

# STATES OF JERSEY



## POSTAL SERVICES: DIRECTION AND GUIDANCE TO THE JERSEY COMPETITION REGULATORY AUTHORITY

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Lodged au Greffe on 7th October 2010  
by Deputy G.P. Southern of St. Helier

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STATES GREFFE

## **PROPOSITION**

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

- (a) to agree that Article 9(1) of the Postal Services (Jersey) Law 2004 should be amended to provide that the States, and not the Minister for Economic Development, should have the responsibility, in the public interest, to 'direct or guide' the Jersey Competition Regulatory Authority in relation to the implementation of any social or environmental policies in respect of postal services; and
- (b) to request the Minister for Economic Development to take the necessary action to bring forward for approval the necessary legislation to give effect to the proposal.

DEPUTY G.P. SOUTHERN OF ST. HELIER

## REPORT

In May 2006, the then Economic Affairs Scrutiny Panel brought a proposition to the States (P.61/2006 – see Appendix 1). This was based on the findings of its Report (S.R.2/2006) into the impact of the fulfilment policy on the incorporation of Jersey Post. The report was concerned about the viability of Jersey Post, its dependence on fulfilment revenue and the cross-subsidy of services provided by its subsidiary Offshore Solutions Limited; the loan offered from Treasury and the terms on which it was to be repaid; the role of the JCRA and the role of the Minister for Economic Development to “direct or guide” the JCRA on environmental and social issues. This proposition revives the concerns expressed then over the vesting of these latter powers in the Minister for Economic Development.

Back in those heady days, our concerns were over the fact that almost all of Jersey Post’s profits (of the order of £4.8 million annually) were derived from the increase in volumes of mail from the fulfilment industry. That is still the case today, but there have been continuing reductions in other mail volumes which have further increased the pressures on Jersey Post. What has now been added to this poisonous brew is the determination of the Minister for Economic Development and the JCRA to increase competition in the sensitive area of fulfilment postal services. Its decision to consider the award of licences to Hub Europe and Citipost now puts the current terms of the Universal Service Obligation (USO) under threat.

Article 9(1) to (3) of the Postal Services (Jersey) Law 2004 is reproduced here. The “Authority” is the JCRA.

### **“9 Minister may direct or guide Authority**

- (1) The Minister for Economic Development may, if he or she considers that it is desirable in the public interest to do so, give to the Authority written directions in respect of the principles, procedures or policies to be followed by the Authority in relation to –
  - (a) the implementation of any social or environmental policies in respect of postal services; or
  - (b) philatelic services.
- (2) The Minister for Economic Development may, if he or she considers that it is desirable in the public interest to do so, give to the Authority written guidance in respect of the principles, procedures or policies to be followed by the Authority in relation to any other matter relating to the performance by the Authority of its functions under this Law.
- (3) It shall be the duty of the Authority in carrying out any of its functions to comply with any such direction and to consider (without necessarily complying with) any such guidance.”

Note that the JCRA under this Article has to comply with a direction but not necessarily with guidance.

Faced with the serious threat to the continued existence of our postal service, the Minister for Economic Development, in his answer to Question 5644 of 28th September indicated his reluctance to act on this matter, as follows –

## “Question

“Will the Minister act to suspend any further action on the granting of additional postal licences until the employment and universal service provision issues at Jersey Post have been resolved, and if not why not?”

