grant from the Education Department, it would not always be practical to pursue absent biological parents.

However, in May 2008 the elections resulted in an almost completely new Education Department (with only one former member remaining). When the new Department was consulted it decided that it wanted further time to consider the options and a more detailed written analysis of the practicalities of pursuing contributions from absent biological parents. The States were advised accordingly by the Chief Minister at the July 2008 States meeting.

This work was undertaken between July and October 2008. The new Education Department then reconsidered the matter in December 2008.

For the reasons set out later in this Report the Policy Council recommends moving to a "household basis" for all income assessments for grants from September 2010 for new students commencing courses in or after September 2010 such that the Education Department will consider the income of whichever biological parent it considers appropriate, having regard to all the circumstances of a case, and then apply the "household" income rules accordingly, such that the income of a new live-in partner may be taken into consideration. This would mirror the income assessment arrangements in England.

The Policy Council therefore recommends the States to direct the Education Department to move to a "household basis" for all income assessments for grants from September 2010 for new students commencing courses in or after September 2010. This would be instead of pursuing contributions from absent biological parents.

## 2. Introduction

In October 2007 the States considered a Report from the Education Department with respect to students attending courses of higher and further education off-island. An amendment, proposed by Deputy Brouard was passed, which stated: -

*“With reference to paragraphs 4.12 and 4.13 of the Report, to direct the Policy Council to report to the States by no later than July 2008, with proposals, including (if necessary or expedient) proposals to amend the Matrimonial Causes legislation and/or Education legislation, to ensure that separated or divorced parents should contribute towards the costs of their biological children’s further and higher education.”*

The current position for the majority of students with separated or divorced parents when entitlement to a higher education award is being assessed, is that the Department only takes into consideration the income of the parent with whom the student lives and not the income of either an absent parent or a new partner. (The exception to this occurs where the parents separate after the student has started a course, in which case both parental incomes are considered and each parent is given a single parent disregard instead of one married couple disregard. The disregard allowance works in a similar way to a personal tax allowance whereby income to a certain level is ignored for grant assessment purposes. If both parents work, this normally results in the parents paying less towards the student’s higher education than if they were still living together because two single person disregards amount to more than one married person disregard, to reflect the higher cost of running two households instead of one).

This Report sets out the progress that has been made with respect to implementing the requirements of the amendment. If the recommendations of this Report are accepted by the States, no further work on this matter will be undertaken by the Policy Council without further direction by the States.

## 3. HM Comptroller’s Advice on the Legal Position

HM Comptroller has advised that as far as the Education Law is concerned it would be possible to take into consideration either the income of an absent parent, or combined household income (including the income of a new partner), when calculating a student’s entitlement to a higher education award from the Education Department.

This is because the Education Law permits the Education Department to make education grants to avoid student hardship but the Law does not stipulate that it must do so or how this should be done. The Law is therefore permissive in that it allows the Education Department to contribute towards university costs rather than compelling it to do so.

The Department could therefore assess the income of both biological parents when assessing a student’s entitlement. However, even a “residential” parent cannot be

legally compelled to contribute to university costs, so taking the income of an absent parent or new partner into consideration in this way would equally not force the absent parent or new partner to contribute. It is probable that this is where the confusion has arisen in earlier correspondence with the Island's Bâtonnier.

The Bâtonnier had advised that a review of the matrimonial laws would be required. If an absent parent were to be forced to contribute in a court of law, then the matrimonial laws would need to be reviewed to see if there was a legal basis for this enforcement, in particular to determine whether divorced parents could return to court to obtain further remittance from an absent parent where a settlement had been previously agreed and there had now been a change of circumstance. Without such a review, the States could still take the income of an absent parent into consideration, but there would be a risk to the student that the absent parent would not provide them with their contribution.

The Higher Education Awards system relies on parental contributions. Without such contributions there would be a significant gap between budget and funding requirements. The Education Department therefore takes parental income into consideration when calculating how much the Department's grant will be and details of how assessments are determined are contained in the Department's Guide to Higher Education Awards, which is normally published annually.

There is no legal impediment preventing the Education Department taking into account the income of an absent parent when assessing the amount of grant that the student is eligible for but, as already explained, it is not able to compel the absent parent (or a new partner) to contribute.

There are likely to be social issues associated with any changes to the way the Education Department's income assessment is carried out. HM Comptroller has advised that whatever course of action the States decide upon, these issues should be carefully considered, parents and students should be consulted and given appropriate notice of any changes to the assessment rules.

#### **4. Education Department Consultation on Higher Education Funding**

Between early February 2007 and early March 2007 the Education Department carried out a comprehensive consultation on the future of higher education funding. There were two questions on whether the income assessment should include the income of an absent parent or a new partner/spouse.

Out of all respondents, 62.2% thought that the Education Department should take into consideration the income of the remaining parent with whom the student normally lives and the income of their new partner/spouse if they are a member of the household, whilst 26.8% of respondents disagreed. A higher percentage, 74.7% of all respondents, thought that the Education Department should take into consideration the income of an absent parent as well unless there has been no contact with the student in the 5 years preceding the commencement of their higher education. However, there were some comments that it would be unfair to implement both of these options.

## **5. Education Department View**

In February 2008, after receiving HM Comptroller's advice, the Policy Council wrote to the Education Department and asked how it would wish to proceed. A copy of its response is attached as **Appendix 2**.

In that letter the former Education Department explained that the Department would like to have seen a move to a "household basis" for all income assessments for grants from September 2009 for new students commencing courses from September 2009. (At the time this assumed that a decision would be reached by the States in July 2008, and this would have given students a year's notice of the change in income assessment method before they started their course and a decision would also have been made before they made their university applications.) Parents have been advised, since the HE funding consultation was undertaken early in 2007, that the income assessment method for separated/divorced parents is under review.

The new Education Department, after initial consideration of the issues, was minded to support the previous Department's decision in terms of recommending a move to "household income" as the future basis of assessments. It discussed the issue further in December 2008. Its responses to the Policy Council are attached as **Appendix 3**.

To ensure that students and parents get sufficient notice of the change in the income assessment the Policy Council recommends that the household basis for income assessments is not introduced until September 2010.

Under such a scenario the income of any new partners living as part of the new family would be taken into consideration, but not the income of absent biological parents. The Department would intend to move towards a more formal code rather than the current guidelines, but that any new code should be sufficiently flexible to allow the Department to consider the income of whichever biological parent it considers appropriate, having regard to all the circumstances of a case, and then apply the "household" income rules accordingly. Assessing biological parents separately is unlikely to yield the increased income returns perhaps first envisaged by the amendment, because the two separate households in this instance both receive a disregard allowance. This is a further reason why the Education Department favours moving towards household income based on the "new" household.

## **6. Rationale for Recommending a Household Income Approach rather than an Income Assessment of Both Parents**

There are four reasons for recommending a household income approach to the income assessment rather than assessing the entitlement to grant based on both parents of the student, including an absent separated/divorced parent.

- 1) A household income assessment mirrors the current UK position for English students – see Appendix 1.

The Directgov website explains the student finance income assessment for students from England: -

*“If your parents are divorced or separated and you started your course in or after September 2004, the local authority will assess the income of just one of your parents, rather than both - whichever one seems appropriate to them in the circumstances. They will ignore income from your other parent, but will take into account the income of any spouse, civil partner or live-in partner of the parent they decide to assess (including a partner of the same sex if you started your course in September 2005 or later).”*

Therefore, the household income of one parent, including their new spouse or partner, is taken into consideration for students from England.

- 2) Both the Housing and Social Security Departments consider household income

Both Housing and Social Security take household income into consideration when assessing entitlement to rent rebate and means-tested non-contributory benefits, respectively.

- 3) Due to the difficulties of tracing some absent biological parents and the practicalities of implementation

Education staff consider that it would be more reasonable to take into consideration the income of a new partner/spouse who is currently living with the household than to trace absent parents who may have had little direct contact for many years and perhaps have also left the Island. The Department could exercise some discretion in cases where the student lost contact with their other parent several years previously. However, in practice, such a discretionary system would be difficult to administer fairly. This is therefore not favoured. This is discussed further in the next section of this report.

- 4) Cost Implications

Student A is studying English at Southampton University, commencing in Sept 2008. He lives with his mother (income £25,000) per annum, His mother is remarried (new partner's income £30,000 per annum). His father has left the Island but is still in contact and earns £30,000 per annum). There are no other children. The table below compares the effect of changing the method of income assessment for the academic year 2008/09.

	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>	<b>Scenario 4</b>
	<b>Situation as now – mother’s income only is considered</b>	<b>If the mother and absent father’s income were to be taken into consideration and one couple disregard is given</b>	<b>If the mother and absent father’s income were to be taken into consideration and two single person disregards are given – what is currently done if the students parents separate after the start of the course</b>	<b>If the mother and live-in new partner’s income were taken into consideration (household income)</b>
<b>Income assessment</b>	<b>£25,000</b>	<b>£55,000</b>	<b>£55,000</b>	<b>£55,000</b>
<b>Disregards for running parents’ household</b>	<b>£26,997 (single parent)</b>	<b>£33,722</b>	<b>2 x £26,997 = £53,994</b>	<b>£33,722</b>
<b>Total cost of tuition fees plus Education maintenance and travel allowances p.a.</b>	<b>£11,751</b>	<b>£11,751</b>	<b>£11,751</b>	<b>£11,751</b>
<b>Parent contribution for the year</b>	<b>£0</b>	<b>£5,320</b>	<b>£252</b>	<b>£5,320</b>
<b>States contribution for the year</b>	<b>£11,751</b>	<b>£6,431</b>	<b>£11,499</b>	<b>£6,431</b>

Please note that it is not possible to assess the effect on States expenditure of changing the income assessment method. There are 906 students studying courses of further and higher education off-island in 2008/09. Of these students, 827 are classed as dependent students, i.e. their income assessment for entitlement to grant includes an assessment of parental income. Of these 827 students, 268 are fee subsidy only and 559 receive an award above the minimum entitlement. Of the 559, 195 receive a single allowance i.e. separated, divorced, single, re-married or widowed. The remaining 364 receive a married allowance as they live with both parents. However, the Department does not collect data on the incomes of absent parents or new partners and therefore is unable to

compare how much the States might save by changing the income assessment method to include the income of either an absent parent or a new partner. From the above table it can be seen that if the absent parent's income is taken into consideration instead of the income of a new partner and if the current practice of apportioning two single parent disregards in such cases continues, per student and for the same level of income, the States would pay more to support that one student under scenario 3 (consideration of the income of the absent parent) than under scenario 4 (household income).

#### **7. The Practicalities of Including the Income of Separated or Divorced Parents in Assessing the Education Grant Towards their Biological Children's Further and Higher Education**

Some people will argue that an absent parent should take responsibility for their child. However, in practice some absent parents who have lost contact or have little contact with their children and who have not financially supported them whilst they have been growing up may not be willing to contribute to the costs of their higher education. If the income of the absent parent were taken into consideration, this could substantially reduce the grant awarded by the Education Department and if the absent parent did not contribute, the student could be in a position where they were unable to access funding for the duration of their university course. (Of course parents can refuse to contribute under the present system, but that is considered less likely). Students whose parents refuse to pay can apply for an award that is independent of parental income when they either reach 25 or they reach 21 and have worked for three years.

Cases where a student has lost touch with an absent parent would be even more difficult to administer. At the moment the presumption behind the Education grant system is that every student is entitled to a minimum grant or fee subsidy regardless of income (subject to the student/parents meeting certain residency conditions and the course must meet the relevant criteria). However, for an additional means-tested grant the onus is on the parent to provide proof of a lower income. If the Education Department doesn't have that income information, they currently only give a minimum grant/fee subsidy. Therefore, the logic would follow that if there is a requirement for a contribution from an absent parent, the parent would have to provide their income information in order for the student to get anything above the minimum grant. Without knowing the income of the absent parent, the Department could make only the minimum grant or fee subsidy. This could be perceived as unfair if the student was now residing in a low income single parent family as it would be unlikely that the student could afford to go to university on this basis. The Townsend Centre found that single pensioners, lone parents and large families with children are the groups most likely to be suffering from relative poverty.

It would be difficult to make exceptions as allowing discretion in such genuine instances of hardship could leave the Education Department wide open to other fraudulent claims. Whilst it could be a criminal offence for someone to claim that they had lost touch with an absent parent, even if they hadn't, this would be very difficult for the Education Department to detect and prove. Even if students were required to submit a copy of their Birth Certificate and assuming that both parents were named on that certificate, the Education Department could not necessarily trace the whereabouts of an

absent parent; and establishing whether a student had genuinely lost touch with an absent parent would be virtually impossible.

It is already possible for an absent parent to make a voluntary contribution to the costs of their child's further or higher education. Any maintenance paid to the student or the household already has to be declared on the grant application and is taken into consideration in the higher education award assessment.

A new partner could also refuse to contribute to the cost of their partner's child's higher education. However, in many cases the new partner will have already taken on some financial responsibility for members of the new household in which they are now living. In addition, for the purpose of carrying out income assessment checks a new partner is at least residing at the same address and in some cases is already required to sign the grant assessment form so that the Education Department can check their partner's (i.e. the student's natural parent's) income with the Income Tax Department. Plus, as already stated, the income assessment for other benefits provided by the States of Guernsey is based on household income.

The only way to legally force any parent to actually contribute to the cost of their child's higher education would be through quite radical primary legislation; at the moment even a "residential" parent with whom the parent lives cannot be legally compelled to contribute to university costs, although the grant offered by the Education Department is subject to a parental income assessment. Such legislation would need to apply to all parents, not just absent ones, and even if it were in place, it would be impossible to enforce if the parent couldn't be traced. The process of trying to trace such parents could be very resource intensive if the responsibility of the Department, or expensive and distressing if it were the responsibility of the student. There is still the potential that a student from a low income family could still be left with the minimum fee subsidy or the Department could be left open to fraudulent claims if it exercised some discretion.

For these practical and administrative reasons it is not recommended that the income of an absent partner be taken into consideration when assessing a student's entitlement to a grant from the Education Department.

## **8. Concluding Remarks**

There are social issues associated with changing the income assessment to include either the income of an absent parent or the income of a new partner, if household income is taken into consideration.

There is no doubt that many people will differ in their preference for changing the assessment of income for student grants to either a household assessment basis or to include the income of an absent parent. What was clear from the higher education funding consultation undertaken in 2007 was that most people favoured changing the income assessment for separated or divorced parents to include either the income of an absent parent or the income of a new partner (but not both).

For the reasons set out in this paper the Policy Council recommends moving to a “household basis” for all income assessments for grants from September 2010 for new students commencing courses in or after September 2010 such that the Education Department will consider the income of whichever biological parent it considers appropriate, having regard to all the circumstances of a case, and then apply the “household” income rules accordingly.

