

STATES OF JERSEY



DRAFT MACHINERY OF GOVERNMENT (MISCELLANEOUS AMENDMENTS) (JERSEY) LAW 201-

Lodged au Greffe on 8th January 2018
by the Chief Minister

STATES GREFFE



Jersey

**DRAFT MACHINERY OF GOVERNMENT
(MISCELLANEOUS AMENDMENTS) (JERSEY)
LAW 201-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 19th December 2017

REPORT

Summary

This draft Law follows nearly 2 decades of independent reports that have highlighted the need to make significant changes to the governance of the public administration in Jersey. Most recently, the Final Report of the Independent Jersey Care Inquiry ([R.59/2017](#)) specifically recommended revisiting those reports and addressing their recommendations. In order to make the necessary first steps towards meaningful improvement, the draft Law sets out 3 main changes that are required immediately –

- the establishment of the Chief Executive Officer as the Principal Accountable Officer for the public administration;
- the making of changes to Ministerial offices by Orders made by the Chief Minister and transfers of budget by a single decision of the Minister for Treasury and Resources; and
- the establishment of a single legal entity for Government.

The draft Law also includes: the removal of the legal requirement for Ministers and Assistant Ministers to be bound by the principle of collective responsibility; changes to the way in which Ministers can move from one Ministerial office to another; and adjustments to the timings of the election of a new Council of Ministers following a general election.

These important changes are an essential foundation for a modern and efficient public sector that works together as one government, delivering quality public services that offer value for money to the Islanders of today and tomorrow. The changes proposed would ensure clearer governance, more transparent decision-making and stronger accountability at the top of the public service.

Background

The need for change

The Final Report of the Independent Jersey Care Inquiry presented to the States Assembly in July 2017 is the latest report to identify as a key failing (p.53) –

*“(x) **Failure to tackle a silo mentality among public-sector agencies.** States departments and institutions have been characterised by territorialism and protectiveness rather than openness to pooling resources and learning. As a result, there has been a lack of a comprehensive strategy to secure the best interests of children in the island.”*

Also, the “Review of Ministerial Responsibility in relation to the Jersey Innovation Fund” ([R.45/2017](#)) concluded by Jessica Simor, Q.C. in May 2017, highlighted the difficulties caused by the need to use interim solutions to achieve transfers of responsibility pending the eventual adoption of the necessary Regulations by the States Assembly. The Review’s recommendations included (at paragraph 24) –

“Finally, aware as I am that this potentially falls outside of my terms of reference, in light of the source of many of the difficulties that arose here between November 2014 and January 2016, consideration should be given to whether a method of streamlining decisions as to the relevant responsibilities of ministers and departments could be found.”

In addition, the reports of the Comptroller and Auditor General make frequent reference to the need for improved corporate working and planning, cultural change and the need to move further away from a silo approach.

Examples include –

- [Review of Financial Management](#) (April 2015);
- [Review of Financial Management – Part 2](#) (February 2016);
- [Arrangements for Freedom of Information](#) (March 2016);
- [Use of Consultants](#) (October 2016);
- [Jersey Innovation Fund](#) (January 2017);
- [Oversight of Arm’s Length Organisations](#) (June 2017);
- [Risk Management](#) (September 2017).

Reports from the Corporate Services Scrutiny Panel and the Public Accounts Committee have made similar observations, further highlighting the pressing need to make significant improvements.

These identified failings need to be addressed through strengthened governance arrangements, which will then enable further improvements to be achieved. International best practice in government accountability arrangements has also evolved over recent years, with improved governance models being adopted by some parts of the British Isles. Implementation of the changes needed to address the breadth and depth of issues identified by the Care Inquiry, and the challenges presented by Brexit, will be significantly hampered without these strengthened governance arrangements.

The adoption by the Assembly of a Proposition (as amended) in July 2016 to agree that the Chief Minister should consider further improvements to the machinery of government ([P.53/2016](#)), began a process of reflection upon the changes required. More recently, it has become clear that there is a need to focus, in the first instance, upon strengthening accountability at the top of the public service, streamlining transfers and changes within government, and establishing government as a single organisation. This draft Law brings forward those changes.

Principal Accountable Officer

There is a need for clear accountability at the very top of the public service for the overall use of resources. This can be achieved through a legal obligation placed upon the organisation’s most senior office-holder. Such an approach is consistent with modern practice elsewhere in the British Isles, such as in Scotland, where the most senior official in the public administration is also the Principal Accountable Officer and is held to account by Parliament for the overall use of resources.

The draft Law proposes that the Chief Executive Officer (“CEO”) should be the Principal Accountable Officer (“PAO”), whose functions would include designating persons as Accountable Officers (“AOs”) for discrete parts of the Jersey administration (States bodies and States funds). The PAO would be responsible for ensuring the propriety and regularity of the finances of States bodies and funds; and for ensuring that such resources are used economically, efficiently and effectively. The PAO would appoint AOs to States bodies and funds, and would be responsible for ensuring the performance of relevant functions by AOs. Lists of the AOs appointed for States bodies and funds would be published by the PAO. This would represent a step-change in accountability, given the absence of this overall responsibility under current arrangements.