## Answer

*“The Postal Services Law (2004) has as its preamble the statement: ‘A **LAW** to abolish the exclusive privilege of the States in postal services’. The Law takes a pro-competition stance and gives the Minister certain duties, to perform his functions in such manner as he considers is best calculated to protect and further the interests of users of postal services, and to perform them, **by promoting competition** among persons engaged in commercial activities connected with postal services in Jersey. Other duties refer to promotion of efficiency, economy and effectiveness; to consider the economic interests of Jersey; and to impose a **minimum of restriction** on persons engaged in commercial activities connected with postal services. The Minister must also have regard to any special needs of persons who are disabled or have limited financial resources or have particular needs.*

*To effect this the Minister has a power to direct the JCRA on matters of social and environmental policy in postal services, but he does not have a power to prevent the JCRA from issuing a licence under the Law. As Members will note from the description of duties just mentioned, the Law states that the Minister should impose a **minimum of restrictions by promoting competition**. As such I simply cannot interfere with the lawful duties of the JCRA under the Law. What I can do, and have done, is revisit the Universal Service Obligation (USO). Analysis of the responses to the public consultation is near completion. If the results support a redefining of the USO then I will ask the JCRA to ensure that this is taken into account when it makes a decision on licensing third parties, indeed, I intend to present the results of the consultation to the States together with the comments of the JCRA so that the States can have an informed debate on the future of postal services in this Island. That is a debate that needs to take place, but it needs to take place in an informed way once the consultation report has been completed. I expect the department to have this ready by the second week of October.” ”*

The stance taken by the Minister is clearly one in which the promotion of competition takes priority over any consideration of its impact on the level of postal service available to the public. He is reliant on the results of the consultation on the Green Paper issued by his Department in June.

## Consultation

Sections 7 to 9 of the Economic Development Green Paper on the USO are reproduced in Appendix 2. However, the essential and central issues can be summed up by sections 7.2 and 8.1, here –

**“7. The reality of the position**

7.1 There are no easy options and hard decisions have to be taken. In summary the current position is –

- postal volumes have declined sharply and will continue to decline. The retail post business in Jersey is making a loss and if there are no changes to the current arrangements this loss will accelerate. Jersey Post as a corporate body is in no position to fund this loss;
- the fulfilment business has over the past few years provided additional profits which have enabled the retail postal service loss to be financed, but this is not sustainable;
- there is not an obvious case for public funding for retail postal services and the Minister for Treasury and Resources has made it clear that this is not an option;
- there is no significant scope for other providers of postal services to provide a subsidy sufficient enough to maintain the USO.

7.2 *This leaves only a reduction in service. The question is what sort of reduction should there be.*

**8. Options**

8.1 *Ideally, in a public consultation one offers a series of options, but in this particular case there is no realistic alternative to a significant reduction in the USO. Questions inevitably are confined to points of detail. Realistically, the reduced service would either have to be 3 days a week collection and delivery, or 5 days a fortnight collection and delivery, with 3 days on one week and 2 days the next.”*

The emphasis on points 7.2 and 8.1 is mine. What the Minister for Economic Development has produced is a Green Paper without any options. This is a sham consultation; the only aim of the Paper appears to be to persuade the public that they must accept severely reduced standards; in short, a third-world postal service.

Examination of Section 9 in Appendix 2 is particularly telling. Having established that we have to do away with daily collections and deliveries, remove the need for traditional post offices and rule out any taxpayer support, those who oppose the proposals are asked to justify their case in a series of leading questions which can only have one outcome. Question 4, for example, is typical of the sort of question that any consultation process should avoid –

“(4) Do you agree that the only viable solution is to reduce substantially, probably by around half, the current collection and delivery service? If not, what other viable solutions can you suggest?”

One has to ask how we could have arrived at a position that requires this sort of massive reduction to the standards of postal service we have been used to. Some of the answers can be found in a comparison of our set-up with that which exists in our near neighbour, Guernsey.

Guernsey Post is in a similar position to Jersey Post in that it is a commercial utility wholly owned by the States of Guernsey and regulated by the Guernsey Office of Utility Regulation (OUR). However there are 2 very different conditions under which it operates –

1. The States of Guernsey (not the Minister) is empowered to give direction to the Office of Utility Regulation (OUR) to determine the level of the Universal Service Obligation.
2. The Regulatory model in the Bailiwick requires that a legal monopoly be prescribed by the Director General to fund this USO.

