WORKING PARTY ON PUBLIC ENTERTAINMENT: FINAL REPORT

Presented to the States on 23rd July 2002
by the Legislation Committee

STATES OF JERSEY

STATES GREFFE

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Introductory

On 14th November 2000, the States of Jersey, adopting a proposition of Senator C.G.P. Lakeman (P.168/2000) charged the Legislation Committee -

> "*(a) to investigate the current powers exercised by the Bailiff in controlling Public Entertainment; and*
>
> *(b) to consider, in consultation with the Bailiff and other interested parties, the desirability to alter the current position, including providing by statute for a Committee or Committees of the States, or some other person, to exercise any or part of such powers; and*
>
> *(c) to report to the States with the recommendations.*".

A Working Party was established by Act of the Legislation Committee dated 26th January 2001, constituted as follows -

Deputy R.G. Le Hérissier, Chairman (Legislation Committee)
Senator C.G.P. Lakeman
Constable J.B. Germain of St. Martin
Deputy L.J. Farnham (Tourism Committee Representative)
Deputy J-A Bridge (Legislation Committee).

The Working Party met on six occasions and Mr. D.C.G. Filipponi, States Greffe, has acted as Clerk. Consultation took place with Mr. M. Hewlett, Mr. R. McLoughlin (Bailiff's Chambers), and Mr. I. Stevens (Opera House).

On 30th November 2001 the Working Party made a preliminary report to the Legislation Committee stating, *inter alia*, that in order to fulfil the requirement to report to the States with recommendations, the Working Party was of the view that a detailed examination should be undertaken of some of the options which had already been identified by the Attorney General. Those options were explored with the kind assistance of Mr. R.C.A. Syvret.

PART 1

The historical background to the Bailiff's powers

The powers of the Bailiff at customary law to control public entertainment do not have a clearly identifiable origin, but in all probability stem from the very nature of his Office, which of course goes back to the very foundations of the Constitution of the Island and its status as a Bailiwick, or *Baillage*. The *Ancienne Coûtume de Normandie* (the original customary law of Normandy) is the foundation of Jersey law. According to the *Coûtume*, the Duke of Normandy appointed 'les baillifs'[1][1] for each *Baillage*. Writers on the customary law help us to understand the underlying function and powers of the Bailiff. According to *Pesnelle*[2][2] -

> "*Bailli* means the same thing as guardian; as *Baillie* means Guard and Protection. Thus it is that *Baillistre* in the old Ordinances and some *Coûtumes*, means Tutor or Curator. The Bailiff thus was in the position of preserver (*conservateur*) of the People and of the Laws."

"*Bailli signifie la même chose que Gardien; comme Baillie signifie Garde & Protection. D'où vient que Baillistre, dans les anciennes Ordonnances & quelques Coûtumes, signifie Tuteur ou Curateur. Le Bailli donc étoit comme le conservateur du Peuple & des Loix.*

According to *Bescherelle*[3][3] the old word "Bailiff" derived from the lower Latin word *bajulus*, meaning 'garde protecteur'[4][4].

Thus it can be seen that the Bailiff's role from its inception was more than that of a mere judge: he was guardian of the public peace in a much wider sense. There can be little doubt that it is for this reason that the Bailiff historically has assumed a role which might be termed custodian of public morals and it was no doubt in this context that Lieutenant Bailiff *Jean Poingdestre*[5][5] wrote in the 17th Century to the effect that, just as the regulation of merchants and taverners properly fell to the Bailiff in order to protect against abuses, so it was proper that the licensing of inn-keepers and *cabarettiers* fell within his jurisdiction because it was 'of great importance to the public' to ensure the orderly and lawful conduct of places to which the public had resort for drinking and entertainment.

These customary powers of the Bailiff were reflected to an extent in his oath under the Code of Laws of 1771 which contained the passage "*vous garderez et ferez garder la paix*" [you shall keep and shall cause to be kept the peace][6][6]. The Bailiff's powers to control public entertainment were considered by the States on 14th November 1778. An extract from the Act of the States of that day [in translation] recites that -

