

STATES OF JERSEY



DRAFT STATES OF JERSEY (POWERS, PRIVILEGES AND IMMUNITIES) (SCRUTINY PANELS, PAC AND PPC) (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 27th February 2018
by the Chairmen's Committee**

STATES GREFFE



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REPORT

Background

One of the objectives of the Chairmen's Committee during this term of the States has been to improve Scrutiny processes and ensure that they are on a par with the rights and powers of scrutiny panels/select committees in other jurisdictions.

In addition to an updated Code of Practice for Engagement between Scrutiny Panels and the Public Accounts Committee and the Executive, which has been lodged separately, an updated Proceedings Code of Practice has also been completed; there has therefore been ongoing review of general issues surrounding the Scrutiny process.

Amongst a number of matters considered, it was, for example, identified that there is an apparent anomaly for protection of witnesses appearing in front of Scrutiny, versus an apparent lack of protection for anybody possibly named by such witnesses. This has been referred to PPC and the Greffier, who has additionally identified a number of issues about the way in which parliamentary privilege has been codified in Jersey with regard to the Assembly's Committees/Panels. The work on these matters is ongoing.

However, as a further aspect to its work, the Chairmen's Committee has also examined opportunities to appropriately update the States of Jersey (Powers, Privileges and Immunities) Regulations, in respect of the authority of Scrutiny Panels and the PAC to obtain written and oral evidence. Such opportunities have been benchmarked against common practice found in established Commonwealth parliaments, and in particular the UK House of Commons.

Consistent with its desire to ensure that Scrutiny processes are on a par with the rights and powers of scrutiny panels/select committees in other jurisdictions, the Chairmen's Committee's work continued and has resulted in this amendment. It seeks to revise the *States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, PAC and PPC) Regulations 2006* to provide the ability for Scrutiny Panels and the PAC to place witnesses on oath.

In essence, the oath is intended to leave a witnesses in no doubt of the importance of giving accurate and full evidence to a Panel or Committee.

States Members are specifically exempt from this power. Privileges and relevant behavioural requirements relating to members are not within the scope of the Regulations, but are instead covered by alternative frameworks. There is, for example,

an explicit requirement in the Code of Conduct for Elected Members to co-operate with committees and panels and to act with honesty, openness and integrity. Such requirements are re-iterated in the Code of Conduct and Practice for Ministers and Assistant Ministers.

The proposed amendment would bring Jersey's scrutiny function onto an equal footing in this respect with parliamentary committees in other jurisdictions, notably for instance within the UK Houses of Parliament.

The Committee is of the opinion that the use of such a provision would be very limited. However, it could represent a powerful tool to be used in certain circumstances, where it would be of value to the proceedings by providing added focus on the requirement for witnesses to be truthful in the evidence they provide.

There is currently limited 'penalty' for witnesses found to be falling short in this respect, whether or not the evidence was provided under oath. Largely this is restricted to a potential loss of immunity from the evidence being used against the person concerned in any criminal or civil proceedings, should the witness knowingly provide untrue evidence.

However, reputational consequences can be significant. A Panel may also choose to publically reprimand a witness in such circumstances, or refer the matter to a bodies such as the Chairmen's Committee or Privileges and Procedures Committee who may, upon judgement of the matter, do likewise. Associated media coverage and social commentary may also be highly unfavourable. As well as highlighting the seriousness of the hearing proceedings, the oath facility may therefore bring increased attention to any potential sanctions and reputational consequences for witness who are demonstrably contemptuous of the Assembly's Panels and Committees.

It is intended that the oath would be administered by the Chair of the respective Panel or Committee, and that the wording would be consistent with that already used by Committees of Inquiry.

Should this amendment be approved, the Chairmen's Committee will update the *Scrutiny/PAC Proceedings: Code of Practice* accordingly, detailing the processes and protocols relevant to this matter. The updated Code would be presented to the Assembly.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These draft Regulations would further amend the States of Jersey (Powers, Privileges and Immunities) (Scrutiny panels, PAC and PPC) (Jersey) Regulations 2006 to introduce (by *Regulation 1*) a new Regulation 7A conferring power on scrutiny panels and the PAC to require witnesses to give evidence on oath.

Regulation 2 would give the title by which these Regulations may be cited and provide for their commencement 7 days after being made.



Jersey

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

THE STATES, in pursuance of Article 49 of the States of Jersey Law 2005¹,
have made the following Regulations –

1 2006 Regulations amended

After Regulation 7 of the States of Jersey (Powers, Privileges and Immunities)
(Scrutiny panels, PAC and PPC) (Jersey) Regulations 2006², there shall be
inserted the following Regulation –

“7A Power of scrutiny panel or Committee to administer oath

- (1) A scrutiny panel, the PAC or PPC may require a person appearing
before it to give evidence on oath.
- (2) The chairman of the panel or, as the case may be, the Committee in
question, is authorized to administer the oath for the purpose of
paragraph (1).”

2 Citation and commencement

These Regulations may be cited as the States of Jersey (Powers, Privileges and
Immunities) (Scrutiny panels, PAC and PPC) (Amendment No. 2) (Jersey)
Regulations 201- and shall come into force 7 days after the day on which they
are made.

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- ¹ *chapter 16.800*
² *chapter 16.800.25*