

# **STATES OF JERSEY**



## **POLITICAL ACTIVITIES BY STATES EMPLOYEES**

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**Lodged au Greffe on 24th February 2006  
by the Council of Ministers**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to agree that the present restrictions on the ability of public sector employees and office-holders to engage in political activities, including standing for election to the States, should be amended and that –
  - (i) public sector employees and office-holders should be categorised as either ‘politically eligible’ or ‘politically ineligible’ as set out in Appendix 2 to the report of the Chief Minister dated 24th February 2006;
  - (ii) those employees who are categorised as ‘politically eligible’ should be able to participate in political activities in accordance with the conditions set out in paragraphs 5.1 – 5.6 (“Proposed Standards of Conduct for Public Sector Employees engaging in Political Activities”) of the said report;
  - (iii) those employees and office-holders who are categorised as ‘politically ineligible’ should be able to stand for election for the States in accordance with the conditions set out in the said paragraphs 5.6 – 5.10 and 6.1 – 6.3;
- (b) to charge the Chief Minister, after consultation as necessary with the States Employment Board, to bring forward for approval the necessary legislation to give effect to the proposals.

**COUNCIL OF MINISTERS**

## REPORT

### 1. Introduction

- 1.1 Issues surrounding entitlement of public sector employees to stand for the States came to the fore at the time of the debate on the terms of the States of Jersey Law. Subsequently, the Policy and Resources Committee presented a Report to the States (R.C.18/2005) in connection with these matters. However, not only did this Report address issues relating to seeking election to the States, but it also extended the topic to cover other issues relating to States employees being entitled to play a public part in political matters.
- 1.2 A number of comments were received following presentation of this Report. These comments, together with further consideration of these matters by the Council of Ministers, have formed the basis of the approach that is now placed before the States for its consideration and approval.

### 2. Current position

- 2.1 At present, a number of groups of public sector employees are prevented from standing for the States or taking a public part in political matters. For example, under the terms of civil servants' contracts and Article 17 of the Civil Service Administration (General) (Jersey) Rules 1949–

*“No officer shall take a public part in any political matter”*

Similar approaches have been taken in respect of a number of other groups such as police and prison officers.

- 2.2 Those who are currently prevented from standing for election and those who do not have similar restrictions applied to them are identified in Appendix 1.
- 2.3 Other jurisdictions have taken a different approach. They have tended to adopt a more selective philosophy by discriminating between those who have a policy-making role, provide advice to elected members or have a law enforcement role and those who do not. For example, the United Kingdom have identified that a number of categories of civil servants in the industrial and non-office grades should be designated as “politically free” and have given them entitlement to take part in all political activities. Others, including those in the Senior Civil Service and civil servants at levels immediately below the Senior Civil Service, have been placed in a “politically restricted” category and are thereby prevented from taking part in national political activities.
- 2.4 Similar approaches have been taken by smaller jurisdictions. For example, the Isle of Man, Malta and Gibraltar have all provided for certain categories of their employees to be free to pursue political activities.

### 3. European Convention on Human Rights

- 3.1 Article 10 of the European Convention on Human Rights provides certain protections in connection with freedom of expression. Article 10 reads as follows–

*“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in*

*confidence, or for maintaining the authority and impartiality of the judiciary.”*

3.2 It will be noted that the right of expression is a **qualified** right. Action can, therefore, be taken to circumscribe this freedom, provided that any restrictions are prescribed by law, pursue a legitimate aim and are proportionate to the objectives to be achieved. Such restrictions have been tested in Court. For example, in the case of *Ahmed and Others -v- United Kingdom*, the European Court of Human Rights found that it was reasonable on the part of the British government to restrict the freedom of expression of certain senior members of local government.

3.3 At present, however, a view could be taken that a blanket restriction of the type that is applied in Jersey, which stops all political activity by every civil servant, is disproportionate and is in contravention of the European Convention on Human Rights.

