

STATES OF JERSEY



RECORDING OF MINISTERIAL DECISIONS

**Presented to the States on 18th October 2005
by the Policy and Resources Committee**

STATES GREFFE

REPORT

Recording and Promulgation of Ministerial Decisions

1. Introduction

- 1.1 The Policy and Resources Committee, working jointly with the Privileges and Procedures and Finance and Economics Committees, has developed a framework for the recording of ministerial decisions. The Committee is now publishing this summary in order to provide States members, the media, and the public with a guide to the arrangements that will exist in the new system of government.
- 1.2 The framework is designed to be simple and easy to understand, whilst at the same time ensuring that the proper degree of information is recorded. The background to the development of this framework, together with the arrangements that have been agreed, is set out below.

2. Background

- 2.1 The need for a standard form of record for ministerial decisions was highlighted shortly after the States took the decision in September 2001 to move to a ministerial system of government, combined with a system of scrutiny. In November 2001 the Policy and Resources Committee published the 'Machinery of Government: Proposed Reforms – Implementation Plan', and in this document it made the following statement in relation to the recording of ministerial decisions –

'Ministers (and Assistant Ministers) will normally be asked to take decisions based upon a short paper prepared by officers of their department and will be required to produce a standard form of minute when formally recording an executive decision. This is especially important to replace the present system of committee Acts and in order to ensure transparency and accountability in decision-taking' (para. 6.4)

- 2.2 On this basis, some initial work on developing a framework for the recording of decisions was carried out by the Policy and Resources Committee early in 2003. It soon became apparent that it would be desirable to work closely with the Privileges and Procedures Committee on this matter, because of the interface with the scrutiny function, and it was agreed that officers from the two departments should work together on a joint approach. As a result, research was carried out into the methods used in other jurisdictions for the recording of decisions, and a visit was made to Westminster to investigate how decisions were recorded in U.K. central government. Other jurisdictions that were examined included Scotland, the Isle of Man, and U.K. local government.

3. A Framework for the Recording of Decisions

- 3.1 Following on from this research, a report was prepared for the Privileges and Procedures Committee and forwarded on to the Policy and Resources Committee in March 2004. The Policy and Resources Committee was broadly supportive of the approach being recommended by the Privileges and Procedures Committee, and agreed that it 'offered a sensible and practical approach to the recording of ministerial decisions'. There were a number of areas in which the Policy and Resources Committee felt that further refinements were desirable, and in particular the Committee agreed that in the interests of transparency it would be helpful to extend the list of decisions to be recorded to include the following –

- A decision to grant consent or permission under statutory provision;
- A decision to nominate or appoint a person as a member of a trust, working party, advisory panel, or other body (subject to approval, if necessary, by the Council of Ministers and/or the States);
- A decision to allocate significant resources (financial, manpower etc.) which cannot be dealt with by the chief officer under delegated powers (and which does not need to be referred to the Council of Ministers or the States); and
- The making of an Order under powers conferred upon the Minister by legislation.

A more detailed list of the ministerial decisions that will need to be recorded is given in **Appendix 1**.

3.2 In line with the recommendation of the Privileges and Procedures Committee, the Policy and Resources Committee also agreed that the record of a ministerial decision should be presented in standard format, and should include the following information –

- date of the decision;
- parties to the decision;
- whether the decision was a telephone meeting/oral meeting/written report. If latter, it should include the date/title/author of the report;
- further considerations requested by the Minister;
- the decision that was taken;
- grounds for the decision; and,
- next steps.

3.3 It was accepted that a proper record of decisions was needed for a variety of purposes and, although this may seem to be self-evident, it is worth reiterating why it is considered to be both important and necessary to maintain a record of decisions. The reasons can be summarised as follows –

- to maintain a historical record;
- to provide a record that will be available for examination by scrutiny panels, States members, the public, and the media;
- to provide a point of reference in the event that a decision should be challenged, including a legal challenge;
- to provide a record of the action that is needed in order to implement the decision (normally by the Department).

3.4 It was agreed by the two committees that the decisions taken by a Minister (or Assistant Minister) should be recorded on a standard template, prepared by the department reporting to the Minister. This template would normally be backed up by a supporting report, which would include the following information –

- who the report is to;
- summary of the issue and recommendations;
- timing;
- background;
- argument;
- financial/legislative implications;
- expected impact;
- consultation undertaken;
- action(s) required/next steps.

Provided that the subject matter was not exempt under the Code of Practice on Public Access to Official Information, it was agreed that the public should have access to the supporting report.

4. Storage and Promulgation of Ministerial Decisions

- 4.1 Consideration has also been given to the arrangements for the storage and promulgation of ministerial decisions, and it has been agreed that it will be useful to maintain the involvement of the States Greffe. This is for two reasons: firstly, the States Greffe will act as a form of 'quality control' to ensure completeness of the record, and secondly because the Greffe will continue to act in its capacity as a central repository of records, i.e. for both the executive and scrutiny functions.
- 4.2 The States Greffe will also be responsible for preparing the record of the meetings of the Council of Ministers, and these are likely to be in a format which is more akin to the current system of Committee minutes. Unlike the record of ministerial decisions, the minutes of the Council of Ministers will consist, at least in part, of a record of the discussions around the table at the Council, and the more narrative approach that is currently adopted in Committee minutes is therefore felt to be appropriate.
- 4.3 As with ministerial decisions, there will be a presumption in favour of public access to the records of the meetings of the Council of Ministers, subject only to exemptions under the Code of Access. As with the current system of committee minutes, States members would be able to seek access to the record of individual subject items that had been deemed as exempt.

5. Trial Recordings

- 5.1 The general arrangements for the recording and promulgation of ministerial decisions were discussed at a meeting of the Policy and Resources, Privileges and Procedures, and Finance and Economics Committees in June 2004, and it was agreed that a trial of the new arrangements should be conducted, involving an operational committee such as Education, Sport and Culture.
- 5.2 It was subsequently agreed that a trial would be conducted with that committee over the period April-December 2005. The purpose of the trial was to be twofold: firstly to establish whether any improvements could be made to the proposed format for the decision and report templates, and secondly whether any administrative arrangements needed to be introduced in the executive departments in order to prepare for this new system of recording. It was agreed that the trial should not replace the current system of committee minutes, but should take place at the same time, and committee members and departmental officers would be asked for their comments.
- 5.3 In response to a suggestion from Deputy J.L. Dorey, Vice-President of the Housing Committee, it was agreed that the trial should be extended to include the Housing Committee, and should run for the period from June-December 2005. In both cases, decision templates have been prepared for all of the decisions taken by the Committee, and the President has been asked to sign these templates in addition to the Committee minutes.
- 5.4 The trial has proved to be extremely useful, and the Committee would like to place on record its thanks to the Education, Sport, and Culture and Housing Committees for their cooperation. The process has been valuable in determining whether the right format has been adopted for the decision templates, and some minor modifications have been made to the template as a result of comments received during the trial.
- 5.5 A copy of the revised template is attached as **Appendix 2**. In addition, some examples of completed templates are attached for information at **Appendix 3**. These provide a good sample of the range of decisions that will be recorded in the ministerial system, and an indication of the level of detail that will be required in each case. The four examples are listed below, together with their subject matter –
- The making of an Order (*Grants to students in higher education*);
 - A review of legislation (*Red Tape Reform – classified as exempt, but enclosed here for purposes of illustration*);
 - A budget transfer (*I.T. and Human Resources*); and
 - A policy review (*Occupancy conditions on housing*).

- 5.6 In each case, the decision template is backed up by a supporting report. As might be expected, the length of a report varies according to the subject under consideration: the proposed budget transfer is supported by a one-page report, whilst the report on the review of legislation runs to nearly 20 pages. As noted in paragraph 3.4, the public will have access to the supporting report, unless it is classified as exempt under the Code of Practice on Public Access to Official Information.
- 5.7 One of the main aims of the trial has been to establish the working arrangements for the preparation of the template. In this connection, it was agreed that the senior officer or chief officer responsible for preparing a report for the Committee (or Minister in the new arrangements) should complete the draft template recording the decision, and that this should then be forwarded to the President for signature. The response from both the Education, Sport, and Culture Department and the Housing Department is that the template has been easy to complete and has proved to be readily acceptable in terms of a record. The completion of the templates has not been too onerous for officers, and the templates have been treated as a priority in order to ensure that they are completed with a minimum of delay.
- 5.8 To ensure that templates are completed to a good standard, training and guidance will be provided during October/November for all officers responsible for preparing decision templates, and further support will be available once the ministerial system comes into effect. It is worth emphasising here that the States Greffe will play an important role in the new system in monitoring the standard and completeness of the templates, and will refer the templates back to the relevant departments if they are considered in any way to be unsatisfactory.
- 5.9 Having trialled the template over a period of several months, it is proposed that the record of part (a) decisions should be made publicly available within five working days of the ministerial decision, with the decision regarded as being taken at the time that the template is signed by the Minister, or in case of urgency, by other formal authorisation. Part (a) ministerial decisions will be published on the States of Jersey website and, in order to provide the public with further access to the records, it is proposed that there should be an electronic link to provide instant access to the supporting paper for each decision.
- 5.10 The Committee believes that this last point is important, as it will make it much easier for States members, scrutiny panels, and the public to have access to the report that has been considered by the Minister prior to taking a decision.

6. Electronic Management of Records

- 6.1 In preparing for the ministerial system, the opportunity has been taken to consider the best means for the electronic management and storage of the records of ministerial decisions. It is considered that there are many benefits to be derived from introducing a new system, which will be common to all States departments and will make use of new technology. These benefits will include savings in staff time, together with the introduction of an electronic process to ensure the effective management and prompt dissemination of the records of ministerial decisions.
- 6.2 The project is being managed by the Computer Services Department, in conjunction with an external supplier, and is scheduled for completion by early December, in time for the introduction of the ministerial system. Training is already under way for those staff who will be directly involved in the processing of ministerial records.

