

# **STATES OF JERSEY**



## **DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS FROM COMMITTEES TO MINISTERS) (JERSEY) REGULATIONS 200-**

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**Lodged au Greffe on 22nd March 2005  
by the Policy and Resources Committee**

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**STATES GREFFE**





Jersey

# **DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS FROM COMMITTEES TO MINISTERS) (JERSEY) REGULATIONS 200-**

## **REPORT**

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### **Machinery of Government Reforms: transfers of functions and consequential amendments**

In September 2001 the States took the historic decision to replace the committee system of government with a ministerial system, combined with a system of scrutiny. Work has since been taking place on the preparation of legislation to give effect to this decision, and in recent months the States has given approval to 2 major pieces of legislation in this connection, namely the draft States of Jersey Law and the draft Public Finances Law. There remains a third area of legislation, namely the general amendments that are required as a consequence of the decision to move to a ministerial decision, and these are now being submitted for consideration by the States.

The first part of these general amendments is relatively short, and is entitled the States of Jersey (Transfer of Functions from Committees to Ministers) (Jersey) Regulations 200-. As its name suggests, the purpose of these Regulations is to transfer the functions of committees to ministers, and these transfers would take effect at the time of introduction of the ministerial system of government. The assignment of responsibilities is in accordance with the States' decision in July 2002 to approve a new departmental structure for the ministerial system, in which it was agreed that there will be ten departments of government, each headed by a minister (*'Machinery of Government: Proposed Departmental Structure and Transitional Arrangements'*, P.70/2002, as amended).

The second part of these general amendments is much lengthier, and is entitled the States of Jersey (Amendments and Construction Provisions) Regulations (the 'consequential amendments'). The Regulations are sub-divided into 10 parts for ease of reference, reflecting the new structure of 10 departments of government. Although the number of proposed amendments is very large, the principle behind these changes is simple: the Island's legislation, where appropriate, needs to be amended so that it will be compatible with the ministerial system of government.

The consequential amendments have been divided up as follows –

- Policy and Resource
- Finance and Economics
- Economic Development
- Environment and Public Services
- Health and Social Services
- Education, Sport and Culture
- Home Affairs
- Employment and Social Security
- Housing
- Harbours and Airport

The amendments relating to Harbours and Airport have been treated as a separate package, although these will fall under the umbrella of Economic Development in the new arrangements. In addition, a short set of amendments is being lodged which relates to the transfer of a function of the Legislation Committee.

These sets of consequential amendments are all being lodged on 22nd March 2005, with the exception of those relating to Environment and Public Services, which are currently being finalised and will be lodged shortly,

together with the appropriate Transfer of Functions Regulations. It will be noted that the draft Regulations in respect of Environment and Public Services have been treated as one package, although there will of course be two separate departments in the ministerial system.

The work of preparing this legislation began shortly after the States' decision in September 2001 and has been coordinated by the Policy and Resources Committee, in consultation with other States committees and departments. The initial work involved checking through every single item of legislation on the Island's statute book in order to establish where the amendments were needed. Drafting instructions were then prepared by the Policy and Resources Department, in close consultation with the departments responsible for administering the legislation. The work of preparing the draft legislation on government reforms has been overseen by a Working Party on Legislation, with a membership including the Attorney General, Law Draftsman, Greffier of the States, and Principal Legal Adviser.

As soon as it has been prepared, each set of Regulations has been forwarded to the relevant administering committee for comment. The Privileges and Procedures and Finance and Economics Committees have also been given the opportunity to comment, as well as the Attorney General. The Shadow Scrutiny Panels were also invited to examine one or more of the sets of Regulations, but have declined this invitation due to their heavy workload. The Policy and Resources Committee has also invited comments from the public by issuing press releases and placing drafts of the Regulations on the Government Reforms website.

It has to be said that very few comments have been received, but all those that have been received have been positive. The Policy and Resources Committee accepts that the draft Regulations are, of necessity, very lengthy, and its prime concern throughout the process of preparing and publicising this draft legislation has been to ensure that every opportunity should be given to interested parties to comment on the changes.

There is a general technical point that needs to be made in relation to the consequential amendments. It will be seen that the Regulations, if adopted by the States, would have the effect of amending primary legislation (i.e. laws) as well as secondary legislation. It is unusual for Regulations to have this effect, but this is being proposed in accordance with Article 49(1)(b) of the draft States of Jersey Law, as approved by the States in November 2004, in which it is stated that '*the States may by Regulations .... amend enactments (...) for the purpose of implementing the repeal of the States of Jersey Law 1966 and its replacement with this Law, in particular, the abolition of Committees of the States and the establishment of a ministerial system of government.*'

It will be noted that in the majority of cases the amendments are very straightforward, and they may consist, for example, in the simple substitution of the word 'committee' with 'minister'. In other cases the changes may be a little more complicated, e.g. in cases where two or more committees are referred to in the legislation. The Law Draftsman's Explanatory Note provides a concise guide to these changes, and in a limited number of cases the Policy and Resources Committee believes that some further explanation is desirable in order to put these changes more fully in context.

These cases are highlighted below, and are listed in order of department –

## **Policy and Resources**

It was intended that the existing Civil Service Administration Law (which dates back to 1947) should be replaced by a new law which better reflected the environment of the modern workplace. Whilst work on this matter is ongoing, it has proved more time consuming than initially thought, and it is now considered possible that a new law will not be ready in time for the introduction of our new system of government. Therefore, to ensure continuity of existing terms and conditions of employment for States employees, the current legislation has been amended only to the extent that the Chief Minister replaces the Policy and Resources Committee as the employing authority.

