

**THE STATES assembled on Tuesday,
14th May 2002 at 9.30 a.m. under
the Presidency of the Bailiff,
Sir Philip Bailhache.**

**His Excellency the Lieutenant Governor,
Air Chief Marshal Sir John Cheshire, K.B.E., C.B.,
was present**

All members were present with the exception of -

Senator Jean Amy Le Maistre - out of the Island
Henry George Coutanche, Connétable of St. Lawrence- out of the Island
Harry Halliwell Baudains, Deputy of St. Clement- out of the Island

Prayers

Subordinate legislation tabled

The following enactments were laid before the States, namely -

Marriage and Civil Status (Forms, Registration and Fees) (Jersey) Order 2002. R & O 33/2002.

Motor Vehicles (Driving Licences) (Jersey) Order 2002. R & O 34/2002.

Motor Traffic (Public Service Vehicles (Fees)) (Jersey) Order 2002. R & O 35/2002.

Collective Investment Funds (Permit Fees) (Jersey) Order 2002. R & O 36/2002.

Health Insurance (Pharmaceutical Benefit) (General Provisions) (Jersey) Order 2002. R & O 37/2002.

Diseases of Animals (Foot and Mouth Restrictions No. 1H) (Jersey) Order 2002. R & O 38/2002.

Employment and Social Security Committee - resignation of member

THE STATES noted the resignation of Senator Stuart Syvret from the Employment and Social Security Committee.

Legislation Committee - resignation of member

THE STATES noted the resignation of Senator Stuart Syvret from the Legislation Committee.

Employment and Social Security Committee - appointment of member

THE STATES appointed Senator Patricia Ann Bailhache as a member of the Employment and Social Security Committee.

Legislation Committee - appointment of member

THE STATES appointed Alan Simon Crowcroft, Connétable of St. Helier, as a member of the Legislation Committee.

Deputy Greffier of the States designate

The Bailiff informed the Assembly that Mr. Michael Nelson de la Haye, Greffier of the States designate, had, in accordance with Article 2(5) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965, as amended, appointed Mrs. Anne Helen Harris as Deputy Greffier of the States with effect from 28th October 2002.

Matters presented

The following matters were presented to the States -

Optical appliances: sale of “ready readers” (P.55/2002) - comments – P.55/2002 (Com).
Presented by the Health and Social Services Committee.

Optical appliances: sale of “ready readers” (P.55/2002) - comments – P.55/2002 (Com)2.
Presented by the Policy and Resources Committee.

Jersey Competition Regulatory Authority: annual report for 2001.
Presented by the Industries Committee.

Regulation of Undertakings and Development (Jersey) Law 1973: commentary on licences granted under Part II for the period to 31st December 2001 - R.C.17/2002.
Presented by the Industries Committee.

The following matters were presented on 7th May 2002 -

Confiscation of alcohol: introduction of legislation (P.46/2002): report - P.46/2002. Rpt.
Presented by the Home Affairs Committee.

Confiscation of alcohol: introduction of legislation (P.46/2002): comments - P.46/2002 Com.
Presented by the Health and Social Services Committee.

Machinery of Government: establishment of an Appointments Commission (P.52/2002): comments - P.52/2002. Com.
Presented by the Human Resources Committee.

Public Sector Manpower Report for the period 1st July 2001 to 31st December 2001 - R.C.16/2002.
Presented by the Human Resources Committee.

THE STATES ordered that the said reports be printed and distributed.

Matters noted - land transactions

THE STATES noted an Act of the Finance and Economics Committee dated 1st May 2002 recording the following decisions of the Treasurer of the States under delegated powers, in pursuance of Standing Orders relating to certain transactions in land -

- (a) as recommended by the Agriculture and Fisheries Committee, the lease to the Jersey Electricity Company Limited from 1st April 2002 of three areas of land (known as “Area 1”, “Area 2” and “Area 3”) adjoining the Abattoir Site, La Collette, St. Helier (as shown on Drawing No. LC16-1-006 (c)), as follows -
 - (i) Area 1 (measuring 1,055 square feet)- until 24th June 2019, at an annual rent of £1,582.50 (representing a rate of £1.50 a square foot), subject to five yearly rent reviews to Open Market Rental Value;
 - (ii) Area 2 (measuring 12,422 square feet)- for a period of five years, at an annual rent of £12,422.00 (representing a rate of £1.00 a square foot), subject to a mid-term rent review to

Open Market Rental Value, with an option to renew for a further five-year period; and

- (iii) Area 3 (measuring 3,498 square feet) - for a period of five years at an annual rent of £2,098.80 (representing a rate of £0.60 a square foot), subject to a mid-term rent review to Open Market Rental Value, with an option to renew for a further five-year period;

on the basis that the combined area was to be enclosed with a fence similar to the existing fence separating the Company's land from the Abattoir site, and with the Company having responsibility for the costs associated with (1) gaining planning and development approval for the development of the site, and any other statutory obligations necessary; (2) the public's legal fees in connection with drafting and agreeing the lease, and passing contract; (3) the Department of Property Services and the Department of Agriculture and Fisheries Committee in connexion with agreeing terms and gaining the necessary approvals; and (4) the employment of a land surveyor to record co-ordinate points of the boundaries and confirm the area of the land being leased;

- (b) as recommended by the Housing Committee, the entering into of a Deed of Arrangement with Mr. Stephen Malcolm Willows, the owner of No. 5 The Willows, Grands Vaux, St. Saviour, in order to ratify the eastern boundary of the property in relation to the publicly-owned footpath, on the following basis -

- (i) the existing block work wall would form the boundary to the land owned by the public and the wall constructed on the eastern side of Mr. Willows' property would remain entirely in the ownership of No. 5 The Willows, without offset;
- (ii) the existing gate, which had been formed within the wall, would be permitted to remain subject to its use being restricted for access purposes, in order that repairs and maintenance work to the boundary wall and gate could be undertaken;
- (iii) the wall and gate were to be maintained at all times in good condition;
- (iv) the contract itself should not in any way imply any right of way over the footpath itself situated adjacent to the wall; and
- (v) Mr. Willows was to meet the reasonable expenses of the public up to a maximum sum of £500.

Matters noted - acceptance of tender

THE STATES noted an Act of the Finance and Economics Committee dated 1st May 2002, showing that, in pursuance of Rule 5 of the Public Finances (General) (Jersey) Rules 1967, as amended, the Committee had noted that the Health and Social Services Committee had, by Act dated 23rd January 2002, accepted the lowest tender received for the development of the Assessment and Rehabilitation Unit at Overdale, St. Helier, namely that submitted by Hacquoil and Cook Limited in the sum of £6,275,299.00 in a contract period of 96 weeks.

Matters lodged

The following matters were lodged "au Greffe" -

"Narkunda" and "Chantemerle", West Hill, St. Helier: transfer of administration- P.78/2002.

Presented by the Public Services Committee.

Housing Committee Strategic Policy Report 2002-2006 (P.2/2002): second amendment - P.2/2002 Amd.(2).

Presented by Deputy J.A. Martin of St. Helier.

Agent of the Impôts: appointment - P.79/2002.

Presented by the Finance and Economics Committee.

Optometrists (Ophthalmic Opticians): issue of written prescriptions - P.80/2002.

Presented by the Industries Committee and referred to the Health and Social Services Committee.

Draft Barclays Private Clients International (Jersey) Law 200-P.81.2002.

Presented by the Deputy of St. Mary and referred to the Finance and Economics Committee.

The following matters were lodged on 30th April 2002 -

Field 141, La Rue Horman, Grouville: sale of land - P.62/2002.

Presented by the Housing Committee.

Draft Rehabilitation of Offenders (Jersey) Law 2001 (Appointed Day) Act 200- P.63/2002.

Presented by the Legislation Committee.

Draft Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 200- P.64/2002.

Presented by the Legislation Committee.

Manual Workers' Joint Council: Employers' Side membership - P.65/2002.

Presented by the Human Resources Committee.

Draft Road Traffic (No. 53) (Jersey) Regulations 200-P.66/2002.

Presented by the Home Affairs Committee.

La Collette Fuel Farm, St. Helier: lease to Shell U.K. Limited and Esso Petroleum Company Limited - P.67/2002.

Presented by the Harbours and Airport Committee and referred to the Finance and Economics and Industries Committees.

Jersey Potato Export Marketing Scheme 2001 - P.68/2002.

Presented by the Connétable of St. Helier and referred to the Agriculture and Fisheries Committee.

Island Plan - P.69/2002.

Presented by the Planning and Environment Committee.

Machinery of Government: proposed departmental structure and transitional arrangements - P.70/2002.

Presented by the Policy and Resources Committee.

The following matters were lodged on 7th May 2002 -

Draft Harbours (Administration) (Amendment No. 6) (Jersey) Law 200- P.71/2002.

Presented by the Harbours and Airport Committee.

Draft Gambling (Betting) (Amendment No. 13) (Jersey) Regulations 200 P.72/2002.

Presented by the Gambling Control Committee.

Draft Gambling (Licensing Provisions) (Amendment No. 13) (Jersey) Regulations 200 P.73/2002.

Presented by the Gambling Control Committee.

Draft Gambling (Pool Betting) (Amendment No. 2) (Jersey) Regulations 200 P.74/2002.

Presented by the Gambling Control Committee.

