

**ADDENDUM**

**Corrections and Additions to the Reports and Supporting Papers for the Easter Meeting of Chief Pleas – 18<sup>th</sup> April 2012**

Enclosed is an additional supporting paper for inclusion under Item 5 which was not included with the Chief Pleas papers due to administrative error:

Item 5. Home Department Report on Wireless Telegraphy to the States of Guernsey dated 21<sup>st</sup> November 2011.

In addition I have allowed the Medical Committee to reissue their Report at Item 15, as a minor change to wording in paragraph 3 was felt necessary by the Committee, please remove and destroy the original Report and replace with the enclosed revised Report:

Item 15. Revised Report entitled “Resignation of the Sark Medical Officer”

4<sup>th</sup> April 2012

Lt Col RJ Guille MBE  
Seneschal and President of Chief Pleas

**HOME DEPARTMENT**  
**WIRELESS TELEGRAPHY**

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

21<sup>st</sup> November 2011

Dear Sir

**1. Executive Summary**

- 1.1 The Law Officers' Chambers have identified several anomalies in the Bailiwick's wireless telegraphy and telecommunications statutory regime, most of which have resulted from the failure of the relevant United Kingdom authorities to transmit some statutory measures for registration in the Royal Court.
- 1.2 One result of this state of affairs is uncertainty regarding the lawful authority of the regulator Ofcom to exercise its statutory functions in the Bailiwick, which in turn creates potential difficulties for persons and businesses operating in the telecommunications sector. Other difficulties arise from the non-registration of a range of technical wireless telegraphy statutory instruments, and several sets of television licensing regulations. Moreover, there will be acts done in reliance upon the effective extension of provisions under those instruments that are unlawful as matters stand, in circumstances in which no blame can attach to those concerned.
- 1.3 It is clearly important to remove any uncertainty by regularising the legislative position and taking steps to put everyone in the legal position in which they thought they were throughout and to ensure that no-one suffers any unfair loss or prejudice. To achieve this, a *Projet de Loi* has been prepared in full consultation with the United Kingdom authorities. The Department believes that enactment of the *Projet* is the most appropriate and pragmatic way to ensure that the remedial steps recommended in the letter from Her Majesty's Comptroller, set out below, are given effect.

**2. Proposals from Her Majesty's Comptroller**

Her Majesty's Comptroller has written to the Department in the following terms:

## **“Introduction**

- 2.1 *Several anomalies in the complex legislative regime governing wireless telegraphy and related matters in the Bailiwick have recently been identified by the Law Officers' Chambers. One of them – the ineffective extension to the Bailiwick of certain provisions in the Communications Act 2003 – is particularly significant. In my view, it is important that these anomalies are rectified as soon as possible, and I consider that the most appropriate and pragmatic way to do that is by a Projet de Loi in the terms attached, developed in close consultation with lawyers from the relevant United Kingdom authorities.*

## **Background**

- 2.2 *Wireless telegraphy legislation has traditionally been approached in the Bailiwick on the basis of Acts of Parliament being extended by Orders in Council under appropriate permissive extent provisions. For example, the Wireless Telegraphy Act 1949 was extended by the Wireless Telegraphy (Channel Islands) Order, 1952, and more recently most of the Wireless Telegraphy Act 2006 was extended by the Wireless Telegraphy (Guernsey) Order 2006. It has been a feature of such extending measures that subordinate legislation made as a matter of UK law will also apply to the Bailiwick, but will only have effect after registration in the Royal Court. The purpose of this requirement is clearly to provide local control and supervision of this legislative process, ensuring that the United Kingdom does not legislate for the Bailiwick against its will.*
- 2.3 *A new, independent regulator for the communications sector was established in the United Kingdom by the Office of Communications Act 2002. This is a body corporate known as the Office of Communications or Ofcom. Ofcom replaced a number of separate regulatory bodies such as the Radio Authority and the Broadcasting Standards Commission.*
- 2.4 *As with previous enactments in relation to this sector, the 2002 Act contained a permissive extent provision. In order to flesh out the bare establishment of Ofcom, the Communications Act 2003 confers functions on it and makes other provision, including about the regulation of the provision of electronic communications networks and services and of the electro-magnetic spectrum, as well as regulation of broadcasting and the provision of television and radio services. The 2003 Act contains a similar permissive extent provision (section 411(6)).*

