SHORTER ARTICLES

MODERNIZING ADMINISTRATIVE REDRESS IN JERSEY

Andrew Le Sueur

This article summarizes provisional recommendations made by the Jersey Law Commission for improving how grievances against administrative decisions are handled and explores the principles that may help identify what a good administrative redress system looks like.

Introduction

1 In April 2016, the Jersey Law Commission published an 83-page consultation report *Improving Administrative Redress in Jersey*.[1] More than 25 individuals and organizations participated in the consultation process and the Commission is currently analysing responses. A final report to the Chief Minister will be made later in 2016.

2 The Commission's project takes a wide angle survey of the different ways in which individuals and business aggrieved by administrative decisions can seek redress. These include—

- internal complaints processes within public authorities;
- an appeal to a tribunal;
- situations in which there is a right of appeal to a Minister;
- the States of Jersey Complaints Panel;
- statutory rights of appeal to the Royal Court;
- judicial review proceedings in the Royal Court; and
- various forms of alternative dispute resolution.

3 In addition, the consultation report discusses whether proposals for a public services ombudsman should be revived.

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[1] Jersey Law Commission, *Improving Administrative Redress in Jersey*, Consultation Paper No.1/2016/CP is available at www.jerseylawcommission.org. The author of this article is the Topic Commissioner. Views expressed here are personal, not those of the other Commissioners or the Jersey Law Commission.

4 Taken as a whole, the Commission's provisional reform proposals are (by Jersey standards) rather radical though many of the interim recommendation either draw on tried and tested arrangements in other jurisdictions or are based on clear constitutional principles. Consultation responses have provided mixed reactions to the key changes and it remains to be seen how these will adjust the Commission's blueprint for change.

The main interim proposals

Internal complaints

5 The Commission suggests that the quality of internal complaints procedures in Jersey is very variable when measured against a template that examines accessibility, clarity, independence and outcomes.[2] There is also considerable variation in the number of internal complaints received: Health and Social Services tops the list with an average of 252 a year; many departments report receiving seven or fewer. The Commission's provisional recommendation is that the Chief Minister's Department should take on responsibility for improving the quality and consistency of internal complaints systems (and collecting more reliable data about them).

Tribunals

6 Nine tribunals dealing with administrative appeals (broadly defined) operate in Jersey: Commissioners of Appeal for Taxes; Social Security Tribunal; Social Security Medical Appeal Tribunal; Income Support Medical Appeal Tribunal; Mental Health Review Tribunal; Health and Safety Appeal Tribunal; Data Protection Tribunal; Rate Appeal Boards; and the Panel appointed by the chairman of the Prison Board of Visitors to hear appeals against findings of guilt relating to a breach of prison discipline. The Commission's provisional recommendation is that these separate judicial bodies should have their jurisdictions transferred to a single new body, to be called the Jersey Administrative Appeals Tribunal (JAAT).

7 Several follow-on reforms are suggested, including: a single procedural code (adapted as needs be to different contexts) with an overriding objective; the creation of a new part-time salaried judicial post (the President of JAAT); clarification of when tribunals must sit in public and publish judgments; legal aid in specific cases where

[2] Using and developing a template from used in M Anderson, A McIlroy and M McAleer, *Mapping the Administrative Justice Landscape in Northern Ireland* (2014).

otherwise where would be inequality of arms; and a new system for appointing tribunal members (ministers against whose decisions tribunals hear appeals should not be part of that process).

Appeals to Ministers

8 Several Laws stipulate that an aggrieved person's redress against an administrative decision is an appeal to or review by a Minister. The Commission's starting point is that external reviews and appeals should normally be carried out by a judicial body (such as a tribunal or the Royal Court), or by an independent body such as the States of Jersey Complaints Panel or an ombudsman, rather than a politician. The role of a politician in making formal decisions about redressing grievances is justifiable only if there is some general public interest at stake. The Commission's main interim recommendation is that most appeals to or reviews by Ministers should be replaced with a right of appeal to JAAT.

States of Jersey Complaints Panel

9 A further type of administrative redress is the States of Jersey Complaints Panel. When originally set up in 1979, the Panel consisted of elected States members. Since 1995, the States Assembly has appointed people from outside the States. The Commission's interim assessment is that the Panel should be abolished and replaced by a public services ombudsman. This provisional view (which has been challenged during the consultation process) was reached because there seemed to be too many major structural defects in the design of the Panel for it to be saved through further reforms.

10 Recognizing the political reality that calls for an ombudsman have been rejected in the past, the Commission sets out a series of alternative interim recommendations for the Panel's reform. The consultation paper suggests that the remit of the Panel should be extended beyond Ministers to other public bodies, including parishes and some corporate entities owned by the States of Jersey. It questions whether the Panel should deal with complaints where an alternative remedy exists (such as an appeal to the Royal Court).

11 The Administrative Decisions (Review) (Jersey) Law 1982, art 9(2) defines the grounds of review largely in terms of errors of law: the decision complained about "was contrary to law", "was based wholly or partly on a mistake of law", "was contrary to the generally accepted principles of natural justice". The Commission makes the provisional recommendation that this definition is unsuitable for a predominately non-legally trained panel and that questions of law should be decided by judicial bodies (either a tribunal or the Royal Court). Various procedural reforms are also suggested.

A public services ombudsman for Jersey

12 In many other countries, a further type of administrative redress is offered by an ombudsman. Ombudsmen use investigatory methods (through meetings, phone calls and emails) to consider complaints and make recommendations about how things should be put right. Ombudsmen also have a positive role in promoting standards of good administration and complaint handling by public bodies. In December 2000, the Clothier committee recommended that Jersey should set up an ombudsman (perhaps in conjunction with Guernsey).[3] The States of Jersey rejected this idea in 2004.

13 The Commission's interim recommendation is that the Government of Jersey and the States Assembly should reconsider the question of a public services ombudsman but commissioning a detailed study into the costs and benefits of introducing an ombudsman scheme. In this context, the Commission notes that other small jurisdictions—including Gibraltar, the Cayman Islands and Bermuda—have in recent years established ombudsman schemes.

The Royal Court

14 The Royal Court potentially has an important role in the administrative justice system, in particular ensuring that the rule of law is adhered to in administrative decision-making.

15 More than 50 different Laws create a right of appeal against the public body directly to the Royal Court. Many of these appeals have never been used or used only occasionally. The Commission's main interim recommendation is that most of these appeals should go instead to JAAT. Where a route to appeal is retained to the Royal Court, the Commission provisionally recommends that the time limits for lodging an appeal should be standardized.

