THE ISLANDS MEMORANDUM

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MEMORANDUM FOR THE ISLANDS DIVISION

- CONSTITUTIONAL AND FINANCIAL RELATIONSHIPS BETWEEN THE UNITED KINGDOM, THE CHANNEL ISLANDS AND THE ISLE OF MAN

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CONSTITUTIONAL AND FINANCIAL RELATIONSHIPS BETWEEN THE UNITED KINGDOM, THE CHANNEL ISLANDS AND THE ISLE OF MAN

INTRODUCTORY

1. Each Channel Island and the Isle of Man (for convenience here referred to as "the Islands") has its own distinctive internal constitutional arrangements - legislatures, courts of law, administrative and fiscal systems, the office holders - deriving from its historical background and traditions. The Islands have however, again deriving from history, some fundamental features in common which constitute their special status and determine or affect their constitutional and other relationships with the United Kingdom. In outline, these features are:

i. The Islands are self-supporting possessions of the Crown, with a Lieutenant-Governor, appointed by the Sovereign, in Jersey, the Bailiwick of Guernsey and the Isle of Man, but they are not part of the United Kingdom, nor on the other hand are they colonies. Together with the United Kingdom, they constitute the "British Islands" (defined in the Interpretation Act 1978, Schedule 1). The special status of the Islands also finds recognition in section 33 of the British Nationality Act 1948. Under subsection (1), references in the Act to "colonies" are to be construed as including references to the Channel Islands and the Isle of Man, but subsection (2) provides that "a citizen of the United Kingdom and Colonies may, if on the grounds of his connection with the Channel Islands or the Isle of Man he so desires, be known as a citizen of the United Kingdom, Islands and Colonies".

ii. The United Kingdom Government is responsible for the Islands international relations and external defence (though foreign governments and international organisations were informed in 1950 that the Islands should no longer be regarded for international purposes as forming part of the United Kingdom).

iii. Since the Islands are dependencies of the Crown, the Crown has the ultimate responsibility for their good government. The Crown acts through the Privy Council, on the recommendation of Ministers of the United Kingdom in their capacity as Privy Councillors. The Crown's powers over the Islands are thus in effect exercised by the United Kingdom Government.

iv. The Home Secretary is the member of the Privy Council primarily concerned with the affairs of the Islands, and he is the channel of communication between the Islands and the Crown and the United Kingdom Government. (For instances where other Ministers have wished to communicate direct with the Islands see CIM/73 234/11/6.)

v. Legislation on internal matters is normally initiated by the Islands' legislative bodies. Channel Islands legislation requires the approval of the Sovereign in Council. The power to signify Royal Assent has been

delegated to the Lieutenant Governor in the Isle of Man, in certain circumstances (see paragraphs 603 - 609). Parliament has a residual power to legislate for the Islands but it would be contrary to constitutional convention for it to be used, in the ordinary course, without their consent in matters domestic to the Islands, particularly taxation.

vi. Since the Islands are not part of the United Kingdom, Acts of the United Kingdom Parliament do not apply to them unless so applied expressly or by necessary implication, and such Acts are rare. Acts which apply directly to the Islands include those relating to nationality, and others on matters where it is necessary or desirable for the law to be the same throughout the British Islands: for example subjects with an international bearing such as extradition. The more usual procedure, however, particularly in recent decades, where the application of provisions of a United Kingdom Act is desired, is for the Act to provide for its extension to the Islands by Order in Council "with such exceptions, modifications and adaptations as may be specified in the Order". The Order in Council is then drawn up in consultation with the Islands.

vii. For immigration purposes, the Islands are included in a common travel area which comprises the United Kingdom, the Republic of Ireland and the Islands. Immigration control operates at the periphery of this area but does not operate within it, a matter of considerable importance to the Islands in facilitating the free flow of tourists.

2. Quoted below is an extract from the joint Home Office Foreign and Commonwealth Office evidence to the Royal Commission on the Constitution (see paragraphs 8-11 below), which further illustrates the fundamental principles of the relationship between the Islands and the United Kingdom:-

"Four considerations have a particular bearing on any proposals for change in the constitutional relationship between the United Kingdom and the Islands: the ultimate responsibility of the Crown for the good government of the Islands, their geographical nearness, the economic relationship and the need to avoid submerging such small communities under administrative burdens.

The ultimate responsibility of the Crown for the good government of the Islands is not unique to the Islands but their propinquity to the United Kingdom and the antiquity of their association with the Crown place the Islands in a category apart from all other British dependencies. The fact that the United Kingdom and the Islands are all parts of the British Islands, while certainly not making uniformity essential, makes it nevertheless high desirable that the institutions and the practices of the Islands should not differ beyond recognition from those of the United Kingdom. The Islands at present succeed in maintaining a way of life that is distinctive from that of the United Kingdom and, in general, Her Majesty's Government fully endorses the desirability of their being free to express their individuality. But the British Islands are an entity in the eyes of the world and Her Majesty's Government would be held responsible internationally if practices in the Islands were to overstep the limits of acceptability. The present links with the Islands, while giving them a great deal of liberty to order their internal affairs, nevertheless enable Her Majesty's Government to ensure that the British Islands as a whole adhere in their policies to certain broad principles that enable the International image of the group, however varied in its features, to be seen nevertheless to follow a coherent pattern.

The economies of the Islands are closely inter-related with those of the United Kingdom and without some measure of compatibility of legislation it would be easy for practices to develop in the Islands, particularly in the commercial field, that would be detrimental to the economic well being of the British Islands as a whole. By virtue of their size, it is inevitable also that the Islands should be dependent on the United Kingdom for the provision of many services that it would be uneconomic or impossible for such small communities to furnish from their own resources. Such services range from defence to the accommodation in the United Kingdom of prisoners sentenced by Island courts. Most such services are provided on a repayment basis but the Channel Islands make no financial contribution to the cost of defence (including fishery protection) or of international representation, while the Isle of Man makes a contribution that falls well short of a proportionate share.

The Islands are neither a part of the United Kingdom nor independent sovereign states. In the spectrum that lies between the former status and the latter there can be only limited room for manoeuvre if the amount of autonomy enjoyed by the Islands is not to be diminished and if Her Majesty's Government is not to be placed in the impossible position of having responsibility without power."

3. There are differences between the Islands in the constitutional and economic fields which the following account will show, but these are not the only differences. The Isle of Man is more spacious than the Channel Islands, being five times the size of Jersey with a population density of 250 per square mile compared with 600 for the United Kingdom and 1600-2100 in the Channel Islands. There is a considerable contrast between Channel Islanders and Manxmen. The Manx are less urbane and more forthright and markedly individualistic, and their links with the United Kingdom tend to be based on practical considerations rather than on sentiment. The relationship between the United Kingdom and the Isle of Man has always been far less harmonious than that between the United Kingdom and the Channel Islands, and this difference may be ascribed partly to the characteristics of the people and partly perhaps to the different historical background and the fact that the Isle of Man has had less autonomy than the Channel Islands and has been striving throughout this century to secure greater independence. On the other hand, the geographical closeness of the Isle of Man to the United Kingdom has led to identical provision of facilities in certain fields, such as national insurance and the health service, with full reciprocity, whereas the Channel Islands have quite separate arrangements. The Isle of Man is in custom union with the United Kingdom, again for practical reasons deriving from its location, whereas the Channel Islands are not.

INTRODUCTION

4. The Channel Islands have a total area of 74 square miles and a population (1981 Census) of about 131,000 and consist of the Bailiwicks of Jersey and Guernsey. The Bailiwick of Guernsey contains all the inhabited islands except Jersey (45 square miles); Guernsey itself (24 square miles) has a population of 53,313 (1981 Census) and the next largest islands are Alderney and Sark, 3 and 2 square miles respectively with populations of 1,800 and 600, respectively. Chief of the other islets are Herm, Jethou and Brecquou. The Casquets are thought to be part of the Bailiwick of Guernsey, though their status is obscure - see letters of 5 May 1976 on CIM/71 237/1/1. The population of Jersey is about 76,000.

5. The relationships between the Islands and England (and subsequently the United Kingdom) have been determined in a very special way by history rather than by geography - which in itself would have suggested links with, if not rule by, France (Guernsey is about 115 miles from Southampton and 60 from St Malo; for Jersey the corresponding distances are 150 miles and about 40 miles. Under the Roman Empire the Islands were included for administrative purposes in the division of "Gaul", of which Lyons was the capital).

6. The historical link was the Duchy of Normandy into which the Islands were incorporated by conquest in the year 993, and of which they remained part after the Norman Conquest of England, being administered from Rouen rather than London (for ecclesiastical purposes they remained part of the diocese of Coutances until Tudor times). When Continental Normandy was lost to France in 1204 the Islands remained loyal to and in the possession of the English Crown - a loyalty that remained unscathed and, indeed, intensified during the Hundred Years War with France - as indeed it was in modern times during the German occupation of the Channel Islands from 1940 to 1945[1]. For 7 years in the 15th century Jersey was occupied by the French; and in a formal petition from the people of Jersey to their Governor in Tudor times they say that they would "rather die English than live French".

7. The Islanders' allegiance to the English and subsequently British Crown was and is, however, allegiance to the Sovereign as Heir to the Dukedom of Normandy.[2] Their laws and customs remain Norman and until the influx of English residents in the 19th and 20th centuries the majority of the inhabitants spoke French, which was also the language invariably used in the States (the legislatures) until the turn of the century. The historical background is summarised by A J Eagleston, one time Assistant Secretary in charge of the Division dealing with the Channel Islands, in the introductory chapter of his posthumously published work "The Channel Islands Under Tudor Government" (Cambridge University press 1949):

"The Islands ..... have developed in a way which has no exact parallel in England or the British Empire. Having their own system of law based on the customary law of Normandy they have never been incorporated into the system of English local government but have been treated as a miniature dominion of the Crown. Partly because, as very small communities, they could not develop political institutions or aspirations as highly developed as those of the American colonies in the 18th century or the dominions in the 19th and 20th centuries, and partly because

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[1]* See "The German Occupation of the Channel Islands" by C Cruickshank, published in 1975.

[2] From the English side, although any idea of reconquering Normandy ceased to be regarded as practical politics by the time of the first Tudors, there was a lingering maintenance of a legal claim which it was felt was reinforced by the Crown's possession of the Channel Islands. Coke's Institutes (early 17th century) say that "the possession of these Islands being parcel of the Duchy of Normandy are a good seizing for the King of the whole Duchy".

English dominions on the Continent of Europe since the 16th century have been of small extent in relation to the Empire as a whole, the Channel Islands have always preserved a particularly intimate relationship with The Sovereign and his Privy Council. Thus Channel Island legislation, to this day, takes the form of an Order in Council, though much of it originates in the Islands themselves, and, when it originates in England, the Islands are consulted ....."

Royal Commission on the Constitution

8. An examination of the constitutional relationship between the Channel Islands and the Isle of Man and the United Kingdom was included in the remit of the Royal Commission on the Constitution set up in 1969. The report, published under the chairmanship of Lord Kilbrandon, appeared in 1973.

9. The Commission made, in effect, only one recommendation for change; and almost all the proposals made by the Isle of Man, Jersey and Alderney were rejected. Guernsey and Sark had not proposed any changes in their relationship with the United Kingdom.

10. The Commission

(a) endorsed the view that Parliament has a residual power to legislate for the Islands on any subject, despite the existence of the convention that it does not normally do so on matters domestic to the Islands;

(b) confirmed the need for HMG to have the power to intervene in the last resort in any Island matter; and indicated the type of circumstances in which it might, in practice, be justified in doing so (those circumstances including the need to protect the interests of the United Kingdom);

(c) commended the proposals put forward by the Home Office and the Foreign and Commonwealth Office for earlier consultation with the Islands about international agreements by which they may be affected;

(d) turned down proposals for

i. dividing responsibility for external relations between the United Kingdom and the Islands.

ii. making formal division of legislative and executive competence between the United Kingdom and the Islands, and

iii. changing the method of choosing and appointing Crown officers.

(e) saw little merit in delegating to the Lieutenant Governors the power to give Royal Assent to Island legislation (on which only the Isle of Man had made proposals);

(f) made no recommendations for change in the economic relationships;

(g) recommended

i. that a Standing Committee similar to that already in existence for the Isle of Man should be established for any other Island that wished to have one; and that, preferably, there should be a single committee for all the Islands.

ii. that such an all-Islands committee should be expanded to form an all-Islands Council,

with an independent element and the roles both of consultation and of reporting on petitions from the Islands before a decision is taken on them by the Privy Council.

11. Following a meeting between officials and representatives of the Island governments in July 1974, the Secretary of State agreed (and so informed Parliament) that the proposal for earlier consultation on proposed international agreements should be implemented but that, as that for an all-Islands consultative body had not found general favour, it should not be implemented. (CIM/74 1/2/3) A standing Committee was established in 1975 on those common interests of the United Kingdom and Alderney that do not impinge on the functions exercised in Alderney by the States of Guernsey. (CIM/74 1/2/4)

1. PRINCIPAL OFFICERS AND INSTITUTIONS

12. The principal officers appointed by the Crown in Guernsey and Jersey are the Lieutenant Governor, the Bailiff and the Law Officers. The principal institutions are the States (the legislative bodies) and the Royal Courts. The present day constitution of the States, and of the Royal Courts, dates from the reforms enacted in both Bailiwicks in 1948, in the light of the 1947 Report of the Privy Council on proposals for reforms submitted by the States and the Royal Courts (Report of the Committee of the Privy Council on Proposed Reforms in the Channel Islands, Cmd 7074, March 1947). These proposals and the Committee's recommendations also related to the functions of the Bailiffs, the Law Officers, and Jurats (see Sections B, C and H below).

13. The Privy Council Report did not touch upon the position of the Lieutenant Governors, but, as indicated in paragraph 19 below, action was taken by the Home Office at about the same time.

A. THE LIEUTENANT GOVERNOR

14. The Lieutenant Governor of Jersey and of Guernsey is the Crown representative and the official channel of communication with the Island authorities. He has virtually no executive functions or powers except in connection with the issue of passports, the control of immigration and the grant of naturalisation. It is interesting to note that the Bailiff of Guernsey commented, when consulted informally about possible candidates for the Lieutenant Governorship in 1968/9, that one of them was said to be ambitious, and that "a man who is still ambitious might seek to make too much of the job - or at least more than is necessary".

15. The Lieutenant Governor of Jersey (but not Guernsey) is a member of the States, without a vote ut with a right of veto on any resolution of the States, other than one requiring the sanction of the Crown in Council, which may concern the special interest of the Sovereign (Article 23 of the States of Jersey Law 1966). There is no modern instance of the right of veto being use.

<u>History of the Development of the Offices of Lieutenant Governor and Bailiff</u>

16. Up to 1202 there is no trace of the Duke of Normandy or the Kings of England having sent representatives to govern the Channel Islands. In 1202 King John despatched troops to protect the Islands against the French, and a permanent military garrison was established in each Island. The Commander of the troops was entrusted with the government of both Islands, besides his military duties. Two terms were originally applied to this office, "Gardien" and Bailli", used synonymously, the later term expressing the fact that the office was delegated by the King. The post has since gone under the titles "Gardien", "Bailli", Capitaine" and "Gouvernaur". Up to the

end of the reign of Edward IV (1483) Jersey and Guernsey were governed by one official, but from that date they had separate Governors. (The term "Capitaine" was introduced at this time, but the designation "Gouvernaur" was fixed in 1618.) The Governors had power to nominate so called Deputy Lieutenant Governors to act in their absence, and the first example of this is in 1254. These officers were normally appointed by the Governor, but sometimes even as early as the 13th and 14th centuries they were appointed by the King. From the 17th century onwards the Monarch has invariably appointed Lieutenant Governors, and officers appointed by the Governor were called Deputy Governors. The Governors of the Islands were apparently frequently absentees, and the office of Lieutenant Governor became the permanent one. Since 1837 in Guernsey and 1838 in Jersey, the office of Governor has not been filled and the former powers of the Governors have been vested in the Lieutenant Governors.[3]

17. The civil powers of the "Gardien" were originally great. A "Bailli du Roi" he appointed the royal officers in the name of the King, and was originally "Chef de la Justice Royale", representing the King in the administration and the judicature. He presided at the Royal Courts and "Tenait la Cour du Roi" in the Islands.

18. The first example of the Governor delegating his civil authority occurred about 1300. The delegate was called the "Bailli", and from that date the offices of Governor and Bailli began to develop separate identities and the terms were no longer synonymous. The Gardiens ceased in practice to administer justice, although in theory they still did so. The powers of the Governors were restrained by a Charter of 1494, and their duties and those of the Courts were more clearly defined. But by an Order in Council of 1617 it was decreed that the charge of the military forces should rest wholly with the Governor, and the care of justice and civil affairs with the Bailiff. Thus originally the Bailiffs were delegated by the Governor. Towards the end of the 13th century two Bailiffs were appointed in a permanent capacity, one for each Island, a course which was confirmed in 1290 by letters written by Edward I to the two officers concerned. The first Bailiffs, sometimes called "Baillis du Guardien" were, therefore, officers of the Crown appointed by the King's representative, but after a time, the King himself appointed the Bailli on occasion. During the 14th and 15th centuries the Bailiffs were appointed sometimes by the Gardien, sometimes by the King, but since 1615 in Jersey and 1674 in Guernsey the nomination of the Bailiff has been reserved to the Crown.

Full Title of the Lieutenant Governors

19. Until 1947, when the garrisons were withdrawn, the offices of Lieutenant Governor were military ones and the emoluments were paid by the War Office. Although the posts are no longer military, King George VI approved a proposal in 1947 to style them "Lieutenant Governor and Commander in Chief". (270411/69,74) The correct titles are now "Lieutenant Governor and Commander in Chief of our Island of Guernsey and its Dependencies" and "Lieutenant Governor and Commander in Chief of our Island of Jersey", and in practice the Lieutenant Governors have continued to be persons who hold or have held high rank in one of the Services (see paragraphs 23 to 26 below). The title "Commander in Chief" is, however, a purely honorary one and does not imply that the Lieutenant Governor has a special interest in defence matters - see Sir Austin Strutt's letter of 28 September 1959 on CIM 16/2/2.

Period of Appointment of Lieutenant Governors

[3] A list of old noted papers about the Lieutenant Governors is to be found on CIM 15/1/5.

20. The appointments are expressed in the Royal Warrants to be "during Our Pleasure". In practice, since well back in the 19th Century, the appointments have normally been for a period of 5 years, the Home Office resisting attempts by the War Office to have the period reduced to 4 years, which was the regular tenure of military command (see 270411/37). In 1969 the Home Office considered whether to make appointments for three years in the first instance, with the possibility of subsequent extension, but did not pursue the idea in view of the clear preference of the proposed appointees for a five year period of office, and of the following comments made by the Bailiff of Jersey:-

"Personally I am against an appointment for three years. My reasons are: it takes at least a year for a Lieutenant Governor to get the feel of the situation and probably a little longer to form his own estimate of the persons with whom he has to deal. Five years gives the office more stability and more continuity than three. The question of extension always creates difficulties and conflicts. To reduce the period of appointment to three years would be an ambiguous step to take at a time of constitutional controversy [reference to the setting up of the Royal Commission on the Constitution]. The reduction might give some slight encouragement to those in the Islands who see the office of Lieutenant Governor only as an unnecessary expense, a point of view which I am quite unable to share".

21. There have, however, been instances where, for special reasons, appointments have been extended beyond the 5 year point, by a matter of months or even years. Extensions for a period of weeks or months to meet the convenience of the outgoing Lieutenant Governor or for example to enable maintenance work in the official residence to be carried out have been quite common - see for example 270411/82 (1953). In 1950 both Lieutenant Governors (who had originally gone to their positions as purely military postings in 1945) were reappointed, but it was decided to limit the term of office to 3 years as each incumbent was 62 years of age at the time (letter of 1 March 1950 on 270411/83). Fresh warrants are not necessary for an extension in office of a Lieutenant Governor, as the original warrants are "during Pleasure" and not limited in time (note of 11 August 1950 on 270411/82). It is interesting to note that in 1938 the inhabitants of Guernsey submitted a petition praying that a Lieutenant Governor's period of office might be extended, but the petition was not granted (270411/42), and a suggestion made in 1947 that would have resulted in an extension was also turned down (270411/67,72).

22. The terms of office of the Lieutenant Governors is confirmed at the time of appointment in a Home Office letter. The most recent examples are on CIM/69 15/2/8 and CIM/77 15/3/3.

Consultations about appointments of Lieutenant Governors

23. Two fundamental principles apply and have been made clear to the Islands, notably in 1947 and 1963:-

i. It would be improper to seek to curtail the discretion of the Sovereign in the appointment of his representative: there can therefore be no question of the Island's legislatures appointing the Lieutenant Governors, nor can the Islands be consulted officially, though they are consulted in confidence (270411/57, /60)

ii. At the same time, express assurances have been given that the Home Secretary will take

> good care to select for recommendation to the Sovereign someone who is persona grata in the Islands, and that not the least important consideration governing an appointment is the acceptability of the person proposed to the States and people of the Islands.

These 2 principles were illustrated in the appointment, in 1953, of a new Lieutenant Governor of Jersey (CIM 15/2/2). The Home Secretary had it in mind to recommend the appointment of a civilian. The Bailiff was, in accordance with practice, consulted informally and reported that the persons whom he had consulted in strictest confidence were opposed to any departure from the tradition that the Lieutenant Governor should hold, or have held, high rank in one of the armed services. The Home Secretary made it quite clear in subsequent discussion with the Bailiff, and the latter fully accepted, that he, the Home Secretary, could not entertain any proposition that would fetter the Sovereign's absolute prerogative to approve whom she chose to be Her Majesty's representative in the Island, and in no circumstances could he accept the principle that the only person whom The Queen might appoint to the Lieutenant Governorship should be a military officer. This was, however, the first fresh appointment since the office of Lieutenant Governor had ceased to be a military one, and in the end an Admiral was appointed, after informal consultation with the Bailiff had shown that he would be acceptable to Jersey.

24. In 1968/9, when the Home Office was informed that opinion in Jersey would favour the appointment of an RAF Officer, the search for candidates was confined to this field and an Air Chief Marshal was appointed. Similarly in 1973/4 Guernsey's wish for an Admiral (the second in a row) was met. (CIM/67 15/1/7) (CIM/67 15/1/11)

25. The question of consultation with the Island authorities over the appointment of a Lieutenant Governor is touched upon in paragraphs 21 to 25 of the Memorandum submitted by the Home Office and the Foreign and Commonwealth Office to the Royal Commission on the Constitution (Minutes of Evidence, Volume VI). The fact that Island advice "weighs heavily" in the process of selecting and appointing a new Lieutenant Governor does not inhibit the Home Office from pressing the claims of the candidate it regards as best suited for the post, and this was done in respect of both the Jersey and the Guernsey Lieutenant Governorships in 1968/9 - see Sir Philip Allen's letters of 16 January 1969 and 31 January 1969 on CIM/67 15/1/7.

26. Other points of procedure have become established over the years, as indicated in particular in the note of 20 November 1968 on CIM/67 15/1/7. In particular:-

i. It is usual for the Lieutenant Governor of Jersey to be of senior - or at least equivalent -rank to the Lieutenant Governor of Guernsey, though it was suggested on CIM/67 15/1/11 that this need not be a binding precedent.

ii. It has been customary for the Lieutenant Governors to hold office for concurrent terms, but in 1973 Her Majesty The Queen suggested that it might be more convenient if this were not the case, and the next Jersey appointment was made in November 1979, five months before the Guernsey change (April 1980). If there is a proposal for extension (as well there might be) then this might offer the opportunity for a realistic separation. (CIM/67 15/1/11 CIM/69 15/2/8 and CIM/77 15/3/3)

iii. The Home Office asks the Ministry of Defence to suggest suitable candidates, taking into account any wishes that may have been informally expressed by the Islands. It is usual for the posts to rotate among the services, though the Bailiff of Jersey expressed a reservation about this principle in a letter of 27 June 1973 on CIM/67 15/1/11. The Ministry of Defence would certainly not favour both posts being filled by officers from the same service.

iv. It is desirable to consult the Bailiff in strict confidence at the earliest possible stage, and it is left

to his discretion whom he consults. In 1973, the views of the retiring Lieutenant Governors were sought as a preliminary to consultation with the Bailiffs. (CIM/67 15/1/11)

v. When informal agreement has been reached with the Bailiff and the Ministry of Defence on a candidate for each place, the Permanent Under-Secretary of State writes to each of them outlining the nature of the job and asking whether they wish to be considered. If the candidates do so wish, a formal submission is made to The Queen.

vi. Well in advance of the date of appointment, the Home Office notifies The Queen's approval by means of informal letters to the retiring Lieutenant Governor, the Bailiffs and the appointees, and steps are taken to agree with the Insular Authorities a date for simultaneous press announcements in the United Kingdom and Islands. In the case of the Lieutenant Governors who took up posts in 1974, these formalities were completed about 12 months in advance.

vii. Each Lieutenant Governor and his wife is received by the Sovereign on appointment, and the Home Office writes to Buckingham Palace so that arrangements can be put in train. (CIM/69 15/2/2) There is no kissing of hands. This practice appears to date from 1925, and Lieutenant Governors were also received on relinquishing appointment until 1934, when the Palace pointed out that Colonial Governors were not so received unless for some very special reason (270411 series). Home Office considered that the Lieutenant Governors of Jersey and Guernsey were "More or less akin to Governors of Colonies" and that it "was not fair that they should have preferential treatment" over the latter. It was therefore decided that they should be received only on appointment unless there were special circumstances, but they have often been to a Garden Party or the like after retirement. Sir Alexander Maxwell's letter to the War Office, recording this, added that the Home Office had never thought that it would be appropriate for Lieutenant Governors to have any sort of ceremonial reception on arriving in London from their posts.

viii. In 1963 and 1969 the newly appointed Lieutenant Governors, with Home Office concurrence, gave pre-recorded interviews for Channel Television, with a view to introducing themselves to the people of the Island. The interview kept clear of any "political" questions. It has also become the practice, at any rate in connection with recent appointments, for the Assistant Secretary of E2 Division to attend the swearing in of the Lieutenant Governor of Jersey, by invitation of the Bailiff.

<u>Salaries and Expenses of Lieutenant Governors</u>

27. Under the Jersey and Guernsey (Financial Provisions) Act 1947 (a Westminster measure) the States of Guernsey and Jersey receive payment from the United Kingdom consolidated fund equivalent to the receipts from the Crown revenues from the Islands. (270411/66,70) In return the States are responsible for, inter alia, the salaries and certain expenses of the Lieutenant Governors. A tax-free salary is fixed by resolution of the States. The Home Office is not so much consulted as informed of an intention on the part of the Insular Authorities to raise the salary; its concern is to ensure that the remuneration is adequate to maintain the honour and dignity of the office and to secure the appointment of a suitable incumbent. At the same time the Home Office would not wish the salary to be too far out of line with salaries payable in comparable posts elsewhere, and to this end the Foreign and Commonwealth Office may be consulted - see for example the correspondence on CIM/69 15/2/3. It is usual for the Treasury to be informed of an impending increase. Since 1947 the salaries of the Jersey and Guernsey Lieutenant Governor have been identical, the Bailiffs keeping in touch with each other to ensure that increases were made at the same time. Concern was felt in the Home Office in 1973 when it appeared that Guernsey was considering a smaller increase in salary than Jersey, but in the event the salaries were revised similarly (CIM/67 51/1/12), and in 1974 the Home Office indicated that it felt a rise was due (CIM/69 15/2/3). The salaries are now reviewed

annually. (CIM/69 15/2/3)

28. In addition to paying a salary, the States of Jersey accept direct responsibility for providing, maintaining and running Government House and an official car for the Lieutenant Governor, and for the salary and expenses of a Secretary/ADC and his Assistant. In Guernsey the States provide and maintain Government House, and give the Lieutenant Governor an expenses allowance to cover the salaries of his staff and his office expenses etc. The Lieutenant Governors also appoint honorary ADCs, who are unpaid.

Proposal to Abolish the Office of Lieutenant Governor

29. In 1957, a Special Committee of the States of Jersey, which had been considering proposed changes in judicial organisations (these led, inter alia, to the creation of the post of Deputy Bailiff) also discussed confidentially the future of the post of Lieutenant Governor. The Committee, though not unanimously, concluded that, in modern conditions, when the Lieutenant Governor had hardly any executive functions, the office was an anachronistic and wasteful sinecure (the annual cost was then about £14,000). The Committee proposed that, subject to consultation with Guernsey, the office of Lieutenant Governor should be abolished and instead some distinguished personage, such as a member of the Royal Family, should be appointed as "Warden" or "Custos" of the Channel Islands. Such a person, it was recognised, could visit the Islands only occasionally and normally therefore his function would be performed by the Bailiff as his Deputy (CIM 15/1/4). It seems likely that the proposals were to some extent inspired by the Bailiff, who had put forward similar ones himself in 1947.

30. Within the Home Office, proposals on these lines had been put forward independently, but to the knowledge of the Bailiff in September 1957 by the then Deputy Under Secretary of State (Sir Austin Strutt) with the agreement of the retiring Permanent Under Secretary of State (Sir Frank Newsam).

31. Further consideration, however, and discussions which the new Permanent Under Secretary of State (Sir Charles Cunningham) had with the Lieutenant Governor and the Attorney General of Jersey suggested that the proposal would not be welcomed by the Islanders generally, and there was also reason to think that it would not be desired by Guernsey. There could moreover by no certainty - even if the Bailiff of the day (Sir A Coutanche, as he then was), who had then been Bailiff of the Island for 22 years, were suitable to act as a permanent Deputy of the non-resident "Custos" or "Warden" - that the limited membership of the Jersey Bar, from which the Bailiff is drawn, would also produce people of the right calibre for this purpose. It seemed that some members of the Special Committee had been influenced by the fear that in certain circumstances a politician might be appointed Lieutenant Governor instead of, as hitherto, a retired serving officer; but the Home Office was already committed by previous assurances, before a new appointment was made, to ascertain whether the person proposed would be acceptable (see paragraph 23 above). Above all, it was undesirable on constitutional grounds that The Queen should be permanently represented in Jersey and Guernsey by the man who was at the same time the Head of the Judiciary, the Head of Civil Administration, and the Speaker of the Representative Assembly.

32. The Home Secretary of the day (Mr Butler, as he then was) decided that the proposal should not be pursued, and so informed a deputation from the Jersey Special Committee, which he received in February 1958. After mentioning that it seemed unlikely that the proposal would be acceptable to Guernsey, and pointing out that it would be contrary to the doctrine of separation of powers, a matter to which the Committee of the Privy Council on Channel Islands Reform had paid great attention, the Home Secretary said that he did not exclude the possibility of a change in the future if proposals were evolved in conjunction with Guernsey which would not involve a further concentration of power in the hands of one person. But, for the present, at least the office of

Lieutenant Governor would have to be retained. It had the merit of demonstrating the link between the Islands and the Crown. In addition, the Lieutenant Governor's social function was useful and should not be lightly cast aside.

Precedence of a Lieutenant Governor outside his Bailiwick

33. The Home Office replied as follows to an enquiry on this point by the Guernsey Lieutenant Governor, after consulting the Ceremonial and Protocol Secretary of the Commonwealth Office (CIM/67 51/1/6):-

> "I can trace no Home Office papers on this point but from advice I have been able to take in Whitehall it would seem that a Lieutenant Governor enjoys no formal precedence once he leaves his own territory. But, being a Governor, it is to be expected that he would at official functions be afforded VIP treatment and might ordinarily be expected to be given precedence over local personalities; possibly to be treated indeed as the principal guest.
>
> A year or two ago I recollect that an enquiry was made by the Embassy in Washington whether a Northern Ireland Minister should be accorded the degree of privilege normally given to a visiting Minister of the Crown. On that occasion, we were advised that a Northern Ireland Minister was not entitled to privilege outside the Province but that, being a Minister in Northern Ireland, he should be accorded privileges of precedence normally given to a very important person.
>
> In the absence of formal rules, it would seem that commonsense and good manners dictate the degree of precedence to be given."

Announcement of Crown Appointments

34. In 1964, the Home Office Press Announcement of the appointment of a new Rector of St Peters, Jersey, a Crown living, appeared - through no fault of Home Office timing - in the local Press before the Lieutenant Governor, who had prepared a "write-up" of his own, received the official notification. This prompted him to suggest that he should make the announcement, as he understood had been the practice in earlier times. He wrote "Surely it is best that the announcement of an appointment to a Crown living ..... should be made by the representative of the Crown where the onus of recommending the choice lies." (CIM 130/5/1). The Home Office replied that "The duty of advising The Queen rests with the Secretary of State, and whilst the advice of the Lieutenant Governor is invariably sought and usually accepted, the Secretary of State is not of course bound in any particular case to accept it; the final responsibility is his alone. This does not seem to suggest that the existing practice whereby notification of the appointment is made by the Home Office - a practice followed for at least 40 years whatever may have been done before then - is correct". In recent years, however, the Lieutenant Governor of Jersey has announced appointments to Crown livings.

35. Before the second World War the Home Office took a much more active part in selecting candidates for Crown livings. Correspondence was conducted direct with the Diocesan Bishop (Winchester) and others, and candidates were often interviewed at the Home Office. Now, however, it is left to the Lieutenant Governor to submit names when there is a vacancy (after consultation with the Bishop). Often, as in the case in question, he submits only one name, and if applications are received direct by the Home Office, they are simply acknowledged and passed on to the Lieutenant Governor. It does not, however, affect the constitutional position as set out above. The same principle - that it is the Secretary of State and not the Lieutenant

Governor who advises the Sovereign - clearly applies to all Crown appointments in the Islands.

The Lieutenant Governors' Warrants of Appointment

36. The most recent warrants of appointment are on CIM/69 15/2/8 and CIM/77 15/3/3. There have been 3 alterations to the wording of the warrants since 1930:-

In 1934 the warrants were adjusted to provide for the Bailiff or a Senior Jurat of the Royal Court to deputise for the Lieutenant Governor (previously the next senior military officer had done so); in 1948 the title of the Lieutenant Governor was altered to include that of Commander in Chief (see paragraph 19 above); and in 1958 (Jersey) and 1970 (Guernsey) the newly created Deputy Bailiff replaced the Senior Jurat as a potential Deputy to the Lieutenant Governor. (270411/31) (270411/69,74)

37. In 1964 the office of the Lieutenant Governor, Jersey, asked why it was that some warrants were despatched in a red leather wallet (for example the warrant of appointment of the Bailiff) and others not. The Home Office explained that the distinction arose from the fact that the Lieutenant Governor is appointed by Warrant under the Royal Sign Manual, which is prepared and despatched by the Home Office, whereas the other Crown appointments are made by Letters Patent under the Great Seal of the Realm, which are prepared and despatched by the Crown Office. (See CIM 17/2/5). The long standing use of the wallet was perhaps because the Great Seal, originally made of wax, was liable to damage unless carried in a secure container. The minute on the file recognised that the difference was particularly apparent in Jersey, where the Lieutenant Governor was the only one not to receive his warrant in a leather wallet, whereas in Guernsey all Crown appointees, except the Bailiff, were, like the Lieutenant Governor, appointed under the Royal Sign Manual, and therefore received their warrants in an envelope, and it was noted - and Jersey informed - that in 1930 the question had been considered of making all appointments under the Sign Manual, but it was concluded that this would require specific authority and that it would be difficult to show adequate grounds for seeking it. (CIM/67 15/1/1)

38. The Jersey Office raised the matter again in 1969 following the swearing in ceremony of a new Lieutenant Governor. The Home Office reply expressed sympathy but after referring to earlier correspondence suggested that this was an issue which it would be better not to open.

Reference to the Lieutenant Governor as "His Excellency"

39. Letters from the Insular Authorities or officers often refer to the Lieutenant Governor as "His Excellency". No Home Office files have been traced in which the question of this title has been expressly considered but it is clear that its use has been of very long standing. The title is not used in Royal Warrants of Appointment, and it seems likely that it is a courtesy title only. If justification for its use were required, it could be said that the Home Office tends to regard the Lieutenant Governors as akin to Governors of Colonies, and the latter are invariably styled "His Excellency".

The Office of the Lieutenant Governor

40. In 1959, certain changes in nomenclature were made in Jersey and Guernsey. The Lieutenant Governor's Secretary, previously known as "the Government Secretary", was restyled

simply "Secretary to the Lieutenant Governor", and the Governor's Office, previously called "Government Office", was renamed "Office of the Lieutenant Governor". These changes arose out of the Report of the Special Committee of the States of Jersey in 1957, other aspects of which are mentioned in paragraph 29 above. (CIM 15/1/4)

41. In September 1959 the Home Office agreed that the Secretary of State had no particular interest in the appointment of the Secretary to the Lieutenant Governors, as he was no longer paid from Crown revenues, and the Secretary was subsequently appointed by the Lieutenant Governors themselves, after consultation with the Bailiffs. (CIM 16/2/2/) During 1961 it happened that in both Bailiwicks the post of Secretary fell vacant, and the opportunity was taken to combine it with that of Aide-de-Camp. Such information as we have about the nature of the duties of the Secretary/ADC is chiefly on CIM 16/1/1 and CIM 16/2/2,3. Both posts have been made pensionable (see in addition to the papers already mentioned Sir Charles Cunningham's hand-written note of 5 December 1962 on CIM 16/1/5) and it is usual for retired commissioned officers to fill them. The cost of the Governor's staff is met by the respective States (see paragraph 28 above).

Visits by Foreign Dignitaries

42. The Home Office endeavours to ensure that the Lieutenant Governors are notified as far as possible if any foreign dignitary intends to visit the Channel Islands, to ensure that the proposed dates are convenient to the Lieutenant Governor and Insular Authorities and to enable them to extend to the intending visitor the hospitality they consider appropriate (CIM/62 267/4/12).

The Lieutenant Governor's representative in Alderney and Sark

43. File CIM 15/3/1 contains copies of correspondence from earlier papers concerning the fact that the Guernsey Lieutenant Governor appoints a representative in Alderney, who invariably attends the meetings of the States of Alderney. The question whether the States of Alderney may properly meet in the absence of the Lieutenant Governor or his representative is discussed. (See also 925655/4).

44. There is no such representative at the Chief Pleas in Sark, nor does the Lieutenant Governor normally attend its meetings. His power there derives from the necessity for him to approve all expenditure voted by the Chief Pleas (under the Reform (Sark) Law 1951).

