

STATES OF JERSEY



REGULATORY REFORM

**Lodged au Greffe on 20th July 2004
by the Policy and Resources Committee**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to agree that States Committees should carry out a programme of regulatory audits of current and proposed legislation, to be co-ordinated by the Policy and Resources Committee, with a view to reducing the burden of legislation.

POLICY AND RESOURCES COMMITTEE

REPORT

It has been widely acknowledged that Jersey has a considerable amount of regulation, and it could be argued that at least some of this regulation is unnecessary. What constitutes over-regulation can be a wide range of factors, but the following difficulties are frequently encountered in relation to legislation in Jersey –

- An overlap of different regulatory regimes
- Duplication of requirements in different regulatory regimes
- Requirements to keep records that aren't really needed
- Requirements to make returns of information that isn't really needed
- Unnecessarily complex or ambiguous application forms.

Recent discussions involving the Policy and Resources Committee have highlighted the desirability of reducing the burden of legislation. A decrease in regulation would contribute to a reduction in red tape and compliance burdens placed upon the public, and in particular, on businesses. It should also result in a reduction of the administrative burden placed upon States Departments. As an example, private sector businesses may be able to make manpower savings if they are no longer required to make certain returns of information.

The 'States Strategic Plan 2005 to 2010' (P.81/2004), which was adopted by the States on 29th June 2004, highlights reasons why Jersey needs to move towards a lighter touch government and how this should be achieved. The Plan points out that a "thorough review and overhaul of regulation placing the emphasis on government guidance and facilitation in place of restrictive regulation and red tape will encourage individual and business responsibility and self-management" (page 6). It also lists one of its overarching policies to be "a thorough review and overhaul of government regulation and bureaucracy" (page 9). Further emphasis to this policy is given in Section 1 of the Plan, where it is stated that the "the States will reduce unnecessary regulation and bureaucracy in the Island" (Aim 1.3).

If Jersey were to move towards reduced regulation, a wide range of alternative options is available, and these options include –

- **Voluntary codes of conduct/self-regulation**
- **Negative licensing:** This means that organisations or individuals are able to carry out certain activities in accordance with particular requirements, but do not need to hold a licence to do so. If there should be a breach of a requirement, their activities are monitored and/or regulated more closely.
- **'Comply or explain':** Regulatory requirements exist that oblige organisations or individuals to carry out particular tasks (e.g. to complete a return for submission to a States department). Under the 'comply or explain' arrangements, businesses may choose to adopt their own procedures to comply with an agreed objective. When questioned, it is up to the business to justify why they are carrying out a task in an alternative way.
- **Routine review of regulation compelled by use of sunset clauses:** 'Sunset clauses' are regulations that are imposed for a specific period of time and then expire. The object of implementing such methods is to compel the legislature to re-assess its benefits periodically, rather than allowing it to carry on indefinitely.

In order to reduce the burden of legislation, the Policy and Resources Committee is proposing that there should be

an audit of existing and proposed legislation. A regulatory audit would broadly ask the following questions—

- Is regulation needed at all?
 - Are there alternative methods of achieving the desired end result which would be less burdensome to the person regulated and the regulator?
 - If regulation is, nevertheless, needed, is it necessary to the extent proposed or would a lighter touch achieve the desired end result?

It is proposed that States Committees should each be charged with carrying out audits of the legislation under their administration. In each case, a small working group would be established comprising of one or more officers from the relevant department, plus 2 other people (more if considered appropriate) who would be representative of the general public, including user groups, but not exclusively drawn from these groups. It is further proposed that an officer from the Policy and Resources Department should act as a coordinator for these groups, as this person would be able to assist in the creation of guidelines for the groups, as well as in identifying common themes and solutions.

In carrying out the proposed audit, the members of each working group would need to have an understanding of –

- Why the regulation is needed
- What constitutes over-regulation
- The sorts of alternatives to regulation that are available
- What constitutes ‘lighter touch’ regulation
- The impact of the proposed scheme, both for the person regulated and the regulator.

In relation to proposals for new legislation, the audit would need to be conducted at an early stage in order to establish whether the legislation is necessary. It is therefore essential to have commitment to the principle from States Committees so that regulatory audits can be completed at a formative stage within departments. It is proposed that existing regulation should also be reviewed, and this would be carried out on a topic-by-topic basis. Having received recommendations from their working groups, States Committees would be asked to report back to the Policy and Resources Committee on their proposals for regulatory reforms (or on the reasons why they may have decided not to implement particular recommendations from their working groups), in order that progress can be centrally reviewed. The actual responsibility for bringing forward any proposed changes, including changes to legislation, would of course rest with individual Committees. In future, this responsibility will rest with the Council of Ministers.

One means of expediting the process of deregulation would be for the States to pass an enabling Law which would create a power to amend principal legislation by Regulations for the purposes of regulatory reform. This is being given further consideration and it is likely that a draft Law will be prepared for consultation if the general principles of this Report are agreed by the States.

In conclusion, therefore the States is asked to agree –

- that Committees should review all new regulatory proposals, together with the legislation that is currently under their administration;

- that this should be achieved by the formation of a number of working groups, one for each Committee, to review existing and proposed legislation;
- that Committees should be asked to report back to the Policy and Resources Committee on their proposals for regulatory reforms (or on the reasons why they may have decided not to implement particular recommendations of their working groups), in order that progress can be centrally reviewed.

It is proposed that the working groups should be established in the autumn of 2004, and that they should be asked to complete their initial review of legislation by the end of March 2005. This will allow sufficient time for the results of the reviews to be taken into account when considering the Legislation Programme for 2006.

Financial and manpower implications

There will be no additional financial implications arising from this proposition, nor will there be any requirement for additional staff.

There will be an additional demand on staff time for those officers involved in the working groups, but it is expected that in the medium to long term a reduction in legislation will help to reduce the demand on States financial and manpower resources. It is also anticipated that a lessening of the burden of legislation will enable savings to be made in the private sector.