7. Conclusion

- 7.1 The Policy and Resources Committee would like to thank all those committees that have been involved in the discussions and preparations for the recording of ministerial decisions. In the Committee's view, the proposed arrangements should allow for ease of use and reference, whilst at the same time meeting the prime obligation to provide a proper record of ministerial decisions.
- 7.2 The effectiveness of these new arrangements can, of course, only be truly tested once the ministerial system has come into effect, and the Committee would welcome any comments or feedback from States

members and the public once the new arrangements are in place.

Ministerial Decisions that will need to be Recorded

A list of the kind of ministerial decisions that will need to be recorded is given below. It should be noted that this is not a comprehensive list, as there may be other types of decisions not listed here that will also need to be recorded.

In general terms, the kinds of decisions that are currently taken by a States Committees, and are recorded in Committee minutes, will be taken by Ministers. These decisions will need to be recorded individually, on a decision template, and each template will need to be signed by the Minister.

The decisions to be recorded include the following –

- A decision to grant consent or permission under statutory provision;
- A decision to approve a draft report and proposition, or other document, for submission to the States, e.g. a comment on another proposition;
- A decision to approve a draft budget for forwarding to the Council of Ministers and the States;
- A decision on a matter of policy that does not need to be referred to the Council of Ministers or the States;
- A decision to award a contract, in accordance with the provisions of the Public Finances Law;
- The making of an Order under powers conferred upon the Minister by legislation;
- A decision to delegate functions to an Assistant Minister or officer, in accordance with Article 27 of the States of Jersey Law;
- A decision to nominate or appoint a person as a member of a trust, working party, advisory panel, or other body (subject to approval, if necessary, by the Council of Ministers and/or the States);
- A decision to allocate significant resources (financial, manpower etc) which cannot be dealt with by the chief officer under delegated powers (and which does not need to be referred to the Council of Ministers or the States);
- A decision to bring forward changes to legislation, whether primary or subordinate, for consideration by the States (and subject to the agreed prioritisation process); and
- A decision to appoint an authorised signatory for the expenditure of funds.

(Title of Minister)
Ministerial Decision

Subject:			
Decision Reference:		Exempt clause(s):	
Type of Report: (oral or written)		Person giving report (if oral):	
Telephone or e-mail Meeting?		Report file ref.:	
Written Report - title:		Written report - author:	
Decision(s):			
Reason(s) for decision:			
Action required:			
Signature: <i>(Minister/Assistant Minister)</i>		Date of Decision:	

Note: The format of this template is slightly different from the format given in the examples in Appendix 3, as it takes into account comments received during the trial with the Education, Sport and Culture and Housing Committees.

EXAMPLE 1

Education, Sport and Culture
Ministerial Action



Title:	Education Discretionary Grants (Jersey) Order 2005		
Action Reference:	ESC/25/2005	Exempt clause(s):	N/A
Type of Report: (oral (O) or written (W))	W	Date of decision:	25 th July 2005
Telephone or e_mail Meeting?	N/A	Person Giving Report (if oral):	N/A
Written Report Name of Author:	David Greenwood	Report File ref:	L/Directorate/Education reports/July/Discretionary Grants
Decision(s):			
<ul style="list-style-type: none"> - Make the Order - Present the Order to the States 			
Reason(s) for decision:			
<ul style="list-style-type: none"> - In accordance with the Education (Jersey) Law 1999, to adjust levels of student support to take account of changes in the Jersey and U.K. Retail Prices Indexes, and the costs of transport to and from the U.K. 			
Action required:			
<ul style="list-style-type: none"> - Committee Clerk to make necessary arrangements 			
Signature:		Date of Approval:	
		25th July 2005	
L:\Directorate\Education\Ministerial Acts 2005\MinAct Discretionary Grants- .doc			



**Committee for Education, Sport and Culture
Committee Report**

Subject:	Education (Discretionary Grants) (Jersey) Order 2005		
Exempt Clause:	3.2.1.(a) xiv	Date:	8 th July 2005
Author:	David Greenwood : Assistant Director : Culture & Lifelong Learning		

1: Background

On 27 March 2005, the Education Sport and Culture Committee reviewed its financial support to students in higher education and agreed to adjust levels of student support to take account of inflation in the UK and Jersey and changes in costs of transport and in UK RPI.

Article 51 of the Education (Jersey) Law 1999 is concerned with Grants and Loans. It gives the former Education Committee the power (by order of the States) to:

'make provision with respect to the advance of financial assistance to persons over compulsory school age attending courses of education and, in particular, but without prejudice to the generality of the foregoing -

- (a) *the advance of financial assistance by way of mandatory or discretionary grant or loan;*
- (b) *the amount of grant or loan available to an applicant;*
- (c) *the courses in respect of which assistance is available;*
- (d) *the grounds for entitlement to assistance, including the age, educational qualifications and financial status of the applicant, and the financial status of his parent;*
- (e) *in the case of a grant, the conditions subject to which it is given, including the amount of any contributions that the applicant, or the applicant's parent is required to make; and*
- (f) *in the case of a loan, the conditions subject to which it is given, the rate of interest applicable to the loan (if any) the time and manner in which repayments are to be made and the circumstances (if any) in which the borrower's liability for the loan may be deferred or cancelled."*

In accordance with the above, the Committee instructed officers to take steps to bring forward amendments to the relevant orders. In consultation with law draftsmen therefore, the Order has been amended and is attached to this report.

2: Recommendation

The Committee is requested to:

- make the Order with effect from 1st September 2005;

- Instruct officers to lay the attached document before the States in accordance with the requirements of Article 51 of the Education (Jersey) Law 1999 and States procedures.

EXAMPLE OF DRAFT



Jersey

EDUCATION (DISCRETIONARY GRANTS) (JERSEY) ORDER 200-

Explanatory Note

This Order updates the amounts that appear in the Order to take account of increases in the cost of living in Jersey and, where appropriate, the United Kingdom.



Jersey

EDUCATION (DISCRETIONARY GRANTS) (JERSEY) ORDER 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>	
<u>2</u>	<u>Dependent and independent students</u>	
<u>3</u>	<u>Residency</u>	
<u>4</u>	<u>Relevant income</u>	
		<i><u>Eligibility for and calculation of maximum grant</u></i>
<u>5</u>	<u>General rules for eligibility</u>	
<u>6</u>	<u>Higher education</u>	
<u>7</u>	<u>Professional examinations</u>	
<u>8</u>	<u>Vocational arts</u>	
<u>9</u>	<u>Calculation of maximum standard and home student grants</u>	
<u>10</u>	<u>Distance learning</u>	
		<i><u>Eligibility for allowances</u></i>
<u>11</u>	<u>Allowance for attendance at interview</u>	
<u>12</u>	<u>Disabled student allowance</u>	
		<i><u>Supplementary provisions</u></i>
<u>13</u>	<u>Relevant assets</u>	
<u>14</u>	<u>Application for grant and provision of information</u>	
<u>15</u>	<u>Period of grant, payment, suspension and withdrawal</u>	
<u>16</u>	<u>Overseas courses</u>	
<u>17</u>	<u>Appeal against delegated decision</u>	
<u>18</u>	<u>Revocation</u>	
<u>19</u>	<u>Application and citation</u>	

SCHEDULE 1

RELEVANT INCOME

<u>1</u>	<u>Interpretation of Schedule 1</u>
<u>2</u>	<u>Relevant income of dependent student</u>
<u>3</u>	<u>Relevant income of independent student</u>

SCHEDULE 2

STANDARD STUDENT GRANT

<u>1</u>	<u>Calculation of maximum standard student grant</u>
<u>2</u>	<u>Course fees</u>
<u>3</u>	<u>Maintenance</u>

- 4 Travel costs
- 5 Vacation study allowance
- 6 Contribution to standard student grant

SCHEDULE 3

HOME STUDENT GRANT

- 1 Calculation of maximum home student grant
- 2 Contribution to home student grant

SCHEDULE 4

DISTANCE LEARNING GRANT

- 1 Financial eligibility for distance learning grant
- 2 Maximum amount of distance learning grant

SCHEDULE 5

INTERVIEW ATTENDANCE ALLOWANCE



Jersey

EDUCATION (DISCRETIONARY GRANTS) (JERSEY) ORDER 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE EDUCATION, SPORT AND CULTURE COMMITTEE, in pursuance of Articles 51 and 68 of the Education (Jersey) Law 1999, orders as follows –

1 Interpretation

(1) In this Order, unless the context requires otherwise –

“1999 Law” means the Education (Jersey) Law 1999

“academic year” means a period of 12 months beginning on the 1st September;

“dependent student” shall be construed in accordance with Article 2;

“higher education” does not include –

(a) a higher degree course; or

(b) a course falling within Schedule 2, paragraph 1(h) to the 1999 Law which is not essential for entry into any description of occupation;

“home student grant” shall be construed in accordance with Article 9(b);

“independent student” shall be construed in accordance with Article 2;

“parent” includes guardian;

“relevant date” means, in relation to an academic year, the 30th June preceding the commencement of that year;

“relevant income” shall be construed in accordance with Article 4;

“standard student grant” shall be construed in accordance with Article 9(a);

“term” means, in relation to a student, a term for the course on which and the institution at which the student is a student.

(2) Unless the context requires otherwise, a reference in this Order to a course of education, examination or qualification by name shall be construed as a reference to the course of education, examination or qualification of that name for the time being available in Jersey, England, Scotland or Wales.