B. THE BAILIFF

45. The Bailiff is appointed by Letters Patent under the Great Seal and holds office during Her Majesty's Pleasure, subject now to a retiring age of 70. There is also a Deputy Bailiff, similarly appointed (in Jersey since 1958, and in Guernsey since 1969).

46. An outline of the history of the office is included in paragraph 16-18 above. In brief, it may be said that, whereas in earlier centuries the Governors, at any rate if they were on the spot and were forceful personalities, exercised the main power in the Islands, this role has for long past been that of the Bailiffs. To give a comparatively recent illustration, shortly before the German occupation of the Islands in 1940, the Bailiffs of Guernsey and Jersey were told, through the Lieutenant Governors, that it was the desire of His Majesty's government that they should stay at their posts and administer the Government of the Islands to the best of their abilities in the

interests of the inhabitants, whether or not they were in a position to receive instruction from His Majesty's government. (Home Office letter of 19 June 1940, quoted at page 21 of 'Islands of Danger' by Allen and Mary Wood (1955)).

47. On two occasions (May 1914 and May 1938) the Bailiff of Jersey accepted invitations from the French government to meet the French President when the latter was visiting the town of St Brieuc in France. There appear to be no Home Office papers about the 1914 visit. The Home Office was consulted in advance, through the Lieutenant Governor, about the 1938 visit, and said, after consulting the Foreign Office, that 'it seemed to be a very good idea' (587625/25).

48. There is no United Kingdom parallel to the office, powers and functions of the Bailiffs. The nearest one can get, and the comparison would be far from exact, is to say that the Bailiff combines the functions of a Lord Chief Justice (and trial judge), Speaker of the House of Commons (but unlike the Speaker, the Bailiff can take part in the debates), and permanent Prime Minister. More precisely, the Bailiff of Guernsey is President of the Royal Court and Court of Appeal, and of the States of Election and Deliberations. The Bailiff of Jersey is President of the Royal Court, the States and the Court of Appeal. The Bailiff also act for the Lieutenant Governors in their absence.

49. The functions of the Bailiffs (except in relation to the Courts of Appeal, which did not then exist) were unaffected by the 1948 Reforms (see paragraph 12 above). This accorded with the views of the States and with those of the Committee of the Privy Council. The Committee concluded that, whatever might be the abstract arguments against the combination of the Legislative and Judicial functions of the Bailiffs, there was no evidence that they exercised undue influence in the deliberations of the States, or that in the Courts they allowed their political position to influence their decision, and that in the States, they exercised important functions in advising on constitutional matters which, in these relatively small communities, could not be performed by any other person. The Committee also noticed (in discussing the position of the Bailiff of Guernsey, but the same consideration would apply to the Bailiff of Jersey) that in the course of insular legislation or in discussions arising from communication with the Privy Council or the Home Office it was the duty of the Bailiff to represent the views of the Island on constitutional matters, and that 'in the event of differences between the Crown and the States it would be the historical duty of the Bailiff to represent the views of the people of the Island'. (Report of the Privy Council on Proposed Reforms in the Channel Islands (1947) Cmnd 7074, Pages 6 - 7 and 16 - 17). The Royal Commission on the Constitution recommended no change in the office of Bailiff (paragraph 1527 of Part XI of Volume 1 of the Report.)

C. THE LAW OFFICERS

50. In each Bailiwick there is an Attorney General (also known as a Procurer) and a Solicitor General (also known in Guernsey as the Comptrolleur and in Jersey as the Avocat-General). The appointment is made by warrant under the Royal Sign Manual in Guernsey, and by Letters Patent under the Great Seal in Jersey, and the offices are held during Her Majesty's Pleasure, subject to a retiring age of 70.

51. The Law Officers have the dual function of being legal advisers to the Crown, and to the Insular States and States Departments; and, as noted by the 1947 Privy Council Committee Report (pages 14 and 27), in the event of a difference arising between the Crown and the States, the allegiance of the Law Officers (unlike that of the Bailiff) is to the Crown. There may, however, be some room for flexibility, without compromising this fundamental principle, where

the issue is merely one of a possible legal action by a Government Department against the States on some day-to-day matters. In 1949, the Home Office, after consulting the General Post Office, saw no objection to the Guernsey Solicitor General advising the States about a claim by the GPO for damage to Post Office cables caused by the States Electricity Department, for which the GPO for its part was being advised by the Guernsey Attorney General (808948/2). This division of responsibilities was confirmed in a letter of 3 October 1961 on CIM 162/1/6.

52. Clearly, however, there could be no question of divided loyalties on any issue of a constitutional nature, and even on policies falling short of that, it would be as undesirable in the Islands as it would be here for the Law Officers to express differing views in public. In 1954, the then Solicitor General, Jersey, expressed in a debate in the States views that were in conflict with those of the Attorney General with regard to certain provisions of a National Service Bill, a measure giving rise to considerable controversy. The Home Office called for and considered his explanation of his conduct, and sent him a letter signed by the then Permanent Under Secretary of State (Sir Frank Newsam) in the following terms (CIM 18/3/1):-

> "I am directed by the Secretary of State to thank you for your letter of 3 inst explaining your conduct in expressing at a meeting of the Jersey States views in conflict with those expressed by the Attorney General, and to say that he accepts your apology and has decided to take no further action on this occasion.
>
> The Secretary of State, however, wishes it to be clearly understood that, while it is open to each of the Law Officers of Jersey to tender to the Crown such confidential advice as he thinks fit, it is not open to them to express conflicting views in public and least of all in the States.
>
> In order to avoid any possible recurrence of such an incidence, a copy of this correspondence is being sent to the Bailiff and to the Attorney General."

The sequel to these events was that the Solicitor General continued to be a source of difficulty, and the following year he was invited by the Home Secretary to resign, and did so. (CIM 18/3/2)

53. As illustrated by the incident referred to in paragraph 52 above, the Law Officers may take part in debates in the States. Until the 1948 reforms, the Law Officers of Guernsey (but not Jersey) also had power to vote. The 1947 Privy Council Committee endorsed a proposal of the States of Guernsey that the Law Officers should no longer have a vote, and noted that, whereas in Jersey, it was a tradition that the Law Officers spoke only on matters of legal or constitutional import or matters on which they proposed, at a later stage, to tender adverse advice to the Sovereign in Council 'as ratifying authority' in Guernsey it was not unusual for the Law Officers to take a full part in the deliberations of the States, and 'on one occasion a Law Officer addressed the House so eloquently as to sway many members against their inclinations'. The Committee recognised that so long as the Law Officers had a vote, they were entitled to play a full part in general debate, but considered that it followed from the proposal to deprive them of the vote, and from other proposals designed to increase the proportion of elected representatives, that the Law Officers should 'progressively confine their duties in the States to matters of a legal or constitutional nature, or affecting the Crown' - that is to say that Guernsey should follow the practice of Jersey in this respect. There is no evidence in later Home Office papers to suggest that this has not been done.

54. Correspondence in 1964 with the Guernsey Attorney General, in connection with a request by the Board of Trade for his advice with regard to proceedings which the Board proposed to

bring under the Company's Act against the Bank of Alderney (among others) confirmed that the Law Officers duties included advising United Kingdom Government Departments, without fee. It was noted that words to this effect had been included in a 1929 Warrant of Appointment of a Guernsey Attorney General, but had been removed when a subsequent warrant was prepared in 1960, on the ground that this duty was clearly understood and that it was unnecessary and invidious to single out the Attorney General for an express injunction to perform it. The Attorney General said in a letter to the Home Office of 2 April 1964 (CIM/64 77/27/1):-

> 'There cannot, in my view, by any doubt at all as to the position of the Law Officers. They are legal advisers to the Crown and to the States and, of course, in the event of differences between the Crown and the States the allegiance of the Law Officers is to the Crown. Part of the salary of each Law Officer is met out of local Crown revenue. The Law Officers are bound to advise United Kingdom Government Departments and the Lieutenant Governor, but, as I understand it, subject always to the over-riding authority of the Home Office. The question of a fee does not and could not arise. Any fees or costs recovered or charges made by the Law Officers in any capacity are paid into the public revenue of the Island.
>
> You may perhaps be aware of the fact that I have, from time to time, acted for the General Post Office on a direct reference'.

55. A mid 19th Century incident established that it would be inconsistent with constitutional principles to leave unfilled a vacancy in the office of Solicitor General, or to amalgamate it with that of Attorney General without the agreement of the States, even if the Lieutenant Governor, the Bailiff and the Attorney General were all in favour of the amalgamation (see paragraphs 230 - 232).

Consultation about the Appointment of Law Officers

56. It is customary, so far as age and seniority permit, for the offices of Solicitor General, Attorney General, Deputy Bailiff and Bailiff to be filled by progressive promotion. The initial recommendations for appointments are made by the Lieutenant Governors after consultation with the Bailiffs. Candidates are usually drawn from the local Bar. Exceptions to the normal principle of progressive promotion from Solicitor General to Bailiff can be found in the appointments of Mr E P Shanks (a non-Islander), CIM/72 17/1/2, and Mr F de Lisle Bois (CIM 17/3/5).

57. The Stats of Jersey proposed to the Royal Commission on the Constitution that the arrangements for the consultations over appointments should be formalised. This evidence is mentioned in paragraphs 1441 - 1444 of Part XI of Volume I of the Report of the Royal Commission on the Constitution, and the conclusion which the Commission reached on this issue is recorded at paragraphs 1525 - 1526. The Commission did not favour any alteration of the present system.

D. OTHER CROWN APPOINTMENTS

58. In the administrative field these include the Receiver General of each Island, who collects and administers the Crown revenues and who, as an exception to normal practice in relation to

Crown appointments, is not appointed on the advice of the Home Secretary but on that of the Treasury. A list of the duties of the Receiver General in Guernsey is to be found in a note of 30 July 1969 at document 19a on CIM/69 21/1/1. In Jersey, the functions of the Receiver General are at present exercised by the Attorney General. The office of Viscount exists in Jersey only. He is the Executive Officer of the States, but without voice or vote. His main responsibilities are those of Chief Executive Officer of the Royal Court including the taking of evidence on commission, the execution of process and holding of inquests. He is assisted in these capacities by a Sergent De Justice and a Deputy Sergent. (These are not Crown posts). Following the resignation, at his own request, of the then Viscount in 1970 and the Queen's acceptance of this resignation, the post is, at present, unfilled, and it seems likely that the Insular Authorities may propose the establishment of a larger organisation to fulfil functions that have become almost too much for the present Viscount's office (CIM/62 18/5/2). The Greffier in Guernsey is the Clerk of the Royal Court and of the States. In Jersey, the Greffier is not a Crown appointment; the Judicial Greffier (Clerk of the Court) and the Greffier (Clerk) of the States are appointed by the Bailiff, subject in the latter case to the consent of the States. The Judicial Greffier may be dismissed only by an Order in Council following a petition of the Royal Court, and the Greffier of the States only be a decision of that body (Laws of 1931 relating to 'Le Departement Du Greffe Judiciare' and 'Le Departement Du Greffe des Etats'). The Greffier of the States is responsible for placing legislation before the States (cf paragraph 77).

59. In Guernsey, HM Sheriff is appointed by the States of Guernsey but may not be dismissed except by Command of Her Majesty. HM Sergent is appointed by warrant of the Lieutenant Governor who is authorised by the Secretary of State to make the appointment.

60. There is a panel of 9 Judges of Appeal covering Jersey and Guernsey (in addition to the Bailiff of each Bailiwick) appointed by the Crown. Jurats are appointed locally but require the approval of The Queen in Council if they wish to retire before the retiring age. (CIM/75 30/2/2)

61. There are also ecclesiastical Crown appointments: the Dean of each Bailiwick, ten Rectors in Guernsey, one Rector in Alderney, and twelve in Jersey. Three other Rectors in Jersey are appointed alternately by the Crown and by the Bishop of Winchester. Until the 1948 Reforms the ten Guernsey Rectors and the twelve Jersey Rectors appointed solely by the Crown were members of the respective States - see section E below.

62. It appears that until 1949 the Jersey Canons relating to Ecclesiastical appointments and dating from at least the time of James I, had or were thought to have, the effect of confining appointments of Rectors to natives or 'Originaires' of the Island. (There were and are no similar restrictions in Guernsey). Since the Dean of Jersey is also Rector of St Helier, this also applied in practice to him. In 1949, however, the relevant Article XIV of the Canons was amended so as to provide merely that preference should be given to native or 'Originaires' over 'Other candidates of like suitability' (CIM 130/13/1). In 1959 a non-Jersey man was appointed as Dean, it being clear to all concerned that there was at the time no suitable candidate from Jersey.

63. Two points arose in connection with this appointment:-

i. In reply to an enquiry by the Bailiff, the Home Office expressed the view that the Deputy Bailiff, as well as the Bailiff, took precedence over the Dean.

ii. A potentially embarrassing situation arose at the time of the swearing in of the new Dean and his installation as a Member of the Royal Court, because he did not have with him the Letters Patent signifying his appointment. The Home Office should warn future incumbents of this post about this point, which was also brought to the notice of the Legal Secretary of the Bishop of Winchester. The problem could not arise in

> Guernsey, except in relation to the Bailiff; he is the only officer appointed by way of Letters Patent and all the others are appointed by Warrant under the Royal Sign Manual, which is prepared and despatched by the Home Office.

64. The Canons as revised in 1949 deliberately retained the original requirements that the Dean must be a Master of Arts, or a graduate in Civil Law at the least, and these requirements had to be met at the time of the 1959 appointment (CIM 130/13/1).

65. In 1971, however, The Queen approved a proposal of the Bishop of Winchester made with the consent of the States and the Decanal Chapter of Jersey, that the relevant Canon should be revised to provide that the Dean should have been at least 6 years in the order of priesthood and be not only learned but also distinguished by some title or proof of learning, or otherwise in the opinion of Her Majesty exceptionally qualified for the office. The revised Canon, which is in the same form as that now adopted in the Constitution and Canons of many English Cathedrals, paved the way for the appointment as Dean of a clergyman who was not a graduate. (CIM/70 131/3/1).

66. As regards appointments to Crown livings generally, the Government secretaries of Guernsey, Jersey (and the Isle of Man) were told in 1965 that a register of suitable clergymen was kept at No 10 Downing Street in connection with appointments in this country on which the Prime Minister or the Lord Chancellor advises; and that, while there was no wish to suggest that Lieutenant Governors ought to consult No 10, it might be helpful to them to know that these facilities are available in the case of any difficulty (CIM 130/4/4).

67. Although it is the case that before the last war the Home Office took an active part in selecting candidates for Crown livings, it is now left to the Lieutenant Governors to submit names. This represents a return to the practice adopted when Lieutenant Governors first replaced Governors in the middle of the 19th Century. In Home Office papers of 1854, it was noted in connection with the death of the last Governor of Jersey, that in Guernsey the Lieutenant Governor had been allowed to make recommendations when vacancies occurred, and in a minute of 30 January 1854 (OS 5179) the Secretary of State (Lord Palmerston) said:

> "I think the same course in this respect should be followed in Jersey as in Guernsey. The Lieutenant Governor is a better judge of the merits of the Island candidates than the Lay of the State (SIC) can be and it will be useful to give the Lieut Gov this means of acquiring influence which he ought to possess".

<u>Advice on appointments to Crown livings when the Home Secretary is a Roman Catholic or a Jew</u>

68. Section 18 of the Roman Catholic Emancipation Act 1829 prohibits a Roman Catholic from advising the Sovereign "directly or indirectly" with regard to Crown livings, and Section 4 of the Relief of Jews Act 1858 contains a similar prohibition on a person "professing the Jewish religion". It appears from the Home Office notebook that in 1916, when the Home Secretary (Mr Herbert Samuel) was a Jew, the Prime Minister advised on the appointment to a living in the Channel Islands, though no doubt the preparatory work was done by the Home Office (the file, A 30309/10, has been destroyed.) In July 1929, when the Home Secretary (Mr Clynes) was a Roman Catholic, the Secretary of State for Air formally advised on the appointment to a Crown living in Alderney, the preparatory work, including the usual consultations leading to the selection of a candidate, having been done by the Home Office. The 1929 file (529993/4) records that, when the question arose in 1916, the Law Officers had advised that in such

circumstances the Home Secretary should be careful, not only to abstain from advising the Sovereign, but to take no part in directing the preparation of warrants, countersigning the presentations or in any other way. It seems reasonable to assume that, should the occasion again arise, another Secretary of State (as in 1929) rather than the Prime Minister (as in 1916) would be asked to tender the formal advice and deal with the warrants, unless there was some special reason for involving the Prime Minister.

E. THE STATES

69. The legislative body in Guernsey is the States of Deliberation, and in Jersey the Assembly of the States. These institutions can be compared with the United Kingdom Parliament in that they initiate and pass legislation, but there are certain significant differences:-

i. As noted later, insular legislation requires ratification by Order in Council; and in contrast to the Royal Assent to an Act of the United Kingdom Parliament, this is not a mere formality.

ii. There is no "second chamber" comparable with the House of Lords. On the other hand, not all of the members of the States are elected representatives.

iii. The Presidents of the States (the Bailiffs) have, as noted earlier, a wider role than that of the Speaker of the House of Commons. In some ways it is nearer to that of the Lord Chancellor in the House of Lords, but again the position is not completely analogous.

iv. There is nothing resembling cabinet government nor an official Opposition in the Islands, or anything comparable with the Queen's Speech at the opening of a new Session of the United Kingdom Parliament. The Lieutenant Governor in Jersey has the right to attend the States and to speak, but does not take part in the debates unless some special point arises on which it would be appropriate for him to intervene as the Sovereign's representative, and the chair which he occupies is placed lower than that of the Bailiff (see a Home Office note of 1949 on 890463/9). The Chairman and members of a Committee have to explain and justify to the States the policy that they recommend, and the Bailiff, though he takes a lead in shaping policy on the more important matters, is careful, when they are debated in the States, not to go beyond explanation and advice, and his attitude in any controversy is studiously judicial.

70. The following paragraphs, taken from document 44a on file CIM/68 820/4/43, a memorandum entitled "The Government of the Island of Guernsey" prepared by the Island's Attorney General, give a good description of the present machinery of government in Guernsey:-

> "There is no Government in Guernsey in the sense of a body of persons each of whom is a member of some political party which commands a majority in the legislature and whose members are jointly and severally responsible to the legislature for all decisions of policy. The Government is the States of Deliberation (usually referred to shortly as "the States of Guernsey") which is not only the legislative and deliberative assembly of the Island responsible for determining policy but itself exercises, either directly or through its many committees, the executive functions of government.
>
> Each Committee of the States is responsible for formulating proposals which it considers should be the policy for the area of government for which it is responsible and presents those

proposals to the States in a Billet d'Etat. The proposals are introduced by the President of the committee concerned and after debate the States formally resolve either to accept or reject the proposals. If the proposals of the committee are not accepted as the policy of the States, the committee concerned does not, in the majority of cases, resign nor is it expected to do so. The committees are simply the agents of the States except, of course, where discretionary power to take decisions is vested in them by legislation. Apart from proposals about policy the committees also have to refer to the States for decision many matters which arise in the normal course of their work, including anything which involves capital expenditure.

It is important to appreciate that the functions of government which the States exercise are not confined to those which local authorities exercise in the United Kingdom. The States are also responsible for matters which in the United Kingdom are the concern of the central government. Thus, although the States Board of Health deals, amongst other things, with public health and the States Housing Authority with housing, the States Board of Administration administers legislation about merchant shipping, pilotage, air navigation and dangerous drugs, while the function of the States Income Tax Authority is self-evident. In addition to the postal services and the telephone system, electricity and water undertakings are also provided by the States and administered by committees of the States. The only public utility undertaking which is privately owned is the Guernsey Gas Light Company. The States provide the general hospital, the mental hospital and the maternity hospital as well as schools medical and dental services and the educational system, including the employment of teachers, is also the responsibility of the States.

The number of committees required to cover such a wide area of governmental activity is large; the number of permanent committees at present is forty-eight and, in addition, there are eight ad hoc committees appointed for a particular purpose. Perhaps the most important committee is the States Advisory and Finance Committee which in addition to performing certain of the functions of a treasury acts as a co-ordinating and advisory body and in the Billet d'Etat comments on the advisability or otherwise of the States accepting proposals put to it by other committees.

The States meet in plenary session normally once a month, except in August, and each member has sent to him, at least ten days before every meeting, a Billet d'Etat which is a convening notice issued by the Bailiff who is the President of the States and contains the proposals made by the various committees and on which a decision of the States if required. Each proposal is set out in a policy letter addressed to the Bailiff who before including it in the Billet d'Etat send it to the Advisory and Finance Committee for their comments. The Bailiff, of course, as civil head of the Island is very much involved in the administration and may himself place before the States such matters as he may consider necessary or desirable. On each set of proposals the necessary propositions are drawn up and these propositions when voted upon become Resolutions of the States expressing their corporate decision. Depending on what any particular proposal is, the Resolution may be sufficient to empower the committee concerned to implement what the States have decided, for example, to provide a new sewage scheme for a particular

parish, to repair and improve sea defences or to build a new school, but more often than not, however, legislation is required to implement the States Resolution, for example, toprovide a compulsory social insurance scheme. If the legislation is required then the States resolve to direct its preparation and it is then prepared under the direction of the Law Officers of the Crown.

The committees of the States meet frequently, some of the more important ones as frequently as once a week, and spend a considerable time dealing with detailed matters. In many case, of course, the President of the committee concerned is vested with the power of taking decisions and some Presidents are in daily contact with their departments.

A permanent secretariat is provided by the States of Guernsey Civil Service which now contains some nine hundred non-industrial civil servants apart from teachers, nurses and manual workers."

Origin and development of the States

71. Originally, legislative as well as judicial functions were exercised by the Royal Courts, which retained certain legislative powers in Jersey until 1771 and in Guernsey up to the time of the 1948 reforms. The Courts developed in medieval times from the weekly meetings of the "Wardens" (later the Bailiffs) and the twelve Jurats (Jures - Justiciers) of each Island. These meetings were in effect the governing bodies. The Jurats were appointed for life by the King's officials and the "optimates" (in effect the large land owners, to which class they themselves would not normally belong - the so-called constitution of King John"). In course of time, the Royal Courts, in dealing with non judicial matters, called in representatives of the parishes to attend their meetings, namely the Rectors and Constables (who were responsible for the policing and general administration of their parishes and were elected by the "elders"). These wider meetings of Jurats, Rectors and Constables in turn developed formally into the States: precise dates cannot apparently be assigned, but in Jersey (according to the historical appendix to the States memorandum of evidence to the Royal Commission on the Constitution, on CIM/68 605/5/25) the States were first mentioned in a deed of 1497, and records of the Acts of the States date from 1524.

72. In course of time, the Law Officers became ex officio members of the States, but otherwise the latter remained confined until the 19th Century to the Jurats, the Rectors and the Constables, with the Bailiffs as President. They contained nor directly elected members, except in-so-far as in Jersey the Jurats were elected, but for life, originally on a restricted franchise but later on the basis of universal franchise[4] (in Guernsey the Jurats were, and are, elected by the States of Election - see paragraph 118 below). Elected members, comparable to United Kingdom Members of Parliament, did not exist until 1856 in Jersey, when a law of the States "Deputes aux Etats" provided for the election of 14 Deputies, later increased by law of 1907 to 17.

73. In Guernsey, the States of Deliberation consisted of the Bailiff, the Law Officers, 12 Jurats, 10 Rectors and 15 Douzeniers (representatives of the Douzaines, the equivalent of Parish Councils). The Douzeniers were appointed by the Douzains for a particular sitting of the States, and had to vote as instructed by the Douzains, being mere delegates. There were no directly elected members of the States until 1899, when the "Loi Relative a la Reforme des Etats de Deliberation" provided for 9 Deputies to be elected by the heads of households (chefs de famille) of the Island.

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3. Since the 1948 reforms, Jurats in Jersey have been elected by an electoral college - see paragraph 114 below.

By the time of the 1948 reforms, the number of deputies had been increased to 18, elected by universal franchise on a parish basis.

74. The Guernsey States of Election have never had any legislative functions. They are an "electoral college" which, before the 1948 reforms, was concerned solely with the election (for life) of the Jurats, and consisted of the Bailiff, the Law Officers, 12 Jurats, 10 Rectors, 20 Constables, 180 Douzeniers (the total number), and the 18 Deputies.

The Reforms of 1948

75. In 1948 the States of Jersey and Guernsey made proposals for constitutional reforms which were considered by a Committee of the Privy Council. Their effects so far as the position of the Bailiffs and Law Officers were concerned had been noted in paragraphs 49 and 53 above. The 1947 Privy Council Report (Cmnd 7074) discusses the background to the nature of the proposals in detail. The main effect of the reforms in both Islands was to remove the Jurats and Rectors from the States as legislatures, and to increase the number and proportion of directly elected representatives. These were not reforms imposed by Whitehall - the initiative came from the Islands. The Privy Council Committee endorsed most of their proposals, and where they recommended modifications, it was left to the Insular States to decide how far to give effect to them.

Present Constitution

76. An interesting comment on the functioning of the States in Jersey and Guernsey is contained in the report by Lord Taylor (then the Parliamentary Under Secretary of State for Commonwealth Relations and the Colonies) on his visit to the Islands in 1965, in particular paragraph 22 (see CIM/74 1/2/9).

a. Jersey

76(1). Under the States of Jersey Law 1966, which codified with some amendments earlier relevant legislation, in particular the Assembly of the States (Jersey) Law 1948, the States consist of the Bailiff (as President), the Lieutenant Governor, 12 Senators, elected on a basis of universal adult suffrage the whole Island forming a single constituency for this purpose (the voting age is 18 under the Franchise (Amendment No 3) (Jersey) Law 1972, CIM/68 2/1/5 the Constables of the Parishes, 28 Deputies, the Dean, and the 2 Law Officers. Elected members of the States are paid an annual allowance.

76(2). Under the 1948 Law, the Senators were elected for 9 years, four of the retiring every third year. The 1966 Law reduced the term of office to 6 years and half (ie 6) of the Senators retire every third year. To the extent that Senators are elected for 6 years and not for life they represent a more democratic element in the States than the Jurats. The removal of the Jurats from the States was also designed to put an end to their previous combination of judicial and legislative functions, a process which was completed by the Judicial and Legislative Functions (Separation) (Jersey) Law 1951, which provides that, while a Jurat is not disqualified for election as a Senator of Deputy, he ceases to hold office as a Jurat on taking oath as a Senator or Deputy - and vice versa.

76(3). The retention of the Constables was endorsed by the 1947 Privy Council Committee Report, which concluded that, on the evidence before the Committee, they "would not be justified in recommending any interference with the current position". The Committee took into account the argument that the Constables brought to the States valuable practical knowledge of municipal administration and observed that "sound practical advantages appear to derive" from

their membership.

76(4). The Deputies are elected by constituencies for 3 years on a basis of universal adult suffrage, some of the constituencies being multi-member, ie, each of the three electoral districts of St Helier elects 4 Deputies.

76(5). As regards retention of the Dean, who had previously sat as one of the 12 Rectors, the Committee observed that it "does, to some extent, favour the Church of England over other religious denominations; but we agree that if the representation of matters spiritual in the Assembly is to be vested in one person, the Dean is the most suitable". The Dean and, as noted earlier, the Law Officers, have no vote in the States.

b. Guernsey

76(6). Under the Reform (Guernsey) Law 1948, the States of Deliberation now consist of the bailiff (as president), 12 Conseillers, the 2 Law Officers (who have no vote), 33 Peoples Deputies, 10 Douzaine representatives, and, under the States of Guernsey (Representation of Alderney) Law 1949, 2 Alderney representatives, appointed by the States of Alderney, who may speak and vote only on matters relating to Alderney. Elected members of the States receive an annual allowance.

77. The Bailiff is entitled to speak on any matter. He has no original vote but he has a casting vote if members are equally divided. He places measures or business before the States at the request of committees or Members and he can also on his own initiative place any matter before the States. This gives him a position of unusual responsibility: see paragraph 70, and c.f. Jersey, paragraph 58.

78. The Conseillers in effect replaced the Jurats, as the Senators did in Jersey, but unlike the latter the Conseillers are elected not by universal suffrage but by the States of Election, which, as indicated earlier, was and is the body which elects the Jurats. The election of Conseillers in this way, rather than by universal suffrage was endorsed by the Privy Council Committee Report (which spoke in terms of "Senators") on the ground that, as a matter of practical politics, it was necessary in order to ensure that the States continued to include persons of experience and ability, but "who would be unwilling to conduct campaigns for public election. It was also represented to us that the electorate of the Island had not hitherto shown great interest in the business of the States, and that it would be a misfortune if the Assembly lost the services of experienced men because the electorate was apathetic, or ignorant of the services which they had given to the Island". This had placed the States in a position in which they "must choose a compromise between what by most people is regarded as sound and democratic, and what is expedient". (Report, pages 18-19).

79. The Conseillers are elected for a term of 6 years. The 19489 Law provided that six of the Conseillers first elected under its terms should serve for 3 years only. This has the permanent effect that, like the Jersey Senators, half the Conseillers retire every 3 years.

80. The People's Deputies are elected triennially on a parochial basis. The voting age is 18 (the Reform (Amendment) (Guernsey) Law 1972, CIM/67 2/2/5).

81. The Douzaine representatives are elected by the Douzaine of each Parish for one year. It is their duty to voice the views of the Douzaine (or Parish Council) which they represent, but they are no longer bound to vote in accordance with instructions. The Privy Council Committee endorsed the retention of Douzaine representatives on the ground that, like the Constables in

Jersey, they brought useful practical knowledge and experience of parochial administration to the States.

82. It will be noted that the Dean is not a member of the States as a legislative body. This is simply because there was no proposal that he should be.

83. The States of Election were also modified by the 1948 reforms. They now elect Conseillers as well as Jurats, and they include, as before, the Bailiff, the two Law Officers, the 12 Jurats, the 10 Rectors, the 33 People's Deputies and Douzaine representatives. The changes are the addition of 12 Conseillers, the reduction in the number of Douzaine representatives from 180 (the total number) to 34, the removal of the 20 Constables, and the addition of 4 representatives from Alderney.

84. The 1948 reforms completed the process of transferring all legislative functions (except with regard to Defence Regulations) from the Guernsey Royal Court to the States, thus bringing Guernsey into line with the situation which has obtained in Jersey since 1771. Prior to 1948, the Royal Court, sitting as the Court of Chief Pleas, had a common law power to pass Ordinances, which were of a provisional nature until approved by the States. The scope of the Ordinances was not precisely defined, but they could not impose taxation or alter existing written or customary law. Where the States wished to pass substantive legislation, they asked the Royal Court to prepare the necessary measure, and the Bill (Projet de Loi) was drafted under the supervision of the Law Officers and presented to the Court for detailed consideration. The preparation of Ordinance and of Projets de Loi in accordance with Resolutions of the States is now (as suggested by the Privy Council Committee) the responsibility of the States Legislation Committee, consisting of the Bailiff, as President, and 7 other members of the States who are elected by the States.

Use of the French language

85. The Privy Council Committee found that English was replacing French as the language commonly used throughout the Islands, particularly in Guernsey, and that it was the language mainly used in debates in the States and for new legislation. The Committee recommended that the deliberations of the States should be conducted in English, unless for some special reason it was desirable on a particular occasion to use French; that new legislation should continue to be drafted in English but that, in accordance with the wishes of the Islands, French should be retained for traditional and ceremonial purposes in the States.

F. THE LEGISLATURE OF ALDERNEY

86. The constitution of the States of Alderney was completely reformed by the Government of Alderney Law 1948 (a measure of the States of Alderney), in accordance with proposals which had been submitted and generally approved by a Committee of the Privy Council on the Island of Alderney. (925655/3). The Committee reported in 1949 (Cmd 7805). (918656). The Privy Council Committee noted that the States did not appear to have a clearly defined and separate existence from the Alderney Court until an Order in Council of 1916, and consisted, until the last war, of the Alderney Judge (as President), 6 Jurats, 4 Douzeniers elected by the rate payers for a period of 12 months, 1 Douzenier elected by the Douzaine for each separate meeting of the States (and bound by the Douzeniers instructions), 3 People's Deputies, (dating from 1923) and HM Procureur, the Island's Attorney General. The Judge and the Procureur were appointed by the Crown. The Jurats were elected by the rate payers, and the Deputies by universal suffrage.

The Jurats had to own property in the Island assessed at more then £400, and the Deputies had to own property assessed at not less than £200. There is a summary of the early history of the States of Alderney in a memorandum at document 44A on CIM/68 820/4/43, and on 890457/209.

87. The 1948 Law provided that the Alderney States should consist of a President and 9 members, all elected on the basis of universal suffrage for 3 years. (CIM/68 6/29/3). The offices of Judge and Procureur, and the Douzaine, were abolished. Under the Government of Alderney (Amendment) Law, 1971 (a measure of the States of Alderney) the number of members was increased to 12, one third of whom retire annually. Under the Government of Alderney (Amendment) Law 1975 the President of Alderney may not hold the office of Jurat, and the voting age was lowered from 20 to 18. Other amending legislation was passed in 1955 and 1969 (CIM 6/29/1 and CIM/68 6/29/3).

Relationships between Alderney and Guernsey

88. Before the second World War Alderney, though then as now part of the Bailiwick of Guernsey, was independent of Guernsey in most matters of legislation and administration, including finance. During the war Alderney was evacuated and turned into a fortress by the Germans, being left derelict at the end of the war. (918656/1). Directly after the war the United Kingdom Government spent a good deal of money to assist the Island's rehabilitation, but, as the Privy Council Committee on Alderney found the Insular administration was not in a position to provide the maximum standards regarded as essential in a present day community, or to cope with the many complex problems arising in the years ahead, for which it was felt they would need the help and guidance of a larger community in the shape of Guernsey. After discussion between Alderney, Guernsey and the Home Office, proposals were agreed not only as to the reconstitution of the Alderney States, as described above, but also some changes in financial and legislative controls which were embodied in the Government of Alderney Law 1948 and the Alderney (Application of Legislation) Law 1948 (925655/3). Guernsey took over the responsibility, including financial responsibility, for the main services in Alderney, including the airport, education, health, immigration, social services and police. (Responsibility for the following services has since been transferred back to Alderney: water supplies (1954), main roads and sewerage (1955) and adoption (1974) - CIM 6/17/2,3; CIM 6/36/1; CIM/68 6/29/7. The existing Guernsey laws on matters for which Guernsey took responsibility were applied to Alderney, and Guernsey was enabled to legislate on them in future without obtaining Alderney's consent. Guernsey scales of taxes, duties and so forth are levied in Alderney, and the services for which Alderney is still responsible are financed by an occupier rate based on the average rate in Guernsey, any deficit being met by Guernsey. As a corollary, Alderney may not submit to Her Majesty in Council any legislative proposal (Projet de Loi) involving increased expenditure, or impinging on the services for which Guernsey is responsible, without the approval of the Guernsey States of Deliberation (on which, as previously noted, Alderney has two representatives). The States of Guernsey has power to legislate for Alderney on criminal matters without the consent of the States of Alderney and on any matter with its consent.

89. The States of Alderney initiates two main forms of legislation, Laws and Ordinances. An Ordinance is the equivalent of a local bye-law and is not submitted to Her Majesty in Council. A Projet de Loi which has been approved by the States of Alderney is sent by the President of the States to the Bailiff of Guernsey for transmission to Her Majesty in Council. But before this is done the Projet de Loi must be submitted to the States of Guernsey Legislation Committee, and any suggested amendments made by the Committee must be considered by Alderney. In practice Projets de Loi are submitted to the States of Guernsey Legislation Committee before being formally laid before the States of Alderney, but if a Project de Loi is not passed in a form

which meets with the Committee's approval then it may make representations to Her Majesty in Council when the Projet de Loi is submitted. This arrangement is based on an Agreement made in March 1925 between the Royal Court of Guernsey and the Court of Alderney which was approved by His Majesty in Council and registered in Guernsey in February 1926. When a Projet de Loi is agreed it is sent by the Bailiff to the lieutenant Governor, who transmits it to Her Majesty in Council in the same way as a Guernsey Projet de Loi. The Order in Council ratifying an Alderney Projet de Loi directs registration in Guernsey, and registration in Alderney takes place subsequently.

90. During the post-war period Alderney's economy has developed to a considerable extent, and representations are made from time to time for its liberation from Guernsey. In 1955 the President of Alderney submitted proposals to the Home Office that the Island should resume responsibility for all its services. This was against the background that Alderney's economic development had exceeded the expectations of the immediate post-war years, and the Island was nearly self-supporting.

91. A conference was held between the then Deputy Under Secretary of State (Sir Austin Strutt) and representatives from Alderney and Guernsey, and the Home Secretary of the day (Major Gwilym Lloyd George) was initially disposed to accept the proposals in principle, subject to there being fully worked out agreements with Guernsey; but he first sought the observations of the former members of the post-war Privy Council on Alderney: Mr Chuter Ede (who had been Home Secretary at the time), Mr Osbert Peake and Viscount Stansgate. He also consulted the Lord Chancellor (Lord Kilmuir) not in his capacity as Lord Chancellor but because he had been his immediate predecessor as Home Secretary. All were in favour of, or saw no objection to, the proposals, with the exception of Mr Chuter Ede, who thought that the proposals generally "were about 2 years ahead of time by which they will be justified if everything goes well in this very small community" and who expressed particular concern about their effect on educational facilities, a point which had also been taken by the Home Office (CIM 235/1/2).

92. While these consultations were proceeding, however, two events occurred which led to a change of view by the Home Office. The election in November 1955 of three members of the States resulted in the replacement of two good and experienced members by two persons who were regarded as irresponsible, making a total of four "irresponsible" members out of the nine who comprised the States. Secondly, a crisis occurred in the fortunes of the Alderney Meat Company, a substantial employer of labour, which looked like going out of business. In these circumstances, and because of the view of the Lieutenant Governor that a change in the constitutional arrangement should not be pursued in view of the change in the composition of the States, the Home Secretary decided that time had not yet come when he would be prepared to approve a scheme for altering the relationship between Guernsey and Alderney, and the authorities there were so informed through the Lieutenant Governor.