The Director General may designate what services are defined as reserved postal services, but may only do so for 2 reasons –

- If he considers it is necessary to ensure the provision of the USO in the Bailiwick, or
- If it is necessary to comply with States Directions.

Despite facing near identical market conditions of falling letter volumes and a substantial fulfillment industry, Guernsey Post are maintaining a level of service way beyond that proposed by the Minister for Economic Development in Jersey –

- One collection from access points on 6 days each week;
- One delivery of letter mail to the home or premises of every natural or legal person in the Bailiwick (or other appropriate installations if agreed by the Director General of Utility Regulation) on 6 days each week including all weekdays;
- Collections for all postal items up to a weight of 20kgs;
- Deliveries on a minimum of 5 working days for all postal items up to a weight of 20kgs;
- Services for registered and insured mail.

That there is some pressure on the USO in Guernsey is shown by the following BBC news item –

#### **“Post surveying over delivery cuts**

**Guernsey Post is asking customers whether or not they would be happy for the number of weekly deliveries to be cut from six to five.** It is one of the questions included in a telephone survey being carried out by a market research company. Customers are also being asked for their views on a price rise in the cost of stamps to avoid any cuts in service. Guernsey Post commissions the survey on a quarterly basis, calling about 200 Bailiwick homes as a sample. The results are fed back to shareholders and some are included in the company’s annual report.”

The difference between the 2 islands appears to be one of approach and emphasis. There appears to be a greater awareness of the limits to competition in a small jurisdiction and greater emphasis on regulation in Guernsey. There is general requirement in Guernsey to maintain funding for the USO. The drive in Jersey shared by our regulator and the Minister by contrast is predicated on the drive for the so-called benefits of competition. I believe that it is time to rein in the Minister's appetite for competition at all costs and restore some control over the USO to the States before we lose our postal service altogether.

**Financial and manpower implications**

There are no financial or manpower implications for the States arising from this Proposition.

P.61/2006

**STATES OF JERSEY**



**JERSEY POST INCORPORATION:  
COST/BENEFIT ANALYSIS,  
INVESTIGATION AND  
RESPONSIBILITIES OF JCRA**

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Lodged au Greffe on 23rd May 2006  
by the Economic Affairs Scrutiny Panel

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STATES GREFFE

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2006

Price code: B

P.61



## PROPOSITION

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

- (a) to agree that an updated cost/benefit analysis, in a form to be approved by the Comptroller and Auditor General, be prepared prior to consideration of the Draft Postal Services (Transfer) (Jersey) Regulations 200- (P.9/2006), in order to provide information relating to –
  - (i) the overall financial viability of Jersey Post International Limited post-incorporation; and
  - (ii) the capability of each element of Jersey Post International Limited to support itself independently;and to request the Minister for Economic Development to take the necessary action;
- (b) to request the Minister for Economic Development to request the Jersey Competition Regulatory Authority, in accordance with the provisions of the Competition Regulatory Authority (Jersey) Law 2001 and the Competition (Jersey) Law 2005, to carry out an investigation, prior to the incorporation of Jersey Post, into the cross subsidy by Jersey Post of Offshore Solutions Limited (OSL);
- (c) to request the Minister for Treasury and Resources to review the decision(s) to grant any loan(s) from the States to Jersey Post International Limited in respect of liabilities under the Jersey Post Office Pension Fund, and the terms of those loans, and report thereon to the States;
- (d)
  - (i) to agree, in principle, that Article 8(1) of the Postal Services (Jersey) Law 2004 be amended to provide that the Jersey Competition Regulatory Authority should no longer have a primary duty to perform its functions under the Law in such manner as to ensure that the company has sufficient financial resources to discharge its liabilities under securities issued by the Company to the States; and
  - (ii) to request the Minister for Economic Development to take the necessary action arising from paragraph (d)(i);
- (e)
  - (i) to agree, in principle, to amend Article 9(1) of the Postal Services (Jersey) Law 2004 to provide that the States, and not the Minister for Economic Development, have the responsibility, in the public interest, to ‘direct or guide’ the Jersey Competition Regulatory Authority in relation to the implementation of any social or environmental policies in respect of postal services; and

- (ii) to request the Minister for Economic Development to take the necessary action arising from paragraph (e)(i).

