

STATES OF JERSEY



DRAFT STATES OF JERSEY (TRANSFER OF FUNCTIONS No. 8) (MISCELLANEOUS TRANSFERS) (JERSEY) REGULATIONS 201- (P.46/2015): COMMENTS

**Presented to the States on 4th December 2015
by the Economic Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

Members will be aware that the Economic Affairs Scrutiny Panel's involvement in the review of P.46/2015 only came about very recently. Recognition that the workload of the Corporate Services Scrutiny Panel would ultimately prevent it from completing a planned review into all aspects of the Transfer of Functions led to an offer from Economic Affairs to look at the proposed transfers that relate to its remit; it was agreed that this would include transfers both into and out of the Economic Development Department, namely –

- **Sport and Culture** from Education, Sport and Culture (ESC) to the Economic Development Department (EDD) (whose Minister would be renamed the Minister for Economic Development, Tourism, Sport and Culture)
- **Digital, Innovation and Competition** from the Economic Development Department to the Chief Minister's Department

Corporate Services Scrutiny Panel review

As the Corporate Services Scrutiny Panel had already carried out work (with the help of an adviser) on the transfer of Jersey Property Holdings from the Minister for Treasury and Resources to the Minister for Transport and Technical Services (to be renamed the Minister for Infrastructure), and had also consulted with the industry in respect of the transfer proposed for Fisheries and other Aquatic Resources from the Minister for Economic Development to the Minister for the Environment, it was agreed that those aspects would be reported on separately by that Panel.

Timing of the review

The proposition was referred back to the Economic Affairs Panel for scrutiny at the States Sitting on 20th October, following a short preliminary debate on the principles. Scoping and terms of reference were subsequently approved by the Chairmen's Committee and the review commenced on 9th November. This gave the Panel the challenge of carrying out an urgent review and presenting its findings to the States inside 5 weeks. In order to meet this timetable the Panel issued a set of background questions to each of the departments involved, seeking evidence which could then be followed up at a series of hearings on 23–24th November. Given the tight deadlines it was considered impractical to seek formal representations from stakeholders outside States departments, or members of the public.

The Panel is aware that because of these time constraints its review is very limited in scope. It has attempted to ensure that some degree of scrutiny has been applied to the proposed transfers before the debate, although in different circumstances members would have preferred the opportunity for a lengthier and much more detailed review.

Rationale for the transfers

The Panel's terms of reference focused on establishing the rationale behind the Chief Minister's proposed portfolio changes, and confirming the extent and effectiveness of any work carried out to prepare for them. Members were aware through contact with

the Corporate Services Scrutiny Panel that previous enquiries along these lines had met with the response that the transfers were the result of a political decision by the Chief Minister, rather than being based on any specific research or background work. However, the Panel was still somewhat surprised to learn from the initial responses to questions sent to departments that no background analysis, reports or business cases had been prepared in advance of the transfers being proposed; nor has the Panel seen any evidence of such work being carried out since the proposition was lodged.

Panel members had assumed that proposals to transfer responsibilities and budgets amounting to several millions of pounds and over a hundred staff between departments would have been supported by some degree of research and preparation to investigate potential advantages, disadvantages and any practical issues associated with the moves, and whether they were likely to bring any long-term benefits, before any final decisions were taken. However, it appears that no such work was done. This clearly gives cause for concern that if the transfers are progressed effectively on an *ad hoc* basis there may be unanticipated and unintended consequences.

Sport and Culture

The Panel held its first public hearing with the Minister for Education, Sport and Culture on 23rd November, which was also attended by the Assistant Minister with responsibility for Sport, Connétable S.W. Pallett of St. Brelade, and the Director of Education.

The Minister explained his view that there needed to be a greater focus purely on Education, and that as Assistant Minister previously he had come to see the difficulties posed particularly by having the responsibility for Sport within the same department. This affected the time and opportunity available to focus on other matters, and also required consideration of matters such as where funding was allocated for grants, which took up a lot of the Minister's time. He considered that there was also a need for a new perspective on Culture, and was confident that Sport and Culture would retain a major role in schools, while in the wider arena both areas would benefit from being championed by their respective Assistant Ministers.

The Assistant Minister expressed enthusiasm and confidence in the changes already ongoing in the area of Sport, feeling that there were opportunities to increase levels of participation outside schools still further with the benefit of the expertise available from Economic Development. Within schools, he did not see a commercial element to the delivery of sport, but considered that it would be enhanced by the development of a physical literacy programme. He was positive about the creation of a new independent body (Jersey Sport) to advise on sports development and create a new vision for sport in the Island going forward.

