

**JERSEY LAW COMMISSION: REPORT FOR 2001**

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**Presented to the States on 10th December 2002  
by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

120

2002

R.C.49

Price code: C

## 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 - Mrs. Lisa Biddlecombe.

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

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### The Jersey Law Commission Sixth Annual Report 2001

*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 Sixth Annual Report covering the activities of the Commission in the calendar year 2001.

Signed

*David Moon, Chairman*

### PART I - The sixth year

Eleven meetings were held during the year. The Commission made progress on three Topic Reports (Real Property, the Law

of Tutelles and the Law of Contract) and embarked on two new topics (Security Interest and the Law of Charities).

## **PART II - Topic reports**

### **II.i Topic Report 4 - The Best Evidence Rule**

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

Following the retirement of Jurat Donald Le Boutillier, David Lyons was appointed Topic Commissioner for this Topic.

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 Law Draftsman to progress to legislation.

### **II.ii Topic 6 - The Jersey Law of Real Property**

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

The Commission decided to split this Topic into two - procedural elements of conveyancing and substantive issues, such as hypothecation. Considerable research and discussion took place throughout the year that formed the basis of a consultation paper.

### **II.iii Topic 8 - Jersey Rules of Légitime**

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

Mr. Lyons commenced work on this Topic in June 1999. Advocate Keith Dixon produced a preliminary paper on the Topic, which formed part of the Law Commission's 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**

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

The Legislation Committee approved this Topic in 1999 and, following his appointment as Commissioner in February 2000, Mr. Clive Chaplin assumed responsibility for the Topic. Steady progress was made during 2001 culminating with the consultation document dated December 2001, which considered the introduction of arrangements for tutelles similar to those currently in existence for curatorships.

### **II.v Topic 10 - The Law of Contracts**

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

The Legislation Committee approved this Topic in 1999 for review by the Commission in due course. Following his appointment as Commissioner in February 2000 Advocate Alan Binnington assumed responsibility for this Topic. Steady progress was made on the consultation document for this Topic throughout the year.

### **II.vi. Topic 12 - The Law of Charities**

(Topic Commissioner: Clive Chaplin)

Commissioner Clive Chaplin has 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 defined definition.

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 real property in general. Commissioners John Wheeler and David Lyons undertook preliminary research to enable the Commission to decide whether it wished to consider Security as a new Topic.

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 2001 -

	£
Printing and stationery	397.00
Advertising	nil
Research fees	6,390.60
Travelling expenses	nil
Disbursements <sup>[1]</sup>	1,163.46

**TOTAL: 7,951.06**

**PART IV - Budgets**

IV.i **Budget for 2001**

The States approved a budget for the Commission of £45,000 for 2001. As the Commission's costs were not as high as expected the under-spend for 2001 was returned to the General Revenue of the States.

IV.ii **Budget for 2002**

The Legislation Committee approved the Commission's budget for 2002 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.

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<sup>[1]</sup> Disbursements include postage and sundries incurred over the period September 1996 to 30th April 2001.