## ECONOMIC AFFAIRS SCRUTINY PANEL

### REPORT

The Economic Affairs Scrutiny Panel has developed this Project from the recommendations of its report entitled 'The impact of the fulfilment policy on the incorporation of Jersey Post' (S.R.2./2006). This report is essential to the understanding of the project and is referenced throughout as the 'Report'.

In respect of Section (a) of the project, the Panel considers that a new, current, cost/benefit study should be carried out before Jersey Post is incorporated. This was the recommendation of the only independent expert who has been involved with the process (Report p.35).

Given that this was the same person who helped guide Jersey Telecom through its incorporation, it is clear that this recommendation was not made on ideological grounds but on the basis of genuine concerns (Report p.32). These concerns were based on full and detailed access to all relevant information, and have increased in the intervening period since the last cost/benefit analysis was carried out (Report p.64).

In addition to the existing concerns, the recent change of policy by the Economic Development Minister in respect of the operation of fulfilment business will have a direct effect on the profitability of the company. This, and the attendant cross-subsidy that this might require should be studied in detail and the findings made available to the States, in order that members can debate this incorporation in possession of all the facts.

The Comptroller and Auditor General's role would be to ensure that any analysis was carried out in such a way that the conclusions, whether in favour or against incorporation, were objective, well-reasoned and fair.

Members should understand that once incorporated, there is no 'going back' for Jersey Post, and any overlooked issues now could have dire consequences in the future.

In respect of Section (b), the Panel has noted that the section of Jersey Post which acts as a 'Third-Party Service Provider' ('3PS' – Definition in the Report, p.15) for the fulfilment industry. This section is known as Offshore Solutions Limited, and, despite a high volume of work, does not make a profit from its operations. It does, however, by allowing fulfilment companies access to low cost, efficient 'pick and pack' services, encourage fulfilment business to operate from the Island. This acts to increase postal volumes, on which its parent company, Jersey Post, can make a profit.

Fulfilment postal income accounts for the vast majority of Jersey Post's estimated £3.8 million profits (Report p.22). The Panel is concerned that in order to maintain these levels of income, Offshore Solutions Limited is being operated at a loss to

increase postal volumes. This would be detrimental to the operation of other businesses in the same market that must generate a profit to continue operations. It would constitute the funding of a competitive element of the business from monopoly profits.

In the course of its investigations, the Panel became extremely concerned about the issue of cross-subsidies which may unfairly affect competition. In particular, it questions the necessity of the States to act a banker to Jersey Post International Limited. In addition, it questions whether it is appropriate to lend Jersey Post International Limited £4 million under terms better than might be obtained in the commercial market.

These concerns are reflected in the recommendation in S.R.2/2006, and paragraph (c) of the projet.

In respect of Section (d), the Panel is concerned that the provision of a loan to Jersey Post International Limited (Report p.28) will prejudice the position of the JCRA, as it will have a primary duty under the Postal Services (Jersey) Law 2004 to ensure that this loan is repaid (Report p.29), as will the Minister for Economic Development. This will supersede the duty in the same Law to protect postal customers. Not only is this undesirable for the customer, it also places requirements of maintaining the proper provision of postal services (regulation) with the same bodies that are tasked to ensure that Jersey Post have sufficient funds to repay the loan to the States and to run effectively (operation).

In respect of Section (e), the Panel is aware that the 'Guernsey model' puts the responsibility to offer guidance to the Office of Utility Regulation with the States of Guernsey. The Panel is of the opinion that the Economic Development Minister has a vested interest by virtue of his role, as he has responsibility for economic growth of Jersey, for the repayment of the loan to the States, and for the profitable operation of Jersey Post (Report p.31). A conflict of interest therefore exists, and the authority to provide guidance to the JCRA should be placed in the hands of the States.