> "*The States taking into consideration the ill effects produced in society, allowing the disposal of any kind of goods by raffle or other similar draws or games of chance; For these reasons, it is expressly forbidden to each and everyone without exception, to display for sale whether in public or private, or to sell any kind of goods or effects of whatever nature, by raffle or draw, by cards, dice or by any game of chance whatsoever, on pain equally for those who display such goods, as towards each and everyone who takes part, of a thousand pounds fine . . .*
>
> *Furthermore, it is found expedient to prevent too much freedom that could be caused, if plays could be performed for reward, which obviously shows to young people who engage in such pursuits, a slackness and idleness which is detrimental to themselves and to society; Considering moreover that similar indolence is controlled in well regulated societies; The States have therefore found it necessary to forbid and it is therefore expressly forbidden to all persons who in future undertake to present for money or other reward any play or farce, unless they have previously obtained permission from the Chief Magistrate and the Royal Court; Such permission may be granted for a reasonably limited time, or refused, according to their judgement; Upon punishment for those contravening this order: two hundred pound fine, for each performance . . .*
>
> *The States has judged it expedient to forbid and it is therefore expressly forbidden to all persons without exception to let off any flare or firework in the towns of St Helier and St Aubin or to sell them, upon punishment of a fine of twenty pounds . . . it being established that mothers and fathers shall be responsible for the said fine for their children; and masters and mistresses for their apprentices or domestics . . .* ".

There may be a question mark over the validity of the Act of 1778 because it was not submitted for Royal Sanction. There is scant evidence of the Royal Court (as opposed to the Bailiff) having invoked this particular power and, whilst often relied upon as a basis for the jurisdiction of the Bailiff, it seems not to have been followed according to its strict terms.

PART 2

The existing statutory powers

At the present day a number of statutes touch on the powers of the Bailiff and other bodies in relation to matters of entertainment.

The Licensing (Jersey) Law 1974, as amended, provides at Article 12(1)(d) that-

> *"Save by permission of the Bailiff, no dancing or cabaret shall be permitted or provided on the licensed premises except for or by persons residing therein and their bona fide guests or members of a club in respect of which a licence of the fifth category is held or guests of such members.*
>
> *Provided that no such permission shall be necessary where the Bailiff has stated in writing that, in his opinion, his permission is not required for the purposes for which it is intended that the premises should*

be used."

The States were empowered by the *Loi* (1851) *autorisant l'établissement des réglements sur la police des chemins* to make permanent Regulations for 'the police of public roads'. Those powers were extended by Article 49 of the Road Traffic (Jersey) Law 1956 to include any park or other public place or any sea beach. The Regulations made under these powers are the Policing of Beaches (Jersey) Regulations 1959, the Policing of Roads (Jersey) Regulations 1959 and the Policing of Parks (Jersey) Regulations 1962 (all as amended). In varying degrees, they either prohibit, or require permission (from the Connétable, the Public Services Committee, the Tourism Committee or the relevant Park Authority) to be obtained for, performances, displays, or exhibitions or the use of musical instruments or apparatus in public places.

Article 2 of the Entertainments on Public Roads (Jersey) Law 1985 provides that the Public Services Committee may, on the application of any person, by Order declare that any public road may be used for the purpose of the holding of an entertainment, the viewing of an entertainment held elsewhere, or the making of arrangements preparatory to the holding of an entertainment, or the viewing of an entertainment to be held elsewhere. A 'public road' for this purpose includes any public place (Article 1). The Law, however, does not derogate from the powers of the Bailiff in matters of public entertainment (Article 5).

The Unlawful Public Entertainments (Jersey) Regulations 2001 ("the 2001 Regulations") extend to all public entertainment not permitted by the Bailiff. They are Triennial Regulations first enacted amidst concern in the late 1980's about the holding of 'raves'. The expression "public entertainment" is not defined: Regulation 2(2) provides merely that "a public entertainment is unlawful if it is held without the permission of the Bailiff". Under Regulation 2(1) -

> "*Any person who organises or is otherwise concerned in providing an unlawful public entertainment shall be guilty of an offence and liable to imprisonment for a term not exceeding six months.*"

The absence of a definition of "entertainment" is, as will be seen in Part 5, problematical. It had been intended to enact these Regulations by way of a Law sanctioned by Her Majesty but, due to the difficulties with the absence of a definition of "entertainment", and pending the review commenced by the States in November 2000, a *projet de loi* has not been lodged.

PART 3

The existing practice

The Report on the findings of the Committee of Inquiry into Controls on Public Entertainment in 1987[7][7] ("the 1987 Report"), described the requirement to obtain the permission of the Bailiff for public entertainment as having two separate objectives, namely -

(a) to exercise control over the safety standards of the place of the public entertainment in order to protect the public attending;

(b) to exercise a watching brief over standards of public morality and taste.