### **Recommendation**

The Policy Council recommends the States:

To direct the Education Department to move to a “household basis” for all income assessments for grants from September 2010 for new students commencing courses of further and higher education outside the Bailiwick in or after September 2010 such that the Education Department will consider the income of whichever biological parent it considers appropriate, having regard to all the circumstances of a case, and then apply the “household” income rules accordingly.

L S Trott  
Chief Minister

23<sup>rd</sup> March 2009

## **APPENDIX 1: INCOME ASSESSMENT FOR ENGLISH STUDENTS**

The Directgov website explains the student finance income assessment for students from England: -

### ***“Whose income will be counted?”***

*Local authorities will always count your own income. This will include non-earned income, such as interest from savings, but not casual or part-time earnings during your course.*

*They may also count income from your parents or partner. Whose income they take into account will depend on whether you are classed as a 'dependent' or 'independent' student.*

*The information below tells you what's usually taken into account when classifying students - but it doesn't cover all circumstances. See the section below on 'Full-time students: finding out more about income assessment' for more detailed guidance.*

### ***Dependent students***

*Generally, you'll be classed as a dependent student if you're under 25 on the first day of the academic year for which you're applying for support and are financially dependent on one or both of your parents (even if you don't live with them).*

*If you're a dependent student, your local authority will take into account the income of your parents or adoptive parents on top of your own income.*

*If your parents are divorced or separated and you started your course in or after September 2004, the local authority will assess the income of just one of your parents, rather than both - whichever one seems appropriate to them in the circumstances. They will ignore income from your other parent, but will take into account the income of any spouse, civil partner or live-in partner of the parent they decide to assess (including a partner of the same sex if you started your course in September 2005 or later).*

### ***Independent students***

*The list below isn't exhaustive, but generally you will be classed as independent if any of the following apply on the first day of the academic year for which you're applying for support:*

- *you have care of a child or young person under the age of 18*
- *you are aged 25 or over*
- *you are, or have been, married or in a civil partnership*
- *you have supported yourself for at least three years*
- *you have no living parents*

*If you are an independent student, your local authority will only take into account your income and that of your partner.*

*This can mean your spouse, civil partner or:*

- *if you started your course in or after September 2001, any live-in partner of the opposite sex*
- *if you started your course in or after September 2005 and you're 25 or over on the first day of the academic year for which you're applying for support, any live-in partner of the same sex"*

Therefore, the household income of one parent, including their new spouse or partner, (but not necessarily an absent parent) is taken into consideration for students from England.

**APPENDIX 2: LETTER FROM FORMER EDUCATION DEPARTMENT**

Deputy M W Torode  
Chief Minister  
Policy Council  
La Charroterie  
St Peter Port

20<sup>th</sup> March 2008

Dear Deputy Torode

**BROUARD AMENDMENT**

Thank you for your letter of 15<sup>th</sup> February. The Board considered this matter at its meeting held on 11<sup>th</sup> March 2008. My Board agreed that the most sensible and pragmatic approach to this matter would be to move all income assessments to a “household” basis, with a suitable notice/introductory period before introduction of the new measures. It was felt that this new methodology could be adopted as early as September 2009 for new students.

In moving to household income the Department would, in future, assess any new partners living as part of the new family. In such a scenario it would not be practical to pursue absent biological partners. However, it was further agreed that any new arrangements (regulations) might be drafted so as to be sufficiently flexible to allow the Department to consider the income of whichever biological parent it considered appropriate, having regard to all the circumstances of a case, and then apply the “household” rules accordingly.

I trust this initial response is sufficient for your needs, but please contact the Department for any further information you may require.

Yours sincerely

M A Ozanne  
Minister

**APPENDIX 3: LETTERS FROM CURRENT EDUCATION DEPARTMENT**

Deputy L S Trott  
Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

13<sup>th</sup> June 2008

Dear Deputy Trott

**Higher Education**

Further to your letter of 20<sup>th</sup> May and previous correspondence between our Departments, I can confirm that the Board of the Education Department considered the matter of the financial contribution of separated or divorced parents towards higher education costs at its meeting held on Tuesday 10<sup>th</sup> June 2008.

My Board is minded, after initial consideration of the issues, to support the previous Board's decision in terms of recommending a move to "household income" as the future basis of assessments. However, a final decision has not been reached as the Board felt that the matter needed to be discussed in greater detail than was possible in a normal Board meeting. It would also like further details included in the report of the practical difficulties associated with including the income of an absent parent in the grant assessment. It has therefore been recommended that the matter be discussed at the next Higher Education Working Group and that the Board waits for any recommendations from that Group before a definitive recommendation is made to Policy Council.

The Department understands that Deputy Brouard is not against further time being given to the investigation into this issue and hopes that our respective staffs can work together to revise the report for submission to the States in the autumn.

Yours sincerely

C A Steere  
Minister

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

17<sup>th</sup> December 2008

Dear Deputy Trott

**Students Attending Courses of Higher and Further Education**

The Board had the opportunity to discuss the above-mentioned States Report at its meeting held on 9<sup>th</sup> December 2008.

After further consideration and discussion, the Board had mixed views on the matter but felt that the most pragmatic solution to address the ongoing problem of single person assessments following separation or divorce was to move to a household basis for assessment.

The difficulties of tracing absent biological parents and the practicalities of administering such a system are well set out in the report. The Department also acknowledges that it must have a system which it can implement effectively and efficiently.

The recommendation by Policy Council that future assessments should be calculated on a household basis was something the Board felt it could confidently manage and, therefore, was supported by a majority of the Board. This solution was seen as simply extending the situation whereby the family unit consisting of the current household would continue to support the children beyond the point of entering further and higher education. Such students, by the very nature of their being dependent, will have been supported up to this point as part of the new household. Continuing this arrangement was viewed as the most sensible approach operationally.

Yours sincerely

C A Steere  
Minister

**(NB The Treasury and Resources Department has no comment on the proposal)**

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 23<sup>rd</sup> March, 2009, of the Policy Council, they are of the opinion:-

To direct the Education Department to move to a “household basis” for all income assessments for grants from September 2010 for new students commencing courses of further and higher education outside the Bailiwick in or after September 2010 such that the Education Department will consider the income of whichever biological parent it considers appropriate, having regard to all the circumstances of a case, and then apply the “household” income rules accordingly.

**COMMERCE AND EMPLOYMENT DEPARTMENT****RE-APPOINTMENT OF THE PUBLIC TRUSTEE**

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

24<sup>th</sup> February 2009

Dear Sir

**1. Executive Summary**

1.1 The term of office of the Public Trustee, David Trestain, ends on 31 May 2009. It is the responsibility of the Commerce and Employment Department under the provisions of section 1 (2) of the Public Trustee (Bailiwick of Guernsey) Law, 2002 (“the Law”) to recommend to the States the appointment of the Public Trustee.

**2. Re-appointment of the Public Trustee**

2.1 Under the Law, at paragraph 1.(4), “the Public Trustee shall hold office for a term not exceeding five years and a person may, on the recommendation of the [Department] ....., be appointed to that office by the States for more than one term of office”. He may be removed from office by the States, on the recommendation of the Department, on the grounds of permanent incapacity, misbehaviour or gross incompetence. He may resign his office at any time but such notice shall not take effect until a successor takes office as Public Trustee.

2.2 Mr Trestain has indicated his willingness to be considered for re-appointment.

2.3 The Commerce and Employment Department is pleased to recommend to the States the re-appointment of Mr David Peter Trestain as Public Trustee and further recommends that the appointment should be for five years.

2.4 Mr Trestain was born in Essex and educated at Chigwell School and the University of Leeds. He is a Fellow of the Institute of Chartered Accountants in England and Wales, having qualified in 1970. After working in England, he came to Guernsey in 1988 to join the States Internal Audit Department. After a brief spell as Chief Internal Auditor, he became States Treasurer in 1992. He stepped down from his post in July 2001 to work part time for the States as

Director – Human Rights Implementation, retiring fully in January 2003. Since then, he acted as Secretary to the States Members Pay Review Board until its work was completed in the autumn of 2003. Mr Trestain was appointed to the Office of Public Trustee on 10 March 2004 (Billet d’Etat III 2004 refers) but the Law did not come into force until 1 June 2004.

### **3. Recommendation**

- 3.1 The Department recommends the States to agree that Mr David Peter Trestain be re-appointed as Public Trustee for a further period of five years commencing 1 June 2009.

Yours faithfully

C S McNulty Bauer  
Minister

**(NB The Policy Council has no comment on the proposal.)**

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

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 24<sup>th</sup> February, 2009, of the Commerce and Employment Department, they are of the opinion:-

To re-appoint Mr David Peter Trestain as Public Trustee for a further period of five years commencing 1 June 2009.

## THE SOCIAL SECURITY DEPARTMENT

### DIGITAL SWITCHOVER – DISCLOSURE OF INFORMATION

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

27<sup>th</sup> February 2009

Dear Sir

#### **Executive Summary**

1. The Channel Islands will switch to digital television in November 2010. The switchover will make digital terrestrial television available in the Channel Islands for the first time. Digital UK, the independent switchover body for the UK, is to lead the process, working with the States of Guernsey and the States of Jersey.
2. A Digital Switchover Help Scheme will be available providing special assistance to persons over the age of 75, persons who are registered blind or partially sighted, persons in receipt of certain disability benefits and persons living in care homes. The Help Scheme will be run by the British Broadcasting Corporation (BBC), funded through the licence fee, under agreements between the Secretary of State for Culture and the BBC Trust with the agreement of the States of Guernsey and the States of Jersey.
3. The BBC have set up a wholly owned company, Digital Switchover Help Scheme Ltd. (DSHS Ltd.), which is responsible for the delivery of Help Scheme assistance and it in turn contracts out the day to day management of the Help Scheme to its service provider, eaga plc.
4. It is a basic principle of the Help Scheme that it directly approaches eligible persons as it is thought that this will improve take up and make it easier for eligible persons to seek help. The Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association and the Sark Douzaine hold the personal details of the majority of eligible persons in the Bailiwick. These departments, committees and bodies need to be able to disclose to the BBC or its agents relevant data (e.g. names and addresses) regarding eligible persons to enable eaga plc. to communicate directly with them regarding digital switchover and the help available to them.

5. This report recommends that legislation be enacted to allow the Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association and any other Guernsey or Alderney government department or committee or body approved by the Policy Council, to disclose relevant data to the BBC or its agents for use in connection with switchover help functions. Due to the relatively small number of eligible persons living in Sark, the Sark Douzaine has decided to obtain the written consent of eligible persons who wish to receive assistance to disclose relevant data to the BBC or its agents for use in connection with switchover help functions, rather than be given the power in law.

## **REPORT**

### **The Digital Switchover Process**

6. Digital television switchover is the process of converting the analogue terrestrial television system to digital. Between now and 2012, analogue channels are being switched off region by region in the UK, and replaced with digital signals enabling free-to-air digital terrestrial television and radio services (from Freeview) to be received through an aerial. Switchover will extend digital terrestrial coverage to the whole of the UK and free up airwaves for new services such as ultra-fast wireless broadband and mobile television.
7. The Channel Islands will switch to digital television in November 2010. Digital UK, the independent switchover body for the UK, is to lead the process, working with the States of Guernsey and Jersey. The Home Department is the lead department in Guernsey.
8. Digital UK is the independent, not-for-profit organisation established in 2005 to implement digital switchover. It is jointly owned and funded by the UK's public-service broadcasters (BBC, ITV, Channel 4, Five, S4C and Teletext) and multiplex operators SDN and Arqiva.
9. Terrestrial television in the Channel Islands is provided by the Fremont Point transmitter in Jersey and seven 'relay' masts in Jersey, Guernsey and Alderney. All of these transmitters will switch from analogue to digital television in a two stage process starting in November 2010. The exact dates will be announced nearer to the time.
10. At the start of switchover, BBC Two will cease broadcasting in analogue and the first group of digital terrestrial channels will become available. Around two weeks later, the remaining analogue channels will be permanently switched off and replaced by additional digital services. In addition to the four traditional television channels, Channel Islanders will receive around 20 of the most-watched digital terrestrial channels for the first time, including digital channels such as BBC Three, BBC Four, BBC News, ITV2, ITV3, E4 and More 4.

11. Households which already have more than four 'standard' television channels will be receiving those channels through digital signals and will therefore have already 'gone digital'. By November 2010, all other households will need to convert all the television sets in their homes if they wish to continue watching broadcast television. All but the oldest television sets can be adapted with any of the following:

- Digital terrestrial television can be received with a set top box (through Freeview) - requiring one-off purchase of a set top box;
- Digital satellite services can be received through a satellite dish - Freesat from Sky or Freesat from the BBC - requiring one-off purchase of satellite equipment; or
- Other satellite subscription services (requiring a monthly subscription).

Or people can buy a new integrated digital television set with built-in terrestrial tuner (identifiable by a 'digital tick' logo).

### **The Digital Switchover Help Scheme**

12. One of the BBC's public purposes under the organisation's Royal Charter is to take a leading role in the switchover to digital television. As part of that role, the UK Government and the BBC have signed the Digital Switchover Help Scheme Agreement to ensure that those who would be most likely to find the switch to digital more difficult receive appropriate assistance to switch.

13. The UK Government, through the Department for Culture, Media and Sport, is responsible for the underlying Help Scheme policies (e.g. who gets help, what help they get and whether they have to pay). The BBC have set up a wholly owned company, DSHS Ltd., which is responsible for the delivery of Help Scheme assistance, and it in turn has contracted out the day to day management of the Help Scheme to eaga plc.

14. In the UK, persons are eligible for assistance under the Help Scheme if they have a television licence and if they are:

- aged 75 or over;
- entitled to one of the following social security benefits:
  - o Disability Living Allowance,
  - o Attendance Allowance,
  - o Constant Attendance Allowance,

- Mobility Supplement;
    - registered blind or partially sighted; or
    - living in a care home (and have done so for six months or more).
15. The scope of the Help Scheme is based on UK Government research that indicates that persons in the above listed groups are the least likely to have digital television and the most likely to struggle with adopting it.
  16. The Help Scheme is operated on an opt-in basis. Eligible persons in the UK who choose to opt-in to the Help Scheme are asked to contribute a subsidised amount of £40 for the following package of support, unless they are in receipt of certain income related benefits, in which case the service is free:
    - Easy to use equipment that suits their needs. People are able to select either the 'standard offer' which is likely to be a set top box which will convert the majority of television sets, or they may select other options, sometimes at a higher cost. Available upgrades include digital recorders and integrated television sets;
    - Help with installing the equipment in their home;
    - A new aerial or dish if required;
    - A demonstration of how the equipment works;
    - Follow-up support.
  17. People who qualify for assistance under the Help Scheme can get help to convert one television set in their home to digital. Assistance is available irrespective of whether an eligible person has already switched to digital. For example, people may wish to have a second television set converted in their home. However, where two or more eligible people are living at the same address as one household, they are only entitled to receive assistance once.
  18. The Help Scheme is funded from the licence fee. The BBC is accountable to the BBC Trust for all expenditure on the Help Scheme, as it is for other licence fee expenditure. The National Audit Office is responsible for auditing the delivery and cost of the Help Scheme in the UK.