16 If a Law does not create a right of appeal to a tribunal or the Royal Court, an aggrieved person may make an application for judicial review to the Royal Court. This is a procedure for examining whether the administrative decision is lawful. Very few, if any, applications for judicial review are made in an average year. The Commission suggests that there may be scope for modernizing the procedures for making a judicial review application and provisionally recommends that the Royal Court Rules Review Group consider carrying out this review, seeking out lessons from the modernizations that have taken place in

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[3] States of Jersey, *Report of the Review Panel on the Machinery of Government in Jersey* (2000) ch 9.

relation to judicial review procedures in England and Wales and Scotland in recent years.

Alternative dispute resolution

17 Alternative dispute resolution (ADR) methods, such as mediation, can be used in disputes about administrative decisions. The Commission considers what scope there is for JAAT, the States of Jersey Complaints Panel (if it is retained), the public sector ombudsman (if it is created) and the Royal Court to use or encourage the use of ADR. Its starting point is to recognize that some administrative disputes are unsuited to ADR, for example because a point of law must be determined or the public body has little or no discretion to change the outcome of its decision.

What does a good administrative redress system look like?

18 In order to assess what improvements could be made to Jersey's administrative redress system, clarity is needed about the characteristics of a good system. The Commission suggests that in assessing the current system, the Commission's interim recommendations, and responses to consultation, regard should be had to the following broad principles.[4]

Presumption in favour of express redress procedure

19 Whenever a Minister or other public authority is conferred with decision-making power affecting people under a Law adopted by the States Assembly, this should normally be accompanied by an appropriate and effective procedure and remedies, set out expressly in law, as to how an aggrieved person may challenge the correctness of a decision (for example, an appeal to a tribunal or the Royal Court). If a *project de loi* fails to provide this, the Minister introducing the legislation should justify the omission.

[4] This draws partly on research findings and recommendations in V Bondy and A Le Sueur, *Designing Redress; A Study about Grievances against Public Bodies* (London, Public Law Project, 2012) and Administrative Justice and Tribunals Council, *Principles for Administrative Justice* (London, AJTC, 2010).

Constitutional principles

20 The design and operation of the administrative redress system should respect basic constitutional principles. These include the rule of law and Convention rights under the Human Rights (Jersey) Law 2000. Public bodies are legal entities exercising powers conferred by law in the public interest; the question whether there has been a breach of the law should always ultimately be decided by a judicial body (a court or tribunal) with judges of appropriate seniority.

21 A further constitutional principle is the independence and impartiality of judicial bodies, including tribunals. This is reflected in art 6 of the European Convention on Human Rights (ECHR), incorporated into Jersey law by the Human Rights (Jersey) Law 2000. The Commission's findings are that there are several respects in which the "structural" independence of tribunals in Jersey could be enhanced.[5]

22 ECHR, art 6 also embodies the concept of equality of arms: in adversarial procedures, this requires that each party be given a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage against their opponent. One area of concern is that there is no general provision for people appealing to a tribunal to receive legal aid for advice and representation even when a complicated point of law is involved and the public body is represented by a lawyer.[6]

The simplicity principle

23 The administrative redress system should be as simple as possible. The complexity of the system in Jersey is at least as bad as it is in the United Kingdom where "there are multiple types and channels of redress, each of which is run by a different body or section, according to different rules and definitions and using different procedures".[7] It can be difficult for people to navigate through the redress system. The distinction between a complaint and appeal may not be clear. It can be difficult to know which route is the most appropriate. Time limits for raising grievances vary widely across the system.

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[5] Jersey Law Commission, *Improving Administrative Redress in Jersey*, Consultation Paper No 1/2016/CP, Part 2.

[6] Jersey Law Commission, *Improving Administrative Redress in Jersey*, Consultation Paper No 1/2016/CP, Part 2.

[7] P Dunleavy et al, "Joining up Citizen Redress in UK Central Government" ch 17 in M Adler (ed), *Administrative Justice in Context* (Oxford, Hart Publishing, 2010).

24 The Commission argues that it should be easier to achieve simplicity in a small system, such as Jersey, than in a larger system. Creating a single official point of contact for impartial information on where to make a complaint or seek redress about government decisions could be one way of promoting simplicity. In the United Kingdom, this was suggested by the National Audit Office in 2005[8] but rejected by the UK Government because they did not want to "create another central point in addition to the Ombudsman because we think that most of these things should be sorted out by the organization doing them".[9] There is no public services ombudsman in Jersey to perform this role.

Principles of transparency and accountability

25 The administrative redress system should operate as transparently as possible. Under ECHR, art 6, judicial and other bodies determining "civil obligations" must do so in public hearings—unless there are clear reasons for favouring privacy (such as when a hearing involves children or vulnerable adults). The Commission's findings are that respect for the transparency principle is variable across Jersey's administrative redress system. The Royal Court scores highly in this regard: its hearings are open to the public and written decisions are clearly presented on the Jersey Legal Information Board website (www.jerseylaw.je). The Complaints Panel's hearings are similarly in public (indeed, they often generate interest from the news media) but the Panel's past decisions are not easily accessible online.[10]

26 Tribunals perform quite poorly in relation to the transparency principle. Some do not sit in public (though in some situations this is justified). The written judgments of tribunals are not publicly accessible. There is, however, is a strong body of opinion in the Island that greater publicity would deter people bringing appeals.

27 Linked to transparency is the principle of accountability for the operation of the administrative redress system. There is a public interest in knowing about matters such as how many complaints and appeals are made each year, how many are successful, how much money is spent on the system and how efficient and effective it is.

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[8] Comptroller and Auditor General, *Citizen Redress: What Citizens can do if Things go Wrong with Public Services*, HC 2, Session 2004–2005 (9 March 2005).

[9] House of Commons Public Administration Select Committee, *When Citizens Complain*, 5th Report of Session 2007–2008, HC 409 (March 2008) para 37.

[10] Jersey Law Commission, *Improving Administrative Redress in Jersey*, Consultation Paper No 1/2016/CP, Part 4.

Accountability requires clear leadership and a reporting mechanism. The Royal Court and the Complaints Panel score reasonably well against these measures; again, the tribunals do not. The Commission provisionally recommend that there should be an annual report by the Chief Minister[11] on administrative justice followed by review by the States Assembly (through the Privileges and Procedures Committee or a Scrutiny Panel).

The proportionality principle

28 An administrative redress system costs money: tax payers' money in running it, the decision-maker's time in responding to grievances, and aggrieved people have to spend time preparing their case and sometimes pay for legal advice and representation. These costs should be kept to the minimum possible consistent with the other principles. Any review of an administrative redress system should seek out cost savings and ways to maximize value for money. Grievances also have costs other than financial ones: for most individuals, pursuing a complaint is likely to be stressful.

29 For all these reasons, if a grievance arises it should be nipped in the bud as speedily, informally and cheaply as possible. Sometimes, however, where an important administrative decision impacts profoundly on a person or raises complex issues, a more elaborate and costly procedure (such an appeal to the Royal Court) may be necessary.

