

STATES OF JERSEY



JERSEY SPORT: ESTABLISHMENT (P.21/2017) – COMMENTS

**Presented to the States on 22nd May 2017
by the Economic Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Panel first became aware of the current Proposition on receiving a letter from the Assistant Minister for Economic Development, Tourism, Sport and Culture (“EDTSC”) with responsibility for Sport, Connétable S.W. Pallett of St. Brelade, on 23rd February 2017. During a meeting with the Assistant Minister the following day, he outlined the need for the Proposition, telling members that this arose from a re-appraisal by Department Officers of the implications of [P.170/2010](#) (‘Shadow Boards and Ministerial Boards: approval by the States’). It was explained that previously, the view had been taken that States’ approval was not needed to establish the Board for Jersey Sport Limited, but re-examination and advice obtained as the Partnership Agreement was being prepared suggested that this might not be correct. The Proposition was therefore intended to enable the establishment to be formally approved.

Panel members considered the matter further at a meeting on 1st March 2017, by which time copies of the draft Proposition had been received. Members were concerned that the rather sudden appearance of the Proposition might suggest that preparations for the launch of Jersey Sport had been rushed. The Chairman wrote to the Assistant Minister on 2nd March, noting that the Panel had no reason to doubt the potential benefits to sport of establishing the new organisation, and would not look to review the principles behind the establishment of Jersey Sport, but that it did have concerns about process, the structure of the organisation, and how the new body would interact with the Department in terms of a partnership agreement, policy setting, performance indicators and monitoring. The letter advised that the Panel intended to carry out a review of the establishment of Jersey Sport, focusing on these points.

The Panel held a further meeting with Department officers and the Assistant Minister on 8th March, where members were told of progress with the new organisation. Members heard that in the first year of operation (2017) there would be a period when no Business Plan would be in place for Jersey Sport Limited, although during this transition period, key performance indicators would be included in the Partnership Agreement. The Panel therefore requested details of the Trust documents and the draft Partnership Agreement as evidence for its review.

It was agreed that the Department would aim for the Proposition to be debated on 23rd May 2017; the Panel hoped to be able to complete its review by then, by prioritising this work over other commitments. A package of evidence containing the documents requested was received on 13/14th March, and [P.21/2017](#) was subsequently lodged *au Greffe* by the Minister for Economic Development, Tourism, Sport and Culture on 31st March 2017.

Panel concerns

Having examined the evidence supplied by the Department in detail, including the Declaration of Trust (already signed) establishing the Jersey Sport Development Trust; the proposed Articles of Association of Jersey Sport Limited (agreed and signed pending States’ approval of this Proposition); and a draft Partnership Agreement between Jersey Sport Limited and the Economic Development, Tourism, Sport and Culture Department, the Panel identified a number of concerns. A meeting was requested with the Minister and Assistant Minister to discuss these on 8th May.

The Panel's primary concerns with the documents reviewed were as follows.

1. Declaration of Trust

- The Jersey Sport Development Trust was established as a Non-Charitable Purpose Trust on 3rd January 2017.
- The signed Declaration of Trust had no link, formal or otherwise, with the States of Jersey.
- It was presumably intended that all meaningful actions would be conducted through the Company (Jersey Sport Limited) to be established under the Trust, and thus be guided by the Partnership Agreement between the Company and EDTSC; the Trust would effectively be a holding mechanism for the shares of the Company, with no actual power of its own.
- However, the Trust Instrument gave certain powers to Trustees and the Enforcer to act, if so minded, without consulting with any States department or any reference to the States.

The Panel was particularly concerned at the absence of any formal or binding documents or agreements requiring the Trustees or Enforcer to consult with the Minister or his Department before exercising their powers. While seen as more of a theoretical risk than a likely problem, technically it would be possible for Trustees under those arrangements to change (for example) the purposes of the Trust, quite legally, without reference to the Minister. With no direct link to the Enforcer either, the only sanction available to the Minister and his Department would be (retrospectively) to withhold the next portion of grant allocation.

At a time when effective governance and the control of public funds are more than ever in the public gaze, the Panel felt that 'in extremis' some power of intervention should be available to the Minister. It was therefore suggested that the Minister should be appointed as the Enforcer to the Trust, an arrangement previously used for Jersey Finance. This would confer the power to remove and appoint Trustees if required, although it is anticipated that this power would only be exercised in exceptional circumstances. The Trustees would effectively retain full independence in other respects, although it was also felt advisable that some more fundamental powers should only be exercised with the consent of the Enforcer.

2. Need for a Memorandum of Understanding

There was also no link between the Settlement and the Company acting through its Board of Directors. The Panel considered that this should be remedied by the agreement of a Memorandum of Understanding or similar document setting out certain minimum requirements, including responsibilities of the Trustees, and information expected to be provided to the Trustees by Directors of the Company. The Panel made some suggestions as to what matters should be included in the document.