The draft Law would also enable, for the first time, AOs to be appointed in relation to certain States bodies where this is not currently possible, including an ‘independently audited States body’ and a ‘States aided independent body’. A Financial Direction would be developed for consultation with the bodies affected before implementation, in order to ensure a clear and shared understanding of the nature of an AO function within these types of States bodies.

Non-ministerial States funded bodies’ are excluded from the scope of the PAO, and existing public finance arrangements would be maintained under the draft Law. Arrangements for AOs within existing enactments are maintained, such as the [States of Jersey Police Force Law 2012](#), which determines that the Chief Officer of the States Police must be the AO for the Force.

The PAO and the AOs would be answerable to the States Assembly and held to account by the Public Accounts Committee. Ministers would continue to be responsible for their respective areas of policy, and be scrutinised and held to account by the States Assembly for policy decisions and the actions of the administration. The opportunity is being taken to adopt the term ‘Accountable Officer’, as used in some other parts of the British Isles, to better reflect this enhanced accountability.

Transfers and changes within the Government

The need to improve the method for making transfers has been identified previously. The Machinery of Government Review, which concluded in 2014, proposed that any formal transfer of ministerial functions should be undertaken by Order made by the Chief Minister, rather than by Regulations. This approach would be consistent with practice elsewhere in the British Isles, where such changes to Ministerial offices are generally made by Order. At the time, this aspect of the proposed amendments to the [States of Jersey Law 2005](#) formed part of a broader set of changes regarding ministerial offices and, while drafted and lodged for debate, was not put to a vote in the States Assembly.

The draft Law proposes that the method by which changes are made to ministerial offices should be amended to an Order-making power, exercised by the Chief Minister, having first provided the States Assembly with at least 2 weeks’ notice. This period of advance notice would enable States Members, the media and others to raise queries regarding the proposed changes, which the Chief Minister could then take into account before making any such Order. Such Orders would be made in accordance with the [Subordinate Legislation \(Jersey\) Law 1960](#) and so could be annulled by the States Assembly in the usual manner.

Where such an Order is made, any associated transfers between financial heads of expenditure would be made in accordance with that Order. In other cases, any significant transfers between or changes to financial heads of expenditure would be made by the Minister for Treasury and Resources, having first consulted the Chief Minister and the PAO, and having provided 2 weeks’ notice to the States Assembly.

The draft Law also proposes that the Chief Minister should be able to move a Minister from one Ministerial office to another, having given the Assembly at least 2 weeks’ notice. Again, this period of advance notice is intended to enable States Members, the media and others to raise queries regarding the proposed changes, which the Chief Minister could then take into account before making any such moves.

Single legal entity

Best practice

The OECD Public Governance Directorate has sponsored work to consider how individual governments can adopt new ways of organising themselves in order to improve their capacity to respond to emerging strategic challenges, so as to avoid unnecessary crises and carry out changes in an orderly and timely manner. This work highlights 3 enablers that must be developed together – strategic sensitivity, resource fluidity, and the collective commitment to joint government action – and argues that governments must maximise integration in the way they work.

The governance arrangements for the Scottish Government feature regularly in this OECD sponsored work, due to their modern and integrated model, whereby the members of the Scottish Government are known collectively as the “Scottish Ministers” and statutory functions are conferred collectively on Scottish Ministers as a unified legal entity. The Welsh Government has adopted a similarly modern legal and organisational structure, with a single legal entity and unified civil service.

Sir John Elvidge, K.C.B., a former Permanent Secretary to the Scottish Government, undertook a review in 2014 of the governance arrangements in the Isle of Man (“IoM”), and recommended that there should be a single legal entity to replace the multiple separate legal identities that currently form the IoM Government. The review concluded that the balance of argument overwhelmingly favoured a change to single legal status for the IoM Government, which would improve the strategic agility of the Government. In addition, the review concluded that, in a single organisation model, there would be a higher degree of collective engagement in managing expenditure against the overall budget and more flexibility in the allocation of resources. The IoM Council of Ministers has since formed a Single Legal Entity Sub-Committee, which presented an Interim Report to Tynwald in June 2017.

As well as enabling strategic agility, resource fluidity, and collective commitment to joint government action, a single legal entity for the Government of Jersey could act as a catalyst for administrative streamlining and increased integration. For example, the Executive is currently embodied as more than 10 different organisations for the purposes of the Data Protection and Freedom of Information Laws, with duplicated administrative structures and processes.

‘Jersey Ministers’

The draft Law would change the legal position of Ministers from each being a separate corporation sole to the ‘Jersey Ministers’ (comprising Ministers and Assistant Ministers) becoming a unified corporation (a ‘corporation aggregate’) with the capacity to sue and be sued and to hold property. Whilst such legal functions could be exercised by any one of the Jersey Ministers, in accordance with their respective policy portfolios, functions currently assigned specifically to the Council of Ministers (such as the lodging of financial plans, which requires a consensus amongst all Ministers) would not generally be affected.