2 Dependent and independent students

(1) For the purpose of determining a student’s eligibility to be considered for any discretionary grant for any academic year, a student is an independent student if –

(a) the student attains the age of 25 years on or before the relevant date for that year;

- (b) the student has been married for any period, or aggregate periods, of 3 years preceding the relevant date for that year, whether or not the student is married on that date;
 - (c) on the relevant date for the first academic year for the student's course –
 - (i) the student has attained the age of 21 years, but has not attained the age of 25 years, and
 - (ii) the student has been in continuous full-time employment for the period of 3 years preceding the relevant date for the first academic year, at least 2 years of which have been in an occupation to which the course directly relates; or
 - (d) the student has been living financially independently of the student's parents for the period of 5 years preceding the relevant date for the first academic year for the student's course.
- (2) For the purposes of this Order, a student who is not an independent student is a dependent student.

3 Residency

- (1) For the purposes of this Order, a student is resident in Jersey if, on the relevant date for the first academic year for the student's course –
 - (a) in the case of a dependent student, the student and the parent with whom the student ordinarily resides are both ordinarily resident in Jersey and have been so resident for the period of 5 years preceding that date or the Committee is satisfied that they would have been so resident but for the fact that the parent is or was temporarily employed outside Jersey;
 - (b) in the case of an independent student, the student is ordinarily resident in Jersey and has been so resident for the period of 5 years preceding that date.
- (2) Notwithstanding paragraph (1), the Committee may, having regard to all the circumstances of the case, treat any other student as resident in Jersey for the purposes of this Order.

4 Relevant income

In this Order, "relevant income" means, for the purpose of determining the eligibility of a student for a grant and the amount of any grant for any academic year, the amount determined in accordance with Schedule 1.

Eligibility for and calculation of maximum grant

5 General rules for eligibility

- (1) A student shall be eligible to be considered for any grant or allowance under this Order only if the student is resident in Jersey.
- (2) Subject to paragraph (3), a student shall not be eligible to be considered for any grant or allowance under this Order unless, on the relevant date for the first academic year of the course to be undertaken, the student has attained the age of 16 years.
- (3) A student shall not be eligible to be considered for a home student grant unless, on the relevant date for the first academic year of the course to be undertaken, the student is of full age.
- (4) A student who has undertaken the whole or part of a course for which any grant is available shall not be eligible to be considered for a grant of that description in respect of another course, whether or not the student received any grant for the course or part of a course first undertaken.
- (5) For the purposes of determining a student's eligibility to be considered for any grant or allowance under this Order, any grant or allowance made by the Committee for an academic year preceding the first day of September 2001 for a course or purpose for which a grant or allowance may be awarded under this Order shall be taken into consideration as if it had been awarded under this Order.

6 Higher education

- (1) An eligible student may be considered for a grant in respect of a course for higher education undertaken in Jersey, England, Scotland or Wales only if the student has attained –
 - (a) where the course is a Higher National Diploma, one A(2) level or an equivalent “level 3” qualification;
 - (b) where the course is a first degree in Art, one A(2) level in that subject or an equivalent “level 3” qualification; and
 - (c) in the case of any other course, either 2 A(2) levels or an equivalent “level 3” qualification.
- (2) A student who has satisfactorily completed one year of a course for a Higher National Diploma shall be deemed to have fulfilled the requirements of paragraph (1)(c).
- (3) A student who has attained the age of 21 years who has successfully completed an accredited “access to higher education course” or equivalent qualification may, at the Committee’s discretion, be deemed to have fulfilled any requirement of paragraph (1)(a).
- (4) A student who has received a grant under Article 7 or 10 shall not be eligible to be considered for a grant under this Article.
- (5) A student who has received a grant under Article 8 in respect of an Art Foundation Course shall not be eligible to be considered for a grant under this Article in respect of the first academic year of a course of higher education unless the student is required to attain the Art Foundation Course in order to undertake the course of higher education.

7 Professional examinations

An eligible student may be considered for a grant in respect of a course of postgraduate education in preparation for a professional examination at a higher level.

8 Vocational arts

- (1) An eligible student may be considered for a grant in respect of –
 - (a) a full-time course, undertaken in England, Scotland or Wales, recognized by the Council for Dance Education and Training or the National Council for Drama Training;
 - (b) a full-time Art Foundation Course undertaken at Highlands College;
 - (c) where the student has attained an A-level in art or 2 A-levels in other subjects, a full-time Art Foundation Course undertaken in England, Scotland or Wales.
- (2) A student shall not be eligible to be considered for a grant under this Article if the student has already received a grant, whether in respect of the whole or part of a course, under Article 6 or 7.

9 Calculation of maximum standard and home student grants

The Committee may award a grant to an eligible student in respect of an academic year of a course described in Article 6, 7 or 8 in an amount up to but not exceeding–

- (a) in the case of a course undertaken outside Jersey, the standard student grant calculated in accordance with Schedule 2;
- (b) in the case of a course undertaken in Jersey, the home student grant calculated in accordance with Schedule 3.

10 Distance learning

- (1) Any eligible student may be considered for a grant in respect of a distance learning course.
- (2) For the purposes of this Order, a course is a distance learning course if it is –
 - (a) an Open University course; or
 - (b) a vocational first degree course undertaken with a distance learning institution in England, Scotland or Wales which the Committee has approved.
- (3) A student who has received a grant under Article 6 shall not be eligible for a grant under this Article.
- (4) The Committee may award a grant to an eligible student in respect of an academic year of a distance learning course in an amount up to but not exceeding the maximum amount determined in accordance with Schedule 4.

Eligibility for allowances

11 Allowance for attendance at interview

- (1) The Committee may advance to an eligible student an amount in respect of reasonable travel expenses incurred by the student for the purpose of the student's attendance for interview for a course of higher education to be undertaken in England, Scotland or Wales.
- (2) The maximum amount that may be advanced to a student under this Article shall be determined in accordance with Schedule 5.
- (3) A student shall be eligible to be considered for one payment only under this Article.
- (4) Where a student advanced an amount under this Article is subsequently assessed as not eligible to be considered for a grant for the course of higher education, by reason of the student's relevant income, the student shall repay the amount advanced under this Article.

12 Disabled student allowance

- (1) A disabled student in receipt of the standard student grant or home student grant shall be eligible to be considered for a disabled student allowance.
- (2) The Committee may make a disabled student allowance in respect of all or part of additional costs incurred by the student, as a consequence of the student's disability, in order to attend the student's course, being the costs of the services of a non-medical helper, the purchase or hire of specialist equipment and miscellaneous expenditure, other than travel costs.
- (3) The Committee may, at its option, lend the student any specialist equipment for the duration of the course in lieu of making an allowance to the student for its purchase or hire.
- (4) Where an amount of the allowance is for the purchase of specialist equipment by the student, its payment may be made conditional upon the student delivering the equipment to the Committee at the conclusion of the course.

Supplementary provisions

13 Relevant assets

- (1) Without limitation of the matters to which the Committee may have regard in considering whether to award any grant or allowance to an eligible student or in considering the amount of grant or allowance to be awarded, the Committee may have regard to the value of the relevant assets of the student.
- (2) For the purposes of this Article, the relevant assets of a student are the movable and immovable

property directly or indirectly owned by or held in trust for the benefit of any person whose income is taken into account in calculating the relevant income of the student.

14 Application for grant and provision of information

- (1) An application for a grant or allowance may be made –
 - (a) in the case of a dependent student, by the student's parent;
 - (b) in the case of an independent student, by the student.
- (2) An application for disabled student allowance must be made before the beginning of the academic year to which the application relates and be supported by such medical evidence and evidence from the institution that the student will be attending as the Committee may require.
- (3) An application for a grant or allowance shall be supported by such proof of eligibility and relevant income and, for the purposes of Article 13, relevant assets, as the Committee may require and the Committee may refuse to consider further any application which is not so supported.
- (4) A student may be required to produce a receipt in respect of travel costs and any other expenditure for which a grant or allowance is made under this Order.
- (5) A person providing information for the purpose of establishing the eligibility of a student for any grant or allowance or for the purpose of the calculation of any grant or allowance shall notify the Committee, as soon as is practicable, of any change in that information.

15 Period of grant, payment, suspension and withdrawal

- (1) Subject to this Article, an award of grant or allowance shall end when the course to which it relates would ordinarily be completed.
- (2) The Committee may transfer an award of grant or allowance from one course to another.
- (3) For the purposes of paragraph (2), a transfer from one course to another includes a transfer from one course to another where both courses are run by the same institution and a transfer from a course run by one institution to the same course run by another institution.
- (4) Where an award of grant or allowance is transferred, the student shall not be eligible for the award in respect of such part of the course to which the student transfers as is equal, in duration, to such part (if any) of the course from which the student has transferred as is not treated, by the institution running the course to which the student transfers, as forming part of the course to which the student transfers.
- (5) The Committee may extend an award of grant or allowance only if, by reason of ill health or other extenuating circumstances, the student does not complete the course within the period ordinarily required.
- (6) The Committee shall withdraw an award of grant or allowance if the student abandons the course or if the institution running the course refuses to allow the student to complete it.
- (7) The Committee may –
 - (a) pay a grant or allowance in such instalments as it thinks fit;
 - (b) make a provisional payment of grant or allowance pending determination of the amount payable to the student in respect of an academic year; and
 - (c) make any payment in respect of course fees to the institution running the course instead of to the student.
- (8) Every award of grant or allowance under this Order shall be conditional upon the student or, where the student is not of full age, the student's parent, undertaking in writing –
 - (a) to repay any overpayment of the grant or allowance;

- (b) to refund any grant or allowance withdrawn pursuant to this Order.
- (9) Where, for any part of an academic year, a student is not in full-time attendance at the institution at which the course is undertaken or at any other place that the student is required, by that institution, to attend, the maximum amount of any grant or allowance that may be made to the student shall be reduced by a portion equivalent to the portion of the academic year for which the student is not in such attendance.
- (10) The Committee may suspend or withdraw a grant or allowance at any time when it has not been provided with such information as it may require for the purpose of determining the maximum amount of grant or allowance that may be paid to the student.
- (11) The Committee may suspend or withdraw a grant or allowance at any time when the student is temporarily excluded from the course by the institution running it or absent from the course without the leave of that institution.