## **Social Security**

In order to address the concerns of the present Employment and Social Security Committee that, under the new system of government, control would vest solely with the Minister for Treasury and Resources over investments made with monies from the Social Security and Health Insurance Funds, it has been considered prudent to retain the safeguards currently provided in the Social Security Law 1974 whereby consultation with the Minister for Social Security is required when such investments are made.

## **Legislation**

In relation to the Legislation Committee, it will be recalled that in approving P.70/2002 the States agreed that the

Legislation Committee should remain in place during the transitional period, and that consultation should take place with the Legislation Committee during this period in order to establish how its functions should be undertaken once the ministerial system comes into effect. This consultation has now taken place, and it has been agreed that matters which are currently the responsibility of the Legislation Committee should be transferred to the Chief Minister, and that an Advisory Panel should be appointed to advise on these matters. This body will be chaired by an Assistant Minister and will consist of States members drawn from both the executive and non-executive arms of government, including representation from the Comité des Connétables. The Transfer of Functions Regulations accordingly make reference to this proposed transfer of responsibility from the Legislation Committee to the Chief Minister.

The Committee does not have any further comments to make on the remaining sets of consequential amendments. In each case the Law Draftsman has provided an explanatory note which should provide the necessary explanation, but the Committee would be pleased to provide further background information or clarification if this would be helpful.

There are no financial or manpower implications for the States arising from the Draft Transfer of Functions Regulations, nor from the consequential amendments.

## **Explanatory Note**

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These Regulations transfer functions from Committees of the States to Ministers (with the exception of the functions of the Environment and Public Services Committee). They will come into force upon the first Council of Ministers being appointed to office.





Jersey

# DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS FROM COMMITTEES TO MINISTERS) (JERSEY) REGULATIONS 200-

## Arrangement

### Regulation

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Transfer of functions from Committees to Ministers</u>
<u>3</u>	<u>Rights and liabilities transferred</u>
<u>4</u>	<u>Construction of documents</u>
<u>5</u>	<u>Transitional provisions</u>
<u>6</u>	<u>Citation and commencement</u>







Jersey

# DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS FROM COMMITTEES TO MINISTERS) (JERSEY) REGULATIONS 200-

*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 2005, [\[1\]](#) have made the following Regulations –

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## 1 Interpretation

In these Regulations any reference to “the receiving Minister” means the Minister to whom functions are transferred under these Regulations and any reference to “the transferring Committee” means the Committee from which those functions are transferred.

## 2 Transfer of functions from Committees to Ministers

The functions of a Committee listed in column 1 below shall be transferred to the Minister listed opposite that Committee in column 2 below.

<i>1</i> <i>transferring Committee</i>	<i>2</i> <i>receiving Minister</i>
Policy and Resources Committee	Chief Minister
Finance and Economics Committee	Minister for Treasury and Resources
Economic Development Committee	Minister for Economic Development
Health and Social Services Committee	Minister for Health and Social Services
Education, Sport and Culture Committee	Minister for Education, Sport and Culture
Home Affairs Committee	Minister for Home Affairs
Employment and Social Security Committee	Minister for Social Security
Housing Committee	Minister for Housing
Harbours and Airport Committee	Minister for Economic Development
Legislation Committee	Chief Minister.

### **3 Rights and liabilities transferred**

- (1) All rights enjoyed and liabilities incurred by the transferring Committee in connection with the functions transferred by Regulation 2 shall be transferred to the receiving Minister and become the rights and liabilities of the receiving Minister.
- (2) A provision of a contract or other instrument that specifies that a right or liability of the transferring Committee is incapable of transfer shall, to the extent that it applies to a right or liability transferred by paragraph (1), be of no effect.
- (3) The operation of paragraph (1) shall not be regarded –
  - (a) as a breach of contract or confidence or otherwise as a civil wrong;
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
  - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

### **4 Construction of documents**

In the construction of, and for the purposes of, any judgment, award, contract, certificate or other document passed or made before this Act comes into force, anything that is, or is to be construed as, a reference to the transferring Committee or its officers shall, so far only as may be necessary for and in consequence of the transfers effected by Regulations 2 and 3, be construed as a reference to the receiving Minister or any officer in an administration of the States for which the receiving Minister is responsible.

### **5 Transitional provisions**

- (1) The transfers effected by Regulation 2 and 3 shall not prejudice the operation of any appointment, delegation, determination, direction, instruction, approval, consent, requirement, authorization or other thing that is, before these Regulations come into force, made, given or done by the transferring Committee in relation to the functions, rights and liabilities so transferred, but such matter shall, if then in force, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the receiving Minister.
- (2) Anything commenced before these Regulations come into force by or under the authority of the transferring Committee may, so far as it relates to the functions, rights, or liabilities transferred by Regulations 2 and 3, be carried on and completed by or under the authority of the receiving Minister.
- (3) Where, at the coming into force of these Regulations, any legal proceeding is pending to which the transferring Committee is a party and the proceeding has reference to any of the functions, rights, or liabilities transferred by Regulation 2 and 3, the receiving Minister shall be substituted in the proceeding for the transferring Committee and the proceeding shall not abate by reason of the substitution.

### **6 Citation and commencement**

These Regulations may be cited as the States of Jersey (Transfer of Functions from Committees to Ministers) (Jersey) Regulations 200- and shall come into force on the same day as Article 42(3) of the States of Jersey Law 2005. <sup>[2]</sup>



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[1] *Recueil des Lois, Volume 2005, page 370.*

[2] *Recueil des Lois, Volume 2005, page 367.*