If decided upon, this change to a single corporation would only come into effect when further legislative changes have been developed and considered by the Assembly. The draft Law includes a Regulation-making power, which is needed to address the numerous references to separate Ministerial legal entities within the statute book, so that each can be considered and amended where required by subsequent Regulations in order to reflect the single legal entity. It is anticipated that this part of the draft Law would, therefore, be brought into force by means of an Appointed Day Act, which would be lodged alongside the Regulations, later in 2018.

Responsibilities of each Minister and Assistant Minister

The draft Law continues to include a requirement for the Chief Minister to maintain and publish information, in order to ensure that there is a legal requirement to clearly specify the respective responsibilities of each Minister and Assistant Minister.

Election of Ministers

The draft Law does not change the system whereby the States Assembly elects Members into named Ministerial offices. These offices are, therefore, maintained within Standing Orders for this purpose. The draft Law does, however, propose a change to Standing Orders, such that the time allowed between the selection of a Chief Minister designate and the selection of Ministers and Chairmen is increased from 2 days to 5 days, so as to allow for a more orderly process of nomination and election. In order not to delay the overall process, the period between the General Election and the election of a Chief Minister designate is reduced from 21 days to 19 days.

Ministers and Collective Responsibility

The draft Law proposes the removal of the legal requirement for Ministers to adhere to the principle of collective responsibility and how this applies to Assistant Ministers. This change would enable future Councils to determine how they wish to operate and to reflect this within the Ministerial Codes. This is the norm elsewhere in the British Isles, where collective responsibility is not established in law, but is a convention reflected only in respective ministerial codes.

Overall Accountability Framework

The governance changes required to strengthen accountability and improve ways of working need to be taken forward in a phased manner, in order that the more immediate and pressing changes to legislation (as outlined above) can be made while the medium-term work required to consider further legislative reform is ongoing. The changes contained within this draft Law are the first essential step towards significantly improving and modernising the way government works. They will help create a more fit-for-purpose framework of governance, which will need to be in place during the first half of 2018 if public sector reform is to be able to continue at pace.

There is, however, also a need to consider wider aspects of the overall accountability framework. The [Public Finances \(Jersey\) Law 2005](#) has developed in an incremental fashion over recent years. Various reports have highlighted areas where the Law should be reviewed, enhanced or streamlined. Now that more than 10 years have elapsed since this Law was first established, it is timely and good practice to conduct a review of the Law as a whole. In addition, a significant part of the overall framework for accountability is now enacted through the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#), which would need to be considered at the same time. There are also some relevant parts of the accountability framework which rest within the States of Jersey Law 2005.

The Council of Ministers has agreed that a further review of the overall accountability framework should be conducted, covering the Public Finances (Jersey) Law 2005, the Employment of States of Jersey Employees (Jersey) Law 2005 and the relevant aspects of the States of Jersey Law 2005. Work on this second step towards an improved legislative framework will start in January 2018, with a view to this being considered by the next Council of Ministers following the May 2018 elections. Further legislative changes might be expected to be proposed to the Assembly towards the end of 2018, with changes coming into force before the next financial plan is decided in 2019.

Conclusion

Recent experience has shown that changes are clearly needed to the governance of the public administration in Jersey. Forthcoming challenges, such as Brexit, re-inforce the pressing need for Government to be more agile and to act in a co-ordinated and integrated way. The changes contained in this draft Law are an essential first step towards enabling the public service to work together as ‘one government’ to provide better public services to Islanders and to respond more quickly to future challenges facing the Island.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no additional financial or manpower requirements for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law concerns the financial governance of the States, and the organisation of political government of Jersey.

Parts 2 and 3 of the Law establish a new position of Principal Accountable Officer. This deals with the organisation of financial oversight of the States administration, and allows for oversight to extend to other bodies which are either part of the broader “States family”, or accept funding from the States. There are no provisions that allow for powers to be used against the general public or against wholly private parties – a private party must consensually take States money and thus bring itself within public governance. These parts of the Law are thus not a matter of human rights concern. It should be noted that the independence of court functions from the general administration is preserved by Articles 38(2) and 38B(2). This is in line with practice in the United Kingdom where court services report directly to Parliament rather than reporting to any ministries. There is thus no need to consider (even to dismiss) the impact of the reforms on the administration of justice, because no impact arises.

Part 4 of the Law deals with the organisation of Ministers into an entity known as the “Jersey Ministers”. It is not the role of human rights law to deal with such purely political issues.

Explanatory Note

This Law amends the Public Finances (Jersey) Law 2005, States of Jersey Law 2005 and the Standing Orders of the States of Jersey. The main changes it makes include (a) establishing the role of “Principal Accountable Officer” held by the Chief Executive to the Council of Ministers and Head of the Public Service (“CEO”); and (b) creating Ministers as a single legal entity.

Part 1, which comprises *Article 1*, is a definition provision for the purposes of referring to the legislation amended by this Law.

Parts 2 and 3 of this Law amend the Public Finances (Jersey) Law 2005 (“PFL”).

Article 2 inserts new definitions in the PFL which are used in *Part 2* and further explained below.

