

STATES OF JERSEY



DRAFT COMMISSIONER FOR STANDARDS (JERSEY) LAW 201- (P.87/2016): AMENDMENT

**Lodged au Greffe on 1st November 2016
by the Chief Minister**

STATES GREFFE

DRAFT COMMISSIONER FOR STANDARDS (JERSEY) LAW 201- (P.87/2016):
AMENDMENT

1 PAGE 23, ARTICLE 1 –

For the definition “code” substitute the following definition –

“ ‘code’ means the code of conduct for elected members of the States set out in Schedule 3 to the Standing Orders of the States of Jersey;”.

2 PAGE 27, ARTICLE 9 –

In Article 9(1) –

- (a) in sub-paragraphs (a), (b) and (d) for the words “a code” substitute the words “the code”;
- (b) in sub-paragraph (d) delete the words “or standards of conduct and practice of Ministers and Assistant Ministers,”;
- (c) for sub-paragraph (e) substitute the following sub-paragraph –

“(e) if requested by the Chief Minister –

- (i) to give advice on any matter relating to the code of conduct and code of practice for Ministers and Assistant Ministers referred to in Article 18(3A) of the States of Jersey Law 2005 including proposals to change that code, and
- (ii) to investigate and report to the Chief Minister on whether a breach of that code has occurred.”.

CHIEF MINISTER

REPORT

The quality of our democracy is central to public trust, and fundamental to our future success and well-being as an Island.

This Council of Ministers has focused on improving public services, sustainable public finances, the economy, and other priorities within the Strategic Plan, but as a government, and as States Members, we know that the quality of our democracy needs further improvements, becoming more inclusive, transparent and representative, with higher levels of public participation.

In addition, the good conduct of all elected States Members, including Ministers and Assistant Ministers, is essential. Where conduct falls below the standards expected of all elected States Members, then proper procedures and processes should exist. The creation of an arm's-length, independent investigation process in the form of a new Commissioner is an important step forward in this area.

This amendment to P.87/2016, and the accompanying proposed amendment to Standing Orders as outlined in the attached Appendix, seeks to clarify the position whereby all elected States Members, in all their official duties, should comply with the Code of Conduct for Elected Members (the “Elected Members’ Code”) and be subject to investigations by the new Commissioner reporting to the Privileges and Procedures Committee (“PPC”).

If a Minister or Assistant Minister is not honest, if they are not open, there should be no doubt that they are in breach of the Elected Members’ Code, whether they are operating in their ministerial capacity, or undertaking constituency business.

The “Code of Conduct and Practice for Ministers and Assistant Ministers” (the “Ministerial Code”) explains this in its very first provision (see *italics*):

“Ministers and Assistant Ministers are expected to uphold the highest standards of propriety through observance of the Seven Principles of Public Life (selflessness, integrity, objectivity, accountability, openness, honesty, leadership) as outlined in Appendix 1. *As members of the States Assembly, Ministers are required to comply at all times with the Code of Conduct for Elected Members.*”

Equally, elected States Members should abide by the Elected Members’ Code whilst acting as a member of a Board, Commission, trust or any other body, to which they are appointed as a States Member. This would include, for example, the Jersey Police Authority, or the Jersey Law Revision Board.

The same treatment should apply to members undertaking their duties on Scrutiny Panels – they should be subject to the Elected Members’ Code.

If, through this amendment and the accompanying proposed amendment to Standing Orders, the Elected Members’ Code is established as clearly applying to all elected States Members in all their official functions, then there is equally no need for the Law to provide the Commissioner with functions in relation to the Ministerial Code, or the Code of Practice for Scrutiny Panels and the Public Accounts Committee (the “Scrutiny Code”).

In this way, the Law becomes clear – the Commissioner for Standards is tasked with examining breaches of standards of conduct under the Elected Members’ Code – and the conduct of Ministers would always be covered by the Elected Members’ Code. This is proper, correct, and clear.

In particular, the Commissioner is not intended as a means of investigating and policing collective responsibility, or other procedural and administrative matters on behalf of the Chief Minister under the Ministerial Code (any more than it should be a means to investigate and police the procedures applied by Scrutiny or the Public Accounts Committee on behalf of the Chairmen’s Committee or individual Panel Chairmen under the Scrutiny Code). It would indeed seem odd if the task for the Commissioner and PPC was to enforce collective responsibility on behalf of the Chief Minister.

Notwithstanding this, if the Chief Minister believes that an aspect of the Ministerial Code unrelated to conduct may have been breached without causing a breach of the Elected Members’ Code, for example, in relation to the application of collective responsibility, the Chief Minister may wish to request that the Commissioner for Standards investigates the situation as an objective outsider. This would enable the Chief Minister to establish the facts objectively, whilst maintaining the proper distinction between the role of PPC as established in Standing Orders, and the role of the Chief Minister as Chairman of the Council of Ministers.

Conclusion

PPC in their Report outline that they want to ensure that there is “effective parliamentary oversight of ministerial conduct, reflecting the fact that Ministers are directly appointed by, and accountable to, the Assembly”.

The proposed amendment and accompanying changes to Standing Orders do this by bringing Ministers and Assistant Ministers clearly into the mainstream system for regulating conduct, and does this within a clear and constitutionally correct framework.