16 Overseas courses

Notwithstanding Articles 6 to 8, the Committee may make an award of grant or allowance for a course undertaken at an institution outside Jersey, England, Scotland or Wales which is equivalent to a course for which an award may be made under any of those Articles in an amount not exceeding the maximum amount of grant or allowance that may be made for the equivalent course undertaken in England, Scotland or Wales.

17 Appeal against delegated decision

- (1) This Article applies where, pursuant to Article 36A of the States of Jersey Law 1966 the Committee delegates any of its functions under this Order to an officer.
- (2) A panel shall be established to hear appeals made under this Article, of which the members shall be –
 - (a) subject to paragraph (3), the Director of Education appointed pursuant to Article 55 of the Education (Jersey) Law 1999 or another officer of the Committee nominated by the Director of Education;
 - (b) a member of the Committee, nominated from time to time by the Committee;
 - (c) a person who is neither an officer or member of the Committee, nominated from time to time by the Committee.
- (3) Where an appeal is made, the officer whose decision is the subject of the appeal shall not be a member of the panel.
- (4) A student and, in the case of a dependent student, the student's parents, aggrieved by any decision of an officer made in the exercise of a delegated function may request, in writing, a written statement of the reasons for the decision.
- (5) The officer shall, as soon as is reasonably practicable, give a person making a request under paragraph (4) the written statement and, at the same time, inform that person of the right conferred by paragraph (6).
- (6) A student and, in the case of a dependent student, the student's parents may give written notice of appeal to the panel against any decision of an officer made in the exercise of a delegated function.
- (7) Notice of appeal may be given only within the period of 2 months following the date the officer's decision is given to the student or, where a statement is requested pursuant to paragraph (4), the date the statement is given to the person who requested it.
- (8) Where an appeal is made, the panel may uphold or vary the decision of the officer or substitute its own decision in the matter.
- (9) Any request, statement or notice of appeal may be served by post.

(10) In this Article, “officer” has the same meaning as in the States of Jersey Law 1966

18 Revocation

The following Orders are revoked –

- (a) Education (Discretionary Grants) (Jersey) Order 2001;
- (b) Education (Discretionary Grants) (Amendment) (Jersey) Order 2002;
- (c) Education (Discretionary Grants) (Amendment No. 2) (Jersey) Order 2003; and
- (d) Education (Discretionary Grants) (Amendment No. 3) (Jersey) Order 2004.

19 Application and citation

- (1) This Order shall apply for the academic year commencing on the first day of September 2005 and ensuing years.
- (2) This Order may be cited as the Education (Discretionary Grants) (Jersey) Order 200-.

SCHEDULE 1

(Article 4)

RELEVANT INCOME

1 Interpretation of Schedule 1

For the purposes of this Schedule, “income” means all profits, gains, salaries, fees, wages and perquisites of any kind.

2 Relevant income of dependent student

- (1) Subject to this paragraph, the relevant income of a dependent student, for the purpose of determining the eligibility of the student to be considered for a grant for an academic year of a course, shall be the sum of –
 - (a) the income of the student’s parents for the calendar year preceding the academic year; and
 - (b) the amount, if any, by which the income of the student for the calendar year in which the academic year commences exceeds £2,000.
- (2) For the purposes of this paragraph, the income of a parent means all income accruing or arising from any source, whether in Jersey or elsewhere, and includes –
 - (a) any income applied by any person, pursuant to a trust, for or towards the maintenance, education or other benefit of the parent or the student or of any other person dependent on or maintained by the parent;
 - (b) any amount payable, whether pursuant to an order of a court or any agreement, for the maintenance of the student or of any other person dependent on the parent.
- (3) Where a parent dies during the academic year, the amount of the parent’s income taken into consideration shall be reduced by a portion equivalent to the unexpired portion of the academic year.
- (4) Where the Committee is satisfied that, as the result of any event beyond the control of the parents, the income of the parents for the calendar year in which the academic year for the course commences is likely to be 80% or less of the income for the preceding calendar year, the Committee may determine the relevant income of the student by reference to the income of the parents for the calendar year in which the academic year for the course commences.
- (5) The income of a parent shall be disregarded where –
 - (a) the parent dies before the commencement of the academic year;
 - (b) the Committee is satisfied that the parent cannot be found, or that it is not reasonably practicable to get in touch with the parent;
 - (c) the student is the subject of any order committing the student to the care of the Health and Social Services Committee, made under the Children (Jersey) Law 1969 or, before attaining full age, was so subject.

3 Relevant income of independent student

- (1) Subject to this paragraph, the relevant income of an independent student, for the purpose of determining the eligibility of the student to be considered for a grant for an academic year of a course shall be the sum of the student’s income for the calendar year preceding the academic year and, where the student is married, the student’s spouse’s income for that year.
- (2) For the purposes of this paragraph, the income of a student means all income accruing or arising from any source, whether in Jersey or elsewhere and includes –

- (a) any income applied by any person, pursuant to a trust, for or towards the maintenance, education or other benefit of the student or of any person dependent on the student;
 - (b) any amount payable, whether pursuant to an order of a court or any agreement, for the maintenance of any person dependent on the student.
- (3) For the purposes of this paragraph, the income of the student's spouse means all income accruing or arising from any source, whether in Jersey or elsewhere, and includes –
 - (a) any income applied by any person, pursuant to a trust, for or towards the maintenance, education or other benefit of the spouse or any person dependent on the spouse;
 - (b) any amount payable, whether pursuant to an order of a court or any agreement, for the maintenance of any person dependent on the spouse.
- (4) Where the student marries during the calendar year preceding the academic year, the amount of the spouse's income taken into consideration shall be reduced by a portion equivalent to the portion of the year preceding the marriage.

SCHEDULE 2

(Article 9(a))

STANDARD STUDENT GRANT

1 Calculation of maximum standard student grant

- (1) The maximum amount of standard student grant that may be made to a student in respect of an academic year of a course shall be the sum of –
 - (a) the course fees determined in accordance with paragraph 2;
 - (b) maintenance, determined in accordance with paragraph 3;
 - (c) travel costs, determined in accordance with paragraph 4; and
 - (d) any vacation study allowance made under paragraph 5,less the contribution determined in accordance with paragraph 6.
- (2) The amount of grant determined in accordance with sub-paragraph (1) shall not include any sum in respect of maintenance for an academic year or portion of an academic year for which the student is required by the institution attended by the student to acquire practical experience through paid employment.
- (3) The student shall not be eligible to be considered for standard student grant where the contribution, determined in accordance with paragraph 6, exceeds the sum of the amounts referred to in sub-paragraph (1)(a) to (d).

2 Course fees

Course fees shall be the aggregate of –

- (a) any fees for admission, registration or matriculation (including matriculation exemption), any sessional or tuition fees, any composition fee, any graduation fee and any fee in respect of validation of the course;
- (b) any college fees or dues at the universities of Cambridge, Durham or Oxford (excluding any element thereof representing or attributable to maintenance or to any such fee as is mentioned in clause (c)) and
- (c) any fees charged by an external body in respect of examinations or the validation of the course or otherwise charged by such a body whose requirements must (for the purposes of the course) be satisfied, or any fees attributable to fees so charged, but in the case of fees in respect of the validation of the course, only where the fees are charged by a body which does not have the power to award a degree.

3 Maintenance

- (1) Subject to sub-paragraph (2), maintenance shall be determined according to the course or parts of a course undertaken by the student during the academic year and the geographical location of the institution or other place attended by the student, by reference to the table below:

Course	City of London and Metropolitan Police District	Elsewhere outside Jersey

1. Any course other than a course falling within items 2 to 5 of this column	£5,950	£4,826
2. A Post Graduate Certificate of Education or para-medical course	£6,313	£5,108
3. A course at Buckingham University	n/a	£5,489
4. Any course in medicine, dentistry or nursing which consists of a period of study by way of clinical training at a hospital or other premises other than the institution at which the person is a student	£8,258	£6,713
5. An advanced diploma or degree in nursing	£7,147	£5,809

(2) Where –

(a) the course is a vocational arts course described in Article 8; and

(b) on the first day of the academic year, the student has not attained the age of 18 years,

the amount of any maintenance determined in accordance with sub-paragraph (1) shall be reduced by 25%.

4 Travel costs

Travel costs shall be determined in accordance with the geographical location of the institution attended by the student, by reference to the table below:

Location of institution	Amount of allowance
Bath, Brighton, Bristol, Eastbourne, Exeter, London, Plymouth, Poole, Portsmouth, Reading, Salisbury, Southampton, Weymouth, Winchester	£439
Birmingham, Cambridge, Canterbury, Cardiff, Chelmsford, Colchester, Coventry, Gloucester, Oxford, Pontypridd, Swansea, Worcester	£482
Aberystwyth, Bangor, Crewe, Derby, Ipswich, Leicester, Liverpool, Loughborough, Manchester, Norwich, Nottingham, Sheffield, Stoke-on-Trent	£526
Durham, Hull, Lancaster, Leeds, Newcastle, York	£568
Aberdeen, Dundee, Edinburgh, Glasgow, St. Andrews, Stirling	£615
Buckingham University	£641

5 Vacation study allowance

- (1) An additional amount may be paid for each day that the student is required by the institution at which he or she is a student to attend and does attend that institution or another institution in England, Scotland or Wales outside the term, at the rate of £16.46.
- (2) An additional allowance may be made for each day that the student is required by the institution at which he or she is a student to attend and does attend another educational institution outside England, Scotland and Wales outside the term, at the rate of £20.22.

6 Contribution to standard student grant

- (1) Subject to sub-paragraphs (2) and (3), the contribution for an academic year shall be the product of—
(relevant income - £26,750) x 20.25%.
- (2) Subject to sub-paragraph (3), where all or part of the relevant income is taken into account to determine any grant payable to 2 or more students, there shall be added to the product of the formula in sub-paragraph (1), in respect of the second and each subsequent student, the sum of £1,000.
- (3) The maximum contribution in respect of each award of standard student grant shall be £10,000.

