STATES OF JERSEY

DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201- (P.33/2014): SIXTH AMENDMENT

Lodged au Greffe on 15th April 2014
by the Connétable of St. Mary

STATES GREFFE

1 PAGES 42–43 ARTICLE 3 –

For Article 3 substitute the following Article –

"3 Article 19 amended

In Article 19 –

(a) for paragraphs (3) to (5) there shall be substituted the following paragraphs –

'(3) The Chief Minister designate shall decide and, in accordance with the prescribed procedures and within the prescribed periods, announce his or her decision as to –

(a) the elected members to be appointed as Ministers; and

(b) the Ministerial office to which each of them is to be assigned.

(4) Before making a decision and announcement under paragraph (3), the Chief Minister designate may, in accordance with the prescribed procedures and within the prescribed periods, propose the establishment or abolition of Ministerial offices.

(5) A proposal under paragraph (4) –

(a) must describe the functions of any new Ministerial office; and

(b) must indicate the Minister to whom the functions of any abolished Ministerial office would be transferred.

(5A) The States may not amend a Chief Minister designate's proposal under paragraph (4).';

(b) for paragraph (7) there shall be substituted the following paragraph –

'(7) The Chief Minister designate and the persons decided by him or her for appointment as Ministers are appointed to office upon the conclusion of his or her announcement of his or her decision under paragraph (3).'."

2 PAGES 43–44, ARTICLE 6 –

For Article 6 substitute the following Article –

"6 Article 23 substituted

For Article 23 there shall be substituted the following Article –

‘23 Subsequent appointments, and changes of office, of Ministers

(1) The Chief Minister may, in accordance with the prescribed procedures, propose the creation of a Ministerial office.

(2) The Chief Minister may decide and, in accordance with the prescribed procedures, announce his or her decision –

(a) to appoint an elected member as a Minister (whether to fill a vacancy in a Ministerial office or upon the creation of a Ministerial office);

(b) to appoint an elected member who is already a Minister to another Ministerial office.

(3) Subject to paragraph (4), the Chief Minister must, within the prescribed period, fill a vacancy that has arisen in a Ministerial office.

(4) The Chief Minister shall not be required to fill a vacancy –

(a) if, within the period referred to in paragraph (3), he or she abolishes the Ministerial office by Order under Article 29; or

(b) where, within the period referred to in paragraph (3), the States are required to make a selection under Article 19(1).

(5) An appointment to a new Ministerial office under this Article takes effect upon the office being created by Order under Article 29.

(6) Any other appointment under this Article takes effect when it is announced.’.”.

3 PAGE 45-6, ARTICLE 11 –

In Article 11 in the inserted Article 29A(1) for the words “if a Chief Minister designate’s proposal or decision referred to in Article 19(7)” substitute the words “if, following the approval by the States of a proposal under Article 19(4), the Chief Minister designate’s decision referred to in Article 19(7)”.

CONNÉTABLE OF ST. MARY

REPORT

I attended both of the recent briefings organised to explain the proposals contained within P.33/2014. It became clear during the second briefing that, despite numerous attempts by different parties to find a winning formula for the appointment of the Council of Ministers, the central issue was once again not being tackled head-on by the current proposals, namely the essential need for clear and unshirkable accountability of the Chief Minister.

The difficulties inherent in the States Assembly deciding upon the Council of Ministers

Under the proposals contained within P.33/2014, the Chief Minister Designate would have 3 attempts to secure the agreement of the States Assembly to a proposed Council of Ministers. If the Chief Minister Designate fails on the third attempt to secure the agreement of the Assembly, he/she can decide upon the composition of the Council. So effectively, if all 3 attempts to secure a majority in favour of the proposed Council fail, then the Chief Minister Designate must choose his/her own slate of Ministers and the Assembly must accept this choice. If this were to occur, then an outside observer would surely wonder what purpose the previous 3 proposals, votes and rejections had served, particularly if the final list of Ministers was identical to the very first proposal (or the second or third) so recently rejected by the Assembly.