### **The Channel Islands Digital Switchover Help Scheme**

19. It was initially envisaged that the Social Security Departments in Guernsey and Jersey would operate the Help Scheme as they hold data about the majority of eligible persons in the Channel Islands. However, having gained a better understanding about what is required, the Home Department and the Social

Security Department in Guernsey and the Economic Development Department and the Social Security Department in Jersey have decided instead to accept the BBC's offer to extend its Help Scheme to the Channel Islands, as it has done for the Isle of Man. It is considered that this would be a far more cost effective solution than setting up and operating a separate Help Scheme locally and it will also ensure that eligible persons in the Channel Islands receive the same standard of service as people in the UK. By the time the Channel Islands switch to digital television in November 2010, considerable experience will have been gained by the current operators in administering the Help Scheme.

20. The BBC Trust believes strongly that the cost to the licence payer of running the Help Scheme should be the same wherever help is being delivered. The total variable cost per customer taking up the Scheme in the UK is £74, of which £67 relates to the purchase and installation of equipment in customers' homes. The remaining £7 is a variable handling fee paid to eaga plc. for managing the Scheme. Due to the small population of the Channel Islands when compared to all other ITV Regions, it is considered highly unlikely that the States of Guernsey and Jersey would be able to procure an equivalent service for just £74 per customer.
21. The Channel Islands Help Scheme will be operated under agreements between the Secretary of State for Culture and the BBC Trust with the agreement of the States of Guernsey and the States of Jersey. The agreements will include provisions for the States of Guernsey and Jersey to appoint observers to the Help Scheme Project Board. The Project Board will be responsible for ensuring that the Help Scheme is operated in a manner that fully supports the needs of the classes of persons whom the Scheme is intended to help.
22. The BBC requires that the Channel Islands Help Scheme eligibility criteria match, as closely as possible, the eligibility criteria in the UK. As the benefits systems in Guernsey and Jersey do not directly mirror those of the UK or each other, the eligibility criteria in each jurisdiction will be slightly different. Table 1 sets out the categories of persons in Guernsey (and Alderney, Herm and Jethou) who it is envisaged will be eligible for assistance under the Help Scheme.

**Table 1**

<b>UK eligibility criteria</b>	<b>Guernsey equivalent</b>
Persons aged 75 or over.	Persons aged 75 or over.
Persons in receipt of Disability Living Allowance.	Persons in receipt of Supplementary Benefit on the grounds of disability.
Persons in receipt of Attendance Allowance.	Persons in receipt of Attendance Allowance.
Persons in receipt of Constant Attendance Allowance.	No equivalent benefit (covered under Attendance Allowance).

Persons in receipt of Mobility Supplement.	No equivalent benefit.
Persons who are registered blind or partially sighted.	Persons who are registered blind or partially sighted.
Persons who have lived in a care home for six months.	Persons living in private or public sector care homes. (The majority of persons living in private sector care homes are in receipt of Long-term Care Benefit)

23. The various laws under which Supplementary Benefit, Attendance Allowance and Long-term Care Benefit are payable, extend to the Islands of Guernsey, Alderney, Herm and Jethou but not to Sark. The Home Department has consulted with the Sark Douzaine and has been advised that, if these benefits were extended to Sark, approximately 60 persons would qualify for assistance under the criteria outlined in Table 1. In total, it is estimated that at least 5,000 people will be eligible for assistance in the Bailiwick, although experience in other regions of the UK suggests that actual take up is likely to be considerably lower than this.
24. As is the case in the UK, eligible persons who choose to opt-in to the Help Scheme in the Bailiwick of Guernsey will be asked to contribute a subsidised amount of £40 for the package of support outlined in paragraph 16, unless they are in receipt of supplementary benefit or, in the case of eligible persons residing in Sark (where supplementary benefit is not available), are considered by the Sark Douzaine to be on a low income, in which case the service will be free of charge.
25. The costs of the Help Scheme, including its overheads, financing, administrative and marketing/communication costs, will be funded from the licence fee.

#### **Disclosure of Information - Legislative Requirements**

26. The BBC works very closely with Digital UK, which delivers *generic* communications for the Help Scheme (i.e. general awareness public relations, advertising and community campaign material to the public as a whole). DSHS Ltd's service provider, eaga plc., delivers *targeted* communications (i.e. direct mail) to eligible persons in relation to the Help Scheme.
27. Eaga plc. sends comprehensive information packs to eligible persons five to seven months before the final switchover date. The information pack, which is available in different languages and formats (e.g. audio, brail, etc) explains digital switchover, sets out the various options available to make the switch to digital television and includes an application form which people must complete and return if they wish to opt-in to the Help Scheme.

28. The Social Security Department holds the personal details of all persons living in Guernsey, Alderney, Herm and Jethou aged over 75 and persons in receipt of Attendance Allowance, Long-term Care Benefit or Supplementary Benefit on the grounds of disability. The Housing Department and the Health and Social Services Department hold the personal details of persons living in public sector care homes. The Guernsey Blind Association holds a register of blind and partially sighted persons living in the Bailiwick, although this is not a complete list of all islanders who have visual impairments as referral to the Association is on a voluntary basis. Although the Sark authorities do not have a database which would readily enable the identification of all eligible persons living in Sark, the Sark Douzaine is aware, through personal knowledge, of many of the persons residing in Sark who fit the eligibility criteria and intends to publicise the Help Scheme and encourage eligible persons to come forwards if they require assistance.
29. The Data Protection Commissioner has advised that the Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association and the Sark Douzaine may not disclose to the BBC or its agents personal data relating to eligible persons unless there is power in law to do so or unless the data subjects (i.e. the eligible persons) have consented to the disclosure.
30. The legislative route is favoured by the Social Security Department because it considers that those persons who are most likely to need assistance with the digital switchover process may also be the most unlikely to complete and return a consent form. The consent route would also create a considerable administrative burden for the parties concerned as it is estimated that over 5,000 people may qualify for assistance in the Bailiwick. Additional people will also become eligible between now and the switchover date, so it will be necessary to obtain consent from new entrants on an ongoing basis.
31. In the UK, primary legislation entitled the Digital Switchover (Disclosure of Information) Act 2007 (Chapter 8) ('the 2007 Act') was enacted to permit the disclosure of relevant data, which is prescribed in secondary legislation<sup>1</sup>, for use in connection with switchover help functions.
32. The data sharing powers in the 2007 Act permit the Department of Work and Pensions and the Northern Ireland Department to share social security and war pensions information with a relevant person for use in connection with switchover help functions. It also permits a local authority or, in Northern Ireland, a Health and Social Services Board, which holds a register of blind and partially sighted persons, to share their data with a relevant person for use in connection with switchover help functions.
33. In the 2007 Act, the term 'relevant person' is defined as:

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<sup>1</sup> The Digital Switchover (Disclosure of Information) Act 2007 (Prescription of Information) Order 2007 (S.I. 2007 No. 1768)

- “(a) *The BBC;*
- (b) *Any company in respect of which any one or more of the following –*
- (i) *the BBC,*
- (ii) *the Secretary of State, or*
- (iii) *a nominee of the BBC or the Secretary of State,*
- hold at least 51% of the issued ordinary share capital or possess at least 51% of the voting rights;*
- (c) *any person who is engaged by the BBC, the Secretary of State or any company falling within paragraph (b) to provide any service connected with switchover help functions, to carry out a switchover help function or to carry out any function connected with switchover help functions.”*
34. In the 2007 Act, the term ‘switchover help functions’ is defined as:
- “(a) *the identification of persons who may be eligible for help under the switchover help scheme;*
- (b) *making contact with such persons with a view to the provision of such help; and*
- (c) *the establishment of any person’s entitlement to help.”*
35. Section 6(3) of the 2007 Act provides the power for the Act to be extended to the Isle of Man by Order in Council. This was done by the Digital Switchover (Disclosure of Information) (Isle of Man) Order 2007. However, the 2007 Act does not provide the power for the Act to be extended to the Channel Islands.
36. It is unlikely, particularly within the switchover timetable, that there will be any suitable primary legislative vehicle that could be used to amend the 2007 Act to include the power to extend the 2007 Act to the Channel Islands. It is, therefore, necessary to enact legislation locally to permit the Social Security Department, the Housing Department, the Health and Social Services Department and the Guernsey Blind Association to disclose relevant data to the BBC or its agents for use in connection with switchover help functions. It is also considered prudent to give the Policy Council the power in law to approve any other Guernsey or Alderney government department or committee or body, which may have been overlooked at this stage, which may need to disclose relevant data to the BBC or its agents for use in connection with switchover help functions. HM Procurer’s office has advised that it will be very simple to draft a Law based on the 2007 Act and that it should take no more than a day to prepare.

37. For these purposes, 'relevant data' means some or all of the following details of eligible persons:
- Name
  - Address
  - Social insurance number
  - Eligibility for subsidised or free assistance
  - Alias
  - Appointee (i.e. a person appointed to act for the claimant or beneficiary and to receive and deal with any sum payable by way of benefit on behalf of the claimant or beneficiary)
  - Date of birth
38. Due to the relatively small number of eligible persons living in Sark, the Sark Douzaine has decided to obtain the written consent of eligible persons who wish to receive assistance to disclose relevant data to the BBC or its agents for use in connection with switchover help functions, rather than be given the power in law.

#### **Disclosure of Information – Procedural Arrangements**

39. It will also be necessary to draft a Memorandum of Understanding (MoU) between the Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association, the Sark Douzaine ('the data holders') and DSHS Ltd. regarding the security and handling of data for the Digital Switchover Help Scheme.
40. The MoU will closely follow the arrangements that have been established in the UK. It will set out the arrangements under which the data holders, as Data Controllers, intend to pass personal data to DSHS Ltd. via a statutory gateway. DSHS Ltd., as Data Controller, will engage eaga plc. as a Data Processor. The data holders will be permitted, on request from DSHS Ltd., to pass personal data direct to eaga plc. to simplify matters, to save time and for administrative ease.
41. The MoU will set out, amongst other things, the responsibilities of the Data Controllers (the data holders and DSHS Ltd.) and the Data Processor (eaga plc.), the methods of data transfer, the purposes for which the data may and may not be used, security standards and how long the data may be retained. Under the terms of the MoU, eaga plc. and DSHS Ltd. will only be able to use the data supplied for the purpose of switchover help functions. The MoU will include a

provision stating that eaga plc. and DSHS Ltd. must **not** use the information supplied for television licence enforcement activities.

42. As the Administrator of the Digital Switchover Help Scheme, eaga plc. will be responsible for ensuring that all information disclosed by the various data-holders is:
- treated as confidential;
  - retained securely at the premises the data is stored or accessed from;
  - destroyed securely and in accordance with Government requirements;
  - not made available to unauthorised personnel or members of the public;
  - processed in compliance with relevant data protection legislation.

### **Timetable**

43. Eaga plc. will send a comprehensive information pack to eligible persons five to seven months before the final switchover date, i.e. April to June 2010. Therefore, the legislation will need to have received Royal Assent and been registered on the records of Guernsey and Alderney by April 2010. The Chairman of Sark's General Purposes and Finance Committee has confirmed that, given the Sark Douzaine's decision to adopt the consent route, the law does not need to apply to Sark. HM Procureur's Office has advised that this timetable is achievable.

### **Consultation**

44. The Social Security Department has consulted with the UK Department for Culture, Media and Sport, the BBC, Digital UK, the Home Department, the Housing Department, the Health and Social Services Department, the States of Alderney Policy and Finance Committee, the Sark Douzaine, the Guernsey Blind Association, the Data Protection Commissioner and HM Procureur's Office. All are content with the proposals outlined in this report.

### **Recommendations**

45. The States are asked to:
- (i) agree that legislation be enacted to allow the Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association and any other Guernsey or Alderney government department or committee or body approved by the Policy Council to disclose relevant data to the BBC or its agents for use in connection with switchover help functions.

- (ii) direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

M H Dorey  
Minister

**(NB The Policy Council has no comment on the proposals.)**

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

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 27<sup>th</sup> February, 2009, of the Social Security Department, they are of the opinion:-

1. That legislation be enacted to allow the Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association and any other Guernsey or Alderney government department or committee or body approved by the Policy Council to disclose relevant data to the BBC or its agents for use in connection with switchover help functions.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### LIMITED LIABILITY PARTNERSHIPS

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

11<sup>th</sup> March 2009

Dear Sir

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

- 1.1. As part of the ongoing review of Guernsey's commercial laws, the Commerce and Employment Department proposes the introduction of *Limited Liability Partnerships* ("LLPs"). In Guernsey, an LLP will be a new form of business structure that combines features from a traditional partnership with the limited liability available to shareholders in a company. LLPs have been introduced in several other jurisdictions and, while relatively new, are now widely used.
- 1.2. The Department expects that LLPs primarily will be attractive to professional persons. However they may also be suitable for other purposes such as joint ventures. It is not intended that the availability of an LLP be restricted to any particular profession or trade; they will be available as an alternative business structure to suit particular needs. However, if an LLP carries on a regulated activity it will need to be licensed by the Guernsey Financial Services Commission ("the Commission").

#### **2. Background**

- 2.1. At present there are four main structures available to those wishing to conduct business in Guernsey: a company, a conventional partnership, a limited partnership, or a sole trader. The LLP will add to this range and increase choice for Guernsey entrepreneurs. They have already been introduced in a number of jurisdictions including the United Kingdom and Jersey. The Department has reviewed the legislation from comparative jurisdictions and has the advantage of being able to learn from those other regimes. The Guernsey LLP will offer the flexibility of a partnership with the advantages of some limited liability for the members of the partnership.

- 2.2. An LLP is a different structure to the limited partnership that was first introduced in Guernsey in 1995, but it is not proposed that they will replace them. The key differences in the two structures are outlined below.
- 2.3. Experience from other jurisdictions has shown that LLPs will be most attractive to professional persons, although once introduced they may be attractive to a wider range of businesses. For example, in the UK approximately 16,000 LLPs have been incorporated since the relevant Act was introduced in 2000.
- 2.4. Other jurisdictions that have introduced LLPs (or equivalent structures thereto) include: Canada, China, Greece, Japan, Poland, Romania, Singapore, and the USA<sup>1</sup>.