With respect to facilities, there would be little change, although all facilities would move from ESC to EDD. The Panel was reassured to hear that a Memorandum of Understanding was being drafted to ensure that head teachers would retain control over facilities at Sports Centres such as Oakfield and Langford from before school until after school hours, so that school timetables would not be affected by other users. The Minister agreed to share the draft with the Panel, although at the time of writing the Panel had not seen it.

The Assistant Minister was also enthusiastic about the work being done within EDD to assist sports clubs putting on events, saying that an enormous amount of work had already been done in the last 10 months, rather than 'sitting in an office and working on the grand scheme of things'.

With regard to culture, the Director of Education described a programme already in development for schools to offer pupils a 'Cultural Passport', whereby all schoolchildren would have an entitlement to certain cultural experiences. This would be produced working very closely with Jersey Heritage. The Minister also confirmed that the department had liaised with Jersey Heritage and various bodies such as the Opera House, the Art Centre, and the Arts Trust, to discuss the transfer of Culture to EDD and answer their questions.

Minister for Economic Development

The Panel's second public hearing on 23rd November was with the Minister for Economic Development, also attended by Assistant Ministers Connétable Pallett and Deputy M.J. Norton of St. Brelade and the Chief Officer, Economic Development Department.

The Minister stressed the importance of ensuring that the development of sports and sporting events contributes to the Island's economy. The aim was to get the full community engaged, but to make sure that the Island as a whole gets 'maximum potential and benefit from the economic opportunities over and above the community benefits'.

Challenged on the question of where social responsibility came into the picture, he stated that social responsibility was taken 'as read', that sport would still play a very important part in the community and the school curriculum; but for the first time the Island would have a comprehensive strategy creating new events and opportunities, ensuring that sport would grow as part of our society. This would afford new opportunities for commercial benefit and tourism, bringing people to the Island to watch these events, as well as allowing young local people to participate and help them to get to the top of their sport.

The Minister further explained the roles of new 'arms' length' bodies such as Visit Jersey, Events Jersey and Jersey Sport in creating and marketing a calendar of events. It was intended that this would generate additional interest in both sporting and cultural events, encourage increased commercial sponsorship, and help to raise the profile of sporting and cultural activities taking place in the Island both locally and abroad.

The Panel expressed some concerns at the position of bodies funded by the States, but as non-profit charitable purpose trust structures, only subject to controls through the Minister's ability to approve a business plan. The Chief Officer explained that interaction was much greater than that, and that the Department had close involvement in the work of the current charitable purpose trust (Visit Jersey) on an ongoing basis, including having a representative of the department sitting as a (non-voting) member of the Board. Arrangements would be the same for the new Jersey Sport body, whereas Events Jersey was intended to be much smaller, possibly co-located with Visit Jersey but involving only one or two people, reporting to the Minister for Economic Development. in the first instance.

Digital, Competition and Innovation

The Panel had hoped to hold a public hearing with the Assistant Chief Minister with responsibility for Digital, Competition and Innovation, Senator P.F.C. Ozouf. Unfortunately this was unable to go ahead as he was out of the Island on States business at the time. While the Assistant Chief Minister did provide the Panel with a short statement prior to his departure promising a more detailed response to the Panel's questions, at the time of writing (and despite drawing the lack of a response from his department to the attention of the Chief Minister during the public hearing on 24th November) no written reply has been received to the Panel's questions. As such the Panel can only comment on the Chief Minister's replies during the hearing.

Public hearing with the Chief Minister

In the Panel's final public hearing on 24th November the Chief Minister explained that he had indicated in his nomination paper that change was needed to meet strategic challenges, and had nominated Ministers on the basis of the proposed changes in the portfolio.

In particular he saw a need to focus on improving Education and Skills across the community. With the pressure to reduce budgets applying to all departments it was felt that there needed to be a very clear focus on improving Education, and there was a possibility that the Sport and Culture functions might lose out when funding was prioritised. However, possible synergies were seen between Tourism, Sport and Culture, and there was potential to relocate Sport and Culture within the Economic Development Department, where the Minister had indicated a desire to focus on Tourism and events, with the opportunity to encourage private sector investment.

The Assistant Chief Minister (Senator P.F. Routier) supported the move in respect of Sport, reminding the Panel that there were concerns when it was decided in 2002 to move Sport, Leisure and Recreation to sit within Education that it might lose its focus. He felt that this had eventually proved to be the case, and that it was time for a further change.

Regarding the transfer of Digital, Competition and Innovation out of Economic Development's remit to the Chief Minister's Department, the Chief Minister indicated that the Economic Development Department had long been considered large and unwieldy, with many functions and too big a portfolio. Important initiatives such as the Ports Incorporation had taken up a lot of the department's resources. The move to relocate Digital, Competition and Innovation in the Chief Minister's Department reflected developing synergies between Digital and Financial Services, as well as the need to follow up the review of Competition and enhance support for Innovation.

