
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR EDUCATION TO ASSISTANT MINISTER

Presented to the States on 13th February 2018
by the Chief Minister

STATES GREFFE

REPORT

The Minister for Education, as a neutral act, is stepping aside during an investigation by the Commissioner for Standards (complaint reference: 1/18).

On 9th February 2018, the Chief Minister, in the temporary absence of the Minister for Education, made a Ministerial Decision to delegate wholly the functions conferred upon or vested in the office of the Minister for Education to Deputy A.E. Pryke of Trinity as Assistant Minister for Education (also the Minister for Housing), in accordance with Articles 27, 28, 30 and 30A of the [States of Jersey Law 2005](#) (MD-C-2018-0030, available at www.gov.je).

Deputy A.E. Pryke of Trinity was appointed as Assistant Minister for Education on 22nd June 2016 ([MD-ESC-2016-0018](#) refers).

Article 27 of the States of Jersey Law 2005 permits a Minister to act in the absence of another Minister; and Article 28 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

“27 Power for Minister to act in the absence of another Minister

- (1) The Deputy Chief Minister shall discharge the functions of the Chief Minister during –
 - (a) the temporary absence or incapacity of the Chief Minister; or
 - (b) a vacancy in the office of Chief Minister.
- (1A) If it appears to the Chief Minister that both he or she and the Deputy Chief Minister will or might be temporarily absent or incapacitated at the same time, the Chief Minister may designate another Minister to discharge the functions of the Chief Minister during the period of the Chief Minister’s and Deputy Chief Minister’s absence or incapacity.
- (1B) If –
 - (a) the Chief Minister is temporarily absent or incapacitated;
 - (b) it appears to the Deputy Chief Minister that he or she will or might be temporarily absent or incapacitated at the same time; and
 - (c) the Chief Minister has not, under paragraph (1A), designated another Minister to discharge the functions of the Chief Minister in that event,

the Deputy Chief Minister may designate another Minister to discharge the functions of the Chief Minister during the period of the Chief Minister’s and Deputy Chief Minister’s absence or incapacity.
- (1C) If the Chief Minister is temporarily absent or incapacitated and, at the same time, the Deputy Chief Minister is temporarily absent or incapacitated, but a designation has not been made by either of them under paragraph (1A) or (1B), the functions of the Chief Minister shall, during the absence or incapacity of both of them, be discharged by the Minister described in paragraph (1E).

- (1D) If the office of Chief Minister is vacant, and the person appointed as Deputy Chief Minister is temporarily absent or incapacitated or ceases to hold office as a Minister, the functions of the Chief Minister shall be discharged by the Minister described in paragraph (1E) during the absence or incapacity of the Deputy Chief Minister or, as the case requires, until the next Chief Minister takes office.
- (1E) The Minister is –
- (a) the Minister who has held office as a Minister for the longest period of time;
 - (b) if 2 or more Ministers have held office as a Minister for the same period of time and, disregarding the other or others of them, that period would be the longest period of time – whichever of them has held office as an elected member for the longest period of time; or
 - (c) if 2 or more Ministers –
 - (i) have held office as a Minister for the same period of time and, disregarding the other or others of them, that period would be the longest period of time, and
 - (ii) have held office as an elected member for the same period of time and, disregarding the other or others of them, that period would be the longest period of time,
 whichever of them would be called first in the roll of elected members, in accordance with standing orders.
- (1F) For the purposes of paragraph (1E) –
- (a) a Minister’s period of office as a Minister includes such office held in a previous Council of Ministers; and
 - (b) a Minister’s period of office as an elected member includes such office held in a previously constituted States.
- (2) **The Chief Minister may, during the temporary absence or incapacity of a Minister or a vacancy in the office of Minister –**
- (a) personally discharge the functions of that Minister; or
 - (b) **designate another Minister to discharge the functions of that Minister.**
- (3) **The functions that a Minister may discharge under this Article shall include the power to make enactments.**
- (4) **The temporary discharge by one Minister of the functions of another Minister shall not affect any delegation made by that other Minister under Article 28.**

[emphasis added]

28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
 - (a) one of his or her Assistant Ministers;
 - (b) an officer.

- (1A) A Minister shall not delegate to an Assistant Minister any function the delegation of which is wholly prohibited by an enactment.
- (1B) Where a Minister delegates to an Assistant Minister a power to make an enactment, paragraphs (4) and (5) of Article 26 shall apply to the making of an enactment by the Assistant Minister, in exercise of the delegated power, as they would apply to the making of the enactment by the Minister.
- (2) A Minister 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 a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (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 –
 - “Minister” includes the Chief Minister;
 - “officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.
- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

“30 Ministerial delegations to be presented to States

- (1) A Minister who delegates functions under Article 28 shall present to the States a report specifying the functions delegated and to whom.
- (2) A Minister shall not be required to present a report under paragraph (1) where the delegation is so immediate and of such brief duration that it is not practicable to present the report before the delegation ends.

30A List of delegations to be published

- (1) The Chief Minister shall cause to be established, maintained and published a consolidated list of –
 - (a) the functions for the time being discharged by the Chief Minister and by each Minister;
 - (b) the functions for the time being delegated by the Chief Minister and each Minister under Article 28, and to whom.
- (2) The list shall also specify which Minister is discharging, for the time being, the functions of another Minister under Article 27(1) or (2).

- (3) The information described in paragraph (1)(b) or (2) is not required to be incorporated in the list where the period for which the delegation has effect or for which one Minister's functions are being discharged by another is so immediate and of such brief duration that it is not practicable to amend and publish the list to incorporate the information before the end of the period.
- (4) It shall be sufficient if the list is published on a website."