### **3. Advantages and disadvantages of a conventional partnership**

- 3.1. A 'conventional' partnership is defined as two or more persons carrying on a business with a view to a profit. Much of Guernsey's partnership law was consolidated and restated in the Partnership (Guernsey) Law, 1995. Such partnerships are free to organise their internal management however the partners agree. It is usual practice (although not obligatory) for the partners to enter into a written partnership agreement that sets out its internal rules of the partnership. The formalities and costs involved in setting up a conventional partnership are relatively low. This flexibility is one of the significant advantages of partnerships, as it allows partners to retain a high degree of control over the business.
- 3.2. These partnerships have lower compliance costs than other business structures; much less so than companies. The applicable law is less prescriptive than for a company. It is also the only structure available to some professions, who may be prohibited by their respective professional rules from forming companies or otherwise limiting personal liability.
- 3.3. A key feature is that conventional partnerships, unlike companies, do not have limited liability or separate legal personality; partnership is simply the way in which individual partners may choose to carry on business together. Each partner is personally responsible for the debts and liabilities incurred by each and every other partner in the course of partnership business. Furthermore the liability of the partners for the debts of the partnership is unlimited. This results in individual partners having a relatively high exposure to personal liability. The lack of limited liability means that all of a partner's personal assets may be available to satisfy any liability of the partnership, regardless of whether that partner was responsible for, or even knew of, the debt. Historically, partnerships have managed this risk through the use of indemnity insurance.

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<sup>1</sup> In the USA the laws concerning LLPs are with the States i.e. not Federal. As at the time of writing over 40 States had introduced legislation to introduce LLPs. LLPs have existed in the US in one form or another since approximately 1990.

- 3.4. Modern partnerships take a variety of forms from two individuals running a small business to large global organisations with several hundred partners; this is particularly the case for the legal and accounting professions. In such an organisation, it is possible that many partners may not know each other yet those partners are still jointly and severally liable for the acts and omissions of each other. Arthur Anderson, a worldwide accountancy firm, did not survive the acts or omissions of its US partners in connection with the Enron scandal.
- 3.5. In recent years there has been concern about the potential for large claims brought against partnerships arising out of professional negligence (although negligence is not the only potential risk). An example is litigation against auditors arising out of corporate insolvency. Accounting firms that provide audit services are often sued by the liquidators of failed companies, on behalf of the creditors and shareholders. Claims arising out of an audit will undoubtedly affect other parts of the accountancy practice; parts which have no involvement in the auditing division. The tax division may have no knowledge or control over the particular audit that is the subject of the litigation, yet those partners remain personally liable if the audit division is negligent in conducting the audit. This uncertainty and the difficulties in risk management has led to the result that professional indemnity insurance has generally become more expensive, and in some cases prohibitively so. Furthermore, some accountancy practices establish separate companies to handle those advisory functions that may properly be separated from core accountancy functions.
- 3.6. The cost of professional indemnity insurance is considerable, and is inevitably passed on to the consumers in the form of higher prices.

#### **4. The difference between an LLP and a Limited Partnership ("LP")**

- 4.1. An LLP is distinctly different from an LP and it is not expected that LLPs will replace them. The UK has had LP legislation in place since 1907. Since the introduction of LLPs in 2000, there does not appear to have been any significant reduction in the number of UK LPs. Data from Companies House shows that the number of LPs registered in the United Kingdom increased by an average of 1000 per year since 2002.
- 4.2. In an LP, the general partners are responsible for the day to day management and operation of the partnership, and remain jointly and severally liable for all of its liabilities. The limited partners enjoy limited liability, provided that they play no part in the management of the LP. The limited partners are thus 'passive' investors. This structure is particularly suited to collective investment funds where investors can invest as limited partners and enjoy a degree of limited liability, while the fund's manager acts as general partner and makes the various investment decisions and remains liable for those decisions.
- 4.3. In an LLP all the partners are entitled to participate in the management of the LLP. Each partner remains personally liable for his own actions. LLPs are

more likely to be used for professional activities rather than as investment vehicles. The LLP does not provide the same level of protection to an investor as the LP. Accordingly the Department does not consider that the introduction of LLPs will have any significant effect on the number of LPs in Guernsey.

## 5. Features of an LLP

5.1. The Guernsey LLP will have the following key features:

- Members of the LLP will not have liability for the negligent acts of other members unless they were party or privy to them although they will remain liable for their own negligence (for further discussion of this point see paragraphs 5.3 and 5.4),
- Unless the members of the partnership elect for the LLP to have a limited life, then the LLP will exist in perpetuity with changes to its members not affecting its legal existence,
- The LLP will be able to elect to have separate legal personality if the members so choose. That choice can be made at formation or alternatively the LLP may elect to adopt separate legal personality at any time, subject to appropriate protection for creditors following such an election,
- Formation of an LLP will be straightforward and will be conducted through the Company Registry,
- An LLP will need to have a registered office in Guernsey at which it must keep its constituting documents, annual validations, accounting and financial records etc,
- An LLP will have internal flexibility with the members being free to agree on how the LLP is to be managed e.g. the members will be able to appoint a secretary to the LLP who can conduct filings with the Registry and otherwise provide administration services to the LLP,
- There will be no restriction on the content of the LLP agreement, however it will need to be written and filed with the Registrar,
- Following incorporation the ongoing reporting requirements will be relatively low. There will be no obligation for an LLP to produce audited accounts, although the members may choose to have the accounts audited if they so wish. The LLP will be required to keep proper accounts and those accounts will need to comply with generally accepted accounting standards, and a regime similar to that in the *Companies (Guernsey) Law, 2008* will be adopted. In addition the LLP must be under a legal duty to keep the assets of the LLP separate from the assets of its members,

- The LLP will have to file an annual validation and will also have to notify the Registrar of changes to its membership, amendments to its constitutive documents, there will be a filing fee associated with such transactions,
  - An LLP can have an unlimited number of members, and the members can be natural persons or other bodies corporate,
  - All members of an LLP will be agents of the LLP and capable of binding the LLP, subject to any restrictions and conditions included in the publicly available constitutive documents,
  - The LLP Law will make provision for the migration of LLPs to and from Guernsey. (The migration regime can be adopted from the 2008 Company Law regime).
- 5.2. A Guernsey LLP will be able to adopt separate legal personality. Regardless of whether it has separate legal personality, the LLP will exist in perpetuity unless dissolved or wound up. A change in the members, through death, retirement, or resignation will not affect the existence of an LLP.
- 5.3. Members of an LLP will have limited liability for the acts or omissions of other members. A creditor will be able to pursue the assets of the LLP but not the personal assets of each and every member. However, individual members will be personally liable for their own actions. For example where a member of an LLP is negligent then that partner will remain personally liable for that negligence. This would allow a creditor to pursue the personal assets of the negligent partner in the event that the assets of the LLP were insufficient to satisfy any judgement. The personal assets of the innocent members of the LLP would be protected. However, if a partner is party or privy to an act or omission that gives rise to personal liability, he will be co-extensively liable with the defaulting member.
- 5.4. In addition to the limitation of liability of members set out above, the Law should specify the following qualifications on the liability of members of an LLP:
- in the absence of a contrary agreement, members of an LLP should not be personally liable in respect of an LLP's breach of contract,
  - A member of an LLP will not be personally liable for the fraud of an LLP unless that member was a party to the fraud or otherwise knowingly involved in that fraud.
- 5.5. This provides a degree of protection to consumers and should allow professionals to use the LLP structure. Whether any particular profession is permitted to practice through an LLP structure will depend on that profession's own rules and is a decision of the governing body of that particular profession.

## 6. Formation of an LLP

6.1. An LLP will only come into existence once it has been registered by the Company Registrar, following receipt of an appropriate application and the payment of such fee as is prescribed by the Registrar. At a minimum the application must:

- Identify the names and addresses of the original partners (of which there must be at least two),
- Specify the nature of the activities to be conducted by the LLP (which need not be carrying on business with a view to a profit, but must be a lawful activity),
- Provide a name for the LLP. (The provisions on names for LLPs should mirror those contained in the *Companies (Guernsey) Law, 2008*),
- Provide a written copy of the partnership agreement. The LLP will be required to have a written partnership agreement at all times,
- Identify the LLPs registered office which must be situated in Guernsey.

6.2. To ensure that the administrative costs of an LLP are kept to a minimum only a small number of matters will need to be filed with the Registrar on an ongoing basis, (all of which shall be available for inspection on the Register of LLPs):

- Any change to the identity of the members or the LLP,
- The members of an LLP will need to provide an address for service, changes of which must be notified to the Registrar,
- The members of an LLP will need to provide a residential address to the Registrar, however much as is the case of directors under the *Companies (Guernsey) Law, 2008* such information will not be publicly available,
- The LLP will need to notify the Registrar of any changes to its partnership agreement, such changes should only be permitted by a resolution of 75% of the members (or such other percentage as set out in the partnership agreement),
- The LLP will need to file an annual validation with the Registry each year.

6.3. An application to form an LLP will be made to the Company Registrar. Only corporate service providers will be able to form LLPs (using the online service currently offered by the Registry.)

- 6.4. The Registrar will be given the power to levy fees for incorporating or registering LLPs. He will also be entitled to charge on-going fees for carrying out any of his functions under the Law. The Registrar shall prescribe the fees by regulation after consulting with the Commerce and Employment Department. The level of fees should be set to produce revenue for the Registry and ultimately the States.
- 6.5. The Department and the Company Registrar intend to conduct public consultation on the level of fees prior to the Law coming into force.
- 6.6. The Law should enable to creation of an electronic registry for LLPs. This may require some further development of the IT system in the Company Registry and the Registrar shall liaise with the Commerce and Employment Department regarding the on-going development costs.

## **7. Ongoing feature of the Guernsey LLP**

- 7.1. The Law will also set out the requirements for a valid LLP agreement and contain a number of minimum provisions concerning the internal management of the LLP. The minimum requirements would set out the following:
- That a member of an LLP may resign in writing at any time,
  - That once resigned the member may realise his capital at that time,
  - That all members have the right to share in the management of the LLP,
  - That on the death or insolvency of a member of an LLP their capital is realised and vested in whomsoever is administering that member's estate.
- 7.2. Those provisions will operate where the LLP agreement does not provide for certain matters. The members of the LLP could choose to implement alternative arrangements in their written agreement.
- 7.3. The Law should give the Commerce and Employment Department the discretion to prescribe a standard partnership agreement in due course. This power should only be exercised if there is sufficient industry demand. Unlike the position under the *Companies (Guernsey) Law, 2008* the Department will need to examine the uses to which LLPs are being put before being able to determine whether or not it is appropriate or practicable to prescribe a standard LLP agreement.
- 7.4. On incorporation the members of an LLP will be those individuals whose names are on the incorporation document. Thereafter the LLP agreement may prescribe how another person may become a member of the LLP.
- 7.5. The partnership agreement may make such provision for management and administration of the LLP as agreed between the members. In the event of a

dispute between the members, the Royal Court shall have jurisdiction to interpret and enforce the LLP agreement as if it were a contract between each of the members and between the members and the LLP.

- 7.6 All LLPs will be required to identify to the public that they are an LLP by including the term “Limited Liability Partnership” or “LLP” on all correspondence and at the registered office of the LLP.

## **8. Other Aspects of the LLP Law**

- 8.1. LLPs should be able to indemnify its members out of the assets of the LLP. The indemnity may be included in the LLP agreement. LLPs shall be permitted to purchase insurance for its members.
- 8.2. The Law should also ensure that there is a clear distinction between the members of the LLP and those employed by the LLP. The Law must be clear that employees of the LLP are not to be considered members. The members of an LLP will only be those members registered with the Registry.
- 8.3. The Law should provide a mechanism for disqualifying individuals from being members of an LLP. The disqualification provision should be similar to those which apply to directors under the *Companies (Guernsey) Law, 2008*.

## **9. Transfer of Partnerships into LLP’s**

- 9.1. Existing conventional Guernsey partnerships would be able become an LLP if they so chose, subject to any restrictions imposed by professional bodies. It would be necessary to apply to the Registrar in the same manner as set out above. Where the application was made by a professional partnership, such as lawyers, accountants, or medical practitioners, the application would need to be accompanied by evidence that the appropriate professional body responsible for admitting members to that profession had consented to members of that profession practising through an LLP. That consent could be granted on a general or specific basis and be subject to conditions if the appropriate professional body saw fit.
- 9.2. Prior to making an application it would be necessary for the partnership to give public notice of the partnership’s intention to convert to an LLP and give any interested person an opportunity to make representations to the Registrar on the application. The Law will specify how such notices are to be given.
- 9.3. The Law will require transitional arrangements for those ordinary partnerships that decide to become LLPs. A converted LLP will not provide retrospective limited liability. For all creditors of the partnership where the liability was incurred prior to incorporation of the LLP, the partners will remain jointly and severally liable. This will prevent LLPs from being formed to defraud creditors.

- 9.4. The Law should also allow for a company to convert to an LLP and vice versa provided that creditor's rights are not affected. Again the model used in the *Companies (Guernsey) Law, 2008* can be adapted.

## **10. Insolvency and Winding Up**

- 10.1. In the UK insolvency of an LLP is governed by the general insolvency law with a range of modifications through regulations issued by the government. This system is complicated and inappropriate for Guernsey. The Law should instead have a stand alone insolvency regime for LLPs similar to that in the *Companies (Guernsey) Law, 2008*.

## **11. Consultation**

- 11.1. The Department released a public consultation document in 2008 to which it has had numerous responses, uniformly supportive of the introduction of LLPs. Many of the suggestions made by industry have been incorporated into this Report. The Guernsey Bar and the Guernsey Society of Chartered and Certified Accountants have also been consulted.
- 11.2. The Law Officers have been consulted and raise no objections to the introduction of an LLP Law along the proposed lines.

## **12. Legislation**

- 12.1. A Projet de Loi will be required to introduce LLPs into Guernsey.

## **13. Recommendation**

- 13.1. The Department recommends the States resolve:
- (a) to approve the introduction of LLPs in Guernsey as outlined in this Report; and
  - (b) to direct the preparation of such legislation as may be necessary to give effect to the foregoing.

Yours faithfully

C S McNulty Bauer  
Minister

**(NB The Policy Council has no comment on the proposals.)**

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

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 11<sup>th</sup> March, 2009, of the Commerce and Employment Department, they are of the opinion:-

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

## INHERITANCE LAW REVIEW COMMITTEE

### SECOND REPORT – TESTAMENTARY FREEDOM

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

18<sup>th</sup> February 2009

Dear Sir

#### **Executive Summary**

1. In this Report the Inheritance Law Review Committee (“the Committee”) proposes consideration of the replacement of the current system of forced heirship in Guernsey by full testamentary freedom accompanied by family provision.
2. Testamentary freedom would enable an individual to leave, by will, both immovable (real) and moveable (personal) property to whoever he/she chooses.
3. This freedom would be accompanied by family provision which would enable an individual to apply to the Royal Court for provision to be made for him/her out of property where he/she contends that the testator has made inadequate provision for him/her.
4. The Report also recommends amendment and clarification of the arrangements which would apply in the case of an intestacy and the rationalisation of rules of inheritance to real property in so far as they are affected by the distinction between “propres” and “acquêts”.
5. The Committee acknowledges that such a fundamental change in Guernsey inheritance law will involve complex issues and should not be rushed. The Committee has therefore agreed that its recommendations should be debated under Rule 12(4) of the Rules of Procedure so that they are considered by the States without amendment. The Committee will report back to the States with detailed proposals having taken account of the views of Members of the States expressed during the debate. The Committee would also be pleased to receive further comments on the proposals from Islanders following publication of this Report.