Draft Terrorism (Jersey) Law 200- P.75/2002.

Presented by the Home Affairs Committee.

Draft Act amending further the Act of the States dated the 4th day of December 1990, establishing a Scheme to provide compensation for victims of crimes of violence - P.76/2002.

Presented by the Home Affairs Committee.

Draft Medicines (Amendment) (Jersey) Law 200- P.77/2002.

Presented by the Health and Social Services Committee.

Arrangement of public business for the present meeting

THE STATES acceded to the request of the President of the Public Services Committee to consider the proposition regarding La Collette, St. Helier, Phase II: transfer of administration (P.51/2002 lodged "au Greffe" on 17th April 2002) immediately after consideration of the proposition regarding La Collette, St. Helier, Phase II: approval of drawings and funding for bus workshop facility (P.61/2002 lodged "au Greffe" on 23rd April 2002) at the present meeting.

THE STATES confirmed that the following matter lodged "au Greffe" would be considered at the present meeting -

Field 141, La Rue Horman, Grouville: sale of land - P.62/2002.
Lodged: 30th April 2002.
Housing Committee.

Arrangement of public business for the next meeting on 28th May 2002

THE STATES confirmed that the following matters lodged "au Greffe" would be considered at the next meeting on 28th May 2002 -

Machinery of Government: establishment of an Appointments Commission - P.52/2002.
Lodged: 17th April 2002.
Policy and Resources Committee.

Machinery of Government: establishment of an Appointments Commission (P.52/2002) - comments - P.52/2002 Com.
Presented: 7th May 2002.
Human Resources Committee.

Draft Housing (Amendment No. 10) (Jersey) Law 200P.54/2002.
Lodged: 23rd April 2002.
Housing Committee.

Draft Public Elections (Jersey) Law 2002 (Appointed Day) Act 200- P.59/2002.
Lodged: 23rd April 2002.
Legislation Committee.

Draft Public Elections (Jersey) Regulations 200- P.60/2002.
Lodged: 23rd April 2002.
Legislation Committee.

Draft Rehabilitation of Offenders (Jersey) Law 2001 (Appointed Day) Act 200- P.63/2002.
Lodged: 30th April 2002.
Legislation Committee.

Draft Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 200- P.64/2002.
Lodged: 30th April 2002.
Legislation Committee.

Manual Workers' Joint Council: Employers' Side membership - P.65/2002.
Lodged: 30th April 2002.
Human Resources Committee.

Draft Harbours (Administration) (Amendment No. 6) (Jersey) Law 200 P.71/2002.
Lodged: 7th May 2002.
Harbours and Airport Committee.

Draft Gambling (Betting) (Amendment No. 13) (Jersey) Regulations 200 P.72/2002.
Lodged: 7th May 2002.
Gambling Control Committee.

Draft Gambling (Licensing Provisions) (Amendment No. 13) (Jersey) Regulations 200 P.73/2002.
Lodged: 7th May 2002.
Gambling Control Committee.

Draft Gambling (Pool Betting) (Amendment No. 2) (Jersey) Regulations 200 P.74/2002.
Lodged: 7th May 2002.
Gambling Control Committee.

Draft Medicines (Amendment) (Jersey) Law 200- P.77/2002.
Lodged: 7th May 2002.
Health and Social Services Committee.

“Narkunda” and “Chantemerle”, West Hill, St. Helier: transfer of administration- P.78/2002
Lodged: 14th May 2002.
Public Services Committee.

Agent of the Impôts: appointment - P.79/2002.
Lodged: 14th May 2002.
Finance and Economics Committee.

Draft Barclays Private Clients International (Jersey) Law 200 P.81/2002
Lodged: 14th May 2002.
Deputy of St. Mary.

François Scornet: commemorative statue - P.116/2001

THE STATES noted that under Standing Order 22(3) Senator Paul Vincent Francis Le Claire had instructed the Greffier of the States to withdraw the proposition regarding the François Scornet: commemorative statue (P.116/2001 lodged “au Greffe” on 17th July 2001).

Draft Act amending further the Act of the States dated the 4th day of December 1990, establishing a Scheme to provide compensation for victims of crimes of violence - P.71/2001

THE STATES noted that under Standing Order 22(3) the President of the Home Affairs Committee had instructed the Greffier of the States to withdraw the Draft Act amending further the Act of the States dated the 4th day of December 1990, establishing a Scheme to provide compensation for victims of crimes of violence (P.71/2001 lodged “au Greffe” on 24th April 2001).

Jersey Arts Trust - question and answer (Tape No. 735)

Deputy Roy George Le Hérisier of St. Saviour asked Senator Patricia Ann Bailhache, Vice-President of the Education Committee, Representative of the Jersey Arts Trust, the following question -

- “(a) Would Senator P.A. Bailhache, in her capacity as Education Committee representative on the Jersey Arts Trust, outline the outcome of the needs analysis that was undertaken by the Jersey Arts Trust (or its predecessor) prior to the granting of approval for the development St. James and the refurbishment of the Opera House?
- (b) if no needs analysis or assessment of demand was undertaken, would the Senator outline how the decisions to develop or redevelop both locations were arrived at?
- (c) how would the Senator seek to improve the process whereby these decisions are arrived at?”

Senator Patricia Ann Bailhache, Vice-President of the Education Committee, Representative of the Jersey Arts Trust, replied as follows -

- “(a) the development of St. James and the refurbishment of the Opera House were approved by the States

in response to reports and propositions presented by the Island Development Committee and the Finance and Economics Committee respectively.

For St. James, the Island Development Committee and the Jersey Arts Centre established a working party to examine the feasibility of a performing arts centre, and the working party's final report was distributed to States members for information in 1994. In November 1994 the States adopted proposition P.146/94 and approved the lease of St. James to the Jersey Arts Trust for use by the Arts Centre Association for arts, community and conference purposes.

For the Opera House, the States approved its acquisition in July 1995 in adopting proposition P.96/95 and in July 1998 approved a further proposition P.167/98 guaranteeing a loan to help finance the refurbishment. The objectives for the operation of the theatre were set out by the Jersey Arts Trust at that time in the 'Opera House Strategic Plan 1999/2001'. The Jersey Arts Trust carried out detailed forecasting based on information and statistics provided by the Arts Council of Great Britain on similar-sized theatres in the United Kingdom. They estimated at that time, bearing in mind the unique expenses of transport and accommodation, funding in the region of £600,000 would be needed.

- (b) This question has been answered in the response to (a).
- (c) The position in respect of St. James is that, to date, insufficient funds have been made available to allow the redevelopment to be completed and the full potential of the venue to be realised.

As far as the Opera House is concerned the position would be improved if the support for the running costs to be provided by the States was increased to equate with the original estimate of the funding that would be required."

Report entitled '2020.je' - question and answer (Tape No. 735)

Senator Paul Vincent Francis Le Claire asked the Deputy Maurice François Dubras of St. Lawrence, President of the Industries Committee, the following question -

- “(a) would the President confirm that the Committee commissioned consultants to produce a report entitled “2020.je” which involved interviewing hundreds of local residents about their views on the future of Jersey?
- (b) if the answer is in the affirmative, would he advise members of the findings of the report?
- (c) would the President confirm that a public presentation of the findings were scheduled for last year but the presentation was cancelled?
- (d) would the President explain why the document has not been released and if there is any intention to release it in future?
- (e) how much did the report cost?”

The President of the Industries Committee requested Deputy Philip François Cyril Ozouf as rapporteur for the Committee to respond, and he replied as follows -

- “(a) The Committee did not Commission the 2020.je report. It was commissioned by the Jersey Information Society Commission (JISC), and more specifically the IS/IT advisor, which owned the project and together with all intellectual rights. The work was authorised and paid for by JISC.
- (b) The draft report consists of a series of scenarios, which were compiled following extensive interviews and information gathering from a wide range of islanders. There are no ‘findings’ as such.
- (c) I understand that a meeting was scheduled towards the end of last year and was postponed.
- (d) Following the departure of the IS/IT advisor at the beginning at 2002, responsibility for e-commerce matters was transferred from the Policy and Resources Committee to the Industries Committee.

The Industries Committee is in the process of setting up a Technology, Media and Telecommunications (TMT) Advisory Group to advise and assist the States of Jersey through the Committee in the area. One of the group's first tasks will be to consider the draft report and recommend how to publish it.

(e) Records from JISC indicate that the total report cost was in the region of £200,000.”

States Information and Communications Technology systems - question and answer (Tape No. 735)

The Deputy of St. John asked Senator Pierre François Horsfall, President of the Policy and Resources Committee, the following question -

“At the recent meeting held at La Place Hotel on 15th and 16th April, it became apparent that the States Information and Communication Technology (I.C.T.) system is still not compatible across all States Departments. Given the Law Draftsmen are using a more up to date system than say the Driver and Vehicle Standards Department, would the President inform members when a uniform I.C.T. system across all States' departments will be in place?”

The President of the Policy and Resources Committee replied as follows -

“I thank the Deputy for his question on what is a matter of vital importance for the States and the delivery of services to the public.