The Panel queried the change to the original intention to create a new ministry incorporating Financial Services, Digital, Competition and Innovation. The Chief Minister explained that in the context of the new income forecast it was preferable to avoid additional bureaucracy. There were also benefits to be had from putting these functions together in a more compact team, as it would encourage Ministers and Assistant Ministers to work together and bring efficiencies in terms of the support required. The Chief Minister stated that he did not want to create another silo.

Reference was made during the hearing to an external adviser's report on the Digital function, which it was suggested might be possible to provide to the Panel; however this had not been received at the time of writing.

Jersey Heritage

Although the Panel did not make a public call for evidence due to time constraints, it did receive a submission on behalf of Jersey Heritage in the form of a letter from its Chairman, Professor Ed Sallis, setting out the organisation's view of what would constitute the basis of a functional relationship with a department accountable for cultural policy and heritage. The letter highlighted the contribution made by Jersey Heritage to a range of activities governed by States policies, including Education, Planning, Tourism, public records and external relations.

It was suggested that Jersey Heritage could account to any one of a number of States Departments given responsibility for cultural policy, depending on the States decision on the most appropriate arrangement. The letter raised a number of issues that would need to be considered in such a relationship, including a proper understanding of the value of culture, not simply in monetary terms; the importance of the voluntary sector; leadership of stakeholder interests; the status of cultural development within the department; the need for an updated cultural strategy for the States; and the ability to handle potential conflicts with external interests, an example given being the need to reconcile historic environment protection with the needs of the construction industry.

Lack of evidence

Scrutiny Panels normally draw their conclusions and present findings and recommendations based on study of a substantial body of evidence collected during the course of a review. In this case the process has been somewhat different, due partly to timing, but also unusually because despite the fairly significant impact of the Proposition in terms of changes within and between departments, the Panel has seen very little evidence of background work being done to prepare for the Transfer of Functions. Members have been told in hearings that a great deal of time has been spent by senior officers of departments working together, but have not been presented with any evidence of this in the form of reports, minutes or other documentation.

It is assumed that there must in fact be some record of outcomes of discussions that have taken place that the Panel may not have seen, but the approach adopted across departments appears to be a contributory factor in the lack of specific evidence relating to the proposed transfers. Since the Chief Minister indicated his intentions alongside his nominations for ministerial office, swiftly followed up in [R.160/2014](#), it seems that departments concerned have worked under the assumption that the entire package of proposals for the Transfer of Functions would go ahead, despite the fact that this has yet to be put to the test in a States debate. Indeed, some Ministers and Assistant Ministers appear to be proud of the fact that (for once) departments have simply got on with the job in hand, rather than delaying pending the production of costly reports and reviews to justify action.

Conclusions

Rightly or wrongly, this approach has led to a situation where it appears unthinkable that the Transfer of Functions will not go ahead. With this in mind, the Panel's position could have been very difficult had it found strong reasons to oppose the Proposition. However, with some (mostly minor) exceptions or caveats this is not the case.

In the notable absence of more formal evidence, the Panel has been struck by the enthusiasm and positivity demonstrated by relevant Ministers, Assistant Ministers (and senior Department Officers) for the Proposition and what it entails. Given the lack of formal investigation or study by departments to support the case for the changes proposed, they must to some extent be regarded as aspirational, rather than offering a certain prospect of success; but the energy and positive support demonstrated at the political level is encouraging.

Findings

- The transfers proposed reflect and hopefully will contribute positively to a climate of change which the Panel nonetheless recognises may be worrying to some. The Panel itself has some concerns about the pace of developments, particularly around the growing predilection for outsourcing previous departmental responsibilities to arms-length bodies, and more specifically the arrangements whereby their activities will be monitored, funded, and controlled by ministers on behalf of the States.
- The Panel would highlight as a concern the relaxation of democratic accountability and gradual erosion of States control over outsourced activities under the arrangements seemingly favoured by EDD. The growth of non-profit charitable purpose trusts as a mechanism for running these functions involves the devolution of operational responsibility from the Minister to an external Board over which he has no effective control, even if it may include a (non-voting) representative of the department. While the Minister for Economic Development seems confident that this will not lead to problems in the future, the Panel remains to be convinced.
- Previous reviews have identified weaknesses in the Treasury 'shareholder' function in respect of incorporated States-owned bodies, even where a formal Memorandum of Understanding is in place to govern the relationship between parties. This vulnerability seems potentially all the more worrying under trust-based arrangements, where oversight will effectively be decentralised to become the responsibility of individual departments and ministers, and ultimately the minister's powers will hinge on the need to obtain his approval of an annual business plan to provide funding.
- In future under this model the interests of the States may increasingly depend upon goodwill and the good stewardship skills of individual ministers looking after quasi-autonomous bodies, rather than more formal or tangible arrangements for oversight and accountability. It could be argued that these concerns fall somewhat outside the

parameters of this review, as the model will not be significantly affected by changes to individual department responsibilities.