## REPORT

### Background

#### *The Committee's Mandate*

6. The Committee was set up on 30 April 2003 (Billet d'État No VI of 2003 at p. 823) and its mandate is as follows:-

*“To review all aspects of the Island's laws of inheritance which review shall include, but not be restricted to:*

- (i) illegitimacy and intestate inheritance;*
- (ii) unascertained heirs to real property;*
- (iii) the distinction between "propres" and "acquêts et conquêts" in collateral inheritance on intestacy;*
- (iv) retrait lignager; and*
- (v) the use of trusts, whether testamentary or inter vivos, for the purpose of estate protection and planning, and, in particular, whether the discrimination against Guernsey rules of forced heirship in Section 11A of the Trusts (Guernsey) Law, 1989, as amended, should be retained<sup>1</sup>;*

*and to report back to the States with such proposals to reform the said laws of inheritance and on any ancillary matter which may arise in the course of the review.”*

#### *The Committee's First Report*

7. The Committee's First Report (Billet d'État No. II of 2005 at p. 167), which resulted in the enactment of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 which came into effect on 7 May 2008, dealt with:-

- 1. the removal of discrimination in inheritance against illegitimate children;
- 2. the introduction of a scheme for administration of real property, the purpose of which is to enable good title to be given in the event of uncertainty as to the ownership of real property after the death of its owner;

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<sup>1</sup> Item (v) of the Committee's mandate was added by Resolution of the States dated 27<sup>th</sup> September, 2006

3. some reforms of the law relating to the formalities for making wills;
4. an amendment to the law of prescription in relation to real property; and
5. the abolition of the right of *retrait lignager*.

### ***Future Workload***

8. Following the States' approval of the Committee's proposals, as set out in the previous paragraph, the Committee turned to consider more general issues of inheritance law reform, and in particular whether, and if so to what extent or in what respects, Guernsey's rules of forced heirship should be retained.

### ***Historical Background***

9. In relation to both personal property and real property, there is already complete freedom of testamentary disposition if the testator is not married and has no descendants. However, if the testator has descendants and/or is married, he/she is restricted in his/her powers of testamentary disposition in relation to both real and personal property, albeit in different ways. The possibility of removing these restrictions and allowing all testators complete freedom of testamentary disposition was considered at some length by the States on various occasions during the first half of the twentieth century.
10. The position in relation to personal property (set out in paragraphs 16-20) is principally governed by the "Loi relative à la Portion Disponible des Biens Meubles des Pères et Mères" of 1930, as amended by the Law of Inheritance (Guernsey) Law, 1979, which imposes strict restrictions on the disposition of personal property by will, by a person domiciled in Guernsey, in order to ensure that a substantial proportion of the estate stays within the family, i.e. is available only for children and other descendants and/or the surviving spouse.
11. In relation to the disposition of real property situate in Guernsey, prior to 1954, the "droit de préciput" (or "eldership") enabled the eldest son to choose his portion of his parent's real property (in practice, often the family home) before the rest of the estate was divided between the other heirs. A surviving spouse would be entitled to a "douaire" (widow) or "franc veuvage" (widower) which amounted to limited rights of enjoyment of the real property rather than actual ownership.
12. Between 1926 and 1950 the States debated the law of succession on a number of occasions as the result of proposals from the Bishop Committee, the Roussel Committee and the Martel Committee. These debates finally resulted in the enactment of the Law of Inheritance, 1954 which principally amended the law relating to the testamentary disposition of real property in Guernsey (see paragraphs 21 and 22).

13. The final report of the Martel Committee (5 May 1950: Billet d'État No. XIX of 1950 at p. 653) advised that the Committee had given a great deal of consideration to the introduction of full testamentary powers (i.e. freedom of disposition) over real property and personal property but were very much divided. The Report contained both a majority report, which recommended the introduction of testamentary freedom, and three minority reports, which put forward varying alternative proposals. Copies of the majority and minority reports are attached as Appendix A.

14. The majority report commented

*“The idea of doing away with all restrictions on testamentary powers may come as something of a surprise to many Guernsey people who have been reared in the traditions of “franc veuvage”, “dower” and “légitime”. But analysing the objections to it rather closely they all seem to depend in the last resort on whether the testator will use his new powers responsibly or not. We have no reason to suggest that the average Guernseyman would use such powers irresponsibly. All the evidence available as to how the average Guernseyman arranges his affairs shows that he is most concerned to make the best possible provision for his widow and children. In the rare cases where he (or she) wishes to exclude some member of the near family, there is usually ample justification for such action.*

*We consider that full testamentary freedom is the ultimate end towards which public opinion has been tending for many years...”*

15. Clearly in 1950 there was no consensus on the introduction of testamentary freedom and the States instead introduced less fundamental change as enacted in the Law of Inheritance, 1954, which nevertheless represented a significant change in the forced heirship regime in relation to real property.

### ***Present rules***

#### **Personal property**

16. The present position in relation to testamentary disposition of personal property by a person domiciled in Guernsey is as follows.
17. Even if such a person domiciled in Guernsey wishes to leave all his/her personal property outside the family he/she is subject to the following restrictions. If he/she dies:
- (1) leaving both a spouse and children, the spouse is entitled to take one third of the personal property and the children are entitled to take one-third between them, the remaining one-third only being freely disposable by will according to the wishes of the testator;

- (2) leaving either a spouse or children (but not both classes) then such spouse, or the children (between them), are entitled to take one-half of the personal property, the remaining one half being freely disposable;
  - (3) leaving neither a spouse nor descendants, he/she can dispose of his entire personal property by will as he/she wishes.
18. The automatic entitlements of the spouse and children from a deceased's personal property are known respectively as their "droit du conjoint" and "légitime", but for the purposes of this Report, the expression "légitime" will cover both.
  19. A spouse's "légitime" may be varied by a marriage settlement made before or after marriage. A spouse can renounce to his/her right to entitlement in the whole or part of the personal property before or during the marriage, in which case the part of his or her entitlement renounced will become part of the disposable portion of the personal property of the deceased.
  20. Under the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 all references to "children" include both legitimate and illegitimate children.

#### Real property

21. The rules governing testamentary disposition in relation to real property situate in Guernsey are contained in the Law of Inheritance, 1954, as amended by the Law of Inheritance (Guernsey) Law, 1979.
22. The 1954 Law abolished the eldest son's préciput and provided that if a person leaves (one or more) descendants then he/she has to leave his/her real property situate in Guernsey to one or more of the persons falling into certain categories, which categories, as expanded by the Law of Inheritance (Guernsey) Law, 1979, include his or her spouse, children (including illegitimate and stepchildren) and descendants of those children. It also provided that, whatever the terms of any will, a surviving spouse is entitled to a life interest until remarriage in one-half of the deceased's real property (replacing the former rights of "douaire" and "franc veuvage"). These provisions still apply today. Thus, although a person owning real property who has descendants can choose to leave it to one only, or some only, of the persons included in the categories set out above, he/she cannot leave it, or any part of it, to any person outside those categories.

#### ***Consultation Document on Testamentary Freedom***

23. In May 2007 the Committee published a consultation document (which is attached as Appendix B) seeking the views of the public of Guernsey on

- whether it would be desirable, having regard to changes in society
  - to introduce testamentary freedom which would enable persons to leave both immovable (real) and moveable (personal) property to whoever they chose
  - in the event that testamentary freedom is introduced, to give the Royal Court jurisdiction to provide protection to the dependants of deceased persons (family provision)

or

- whether the current provisions which require a portion of a deceased person's estate ("*légitime*") to be left, whether by will or intestacy, according to inheritance law should be retained.

24. Overall, the level of response to the consultation document was disappointing. The responses are summarised in the following table

	In favour of testamentary freedom/family provision	In favour of retaining current arrangements	No view on testamentary freedom	Total
States Members	5	2	1	8
Douzaines	1	2	3	6
Bar Council	-	-	1	1
Advocates	-	6	-	6
General Public	20	3	4	27
Total	26	13	9	48

25. The responses from the six Guernsey Advocates raised a number of detailed issues regarding the operation of the current provisions.

### **Deliberations of Committee**

26. Following the reconstitution of the Committee in May 2008, Members have given further consideration to the possible introduction of testamentary freedom. Whilst bearing in mind the majority response to the consultation in favour of complete testamentary freedom, the Committee has also considered the possibility of adopting an evolutionary approach to reform in this area. It is clear that, in the event that testamentary freedom is rejected as the way forward, some reform would be required, at the very least in order to address the difficulties and anomalies which exist under the present system. The Committee has concluded, and recommends in this Report, that testamentary freedom should be introduced, and consequently it has not, for the purposes of this Report, examined in depth all the possibilities for an alternative approach. The

Committee's preliminary investigations indicate, however, that an alternative approach would necessitate consideration of a number of complex issues, some of which are mentioned in the following paragraphs. The Committee anticipates that other issues would arise should an evolutionary approach be adopted.

27. One anomaly which, the Committee considers, must be addressed is the difference between the successoral régime in respect of inheritance to personal property and that in respect of inheritance to real property. Under the present rules, a person with descendants (including illegitimate descendants) actually has greater freedom of choice when arranging for the disposition of his/her real property upon his/her death than he/she does in relation to his/her personal property. In relation to real property, he/she can choose his/her beneficiary/beneficiaries from amongst certain classes of relative (see paragraph 22) whereas, in relation to his/her personal property, he/she has no choice in respect of two thirds (if there is a surviving spouse) or one half (if he/she is not married) of that property. This discrepancy should, in the opinion of the Committee, be removed if total testamentary freedom is not introduced and it would be necessary to consider further the detail of how this should be resolved.
28. A further issue which the Committee would need to consider if freedom of testamentary disposition is not introduced is the status and rights for inheritance purposes of a surviving unmarried partner/cohabitee. Under the present régime, a surviving unmarried partner cannot be the beneficiary of a will of real property owned solely by his/her deceased partner if that partner has descendants. Furthermore, he/she is not entitled to any interest in the légitime of the personal property to which a spouse would be entitled and so his/her maximum entitlement, even if the deceased partner makes a will in his/her favour, is one half of the personal estate. Arrangements can usually be made to transfer property prior to death but this can lead to complex, sometimes unsatisfactory, vesting provisions. The Committee considers that in the modern age this position is unacceptable, affects a significant number of people, and must be resolved. If total testamentary freedom, which would enable a testator to choose to benefit his/her surviving unmarried partner if he/she so wished, is not introduced, then careful consideration will have to be given to rectifying this inequality in other ways.
29. The third area of law which requires further consideration if testamentary freedom is not introduced is that of testamentary trusts (that is, trusts created by will). Once again, there are two distinct régimes.
30. In relation to real property, a testator who has descendants is not permitted to place that property in trust, even if the beneficiaries of such a trust are among the persons included in the classes which the testator is permitted to benefit absolutely (i.e. as set out in paragraph 22).
31. With regard to personal property, the Loi Supplémentaire à la Loi des Successions of 1889 enables a testator to create a testamentary trust of the

légitime to which any of his/her descendants is entitled; however, such a trust may not be expressed to endure for a period longer than the lifetime of that descendant (so that, when he/she dies, if the trust is still in existence, the trust property will be distributed among his/her heirs according to his/her will or the rules of intestacy). There are no restrictions upon the placing of the freely disposable portion in trust.

32. If an evolutionary approach to reforming the laws of inheritance is preferred to complete freedom of testamentary disposition, it would be desirable to consider the liberalisation of the present restrictions relating to testamentary trusts and, in particular, the removal of the inconsistencies between the rules relating to real property and those relating to personal property, and the possible extension of the permitted use of testamentary trusts generally. This would give rise to many complex issues which would need very careful consideration.
33. A fourth area for consideration in contemplation of an evolutionary approach to successoral reform, rather than total freedom of testamentary disposition, might be to permit the transfer into inter vivos trusts (that is, trusts created during the lifetime of the testator) of real property or personal property on terms that would override the rules of forced heirship. Although this would only be of use for persons whose means warranted the expense involved in setting up a trust, it is a matter which is worthy of further consideration if some form of forced heirship is retained.
34. The foregoing paragraphs give an indication of some areas which the Committee has noted as requiring further consideration should the proposal to introduce testamentary freedom be rejected. The following paragraphs deal with the consequences noted by the Committee as likely to arise as a result of the liberalisation of the successoral regime and the introduction of freedom of testamentary disposition.
35. The most obvious consequence of the introduction of freedom of testators to dispose of their property, both real and personal, to any person or persons, without any stipulations as to the classes of person/s whom the testator may name in his/her will, is that persons who might, in the past, have legitimately expected to be given financial support (such as a spouse and children of the deceased) may not be supported at all, or not to the extent to which they might have expected. The testator might be justified in his actions in refraining from providing for his/her relatives (for example, he/she might have given them adequate support during his/her lifetime) or his/her actions might be the result of a whim. In either case, he/she would be entitled to frame his/her will in whatever terms he/she wished, and any person with a genuine and justifiable grievance would have to resort to an application for family provision (see paragraph 47) if he/she wished to pursue a claim for a share of the estate.
36. If the principle of testamentary freedom is introduced into Guernsey law, consideration will have to be given as to how to deal with wills which have

already been drawn up, by persons still living at the date of commencement of the new provisions, and in terms which reflect the intentions of the testator in the light of the law at that time i.e. when forced heirship was applicable. The Committee would propose, to avoid (as far as possible) the necessity for the redrafting of wills, that the legislation should contain a “grandfathering” clause, effectively retaining forced heirship in situations where a will was made prior to the coming into force of the legislation introducing freedom of testamentary disposition. Although it would be open to a person who had made a will before the abolition of forced heirship to make a new will taking into consideration the effect of the new freedom of testamentary disposition, he or she would not need to do so if the effect of the existing will was still to his or her satisfaction; and if a person was for some reason unable to make a new will, for example due to incapacity, the effect of the existing will would remain as the testator had originally intended it.

37. Consideration will also have to be given to the effect on existing marriage contracts and other contractual arrangements which might have been made in contemplation of the existence of the forced heirship regime. Although “grandfathering” could ameliorate the effects of this change on such contractual arrangements, it might also be desirable in such cases for advice to be taken, and new contracts drawn up (where possible) taking into account the new provisions. The Committee would have to consider this aspect more fully if the principle of freedom of testamentary disposition is accepted.