#### **4. Proposed way forward**

4.1 In light of the above, it is now proposed to introduce legislation which frees up certain public sector employees to take a public part in political matters. It is considered that, in coming to decisions on those who should be provided with such freedoms, there is a need to balance two potentially opposing principles: that is that in a democratic society it is desirable that as many citizens as possible play an active part in the public affairs of the community; balanced by the notion that public interest demands that confidence be maintained in a politically impartial public service.

4.2 The criteria that have been used in determining the way forward are those that have been applied by the other jurisdictions referred to above. Thus, eligibility to take part in political matters has been influenced by whether an employee is involved in policy-making, providing advice directly to elected members, speaking on behalf of the States to the media or involved in law enforcement. In seeking to apply this across the States workforce, certain judgements have had to be made. However, it is considered that the designations proposed and identified in Appendix 2 achieve an appropriate balance between those who will be designated as “**politically eligible**” and those who will be designated as “**politically ineligible**”.

4.3 Nevertheless, it is recognised that it is possible that such designations may prove incorrect in the light of the specific responsibilities of particular employees. Certain employees who fall within the “politically ineligible” category might consider that they should be designated as “politically eligible” and management might consider that certain roles that have been designated as “politically eligible” should be recognised as “politically ineligible”. It is, therefore, proposed that existing States grievance procedures should be applied to review any decisions as to eligibility.

#### **5. Proposed Standards of Conduct of Public Sector Employees**

5.1 Where an employee is designated as “politically eligible”, it will mean that such an employee will be free to engage in any political activity, which includes standing for election to the States or as a Connétable, publicly supporting someone who is standing for election or playing a public part in any political matter.

5.2 In the case of standing for election, employees will be obliged to do so on the following terms –

- They should inform their managers as early as possible of their intention to stand for election in order that practical steps can be taken to deal with the consequential effect of their subsequent absence from work.
- They will be deemed to be on unpaid special leave with effect from the date of their formal nomination as a candidate for the States or as a Connétable.
- They will be entitled to maintain their contributions to the Public Employees Contributory Retirement Scheme during the period of unpaid leave. However, if they elect to do so, they will be responsible for paying both elements (employer and employee) of those contributions.

5.3 If employees are successful in being elected –

- Their employment with the States shall be deemed to have terminated on the day preceding that on which they are sworn in as members of the States or as a Connétable. In the period between the election results and the effective termination date they will not be entitled to return to work.

5.4 If employees are unsuccessful –

- If they wish to continue working for the States, they will be entitled to reinstatement in the same duties and be entitled to the same terms and conditions of service that applied to them immediately prior to the commencement of their unpaid leave, provided that they notify their employing Department of this within a week of the date on which the election results were known.
- They must return to work within a period not exceeding 4 weeks after the date on which the election results were known.

5.5 In a similar manner, all “eligible” employees will be entitled to take a public part in political matters, such as canvassing at elections, writing to the news media to express opinions, etc.

5.6 However, it is considered that such political freedoms should not be entirely unfettered. If employees behave in a way which destroys the confidence and trust that rests with them by engaging in comment on existing States policies in an immoderate manner or engaging in personal attacks on elected members or utilising information that has been obtained by virtue of their position then consideration will be given to whether it is appropriate for them to return to work. Such behaviour would be deemed to be considered as “gross misconduct” and, if the employee wishes to be accepted back into their former position, then States disciplinary processes would be applied. If, after the application of these procedures, it was confirmed that the matter constituted gross misconduct then an employee’s request for reinstatement would be rejected. A similar approach would be applied where an employee takes a public part in a political manner and behaves in a similar manner to that described above.

5.7 If employees who are categorised as “politically ineligible” wish to stand for election, they will be obliged to follow the following procedure –

- They should inform their manager as early as possible of their intention to stand in order that consideration can be given to their current duties and whether it is appropriate to continue with them in the light of their intention to stand and in order that practical steps can be taken to deal with the consequential effects of their subsequent absence from work.
- They will be deemed to have resigned with effect from the day prior to that on which they publicly commence campaigning or from their formal nomination, whichever is the earlier.

5.8 If a politically ineligible employee is unsuccessful in an election –

- They will be free to apply for positions within the Public Service. However, this must occur in open competition, in accordance with the Recruitment Code specified by the Jersey Appointments Commission.

