

STATES OF JERSEY



DRAFT STATES OF JERSEY (AMENDMENT No. 5) LAW 200- (P.122/2008): COMMENTS

**Presented to the States on 8th September 2008
by the Council of Ministers**

STATES GREFFE

COMMENTS

Background

Members will recall that at the end of 2006, the Privileges and Procedures Committee (PPC) was requested by the States to prepare a Report on the first 12 months of Ministerial Government, and appointed a Sub-Committee of 3 of its members to undertake this task – Connétable D. Gray, the Chairman, Senator M.E. Vibert, and Deputy J. Gallichan of St. Mary.

The Sub-Committee published its Report on 9th November 2007 which lays out a number of recommendations to be undertaken.

The Council of Ministers is pleased to note that, following consultation with States departments, Scrutiny and other stakeholders, PPC has completed the first phase of its deliberations and has lodged amendments to the States of Jersey Law 2005 (P.122/2008, attached as an Appendix to these Comments).

Article 2– Suspension of Minister in respect of whom a proposition for dismissal is to be lodged

It is of some concern to the Council of Ministers that that current situation does not allow for an interim resolution in the event of a serious breakdown in Ministerial co-operation. This is a matter that could have potentially very serious consequences if any future event caused a Minister to be unable to discharge his/her duties but unwilling to relinquish office.

The Council of Ministers is therefore pleased to support the amendments to the Law lodged by PPC, which it believes should rectify this situation.

Article 3 – Delegation of functions by Ministers

The Council of Ministers has noted the requirements outlined in Article 30A concerning the delegation of functions by Ministers and supports PPC's suggested amendments to the Law.

Article 4 – Remuneration of elected members – pension provision

The Council of Ministers has noted that PPC's amendment does not in any way mean that a pension system should necessarily be introduced. This is a decision that will need to be made by the States Members' Remuneration Review Body when it reports on remuneration levels for 2009 and beyond.

The Council of Ministers is therefore pleased to support the amendments to the Law lodged by PPC.

STATES OF JERSEY



DRAFT STATES OF JERSEY (AMENDMENT No. 5) LAW 200-

Lodged au Greffe on 29th July 2008
by the Privileges and Procedures Committee

STATES GREFFE



**DRAFT STATES OF JERSEY (AMENDMENT No. 5)
LAW 200-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chairman of the Privileges and Procedures Committee has made the following statement –

In the view of the Chairman of the Privileges and Procedures Committee the provisions of the Draft States of Jersey (Amendment No. 5) Law 200- are compatible with the Convention Rights.

(Signed) **Connétable D.F. Gray of St. Clement**

REPORT

Article 2 – Suspension of Minister in respect of whom a proposition for dismissal is to be lodged

Article 2 inserts a new Article 21A in the States of Jersey Law 2005.

The report 'Machinery of Government Review', R.105/2007 (re-issue) was presented to the States by the Privileges and Procedures Committee on 9th November 2007 setting out a number of recommendations to make improvements to the ministerial system of government. The review was undertaken by a sub-committee of PPC, and concluded its evidence-gathering on the first 12 months of the operation of the ministerial form of government early in 2007, before the events of the summer of 2007 relating to the Minister for Health and Social Services occurred. The sub-committee nevertheless considered the lessons to be learnt from these events.

The sub-committee did not believe it was satisfactory that a Minister should be able to continue performing his duties after the Chief Minister had decided to lodge a proposition for his or her dismissal, and this view was shared by the Council of Ministers during the consultation that followed the publication of R.105/2007. Once the relationship between a Minister and his or her ministerial colleagues has broken down to the extent that the Chief Minister is seeking the dismissal of the Minister concerned, it seems inappropriate that the Minister, who may have extensive statutory powers and duties, should continue to carry out his duties; but should instead be suspended until the States make a decision on his/her dismissal.

The duties of the suspended Minister would either be carried out by the Chief Minister himself or herself or delegated by the Chief Minister to another Minister, in accordance with Article 27(2) of the States of Jersey Law 2005. In practice, a proposition to dismiss a Minister requires a 2 week lodging period, and would normally be debated at the soonest possible meeting, as it would be unsatisfactory for a situation of, 'de facto' no confidence, to continue. It should be noted that the proposed new Article 27(4) provides that the Minister's suspension will cease if the Chief Minister does not lodge the necessary dismissal proposition within 3 working days to ensure that a Minister cannot be suspended for an unduly long period before the States debate.

Article 3 – Delegation of functions by Ministers

Article 3 substitutes current Article 30 and inserts a new Article 30A in the States of Jersey Law 2005.