## **Extension of the Communications Act 2003**

- 2.5 *In consultation with the Bailiwick authorities, an Order in Council was prepared that extends the relevant provisions of the 2002 Act and the majority of the provisions of the 2003 Act identified as being needed for the Bailiwick. This was part and parcel of a wider project in the British Islands to bring into force from 29 December 2003 the provisions relating to Ofcom in order to transfer to it the full range of functions set out in Schedule 1 to the 2003 Act. This was entirely*

consistent with the previous approach to legislation in this area and was supported by the Bailiwick authorities. The Communications (Bailiwick of Guernsey) Order 2003 (SI 2003/3195) was made on 10 December 2003. A similar measure in respect of Jersey was also made.

- 2.6 By virtue of the 2003 Order, the provisions extending the 2002 Act were expressed to come into force on 29 December 2003. However, the provisions extending the 2003 Act had complicated and inter-related commencement provisions, which were designed to ensure that the provisions as extended would not enter into force in the Bailiwick earlier than the dates on which they were being commenced by two Commencement Orders made in respect of the UK as a matter of UK law under the 2003 Act. The specific provision setting this out was also subject to those two UK Commencement Orders being registered in the Royal Court.
- 2.7 Whilst the 2003 Order itself was forwarded through official channels for the purposes of registration under a letter from the Department for Constitutional Affairs dated 22 December 2003, with registration thereof being affected on 19 January 2004, the two UK Commencement Orders were not transmitted in this way and so were not registered. They have still not been registered: to have done so when the non-registration was first identified, some five years later, would have caused problems relating to the lawfulness of what had already been done under the relevant provisions in that period. In respect of Jersey, where there are comparable commencement provisions on the face of its extending Order in Council, we have been told that the UK Commencement Orders as well as the principal Order in Council extending the Acts were registered on 2 January 2004. Despite making enquiries of all those concerned in the usual chain of communication for official correspondence, it remains a mystery as to why the documents transmitted to Jersey for registration were complete, whereas those sent to Guernsey omitted the two Commencement Orders.

#### **Communications Act 2003: the consequences of non-registration**

- 2.8 The non-registration of the relevant Commencement Orders was identified by a lawyer at the Law Officers' Chambers, who considered that its legal effect was that the provisions of the 2003 Act being extended by the 2003 Order were not yet effective and so, in particular, the functions conferred on Ofcom by the 2003 Act had not been conferred on that body in respect of the Bailiwick. When the issue was drawn to my attention I concurred with this view. The matter was raised with officials at the Ministry of Justice and subsequently with officials and lawyers at Ofcom, who also agreed with our analysis, and the need to address the issue.
- 2.9 The effective non-extension of these provisions is not merely a legal problem, but also and more importantly a practical one. Ofcom performs a variety of functions within the Bailiwick, affecting different groups of people and businesses, all of whom must be able to rely on it having the lawful authority to exercise those functions.