On the face of it, the Deputy's question seems relatively simple. If he is referring to 'Office' systems, i.e. the kind of systems which are used for word processing, spreadsheet calculations, e-mail and other communications, etc. across the States, the current limited I.C.T. capital development plan will see States departments upgraded to the latest Microsoft Windows systems over the next four to five years. However, given that most States departments are still operating on Windows and Office'95, which is no longer supported by Microsoft and that the new Treasury Financial Information System (J.D. Edwards) is to be rolled out to departments some time in 2003 and will need departments to be operating compatible systems, urgent talks with the Treasury are in hand to find ways in which funding for the new office and related systems rollout can be enhanced and brought forward.

If these actions prove successful, and there is a desperate need that they should, the new systems could be in place across the States 18-24 months after the date when work can start. Not only will this halve the expected roll out period, and save many associated costs, but will also mean that the introduction of the new Office systems coincides with, and supports, the introduction of the new financial systems - which in turn, will open the door to more effective and efficient ways of working and of delivering services.

To set this answer into context, I would remind States members that the Computer Services Department and management of the I.C.T. capital development programme, was only recently transferred to the Policy and Resources Committee and that, following this transfer a new I.C.T. Director (Dr. Stephen Chiang) has been appointed. Having joined us last year, Dr. Chiang has been carrying out a thorough and ongoing review of I.C.T. developments across the States and has recently brought forward a comprehensive report identifying where there are serious shortcomings in the States I.C.T. infrastructure and how such shortcomings should, with significant increases in funding, be addressed over the next few years.

Historically, and to a large extent still today, States' investment in I.C.T. has been 'tactical' rather than 'strategic'. The departmental and committee system we operate encourages I.C.T. (as well as other) expenditure that meets the needs of individual departments without necessarily taking full account of the needs of the States as a whole. The underlying theme, because of perceived short term tactical advantage, is that development of stand alone systems is good for "the departmental customer". However, this often ignores the fact that it is the same set of customers that all departments service.

This distributed approach, whilst it has led to the development of many excellent in-house systems, has also led to a wasteful I.C.T. environment, in which we have:

 duplicated systems - I am told that we have over 200 name and address databases and over 140

different finance systems across States departments ranging from the very simple to the highly complex;

different infrastructure (both hardware and software) upon which these systems run;

common skills in a number of places in the organisation, i.e. several people doing more or less the same thing at a departmental level, when fewer might suffice. (Computer services employs about 33 people, but there are around 90 people across the States involved in I.C.T. work);

an environment where departments are unable to share data and processes at the automated level;

an environment where, corporately we have no way of knowing exactly what projects are underway, what resources and skills we have across the organisation and full details of what infrastructure exists at departmental level;

immense difficulty in unravelling just what expenditure the States are incurring on I.C.T.

In this overall regard, Jersey is perhaps no different to the majority of local authorities in the U.K. and perhaps worldwide, where tactical thinking at departmental level has led to there being, in I.C.T. terms, a collection of different public organisations under a collective banner, rather than the single, unified organisation we should have and need to be.

The bottom line is that States of Jersey computing does not in all respects provide us with good value for money and we must change our way of thinking and of doing business if we are to meet the challenges ahead of us - not least in relation to the machinery of government reforms.

As we reform government, I strongly suggest we must also develop a unified and corporate approach to I.C.T. across the States. This means -

I.C.T. and data will be corporate resources with responsibility for overall management and development resting with the Council of Ministers;

There should be corporate responsibility for key, cross department, I.C.T. areas, whilst maintaining business responsibility for departmental systems at a departmental level;

All expenditure on I.C.T. must be prioritised and corporately approved so that we gain greatest benefit;

All I.C.T. staff across the States, as with other professional groups, should be considered a corporate resource and should be managed and developed corporately so as to ensure value for money and continued effectiveness and efficiency;

Where appropriate, common systems such as a single name and address database must be developed and implemented; (the new J.D. Edwards system is a major step in the right direction).

To sum up, we must think and act strategically and we must recognise that using, developing and replacing I.C.T. systems is a central and essential part of doing business today. It is no longer an add-on item or something which is nice to have. The States must find the way to address the historical lack of funding in strategic I.C.T. and must do it quickly. There is no better time to be doing this work than as we embark upon major reforms to reduce the number of departments, as improvements to the quality of services available to the people of this Island are at the very core of what we decided to do last September.

The Policy and Resources Committee is presently pursuing this matter with vigour and will shortly be bringing forward proposals as to how these crucial needs can be met."

Employment legislation - questions and answers (Tape No. 735)

Senator Corrie Stein asked Senator Terence Augustine Le Sueur, President of the Employment and Social Security Committee, the following questions -

“1. Would the President provide members with a progress report on the development of employment legislation regarding, in particular -

(a) the protection from unfair dismissal;

(b) the introduction of pay statements;

(c) the establishment of minimum contractual standards;

(d) the revision of the Industrial Disputes Law;

(e) the Maternity Rights and other legislation originally proposed for this year; and

would he indicate the future timetable having regard to the delay in bringing forward the first phase of employment legislation as agreed by the States on 12th December 2000?

2. Would the President advise members whether his department has referred for consideration of prosecution any employers who have failed to provide written statements of employment bearing in mind his assurance as long ago as 1996 that this would be one of the Committee’s priorities?”

The President of the Employment and Social Security Committee replied as follows -

“1. As members will be aware, the Assembly agreed in December 2000 to the sequence in which reforms of employment legislation should occur, and agreed to the Employment Forum being used as part of a consultation process to assist my Committee in framing suitable instructions to the Law Draftsman. Although this process has taken a little longer than envisaged, our original timescale of presenting the legislation for debate during 2002 remains intact, albeit later in 2002 than intended.

The consultation period for the first phase of the reforms has now been completed, my Committee has agreed the relevant briefs, which have been submitted to the Law Draftsman, and I am advised that the drafting should be completed within the next six to eight weeks. This will cover the items listed in (a) to (c) of the question, and will also cover the Minimum Wage, a supporting Employment Tribunal (as a body for enforcement) and the statutory requirements for the Jersey Advisory and Conciliation Service, as well as consolidating, and improving upon, all existing pieces of employment legislation.

This latter process will include the Industrial Disputes Law referred to in (d) above, which members will recall was included as part of an amendment of the Industries Committee (P.183/2000) which was also agreed. After full public consultation on this issue, completed at the beginning of this year, the Employment and Social Security Committee had a useful and constructive working session with representatives of the Industries Committee and the Human Resources Committee and their respective officers, and we are now putting the finishing touches to the proposed framework of a new ‘Employment Relations Law’, and will be circulating it shortly, firstly to those Committees and thereafter to the States.

The first phase of the legislation will include protection for pregnant women against unfair dismissal. It was agreed in December 2000 that other Maternity Rights, along with many other potential employment issues, would be dealt with in the second phase of the reform process, but it was always envisaged that there would be a reasonable time lag between the two phases in order to enable employers and employees to become accustomed to the changes arising from the first phase. This will also depend on the availability of time within the Law Drafting Programme for subsequent years.

2. The Committee only took over responsibility for Industrial Relations matters in 1997, and although at that time, (and indeed now) it did seem to be a priority to ensure compliance with the requirement for all employees to have statements of particulars of employment, our subsequent review of employment legislation generally has revealed the need for a more widespread revision and updating of the legislation, in a cohesive manner and in the order agreed by this Assembly in December 2000.

Under the existing Terms of Employment (Jersey) Regulations, the Department has no powers to refer cases for prosecution. The Regulations state that if an employer does not give an employee a statement as stipulated, ‘the Industrial Relations Advisory Officer, (now JACS) the employee or a

person nominated by the employee for the purpose may refer this omission to the Terms of Employment Officer’.

I am aware that a number of referrals have been made to the Terms of Employment Officer. He has advised that the current legislation makes it very difficult to determine questions under these Regulations, and, as a result, has suggested amending the existing legislation. This will be done when consolidating it into the new Employment Law. By that stage there will also be in place an Employment Tribunal to enable the law to be properly enforced where appropriate and protection against unfair dismissal. No offences under the present Regulations have yet resulted in a successful prosecution. I am unable to confirm how any referrals presently under consideration will be determined.”

Emergencies Council meetings - question and answer (Tape No. 735)

Senator Paul Vincent Francis Le Claire asked Senator Pierre François Horsfall, President of the Policy and Resources Committee, the following question -

“Given the importance of security matters since the incidents of 11th September 2002, would the President advise members -

- (a) why he was not represented by a fellow Committee member on 24th April 2002 at the Emergencies Council meeting?
- (b) why no officers of his Committee were present either?
- (c) what has been the attendance record at Emergencies Council meetings in the last 12 months and which Committees have been unable to attend the various meetings ?”

The President of the Policy and Resources Committee replied as follows -

- “(a) I was ill on 24th April 2002 and at short notice could not attend the Emergencies Council meeting on that day.
- (b) The Chief Executive of the Policy and Resources Department receives all the papers for the Emergencies Council but does not routinely attend all its meetings.
- (c) The attendance record of members of the Emergencies Council is not a matter for me. I have attended five of its seven meetings since February 2001.”

Attendance at the Emergencies Council meeting of 24th April 2002 - question and answer (Tape No. 735)

Senator Paul Vincent Francis Le Claire asked the Deputy of St. Peter, President of the Public Services Committee, the following question -

“Would the President advise members why there were no political representatives of his Committee at the scheduled meeting of the Emergencies Council on 24th April 2002?”

