

# **STATES OF JERSEY**



## **DRAFT THE LAW SOCIETY OF JERSEY LAW 200- (P.154/2003): SECOND AMENDMENTS**

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**Lodged au Greffe on 6th July 2004  
by Deputy R.G. Le Hérisier of St. Saviour**

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**STATES GREFFE**

PAGE 23, ARTICLE 18 –

*For Article 18 substitute the following Article –*

**“18 The disciplinary panel of the Law Society**

- (1) There shall be a disciplinary panel consisting of –
  - (a) 7 fit and proper persons, as lay members of the panel; and
  - (b) 4 ordinary members of the Law Society.
- (2) The lay members of the disciplinary panel shall be appointed by the States on the recommendation of the Jersey Appointments Commission established with the approval of the Act of the States dated 28th May 2002, after consultation by that Commission with the Law Society.
- (3) A person shall be eligible for appointment to the disciplinary panel as a lay member if, but only if, he or she –
  - (a) is not an advocate or solicitor; and
  - (b) is not admitted in any other jurisdiction as a legal practitioner.
- (4) The members of the disciplinary panel who are ordinary members of the Law Society shall be appointed by the Society in general meeting.
- (5) An ordinary member of the Society shall be eligible for appointment to the disciplinary panel if, but only if, he or she –
  - (a) is in private practice; and
  - (b) is a practitioner of at least 10 years’ standing.
- (6) However, Committee members, the Bâtonnier and the President of the Chambre des Ecrivains shall not be eligible for appointment to the disciplinary panel.”.

PAGE 24, ARTICLE 19, PARAGRAPH (1) –

*For the figure “5” substitute the figure “3”.*

PAGE 24, ARTICLE 19, PARAGRAPH (2) –

*For paragraph (2) substitute the following paragraph –*

- “(2) The member shall be entitled, if he or she so requests in writing, to be re-appointed for one further term of 3 years commencing on the expiry of his or her first term, but shall not be otherwise eligible for re-appointment.”.

PAGE 24, ARTICLE 20, PARAGRAPH (4)(b) –

*After the words “any member” insert the words “(being a lay member of the disciplinary panel)”.*

PAGE 25, ARTICLE 21, PARAGRAPH (1)(b) –

*For the words “2 persons who are ordinary members of the Society and one member who is a lay member” substitute the words “2 persons who are lay members of the disciplinary panel and one person who is an ordinary member of the Society”.*

PAGE 25, ARTICLE 21, PARAGRAPH (1)(c) –

*For the word “ordinary” substitute the word “lay”.*

PAGE 25, ARTICLE 22 –

*For paragraph (3) substitute the following paragraphs –*

“(3) The disciplinary committee shall sit in public unless –

(a) on the application of the complainant or the practitioner; and

(b) for reasons that the disciplinary committee shall state in writing,  
the disciplinary committee decides to sit privately.

(4) There shall be a right of appeal, in accordance with Article 24, against a decision of the disciplinary committee on an application to which paragraph (3) refers.”.

*Renumber the existing paragraphs (4), (5) and (6) as (5), (6) and (7) accordingly.*

PAGE 26, ARTICLE 23 –

*For paragraph (2) substitute the following paragraphs –*

“(2) If the disciplinary committee has sat in public to hear the complaint, it shall deliver its decision in public unless the decision is to privately rebuke the practitioner.

(3) The disciplinary committee shall provide written copies of its decision and of its reasons for the decision to –

(a) the complainant, the practitioner, the Attorney General and the Secretary; and

(b) the Bâtonnier or the President of the Chambre des Ecrivains, if he or she has been heard on the matter.”.

*Renumber the existing paragraph (3) accordingly.*

PAGE 26, ARTICLE 24(1)(a) –

*For the words “either to” substitute the words “to grant or refuse an application to sit privately to hear his or her complaint or to”.*

PAGE 27, ARTICLE 24(1)(c) –

*For the word “to” substitute the words “to grant or refuse an application to sit privately to hear the complaint or to”.*

PAGE 27, ARTICLE 24 –

*For paragraph (2) substitute the following paragraph –*

“(2) The appeal shall be lodged within one month after the decision to which it relates is given, or within such further time as the Royal Court may allow.”.

