

STATES OF JERSEY



JERSEY LAW COMMISSION: REPORT FOR 2002

**Presented to the States on 9th September 2003
by the Legislation Committee**

STATES GREFFE

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 – Mr. David Moon, Solicitor, *Chairman*
Mr. David Lyons, English Solicitor
Advocate Alan Binnington
Mr. Clive Chaplin, Solicitor
Advocate John Wheeler

The Secretary is – Miss Brenda de Louche

The address of the Jersey Law Commission is Whiteley Chambers, Don Street, St. Helier, Jersey JE4 9WG

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The Jersey Law Commission Seventh Annual Report 2002

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 Seventh Annual Report covering the activities of the Commission in the calendar year 2002.

Signed

David Moon, Chairman.

PART I – The Seventh Year

Eleven meetings were held during the year. The Commission issued Consultation Papers on 3 Topic Reports (Real Property, the Law of Tutelles and the Law of Contract), a final Report on the Law of Tutelles and made progress on 2 topics, Security Interest Laws and the Law of Charities.

PART II – Topic Reports

II.i Topic 4 – The Best Evidence Rule

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(Topic Commissioners: Jurat Donald Le Boutillier; Mr. David Lyons)
(Topic Practitioner: Advocate Anthony Dessain)

The Final Topic Report was produced and presented to the Legislation Committee on 26th January 2001. The recommendations contained therein were approved by the States of Jersey and have been passed to the States Law Draftsman to progress to legislation.

II.ii Topic 6 – The Jersey Law of Real Property

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(Topic Commissioner: Mr. David Moon)
(Topic Researchers: Advocates Helen Boleat, James Lawrence and Andrew Bridgeford)

The Commission issued a Consultation paper on this topic in September 2002. It has evoked considerable interest and comment which the Commission is evaluating in preparing its Report on the topic for submission to the Legislation Committee.

II.iii Topic 8 – Jersey Rules of Légitime

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(Topic Commissioner: Mr. David Lyons)
(Topic Researcher: Advocate Keith Dixon)

The Law Commission submitted a paper in response to the Legislation Committee's consultation document R.C.3/2001 on Succession Rights, which had been presented by the Legislation Committee to the States on 2nd January 2001. No further work is required to be done by the Law Commission until instruction has been received from the Legislation Committee.

II.iv Topic 9 – The Law on Tutelles

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(Topic Commissioner: Clive Chaplin, Solicitor)
(Topic Researchers: Advocates Marion Whittaker and Rose Colley)

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The Commission's Report of July 2002 on this Topic was laid before the States by the Legislation

Committee and approved by the States on 10th September 2002. Its recommendations are now with the Law Draftsman for implementation in a new statute.

II.v Topic 10 – The Law of Contracts

(Topic Commissioner: Advocate Alan Binnington)
(Topic Researcher: Advocate John Kelleher)

A Consultation Paper on this Topic was issued in October 2002. A Report is being prepared for submission to the Legislation Committee with recommendations incorporating views expressed in the comments received on the Consultation Paper.

IIvi. Topic 12 – The Law of Charities

(Topic Commissioner: Clive Chaplin)
(Topic Researcher: Philip Le Cornu)

Commissioner Clive Chaplin and [Philip Le Cornu] have been progressing a consultation document that would include a proposal to redefine the definition of charity and abolish the 1601 test in favour of a new definition and provide a system of regulation appropriate to the Island to prevent the abuse of charitable trusts as a cloak for illegal activities.

IIvii. The Law on Security

(Commissioners: John Wheeler and David Lyons)

Arising from a request from the Jersey Financial Services Commission to review a consultation document by the Company Law Review Steering Group in relation to the registration of company charges, the Law Commission decided to review security interests and charges over property in general. Commissioners John Wheeler and David Lyons undertook preliminary research as a result of which the Commission decided to consider Security as a new Topic. These 2 Commissioners are now leading the preparation of consultative paper for the Commission to publish on the subject.

IIviii. The Rights of Beneficiaries to Information Regarding a Trust

The Law Commission understands that the Topic Report on the Rights of Beneficiaries to information regarding a Trust was forwarded to the Finance and Economics Committee for consideration and comments. The Commission therefore waits to hear whether this Topic will progress to legislation in due course.

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.

III.ii The Commission incurred the following expenditure in 2002 –

	£
Printing and stationery	3,520.00
Advertising	804.00
Research fees	9,885.00
Travelling expenses	nil
Disbursements	nil
TOTAL	<u>14,209.00</u>

PART IV – Budgets

IV.i Budget for 2002

The States approved a budget for the Commission of £45,000 for 2002. As the Commission's costs were not as high as expected, the under-spend for 2002 was returned to the General Revenue of the States.

IV.ii Budget for 2003

The Legislation Committee approved the Commission's budget for 2003 as being £45,000.

Signed

David Moon, Chairman

David Lyons

Clive Chaplin

Alan Binnington

John Wheeler

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 is 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.