Good fit principle

30 A well-designed administrative redress system should ensure that grievances are channelled to the appropriate redress body. In reviewing and redesigning a redress system, regard should be had to achieving a good "fit" between the *type* of complaints that arise and redress mechanism. For example—

- disagreements about everyday facts, or how the decision-maker exercised discretion, may be best resolved by a body including lay people with broad experience of life;
- disputes involving disagreements over professional judgements or technical matters may be best resolved by a body that includes experts in the relevant subject-matter;

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[11] "Within the executive branch of government, the Chief Minister is responsible for justice policy and resources": see P.92/2013.

- disputes about important points of law are best addressed by a judicial body such as the Royal Court.

31 The Commission considers the role of the Royal Court. In some contexts, where appeals are likely to turn on factual rather than legal disputes and where appellants are likely to be individuals with limited financial resources or small businesses, the Commission's interim recommendation is that an appeal route to the proposed JAAT (or to the proposed public services ombudsman) would be more proportionate. The Commission also considers how greater use of alternative dispute resolution (ADR) techniques, such as mediation, may provide the most proportionate responses in some situations.

The "right first time" goal

32 As well as dealing with individual grievances, redress mechanisms should contribute to improvements in the quality of public services.

33 Ministers, civil servants, and others working in public bodies may fail to make decisions correctly and lawfully due to a range of different factors. These include the law being too complicated, vague or rigid or the decision-maker using an unsatisfactory procedure. Evaluation of the law underpinning the making of initial administrative decisions is beyond the scope of the Commission's current inquiry but it is notable that during the research interviews for this project,[12] several people were critical of how social security and income support legislation had developed: they told us that a generation ago, the law gave officers sufficient flexibility to enable them to apply common sense and compassion in difficult cases whereas now officers had to work within a straitjacket of rules that were sometimes too rigid and led to grievances arising.

34 Where a decision is not made right first time and a grievance is taken to a tribunal, court or other redress mechanism, the public body should seek to learn lessons for the future.

The user perspective principle

35 Across the United Kingdom over the past decade, there has been increasing emphasis on "user perspectives" and "customer focus" in administrative justice. In a democracy, government exists to provide public services to citizens. Redress for grievances about administrative decisions is a public service and should be designed around people's

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[12] On research methods, see Jersey Law Commission, *Improving Administrative Redress in Jersey*, Consultation Paper No.1/2016/CP, at 1.9.

needs (not administrative convenience). Administrative redress should be as "user friendly" as possible.

36 A practical way in which user perspectives can be incorporated when systems are being redesigned is to consider the "user journey" through the processes. This involves thinking about how different elements of the process fit together: from how an administrative decision is communicated; what information people are given about what to do if they are aggrieved; how people obtain independent help and advice about the problem; how they are "signposted" to the right part of the redress system, etc.

37 The Commission's findings suggest that across the administrative redress system in Jersey there is not a strong culture and commitment to focusing on users' perspectives. For example, there have been no systematic attempts to find out what appellants using the tribunal system, or complainants using the States of Jersey Complaints Panel, think and feel about the process—or why people decide not to pursue an appeal or complaint.

38 A further challenge in adopting a user perspective is that in respect of many of Jersey's redress mechanisms there are either very few or no users. There are various possible explanations for this.

39 There may be very few or no grievances that require to be redressed. This could be because the quality of public administration is exceptionally high or because no or very few decisions are actually made under a particular Law (which is possible in a small island).

40 When grievances do arise people are unaware about what they can do about them (for example, exercise a right of appeal or use the States of Jersey Complaints Panel).

41 People may be aware of how their grievances could be addressed but are reluctant to use redress mechanisms because of concerns about the stress, cost, time involved or publicity that may flow from doing so.

42 It may be a mix of the above.

43 For the purposes of this consultation report, the Commission have tried to have regard to the following factors, that—

- people should have access to affordable, timely and independent advice about their grievance;
- procedures for using redress mechanisms should be clear and easily understandable by non-lawyers; and
- time limits for making complaints and appeals should be clear and reasonable.

Next steps

44 Over the next three months, the Commission will be considering in detail the responses received during the consultation process. A final report to the Chief Minister will be made before the end of 2016.

Andrew Le Sueur is Professor of Constitutional Justice at the University of Essex and a member of the Jersey Law Commission.

IMPLIED RIGHTS AND CONVEYANCING PRACTICE

Richard Falle

1 Once upon a time, if not quite beyond the memory of some still living, most lawyers in Jersey served a population whose principal preoccupation was the acquisition and disposal of interests in land. It is hard to imagine that anything much has changed. Today however, conveyancing is a much more marginal concern for many lawyers who seem content to delegate what is nevertheless an essential activity for the community, over which they have a monopoly, to persons whose qualification to conduct such business is, in some cases, questionable. Given that the purchase and sale of his dwelling is typically, the most important transaction in the life of an individual, it seems appropriate to question whether in this instance, the legal profession may be failing the community.

2 This short note considers evidence tending to show that the practice of conveyancing may have degenerated, where serious errors on occasion occur and how landowners, their titles wrongly disparaged and the value of their property undermined, suffer loss on disposal. It is not unknown for a willing purchaser to be induced on the basis of advice to withdraw from a transaction on the questionable ground that to complete would be to risk purchasing a defective title. In another case, a landowner attempting to sell may face a sudden unexpected challenge to his title and under pressure to complete will do so on less favourable terms, persuaded to pay an expensive premium for defective title insurance or made subject to a heavy retention.

3 It is often the case that a conveyancer when acting for a purchaser will expose some genuine anomaly, perhaps on a site visit or when checking title. It is then quite normal to ask a landowner to be party to a contract to perfect his neighbour's title when to do so would not prejudice his own. When this occurs however, the vendor can often be

held to ransom by a neighbour demanding onerous terms for his participation and an indemnity against the often heavy and, in the circumstances, unchallengeable fees of those who advise him.

4 Unfortunately, it is often the case that the perceived anomaly does not in fact exist. Experience suggests that in a significant number of cases the advice given falls short of what is required because the conveyancer's knowledge is confined to the pages of his draft contract. This is hugely frustrating for those on the other side of the transaction in question, who know the law yet are faced with the impenetrable ignorance of those who do not know what they do not know!

5 Gone are most of those older practitioners whose technical skills were buttressed by a profound knowledge of land law. Their clerks, although without professional qualification themselves, acquired the skills at the elbow of those who had. The art and craft of drafting contracts and describing and transferring interests in land often involved a lengthy apprenticeship. Problems arising regarding title, boundaries, *servitudes* and hypothecation would invariably be resolved by reference to the general law and the proper construction of documents. Lawyers would be intimately involved in the process.