During the above Machinery of Government Review, the sub-committee noted confusion as to who was responsible for general and statutory functions during the temporary, or longer term, absence of the Minister. The manner in which Assistant Ministers are delegated to act for Ministers in their absence is also somewhat unclear. In practice, most Assistant Ministers deputised for their Minister when he or she was unwell or out of the Island. In most cases this extended across the entire spectrum of ministerial responsibility, although there are certain matters that cannot, in law, be delegated to an Assistant Minister. These include, importantly, the ability to make Orders and, in the absence of a Minister, these must be made by the Chief Minister or another Minister appointed by the Chief Minister to undertake the functions of the absent Minister.

The publication of delegation of functions is not very straightforward –

- Under Article 30 of the States of Jersey Law 2005 as currently drafted, the Chief Minister has a duty to maintain a list of responsibilities carried out by Ministers and Assistant Ministers and the functions exercisable by them. This report is an overarching report which is not detailed, and which might not be up to date as time wears on in the life of the Assembly.
- In addition, each Minister publishes a report in the 'R' series when statutory functions have been delegated. This has not been a statutory requirement but has been considered to be the most effective way forward. For a number of departments, several of such reports exist.
- Delegations of general areas of activity will be recorded in a Ministerial Decision which will be available on the www.gov.je website (and again there may be more than one) and will be a matter of public record.
- Temporary delegations have not been recorded.

As there are a number of documents in a number of places setting out the delegations, it is difficult therefore track down and verify all the functions delegated by a Minister to an Assistant Minister.

The purpose of the amendment is to provide that –

1. When statutory functions are delegated, they must be reported to the States Assembly (except that very short-term delegations do not need to be reported). This reflects the current practice but makes it a formal statutory requirement.
2. The Chief Minister shall establish and maintain a published list of the functions of each Minister, and of the functions which have been delegated to others. This will provide that there is one list in one place that will give all the necessary information on delegated functions.
3. This list may be published and maintained on a website. In practice it is intended that the list will be published on a website so that it will be capable of being updated simply and will be easily accessible.

Article 4 – Remuneration of elected members – pension provision

Article 4 amends Article 44 of the 2005 Law.

Following an amendment adopted during the debate on the original States of Jersey Law 2005, Article 44 was drafted so as to ensure that all States members would receive equal remuneration, regardless of official responsibility. The Article currently reads as follows –

44 Remuneration of elected members

No scheme, agreement or other arrangement whatsoever for the remuneration of, or the payment of any allowance to, elected members out of the general revenue of the States shall provide for different elected members to receive different amounts of remuneration or allowance.

When the States Members' Remuneration Review Body reported in 2005 it made it clear that, although it might have wished to make recommendations on a possible pension provision for States members, it did not feel able to do so because Article 44 precluded this and the Body did not think it was appropriate to make recommendations that were contrary to an existing statutory requirement (the Body had received legal advice that any pension scheme would almost certainly fall foul of Article 44 because the Body had received advice from a pensions expert that any formal pension scheme would require different contributions for different members because of the age range of members).

In response to the Body's views PPC lodged an amendment to the Law in 2006 to repeal Article 44 (P.126/2006) but that was rejected on 16th January 2007 by 23 votes to 28. It was clear during the debate that the main concern of those opposing the repeal was that the absence of Article 44 would lead to the possibility of differential pay for Ministers and other officeholders. The current amendment to Article 44 is therefore restricted to one single matter which is pension provision.

PPC wishes to stress in the strongest terms that, at this stage, the amendment does not in any way mean that a pension scheme should necessarily be introduced. However, the amendment will enable the States Members' Remuneration Review Body to consider this matter and make appropriate recommendations for consideration by the States when it reports on remuneration levels for 2009 and beyond later this year.

Financial and manpower implications

In order to provide an up-to-date list of all delegated functions, there will be a need to maintain an electronic list on the www.gov.je website. The resource implication should nevertheless be minimal and the change can be undertaken within existing resources.

The amendment to Article 44 enables the SMRRB to consider the issue of pensions. Any proposal to actually implement pension provision for elected members, which could have significant financial implications, would be the subject of a separate proposition.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 28th July 2008 the Chairman of the Privileges and Procedures Committee made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chairman of the Privileges and Procedures Committee the provisions of the Draft States of Jersey (Amendment No. 5) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 defines the States of Jersey Law 2005 as the “principal Law”.

Article 2 inserts a new Article in the principal Law.

21A Suspension pending dismissal

Article 21(5) to (7) of the principal Law already provide that the Chief Minister may, with the agreement of the majority of the Council of Ministers, lodge a proposition for the dismissal of a Minister. This new Article describes the consequences that may follow once the majority of the Council of Ministers have given that agreement.