The President of the Public Services Committee replied as follows -

“I have instructed my Chief Officer, or in his absence his deputy, to attend all meetings of the Emergencies Council, and to advise me of any important matters resulting therefrom. He regularly deals with emergencies in the Island and is best able to provide expert advice on operational matters and on planning requirements.”

Jersey Police Authority, the review of Police Services and the Territorial Army agreement - questions and answers (Tape No. 735)

The Deputy of St. John asked Deputy Alastair John Layzell of St. Brelade, President of the Home Affairs Committee, the following questions -

- “1. On 26th February 2002, the States received a progress report on the Jersey Police Authority (J.P.A.) in answer to a question put by the Deputy of St. Martin. Would the President update members on the number of occasions the Authority has met since its inception and details of when it will become fully functional?
2. Would the President advise members when the Report of the Independent Review Body on Police Services in Jersey, prepared in July 1996 (under the chairmanship of Sir Cecil Clothier K.C.B., Q.C.) will be implemented in full or in part?
3. The Defence Committee approved the Terms of Agreement between the United Kingdom Government and the States of Jersey on the raising of a Territorial Army Unit in Jersey at its meeting on 24th November 1988.
 - (a) Would the President confirm that this agreement was for a ten year period and advise whether an extension to that agreement has been approved. If so, would he give details of the extension?
 - (b) if no such extension has been agreed, would the President undertake to bring a report and proposition on this matter to the States for debate?”

The President of the Home Affairs Committee replied as follows -

- “1. The Jersey Police Authority has met formally on 12 occasions since its inception in 1998. It now has its full complement of lay members and will shortly be advertising for a new Chairman following Senator Lakeman’s appointment as President of the Privileges and Procedures Committee and his resignation as Acting Chairman of the J.P.A. At a meeting held on 30th April, the Honorary Police elected two chefs de police to perform the functions of Chairman and a Deputy Chairman of the Honorary Police. This will provide the single point of contact which the J.P.A. needs and will assist in our efforts to appoint a new Chairman.
2. In answer to a similar question on 26th February from the Deputy of St. Martin, I repeat that a draft action plan was produced in June 2001 but has yet to be presented to the Home Affairs Committee. However, I believe the main task will involve the amendment of approximately 50 pieces of primary legislation. The Committee’s immediate priority is to appoint a Chairman and a Project Officer to take this work forward now that the Honorary Police have taken the positive step of identifying a single point of contact to work with the J.P.A.
3. The agreement states that ‘these arrangements shall continue for a minimum of ten years from coming into effect. They shall not be amended without prior consultation between the parties and after giving six months notice of intention to do so’. It is therefore not necessary for an extension to be approved. Neither party has given the required notice of wishing to amend the agreement. In view of the answer to (a), question (b) falls away. The Home Affairs Committee does not intend to seek an amendment to the present agreement. The Jersey Field Squadron is thriving under its present Officer Commanding and the Committee expects the complement to increase steadily during the next two years.”

Provision of a Hoppa Bus service - questions and answers (Tape No. 735)

Deputy Geoffrey Peter Southern of St. Helier asked the Deputy of St. Peter, President of the Public Service Committee, the following questions -

- “1. In light of the public comment following the appointment of Connex Bus U.K. to run the Island’s bus service from September, and the Committee’s stated aim ‘to maximise bus usage’, would the President confirm that under Regulations 19(1) of the Draft Motor Traffic (No. 8) (Jersey) Regulations 2002 the Committee has the power to appoint an operator for the Hoppa Bus service without going through a lengthy tendering process?

2. As part of the tendering process, Connex Bus has provided costings for the provision of additional services such as the Hoppa Bus. Would the President -
 - (a) advise members of this figure, and indicate what overall sum would be required to restore the Hoppa Bus service?
 - (b) give an undertaking to members to open negotiations with Connex Bus U.K., and to seek the required funding, to restore the Hoppa Bus to enable a service to be in place by December 2002?"

The President of the Public Services Committee replied as follows -

- "1. Yes. Subject to receiving an application, the Committee can issue a licence without going through a tendering process. However, the Notice and Consultation procedures detailed in Article 24 of the Law would apply.
2. (a) During normal hours the additional cost quoted in the tender is £22.50 per hour plus £1.06 per kilometre. If the Hoppa bus service was to operate in a similar manner to that during the experiment in 1999, the estimated overall cost would be in the order of £315,000 per year.
 - (b) If the Deputy or anyone else can raise the £315,000 needed, I will be happy to discuss with Connex the most effective way of providing a service."

Policing and suicides in car parks - questions and answers (Tape No. 735)

Senator Paul Vincent Francis Le Claire asked Deputy Alastair John Layzell of St. Brelade, President of the Home Affairs Committee, the following questions -

- "1. (a) how many officers are currently tasked to investigate financial crime related matters at present in the States of Jersey Police and how many of that number are assisting with investigations from outside of this jurisdiction?
 - (b) what has been the increase in workload for the police in this area in the last five years showing percentages and has this been attributed to stricter financial regulations as well as international agreements adopted by this Assembly?
 - (c) given that finance continues to be the number one economic contributor to the revenues of this Island, does the President consider that enough police are being provided to meet our international obligations, and does he have the resources available for them to continue to give their full co-operation where and when it is necessary, or does he anticipate having to prioritize investigations in future due to increased reporting practises and limited resources?
 - (d) is the possibility of money laundering and the difficulty of knowing one's client been identified by the police to all of the promotional bodies of finance in Jersey as a cause for concern?
 - (e) if the answer is yes, what has been their instruction and are they acting upon this to the satisfaction of the police?
2. Does the President have statistics on suicides that indicate causes for concern in relation to car parks and if so would he make those known?"

The President of the Home Affairs Committee replied as follows -

- "1.(a) There are 22 staff currently deployed to Financial Crime Investigations locally. This includes 13 States of Jersey police officers, two Customs Officers, five civilians and two police officers on secondment from the U.K.

Every member of staff has a caseload that includes files where essential assistance is provided to external agencies.

- (b) A calculated estimate would indicate a 75 per cent increase in activity in the area of financial crime investigation in the last three years.

There are a variety of reasons for this significant increase. Stricter financial regulations, international agreements, the implementation of U.N. and E.U. sanctions and new legislation such as the Proceeds of Crime Law and the Criminal Justice International Co-Operation Law have all contributed. Similarly, the raising of Jersey's global profile in terms of co-operation and the general raising of awareness in respect of money laundering since 11th September have also had a major impact.

- (c) The level of resources to this particular specialised area of policing remains under constant review. This of course includes the drafting of resources from both other areas of the States of Jersey Police and other organisations both in and out of the Island.

All police work is prioritised in accordance with workload and resources and it is vitally important that we do not refuse assistance to other jurisdictions (where it is lawfully made) for fear of being labelled as unco-operative.

- (d) & (e)

I will answer questions 1(d) and 1(e) at the same time.

The concept of 'knowing your client' is well established locally and features in all briefings conducted by the States of Jersey Police and the Jersey Financial Services Commission. Both organisations have a close working relationship with each other.

The States of Jersey Police however has little contact with the Finance Industry's promotional body the Jersey Finance Industry Association.

2. Over the last three years there have been six suicides and 19 cases where individuals have threatened or attempted to commit suicide by jumping from multi-storey car parks. The Committee discussed this matter two weeks ago and expressed its very grave concern. It has urged the Public Services Committee to expedite arrangements to make the multi-storey car parks more secure."

Post of Chief Executive at the Harbours - question and answer (Tape No. 735)

Deputy Gerard Clifford Lemmens Baudains of St. Clement asked the Deputy of St. Mary, President of the Harbours and Airport Committee, the following question -

"The traditional positions of Harbour Master and Deputy Harbour Master have been changed by creating the position of Chief Executive and deleting the position of Deputy Harbour Master. Would the President inform members of the salary difference between the deleted post and the newly created one and what future annual costs may occur for the taxpayer from the pension aspect of these changes?"

The President of the Harbours and Airport Committee replied as follows -

"The present salary difference is one Hay grade. On the understanding that Jersey Harbours remains self-funding, no future annual costs will occur for the taxpayer.

The separation of roles was one of the fundamental recommendations of the Strategic Service Review of the Department that was formally accepted by the Policy and Resources, Finance and Economics, Human Resources and Harbours and Airport Committees in March 1999."

Sale of rented housing to tenants - question and answer (Tape No. 735)

Deputy Geoffrey Peter Southern of St. Helier asked Deputy Terence John Le Main of St. Helier, President of the Housing Committee, the following question -

"Will the President outline the Committee's current policy on selling rented housing to sitting tenants?"

The President of the Housing Committee replied as follows -

“The Committee has considered from time to time the possibility of selling States rental accommodation to sitting tenants but has decided not to pursue such a policy. While there remains a shortage of accommodation to rent, particularly three and four bedroom houses, a policy of selling to sitting tenants would worsen the housing situation for those in greatest need.

The Committee’s rental housing stock is largely made up of flats - out of a total of 4,700 dwellings only 800 are three bedroom houses. If a policy of ‘right to buy’ was introduced the houses would inevitably be the most attractive to sitting tenants and would be the first to be purchased, leaving the Committee with even fewer family homes for those applying to rent accommodation.

The Committee strongly supports the principle of home ownership and will continue to ensure that opportunities are made available for prospective homeowners through the designation of dwellings for first time buyers and, possibly, a shared equity scheme in the future.”

