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STATES GREFFER

25th March 2013

Senator S. C. Ferguson,
Chairman,
Corporate Services Scrutiny Panel,
Morier House,
St. Helier,
JE1 1DD

Dear Senator Ferguson,

Draft States of Jersey (Minister for External Relations)(Jersey)(Regulations) 201-

I am writing in response to your letter of 15th March 2013 in respect of the review of the above, which I received on my recent return to the Island from holiday. In particular I respond below to the specific questions you pose:

1. My overall view of the proposals is that they should be treated with caution, for reasons on which I shall elaborate later in this letter. However I commend the current Chief Minister for raising the subject in the manner in which he has. It is one of ever growing importance and worthy of resolution.
2. My involvement in this subject goes back to my period in office, notably most recently as Chief Minister, when I was responsible for appointing (the then Senator) Freddie Cohen as my Assistant Minister, with the expectation that he would take delegated responsibility for External Affairs, a matter which falls under the aegis of the Chief Minister's Department. It was my conscious decision to make him an Assistant Minister rather than propose to the States the creation of a new Ministerial post.
3. I am not sure that the appointment of a Minister for External Relations would have a major impact on the undertaking of Jersey's external relations when compared with the present position. Whilst on the one hand the status of a full Ministerial post would give the incumbent greater status than that of an Assistant Minister (an important distinction in certain parts of the world) it can be argued that where major political presence is seen as important then nobody less than the Chief Minister (when considering a small jurisdiction such as ours) should fulfil that function. However Jersey is in a continually evolving situation in which responsibility for our own external affairs is becoming ever more serious and widespread, and the States will need to keep the effects of this evolution under regular review.
4. Whilst the wording of Draft Regulation 3 does indeed state that the Minister for External Relations shall, concurrently with the Chief Minister, discharge the functions described in Article 18(3)(b) of the Principal Law, I do not see that necessarily working so simply in practice, when each Minister is still a Corporation Sole and the Council of Ministers is not bound by a policy of collective responsibility. Whilst it may at present be the norm for States Members to endorse most of the Chief Minister's nominees in their posts, this may not always be the case.

Looking at the terms of reference of your Panel's enquiry, my feelings that these regulations are an imperfect solution are enhanced. That does not mean that the present situation is perfect either ; it is not. However it is not just the situation in relation to External Relations which is imperfect ; it is the whole structure of the Council of Ministers which has been unsatisfactory ever since there were certain amendments to the original proposals put forward in 2005. Since that date Ministers have worked within a framework which is an imperfect compromise ; every attempt at minor improvement only seems to make the imperfections even more apparent. I see the present draft Regulations as being likely to continue those imperfections.

Looking at item (c) of your terms of reference, the responsibility and authority that would be held by the Minister for External Relations must surely be identical to those of, for example, the Minister for Economic Development. Regulations can never override the principal Law, nor indeed any other Law. Each and every Minister at the current time (including a new Minister for External Relations) remains a Corporation Sole, and whilst I could advance reasoned argument for reverting to something more like the 2005 proposals, that is not the issue currently before your Panel.

Items (d) and (e) of your terms of reference are interesting in that (d) talks about shared responsibilities, whilst (e) talks about Ministerial accountability. It is hard to see how these two subjects can sit comfortably together. If there were to be a conflict between the Chief Minister and the Minister for External Relations, I am not sure that the present Ministerial Code of Conduct is adequate to deal with this. Conflicts over policy could presumably be resolved by reference to the policy which should have been approved by the council of Ministers (although there could no doubt be a conflict over the interpretation of that agreed policy, which might need to be referred back to the Council of Ministers for clarification).

On a practical level I do not see the merit of creating an entirely separate Department for External Affairs ; the administrative function would no doubt still be carried out within the Chief Ministers Department. Hence in theory at least one Chief Officer would be answerable to two Ministers ; perhaps the Chief Minister would here be the first among equals ! Conversely the creation of a new Departmental structure for External Relations does not strike me as a good use of resources, and is probably incompatible with draft Regulation 3.

I have had experience of working together and having shared responsibilities, in relation to economic policy and the interface with the private sector and international financial matters. Whilst policies can be agreed and implemented between the Chief Minister (International), Treasury Minister (Fiscal) and Economic Development Minister (Commercial), there is a blurring at the edges which makes accountability much more difficult and requires goodwill and a harmonious relationship between the Ministers involved. Trying to enshrine such compromises in Regulations may not be such a good idea.

I said at the outset that this was a matter which needed resolution, and the spirit in which these draft Regulations have been presented seems very positive. However I would be far happier to see this subject resolved within a better Constitutional framework, and that, of course, is a much more substantial exercise. It is, though, one which I am sure would lead to a better outcome in the long run. What I see here is a further compromise which, though a second best option, can be made to work given goodwill and commitment.