PAGE 31, ARTICLE 37(2) –

*For the words “the members of the disciplinary panel under Article 18(1)” substitute the words “members of the disciplinary panel under Article 18(4)”.*

DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

## **REPORT**

This Law has been a long time in coming. During its gestation there have been shifts in society's attitude concerning the issues it aims to address.

One of its key aims is to put in place a framework for the discipline of registered practitioners in the Jersey legal profession. Hitherto the Bâtonnier has been faced with administering discipline without the proper statutory framework. This has, at times, led to considerable difficulties and a perception that the Law Society is toothless or that it is a body protecting its own. Contrary to public perceptions, this matter has been of considerable concern to many members of the profession who want to see robust and credible disciplinary procedures in place.

As a former member and President of the Legislation Committee I have reflected upon our approach to this key issue and have concluded that the actual process needs to be strengthened if it is to enjoy public confidence.

### **Recommendations**

While there is a debate to be had on the role of the Royal Court as the major tribunal for disciplinary matters, this proposition focuses on the Disciplinary Panel/Committee (Part 3, Articles 18-23).

In the proposer's view, the lay element on the Panel and Committees should be considerably strengthened. There is a public demand for more accountability from professionals who are given, as in this instance, certain privileges by the State. In some cases, such as the Police, the determination of complaints has been completely placed in the hands of an independent body both here and in the U.K.

The lay element should exceed the professional element. Furthermore, the appointment process for the lay element must be seen to be transparent. This model has worked with success in bodies like the General Medical Council. It emphasises the importance of outside participation and thereby adds considerable credibility to the process.

### **ARTICLE 18**

The proposed amendment will alter the composition and mode of appointment of the disciplinary panel from which disciplinary committees are appointed to hear individual complaints.

The draft Law at present provides that the panel is to consist of 7 ordinary members of the Law Society and 4 lay persons, all to be appointed by the Law Society in general meeting.

The amendment provides that it is instead to consist of 7 lay persons and 4 ordinary members of the Law Society – and that the lay members shall be appointed by States on the recommendation of the Appointments Commission, after consultation by the Commission with the Law Society.

### **ARTICLE 19(1)**

The proposed amendment reduces from 5 to 3 years the term of office for which any member of the disciplinary panel may be appointed.

### **ARTICLE 19(2)**

The amendment provides that a member of the disciplinary panel is entitled as of right, at his or her request, to be appointed for one second term of 3 years.

(At present, the draft law provides that members may be appointed for one term only, so the combined effect of the proposed amendments to Article 19 would be that members can, if they so chose, hold office for 6 years rather than 5 years.)

### **ARTICLE 20(4)(b)**

At present, a disciplinary committee can continue to sit with any 2 members, if the third member becomes unable to act.

The effect of the proposed amendment is that it would only be able to continue to do so if one of the remaining members is a lay member and the other is the lawyer member.

#### ARTICLE 21(1)(b)

The draft Law at present provides that of the 3 members of the disciplinary panel who constitute a disciplinary committee, 2 must be lawyer members and the third a lay member.

The proposed amendment would provide instead that 2 must be lay members and the third a lawyer member.

#### ARTICLE 21(1)(c)

The draft Law at present provides that one of the 2 lawyer members of a disciplinary committee is to be appointed as its chairman.

The amendment would provide instead that one of the lay members is to be the chairman.

#### ARTICLE 22

This amendment would provide that a disciplinary committee must ordinarily sit in public, unless on the application of the complainant or the practitioner concerned the committee decides to sit privately.

If it does decide to sit privately, the disciplinary committee must state its reasons in writing, and there will be a right of appeal to the Royal Court against its decision.

#### ARTICLE 23

This amendment would provide that where a disciplinary committee sits in public to hear a complaint, it must also give its decision in public unless that decision is to rebuke the practitioner privately.

#### ARTICLE 24(1)(a)

This amendment, which is consequential, would confer on a complainant a right of appeal to the Royal Court against a decision by a disciplinary committee to grant or refuse an application to sit privately to hear a complaint.

#### ARTICLE 24(1)(c)

This amendment, which is also consequential, would confer on a practitioner that same right of appeal.

#### ARTICLE 24(2)

This amendment, which is also consequential, has the effect of stipulating a time limit for bringing any such appeal.

#### ARTICLE 37(2)

This amendment is consequential on the replacement of Article 18.

There are no financial or manpower implications for the States arising from these draft amendments.