

THE JERSEY LAW COMMISSION: REPORT FOR 1998

**Presented to the States on 20th July 1999
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

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REPORT

The Jersey Law Commission

The Jersey Law Commission was set up by a proposition laid before the States of Jersey and approved by the States Assembly on 30th July 1996.

The Commissioners are -

Advocate Keith Baker, Chairman
Jurat Donald Le Boutillier
Mr. David Lyons
Mr. David Moon
Advocate William Bailhache

The address of the Jersey Law Commission is PO Box 87, St. Helier, Jersey, JE4 8PX.

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The Jersey Law Commission Third Annual Report 1998

To the President of the Legislation Committee of the States of Jersey

I have the honour to present to you, on behalf of the Jersey Law Commission, pursuant to the proposition to establish the Commission approved by the States on 30th July 1996, our third Annual Report covering the activities of the Commission in the calendar year 1998.

Signed

Keith Baker, Chairman.

PART I - The third year

The Commissioners held 12 meetings during the year, completed one Topic, made progress on two others, embarked on one new one and received the approval of the Legislation Committee to proceed with the review of four others in due course.

The completion of our first Topic took us right through our full six-stage procedure for the first time (see Appendix B). This working method, which we devised in the early planning stages, has proved satisfactory in practice, and we will continue to work in the same way for the immediate future.

PART II - Topic reports

II.i Topic 3 - The accountability of Trustees

(Topic Commissioner: Advocate Keith Baker)
(Topic Practitioner: Advocate Cyman Davies)

The Consultation Paper on this Topic, entitled "The rights of beneficiaries to information regarding a trust" was published in March 1998, both in printed form and on the Internet. We received 31 letters in response to it.

After detailed consideration of the responses, we delivered our final report to the Legislation Committee on 23rd October 1998, and it was similarly published both in printed form and on the Internet.

II.ii Topic 4 - The Best Evidence Rule

(Topic Commissioner: Jurat Donald Le Boutillier)
(Topic Practitioner: Advocate Anthony Dessain)

The Consultation Paper on this topic was completed after the end of 1998, and it will shortly be published.

II.iii Topic 5 - Dégrevement and its relationship to the Bankruptcy (Désastre) (Jersey) Law 1990

(Topic Commissioner: Mr. David Lyons)
(Topic Practitioner: Mr. Peter Luce)

The Consultation Paper on this Topic was published in November 1998, and although there was a large demand for copies, we received very few letters in response. We have therefore concluded that most people agreed with our proposals. Those who did respond, however, made very valuable suggestions, and these are presently being evaluated in the course of preparing our Final Topic Report.

II.iv Topic 6 - The Jersey Law of Real Property

(Topic Commissioner: Mr. David Moon)

This new Topic for review by the Commission was approved by the Legislation Committee in November 1998. Mr. Moon began work on it after the end of the year, with the assistance of Advocates Le Marquand and C. Renouf and Mr. John Bisson, Solicitor.

PART III - The cost of the Commission

III.i The Commission's resources are made available by the States of Jersey through the Legislation Committee, based on budgets submitted by the Commission and approved by that Committee. Although a budget of £75,000 was approved for 1998, we once again spent very much less than that.

III.ii The following expenditure was incurred by the Commission in 1998 -

Printing and stationery	£3,249.41
Telephone and fax/postage	£1,484.08
Advertising	£1,098.96
Research fees	£3,285.00
Travelling expenses	Nil
TOTAL	<u>£9,117.45</u>

PART IV - Budgets

IV.i Budget for 1998. The States previously approved our budget of £75,000 for 1998, which, together with the amount underspent for 1997, left an accumulated balance of £127,000 available at the end of 1998. As it has now become clear that the Commission is working much more cheaply than expected, we wish to return £100,000 of that provision.

IV.ii Budget for 1999. £75,000 has been allocated, but it is likely that further funds will be returned at the year end.

IV.iii Budget for 2000. This has been reduced to £45,000.

Signed

Keith Baker, Chairman

Donald Le Boutillier

David Lyons

David Moon

William Bailhache

The rôle of the Commission

The Commission is a body established by the States of Jersey. Although the Commission works in close consultation with the Legislation Committee, which also organises its funding and acts as its channel of communication with the States, it is an independent body whose reports will be made available, unaltered, to the public.

The rôle of the Commission is defined in its terms of reference, which are set out as follows in the proposition establishing it

“It shall be the duty of the Commission to identify aspects of Jersey law which it considers should be examined with a view to their development and reform, including in particular the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law, and to those ends -

- (a) to receive and consider any proposals for the reform of the law which may be made or referred to them;*
- (b) to prepare and submit to the Legislation Committee from time to time programmes for the examination of different branches of the law with a view to reform;*
- (c) to undertake, pursuant to any such recommendations approved by the Legislation Committee, the examination of particular branches of the law, such consultation thereon as the Commission shall think fit, and the formulation by means of draft bills or otherwise of proposals for such reform.”.*

The Commission's working method

Upon accepting a topic for review the Commission appoints one of its members to act as the Topic Commissioner to conduct and co-ordinate all of the Commission's work on that topic. On his recommendation the Commission seeks to appoint a Jersey lawyer currently practising in that field as Topic Practitioner to assist him generally and to ensure that the Commission's work remains relevant to the issues actually arising in day-to-day practice. Neither the Topic Commissioner nor the Topic Practitioner are paid by the Commission. Any necessary legal research will usually be carried out by others: either by professional researchers under contract or by experts willing to give their time as a public service.

The procedure for the review of each topic will commonly fall into the following steps -

1. Finding out whether there is a problem and if there is, defining exactly what it is.
2. Researching and summarising the existing law relevant to the topic.
3. Suggesting how the relevant law might be changed to solve the problem.
4. Preparing and publishing a consultative document based on items 1, 2 and 3.
5. Receiving and discussing representations made in response to the consultative document.
6. Preparing and publishing a final report culminating in either a detailed brief for the Law Draftsman or in a draft Law prepared in consultation with the Law Draftsman.