

POLICY COUNCIL

PAROCHIAL LEGISLATION WORKING PARTY

Executive Summary

This Report recommends the States to implement the recommendations of the Parochial Legislation Working Party (PLWP).

Introduction

In July 2008 the Policy Council, having consulted the Guernsey Douzaine Council, established the PLWP, under the independent chairmanship of Mr Peter J H Morgan. This followed a States resolution of 1 November 2007 following consideration of a Policy Council Report dated 24 September 2007 entitled “The Rôle of the Douzaines and their Relationship with the States”:-

To note the Policy Council’s intention to create a Working Party as set out in paragraphs 23 and 24 of that report and that its mandate will include a review of the continued need or otherwise of bornements.”

Paragraphs 23 and 24 of the 24 September 2007 Report suggested that the Working Party should firstly identify precisely the functions and powers and secondly determine which functions should be retained by the parishes or transferred to the States or abandoned.

Attached as an appendix to this Report is the report dated 11 November 2009 of PLWP.

In submitting this Report to the States the Policy Council wishes to thank the Chairman and Members of the PLWP for their comprehensive report which considers and makes recommendations in respect of a wide range of legislation including functions and powers exercised by the parish authorities.

Consideration of the report of the PLWP

The Policy Council has reviewed the report of the PLWP and endorses its conclusions and recommendations.

In particular, the Policy Council

- approves the specific recommendations for amendments and repeals of legislation as summarised in appendix 1 to the report of the PLWP; and also the proposal to amend the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991 to permit the transfer by Ordinance of appropriate functions from the States to the Constables and/or Douzaines of one, or some, or all of the Parishes, and vice-versa

- endorses the view of the PLWP that the requirement for a permit to build within 9 metres of a public highway is no longer necessary and, on balance, accepts that there is value in retaining the requirement for a bornement for works within 1.5 metres of a public road

The Policy Council notes that the proposed change will, in effect, return the bornement regime to its original purpose of dealing with the boundary between private property and the public road. The extension of the bornement regime to 30 feet (9 metres) made in 1931 was based on considerations such as visibility which are now adequately dealt with under the planning regime. Whilst questioning the need to retain even this requirement, which some Members consider an additional bureaucratic requirement, the Policy Council on balance has accepted that it is complementary to the planning regime and makes good use of the knowledge and expertise of the Douzaines. Nevertheless, the Policy Council considers that wherever possible the process should be streamlined to ensure close co-operation between the Douzaines and the planning regime and that it would be desirable if the Douzaines provided guidance to the public on the issues which they take into account when considering applications for bornements. The Policy Council proposes, in due course, to ask the Douzaines to give consideration to providing such guidance.

The Policy Council will also consult, in due course, with the Douzaines on the need to increase the maximum fee for bornements by regulation (as provided for by the Fees, Charges and Penalties (Guernsey) Law, 2007).

- supports the proposal to use civil law for dealing with persons who fail to observe the provisions of the legislation on hedge-cutting and cleaning of streams

The Policy Council was initially concerned about whether this proposal would ensure that land owners (or other responsible persons) carried out hedge-cutting and cleaning of streams and sought the views of the PLWP on the suggestion that, in cases where the work was not carried out despite the imposition of civil penalties, the parochial authorities be given authority to undertake the work and charge the responsible person accordingly.

The Policy Council was advised by the PLWP that it had given careful consideration to this suggestion but that, while it was initially thought to have some merit, on further consideration had concluded that the advantages were outweighed by the difficulties, in particular legal and public liability issues.

The Policy Council was reassured by the PLWP's opinion that the proposed civil penalty of £50 fixed plus £5 per day thereafter should be sufficient to prompt non-compliant persons to take measures to have the hedges cut and the streams cleaned.

- supports the proposal that the Culture and Leisure Department works with the Constables of St Peter Port on the present day issues regarding itinerant performers and street entertainers in St Peter Port
- supports the proposal to establish a tribunal along the lines indicated in appendix 3 to the report of the PLWP which would consider appeals against decisions of a Constable or Douzaine and which should have the power to reconsider matters afresh rather than being restricted to *vires* and reasonableness
- agrees that it would be beneficial to have a simple charter, along the lines indicated in appendix 4 to the report of the PLWP, setting out the working relationship between the States and the Douzaines and, if endorsed by the States, would hold discussions with the Douzaines in order to agree a final version.

Consultations

In view of the carefully constructed membership of the PLWP, which included HM Procureur, and the consultations which it undertook with the Douzaines, the Guernsey Douzaine Council and those States Departments most affected in preparing its report, the Policy Council has only carried out limited further consultations with States Departments at this stage.

Recommendations

The States are recommended to:-

1. approve the enactment, amendment and repeal of legislation on the lines set out in the report of the Parochial Legislation Working Party appended to this Report, i.e. that –
 - (a) the legislative provisions listed in Appendix 1 thereto which are no longer thought necessary be repealed;
 - (b) other sundry legislation concerning parochial matters be consolidated in a general parochial administration ordinance;
 - (c) the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991 be amended to allow the States from time to time, by Ordinance, to transfer appropriate functions from the States to the Constables and/or Douzaines of one, or some, or all of the Parishes, and vice-versa;

- (d) the Royal Court should no longer be involved in matters relating to the establishment of cemeteries, brick-yards and quarries etc., the erection of cranes in St Peter Port and the installation of ovens in St Peter Port;
 - (e) the Douzaines' function relating to bornements should continue in respect of buildings within 1.5 metres of a public road;
 - (f) a mechanism be introduced enabling any person who is dissatisfied by any decision of a Constable or Douzaine which is directed to that person alone (or to a discrete group of which that person is a member) to appeal against that decision;
 - (g) persons who fail to observe the requirements of legislation regarding the cutting of hedges etc. and cleaning of streams be dealt with by way of civil penalty rather than criminal proceedings;
 - (h) the maximum which may be held in a Parish Reserve Fund be increased to £250,000 plus accrued interest;
 - (i) Dog Tax be increased to £10 per dog;
2. (1) authorise the Policy Council:-
- (i) to pursue discussions with the Douzaines regarding the establishment of a Charter between the States and the Douzaines setting out the working relationship between the respective parties;
 - (ii) to agree the terms of the charter;
- (2) authorise the Chief Minister (or other Minister appointed in that behalf by the Policy Council) to sign the charter on behalf of the States;
3. direct the Culture and Leisure Department, in association with the Constables of St Peter Port, to review and report back to the States on the present day issues regarding itinerant performers and street entertainers.

L S Trott
Chief Minister

30th April 2010