In certain respects, the Working Party views the above description as slightly narrow.

The first limb of the Bailiff's jurisdiction is indeed to grant or refuse permission taking into account safety or public health considerations. However, the second limb of his jurisdiction is to grant or refuse permission, taking into account not only standards of public morals and decency, but also potential inconvenience such as excessive noise or the risk of disturbance or disorder.

<u>The current advisory process</u>

There is an advisory process to assist the Bailiff in exercising both limbs of his jurisdiction.

(i) In relation to the power of the Bailiff to grant or refuse permission taking into account safety or public health considerations, two kinds of permit should be distinguished -

The first is the annual entertainment permit attached to the seventh category licence and held by venues such as the Opera House, Arts Centre, St. James and a number of hotels. Prior to a decision on the issue of a permit, the premises are inspected for their suitability by the Fire Service which fixes occupancy limits (which may vary according to the purposes for which the premises are used - different seating configurations *etc*.), and by the environmental health authorities for such things as sanitary accommodation, sound insulation *etc*. A copy of the application is also sent to the appropriate Connétable and submitted to the Parish Assembly before a decision is made.

The second relates to *ad hoc* applications in respect of which there is an advisory panel. Upon receipt of a request for a permit, a decision is taken at first instance whether or not to refer the matter to the panel for advice. Straightforward

matters (*e.g.* a scout show in a youth club or Parish Hall) are dealt with without recourse to the panel, and are normally approved subject occupancy levels fixed by the Fire Service.

Matters referred to the Panel are those that take place in circumstances in which the detailed advice of statutory bodies is likely to be required in order to reach an informed decision on the merits of the application (such circumstances include unusual venues, open-air events, events involving very large numbers of people *etc*.).

In this case the matter is put to the panel that meets on a monthly basis. Membership is as follows -

Chief Officer, Bailiff's Chambers (Chairman)
Health and Safety Inspector
Environmental Health Inspector
Police
Ambulance
Fire Service

The Connétable or a representative of the Parish in which the event is intended to take place is also invited.

The applicant is invited to submit details of the application in advance, and to be present to explain his proposals and to deal with any matters raised by the panel. It is often the case that the details of plans are amended in the light of suggestions made by the panel, and, in consequence, the process may involve consideration of the matter at more than one meeting.

Recently, the panel agreed that the final date for considering applications should be at the meeting taking place in the month before the event itself. After that meeting a recommendation is made to the Bailiff who issues a permit, or declines to do so (or attaches conditions) as he sees fit. The panel is advisory so it is the Bailiff who makes the decision. In practice, however, there is unlikely to be any instance where (having gone through the above process) the Bailiff will disregard the advice of the panel.

(ii) Moving on to the advisory process in relation to the Bailiff's jurisdiction to grant or refuse permission taking into account standards of public morals and decency, *etc*., the States agreed following the 1987 Report that a panel be appointed to establish 'initial guidelines' and 'assist the Bailiff in monitoring standards of entertainment'. Whilst the panel initially published its guidelines, it has not formally been reconstituted by the States and now exists only as an informal body convened on an *ad hoc* basis to address specific matters as requested by the Bailiff. In effect, the more formal practice contemplated by the States in 1987 has lapsed.

Nonetheless, existing guidelines make clear the obligations of promoters to warn members of the public of, for instance, bad language or other matters which might cause offence. In consequence, there are now fewer complaints.

The fact that public attitudes have become more relaxed since the 1987 Report has been reflected in the control of entertainment. There have been few controversial applications upon which the Bailiff has required the advice of the informal panel. There has apparently been no formal meeting of the panel since 1996, although the Bailiff has consulted informally with the Chairman and once, through the Chairman, with members[8][8].

Thus a panel still exists in a loose form to offer advice to the Bailiff but, whereas the panel of statutory bodies meets regularly to advise on safety, *etc.*, the need for advice on issues of public morals has diminished considerably.

In relation to cinemas, the initial control lies outside the Island and is vested in the British Board of Film Classification. The Bailiff issues an annual permit that restricts the premises to showing only those films passed by the BBFC. Such permission carries the implication that certain films will only be shown to people over particular ages. On occasions in the past, the Bailiff (normally advised by an advisory panel) has made his permission conditional on some other age categorisation, and in some cases he has banned the showing of the film. There have been no such instances of this in the time of the present Bailiff.