6 The contracts drawn by experienced and admired conveyancers working in the profession half a century ago provide excellent models for students. The drafting there is often notably elegant and clean—perhaps the work of a Francis Caurel, Ted Le Gresley or Philip Le Cras (in his conveyancing days!) who were altogether at home with the maxim "*Qui veut les fins veut les moyens*" and accordingly knew that the grant of a *servitude* without further express detail necessarily carried with it the accessory rights without which that *servitude* could not be exercised.

7 Familiarity with written French was once regarded as a minimum qualification for those involved in conveyancing. It remains vital. Yet the cultural discontinuity in Jersey which resulted from changing the language of conveyancing from French to English a decade or so ago, has meant that a significant number of persons now employed in this field are unable to read documents written in French or to demonstrate a root of title reaching back at least 40 years and accordingly struggle to carry out a competent title search.

8 The records of the *Registre Public* which date from the beginning of the 17th century are a wonderful resource for the historian and genealogist and those teasing out a complex provenance in their title searches. In practice, however, these records are closed to a monoglot conveyancer. Such persons, unable to conduct a proper research into the provenance of rights and titles or to access the works of the Commentators on Norman and Jersey custom, cannot be regarded as

competent or qualified to advise on such matters. Yet persons enjoying delegated authority from their employers to conduct transactions worth millions of pounds are often unwilling or unable to debate issues before because the custom and its commentators are inaccessible to them

9 It must surely be wrong for a lawyer, faced with a lack of competence in this important area of legal practice, to abdicate responsibility to his clerk. It is, in the circumstances, questionable whether that so-called reform of the language of conveyancing has done anything to advance the public interest.

10 The invocation of legal principle and the citation of authority are sometimes slightingly described as "academic" by conveyancers who appear to assume that they have no need for such knowledge. Their concern is rather to be comprehensively inclusive in their contracts. What is most impressive about such documents is their weight. It is however obvious that in straining to describe everything, the draftsman runs the risk that some accidental omission might, in any subsequent dispute, be construed as intentional and accordingly significant.

11 The reality of course, is that the value of any particular title is often supported as much by implied rights as by those which, deriving from express covenants, are recited in full. Implied rights are carried forward in the title by the words "The whole such as it is with all such rights appurtenances and dependencies as may belong thereto . . ."

12 It is accordingly vital that a conveyancer should appreciate that all the rights attached to a property are not necessarily to be found described within the four corners of the contract. Landed titles have to be considered in a matrix of customary law. Yet all too often when checking title, ignorance of that fact leads to the false conclusion that rights not spelt out *in extenso* in the conveyance simply do not exist and their absence evidence of defective title. When for example, faced with a provenance which clearly supports the existence of a *servitude* based upon the doctrine of "*Destination de père de famille vaut titre*", it is unacceptable for a conveyancer to persist in parroting "*nulle servitude sans titre*" when that principle is not then applicable. In such a case it must also be unacceptable that the value of a property with a perfect title should be tainted by the ignorance of those who should know better yet on whose advice the landowner will naturally rely.

13 This short note is not the place for an extended discussion of the doctrine of *destination*, although one is clearly overdue. It is however, fundamentally important for conveyancers to understand that this doctrine is a living part of the customary law of Jersey and rooted in the origins of heritable property. It looks to the continuity of rights held "*à fin d'heritage*" in circumstances where a *père de famille*,

having during his life enjoyed his various conjoined properties as one, dies and passes the estate to his different heirs. The component parts seamlessly pass to his heirs and the natural support and amenities which they previously enjoyed now crystallise into such *servitudes* as may be necessary to secure their fullest enjoyment in separate ownership. Such *servitudes*, where appropriate, include rights of passage, access, drainage, support, *etc.* to be reciprocally enjoyed by the heirs over their landed inheritance.

14 An extension of the same doctrine provides for implied *servitudes* to crystallise on the disposal by a landowner of part of his property to a third party where, in the absence of alternative provision for the protection of the land retained and critically in the absence of an express disclaimer in the contract calculated to prevent the coming into effect of such implied rights, a vendor is presumed to intend the creation of *servitudes* without which the land retained would necessarily suffer material loss of enjoyment and amenity.

15 This note is not authority to be relied upon by practitioners but it is certainly intended as a finger post to the works of Le Geyt, Berault, Basnage, Flaust and other commentators who all discuss the subject of implied *servitudes* and their creation as one with deep roots in our custom. It is also discussed with characteristic clarity by Pothier in relation to the customs of Paris and Orléans. These same principles are alive in the modern civil law of France. Such sources of authority should be studied by all who have to do with conveyancing in Jersey.

16 The fault in all this lies for the main part, not with dedicated and conscientious clerks, but with those who employ them without procuring the training and knowledge they require to provide their clients with a professional service. There is unfortunately, no course yet available at the Jersey Institute of Law to provide some kind of diploma in land law and practical conveyancing for persons who have no intention of becoming qualified lawyers but nevertheless would wish to be able to conduct the business of conveyancing with a sound knowledge of land law.[1]

Richard Falle has been in practice as an Advocate of the Royal Court of Jersey since 1968. He served for a number of years as Magistrate.

[1] [Editorial note: much preparatory work to create such a course was in fact carried out by the previous Director of Studies at the Institute of Law but the project was shelved in the light of opposition from the legal profession.]

BACK TO THE FUTURE

Simon Hodgett[1]

This article summarises the 2016 machinery of government changes in Guernsey which originated following recommendations from the States Review Committee. The States Review Committee was established in 2012 to review the organisation of States affairs and to make any recommendations for reform which it considered necessary, with the intention of providing for the highest possible standards of good governance. The recommendations were essentially to follow a committee system of government.

1 When the Organisation of States Affairs (Transfer of Functions) Ordinance 2016[2] came into force on 1 May 2016, the structure of Guernsey's government changed significantly. Although retaining a committee system, a new senior committee was created along with six principal committees and an overarching scrutiny management committee. A further three new authorities, a trading supervisory board and an Overseas Aid & Development Commission were also instituted.

2 The members of the States Review Committee included Terry Le Sueur, OBE, former Chief Minister of Jersey and the Committee undertook detailed interviews, research and discussions with a wide range of interested parties before the proposals were presented to the States of Deliberation. Whilst it seems clear that there is no one perfect government model for small island jurisdictions, interestingly, the States Review Committee unanimously recommended that Guernsey should not follow the Jersey route of ministerial government.[3]

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[1] I am grateful for the assistance of HM Comptroller, Megan Pullum, QC, in reviewing this article but any mistakes are, of course, my own.

[2] Ordinance No IX of 2016.