93. A delegation of the States of Alderney came to the Home Office in May 1968 in connection with EEC questions, and the agreed statement issued subsequently said that "the financial tie with Guernsey brought about by the 1948 Law was a convenient statutory arrangement which did not affect Alderney's general constitutional position as a largely autonomous dependency under the Crown". This passage is quoted in Alderney's evidence to the Royal Commission on the Constitution - see Minutes of Evidence Volume VI, page 264 - and in their oral evidence to the Commission the States said that it was the general expectation of the people of Alderney that at some time in the future the Island would regain its pre-war independence, and they claimed that it was in a financial position to do so at any time. The witnesses recognised that any arrangements to that end would, like the 1948 arrangements, be a matter for tripartite agreement between Alderney, Guernsey and the Home Office.

94. In January 1971, the States of Alderney were reported to have decided "to take the first exploratory steps to examine in detail the possibility of a complete break away from Guernsey, initially in the context of the public services at present provided by Guernsey". (CIM/70 2/3/1). This arose from consideration of a report by the "Committee for Constitutional and Common Market Affairs" set up by the States, which had in mind the possibility that Alderney might take a different line from Guernsey on the question of EEC entry. On internal matters, the Committee expressed the view that the present number of members of the States was inadequate to deal with the volume of business, and recommended an increase to 12. The Committee also, according to press reports, thought that there should be a qualifying period of at least two years residence in Alderney for the franchise and 5 years for eligibility for election to the States, which proposals the Home Office felt "could not possibly be countenanced."

95. All that has definitely emerged so far is an increase in the number of members of the States from 9 to 12 under the Government of Alderney (Amendment) Law 1971. The Home Office noted that this change might be designed in part at least to give Alderney greater strength in pressing for a loosening of its ties with Guernsey, but felt that a larger legislature was justified by the increase in population and the increased complexity of administration (CIM/68 6/29/3).

96. If Alderney again submits proposals for independence, it is likely that the Home Office would need to be satisfied that Alderney was (and was likely to remain) financially and economically viable (by 1976 the situation was less promising); that the Alderney States appeared to be a responsible body; that there were no reasonable objections by Guernsey on any fundamental point which could not satisfactorily be met; and the need for special arrangements and safeguards on certain matters would have to be considered, such as the control of the police and the airport, the question of educational facilities and the control of immigration.

97. A separate question, though connected in some respects with that of independence, has been whether the President of Alderney should (like the pre-war judge) be appointed by the Crown, rather than elected by the people like the other members of the States. This matter was last considered by the Home Office in 1957, when the Home Secretary (Mr Butler as he then was), agreed with the departmental view that, while the idea had attractions insofar as it would ensure the appointment of the right person, it would be a retrograde step to take away from Alderney, without its consent, the privilege which it had enjoyed since 1948 of electing its President (CIM 19/3/1). Moreover, it was pointed out that so long as the arrangements with Guernsey remained, the Alderney States "were not in a position to do anything foolish". It was therefore decided in 1957 to defer consideration of any change in the procedure for the appointment of the President until the question of greater independence for Alderney became a live issue. (See 925772/1 for consideration of the same issue in 1948.)

98. It may well be that in due course Alderney will submit a claim for independence from Guernsey while assuming that it may continue to elect the President. Alderney could make the point that neither the Home Office nor Guernsey are recorded as having raised the question of the President's position during the 1955 conference on possible independence (CIM 235/1/2). On the other hand, if Alderney were to obtain the same legislative autonomy, or nearly so, as Guernsey, it would be somewhat anomalous that the President of the Alderney States should be elected, whereas the Presidents of the States of Guernsey and Jersey (the Bailiffs) are appointed by the Crown. It may be thought that this is a point to be borne in mind in any future discussions about independence whether or not it is raised by Alderney or Guernsey.

99. As regards the Lieutenant Governor's representative in Alderney, see paragraph 43.

100. Following the report of the Royal Commission on the Constitution, a United Kingdom/Alderney Standing Committee was set up (see paragraph 11).

G. SARK

101. Nowadays, the Island of Sark, which lies off Guernsey and is part of the Bailiwick of Guernsey, has a population of about 600. The history of its relationship with the United Kingdom began in 1565 when Queen Elizabeth I granted it as an uninhabited island to Hilary de Carteret, Seigneur of St Ouen (in Jersey), on condition that after reserving certain lands for his own use, the remainder of the Island be divided into tenements to be continually inhabited by at least 40 tenants. A copy of the original letters patent is on 398733/11. But the beginning of the 17th century Sark had developed a clearly defined constitution and was unmistakably a dependency of Guernsey under the jurisdiction of the Governor of Guernsey with a subordinate legislature (the Chief Pleas) and Court of Justice (see paragraph 126) of its own. The early history of the Island is set out in a memorandum dated 26 May 1921 compiled by Mr A J Eagleston (398733/15a), to which are appended the texts of various source documents of Sark's history. Further letters patent of King James I in 1612 modified the original letters patent to provide that the 40 tenements should always be held whole and entire; to this day the sanction of the Sovereign in Council is necessary if it is desired to dispose of part of a tenement (unless for "public purposes") - see 455728/6. a recent example is La Ville Roussel (Variation of Trusts) (Sark) Law 1968 (CIM/59 215/2/7). Tenements may however be jointly owned. The ownership of the entire Island can change hands: Dame Sybil Hathaway's (see later) grandmother purchased it in the nineteenth century, with an approving Order in Council.

102. The letters patent of 1565 conveyed rights of ownership but did not make provision for the government of Sark. The system of ownership had been reflected in the constitution of Sark as it has developed over the centuries. The present day constitution was established by an Order in Council of 1922, under which the legislative authority of Sark, the Chief Pleas, consists of:-

The Seigneur (or Dame)

The Seneschal (appointed by the Seigneur for a term of 3 years, with the approval of the Lieutenant Governor of Guernsey)

The 40 Tenants

Twelve Deputies of the People, elected triennially. The voting age is 20, under the Reform (Sark) Law 1951.

Before this 1922 Order in Council there had been no elected members of the Chief Pleas. The files relating to the drawing-up of the Order in Council are 398733/15, 17, 19, 22 and 28, and the Order in Council itself is on 398733/31.

103. In 1923 a further Order in Council was drawn up amending that of 1922 by enabling the tenants to appoint deputies to represent them at the Chief Pleas (398733/39, 46, 47). The constitution was most recently promulgated in the Reform (Sark) Law 1951, a measure of the Chief Pleas of Sark, which made no change in the constitution of the Chief Pleas but extended the franchise for the election of Deputies to all adult British subjects, other than Tenants, whose ordinary place of residence had been in Sark during the previous 12 months (398733/62,64). Under the 1922 constitution women under 30 were not entitled to the vote unless they were tax payers. The 1951 Law made more specific provision about the nomination of a deputy by the Seigneur and Seneschal, and clarified certain other aspects of the constitution.

104. The legislature of Guernsey (the States) possesses, and has repeatedly exercised, the power of legislating for Sark in matters which are above the competence of the Chief Pleas, particularly criminal matters. A 1920 memorandum on 398733/7 traces the jurisdiction of Guernsey in criminal law back to an Order in Council of 1583. In other matters legislation is enacted by the States of Guernsey with the agreement of the Chief Pleas (see paragraph 274 - for an example of the Chief Pleas withholding agreement). Otherwise the Chief Pleas of Sark enact Ordinances (byelaws) "for the maintenance of public order and for the regulation of the local affairs of the Island" (Section 8(i) of the Reform (Sark) Law 1951). These Ordinances have to be passed to the Royal Court of Guernsey and may be annulled by it as being ultra vires or unreasonable. See CIM 236/2/1 for an exposition (in 1953) of the extent of the power of the Chief Pleas to enact Ordinances. The Chief Pleas may also legislate by Projets de Loi which are submitted to The Queen in Council (through the Lieutenant Governor). Sark Projets de Loi are normally examined by the States of Guernsey Legislation Committee, although there is no formal agreement as there is with Alderney (see paragraph 89). Sark Laws, after receiving the Royal sanction, are registered in Guernsey and subsequently in Sark. Any proposal to raise or spend money for public purposes is subject to the approval and regulation of the Lieutenant Governor of Guernsey (sections 16-19 of the Reform (Sark) Law 1951). The accounts of the Island are forwarded to the Home Office, the most recent examples being on CIM/79 216/3/1.

105. In addition to the matters already mentioned, the Reform (Sark) Law 1951 sets out the constitution of the Chief Pleas, its powers and the arrangements for it to meet, the electoral roll of the Island, the officers of the Island and the Court of the Seneschal. A 1950 minute on 398733/62 observes, in commenting on the obsolete nature of the constitution, "Sark is only a village and a small village at that, and obsolete through the present constitution may be it has the merit of being workable and reasonably satisfactory to the Sarkese". Some relatively minor amendments to the constitution were effected by the Reform (Amendment) (Sark) Law 1981. (CIM/81 236/2/2). The Seigneur was empowered to appoint as his Deputy a person of full age who is his issue, whether or not he is ordinarily resident in Sark. An alteration was made concerning the appointment of a Deputy Seneschal, and provision was made for the appointment of an Assistant Constable to help with the policing of the Island.

106. There is an interesting account of the feudal nature of society in Sark, written by the Dame of Sark in 1932, on 398733/53, and in 1961 she published her autobiography (called simply Dame of Sark). The Island submitted evidence to the Royal Commission on the Constitution but did not seek any alteration in its relationship with the United Kingdom.

107. The Island submitted a petition to the Privy Council in 1967 concerning the implications of entry into the Common Market. The petition contains much interesting information about the island and its economy. In the light of developments in the European Economic Community negotiations, the petition was withdrawn before being formally considered (CIM/66 1200/2/19).

108. The personality of one of its feudal rulers, Dame Sybil Hathaway, brought a great deal of renown to the Island of Sark. As Mrs Dudley Beaumont she inherited the Seigneurie in 1927 on the death of her father without male issue. At the time she was a widow with 6 children, 3 sons and 3 daughters. In 1929 she married Mr Robert Hathaway, a naturalised British subject from the United States of America, and he enjoyed the title of Seigneur of Sark until his death in 1954. There were no children of that marriage. In 1954 the title reverted to Mrs Hathaway and she was known as La Dame de Serk. She was made a Dame of the Order of the British Empire in 1965. She died in 1974 at the age of 90.

109. Home Office files contain numerous examples of family difficulties and intrigues over

the question of the Dame's successor. In 1928 she submitted a petition to mortgage the Seigneurie (455728/7,8,10,12) and it appears that the Dame contemplated diverting the succession from her eldest son Lionel Beaumont to her youngest son Richard Beaumont. In 1953 she seemed to have it in mind to transfer the title to her youngest daughter Mrs Jehanne Bell who lives in Sark, and in 1969 there were reports that the Dame wished to resign and hand the Government of the Island over to Guernsey. (CIM 236/1/1). These various files and those mentioned in the subsequent paragraph contain a good deal of learning about the ability of the Seigneur to dispose of his Seigneurial rights inter vivos, the interest of the Crown in the Seigneurie, the right of the Seigneur to dispose of his real estate and the position of Mr Hathaway in the Island. (CIM/67 236/2/3).

110. In 1961 the Dame's youngest son, Mr Richard Beaumont, petitioned the Queen, the burden of his submission being that his mother was not the rightful Seigneur of Sark, that she had infringed the constitution of Sark and that she had deprived her children of their inheritance from the estate of their father, Mr Dudley Beaumont. (CIM/236/1/2). The Home Office consulted the Guernsey Attorney General, and then replied to Mr Beaumont to the effect that the Secretary of State could find no grounds for recommending Her Majesty to issue any Commands on the petition. In 1969 Mr Beaumont returned to the charge (CIM 236/1/1A) writing to the Home Office and the Privy Council Office, and again petitioning The Queen in 1970. (CIM/69 236/1/1). A long reply was sent to this petition (letter of 12 November 1970) explaining why in the view of the Secretary of State, Dame Sybil Hathaway was the rightful ruler of Sark, and advising Mr Beaumont that the administration of his father's estate was a matter for the courts. On 24 December 1970 Mr Beaumont replied to that letter, specifically requesting that his petition should be dealt with by Her Majesty in Council. Although Mr Beaumont was living in the United Kingdom the Clerk to the Council did not feel that he could reject the petition on the ground that it had not come "from those Islands ....." (the Order in Council of 22 February 1952 setting up the Channel Islands Committee of the Privy Council, copy on CIM/69 236/1/3), and the petition was duly considered and rejected by that Channel Islands Committee. There is a useful note about the various points Mr Beaumont raised, dated 23 March 1971, on CIM/69 236/1/3. An Order in Council was issued on 22 December 1971 dismissing the petitions. (CIM/69 236/1/3). A further stream of correspondence from Mr Beaumont was received in 1972 following a reported statement by the Dame that she did not intend her lawful heir, Mr Michael Beaumont, to succeed her. (CIM/79 236/1/1). Mr Beaumont has continued to write to the Home Office over the years and even forged the signature of Sir Philip Moore in 1979 (doc 5 on CIM/79 236/1/1). He submitted a further petition to The Queen in 1979 (CIM/79 236/1/2).

111. As regards the then Mrs Beaumont's succession to the Seigneurie (meaning here the seigneurial rights) in 1927, a letter of 21 April 1961 from the Attorney General of Guernsey states "..... the custom is well established that where there are only daughters ..... the eldest daughter inherits in the same manner as the eldest son .....". It is clear from Mr Farrell's note of 25 September 1970 on CIM/69 236/1/1 that at that date the Home Office file series containing copies of ancient Orders in Council and Charters relating to Sark (398733) did not hold any detailed information about the inheritance of the role of Seigneur, which is apparently to be found in a Norman French translation of a Latin Charter dating from the reign of James I and is quoted by Mr Richard Beaumont in enclosures 5 and 10 to his petition to The Queen of 27 June 1970 on CIM/69 236/1/1A. The Charter is also referred to by the Attorney General of Guernsey in his letter of 24 September 1970 on the same file, and basically provides for inheritance by primogeniture in the male line, or failing direct male heirs, by primogeniture of female heirs.

112. In the years before her death Dame Sybil Hathaway gradually drew her grandson and heir Mr Michael Beaumont (the son of her eldest son Lionel Beaumont who was killed during the second World War) more fully into Sark affairs, and he succeeded peacefully after she died in

1974. Dame Sybil bequeathed the Seigneurie (the Seigneurial residence) to her grandson, but her estate on the Island to her daughter Mrs Jehanne Bell. (CIM/74 236/5/1).

H. THE COURTS

113. The principal court in each Bailiwick is the Royal Court, which has unlimited criminal and civil jurisdiction, and which also hears appeals from the lower courts described below. The functions and procedures of the Royal Courts were to some extent modified following the 1947 Privy Council Committee Report (Cmnd 7074).

JERSEY

114. In Jersey the Royal Court consists of the Bailiff, as President, and the Jurats who, before the 1948 reforms, were elected by the Islanders and were also members of the States. They now have judicial duties only and are elected by an Electoral College, established by the Royal Court (Jersey) Law 1948, which consists of the Bailiff, the Jurats, the Constable, the elected member of the States, the Lieutenant Governor, the Dean and the Law Officers, (who are not entitled to propose or second a candidate or to vote), members of the Jersey Bar, and practising solicitors of the Royal Court of not less then 7 years standing (other than those in whole-time service in any office or employment of the Crown or the States). The Jurats are judges (though not in Guernsey) a jury on English lines. The Jurats determine damages in civil cases and sentence in criminal ones. In Guernsey, as indicated in paragraph 119 below, the Jurats confers with the Bailiff as to sentence, but in Jersey the Crown Officers propose what the sentence should be, and the Judicial Committee of the Privy Council has refused to interfere with a sentence on this ground (Manley-Casimir v. Attorney General for Jersey: The Times, 12.2.65, copy on CIM/65 30/1/1).

115. The Jersey Jurats ordinarily cease to hold office on reaching the age of 70, but until 1974 the term could be extended up to the age of 75 (article 10 of the Royal Court (Jersey) Law 1948. The procedure for obtaining an extension involved an Order in Council following a petition from the "Superior Number" (see below) of the Court. In 1949 the Superior Number petitioned for an extension of office of two Jurats, one aged 73 and the other approaching the age of 70. In advising on the petitions, the Lieutenant Governor said that there would shortly be several vacancies in the office of Jurat, and a measure of continuity was desirable. He therefore favoured the petition on this occasion, but he had pointed out to the Insular authorities that the normal retiring age must be recognised as being 70 and that extension should be contemplated only in exceptional circumstances. This accorded with the views of the Home Office. Orders in Council were made in response to the petition, but the Lieutenant Governor was told in a demi-official letter that these cases should not be regarded as precedents. We were anxious to avoid any impression that Jurats would normally be awarded an extension of office, and hoped that there would be no more requests of this kind save in the most exceptional circumstances (533754/32). In recent years, however, we seem not to have queried proposals for extension of terms of office of Jurats, and a number have been allowed (CIM/67 20/2- series) on the simple assurance by the Lieutenant Governor that he is satisfied that an extension is desirable in the public interest, but in March 1974 the Minister of State minuted CIM/67 20/2/9 to the effect that the age of 70 seemed a reasonable one for retirement as a Jurat. Subsequently under the Royal Court (Amendment No 2) (Jersey) law 1974 provisions for extension of the terms of officer were repealed. The court has power to call on a Jurat to resign in certain circumstances, and if he fails to do so it may petition Her Majesty in Council for his removal. There seems to be no instance of such a petition.

116. The "Superior Number" of the Court normally consists of the Bailiff or the Deputy Bailiff, and at least 7 Jurats, though exceptionally only 3 Jurats suffice. The "Inferior Number" consists of the Bailiff or Deputy Bailiff and 2 Jurats. Until the establishment of the Jersey Court of Appeal (see below), the Superior Number heard appeals from decisions of the Inferior Number in civil cases. Such appeals now lie to the Court of Appeal, but appeals against conviction or sentence in criminal cases tried by the Inferior Number go to the Superior Number, which for this purpose must consist of the Bailiff or Deputy Bailiff and not less than 5 Jurats, and must exclude anyone who was a member of the Inferior Court when it dealt with the case in question.

Summary Courts

117. There is a Police Court ("Cour Pour la Repression des Moindres Delits") and a Petty Debts Court ("Cour Pour le Recouvrement de Menues Dettes"). They were established by Insular legislation of 1853 (after something in the nature of a constitutional crisis, mentioned in the section dealing with Prerogative Orders in Council), and under a Law of 1864, both have the same salaried magistrate ("Juge d'Instruction") appointed by the States. The magistrate must, under the present law (1964) have been a Jurat, or one of the Law Officers, or an advocate or solicitor of the Royal Court of 10 years' standing, or an English barrister of similar standing, or a Commonwealth judge. The Police Court has power to impose a fine of up to £50 and up to 3 months' imprisonment. The Petty Debts Court has jurisdiction over actions for the recovery of debts and damages up to £100. It also makes separation and maintenance orders and enforces maintenance orders made outside Jersey.

GUERNSEY

118. In Guernsey, the Royal court consists of the Bailiff, who presides, and 12 Jurats, elected by the States of Election (Royal Court of Guernsey (Miscellaneous Reform Provisions) Law 1950). A Jurat normally holds office until the age of 70, but a majority of the Court, provided it includes the Bailiff may, if it considers it desirable in the public interest, extend a Jurat's office until he reaches the age of 75. On the other hand, if a Jurat fails without good reason to discharge his duties for a continuous period of 12 months, or in the opinion of a similar majority of the court, is permanently unable efficiently to carry his duties, he may be called upon by the Bailiff to petition Her Majesty in Council, through the Court, to resign, and unless he does so within "reasonable time" Her Majesty in council may remove him from office on petition by the Court. (This has not so far arisen.)

119. Until 1950, the Jurats, though not required to have legal qualifications (this is still the case), were judges of law as well as of fact. Under the 1950 Law they are now, as recommended by the Privy Council Committee, judges of fact only, like an english jury, although unlike such a jury, they have a sentencing function. After a conviction they confer in private with the Bailiff as to the sentence to be imposed. Prior to the 1950 Law, the Attorney General or Solicitor General had tendered to the Court his "conclusion" as to the sentence which should be passed. The 1950 Law abolished this power, and also provided that the presence of one of the Law Officers should no longer b necessary for the proper constitution of the Court. In accordance with a decision by the Guernsey Court of Appeal in 1973, the Jurats retire when questions of admissibility of evidence are considered (CIM/65 30/3/15). In a Guernsey memorandum at document 44a on CIM/68 820/4/43 it is stated that since the establishment of the Guernsey Court of Appeal (see below) the Jurats have become in effect a permanent jury.

120. The "Full Court", of the Bailiff and not less than 7 Jurats, has full criminal jurisdiction

and hears appeals in criminal cases from the Guernsey magistrates' court, which has a full-time paid magistrate, and from the Courts of Alderney and Sark. The Full Court also exercises certain quasi-judicial and administrative functions such as the granting of liquor licences and the registration of Orders in Council. The "Ordinary Court" (the Bailiff and not less than 2 Jurats) has civil jurisdiction and hears civil appeals from the above-mentioned courts. There is also a Matrimonial Causes Division.

121. The magistrates' court has power to impose sentence of up to 6 months' imprisonment and/or a fine of £100, to deal with civil matters up to the value of £100, to make maintenance and affiliation orders, and to enforce orders made by summary courts outside the Bailiwick. The Magistrate also has the functions of a Coroner. The Magistrate, who must be a Jurat of the Royal Court or an advocate of the Royal Court of Guernsey or of Jersey of not less than 5 years' standing, or a member of the English, Scottish or Northern Irish Bar of similar standing, is appointed by a panel consisting of the Bailiff and 4 Jurats of the Royal Court designated by the Court. Under the Deputy Bailiff (Guernsey) Law 1969, the Deputy Bailiff may act as a magistrates' court.

ALDERNEY

122. Alderney has 6 Jurats appointed by the Secretary of State on the recommendation of the Lieutenant Governor, in accordance with the Government of Alderney Law 1948. One of the Jurats is appointed as Chairman. The Court of Alderney consists of a Chairman and at least three Jurats.

123. The Court has unlimited civil jurisdiction. In criminal matters the Court has jurisdiction except for certain specified offences such as homicide, rape, arson, fraud and perjury, but may not pass a higher sentence than t fine of £50 and/or one month's imprisonment. Where the Court considers that there is a prima facie case to answer on a charge of one of the specified offences, it takes written depositions and commits the accused for trial by the Royal Court of Guernsey, and where on conviction of any other offence, it considers that a penalty greater than it is authorised to impose is warranted, it commits the convicted person to the Royal Court for sentence. There is a right of appeal from the Alderney Court to the Royal Court of Guernsey.

124. The first appointments of Jurats under the 1948 Law are dealt with 925863/1. The following points of procedure with regard to subsequent appointments were agreed in 1952 between the Home Office and the Lieutenant Governor and Bailiff of Guernsey, following representations by the Chairman of the Court that he ought to be consulted:-

i. The Chairman ought certainly to be consulted, but it was important- particularly in a small place like Alderney "with its cliques and intermarriages" - that it should be understood that this did not mean that any recommendation of his would be automatically accepted.

ii. The Lieutenant Governor would as before ask the President of the States of Alderney for a recommendation but would instruct him to consult the Chairman and to forward the latter's views, whether or not he agreed with them (925863/4). The Lieutenant Governor, for his part, had "confidential means" of ascertaining public feeling in Alderney and would if necessary make enquiries in order to assist him in making his own recommendations to the Home Secretary.

iii. The Home Secretary's warrant had to be sent direct to the person named in it (of 92583/3) and could not, therefore, as the Insular Authorities suggested, be routed via the Lieutenant Governor's Office, the President and the Chairman before

reaching the person concerned. The Home Office would, however, send copies of the warrants to the Lieutenant Governor's Office for transmission to the President and the Chairman.

125. No objection was seen to appointing the Treasurer of the States of Alderney as a Jurat, on the clear understanding that he must not adjudicate in any case in which the States, or any of their Committees, was involved (925863/3). In 1974 no objection was seen to the appointment of a Jurat as the Lieutenant Governor's representative in Alderney (CIM/67 20/2/10). In 1972 some difficulties arose because a Jurat was elected to the office of President of Alderney and declined to resign his office as Jurat. The Home Office said that as there was no reason, under Alderney law, why a man should not hold both offices, there was no action that the Home Secretary could take (CIM/67 20/2/2). The law was subsequently changed (CIM/68 6/29/6).

SARK

126. In Sark the only Court is that of the Seneschal, who is appointed by the Seigneur or Dame, and need not be legally qualified. Under the Court of the Seneschal (Increase of Jurisdiction and Transfer of Prisoners) Law 1972, the Seneschal may impose a sentence of a fine not exceeding £50 and/or 1 month's imprisonment, provided that any sentence exceeding 3 days is to be served in Guernsey (for which Guernsey have made provision under the Prison Sentences (Reception of Sark Prisoners) Law 1971. (CIM 71 6/19/1). The 1971 Law confirms the right of appeal from the Seneschal's Court to the Guernsey Royal Court. As regards the appointment of a Deputy Seneschal see paragraph 105 above.

THE COURTS OF APPEAL

127. The 1947 Privy Council Committee on reforms in the Channel Islands considered the question of appeals against decision of the Royal Courts. At that time, the only appeals against decisions of the Royal Courts (except in so far as appeal lay from the Inferior to the Superior Number in Jersey and in certain circumstances to the Full Court in Guernsey) were to the Judicial Committee of the Privy Council. The appeal was as of right in civil cases, but inevitably involved delay and heavy expenditure (there was no provision for legal aid). In criminal cases, appeal was only by special leave of the Committee, and, as the Judicial Committee stated in the 1936 case of Renouf v The Attorney General of Jersey, the "give advice to His Majesty to intervene only if there is shown to be such a violation of the principles of justice that grave and substantial injustice has been done." They "have repeatedly declined to act as a general Court of Appeal". The last petition of its kind was that of Mr E R Manley-Casimir in 1965 (CIM/65 30/1/1). It is noted on CIM/79 64/5/2 that section 4 of the Judicial Committee Act 1833 provides for reference to the Committee by The Queen for advice, but that this would only be done on the advice of the Home Secretary and then only on a matter of great constitutional importance.

128. The report of the 1947 Privy Council Committee (Cmnd 7074) endorsed the proposal of the Islands for a joint Court of Appeal covering both Guernsey and Jersey, though the Committee did not accept the suggestion of the Jersey Royal Court that the judges should be confined to persons of Channel Island origin. Subsequently, with the agreement of the States of Guernsey and Jersey, an Order in Council was made (the Court of Appeal (Channel Islands) Order 1949) designed to establish a joint Court of Appeal, consisting of the Bailiffs of Jersey and Guernsey as ex-officio judges, and of ordinary judges appointed by the Crown, either generally or for any particular case or classes of case. The ordinary judges were to be persons who had either held high judicial office in the Commonwealth, or who had been practising barristers for at least 10 years in the Islands (including for this purpose former Law Officers) or the United Kingdom, and preference was, wherever practicable, to be given to a person having knowledge of the laws and customs of the Channel Islands. (For the text of the order, see pages 124-51 of

Volume XIV of the Guernsey "Orders en Conseil"). The substantive provisions of the Order were to come into force at such time or times as might be appointed by further Orders in Council.

129. But despite the Island agreement with the concept of a joint Court, difficulties and disputes arose between them as to the practical implications. Some of these were of a financial nature which were being or could probably have been resolved, but the sticking point seems to have been that, because the Bailiff of Jersey did not intend to sit at the hearing of cases in the first instance, whereas the Bailiff of Guernsey (who then had no deputy) would be doing so, the Jersey Bailiff would in effect be permanent President of the Court of Appeal, a prospect which was unacceptable to Guernsey. It therefore became apparent that the idea of a joint Court would have to be abandoned in favour of separate Courts for the two Bailiwicks (CIM 30/2/2). After prolonged discussion over sever years, during which at one stage the Bailiffs were warned that if there were no sign of progress the Home Secretary would have to ask his colleagues on the Committee of the Privy Council for the Affairs of Jersey and Guernsey "to consider what advice should be tended to The Queen to ensure that Her Order is carried out", agreement was reached between the Home Office, the Lord Chancellor's Office and the Insular Authorities on the terms of laws which were passed by the States in 1961, and the 1949 Order in Council was revoked. The 1961 Laws provide for a Court of Appeal for each Bailiwick consisting of the Bailiff and, in Jersey, the Deputy Bailiff, as judges ex-officio, and of ordinary judges appointed by the Crown (in practice on the recommendation of the Home Secretary, after consultation with the Lord Chancellor). The qualifications for appointment as an ordinary judge are the same as under the revoked Order in Council, except that there is no statutory requirement to give preference to persons with knowledge of Channel Islands law. Undertakings were however given that only persons acceptable to the Insular Authorities would be recommended for appointment and accordingly any names suggested are agreed with the Bailiffs.

130. Each Court of Appeal consists of an uneven number of judges (to allow for majority decision) with a minimum of 3. The Bailiff is President, unless he is unwilling or unable to act (for example because he adjudicated in the case which is the subject of appeal). In that event, the Deputy Bailiff is President. The post of Deputy Bailiff was not created in Guernsey until 1969, and before that date a judge chosen by the Court would preside if the Bailiff were unable to do so. The Court of Appeal (Amendment) (Jersey) Law 1976 provides that in criminal cases an ordinary judge of the Jersey Court of Appeal may preside over the Superior Number of the Royal Court sitting as a Court of Appeal. (CIM/75 30/2/4). Previously, under the Court of Appeal (Jersey) Law 1961, only the Bailiff or Deputy Bailiff was able to preside, and practical difficulties had arisen.

131. It has been possible to preserve the concept of a joint Court to the extent of having a common panel of ordinary judges for both Courts. The judges have separate warrants for each Court. On the basis that about 12 appeals are likely to be heard each year, and that the panel should be small enough to ensure that all members have opportunities for sitting and gaining experience in Insular laws, 6 ordinary judges - English barristers - were initially appointed. In addition, and in accordance with their wishes, the Bailiff of Guernsey was appointed as an ordinary judge of the Jersey Court of Appeal and vice versa (CIM 30/2/10).

132. The emoluments of the "ordinary judges" are determined by resolution of the States. Since the Courts are not in session, but sit only when the need arises, payment is on a daily fee basis, which is kept in line with corresponding fees for judges in England who sit from time to time.

133. As regards civil appeals, the Courts took over the appellate jurisdiction formerly exercised by the Superior Number of the Jersey Royal Court and by the Guernsey Royal Court sitting as a "Cour des Judgements et Records". An appeal lies from the Court of Appeal to the

Judicial Committee of the Privy Council as of right where the amount in dispute id £500 or more, and with the special leave of the Council or Court of Appeal in other cases. In criminal cases, the respective Courts of Appeal may hear appeals from convictions or sentences imposed by the Guernsey "Full Court" and by the Superior Number of the jersey Court, but the latter is still the appellate body for cases determined by the Inferior Number. The powers of the Courts of Appeal are, subject to the points mentioned below, modelled on those of the English Court of Appeal (Criminal Division). Thus an appeal (except against one against conviction on a question of law alone, or on a certificate from the trial judge) may be made only with the leave of the Court of Appeal, which may be granted by a single judge, and there are provisions for legal aid. The Home Secretary has similar powers to those under the English law to refer a case to the Insular Courts of Appeal, but no instance has yet arisen (though he was asked to do so in the case of I S Le Brun - see paragraph 262). The courts may make procedural rules, and have done so in consultation with the Home Office. A right of appeal in criminal cases lies from the Court of Appeal to the Judicial Committee of the Privy Council, but leave would only be granted where questions of great and general importance were raised.

134. As a result of changes made in the English law since 1961, but not reflected in any subsequent Insular legislation, there are now certain differences between the two in respect of appeals:-

i. The Insular Courts of Appeal may increase a sentence on appeal; the English Court lost this power in 1966 - and regained ...

ii. Applications for leave to appeal must be made within 10 days of conviction or sentence. In England the period is 28 days.

iii. An unsuccessful applicant for leave to appeal "loses time" ie the whole or part of the time spent as an appellant is in effect added to his sentence, unless the court otherwise orders. In England, since 1966, an appellant does not lose time unless the court specifically so orders.

2. LEGISLATION

135. In the context of the Channel Islands, the terms "Imperial Parliament" and "Imperial legislation" are sometimes used - for example, in Appendix A to the 1971 Home Office Memorandum to the Royal Commission on the Constitution. Alternatively, reference is made to the "United Kingdom Parliament", as for example in Jersey Memorandum to the Royal Commission. Either of these terms may be used, though "Imperial" carries implications which do not reflect the nature of our present relationship with the Islands; but it is also not out of order to refer simply to "Parliament" and "Acts of Parliament" so long as it is clearly understood that this means the Parliament at Westminster and its enactments, as distinct from the Insular States and Tynwald and theirs. The term "Westminster legislation" is frequently used nowadays in correspondence with the Islands. Insular legislation in Jersey and Guernsey that has received Royal Assent becomes a Law rather than an Act; Manx laws are called Acts, but for clarity in this memorandum are referred to as Acts of Tynwald.

A. GENERAL PRINCIPLES

136. The Channel Islands do not come within the United Kingdom, but are included in the "The British Islands", are "British possessions" and are not "colonies" (Interpretation Act 1889, section 18 - see paragraph 1 above. Acts of Parliament do not apply to the Channel Islands unless they are expressed in terms to apply to the, or do so by necessary implication. Parliament has, however, the right to legislate for the Islands, if need be. (CIM/63 1/2/16). There is a

discussion of this subject in Mr Eagleston's memorandum (at Appendix to Part C of Mr Glanville's memorandum) under "the Extradition Act 1870", and it is dealt with on 430237/7(1922) and 890463/15(1951).

137. The Royal Commission on the Constitution considered the matter, and came to the conclusion that "In such cases [where there is an irreconcilable conflict of view between the governments of the Channel Islands (or the Isle of Man) and the United Kingdom] we are firmly of the opinion that the United Kingdom Government has, and should retain, the right in the last resort to legislate for the Islands" (paragraph 1513 of Part XI of Volume 1 of the Report of the Royal Commission on the Constitution, 1969 to 1973).

138. It is, however, a constitutional convention, from which there is no present intention to depart, that Parliament does not legislate for the Islands on taxation or other domestic matters without their assent. This is, however, merely a convention, and although in practice it has not been infringed for very many years so far as the Channel Islands are concerned, nevertheless the United Kingdom would not accept that there is any formal limit to Parliament's powers - and the Royal Commission on the Constitution supported this view, stating in paragraph 1473 of Part XI of Volume 1 of their Report (Relationships between the United Kingdom and the Channel Islands and the Isle of Man) "But if, exceptionally, circumstances should demand the application to the Islands without their consent of measures of a kind hitherto regarded as domestic, then Parliament would, in our view, have the power to enact the necessary legislation." Thus the Royal Commission rejected the suggestion by the States of Jersey that Parliament had, by convention, renounced its ultimate right to legislate for the Island in domestic matters. It is interesting to note that the memorandum by the States to the Royal Commission differed from a memorandum of 1968, to which the Home Office did not take exception, which had included a clear statement that "Jersey is subject to the legislative supremacy of Parliament, which has a "paramount right to legislate for the Island. As a matter of strict law, that right extends to every field of legislation, including subjects of purely domestic concern and taxation, and may be exercised without the consent of the States." This memorandum is reproduced as Annex A to the Memorandum by the Home Office and the Foreign and Commonwealth Office to the Royal Commission, reproduced in Volume VI of the Minutes of Evidence of the Royal Commission.

139. Acts that apply by necessary implication are rare. The Regency Act 1937 provides for the delegation of the functions of the Sovereign and applies by necessary implication to all the Sovereign's dominions. The same principle applies to the Royal Titles Act 1953.

140. Consistently with constitutional convention, the Acts of Parliament which apply to the Islands, either directly or by extension with or without modification by a "statutory" Order in Council, are normally those dealing with matters where it is necessary or desirable for the law to be the same throughout the British Isles. A list of such legislation is at Annex B to the Home Office and Foreign and Commonwealth Office Memorandum of Evidence to the Royal Commission on the Constitution, referred to in paragraph 138 above. There is no modern instance of an Act having to be imposed upon the Channel Islands, and because the usual method of extending an Act to them is by means of "statutory" Order in Council, the Insular authorities are in effect consulted about legislation before it is applied to them. It appears that one has to go back as far as the Habeas Corpus Act 1679 to find an example of legislation which applied in terms without consultation to the Channel Islands: section 10, which is still in force, provides that a writ of habeas corpus "may be directed to run ... into the Islands of Jersey or Guernsey any law or usage to the contrary notwithstanding". This Act, however, took effect before the Island States had acquired their present range of legislative powers. It was supplemented by the Habeas Corpus Act 1861, which also applies directly to the Islands because it complemented the earlier Act, even though by that date the standing of the States was different. The most recent example of an Act applying in terms is the Southern Rhodesia Act

1965. (CIM/67 610/1/1).

141. Over the years United Kingdom governments have become more ready to allow the Insular authorities to enact their own legislation (see paragraphs 167 to 195 below) even though it may be in parallel with ours, rather than applying our legislation to them. This point may be illustrated with reference to "summer time" legislation. In 1922 the question of "summer time" was regarded as one which was pre-eminently for United Kingdom legislation, and could not be entrusted to parallel Jersey legislation. An amendment was put down to the Summer Time Bill which would have had the effect of excluding the Channel Islands from its operation. The following is an extract from the "Notes on Amendments" (430237/7):-

> "He (Sir Bertram Falle) and a party in the Channel Island dislike being legislated for by the Imperial Government and some of them would say that Parliament has no right to interfere in Channel Island matters. This is a claim which never has been admitted and cannot be admitted for a moment. The Imperial Parliament has frequently legislated for the Channel Islands. To take two or three instances at random - the Burial Laws Amendment Act of 1880 which gave non-conformists the right of burial in the parish churchyard without the performance of the Church of England rites was made to apply to the Channel Islands; so was the great Friendly Societies Act of 1896 which consolidated the law relating to Friendly Societies, and the Collecting Societies and Industrial Assurance Acts of the same year and quite recently Section 40 of the Criminal Justice Administration Act 1914, relating to the service and execution in the Channel Islands of process issued by Courts of Summary Jurisdiction in England. The Imperial Parliament does not legislate of course unnecessarily or vexatiously for the Channel Islands. It leaves all purely local matters to the Islanders themselves to settle, but certain questions arise from time to time on which it is important that the law should be the same throughout the British Isles and on such matters the Imperial Parliament has and exercises the power to legislate for the Channel Islands. If there is one matter more than another on which it is desirable that there should be such uniformity one would say that it was the matter of "time". Sir Bertram Falle will perhaps say that Jersey is quite willing to follow the example of the Imperial Parliament in legislating for Summer Time and it has in fact during the present year passed a law (which however has not yet received the Royal Assent) adopting Summer Time permanently on the lines of the present Bill. They did this of course because they did not wish the Imperial Parliament to legislate for them, but what they can do they can (subject to the Royal Consent) undo at any time, and it would be very undesirable that there should be any room for dispute between the Channel Islands and Great Britain on the subject of Summer Time. Sir Bertram Falle may urge that any provision in the Bill relating to the Channel Islands is unnecessary as without any such provision the Crown can direct the registration of the Act in the Island, and it would thereupon apply. It would be unsafe to rely on the Islands accepting this position and it is important that there should be no room for dispute as to the application of the Bill to the islands. It is suggested that the amendment should be resisted ....."