SCHEDULE 3

(Article 9(b))

HOME STUDENT GRANT

1 Calculation of maximum home student grant

- (1) The maximum amount of home student grant that may be made to a student in respect of an academic year of a course shall be £4,158 less the contribution determined in accordance with paragraph 2.
- (2) The student shall not be eligible to be considered for home student grant where the contribution equals or exceeds the maximum amount of grant that may be made.

2 Contribution to home student grant

The contribution for an academic year shall be determined in accordance with paragraph 6(1) and (2) of Schedule 2.

SCHEDULE 4

(Article 10(4))

DISTANCE LEARNING GRANT

1 Financial eligibility for distance learning grant

A student whose relevant income exceeds £53,500 shall not be eligible to be considered for the distance learning grant.

2 Maximum amount of distance learning grant

- (1) Subject to sub-paragraph (2), an eligible student may be awarded—
 - (a) an amount not more than the product of –
 $£374 - ((\text{relevant income} - £26,750) \times 1.4\%)$; and
 - (b) where the student completes a summer school in the academic year, an amount not more than the product of –
 $£410 - ((\text{relevant income} - £26,750) \times 1.53\%)$.
- (2) An eligible student whose relevant income is £26,750 or less may be awarded –
 - (a) an amount not more than £374; and
 - (b) where the student completes a summer school in the academic year, an amount not more than £410.

SCHEDULE 5

(Article 11(2))

INTERVIEW ATTENDANCE ALLOWANCE

The maximum allowance for attendance at an interview in England, Scotland or Wales shall be whichever is the lesser of the amount of the travel costs incurred by the student or £253.

EXAMPLE 2

Education, Sport and Culture
Ministerial Action



Subject:	Red Tape Reform – Submission to Policy & Resources Committee		
Action Reference:	4/ESC/2005	Exempt clause:	3.2.1(a) (xiv)
Type of Report: (oral or written)	Written	Person giving report (if oral)	27 April 2005
Telephone or e_mail Meeting?	n/a	Report file ref	-
Written Report Title	Red Tape Reform – Submission to Policy & Resources Committee		
Author:	S. Stoten, Project Manager	Report File ref:	L/Directorate/EDC/Com Reports 2005/April/Red Tape
Decision(s):			
<p>a) Submit the 'Red Tape' report to the Policy & Resources Committee.</p> <p>b) Agree to the amendments to Article 3 of the Education (Jersey) Law 1999 as suggested in the paper</p> <p>c) Agree to an annual review of Committee's Legislation by Officers</p>			
Reason(s) for decision:			
The above is the outcome of a review of all the Committee's legislation, which was undertaken as part of the Red Tape Reform initiative, sponsored by the Policy & Resources Committee.			
Action required:			
<p>a) Submit the report to the Policy & Resources Department</p> <p>b) Undertake annual reviews of the Committee's legislation</p>			
Signature:		Date of Approval:	



Committee for Education, Sport and Culture

Subject:	Red Tape Reform – Submission to Policy and Resources		
Exempt Clause	3.2.1(a) xiv	Date:	20 th April 2005
Author:	Sarah Stoten – Project Manager		

1. Introduction

The purpose of this report is to advise the Committee of a review of its legislation as part of the 'Red Tape Reform' initiative championed by the Policy and Resources Committee and to seek the Committee's approval on the following:

- a) amendments to Article 3 of the Education (Jersey) Law 1999 to enable a change to the First Schedule Part I (**list of provided schools**) via order;
- b) the submission of a law drafting request for changes to the Public Library (Jersey) Regulations and Rules 2003;
- c) an annual review of the Committee's legislation and where possible, a wider consultation within the service to agents and practitioners of the Department to ensure a consistent approach and interpretation. The review could also highlight opportunities to introduce efficiency and /or reduce red tape; and
- d) the submission of this report to the Policy and Resources Department, specifically the Red Tape Team, for consolidation and subsequent presentation to the States Assembly.

When considering these recommendations, the Committee is advised to do so in the context of the 2006 legislation programme, the law drafting requests for which are in the process of being submitted

The Education, Sport and Culture Committee oversees a relatively small amount of legislation, some of which has been subject to recent reviews, this has assisted the current red tape review and consequently reduced the number of recommended changes presented in this report. An overview of the approach, individual legislation and recommendations are detailed in the following report.

2. Background

The Education, Sport and Culture Department is participating in the Red Tape Reform initiative, sponsored by the Corporate Management Board and facilitated by the Policy and Resources Department. The objective is to improve customer focus, consider non-legislative alternatives, to reveal where duplication exists, where outdated requirements can be ended and where complex forms can be made much simpler. Similarly, it should help to reduce legislation and make the States more efficient. Ultimately this period of analysis will tie in with the 2006 legislation programme due to be formalised at a conference in mid 2005.

As part of Government Reforms and commitments in the Strategic Plan, the States of Jersey has pledged to reduce unnecessary regulation, legislation and bureaucracy in the Island. Projet P.134/2004 (**Appendix B**) was unanimously approved by the States Assembly on 15th September 2004 and it was agreed that States Committees should carry out a programme of regulatory audits of current and proposed legislation, to be co-ordinated by the Policy and Resources Committee, with a view to reducing the burden of legislation.

Members of the Public have been encouraged to share their experiences or concerns regarding excessive

regulation or bothersome bureaucracy via a confidential forum managed by Melanie Cavey at Policy and Resources. Public interaction is deemed crucial to the audits and the project stipulates that each Working Group is required to engage at least two independent members who share knowledge of the legislation and can appropriately contribute to the audit. Identifying these independent members has been a difficult task for many of the Working Groups as self interest has posed a significant obstacle.

A full report will be published in April 2005 and the Departmental Working Groups are expected to contribute their own analysis by the end of March 2005. Unlike other Departments, the Education, Sport and Culture Committee has a comparatively low legislative burden and this piece of work, whilst contributing to cuts in bureaucracy, will also compliment the internal project work to develop a comprehensive Policy Framework.

3. Approach

Working Groups and Work Streams

Several Working Groups have been established to review designated legislation and further analyse where other Committee's legislation impacts on Departmental functions and vice versa.

Some of the questions raised by each working group have included –

- What is currently being reviewed?
- What is due to be changed?
- How does other Committee's legislation impact on a particular section or ESC division?
- Could a process prescribed by order or legislation be approved by Committee or delegated function?

In all cases above the assumption can be made that a concurrent review or consultation takes precedent, this is certainly the case with the migration legislation. A sound and detailed knowledge of specific legislation and its application was required of the Working Group members and independent members were nominated for their practical knowledge of how the legislation had been applied, in the case of Chris Simpson, in his role as finance sub-committee chairman and Jimmy Johns, as a member of the Grant Appeals Board.

Members of the Working Groups were encouraged to keep the advantages of legislative reform in mind during the review period. Reduction in law drafting time for departmental and law draftsman staff, less debating time in the States, the introduction of quicker and potentially more efficient processes and greater flexibility were considered the main benefits of this project.

It should be noted that a parallel project is being run by the Change Team under the principal guidance of Steve Le Marquand, Change Champion for Customs and Excise. This project intends to investigate excessive bureaucracy within the everyday functions of Departments and it would be worth considering some aspects of bureaucracy for example in the grant application process or day care registration. This will also be considered in more detail by the ESC change network working group.

The eventual outcome of this process will culminate in the presentation of the working group's findings to the Policy and Resources Department and will subsequently provide analysis for a wider document made available for public consultation.

Sarah Stoten has managed the Education Sport and Culture Department Working Groups, three streams were established to analyse the three identifiable areas of legislation in force by the Committee. These areas were –

Education (Jersey) Law

A Working Group of Mick Heald, Lesley Le Bailly, Tom McKeon and Sarah Stoten was set up and tasked with reviewing the Law and identifying over regulation and/or areas where potential changes could be made. An independent member, Mr Chris Simpson, Chairman of the Finance sub-Committee of Jersey College for Girls has provided useful feedback on the Law.

Subordinate Legislation – Grants and Lord Portsea Fund

Subordinate legislation in the Lifelong Learning area covers Grants, the Lord Portsea Fund and Library Administration. The Assistant Director for Lifelong Learning, David Greenwood, Pat Davis, Chief Librarian and an independent member from the Grants Appeal Board, Jimmy Johns have been consulted with regard to reviewing these diverse pieces of legislation.

Requirements of Registration (Children (Jersey) Law 1969 Part VII/ Day Care of Children (Jersey) Law 2002)

The above Law was approved by an Act of Committee on December 2002, however an appointed day for this legislation has yet to be confirmed. This new piece of legislation has obviously been subject to scrutiny during its development. Sandra Mountford was the lead member for this working Group.

Teachers' Superannuation (Jersey) Law 1979

Options for the future of the Jersey Teachers Superannuation Fund are currently being considered including the transfer to the Public Employees Contributory Retirement Scheme (PECRS). Whatever option is agreed there will be an impact on the existing legislation and as a result this has been excluded from any further detailed analysis.

5. Review

Full analysis of the review can be found in (**Appendix A**). In summary very few changes have been recommended, an overview of each piece is as follows;

Requirements of Registration (Children (Jersey) Law 1969 Part VII/ Day Care of Children (Jersey) Law 2002)

No amendments are recommended to the Requirements of Registration (Children (Jersey) Law 1969 Part VII/ Day Care of Children (Jersey) Law 2002) as the review has highlighted a satisfactory legislative process. The voluntary compliance and commitment to the Law by providers is strong evidence that the Law represents a sensible and co-operative approach to day care registration.

Education (Jersey) Law 1999

Minimal changes to the Education (Jersey) Law 1999 are recommended and the Working Group is confident that it was not administratively burdensome, but was facilitative and manageable for the Committee's purposes, likewise in terms of application by agents and practitioners of the Department.