### ***Joint Accounts***

38. One further aspect of inheritance to real property and personal property needs to be mentioned for the purposes of this Report.
39. By the Husband and Wife (Joint Accounts) (Guernsey) Law, 1966, any monies standing to the credit of an account in the joint names of a husband and wife are presumed to belong beneficially to the survivor, unless the contrary be proved. Besides money in joint bank accounts, the practice has been for executors to treat matrimonial assets acquired out of joint monies as belonging presumptively to the survivor, and in any case in which doubt might exist, husbands and wives making wills may make an appropriate declaration to the effect that all or specified assets – such as “all articles and effects of domestic or personal use or ornament” - are owned jointly on terms that the survivor takes absolutely. The position is by no means so straightforward for inheritance purposes in respect of a joint bank account or joint assets where the parties are unmarried, but as a matter of banking law, and pursuant to the contract made between joint customers and the bank, the bank will treat the money as belonging to the survivor. Other types of personal property, in any case in which doubt might arise, may be dealt with by appropriate declaration. Real property which is jointly owned will always devolve by reference to the basis upon which it was originally acquired.

40. Whilst the Committee cannot point to any serious legal or practical difficulties that have arisen with regard to jointly owned property, it is of the view that the time is right, whether or not the principle of full testamentary freedom is introduced, to review the issue of jointly purchased or jointly owned personal property, not just in respect of husbands and wives but also in respect of cohabiting unmarried persons.

### ***Conclusion***

41. Having considered the arguments for and against the introduction of testamentary freedom, the Committee has decided to recommend the States to agree to its introduction in principle. It is of the view that the introduction of testamentary freedom is appropriate in today's society, and also that it is more practicable and desirable, and considerably less complex in its ramifications, than an attempt to reform the law in this area in a piecemeal fashion.
42. The forced heirship régime was designed to meet the requirements of a very different time. The Committee considers that it needs to be reformed to meet changing social circumstances, where individuals are more likely to marry more than once or to cohabit. The Committee also considers that it is reasonable to allow individuals to deal as freely with their property after death as they would be able to do during their lifetimes. The Committee has formed the view that although there will be short-term implications which may involve persons rearranging their affairs in order to take account of the new régime, this should not prevent the change being made if it is for the long term benefit of the population as a whole.
43. The Committee has noted that testamentary freedom was considered by the States more than half a century ago and, although considered a step too far at that time, the view of a number of eminent citizens was that it was "*the ultimate end towards which public opinion has been tending for many years*".
44. Although forced heirship is part of Guernsey's cultural tradition, it appears to the Committee that it is increasingly the case that individuals intuitively expect to be able to leave their property to whoever they chose.
45. That is not to suggest that testators, in the vast majority of cases, will do other than leave their property to those closest to them (although this may well include individuals who are not provided for under the forced heirship regime). In the words of the 1950 majority report "*All the evidence available as to how the average Guernseyman arranges his affairs shows that he is most concerned to make the best possible provision for his widow and children. In the rare cases where he (or she) wishes to exclude some member of the near family, there is usually ample justification for such action.*"
46. Nevertheless the Committee believes it essential that testamentary freedom be accompanied by family provision which would enable the Royal Court to protect

the interests of dependants who had not been provided for, or who had been inadequately provided for, by will or, in the absence of a will, where the rules of intestacy operate unfairly.

47. It is proposed that legislation similar to the Inheritance (Provision for Family and Dependents) Act, 1975, which applies in England and Wales, be enacted. Briefly, this legislation enables a person falling into one of the categories set out in that Act (a spouse or a former spouse who has not remarried, a civil partner, a person who had lived with the deceased for two years as his spouse or civil partner, a child of the deceased, or any other person who was being maintained wholly or partly by the deceased prior to his death) to apply to the Court for an order for a lump sum payment, periodical payments, transfer of property or variation of a marriage settlement. An award will be made if the Court considers that reasonable financial provision has not been made for the applicant by will or on intestacy *and* the Court considers it appropriate to make an order in the circumstances of the case. Different considerations such as the age of the applicant, the length of the marriage, the manner in which a child is being educated, would all have to be taken into account. The Court will also take into account, when deciding whether reasonable provision was made and, if not, whether to exercise its discretion to make an order, such matters as the financial resources of the applicant and of any existing beneficiary of the estate, the size of the estate and any other matters including the conduct of any person before or after the death and, if relevant, the deceased's reasons for not making provision. The English courts discourage the making of applications without good reason by awarding costs against unsuccessful claimants.

***Other matters***

48. Should the Committee's proposals be accepted by the States, the Committee would propose, in addition to its detailed proposals for the introduction of testamentary freedom and family provision, to bring further proposals for the following matters within its mandate, namely –
- (a) the restatement, with revision where appropriate, of the rules of intestate succession to real and personal property in order to amend the rules where necessary in the interests of consistency and fairness (for example, to update the entitlement of a surviving spouse and abolish the distinctions which presently apply between entitlement to personal property and entitlement to real property on intestacy) and otherwise to clarify the rules and present them in a simplified form and in English; and
  - (b) the rationalisation of the rules of inheritance which provide that different rules apply where the property which is the subject of an intestate inheritance is a *propre* (real property inherited by a person) and where it is an *acquêt* (real property purchased by a person), a distinction which is nowadays arbitrary and inappropriate.

**Recommendation**

49. The Committee sets out its recommendation for debate in accordance with Rule 12 (4) of the Rules of Procedure. The Committee will report back to the States with detailed proposals having taken account of the views of Members of the States expressed during the debate.
50. The Committee recommends the States to approve the replacement of the current system of forced heirship in Guernsey by full testamentary freedom accompanied by family provision and otherwise as set out in this Report.

Yours faithfully

Mary Lowe  
Chairman

**Extract from Billet d'État XIX of 1950**

MAJORITY REPORT ON FULL TESTAMENTARY POWERS  
OVER REALITY AND PERSONALTY

In view of the feelings expressed in the States on the 22<sup>nd</sup> February, 1949, it was evident that there was a desire that illegitimate children should be provided for. We fully agree with those feelings although we, in common with the other members of this Committee, do not think such children be entitled to share as of right in an intestate estate.

As stated in the main report, this difficulty could be overcome by including illegitimate children amongst the class of persons to whom a parent can bequeath his realty. When we considered this point, however, we could not overlook the position of step-children.

Under Resolution J. 1. a parent can bequeath his realty within the family circle but take the case of a man who bequeaths his property to his second wife. If they have children and she survives then she cannot bequeath any realty to the children of the first marriage as under this Resolution she can only bequeath to her own children.

Take also the case of adopted children. Under the above Resolution they could not benefit by Will although they might have been brought up as members of the family.

In preparing our first report we concentrated on the needs of the immediate dependants; spouse and issue, of the testator, and those were the needs which were emphasised to the States. However there must inevitably arise many cases in which Resolution J. I. will not be wide enough to meet the natural desires of the testator, apart from the cases to which we have now drawn particular attention.

In our previous report and the foregoing sections of this report we have mainly gone over the ground covered by the 1939 Committee – indeed our mandate did not strictly authorise us to do more. We have concentrated on the removal of the injustices and more obvious anomalies of our present Law of Succession. But before the new legislation is passed we suggest that the States should consider whether the time has not come to grant a parent un-restricted power to dispose of the whole of his or her real and personal property by Will.

So far as we have recommended, the powers of the testator over his real estate would in all cases be subject to the statutory rights of enjoyment of the spouse. On his personal estate the testator would only be able to dispose of the “portion disponible” – one third if there is a spouse and children, or one-half if there is a spouse and no children or children and no spouse.

Such restrictions would be necessary or advisable, if there was good reason to mistrust the average testator and doubt his sense of responsibility towards his immediate family. But if the testator can be expected to exercise his testamentary freedom with discretion

such restrictions are quite unnecessary and may be inadvisable in many cases.

Such restrictions can have very undesirable and undesired consequences. They enable, in some cases, a guilty or otherwise undeserving spouse to claim a share in the estate of the deceased to which he or she has forfeited all moral claim. They cause delay and extra expenses in cases where the whereabouts of an absent spouse or child are unknown.

To grant unrestricted testamentary powers over both real and personal estates would enable the testator who so wished to avoid all such undesirable consequences. The States have already accepted the principle of testamentary power over realty in favour of descendants subject to the rights of the surviving spouse. To grant wider powers over personalty might enable a parent to make a much more equitable distribution of his estate as a whole.

The idea of doing away with all restrictions on testamentary powers may come as something of a surprise to many Guernsey people who have been reared in the traditions of “franc veuvage”, “dower” and “légitime”. But analysing the objections to it rather closely they seem all to depend in the last resort on whether the testator will use his new powers responsibly or not. We have no reason to suggest that the average Guernseyman would use such powers irresponsibly. All the evidence available as to how the average Guernseyman arranges his affairs shows that he is most concerned to make the best possible provision for his widow and children. In the rare cases where he (or she) wishes to exclude some member of the near family, there is usually ample justification for such action.

We consider that full testamentary freedom is the ultimate end towards which public opinion has been tending for many years, and that there is no valid reason for not attaining that end by this present legislation. If this is adopted as the line of policy for the new legislation, we recommend that some provision should be made on the lines of the English Inheritance (Family Provision) Act, 1938.

That Act enables the Court to make provision for dependants of the testator (i.e. wife or husband, unmarried daughter, infant son, or son or daughter who is incapable of maintaining himself or herself by reason of mental or physical disability) for whose maintenance reasonable provision has not been made in the Will. If the estate is a small one, the provision may be in the form of a capital sum, otherwise it is by periodical payments of income – up to one-half or two-thirds, depending on circumstances. We have not gone into the details at this stage but we shall do so at once if this policy is approved by the States.

We therefore recommend:-

1. That a person shall have unrestricted power of testamentary disposition even though he be survived by a spouse and/or issue over:-
  - (a) his real estate
  - (b) his personal estate.

2. That the Committee shall submit recommendations for suitable provision to be made by the Court for the spouse or dependant issue who have not been provided for by the testator.
3. That resolution J.1. of the 22<sup>nd</sup> February, 1949, be rescinded.

J. E. L. MARTEL  
P.R. COLLAS  
T. F. PRIAULX

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### MINORITY REPORTS

After much consideration of this complicated matter I have come to the conclusion that the best way would be to grant parents full testamentary powers over their real property subject to the rights of the surviving spouse.

I am against granting full testamentary power over personalty and I recommend that our present law in that respect should not be altered. It protects a surviving spouse and children and in my opinion grants ample scope for a testator to benefit illegitimate children, step children or adopted children.

QUERTIER LE PELLEY

I have devoted much thought to the question of providing for illegitimate children, and, after weighing carefully all the arguments which I have heard, I have come to the conclusion that the Committee's recommendations in the main report were the right ones. In my opinion a parent can make sufficient provision for an illegitimate child or a step child or an adopted child out of his personal estate.

I am strongly against granting full testamentary powers over either realty or personalty as I consider that the rights of a surviving spouse and of descendants must be protected.

I therefore recommend that our present law regarding personalty should remain unaltered. With regard to realty I suggest that the States should adhere to Resolution J.1. of the 22<sup>nd</sup> February, 1949, which was as follows:-

That a person having descendants be granted testamentary power to dispose of his or her realty, subject to the rights of the surviving spouse, in favour of one or more of his or her descendants and/or his or her surviving spouse.

S. J. FALLA

I do not subscribe to the views of my fellow Committee members who urge the States in the above proposals to introduce in this Island unrestricted testamentary powers. The arguments which support the proposal indicate little else than a desire to protect the estate of a presumably innocent spouse against the claims of a presumably guilty spouse.

I feel strongly that the people of this Island have enjoyed for a great many years a very just law which ensures that the surviving spouse and children shall not be disinherited at the whim of a testator. Indeed, the dangers inherent in the principle of unrestricted testamentary power as practised in England provoked the Legislature to provide by the 1938 Act for a measure of relief which, in mathematical terms, is very closely allied to our present Law. Thus the difference between the two systems amounts in effect, to little more than this: that whereas in Guernsey the “legitime”, “dower” or “franc veuvage” fall as of right, in England, for example, the unfortunate widow disinherited by the husband is compelled to go to the Courts, not only at the risk of getting nothing out of the Estate but with the certainty of having the most intimate details of her family life exposed to the public gaze.

It may well be that under our Law, on occasion an unworthy spouse takes a portion of the Estate of the deceased spouse, but I feel that occasions will arise, in far greater number, when a testator, granted unrestricted testamentary power, might well deprive a worthy spouse (and possibly his children too) of a share in his estate and the only remedy offered might well deter some people from making any claim in the courts at all. The deterrent imposed by the fear of publicity of intimate family affairs is, I think, likely to be accentuated in a small community and on in which, I am happy to think, a great many people still cherish and entertain some personal pride.

Jersey, Scottish, French and Scandinavian Laws (to mention a few instances only) still afford adequate protection to a surviving spouse and children by way of “légitime” and rights of survivorship in the estate (both real and personal) of a deceased person.

After having given the whole matter very careful consideration I have come to the conclusion that it would be most unwise to grant unrestricted testamentary powers over personalty and realty to a person who leaves a spouse and/or descendants:

I therefore recommend:-

- (1) That our present law governing testamentary powers over personalty should remain unaltered.
- (2) That a person having descendants be granted testamentary power to dispose of his or her realty, subject to the rights of the surviving spouse, in favour of one or more of his or her descendants (including illegitimate descendants) step children and their issue and/or his or her surviving spouse.

(This is resolution J.1. of the 22<sup>nd</sup> February, 1949, amended to include illegitimate children and step children.)

W. H LANGLOIS

## CONSULTATION ON TESTAMENTARY FREEDOM

### Introduction

The Projet de Loi entitled “The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006”, which was approved by the States in September 2006 and which is awaiting Privy Council approval, will implement the Inheritance Law Review Committee’s initial recommendations and will provide for

- removal of all discrimination against illegitimate children in inheritance to both Guernsey immoveable (real) and moveable (personal) property
- introduction of a scheme of administration of Guernsey immoveable property
- minor reform of formalities for making wills
- minor amendment of the *Loi relative aux Prescriptions, 1909*
- abolition of *retrait lignager*.

In its 15 August 2006 States Report the Inheritance Law Review Committee advised that it would move on to consider more general issues of inheritance law reform on which it proposed to carry out extensive public consultation and the most careful consideration of all the issues involved.

**As a first step the Committee has decided to seek views on the question of testamentary freedom and family provision.**

### Background

A person can inherit from another person either (1) by operation of law or (2) under the will of the deceased. A person may take possession by operation of law because either (1) the deceased left no will (2) the will was invalid or (3) the will exceeded the deceased’s testamentary powers. This last point is particularly important in Guernsey where a person does not have free disposition of his estate (this is in common with many other jurisdictions, including Scotland and France, whereas in England and Wales a person can dispose of all his property by will subject to the Family Provision Acts).