[3] The SRC came to this conclusion as it considered that political parties would probably be required to make a ministerial system effective and accountable, it was unlikely that the full advantages of such a system would be realised in Guernsey, and a ministerial system might well create not insignificant disadvantages and challenges.

3 As a result of the recommendations made by the States Review Committee[4] in 2014[5] and 2015,[6] the previous system of 10 departments and a coordinating Policy Council was reformed. In its place, a structure including the new Policy & Resources Committee and six principal committees was introduced in an effort to simplify and improve the administration of government in Guernsey. Additionally, some of the regulatory functions given to the previous departments were removed to prevent any conflict of roles and instead made the responsibility of one of the new authorities.

Senior committee

4 With a mandate to coordinate policy including leading the policy planning process, the allocation and management of resources, and facilitating cross-committee policy development, the Policy & Resources Committee (P&RC) has effectively replaced the Policy Council and the Treasury & Resources Department. It also has general responsibility for fiscal policy and economic affairs, as well as international and constitutional matters. Composed of five Deputies who may not sit on any other committee, authority or board,[7] the new committee is led by its President, the senior Island politician, who is assisted by its Vice President and the Lead Member for External Relations.[8] Unlike its predecessor, the Treasury and Resources Department, the P&RC no longer has shareholder functions and duties[9] nor does it retain any responsibility for the management of States-owned and leased property.

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[4] A Special States Committee constituted on 9 March 2012 as a result of a successful *requête*; originally led by Deputy Peter Harwood, the SRC was chaired by his successor as Chief Minister, Deputy Jonathan Le Tocq, when it published a series of reports in 2014 and 2015. The SRC's other members were Deputies Matt Fallaize, Richard Conder, Mark Dorey and Gavin St Pier, Mr Terry Le Sueur, OBE and Mrs Claire Smith. Deputy Harwood agreed to remain as a non-voting adviser after his resignation as Chief Minister.

[5] Published in *Billet d'État* XIV of 2014 and debated on 8 and 9 July 2014.

[6] Published in *Billet d'État* XII of 2015 and debated from 7 to 9 July 2015; also published in *Billet d'État* XXI of 2015 and debated on 26 and 27 November 2015.

[7] With the limited exception of the States Assembly and Constitution Committee.

[8] In Guernesiaise, *le Prumier de Giernesi*, *le Vice-Prumier de Giernesi* and *le Secrétaire des Affaires Extérieures* respectively.

[9] These have now been transferred to the States Trading Supervisory Board (see para 21 of this article).

Principal committees

5 The principal committees which have replaced the departments comprise five Deputies and up to two non-States Members; the office which supports the committee is now led by a Chief Secretary. The principal committees are as follows.

Committee for Economic Development (CED)

6 With a mandate—

> "to secure prosperity through the generation of wealth and the creation of the greatest number and widest range of employment opportunities possible by promoting and developing business, commerce and industry in all sectors of the economy",

this committee is the successor to the Commerce and Employment Department. However, certain responsibilities have been given to other committees: Guernsey Training Agency (CESC), Health and Safety and Employment Relations Service (CESS), agriculture and the rural environment (CEI), trading standards and consumer protection (CHA), air route licences (TLA) and the Guernsey Dairy (STSB).

Committee for Education, Sport & Culture (CESC)

7 Taking on the general functions of the previous Education Department and the Culture and Leisure Department, this committee has been tasked—

> "to encourage human development by maximising opportunities for participation and excellence through education, learning, sport and culture at every stage of life."

With ongoing responsibility for civic celebrations and new responsibility for the Island Archives, the new committee will no longer oversee the Channel Islands' lottery (STSB) or public parks (CEI).

Committee for Employment & Social Security (CESS)

8 The committee's mandate includes fostering—

> "a compassionate, cohesive and aspirational society . . . in which individuals and families are supported through schemes of social protection"

relating to pensions, benefits, social housing, employment and labour market legislation. The responsibilities of the former Social Security and Housing Departments have therefore been given to this committee with the main exception of the administration of housing control and the right to work legislation (CHA).

Committee for the Environment & Infrastructure (CEI)

9 The new committee has taken on the functions of the Environment Department and the Public Services Department with two key exceptions: (i) the operational functions arising out of planning legislation such as enforcing planning legislation, administering planning applications and making building regulations are now dealt with by the Development and Planning Authority (DPA), and (ii) the management of the airports and harbours (along with management of the public water supply and disposal of solid waste) lies with the STSB. Its remaining functions are therefore—

> "to protect and enhance the natural and physical environment and develop infrastructure in ways which are balanced and sustainable in order that present and future generations can live in a community which is clean, vibrant and prosperous."

Committee for Health & Social Care (CHSC)

10 The mandate of this committee is "to protect, promote and improve the health and well-being of individuals and the community" in a similar way to the previous Health and Social Services Department. Most of that Department's functions remain with the new committee.

Committee for Home Affairs (CHA)

11 The successor to the Home Department retains responsibility for areas such as crime prevention, law enforcement, data protection and civil defence but broadcasting services now fall under the purview of the CED. The committee's mandate is now—

> "to support a high standard of living and quality of life by maintaining and promoting a safe, stable and equitable society which values public protection and justice and respects the rights, responsibilities and potential of every person."

12 The previous titles of "Department" and "Minister" are no longer used as they were thought to be confusing in what could be described as a committee system overlaid with "several features more common to ministerial government". However, when off-Island, the senior committee politicians will use ministerial titles.[10]

Other committees

[10] The President, Vice President and Lead Member for External Affairs in the P&RC will be known off-Island as the Chief Minister, Deputy Chief Minister and Minister for External Relations respectively.

13 In addition to the senior and principal committees, the SRC proposals included the creation of one final committee and the maintenance of another.

Scrutiny Management Committee (SMC)

14 Under the previous machinery of government, overall scrutiny of the States was entrusted to three different committees: the Scrutiny Committee, the Public Accounts Committee and the Legislation Select Committee. As their names suggest, the latter two committees focused on finance and legislation respectively, whilst the former considered policy and service delivery by departments and committees on a more general level. The new Scrutiny Management Committee has superseded all of these with an enlarged mandate to—

> "lead and co-ordinate the scrutiny of committees of the States by reviewing and examining legislation, policies, services and the use of monies and other resources for which committees are responsible."[11]

Whether acting through "task and finish" groups to review policy, services or financial matters, or through the Legislation Review Panel[12] to examine enactments and other legislative instruments, this new committee will choose the most appropriate way of ensuring efficient scrutiny of the States. The Scrutiny Management Committee consists of a President and two People's Deputies[13] accompanied by two non-States members. It should be noted that the previous power of the Legislation Select Committee to enact Ordinances under art 66 of the Reform (Guernsey) Law 1948 now rests with the P&RC.