142. Until 1968 "Summer Time" in the Channel Islands continued to be determined by United Kingdom Acts or Orders in Council made thereunder. In connection, however, with the preparation of the British Standard Time Act 1968, which provided for "summer time" throughout the year for an experimental period of 3 years, the Home Office agreed that the matter could be left to parallel Insular legislation, if the Insular authorities so desired. Accordingly Section 3 of the 1968 Act had the effect that the Act did not apply to Jersey, Guernsey, or the Isle of Man if "other provision" was made by their respective legislature, and Jersey enacted its own parallel legislation - the Time (Jersey) Law 1968. (Guernsey were content for the United Kingdom Act to apply to them, and the Isle of Man passed the Manx Time Act

1968 which provided simply that the time there should be that currently prevailing in the United Kingdom). Following the decision of Parliament in December 1970 not to make "British Standard Time" permanent, Jersey told the Home Office that they proposed to let their 1968 Law expire, and the States passed the Summer Time (Jersey) Law 1972 which contains parallel provisions to those of a United Kingdom Summer Time Act (CIM/66 266/1/3,4,9,10,11).

The Exercise of the Residual Power to Legislate

143. The United Kingdom Government has never found it necessary to resort to the residual power to legislate and it would only do so "in extremis". Such action might be necessary in the event of constitutional breakdown, grave internal disorder, or perhaps in the light of international considerations. Even the memorandum by the States of Jersey to the Royal Commission on the Constitution (minutes of evidence Volume VI) in maintaining that "the United Kingdom Parliament is precluded by convention from encroaching on the field of domestic autonomy achieved by an overseas territory", went on to say "except where a constitutional breakdown or subversion of the machinery of government occurs". It might, however, conceivably be necessary to legislate on other matters, such as perhaps drugs or immigration if a uniform policy throughout the British Isles seemed absolutely essential to the United Kingdom Government, and the Channel Islands were unwilling to fall into line.

B. APPLYING ACTS OF PARLIAMENT TO THE CHANNEL ISLANDS

144. The practice of applying an Act directly to the Islands is still followed (as indicated in Annex B to the Joint Home Office and Foreign and Commonwealth Office Memorandum to the Royal Commission on the Constitution and also in the memorandum by the States of Jersey, minutes of evidence Volume VI, pages 15 and 103 respectively), but the more usual practice, where application of an Act to the Islands is or may be desirable, is for the Act to contain a provision empowering the Sovereign by Order in Council to extend to the Islands any of the provisions of the Act, subject to such exceptions, adaptations and modifications as may be specified in the Order. It is convenient to refer to this method as extension by "statutory" Order in Council. It is normal for the Insular Authorities to be asked whether they are content for the legislation to include such a provision.

145. Under this procedure, the Act of Parliament commits the Islands to nothing. Consultations with the Island authorities about the provisions which should be extended and any necessary modifications can be pursued subsequently, without delaying the passage of the Act. The application by Order in Council to the Islands can be timed to fit in with political and other circumstances there, and it may sometimes be found that it is not necessary to extend an Act to the Island, but the enabling power remains in reserve.

146. To extend an Act in this way all that is necessary is to arrange for a draft Order in Council to be prepared and submitted to the Privy Council Office for the Royal Assent. The arrangements for drafting the Order in Council vary from case to case. In the simplest case, where it has been agreed with the Islands and any other government departments concerned that the whole Act should be extended, it is only necessary to ascertain whether any modifications are required, and on receipt of this information the Home Office Legal Advisers prepare a draft order. In more complicated cases where difficult questions of policy arise, it may be desirable for the first draft to be prepared in the Islands, though they have been known to object to being asked to do this - see 476061/95. Subsequent re-drafts may be prepared by the Home Office or the Government Department primarily concerned. An example of long and difficult consultations, with several redrafts, is provided by the extension of the Civil Aviation Act 1949 (929000). More recent examples are the Sea Fish (Conservation) Act 1967 (CIM/63 726/4/6) the

Sea Fisheries Act 1968 (CIM/68 820/4/11,27), and the Merchant Shipping Act 1974 (CIM/70 106/1/4-7).

147. When the draft of an Order in Council extending an Act has been finally agreed, the draft is submitted to the Secretary of State with a brief note explaining the purpose of and necessity for the Order, and recommending his approval of submission of the draft to the Privy Council Office. If he approves, the file is sent to the Legal Advisers Branch, to arrange for printing and submission to the Privy Council Office. When Royal Assent is received the Order in Council is sent to the Lieutenant Governor and is subsequently registered by the Royal Court of the Island concerned (see paragraphs 196 to 214 below).

Joint Committee on Statutory Instruments

148. This Committee has recently requested a memorandum on certain Island. Orders in Council, namely the Value Added Tax (United Kingdom and Isle of Man) Order 1974 (CIM 72 529/15/3), and the Orders made for all three Islands under the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 (CIM 73 192/2/5,13).

Application to the Channel Islands of Orders or Regulations made under an Act

149. In cases where an Act provides for detailed arrangements to be made by means of subsidiary Orders or Regulations, it is usual to ensure that these do not apply automatically to the Channel Islands by providing in the Order in Council extending the Act that any such Order or Regulation does not come into force until registered by the Royal Court. Pages 17 to 18 of Mr Glanville's memorandum touch upon this matter (CIM/63 1/2/16). The procedure for drawing up subsidiary orders and regulations is on the same lines as in the case of Orders in Council (see above). An example of long and difficult negotiations is the Civil Aviation (Investigation of Accidents) Regulations (CIM/66 480/2/8).

The Repeal or Expiry of Acts of Parliament which have been extended to the Channel Islands

150. From time to time the question arises whether an Act which has been extended to the Channel Islands by Order in Council continues to have effect in the Islands after it has been repealed, or has expired, in this country. A number of legal opinions were obtained on particular cases: these were brought together on file 929680 and the guidance of the then legal adviser, Sir Leslie Brass, was sought as to the proper reconciliation of these opinions. Following his minute of 20 November 1956, certain general principles were laid down:-

i. Where a temporary Act is extended by Order in Council to an Island, the Act ceases to be operative in the Island as well as in the United Kingdom when the time enacted for its expiry arrives.

ii. Where an Act has been extended by Order in Council to an Island and the Act and the power to extend is repealed, the Act so extended comes to an end in the Island also.

iii. Where an Act has been extended by Order in Council to an Island and the Act (including the power to extend) is afterwards repealed in the United Kingdom by another Act which itself provides expressly for its own extension by Order in Council to the Island, the former Act continues in force in the Island until it is repealed there by the later Act being extended.

iv. Where an Act has been extended by Order in Council to an Island and the Act is

repealed by a later Act but the power to extend by Order in Council is left unaffected, the original Act probably does not continue in force in the Island; but if a case arose in which the power to extend had been exercised before the Act was repealed in the United Kingdom, it is likely that the court would determine the intention of the legislature after a consideration of all the relevant circumstances.

v. A statutory provision which has become law in the Islands by means of Prerogative Order continues in force in the Islands though repealed in the United Kingdom.

vi. Where Acts are directed to be construed as one, a section empowering Her Majesty by Order in Council to extend the earlier Act to the Islands and to vary and revoke such Order by a subsequent Order may be used to extend the Second Act to the Islands, though it is preferable for the later legislation to contain express provisions. Construction as one does not bring the later Act under the umbrella of an existing Order in Council already made extending the earlier Act to the Islands.

151. These principles apply equally to the Isle of Man. For a recent instance see CIM/72 95/4/5.

Prerogative Orders of the Sovereign in Council

152. A Prerogative Order in Council is one made in the exercise of the Sovereign's prerogative, and is thus to be distinguished from what are conveniently referred to above as Statutory Orders in Council. The latter are Orders made in pursuance of provisions of an Act of the United Kingdom Parliament - normally, provisions for extension of the Act or specified parts of it to the Islands by Order in Council with such modifications as may be prescribed by the Order. Or provision may sometimes be made for "Statutory Orders" to meet special situations: for example, section 87 of the Post Office Act 1969 empowered Orders in Council to be made to enable effect to be given to agreements reached between the Islands and the Minister of Posts and Telecommunications regarding their takeover of postal services.

153. Historically, the Prerogative Order in Council has been used as a means of legislating directly for the Channel Islands. This is an exceptional method nowadays, but it is worth devoting some attention to past history insofar as it established, confirmed or illustrated some leading principles affecting constitutional relationships with the Islands, and a survey of the development of the use of the Prerogative Order is at paragraphs 218-237.

154. The Prerogative Order has also been used as a means (alternative to the Statutory Order) of extending a United Kingdom Act to the Islands. The only example of this, however, at any rate in modern times, seems to be the Prerogative Order made in 1945, in advance of the liberation of the Channel Islands, to extend to them the Telegraph Act 1943 which had been passed while the Islands were under German occupation and which had not contained the normal provision for extension by way of a "statutory" Order.

155. This instance may almost be regarded as the exception that proves the rule that the Prerogative Order is not in these days used for extending an Act of Parliament. The other point of interest about the 1945 Order is that it in effect disposed of an argument put forward in the 1920s by the Privy Council Office in correspondence with the Home Office about the way in which a Prerogative Order might be used to apply United Kingdom legislation to the Channel Islands. The Privy Council contended that a Prerogative Order could not make an Act of Parliament applicable to an area not mentioned in the Act. The Home Office administrators accepted that an Order could not take the form of simply extending such an Act to the Islands, but suggested that the Order could achieve the same result by "prescribing for the Islands what

had been prescribed for this country by Act of Parliament" (470102/7,17). The 1945 Order in Council, which was drafted by the Home Office Legal Adviser, did not trouble with such niceties. It simply said that "the Telegraph Act 1943 shall extend to the Channel Islands", and provided that the Act should be registered and published there (691828/2). It appears from the same papers that an Order was also made directing the registration of the Expiring Laws Continuance Act 1944, and the Army and Air Force Annual Act 1944, as it was felt necessary that these Acts also should apply to the Islands as soon as they were liberated.

Principles and Modern Practice Governing Prerogative Orders

156. A survey of the use of prerogative orders is contained in the appendix to this section beginning at paragraph 218.

157. The only significant Prerogative Orders of a legislative nature, apart from the exceptional 1945 Order referred to in paragraph 155 above, have been the Order of 1916 relating to the States of Alderney, the Order of 1922 reforming the constitution of Sark, and the Court of Appeal Order of 1949, each of which was made following a special enquiry and report by a Committee of the Privy Council. As noted in paragraph 102-3,128 and the Appendix to this section, the 1916 Alderney Order and the 1922 Sark Order have been replaced, with amendments, by Guernsey legislation of 1948 and 1951, and the 1949 Court of Appeal Order never came into operation being superseded in 1961 by Jersey and Guernsey Laws which established separate Courts for each Bailiwick.

158. The Jersey case of 1852-3 (see paragraphs 219 to 220 of the Appendix to this section) established that as a matter of constitutional convention a Prerogative Order materially affecting the institutions of the Islands should not be made without the assent of the States, and the Guernsey Petition of 1861 (paragraphs 230 to 232 of the Appendix to this section) established that, a fortiori, the Home Secretary should not do so by administrative action. The Jersey Prison Board case seems to have established that a Prerogative Order ought not to be made even on a procedural matter, without the agreement of the States, if the effect is to modify some provision which was part of an earlier "package deal" with the States. It has been said (for example in paragraph 2(b) of Part II of the Annex to Lord Taylor's report of his 1965 visit to the Channel Islands) that the 1852/3 Jersey case established the principle that to introduce taxation by a Prerogative Order without the consent of the States would be "unconstitutional". (CIM/74 1/2/9). It is true that the 1852 Prerogative Orders, by providing for the appointment of salaried judges and for a paid police force in St Helier, would have imposed new expenditure on the States about which they had not been consulted - and this was not the least of the States grounds of objection. The terms of the Privy Council's advice to The Queen in 1853 that the 1852 Orders should be revoked did not however refer expressly to taxation.

159. It can certainly be said that nowadays a Prerogative Order would not be made without consultation with the States, unless there were wholly exceptional circumstances such as those of the January 1945 Order, where action was necessary but consultation impossible. The Prerogative Order is now a most exceptional method of legislating, the normal means being the extension by "statutory" Order of an Act of the United Kingdom Parliament, or insular legislation. The Prerogative Order has played a distinctive constitutional role, but its day is now largely past. The 1949 Court of Appeal Order illustrates many of these points. The provision of a single Court of Appeal for the Islands was a domestic matter and thus not, by convention, appropriate for an Act of the United Kingdom Parliament, yet it could not be provided for by separate Laws of the States of Jersey and Guernsey, so the Prerogative Order was resorted to by consent as the most convenient way of proceeding. But later when it became clear that the idea of a single Court of Appeal would have to be abandoned in favour of separate Courts for each Bailiwick, these Courts were established by separate Laws of the States and the 1949 Order was revoked -

although, as indicated in paragraph 129 above, the existence of the Order served to some extent to keep the States up to the mark in proceeding with their legislation. Similarly, and to a much greater degree, the 1852 Prerogative Order in Council had the effect of stimulating, if not forcing, Jersey to introduce long overdue reforms which might otherwise have been indefinitely postponed.

160. Although the Prerogative Order is now rarely used, the Home Office does not accept the contention of the States of Jersey in their written evidence to the Royal Commission on the Constitution (Minutes of Evidence Volume VI, page 102) that "the prerogative power of altering the law of Jersey..... appears to have been superseded". The fact that the power has not been greatly exercised during the twentieth century does not mean that it has lapsed altogether. In practice the prerogative power has been superseded by other methods of legislating, but as a matter of constitutional principle the power is merely dormant. If the time ever came to exercise the residual power to legislate, which the Royal Commission on the Constitution recognise still to exist (see paragraph 143 above), the Prerogative Order in Council might well be the mans of doing so.

Registration of Prerogative Orders

161. A Prerogative Order, like a Statutory Order, is sent to the Islands with a command to register it in the Royal Court. In Jersey, as noted by the Royal Commission of 1847, the Insular Code of 1771 has the effect that the Royal Court may, in any case where the Order appears to be contrary to the charters or privileges of the Island, or burdensome, suspend registration until the pleasure of the Crown be further taken, and meanwhile the Order does not take effect. If the Crown reconsiders the matter and does not withdraw the Order, it must be registered and therewith takes effect. As regards Guernsey, the 1847 Report of the Royal Commission took the view that the Court there had no discretion with regard to registration and was bound to register a Prerogative Order when it was received without in any way suspending its operation.

The Right of the Insular Authorities to make Representations

162. From time to time in the past the Insular Authorities have made formal representations to the Sovereign against the application to the Islands of Acts of Parliament or Orders in Council. The Jersey Code of 1771, (the code is summarised in Appendix I to the Jersey evidence to the Royal Commission on the Constitution), beginning at paragraph 6/10 (page 159) contains the following passage, the authority for which is said to be an Order in Council dated 21 May 1679:-

> "Les Loix et Privileges de l'Isle sont confirmes comme d'anciennete, et aucuns Ordres, Warrants, ou Lettres de quelque nature qu'ils soient, ne seront point executes dan l'Isle, qu'apres avoir ete presentes a la Cour Royale, afin d'y etre enregistres et publies: et dans les cas que tel Ordres, Warrants ou Lettres soient trouves contraries aux Chartres et Privileges, et onereus a ladite Isle, l'enregistrement, l'execution, et la publication en peuvent etre suspendus par la Cour, jusqu'a e que le cas ait ete represente a Sa Majeste, et que son bon plaisir soit signifie la-dessus."

163. The passage goes on to deal with the necessity for registration of Acts of Parliament, but does not specifically say that there is a right of making representations in regard to these. There does not appear to be a similar provision in regard to Guernsey, but the right of making representations has evidently been exercised, at least in regard to Orders in Council, from time immemorial. To quote only one example, on page 254 of Volume II of the "Actes des etats de l'Ile de Guernsey" it is recorded that on 7 April 1767 the States of Guernsey decided to send their representative "pour representer bien-humblement a Sa Majeste les Griefs et torts" which the inhabitants would suffer as a result of an Order in Council of 13 February 1767, establishing

customs officers in the Island. The States conceived that the Order was "contrarie aux Privileges Franchises et Immunites accordes aux Habitants de ces Isles par nos Illustres Souverains Rois et Reines d'Angleterre, par plusierus Chartres sous le Grand Soeau d'Angleterre et dont ils ont joui de tous temps".

164. In Jersey, difficulties arose in 1869 and 1875 over Orders in Council regarding Ecclesiastical Districts (see 39550, especially 3955OA/6). When an Order in Council of 7 October 1869, forming the District of St Andrews, was sent down for registration together with three Acts of Parliament, it was observed that Jersey was not mentioned in the Acts (one of which provided for the formation and endowment of separate and district parishes) and on 12 January 1872 the States decided to withhold the registration of the Order and Acts. An Order in Council was then sent, intimating that if the States would not comply with the preceding Order, a Peremptory Order would follow: on this, the States yielded, but not without making their views on the matter known by way of a States Committee Report. On 26 October 1875, an Order in Council was issued sanctioning the formation of a consolidated chapelry out of certain parts of the parishes of St Martin and Grouville. Objections to this Order were raised in the States, principally "on the ground that 2 of the 3 Acts in pursuance of which the said consolidated chapelry is alleged to be formed..... have not force of law in the said Island..... in consequence of the said Island of Jersey not being specifically and by name mentioned.....". As a result of these objections a Bill entitled "The Channel Islands (Applicability of Acts) Bill" was introduced at Westminster "to remove doubts as to the applicability of certain Acts of Parliament to the Channel Islands". The Bill was read a first time on 8 July 1879 and withdrawn on 5 August 1879, before Second Reading, perhaps because it became clear that opinion in Jersey was by no means all favourable to the Bill, or more particularly to the dismemberment of the existing parishes of St Martin and Grouville. (The dismemberment was ultimately affected by Order in Council dated 17 September 1900, registered in Jersey on 20 October 1900 - see Receuil de Lois, 1900-1907, page 81).

165. In Guernsey, objection was taken to some of the provisions of the Customs Consolidation Act 1876 (see 58303/1-12). When this was sent down with an Order in Council for registration, the Royal Court, being of opinion that representations should be made to Her Majesty in Council with reference to certain provisions contained in the said Act of Parliament, ordered on 16 September 1976 that the said Act of Parliament should be registered provisionally for six months. The Bailiffs submitted objections to sections 157 and 205 of the Act: as to section 157, on grounds of difficulty of application because of vagueness of meaning; as to section 205, partly on grounds that the Channel Islands should have been dealt with in a separate section. As no reply had been received to these representations by 10 March 1877, the provisional registration was extended by the Court for three months. The file does not itself show the outcome, but a note on it states that from B 15823/1 it appeared that the Bailiffs' representations were considered under the Rules. An Order in Council of 13 August 1877 directed registration in the usual way.

166. Other instances of representations being made are recorded in Mr Eagleston's memorandum of 18 December 1923, which is reproduced at the Appendix to Part C of Mr Glanville's memorandum (CIM 631/2/16). In 1939, when consultations were going on about the extension to the Channel Islands of the Air Navigation Acts, Mr Duret Aubin said in a letter of 22 March 1939, (476061/70) that the Bailiff of Jersey thought that, insofar as Jersey was concerned and in order to avoid any possible misunderstanding in the future as to what had been intended, it should be specifically provided in extending the Order that the Royal Court of Jersey should, in relation to "any Orders or Regulations made or Directions given by the Secretary of State thereunder", have the same right of representation to His Majesty as it possessed under the Code of 1771 in relation to "aucuns Ordres, Warrants ou Lettres de quelque nature qu'ils soient" (see extract from Code in paragraph 162 above). This suggestion was not adopted in the Order (the

Air Navigation Acts (Extension to Channel Islands) Order 1939), but at a meeting with the Attorneys General it was agreed that a letter should be written to Jersey containing the explicit safeguard they had requested. In the Home Office letter dated 2 September 1939 under which the Order in Council was sent for registration (476061/74), the following passage occurs: "it is also acknowledged that the Royal Court of Jersey has, in relation to any Orders or Regulations made or Directions given by the Secretary of State under the Air Navigation Acts, same rights of representation to His Majesty as it possesses under the Code of 1771 in relation to "aucuns Ordres, Warrants ou Lettres de quelque nature qu'ils soient".

C. INSULAR LEGISLATION

167. The Island authorities have always favoured local legislation, preferring to pass their own laws, even though they may be exactly parallel with ours, rather than that ours should apply to them. In practice the Islands are consulted as to the best procedure to adopt in each case that arises and over the years the United Kingdom Government has become more disposed to allow the Islands to pass their own legislation - see paragraphs 141 to 142 above. The question of the preference for local legislation is touched upon by Mr Glanville in his memorandum (CIM/63 1/2/16) at pages 3-4, and by Mr Eagleston (see his memorandum at the Appendix to Part C of Mr Glanville's memorandum).

General Principles

168. It is constitutionally improper for insular legislation to purpose to amend United Kingdom Acts. (CIM/63 1/2/16). Mr Glanville refers to this point in Part B of his memorandum, at page 15, and a more recent example arose in 1957 when the Jersey Attorney General suggested that the Trustee Savings Bank Act 1954, which in terms applied to Jersey and had been registered there, should be amended in its application to Jersey by insular legislation. His suggestion brought to light the fact that on 2 past occasions (1834 and 1900) Savings Banks legislation of the United Kingdom Parliament had been amended by insular legislation, but as both the Home Office and the Privy Council papers had been destroyed it was not possible to discover in more detail how this legislation came to be allowed. The Home Office letter of 28 August 1957 to the Attorney General (CIM 234/3/6), while recognising the existence of these local laws, said that both we and the insular authorities seemed for long to have accepted that it was constitutionally improper for insular legislation to amend an Act which applied expressly to Jersey, and that we would be reluctant to see the proposal go forward and thus to allow a breach of the important constitutional principle involved. The Attorney General did not pursue the matter.

169. It is interesting to note that Sir Leslie Brass commented, in his Minute of 20 November 1956 on 929680 (Footnote on page 2) "In the past I have doubted whether there is any objection in law to insular legislation to which the Crown assents reversing a Westminster statute. Cases on occasion arise when to do so would be desirable". Such an occasion did arise over the European Communities Act 1972. Section 2(6) provides that a law passed by the legislature of any of the Channel Islands or the Isle of Man "if expressed to be passed or made in the implementation of the Treaties and of the obligations of the United Kingdom thereunder, shall not be void or inoperative by reason of any inconsistency with or repugnancy to an Act of Parliament passed or to be passed, that extends to the Island....., nor by reason of its having some operation outside the Island.....". This Section enables the Islands to give the force of law to so much of the Community legislation as is intended to be directly applicable to them and enables then to fulfil their Community obligations directly by means of local legislation rather than having a United Kingdom Act applied to them. The notes on clauses relating to this Section of the Act record that it would in theory have been possible to make provision for the Islands in Westminster legislation, "but it is much more satisfactory that they should legislate themselves in

every practicable respect to fulfil the European commitments". The significant point from the constitutional aspect is that this power conferring validity on local legislation which amends or differs from United Kingdom legislation is expressly given to the insular legislature by the Act, and this Section can therefore be regarded as continuing rather than derogating from the principle that insular legislation cannot in the normal course amend United Kingdom legislation: it can do so only in so far as a United Kingdom Act expressly states that t may. An earlier similar example is the Isle of Man Act 1958.

170. There is a further reference to divergencies between local and United Kingdom legislation in Part A of Mr Glanville's memorandum, page 6-7 (CIM/63 1/2/16).

171. There is no similar constitutional principle that insular legislation must match United Kingdom legislation which does not apply to the Islands. Thus the Jersey and Guernsey Courts of Appeal Laws of 1961 have not been amended to take account of certain changes made since that date in the English law with regard to criminal appeals, and Jersey and the Isle of Man have not yet followed Great Britain in the abolition of capital punishment for murder, though it may be added that the Genocide (Jersey) Law 1969, which is otherwise in parallel with the United Kingdom Genocide Act of the same year, provides for the death penalty for certain offences for which under the United Kingdom Act the penalty is life imprisonment. Numerous other instances could be cited. To mention one where the issue was from one point of view of lesser substance than those just mentioned, but of more practical every day effect, the Privy Council agreed with the Home Office in 1959 that objection should not be made in connection with the Guernsey Preservation of Natural Beauty Law to the absence of any provision for payment of compensation in cases of absolute refusal of permission for development. The Home Office emphasised the limited extent to which experience and practice in the United Kingdom could be applied to Guernsey, which depended so substantially on the preservation of natural amenities. This was essentially a matter which should be judged by the people of Guernsey, and there were no petitions against the proposed law (CIM/66 59/1/1). Another more recent example, in a different field, is the Motor Traffic (Third Party Insurance) (Amendment No. 4) (Jersey) Law 1979, which imposes penalties well in excess of those in this country (CIM/76 129/1/9).

172. In the field of road traffic legislation, the Home Office has been ready to contemplate the use of insular regulation-making powers to introduce provisions for which there is (or was at the time) no parallel in United Kingdom legislation, for example as to compulsory wearing of crash helmets or seat belts, provided that we are consulted in advance (CIM/64 129/1/8, 30).

173. Another difference of note is that under common law Guernsey retains corporal punishment as a judicial penalty. The most recent sentence was passed by the Court in 1974 on two youths who perpetrated a bomb hoax. Judicial corporal punishment has not been formally abolished in Jersey but it has not been used as a sanction in recent years. After the Guernsey sentence the Home Office wrote to the Lieutenant Governors of both Bailiwicks drawing their attention to the proceedings before the European Commission of Human Rights in respect of two youths who were birched in the Isle of Man in 1972, and to the fact that the propriety of corporal punishment had thus been called in question under an international convention applying to both the United Kingdom and the Islands. In the light of the subsequent judgment of the European Court of Human Rights in 1978, it is understood that the judiciary in both Islands accept that to pass a sentence of birching would be to risk a further successful petition under the Convention (see doc. 9 on CIM/74 170/14/55).

174. It can happen that a Westminster Act contains a provision for extension by Order in Council and yet the Islands pass local legislation on the matter. An example arose in relation to legislation about oil in navigable waters: the Legal Adviser's minute of 8 June 1966 records that "the justification for con-current legislative powers is that the imperial one is necessary for extra

territorial effect and it would seem to be wrong to argue from the mere existence of a power to extend by Order in Council that Tynwald is debarred from legislating for its own territory".

SUBMISSION OF PROJECTS DE LOI TO THE HOME OFFICE

175. It occasionally happens that the Island Law Officers choose to send a Projet de Loi to the Home Office in draft for comments. The consultation is entirely unofficial and dependent upon the initiative of the insular Law Officers. Consultation of this kind is less common nowadays that it once was, but a recent example is Guernsey's Gambling Law.

a. GUERNSEY

A Guernsey Projet de Loi, after being passed by the States, is sent by the Lieutenant Governor to the Home Office. The Lieutenant Governor also encloses a Petition to Her Majesty in Council, signed on behalf of the States by the Bailiff, praying for Her Majesty's sanction to the law; and a report by the Attorney General giving his opinion whether the law may properly be recommended to Her Majesty. The Lieutenant Governor states whether he concur in the prayer of Petition. The arrangement whereby the Attorney General submits his report with all Guernsey Projets and with those from Alderney and Sark, was made in 1931 (567948/2). The Home Office sends a copy of all the papers to the Privy Council for information (CIM/64 6/1/11).

b. JERSEY

The Jersey authorities have always insisted on their right of direct access to the Privy Council, (see for example 686446/3), but in 1974 a new arrangement was instituted whereby a Jersey Projet de Loi after being passed by the States is sent by the Lieutenant Governor direct to the Privy Council Office with the Law Officer's Report and a Petition to Her Majesty in Council, and the Lieutenant Governor sends a copy of the papers to the Home Office. The Privy Council Office takes no action on the Law until it receives a recommendation from the Home Secretary (CIM/64 6/1/11).

176. In 1973 the Home Office became concerned because a tendency appeared to be developing in Jersey for Bills to be passed by the States without having been referred to the Attorney General. The matter was taken up with the Lieutenant Governor and assurances were received that the Attorney General was not as a general rule short-circuited when legislation was prepared (CIM 64 6/1/9).

Examination of Projects

177. On receipt of a Projet from the Lieutenant Governor of Jersey or Guernsey together with the Law Officer's Report E2 Division examines the contents of the Projet and decides which other divisions of the Home Office or other Government Departments should be invited to offer comments. This is usually a fairly simple matter and in cases where there is some doubt whether a particular division or department may have an interest, it is normally better to risk consulting them unnecessarily than to fail to consult someone who should have been consulted. A full explanation of the way Island legislation is dealt with in Whitehall is to be found in a letter of 9 April 1974 to the Lieutenant Governor of the Isle of Man, on CIM/66 400/2/35. It is convenient to the Privy Council Office if the Departments of at least 2 Ministers who are Privy Counsellors, other than the Home Secretary, are consulted on every Projet before it goes forward for the Royal Assent, as this constitutes the quorum of the Privy Council Committee; but of course it is not always possible to find so many Ministers with a departmental interest in each Projet.

178. It is not the intention that divisions or departments should point out at great length all

the differences between the provisions of the Projet and the law prevailing in this country; it is accepted that on many subjects the law contained in Channel Island Projets will differ from the law of Great Britain and may quite properly do so. Mr Glanville cites an interesting old example on this score (B15796/9-10, 1914) at page 9-10 of his memorandum (CIM 63 1/2/16). It is hoped that from their experience and expert knowledge those consulted may be able to advise whether the provisions of the proposed law are workable or that they omit some desirable safeguard or violate some principle normally adhered to in this country; or that the Projet conflicts with obligations imposed by an international convention (see for example the comments of Inland Revenue on the draft Jersey Corporation Tax Law 1959 - CIM 229/1/1); or they may be able to suggest amendments which the Island authorities might wish to consider for future legislation. If when all the comments have been gathered in an amendment of substance to the Projet seems to be necessary or desirable, the relationship between the Home Office and the insular authorities is such that one would expect the matter to be settled between them with a view to the States withdrawing their Projet and submitting one revised to take account of the comments made. This is a fairly rare occurrence but an example is the Gambling (Jersey) Law 1964 (CIM 263/1/3). An example of the Home Office taking up numerous points on an insular Bill is the Rent Control (Guernsey) Law 1976 (CIM/71 57/4/3).

179. In the 1970's, the Home Office became concerned over a tendency in Jersey Projets for power to be taken to act through regulations made under Laws in fields in which the Home Secretary thought substantive legislation was more appropriate. The first version of the Hire Cars (Amendment) (Jersey) Law 1971 would have enabled the States to amend by regulations any of the provisions of the Hire Cars (Jersey) Law 1964 (CIM 64 129/1/23,33). After representations from the Home Office the power to make regulations was confined to matters of administrative details (CIM/73 6/138/1). On 26 October 1973 a letter was sent to the Lieutenant Governor about the Restriction on Smoking (Jersey) Law 1973, indicating that the Secretary of State considered that a provision concerning the minimum age of persons to whom cigarettes might be sold ought more properly to have been contained in the substantive law than in regulations made under it (CIM/71 31/6/5). Other examples were the Police Force (Jersey) Law 1974 which in draft included a power to specify by regulation the number of honorary police, and the Family Allowances (Amendment) (Jersey) Law 1973, which empowered the States by regulation to specify under what age a person should be deemed to be a child for the purposes of the Law (CIM/68 265/5/5). In the event the Attorney General of Jersey, who did not draft the legislation, declined to recommend that it should receive Royal Assent (although by then it had passed through the States and been submitted to the Home Office); leave was subsequently sought and granted for the Law to be withdrawn, the offending provision was re-drafted and became part of the Family Allowances (Amendment) (Jersey) Law 1974. Another example was a proposal by Jersey to introduce a Bill to enable any fine in any Law to be varied by Regulations (CIM/75 30/3/1). The Home Office is not in favour of this procedure; its view expressed by Mr Gordon Brown in 1958, (doc 01 on CIM/64 102/2/5) is that it is acceptable to prescribe penalties by ordinance in respect of offences created by ordinance, but not acceptable to prescribe penalties by ordinance where the offences are created in the Law itself. The point arose again in connection with a Bill proposed by Jersey in 1975 relating to the EEC (CIM/72 6/134/6). In general the Home Office view is that alterations to the terms of a Law by means of regulations (which are not subject to scrutiny by Her Majesty in Council) should be confined to points of administrative detail. Thus no objection has been taken to several Jersey Laws providing for the alteration of fees by regulation (see for example CIM/75 6/55/1, CIM/75 141/3/1, CIM/75 144/1/1, CIM/75 144/2/2).

Increase of penalties by subordinate legislation

179 (a) In response to an enquiry from the Attorney General of Jersey in connection with amended fines proposed to the Loi (1914) sur la Voirie (Highways Law), the Home Office wrote

in 1980 to say that there would be no objection in this instance to provision being made for penalties to be increased by means of subordinate legislation (Regulations), provided that the amended Law stipulated (a) a maximum fine which could not be exceeded without fresh empowering legislation; (b) minimum periods that must elapse between increases and (c) an injunction against increases in excess of the rate of inflation (CIM/80 6/168/1).

Scrutiny by Legal Adviser

180. From about the beginning of the century until 1949 the practice obtained of referring most insular legislation to the English Law Officers, before submitting it for Royal Assent, though in cases where Royal Assent was urgently required and the Home Office and Privy Council were satisfied that the legislation was in order, reference to the Law Officers was dispensed with. In 1949 the Law Officers' Department represented that this practice involved the Law Officers considering a lot of drafting points which it was not really their proper function to consider, and it was agreed between the Home Office, the Privy Council and the Law Officers' Department that the Home Office would in future be responsible for the examination of all Channel Islands (and Isle of Man) legislation, both on policy and in detail, and that only those laws which, in the opinion of the Home Office or the Privy Council, contained matters of difficulty or doubt which required the attention of the Law Officers should be referred to them (567948/22). Since then, reference to the Law Officers has been very rare. The Privy Council Office relies on legislation having been scrutinised by the Home Office Legal Adviser - see in this context CIM/68 429/1/7.

The responsibilities of the Home Secretary and the Privy Council

181. In earlier times, when there were troops, Crown lands and Crown revenues in the Islands, other Departments, as well as the Home Office, had a direct interest in insular affairs, and the Privy Council Office were responsible for co-ordinating consideration by all interested United Kingdom Departments of insular laws and other matters involving an Order in Council; though any claim by the Privy Council Office that its functions extended to taking part in consideration of all questions of policy affecting the Islands was always resisted as being the responsibility of the Home Secretary. Files 102581/2, 3 and B15796/9, 10, dating from the first decade of this century, deal with this question. Nowadays it is the Home Office and not the Privy Council which consults other interested Departments and co-ordinates their views, and it is the Home Secretary who recommends whether or not an insular law should be approved. The Privy Council Office reserves the right to refer insular laws to the Law Officers, but the necessity for this largely disappeared following the arrangement that all insular laws should be examined by the Home Office Legal Adviser. The most recent recorded case of a reference by the Privy Council Office to the Law Officers of a Channel Island projet was in 1936 (686666/5) (see paragraph 574 as regards the Isle of Man).

182. File CIM 250/1/1 contains correspondence with the then Lord President of the Council concerning the respective functions of the Home Office and the Privy Council Office in relation to Channel Islands business, and there is a memorandum by Mr Gordon Brown dated 8 July 1959 summarising previous papers. No similar issue of Ministerial responsibility seems to have arisen since then, but in 1965 the Clerk of the Privy Council represented, in connection with th submission of an Isle of Man Act for Royal Assent, that the Home Secretary should personally approve recommendations to the Privy Council with regard to insular legislation. The position then was -and had been for many years - that Home Office officials acted on behalf of the Home Secretary in this matter, as in others, unless issues of importance or controversy were involved, being reluctant to trouble the Home Secretary himself with insular legislation which raised no special issues, particularly in view of the increase in such legislation. The basis of the Clerk's contention seemed, however, to be that the Home Secretary was answerable for the Channel Islands and the Isle of Man not as a Minister is ordinarily answerable in the United Kingdom Parliament, but as a member of the Committee of the Privy Council appointed at the beginning of every reign to advise the Sovereign in the affairs of the Islands, and if in these circumstances the Clerk of the Council considered that, as a matter of Council procedure, he should be able to be satisfied, on receiving a Home Office letter recommending the grant of Royal Assent, that the matter had received the personal consideration of the Home Secretary, the Home Office felt that it would be difficult to controvert him (or at least that it was not worth making an issue of the point). Accordingly, with the agreement of the then Home Secretary, the practice was adopted and has since been followed of submitting all insular legislation to the Home Secretary before transmitting it to the Privy Council, though in times of exceptionally heavy pressure on the Home Secretary the agreement of the Privy Council Office is obtained to the legislation being submitted by the Minister of State (CIM/64 6/1/5). The most recent note about the procedure for submitting Island legislation to Ministers is on CIM/74 1000/1/1. As regards the Isle of Man see paragraph 603-606 and CIM/80 400/2/1.

Submission of Projets for Royal Assent

183. As outlined above, the Home Secretary sends the projet de loi to the Privy Council Office, expressing his opinion whether Her Majesty should be advised to approve it, and informing the Privy Council which other departments have been consulted (567948/1 and CIM/64 6/1/11). In the Isle of Man the power to signify Royal Assent is delegated in most cases to the Lieutenant Governor - see paragraph 603-606 below.

