

STATES OF JERSEY

r

DRAFT STATES OF JERSEY (AMENDMENT No. 3) LAW 200

Lodged au Greffe on 10th May 2007
by the Privileges and Procedures Committee

STATES GREFFE



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 3) 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. 3) Law 200 are compatible with the Convention Rights.

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

REPORT

Introduction

This amendment to the States of Jersey Law 2005 is brought by the Privileges and Procedures Committee following discussions with the Chairmen's Committee about the manner in which advisers to scrutiny panels are able to participate in questioning at hearings. As can be seen below the amendment would, if adopted, enable the States to make Regulations in due course to confer similar legal immunity on advisers to that which is currently given to States members and witnesses appearing before the panels.

Background

During the shadow Scrutiny phase, the rôle of advisers to scrutiny panels took various forms in order to trial a number of differing working practices. During the shadow Scrutiny period the experiences and working practices of other jurisdictions were also taken into account.

The analysis of the rôle of advisers prepared for the evaluation of the shadow Scrutiny process was as follows –

Advisor role	Agri-Env.	Water	Waste	GST
Involvement in drafting Terms of Reference	No	No	No	No
Preparation of questions	Yes informally	Yes written questions prepared and submitted	Yes informally	Yes written questions prepared and submitted
Questioning at the hearing	Yes	Yes	Yes	Yes
Giving evidence	No	Yes	Prof. Coggins Yes Prof. Swithenbank No	No
Producing summary and analysis of the evidence received	No	Yes	No	Informally
Producing information briefs	No	Yes technical assessment	Yes	Yes
Assist with the drafting of the review report	No	No	No	Key points only provided

It can be seen clearly from the chart above that during the shadow Scrutiny period, members found it beneficial for advisers to be able to ask questions directly of witnesses at hearings. It should be noted that such questions were generally only asked of independent or technical witnesses and not of States Members.

In preparing its draft Code of Practice, the Chairmen's Committee, at its meeting of 19th May 2006, received advice that it was inappropriate that advisers should be permitted to ask questions under the new system of 'full' scrutiny as, not being Panel members, they would not be covered by any immunity under the States of Jersey Law 2005 and could therefore be exposing themselves to legal action. It was also noted that the U.K. Parliament at Westminster, the Scottish Parliament and the Welsh Assembly^[1] do not permit advisers to ask questions directly of witnesses.

Section 5.4 of the draft Code of Practice (originally lodged as P.101/2006 but then withdrawn) reads–

“Advisers may be used for a range of tasks including technical assessment of evidence, advising on the selection and questioning of witnesses and providing briefing papers for the Panel. Advisers generally attend oral evidence sessions but should not participate in questioning witnesses as they are not Panel members and are therefore not covered by any immunity. An adviser may also be invited in a hearing to act as an expert witness.”

The view of the Chairmen’s Committee, which is shared by the Privileges and Procedures Committee, is that there are likely to be occasions when, on technical issues, an adviser may be better placed to question a witness rather than being obliged to simply pass a note to a member of the panel who then, in practice, would simply need to read out the question. The Chairmen’s Committee does not, nevertheless, believe it would be appropriate for advisers to be able to ask questions of States members and this is reflected in the draft protocol reproduced below.

In order to allow advisers to ask questions in these very limited circumstances it is necessary to ensure that they are protected by appropriate immunity to mirror the present position of States members and witnesses at the hearing and that is the purpose of this minor amendment.

Article 49 of the States of Jersey Law 2005 currently reads as follows –

49 Regulations: powers, privileges and immunities

The States may by Regulations –

- (a) confer on members of committees established by standing orders who are not members of the States immunity from civil and criminal proceedings in their capacity as members of such committees;
- (...)
- (e) confer on persons appearing before any committee or panel established by standing orders immunity from civil and criminal proceedings for words spoken before or in a written report to the committee or panel.

The States have already made Regulations under Article 49 to confer immunity on persons appearing before panels and the PAC as witnesses (the States of Jersey (Powers, Privileges and Immunities, (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006) and, if adopted, this amendment would extend the present Regulation-making power to allow the States to make Regulations to confer immunity on advisers working for scrutiny panels, in their capacity as technical experts. This would permit them to ask questions of persons appearing before the panel although this would, of course, only be at the invitation of the Chairman of the panel.

The Chairmen’s Committee has agreed a draft protocol that could be introduced if this amendment is approved and Regulations subsequently made under the amended Article 49. This protocol would govern the way in which advisers would be able to participate in hearings as is proposed as follows –

1. Question preparation with the adviser will take place in advance of the Panel/ Sub-Panel hearing;
2. At the start of a hearing a witness will be advised that the adviser might ask questions of the witness;
3. Advisers may only ask questions at formal scrutiny hearings, convened by the appropriate Panel or Sub-Panel;
4. Advisers will only ask questions when invited to do so by the Panel/Sub-Panel Chairman. There will be no automatic right for advisers to put questions to witnesses;
5. Advisers may ask questions only of witnesses who are not States Members;
6. Only questions relating to technical matters will be asked by advisers.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this Draft Law.

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 4th May 2007 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. 3) Law 200 are compatible with the Convention Rights.

Explanatory Note

This draft Law enables the States to make Regulations to provide that persons appointed by a States' committee or panel to advise on technical matters have immunity from civil or criminal liability when asking any questions of persons appearing before the committee or panel.



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 3) LAW 200

A LAW to amend further the States of Jersey Law 2005

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Article 49 amended

In Article 49 of the States of Jersey Law 2005^[1] –

(a) in paragraph (e) for the full stop there shall be substituted a semi colon;

(b) after paragraph (e) there shall be added the following paragraph –

“(f) confer on persons appointed by any committee or panel established by standing orders to advise the committee or panel on any technical matter, immunity from civil and criminal proceedings when questioning persons appearing before the committee or panel.”.

2 Citation and commencement

This Law may be cited as the States of Jersey (Amendment No. 3) Law 200 and shall come into force 7 days after it is registered.

[1] *Advisers in these jurisdictions do not sit at the table during hearings but sit behind the Chairman and pass notes as and when the adviser feels appropriate.*

[1] *chapter 16.800*