Article 3 replaces the Articles in the PFL that require “States funded bodies” (as currently defined in Article 1(1) of the PFL) to have accounting officers and sets out the functions of such officers. The new replacement Articles are described below.

New Article 37 of the PFL creates a new role of “Principal Accountable Officer” (“PAO”). The post of PAO is held by the Chief Executive Officer (as defined in Article 3 of the Employment of States of Jersey Employees (Jersey) Law 2005). The PAO has functions, as described below, in relation to “States funded bodies”; “independently audited States bodies” (as currently defined in Article 1(1) of the PFL); “States aided independent bodies” (as currently defined in Article 1(1) of the PFL); funds established under the PFL; States’ income; taxes; and trust assets. The PAO’s functions do not extend to non-Ministerial States funded bodies, that is, the bodies currently defined in Article 1(1) of the PFL to mean the Bailiff’s Department, Office of the Lieutenant Governor, Office of the Dean of Jersey, Comptroller and Auditor General, Official Analyst, States Assembly, Viscount’s Department, Judicial Greffe, Law Officers’ Department, Probation Department and the Data Protection Commissioner. *Article 2* inserts in the PFL a new definition of “independently audited States body” which mirrors Article 14(1) of the Comptroller and Auditor General (Jersey) Law 2014.

New Article 37 also inserts in the PFL a new definition, “States body”. A “States body” is any of the bodies described in the above paragraph for which the PAO has appointed an accountable officer under the new Article 38 (or deemed to have appointed such an officer under the transitional provision Article 38B(1)).

New Article 37 also inserts in the PFL a new definition, “States fund” to refer to funds established under the PFL, States’ income, taxes and trust assets.

New Article 38 sets out the PAO’s functions in relation to States bodies and States funds. The PAO must ensure the propriety and regularity of the finances of States bodies and States funds and that the resources of those bodies and funds are used economically, efficiently and effectively. The PAO is also responsible for appointing accountable officers for such States funded bodies, independently audited States bodies, and States aided independent bodies as he or she may specify. However Article 38 prevents the PAO from appointing an accountable officer if the effect of an enactment, whether expressly or by implication provides for another person to carry out functions similar or equivalent to those of an accountable officer.

New Article 38A defines “accountable officer” for the purposes of PFL. An accountable officer must exercise the functions applying to that officer determined by

the PAO (different functions may be determined for different accountable officers under Article 38(1)(d)) and, if applicable to that officer, any functions specified in any enactment or act of the States.

New Article 38B is a transitional provision which deems officers who are senior States' employees in Ministerial departments and therefore "accounting officers" under Article 37 or Article 38A of the PFL immediately before the commencement of this Part of this Law to be appointed by the PAO under the new Article 38. A similar deeming provision applies to any person who is expressly an "accounting officer" for the purposes of the PFL under any enactment. In relation to non-Ministerial States funded bodies, as defined in Schedule 1 to the PFL, Articles 37, 38 and 39 as in force immediately before the commencement of this Law will continue to apply. In relation to other States funded bodies which are not Ministerial departments, Articles 37, 38 and 39 of the of the PFL, as in force immediately before the commencement of this Law, continue to apply until such time as an accountable officer (if any) is appointed under Part 5.

Article 4 amends the PFL so as to replace a requirement for records to be produced when required to accounting officers of States funded bodies with a requirement for records to be produced when required to the PAO or to accountable officers.

Article 5 amends the PFL to enable the States by Regulations to amend Part 5 (Administration – Articles 28 to 39).

Articles 6 and 7 make consequential amendments to Schedule 2 to the PFL and, in the *Schedule*, to other enactments so as to replace references to "accounting officer" with "accountable officer".

Part 3 amends the PFL by making amendments with respect to budget transfers.

Article 8 introduces a new provision to require the Minister for Treasury and Resources ("Treasury Minister") after consulting the Chief Minister and the PAO, to give the States Assembly at least 2 weeks' notice of a transfer from one head of expenditure to another for reasons other than to comply with accounting standards or as a consequence of a transfer of functions from one Minister to another. The Treasury Minister must also give such notice where a transfer is made from a head of expenditure to contingency expenditure. In introducing this change, *Article 8* deletes the current requirement for approval by the Minister responsible for a States funded body (other than where the transfer is from the States Assembly, the Comptroller and Auditor General or a non-Ministerial States funded body where the current requirements for approval remain). *Article 8* also deletes the requirement that the Treasury Minister must consult the Chief Minister before approving a transfer from the Viscount's Department, Judicial Greffe, Law Officers' Department, Probation Department and Data Protection Commissioner.

Part 4 amends the States of Jersey Law 2005 ("SOJL") and makes provision for the Ministers to be a single legal body exercising joint functions.