In relation to theatres, nightclubs, and discothèques, the normal procedure is for the Bailiff to issue an annual permit to the particular premises.

In respect of places of occasional entertainment, there is a standard condition placed on such permits insisting that the entertainment is not of an irreligious or immoral character and is conducted in an orderly and peaceable manner acceptable to the public and to the inhabitants of the neighbourhood.

PART 4

Obscenity: the offence at customary law

Although not strictly within the brief of this Working Party, it is helpful to mention briefly the customary law offence of obscenity.

The powers of the Bailiff outlined above are, of course, powers of 'pre-vetting'. They operate alongside what may be termed the *ex-post facto* jurisdiction of the Island's criminal courts to punish the customary law offence of publishing an obscenity.

The nature of the offence was considered by Sir Frank Ereaut (then Deputy Bailiff) in the case of *Carpenter -v- Connétable of St. Clement*(1972) J.J. 2107. This was an appeal against conviction in the Police Court (as it then was) o having "published to five persons an obscene film entitled 'Top Secret'". The Royal Court held that it was an essential ingredient of the offence that there be a tendency to injure or corrupt public morals. The tendency of the matter had to be such as to deprave and corrupt the class of persons who, having regard to the methods of distribution, publication or exhibition, were likely to come into contact with it.

Being an offence at customary law the amount of fine or length of imprisonment is at the discretion of the sentencing court.

The above does not purport to be an exhaustive statement of Jersey customary law in this respect, but it is thought helpful to provide this brief statement by way of background in order to present the fullest possible picture of all aspects relating to the control of public entertainment (of which the powers of the courts are a part).

PART 5

Potential shortcomings of the existing régime

Both the current holder of the office of Bailiff and his predecessor have, over several years, publicly stated that it is undesirable that the executive function in relation to the control of public entertainment should be exercised by the Bailiff.

In these times when there is unease about the exercise of executive power by a judge who is not elected, the existence of the executive power in the Bailiff may be thought to be politically undesirable. To remove that executive power may involve conferring it upon some other person or body, with the resulting resource implications. That requires a political assessment of whether any objections to the exercise of executive power are so strong that the resources ought to be given to funding an alternative.

A further issue in this respect is that occasion may arise when the exercise of the Bailiff's executive power comes to be reviewed judicially. Whilst, clearly, it would be impossible for the Bailiff, sitting as a judge, to review the lawfulness of a refusal of a licence by him in his executive capacity, judges frequently do review decisions taken by other judges at first instance, and either follow them or change them as they think fit.

Apart from these considerations, of especial difficulty (as already noted in Part 2 above) in the 2001 Regulations is the absence of a definition of what constitutes 'public entertainment'. Whether it is to be the Bailiff or any other person or body that exercises the current executive power, some statutory definition of what constitutes a public entertainment must be formulated. In the absence of a statutory definition, courts normally look to the dictionary definition. The word 'entertainment' in this context is defined in the Shorter Oxford English Dictionary as -

> "*The action of occupying attention agreeably; that which affords interest or amusement;* esp. *a public performance of a varied character*".

Ostensibly, therefore, an entertainment may be caught if it is, or is merely incidental to, something such as a sporting event or a garden fête. The 'Notes for Guidance' issued by the Bailiff's Chambers state that "public entertainment" may be defined as "any entertainment to which a reputable member of the public may gain access with or without payment". The Notes state that religious meetings or services do not constitute public entertainment, nor do jumble sales, bazaars, sales of work, garden fêtes and the like, or sporting or athletic events. However, the Notes are not reflected in the 2001 Regulations; neither do the Regulations formally empower the Bailiff (or any other body) to exempt such categories of entertainment from the criminal offence in Regulation 2(1) of the Regulations. This may have a bearing on the European Convention on Human Rights, Article 6 of which (right to a fair trial) has been held 'to enshrine the fundamental principle of the rule of law'. It might be argued that the subject matter of any prosecution must be sufficiently certain that members of the public, when they go about their daily lives, know whether they are, or are not, committing an offence.

PART 6

Options for reform

Parts 1 to 5 above constitute the investigation of the Working Party into the current powers exercised by the Bailiff in controlling public entertainment. We now move on to consider, in the words of the Act of the States dated 14th November 2000, "*the desirability to alter the current position, including providing by statute for a Committee or Committees of the States, or some other person, to exercise any part of such powers*".