### ***Non-registration of other measures***

- 2.10 *Having identified the problem of non-registration outlined above, further extensive work has been undertaken in conjunction with Ofcom and the Ministry of Justice to ascertain whether other measures, in particular those made by Ofcom since its establishment at the end of 2003, that require registration before they come into effect have indeed been registered. This analysis has identified several wireless telegraphy statutory instruments that have not been registered and so, as a matter of law, do not currently have effect. In many cases, the measures create exemptions from the requirements that would normally apply – for example, the Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2005 (SI 2005/353).*
- 2.11 *Again, this creates potential practical problems for those affected by these instruments in their work or leisure pursuits, and who rely on their being in force.*
- 2.12 *It was also discovered that several sets of regulations amending the television licence fee were not registered when they should have been. These regulations are made by the Secretary of State under powers that have properly been extended to the Bailiwick by the Communications (Bailiwick of Guernsey) Order 2004 (SI 2004/307), which did not contain complex commencement provisions. However, the way in which the relevant section of the 2003 Act has been extended requires any regulations made by the Secretary of State to be registered in the Royal Court before they have effect. As extended, that section also provides that, upon registration, the regulations have effect from the following day, or on the date specified therein, whichever is later.*
- 2.13 *The original Communications (Television Licensing) Regulations 2004 (SI 2004/692) were registered on 29 March 2004. However, the amendments made in 2005 (SI 2005/606), 2006 (SI 2006/619) and 2010 (SI 2010/640) were not registered. The amendment regulations made in 2008 (SI 2008/643) were registered on 30 July 2008 and became effective the following day, some four months after they were intended to take effect on 1 April; as a result, refunds were subsequently paid in respect of the small overpayments made by licence fee payers in the Bailiwick who had acquired or renewed television licences that commenced from 1 April to 31 July. These refunds were paid by TV Licensing, the UK Agency responsible for these matters.*
- 2.14 *These amending regulations, which are issued most years, deal not only with licence fees but also other issues relating to the television licence, such as special provision for licences in accommodation for residential care. They also amend the basic provisions to keep them up to date with machinery of government changes in Guernsey. This makes it all the more important to use this opportunity to regularise the position with respect to them.*

### ***Why the measures were not registered***

- 2.15 *While one case has been identified where non-registration was as a result of an oversight here in Guernsey, so far as we can ascertain at present in all the other cases the relevant measures were simply never forwarded by the United Kingdom authorities for registration in the Royal Court as they should have been, as a result of administrative error either within Ofcom or Her Majesty's Government.*
- 2.16 *Since these problems have been identified, the relevant Guernsey authorities, including the Law Officers' Chambers, have been working closely with the relevant United Kingdom authorities, including the Ministry of Justice, to put in place systems and measures aimed at eliminating the risk of relevant measures not being transmitted to the Bailiwick for registration in the future. Work has also been undertaken to address the risk of legislation that is transmitted to Guernsey becoming "lost in the system" and not registered in the proper way.*

### ***The Projet de Loi***

- 2.17 *The non-registration of the various measures discussed above has been, as noted, the result of administrative error. In every case the clear intent was that they be registered and have effect here, and they have been relied upon as if they had been so registered. As such, the broad purpose and effect of the Projet de Loi is to put the Bailiwick into the position it would be in if the measures had been registered when they should have been; and to ensure that no-one suffers loss or other prejudice as a result of their non-registration.*
- 2.18 *To achieve that, it does the following:*
- *it deems the Commencement Orders relating to the Communications Act 2003 to have been registered on the same date that the 2003 Order was registered;*
  - *it deems the other measures identified above to have been registered on appropriate dates – that is, on dates when they would have been registered had they been transmitted to Guernsey in the normal way;*
  - *it renders lawful any acts which were not lawfully done because of the failure to register these measures – for example, a reliance on an exemption in a non-registered wireless telegraphy statutory instrument, or the collection by Ofcom of a statutory fee; and*
  - *it provides (for the avoidance of doubt) that no person shall be guilty of an offence under the provisions of the Communications Act 2003 extended by the 2003 Order, where the act or omission in question took place before the commencement of the Law.*
- 2.19 *This is not the first example of this sort of remedial legislation in Guernsey. The most recent example of the States of Deliberation legislating to validate something that should have happened but had not was in relation to the failure to appoint members to the Guernsey Tax Tribunal upon the expiry of the terms*

*of office of the original appointees to that body. The Tribunal had continued to operate without anyone having noticed that the terms of office had expired and so the members' entitlement to sit had lapsed. New appointments were then made, but it was necessary to validate what had happened in the meantime. This was achieved by the Guernsey Tax Tribunal (Validation) (Guernsey) Law, 1999. This Law followed a pattern that had been used previously in relation to elections, beginning with the Sark Elections (Validation) Law, 1950.*