The Assembly is therefore asked to accept this proposed amendment, and to thereby support the proposed changes to Standing Orders.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this amendment.

Re-issue Note

This amendment is being re-issued with the omission of the original paragraph 1 of the amendment, which is considered to be superfluous.



Jersey

AMENDMENT (No. X) OF THE STANDING ORDERS OF THE STATES OF JERSEY

REPORT

Explanatory Note

These amendments to the Standing Orders of the States of Jersey are in consequence of the establishment of the office of Commissioner for Standards under the Commissioner for Standards (Jersey) Law 201-.

Amendment 1 is an interpretation provision.

Amendment 2 defines “Commissioner for Standards” with reference to the Commissioner for Standards (Jersey) Law 201-.

Amendment 3 amends standing order 156 to provide that any person can complain to the Commissioner for Standards (“Commissioner”) that there has been a breach of the code of conduct for elected members of the States. The code of conduct for elected members of the States is set out in Schedule 3 to the Standing Orders. This amendment replaces the existing provision that allows a person to make a complaint relating to the code of conduct for elected members of the States to the Privileges and Procedures Committee (“PPC”). The existing provisions in standing order 156 setting out the circumstances in which a complaint must be refused are removed as equivalent provisions relating to complaints to the Commissioner are now in Article 9 of the Commissioner for Standards (Jersey) Law 201-. Those circumstances are where the complaint is by a non-States member about conduct of a States member during a States meeting, is anonymous or is considered to be frivolous, vexatious or unsubstantiated.

Amendment 4 revokes standing order 157 which sets out the procedures for investigation of a complaint by the PPC.

Amendment 5 substitutes the existing standing order 158 so as to make provision for the action the PPC must take following a report to it by the Commissioner under the Commissioner for Standards (Jersey) Law 201- of the Commissioner’s investigation that there has been a breach of the code of conduct for elected members. Under Article 9 of that Law, the report must include the Commissioner’s conclusions and the action, if any, recommended by the Commissioner. Such conclusions and recommendations are not binding on the PPC. The amendment to standing order 158 requires the PPC to review the Commissioner’s report and give the person whose

action is investigated the right to address the PPC accompanied, if the person wishes, by someone of his or her choice. The PPC must, on the basis of the information before it, form its own opinion as to whether the code has been breached and what action, if any, it thinks should be taken. The PPC must inform the persons concerned of its opinion with reasons and any action it thinks should be taken and, if it wishes, may report on such matters to the States.

Amendment 6 amends the code of conduct for elected members in Schedule 3 by making it clear that the code applies to elected members at all times, including when an elected member is acting in the course of ministerial or other official duties as an elected member of the States.

Amendment 7 sets out the title of these Amendments to Standing Orders and provides that they will come into force on the same date that the Commissioner for Standards (Jersey) Law 201- comes into force.



Jersey

AMENDMENT (No. X) OF THE STANDING ORDERS OF THE STATES OF JERSEY

Arrangement

Amendment

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AMENDMENT (No. X) OF THE STANDING ORDERS OF THE STATES OF JERSEY

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 48 of the States of Jersey Law 2005,
have made the following amendments to the Standing Orders of the States of
Jersey –

1 Interpretation

In these Amendments, a reference to a standing order by number is a reference
to the standing order of that number in the Standing Orders of the States of
Jersey.

2 Standing order 1 amended

In standing order 1(1) after the definition “cohabitee” there shall be inserted the
following definition –

“ ‘Commissioner for Standards’ has the same meaning as in the
Commissioner for Standards (Jersey) Law 201-;”.

3 Standing order 156 substituted

For standing order 156 there shall be substituted the following standing order –

“156 Complaints to the Commissioner for Standards

Any person may complain to the Commissioner for Standards that an
elected member has breached the code of conduct in Schedule 3.”.

4 Standing order 157 revoked

Standing order 157 shall be revoked.

5 Standing order 158 substituted

For standing order 158 there shall be substituted the following standing order –

“Outcome of investigation by the Commissioner for Standards

- (1) When the Commissioner for Standards has reported the outcome of an investigation to the PPC under Article 9(1)(c) of the Commissioner for Standards (Jersey) Law 201- the PPC –
 - (a) shall review the Commissioner’s report;
 - (b) shall give the elected member whose act has been investigated the right to address the PPC, accompanied, if the elected member wishes, by a person of his or her choice;
 - (c) shall form an opinion, on the basis of the information before it, as to whether or not the elected member has breached the code of conduct and what action, if any, should be taken;
 - (d) shall inform the elected member of its opinion with reasons and what action, if any, it thinks should be taken; and
 - (e) may report its opinion and reasons, and any action it thinks should be taken, or which has been taken, to the States.
- (2) The report by the PPC referred to in paragraph (1)(e) may be presented to the States in writing or made orally by the chairman of the PPC in a statement.”.

6 Schedule 3 amended

In Schedule 3, at the end of paragraph 1 of the Code of Conduct for Elected Members there shall be added the following words “This applies to elected members at all times, including when an elected member is acting in the course of ministerial or other official duties as an elected member of the States.”.

7 Citation and commencement

These Amendments may be cited as Amendment (No. X) of the Standing Orders of the States of Jersey and shall come into force on the same date as the Commissioner for Standards (Jersey) Law 201- comes into force.