Petitions to the Privy Council against Insular Legislation

184. For historical reasons the Islands look to The Sovereign in Council and not to Parliament as the supreme legislative authority. Any permanent Act or Law passed by the local legislatures and the extension of any Act of Parliament to the Islands is sanctioned by an Order of the Sovereign in Council. There is a general description of the role of the Privy Council in relation to Insular legislation in a letter of 21 April 1967 from the Privy Council Office to the Clerk of Tynwald on CIM/64 494/1/20:

> "The history of the Privy Council can be traced back to Norman times and even beyond. Broadly speaking it can be said to be the Body on whose advice and through whom Her Majesty exercises certain prerogative and statutory powers. It must, however, be appreciated that constitutionally The Sovereign acts on the advice of Ministers; it follows, therefore, that the decisions taken in Council necessarily reflect the views and policy of the government.....
>
> All Acts of Tynwald submitted to Her Majesty in Council for Royal Assent and any Petitions from the Isle of Man stand referred, in accordance with an Order made on 22 February, 1952..... to a Committee of the Council for consideration and report. The constitution of the Committee will vary according to the subject matter of the Act or the Petition in question.
>
> In the case of an Order in Council applying the provisions of an Imperial Act of Parliament to the Isle of Man, Her Majesty in Council is advised by the Privy Council generally and not by the Committee referred to in the previous paragraph.
>
> It is not possible for the Isle of Man Government to be represented in the Privy Council. Nevertheless, where it is proposed to submit for the approval of Her Majesty in Council an Order applying the provisions of an Imperial Act to the Isle of Man, it is open to the Manx authorities to make written representations to the Privy Council and these will be considered before any advice is tendered to Her Majesty in Council.
>
> If, on the other hand, Tynwald decides to petition Her Majesty in Council, the Petition would, in accordance with the Order of 1952, stand referred to the Committee of the Council and it would be for the Committee to consider whether representatives of the Isle of Man Government should be invited to appear to elaborate the views of that Government."

185. The principles set out in the letter just quoted apply equally to the Channel Islands, in respect of which a separate Order in Council was made on 22 February 1952. A copy of these

two Orders in Council is to be found on CIM/64 6/1/7. As regards petitions against Orders in Council applying Imperial Acts to the Islands see paragraphs 162 to 166 above and paragraph 189c below.

186. Nowadays, if a Petition is received against Insular legislation submitted for Royal Assent it is sent to the Home Office, who obtain the views of the appropriate Insular Attorney-General and in due course inform the Privy Council Office of the views of the Secretary of State on the Petition. An account of the relationship between the Home Office and Privy Council Office on the matter of Petitions earlier this century is to be found in a memorandum of 8 July 1959 on CIM 250/1/1 (see also CIM/64 6/1/7).

187. It is not usual for the Privy Council Committee to meet when considering Insular legislation or Petitions against it; the business is usually dealt with by correspondence. There has, however, been one occasion in recent years when a deputation from the Isle of Man was received by the Lord President and a Committee of the Council, in relation to the Marine Etc Broadcasting (Offences) Act 1967 (see below).

188. The evidence of Tynwald to the Royal Commission on the Constitution suggested (at paragraph 45) that Petitions by Tynwald to Her Majesty in Council should not be heard by the Committee of the Privy Council charged with Manx affairs but by a separate Committee on which the Secretary of State responsible for the British Islands or any United Kingdom Minister directly concerned with the subject matter of the Petition would not serve or be represented. The Home Office and the Privy Council Office were not in favour of this suggestion - see the note of 27 January 1970 on CIM/68 605/5/30. But the Royal Commission felt some sympathy with the views expressed by Tynwald and in its Report suggested a new body, "The Council of the Islands", which might be set up to supplement the existing arrangements for consultation over legislation (paragraphs 1518-1524 of Part XI of Volume I of the Report).

189. There are a few recorded cases of Petitions submitted to the Privy Council early this century on:

507783/2-4		(1927)
513844/12		(1934)
686446/67		(1937)
513844/14 & 16	(1936-7)	
811340/2-8		(1938)
890457/162		(1946)

A list giving brief details of more recent Petitions to the Privy Council in respect of legislation is given below.

a. Jersey

Loi (1961) Sur l'exercice de la profession de droit a Jersey. (CIM 30/3/15)

A Petition against this projet de loi was received from a firm of solicitors. The Privy Council Office sent them a copy of the Order in Council ratifying the Law and a brief covering letter.

Road Traffic (Miscellaneous Provisions) (Jersey) Law 1962.(CIM 129/1/31,34)

The Order in Council mentions that a Petition against the Law was considered and a copy of the Order was sent to the petitioner by the Privy Council Office.

Seignorial Rights (Abolition) (Jersey) Law 1966. (CIM/63 56/6/1)

This projet was prayed against by an individual Seigneur who is mentioned in the ratifying Order in Council.

Protection of Birds (Amendment) (Jersey) Law 1972. (CIM/71 87/3/1)

This Law was ratified without there being any mention of the Petition in the Order and there is no record of the information given to the petitioner.

b. Guernsey and Alderney

Export of Tomatoes Law 1949 (Continuance) Law 1950. (559 625/41)

The petitioners were mentioned in the Order in Council ratifying this Law. The case is described in detail in Mr Glanville's memorandum (CIM/63 1/2/16).

The Housing (Control of Occupation) (Guernsey) Law 1975. (CIM/69 64/5/5)

The petitioner is mentioned in the Order in Council and the Home Office wrote to inform him of the decision.

The Building and Development Control (Alderney) Law 1975. (CIM/66 59/1/12)

The petitioner is mentioned in the ratifying Order in Council and he was informed of the outcome by the Home Office.

The Government of Alderney (Amendment) Law 1975. (CIM/68 6/29/6)

This Law was petitioned against, after it had received Royal Assent, by a large proportion of the residents of Alderney, including the President of the States of Alderney who had, in his official capacity, forwarded the Law for Royal Assent. An Order in Council was issued dismissing the Petition.

The Housing (Control of Occupation) (Guernsey) Law 1975.

In December 1976 Mr J B J Mainguard, an English Barrister working in the Department of the Attorney General in Guernsey, submitted a petition to Her Majesty in Council concerning the application of Guernsey Housing Laws in his case, which was dismissed by an Order in Council dated 26 July 1977. A further petition forwarded in November 1978 seeking the repeal of the Housing (Control of Occupation) (Guernsey) Law 1975 was dismissed by Order in Council of 26 June 1979. Mr Mainguard also submitted a petition against the Housing (Control of Occupation) (Amendment) (Guernsey) Law 1979. (CIM/79 64/5/1).

The Firearms (Guernsey) Law 1981. (CIM/80 256/1/1).
This Law was petitioned against by Mr W K Neal.

c. The Isle of Man

The Marine etc Broadcasting (Offences) Act 1967. (CIM/64 494/1/20)

Tynwald submitted a Petition against the proposed application of this Act of Parliament to the Isle of Man, and asked to send a deputation to the Privy Council Committee. A deputation was duly received on 5 June 1967 by the Lord President, the Minister of State at the Home Office, the Postmaster General and the Attorney General. An Order in Council was issued on 28 July 1967 rejecting the request for the Act in question not to be extended and on 23 August 1967 an Order in Council was made applying the Act to the Isle of Man.

The Town and Country Planning Act 1973. (CIM/72 440/10/2)

This Act of Tynwald was ratified by Order in Council and the petitioner was informed of the decision by the Home Office.

d. Other Petitions

In addition to the examples given above two petitions were submitted to Her Majesty in Council concerning the United Kingdom position in relation to the European Economic Community. (CIM/66 1200/2/19). A petition from Sark submitted in 1967 was later withdrawn in the light of the development of the negotiations relating to entry, and a petition from the Channel Islands was answered by an Order in Council 1971. (CIM/69 1200/2/95).

See paragraphs 289 and 290 concerning petitions to Her Majesty in Council about individual grievances and other non legislative matters, and paragraph 291 about petitions to The Queen.

Royal Assent, or Disallowance of Legislation

190. At the beginning of each new reign an Order in Council is made providing that all Acts and petitions submitted from the Channel Islands for the Sovereign's approval shall be referred to "a Committee for the Affairs of Jersey and Guernsey" for consideration and report. The Committee is "the whole Privy Council or any three or more of them" (see (CIM/64 6/1/7).

191. It has always been very rare for insular legislation to be disallowed by the Privy Council, and the relationship between the Home Office and the Island authorities nowadays is such that one would expect any problems over Channel Island legislation to be ironed out before submission to the Privy Council, as was done for example in respect of the Gambling (Jersey) Law 1964 (CIM 263/1/3). (CIM/63 1/2/16) paragraphs 8 and 9 (pages 12-13) of part B of Mr Glanville's memorandum give examples of cases where legislation was disallowed or modified: 137097/24 (which contains a memorandum on cases relating to finance which arose between 1839 and 1907), 513844/12 (1934), 686666/5 (1936), and CIM 6/31/1 (1954). Other examples are given in paragraph 179 above. In addition, the Privy Council rejected a legislative petition by the States of Alderney that elections should be delayed for a year (890457/162), as mentioned in Mr Hill's note of 1 May 1970 on CIM/63 1/2/16, and refused Royal Assent to the Import Duties Bill 1919, a Jersey measure (383642/5,6,8).

Amendment of Legislation submitted for Royal Assent

192. Paragraph 7 of Part B of Mr Glanville's memorandum refers to amendments made by the confirming Order in Council. This procedure is not now used: where an amendment of substance seems necessary or desirable it will be settled if possible between the Home Office

and the insular authorities before the Law is submitted for Royal Assent (for example, see paragraph 179).

193. Amendments are occasionally needed not on any point of policy but merely to make a drafting correction. The procedure here is flexible, and examples are to be found on CIM/64 142/1/4, CIM/66 59/1/1 and CIM/69 263/1/4/

Procedure after Royal Assent

194. Projets de loi of Guernsey and Jersey are approved by prerogative Orders in Council, and transmitted by the Home Office to the appropriate Lieutenant Governor for registration in the Island. When notification is received that the Law and the Order in Council have been registered, the Privy Council Office is informed. Alderney and Sark projets, when approved by Her Majesty in Council, are sent to Guernsey, and the authorities there arrange for registration in Alderney and Sark, but the Home Office is concerned only to know that registration has been effected in the Royal Court of Guernsey (see 890463/15,17).

195. As soon as a projet receives the Royal Assent, and before the Order in Council is available, the Privy Council Office notifies the Home Office who in turn inform the respective Lieutenant Governors. In addition, the Privy Council notifies the Greffier of the States of Jersey of the grant of Royal Assent. (CIM/64 6/1/11). As regards the Isle of Man see paragraphs 603-609 below.

D. REGISTRATION

196. This is dealt with comprehensively in Mr Glanville's memorandum. (CIM/63 1/2/16).

197. The following points must be added:

Validity of an Act not dependent on registration

198. The memorandum deals with a long standing divergence of opinion between the Home Office and the insular authorities on the significance of registration of Acts of Parliament; the insular view being that United Kingdom legislation which applies directly or by implication to the Channel Islands has no force there until it has been registered, and the Home Office view being that registration is merely a means of giving publicity to such legislation, and is not necessary to ensure its validity. It appears however from the written evidence of the Islands to the Royal Commission on the Constitution that the Home Office view is now accepted. Thus the Submission of the States of Jersey says

> "The legal operation of an Act of Parliament which applies to the Island in terms or by necessary implication is not dependent upon registration and publication, the purpose of which is merely to give notice to the inhabitants, and such an Act has effect in the Island even though not registered".

199. Guernsey's written evidence contains a similar conclusion, if not quite so forthrightly. It seems therefore that there is no difference of opinion between the United Kingdom and the Channel Islands on this issue.

Direction to register included in an Act

200. A recent example of a United Kingdom Act which includes a direction in the body of the measure for its registration in the Channel Islands is the Finance Act 1962. (CIM 3/11/3 & CIM/73 237/11/11). Section 34(6) reads:

> "This Act, so far as it relates to the Government Annuities Act, 1929 shall extend to the Channel Islands and the Isle of Man, and the Royal Courts of the Channel Islands shall register it accordingly."

201. The Home Office was not consulted about the wording of this clause, which follows the precedent of section 70(3) of the Government Annuities Act 1929, an Act which applies directly (see Mr Glanville's memorandum, pages 36-37).

Validity of Orders in Council etc is not dependent on registration

202. An Order in Council made in pursuance of an Act of Parliament and extending the Act to the Islands with specified modifications etc does not normally include a direction to register it (unless there are special reasons for doing so - cf Mr Semken's minute of 13 May 1971 on CIM/63 120/3/2), but is sent to the Islands with a separate Order in Council directing registration. In the Home Office view, however, the validity of the Order in Council extending the Act is not dependent on registration, an dit is this area which now seems to be the one where there is a divergence of opinion as to the significance of registration, the Home Office view being (though there seems to be no recent statement of it) that an Act so extended becomes law in the Island concerned as soon as the Order in Council extending it comes into operation and the Island view being that the date of coming into operation of the Order in Council or its date of registration, whichever is the later, is the date upon which the Act has effect in the Island. This registration is regarded as essential. In practice any confrontation over this issue is avoided by providing for the Act to come into effect some two weeks or more after it is made thus providing time for registration before the Act has effect in the Island.

Other orders, regulations etc made under an Act

203. Jersey's Submission to the Royal Commission says:

> "Acts of Parliament sometimes confer powers to make subordinate legislation. Normally these powers are vested in the Crown in Council or a Minister of the Crown. (Sometimes powers are given to the States or a Committee of the States). The instruments are transmitted to the Island but do not have effect until registered by the Royal Court, unless specific provision to the contrary is made as it was (by agreement with the States) in relation to instruments made under the Exchange Control Act 1947".

204. This view is not accepted by the Home Office. In its view orders or regulations etc made under an Act and applying to the Channel Islands are no more dependent on registration for their validity than is the Act itself, or an Order in Council applying the Act. (CIM/63 1/2/16). Mr Glanville's memorandum touches on this at D2 and 5(a) and also explains the special circumstances arising with regard to the Exchange Control Act 1947, and the reasons why the

Home Office does not regard what happened then as a precedent or as authority for the Jersey view quoted above.

205. The Jersey Submission goes on to say that:

> "The right of the Royal Court to exercise the power of provisional suspension of registration in respect of statutory instruments made under an Act of Parliament has been recognised by the United Kingdom Government, for example, in relation to any Order or Regulations made, or Directions given, by the Board of Trade under the Civil Aviation Act 1949."

206. The same passage also appears in the 1968 "agreed" statement on the constitutional status of Jersey (see Appendix A to the Home Office evidence to the Royal Commission). The position is that the Civil Aviation Act (Channel Islands) Order 1953, which extends the Civil Aviation Act 1949 to the Islands which specified modifications, provides that orders or regulations made under that Act "shall not come into force in Jersey or Guernsey until registered in the Royal Court". This follows the precedent of the Air Navigation Acts (Extension to Channel Islands) Order 1939 referred to at D5(e) of Mr Glanville's memorandum. (CIM/63 1/2/16). There is a sound practical reason for this provision, namely to ensure that the orders regulations or directions that may be made from time to time (mainly by Departments other than the Home Office, and without having the Channel Islands primarily in mind) do not "bite" on the Islands until they have cognizance of them by means of registration: to put it another way, it means that the insular authorities do not have to constantly ask Whitehall whether any new orders have been made under the Civil Aviation Act. But this in fact illustrates the point that, constitutionally, the validity of regulations etc is not dependent on registration. If it were so dependent, it would not have been necessary to provide specifically that these particular regulations should not come into force until registered.

207. The 1953 Order contains nothing about provisional suspension of registration, nor did the 1939 Order referred to above, but, as stated at C(3) of Mr Glanville's memorandum, the Home Office acknowledged, in connection with the 1939 Order, that the Royal Court of Jersey "has, in relation to any orders, regulations or directions under the Air Navigation Acts, the same right of representation to Her Majesty, as it possesses under the Code of 1771 in relation to 'aucuns Ordres, Warrants ou Lettres de quelque nature qu'ils soient.'" A similar acknowledgement was made in respect of the 1953 Order (Home Office letter of 16 April 1953 in 929000/53) and this is no doubt what Jersey has in mind in the passage quoted in paragraph 205 above. (From a strictly drafting point of view, it might have been better if the passage had not referred to "statutory instruments", since an Order in Council extending an Act is also a statutory instrument and, as indicated in paragraph 202 above the Home Office would not accept, nor does Jersey claim, that the Royal Court can provisionally suspend registration of such an Order).

208. Guernsey's written evidence to the Royal Commission, after referring in general terms to provisions that regulations do not come into force until registered, says that "similar provision is generally made where Her Majesty is empowered by Order in Council to implement the provision of an Act". If this is intended to refer to an Order in Council extending an Act to the Island with or without specified modifications, the Home Office would not accept this as representing correct constitutional procedure. The validity of such an Order in Council is not, in the Home Office view, dependent upon registration; but in practice, although difference of opinion exist over the constitutional significance of registration, difficulties are avoided by the simple device of leaving a long enough gap between the promulgation of the measure concerned and its coming into effect to allow registration to take place in the interim. For an example of an Order in Council which came into effect on the day it was made see the Fuel and Electricity

(Control) Act 1973 on CIM/67 75/3/14, 19.

209. As regards the wording of directions to register included in Orders in Council see the exchange of notes on CIM/67 3/14/2.

Consultations as to registration

210. As indicated in paragraph 4(a) of Section D of Mr Glanville's memorandum, the question whether a particular Act should be registered is normally settled, specifically or by implication, in the course of the usual consultations with the insular authorities as to whether the Act should apply. (CIM/63 1/2/16). These authorities agreed in 1966, in connection with the Lesotho Independence Act of that year, that Orders in Council directing the registration of an "Independent" Act which was in the standard form should be made without the need for prior consultation. (CIM/66 3/57/1). Since the only provision in such Acts which applies to the Islands is a standard form subsection as to application to the newly independent territory of existing laws, the 1966 agreement does not represent any derogation from the general principle of consultation but simply a saving of unnecessary correspondence.

211. As also indicated in the above mentioned section of Mr Glanville's memorandum, registration of Acts which do not apply to the Islands may cause confusion, and does not normally take place. In 1952, it was agreed with the insular authorities that the International Organisations (Immunities and Privileges) Act 1950 and the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952 should be registered. In the course of consultation, the Bailiff of Guernsey expressed the view that as the Acts were not, in terms, operative outside the United Kingdom, registration would "merely inform us as to the law of the United Kingdom on the matter and not extend its operation to the Channel Islands". The Home Office confirm the Bailiff's view in an official letter to the Lieutenant Governor.

212. In addition to consultation ad hoc about a specific Act or Acts, it is the practice to send copies of all Bills that have received Royal Assent which may be of interest to the insular authorities, and to ask whether any of the bills are of sufficient local interest to justify registration. An Order in Council directing registration is then sought.

Registration of one Island only

213. This question, which is touched on at D2(h) of Mr Glanville's memorandum, arose in 1956-7, when Jersey said that they did not wish to register two Acts with Guernsey had asked to register, since in the case of one of them, Jersey had local legislation on the subject, and as regards the other, Jersey doubted if they would ever wish the relevant part of the Act to be applied (since it wold involve Parliament defining the jurisdiction of the Royal Court on a particular matter. (CIM/63 1/2/16). The Home Office took the view (Mr Critchley's minute of 28 January 1957) that, while uniformity between the islands as regards registration was desirable, it was not always attainable and in particular it could not be expected where one island had local legislation and the other had not. (CIM 3/14/3). "The most we can or should do in such circumstances is simply to draw the attention of the insular authority concerned to the difference and accept their comments without question". Accordingly, the Home Office asked the Privy Council to arrange for the registration of these two Acts in Guernsey only and explained the reasons in a demi-official letter.

Registration of part of an Act

214. Mr Glanville's memorandum touches on this topic at pages 35-36. (CIM/63 1/2/16). The matter is discussed, with various examples cited, in a letter of 22 June 1959 on CIM/59

44/2/1 and CIM 4/2/2 in which it is stated that all cases of partial registration of United Kingdom Acts have arisen over provisions that were amendments of, or additions to, earlier Acts which applied, or had been registered in the Channel Islands. Otherwise, in the case of a homogenous Act only parts of which apply to the Channel Islands, it is normal practice for the whole Act to be registered, an example being the Criminal Justice Act 1948.

E. ROYAL CHARTERS

215. Royal Charters have long ceased to be a form of legislation, but they are touched on here because they have been mentioned in evidence to the Royal Commission on the Constitution (see Minutes of Evidence, Volume VI, written evidence by Guernsey, and Appendix A to the joint Home Office/Foreign and Commonwealth Office Memorandum of Evidence).

216. In earlier times, rights and privileges were conferred on the Islands by a series of Royal Charters, notably charters granted by Elizabeth I in 1559 to Guernsey and in 1562 to Jersey. Those Charters repeated and confirmed the rights and privileges granted by its predecessors and added others. In general terms the Charters granted certain franchises and liberties to the men of the Islands and freedom from taxes and customs to the people and communities in the islands in all cities, market towns and ports in the Kingdom of England, and the freedom of the inhabitants from process of English courts in matters arising in the Island. Likewise they recognised the ancient privilege of the inhabitants of immunity from military service out of the Islands, unless it be to accompany the Sovereign their Duke in person for the recovery of England or that the person of the Sovereign should be taken by the enemy. The last Royal Charter was that granted to Jersey by James II in 1607, ratifying the existing privileges of the Islands.

217. The rights and immunities granted by the Charters have continued to be respected, and there are instances where they have been taken into accounting United Kingdom or insular legislation. Thus the immunity of insular produce from customs duty on entry into the United Kingdom, which was confirmed in Acts of 1714 and 1846, was re-enacted in section 37 of the Customs and Excise Act 1952, and United Kingdom legislation for conscription in the two World Wars did not apply to the Islands (which passed their own National Service laws).

APPENDIX

(See paragraphs 156 to 160 of the main text)

A SURVEY OF THE USE OF PREROGATIVE ORDERS IN COUNCIL

218. The right within the Royal prerogative to legislate for the Islands is presumed to have derived from the supreme legislative power originally possessed by the Dukes of Normandy (see for example paragraph 2 of Annex A to the Home Office/Foreign and Commonwealth Office evidence to the Royal Commission on the Constitution, published Minutes of Evidence Volume VI page 13), and indeed, as mentioned at page 2 of A J Eagleston's book "Channel Islands Under Tudor Government", during the Tudor and early Stuart times, England, as well as the Islands, was in effect governed by the Sovereign in Council. "Conciliar Government", as Eagleston calls it, ceased in England with the Civil War, but the Prerogative Order continued for some time to be the method commonly used for Channel Islands legislation and seems to have been regarded as the chief method, or at any rater as a method on a par with Acts of Parliament, by the 1847 Report of the Royal Commission on the State of the Criminal Law in the Channel Islands.

Notable Cases

(a) Jersey

219. In the 19th Century there was a series of clashes with Jersey over Prerogative Orders, which are referred to in the memorandum by the Jersey Constitutional association in their evidence to the Royal Commission on the Constitution (published in Minutes of Evidence Volume VI, beginning at page 177.) The most notable case arose in 1852/3. The group then in power in the States had blocked all attempts at internal reforms, including the recommendations of the 1847 Royal Commission for the appointment of paid judges and a salaried police, and in February 1852 three Prerogative Orders in Council were made establishing a police court, a petty debts court (both with salaried judges) and a paid police force in St Helier. These Orders were made after consideration of a petition from a "New Police Committee" which had been appointed at a public meeting of the inhabitants, but without consultation or communication with the States. The Royal Court suspended registration of the Orders and the States petitioned for their revocation so that Insular legislation on the same matters could be prepared and submitted for the approval of the Queen in Council. The Privy Council agreed to the continued suspension of the Orders pending consideration of Insular legislation, and in August 1852 the States passed six laws, including three providing for the establishment of the police and petty debts courts (but not with salaried judges) and for a paid police force in St Helier. The Privy Council considered the whole matter in the light of representations of the States, counter petitions by "Merchants, Bankers, Tradesmen and other inhabitants of St Helier" and "Ratepayers and Householders of the Island" to the effect that the Order in Council should stand, or that some of the proposed Insular legislation should be modified, and of arguments by Counsel. The case put forward on behalf of the States of Jersey is summarised in a Memorandum of Evidence to the Royal Commission on the Constitution (Minutes of Evidence volume VI, at page 181). The Privy Council subsequently reported that "with respect to the Orders in Council of 11 February 1852, although they appear to their Lordships in their main provisions well calculated to improve the administration of justice in Jersey, yet, as serious doubts exist whether the establishment of such provisions by Your Majesty's prerogative without the assent

of the States of Jersey is consistent with the constitutional rights of the Island of Jersey, their Lordships have agreed to report their opinion to Your Majesty, that it may be expedient for Your Majesty to revoke the said Orders. That as regards the Acts of the States, although they do not in all respects carry the provisions of the said Orders in Council into full effect, and although with respect of the appointment of the Judge of the New Courts, it might, in their Lordships opinion, be an improvement of the Acts of the States if the appointment of the Judge were vested in Your Majesty, and such appointments were not confined necessarily to the members of the Royal Court - yet, as such Acts do, to a considerable extent, carry into effect substantially the provisions of the said Orders in Council, and the benefits thereby conferred on the Island may, by further Acts of the States, with Your Majesty's sanction, be extended. Their Lordships humbly report their opinion to Your Majesty, that it may be proper to give Your Majesty's assent to the said Acts." (Receuil des Lois, Tome 11 pages 44 to 46).

220. In the light of this report, an Order in Council was made in December 1853 "recalling and revoking" the three Orders of February 1852 and approving the six Laws passed by the States. In ordering the registration of the 1853 Order, the States said that they "croient devoir exprimer lelur haute satisfaction ....de cette confirmation solennelle de leur franchises et privileges" and added that "ils seront toujours prets a donner toute l'attention possible a l'amelioration des Lois et des Institutions du Pays". (Receuil des Lois, Tome 11 page 41).

221. Between 1853 and 1859 2 Orders in Council were made with regard to regulations for the government of Victoria College (built in commemoration of a visit to Jersey by Queen Victoria). The Royal Court suspended their registration, and they were revoked by subsequent Orders in Council. In the end, the States passed a "Reglement" in 1860 which gave effect (with one modification) to the substance of the Orders in Council.

222. The third 19th Century controversy with Jersey stretched over 3 years (1891-4) and is commonly known as the Jersey Prison Board case. The issue was on the face of it a minor, almost trivial, one, certainly in comparison with that of the Prerogative Orders in Council of 1852, and the outcome is described in "History of the Island of Jersey" by G R Balleine, himself a Jersey man, as a "worthless victory" for the Island - at a cost of over £5,000 in Counsel's fees and the like. But as the case is still remembered in the insular annals, and is mentioned in the evidence to the Royal Commission on the Constitution referred to in paragraph 219 above (at page 183), it should perhaps be mentioned here.

223. The administration of Jersey prison had been dealt with by a Prerogative Order in Council of 1837, after a good deal of controversy with Whitehall as to the terms on which, and the extent to which, the States were to furnish revenue for prison purposes.
The 1837 Order contained agreed provisions as to the membership of the Prison Board, which included the Bailiff and the Lieutenant Governor, but was silent on the question of who was to be chairman. At a meeting of the Board in 1891, the Bailiff was absent, and the Lieutenant Bailiff claimed the right to preside, and when the Lieutenant Bailiff would not budge, he and the Crown Officers withdrew, taking the minute books with them.

224. A Prerogative Order in Council was thereupon made, without any consultation with the States, providing that whenever the Lieutenant Governor was present at a meeting of the Board, he should preside. In his absence the Bailiff should preside. The Royal Courts suspended the registration of the Order and referred it to the States on the ground that it contained modifications of the basic Order of 1837, and the States petitioned for the "recall" of the Order. The petition is summarised in the evidence to the Royal Commission on the Constitution already quoted in paragraph 222 above, at page 184.

225. The petition began by expressing the State's regret "that no previous intimation was

given to them that any change with regard to the Prison Board was in contemplation"; went on to argue that the Order, since it modified an earlier Order which had been made with the agreement of the States, was inconsistent with the constitutional principles accepted by the Privy Council in 1853, and that it was also inconsistent with the "constitutional usage of the Island for the past three centuries", that in civil affairs the Bailiff had precedence over the Lieutenant Governor (a principle which the States claimed had been recognised by the Privy Council in previous controversy over the governing body of Victoria College). The petition concluded by asking that "in the event that it should be deemed desirable to issue any fresh Order with reference to the Jersey Prison Board, Your Majesty will be pleased to direct that Your Majesty's Pleasure therein be in the first place communicated to the States, in order that such Order may be made with their co-operation".

226. The Privy Council, after considering a mass of documents including a lengthy memorandum by the then Attorney General on the constitutional history of Jersey and arguments by Counsel (Jersey were represented by Lord Haldane, as he later became) concluded that the 1891 Order materially altered the arrangement embodied in the 1837 Order, on the basis of which the States had agreed to pass, and had passed, the necessary Acts for making the financial contributions specified by the Order. The Privy Council therefore thought that the 1891 Order "ought not to be sustained", and it was revoked by an Order of 1894.

227. Arising out of the case, on file 890463/3 there is an interesting memorandum written by Lord Haldane in 1894 which traces the early constitutional development of Jersey and considers whether the Crown might legislate for the Island without the advice and consent of the States.

228. Subsequently, the States, after consultation with the Home Office, passed a "Loi modifiant la composition due Conseil d'Administration de la praison" which was confirmed by Her Majesty in Council in 1895. This law removed both the Bailiff and the Lieutenant Governor from the Prison Board, which was confined to four members appointed by the States, together with the Viscount and the Receiver General. The Lieutenant Governor and the Bailiff became Visitors to the prison. Nowadays, under the Prison (Jersey) Law 1957, the Board consists of a Committee of the States, and there is a Board of Visitors consisting of Jurats appointed by Superior Number of the Royal Court in accordance with the regulations made by the States. The Lieutenant Governor and the Bailiff have the right to visit the prison at any time, and the Bailiff has certain powers with regard to prison discipline.

(b) Guernsey

229. There appear to have been no similar instances in the 19th century of Prerogative Orders of a legislative nature being made without the consent of the States of Guernsey, but in one case an Order was made which over-ruled an earlier discussion by the Home Secretary to which the States had objected.

230. In 1851, when the office of "Controle de la Reine" (Solicitor General in modern terms) became vacant, it was amalgamated with that of Procureur (Attorney General) by administrative arrangements made between the Home Secretary and the Procureur, with the support of the Lieutenant Governor and the Bailiff, but without any consultation with the States. In 1859 the States petitioned Her Majesty in Council for the filling of the office of Controle de la Reine. The petition was dismissed without the States being heard. In 1861 the States petitioned again, asking either for the office to be filled, or that Her Majesty would hear them in support of the petitions. The States said that they had not thought it necessary each

time they petitioned to express all their supporting reasons, especially in a case where the object was "to maintain the constitution inviolate", and they had understood that a vote of the States would be received favourably by Her Majesty unless opposed, or where Her Majesty objected to its confirmation, and that in either case Her Majesty would not reach a final decision without hearing the States. They also contended that the 1851 arrangement was in effect a legislative measure affecting the constitution of the Royal Court and the institutions of the Island, and was consequently an encroachment on the authority of Her Majesty in Council as well as on that of the States. The petition also contended that not only the administration of justice, but also the judicial organisation of the Court, suffered from the suppression of the office of Controle de la Reine in that, among other things, it had discouraged new entrants to the Bar and had reduced the number of persons capable of promotion in due course to the Office of Attorney General or Bailiff.

231. On this occasion, the States were heard, through Counsel, who argued inter alia, that the decision in the Jersey case of 1852-3 had established that a Prerogative Order in Council affecting the insular constitution or institution ought not to be made without the assent of the States, and in reply to an argument by the Attorney General that the Crown had the right to suspend or abolish Crown Offices Guernsey contended that, while the Crown had the right of nomination to such offices, it had no power of creation or suspension of an office without insular consent.

232. In the event, a Prerogative Order in Council was made on 25 July 1861 directing that the office of Controle de la Reine should be revived. (Ordres en Conseil, Guernsey, Tome 1 pages 349-358 and Moore's Privy Council Cases, Volume 15, pages 345-354).

(c) Other examples

233. There are some examples of Prerogative Orders being made on specific matters at the request of the insular authorities. In 1916, at an election to fill a vacancy among the Jurats of Alderney, two of the candidates headed the poll with an equal number of votes. The law did not provide for anyone to exercise a casting vote, or determine in any other way which candidate should be appointed. A fresh election could have been held, but the Alderney Court petitioned, through the Guernsey Lieutenant Governor, that an Order in Council should be made to decide which of the two tied candidates should be appointed - apparently the Court accepted the representations of those candidates that as they had received ten votes more than any others, a fresh election open to all comers would not be appropriate. The petition cited as a precedent a Prerogative Order in Council of 1671 which determined which of two equal candidates should be appointed a Jurat in Guernsey. In 1671 Order was made "for the preventing of further differences and contests which His Majesty has reason ..... to believe would arise if the matter were left to be decided by a new election to the distracting of the quiet of the said Island".

234. In response to the 1916 petition, a Prerogative Order in Council was made appointing as Jurat one of the two tied candidates who was recommended for appointment by the Judge of Alderney (170(B) and 321073/1-4). A similar situation with regard to Jurats would not arise in these days, since Jurats are now appointed in Alderney by the Secretary of State, and in Jersey and Guernsey are elected under a procedure which provides for the contingency of an equality of votes. Even in 1916, the Home Office minutes said that it was "absurd that the intervention of the King in Council should be invoked in order to settle a difficulty of this kind", and that the remarks in another Order in Council of 1673 settling another dispute as to who should be Jurat were very much to the point. In that Order in Council, Charles II said "It seems some differences arose about the election ..... we could have wished your proceedings therein had

been more calm and peaceable than to have occasioned so much trouble to Us and to yourselves .....".

235. In 1945 another Order in Council was made relating to Alderney. The life of the States, Court and Douzaine of Alderney had expired during the war time evacuation of the Island, and the Judge and President of the Island and members of the 1940 States petitioned The King to continue in office the previous office-holders, which was done (890457/19).

(d) The most recent examples

236. The States of Guernsey passed the Aliens Restriction (Guernsey) Law in 1958 and the immigration of aliens came under the jurisdiction of a law of the Bailiwick for the first time. It was therefore necessary to cancel the application to the Island of the Westminster legislation which had previously been in force there,
and this was achieved by issuing a Prerogative Order in Council on 20 February 1959 revoking four earlier Orders in Council relating to Westminster Aliens Orders which had been registered on the records of the Island. (CIM 180/6/1)

237. In 1964 a prerogative Order in Council was issued with the concurrence of the Islands defining the base lines from which the territorial waters adjacent to the United Kingdom, the Channel Islands and the Isle of Man are to be measured. (CIM 451/1/25).

237(a).In 1981 the Royal Assent to Legislation (Isle of Man) Order 1981 provided for the Lieutenant Governor of the Isle of Man to signify Royal Assent to domestic legislation, in prescribed circumstances (see paragraphs 603 to 606) (CIM/80 400/2/1).

3. MISCELLANEOUS

A. PUBLIC SERVICES

238. The Guernsey and Jersey authorities make requests from time to time for expert advice from the United Kingdom in various fields, which it is usual to meet: examples in recent years have included fire services, the police, prisons and explosives. It is not only Home Office Inspectorates who may be asked to advise - other examples include the Government Actuary and the Civil Aviation Authority. The Island Authorities pay for these services. Normally such inspections relate to matters which fall within local competence in which it is customary for the United Kingdom Government not to intervene, but nevertheless the Home Office keeps an eye on areas where there might be any suggestion that local standards are so different from those in the United Kingdom that it could be argued that the Government was failing to discharge its overall responsibility for the good government of the Islands, and the Home Office has for example intervened to attempt to speed progress in relation to changes recommended for the Jersey police force, and in relation to Jersey Airport.

B. THE POLICE

Guernsey

239. The prevention and detection of crime, enforcement of the law and keeping of the peace are the responsibility of a regular police force under the authority of a Committee of the States in accordance with the Loi Ayant Rapport a la Police Salaries pour L'Ile Entiere of 1920. The establishment of the force is determined in the States on the recommendation of the Committee, and HM Inspectors of Constabulary carry out regular inspections of the force. As noted earlier (paragraph 88), Guernsey is also responsible for the policing of Alderney, and the Home Office has taken the view that it should remain so.

Jersey

240. Jersey has a unique 2-tier system of policing, in which the professional office numbering 185 are subordinate to 285 parish officials whose duties include acting as policeman. The latter are known as the honorary police, though there is nothing honorary about their powers and status, which still exceed those of the professional police (who are referred to as the States police) in certain important respects (see paragraph 250). It has long been an aim of the Home Office to improve the standing of the professional police service in Jersey so as to bring the standard of law enforcement there into line with that in the United Kingdom, but the strength of the traditions which have buttressed the survival of the curious system there are well recognised.

241. Since 1949 the Home Office has been involved with the question of the efficiency of Jersey's method of policing on several occasions. In 1949, a New Scotland Yard Officer, Superintendent Mahon, and a Home Office forensic science expert, Dr Firth, were invited to Jersey to investigate a number of serious cases of arson. Both officers commented adversely on the organisation of the Jersey police, and a confidential report was submitted to the Home Office (827787/9). It was decided that while the policing of the Island was primarily a domestic matter, the preservation of the King's Peace was not, and as the States had failed in their duty of providing reasonable protection of property the Home Office had a duty to act. Sir Frank Newsam wrote to the Lieutenant Governor on 9 January 1950 to impress upon him the urgent need for reform. "The state of affairs revealed ... appears to me to be extremely serious, and

although the policing of the Island is in a sense a domestic matter, the preservation of the King's Peace and the protection of life and property in the Island is not a subject to which the Home Secretary as a member of the Privy Council can remain indifferent." This letter was followed by a discussion with the Island authorities, and a further formal letter was sent on 1 February 1950 asking that consideration be given, as a matter of urgency, to the state of efficiency of the Island police and suggesting that reforms should be considered.

242. In March 1950 the States of Jersey asked the Secretary of State to provide "expert advice and assistance as to the best method of reorganising the police system of the Island on a basis adapted to the peculiar conditions, especially having regard to the Honorary Police System, and sufficient for the present-day needs of the Island". As a result, Sir Alexander Maxwell, a former Permanent Under Secretary of State at the Home Office, and
Mr F T Tarry (an HM Inspector of Constabulary) spent 2 weeks in Jersey carrying out an enquiry. It is worth quoting from the report (476212/26) the paragraphs describing the police system of 1950, both because it sets the scene very well and because in several important respects the situation remains unchanged today:-

"The existing police system

3. We were informed that the police system of the Island is based on parochial organisations of elected Honorary Officers, each parish being in theory wholly independent of the rest. In the parish of St Helier, the Honorary Service is assisted by a body of paid police.