States Assembly and Constitution Committee (SACC)

15 The only committee which retains its previous name and responsibilities (albeit with minor changes) is the States Assembly and Constitution Committee; its role continues to include oversight of the

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[11] In an effort to ensure that this Committee was as independent as possible, the line management links between the Chief Executive of the States of Guernsey and officers supporting the Committee were removed (see para 9.4.11, 2nd policy letter).

[12] In its first incarnation, the LRP comprises five Deputies and two non-States members who are both advocates of the Royal Court.

[13] Whilst the President may not be a member of any of the principal committees, a member may not be a member of more than one of those committees.

constitution of the States, the procedure and practices of the States and the committees, and the broadcasting of States' proceedings.

Authorities, Board and Commission

16 Alongside the principal committees, other bodies have been created to fulfil the previous functions of the States. The SRC noted that some elements of the previous framework had been vulnerable to perceptions of partiality and conflicts of interest; the creation of two new regulatory authorities which were separate from the policy-making committees was therefore proposed.

Transport Licensing Authority (TLA)

17 Although intended principally to deal with the unsatisfactory situation regarding air route licensing,[14] the mandate of this authority may also include other forms of transport licensing conferred on it by the States. To strengthen the impartiality of the authority, no member of the TLA may also sit on the P&RC, CEI or CED.

Development & Planning Authority (DPA)

18 In a similar way, the SRC proposed that the policy and operational responsibilities for environmental or infrastructure matters should be separated from the determination of planning applications. Accordingly, this new authority has been created with the regulatory function of development control; however, its original mandate was widened by the SRC to include determining land use policy through the production of the Island Development Plan every 10 years. The legal framework underpinning planning policy and development control will remain the same, as will the practice of only referring the "most contentious or high-profile or atypical applications" for the authority to determine in an open planning meeting.[15]

19 Both authorities comprise five Deputies and two non-States Members to ensure that the mix of political accountability and relevant expertise is retained.

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[14] By way of example, members of the Commerce and Employment Department, which previously made such decisions, felt unable to advise and withdrew from the States debate on Guernsey's air links, even though the issue fell squarely with the Department's mandate: see para 8.7.3, 2nd policy letter.

[15] Paragraph 8.8.29, 2nd policy letter.

Civil Contingencies Authority (CCA)

20 The third authority under the new machinery of government is the Civil Contingencies Authority which retains its previous name and function; composed of the Presidents of the P&RC, CEI, CHSC and CHA, it is responsible from ensuring security and wellbeing in an emergency.

States Trading and Supervisory Board (STSB)

21 Possibly one of the main innovations in the reforms proposed by the SRC was the introduction of the STSB, which has inherited the functions of a quartet of previous departments[16] with a mandate to—

(a) carry out the States' role as shareholder of the following incorporated States-owned companies: Cabernet Group,[17] Guernsey Electricity, Guernsey Post, and Jamesco 750;[18]

(b) operate the following States' unincorporated trading concerns and commercial interests: the Channel Islands lottery, Guernsey and Alderney airports, Guernsey Dairy, Guernsey Harbours, Guernsey Water, property and real estate owned or leased by the States, and States Works; and

(c) act as the Waste Disposal Authority.

22 The intention behind the creation of the STSB was to allow focused political oversight of a wide range of different commercial and trading activities, although its role will differ depending on the status of the company or concern in question. The constitution of the Board is decided by the States but it is led by a President, accompanied by at least one People's Deputy and at least two non-States Members.

Overseas Aid & Development Commission (OADC)

23 The final body undertaking functions of the States is the Overseas Aid & Development Commission, a new title for the previous Overseas Aid Commission to recognise that a "considerable proportion of funds distributed by the Commission are in the cause of developing communities and infrastructure".[19] Formerly, the Commission was chaired by a member of the Policy Council but, in its

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[16] The Treasury and Resources, Commerce and Employment, Culture and Leisure, and Public Services Departments.

[17] Holding company of Aurigny Air Services and Anglo-Normandy Engineering.

[18] Operator of the Island's fuel ships, Sarnia Cherie and Sarnia Liberty.

[19] Paragraph 8.3.2, 2nd policy letter.

new guise, there is a presumption that this President will in fact not be a member of the P&RC.[20]

States of Deliberation

24 As part of its original recommendations, the SRC wished to examine the possibility of reducing the number of People's Deputies in the States in line with "the prevailing view—both inside and outside the States—that Guernsey is over-governed and over-represented".[21]

25 Following much consideration, the SRC proposed a decrease in voting members of the States from 47[22] to 38, representing "a reduction which is pragmatic and measured, not radical"[23] and providing one Deputy for approximately every 1,650 people.[24] After a States debate, the States Assembly & Constitution Committee subsequently brought forward proposals in relation to the allocation of seats between electoral districts.

Conclusion

26 After little more than a decade under the previous structure, Guernsey has again introduced new machinery of government. Having only been effective since May 2016, it is still in its infancy and time will tell whether the benefits anticipated by the SRC will in fact be produced.

Simon Hodgett is a Crown Advocate of the Royal Court based at the Law Officers' Chambers in Guernsey; he is also a non-practising barrister with a door tenancy at five Pump Court, Temple, London.

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[20] The power of nomination is held by the P&RC which proposed Deputy Emily Yerby and six other non-States Members.
[21] Paragraph 10.3.3, 2nd policy letter.
[22] 45 People's Deputies and two Alderney Representatives; the Bailiff and the Law Officers, although members of the States, do not have a vote.
[23] Paragraph 10.6.3, 2nd policy letter.
[24] By contrast, there is one member for approximately every 2,000 people in Jersey, one member for approximately every 2,500 people in the Isle of Man and one member for every 1,400 people in Bermuda (para 10.4.2 and 10.4.3, 2nd policy letter).

THE LEGISLATIVE FRAMEWORK UNDERPINNING THE JERSEY AIRCRAFT REGISTRY

Victoria Bell and Karen Stephen-Dalton

The creation and launch of the Jersey Aircraft Registry in 2015 required a new and comprehensive legislative package. While building on various key ideas previously established under the Security Interests (Jersey) Law 2012, the legislation underpinning the Jersey Aircraft Registry also breaks new conceptual ground, and, whilst offering new possibilities for the financial services sector, hints at new ways of approaching the future of the tangible movables market in Jersey.

Introduction

1 It is approaching one year since the Jersey Aircraft Registry ("JAR") was launched in November 2015. The development of both the JAR and Guernsey Aircraft Registry followed that of the Isle of Man and are clear demonstrations of the shift towards diversification of Crown Dependency economies and a desire to progress modern aviation sectors whilst ensuring compliance with relevant international standards. More generally, the establishment of both aircraft registries are commercial strategies designed at generating legitimate business and investment in the Islands in a similar manner to the successful companies, security interests and shipping registries which are already entrenched in their legislative frameworks.