The current position could be altered in one of several ways -

(i) by abolishing altogether the current powers exercised by the Bailiff in controlling public entertainment without seeking to vest those powers in any other body;

(ii) by vesting those powers in a Committee of the States or, in the wake of potential reforms following the *Clothier* recommendations, in a Minister;

(iii) by vesting those powers in some other person or body.

It should be stated at this point that the Working Party has concluded that the Bailiff ought no longer to be possessed of his existing powers but that those powers should vest in another person or body. The reasoning for this conclusion will hopefully become clear in the following paragraphs.

Abolishing the existing executive powers outright

The two limbs of the jurisdiction of the Bailiff in relation to public entertainment have been set out in Part 3 above as consisting of the power to grant or refuse permission -

(a) taking into account safety or public health considerations; and

(b) taking into account not only standards of public morals and decency, but also potential inconvenience such as excessive noise or the risk of disturbance or disorder.

(a) Public health/safety considerations

In the opinion of the Working Party, safety and public health considerations are paramount. If the customary power of the Bailiff were to be abolished outright, it is doubtful whether the relevant States Committees would be possessed of sufficient statutory powers to require safety measures to be taken before an entertainment took place or to prohibit altogether the holding of the entertainment in the absence of precautions being taken.

Given that the safety of the public is paramount, there must be no room for doubt. The Working Party believes that, rather than risk a lacuna in powers to control safety standards at any public entertainment, the Bailiff's existing jurisdiction should not be abolished outright, albeit that (as already stated) the Working Party does not consider that the Bailiff should continue to be seized of that jurisdiction.

(b) Public morals, disturbance etc. considerations

Turning to the second limb of the Bailiff's existing jurisdiction, namely, that of granting or refusing permission, taking into account not only standards of public morals and decency, but also potential inconvenience such as excessive noise or the risk or disturbance or disorder, there are, of course, competing arguments as to whether or not the Bailiff's powers should be abolished outright, not least insofar as this limb concerns the vetting of entertainment for its content in terms of public morality and taste.

As noted in Part 4 above, the powers of the Bailiff operate alongside the jurisdiction of the Island's criminal courts to punish the customary law offence of displaying or publishing anything which has a tendency to injure or corrupt public morals. If a public entertainment is not such that it has a tendency to injure or corrupt public morals, what purpose is served by "pre-vetting" a proposed entertainment because it might affront the moral sensibilities or a proportion of the population? It might be argued that the judgment of the people, rather than that of the Bailiff (or any other person or body), should prevail.

On the other hand, the existence of such a 'filter' may be said to prevent 'excesses' and safeguard what may be seen as the moral complexion of the Island. The 1987 Report pointed to "evidence of a deterioration in the standards and quality of local entertainment" and came to the conclusion that "certain trends should be arrested". The authors of the 1987 Report were thus unequivocal in their view that this executive power or at least substantially the same power should remain (and remain vested in the Bailiff).

The Working Party today believes that the arguments are now more finely balanced.

Attitudes have changed in the past fifteen years. They now lean more towards an acceptance of the freedom of the adult population to make its own judgments and the need to respect basic human rights. The Working Party does not recognize as a proper function of government the control of 'trends' in public entertainment. It does however (subject to what is said below) accept that there remains a need to afford a measure of protection to the more vulnerable elements of society. But, if there is to be state control of entertainment, that control must be exercised according to closely defined statutory criteria. The absence of statutory criteria is liable to give rise to the perception of the existing powers of the Bailiff being able to be exercised arbitrarily. There are at present no statutory criteria upon which the Bailiff may grant or refuse permission and,

whilst guidelines exist, the Bailiff (or any subsequent Bailiff) is in theory at least free to withdraw them and apply whatever test he or she may wish. The arbitrary nature of the existing power is not, in the opinion of the Working Party, satisfactory and could not simply be transferred to another person or body in its present form.

Thus, whilst the Working Party has concluded that control of entertainment in this particular respect should not be abolished outright, it is of the view that criteria should be formulated so that a refusal to grant a public entertainment licence should be based on stated grounds, the principal of which being that an entertainment would be likely -

1. taken as a whole, to tend to injure or corrupt persons likely to view, hear, or participate in, it;

2. taken as whole, to outrage reasonable standards of public decency;

3. in whole or in part, to be prejudicial to the well-being of children (under the age of 18) likely to view, hear, or participate in, it;

4. to cause unreasonable disturbance to persons in the neighbourhood of it; or

5. to pose a risk to the maintenance of public order.