**The financial and manpower implications for the States are –**

The engagement of a consultant to carry out the cost/benefit analysis. It is recommended that £10,000 be budgeted and that the Economic Development Department meet this cost. (The only study undertaken so far cost £2,100.)

The Panel recommends that the JCRA recoup costs incurred from actions taken as a result of this projet from Jersey Post, in addition to its previously agreed incorporation fees.

Extract from R.92/2010:

**POSTAL SERVICES IN JERSEY: UNIVERSAL SERVICE OBLIGATION –  
CONSULTATION GREEN PAPER**

**7. The reality of the position**

7.1 There are no easy options and hard decisions have to be taken. In summary the current position is –

- postal volumes have declined sharply and will continue to decline. The retail post business in Jersey is making a loss and if there are no changes to the current arrangements this loss will accelerate. Jersey Post as a corporate body is in no position to fund this loss;
- the fulfilment business has over the past few years provided additional profits which have enabled the retail postal service loss to be financed, but this is not sustainable;
- there is not an obvious case for public funding for retail postal services and the Minister for Treasury and Resources has made it clear that this is not an option;
- there is no significant scope for other providers of postal services to provide a subsidy sufficient enough to maintain the USO.

7.2 This leaves only a reduction in service. The question is what sort of reduction should there be.

**8. Options**

8.1 Ideally, in a public consultation one offers a series of options, but in this particular case there is no realistic alternative to a significant reduction in the USO. Questions inevitably are confined to points of detail. Realistically, the reduced service would either have to be 3 days a week collection and delivery, or 5 days a fortnight collection and delivery, with 3 days on one week and 2 days the next.

8.2 Service reduction could be accompanied by some modest enhancements, for example –

- an enhanced collection service consisting daily collections from a small number (no more than about 6) of collection points with next day delivery to the UK and delivery on the next delivery day in Jersey;
- offering daily deliveries in exchange for a fixed monthly charge. This option would probably be attractive to a number of businesses, but probably not to many householders;

- offering daily deliveries to all addresses in exchange for a fixed monthly/quarterly charge. This would be similar to the standard charge levied by other utility companies such as electricity, telephone, gas and water to access their networks. If such a charge were to be introduced, we recognize that it would be complex to implement.

8.3 Such enhancements may not be feasible or economic in the marketplace. If there is support for them in principle then work would have to be done to cost these services and assess whether there is a viable market.

8.4 All of these options would also have to be accompanied by changing the way Jersey Post customers access its services. The Island's post office network would change into a model that provides greater, albeit different, access, e.g. online, 'post & pay' machines and a new, commission-based retail model.

8.5 As with other industries where there is a decline in demand, it is sadly inevitable that some people will lose their jobs and that there will have to be changes in working practices to take account of the new realities of the market place.

## **9. Consultation questions**

9.1 Respondents need not respond to each of the questions. The first 3 questions in particular are appropriate mainly for those people with a particular interest in the subject or for businesses for which postal services are vital. Individuals are more likely to be interested in the remaining questions.

- (1) Is the analysis of the market in sections 2 – 4 correct? If you believe it is not correct what evidence can you provide to support your view?
- (2) The Minister for Treasury and Resources has ruled out providing a taxpayer subsidy to support the present USO. Do you agree? If not, what is the justification for the taxpayer funding the USO as against other priorities?
- (3) Do you agree with the analysis of why cross-subsidisation from other postal services to fund the USO is not viable? If you do not agree, what evidence can you provide to support your arguments?
- (4) Do you agree that the only viable solution is to reduce substantially, probably by around half, the current collection and delivery service? If not, what other viable solutions can you suggest?
- (5) Do you agree that part of this solution should include changing the way postal services are accessed, by improving availability, but removing the requirement for a traditional sub-post office? If not, what other viable solutions can you suggest?
- (6) If you had a choice between deliveries 3 days a week or 5 days a fortnight, bearing in mind that the latter would be accompanied by marginally lower costs, do you have a preference?