Public Library (Jersey) Regulations and Rules 2003

A Law drafting request for changes to the Public Library (Jersey) Regulations has formed part of a bid by the Department as part of the Law Drafting Programme for 2006. Should the request be successful a brief to the Committee will be forthcoming.

Lord Portsea Gift Fund (Jersey) Act 1971

The Lord Portsea Gift Fund is referenced in this report by way of illustrating the types of trusts the Committee administers and the restrictions faced by the Department in any attempts to change the conditions of the funds. In recent years the prerequisites of entitlement have been changed to reflect changing times and deliver equitableness, for example the inclusion of female applicants. Due to the benefactor nature of the Trust, no changes are therefore recommended.

Education (Discretionary Grants (Jersey) Order 2001

A number of observations are offered to the Committee for information only as it is likely it will be asked to consider possible changes at the end of the year in conjunction with any proposals for the future of Higher Education funding. The Assistant Director, Lifelong Learning will be in a position to update the Committee at a future meeting. These include the membership of the appeals panel, residential qualifications and pre-requisites for eligibility for a maintenance grant.

6. Additional Observations

Whilst this report has concentrated on the Committee's legislation, further areas of bureaucracy have been highlighted during the review. The Change Team is co-ordinating attempts to investigate areas of inefficiency and over bureaucratic procedure and the following points will be brought to their attention.

- 1) The purpose and effectiveness of the Committee Act process has been discussed by the Policy and Resources Committee; it is envisaged that further thought will be given to speeding up cross Committee / Ministerial correspondence. Possible solutions for the promulgation of ministerial decisions and the level of accountability for processing have yet to be determined but it is clear that the current system, whilst valued for its accurate recording of meetings, slows down the decision making process. Further promotion of Departmental co-operation outside of the formalities of this process is desirable.
- 2) The presentation of School plans / drawings to the States post planning and building byelaw approval. The ability of States members to object to the plans seems limited as the planning process has been completed. This task currently involves a significant amount of resources and man hours.
- 3) The role of Law Officers and Draftsmen should be considered in respect of the reliance on their expertise and time. There should be some thought given to the delivery of training to Officers and other Civil Servants in respect of legislative alternatives. There appears to be a reliance on formal legislation with little knowledge of other facilitative options that might be available. Law drafting training is delivered by the Law Draftsman but this is strictly within the confines of the current legislative framework, it is hoped that a varied training programme might ease the already heavy burden of the Law Draftsman's team and also encourage a more modern less regulated States of Jersey.
- 4) Demystify the States Assembly procedures – in conjunction with the Machinery of Government Reform and the review of the States of Jersey Law and standing Orders (PPC). Both the Assembly and Officers alike appear to find the traditions and procedures of the States of Jersey numerous and often restrictive. A detailed annual overview of why certain traditions are in place and what protocol to follow would be most helpful. Especially for new Officers in post or perhaps as a refresher for those who have 'learnt on the job' as it were. Examples of subjects to cover could include –
 - Order Paper
 - Presentation of papers
 - Regulations and Orders
 - Projects and lodging periods
 - In house traditions
 - States of Jersey Law and Standing Orders
- 5) Co-operation with the Housing Department with regard to confirmation of schooling and Housing qualifications. A house purchaser must obtain proof of ten years schooling directly from each institution. No central records exist in the Department and the absence of shared data between Departments means that current purchasers face an additional admin inquiry at an already stressful time. Data protection issues prevent this data being readily available.
- 6) HR record keeping and IS/IT systems. ESC has separate payroll and HR functions as do Police etc. Database technology and the sharing of information is being investigated as part of the IS/IT strategy but current issues include the difficulty in recording length of service when staff move between Departments and updating personal data. Should IT be restructured in these areas it will undoubtedly improve the HR service delivered by the Staff Services Team.
- 7) Data Protection Issues and Administration – The Data Protection Officer has not identified any red tape issues with regard to Data Protection Legislation, however, the new Law will require all Schools to 'notify' separately. The Data Protection Officer will continue to provide guidance and support.
- 8) TICT security and remote access policy – There was a view that the corporate procedure for granting remote access to the States network was cumbersome and time consuming often to the detriment of getting a task completed. The Computer Services Department has been consulted in this respect and

they have highlighted a need to streamline the procedure.

7. Recommendations

The Committee is asked to approve:

- i) the submission of this report to the Policy and Resources Department, specifically the Red Tape Team, for consolidation and subsequent presentation to the States Assembly.

The following changes to the Committee's legislation are proposed

- ii) Amendments to Article 3 of the Education (Jersey) Law 1999 to enable a change to the First Schedule Part I (**list of provided schools**) via order.

The Committee is further requested to sanction the following tasks by Officers of the Department;

- iii) The submission of a law drafting request for changes to the Public Library (Jersey) Regulations and Rules 2003; and
- iv) An annual review of the Committee's legislation and where possible, a wider consultation within the service or to agents and practitioners of the Department to ensure a consistent approach and interpretation. The review could also highlight opportunities to introduce efficiency or reduce red tape.

Review

Requirements of Registration (Children (Jersey) Law 1969 Part VII/ Day Care of Children (Jersey) Law 2002)

The above Law will replace the Children (Jersey) Law 1969 Part VII under which all private sector childcare provision is currently registered. The new Law, having been approved by the States on 26th February 2002, is due to come into force once ratified and given an appointed day for implementation. As yet the Health and Social Services Committee have not repealed the relevant section of the Children (Jersey) Law 1969 which has also been the subject of a detailed review in recent years.

All existing providers of private health care including Highlands College, the Training and Employment Partnership (TEP) and the Jersey Child Care Trust (JCCT) have been extensively consulted during the review process to the extent that most providers comply to the principles of the new Law despite it not being legitimately in force.

The consultation process established by the day care registration team, between March and October 2002, has been both thorough and collaborative in its approach. At least ten years of policy development has been geared towards quality improvement delivered over a significant period of time initially on a voluntary basis. By introducing user friendly, incremental changes, the team believed that full provider participation could be more fully achieved.

Requirements for Registration policy packs were produced as a result of the consultation and are provided to all individuals considering setting up a private provision. A consensus had been achieved amongst the majority of providers and other services. A major focus was placed on training requirements in order to introduce parity across all sectors of registered provision and this was supported by partners such as JCCT, TEP and Highlands.

The main premise of the Law is to establish that both the premises and carers are fit for the purpose of looking after children under the age of twelve for a specified period of time.

The Committee is the registering body and as such is responsible for awarding or refusing applications for registration including cancellations. A person aggrieved by a decision has the right of appeal to the Royal Court within one month from receiving notice of the Committee's final decision. The Committee must apply to the court should it require a cancellation, variation, removal or imposition to have immediate effect.

Education (Jersey) Law 1999

A degree of inefficiency and redundant clauses had previously been identified in the Law having been the subject of a full review in the late nineties resulting in the repealing of several laws. The Director of Education, Sport and Culture, was involved in the original drafting of this Law and has assisted the Working Group in interpreting the Articles. The Law offers a degree of flexibility to the incumbent Committee or future Minister which leaves the Department and Committee / Ministry free from unnecessary bureaucracy or procedure. An appropriate level of checks and balances are included in the Law where certain decisions would be subject to the scrutiny and further approval of the States. It was acknowledged that the Law was both simple and facilitative and should be the subject of minor changes as a result of the red tape review.

The following amendments to the Law have been proposed:

- i) Article 3 paragraph (4) stipulates that the First Schedule Part I (**list of provided schools**) must only be changed via regulation. It was deemed appropriate that this should be changed via Order in the future.
- ii) The Committee will recall that it was requested to approve minor amendments to the Education (Jersey) Law 1999 to give the Magistrate's Court the power to expedite **Education Supervision Orders**. It was noted that Article 14 of the Education (Jersey) Law 1999 made provision for the Royal Court to make a Supervision Order placing a child under the supervision of an officer of the Education, Sport and Culture Department providing that the Court had previously received an application from the Committee and was satisfied that the child was not receiving a full-time education appropriate to his/her ability and aptitude. As the power to expedite Education Supervision Orders was currently vested in the Royal Court, the Committee was advised that it could take a considerable period of time to secure an order and that the

Educational Welfare Officer and Police Legal Advisor, amongst other Officers, believed it was more appropriate for the order making power to be vested in the Magistrate's Court. The administrative burden of this process will potentially be reduced by passing the responsibility to the lower courts. Projet (P.179/2004) has since been withdrawn subject to the agreement of the Magistrate, at which point it is likely and appropriate change to the Law will be presented to the Committee and subsequently the Assembly.

In his capacity as both a member of the Jersey College for Girls (JCG) Finance Sub-Committee and a member of the Public, Mr Chris Simpson has provided the Working Group with feed back on the practical application of the Law particularly from the viewpoint of a school governing body. Of particular interest was Article 35, Article 36 and Article 57 (3) of the Fourth Schedule, a brief summary follows:

- i) Article 36 - **Suspension and expulsion of pupils**. There was some concern that a Head Teacher of a provided school wishing to suspend or expel a pupil from the school might be vulnerable or liable to legal proceedings. The power to expel or suspend is only exercisable by the Head Teacher however they must obtain agreement in writing of the Director of Education, Sport and Culture. It was agreed that a Head Teacher would face this responsibility infrequently in their career and that sufficient guidance and support would be provided firstly by the Director of Education, Sport and Culture and secondly by the Board of Governors. A framework of advice would subsequently be provided by the Department as to a suitable way forward as is the case for any issue of this nature.
- ii) Article 57(3), Fourth Schedule – **Functions of the Governing Body**. The Finance Sub-Committee of Jersey College for Girls faces particular difficulty when complying with regard to fee setting. The timetable and modification to paragraph 13 detailed in Part V of the Fourth Schedule, Article 57 (5) paragraph 19 (2) suggest that the Committee must approve the Governing Body's recommendations for fees at the prep and college of JCG. To provide this within the first term of the school year within such short timescale poses a significant problem to the Board of Governors when performance, budgets and demographics cannot be accurately gauged so early on in the school year. A question has been raised as to what responsibility the Committee has to the college to confirm its approval and subsequently facilitate notifying parents. The Director has confirmed that a draft policy statement detailing correct procedures is forthcoming. It was agreed that the Committee should continue to be the final arbiter with regard to fees to ensure expenditure is scrutinised but that further guidance was required.
- iii) Procedurally, **fee collection**, a service provided by the ESC Finance Department, was praised by Mr Simpson particularly the fact that parents receive one invoice in cases where more than one child attends the college. However the pastoral issue faced by the College when dealing with late or non-payers has highlighted the issue of identifying real cases of need and opportunities to expand the availability of financial support.
- iv) One final point made by Mr Simpson centred on Human Rights and the implications of the Law when parents, guardians or indeed pupils claimed their right to education and a place at a particular school. Public demand for places at the Island's Schools will continue to pose difficulties to the Committee and likewise the Projects and Planning Manager when places are unavailable or first choices cannot be met. The Law clearly defines the duty of the Committee with respect to children of compulsory school age in Article 11:

'The Committee shall ensure that there is available to every child of compulsory school age full-time education appropriate to his age, ability and aptitude.'