Transferring the Bailiff's jurisdiction to a Committee of the States or to a Minister

(a) Public health/safety considerations

There ought, in the opinion of the Working Party, to be a proper statutory framework within which those who currently advise the Bailiff are bound to tender advice on safety grounds to the holding of public entertainment. The reasons for this will already be apparent from what has been said under the foregoing heading relating to public health/safety considerations. Rather than apply to separate Committees and statutory bodies etc. for permission, there ought to be constituted by statute an Entertainments Authority in which would vest the existing 'first limb' of the Bailiff's customary law powers (with the relevant Connétable being consulted in relation an application affecting his or her Parish).

(b) Public morals/disturbance etc. considerations

Whilst the Working Party on the one hand has reached the conclusion that the jurisdiction presently vested in the Bailiff should not be abolished outright, it has on the other hand (as indicated above), reached the conclusion that that jurisdiction should no longer be exercised by the Bailiff. Its conclusion in this latter respect is based partly, but not exclusively, upon the potential shortcomings (as the Working Party sees them to be) of the existing régime that are set out in Part 5 of this Report.

If it is accepted that the Bailiff no longer should exercise this jurisdiction, by whom should it be exercised?

States Committees consisting of elected representatives (or a Minister in the context of potential reforms following the approval of P.122/2001) would, it may be argued, better represent the views and attitudes of the public. But can a body consisting solely of elected States members, or solely of a Minister, always make an objective assessment and exercise discretion judicially under the statutory framework proposed? The Working Party does not call into question the integrity of States members, but would express misgivings as to the ability of a States Committee (or, in the course of time, a Minister) alone to be truly detached and to follow a strictly judicial approach in assessing applications against statutory criteria. The judgment required has to be detached from political pressure (or perceived political advantage) that might distort the objectivity required to make that judgment.

Accordingly, it is not recommended that the present jurisdiction of the Bailiff be exercised either by a Committee of the States or by a Minister.

Transferring the Bailiff's jurisdiction to another body

There is no need to re-explore questions under this heading about the transfer of the Bailiff's existing powers in relation to public health and safety: this has already been addressed under the foregoing heading. We are concerned here only with the second 'limb' of the Bailiff's jurisdiction and by whom it should exercised (if not by a Committee of the States or a Minister).

It is extremely difficult to fix upon which persons should constitute an appropriate statutory authority for this purpose. Ideally, such an authority would reflect divergent views and be representative of a broad range of the public and of interests in the field of public entertainment. It would have to be competent to assess applications as a quasi-judicial body. It would have to have membership bringing to bear expertise and experience without excluding younger persons in the community, but not be large and unwieldy. With this in mind, it is considered that the Authority should consist of no more than five persons.

A unified body

It may be useful at this point briefly to recapitulate.

The Working Party has concluded that both limbs of the existing jurisdiction of the Bailiff should be preserved, but that a separate statutory body should be constituted to exercise both limbs of that jurisdiction.

At one point in its deliberations, the Working Party contemplated the existence of -

(i) a statutory body to exercise jurisdiction in relation to health and safety considerations; and

(ii) a second body to exercise jurisdiction in relation to standards of morality, protection from noise, disturbance, *etc*.

However, it concluded that there ought to be constituted a single statutory body that would exercise jurisdiction in a manner similar to that in which the existing jurisdiction of the Bailiff is exercised. In other words, such body or authority would receive applications and take advice from a panel of advisers (similar to that described in Part 3 above) consisting of the Health and Safety Inspector, the Environmental Health Inspector and the appropriate representatives of the Ambulance and Fire Services and of the Police - together with the Connétable or a representative of the Parish in which the event was to take place.

It would follow that such a unified body would be empowered to refuse to grant or to attach conditions to a public entertainment permit not only upon the grounds listed above relating to public morals, unreasonable disturbance, *etc*, but upon the ground that the proposed entertainment posed a risk to public health or safety.

How would such a unified body be appointed?