4. There are 12 parishes in Jersey, each having at the head of its parochial administration a Constable who inter alia is responsible for the policing of the parish. He is assisted by 2 Centeniers (in St Helier there are 6), and by a number of subordinate officers known as Vingteniers and Constables Officers, the numbers of which vary according to the size of the parish. All these officers are sworn in on assuming office, and possess a badge of office to establish their police status. They have no uniform. The Constables, Centeniers, Vingteniers and Constables Officers are collectively known as the honorary police. They number 233 in all. There are no women officers. Service in the Honorary Police is regarded as an honourable privilege and there is frequently keen competition to secure election even to the junior ranks. It is a recognised method of entry into the public life of the Island of which it forms an integral part. The system is very old, its precise origin not being known.

5. The Constables. In addition to his parochial duties the Constable occupies by virtue of his office a seat in the States of the Island. He is elected by secret ballot and any British subject who has attained the age of 21 years, and should have the necessary residential qualifications is entitled to be registered as an elector. The electoral list is prepared annually by the Constable and is available for inspection by the public. Within the parish limits the Constable has power to arrest any person whom he suspects on reasonable grounds of having committed a crime and power to search without a warrant premises in which he has reason to believe that evidence of the commission of a crime may be found. The power of arrest extends to persons who commit offences of any kind, including for example minor traffic offences. We understand that in practice it is not used for minor offences but it is considerably wider than the power on the mainland, where the only offences for which arrest is authorised are felonies and other offences in

respect of which the power is specifically conferred by statute. There is no appeal from a decision of the Jersey police in matters of arrest and search, but they are open to civil process in respect of any abuse of their powers, and in serious cases are liable to be removed from office by the Royal Court.

6. The Centeniers. The Centeniers are elected in the same way as the Constables and enjoy the same posers of arrest and search. It is on them that the duty of policing the parish principally falls. The Centeniers investigate crimes and traffic offences, and where they conclude that an offence has been committed they present the case in the Stipendiary Magistrates' Court, where, although they are sworn as witnesses, their role is rather that of public prosecutor. They present the case and call witnesses but they leave the questioning of witnesses to the Magistrate and the Defence. Under the Reglement sur la Police des Chemins et des Endroits Publics they have power to levy fines summarily for certain minor traffic offences, the accused having the option of appearing in the Stipendiary Magistrates' Court. The procedure is either to impose the penalty on the spot or to warn the defendent orally to attend at the parish hall on the evening of the day on which the alleged offence is committed. If a fine is imposed an official receipt is issued. This record is practically the only record of the case and where no fine is imposed there is no record. The proceedings are heard in private and representatives of the press are not admitted. The Senior Centenier replaces the Constable in his absence, being known in that capacity as Chef de Police. By ancient custom this extends to representing the Constable in the States.

7. The Vingteniers and Constables Officers. The Vingteniers and Constables Officers act as assistants to the Centeniers. From time to time they are called on to patrol their parishes with a view to supervising traffic. In some parishes there is a weekly rota of duties drawn up. They may be called upon to assist the Centeniers in investigations of accidents or offences or to warn persons living in the district to appear at the parish hall. The Vingteniers are elected by the parish assembly of principals and officers, which broadly speaking consists of the principal rate-payers of the parish (who own or occupy property of a rentable value assessed at £70 a year), and persons holding municipal office. The method of recording votes is the "appel nominal" by which, we are informed, the electors make their vote orally to the presiding officer (usually the Constable). Constables Officers are chosen by persons on the electoral role of the Vingtaine concerned. Both Vingteniers and Constable Officers enjoy the powers of Constable of Centenier in the following circumstances:-

a. if they actually see a crime being committed;

b. in a case of hue and cry;

c. when, shortly after an offence has been committed, a suspected person is found in possession of effects, arms, instruments or papers which suggest that he is concerned in the offence; or

d. when in possession of a special order signed by the Constable.

8. The Harbour Master and the Commandant and Deputy Commandant of the Airport. These officers possess by statute the same powers of arrest and maintaining public order within the area of the port and airport respectively as those possessed by a Centenier.

9. The Paid Police. The paid police of St Helier number 50. Originally instituted in 1853 as a Night Watch to prevent Centeniers from being unnecessarily troubled by nocturnal brawlers, they were placed under the control of the Constable of St Helier, who is still responsible for their direction, although in practice he delegates most of his police functions to the Centeniers from whom the paid police take their orders. The cost of the

force was originally shared by the States (out of Harbour Revenues) and the rate-payers of St Helier but in 1940 the whole of the cost was assumed by the States. The duty of considering expenditure on the force and of making recommendations to the States rests with the Island Defence Committee. Members of the force have broadly speaking the powers of Constables Officers. If they find an offender in the circumstances cited in paragraph 7 they detain him and ultimately bring him before the Centenier. Their powers are confined to the Parish of St Helier, and although they are not infrequently called in to assist the Honorary Police in the Country parishes, they have no powers outside the Parish of

St Helier other than those of an ordinary citizen. In St Helier, where each of the 6 Centeniers is on duty in turn for a week at a time, the paid police act under the orders of the Duty Centenier. The conditions of service of the full-time police have recently been improved, and broadly speaking are not inferior to those of the English police. The force, which consists of 46 uniformed members and 4 plain-clothes detectives, is under the supervision of a uniformed senior sergeant. The uniform worn is of the same pattern as that worn by the Police in England and Wales with bright furniture in the helmets and a local collar badge. There is a special harbour section which patrols the harbour in the daytime and a small motor wireless patrol consisting of 4 constables manning 2 vehicles which operate only at night. The remainder of the uniformed police is divided into 3 sections which man the beats and points in the Parish of St Helier, one section operating each of the 3 eight-hour shifts over the 24 hour period.

10. The Motor Traffic Office. Certain duties which in many countries would be undertaken by the police are in Jersey, entrusted to a motor traffic inspector and his staff, who are employed by the States. These Motor Traffic Officers supervise the operation of public service vehicles, checking the maintenance of the vehicle, licences, and the operation of time-tables. They also conduct driving tests for the drivers of motor vehicles. They do not arrest or prosecute offenders, but report them to the Honorary Police whom they assist and for whom they act as expert witnesses."

The Maxwell - Tarry report went on to pay a very tactfully worded tribute to the Honorary system. Paragraph 13 below, in particular, is noteworthy:-

"The value of the spirit underlying the Honorary Police System".

11. The system of policing the parishes of Jersey by elected and unpaid officers rests on a tradition of public service to which high value must be attached. No-one who has had the opportunities which we have had of meeting members of this honorary service and of discussing their work with them can fail to appreciate their public spirit. Most of the Constables and Centeniers before being elected to these offices have served for years as Vingteniers and Constables Officers. Hardly any of them are persons of leisure: almost all of them are engaged in farming or business advocations which make continuous calls on their time and energy. With these advocations they combine public duties which are often exacting and troublesome. At any time of the day a Centenier may be called on to drop what he is doing and to give priority to some police duty requiring immediate attention. He sleeps with a telephone by his bedside. He must be prepared to go out in all weathers, and may have to spend hours in dealing with some bad road accident, involving perhaps death or serious injury, or some tragedy such as a suicide, or some offence or suspected offence involving protracted enquiries. When some special event brings together a concourse of people or vehicles, the Centenier and other honorary officers undertake the duty of regulating the traffic. In some parishes the Centeniers, Vingteniers and Constables Officers periodically arrange to patrol the most frequented roads and to stop and check all cyclists and motorists for the purpose of seeing that there

is compliance with the requirements as to licensing, lighting etc. In many parishes there are periodic meetings of all the honorary police officers for the purpose of discussing what has been done and what should be done for the purpose of preserving good order in the parish.

12. In addition to police functions the Constables and Centeniers do useful work in composing matrimonial disputes, dealing with all sorts of domestic difficulties and acting as arbiters in disputes between parishioners. In many of these cases their authority rests not on legal powers, but on their status as the chosen leaders of the local community and on the respect felt for their judgement and impartiality.

13. It is a fine thing that men should be prepared to undertake gratuitous services of this kind for the public good, and in the consideration of proposals for reorganising the Police System to meet modern needs it is important not to underestimate the value of the spirit which inspires the honorary system, and of the useful work which honorary officers are still doing. To some of the residents in Jersey, especially those who have had experience of modern police systems, the drawbacks of the honorary system may seem more obvious than the advantages, but so far as we could ascertain there is a widespread desire in Jersey to retain it. In the rural districts at any rate our information indicates that any proposal to abandon or seriously to impair the honorary system would be strongly resisted and would receive little or no support."

243. The rest of the report was devoted to suggestions for remedying the most glaring defects in the efficiency of the system, within the existing two-tier framework. These recommendations formed the basis for the Paid Police Force (Jersey) Law 1951 (476212/30), which remained in force until 1974 (see paragraph 250).

244. The 1951 Law left the honorary police system untouched. It set up a force of paid police officers under a Chief Officer, available for duty throughout the Island. The size of the force was prescribed by regulations, and in 1951 was set at 75. The Constable or Centeniers of any parish were empowered (but not obliged) to ask the Chief Officer for the assistance of his officers; if the Chief Officer directed his officers to take immediate action of his own initiative, he was to inform the appropriate Constable or Centenier straight away. Police officers were to act under the direction of a Constable or Centenier, who was responsible for the investigation of offences. They were given no power of arrest, but could detain a suspect within the parochial boundaries or could pursue a suspect outside the parish limits and there detain him, reporting the matter immediately to the appropriate Constable or Centenier.

245. In 1959 Mr Tarry was again invited to Jersey to look into the working of the Paid Police Force in general and to submit an informal report to the Defence Committee. He was accompanied by Superintendent J Kennedy of the Metropolitan Police who investigated the CID. It was a 3 day visit, and the recommendations made related mainly to organisation and training. The Police Force (Amendment) (Jersey) Law 1960 was subsequently passed, which alters the title of the professional police from the Jersey Paid Police Force to the States of Jersey Police Force, and extended to the Chief Officer the powers and duties of the other members of the force, which previously he had not possessed (CIM 31/2/8). Administratively, the size of the force was increased from 75 to 100; the mobile section was extended; it was decided to recruit cadets, and a police dog was purchased.

246. In 1961 a New Scotland Yard Officer, Superintendent J Mannings, went to Jersey at the request of the Insular Authorities to assist in investigations into a series of cases of sexual assault. The Lieutenant Governor subsequently wrote to ask whether Superintendent Mannings could submit a report on the Jersey police system (letter of 30 May 1961 on CIM 31/2/11). The

Home Office did not feel it to be appropriate for a New Scotland Yard officer to comment on the organisation of the Jersey Force, and it was felt to be too soon after the Tarry/Kennedy visit of 1959 for a further attempt to press for reorganisation to be effective. It was decided that Superintendent Mannings should submit a report to the Commissioner about his investigation, commenting in it on any relevant aspects of criminal investigation in Jersey. The report would be sent by the Commissioner to the Secretary of State, who could draw it to the attention of the Island authorities, and a report was duly dispatched in May 1962. It is interesting to note that Superintendent Mannings' report included the following paragraph:- "Broadly speaking, the difficulties I met with were present in 1950 when Sir Alexander Maxwell and Mr F T Tarry visited the Island, and most of the recommendations I have made were suggested either then, or after the visit of Mr Tarry and Detective Superintendent Kennedy in 1958."

247. In 1971 the Defence Committee of the States asked for an inspection and report on the States police, following indications that morale in the force was particularly low. An inspection was carried out by Mr R G Fenwick, an HM Inspector of Constabulary (CIM 67 31/2/6). The report contained numerous recommendations, of which the most significant were that:-

a. In the long term there should be a single, professional force. Mr Fenwick accepted that Insular opinion was not yet ready for this.

b. The States police should have power to arrest and should be responsible for charging accused persons.

c. There should be an annual inspection by an HMI.

d. The respective responsibilities of the States Defence Committee and the Chief Officer should be clarified. In particular, the latter should be responsible for promotions up to the rank of chief inspector.

e. The Honorary Police should be required by law to notify the States Police of all crimes reported to them.

248. In submitting his report to the Home Office Mr Fenwick said that the "constant state of friction" between the two police forces was the cause of much of the trouble that had led to the request for an investigation. He thought it significant that a man recently convicted of a series of sexual offences committed over a number of years, whose case had attracted great notoriety, lived in a parish where the relationship between the two forces was particularly poor, a situation which, in his opinion, contributed to the delay in bringing the offender to book. Mr Fenwick also expressed the opinion that the Island's criminal procedures badly needed overhauling from the point of view of the rights of the accused. In particular, the stipendiary magistrate appeared to operate as both prosecutor and judge. The Home Office brought these comments to the notice of the Lieutenant Governor indicating that he could if he wished pass them on to the Crown Officers.

249. In November 1972 the States debated a report of the Defence Committee arising out of Mr Fenwick's report, and accepted 15 of the 16 recommendations made. The recommendation which was rejected was that the States Police should have the power to search premises with a warrant. The Defence Committee had found itself unable to recommend that the Island should eventually have the same right of search as the Honorary Constables and Centeniers; and that the States Police should be given powers of arrest and responsibility for charging arrested persons in criminal cases, but instead of this the Committee had recommended that if a Centenier declined to prosecute an offender, the States Police should be entitled to refer

the matter to the Crown Officers. Earlier in the year the Home Office had intervened to try to speed up the process of implementing Mr Fenwick's proposals (letter of 17 July 1972 on CIM/67 31/2/6) but to no avail; the Attorney General replied on 27 July 1972 stating the case for an evolutionary approach.

250. Most of the recommendations accepted by the States required legislation which was eventually passed in the shape of the Police Force (Jersey) Law 1974 (CIM/71 31/6/5). The Honorary Police retained an exclusive right to search premises without warrant, formally to charge suspected persons and to grant bail to such persons; but if a member of the Honorary Police declines to charge a suspect the States Police are empowered to refer the matter to the Attorney General, who may give directions. The Honorary Police are obliged to request the assistance of the States Police when investigating certain offences prescribed by Orders made under the Law by the Defence Committee. The Law also provided, for the first time, for the States to make regulations governing the administration and conditions of service of the Honorary Police, who were previously virtually unaccountable for their actions (they receive no training and are not subject to a Discipline Code). The measure fell well short of the ideal - a single professional police force - but was regarded by the Home Office as a step in the right direction.

251. Under the Loi (1975) au sujet des centeniers et officiers de police, Honorary Constables were deprived of the power to authorise their subordinates to search premises without a warrant. (CIM/71 31/6/6).

252. Progress was made with various other recommendations which did not require legislation, and in pursuance of the recommendation that there should be an annual inspection of the States of Jersey Police, Mr Fenwick again visited the Island in 1973 and 1974 to report on the force (CIM/67 31/2/10). Annual inspections are now made.

The Honorary Police: Control over Numbers

253. There are at present 285 honorary police officers (Appendix III to Mr Fenwick's 1971 Report, CIM/67 31/2/6). Any variation in the number of honorary police requires insular legislation and consequently the approval of The Queen in Council, and the Home Office expect the Attorney General to satisfy himself that the increase proposed is fully justified before recommending the measure for approval - see as an example CIM/69/120/1/9.

254. In 1970 the Attorney General wrote to say that he had received a request from the Constables for consideration to be given to an Order in Council to permit the States to authorise the election of additional honorary police by regulation (CIM/67 31/2/5). The terms of his letter made it plain that he was not in sympathy with this proposal, and the Home Office reply stated that "in view of the concern that the Privy Council must have for the maintenance of the Queen's Peace ... we consider it most unlikely that the Home Secretary would feel able to recommend the grant of Royal assent to a Projet de Loi that would remove from the Privy Council the scrutiny of matters with so direct a bearing on the subject". (Letter of 7 October 1970). The Attorney General replied suggesting that if power to vary the numbers of honorary police were delegated to the States it might be made subject to the consent of the Attorney General. But the Jersey evidence to the Commission on the Constitution had included a suggestion that the Attorney General should be appointed on the advice of the Island authorities, and it was subsequently made clear in oral evidence that the advice tendered was intended to be mandatory. The Attorney General was therefore informed that the Home Secretary would not feel able to recommend the adoption of the solution suggested by the Attorney General so long as the issue

of the method of appointing his successors remained on the table.

255. In 1976 the Attorney General of Jersey asked whether a Bill to increase by one the number of centeniers in the parish of St Ouen would be likely to be recommended for Royal Assent. The Home Office asked him to confirm that the additional work could not be undertaken by the States Police. (CIM/70 6/107/1).

C. PRISONS AND PRISONERS

256. There is some information relating to the Channel Island prisons and prisoners in the Isle of Man section (paragraphs 635 to 644).

257. Jersey prison at La Moye was opened in 1975. The old prison was inspected in 1946, 1964 and 1968. In 1968 the facilities were described as being far below those of UK prisons or those generally accepted elsewhere in Europe (CIM/65 34/1/1 and CIM/69 32/3/7).

258. In 1979 the arrangements for the transfer of prisoners from Jersey to the United Kingdom were reviewed in the light of the acute over-crowding of United Kingdom prison establishments and the existence of a fully operational modern prison in Jersey, and Jersey was asked to retain prisoners serving sentences of 4 years sor less. (CIM/69 32/3/18). After discussion with the Home Office it was agreed that from 1 April 1980 the following categories of prisoner would be transferred from Jersey to the United Kingdom:-

(a) male prisoners sentenced to 3 years imprisonment or more (this arrangement to be restricted to sentences of over 4 years from 1 April 1982).

(b) male prisoners serving 18 months imprisonment or more who normally live in the United Kingdom and were in Jersey temporarily when they committed their offence;

(c) female prisoners sentenced to six months imprisonment or more;

(d) young offenders;

(e) any prisoners too difficult or dangerous to be held in Jersey or who could not be held there for security reasons who needed prolonged medical or psychiatric treatment not available there.

259. Following a disturbance at Guernsey prison in 1976, an inspection revealed that the establishment was antiquated, overcrowded and run by amateurs. Because the risk that further disturbances might involve the ultimate responsibility of the Crown for the good government of the Island, regular reports on the situation were called for and two further inspections made. At a meeting with Guernsey representatives in 1978 the Minister of State emphasised the serious concern felt by the UK government about the state of the prison, and the apparent lack of urgency shown by the Guernsey authorities in dealing with it. Since then a full-time Prison Governor has been appointed in the place of the previous part-time appointee; and a Training Principal Officer from the United Kingdom has been seconded to the prison at Island expense. The Inspection Reports on the prison have been published, and a number of the detailed recommendations have been implemented. Finally the States have now accepted in principle the report of a working party, set up to consider the problem, which recommended the expenditure of some £2 million on the construction of a small new training establishment on a

separate site and the complete refurbishment of the existing prison. The Home Office has agreed to provide any help or advice that the Guernsey Prison Board requires in connection with the redevelopment.

259(a) The present prison in Guernsey normally holds only remand prisoners and those sentenced to less than 12 months' imprisonment, longer term prisoners and those sentenced to borstal training being transferred to United Kingdom establishments at the expense of the Island (CIM/69 32/3/5). Women with sentences of 4 months or more are normally transferred. The arrangements for transferring men with sentences of 12 months or more can be traced back to 1950 (929002/6). It is recognised that the facilities at the prison are unsuitable for longer term prisoners (CIM/69 33/1/1).

259(b) In 1976 the Minister of State questioned whether the United Kingdom should continue to provide accommodation in its prisons for offenders sentenced in the Channel Islands and the Isle of Man and a review of the existing arrangements was carried out (CIM/69 32/3/18). The file includes the most recent statistics of transfers of prisoners from the Islands to United Kingdom establishments.

Prisoners' Petitions

260. A petition from a prisoner convicted in the Islands but serving his sentence in the United Kingdom which raises questions relating to conviction or sentence is forwarded to the Lieutenant Governor for the comments of the Insular Authorities and any which the Lieutenant Governor may wish to add. A petition from a prisoner in the Islands is forwarded to the Home Office through the Lieutenant Governor. (CIM 31/2/16). Petitions are considered by the appropriate Home Office Division, and a copy of the reply to the petitioner is sent to the Insular Authorities through the Lieutenant Governor by E2 Division. A petition from a prisoner in England relating solely to a matter of his treatment or allocationis dealt with by Prison Department in the normal way, and petitions to The Queen are handled as outlined above and in accordance with normal procedures - see for example CIM/75 30/1/2.

Royal Prerogative of Mercy

261. The exercise of the Prerogative of Mercy in relation to Channel Islands cases rests entirely with Sovereign, on the advice of the Home Secretary. In contrast to most other Insular matters, the Privy Council has no concern with this question - it is one for the Home Secretary alone to advise on. E2 Division acts purely as a channel of communication if any Island cases arise, passing them to the appropriate C Division for consideration. The Criminal Department is assisted, in considering Prerogative of Mercy cases, by a memorandum prepared by Mr W H Cornish, a former Assistant Under-Secretary of State. Paragraph 47 to 59 of this memorandum relate to the Channel Islands.

The Death Penalty

262. Guernsey followed closely after Great Britain in abolishing the death penalty for murder, but it still remains in Jersey. Very few cases have arisen in Jersey since abolition in this country, and the papers are passed by E2 Division to the appropriate C Division for consideration. It has been made clear to the Jersey Authorities that they cannot look to the United Kingdom for the expertise essential in carrying out an execution, upon which they previously relied absolutely. (CIM 46/1/4).

262(a) Ian Stanley Le Brun, a Jerseyman, pleaded guilty to a charge of murdering his wife and was sentenced to death by the Royal Court in April 1975. (CIM 67 30/4/9). On the

recommendation of the Home Secretary, the sentence was commuted to one of life imprisonment and he was transferred to the United Kingdom to serve it. In 1977, solicitors acting for Le Brun asked the Home Secretary to refer the case to the Court of Appeal in Jersey on the contention that Le Brun's pleas of guilty should be set aside because his legal advisers did not tell him that psychiatric evidence was available to indicate that he was at the time of the crime unable to form a specific intent to murder (the plea of diminished responsibility, leading to conviction of manslaughter, is not available under Jersey Law). The Home Office decided that the power to refer a case to the Court of Appeal in Jersey existed under Article 41 of the Court of Appeal (Jersey) Law 1961 taken with article 25(1), but that no significant fresh evidence had been produced such as to cast real doubt upon the correctness of the conviction, so the request for a reference was refused. On 1 November 1979 a Board of the Privy Council consisting of 3 Law Lords considered an application on Le Brun's behalf for leave to appeal to the Privy Council against conviction and sentence on the ground that his plea of guilty was based on erroneous advice, but the application was dismissed.

262(b) In 1980, Nigel Hammill Hopton who came from Yorkshire was convicted of murdering Miss J A Harris in St Helier, Jersey, and was sentenced to death. His appeal against conviction was dismissed and on the recommendation of the Home Secretary the sentence was commuted to life imprisonment (CIM/72 30/8/5).

Life Sentence Prisoners

263. Within the Home Office the question of release of life sentence prisoners is dealt with by the appropriate C Division. Section 16 of the Criminal Justice Act 1967 requires the Home Secretary to consult the Lord Chief Justice and, if he is available, the trial judge before releasing on licence a life sentence prisoner. (In practice the judiciary are normally consulted before a proposal for release is made to the Parole Board). As regards consultation in Channel Islands cases, the following undertaking was given to the Jersey Attorney General in Captain Carrington's letter of 17 February 1972 (CIM/61 30/9/4):-

> "As you will know, the effect of section 61 of the Criminal Justice Act 1967 is to require the Home Secretary to consult the Bailiff if he was the trial judge, but it imposes on him no statutory obligation to consult the Bailiff of the day if he was not the trial judge. I am authorised to say, however, that the Home Secretary, while he cannot bind his successors, nevertheless takes the view that any Home Secretary, if the Bailiff of the day had not presided at the trial, would certainly consult both the Bailiff and the trial judge, if still available, before releasing on licence under sentence 61 of the Act a person sentenced by the Royal Court. As you will appreciate, such advice, like that under the statute, would not be binding on the Home Secretary.
>
> There would be no objection to your informing the States in those terms."

Parole

264. The provisions of the Criminal Justice Act 1967 regarding release on licence, on the recommendation of the Parole Board, apply to a prisoner convicted by a Channel Islands Court but serving his sentence in this country, and the provisions relating to revocation of the licence and recall to prison apply to a "licensee" living in the Channel Islands, whether he was originally convicted by an Insular or an English Court (CIM/68 32/1/1). The Jersey and Guernsey Attorney Generals have indicated that they see no difficulty about operating the recall procedure should the occasion arise. One case has arisen, that of a Jersey man named Botrel. The order of recall was sent to the Lieutenant Governor's Office, and Botrel was duly arrested by the Jersey police and transferred to Winchester prison (CIM/68 32/1/2).

265. The decision whether to release a prisoner on licence, if the Parole Board so recommend, is entirely one for the Secretary of State. There is no question of seeking the concurrence of the Insular Authorities to the release (or recall) of a Channel Islands prisoner, nor has it been thought appropriate, having regard particularly to the sensitivity of the Parole Board about its independent status, for the Home Office to invite the Insular Authorities to make recommendations on proposals for the parole of a Channel Islands prisoner - though the authorities are accustomed to doing so in most criminal cases, in particular those arising in connection with the exercise of the Royal Prerogative of Mercy, on which we ask them for reports. If the Insular Authorities made any recommendations of their own accord regarding parole it would be reasonable to hope that the Parole Board would appreciate their special position. Normally, therefore, communications with the Insular Authorities conducted by E2 Division on behalf of H2 Division's Parole Unit are confined to asking for information which will be needed first by the Local Review Committee which considers cases of prisoners who are eligible for parole, and subsequently by the Parole Board; informing the Insular Authorities of the pending release on licence of a prisoner who will be residing in the Channel Islands, and asking the authorities to secure the arrest of a "licensee" who is in Channel Islands but due to be recalled to prison. Communications are normally addressed to the Lieutenant Governor, though notifications of pending release in Guernsey have on occasions been sent to the Attorney General (who had made representations in one instance about the absence of any notification).

266. "Licensees" in the Channel Islands, as in England, are subject to supervision by the local probation officer.

D. MENTAL HEALTH

267. This is primarily a matter for the Department of Health and Social Security or, so far as concerns mentally disordered offenders, for the appropriate C Division. This particular section also covers the Isle of Man, since the position is similar.

General

268. Jersey, Guernsey and the Isle of Man each have their own Mental Health laws and psychiatric hospitals. There are longstanding, informal arrangements between the Island and the DHHS for patients, other than offenders found to be insane on the commission of an offence or at the time of trial, to be sent to English hospitals for treatment. It was not thought necessary, when English law was revised in the Mental Health Act 1959, to put these arrangements on a statutory footing. A transfer can take place only at the request of the Insular Authorities. The Secretary of State has no power of direction as he has in the case of an offender found to be insane (see paragraph 269 below) and he has no more power to intervene in the treatment of a non-offender patient in an Island hospital than in any other purely domestic matter. If, however, we receive representations by or on behalf of a patient in an Island hospital, we can make tactful enquiries of the Insular Authorities and ask them and the DHSS about the possibility of transfer to an English hospital, and such enquiries may lead to further consideration being given to a patient's case. For an example see CIM/67 390/1/11, 12, 18.

Mentally Disordered Offenders

269. The Home Office has various responsibilities under the Mental Health Act 1959 for mentally disordered offenders from or in the Channel Islands or the Isle of Man, which are exercised by the appropriate C Division. There is, however, one aspect of the Act which merits a mention. Under Section 88 of the 1959 Act, a patient (whether or not an Islander) who absconds from a hospital in England, Wales or Scotland to one of the Islands may be recovered from there

(this applies also to non-offender patients, but these are not the responsibility of the Home Office). There appears to be no case since the 1959 Act in which we have had occasion to secure the return of an absconder from the Islands, but the fact that this power is in the background has enabled us, for example, to allow a patient from an English hospital to spend a short leave of absence in Jersey (CCS 860/95/1). The Islands have no corresponding powers to recover one of their "absconders" from Great Britain. Since they cannot take such powers in Insular Legislation, the powers would have to be conferred by a United Kingdom Act. No suitable opportunity for such legislation has so far occurred, but the question stands referred to C3 Division, in consultation with the DHSS, whose primary concern it would be since most Island patients are non-offenders. The matter is not one of high priority since it appears that the absence of these powers has not as yet given rise to any real difficulty: we were told, for example, by Guernsey that they had only 2 absconders in a period of 11 years (CRI 61 6/9/38).

E. HEALTH SERVICE ARRANGEMENTS

270. There are arrangements for reciprocal health service treatment between the United Kingdom, the Isle of Man and the Channel Islands which are embodied in a Convention. The first such Agreement, made in 1950, was between the Ministry of Health, the Department of Health for Scotland and the States of Jersey and Guernsey. In 1974, revision of the Agreement became necessary as a consequence of the reorganisation of the health service in the United Kingdom, and the opportunity was taken of making a full review of its terms. As a result a Convention was agreed in 1976 between the Governments of the United Kingdom of Great Britain and Northern Ireland and the Isle of Man, and the States of Jersey, Guernsey and Alderney and the Chief Pleas of Sark, which provided for health treatment for visitors as if they were residents of the country being visited, and for Channel Island residents to receive treatment in the United Kingdom or the Isle of Man if local facilities were inadequate. (CIM/64 141/1/10).

271. The Isle of Man was assured that the prospect of Channel Island residents being sent there for treatment was remove, and the text of the Convention was revised so as to remove the possibility of the inference being drawn that the Isle of Man was part of the United Kingdom.

F. POSTAL AND TELECOMMUNICATION SERVICES

272. Section 87 of the United Kingdom Post Office Act 1969 made provision for effect to be given to agreement between the Minister of Posts and Telecommunications and Jersey, Guernsey or the Isle of Man as regards responsibility for postal and telecommunication services. Jersey and Guernsey took responsibility for postal services within their Bailiwicks on 1 October 1969 (the date when the Post Office Act 1969 came into force), and for telecommunications on 1 January 1973 (before this date they had been running their own telecommunication services under licence from the United Kingdom Authorities). The Isle of Man took responsibility for its postal services on 5 July 1973. Various Orders in Council were made to effect these transfers - see CIM 67 29/1/35, CIM 67 29/1/20, 27, CIM 68 429/1/1. The Island postal authorities are not postal administrations for the purposes of the Universal Postal Union.

273. Two points of significance arose in relation to these Orders in Council. The first relates to the application of Section 80 of the Post Office Act 1969 (which deals with the interception of mail and telephone calls) to the Channel Islands and the Isle of Man, which was done in a slightly different way for each Island. Certain assurances were sought from the Attorney General of Jersey and Guernsey and the Lieutenant Governor of the Isle of Man and consideration should be given to seeking similar assurances from each new incumbent of these offices - see CIM 68 429/1/11. A question about interception was asked in Tynwald on 18 March 1980 - see CIM/80 496/1/1.

274. The second point arose from action taken by the Chief Pleas of Sark (CIM/69 160/9/1). The assembly had approved the Projet de Loi in draft, but when the final version was sent to them in July 1969 they decided by a majority, and contrary to the advice of the Dame, to accept a motion by the Tenant of Brecqhou that the Projet should be examined by a specially constituted committee which would report in two months time. This decision caused some consternation, because Guernsey was aiming to submit the new law to the Privy Council in time for it to come into force on 1 October, the date when the Post Office Act 1969 itself was due to take effect, and time was short. The Home Office considered what the position would be if the Guernsey law were submitted for Royal Assent without a statement of the approval of the Chief Pleas. Legal advisers stated that "..... the Crown in Parliament of the United Kingdom can legislate for Sark against their will but the State of Guernsey cannot do so without the consent of the Chief Pleas in this field. (The States of Guernsey is able to legislate for Sark against its will in respect of criminal law). Various alternative possibilities were considered but in the event a firm letter from the Bailiff of Guernsey to the Seneschal of Sark led to a discussion of the situation between Guernsey and Sark representatives, and the Chief Pleas subsequently approved the Projet on 28 July 1969. There were in fact economic as well as constitutional overtones to these events, in that if Sark had insisted on issuing its own postage stamps, this could have threatened the viability of the Guernsey postal service.

Issue of postage stamps and coins by Jersey and Guernsey

275. Any postage stamp or coin design containing The Queen's portrait or cypher must be submitted for Her Majesty's approval, and this is done through the Lieutenant Governor and the Home Office. In contrast with the Isle of Man, Jersey and Guernsey coins do not bear the Royal Effigy. The Crown Agents or the other agents employed by the States deal with other matters, not affecting Royal Approval, which may need clearance, for example questions of copyright.

275(a).In 1981 an agreement was reached between Guernsey and Alderney for the Guernsey Post Office Board to produce Alderney definitive and commemorative stamps as regional issues. (CIM/69 160/8/13). This was the culmination of many years of campaigning by Alderney designed to provide an extra source of revenue. The first issue is expected in 1983. In 1982 Sark decided to ask the Guernsey Post Office Board for a similar arrangement. (CIM/82 160/8/2).

276. Guernsey asked whether they could make a personal presentation to The Queen of an album containing a set of their first stamps. The Home Office consulted the Palace and subsequently informed Guernsey that while the Queen would be very glad to accept the album, the Home Secretary felt unable to advise her to grant an audience at which the presentation could be made personally. An album was subsequently forwarded to the Queen via the Home Office, and a letter of thanks on her behalf was sent by the Home Secretary (see CIM 67 160/6/3). Other albums have subsequently been presented by the Channel Islands.

G. BROADCASTING

277. Under the Wireless Telegraphy Act 1949, as amended and extended to the Islands, the Home Secretary is the licensing authority for the Islands. Licence fees, at the same level as those applying here, are collected by the Island authorities and remitted to the Home Office, a fee being charged by the Islands for this service and for other enforcement work carried out by them. (CIM/67 29/1/28). The Independent Broadcasting Authority Act 1973 also applies to the Islands, with the exception of the provisions relating to sound broadcasting.

278. Channel Television, which provides a commercial service to the Channel Islands, has its headquarters in Jersey. It introduced the first colour service in the Islands in July 1976. BBC1

and 2 became available in colour in December 1976. Previously, the Islands could not receive BBC2 at all. (CIM/66 162/1/28).

279. The Channel Islands were invited to submit evidence to the Committee set up by the then Minister of Posts and Telecommunications (the Crawford Committee) to examine the broadcasting coverage of Scotland, Wales, Northern Ireland and rural England, but declined.

280. The terms of reference of the Committee of Inquiry under Lord Annan into the future of broadcasting services in the United Kingdom did not include the Channel Islands (or the Isle of Man) but the Islands were told that they were welcome to submit evidence to the Committee if they so wished. (CIM/64 494/1/65). In the event they did not do so.

281. In 1972 the BBC announced its plans to cease its regional output on the medium frequency transmissions of Radio 4. This resulted in complaints from the Channel Islands that they had been used to getting a South-West England programme on medium frequencies and that in future all that would be available would be some rather shorter regional inserts in the VHF transmissions. Many people in the Islands did not have sets which would receive VHF. (CIM/66 162/1/8).

282. Following this decision by the BBC the Islands again raised the question of establishing a joint local sound radio service. (The matter had first been raised at a meeting held with the Home Office in May 1971 (CIM/66 162/1/28). It was envisaged that such a service would be broadcast on a medium frequency, and the then Ministry of Posts said that they would take account of the aims of the Channel Islands in this respect, as well as those of the off-shore islands, when making preparations for United Kingdom participation in the Regional Administrative Broadcasting Conference to review the use of low and medium frequencies in Europe.

283. The Conference, held in the autumn of 1975 in Geneva, produced an Agreement and Plan setting out frequency assignments for use in a period of at least 10 years starting in November 1978. Two medium frequency assignments to meet the broadcasting needs of the Channel Islands from 1978 were included in the plan. (Two frequencies rather than one were needed since separate transmitters would have to be established in each Bailiwick in order to avoid overspill into France).

284. In the light of these assignments the Channel Islands considered the establishment of a Channel Islands Broadcasting Service and in July 1976 representatives of the Islands' Broadcasting Committees met Home Office officials to discuss ways of establishing such a service. The choices appeared to lie between a local station operated by the BBC, an Islands public authority, or a commercial company; and BBC national network programmes broadcast on the island frequencies and interspersed with Island news and features (on the lines of broadcasts to the Shetlands). If a local station were to be set up it would not be allowed to broadcast with any significant overspill into the United Kingdom or Ireland, and the licensee would need to take care not to give the impression of addressing broadcasts to France (into which overspill would probably be unavoidable).

285. Jersey and Guernsey both opted to set up local broadcasting stations, and after negotiations with the Home Office and the BBC, and with the necessary international approval, local stations were established in 1981 and began to broadcast in 1982.

H. ACTION TO BE TAKEN IN THE EVENT OF THE DEATHS OF PROMINENT PEOPLE IN THE ISLANDS.

286. The procedure to be adopted in the event of the death of a prominent person in the

Islands is considered on CIM/71 23/1/1. This section summarises the guidance on that file, but the action taken may vary according to the circumstances of each case. It should be noted that where a wreath is appropriate, it is normal to request the ADC to Lieutenant Governor to make the appropriate arrangements, and that in addition to formal arrangements for the sending of letters of condolence it is usual for senior officials to write on a personal basis. A complete list of holders of the offices of Lieutenant Governor and Bailiff is to be found in the Jersey and Guernsey Almanacks. Draft letters and telegrams are on CIM/71 23/1/1.