- (7) If collection and delivery services are substantially reduced would you favour a daily collection facility from a limited number of collection points?
- (8) If delivery and collection services are significantly reduced would you favour mail recipients having the option to pay a fixed commercial charge in exchange for daily deliveries?

## Guernsey Post Limited

### A commercialised utility regulated by the Guernsey Office of Utility Regulation

#### 1.0 Background

Guernsey Post is a commercial utility wholly owned by the States of Guernsey and regulated by the Guernsey Office of Utility Regulation (OUR). It is committed to continual improvement in service delivery and customer relations in its core business, namely the provision of a secure, reliable and efficient postal service.

Guernsey Post obtained its Licence from the OUR on 1st October 2001. Further details on the Postal Licence and legislation underpinning the relationship and activity of the OUR with Guernsey Post can be found at [www.regutil.gg](http://www.regutil.gg).

Key areas of the model are outlined below:

- Universal Service Obligation
- Reserved Postal Services
- Customer Charter
- Quality of Service

#### 2.0 Universal Service Obligation

The States of Guernsey resolved to give the following Direction to the Director General of the OUR in accordance with section 3(1) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001:

‘The following Universal Postal Service (USO) shall be provided by at least one Licensee throughout the Bailiwick of Guernsey at uniform and affordable prices, except in circumstances or geographical conditions that the Director General of Utility Regulation agrees are exceptional:

- One collection from access points on six days each week;
- One delivery of letter mail to the home or premises of every natural or legal person in the Bailiwick (or other appropriate installations if agreed by the Director General of Utility Regulation) on six days each week including all week days;
- Collections for all postal items up to a weight of 20kgs;
- Deliveries on a minimum of five working days for all postal items up to a weight of 20kgs;
- Services for registered and insured mail.

In providing these services, the Licensee shall ensure that the density of access points and contact points shall take account of the needs of users.

“access points” shall include any post boxes or other facility provided by the Licensee for the purpose of receiving postal items for onward transmission in connection with the provision of this universal postal service.’

### 3.0 Reserved Postal Services

The Regulatory model in the Bailiwick requires that a legal monopoly be prescribed by the Director General to fund this USO.

In September 2001, the States of Guernsey issued Directions to the Director General regarding the scope of the USO (as detailed above) and directed that the reserved postal services be defined so as to ensure that the USO was met. In document OUR 01/17, the Director General described the background to an Order made in October 2001 designating certain postal services as 'reserved postal services'.

The effect of the Order was to reserve the right to provide certain postal services to the first licensee in the postal sector in the Bailiwick, i.e. Guernsey Post Limited, to ensure that the USO could be met. The document also indicated that the Director General expected to carry out more in-depth analysis of the postal market in Guernsey with a view to determining whether this designation should be amended in the future.

The Director General may designate what services are defined as reserved postal services, but may only do so for two reasons:

- if he considers it is necessary to ensure the provision of the USO in the Bailiwick, or
- if it is necessary to comply with States Directions

Given the limited information available at that time on the Guernsey postal market, as well as having due regard to international practice, the reserved postal services were defined exclusively by value, as those postal services provided for a consideration of less than £1.35. A postal service being 'the service of conveying postal packets from one place to another, the incidental services of receiving, collecting and delivering such packets and any other service which relates to such services. A "postal packet" means a letter, parcel, packet or other article capable of transmission by post.

The price limit was arrived at by multiplying the standard tariff for letters to the UK (27p in 2001) by five, along the lines of the EU approach. The use of the standard UK tariff reflected the fact that a significant amount of the Bailiwick's mail is between the islands and the UK. It is understood that the Director General did not wish to include a weight limit in the designation of the reserved services until further consideration could be given to the profile of Bailiwick postal service, particularly those services that were provided on the basis of volume rather than weight (flower boxes).