2 By the nature of their locus, the aircraft registries in Guernsey and Jersey are technically "sub-registries" of the UK registry which is run under the aegis of the Civil Aviation Authority ("CAA"). The development of both the Jersey and Guernsey registries (and that of the Isle of Man) has thus required close UK–Crown Dependency engagement on account of the UK's status as the contracting sovereign state party to the 1944 Convention on International Civil Aviation ("the Chicago Convention").[1] To achieve the complex technical and legal requirements which attend upon any registry, both projects have required robust and comprehensive legislative frameworks which take account of the UK–Crown Dependency relationship and the broader international requirements of a state-run registry.

[1] http://www.icao.int/publications/Documents/7300_orig.pdf

3 This short article examines and explains the principal features of the legislative framework behind Jersey's Aircraft Registry. It aims to highlight areas of novelty and explores how key concepts established under the Security Interests (Jersey) Law 2012 ("SIL") have now been applied and adapted with respect to tangible movable assets for the first time.

Legislation

4 The four-year development of the JAR has led to a package of legislation which, at present, comprises two principal Laws together with eight pieces of subordinate legislation, which are a mix of both Regulations and Ministerial Orders. These principal laws, which are the focus of this article, are comprehensive and provide for the operation of the registry and contain newly updated provisions covering the operation of aircraft, aerodromes and air traffic control services.

The Registration Law

Who can register?

5 The first Law, the Aircraft Registration (Jersey) Law 2014 (as amended) ("the Registration Law"), provides the key ingredients in respect of the establishment, operation and function of the JAR. Its principal features include provisions for the appointment and powers of the Registrar; the eligibility to register an aircraft; the registration of aircraft, aircraft engines, aircraft mortgages, aircraft engine mortgages and priority notices; the enforcement of aircraft and aircraft engine mortgages; the registration of any births and deaths occurring; and a full classification of the types of aircraft which may enjoy the benefits of registration.

6 To set the legislative framework in context, it is perhaps most effective, at the outset, to identify who a "qualified person" is considered to be and what type of aircraft may be included in the registration.

7 Article 17 strictly sets out that *only* a "qualified person" is permitted to hold legal or beneficial interests in Jersey registered aircraft. It should be noted that this restriction does not apply to aircraft engines. To be so "qualified", that person is required to be a natural or legal person from one of the countries listed at Schedule 1 to the Registration Law, meaning that only natural or legal persons of the EEA, Switzerland and the Commonwealth (to include Jersey, Guernsey and the Isle of Man in this case) may register. Thus, where, for example, an aircraft is held by a corporate vehicle in a jurisdiction outside this list, the most expedient way to benefit from the JAR may

be to set up a Jersey company (perhaps overseen by a local corporate service provider) in order to "hold" the asset. Where, for whatever reason, an "unqualified" person holds a legal or beneficial interest, another alternative under the Law may be for the aircraft to be leased—or chartered by demise—to a person who is "qualified." On this basis, the Registrar is permitted to register the aircraft in Jersey in the name of the charterer by demise for so long as that arrangement will persist. It is anticipated that this provision will open up a number of possibilities for leasing arrangements in Jersey and may be of particular interest where, for example, the owner is not intending to act as operator. Such flexibility may be particularly attractive bearing in mind that the types of "aircraft" permitted are broad in nature and include four types of aeroplane, gliders, kites, airships, balloons, powered lifts and rotorcraft.

The role of Registrar

8 The new role of "Registrar" arises under arts 2 and 3 of the Registration Law which provide that the Minister for Economic Development may appoint a person to hold the office of Registrar, with functions to include the registration of aircraft, engines, their respective mortgages as well as generally advising the Minister and administering the office. This new appointment thus makes way for administration and regulation of what is, in essence, an entirely new product for Jersey (art 9).

9 Previously, the *Loi (1880) sur la propriété foncière* had expressly forbidden the raising of charges (in the form of a "hypothec") on tangible movable assets, with the only relatively recent exception being where one might raise a charge (in the form of a "mortgage") on a ship. Thus, the Shipping (Jersey) Law 2002 ("the 2002 Law") expressly provides that "mortgages" may be taken over these vessels and enforced, a concept which follows UK provisions found originally under the Merchant Shipping Act 1894 (now Merchant Shipping Act 1988 as amended). Like ships, aircraft move internationally and run some element of risk on their physical journeys which make their comparison as "assets" on the market clear. Accordingly, with a substantive history of debt being secured over ships, the use of the term "mortgage" to denote that security is a well-established concept internationally and thus proved to be the language of choice to be applied to aircraft and engines in Jersey, rather than the civilian concept of the Jersey law hypothec. This means that as well as the ability to register aircraft mortgages and aircraft engine mortgages from the jurisdictions encompassed by Schedule 1, these respective mortgages can be now created in the Island as a new product in fiduciary, legal and trust sectors and enforced. This, along with the

ability to register the aircraft or engine itself, substantively shifts the horizon on what is on offer for the financial services sector in Jersey.

The rise of aircraft and aircraft engine mortgages

10 Article 29 is the key provision which enables the creation of an aircraft mortgage or aircraft engine mortgage over an aircraft or aircraft engine registered in Jersey. In essence, the mortgage itself is actually created by the parties to a mortgage agreement, which is then registered on the JAR. The article also makes clear (so as to avoid any doubt) that nothing in the *Loi (1880) sur la propriété foncière* nor the customary rule of *donner et retenir ne vaut* (which means that one cannot both give and retain an asset) shall affect the validity of any such mortgage. Article 30 provides the registration mechanism for both mortgages and priority notices, with applications which are properly made being entered in the Register in order of their receipt by the Registrar.

11 The new system of priority in its detail draws heavily on the structure already successfully established by SIL, applying in this sense a complementary system as between tangible and intangible movables. Thus, aircraft and engine mortgages as between themselves rank in order of registration, with the first in time having priority. The existence of the priority notice system offers similar flexibility for mortgagees by providing a system which allows an aircraft or engine mortgage contemplated in such a notice to take the date of the notice where the mortgage is brought into being and registered. Such priority may then be varied by agreement as between mortgage holders where this is desired (except that an assignee of a subordinated mortgage is *not* bound by an agreement to subordinate that mortgage unless at the time of the assignment a subordination relating to that agreement had been filed with the Registrar and entered on the Register).