Waste strategy - questions and answers - (Tape No. 735)

The Deputy of St. John asked the Deputy of St. Peter, President of the Public Services Committee, the following questions -

- “1. Would the President advise members of the cost so far of the report on the Waste Strategy Review up to 26th April 2002?
2. Will the President confirm -
 - (a) that the Committee recently engaged the services of an independent consultant, and that he was employed to undertake work on a Waste Strategy Review?
 - (b) whether, at the time of appointing this independent consultant, references were followed up to ascertain his suitability for appointment? If the answer is in the affirmative what was the result?”

The President of the Public Services Committee replied as follows -

- “1. On 26th April 2002, the Department wrote to the Deputy of St. John outlining the costs of the Waste Strategy. The costs to that date are as follows: -

1. Carl Bro Limited - Preparation of Waste Strategy £58,047

This figure was based on a fixed price quotation of £60,000.

2. Fichtner/Babtie Consulting Engineers Limited - Review of Waste Strategy and preparation of Technical and Financial Feasibility Study for the replacement of the existing Bellozanne Incinerator. £59,930

The cost was based on a fixed fee to £57,346 plus additional works requested by the Committee for presentations and the preparation of a summary report document.

3. Preparation of materials for the public consultation process and organising public meetings £3,690

TOTAL £121,667

In addition to the above, a considerable amount of work is ongoing in the development of the funding options for a new Energy from Waste plant. This work is being undertaken by Pricewaterhouse Coopers, the States Auditors and their report is due for completion in the next four weeks.

Following the recent publicity on new Alternative Technologies, the Department has been undertaking work in conjunction with the Consultants, in evaluating these new facilities.

- 2.(a) The Committee has not engaged the services of an independent consultant for work on the Waste Strategy Review.

If the Deputy is referring to the Waste Collection Report that is currently being undertaken, the Committee engaged Fichtner/Babtie the consortium that has prepared the overall Waste Strategy. Fichtner/ Babtie engaged the services of an independent consultant to work for them in the preparation of the Waste Collection Report.

- (b) The Committee did not take up references.

The terms of engagement were between the Public Services Committee and Fichtner/Babtie, it was for them to provide a consultant with the relevant degree of expertise in the waste collection field. The Department met the consultant prior to commencing interviews with the Parish authorities and waste collectors and were totally satisfied with his level of expertise. A representative from the Public Services Department was also present at each meeting with the Parish authorities and contractors.”

Savings - question and answer (Tape No. 375)

Deputy Gerard Clifford Lemmens Baudains of St. Clement asked Senator Nigel Lewis Quérée, President of the Planning and Environment Committee, the following question -

- “1. In the President’s statement to the Assembly on 23rd April 2002, he announced that the appeals procedure is being curtailed as a result of a 14 per cent cutback in the Department’s finances, would

the President -

- (a) explain why the Committee is required to make a 14 per cent cutback when other committees are being asked for two per cent and what proportion of that 14 per cent, if any, is due to new services or the expansion of existing ones?
- (b) give members an account of the prioritisation process the Committee used to arrive at the decision as to which service would be cut or reduced in order to achieve savings, including an explanation as to which other areas were considered, and why they were discounted.”

The President of the Planning and Environment Committee replied as follows -

- (a) In my Statement to the States on 23rd April 2002 I explained that the Committee concluded that the level of services currently provided by the Committee was no longer tenable with the level of resources currently available to it. The Committee has regularly reported to the States that at some stage this situation would become critical. This under-resourcing is longstanding and there are many references to it in previously published States reports. The Committee’s external Service Review published in 1999 concluded - *‘The Committee cannot meet either the States’ strategic objectives or increasing public user expectations of service quality with the present level of resources.’*

The inadequacy of resources was reported by the Committee to the States in the 1998, 1999, 2000, 2001 and 2002 budgets. The Committee drew the States’ attention to the problem in the published States accounts and reported that the Department’s workload had increased beyond its capacity to maintain the previous productivity gains and sustain its service standards. During the last two years, despite a peak level of construction activity, the Committee’s cash limit fell well below that which was required to maintain its core statutory services.

In the year 2001 this fell short by £144,900. In 2002 this shortfall had become £340,200. In an effort to maintain these services at an adequate level the Committee had no option but to supplement its budget with funds from ‘windfall’ sources, which had accrued from planning and building application income in excess of budget and one-off gains from property rentals. Neither of these sources are sustainable in the longer-term. It was expected that these sums would be consolidated in the cash limit for 2003. This has not occurred.

The Committee’s recommended cash limit for 2003 amounts to £2,572,100. This compares with its 2002 budget of £2,999,700, a shortfall of £427,600 which amounts to a reduction of 14 per cent as identified in my Statement that is, the two per cent reduction plus the shortfall identified above.

In reply to the part of the Deputy’s question on what proportion of the 14 per cent is due to new services or expansion of existing ones, the Committee has very provisionally allocated the Finance and Economics Committee’s recommended new 2003 budget of £2,572,100 entirely between its existing services, in other words, no new services.

- (b) An extensive review of the budget base was completed last year. The Committee received a presentation from its Chief Officer and his management team in January setting out the capability of the department from its existing resources and were asked to ‘draw the line’ on priorities for the 2002 Business Plan. The Committee also received ERM’s report on staffing at that same meeting (published in its final form RC.13/2002). The Committee decided that for 2003 a structural solution to the resource problem be prepared based on user-pays basis to improve service standards in the future to meet the expectations of users, provide the capability which is required as a result of the new Law and reduce the call on taxpayer funds. The details of this proposal were approved by the Committee for submission to the decision conference which took place in April. This was not recommended by the Presidents.

The Committee has given priority to maintaining its statutory services and reductions have been proposed in non-statutory areas. The Committee has also given priority to reducing the impact on its staff of unachievable service levels given present resources and workloads.”

Deputy Roy George Le Hérissier of St. Saviour asked the Deputy of St. Mary, President of the Harbours and Airport Committee, the following questions -

- “1. The report by OXERA Consulting Limited on the Funding of Jersey Airport (P.4) showed Jersey to be under-achieving in revenues from non-aeronautical activities. What steps are in hand to remedy this under-achievement?
2. The Report (P.36) states that the consultants were not in a position to assess the costings and necessity for the proposed Capital Expenditure programme.
 - (a) is the Committee aware whether OXERA attempted to make informed comparisons through studying similar programmes at comparable airports?
 - (b) in view of the observations of OXERA, how will the Committee make an informed decision on this matter?
3. The Report states (P.38) that Jersey’s staff costs are approximately double those of comparable airports, but that other costs are low. Would the President inform the Assembly what steps are being taken to rectify these high staff costs?”

The President of the Harbours and Airport Committee replied as follows -

- “1. The Report factually states that ‘Jersey Airport’ derives a fairly limited proportion of total revenues from non-aeronautical activities not that it is under-achieving.

Comparisons were made on a factual basis with no reference being made to the different circumstances at the different airports.

Unlike most airports in the U.K., Jersey is a destination airport serving a very limited market. It is not a gateway to the world serving a population of several millions; therefore the opportunities for retailing are limited. Jersey Airport does not have a land bank, which it can exploit for the benefit of travellers. The only parcel of land that the Airport administers and that is not required to be free of obstruction for safety reasons, is zoned by the Planning and Environment Committee for Aeronautical Operations, so there is little likelihood of the Airport being able to generate a significant income stream from this area. Members will recall the previous abortive attempt by one of my predecessors to establish a supermarket in this area.

Car park charges have risen in line with those in St. Helier; commercial market value rents are negotiated with all tenants; a second hangar for private aircraft will soon be constructed alongside the Aviation Beauport hangar, a new depot and car valeting area will soon be created alongside the freight area, which will eliminate the need for hundreds of vehicle journeys to and from La Moye and, in partnership with Alpha the Duty Free Shop has been re-sited alongside its temporary position, which caused interruption to passenger flow through the terminal and came in for considerable criticism from passengers because of its very limited range of products. The Airport Management will continue to bear down on costs whilst continually seeking to exploit new revenue generating opportunities.

2. The OXERA Report was commissioned by the Policy and Resources Committee, so the Deputy should more appropriately have directed this question to the President of that Committee. But let me tell the Deputy what happened as far as the Harbours and Airport Committee is concerned.

Shortly after my Committee came into office it was patently obvious that the writing off of the £10 million of outstanding capital debt at the Airport was not the end of the Airport’s financial needs. So we instructed the Airport Management to produce a capital expenditure plan going forward to the year 2020. The costings were in some cases based on estimates and some were based on current prices of suppliers. The total came to £146 million and the Committee was concerned as to whether this was a realistic estimate or a Rolls Royce wish list. It had no way of judging whether this was realistic in terms of timing, quality and cost. So Vector Management Ltd., a firm specialising in Airport infrastructure was commissioned to ‘Audit’ this programme. Their conclusion was that ‘The Capital Investment Programme for the Airport is considered to be a technically satisfactory and

robust projection of potential capital investments needed during the initial 10-year programme. It generally reflects the technical requirements and cost levels to be expected of an Airport of this size and location. By its nature the Airport is dynamic and, whilst the comparison below is considered a robust representation of the investments necessary, there remains a requirement for funding to remain flexible in order to accommodate items either unforeseen or unquantifiable at this time'.

