

# STATES OF JERSEY



## JUSTICE POLICY AND RESOURCES: RESPONSIBILITY

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Lodged au Greffe on 31st July 2013  
by the Chief Minister

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STATES GREFFE

## **PROPOSITION**

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

that, within the executive branch of government, the Chief Minister is responsible for justice policy and resources, as clarified in the accompanying report.

CHIEF MINISTER

## REPORT

### 1. Background

#### Proposition P.120/2012

The following Proposition was lodged au Greffe on 13th November 2012 (P.120/2012), and amended, on 15th January 2013, by Senator L.J. Farnham. The Proposition, as amended, was as follows –

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

to request the Chief Minister to investigate the possibility of establishing a means of appropriate Ministerial oversight of the justice system such as a new Ministerial office of Minister for Justice in Jersey with an associated Department of Justice and, in consultation with the Council of Ministers, to report to the States with recommendations or proposals no later than 31st July 2013.

The States Assembly considered this amended Proposition on 19th February 2013 and decided unanimously in favour (votes – pour: 49; contre: 0; abstain: 0).

#### The need for clarification of responsibilities

During the committee discussions which preceded the change to a system of ministerial government in 2005, there was an assumption that the Chief Minister would take the lead in engaging with the Bailiff and principals of the legal services departments, providing a linkage between executive government and the judiciary and legal services departments. However, this was not implemented fully, and these responsibilities were absent from the first report to the States Assembly regarding ministerial responsibilities presented in March 2006. As a result, these responsibilities would now benefit from improved clarity.

The Council of Ministers considered this matter on 10th July 2013 and decided that a clarification should be proposed to the States Assembly that, within the executive branch of government, the Chief Minister is responsible for justice policy and resources, as detailed below. This was felt to have a number of advantages, including bringing the seniority of the post of Chief Minister to the justice portfolio, delivering the most economical solution, and placing justice policy and resources at the heart of government.

In the current fiscal and economic cycle, it was not felt to be an appropriate time to consider establishing a new department with the consequent resource implications. It was also felt that, at present, it was desirable to propose an appropriate separation between the enforcement responsibilities of the Home Affairs portfolio and the wider oversight of the justice portfolio.

## **2. Clarification of Chief Minister's responsibility for justice policy and resources**

If the States Assembly decides in favour of this Proposition, this will confirm that the Chief Minister is responsible for justice policy and resources. This means that the Chief Minister has –

- (i) democratic responsibility within the executive branch of government for the components of the overall justice system, which are not currently perceived as being included within the accountabilities of the elected government (e.g. the overall criminal, civil, family and administrative justice system; the courts, tribunals, access to justice and legal aid);
- (ii) responsibility for safeguarding human rights, data protection, legal services, constitutional reform, and strengthening democracy, as part of the overall justice and constitutional affairs portfolio;
- (iii) responsibility for the Legislation Advisory Panel.

However, this clarification of the Chief Minister's responsibility for overall justice policy and resources is not intended to affect the existing framework within which relevant offices and arm's-length bodies perform their functions; and therefore does not suggest that the Chief Minister has responsibility for individual cases, operational or administrative matters, legal or constitutional advice provided by officers of the Crown, or day-to-day resource management – all of which remain the responsibility of the relevant offices and arm's-length bodies. The States Assembly will wish to recognise the importance of maintaining the independence of the courts and the prosecution and data protection authorities as part of upholding the rule of law.

In addition, this clarification is not intended to change the responsibility of the Minister for Home Affairs and the Home Affairs Department for oversight of the States of Jersey Police, States of Jersey Fire and Rescue Service, Jersey Prison Service, Jersey Customs and Immigration Service, Jersey Field Squadron, and Office of the Superintendent Registrar. The Home Affairs Department will also continue to oversee the criminal justice policy and the Building a Safer Society Strategy.

## **3. Upholding the independence of the judiciary, prosecutors and data protection authority**

This clarification also acknowledges that there is an obligation upon Ministers to uphold and defend the continued independence of, and to provide sufficient resources to, the judiciary, prosecutors and data protection authority. Ministers must not seek to influence particular judicial, prosecuting or data protection decisions. Arising from the need to continue to uphold this independence, a number of aspects are intended to remain unchanged by this clarification, including –

- (i) the relevant principal Crown Officer appointments (Bailiff, Deputy Bailiff, Attorney General, Solicitor General), who would remain outside the executive;
- (ii) the relevant posts that are currently defined as not being States employees (Bailiff, Deputy Bailiff, Attorney General, Solicitor General, Viscount, Deputy Viscount, Judicial Greffier, Deputy Judicial Greffier, Master of the Royal Court, Magistrate, Assistant Magistrate);
- (iii) the provisions that apply to other officers within the departments of the judiciary, who are appointed, suspended or terminated only with the consent of the Bailiff, the Attorney General, the Viscount or the Judicial Greffier; and who shall not be directed or supervised in the discharge of their duties by the Chief Executive Officer, the States Employment Board or a Minister or a person acting on behalf of such a person;
- (iv) the status of the officers of the Probation and After-Care Service as officers of the Royal Court, with the service continuing to be overseen by the Probation Board;
- (v) the appointment and office of the Data Protection Commissioner as detailed in the Data Protection (Jersey) Law 2005;
- (vi) the current Accounting Officer appointments and responsibilities for relevant departments (Bailiff's Chambers, Judicial Greffe, Viscount's Department, Law Officers' Department, Data Protection Commissioner, Probation and After-Care Service);
- (vii) the status of the Bailiff's Chambers as a non-Ministerial States-funded body, given the additional roles of the Bailiff as President of the States Assembly and civic head;
- (viii) the Jersey Law Commission, as established by the States Assembly.

#### **4. Financial and manpower implications**

There will be a need to provide sufficient officer support to the Chief Minister to ensure that the public interest in the advancement of justice is not compromised. Given the relatively modest level of resources required, and the need to operate within the limits set within the Medium Term Financial Plan (MTFP), the Chief Minister's Department will seek to put in place the required resources from within existing limits.

Lastly, if the States Assembly decides in favour of clarifying that the Chief Minister holds responsibility for justice policy and resources, then the capacity constraints in the post of Chief Minister will need to be addressed in due course.