12 Perhaps, however, the article of particular interest to commercial lenders relates to the enforcement provisions set out at art 40. The contents again draw heavily on the enforcement provisions of SIL, and provide a robust and varied framework. Each of the different remedies on offer of course becomes exercisable *only* on an event of default, with the mortgagor having been served with written notice specifying the particulars beforehand. Importantly, these powers do remain subject at all times to various safeguarding provisions which ensure, for example, that adequate notice is given to *all* parties with an interest as well as the duties to obtain fair valuation or fair price. Also included are the familiar SIL powers of redemption at art 51 where a mortgagor can (at any time before a mortgagee has acted irrevocably in relation to the aircraft or engine) redeem the asset, with his powers for doing so

having the benefit of priority over any other person's right to do the same.

13 The arsenal of enforcement powers themselves are perhaps unsurprisingly broad in order to offer the most reassuring and (with SIL in mind) consistent environment to lenders, and includes the ability—

- to apply to the Royal Court for an order under art 49;
- to appropriate;
- to sell;
- to take control or possession;
- to exercise any rights of the mortgagor in relation to the aircraft or engine;
- to instruct any person who has an obligation in relation to the aircraft or engine; and
- to apply any remedy that the mortgage agreement itself provides for.

14 Necessarily, where sale or appropriation takes place, the Law is careful to provide that a purchaser for value and in good faith takes free of the interest of the mortgagor as well as any interest subordinate to that of the mortgagee. Where an aircraft or aircraft engine is finally sold or appropriated, art 45 provides that a mortgagee must provide the mortgagor (and other specified persons) with a statement within 14 days to inform them as to *either* the gross value realised on appropriation *or* the amount of the gross proceeds of sale, together with the mortgagee's associated reasonable costs, reasonable expenses (incurred during the enforcement process), the net value of the aircraft or aircraft engine and the surplus owing by or debt owing to the mortgagee.

15 Finally, provisions relating to how the surplus is dealt with and apportioned are set out at arts 46 to 48 and allow for the distribution of the surplus on the sale of an aircraft or engine in due order of priority, or by paying the surplus into the Royal Court which allows the court to then decide upon who is entitled to the surplus upon application.

16 Where a balance remains this is then to be distributed in payment to the mortgagor (except where he has become insolvent where it is paid to the Viscount or other proper officer as may be).

The Air Navigation Law

The overhaul

17 The second law of importance which governs the operation of the JAR is the Air Navigation (Jersey) Law 2014 ("the Air Navigation Law"), which concerns the operation of aircraft, aerodromes and air traffic control services. The enactment of this new law represents not only an overhaul of pre-existing provisions but also represents an important further step away from relying on UK Orders in Council as a vehicle for enacting legislation in this sphere.

18 Accordingly, the Air Navigation Law repealed and replaced the previous Air Navigation (Jersey) Order 2008 which was a modified version of the UK Air Navigation Order 2005. Instead of engaging in the cumbersome process of amending the Order in Council, a new law was drafted in step with the increasing move away from reliance on the extension of UK legislation. Therefore, whilst it forms an integral part of the JAR package, it was also deemed a distinct policy project in itself, both constitutionally and with the overarching aim of safeguarding Jersey's continuing compliance with relevant ICAO Annexes which the Island is obliged to adhere to by virtue of the extension of the Chicago Convention to Jersey.

19 Thus, the Air Navigation Law provides for a range of new provisions from offences relating to malicious use of lasers against aircraft in flight to revised definitions for "small unmanned aircraft," and new provisions relating to the carriage of dangerous goods. For the JAR's particular interests, however, it concerns key operational and safety requirements for aircraft, bringing forward provisions to meet the international obligations under the Chicago Convention which are incumbent on a territory with an aircraft registry to include, inter alia, airworthiness, personnel licensing and operations.

Air worthiness, licensing and operations

20 Under art 5 of the Air Navigation Law, an aircraft is prohibited from flying unless there is in force a certificate of airworthiness issued or rendered valid under the laws of the country in which the aircraft is registered. The provisions covering the role of the relatively new post of Director of Civil Aviation ("DCA") as the Island's civil aviation authority (currently shared between Jersey and Guernsey) builds on those set out under the Civil Aviation (Jersey) Law 2008 ("the 2008 Law") (which created the DCA as a corporation sole under the Minister for External Relations).

21 The 2008 Law gave the DCA full powers in relation to, *inter alia*, ensuring the safety of aerodromes and air traffic; the security of

aerodromes, passengers and goods carried by air; licensing aerodromes and approving air traffic controllers (see art 10). Accordingly, the DCA has the power to issue, re-issue or vary a certificate of airworthiness for any aircraft and provision is made for the *continued* airworthiness of an aircraft registered in Jersey such that that aircraft is prohibited from flying unless maintained in a maintenance programme approved by the DCA.

22 The licensing provisions of the Air Navigation Law require an aircraft registered in Jersey to carry licensed flight crew of the number and description adequate to ensure the safety of the aircraft in order to be permitted to fly. Thus, if the aircraft has a flight manual, it must carry a crew of at least the number and description specified in that flight manual and, if not, it must carry a crew of at least the number and description specified in the certificate of airworthiness or the permit to fly.

23 With respect to operations, a requirement is also imposed that an aircraft registered in Jersey and required to be equipped with radio communications must carry a flight radiotelephony operator as a member of the flight crew. With this in mind, the DCA may also direct additional flight and cabin crew to be carried on aircraft registered in Jersey where he considers this to be appropriate.

The complete package

24 Although this article focuses on the primary legislative provisions establishing the framework for the JAR, no introduction to a legislative package such as this would be complete without at least a mention of the other forms of legislation so crucial to the successful building of this venture. Included within the package therefore are three sets of Regulations and three sets of Ministerial Orders.

25 In brief, the Regulations provide new frameworks for the investigation of air accidents and incidents on Jersey-registered aircraft; the recording of the registration of births, deaths and missing persons; and the implementation of the EU Insurance Regulation (Regulation (EC) 785/2004) for minimum insurance requirements.

26 The Orders provide respectively for the form and manner of nationality and registration marks, and two fee types relating to (i) approvals, licences, permissions, validations, examinations, tests and investigations, and (ii) registration in relation to aircraft weight and type.

Conclusion

27 Clearly, as the JAR develops, any amendments to the current legislative arrangement (or indeed further legislation) are going to be

dependent upon the emerging shape of both the global and domestic markets for aircraft, aircraft engines and their mortgages. Inevitably, therefore, the different requirements of financial markets as they emerge are going to further refine the many strengths of this new product and take it forward.

28 The Jersey Aircraft Registry package, with its principles of registration of aircraft, engines and their mortgages, represents a development in the marketing not only of this type of property as an asset class but also of the registration of charges over tangible movables outside of marine vessels for the first time. It will be interesting to see whether this may be the start of a new approach to the tangible movables market for Jersey.

Victoria Bell is a Jersey Advocate and Legal Adviser at the Jersey Law Officers' Department.

Karen Stephen-Dalton is Assistant Law Draftsman at the Jersey Law Draftsman's Office.