#### *Immoveable Property*

The purpose of a will is either to make a testator’s wishes explicit or to change the devolution of his property which would take place according to law if the deceased had made no will. Guernsey has always been very strict regarding disposition of immoveable property (ie land, houses and buildings) situate in Guernsey on death and

the principle still remains that a person cannot will his immovable property outside the family. The Law of Inheritance, 1954, provides that if a person leaves descendants then he must leave his immovable property to one or more of the persons falling into certain categories, namely his spouse, children (including illegitimate and stepchildren) and their descendants. Further, whatever the terms of the will, a surviving spouse is entitled to a life interest in (at least) one-half of any immovable property held in the sole name of the deceased, the colloquial term “life interest” meaning enjoyment until death or re-marriage. The heirs would thus take their share subject to the life interest of the spouse. The testator may leave a life interest in all his immovable property by will.

Where a deceased has left no will, or the will he has left is invalid, (that is, he dies intestate) the immovable property held in his sole name will pass to the deceased’s children, (now including illegitimate children), if more than one in equal shares between them, with representation if a child has died leaving grandchildren. If there are no children or grandchildren (or remoter descendants), any brothers and sisters will benefit, and, in default of brothers and sisters, nephews and nieces will benefit, and lastly parents and grandparents (subject to certain conditions). On intestacy, a surviving spouse never takes the property, but he or she takes a life interest in (at least) one half, as mentioned above.

It should be noted that the above described provisions only apply to the immovable property held by a person in his or her sole name. Any immovable property held with another person “jointly and for the survivor of them” will become the sole property of the survivor on the death of the first-deceased. However, where the deceased was the joint owner with another person or persons in immovable property in undivided shares, his share will pass to his heirs, and the share or shares of the other owners will pass to their respective heirs.

### *Moveable Property*

As in the case of immovable property, Guernsey law imposes severe restrictions on the disposition of moveable property (ie anything other than immovable property) by will, by a person domiciled in Guernsey, in order to ensure that the greater proportion of the estate stays within the family. Even if such a person domiciled in Guernsey wishes to leave all his estate outside the family he is subject to the following restrictions. If he dies:

- (1) leaving both a spouse and children, the spouse is entitled to take one third of the moveable property and the children are entitled to take one-third between them, the remaining one-third only being freely disposable by will according to the wishes of the testator;
- (2) leaving either a spouse or children (but not both classes) then such spouse or children (between them) are entitled to take one-half of the moveable property, the remaining one half being freely disposable;
- (3) leaving neither a spouse nor descendants, he can dispose of his entire moveable

property by will as he wishes.

The automatic entitlements of the spouse and children in a person's moveable property are known respectively as their "*droit du conjoint*" and "*légitime*", but for the purposes of this Report, the expression "*légitime*" will cover both.

A spouse's "*légitime*" may be varied by a marriage settlement made before or after marriage. A spouse can renounce his or her right to entitlement in whole or in part of the moveable property before or during the marriage, in which case the part of his/her entitlement renounced will become part of the disposable portion of the personal estate of the deceased.

If a person dies intestate as to moveable property and if he leaves:

- (1) a spouse but no children, the spouse will be automatically entitled to one-half of the moveable property and the remaining one-half will pass to his heirs according to law;
- (2) children, but no spouse, the children take the whole of the moveable property (in equal shares between them), and
- (3) both a spouse and children, the spouse will take one-third of the moveable property and the children two-thirds.

When the *Projet de Loi* entitled "The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006" comes into force all references to "children" will include both legitimate and illegitimate children.

### **Testamentary Freedom and Family Provision**

Testamentary freedom would permit a person to leave his property, whether immovable or moveable, by will as he wishes and without any person having any legal entitlement to a share of it by virtue of their relationship with the testator.

Testamentary freedom should not, however, be considered in isolation of the need to support spouses and those who, although not married, have been cohabiting with a person as his or her spouse ie established partners, and/or dependent children of the deceased (family provision).

Testamentary freedom would not directly affect the arrangements which apply in the case of intestacy, although these arrangements could be affected if a scheme for family provision was introduced (see below).

#### *Légitime*

The introduction of testamentary freedom would mean that the customary rules which require a testator to leave a certain portion of his estate to his/her family would be

abolished. By this approach, the underlying principle of Guernsey inheritance law, derived from Norman customary law (which gave greater regard to the notion of *patrimoine*, or ‘family property’, than any other French customary law) would be abandoned.

Historically there were two principal reasons for the *légitime* –

- (i) the need to ensure that a person’s estate was available to meet the needs of the dependants ie spouse and children of the deceased.
- (ii) the Norman view that it is *right* for the estate to pass to the immediate family of the deceased, rather than outside the family.

This was partly based on a traditional/moralistic view of the family and an unwillingness to recognise the rights of any persons outside of the traditional family eg illegitimate children. This view will be eroded significantly when the Projet de Loi entitled “The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006” comes into force.

#### *Changes in Society*

The laws of inheritance need to meet the current requirements of society which they are intended to serve, and should take account of recent and continuing changes in the structures and aspirations (needs and wants) of society, including

- many couples now prefer to cohabit and bring up a family in that state, rather than marry.
- a significant proportion of marriages end in divorce.
- a significant proportion of marriages take place between those who have previously been married to others, and may have existing children from a previous marriage.
- the proposed removal of discrimination in inheritance against illegitimate children.
- relationships are generally ‘looser’ and less permanent than they were formerly.

The existing rules regarding *légitime* may well have been designed for regulating the division of property within the family, but it could be argued that that was based on the traditional view that there was only one family, and that the family consisted of a married couple and their legitimate children. They are not necessarily appropriate for the division of an estate where the testator has/had more than one family (particularly where this arises through remarriage), or where he has never married or has had children outside the marriage.

### *Family Provision*

It is, however, important that the law gives adequate protection for any dependants of a deceased should he choose to exercise his right of testamentary freedom to disinherit such persons. There is both a public and a private interest in making proper provision for persons who have a legitimate (in the moral sense) expectation of benefit, the more so the longer the relationship, and the more that the survivor has brought to and benefited the relationship. The private interest is quite obvious; and in a sense the public interest is no less obvious in that, if there are dependants of the deceased who are not adequately provided for by will or intestacy, then the likelihood is that the States would become obliged to intervene to alleviate any financial hardship being suffered.

There is presently a fundamental distinction between the approach in England and Wales, under which the courts are vested with a discretion to make provision for the family and dependants of the deceased where the provision out of the estate is inadequate or non-existent, and the Guernsey approach under which the law automatically provides for a given share of the estate to devolve upon immediate family members and/or spouses.

The English approach, being less rigid, potentially provides greater fairness for spouses and dependent children, who, if they have been excluded from the estate of the person upon whom they were dependent, can apply to the court for an order that they receive appropriate benefit notwithstanding the wishes of the deceased in his will. Indeed, such a regime enables unmarried partners, and indeed any dependent persons, to be able to claim for protection out of the estate of the deceased. A similar regime has been approved in Jersey.

Against the arguments for change, it is probably the case that many people find that the restrictions imposed upon them by Guernsey's forced heirship regime simplifies the choices which they have to make, and often achieves the result which they require. (This will, in future, also come to benefit illegitimate children.)

It is also probably the case that, in the event that testamentary freedom was introduced, the necessity for family provision would involve the creation of a new jurisdiction in the Royal Court and could, potentially, lead to a great deal of litigation, particularly in cases where a person who would have benefited under the existing rules was disinherited and naturally felt aggrieved. It may be argued that the family provision regime in England and Wales has not led to a great amount of litigation, but forced heirship has not featured as part of English law for a very long time, and there is no cultural expectation of automatic benefit there, whereas in Guernsey such expectation does exist.

### **Consultation**

The Inheritance Law Review Committee, as promised in paragraph 27 of its 15 August 2006 States Report, now invites the public to comment on whether the existing rules of *légitime* should be replaced by testamentary freedom and, if the view is that they should, whether a system of family provision should also be introduced. As part of this consultation, the Committee will consult the Guernsey Bar. The Committee undertakes to report back with the results of this consultation.

**(NB The Policy Council has no comment on the proposal.)**

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

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 18<sup>th</sup> February, 2009, of the Inheritance Law Review Committee, they are of the opinion:-

To approve the replacement of the current system of forced heirship in Guernsey by full testamentary freedom accompanied by family provision and otherwise as set out in that Report.

**(NB The Inheritance Law Review Committee has requested that this matter be debated in accordance with Rule 12 (4) of the Rules of Procedure of the States of Deliberation which provides**

“Where a Department or Committee originating a matter for debate before the States is of the opinion that the proposals it is submitting to the States are ones of general policy, and where it is desirable that the general principles of that policy should be considered, the Department or Committee may request that its propositions be considered by the States without amendment, on the understanding that if the propositions are accepted, the Department or Committee would return with detailed proposals which could be accepted or rejected, together with any amendments...”)

## REQUÊTE

### DEDICATED WHEELCHAIR SERVICE

THE HUMBLE PETITION of the under mentioned Members of the States of Deliberation SHEWETH THAT:

1. In 2003 the States Board of Health identified the need for a dedicated multi-disciplinary wheelchair service integrated with other equipment and rehabilitation services in the community.
2. A report commissioned by HSSD submitted to them around August 2007 contained compelling evidence that wheelchair users could suffer pain and develop long-term health problems, and that considerable costs were being incurred by both the Health and Social Services Department and the Social Security Department due to the absence of a dedicated wheelchair service.
3. Even in the knowledge of the information in the report the introduction of such a service was given a low priority and at a January 2009 board meeting was deferred again.
4. Your Petitioners consider that such a service should meet the needs of all wheelchair users in a timely manner in accordance with standards set for wheelchair users.
5. In the opinion of your Petitioners the identified need for such a service ought to be addressed without delay.

THESE PREMISES CONSIDERED, your Petitioners humbly pray that the States may be pleased to resolve:-

To direct the Health and Social Services Department to implement a dedicated multi-disciplinary wheelchair service to be integrated with other equipment and rehabilitation services in the community.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 27<sup>th</sup> day of February 2009

M P J Hadley  
T J Stephens  
J Kuttelwascher  
R R Matthews

J A B Gollop  
D de G De Lisle  
M W Collins

**(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)**

**HEALTH AND SOCIAL SERVICES DEPARTMENT**

Deputy L S Trott  
 Chief Minister  
 Policy Council  
 Sir Charles Frossard House  
 La Charroterie  
 St Peter Port

16<sup>th</sup> March 2009

Dear Deputy Trott

Requête on a 'Dedicated Wheelchair Service'

Thank you for your letter of 4 March 2009 regarding the above.

The Health and Social Services Department (HSSD) is concerned that requêtes such as this, if successful, result in the States micro-managing departments. We consider that the HSSD, and other departments, should be allowed to determine the relative priority of service developments.

In respect of the wheelchair services, it is correct that the former Board of Health identified development of wheelchair services, along with other developments, as desirable some years ago and that the HSSD commissioned a review of wheelchair services that was undertaken in 2007. It is not correct that the report on this was submitted around August 2007 but the report was received in 2008.

When considering the relative priorities of the various service developments proposed, the HSSD, in August 2008, considered the wheelchair service item to be a medium priority, not a low priority. However, there were insufficient resources in the 2008 budget to introduce all the high priority items, so the medium priority items were not addressed.

The report on the wheelchair service was presented to members of the Board of the HSSD for information in September 2008 but Board members were keen to establish whether there was a business case that would identify savings that could be made in order to fund the service development.

The business case, prepared by the staff involved in the service, was presented to the Board of the HSSD in January 2009 but it did not identify cash releasing savings that would fund the service. Instead, it identified that there would be costs of approximately £120,000 a year.

As the HSSD budget for 2009 does not allow for any new service developments, the only way to fund this service would be by making cuts in other services. Consequently, it was agreed that the relative priority of the wheelchair service compared with existing services and other proposed service developments should be considered by the Board at a meeting that was already being arranged for this purpose and is to take place at the end of this month. A decision will then be made whether the 2009 budget can afford any service developments, in the light of the experience of the first three months of the year, if so, which have priority and, if not, whether any of the proposed service developments are of such a high priority that an existing service should be cut in order to fund them.

Meanwhile, the department has asked its staff to negotiate a pilot arrangement with Southampton Primary Care Trust so that the cost of some of the off-island services can be saved by providing on-island services. Similarly, the staff are discussing with the St John Ambulance and Rescue Service what enhancements can be made in the services of maintenance, storage and administration to establish what could be achieved at a lesser cost that may be more affordable within the HSSD's budget. These measures will, it is hoped, improve the service to wheelchair users but to provide a full dedicated service, as requested in the requête, would need additional staff, for which significant additional funding would be needed.

Yours sincerely

A H Adam  
Minister

## EDUCATION DEPARTMENT

Deputy L S Trott  
 Chief Minister  
 Policy Council  
 Sir Charles Frossard House  
 La Charroterie  
 St Peter Port

16<sup>th</sup> March 2009

Dear Deputy Trott

### **Re: Requête – Dedicated Wheelchair Service**

Thank you for providing the opportunity to provide comment on Deputy Mike Hadley's Requête on the development of a dedicated wheelchair service for Guernsey. The officers of the Department responsible for Special Educational Needs provision are able to make the following comments.

The advantages of such a service would be:-

- It is best practice for a multidisciplinary team to assess and fit a wheelchair. A dedicated wheelchair service would provide this by having a wheelchair expert bring their up-to-date expertise to Guernsey where assessment would be carried out in-situ to include the views of those with local knowledge about the child and the child's situation, e.g. parents, teacher, paediatrician, physiotherapist, occupational therapist.
- A dedicated wheelchair service would enable a store of wheelchairs to be maintained properly so that a potential user could try out a particular chair thus ensuring that it was suitable before the decision to purchase was made and ensuring that money was spent wisely.

### **Difficulties with the current system (relating to children)**

Any difficulties within the current system are likely to penalise children in particular as they are more likely to need regular assessments as they grow and develop in order to ensure that their needs are met. This is very important, obviously, as a child will sit in the chair for nearly all of their waking day.

- In a small island community it is difficult for staff to keep up to date with skills required in this area when it is not the only or even the main focus of their work.

- It is difficult to get wheelchair company reps over when required.
- The current system is inequitable and varies with the age of the child. If a pre-school child requires a wheelchair the parents have to buy it themselves unless they are means tested when it may be funded by SSD or funded by a charity. When a child is of school age, between 5 and 16, the Education Department funds the purchase of a wheelchair on the recommendation of a paediatric occupational therapist. While the wheelchair is primarily for use in school, most children go home with their chairs and have them available out of school hours. Parents may also privately fund a chair for use at home. Post 16, young persons are eligible to have a wheelchair funded in their own right through the SSD.

Typically a wheelchair costs from around £500.00 up to around £3,000.00 depending on whether it is a power chair or self-propelled.

I trust the above comments are of assistance.

Yours sincerely

C A Steere  
Minister

**SOCIAL SECURITY DEPARTMENT**

Deputy L S Trott  
Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

20<sup>th</sup> March 2009

Dear Deputy Trott

**Requête for a dedicated wheelchair service**

Thank you for your letter of 4 March 2009, which attached a copy of the above Requête.