GROUP A - LIEUTENANT GOVERNORS

	Telegram/Letter of Condolence		Wreath from S of S if funeral public	Representation at (public) funeral or Memorial service	Notes
	The Queen	S of S			
Lieutenant Governor	To Bailiff/ Deemster	To 1. Bailiff/ Deemster 2. Family	Yes	Yes	
Wife of Lieutenant Governor	To Lieutenant Governor	To Lieutenant Governor	No	No	
Former Lieutenant	No	To Family	No	No	S of S represented at funeral of Sir Ambrose Dundas by Sir Austin Strutt but not a precedent - CIM/71 23/1/1. No action taken on death of Sir Edward Grasett 1971 - CIM/71 23/1/1

GROUP B - BAILIFFS

Bailiff	To Lieutenant Governor	To 1. Lieutenant Governor 2. Family	Yes	Yes	Sir William Arnold (Guernsey) died in office 21.7.73 CIM/72 17/1/3 Mr C S Harrison (Jersey) died in office, 1962-CIM 17/2/5
Wife of Bailiff	No	To Bailiff	No	No	
Former Bailiff	To Lieutenant Governor	To 1. Lieutenant Governor 2. Family	Yes	Yes	Secretary of State wrote to Lord Contanche on the death of his wife, 1973 - CIM/71 17/2/3.Death of Lord Contanche CIM/71 17/2/4

GROUP C - FIRST DEEMSTER

First Deemster	No	To 1. Lieutenant Governor 2. Family	Yes	Yes	Sir Percy Cowley died in office 1958 - CIM 417/1/6.
Wife of First Deemster	No	To First Deemster	No	No	
Former First Deemster	No	To 1. Lieutenant Governor 2. Family	No	No	

GROUP D - OTHER SENIOR CROWN OFFICERS

Deputy Bailiff Second Deemster Attorney General Solicitor General	No	To 1. Lieutenant Governor 2. Family	Yes	Yes, for Attorney General and above	Attorney General of Isle of Man died in office, 1972. HO represented at funeral by First Deemster, but not a precedent for Channel Islands - CIM/69 418/1/2
Wife of above	No	To officer in question	No	No	
Former holder of above offices	No	To 1. Lieutenant Governor 2. Family	No	No	

GROUP E - HOLDERS OF OTHER PROMINENT POSTS

Seigneur of Sark	To Lieutenant Governor	To Lieutenant Governor	Yes	Yes	
President of Alderney	To Vice President of Alderney	To Lieutenant Governor*	Yes	Yes	Captain Herivel died shortly after retiring after 21 years as President CIM/70 19/3/1
Bishop of Sodor and Man	No	To Lieutenant Governor*	No	No	
Speaker of Keys	No	To Lieutenant Governor*	No	No	
Spouse of any of above	No	To survivor	No	No	Letters sent to Bishop on death of wife by S of S 1970 - CIM/70 461/1/1. Letters sent to Speaker on death of wife by S of S 1970 - CIM/67 403/1/3. Mrs Herivel died very shortly before her husband - no letters sent - CIM/70 19/3/1.
Former holders of above offices	No	No	No	No	

* conveying condolences to family as well as to people of Island in question

GROUP F - SENIOR CIVIL SERVANTS

Government Secretary Isle of Man States Supervisor Guernsey States Greffier Jersey	No	No	No	No	Letter to family from the head of the Islands Division

J. JERSEY AIRPORT

287. The safety standards at Jersey Airport have given cause for concern in recent years. The provision of facilities at the Airport is within local competence, but the power to make this provision is vested in the Harbours and Airport Committee of the States by virtue of the extension, by Order in Council, of the Air Navigation Order 1972 rather than by Insular legislation. It was therefore held that Her Majesty's Government could be open to criticism for continuing to vest such power in the Committee if the safety standards at the Airport were below the standards in the United Kingdom for the grant of a licence - see Mr Witney's letter of 27 September 1973 on CIM/66 156/3/4. The safety standards were improved as a result of Home Office representations.

288. In 1969 the (then) Board of Trade issued a memorandum on safety areas at the end of airport runways, and the Jersey authorities subsequently requested a survey of their airport. The report, sent to the Insular Authorities in 1971, recommended that serious consideration should be given to the construction of a 1,000 foot extension to the runway, the diversion of a road and the safeguarding of an area for a 2,000 foot extension. In March 1972 the Bailiff asked for the appointment of a High Court Judge to hold a public inquiry into the resultant report of the Jersey Harbours and Airports Committee, but the Lord Chancellor was unable to comply with that request. Extending the runway as recommended by the (then) Department of Trade and Industry would mean demolishing part of St Peter's Village, a very unpopular suggestion for any Island politician to make, and it is basically this that hindered progress. In May 1972 the Harbours and Airport Committee resigned after suffering a defeat over its proposals for extending the runway and in March 1974 some fresh proposals were set out by the successor committee. The Jersey Authorities argue that the United Kingdom safety standards are above the international standards, and that Jersey Airport complies with the latter.

K. JERSEY FLAG

288(a) In August 1976 the Lieutenant Governor of Jersey wrote to say that the Insular Authorities were anxious to obtain approval for a new flag, if possible in time for use during The Queen's Silver Jubilee celebrations. The first design proposed by Jersey was found to be unacceptable to Garter Principal King of Arms; it was not until 1980, after prolonged negotiations between the Lieutenant Governor on behalf of the Jersey Authorities and Garter Principal King of Arms that a new flag was approved by HM The Queen (CIM/73 258/2/3). Doc 27 on the file contains interesting information from an old file, B2262/42, about the origin of the arms of Jersey, and Garter decided that the addition of a Plantagenet Crown to the Jersey arms on the flag was acceptable and did not necessitate or constitute a new coat of arms for the Island (doc 48).

L. PETITIONS TO HER MAJESTY IN COUNCIL CONCERNING INDIVIDUAL GRIEVANCES

289. In addition to the right which may be exercised by individuals to lodge an objection to proposed Island legislation (see the examples given in paragraph 189) it is accepted that individuals may petition Her Majesty in Council on others matters. It does not appear that the extent of this rights has ever been defined but it is interesting to note that in 1971 the Privy Council Office did not feel able to decline to consider a petition form an Englishman living in England and not born in the Channel Islands. (CIM 236/1/3) There have been the following petitions in recent years:-

(a) In 1971 Mr Richard Beaumont petitioned Her Majesty in Council concerning (inter alia) the right of his mother to succeed in Sark. (CIM/69 236/1/3) An Order in Council was issued dismissing his petition. (As regards other petitions from Mr Beaumont see paragraph 110).

(b) Mr P H Ogden petitioned Her Majesty in Council seeking compensation for the refusal of the States of Alderney to grant him planning permission in respect of land he owned on the Island. (Mr Ogden lived in England). (CIM/67 390/1/17) After investigation his petition was dismissed by Order in Council on 16 July 1973.

(c) In July 1974 Mr Barrie R Cooper petitioned The Queen in Council alleging unlawful detention in a mental ward of the General Hospital in Jersey for 4 days in June 1961 and sought compensation. Over the years there has been voluminous correspondence with the authorities in Jersey over Mr Cooper's case. (CIM/67 390/1/38) The outcome was unique: an Order in Council was issued on 19 May 1976 with the finding that Mr Cooper's detention had been illegal and the recommendation that the Jersey authorities be informed so that they "may consider the issue of an acknowledgement of the injustice done to Mr Cooper and the grant of compensation to him". This is the first instance of a finding by the Privy Council against the authorities in any of the Islands in response to a petition by an individual; but the Privy council had no power to direct the Jersey authorities to compensate the petitioner. Mr Cooper received £12,000 compensation.

(d) In 1976 Mr Alphonse le Gastelois petitioned Her Majesty in Council to be made Seigneur of Ecrehous. (CIM/67 239/1/4)

(e) In July 1978, a petition to The Queen in Council was submitted jointly by Alderney Meat Products Limited and Drifield Estates Limited seeking redress in respect of inconvenience, harassment and loss alleged to have been suffered as a result of proceedings taken against them for breach of Building Regulations in Alderney and obstruction of a Building Inspector. (CIM/77 59/1/3) The defence argued that 2 charges under the Regulation of Building (Alderney) Ordinance 1949 were ultra vires because the Ordinance related to matters that were properly the subject of legislation by Order in Council. The Royal Court in Guernsey found in favour of the defence; the Ordinance was a nullity, and a verdict of not guilty was recorded. The third charge, under the Building and Development Control (Alderney) Law 1975, was dismissed because the building work in question was so near to completion when the law came into force that the court of Alderney accepted the defence argument that it was unreasonable to hold that the law should apply to it. The complaint of the Companies that the Courts of the Bailiwick of Guernsey had no power to award costs in cases of this kind and that therefore the Companies had had to bear the full expense of these proceedings was felt to be a justifiable grievance, but the degree of injustice involved was not considered to be serious enough to warrant the intervention of the Privy Council. The petition was dismissed in April 1979.

(f) In October 1978 Mr Ronald Ernest Payne, a Guernseyman, submitted a petition to The Queen in Council seeking the custody of his two children. The petition was dismissed by Order in Council on 26 June 1979. (CIM/76 250/5/15)

(g) In February 1979 Mr J P I Taillefumiere submitted a petition requesting recognition of his sovereignty of the Ecrehous, which was treated as a petition to The Queen in Council. (CIM/77 239/1/2) Mr Taillefumiere claimed to have acquired the fief of the Ecrehous by simple contract in October 1976, but the Home Office and the Jersey Crown Officers

could find no grounds for supporting this view and the petition was dismissed by Order in Council on 19 October 1979. Mr Taillefumiere wrote to ask the reasons for this decision: he was told that it is not the practice to give detailed reasons for Privy Council Committee decisions, but .... "after consultation with the Jersey authorities, your claim for recognition to the Seigneurie of Ecrehous was, for a number of reasons, not considered to be well founded".

(h) In January 1980 Mr Barrie Cooper and Mr Ronald Payne (see (c) and (f) above) submitted a joint petition to The Queen in Council seeking a commission of enquiry into certain aspects of the government of the Channel Islands. (CIM/80 390/1/1) In particular they were concerned that the powers of the Crown Officers in Jersey and Guernsey were excessive and abused by the holders. The petition was dismissed by Order in Council on 13 October 1980.

Other non-legislative petitions

290. Other matters in respect of which petitions have been submitted to Her Majesty in Council in recent years include:

(a) petitions in 1969 and 1971 to Her Majesty in Council as Patron of the living of a Parish, for example, for permission to sell some property in the parish in Guernsey (CIM/69 130/14/1, CIM/71 130/27/1);

(b) a petition to Her Majesty in council from the States of Guernsey for an Order in Council to amend the statutes of Queen Elizabeth College, Guernsey, which is governed by statutes confirmed by Order in Council in 1852. An example occurred in 1971 (CIM/65 250/1/2);

(c) petitions to Her Majesty in Council from the trustees of the Howard Leopold Davis Scholarships Trust, which was incorporated by Royal Charter in 1929, for a supplemental Charter. Examples arose in 1964 (HON 210/240/IW) and 1976 (CIM 250/3/1).

M. PETITIONS TO THE QUEEN

291. Petitions to The Queen from the Channel Islands and the Isle of Man are dealt with in accordance with normal Departmental policy. There have been the following examples in recent years (the list may not be complete):-

(a) A petition from the Committee of the Anglo-Rhodesia Association of the Isle of Man submitted in 1966 was in fact dealt with by the Commonwealth Relations Office. (CIM/62 567/2/3).

(b) A petition from Mr G Seymour Tett of Jersey in 1969 resulted in the Home Office seeking information from the Lieutenant Governor because among his complaints was one about the behaviour of the Jersey Law Officers; as a result his case was thoroughly investigated. (CIM/67 390/1/6).

(c) In 1973 a petition was received from Mec Vannin alleging corruption and misgovernment in the Isle of man. (CIM/73 567/2/2).

(d) A prisoner in Jersey Prison, Mr C P R Dale, petitioned The Queen in 1975. (CIM/75 30/1/2).

(e) In 1973 Mr W S Cole petitioned The Queen concerning his dismissal by the Isle of Man Civil Service Commission from a post with the Isle of Man Gas Authority. The case was investigated at length and the file contains memoranda about the delegation to the Lieutenant Governor of the prerogative of the Crown to dismiss Crown employees at will (section 3(1) of the Isle of Man Civil Service Act 1962). The petition was eventually dismissed in 1975 (CIM/72 590/1/2).

(f) In 1980 Mr Spencer Gelsthorpe petitioned The Queen about his treatment by the authorities in Guernsey in connection with his occupation of his house there (CIM/79 64/5/4).

(g) Mr JG Gillow submitted a petition to The Queen in September 1980 about the operation of Guernsey Housing Control Law in his case (CIM/80 64/5/11).

(h) In April 1980 Mr Michael John Dun (from Jersey) submitted a petition to The Queen seeking a commission of enquiry into alleged defects in the administration of justice and in the understanding and application of the laws and customs of Jersey and Guernsey, which he maintained could not be remedied without intervention by the United Kingdom Government. The petition was rejected. (CIM/80 30/4/1)

CHANNEL ISLANDS: FINANCIAL RELATIONSHIP WITH THE UNITED KINGDOM

A. GENERAL

292. The Islands enjoy a considerable amount of financial and economic independence and, so far as their internal budgets are concerned, are self-supporting. They fix their own rates of income and other taxes and, operating as separate customs areas, levy their own customs and excise duties. They receive no grants from the United Kingdom Exchequer, which bears, however, the cost of a number of services of direct benefit to the Islands.

293. The Islands pay the full economic cost of such services as the accommodation in United Kingdom penal establishments of offenders sentenced in the Islands but transferred to the United Kingdom. a summary of the other arrangements between the United Kingdom and Guernsey is to be found in Guernsey's evidence to the Royal Commission on the Constitution, in the section headed "Comity of the United Kingdom and Guernsey". Unlike the Isle of Man, however, the Channel Islands make no regular contribution towards the cost of defence (including fishery protection), overseas representation of other common services. They have always declined to do so on the ground that it would be a form of taxation by the United Kingdom, but some lump sum payments have been made.

294. The Islands form part of the United Kingdom exchange control area and operate the necessary controls in co-operation with the Treasury and the Bank of England.

295. In general, the Island authorities appear to welcome action by Her Majesty's Government to prevent people from the United Kingdom from taking advantage of their lower tax rates; while they set great store by their fiscal independence, they have no desire for it to be exploited by people in other territories. (But see the papers on the capital transfer tax provisions of the Finance Act 1975).

296. The prosperity induced by the successful negotiation of a special relationship with the EEC, combined with the recent contraction of the exchange control area, has brought with it considerable social pressures, particularly in relation to housing and office accommodation.

297. Details of the economy of Guernsey (and Alderney) can be found in the annual Billet d'Etat giving the accounts of the Island. Information relating to Jersey can be found in the accounts and in a book published in 1971 by the States Economic Adviser, G C Powell, entitled Economic Survey of Jersey. The Island's evidence to the Royal Commission on the Constitution includes a summary of the principal taxes, at page 186-7 of Minutes of Evidence volume VI. The Lieutenant Governor of Guernsey provides annually the accounts and budget of Sark.

Royal Charters relating to trade

298. Over the centuries English sovereigns have granted various Charters to the Channel Islands in recognition of particular services they had rendered (see paragraphs 215-217), and one of the privileges included in these Charters is the right to export goods to the United Kingdom without the imposition of customs duties. The provisions of the Charters are summarised in Guernsey's evidence to the royal Commission on the Constitution, published at page 228 of Minutes of Evidence, Volume VI. The Jersey evidence goes into greater detail but the relevant Appendix covering Charters was not published by the Royal Commission; it is however available in the volume entitled "Submission of the States of Jersey to the Royal Commission on the Constitution", Appendix 1 Section 8 (pages 116-151). There is a memorandum entitled "Channel Islands: Immunity from Imperial Taxation" on 433527/8, dating from 1922 and unfortunately now incomplete, which gives details of the early Charters relating to trade.

299. The general situation is well summarised in the Guernsey evidence to the Royal Commission:-

> "Probably the most important privilege granted by the Charters was the immunity of insular produce from customs duty on entry into the United Kingdom. This relief from duty was confirmed by an Act of Parliament of 1714 (3 Geo, IC 4), and by section 156 of the Customs Consolidation Act, 1876. Although both those Acts have been repealed the right was re-enacted in section thirty-seven of the Customs and Excise, Act 1952.
>
> The rights and immunities granted by the Charters have always been respected and in the three cases mentioned have been reiterated and confirmed, in two cases by an Order in Council and in the other, as recently as 1952, by an Act of Parliament".

300. The trading arrangements between the United Kingdom and the Channel Islands were generally unaffected by accession to the EEC, but the Channel Islands and in particular Guernsey's tomato trade face greater competition for a share of the United Kingdom market due to the dismantling of United Kingdom quota systems and provisions giving other countries produce free access to the United Kingdom market.

Customs Officers in the Islands

301. HM Customs and Excise stationed a Customs Officer in Jersey and Guernsey from the eighteenth century until 31 December 1973, when the officers were withdrawn on the initiative of Customs and Excise in the face of staff shortages. The duties are now undertaken by a local officer. (CIM/69 223/4/1)

302. HM Customs Officers were first stationed in Jersey and Guernsey in order to eliminate smuggling between the Channel Islands and the United Kingdom, but by 1973 the majority of the duties performed were agency - work for other Government Departments. The file contains an interesting historical note of 7 May 1973 about the post in Guernsey.

B. CONTRIBUTIONS FROM THE CHANNEL ISLANDS TO THE UNITED KINGDOM EXCHEQUER

The First World War

303. The first occasion on which it was suggested that the Channel Islands should contribute to Imperial Funds arose in 1917. The introduction of Military Services Laws into the Islands that year relieved them of the cost of the local Militia Forces which they had previously borne, and the entire cost of the defence of the Islands fell upon the Imperial Exchequer. A letter of 18 June 1917 from the War Office to the Home Office stated that "The Army Council feel that such an arrangement is clearly inequitable and that it calls for amendment. At a time when nearly every portion of the Empire is contributing to the war expenditure in one way or another, the Council cannot think that the Channel Islands would wish to be in the unique position of having made a saving at the expense of the Imperial Exchequer as a result of measures introduced for the furtherance of the war.

304. In these circumstances the Council trust that Sir George Cave[5]" will be so good as to approach the local authorities of Jersey and Guernsey with a view to obtaining in some form a

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[5] The Home Secretary of the day.

contribution from the revenues of the Islands towards the cost of the new Forces raised under the Military Service Laws. (361862/1)

305. This letter was duly forwarded by the Home Office to the Lieutenant Governor of Jersey and Guernsey "for the favour of your observations thereon". The result was an offer to Her Majesty's Government in December 1917 of £25,000 from the States of Jersey "to be applied, as may be deemed most expedient by them, towards the cost of the War ...". There was no immediate response from Guernsey. (361862/10)

306. The next move came in 1918 when a letter was addressed to the Lieutenant Governors of all three Islands on 11 April calling for a greater contribution to the War effort, particularly by sending more men to the forces, by producing more food and by bearing a due share of the financial burden of the war. The Home Secretary wrote:-

> "Not only has the Imperial Government hitherto not asked the Island to bear any share of the burden, but it has also taken upon itself the whole charges in respect of the forces contributed by the Island - so that not only has the Island been relieved since the passing of the Military Service Act of all cost of maintenance and equipment which it previously had to bear in connection with the Island Militia, but large sums are being paid to the Island in the shape of separation allowances for the maintenance of dependents of the men who have been recruited, and the future pension charges will also fall upon the Imperial Exchequer.
>
> HM Government believe that the Island will feel that while it enjoys the full protection of the armies and navies of the Crown, it should bear an equal share of the heavy burden which rests upon the Country, and will be ready to take whatever measures may be necessary for the purpose ...
>
> The Government invite the Island of Jersey [Guernsey] to takes its full share now in the defence of the freedom and safety of the Empire with which their own safety and freedom are inseparably connected. They feel sure that the people of Jersey [Guernsey] do not fail to realise the greatness of the need and will respond to the utmost of their power."

307. In less than a month there was indications that Guernsey would make a contribution of £100,000, and in September 1918 the States of Jersey voted a further £50,000 (see paragraph 305 above). (36182/17,28 3618262/24) On 24 March 1919 Jersey offered a further £25,000 so that the total contributions from the Island matched the £100,000 from Guernsey. Guernsey found it necessary to introduce income tax for the first time in a Projet de Loi of December 1919 in order to finance its contributions. (361862/49)

The Geddes Committee 1922

308. After the First World War the Committee on National Expenditure (the Geddes Committee) in a Report of February 1922 (Cmnd 1589) indicated that it considered the contributions from the Channel Islands to be an inadequate payment for the protection of the armed forces and the provision of diplomatic and consular privileges abroad, and pointed out that the cost to Army Votes of troops stationed in the Channel Islands totalled £365,000 a year. The report said "We suggest that ..... the Government might think the present an appropriate occasion on which to consider whether the Channel Islands should not be invited to make an annual contribution for the purpose of relieving the Imperial Exchequer in return for the benefits which the inhabitants obtain". (433527/2) A note of 3 February 1922 on 437428 points out the difficulties in the way of extracting any kind of contribution from the Channel Islands, and after enquiries into the financial situation of the Islands (433527/2/3) the outcome was a letter of 30

January 1923 to the Lieutenant Governors of Jersey and Guernsey enclosing a letter to the Bailiff and States of the Islands drawing attention to the findings of the Geddes Committee and asking the Islands to consider making an annual contribution to the Imperial Exchequer. A memorandum by the Treasury was enclosed suggesting that the amount of the contribution might be £325,000 a year from Jersey and £275,000 a year from Guernsey (433527/8).

309. The response from Jersey took the form of a resolution passed by the States on 1 December 1923: "The States, having again considered the request of the Imperial Government ... to grant, henceforward, an annual contribution of £325,000 ... towards Imperial expenses, have declared that they cannot, even if the financial position of the Island did not prevent it, undertake to do so, without violating the recognised privileges, franchises and immunities of the Island and the fundamental principle that no tax can be levied by the States for other than Island purposes, and that no tax can be imposed as a permanent charge whereby the tax payers of the Island and their successors would be committed indefinitely to a levy the yield whereof, when once paid into the Imperial Exchequer, would necessarily escape, as regards its application, any control on the part of the tax payers themselves and that of their representatives". (433527/25)

310. A resolution was passed by the States of Guernsey on 3 October 1923:- "The States having carefully considered the request ... for an annual contribution to the Imperial Exchequer to meet the very pressing needs created by the late war ... have resolved to affirm that such a demand is incompatible with the privileges and immunities of this Island, and for that reason must be refused. The States have further resolved that any proposition to contribute to the Imperial Exchequer should emanate from the States themselves ...", and the resolution went on to state that consideration of any such proposals would be deferred for 4 months. In February 1924 the States of Guernsey offered £220,000 to the Imperial Exchequer "to be utilised towards providing pensions for Guernseymen or residents of Guernsey who served during the late war". (433527/26) (433527/27)

The Atholl Committee 1925

311. In an effort to secure a more adequate donation from the Islands it was decided to set up a Committee of the Privy Council, "To consider the question of contributions to Imperial funds from the Islands of Jersey, Guernsey and Man, and to make recommendations as to the arrangements which should be made between the Imperial and the Insular Governments for the payment of any such contributions." A four-man committee under the chairmanship of the Duke of Atholl was appointed in March 1925. (437428/19) (476642 476642/2)

312. With regard to Jersey's contention that a contribution would violate the privileges of the Island and the fundamental principle that no tax may be levied by the States for other than Island purposes, the Home Office commented in evidence given by Mr (later Sir) A Maxwell to the Committee:-

> "On the narrowest view it would seem impossible to contend that the payment of Island pensioners who served in the war is outside the scope of the phrase. But the Island cannot exist as a self-contained community. In the matter of defence it is dependent on the British Fleet and British Air Force and as it will be argued later the economic interests of the Island are inseparably connected with the economic interests of Great Britain. Accordingly even if the principles for which the Island contend were admitted these principles would not exclude a contribution towards the war debt, towards the cost of pensions and towards the cost of defence." (476642/16)

313. The Report of the Committee of the Privy Council on the question of contributions to Imperial Funds from the Islands of Jersey, Guernsey and Man, Cmnd 2586, was published in 1926. The recommendations made were for a minimum annual contribution of £120,000 a year for 100 years from Jersey, and £75,000 a year for 100 years from Guernsey. The sum of £220,000 as a lump sum payment offered by Guernsey was regarded as quite inadequate, and an argument adduced by Guernsey that the Island made an indirect contribution of £53,000 a year through tax claimed in the United Kingdom from Guernsey men was not accepted by the Committee, who found that the situation of Guernsey in this respect did not differ from that of other parts of the Empire. Jersey indicated to the Committee that a capital sum of £500,000 might be offered, but later reduced the figure to £300,000. (433527/39) The Committee commented "We regret that we can only regard the decision of the States as an indication that they are still unwilling to contemplate any material alternation in the favoured position which, at the expense of the British taxpayer, the Island now enjoys." The recommendations of the Committee assumed the imposition of taxes in Jersey and Guernsey for a limited period amounting to £2.45p and £1.95p a head respectively. (Paragraphs 39, 42, 49, 50, 62 and 65 of the Report). The Treasury memorandum of evidence to the Committee had suggested an annual payment of £303,000 from Jersey and a lump sum payment of £870,000 to cover the cost of war pensions, and an annual contribution of £208,000 from Guernsey and a lump sum payment of £1,041,000 (Appendix 1 to the Report).

314. A meeting of Ministers in March 1926 considered what action should be taken following the Report, and it was decided that the Home Secretary should prepare communications to the Insular governments enquiring what contributions to Imperial funds they were prepared to make. (490074/9) A memorandum of 19 February 1926 by Sir Malcolm Delevingne on 490074 discusses how forceful a line the government should take in seeking contributions and points out that, in the case of the Channel Islands, if no voluntary offer were made, in the ultimate resort the contribution would have to be extracted from the Island by means of Westminster legislation.

315. The States of Jersey and Guernsey lost no time in passing resolutions in almost identical terms informing His Majesty's Government that "they are not prepared to accept the findings of the Report either on the constitutional or the financial issues involved ...". (490074/12, 13) A letter was subsequently sent to the Lieutenant Governors of Jersey and Guernsey by Sir John Anderson stating that His Majesty's Government ..." are sincerely desirous of coming to an amicable settlement with the Islands on this matter and they are ready to consider any representation that the Islands may wish to submit, and would also be glad to know whether they have nay counter proposals to put forward." (490074/17) The outcome was a renewal of the offer of £300,000 from Jersey "as a final contribution towards the cost of the War and as a free and gratuitous gift to the Imperial Treasury", and news from the States of Guernsey that "they are unable to increase the offer of £220,000 they have already made." (490074/27 490074/28)

316. On 22 February 1927 a letter was addressed to the Lieutenant Governors expressing disappointment at this outcome, without, however, exerting any particularly strong pressure for an increase:-

> "They [His Majesty's Government] regret that the States of the Island of Jersey [Guernsey] have not seen their way to undertake voluntarily a share proportionate to the capacity of the Island in the heavy burden incurred by Great Britain for the purposes of the war in which the interests of the Island were equally engaged with those of Great Britain itself. They do not propose however to take any steps to press the view which they entertain as to the obligation of the Island in this matter against the wishes of the Island community.

> Without in any way pronouncing upon the constitutional issues involved or latent they have approached the obligation not as a legal but as a moral obligation, and if the States decide to continue in their present attitude, His Majesty's Government propose to leave the matter there."

317. The letter went on to point out that contributions from the Isle of Man towards the cost of the war totalled £760,000, and to urge Jersey and Guernsey to make a similar effort.

318. Jersey and Guernsey were not disposed to be shamed by the comparison with the Isle of Man into altering their proposed contributions, and the sums of £300,000 and £220,000 were later received from them. An indication of the depth of feeling aroused in Guernsey by the contribution issue is given in a comment by the Bailiff quoted in a letter of 25 May 1929 on 468883/6:-

> "The Island thinks that in the matter of the Contribution it was unfairly treated in two ways. First by the Treasury's attitude in putting forward publicly figures which were most misleading from their fallacy, and secondly by the Secretary of State's failure to acknowledge the receipt of an offer of £220,000 as a first payment towards the pensions of our men. I can assure you that these matters have not been forgotten, and ill-feeling will only be stirred up again if this question is raised."

The Second World War

319. The matter does not appear to have been raised again for a considerable period. On the even of the outbreak of the Second World War the States of Guernsey made a gift of £25,000 to the United Kingdom, and resolved to spend £180,000 on its own defence in the period 1940 to 1942. In May 1940 a further contribution was about to be considered, but occupation by enemy forces occurred before any action could be taken. Jersey meanwhile sent £100,000 in March 1940 "to be applied towards the cost of the war. The note of 16 February 1952 on 929147/2 records that "On the liberation the Channel Islands were in no condition to make any contribution to the cost of the war. On the contrary, it was necessary for His Majesty's Government to give them £7½m to enable them to pay off their indebtedness to the Banks. (829030 829030/9 829030/6)

320. In June 1949 when the Island economy had shown that it was once again assuming its pre-war prosperity Sir Frank Newsam suggested to the Bailiffs of Jersey and Guernsey that the Island might wish to make a financial gift to the Imperial Exchequer. Nothing seems to have come of this suggestion although in a letter dated 24 July 1949, a copy of which is registered in 929147, the Bailiff of Guernsey informed Sir Frank Newsam that the Finance Committee of the State of Guernsey "had undertaken to examine the matter."

321. Further action was taken in 1952. On 19 February the Home Secretary wrote to the Chancellor of the Exchequer suggesting that the time was ripe for a fresh approach to the Channel Islands. "Not only do the Islands benefit from the participation of the United Kingdom in European defence plans" the Home Secretary wrote, "But their inhabitants possess all the advantages of citizens of the United Kingdom as regards diplomatic and consular facilities abroad. Moreover the prosperous economy of the Islands derives almost entirely from their proximity to Great Britain, which favours exports to this country of horticultural and agricultural products, and the imports into the Islands each summer of large numbers of tourists ..."

322. Since the United Kingdom taxpayer is being asked to shoulder new burdens and made new sacrifices, it seems to me that no more suitable time than the present is likely to occur for

again inviting the Channel Islands to contribute to Imperial funds in recognition of defence and other advantages derived from the United Kingdom."

323. The Chancellor of the Exchequer concurred with the Home Secretary's suggestion, and Sir Frank Newsam put the matter informally to the Bailiff of each Island. A copy of the Home Secretary's letter of 19 February 1952 was subsequently sent to the Lieutenant Governors. The States of Guernsey decided on 10 December 1952 to make an unconditional gift of £100,000 to Her Majesty's Government. The Lieutenant Governor wrote:- "This gift is offered as evidence that the States and People of this Island are not unmindful of the fact that they share in the security provided by Her Majesty's armed forces nor unaware of the heavy burdens falling upon the people of the United Kingdom in the provision of that security." (829030/10) On 9 June 1953 the States of Jersey, "being mindful of the sacrifices made by all member countries of the Commonwealth in helping towards the defence of the free nations of the world, unanimously decided that a gift of £150,000 sterling should be made, on behalf of the Island of Jersey, to Her Majesty's Government in the United Kingdom as an Island contribution towards Imperial defence ...". (CIM 217/2/1)

324. The possibility of approaching the Channel Islands for a contribution towards the cost of defence and overseas representation is touched upon in a minute of 20 May 1971 on CIM/68 605/5/30, but the question has not been raised with them since the events of 1952.

C. CROWN LANDS AND REVENUES

Crown Revenues: the 1947 arrangement

325. Until 1 April 1947, the Lieutenant Governors of Jersey and Guernsey were military officers paid from War Office Funds. After 1 April 1947, however, all troops were withdrawn from the Channel Islands and the appointment of military officers to the posts of Lieutenant Governor was no longer necessary so alternative arrangements were made. The States in each Island agreed to meet the cost of maintaining the office of Lieutenant Governor in return for being given the proceeds of Crown revenues in the Islands (a note on 270411/67B sets out these revenues). This arrangement was in line with those made in the Colonies, all of which undertook financial responsibility for the salary and emoluments of the King's representative and the upkeep of his official residence and office. (270411/57)

326. The agreement was implemented by the (Westminster) Jersey and Guernsey (Financial Provisions) Act 1947. A note for second reading of the Bill, on 270411/70, records that "The Crown revenues, which are paid to His Majesty's Receiver General in each Island, are feudal in origin and represent, for the most part, commuted feudal payments. They are part of the hereditary revenues of The Crown which are placed at the disposal of Parliament at the beginning of each reign in return for the civil list, but part of them is used, with the authority of the Treasury, for meeting various expenses in the Islands, principally the payment of salaries of certain Crown Officers in the Islands who receive the balance of their emoluments from the local revenue. The balance of Crown Revenues, after meeting these expenses is, in pursuance of the Civil List Act, paid into the Exchequer." The revenues continued to be collected as before; the 1947 Act provided for the equivalent of the balance received under The Civil List Act to be paid to the States.

327. The abolition of feudal dues (see paragraphs 334 to 338) means that the expenses of the office of Lieutenant Governor falls fully on the States.

Crown Lands

328. Home Office papers do not appear to contain any detailed information about the extent of Crown property in the Channel Islands, though there are some old papers dealing with procedure to be followed when it is intended to sell any part of Crown land in Jersey (B1973/15, 919014/1). A 1947 memorandum on 270411/67B states that Crown lands include the foreshore of Jersey and Guernsey, and the island of Jethou in the Bailiwick of Guernsey, and certain other properties acquired through escheat (see paragraph 339).

329. The Treasury has general responsibility for matters arising in connection with Crown lands, and correspondence relating to the sale of Crown land in Jersey normally takes place direct between the Receiver General and the Treasury. The Receiver General consults the Lieutenant Governor when the prospective purchaser is a private individual, and he ensures that the States are given an opportunity to comment. The Treasury consults the Home Office. The arrangements date back to an Order in Council of 1891 and the history is outlined in a letter of 30 September 1947 on 919014/1. Recent cases are on CIM/70 56/9/1. In 1972 consideration was given to the possibility of delegating this work to Island authorities, but it was decided to leave matters as they were. (CIM/70 56/9/2)

Alderney

330. Crown lands and revenues (including feudal revenues) in Alderney with the exception of the breakwater (see section H) were transferred to the States of Alderney by the Alderney (Transfer of Property etc) Order 1950 (513844/46, 49)

Ecrehous and Minquiers

331. The Ecrehous and Minquiers reefs lie approximately 10 miles to the north-east and 20 miles south of Jersey respectively and are part of the Bailiwick. The International Court of Justice was asked to determine whether sovereignty over the islets belonged to the United Kingdom or to France, and in a judgement delivered on 17 November 1953 declared that it belonged to the United Kingdom. (122443/53, 54)

332. An Agreement between the governments of the United Kingdom and France regarding fishery rights in the Ecrehous and Minquiers areas was published on 30 January 1951 (Cmnd 8168).

333. In 1968 an inquiry was received from the authorities in Jersey as to whether the Crown would be willing to transfer ownership of the reefs to the States. The Treasury expressed reluctance (letter of 24 March 1975) and no transaction has yet taken place, but the Lieutenant Governor was informed that the Secretary of State would be content for Jersey legislation to be applied to the islets notwithstanding that they were Crown land. (CIM/67 239/1/2)

Feudal Dues

(a) Jersey

334. The Seignorial Rights (Abolition) (Jersey) Law 1966 was the most recent of a series of measures which since 1862 have progressively modified the system of feudal tenure in Jersey, and it abolished the last of the seignorial rights from which financial advantage accrued. An explanation of the proposed contents of the legislation, which includes a full description of the then existing feudal dues, is to be found in the Bailiff's letter of 21 October 1963. (CIM/63 56/6/1) The original proposals for legislation were later modified so as to leave unaffected the ceremonial duties of the seigneurs, the traditional personal services owed to The Queen. These are: "fancy" rents owed by two fiefs, one of a pair of gilt spurs and one of a pair of white spurs

(none have been presented in recent memory); three seigneurs owe a duty of riding into the sea on the arrival of departure of the Sovereign; two (or possibly three) owe a duty of acting as Butler; and one must present two mallards to the Sovereign. This was done when The Queen visited Jersey in 1957. Also in 1957 a meeting of the Cour d'Heritage was held in The Queen's presence - this is a sitting of the Royal Court of Jersey held twice a year at which certain seigneurs are required to answer to their names, on pain of forfeiture of the property to the Crown if they fail to attend on three consecutive occasions. A pair of mallards was presented to The Queen when she visited Jersey in 1978 and the file contains interesting minutes concerning the refusal of a request from the seigneur concerned for a formal receipt for his feudal dues. (CIM/77 267/3/9)

335. The Queen was consulted concerning Her interests before the Bill was proceeded with in the legislature. A petition against the measure was received and its rejection is mentioned in the Order in Council sanctioning the Law.

(b) Guernsey

336. Proposals relating to the abolition of feudal dues in Guernsey were first put to the Home Office in 1971 having been under discussion in the Island for some years. (CIM/63 56/6/2) A draft report of the States Advisory and Finance Committee on the matter was forwarded in October 1972. Delay occurred in 1973 over a point raised by the Treasury relating to whether Parliament had an interest in the matter on the grounds that it was involved in setting up the 1947 (CIM/63 56/6/2) agreement relating to Crown Revenues under the Jersey and Guernsey (Financial Provisions) Act 1947, and the relevant Home Office papers could not at the time be traced. Eventually however the Home Office succeeded in satisfying the Treasury that there was no need to involve Parliament (letter of 8 March 1974). An assurance was sought from Guernsey that the loss of income to the States resulting from the proposals would not cause the States to fail in their responsibility for maintaining at a proper level the salary and establishment of the Lieutenant Governor and the salaries of the Bailiff, Deputy Bailiff and the Law Officers of the Crown.

337. A report was made to the States in November 1974 and considered in December. (CIM/76 56/6/1) The States requested the Committee to provide details of the annual loss of revenue involved and the manner in which the loss could be made good. A second report, giving details of the loss of revenue but with no specific proposals for making it good, was approved by the States in January 1976. The report included a recommendation that a sum of £50,000 should be shared among the seigneurs in compensation for their loss of revenue, and that no compensation should be paid to the Crown. Suggestions by the seigneurs of alternative schemes were rejected by the States Committee and by the States.

338. At this point, when proposals for legislation had been approved but no Billet d'Etat had been drafted, the matter was submitted to the Home Office for The Queen's Pleasure in the matter to be ascertained. She gave Her consent in August 1976, and the submission of the legislation is now awaited.

<u>Escheats and Bona Vacantia</u>

339. Property and goods (the real estate and personal estate) of persons domiciled in the Channel Islands revert to the Crown if the owner dies intestate without heirs. The Treasury is the Department with general responsibility in this field, but correspondence is channelled through the Home Office.

340. A note of 7 July 1969 on CIM/69 63/4/2 sets out the position in Jersey, and lists five

cases in which petitions have been submitted:- B18324/1 (1895), 816969 (1939), CIM 56/2/1 (1955), CIM/68 56/2/1 (1968), and CIM/68 56/2/2 (1969). As regards Guernsey, the then Attorney General explained in a letter of 23 March 1965 on CIM/64 58/1/1:-

"... I take possession on behalf of the Crown of bona vacantia and escheats on Crown fiefs after receiving formal permission from the Royal Court to do so. I then wind up the person's estate either wholly or as far as I can and hand the balance of the monies to the Receiver General together with any securities and the documents of title to any real estate. The Receiver General realises any securities and disposes of any real estate. The monies accruing from bona vacantia and escheats are invested by the Receiver General in accordance with Treasury instructions in the joint names of the Permanent Secretary to the Treasury and the Receiver General. The interest from such investments forms part of local Crown revenues which ... are handed over to the States of Guernsey." One case is mentioned, 925629/21 (1950). Another occurred in 1967 - CIM/65 211/2/3.