Whilst I have the greatest respect for OXERA as an organisation primarily of economists, I am unaware that they are experts in Airport infrastructure. That is why the Committee employed Vector Management to review the capital programme and I would suggest that OXERA applied their economic analysis to the comments of Vector Management.

3. The statistics to which the Deputy refers are factually correct but the table of statistics takes no account of the different nature of Jersey Airport to those with which it is being compared.

None of the other airports operate air space such as the Channel Islands Control Zone, without which none of the Channel Islands would be able to receive and despatch the number of planes that come and go to and from the Islands everyday particularly in the summer; none of the other airports operate a department of Communications Services, which manages the technology of other States Departments such as the Police, Fire, Ambulance, States Chamber and so on; none of the other airports have a comprehensive Meteorological service which allows pilots to actually talk to a Meteorological Officer about the local weather, which plays such an important role in an Island Airport where there is no train or coach alternative available for diverted flights.

So whilst the numbers are factually correct, it is a case of comparing apples and oranges and not like for like. As a member of the Health and Social Services Committee and Agriculture and Fisheries Committees, the Deputy must be aware that Committees are not totally in control of their staff costs as regards pay awards and pensions or, indeed, numbers. Performance pay, for example, is not part of the public sector culture, yet.

Staff numbers have been reduced wherever possible by natural wastage and redeployment. But the Airport's hours of opening do dictate the number of staff required to be employed to operate the Airport safely from 05.00hrs to 22.00hrs, seven days a week and 52 weeks a year.

Staff cost savings will continue to be on the agenda as are absenteeism and overtime, which have both improved recently."

Allegations that large amounts of ormers had been taken at Les Minquiers during the Easter spring tides - statement

The Vice-President of the Agriculture and Fisheries Committee made a statement in the following terms -

"At the States sitting on Wednesday, 17th April 2002, in a supplementary question to the rapporteur for the Agriculture and Fisheries Committee, the Deputy of St. John alleged that the French National television had reported that ormers to the value of 20,000 Euros (£12,500) had been taken from Les Minquiers over the recent spring tide and had been shipped to London for use in Chinese restaurants. He asked that the matter be investigated. As the Deputy of St. Martin was the rapporteur he informed the Assembly that the matter would be investigated.

The allegations have been fully researched and investigated by the Deputy of St. Martin with the assistance of the Department Officers.

Since 17th April, a considerable amount of time has been spent investigating the Deputy of St. John's allegations. In an effort to trace the T.V. station which had allegedly broadcast the programme, referred to by the Deputy of St. John, the Affaires Maritimes in Cherbourg, St. Malo and St. Briec, the French Consular Agent in Jersey, Maison de Normandie et de la Manche in Jersey, Maison de Jersey in Caen and the French Embassy in Paris have all been contacted. It has become evident that no programme was broadcast. In addition a number of fishermen who were at the reef over the Easter period have been interviewed. However, no evidence has come to hand to substantiate the magnitude of the claim made by the Deputy of St. John. Thus the officers's decision to concentrate the resources available on the low water

areas around our coast has been vindicated.

Unfortunately, a great deal of unnecessary time has been spent following the allegations made by the Deputy of St. John and I believe that no further time should be wasted. I do, however, ask that in future should the Deputy consider making any allegations, particularly across the floor of this Assembly, that he takes proper steps prior to making allegations to verify the accuracy and authenticity of the information given to him.

We respect the absolute right of the Deputy of St. John to ask questions. However, we ask that they be accompanied by suitable research and are not simply unsubstantiated allegations.

The Sea Fisheries Officers are extremely concerned about the issue of illegal fishing and are well aware of the public concern in this area. I can assure the Assembly that the Officers have been extremely diligent in policing our Territorial Waters including the reefs. This is evident by the increased numbers of prosecutions during 2001.”

United Kingdom and the Island: constitutional relationship - statement

Her Majesty’s Attorney General made a statement in the following terms -

“The President of the Policy and Resources Committee has asked me to make a statement to the Assembly concerning the constitutional relationship between the United Kingdom and the Island having regard both to the E.U. tax initiatives and to the recent press coverage of that relationship. Accordingly I have addressed the following questions.

1. Can the United Kingdom Parliament legislate for Jersey against its will in relation to domestic matters including taxation?
2. What are the United Kingdom’s residual powers of good government and when can they be exercised?
3. Can the United Kingdom enter international obligations on the Island’s behalf without our consent?

In relation to all these questions which have been put to me, it is right to start by saying that in the absence of a written constitution there are a number of uncertainties which ultimately could only be resolved by the decision of a court of law. However a considerable amount of work has been done by both me and my predecessor with Professor Jeffrey Jowell, Q.C., a leading constitutional lawyer, and my advice on these subjects, both to the States and should it be sought of me, the Crown, in respect of this matter follows. However it is right that I should tell the Assembly that this advice in one important respect at least is not the same as the advice that was tendered by the Law Officers of the day to the Royal Commission on the Constitution 1969-1973. This is partly because the Law Officers then perhaps did not have the same opportunities to reflect on the type of constitutional advice which I and my predecessor have received and partly because the courts have had to determine a number of cases with constitutional implications since 1973 - thirty years is a long time and the law does not stand still - and indeed have now to consider the effect of international treaties and conventions including the European Convention of Human Rights. Ultimately as I have said, the question of whether legal advice is or is not right can only be tested in a court of law, as Lord Kilbrandon himself recognised.

1. The traditional view (accepted by the Law Officers of the day in 1970) as enunciated by A.V. Dicey in *The Law of the Constitution* (1885) and, perhaps unsurprisingly given the approach taken by Jersey at that time, by the Report of the Royal Commission on the Constitution (1973) presented by Lord Kilbrandon, is that Parliament has unlimited legal power of legislating for Jersey, but that power is in practice limited by a convention restraining (but not wholly excluding) its exercise in domestic affairs including taxation. However neither Kilbrandon nor Dicey produce any authority in favour of that proposition to justify the legal sovereignty of Parliament over Jersey. Nor is there any justification by reference to constitutional principle or other legal source. Dicey relied on raw power, when he said that:

“But whatever doubt may arise in the Channel Islands, every English lawyer knows that any English Court will hold that an Act of Parliament clearly intended to apply to the Channel Islands is in force there proprio vigore [by virtue of its own force] whether registered in the States or not.”

Kilbrandon justified what he termed the U.K.'s paramount power over Jersey only by reference to convenience.

Parliamentary sovereignty is a constitutional precept which justifies the supremacy of Parliament over the Crown by requiring the will of Parliament to be supreme over that of the monarch. In particular it was a principle which developed from an intention to prevent the King from raising taxation without the consent of Parliament. The principle is now seen to be based upon the concept of where power ought to lie in a democracy - namely with the elected representatives of the people.

In my view, democratic principle does not justify the supremacy of U.K. Parliament over Jersey's affairs. Indeed it points the other way. Hence Blackstone in his celebrated statement explaining why Parliament legislated for the town of Berwick-Upon-Tweed but not for Ireland said as long ago as 1765:

“The town of Berwick-on-Tweed though subject to the Crown of England ever since the conquest of it in the reign of Edward IV is not part of the Kingdom of England nor subject to the common law though it is subject to all Acts of Parliament being represented by Bergers therein ...but as Ireland was a distinct dominion and had Parliaments of its own ... our statutes do not bind them, because they do not send representatives to our Parliament ...”.

In the debates in Parliament in relation to the imposition of the Stamp Acts on America in the 1760's, Lord Camden said on 10th February 1766:

“Wales, my Lords, was not taxed until it was united to England when it was forthwith represented. Calais and Berwick when they were conquered sent members to Parliament. Guernsey, Jersey and the Isle of Man are not yet a part of the realm of England, and have never yet been taxed.”

As members will be aware, historically the relationship between the Channel Islands and the United Kingdom arises through the Crown - the conquest of England in 1066 by the Duke of Normandy when the Islands formed part of Normandy, followed by the continued loyalty of the Island to the English Crown notwithstanding the loss of Normandy in 1204. Subsequently a number of Royal Charters confirmed the Island's domestic autonomy, including the right to be governed by Norman law, not to be cited in English writs, to have a local judicature and to be exempted from *“tolls, tallages, contributions, burdens and exactions, other than those imposed under the Royal Prerogative.”* Furthermore, Jersey has been neither conquered or colonised by the United Kingdom, nor ceded to it. None of the usual reasons which justify the assertion of legal supremacy by one territory over another therefore applies.

Accordingly my advice to the Assembly is that Parliament has no legal power to legislate for Jersey against its will in relation to domestic matters including taxation because if it were to do so it would be acting contrary to constitutional principle, to Royal Charters granted over the centuries and to the unique historical relationship which ties the Channel Islands and the United Kingdom together.

2. Although Kilbrandon used the phrase *“good government”* he did not provide any source for it. However the phrase has been used from time to time in the nature of the powers of the Crown to legislate for Crown colonies. After the status of a colony was conferred upon a conquered or ceded territory, Orders in Council would normally be made specifically conferring upon the colonial authority, with the advice and consent of Parliament or of the Privy Council as the case may be, the power *“to make from time to time all such laws as appear necessary for the peace, order and good government of the Territory.”* This formula was held in a number of cases in the Privy Council to *“connote in British constitutional language, the widest law making powers appropriate to a sovereign.”* See for example Ibralebbe v. The Queen [1964] AC 900 at page 923.