The Committee and the Department of Education, Sport and Culture however do have a duty to ensure the efficient and effective use of resources and will do everything in their power to meet the preferences expressed by parents.

Public Library (Jersey) Regulations and Rules 2003

It was noted that the Committee currently has the equivalent of English local government byelaws with regard to the administration of the Jersey Library Service, it is suggested that the States potentially did not need to be involved in such detail. It is recommended that a Public Library Law could make the provision of a public library service statutory whilst also referring to some minimum standards. The Chief Librarian feels strongly that the Committee and by implication, the States Assembly only need be involved in changes to service definition, and potentially opening hours. The remaining legislation / policies would subsequently be managed under delegated authority of the Director, the Minister for Education, Sport and Culture or the Chief Librarian.

The Public Library (Jersey) Regulations 2003 are deemed to be fit for purpose and do not appear to create an unnecessary burden on the States or the Committee. Both the Chief Librarian and the Assistant Director for Lifelong learning are keen to highlight the fact that they do not confer any obligation on the States to provide a public library service. The Chief Librarian in particular would like to see these regulations amended to include an appropriate statement implying a statutory obligation. It should be noted that this has been in place in United Kingdom since 1852, the most recent example being found in the 1964 Public Libraries and Museums Act.

The Working Group felt that the Public Library (Jersey) Rules 2003 were too detailed and involved substantial official process for minor operational amendments. Most of the details included were operational procedure which could be better recommended by the Chief Librarian and approved by the Committee / Minister without referral to States.

It is recommended that amendments, via order, be considered in the following areas –

- Detail of the opening hours
- Registration of borrowers and the style and types of library tickets and membership
- Minor Fines and Fees (The document should not refer to actual prices)
- The number of permitted renewals

Having been raised by Order, the aforementioned would be effective immediately and presented to the States for information only.

The very detailed nature of the suggested changes above would preclude them from appearing in the local authority byelaws in England and would be approved by the appropriate local authority committee or even devolved to the Director of the Department in some cases. Definitions of opening hours are often considered contentious as they can be correlated with potential cuts likewise any potential increases in fines or charges can come under public scrutiny.

Lord Portsea Gift Fund (Jersey) Act 1971

Administrative difficulties have been highlighted particularly centred around the management of the Fund by a delegation of eight persons, four of whom must be Jurats the remaining four should be members of the Committee and their attendance is required at any meeting arranged to determine the distribution of funds. Annual reports are produced by the Treasury in conjunction with Student Finance and these are presented to the States Assembly for information purposes only. It could be argued that the Trust represents a high level of administration however the very nature of the Lord Portsea Fund and Trusts like it, mean that there is very little scope for change. Benefactors who generously bequeath or donate funds to States Departments stipulate the way in which they should be managed and distributed. It is recommended therefore that only changes that accommodate the forthcoming Ministerial Government are appropriate at this time.

It should be noted that the Committee/Department has administrative responsibility for many Trusts and special funds such as the Howard Leopold Davis Scholarship Trust and the Children's' Benefit Fund a list is available for the Head of Careers, funds for the benefit of pupils at Victoria College predominate on the list. Trusts such as the Jersey Arts Trust, Jersey Heritage Trust and the Jersey Child Care Trust have not been the subject of a review.

Education (Discretionary Grants (Jersey) Order 2001

The current procedures, definitions and responsibilities for the administering of student funding are determined by Order of the Committee. There is no mandatory grant for students in Jersey but legislation exists as a means of formally notifying the public, parents and students in particular of the entitlements and grant calculations.

Whilst it is acknowledged that the Law Draftsman's time is required on a yearly basis for regular amendments in line with the cost of living etc, it was deemed wholly appropriate that the Order should offer immediate power to the Committee to define the grant calculation methods. The legislation also offers an appropriate forum for parents and potential students alike who are informed by virtue of the States procedure and subsequently by the Student Grant Officers. The current order imposes a degree of discipline however there is an element of misinterpretation which in the past has called for a discretionary ruling by the Director of Education, Sport and Culture and the Appeals Panel is required.

The Appeals route is followed in instances when the Order is misapplied due to an admin error or where special circumstances require the Committee or panel to exercise its discretion. There is currently no second appeal route and the decision of the Appeals panel is considered final and often sets a precedent when similar appeals come before the Student Grant Department. There are potential Human Rights issues regarding the independent nature of the Appeals Panel and countering arguments in respect of the practicalities of maintaining such independence.

Determining the residential status of a potential student in terms of entitlement has generated much discussion in the past and the current Order stipulates that an independent student must have been resident in the Island for a period of five years. The reference to five years has been questioned as this is currently only a requirement of the Regulation of Undertakings and may not be appropriate when determining entitlement to funding.

The Law Draftsman has drafted a number of minor changes as directed by the former Student Finance Officer, Chris Kelleher, which is likely to form the basis of any future discussions.

Mr Jimmy Johns, the current independent member of the Appeals Panel has kindly provided comment on his experiences and opinions regarding the application of the Law and the administration of the appeals system. The points he raised were as follows;

Ascertaining the independence of applicants as outlined in Article 2 of the law appears to cause some concern for instance; Mr Johns felt that having to be married for 3 yrs could be perceived as too long.

Mr Johns also felt that the Pre-requisites for higher degree qualifications stipulated in Article 6 could be revisited to establish whether higher grades should be attained by applicants.

Mr Johns has been involved with the Appeals Process for some time and has found it to be more than satisfactory. He has worked closely with Officers of the Department, namely the Director and Assistant Director for Lifelong Learning, whilst he was not at all critical of their support he felt that the panel would benefit from the addition of a non- ESC member to avoid any criticism of bias. Mr Johns has suggested that the Director of Education, Sport and Culture might become a non- voting advisor to the panel.

As no case is the same, Mr Johns was clear that every applicant should have the right to appeal even in cases where a former decision may have set a precedent.

Teachers' Superannuation (Jersey) Law

The above Law is likely to be dissolved in the very near future as negotiations to merge the Teachers' Pension Scheme with the current States scheme are underway.

April 2004

Projet 134/2004 "Regulatory Reform" – lodged au Greffe on 20th July 2004 by the Policy and Resources Committee

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to agree that States Committees should carry out a programme of regulatory audits of current and proposed legislation, to be co-ordinated by the Policy and Resources Committee, with a view to reducing the burden of legislation.

POLICY AND RESOURCES COMMITTEE

REPORT

It has been widely acknowledged that Jersey has a considerable amount of regulation, and it could be argued that at least some of this regulation is unnecessary. What constitutes over-regulation can be a wide range of factors, but the following difficulties are frequently encountered in relation to legislation in Jersey –

- An overlap of different regulatory regimes
- Duplication of requirements in different regulatory regimes
- Requirements to keep records that aren't really needed
- Requirements to make returns of information that isn't really needed
- Unnecessarily complex or ambiguous application forms.

Recent discussions involving the Policy and Resources Committee have highlighted the desirability of reducing the burden of legislation. A decrease in regulation would contribute to a reduction in red tape and compliance burdens placed upon the public, and in particular, on businesses. It should also result in a reduction of the administrative burden placed upon States Departments. As an example, private sector businesses may be able to make manpower savings if they are no longer required to make certain returns of information.

The 'States Strategic Plan 2005 to 2010' (P.81/2004), which was adopted by the States on 29th June 2004, highlights reasons why Jersey needs to move towards a lighter touch government and how this should be achieved. The Plan points out that a "thorough review and overhaul of regulation placing the emphasis on government guidance and facilitation in place of restrictive regulation and red tape will encourage individual and business responsibility and self-management" (page 6). It also lists one of its overarching policies to be "a thorough review and overhaul of government regulation and bureaucracy" (page 9). Further emphasis to this policy is given in Section 1 of the Plan, where it is stated that the "the States will reduce unnecessary regulation and bureaucracy in the Island" (Aim 1.3).

If Jersey were to move towards reduced regulation, a wide range of alternative options is available, and these options include –

- **Voluntary codes of conduct/self-regulation**
- **Negative licensing:** This means that organisations or individuals are able to carry out certain activities in accordance with particular requirements, but do not need to hold a licence to do so. If there should be a breach of a requirement, their activities are monitored and/or regulated more closely.
- **‘Comply or explain’:** Regulatory requirements exist that oblige organisations or individuals to carry out particular tasks (e.g. to complete a return for submission to a States department). Under the ‘comply or explain’ arrangements, businesses may choose to adopt their own procedures to comply with an agreed objective. When questioned, it is up to the business to justify why they are carrying out a task in an alternative way.
- **Routine review of regulation compelled by use of sunset clauses:** ‘Sunset clauses’ are regulations that are imposed for a specific period of time and then expire. The object of implementing such methods is to compel the legislature to re-assess its benefits periodically, rather than allowing it to carry on indefinitely.