- 2.20 *I therefore recommend that the attached draft Projet de Loi, the terms of which been discussed and agreed with the relevant United Kingdom authorities, together with this explanation of why it is needed, should be considered by the States of Deliberation at the earliest opportunity."*

### **3. Consultation**

- 3.1 The States of Alderney and Chief Pleas of Sark have been consulted regarding the proposals in this Report and support the proposal of remedial legislation.
- 3.2 The Law Officers support the legislative amendments proposed within this Report.
- 3.3 TV Licensing, the United Kingdom agency charged with collection of the television licence fee, has been contacted and is aware of the position and has been kept informed about progress towards the recommended remedial legislation route.
- 3.4 The Ministry of Justice in the UK is fully conversant with these proposals and has been closely involved in the drafting of the Projet de Loi.
- 3.5 Ofcom and the United Kingdom Department for Culture, Media and Sport are supportive of addressing this issue at the earliest opportunity, and again have been consulted in relation to the terms of the legislation.
- 3.6 The Office of Utility Regulation has been consulted and supports the recommendations.

### **4. Resources**

- 4.1 These proposals will not result in any additional expenditure by the States.

### **5. Good Governance Principles**

- 5.1 The proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principle 5 "*developing the capacity and capability of the governing body to be effective.*"

### **6. Legislation**

- 6.1 A Projet de Loi will be required to effect the recommendations set out in this Report. As Her Majesty's Comptroller recommends rectifying the anomalies identified in his letter as soon as possible, the Department has sought the approval of the Policy Council and the Presiding Officer for this Report and the Projet de Loi to appear in the same Billet d'État. The Department is grateful to the Policy Council and the Presiding Officer for their consent in this regard.

## 7. Recommendations

- 7.1 The Department recommends that the States:

1. Approve the enactment of legislative provision deeming that the following measures were registered in the Royal Court on 19 January 2004 -

The Communications Act 2003 (Commencement No 1) Order 2003  
[S.I. 2003/1900]

The Office of Communications Act 2002 (Commencement No 3) and  
Communications Act 2003 (Commencement No 2) Order 2003  
[S.I. 2003/3142],

2. Approve the enactment of legislative provision deeming that the measures set out in the following table were registered in the Royal Court on the relevant corresponding date set out in the table -

Wireless Telegraphy (Licence Charges) Regulations 2005 [S.I. 2005/1378]	6 June 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations 2005 [S.I. 2005/353]	7 March 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No 2) Regulations 2005 [S.I. 2005/1585]	4 July 2005
Wireless Telegraphy (Automotive Short Range Radar) (Exemption) (No 2) (Amendment) Regulations 2008 [S.I. 2008/237]	18 February 2008
Wireless Telegraphy (Radio Frequency Identification Equipment)(Exemption) Regulations 2005 [S.I. 2005/3471]	9 January 2006
Wireless Telegraphy (Radio Frequency Identification Equipment)(Exemption) (Amendment) Regulations 2007 [S.I. 2007/1282]	14 May 2007
Wireless Telegraphy (Inspection and Restrictions on Use of Exempt Stations and Apparatus) Regulations 2005 [S.I. 2005/3481]	9 January 2006

Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2007 [S.I. 2007/2084]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2007 [S.I. 2007/2440]	1 October 2007
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009 [S.I. 2009/2517]	5 October 2009
Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) (Amendment) Regulations 2010 [S.I. 2010/2761]	6 December 2010
Wireless Telegraphy (Licence Charges) (Amendment) (Channel Islands and Isle of Man) Regulations 2003 [SI 2003/2984]	1 December 2003
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2006 [SI 2006/2894]	4 December 2006
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2007 [SI 2007/2326]	1 October 2007
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2008 [SI 2008/139]	18 February 2008
The Wireless Telegraphy (Licence Charges) (Amendment) (No. 2) Regulations [SI 2008/2106]	8 September 2008
Wireless Telegraphy (Exemption) Amendment Regulations 2006 [SI 2006/2994]	13 November 2006
Wireless Telegraphy (Exemption) Amendment Regulations 2008 [SI 2008/236]	18 February 2008
Wireless Telegraphy (Exemption) Amendment (No. 2) Regulations 2008 [SI 2008/2426]	6 October 2008
Wireless Telegraphy (Exemption and Amendment) Regulations 2010 [SI 2010/2512]	8 November 2010