Kilbrandon accepted that there was room for a difference of view as to the circumstances when it would be proper to exercise any such power. He said:

“Intervention would certainly be justifiable to preserve law and order in the event of grave internal disruption. Whether there are other circumstances in which it would be justified is a question which is so hypothetical as in our view not to be worth pursuing.”

This conclusion was echoed by the comment by Lord Bach, on behalf of Her Majesty's Government in the House of Lords on 3rd May 2000, when he said:

“The Crown is ultimately responsible for the good government of the Crown Dependencies. This means that in the circumstances of a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands and the Isle of Man. It is unhelpful to the relationship between Her Majesty’s Government and the Islands to speculate about the hypothetical and highly unlikely circumstances in which such interventions might take place.”

It is to be emphasized that the power to intervene on the grounds of good government resides in the Crown and not in Parliament. In advising Her Majesty, ministers are in my view required to have regard to the interests of the Island. Furthermore, it seems clear that the power is a limited one designed to be exercised primarily where there is a grave breakdown of law and order which the exercise of the power seeks to restore.

In my view, there is no doubt at all that the power does not permit lawful intervention with Jersey’s tax regimes or fiscal structures.

3. The competence of the United Kingdom to conduct international relations on behalf of Jersey is well recognised under international law - see for example the U.K./France Continental Shelf case [54 ILR, page 6] The source of the U.K.’s competence in this area is consistent with Jersey’s status as a Crown Dependency, as the treaty making power of the Crown falls squarely within the scope of the Royal Prerogative.

This is not to say however that simply because the U.K. possesses legal competence to conduct Jersey’s international affairs that Jersey has no international personality of its own. That Jersey has a limited international personality is clear from its representation in some Commonwealth bodies, and on the British Irish Council; also from the fact that Jersey was left to negotiate directly with the O.E.C.D. There is a parallel in the case of U.S. Nationals in Morocco [I.C.J. Reports 1952, page 176] where the power of France to conduct international relations for Morocco did not extinguish a degree of international personality on the part of Morocco, nor necessarily override the limits of the constitutional relationship between the two States. Another parallel exists in the International Coffee Agreement where net exporters of coffee who are U.K. Overseas Territories have a special status in what is a Treaty based organisation.

Equally, the legal competence in the U.K. to conduct Jersey’s international affairs does not mean that the U.K. is entitled to bind Jersey to international obligations without its consent. Under the Vienna Convention 1969 there is a presumption that Treaties apply to the whole of the territories for the international relations of which a State is responsible. However that presumption is rebuttable where a different intention appears from the Treaty or is otherwise established.

Since 1967, the United Kingdom has adopted the practice of making clear in the terms of instruments of ratification that the Treaty is not presumed to apply to the whole of the territories for the international relations of which the United Kingdom is responsible. That “*different intention*” has therefore been firmly established in practice and is accepted in the United Nations and in international law. It is also consistent with the Foreign Secretary’s circular to other governments of 16th October 1950 when he said:

“... It would also be more consistent with the constitutional position of [the Channel Islands and the Isle of Man] to regard them for international purposes as not forming part of the United Kingdom of Great Britain and Northern Ireland.”

Furthermore, the existence of an obligation of the United Kingdom in international law does not of itself confer on the United Kingdom a power to impose that obligation upon Jersey contrary to the U.K.-Jersey constitutional arrangements. This is because Treaties are made by the executive, and laws are made by the legislature. For a Treaty to have effect in U.K. law, Parliament must transform that Treaty into U.K. law. Similarly, for an international obligation to have effect in Jersey law, Jersey legislation is necessary.”

E.U. tax matters - statement

The President of the Policy and Resources Committee made a statement in the following terms -

“I made a statement to the Assembly on 17th April 2002 about the E.U. Tax Package and I am sure that all members are well aware that this difficult subject has continued to dominate my Committee’s counsels in

the ensuing four weeks. My earlier statement was, however, mainly concerned with one particular aspect of the Tax Package - the E.U.'s Code of Conduct on Business Taxation, under whose principles, if we were to subscribe to them, we should have to 'rollback' certain key tax measures deemed by the E.U. to have 'harmful features'. Our consideration of that issue continues.

My further statement today is, however, about the other main aspect of the Tax Package - the exchange of information on the savings income of E.U. residents - which in the E.U. is being taken forward through a draft Directive on the Effective Taxation of Savings Income. This was published in July 2001 and the European Council has said it hopes to reach a common position on it at the end of this year, although it has made the adoption of the Directive conditional on measures of equivalent effect being agreed by several countries outside the E.U. in order to prevent capital flight. As I believe all members will be aware, the E.U. Member States have therefore committed themselves to ensuring that same or equivalent measures to those set out in the Directive are put in place by certain third countries, notably Switzerland or the U.S.A. and that same measures as those in the Directive are applied, within the framework of their constitutional arrangements, by their dependent or associated territories. As I indicated in my earlier statement on 17th April, in the light of this situation in the E.U., we have naturally been giving very careful consideration to the position that Jersey should adopt on the important issues raised.

I wish to inform the Assembly of an important conclusion which has now been reached by the Policy and Resources Committee. This is that Jersey should support exchange of information in respect of the savings income of E.U. residents.

I communicated this yesterday evening by letter to Ms. Primarolo, the U.K. Paymaster General, and I have circulated a copy of that letter to all members along with a copy of this statement. Both documents will be publicly available on the www.gov.je website shortly after I have sat down.

This conclusion has been reached by the Committee only after very careful consideration of where Jersey's best interests lie, and it follows thorough consultation with the Jersey Finance Industry Association which I am pleased to say is fully supportive of the approach we have adopted and welcomes the certainty that this will provide, looking forward, for Jersey's customers.

It is also a natural, and perhaps unsurprising, outcome from earlier, interim positions that we have taken on the issues posed by the draft Directive. We indicated to the U.K. last November, not long after the draft Directive was published, that although Jersey was not in the E.U.'s fiscal territory we recognised the importance that the E.U. Member States attached to the Directive and that we had no intention of allowing Jersey to become a place where E.U. residents could escape tax obligations in their own home countries. We would therefore look to adopt same or equivalent measures to those in the Directive. This was an important statement of principle on our part.

'Equivalent' measures might, in practice, have meant our adopting some form of withholding tax, perhaps along similar lines to Switzerland. Our finance industry has not supported a withholding tax approach. It has in fact said clearly that, in the circumstances Jersey finds itself of having to adapt to the political and economic forces that shape the Island's market for financial services, exchange of information in respect of E.U. residents is the best route to follow. This view coincided with our own analysis. I emphasise, though, that the exchange of information is in respect of E.U. residents only, and is naturally subject to level playing field safeguards as stated clearly in my letter to Ms. Primarolo.

This decision is, I believe, further evidence of Jersey's constructive approach to these difficult issues. Jersey is not in the E.U. for fiscal purposes, nor of course within the U.K., and it was certainly wrong that we were included in the Tax Package in the first place. We were certainly not consulted on the matter. But we are where we are. Political as well as economic forces are at work. Jersey depends for its living on global markets. There is no use in sticking our heads in the sand and wishing that pressures such as the E.U. Tax Package did not exist. Rather, we must make hard-headed assessments of where, in the round, the Island's best interests lie and how best we can safeguard those.

My Committee is of the clear view that the approach we have now adopted, after undertaking a full and careful analysis of all the options as we said we would do, is wholly consistent with ensuring that Jersey stays in the forefront as a reputable, well-regulated and transparent international finance centre within the European region, where indisputably many of our most important commercial interests lie.

I should emphasise in conclusion, that the changes now in prospect will require amendments to legislation and these will, of course, require the approval of the Assembly in due course. However, I am utterly confident that the position we have adopted is in Jersey's best interests and that it will receive the full support of Members of this Assembly."

APPENDIX

"Dear Minister

E.U. DRAFT DIRECTIVE ON THE TAXATION
OF SAVINGS INCOME

Following publication of the revised draft directive last summer, you will recall that we made clear that we recognised the importance the E.U. Member States attached to it and their wish to limit as far as possible any circumvention of the effect of the Directive in third countries. We therefore said that, although Jersey was not within the E.U.'s fiscal territory or the E.U. single market, we would seek to ensure that Jersey was not a place where E.U. residents could endeavour to circumvent the effect of the Directive. To meet this point of principle we would look to adopt measures that were the same or equivalent to those set out in the draft directive. This was subject to the key 'level playing field' safeguards of, first, sufficient assurance about the application of the same or equivalent measures by the E.U. Member States and the third countries named in the Feira conclusions and, secondly, Jersey's not implementing any such measures ahead of action by the Member States themselves and others.

Over recent months we have been looking carefully, in consultation with our finance industry, at how best to give effect to this commitment. When we spoke last month, I said that I expected to be in a position to share our thinking with you in early May. I am indeed now able to do that.

We have decided that the right way for Jersey to proceed is to support exchange of information in respect of E.U. residents. I can therefore confirm to you that we are now going to begin the necessary work to develop appropriate measures, so that when the Directive has been adopted in its final form we shall be able to proceed in Jersey in a timely manner. I shall be making a statement to our States Assembly tomorrow accordingly. Of course, the ultimate decision will be for the States because changes to our legislation will be required.