On 17th April 2002, the Policy and Resources Committee lodged *Projet* 52/2002 relating to the establishment of an Appointments Commission. The function of such a Commission is intended be that of ensuring that senior appointments to the civil service and autonomous and quasi-autonomous public bodies are properly made.

In the opinion of the Working Party, the appointment of a 'Public Entertainments Authority' could properly fall within the remit of the Appointments Commission, should it be constituted.

The legislative requirements

The Working Party is conscious of the fact that, if its recommendations are accepted, the Law Draftsman will have to be briefed in detail. As already indicated, the recommendations in this Report, if approved, would require primary legislation and, in this respect, the difficulties associated with the definition of "public entertainment" have already been identified.

The Appendix to this Report, whilst not purporting to constitute a definitive drafting brief, is intended to assist in providing precedents of United Kingdom legislation and in seeking to identify the means by which difficulties in certain aspects of the legislative drafting involved might be overcome. In due course, the Legislation Committee would furnish the Law Draftsman with appropriate instructions should the following recommendations be adopted following the necessary consultation process.

PART 7

Summary of conclusions and recommendations

1. It is no longer appropriate for the Bailiff to exercise the executive function of controlling public entertainment.

2. That executive function should not however be abolished outright, but vest in a statutory Authority consisting of no more than five persons.

3. Insofar as that function relates to public health and safety considerations, the existing advisory bodies to the Bailiff should continue to perform their advisory function in relation to the new statutory Authority.

4. The new statutory Authority should be appointed under the ægis of the proposed Appointments Commission.

5. The consent of the new statutory Authority should be required for the holding of a public entertainment (to be properly defined) and have power to grant or refuse permission or to grant permission subject to conditions. (In each case, consent or refusal *etc.* only to be after consultation with the *Connétable* of the relevant Parish.)

6. The Authority, in granting or refusing permission or attaching conditions, should have regard to statutory criteria based on whether the proposed entertainment would be likely -

(i) taken as a whole, to tend to injure or corrupt persons likely to view, hear, or participate in, it;

(ii) taken as a whole, to outrage reasonable standards of public decency;

(iii) in whole or in part, to be prejudicial to the well-being of children (under the age of 18) likely to view, hear, or participate in, it;

(iv) to cause unreasonable disturbance to persons in the neighbourhood of it;

(v) to pose a risk to the maintenance of public order; or

(vi) to pose a risk to public health or safety.

7. Refusal to grant permission (or attaching of conditions to a grant) be subject to judicial review in the normal way.

APPENDIX

THE LEGISLATIVE REQUIREMENTS - DEFINITION OF 'PUBLIC ENTERTAINMENT'

1. The U.K. precedent

Part 5 of the Report drew attention to potential shortcomings in the existing régime, the principal of which was the absence of any definition of "entertainment" in the 2001 Regulations. In this respect, some assistance may be drawn from Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 of the United Kingdom. It sets out three categories of public entertainment for which a licence is required by the appropriate authority.

The **first** category is public dancing or music or any other public entertainment of a like kind, but not including -

(a) any music -

(i) in a place of public religious worship; or

(ii) performed as an incident of a religious meeting or service;

(b) an entertainment held in a pleasure fair; or

(c) an entertainment which takes place wholly or mainly in the open air.

The **second** category is any entertainment which consists of any sporting event to which the public are invited as spectators (a "sports entertainment"). The exceptions to this category are -

(a) occasions when the sporting event which constitutes the entertainment are not the principal purpose for which the premises are used on that occasion; and

(b) a sports entertainment held in a pleasure fair.

The **third** category is any public musical entertainment held wholly or mainly in the open air at a place on private land. For this purpose an entertainment is musical if music is a substantial ingredient. Land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee. This category does not apply to -

(a) a garden fête, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two or more days; or

(b) to a religious meeting or service,

merely because music is incidental to it. Neither does this category apply to an entertainment held in a pleasure fair.

In relation to the first two categories (public dancing, music or any other public entertainment of a like kind; and any sports entertainment) the appropriate authority may grant a licence on such terms and conditions and subject to such restrictions as may be specified.

In relation to the third category (any public musical entertainment in the open air on private land) a licence may be granted subject to terms and conditions and restrictions but only for the following purposes -

(i) for securing the safety of performers at the entertainment for which the licence is granted and other persons present at the entertainment;

(ii) for securing adequate access for fire engines, ambulances, police cars or other vehicles that may be required in an emergency;

(iii) for securing the provision of adequate sanitary appliances and things used in connection with such appliances;

(iv) for preventing persons in the neighbourhood being unreasonably disturbed by noise.