341. In Alderney a case arose in 1964 on the death of Mr E P M Audren involving real estate and personal estate. (CIM/64 58/1/1) The real estate was dealt with under the Alderney Land and Property etc Law, 1949, but consideration had to be given for the first time to the question of how to dispose of the personal estate (bona vacantia) which had reverted to the Crown. The case is summarised in notes of 22 March 1966 and 10 January 1967. Eventually an Order in Council was made under the Alderney (Transfer of Property, etc) Act 1923 to enable the proceeds of the personal estate to be invested and the income paid to the States of Alderney (see letter of 25 November 1968 and the minute of 3 December 1971).

D. EXCHANGE CONTROL

342. The Exchange Control Act 1946 was applied to the Channel Islands by the Exchange Control (Channel Islands) Order 1947 (890521/6). (1947/2034) Provision was made, under the modification of section 36 of the Act in the Order, for Treasury Orders made under the Act to apply in the Channel Islands from the specified date of operation, without being registered first. Both Jersey and Guernsey subsequently passed local legislation providing for Treasury Orders made under the Act to take effect without registration - the Exchange Control (Special Provisions) Law 1947 for Guernsey (890521/8, 9) and an Act Relating to the Exchange Control Act 1947 for Jersey (890521/10).

343. The Channels Islands (Exchange Control) Order 1950 made a very slight amendment to the 1947 Order in Council (890521/22). Recent action on exchange control is on the CIM 222/1 series. (1950/1651)

344. The Borrowing (Control and Guarantees) Act 1946 was followed by local legislation to the same effect in the Channel Islands - the Borrowing (Control) (Bailiwick of Guernsey) Law 1946 (890521/7A) and the Borrowing (Control) (Jersey) Law 1947 (890521/3). The local Defence (Finance) Regulations No 6 (900413 series) were subsequently repealed (unlike the Isle of Man, to which the Westminster Defence (Finance) Regulations applied, the Channel Islands reproduced the Regulations locally, in Jersey by the State and in Guernsey by the Royal Court).

345. The other legislation relating to the protection of the Sterling Area is the Import, Export and Customs Powers (Defence) Act 1939. This Act does not extend to the Channel Islands, but its provisions are broadly reproduced in local legislation: the Import and Export (Control) (Guernsey) Law, 1946, the Import and Export (Control) (Alderney) Law 1946 and the Import and Export (Control) (Jersey) Law 1946 (824769/76). For an example of action under this legislation

see CIM/75 222/1/1.

E. EXPORT COUNCIL

346. The Channel Islands operate an export licensing system modelled on that of the United Kingdom and based on orders made under the local Import and Export (Control) Laws (see paragraph 345 above). In 1976 Lord Allen conducted an inquiry into events in Jersey which appeared to have given rise to a breach of the control over the export of strategic goods; his report is on CIM/75 65/5/10. As a result of this incident new arrangements were instituted for consultation with the Islands in applying the controls (CIM/75 65/5/9). Under these new arrangements, the Insular Authorities consult the Home Office on each application that they receive to export any of the items listed in Group 1 of Schedule 1 to the United Kingdom Export of Goods (Control) Order 1970.

F. TAXATION

Income Tax

(a) Jersey

347. Legislation to impose income tax in Jersey was first passed by the States in 1928, and brought the comment from a Home Office official:- "Jersey ought to have had an income tax years ago". the Privy Council received a petition against the Bill which was considered and rejected. The files containing subsequent income tax legislation are 547130, CIM 225/2, CIM/64 225/2 and CIM/75 2255/2. (383642/21 383642/24, 29, 33.)

348. It appears from 383642/8 that the introduction of income tax was first recommended in a report by the Finance Committee of the States in 1918 and the States adopted the report in November of that year. In March 1919, however, the States altered their decision and substituted an ad valorem tax, but Royal Assent was refused to the ensuring legislation, the Import Duties Bill 1919. (383642/5, 6, 8). A memorandum of 25 October 1920 on 383642/13 explains why the initiative for indirect taxation did not belong specifically to the States, and that it was the express duty of the Home Office and the Privy Council Office to protect the insular taxpayer from unfair or excessive taxation.

(b) Guernsey

349. The first legislation to impose income tax in Guernsey was passed in 1919, to finance a contribution voted by the States towards the cost of the war (see paragraph 307). (361862/49) Subsequent files are 581680, CIM 225/3 and CIM/68 225/3.

Double Taxation

350. Agreements relating to double taxation on income were made between the United Kingdom and Jersey and Guernsey in 1952 (see note of meeting on 14 December 1951 on 821144/49) and implemented by the Double Taxation Relief (Taxes on Income) (Jersey) Order 1952, made under section 347(1) of the Income Tax Act, 1952; and by insular legislation: the Income Tax (Guernsey) Law 1950 as amended by the Income Tax (Guernsey) Amendment (No 2) Law 1951, and the Income Tax (Amendment No 11) (Jersey) Law 1952. (929562/1, 2. (Westminster) 581680/45, 56 547130/70)

351. Guernsey extended double income tax relief to all Commonwealth countries in 1953, and there is an agreement between Jersey and Guernsey.(CIM 225/3/1 CIM 225/1/3,

547130/57,64, 66)

352. There are indications on CIM/67 2255/1/2 that amendment of the double taxation agreements with Jersey and Guernsey was under consideration in 1969 and again in 1973, this time including the agreement with the Isle of Man, but no changes seem to have been achieved.

Purchase Tax

353. When purchase tax measures were proposed in the United Kingdom in 1940 the Channel Islands were informed so that they could consider whether it was desirable for them to enact similar legislation (900497/1, 2). Local laws were never introduced, however, no doubt because the Islands came under enemy occupation in 1940. After the war Guernsey reconsidered the question of purchase tax (900497/25) in the context of the repeal of the war-time Sales Tax Laws (918401/1), but the island's proposals met with an unfavourable reception from Customs and Excise and were dropped. Purchase tax was never levied in the Channels Islands.

Value Added Tax (VAT)

354. The Finance Act 1972 replaced purchase tax in the United Kingdom by value added tax, as part of the arrangements for the United Kingdom entry to the Common Market. provision was made in the Act for exports of goods from the United Kingdom to the Channel Islands to be zero rated, and for goods imported into the United Kingdom from the Channel Islands to bear value added tax. VAT is not raised in the Channel Islands. (CIM/70 1200/7/2)

G. MARITIME MATTERS

354(a) This section covers the Isle of Man as well as the Channel Islands (unless otherwise indicated).

Territorial Waters

355. The Convention on the Territorial Sea and Contiguous Zone 1958 made provision for the sovereignty of coastal states over the territorial sea, defined the baselines from which it was to be measured and provided for the right of innocent passage through territorial waters. The baselines for the United Kingdom, the Channel Islands and the Isle of Man were defined in a prerogative Order in Council in 1964. (CIM/451/1/25)

356. The extent of territorial waters is not defined by an international convention. It is customarily three nautical miles but some countries have extended their territorial limits, by declaration, beyond that extent. France so extended her limits to 12 nautical miles in 1972. (CIM/ 451/1/18 68)

357. In international law, the territorial waters around the Channel Islands and the Isle of Man are part of those of the British Islands, the extension of which would be a matter for the Government of the United Kingdom as the sovereign power. (CIM 3/1/2 (Legal Adviser memo 8.6.66))

358. Any legislature of a separate jurisdiction (such as those of the Islands) is competent to legislate for the territorial waters adjacent to its coast unless there is a constitutional inhibition against its doing so. There is no such inhibition in respect of the Channel Islands and the Isle of Man. If Her Majesty's Government were to extend the territorial waters of the British Islands to,

for example, 12 miles, the jurisdiction of the Island legislatures would extend to 12 miles (or to the median lines where the distance between their territories and the adjacent coasts of other territories is less than 24 miles).

3558(a) The draft negotiating text of the United Nations Law of the Sea Conference (paragraphs 380-383 below) contains a provision which would enable all contracting states to adopt a 12 mile territorial sea. In the summer of 1978 against the possibility of an early conclusion of the Conference, we consulted the Islands about the extension of territorial waters. We understand that such a move would command general support. A paper prepared by the Home Office assessing the implications of extension is on CIM/78 451/1/3.

359. Although the Home Office has historically taken the line that the Islands, as dependent territories, cannot normally legislate extraterritorially, that stance is not well founded in constitutional law. In practice, the Islands can legislate to whatever extent the Privy Council will countenance; the limitation is one of policy rather than of constitutional constraint. Since control of fisheries inevitably involves subordinate legislation, and since Island subordinate legislation is outside the purview of the Privy Council, we have always taken the view that it would be inappropriate to allow the Islands to legislate on fisheries outside territorial waters; there would otherwise be a risk of a clash between Island subordinate legislation, over which we have no control and the international responsibilities of the United Kingdom. Conferment of extraterritorial powers in such a context would involve appreciable constitutional and political difficulty. (See also paragraph 361 below).

Control of Fisheries in Water Generated by the Islands Outside Territorial Limits

360. Since the Island legislatures are competent to legislate for the control of fishing within territorial waters, offences within that area come within the jurisdiction of the Insular courts.

361. Outside territorial waters, that is in the present 3-12 mile belt, the control of fisheries is effected by the extension of Westminster legislation. The extension of the Sea Fish (Conservation) Act 1967, which has for some time been the subject of correspondence with the Insular Law Officers, would, for example, apply the provisions of the Act to the fishery limits outside the territorial waters around the Channel Islands and would bring offences committed within the 3-12 mile belt within the jurisdiction of the Insular courts. It would not confer on an authority in either Bailiwick the power to make Orders under the Act but it would be open to the Insular Authorities to ask Minister to make such Orders as might be required. (The 1967 Act has been extended to the Isle of Man, Orders to prohibit the taking of herring at certain times of the year in the fishery waters around the Isle of Man outside territorial waters.)

362. The Sea Fisheries Act 1968, which has been extended to the Channel Islands and to British fishing boats registered in the Channel Islands, applies Ministerial orders relating to the stowage of gear to foreign fishing boats in the Island's 3-12 mile belt; empowers the Insular Authorities to appoint British sea fishery officers and brings offences within the jurisdiction of the Island courts.

363. In 1973, in pursuance of a Resolution of Tynwald, the Isle of Man unsuccessfully sought to acquire the power to legislate for the control of fisheries in the 3-12 mile belt around the Island and claimed that the Fishery Limits Act 1964 had impaired Tynwald's power to legislate within territorial waters. Conferment of extra territorial powers in the context of fisheries would involve considerable constitutional and political difficulty because there would be the risk of a clash between Island subordinate legislation, which is not subject to ratification by the Privy Council, and Her Majesty's Government's international responsibilities. (See also paragraphs 355 to 359 on Territorial Waters.)

Extension of Fishery Limits

(a) The Fishery Limits Act 1964

Until 1964, territorial water limits and fishery limits were both set at 3 miles. (CIM/68 451/1/63).

364. The Fisheries Convention 1964 provided that Contracting Parties to the Convention had the right to fish, and to exclusive jurisdiction, in the 0-6 mile belt adjacent to their own coasts and that other Contracting Parties might be accorded habitual rights in the 6-12 mile belt. The Convention, which applies to the waters generated by the United Kingdom and the Islands, had the effect of extending United Kingdom jurisdiction to an area of sea outside territorial limits, which had previously been co-terminous with fishery limits. It also brought foreign fishermen within British jurisdiction for the first time.

365. The Fishery Limits Act 1964 extended the fishery limits of the British Islands to 12 miles in accordance with the Convention.

366. The Act enabled Ministers to designate by Order any country outside the British Islands and the area in which, and the fish for which, fishing boats registered in that country might fish in the 6-12 mile belt; and to apply to such vessels the existing powers of conservation and regulation of fisheries that it had previously been possible to apply only to British vessels.

(b) The Fishery Limits Act 1976

The Fishery Limits Bill was introduced in the House of Commons on 25 November 1976, received Royal Assent on 22 December and came into operation on 1 January 1977. (CIM/68 451/1/62, CIM/68 451/1/67). The Act provides for British fishery limits to extend:

a. to 200 miles from the baselines from which the breadth of the territorial sea adjacent to the United Kingdom, the Channel Islands and the Isle of Man is measured, or

b. to such other lines as may be specified by Order in Council, or

c. to a median line.

The Act also enables Ministers to prohibit British and foreign vessels from fishing within British limits unless they have a licence granted by one of the Ministers. (The powers have hitherto applied only to British fishing boats.)

The commencement provisions enable Ministers

a. to bring different provisions into operation on different days for different purposes and

b. to bring the extension of fishery limits into force on different days for different parts of the United Kingdom and for the Channel Islands and the Isle of Man.

367. The implication of the extension of British fishery limits were discussed with representatives of the Insular Authorities of Jersey and the Bailiwick of Guernsey and of the Government of the Isle of Man at separate meetings held in the Home Office on 3 December and 16 December 1976 respectively. (CIM/68 451/1/64/65/66)

Habitual Fishing Rights

368. Fishing around Jersey is controlled by a complex of Anglo/French agreements dating back to 1839. They allow French vessels to fish to within three miles of mainland Jersey and within the territorial waters of all nearby groups of islets, including the Ecrehos and Minquiers, over which Jersey has jurisdiction. Conversely, British fishing is allowed up to a special line on the east coast of Granville Bay, the line running parallel to, and within, the French three mile limit. (The effect on Guernsey fisheries of the preservation of the regime around Jersey is dealt with in paragraph 369. (CIM/68 451/1/59 (Doc.6) (Doc.10) also CIM/68 451/1/25)

369. With the agreement of the Insular Authorities, Article 10 of the Fisheries Convention provided for the existing fishery regime in respect of Granville Bay and the Minquiers and Ecrehos to remain in force. An Exchange of Notes between Her Majesty's Government and the Government of the Republic of France, in 1965, recorded their agreement that the regime should continue pending the conversion of the various Anglo/French agreements relating to the area into a new single agreement for the establishment of a Mer Commune. (The Fishery Limits Act 1964 also provided for the preservation of the regime. The relevant provisions are not repealed by the Fishery Limits Act 1976). (CIM/68 451/1/67)

370. Negotiations with France on Channel Island claims for habitual rights in French waters and on the establishment of a Mer Commune started in 1968. A draft agreement on the Mer Commune was subsequently the subject of correspondence with the Attorney General of Jersey.

371. In 1970, the French were informed that Her Majesty's Government would be making claims for habitual rights in French waters on behalf of Channel Island fishermen. A draft Aide-Memoire was prepared and was subsequently the subject of correspondence with the Law Officers in Jersey and Guernsey. [Map here in original omitted - it was not clear]

372. The negotiations with the French were held in abeyance, however, during the negotiations for accession to the European Communities and they have been subsequently held in abeyance pending agreement on the demarcation of the Anglo/French continental shelf. (CIM/68 451/1/59 HO letter of 9.1.76) (The Insular Authorities are aware the lobsters and crabs, to which the present arrangements relate, are resources of the continental shelf and that the outcome of the proceedings before the Court of Arbitration may therefore have a bearing on the negotiation of the claims for habitual fishing rights.) Although the Court of Arbitration delivered its judgement in 1977, and the following year issued a further ruling on a point referred to it by the United Kingdom for clarification, it left unresolved the question of the definition of the continental shelf in the area between Jersey and France, and further bilateral discussions on this are necessary before any progress can be made on the question of fishing limits. (CIM/68 451/1/63 (HO letter of 14.9.76 and Annex C))

373. In the Exchange of Notes referred to in paragraph 369 Her Majesty's Government and the government of the French Republic agreed that a line drawn south west of L'Etac de Sark should be the north west limit of the reserved Jersey/French area. The effect was that Guernsey's fishery limits cannot be enforced against French vessels fishing in the area south east of the L'Etac de Sark line. The Bailiwick's 6 mile exclusive limit is otherwise fully enforceable.

374. The Guernsey authorities complain periodically about poaching by French fishing boats in the area of Banc de la Schôle which lies to the east of Guernsey outside the 6 mile belt. Guernsey claim exclusive rights over the Banc but the Foreign and Commonwealth Office informed us, in 1967, that the French were likely to claim habitual rights there. The Insular Authorities were told in 1968, and again in 1976, that, in the absence of a formal agreement binding both Governments, the French could not be prevented from claiming rights in the area of the Banc but that Her Majesty's Government would not grant any concessions without the

agreement of the Insular Authorities. They are aware, meanwhile, of the instructions given to the Royal Navy Fishery Protection Service. (CIM/68 451/1/59 (HO letter of 9.1.76))

375. The geographical features referred to above are shown on the chart below.

Continental Shelf

376. The Isle of Man is dealt with in paragraphs 839-842.

377. The Convention on the Continental Shelf 1958 provided that the boundary of the continental shelf adjacent to the territories of two or more States whose coasts are opposite to each other should be determined by agreement between the States concerned and that, in the absence of agreement and, unless another boundary line is justified by special circumstances, the boundary should be the median line.

378. (CIM/68 820/4/43 (Docs.20, 58, 33)) Negotiations with the French on the delimitation of the Anglo/French continental shelf, which had been in progress for a number of years, failed to produce agreement and the parties concerned agreed in 1974 to submit the matter to arbitration. By agreement between the two Governments [on 10 July 1975], a Court of Arbitration was established to determine the boundary of the continental shelf between the United Kingdom and France from the eastern part of the English Channel out into the Atlantic Ocean. The continental shelf in the vicinity of the Channel Islands comes within the area that is the subject of arbitration. The Attorney General of Jersey and Guernsey have been included in the legal team concerned with the proceedings before the court of Arbitration. The Court's decision was made known in 1977, but it was necessary for the United Kingdom to apply to the Court for clarification of certain points, and a further decision was issued in 1978. The Court however held itself incompetent to delineate the continental shelf boundary to the south and east of the Channel Islands, in as much as this would involve resolving disputed points relating to the measurement of the territorial seas of the two parties.

379. The Island authorities know that in due course the Home Office hopes to be able to consult them about financial arrangements (the subject of correspondence in 1963, 1971 and 1973), to enable them to participate in the financial benefits accruing from the exploitation of the British continental shelf. What is envisaged is a sharing arrangement similar to that with the Isle of Man (paragraph 841), whereby the Isle of Man Government receives a proportionate share of the licence fees and royalties arising from the exploitation of the petroleum resources of the entire British continental shelf. However the possibility that territorial waters around the Islands might be extended must inevitably affect the nature of any such arrangements, and consideration of this matter has therefore been suspended until the position on territorial waters is clear. (CIM/68 820/4/30 (memo 19.1.70) CIM/68 820/5/16 (Docs. 12, 38, 47, 47(a) and 78))

United Nations Law of the Sea Conference

380. The unified texts circulated at the close of the Third Session of the Law of the Sea Conference by the chairmen of the three main committees were subsequently revised and were discussed by the Conference during the Fifth Session, which was held in New York from 2 August to 17 September 1976. The texts, by which no delegation was formally committed, were intended to serve as bases for negotiation. No decisions were reached and further sessions of the Conference were held in 1977-80. (CIM/68 820/4/84)

381. Her Majesty's Government joined in the extensive support at the Conference for an exclusive economic zone within which the Coastal State would exercise sovereign rights over all living and non-living economic resources of the sea and seabed. They proposed that the

conference should declare that the Coastal State's jurisdiction over continental shelf resources extends as far as the outer edge of the margin, where this lies more than 200 miles from the coast, and supported proposals at the Conference that Coastal States should share with the international community a proportion of the revenue derived from exploitation of the continental shelf resources beyond 200 miles. They also hope that the Conference will reach agreement on an international regime to govern the exploitation of the mineral resources of the deep sea beyond the limits of national jurisdiction.

382. In view of the varied and complex nature of the matters with which the Conference is dealing, the formulation of a draft Convention has taken an appreciable time.

383. In the event of the fishery limits of the British Islands being extended by the creation of an exclusive economic zone, the Island legislatures will continue to be competent to legislate for that part of the zone that lies within territorial waters and will continue to rely on the extension of Westminster legislation for the control of fisheries in that part of the zone that lies outside territorial waters.

H. THE ALDERNEY BREAKWATER

384. The Alderney Breakwater was constructed by the Admiralty between 1847 and 1864 as a place of strategic importance. Its early history is set out in a 1921 memorandum on file 423481, which includes a copy of a report on the breakwater by a Select Committee of the House of Lords in 1872.

385. In 1921 the Admiralty decided that it no longer wished to retain and continue to maintain the breakwater for strategic purposes; but by then Alderney's original harbour had silted up as a direct result of the building of the breakwater, and if the breakwater were allowed to disintegrate the debris would further damage the harbour facilities. The Home Office felt that "... the question should be placed definitely on a basis not of economy but of policy and obligation."

386. There followed a proposal to transfer Crown lands and revenues in Alderney, including the breakwater, to the States of Alderney, and to this end the Alderney (Transfer of Property) Act 1923 was passed transferring the property of various Government Departments to the Office of Woods (later the Office of Crown Lands). For various reasons, however, negotiations to achieve a contract with the quarrying industry (which was to precede the assumption of responsibility for Crown lands and revenues by the States of Alderney) did not succeed, and when in 1927 the Home Office wrote to the Lieutenant Governor about the proposed transfer the scheme was rejected by the States of Alderney. (439177/52, 46) A 1938 memorandum on 513844/23 summarises the economic position of Alderney at that date and sets out the history of the breakwater.

387. During the second World War Alderney was evacuated, and German troops occupied it. In 1947 a Committee of the Privy Council was set up to enquire into and report upon the state of the Island, and the introduction to the Committee's Report (Cmnd.7805 published in 1949) outlines what happened in the intervening period. Paragraph 25 relates to the breakwater, as regards which the outcome was (paragraph 120 of the Report) that "His Majesty's Government will retain responsibility for the breakwater and the cost of maintenance will be borne on the Home Office vote" on the grounds that it had been built by His Majesty's Government for naval purposes and its maintenance was a burden which Guernsey, which was to subsidise Alderney, could not be asked to bear (paragraph 93 of the Report).

388. Effect was given to this recommendation by the Alderney (Transfer of Breakwater)

Order 1950 (513844/50,51), and the cost of maintenance has fallen on the Home Office vote since 1950 (see 596124/24). Memoranda on 513844/37 and 42 indicate that the average cost of maintaining the breakwater in the pre-war period was £2,100 a year; a reply to a Parliamentary Question on 9 July 1974 stated that the average annual expenditure since 1950 has been £41,000. (CIM/69 58/2/8). A memorandum prepared in 1957 for the Exchequer and Audit Department provides a useful summary of the breakwater issue and pinpoints relevant files in the 596124 series, and includes the information that a shortening of the breakwater was considered in 1921, 1950 and 1957, and found to be incompatible with the provision of adequate harbour facilities in Alderney. (CIM/58/2/10).

J. THE ISLANDS AND THE EUROPEAN COMMUNITIES

389. This section covers the Isle of Man as well as the Channel Islands.

General Summary

390. The original Treaty establishing the European Communities applies to the European territories for whose external relations a member state is responsible. As a consequence, the prospect of the United Kingdom's accession to the Community caused acute anxiety in the Islands for a period of 10 years. If they were to become full members of the EEC their ability to order their own levels of taxation (without which they might well be as depopulated as some other European Islands) would have been endangered. If exclusion from the Community were to be negotiated, their viability would be jeopardised by the need for their exports to the United Kingdom (as part of the Community) to surmount the common external tariff, a situation that would have ruined Guernsey, with its dependence on our tomato market.

391. In the event, special terms were negotiated for the Islands, and their relationship to the EEC, the EAEC and the ECSC is governed by Articles 25-27 of, and Protocol 3 to, the Treaty of Accession. As far as the EEC is concerned, the broad outcome is that the Islands are included in the Community solely for customs purposes and for certain aspects of the common agricultural policy. The trade arrangements between the Islands and the United Kingdom are generally unaffected by the United Kingdom's accession to the Community. The provisions affecting the Islands are summarised below.

392. The Islands apply the common external tariff and agricultural levies to direct imports from outside the Community but are ineligible for support from Community funds. They are therefore empowered to retain the receipts from the tariff and levies. Their exports to the Community (including the United Kingdom) are subject to certain Community marketing requirements. All state aids affecting agriculture are notifiable to the Commission.

393. The Islands are not required to accord free movement for purposes of employment in their territories (which could lead, in some circumstances, to intolerable pressures in such small communities) but are required not to discriminate in this and in other matters between the nationals of different member states. (The Isle of Man and Alderney exercise statutory employment controls over all those who have no close connections with the Island).

394. Islanders retain their traditional right of free access to jobs in the United Kingdom, but only those with close ties with the United Kingdom (as defined in Protocol 3 to the Treaty of Accession) have the right of free movement, for such purposes as employment, in other member states.

395. Under the special arrangements, the Islands are not required to adopt value added tax and the Channel Islands have not done so. The Isle of Man has done so, however, in order to

maintain the common purse arrangement.

396. The Islands passed legislation in 1972 and 1973 to implement their Community obligations and the Home Office has established procedures whereby they receive early notification to proposed Community legislation that is likely to affect them.

The European Communities Act 1972

397. Section 2(6) of this Westminster Act is of interest in a constitutional context. It provides that Island legislation passed in compliance with the limited Treaty obligations of the Islands shall cause EEC Regulations applicable to the Islands to override where necessary Westminster legislation extended to the Islands, and that Island legislation may also, where necessary in this context, have extra-territorial effect (see Doc 4a on CIM/71 1200/1/12).

The Negotiations for Entry

398. A detailed history of the negotiations for the United Kingdom's entry into the EEC and the repercussions for the Islands in the period 1961-71 is to be found on CIM/69 1200/1/100. The possibility of independent status for the Islands was one of the matters considered. The following paragraphs summarise developments since the end of 1971, that is to say since the drawing-up of Protocol No 3 to the United Kingdom's Treaty of Accession.

Protocol No 3

399. In the early months of 1972 Protocol No 3 was studied in detail, and a list was draw up of points on which clarification was required from the EEC so that the full implications for the Islands could be understood (see document 69 on CIM/71 1200/2/21). The terms of the Protocol provided, in outline, that the Islands should be brought within the common market with free access for their produce to all parts of the Community, while retaining their financial autonomy and without being required to concede rights of establishment to Community nationals. The obligations they were to assume were the application of the common external tariff and agricultural levies, and such parts of the Community agricultural regime as might be necessary to ensure free movement and fair competition in the sale of produce; and not to discriminate in establishment matters between nationals on one member state and another.

400. Although the Protocol was couched in terms of general principle and left certain important points of detail unresolved it was decided to proceed on the basis that the Islands should legislate in accordance with the United Kingdom's interpretation of the most pressing parts of the Protocol rather than make an immediate approach to the Community for full clarification. This solution was decided upon following a letter of 25 May 1972 from the United Kingdom Delegation to the European Communities (see documents 16 and 23 on CIM/71 1200/2/32). In August 1972, following further consideration of the Protocol, Ministers agreed to a proposal that the Islands should be invited to legislate in the immediate future for the limited purposes of applying the tariffs and retaining the proceeds of the common external tariff on direct imports, and to remove any discrimination within their territories in the treatment of nationals of member states (document 13 on CIM/71 1200/2/40). A letter was sent to each Lieutenant Governor on 17 August 1972 outlining what the United Kingdom Government saw as the necessary contents of legislation to apply such parts of protocol No 3 as did not require further decisions by the Community.

401. It was proposed that each of the Islands should retain the proceeds of the common

external tariff on direct imports. As regards goods destined for the Islands but imported through the United Kingdom, it was proposed that the Isle of Man should receive its share of the common external tariff and the agricultural levies through the Common Purse arrangements, and Jersey and Guernsey were asked to consider whether they would wish to institute a similar sharing arrangement. They declined the offer. (Documents 14-16, 17-19 and 73A on CIM/71 1200/2/40, and document 6B on CIM/71 1200/2/44).

402. The Island legislation which followed the Home Office letters of 17 August 1972 was the European Communities (Isle of Man) Act 1972 (CIM/72 404/108/1), the European Communities (Jersey) Law 1972 (CIM/72 6/134/2) and (Bailiwick of Guernsey) Law 1972 (CIM/72 6/134/1).

Application of the Euratom Treaty

402(a) During 1979, consideration was given to the way in which the Euratom Treaty applied to the Islands, and particular to the implications of the Euratom Directive (76/579) OF 1 June 1976. A summary of information on Home Office papers was prepared (memorandum of 1 December 1978 on CIM/71 1200/2/99), and the Health and Safety Executive and the Foreign and Commonwealth Office were consulted. The significant correspondence is letters of 16 May, and 22 June 1979 on CIM/76 1200/2/28. The history of Article 3 of Protocol 3 of the Treaty of Accession of 1972 is explained in the FCO letter of 22 June, which goes on to conclude that the Islands are "in the territory of Member States" for the purposes of Article 196 of the Euratom Treaty and that a Directive made under Articles 31 and 32 of the Euratom Treaty would apply to people carrying on the relevant activities in the Islands provided that they were also established there. The Islands were informed of these conclusions in a letter of 20 July 1979 (doc 27 on CIM/76 1200/2/28).

Agricultural Arrangements (Regulation 706/1973)

403. In October 1972 informal discussions were held at the Agricultural Directorate of the European Commission, at the initiative of the Agricultural Directorate, on the subject of the Islands and the operation of certain agricultural provisions (see the submission to the Secretary of State of 19 October 1972, and the brief for the United Kingdom delegation at documents 71 and 68 on CIM/71 1200/2/40). The outcome of the meeting is recorded at document 5B on CIM/71 1200/2/44. Three major points arose out of this meeting: the question of the timetable to be followed, the problem of the Common Purse arrangement with the Isle of Man, and the identification of the Community subordinate legislation which should eventually apply to the Islands. These matters were discussed at a meeting of officials on 8 November 1972 (document 21A on CIM/71 1200/2/44). The Agricultural Directorate subsequently made proposals in a Working Document on the agricultural arrangements for the Islands which was discussed by a group of experts from member states of the Community at a meeting on 4 December 1972 and was generally agreed (document 67 on CIM/71 1200/2/44). A request made on behalf of the Channel Islands that they should be authorised to maintain prohibitions on the import of milk was rejected as being incompatible with the arrangements for free movement of goods under the Protocol.

404. In January 1973 a draft Regulation of the EEC on rules applicable to agricultural products of the Channel Islands and the Isle of Man was circulated, and its implications were discussed at a meeting with representatives from the Islands on 2 February (documents 42, 56, 69 on CIM/71 1200/2/45 and document 42 on CIM/71 1200/2/52). Very few amendments were requested to the text of the draft Regulation (document 99(1) on -/45), the chief problem being the timing of the bringing into effect of the Regulation in the Islands (document 124 on CIM/71 1200/2/45). The United Kingdom Government gave a firm undertaking that the whole

Regulation would be brought into effect by 1 September 1973, and this commitment was accepted. The finally agreed text of the Regulation, No 706/1973, is at document 15 and 30A on CIM/71 1200/2/52. Article 3 of the Regulation sets out the fields in which Community rules apply in the Islands. A summary of the effect of the United Kingdom's accession to the EEC on the Channel Islands and the Isle of Man is to be found at document 51(a) on CIM/71 1200/2/52.

405. Insular legislation was prepared to enable the Islands to fulfil the terms of Regulation 706/1973. (CIM/72 404/108/2). The European Communities (Isle of Man) Act 1973 repealed and re-enacted the 1972 Act of the same title, and gave the force of law in the Isle of Man to directly applicable Community law. It also provided that a certificate issued by the Secretary of State was to be conclusive evidence of whether or not a Community instrument applied in the Island. The European Communities (Bailiwick of Guernsey) Law 1973 and the European Communities (Jersey) Law 1973 made provision on similar lines for the Channel Islands. Two points of general interest arose on the Guernsey legislation:- the provision in section 7(2) for the provisions of the European Free Trade Association (Guernsey) Law 1960 to be repealed by Ordinance, and the fact that the draft Bill was amended so as to avoid the situation of an Ordinance seeking to over-ride legislation which had received the Royal Assent.

406. Further legislation for Jersey and the Isle of Man is currently under consideration (CIM/72 6/134/6 and CIM/72 404/108/3. The aim of the Jersey legislation is to enable existing local legislation to be amended by Order of Committees of the States for the purpose of complying with the Island's EEC obligations; the Home Office found cause for concern in that the proposed Law placed no limitations on the scope of the subordinate legislation, and felt that for example a limitation should be placed on its retrospective effect and the penalties that could be prescribed.

Monetary Compensatory Amounts

406(a) Since 1978 the Isle of Man has been exercised about he system of levies and refunds provided for under the common agricultural policy of the EC, and particularly about monetary compensatory amounts (MCAs). MCAs are a method of compensating for the differences arising from fluctuating exchange rates caused by the application of Community prices in the currencies of various Member States, and apply to trade with other Member States and to trade with third countries. In 1978 a trader in the Isle of Man began to export livestock by air to France and the Isle of Man Government charged the MCAs on them. In the light of the trader's objections, HM Customs and Excise considered the matter inter-departmentally and in consultation with the Island Government and obtained a ruling from the European Commission which confirmed that the Isle of Man Government had acted correctly in charging the MCAs. The matter was then considered by the Select Committee of Tynwald on the Common Market, the main recommendation of which was that MCAs should no longer be applied in the Island's trade. The report was adopted by Tynwald. In October 1978 the Isle of Man Government was sent a memorandum setting out the implications for the Island of the decision to cease applying MCAs, drawing attention to the legal argument in favour of applying MCAs to the Island's trade (other than with the United Kingdom) to the danger of trade deflections if MCAs were not applied, and to the powers of the European Commission to take steps to prevent such trade deflections, steps which could in themselves be damaging to the Islands interests. The European Commission reiterated its view that MCAs should be applied on the Islands exports or products subject to these charges and in March 1979 the Isle of Man was invited to reconsider its earlier decision, in response to which the Government replied that it continued to take the view that there was no legal obligation compelling the Isle of Man to apply MCAs. (CIM/76 1200/2/25).

Direct Contact between the Isle of Man and the EEC

406 (b) In November 1977 three members of Tynwald visited Brussels to draw attention to the Millennium, and while there they raised with EEC officials the possibility of establishing direct relations with Brussels. (CIM/76 1200/1/16). The officials encouraged this initiative. The Home Office and other Whitehall Departments felt that particularly awkward consequences could stem from direct contact between the Isle of Man and the EEC and a letter was sent to UKREP asking for the Home Office to be alerted to any developments on the subject. In fact the Island Government has only made one direct approach to the Commission, in 1978 on the subject of agricultural state aids. In 1979, however, the Manx Government was itself upset because the Manx National Farmers Union and the Manx Agricultural Marketing Association arranged an informal meeting with the Commission to discuss the application of the Community rules to the Island's agricultural industry.

Articles 25 and 46 of the European Convention on Human Rights

406(c) Article 25 of the ECHR provides a right of individual petition to the Council of Europe in cases of violation of the rights set out in the Convention, and Article 46 provides for recognition of the jurisdiction of the European Court of Human rights in matters concerning the interpretation and application of the Convention. Declarations under these Articles were first made by the United Kingdom in January 1966 and on behalf of the Isle of Man and Guernsey in September 1967, and were renewed at intervals up to 1976. In that year Guernsey renewed its declarations, Jersey made declarations for the first time and the Isle of Man decided that although it was happy to make a declaration under Article 46, it did not wish to make a declaration under Article 25. (CIM 74 820/5/9). Tynwald later asked to make a qualified declaration under Article 25, excluding a right of petition in respect of a lawful sentence of corporal punishment. The United Kingdom Government's view was that any declaration had to be unconditional, and that Articles 25 and 46 should stand together. The Isle of Man did not therefore make a declaration relating to either Article in 1976, and when Guernsey and Jersey renewed their declarations in 1981 the response from the Isle of Man was that the Convention was going to be incorporated into the Island's law in respect of alleged breaches of the Convention (see paragraphs 614-616 below) giving Manx residents a right of petition to the Island's High Court, so it was not considered necessary to give them also a right of individual petition under Article 25 or to give the European Court of Human Rights automatic jurisdiction in the Island under Article 46. The matter is summarised in greater detail in document 35 on CIM 80 820/5/2.

406(d) Further information about the Isle of Man and the European Convention on Human Rights is contained in paragraphs 406(e) and 614-618 below.

Petitions to the European Commission of Human Rights

406(e) In March 1972 Mr A M Tyrer was sentenced to three strokes of the birch in the Isle of Man, for occasioning actual bodily harm. (CIM/74 170/14/55). His appeal was dismissed and the sentence was carried out in April 1972. In September 1972 a petition was lodged with the European Commission of Human Rights under Article 25 of the European Convention on Human Rights. In December 1976 the European Commission of Human Rights found that the judicial corporal punishment inflicted on Mr Tyrer was in breach of the European Convention on Human Rights by virtue of being degrading punishment. The case was referred to the European Court of Human Rights in March 1977. In April 1978, the Court found that the punishment inflicted on Mr Tyrer amounted to degrading punishment within the meaning of Article 3 of the Convention. The decision of the Court was communicated to the Government of the Isle of Man with the information that, having studied the judgement, the United Kingdom Government took the view that judicial corporal punishment in the Isle of Man must now be held to be in breach of the European Convention on Human Rights. The First Deemster of the Isle of Man brought the judgement of the Court and the view of the United Kingdom Government to the attention of all

persons who were able, under existing legislation, to pass a sentence of birching. In October 1978 the Committee of Ministers of the Council of Europe responsible for supervising the execution of the judgements of the Court adopted a Resolution declaring that, having taken note of the measures taken in consequence of the judgement it had exercised its functions under the Convention on Human Rights in the case. For subsequent developments see paragraphs 612-620 below.

406(f) On 21 February 1976 Mr Paul Henry Wiggins submitted an application to the European Commission of Human Rights alleging that the treatment he had received at the hands of the Guernsey States Housing Authority violated certain Articles of the Convention. (CIM/74 107/14/43). After receiving written observations from the United Kingdom government and holding an oral hearing on the admissibility and merits of the case, the Commission eventually declared the application inadmissible on 8 February 1978.