3. Approve the enactment of legislative provision deeming that the measures set out in the following table were registered in the Royal Court on the relevant corresponding date set out in the table -

The Communications (Television Licensing) (Amendment) Regulations 2005 [S.I. 2005/606]	14 March 2005
The Communications (Television Licensing) (Amendment) Regulations 2006 [S.I. 2006/619]	21 March 2006
The Communications (Television Licensing) (Amendment) Regulations 2010 [S.I. 2010/640]	23 March 2010

4. Approve the enactment of legislative provision which will render lawful any acts or omissions which were not lawfully done because of the failure to register the measures set out in paragraphs 7.1.1, 7.1.2 and 7.1.3 above, including for the purposes of criminal proceedings, acts or omissions rendered unlawful by the ineffective extension to the Bailiwick of the Communications Act 2003, and
5. Approve the Projet de Loi entitled the Wireless Telegraphy and Related Matters (Deemed Registration and Validation) (Bailiwick of Guernsey) Law, 2011.

Yours faithfully

Geoff Mahy  
Minister

F W Quin, Deputy Minister  
J M Tasker  
M S Laine  
B N Kelly

A L Ozanne

**MEDICAL COMMITTEE**  
**Report to Easter Chief Pleas, 18<sup>th</sup> April 2012**

**RESIGNATION OF THE SARK MEDICAL OFFICER**

On the 30<sup>th</sup> January 2012, Dr Peter Counsell, the Sark Medical Officer, handed the Medical Committee his notice of resignation, this was due to the Sark Newsletter and its continual criticism of how he has dealt with medical emergencies and in particular, medical evacuations. This criticism has been made by persons who are not Medical Practitioners, who, to our understanding, have had no knowledge of the reasons and decision making processes involved for an evacuation, but who feel their opinion is paramount.

The Medical Committee would like to make it clear that Doctor Counsell did not have another position lined up or need any excuse to leave; both he and his family have been happy and would have hoped to stay on Sark for some time yet. The community on Sark has shown its support for Dr Counsell but, understandably, he feels he cannot carry on working here; we have therefore, had no alternative but to advertise for a replacement Medical Practitioner.

Doctor Roger Norwich has generously offered to assist this Committee with his time and expertise and this offer has been accepted. The Primary Care Department in Guernsey is also prepared to help guide us with our applications if required and asked to do so. The Committee hopes to interview a short list of candidates in the middle of April.

The advertising of this position was needed immediately and with Doctor Norwich's advice we placed two adverts, one in the General Practitioners Magazine and another in the British Medical Journal, both of which included an online version. These two advertisements cost £3,800, which we ask, with your approval, to be taken out of unforeseen expenditure. We also need to ask for further costs which have not been budgeted for; this will be for interview expenses (Interviews include travel and accommodation for candidates and use of Hall for interviews) and removal costs for a new doctor to come to Sark. To give you an idea of costs:

<b>2008 Doctor</b>	<b>2008 Head teacher</b>	<b>2010 Teacher</b>
Advertising £1,126	£1,360	£1,600
Interview expenses £1,027	£870	£1,227
Removal £5,000	£9,395	£4,320
Total £7,153	£11,625	£7,147

The Medical Committee are unsure of the costs involved in finding a new doctor and ask you to approve the sum of £12,000, which includes the advertising costs already spent, in the hope we will spend far less; but looking at the cost of advertising we can assume all costs will have gone up considerably. We intend giving Chief Pleas a full account of our spending at the next sitting of Chief Pleas.

**Proposition –**

**That Chief Pleas approve the spending of up to £12,000 from unforeseen expenditure to advertise, interview and assist with relocation costs for a new doctor to replace Doctor Peter Counsell.**

**Conseiller Diane Baker**  
**Medical Committee**