Article 9 replaces the existing provision in the SOJL which establishes each individual Minister as a corporation sole meaning that each Minister is a separate legal entity. The new replacement provision establishes the Jersey Ministers as a corporation aggregate, that is, as a single legal entity. *Article 9* also makes provision for functions to be conferred on the "Jersey Ministers" by that name and for such functions to be exercisable by any Minister or Assistant Minister. *Article 9* also introduces a provision so that property is jointly held by the Jersey Ministers and that acts of one Minister or Assistant Minister are treated as acts of the Jersey Ministers. However this does not apply to functions conferred specifically on the Chief Minister. References in legislation to a named Minister, other than to the Chief Minister, are to be deemed to

refer to the “Jersey Ministers”. Finally *Article 9* introduces two Regulation-making powers. One allows the States to make Regulations to preserve the functions and responsibilities of any Minister in addition to the Chief Minister. The other enables the States to make consequential amendments to any enactment, including the SOJL, to give effect to the provisions described above introduced by *Article 9*. These changes will be brought into force by an Appointed Day Act along with the other amendments made by *Part 4*: see *Article 19* below.

Article 10 makes consequential amendments to *Article 27* of the SOJL concerning the power of a Minister to act in the absence of another Minister so that its scope is confined to statutory functions conferred specifically on the Chief Minister.

Article 11 replaces the existing provision in the SOJL which enables a Minister to delegate functions to an Assistant Minister or to an officer with a new provision which confines the powers of the Jersey Ministers to delegating their functions to officers (that is, States’ employees, members of the States of Jersey Police Force and immigration officers).

Article 12 substitutes the current provision in the SOJL which requires delegations of functions to be published with a new provision which requires the Chief Minister to publish a list of the responsibilities of individual Ministers.

Part 5 makes other amendments to the SOJL relating to Ministers.

Article 13 repeals the provision in the SOJL which requires the Chief Minister and Ministers to adhere to the principle of collective responsibility.

Article 14 deletes the provision in the SOJL which requires the Assistant Ministers to adhere to the principle of collective responsibility.

Articles 15 and 16 have the effect of replacing the current provision in the SOJL which enables the States by Regulations to change the descriptions of Ministers and transfer functions from one Minister to another. Instead, under the new provisions, the Chief Minister must give at least 2 weeks’ notice to the States of moving a Minister to a different Ministerial office. As a replacement to the current Regulation-making power, the Chief Minister may, by Order, after giving at least 2 weeks’ notice to the States, make changes concerning the names and responsibilities of Ministers and make other provisions equivalent to the current Regulation-making power.

Part 6 comprises *Article 17*. It amends the Standing Orders of the States of Jersey by reducing the number of days within which the States Assembly must meet to select a new Chief Minister after an election from 21 days to 19 days. It also increases the number of clear working days which must elapse after that meeting before the Ministers and chairmen of various panels and committees must be selected or appointed from 2 clear working days to 5 clear working days.

Part 7 is a general and closing provision comprising *Articles 18 and 19*. *Article 18* gives the States a Regulation-making power to amend any enactment in consequence of any provision of this Law. *Article 19* sets out the title of this Law and provides that the Law shall come into force 7 days after registration, except for *Part 4*, which shall come into force by an Appointed Day Act.



Jersey

**DRAFT MACHINERY OF GOVERNMENT
(MISCELLANEOUS AMENDMENTS) (JERSEY)
LAW 201-**

Arrangement

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Jersey

**DRAFT MACHINERY OF GOVERNMENT
(MISCELLANEOUS AMENDMENTS) (JERSEY)
LAW 201-**

A LAW to amend further the Public Finances (Jersey) Law 2005, the States of Jersey Law 2005 and related legislation

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

OPENING

1 Interpretation

In this Law –

“Public Finances Law” means the Public Finances (Jersey) Law 2005¹;

“States of Jersey Law” means the States of Jersey Law 2005².

PART 2

ACCOUNTABLE OFFICERS – PUBLIC FINANCES LAW AMENDED

2 Article 1 amended

In Article 1 of the Public Finances Law –

- (a) before the definition “capital head of expenditure” there shall be inserted the following definition –

“ ‘accountable officer’ has the meaning given by Article 38A(1);”;

- (b) after the definition “central planning vote” there shall be inserted the following definition –
- “ ‘Chief Executive Officer’ has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005³;”;
- (c) after the definition “Panel” there shall be inserted the following definition –
- “ ‘PAO’ means the Principal Accountable Officer under Article 37;”;
- (d) after the definition “standing orders” there shall be inserted the following definition –
- “ ‘States aided independent body’ means a body (including an individual and a corporation sole), whether or not incorporated, that in a financial year receives an amount of money from the States to aid it to carry out its activities;”;
- (e) after the definition “States Assembly” there shall be inserted the following definitions –
- “ ‘States body’ has the meaning given by Article 37(2)(a);
- ‘States fund’ has the meaning given by Article 37(2)(b);”;
- (f) the definition “States aided independent body” after the definition “strategic reserve fund” shall be deleted;
- (g) the definition “strategic reserve fund” shall be placed after the definition “States trading operation.”.