2. The requirements for Jersey

For Jersey, it may not be necessary for legislation to mirror the complexities of the U.K. legislation [of which the 1982 Act is but a part]. There must, however, be a statutory definition enabling the courts to determine with some precision what activities do and do not constitute 'entertainment' for the purposes of requiring permission from the proposed statutory Authority.

It may be that the key for Jersey by primary legislation would be to introduce a broad definition of public entertainment such as "public dancing, music, exhibition or any other public entertainment whether held in a public place or on private land" and then to empower the States by Regulations to exempt and/or make detailed provision in respect of categories of entertainment. In such subordinate legislation, it may be possible to echo in statutory form the existing guidelines of the Bailiff setting out those forms of public entertainment for which consent is not required. The following random extracts from those guidelines might be of assistance -

> *"Public Entertainment" may be defined as any entertainment to which any reputable member of the public may gain access with or without payment. Religious meetings or services do not constitute public entertainment nor do jumble sales, bazaars and the like, sporting or athletic events.*
>
> *Concerts, plays, fairs, fetes, dances, festivals etc. involving the admittance of the public (whether or not an entry fee is charged) must be covered by the Bailiff's entertainment permit.*
>
> *Public performances by a "non-commercial" group (Young Farmers Club, J.A.D.C. for example) need a permit to cover the venue but if the venue is already covered by a "commercial" Bailiff's permit, (e.g. Arts Centre, Opera House) then an "ad hoc" permit is not required.*
>
> *Various sporting events require the issue of the Bailiff's Public Entertainment Permit.*
>
> *Boxing*
>
> *Article 5 of the Children (Jersey) Law controls the taking part of children under the age of sixteen in public performances. The Education Committee agreed in 1979 to recommend to the Bailiff that boys aged fifteen and sixteen may take part in public performances on up to six occasions a year. This remains the position.*
>
> *There have been no professional boxing tournaments in Jersey for some years. Those that have taken place have been on licensed and permitted premises. Any application would be taken on its merit.*
>
> *Wrestling*
>
> *In the past successive Bailiff's have not been prepared to grant permission for the promotion of professional wrestling. In 1992 the attitude had eased somewhat but no tournaments have taken place nor have there been any subsequent inquiries.*
>
> *Motor Sports*
>
> *The Motor Vehicle Races (Jersey) Law 1946 provides for the authorisation of motor races. A Bailiff's permit is issued to ensure all safety matters are taken into consideration. Permits may cover Hill Climbs, Sand Racing, Sprints, Road Rallies and Scrambles by motor cars, motorbikes and karts.*
>
> *Equestrian events*
>
> *Horse racing and other events such as gymkhanas are dealt with as ad hoc entertainment.*
> *Street Entertainment*
>
> *A scheme is in place whereby street entertainers may perform in streets and open places.*
>
> *Circuses*
>
> *There have been occasional visits, though not in recent times, of larger circuses employing large animals such as horses and elephants. The Department of Agriculture - States Vet, would need to be informed at an early date.*

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[1][1] See De Gruchy: *Ancienne Coûtume de Normandie*, page 41; and Terrien: *Commentaires du Droict Civil tant Public que Privé Observé au Pays et Duché de Normandie,* page 44 . In old French, the word was often spelt "Bailiff".

[2][2] *Ancienne Coûtume de Normandie*, first volume (4th edition) "de jurisdiction", first Article.

[3][3] *Dictionaire National,* Volume 1, page 331.

[4][4] *Bescherelle* goes on to tell us that Bailiffs and Bailiwicks were abolished in France by a law of 7th September 1790 (the year after the Revolution!).

[5][5] *Les Lois et Coûtumes de l'Ile de Jersey*: page 15.

[6][6] A revised form of oath (in English) is now contained in the Departments of the Judiciary and the Legislature (Jersey) Law 1965.

[7][7] *Projet* 139/1987.

[8][8] He did this recently when a request was received for a special screening of *Schindler's List* to a school group under the age limit (15) set by the British Board of Film Classification. The Panel was unanimous in recommending that the limit should be relaxed in this case on condition that the school concerned fulfilled an undertaking it had given to obtain the written consent of all the parents of pupils who were to see the film and who were under the age of 15. Permission was granted accordingly.