STATES OF JERSEY

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PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME: PENSIONS ASPECTS OF THE DRAFT POSTAL SERVICES (JERSEY) LAW 200-

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Presented to the States on 16th March 2004
by the Policy and Resources Committee

STATES GREFFE

REPORT TO THE STATES BY THE POLICY AND RESOURCES COMMITTEE ("P&R") AS PRINCIPAL EMPLOYER UNDER THE PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME ("PECRS")

1. P&R has been asked by the Committee of Management ("COM") of PECRS to place before the States a Report that COM has prepared and that contains information that COM believes is important for the States to understand in connection with COM's fiduciary duties towards existing postal employees who are members of PECRS.

2. The Report is set out below.

3. In placing the Report before the States, P&R, in its capacity as the Principal Employer for the purposes of PECRS, confirms the agreement and undertakings set out in paragraph 5.

POLICY AND RESOURCES COMMITTEE
Thursday 11th March 2004

Pensions aspects of the Draft Postal Services (Jersey) Law 200- (the "draft Law")

Report of the Committee of Management ("COM") of the
Public Employees Contributory Retirement Scheme ("PECRS")

1. Since autumn 2003 the COM has been following developments in the pensions aspects of the incorporation of Jersey Post. It delegated to its Technical Sub-committee the task of working with the Policy and Resources Committee (the "**Principal Employer**"), the Economic Development Committee ("**EDC**") and the parties' advisers to ensure that the COM was in a position to fulfil its fiduciary responsibilities. The COM and its advisers were afforded the opportunity to consider and comment on drafts of the proposed legislation and raised issues to which reference is made in the Report to the draft Law as lodged. Although the full COM has not met since the draft Law was lodged, its Technical Sub-Committee has considered both it and the accompanying Report and welcomes the work of the EDC and others to meet the COM's concerns.

2. It will be noted that those Postal employees who are members of PECRS immediately before they are transferred into the employment of the new company remain in the Scheme after the transfer. The COM owes fiduciary duties to all PECRS members, including the postal workers and managers and was concerned that if, at a later stage, the new company sought to withdraw its employees from PECRS at a time when the benefits which those members had accrued under PECRS were not fully funded, it would be necessary to cut back transfer values. This would mean a reduction in the sums to be paid in respect of those members to any new scheme established by the new company for its employees or otherwise in accordance with the PECRS regulations. The Committee for Postal Administration ("**CPA**") has reached a collective agreement with the relevant unions and representative bodies which, amongst other things, addresses this concern. Although the COM is not a party to the agreement, account has been taken of the relevant provisions contained in it in considering the likely effect of the draft Law on PECRS members, particularly those members who will be transferred from the employment of the States to employment by the new company pursuant to provisions in the draft Law.

3. The COM sought an Article in the draft Law, the effect of which would be to require a States debate should Jersey Post seek to remove its members from PECRS; at such a time, the States could have sought confirmation that the proposed transfer of members was satisfactory in all relevant respects, including the applicable transfer values. The collective agreement reached between the CPA and the relevant unions and representative bodies has rendered such an Article unnecessary if full force and effect is given to the provisions in the agreement designed to ensure full funding of accrued benefits.

4. It is understood that the CPA recognised the issue of possible reduced transfer values and has sought to deal with it by entering into a legally binding obligation (that would also bind the new company) to make a payment into PECRS before removing its members, such payment to be of sufficient size to enable full transfer values to be paid.

5. The COM welcomes this agreement but wishes to make absolutely certain that all these arrangements surrounding these employees will be legally enforceable in due course and completely transparent now. Following discussions with the Principal Employer, it has been agreed and the Principal Employer has undertaken that –

   (a) the Principal Employer will ensure that the Admission Document required for admission into PECRS for the new company, and for any other postal services company which shall at any time employ individuals who are members of PECRS, will contain provisions relating to the payment by that company of a "Termination Contribution" should 6 months' notice of exit ever be given by or to the company and will also use its best endeavours to ensure that an Admission Document will be executed by the new company before the date of transfer of employees;

   (b) the Principal Employer will proceed swiftly with processes already commenced last year that will procure, subject to a States decision, changes to the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989, as amended (the "**General Regulations**" to place beyond doubt the binding nature of Admission Documents;

   (c) the Principal Employer will also procure, subject to a States decision, such changes as may be necessary to the General Regulations so as to require the Scheme Actuary to calculate and issue a certificate requiring a "Termination Contribution" from the new company and other employers whose employees participate in PECRS in a similar way.

6. The COM welcomes these undertakings but has one remaining matter to report to the States in order to discharge its fiduciary duty referred to above. Whilst it is understood that –

   (a) the separate notional Employers Sub-Fund within PECRS is expected to be virtually fully funded at transfer date; and

   (b) the Actuary will issue a certificate requiring regular contributions from the new company to ensure that the fully funded position will be maintained and achieved within the working lives of the postal employees; and

   (c) the Actuary will, without any residual doubt, be required to issue a "Termination Contribution" certificate should a deficit in funding occur at a time when 6 months' notice of exit has been given; and

   (d) the new company will, without any residual doubt, be legally obliged to pay that "Termination Contribution",

   a remote possibility might occur – the new company (or other postal services employer) might be bankrupt at the time and therefore unable to pay the "Termination Contribution" in full. It is understood that CPA discussed this with its unions in connection with the collective agreement mentioned above before it was signed and it was recognised in such discussions that the transfer of employees into employment by a company, albeit 100% States owned, was a real change that affected many employment matters other than pensions. COM and the Principal Employer have also discussed this matter and the present position is that it is understood by COM that the States will not be giving a guarantee in this connection.

7. However, in the course of discussions, COM's legal advisers have drawn the attention of the EDC to a slightly unsatisfactory sentence in the Draft Postal Services (Jersey) Law 200-. The COM understands that it is the intention of EDC to lodge a proposition for a revised Article 29(2) in the Law to correct this

error.

Committee of Management
Friday 12th March 2004