The Social Security Department does not wish to comment on the merits of the Requête, but would like to take the opportunity to describe briefly the system for the provision of wheelchairs for people who cannot afford to pay for the equipment.

The Social Security Department receives documented requests for the funding of wheelchairs, on a case by case basis, from Health and Social Services professional staff. Most of the requests are received from occupational therapists and are in relation to adults. Other requests, in relation to children, are received from physiotherapists working for the Children's Therapy Services at Le Rondin. The requests from either source, being specific to an individual, contain the details of the type of wheelchair and ancillary equipment that is needed and attach a quote from the proposed supplier of that equipment. If the person needing the wheelchair is already receiving supplementary benefit, the Department's staff can issue a purchase order to the supplier without delay. If the individual is not currently receiving benefit, then the Department's officers will organise the making of a claim.

Requests for repair or servicing of wheelchairs that have been paid for by the Department are also received from the health professionals.

In considering whether financial assistance should be given, the Department will have regard to both the income and savings that the applicant may have.

A summary of the numbers and cost of wheelchairs provided under the Supplementary Benefit Law in 2007 and 2008 is attached.

Yours sincerely

M H Dorey  
Minister

**Wheelchairs provided under the Supplementary Benefit Law**

<b>2007</b>	<b>Number</b>	<b>Cost</b>
Manual Wheelchairs	17	£15,839
Powered Wheelchairs	6	£20,670
Scooters	2	£3,700
Repairs, Parts & Hire		<u>£4,304</u>
		£44,513

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**(NB By the April 2009 States debate, it is anticipated that States Members will have had sight of the draft Government Business Plan and Social Policy Plan and will be able to see the potential costs of all the social policy initiatives that departments have put forward for prioritisation. If all these initiatives are to be implemented by 2014 they could cost several million pounds per year in total. In an ideal situation the States of Guernsey would have had the opportunity to debate the priorities before voting on the Requête. The Policy Council feels that States Members should consider the social policy initiatives that Departments would like to bring forward (many of which the majority of the Social Policy Group consider to be of higher priority), rather than the wheelchair service being considered by the States in isolation.)**

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

The States are asked to decide:-

XIII.- Whether, after consideration of the Requête, dated 27<sup>th</sup> February, 2009, signed by Deputy M P J Hadley and six other Members of the States, they are of the opinion:-

To direct the Health and Social Services Department to implement a dedicated multi-disciplinary wheelchair service to be integrated with other equipment and rehabilitation services in the community.

***ORDINANCE LAID BEFORE THE STATES***

**THE ROAD TRAFFIC (COMPULSORY THIRD PARTY INSURANCE)  
(AMENDMENT) (GUERNSEY) ORDINANCE, 2009**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Road Traffic (Compulsory Third Party Insurance) (Amendment) (Guernsey) Ordinance, 2009, made by the Legislation Select Committee on the 16<sup>th</sup> March, 2009, is laid before the States.

***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

**THE COMPANIES (FINANCIAL ASSISTANCE)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Financial Assistance) Regulations, 2008, made by the Commerce and Employment Department on 24<sup>th</sup> June, 2008, are laid before the States.

EXPLANATORY NOTE

These regulations prescribe transactions which do not amount to the giving by a company of financial assistance for the acquisition of its own shares or shares in its holding company within the meaning of the Companies (Guernsey) Law, 2008.

**THE COMPANIES (BENEFICIAL OWNERSHIP)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Beneficial Ownership) Regulations, 2008, made by the Commerce and Employment Department on 24<sup>th</sup> June, 2008, are laid before the States.

EXPLANATORY NOTE

These regulations prescribe classes and descriptions of company which are exempt from certain provisions of Part XXIX of the Companies (Guernsey) Law, 2008 ("beneficial ownership").

**THE COMPANIES (TRANSITIONAL PROVISIONS)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Transitional Provisions) Regulations, 2008, made by the Commerce and Employment Department on 24<sup>th</sup> June, 2008, are laid before the States.

## EXPLANATORY NOTE

These regulations prescribe savings and transitional provisions in connection with the commencement of the Companies (Guernsey) Law, 2008 and for the purposes of effecting the transition to the 2008 Law from the Companies (Guernsey) Law, 1994 and from the Ordinances enacted under the Companies (Enabling Provisions) (Guernsey) Law, 1996, all of which are repealed by the 2008 Law.

**THE COMPANIES (STANDARD ARTICLES OF INCORPORATION)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Standard Articles of Incorporation) Regulations, 2008, made by the Commerce and Employment Department on 22<sup>nd</sup> July, 2008, are laid before the States.

## EXPLANATORY NOTE

These regulations prescribe for the purposes of the Companies (Guernsey) Law, 2008 standard articles of incorporation for a non-cellular company limited by shares with unlimited objects that is not publicly traded.

**THE COMPANIES (TRANSITIONAL PROVISIONS)  
(No.2) REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Transitional Provisions) (No.2) Regulations, 2008, made by the Commerce and Employment Department on 19<sup>th</sup> August, 2008, are laid before the States.

## EXPLANATORY NOTE

These regulations prescribe savings and transitional provisions in connection with the commencement of the Companies (Guernsey) Law, 2008 and for the purposes of effecting the transition to the 2008 Law from the Companies (Guernsey) Law, 1994 and from the Ordinances enacted under the Companies (Enabling Provisions)(Guernsey) Law, 1996, all of which are repealed by the 2008 Law. They are in addition to the savings and transitional provisions made by the Companies (Transitional Provisions) Regulations, 2008.

**THE MILK (RETAIL PRICES) (GUERNSEY) ORDER, 2008**

In pursuance of Section 8(4) of the Milk (Control) (Guernsey) Ordinance 1958 (as amended), the Milk (Retail Prices) (Guernsey) Order, 2008 made by the Commerce and Employment Department on 11<sup>th</sup> November, 2008, is laid before the States.

## EXPLANATORY NOTE

This Order changes the retail price of milk sold in litres and half litres from 7<sup>th</sup> December 2008.

**THE DRIVING TESTS (INCREASE OF FEES) REGULATIONS, 2008**

In pursuance of section 2B (e) of the Motor Taxation and Licensing (Guernsey) Law, 1987, the Driving Tests (Increase of Fees) Regulations, 2008, made by the Environment Department on 30<sup>th</sup> December, 2008, are laid before the States.

## EXPLANATORY NOTE

These regulations set the fees that are chargeable for tests of competence to drive with effect from 1<sup>st</sup> January, 2009, by increasing approximately by RPI the current fees that are set out in Schedule 2 to the Driving Licences (Guernsey) Ordinance, 1995, as amended.

**THE COMPANIES (TRANSITIONAL PROVISIONS)  
(AMENDMENT) REGULATIONS 2009**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Transitional Provisions) (Amendment) Regulations, 2009, made by the Commerce and Employment Department on 10<sup>th</sup> March, 2009, are laid before the States.

## EXPLANATORY NOTE

These regulations amend the Companies (Transitional Provisions) Regulations, 2008 which prescribe savings and transitional provisions in connection with the commencement of the Companies (Guernsey) Law, 2008 by extending the transitional period for the provisions of that Law relating to the memorandum of incorporation, the articles of incorporation, shadow directors, the duties of secretaries, conversion of shares into stock and the powers of the directors to issue shares.

**IN THE STATES OF THE ISLAND OF GUERNSEY  
ON THE 29<sup>th</sup> DAY OF APRIL, 2009**

**The States resolved as follows concerning Billet d'État No XI  
dated 9<sup>th</sup> April 2009**

**PROJET DE LOI**

entitled

**THE INCOME TAX (ZERO 10, ETC) (GUERNSEY)  
(AMENDMENT) LAW, 2009**

I.-

- (1) To approve the Projet de Loi entitled “The Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.
- (2) Considering it expedient in the public interest so to do, to declare, pursuant to section 1 of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992, that the said Projet de Loi shall have effect from the 29<sup>th</sup> April, 2009, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

**PROJET DE LOI**

entitled

**THE CHARITIES AND NON PROFIT ORGANISATIONS (REGISTRATION)  
(GUERNSEY) (AMENDMENT) LAW, 2009**

II.- To approve the Projet de Loi entitled “The Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

## **PROJET DE LOI**

entitled

### **THE CHARITIES AND NON PROFIT ORGANISATIONS (ENABLING PROVISIONS) (GUERNSEY AND ALDERNEY) LAW, 2009**

III.- To approve the Projet de Loi entitled “The Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

### **THE COMPANIES (PANEL ON TAKEOVERS AND MERGERS) ORDINANCE, 2009**

IV.- To approve the draft Ordinance entitled “The Companies (Panel on Takeovers and Mergers) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

### **THE BOATS AND VESSELS (REGISTRATION, SPEED LIMITS AND ABATEMENT OF NOISE) (AMENDMENT) ORDINANCE, 2009**

V.- To approve the draft Ordinance entitled “The Boats and Vessels (Registration, Speed Limits and Abatement of Noise) (Amendment) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

## **PUBLIC SECTOR REMUNERATION COMMITTEE**

### **NEW MEMBER**

VI.- To elect Deputy A. R. Le Lievre as a member of the Public Sector Remuneration Committee to complete the unexpired portion of the term of office of Deputy B L Brehaut, who has resigned as a member of that Committee, namely to serve until May 2012 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

## **POLICY COUNCIL**

### **FISCAL POLICY FRAMEWORK**

VII.- After consideration of the Report dated 23<sup>rd</sup> March, 2009, of the Policy Council:-

To endorse and adopt the Fiscal Policy Framework as described by section 8 of that Report, subject to: -

- (1) the removal from the first bold bullet point of “, **economic conditions permitting**,”; and
- (2) the proviso that the maximum percentage figure of public borrowing shall be set at 15% of Gross Domestic Product.

## **POLICY COUNCIL**

### **STUDENTS ATTENDING COURSES OF HIGHER AND FURTHER EDUCATION OFF-ISLAND AND THE FINANCIAL CONTRIBUTION WHEN PARENTS ARE SEPARATED OR DIVORCED**

VIII.- After consideration of the Report dated 23<sup>rd</sup> March, 2009, of the Policy Council:-

To direct the Education Department to move to a “household basis” for all income assessments for grants from September 2010 for new students commencing courses of further and higher education outside the Bailiwick in or after September 2010 such that the Education Department will consider the income of whichever biological parent it considers appropriate, having regard to all the circumstances of a case, and then apply the “household” income rules accordingly.

## **COMMERCE AND EMPLOYMENT DEPARTMENT**

### **RE-APPOINTMENT OF THE PUBLIC TRUSTEE**

IX.- After consideration of the Report dated 24<sup>th</sup> February, 2009, of the Commerce and Employment Department:-

To re-appoint Mr David Peter Trestain as Public Trustee for a further period of five years commencing 1 June 2009.

## **SOCIAL SECURITY DEPARTMENT**

### **DIGITAL SWITCHOVER – DISCLOSURE OF INFORMATION**

X.- After consideration of the Report dated 27<sup>th</sup> February, 2009, of the Social Security Department:-

1. That legislation be enacted to allow the Social Security Department, the Housing Department, the Health and Social Services Department, the Guernsey Blind Association and any other Guernsey or Alderney government department or committee or body approved by the Home Department to disclose relevant data to the BBC or its agents for use in connection with switchover help functions.

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

## **COMMERCE AND EMPLOYMENT DEPARTMENT**

### **LIMITED LIABILITY PARTNERSHIPS**

XI.- After consideration of the Report dated 11<sup>th</sup> March, 2009, of the Commerce and Employment Department:-

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

## **INHERITANCE LAW REVIEW COMMITTEE**

### **SECOND REPORT – TESTAMENTARY FREEDOM**

XII.- After consideration of the Report dated 18<sup>th</sup> February, 2009, of the Inheritance Law Review Committee:-

To approve the replacement of the current system of forced heirship in Guernsey by full testamentary freedom accompanied by family provision and otherwise as set out in that Report.

## **REQUÊTE**

### **DEDICATED WHEELCHAIR SERVICE**

XIII.- After consideration of the Requête, dated 27<sup>th</sup> February, 2009, signed by Deputy M P J Hadley and six other Members of the States:-

TO NEGATIVE THE PROPOSITION to direct the Health and Social Services Department to implement a dedicated multi-disciplinary wheelchair service to be integrated with other equipment and rehabilitation services in the community.

***ORDINANCE LAID BEFORE THE STATES***

**THE ROAD TRAFFIC (COMPULSORY THIRD PARTY INSURANCE)  
(AMENDMENT) (GUERNSEY) ORDINANCE, 2009**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Road Traffic (Compulsory Third Party Insurance) (Amendment) (Guernsey) Ordinance, 2009, made by the Legislation Select Committee on the 16<sup>th</sup> March, 2009, was laid before the States.

***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

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REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Financial Assistance) Regulations, 2008, made by the Commerce and Employment Department on 24<sup>th</sup> June, 2008, were laid before the States.

**THE COMPANIES (BENEFICIAL OWNERSHIP)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Beneficial Ownership) Regulations, 2008, made by the Commerce and Employment Department on 24<sup>th</sup> June, 2008, were laid before the States.

**THE COMPANIES (TRANSITIONAL PROVISIONS)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Transitional Provisions) Regulations, 2008, made by the Commerce and Employment Department on 24<sup>th</sup> June, 2008, were laid before the States.

**THE COMPANIES (STANDARD ARTICLES OF INCORPORATION)  
REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Standard Articles of Incorporation) Regulations, 2008, made by the Commerce and Employment Department on 22<sup>nd</sup> July, 2008, were laid before the States.

**THE COMPANIES (TRANSITIONAL PROVISIONS)  
(No.2) REGULATIONS 2008**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Transitional Provisions) (No.2) Regulations, 2008, made by the Commerce and Employment Department on 19<sup>th</sup> August, 2008, were laid before the States.

**THE MILK (RETAIL PRICES) (GUERNSEY) ORDER, 2008**

In pursuance of Section 8(4) of the Milk (Control) (Guernsey) Ordinance 1958 (as amended), the Milk (Retail Prices) (Guernsey) Order, 2008 made by the Commerce and Employment Department on 11<sup>th</sup> November, 2008, was laid before the States.

**THE DRIVING TESTS (INCREASE OF FEES) REGULATIONS, 2008**

In pursuance of section 2B (e) of the Motor Taxation and Licensing (Guernsey) Law, 1987, the Driving Tests (Increase of Fees) Regulations, 2008, made by the Environment Department on 30<sup>th</sup> December, 2008, were laid before the States.

**THE COMPANIES (TRANSITIONAL PROVISIONS)  
(AMENDMENT) REGULATIONS 2009**

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, the Companies (Transitional Provisions) (Amendment) Regulations, 2009, made by the Commerce and Employment Department on 10<sup>th</sup> March, 2009, were laid before the States.

**K H TOUGH  
HER MAJESTY'S GREFFIER**