3 Articles 37 to 38A and cross heading substituted

For the cross heading before Article 37 in the Public Finances Law and for Articles 37, 38 and 38A there shall be substituted the following cross heading and Articles –

“Accountable officers

37 Principal Accountable Officer

- (1) The Chief Executive Officer shall be the Principal Accountable Officer with functions, as provided in this Part, in relation to –
- (a) States funded bodies excluding non-Ministerial States funded bodies;
- (b) independently audited States bodies;
- (c) States aided independent bodies; and
- (d) any fund established by Part 2, any special fund, any States income, any money derived from taxation or any money forming part of trust assets.
- (2) In this Law –

- (a) 'States body' means any body included in paragraph (1)(a) to (c) for which an accountable officer has been appointed by the PAO under Article 38(1)(c) or deemed to have been so appointed under Article 38B(1);
- (b) 'States fund' means any fund, income or money referred to in paragraph (1)(d).

(3) Where –

- (a) the Chief Executive Officer is unable to discharge the functions of the PAO for any reason, including, without prejudice to the generality of the foregoing, illness, injury or absence; or
- (b) there is no person holding the post of Chief Executive Officer,

the Minister may, having first consulted the Chief Minister, appoint another person to discharge the functions of PAO until, as the case requires, the Chief Executive Officer is able to discharge such functions or that post is filled.

38 Functions of PAO

(1) The PAO has the following functions and is answerable to the States for the exercise of those functions –

- (a) ensuring the propriety and regularity of the finances of States bodies and States funds;
- (b) ensuring that the resources of States bodies and States funds are used economically, efficiently and effectively;
- (c) subject to paragraph (2), appointing accountable officers for such of any of the following as the PAO may specify –
 - (i) bodies included in Article 37(1)(a) to (c), or
 - (ii) States funds;
- (d) determining the functions of accountable officers;
- (e) ensuring the performance of the functions of accountable officers;
- (f) exercising the functions of an accountable officer of a States body or States fund in respect of which the accountable officer is unable, for any reason, to act; and
- (g) making publicly available a list of the names or descriptions of States bodies and States funds and their accountable officers.

(2) Paragraph (1)(c) does not apply in relation to a body included in Article 37(1)(a) to (c) or to a States fund if the effect of an enactment, whether expressly or by implication and whether or not in force at the time of commencement of Part 2 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-⁴, provides for a person other than a person appointed under this Part

to carry out functions similar or equivalent to those of an accountable officer.

- (3) Any functions of an accountable officer determined by the PAO under paragraph (1)(d) are without prejudice to any specific functions specified in any enactment or act of the States that apply to that accountable officer.
- (4) The functions that may be determined by the PAO under paragraph (1)(d), without prejudice to the generality of that provision, include, in particular –
 - (a) ensuring the propriety and regularity of the finances of the States body or States fund for which the accountable officer is responsible; and
 - (b) ensuring that the resources of that States body or States fund are used economically, efficiently and effectively.
- (5) The PAO may determine different functions under paragraph (1)(d) for different accountable officers.
- (6) Financial directions may specify the application of the PAO's functions and how they are to be carried out and, accordingly, those functions must be applied and carried out in accordance with those directions.

38A Accountable officers

- (1) In this Law, except where specified otherwise, 'accountable officer' means any person who is appointed under Article 38(1)(c) or deemed to be so appointed under Article 38B.
- (2) An accountable officer has the following functions –
 - (a) exercising the functions that apply to that accountable officer (if any) determined by the PAO under Article 38(1)(d); and
 - (b) exercising functions that apply to that accountable officer (if any) specified in any relevant enactment or act of the States.
- (3) Except to the extent that an enactment specifies otherwise, an accountable officer is answerable to the States for the exercise of the functions that apply to him or her under paragraph (2).
- (4) Financial directions may specify how the functions of an accountable officer must be carried out and, accordingly, an accountable officer must carry out those functions in accordance with those directions.
- (5) In making an appointment under Article 38(1)(c) the PAO shall have regard to any relevant act of the States.
- (6) A person appointed under Article 38(1)(c) must be a States' employee within the meaning of Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005⁵, or otherwise an employee of the States body or States fund for which he or she is appointed.

- (7) An appointment under Article 38(1) must be by written notice and has effect when the appointed person receives a copy of the notice.
- (8) A copy of the notice must also be sent to the Comptroller and Auditor General and to the Minister, if any, with responsibility to the States for the States body or States fund, as the case may be.

38B Transitional and savings provisions

- (1) A person who is –
 - (a) by virtue of being a senior States' employee in a Ministerial department, an accounting officer under Article 37(1) or (2) or Article 38A of this Law immediately before the commencement of Part 2 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-; or
 - (b) an accounting officer for the purposes of this Law under an express provision to that effect in any enactment, immediately before the commencement of Part 2 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-

shall be deemed to be appointed by the PAO as an accountable officer under Article 38 in compliance with the provisions for appointment under Article 38A.

- (2) In relation to a non-Ministerial States funded body, Articles 37, 38 and 39 of this Law shall continue to apply to the extent they applied to such a body immediately before the commencement of Part 2 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-.
- (3) In relation to any other States funded body which does not have an accounting officer as described in paragraph (1), Articles 37, 38 and 39 of this Law shall continue to apply to the extent they applied to such a body immediately before the commencement of Part 2 of the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-. until such time (if at all) as an accountable officer is appointed under Part 5.”.