This Article empowers the Chief Minister to suspend the Minister whose dismissal is being sought. From the time that the Chief Minister does so, the Minister who is suspended ceases to have any of the powers of his or her office. The Chief Minister is under an obligation to inform persons affected by the suspension of it, but is not required to do so before the suspension takes effect.

The suspension remains in place until the proposition for dismissal is voted upon or withdrawn. In addition, if the Chief Minister, having suspended the Minister, then delays in lodging the proposition for dismissal, the suspension will end after 3 working days. This is to ensure that the Chief Minister cannot suspend a Minister indefinitely, without the matter being debated by the States.

Whilst a Minister is suspended, the Chief Minister can discharge the functions of that office personally or designate another Minister to discharge them.

Article 3 substitutes Article 30 of the principal Law. Currently, Article 30 requires the Chief Minister to establish, maintain and publish a list of Ministers and Assistant Ministers and the functions exercisable by each of them. The substituted Articles are as follows –

30 Ministerial delegations to be presented to States

This Article codifies a practice already adopted by Ministers by requiring them to present to the States a report of any functions delegated by them, and to whom. A report is not required if the delegation is spontaneous rather than pre-planned and will be in place for such a short period of time that the delegation will have ended before the report is presented.

30A List of delegations to be published

This Article expands upon the duty currently imposed on the Chief Minister by the existing Article 30. The Chief Minister is charged with maintaining an up-to-date list containing the following information –

- the functions for the time being delegated by Ministers and
- in the event of the absence, incapacity or suspension pending dismissal, of a Minister or in the event of a vacancy in the office of a Minister, the name of the other Minister who is, for the time being, discharging the functions of the first-mentioned Minister's office.

It would be sufficient for the information to be published on a website. There is no requirement to publish if the delegation or 'standing-in' of one Minister for another is spontaneous rather than pre-planned and will be of such brief duration that it will have ended before the information can be published.

Article 4 relaxes the rule that all States members shall receive the same remuneration and allowances. It allows different amounts of pension contributions to be made, whether directly or by way of allowance to the States member concerned, in respect of different States members.

Article 5 provides for the citation and commencement of this draft Law.



**DRAFT STATES OF JERSEY (AMENDMENT No. 5)
LAW 200-**

A LAW to amend further the States of Jersey Law 2005

<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 –

1 Interpretation

In this Law, “principal Law” means the States of Jersey Law 2005¹.

2 Article 21A inserted

After Article 21 of the principal Law there shall be inserted the following Article –

***21A Suspension pending dismissal**

- (1) This Article applies where the Chief Minister has obtained agreement, in accordance with Article 21(6)(b), to the lodging of a proposition for dismissal of a Minister.
- (2) The Chief Minister may, on or after obtaining that agreement, suspend the Minister, with immediate effect.
- (3) The Chief Minister shall take steps, as soon as possible, to inform the following persons of the suspension –
 - (a) the Minister suspended;
 - (b) other States members; and

- (c) States employees working in any administration of the States for which the suspended Minister is assigned responsibility.
- (4) The suspension shall cease to have effect in the event that the Chief Minister does not, before the expiry of the period of 3 working days commencing on the day after the suspension takes effect, lodge the proposition for the Minister's dismissal.
- (5) The suspension shall otherwise have effect until the time when the proposition for dismissal is voted on or otherwise withdrawn.
- (6) Whilst the suspension is in effect –
 - (a) the Minister shall not have any of the powers or otherwise discharge the functions of, his or her Ministerial office; and
 - (b) Article 27(2) to (4) shall apply as if the office were vacant.
- (7) In this Article, 'States' employees' shall be construed in accordance with the Employment of States of Jersey Employees (Jersey) Law 2005².

3 Article 30 substituted

For Article 30 of the principal Law there shall be substituted the following Articles –

***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.”.

4 Article 44 substituted

For Article 44 of the States of Jersey Law 2005 there shall be substituted the following Article –

“44 Remuneration of elected members

- (1) No scheme, agreement or other arrangement whatsoever for the remuneration of, or the payment of any allowance to, elected members out of the consolidated fund shall provide for different elected members to be entitled to receive different amounts of remuneration or allowance.
- (2) In paragraph (1), ‘remuneration’ does not include payments out of the consolidated fund –
- (a) into a superannuation fund or pension scheme, for the benefit of an elected member;
 - (b) to an elected member, as an allowance in respect of his or her contributions to a superannuation fund or pension scheme for his or her benefit”.

4 Citation and commencement

This Law may be cited as the States of Jersey (Amendment No. 5) Law 200- and shall come into force 7 days after it is registered.

¹ *chapter 16.800*
² *chapter 16.325*