3. Articles of Association of Jersey Sport Limited

Members will note that the Articles were signed on 13th January 2017, shortly after the Trust was established. The Panel found it somewhat concerning that the need for States' approval was not recognised until after this had taken place. However, the Panel found little to take issue with in the Company Articles of Association. Members were advised that Article 16 had been amended shortly prior to the Panel's involvement to exclude the payment of any remuneration to Directors other than justifiable expenses; Members may notice that Appendix 2 to the report on the Proposition is a copy of the earlier, un-amended version. Some further (mostly minor) changes were proposed by the Panel, in particular an amendment to strengthen the existing Articles by inserting a requirement that Company accounts be audited.

4. The Partnership Agreement

The Panel considers this to be a crucial document, particularly in the transition period from existing arrangements for Sport under the control of the States to the new arm's-length organisation. The Company will effectively be wholly independent, while receiving its funding from a States' grant. Assuming the States approve the establishment of the Company, until the first Business Plan is agreed and comes into effect at the beginning of 2018 the Partnership Agreement will be its operating manual. It will set out overall objectives and strategic priorities, as well as putting in place key performance indicators and targets.

The Panel was therefore concerned to find that the draft Partnership Agreement initially supplied for inspection did not appear fit for purpose, due to a number of errors and various issues with the content. It was understood that this was an early draft, so shortly prior to the meeting with the Minister on 8th May an updated version was requested and received. This version contained some amendments, but in the Panel's view still presented significant problems. The Partnership Agreement was therefore discussed in great detail during the meeting, with numerous amendments being suggested to strengthen and improve the document.

Concerns of the Panel included a lack of clarity in the definition of strategic priorities, which were felt in some cases to need amendment to make them more meaningful and attainable. There was also considered to be room for much improvement in the area of deliverables and performance indicators, which in their draft form appeared to be poorly defined and lacking in rigour.

A specific point in the Partnership Agreement which caused the Panel some concern related to Schedule 4, covering the 2017 Annual Grant, payments and pre-conditions. Payment 1 in the Grant Payment Schedule in the first draft seen was shown as £200,000; in the revised draft discussed on 8th May this sum had risen to £500,000. When the Panel queried this, the explanation given was not clear, and members asked the Department to review the figures. Subsequently the amount was again reduced to £200,000, but on checking once more on 17th May the Panel was told that the figure might need to be further amended to £250,000. At the time of writing the final amount was not known.

Members were also concerned by the original wording of Schedule 4 regarding grant payments and pre-conditions. While it appeared that the intention was to allow the Department some discretion in its ability to approve payments, the Panel considered that in some instances this went too far, and could have the unintended effect of weakening controls on grant payments.

Outcome of meetings

Following discussions on 8th May the Department undertook to take note of all the Panel's comments and consider possible amendments, where necessary with the benefit of qualified advice. A further meeting was held with the Assistant Minister on 17th May to discuss the advice received by the Department and its resulting position on the Panel's observations, and to seek agreement on a way forward.

Without going into exhaustive detail of minor amendments (of which some remain to be confirmed – see points 2 and 3 below), consensus was reached on the following key issues –

1. The Panel's concern about a lack of connection between the Trust and the Department has been addressed by an agreement to appoint the Minister as Enforcer. While that may not be achievable in time for the debate, the Panel has received a firm undertaking from the Assistant Minister that the change will be made, and is satisfied with this.
2. A Memorandum of Understanding between the Trust and the Company will be put in place taking into account points raised by the Panel. As this has not yet been seen, the Panel expects to be given the opportunity to review the content before it is finalised.
3. The Partnership Agreement has been significantly improved and strengthened following discussions. The Assistant Minister also undertook to provide a copy to States Members prior to the debate. Given that the latest draft was only received on 17th May, it was agreed that the Panel would continue to work with the Department to ensure that any remaining issues are addressed before the Agreement is signed.

Conclusion

The Panel is pleased to have completed this review within tight time constraints. Ideally, members would have preferred to present these Comments earlier, but given the discussions still taking place as recently as 17th May, this was not possible.

Members consider that the review has highlighted some issues from which useful lessons can be learned. The urgency of the current Proposition could be seen as something of an oversight in preparations for the new body, although the Department might prefer a different interpretation. That said, the original intention was for Jersey Sport Limited to be up and running before now. With this in mind, the Panel was surprised to find that a document as important as the Partnership Agreement still needed considerably more work, although before the Panel began to review it in detail, the Department was apparently seeking to finalise it with the Jersey Sport Shadow Board.

Changes agreed as a result of the review should strengthen the overall structure and improve governance for the new organisation. However, documentation on its own cannot guarantee results. Trust, Company and Department will need to work closely together to ensure that Jersey Sport Limited develops into a successful independent body with grant funding from the States. Protection of the States' interests will rely to a large extent on effective monitoring of the Partnership Agreement and appropriate Annual Business Plans agreed between the Company and the Department.

There is still some work to be done to finalise and implement the agreed changes, and the Panel looks forward to assisting in this to see the task completed. Members believe that good co-operation between the Department and the Panel has improved the arrangements proposed for the new organisation for Jersey Sport at both Trust and Company level. Most importantly, the Panel considers that these now offer greater protection for the States' interests, while not compromising the essential independence of the new organisation. Panel members will be supporting the Proposition.