4 Article 39 amended

In Article 39 of the Public Finances Law –

- (a) after paragraph (d) the word “or” shall be deleted;
- (b) for paragraph (e) there shall be substituted the following paragraph –

“(e) the PAO or an accountable officer.”.

5 Article 69A amended

In Article 69A of the Public Finances Law –

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- (a) in paragraph (1), for the words “3 and 4” there shall be substituted the words “3, 4 and 5”;
 - (b) in paragraph (3), for the words “of Part 3 or 4” there shall be substituted “3, 4 or 5”.

6 Schedule 2 amended

In Schedule 2 to the Public Finances Law in paragraph 1(1)(b) and (2)(a) for the words “accounting officer” there shall be substituted the words “accountable officer”.

7 Amendments to other enactments consequential on this Part

The Schedule shall have effect.

PART 3

BUDGET TRANSFERS – PUBLIC FINANCES LAW AMENDED

8 Article 18 amended

In Article 18 of the Public Finances Law –

- (a) after paragraph (1A) there shall be inserted the following paragraph –
“(1B) The Minister shall, after consulting the Chief Minister and PAO, give the States Assembly at least 2 weeks’ notice before an amount is transferred under paragraph (1)(c) or (1A).”;
- (b) in paragraph (2) –
 - (i) after sub-paragraph (aa) there shall be inserted the word “or”,
 - (ii) after sub-paragraph (b), for the words “; or” there shall be substituted a full-stop,
 - (iii) paragraph (c) shall be deleted;
- (c) paragraph (2A) shall be repealed.

PART 4

STATUS OF JERSEY MINISTERS – STATES OF JERSEY LAW AMENDED

9 Article 26 substituted

For Article 26 of the States of Jersey Law there shall be substituted the following Articles –

“26 Status and functions of Jersey Ministers

- (1) The Ministers, including the Chief Minister, shall be referred to collectively as the Jersey Ministers.
- (2) The Jersey Ministers shall be a corporation aggregate, capable of –
 - (a) entering into agreements;
 - (b) acquiring, holding and disposing of property;
 - (c) suing and being sued in civil proceedings;
 - (d) being charged with an offence and defending criminal proceedings; and
 - (e) doing anything reasonably necessary, expedient for, or incidental to, their functions as Ministers or anything referred to in sub-paragraphs (a) to (d).
- (3) Functions (whether or not statutory functions) may be conferred on the Jersey Ministers by that name.
- (4) Functions (whether or not statutory functions) of the Jersey Ministers shall be exercisable by any of them or by any Assistant Minister.
- (5) The Jersey Ministers shall have an official seal.
- (6) Every document purporting to be an instrument made or issued by the Jersey Ministers sealed with the Jersey Ministers’ official seal, shall be received in evidence and deemed to be so made or issued without further proof, unless the contrary is shown.

26A Property and liabilities of the Jersey Ministers

- (1) Property may be held by the Jersey Ministers by that name.
- (2) Property acquired by, or transferred to, the Jersey Ministers shall belong to, and liabilities incurred by the Jersey Ministers shall be liabilities of, the Jersey Ministers for the time being.
- (3) In relation to property to be acquired by, or transferred to, or belonging to, the Jersey Ministers or liabilities incurred by the Jersey Ministers, references to ‘Jersey Ministers’ in any document, including any contract or other document registered in the Public Registry or with the Royal Court, shall be read in accordance with paragraph (2).
- (4) Subject to paragraph (5), any act or omission of, or in relation to, any Minister or Assistant Minister shall be treated as an act or omission of, or in relation to, the Jersey Ministers and any property acquired, or liability incurred by any Minister or Assistant Minister shall be treated accordingly.
- (5) Paragraph (4) shall not apply to any act or omission by the Chief Minister exercising functions conferred on the Chief Minister by that name (whether or not exercised by him or her or on his or her behalf and whether the functions are statutory or otherwise).

- (6) A document shall be validly executed by the Jersey Ministers if it is executed by any Minister or Assistant Minister.

26B References to a Minister and powers to make Regulations

- (1) Any reference in legislation to a named Minister, other than to the Chief Minister, shall be deemed to refer to the Jersey Ministers.
- (2) Notwithstanding paragraph (1), the States may, by Regulations, preserve the functions and responsibilities of any Minister in addition to the Chief Minister.
- (3) The States, may, by Regulations, amend any enactment, including this Law in consequence of, or to give effect to, paragraphs (1) and (2), Articles 26 and 26A.
- (4) Regulations under paragraphs (2) and (3) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States consider necessary or expedient for the purposes of the Regulations.”.

10 Article 27 amended

In Article 27 of the States of Jersey Law –

- (a) before paragraph (1) there shall be inserted the following paragraph –
“(A1) In this Article, references to the functions of the Chief Minister are to any function which is conferred on the Chief Minister by that name.”;
- (b) Paragraphs (2) and (4) shall be repealed.

