

**JERSEY LAW COMMISSION:
ESTABLISHMENT**

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by the Legislation Committee**



STATES OF JERSEY

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PROPOSITION

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

- (a) to approve the establishment of a Jersey Law Commission as outlined in the report of the Legislation Committee, dated 20th May 1996;
- (b) to appoint the following persons to act as Chairman and members of the Law Commission -

Advocate Keith Sherwood Baker	Chairman
Jurat Donald Edward Le Boutillier	Member
Mr. David Lyons	Member
- (c) to authorise the Finance and Economics Committee to make the necessary financial resources available.

LEGISLATION COMMITTEE

NOTE: The Finance and Economics Committee supports this proposition, but is aware that the request for additional funding for this project has been put forward to the Revenue Decision Conference, the outcome of which is, as yet, unknown; although it is recognised that the outcome is likely to be known by the time this matter is considered by the States.

The Committee is also aware that the proposed Commission may well have an impact on the Law Drafting Programme which, at present, cannot be determined.

Report

Law Commissions have proved to be extremely useful and worthwhile organisations. They have been established in recognition of the fact that the common law and statute law have traditionally been unable to keep up fully with changing social conditions. Commissions are as varied as the jurisdictions that they serve and the nature of the problems they confront.

Jersey is unusual in that, unlike other Commonwealth jurisdictions, its law was historically based upon Norman customary laws rather than English Common Law. Over the years the influence of English law has grown stronger as a result and the need for codification and reform of Jersey law in some areas is great.

The Committee is proposing the establishment of a Jersey Law Commission with the following terms of reference -

It shall be the duty of the Commission to identify aspects of Jersey law which it considers should be examined with a view to their development and reform, including in particular the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law, and to those ends -

- (a) to receive and consider any proposals for the reform of the law which may be made or referred to them;
- (b) to prepare and submit to the Legislation Committee from time to time programmes for the examination of different branches of the law with a view to reform;
- (c) to undertake, pursuant to any such recommendations approved by the Legislation Committee, the examination of particular branches of the law, such consultation thereon as the Commission shall think fit, and the formulation by means of draft bills or otherwise of proposals for such reform.

It is envisaged that the Commission would review selected topics as follows -

1. Finding out whether there is a problem and if there is, defining exactly what the problem is.
2. Researching and summarising the existing law relevant to the topic.
3. Suggesting how the relevant law might be changed to solve the problem.
4. Preparing and publishing a consultative document based on items 1, 2 and 3.
5. Receiving and discussing representations made in response to the consultative document.
6. Preparing and publishing a final report culminating in either a detailed brief for the Law Draftsman or in a draft law prepared in consultation with the Law Draftsman.

The Committee is convinced that this work will be carried out in a thorough and efficient manner and whilst the Commissioners and other legal experts in Jersey are likely to give of their time without financial recompense it will nevertheless be necessary to incur certain expenditure.

Subject to the approval of the States to the proposal, the Finance and Economics Committee has agreed to allocate the sum of £20,000 to the Commission for 1996 and the sum of £50,000 will be required for 1997.

These funds are needed to cover the cost of legal research and drafting, including the use of expert or qualified individuals or university law faculties, and assuming that a maximum of two topics would be dealt with each year at £20,000 each. The balance of funds is required for the provision of outside secretarial services to the Commission.

The Commissioners will be required to submit an annual report to the States to enable the desirability and effectiveness of the Law Commission to be judged and the level of budgeted expenditure reviewed.

The particular matters to be reviewed by the Commission would be decided upon following discussion between the Legislation Committee and the Commission, but likely topics for early review include the following -

- (a) security over movable and immovable property (with particular reference to whether the dégrévement procedure is appropriate in modern times and to whether there should be provision for floating charges);
- (b) the simplification of civil litigation (with particular reference to small claims);
- (c) the question of whether costs recovered by successful litigants in civil proceedings should extend to all costs incurred by them;
- (d) possible reform of the criminal law relating to offences of dishonesty and consideration of whether such law is sufficiently clear and appropriate for modern times;
- (e) pre-trial practice and procedure;
- (f) the powers of the Court in relation to vexatious litigants;
- (g) the 'best evidence' rule (including the admissibility of computer-produced data);
- (h) The principle of accountability of trustees.

20th May 1996.