5.9 Again, the manner in which such employees behave in the election could be taken into account when considering them for re-employment. If they behave inappropriately – in the manner set out above – then this would prejudice their application to work for the States.

5.10 Similarly, all politically ineligible employees would be unable to take a public part in any other political matter.

## **6.0 Position of Police**

- 6.1 It is important to note that the foregoing paragraphs relate specifically to employees of the States, that is to say, those groups of employees which come within the remit of the States Employment Board. There is, however, another significant group, members of the Jersey Police Service, who are, from a legal standpoint, recognised as office-holders and not as employees. Nevertheless, notwithstanding this distinction, it is important that the States identifies how this significant group should be categorised from the point of view of engaging in political activities.
- 6.2 It is considered that, in view of the vital role that police officers should play in upholding the Law in a totally impartial fashion, it is appropriate that all police officers should be designated as “politically ineligible”.
- 6.3 As a result of the legal standing of police officers, it is envisaged that legal provision will need to be made in order to secure their political ineligibility in future.

## **7.0 Financial and manpower consequences**

- 7.1 In view of the fact that eligible employees will be provided with unpaid special leave whilst they are seeking election to the States, it is considered that the financial implications of these proposals are minimal. During the period of unpaid special leave, there might be a requirement to employ additional temporary staff in order to ensure continuity of service. However, this short-term arrangement will be resolved following the outcome of the elections and identification of whether the employee will return to work or not.

## **8.0 Conclusions**

- 8.1 It is recognised that the proposed changes that have been set out above are not without potential difficulty. At present the position is clear and maintains a politically neutral public service within certain employee groups – particularly the civil service. The situation will undoubtedly be quite different if the above proposals are adopted and, in a comparatively small community, this might lead to problems and tensions. However, these potential risks must be weighed against employees’ entitlement to participate in the normal democratic processes in which other members of the community can engage.
- 8.2 It is suggested that, on the whole, the balance in respect of the proposed way forward is correct. However, the mechanism to enable employees and managers to have a particular designation reviewed through the grievance processes is considered to be an important outlet for those who believe that an incorrect designation has been made in a particular case.
- 8.3 The States are therefore commended to approve the principles that have been described above in order that action can be taken to bring forward the appropriate legislative changes to put these measures into effect.

**STATES EMPLOYEES CURRENTLY ENTITLED TO STAND FOR ELECTION**

Airport Electricians  
Airport Rescue and Fire-fighting Service  
Education, Technical and Support Staff  
Head-Teachers and Deputy Head-Teachers  
Highlands College Lecturers  
Highlands College Managers  
Manual Workers  
Medical Staff  
Postal Workers  
Teachers  
Youth Workers

**STATES EMPLOYEES/OFFICE-HOLDERS WHO ARE CURRENTLY NOT ALLOWED TO STAND FOR ELECTION**

Civil Servants  
Emergency Ambulance Service  
Family Support Workers  
Fire and Rescue Service  
Nurses and Midwives  
Police Officers  
Prison Officers  
Prison Managers  
Residential Child Care Officers

**EMPLOYEES CATEGORISED AS “POLITICALLY ELIGIBLE”**

Airport Electricians  
Airport Rescue and Fire-fighting Service  
Civil Servants graded 11 or below  
Educational, Technical and Support Staff graded 11 or below  
Emergency Ambulance Service  
Family Support Workers  
Fire and Rescue Service  
Highlands College Lecturers  
Manual workers  
Medical Staff  
Nurses and Midwives  
Postal Workers  
Prison Officers  
Prison Managers  
Residential Child Care Officers  
Teachers  
Youth Workers

**EMPLOYEES/OFFICE-HOLDERS CATEGORISED AS “POLITICALLY INELIGIBLE”**

Civil Servants graded 12 or above  
Educational, Technical and Support Officers graded 12 or above  
Head-Teachers  
Police Officers  
Chief Officer and Area Managers of the Fire Service  
Prison Governor and Deputy Prison Governor