- Nevertheless, the Panel would take this opportunity to raise once again its concerns over the perennial problem of the Board membership of such bodies, and the regular appearance of certain influential individuals amongst them. This was most recently discussed with the Minister for Treasury and Resources in the context of the Panel's review of the Ports of Jersey Incorporation, when he agreed that it was something that should be looked into.
- Given the likelihood that this trend towards external 'quangos' to run the operational aspects of government policy will continue, it seems all the more important to ensure that unelected individuals cannot exercise undue influence over Island affairs through membership of numerous Boards at the same time. The Panel would urge the Council of Ministers to address this problem by whatever means necessary, particularly as it seems unlikely that States approval will be sought in future for membership of Trust Boards. In the Panel's view there should be a (low) limit to the number of such bodies that any individual can sit on at any one time.
- The Panel also has some reservations about the degree to which the transfers reflect the personalities and preferences of individual ministers. While moving responsibilities around government to individuals with a strong interest or capability in a particular area is not unusual or a cause for concern, in a small jurisdiction with a limited number of candidates to choose from this could raise questions about succession planning. If specific responsibilities are heavily 'tailored' to fit individual ministers, what will happen if they move on, or leave the States? The rationale for the new structure needs to be sustainable beyond the influence of individual personalities.
- There may also be concerns if an individual minister's enthusiasm for a particular aspect of their remit (in this case, examples could be particular sports or specific cultural activities) leads to a lack of balance in their approach to a newly restructured department portfolio. In the absence of any background work to identify potential pitfalls such as these, the Panel believes that only time will tell whether the changes proposed are both sustainable and in the best interests of the public of the Island of Jersey.
- During discussions members raised questions around the focus of new arrangements being advanced for Sport. There was some concern amongst the Panel that while school sport appeared to be in good hands, and there was some promise of better outcomes (perhaps involving increased commercial sponsorship) for 'elite' sports and sporting 'stars', it was not clear what additional support there would be for those in the middle ground, for example ordinary club members or individuals with an interest in particular sports, not necessarily aspiring to the level of sporting excellence.
- Members were reassured to learn that the link between Sport and Education will be maintained by retaining the shared roles of the

Assistant Minister to both EDD and Education currently in place, but it remains to be seen how recent policies will be carried through by the creation of Jersey Sport. There was also some discussion about the possible benefit of links between new Sport bodies and Health, although it was recognised that the new hospital might take priority over any such commitment

- Regarding Culture, it was noted that all the existing budgets will be carried across, but there was no real clarity about the future. There appear to be no immediate plans for new cultural bodies, and while an early review of cultural activities is expected to take place there was no indication of a specific direction in mind at present. As such the Panel feels that the future for Culture in the community may be less clear than for Sport. The Panel was impressed by the plans put forward for a new 'Cultural Passport' for Jersey schoolchildren, which appears to be an excellent initiative, but has insufficient information to comment on what benefits if any the transfer of Culture may bring for the general public.
- In the context of uncertainties over the Medium Term Financial Plan (2) beyond the summer of 2016, the Panel questions whether there may be some concerns for the maintenance of grants to clubs and other bodies currently awarded by ESC.
- The Panel considers that it may be helpful in the context of the debate to clarify which Assistant Minister roles will stay and which will go in all departments affected.
- The Panel respects the reasoning behind the Chief Minister's decision not to create a new ministry encompassing the functions of Financial Services, Digital, Competition and Innovation, although it feels there may well be those for whom the importance of the Finance Industry to the Island and the need to demonstrate this abroad might seem to justify a higher profile. There may also be some concern that in lightening the burden on one department whose portfolio was seen as unwieldy, there could be a risk of creating similar problems within the Chief Minister's Department.
- The Panel would take this opportunity to highlight the importance of maintaining the independence of financial and competition regulatory functions from the relevant promotional and policy development areas, which may sit within the area of responsibility of the same department, but must be seen to operate objectively and free of influence to avoid any conflict of interests.
- Finally, also in the interests of clarity, the Panel notes that during the public hearing on 24th November the Chief Minister referred to the findings of the McKinsey Report in explaining the justification for the move of Financial Services to the Chief Minister's Department. The Panel questions whether in the interests of good government it would be appropriate to make that report a public document, rather than continuing to make veiled references to a report that has not even been shared with States Members.