11 Article 28 substituted

For Article 28 of the States of Jersey Law there shall be substituted the following Article –

“28 Powers of Jersey Ministers to delegate functions

- (1) The Jersey Ministers may delegate, wholly or partly, functions conferred upon or vested in the Jersey Ministers by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to an officer.
- (2) Jersey Ministers shall not delegate to an officer –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited wholly, or to an officer, by an enactment.
- (3) The delegation of functions by Jersey Ministers under this Article shall not prevent a Minister or Assistant Minister from exercising those functions personally on behalf of the Jersey Ministers.

- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article ‘officer’ means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005⁶ and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993⁷ and amended by the Immigration (Jersey) (Amendment) Order 2017⁸.
- (6) The States may by Regulations amend the definition ‘officer’ in paragraph (5).”.

12 Article 30A substituted

For Article 30A there is substituted the following Article –

“30A List of Ministerial responsibilities to be published

- (1) The Chief Minister shall cause to be established, maintained and published a consolidated list of the responsibilities for the time being of each Minister and Assistant Minister.
- (2) It shall be sufficient if the list is published on a website.”.

PART 5

**OTHER PROVISIONS RELATING TO MINISTERS –
STATES OF JERSEY LAW AMENDED**

13 Article 18 amended

In Article 18(3A) of the States of Jersey Law, sub-paragraph (a) shall be deleted.

14 Article 25 amended

Article 25(6) of the States of Jersey Law shall be repealed.

15 Article 29 substituted

For Article 29 of the States of Jersey Law there shall be substituted the following Article –

“29 Powers to move Ministers

The Chief Minister may, after giving not less than 2 weeks’ notice to the States, move a Minister from one Ministerial office to another.”.

16 Article 29A inserted

After Article 29 of the States of Jersey Law there shall be inserted the following Article –

“29A Powers relating to changes to Ministerial offices

- (1) The Chief Minister may by Order do any of the following –
 - (a) establish and abolish Ministers;
 - (b) determine the name by which an existing Minister is described;
 - (c) make provision relating to a Minister’s responsibilities and functions (including their transfer from one Minister to another).
- (2) An Order made under paragraph (1) may include such supplemental, incidental, consequential, transitional and savings provisions as he or she considers necessary or expedient for the purpose of giving full effect to that Order, including provisions –
 - (a) relating to property, resources (including funding) and liabilities;
 - (b) amending any enactment (including this one);
 - (c) construing any legislation made outside Jersey which has effect in Jersey; and
 - (d) construing and adapting any contract, instrument or other document.
- (3) Before making an Order under paragraph (1), the Chief Minister shall give not less than 2 weeks’ notice to the States.”.

PART 6

STANDING ORDERS AMENDED

17 Standing order 112 amended

In the table in standing order 112 of the Standing Orders of the States of Jersey⁹, in the column under the heading “When” –

- (a) for the number “21” there shall be substituted the number “19”; and
- (b) for the number “2” there shall be substituted the number “5”.

PART 7

GENERAL AND CLOSING

18 Consequential Regulations

The States may, by Regulations, amend any enactment for the purpose of making such transitional, consequential, incidental, supplementary and savings provisions as they consider necessary or expedient in consequence of any provision of this Law.

19 Citation and commencement

- (1) This Law may be cited as the Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201-.
- (2) Parts 1, 2, 3, 5, 6 and this Part shall come into force 7 days after this Law is registered.
- (3) Part 4 shall come into force on such day as the States may by Act appoint.

SCHEDULE

(Article 7)

CONSEQUENTIAL AMENDMENTS**1 Employment of States of Jersey Employees (Jersey) Law 2005**In the Employment of States of Jersey Employees (Jersey) Law 2005¹⁰ –

- (a) in Article 3(5)(a), clause (i) shall be deleted;
- (b) in Article 10A(1) and (3) for the words “accounting officer” there shall be substituted the words “accountable officer”.

2 Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005In the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005¹¹ for the words “accounting officer” there shall be substituted the words “accountable officer” in the following provisions –

- (a) Regulation 17(2)(a);
- (b) Regulation 19(1) in each place those words occur;
- (c) Article 19(2);
- (d) Article 19(3)(a) in each place those words occur;
- (e) Article 19(3)(b) in each place those words occur;
- (f) Article 20(1) in each place those words occur.

3 States of Jersey Police Force Law 2012For Article 17(5) of the States of Jersey Police Force Law 2012¹² there shall be substituted the following paragraph –

- “(5) The Chief Officer, or any person carrying out the functions of the Chief Officer under Article 8, shall be the accountable officer of the States Police Force for the purposes of the Public Finances (Jersey) Law 2005¹³.”

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- 1 *chapter 24.900*
 - 2 *chapter 16.800*
 - 3 *chapter 16.325*
 - 4 *P.1/2018*
 - 5 *chapter 16.325*
 - 6 *chapter 16.325*
 - 7 *chapter 21.700*
 - 8 *L.23/2017*
 - 9 *chapter 16.800.15*
 - 10 *chapter 16.325*
 - 11 *chapter 24.900.81*
 - 12 *chapter 23.820*
 - 13 *chapter 24.900*