

STATES OF JERSEY



MIGRATION CONTROL POLICY (P.137/2020): THIRD AMENDMENT (P.137/2020) COMMENTS

Presented to the States on 25th February 2021
by the Privileges and Procedures Committee

STATES GREFFE

COMMENTS

Introduction

The Committee has considered the [amendment](#) lodged by the Migration and Population Scrutiny Review Panel which asks the States to agree that members of the Independent Panel in the Migration Control Policy proposition should be appointed by the States Assembly. The Review Panel states that the nominations should be put forward on a proposition lodged by the Chief Minister.

States of Jersey (Appointment Procedures) (Jersey) Law 2018

In considering this amendment, the Committee refers to the legislative changes [brought](#) forward by the previous Committee to remove as many appointments as possible from States Assembly proceedings. To provide context, a new system was introduced through the [States of Jersey \(Appointment Procedures\) \(Jersey\) Law 2018](#) whereby a Minister, body or person responsible for making an appointment would present a report to the States setting out the details of the proposed nomination, rather than lodging a proposition for debate. The previous Committee initiated this legislative change following a number of concerns raised by members about the process.

Concerns about the role of the States in approving appointments

At that time, some members had raised concerns that the role of the States in approving appointments was unclear, particularly if nominations were made following the rigorous process set out by the Appointments Commission. In practice it meant that members often did not have any realistic alternative but to approve the nomination. This often resulted in unsatisfactory debates and members feeling as though their decisions were a “rubber-stamp” exercise. This was particularly prominent in cases related to the appointment of officers to paid positions where it would have been extremely difficult for the States to reject the nomination of a person who had been through a full assessment and interview process in the expectation of being appointed. It was also noted that, if members were to have concerns about a nomination, a States debate, often in public, may not be the most appropriate way to address concerns.

The Committee believes that the Review Panel’s amendment would take the States back into this unsatisfactory process of appointments’ approval. The current system is that a report containing the specific details about a nominee (including a summary of duties and the process followed to make the selection) is presented to the States for at least two weeks before the nomination is confirmed. Therefore, there is already a mechanism in place whereby members would be able to raise any concerns about the nominations for the Independent Panel and, if desired, enough time to lodge a proposition seeking a debate on the matter. This system appears to have worked well, informing members of prospective appointments and enabling questions and concerns to be dealt with behind the scenes and with a States debate as a backstop if issues are not resolved.

Appointments that continue to be made by the States

In its report, the Review Panel makes reference to other independent authorities and independent boards which continue to be approved by the States Assembly. When the previous Committee considered the appointments made by the States, it acknowledged that there were certain positions where it would be appropriate for the Assembly to ratify

some appointments. This included, amongst others, the post of Comptroller and Auditor General and the Greffier of the States. Both report directly to the Assembly and it is appropriate that members should collectively have the opportunity to express their approval of the nomination proposed. Appointments to tribunals were also not included in the work to reduce the number of appointments made by the States because of the particular nature of those roles.

The Committee does not consider that the appointment of members of the Independent Panel, who will have an advisory role, working to the Government and not the Assembly, falls into the categories of appointments which ought to be made by the States.

Conclusion

Given the concerns raised in the past when appointments were previously approved by the Assembly, and the new system subsequently introduced by the previous Committee which addressed those concerns, we urge members to consider these matters carefully during the debate.

In discussing this matter, the Committee noted that there do appear to be inconsistencies around how independent panels and boards are established across the States. This is part of a wider discussion around governance and would benefit from further review.