You have always emphasised to me the importance the United Kingdom attaches to a level playing field and, with this in mind, our decision is naturally subject to the E.U. itself adopting - and effectively implementing - the Directive and our having sufficient assurance about the intentions of the named third countries. You have also been very clear in saying that it is not the United Kingdom's intention to seek to promote change on the part of a Crown Dependency such as Jersey ahead of others in the international framework (to use the same words that you deployed last week in the Finance Bill Committee Stage). I look to you to ensure that our shared insistence on securing a level playing field is fully met.

On timing, it appears that some Member States are not likely to move towards exchange of information until 2011 at the earliest. That will not be our approach but discussions will be required on information exchange arrangements prior to full implementation of the same within the E.U. There will clearly also be technical and practical issues to be resolved. So far as the detailed discussions on implementation are concerned, we would obviously expect to participate in those, not least because as a non-E.U. territory there may be shades of difference in some areas to be addressed, for example on data protection and privacy issues and I should welcome your assurance that you will facilitate Jersey playing its part in them.

Jersey has always sought to maintain its reputation as a high quality, well-regulated and cooperative jurisdiction. We made that clear when the E.U. tax package first emerged four years ago and we have repeated the point on many occasions since then. Our insistence on a level playing field comes simply from a belief in fairness and in particular a desire to avoid investment flowing from well-regulated centres like our own to less well-regulated ones, a desire that I know you share.

Our preference is to work together, while recognising that our interests are not always identical, and to endeavour to find a mutually acceptable way through any problems that arise. The position which we have now reached on exchange of information in respect of E.U. residents, foreshadowed last autumn but now confirmed in the light of our detailed analysis, is proof, if any was needed, that we mean what we say and

do what we promise.

Accordingly, I hope we can now seek to move forward on our discussions about the Code of Conduct the more constructively and with the necessary flexibility on each side to ensure that our legitimate economic interests are protected.

Once the States have been informed, I intend to invite the Bailiff of Jersey to write through official channels in order to set out both the principle and detail of Jersey's position in a formal manner for the record. I shall also be asking my officials to pursue with yours various points of detail arising that will need to be addressed in moving forward and in considering how best we should contribute to the implementation process.

Yours sincerely,

(Signed) SENATOR P F HORSFALL, O.B.E.
PRESIDENT, POLICY AND RESOURCES COMMITTEE

La Collette, St. Helier, Phase II: approval of drawings and funding arrangements for the construction of a bus workshop - P.61/2001

THE STATES, adopting a proposition of the Planning and Environment Committee -

- (a) approved drawing Nos. 4281/10,12,13 and 14 showing the construction and fitting out of a new public bus service maintenance workshop of approximately 12,500 square feet and associated parking area on reclaimed land at La Collette Phase II, St. Helier (as shown on Drawing Nos. 1171/02/42 and 4281/07) for occupation by the authorised operators of the Island's public bus service, and authorised the Greffier of the States to sign the said drawings on behalf of the States;
- (b) authorised the Finance and Economics Committee on behalf of the public to enter into an agreement with an authorised lending institution for the direct external borrowing of a maximum of £2,200,000 (two million two hundred thousand pounds) to finance the construction of the building and parking areas described in paragraph (a) on terms, and at a date, to be agreed by the Finance and Economics Committee;
- (c) authorised the Planning and Environment Committee on behalf of the public to enter into a fixed price development agreement with A.C. Mauger and Son Limited for the design and construction of the building and parking areas described in paragraph (a);
- (d) authorised the Treasurer of the States to credit a suspense account established for this purpose in the name of the Planning and Environment Committee under Articles 7(1)(e) and 20(2) of the Public Finance (Administration) (Jersey) Law 1967, as amended, and authorised that Committee to pay from the account the costs of the development and all professional and legal fees associated with the development and funding arrangements; and
- (e) authorised the Attorney General and the Greffier of the States to pass, and the Greffier of the States to sign, as appropriate, on behalf of the public, such contracts or agreements as might be necessary.

La Collette, St. Helier, Phase II: transfer of administration P.51/2002

THE STATES adopting a proposition of the Public Services Committee -

- (a) approved the transfer of administration of 127,629 square feet of reclaimed land at La Collette, Phase II, as shown hatched on drawing No. 1171/02/42, from the Public Services Committee to the Planning and Environment Committee, for the purpose of developing the site as a bus workshop and parking facility; and
- (b) authorised the Greffier of the States to sign the said drawing on behalf of the States.

Draft Public Markets (Administration) (Amendment) (Jersey) Regulations 200- P.53/2002

THE STATES, in pursuance of Article 3 of the “Lois (1885 à 1940) touchant l’Administration des Marchés Publics”, and of all other powers enabling them in that behalf, made Regulations entitled the Public Markets (Administration) (Amendment) (Jersey) Regulations 2002.

5-7 Newgate Street, St. Helier: purchase of land - P.58/2002

THE STATES adopting a proposition of the Health and Social Services Committee -

- (a) (i) agreed the transfer by the Public of the property known as Nos. 5, 6 and 7 Newgate Street St. Helier (as shown on Drawing No. 1420/02/40) to a nominee company of Dandara Jersey Limited;
- (ii) authorised the entering into a Development Agreement between the Public and a nominee company of Dandara Jersey Limited for the purposes of providing an area of the ground floor of approximately 464 square metres for the provision of a Dental Clinic as shown on Drawing No. 2000/18/03 with each party to be responsible for the payment of their own legal fees; and
- (iii) authorised the payment of £230,000 (two hundred and thirty thousand pounds sterling) for the flying freehold interest in the said ground floor upon completion of the combined redevelopment and delivery of the shell and core;
- (b) authorised the payment of any legal expenses in connexion with the proposed scheme and all interests therein;
- (c) authorised the Attorney General and the Greffier of the States to pass on behalf of the Public any contracts which may be found necessary to pass in connection with the transfer, the Development Agreement and all interests therein; and
- (d) authorised the payment or discharge of any expenses incurred in connection with the transfer of the properties and any interest therein from the Planning and Environment Committee’s Vote of Credit C0904 “Acquisition of Land - Major Reserve”.

Proposed Race Discrimination (Jersey) Law - P.32/2002 Comment - P.32/2002.Com. and Com.(2)

The Bailiff having granted leave to the President of the Legislation Committee to move without notice an amendment that in part (b) of the proposition, “2004” be substituted for “2003”, the States adopted a proposition of the Legislation Committee and-

- (a) approved, in principle, the proposals to render unlawful racial discrimination as defined by law, as set out in Parts A to F of the report of the Legislation Committee dated 5th March 2002, namely -
 - (i) racial discrimination to which the Law would apply (Part A);
 - (ii) discrimination in employment (Part B);
 - (iii) discrimination in other areas (Part C);
 - (iv) other unlawful acts (Part D);
 - (v) general exceptions (Part E);
 - (vi) incitement to racial hatred (Part F)
- together with the enforcement proposals as set out in Part G of the report;

- (b) requested that the necessary funding be included in the prioritisation process for 2004 and beyond; and,
- (c) charged the Legislation Committee to prepare the necessary draft legislation for approval by the States.

Members present voted on the proposition as amended as follows -

“Pour” (41)

Senators

Horsfall, Stein, Bailhache, Syvret, Kinnard, Le Sueur, Le Claire, Lakeman.

Connétables

Grouville, St. Martin, St. Ouen, St. Brelade, St. Mary, St. John, St. Peter, St. Clement, St. Helier.

Deputies

S. Baudains(H), Trinity, Duhamel(S), Routier(H), Layzell(B), Breckon(S), Grouville, Huet(H)
St. Martin, Le Main(H), Vibert(B), St. Peter, Dubras(L), St. Ouen, Dorey(H), Troy(B), Voisin(I)
Scott Warren(S), Le Hérissier(S), Ozouf(H), Fox(H), Bridge(H), Martin(H), Southern (H).

“Contre” (4)

Connétables

Trinity, St. Saviour.

Deputies

St. John, G. Baudains(C).

Field 141, La Rue Horman, Grouville: sale of land- P.62/2002

THE STATES adopting a proposition of the Housing Committee -

- (a) authorised the sale to G.R. Langlois Limited of two areas of land totalling approximately 1,000 square feet in the south and north-west corners of Field 141, La Rue Horman, Grouville, as shown on Drawing No. 259/01/35, for £10,000 (ten thousand pounds) with each party being responsible for their own legal costs;
- (b) authorised the granting of vehicular and pedestrian access over the pavement, in Rue de la Poterie, Grouville and the right to connect services to Field 141, Grouville, for the sum of £50,000 (fifty thousand pounds);
- (c) authorised the Greffier of the States to sign the said drawing on behalf of the States;
- (d) authorised the Attorney General and the Greffier of the States to pass on behalf of the Public any contracts it might be necessary to pass in connexion with the sale of the said land and the granting of the rights of way and service wayleaves; and
- (e) agreed that monies received by the Treasurer of the States from the transaction be credited to the Planning and Environment Committee’s Vote of Credit C0904 “Acquisition of Land - Major Reserve”.

Additional meeting

THE STATES, on the proposition of Senator Pierre François Horsfall, O.B.E. and in accordance with Standing Order 5(1c)(b), agreed to meet on 21st May 2002 in order to complete consideration of matters of which notice

had been given for the present meeting.

THE STATES rose at 5.40 p.m.

M.N. DE LA HAYE

Deputy Greffier of the States.