In order to reduce the burden of legislation, the Policy and Resources Committee is proposing that there should be an audit of existing and proposed legislation. A regulatory audit would broadly ask the following questions–

- Is regulation needed at all?
 - Are there alternative methods of achieving the desired end result which would be less burdensome to the person regulated and the regulator?
 - If regulation is, nevertheless, needed, is it necessary to the extent proposed or would a lighter touch achieve the desired end result?

It is proposed that States Committees should each be charged with carrying out audits of the legislation under their administration. In each case, a small working group would be established comprising of one or more officers from the relevant department, plus 2 other people (more if considered appropriate) who would be representative of the general public, including user groups, but not exclusively drawn from these groups. It is further proposed that an officer from the Policy and Resources Department should act as a coordinator for these groups, as this person would be able assist in the creation of guidelines for the groups, as well as in identifying common themes and solutions.

In carrying out the proposed audit, the members of each working group would need to have an understanding of –

- Why the regulation is needed
- What constitutes over-regulation
- The sorts of alternatives to regulation that are available
- What constitutes ‘lighter touch’ regulation
- The impact of the proposed scheme, both for the person regulated and the regulator.

In relation to proposals for new legislation, the audit would need to be conducted at an early stage in order to

establish whether the legislation is necessary. It is therefore essential to have commitment to the principle from States Committees so that regulatory audits can be completed at a formative stage within departments. It is proposed that existing regulation should also be reviewed, and this would be carried out on a topic-by-topic basis. Having received recommendations from their working groups, States Committees would be asked to report back to the Policy and Resources Committee on their proposals for regulatory reforms (or on the reasons why they may have decided not to implement particular recommendations from their working groups), in order that progress can be centrally reviewed. The actual responsibility for bringing forward any proposed changes, including changes to legislation, would of course rest with individual Committees. In future, this responsibility will rest with the Council of Ministers.

One means of expediting the process of deregulation would be for the States to pass an enabling Law which would create a power to amend principal legislation by Regulations for the purposes of regulatory reform. This is being given further consideration and it is likely that a draft Law will be prepared for consultation if the general principles of this Report are agreed by the States.

In conclusion, therefore the States is asked to agree –

- that Committees should review all new regulatory proposals, together with the legislation that is currently under their administration;
- that this should be achieved by the formation of a number of working groups, one for each Committee, to review existing and proposed legislation;
- that Committees should be asked to report back to the Policy and Resources Committee on their proposals for regulatory reforms (or on the reasons why they may have decided not to implement particular recommendations of their working groups), in order that progress can be centrally reviewed.

It is proposed that the working groups should be established in the autumn of 2004, and that they should be asked to complete their initial review of legislation by the end of March 2005. This will allow sufficient time for the results of the reviews to be taken into account when considering the Legislation Programme for 2006.

Financial and manpower implications

There will be no additional financial implications arising from this proposition, nor will there be any requirement for additional staff.

There will be an additional demand on staff time for those officers involved in the working groups, but it is expected that in the medium to long term a reduction in legislation will help to reduce the demand on States financial and manpower resources. It is also anticipated that a lessening of the burden of legislation will enable savings to be made in the private sector.

Housing Ministerial Action



Title:	Transfer of Budgets for Information systems and advertising		
Action Reference:	-	Exempt Clause:	-
Type of Report: (oral or written)	Written	Date of decision:	25 th July 2005
Telephone Meeting? (y/n)	No	Person Giving Report (if oral):	F Ferris with written report
Written Report	Transfer of Budgets for Information systems and advertising		
Author:	F Ferris	File Reference:	L:\finance\director of finance\word\main committee papers & submissions\2005\Budget transfers IS & HR
Decision(s):			
<p>The Committee agreed the budget transfers of total £59,929 to cover work which will be taken over by Computer Services and £5,000 to cover vacancy advertising, a service which is now provided by the Shared Services Department.</p>			
Reason(s) for decision:			
Efficiency savings			
Action required:			
FF Will effect transfer			
Signature		Date of Approval:	
		25 th July 2005	

25th July 2005.

HOUSING COMMITTEE

Transfer of 2005 Budgets for Information System and Advertising

Introduction & Background

As part of the efficiency savings across the States, some Information Systems and Human Resources services are to be centralised. This means that some of the costs currently held in Housing's own budget require to be transferred to the Committees which are responsible for providing these services.

Information Systems- The IT Section currently contains the budgets for the IS Director and one grade 10 Officer. The Grade 10 officer is to be transferred to Computer Services although Housing will still receive some support from him. In addition certain services will be provided from the centre. The result is that the transfer will be:-

Cost of officer less 7.79% efficiency saving	£45,206
Computer Services Recharges + common Server provision + software provision And maintenance	<u>£14,723</u>
Total transfer Information Systems	<u>£59,929</u>

Human Resources- The Committee does not have its own HR Section, and HR work is carried out by the individual managers supported by the Senior Secretary.

The only discrete area of HR expense has been on advertising for vacancies. This was budgeted at £5,000 and it is proposed to transfer this £5,000 to F & E who are currently providing this service. The Committee is not incurring any costs for vacancy advertising this year.

Recommendation

The Committee is recommended to approve the above transfers.

Frances Ferris
Director of Finance
19th July 2005.

Housing Ministerial Action



Title:	Review of Occupancy Conditions		
Action Reference:	-	Exempt Clause:	-
Type of Report: (oral or written)	Written	Date of decision:	25 th July 2005
Telephone Meeting? (y/n)	No	Person Giving Report (if oral):	
Written Report			
Author:	Director of Housing Control	File Reference:	As title
Decision(s):			
Defer further review until Population Office commences overall review of Migration proposals.			
Reason(s) for decision:			
To amalgamate a-h and a-j occupancy conditions now could impact on future proposals for property registration and classification as part of the Migration proposals, and does require some legislative changes which if prepared separately might become non cost-effective.			
Action required:			
Director of Housing Control to carry forward into any future proposals in relation to the Migration policy.			
Signature		Date of Approval: 25th July 2005	

Report for Housing Committee

Review of Occupancy Conditions

1. The Committee is asked to give initial consideration as to whether it wishes to review the classification of occupancy conditions imposed on property transactions.
2. Every sale, transfer or contract lease application enables the Committee to impose occupancy conditions on the accommodation which is subject to the application. The three general options are 1(1)(a)-(h), 1(1)(a)-(j), or Regulation 1 (this includes all classes). In addition on every consent there is a condition that states that any further units of accommodation created on the site must be occupied by persons qualifying under Regulation 1(1)(a)-(h). The condition imposed dictates the classes of person who are able to occupy the property for the duration of that particular ownership. Where the property is in multiple units and sold on by way of share transfer or flying freehold, the conditions remains in perpetuity.

History

3. The 1970 Housing Regulations set out the classes of persons to whom the Committee shall grant consent, and those to whom it may grant consent, those including Regulation 1(1)(g), 1(1)(j) and 1(1)(k). 1(1)(a)-(h) categories are recognised as local qualifications and the imposition of 1(1)(a)-(h) conditions since the 1970 Regulations has been seen as a means of protecting the local market from potentially high spending 1(1)(j) applicants, and as a means of ensuring that any new additional units added to the housing stock are provided specifically for the local market.
4. Having a 1(1)(a)-(j) or a 1(1)(a)-(k) condition on a property, particularly new build, is perceived by developers and lenders to increase the value of the property concerned. Whilst this can be true in some market conditions, it is often more of a perception than a reality. Having a wider category of persons to market property to is certainly an advantage, and by definition many private sector 1(1)(j) employees have a fairly high level of purchasing power. The Committee can amend its policy on the imposition of conditions for certain types of transaction. For example, for a period when there was an extreme shortage of accommodation, in order to encourage the provision of net additional residential accommodation, the Committee attached 1(1)(a)-(j) occupancy conditions on all residential development of purely commercial sites. When considering policies of this nature the Committee must be consistent in its application of such Policy.

Legislation

5. There are three parts of the 1949 Housing Law and corresponding three parts of the 1970 Regulations that actually impose a statutory condition requiring occupation of accommodation by a person qualifying under Regulation 1(1)(a)-(h). These are;
 - a Degrèvement, and inheritance by a body corporate, since June 1993
 - b Company owned land acquired prior to the enactment of the 1949 Housing Law, and
 - c Any dwelling accommodation purchased by a Company retrospectively since the 1949 Law, and currently on any company consent granted.

Discussion

6. The Migration Policy recently approved by the States envisages that all property will be classified as controlled or uncontrolled. Access to controlled property will be by all existing 1(1)(a)-(h) and 1(1)(j) category persons (1(1)(k) may be considered separately), and the remainder being occupied by anyone not classified as entitled (1(1)(a)-(h)) or licence (1(1)(j)).
7. Whilst the current Housing Law and Regulations will continue as they are whilst the Migration proposals are being developed, the Committee must decide whether it wishes to move to change the current occupancy conditions to reflect these future proposals.

Potential Benefits

8.
 - a Market forces left to dictate style and size of newly created accommodation.
 - b More clarity, less restrictions, less bureaucracy.

- c Only two types of controlled accommodation in the future – First Time buyer and other.

Potential Problems

- 9.
 - a Removes potential protection for those with local qualifications.
 - b Could lead to temporary increases in prices/rents.
 - c Political opposition to opening up the market to the potential detriment of those with local qualifications.

- 10. Although, as stated earlier in the Report, the Committee can by way of Policy impose and vary conditions attaching to consents depending on circumstances, in view of the statutory imposition of 1(1)(a)-(h) conditions the Committee will be required to take any amendment to the States extending the statutory conditions to include the wider categories of occupation.

Peter Connew
Director of Housing Control
18th July 2005