An alternative might be that, after 3 rejections of the Chief Minister Designate's proposals for a Council, the current procedure might be re-enacted, whereby the Chief Minister would propose his/her choice of Ministers individually and States members would be able to nominate alternatives with a vote being taken in each case. However, if we have this alternative "no change" procedure as a fall-back position, then we do nothing at all to improve the accountability of the Chief Minister. The argument would always exist that whilst a Chief Minister was doing their best to carry out the pledges that had been made, the performance of the Executive was being impaired because they were trying to do this with a Council of Ministers not of their own choosing.

The proposal put forward in the final report of the machinery of government review, but which ultimately did not win through to the final draft Law, was that the Chief Minister Designate would have 3 attempts at proposing a slate of Ministers and, if after the third attempt the Assembly had not voted in support of his/her choice, then the Chief Minister Designate would fall and a new election for Chief Minister would follow. However, experience has shown that the election for Chief Minister can be a close run affair. In a case where there are only a handful of votes between the winning and second-placed candidates, tactical voting in the "3 strikes and you are out" procedure could allow results to be manipulated in order to secure a further ballot for Chief Minister. This would surely bring the process into disrepute, quite apart from the fact that the cycle could be repeated several times, leaving the Island without an Executive for an extended period.

The inherent contradiction at the heart of all these proposals arises from an attempt to seek to reconcile the need for the Chief Minister to select a Council in which he/she has confidence, and so can be held to account for, whilst maintaining the position whereby the Assembly decides upon the appointment of Ministers. These contradicting objectives can be traced back to the Clothier review, which suggested that the Chief Minister would choose his/her team of Ministers which he/she would

present to the States for approval. These 2 objectives can be reconciled to some extent at the start of an appointment process, but the need for a conclusive end to the process highlights the inherent contradiction of this position.

Improved accountability through the Chief Minister deciding upon the appointment of Ministers

Looking at all these options dispassionately, they are all flawed, and it seems that the only way to ensure that there is a straightforward outcome which ensures that the Chief Minister can be held fully accountable for the performance of the Council is simply to allow him/her to appoint Ministers without seeking a decision from the Assembly, as proposed in this amendment.

In the UK, the Prime Minister advises the Sovereign on the exercise of prerogative powers in relation to the appointment and dismissal of other Ministers – this constitutional convention ensures that the Prime Minister can choose his/her own team of Ministers. The Scottish and Welsh governments follow the same approach, with the respective First Ministers appointing their own team of Ministers, with the approval of Her Majesty. This practice is not confirmed to party political systems, as the Chief Minister in the Isle of Man also selects his/her own team of Ministers. This amendment would achieve the same end result as current practice in the UK, Scotland, Wales and the Isle of Man.

This might seem a very bold step. However, if we look at the circumstances that would surround such an appointment, it is not an unreasonable one.

After all, by this point in the proceedings, the Assembly will have decided on a Chief Minister. His/her aims and objectives will have been published and the Assembly will have had the opportunity to pose questions and judge the veracity of the answers provided. The Assembly is effectively already beginning to gather evidence regarding the Chief Minister Designate's intentions and this evidence can be used subsequently to challenge performance.

Also, the States Assembly does not lose the ability to directly challenge underperforming Ministers. The States of Jersey Law 2005 will retain Article 21(3)(c) which provides that, if a motion of no confidence in a Minister is adopted, then that Minister will cease to hold office.

This amendment also changes the method for the filling of casual vacancies in the office of Minister to bring this into line with the revised Ministerial appointment process. I believe a questioning period is still essential, even when there will be no vote, for the reasons outlined below.

The Assembly would continue to decide upon changes to Ministerial offices

In many respects, the structure of the Council will be as important as the membership. In contemplating this amendment, I initially thought that the Chief Minister should also have the opportunity to create, modify and abolish Ministerial posts without seeking the approval of the Assembly. However, in taking soundings on this point, it became clear to me that this would not be desirable. I am supportive of the move to introduce collective responsibility, having seen how effectively this works in other jurisdictions, and on reflection I feel that if this is adopted, then the Assembly should

be able to regulate the establishment of new Ministerial offices, and so control the maximum number of members who can be bound in this way on all affected votes by virtue of being Ministers. This amendment therefore ensures that it is the Assembly who decide upon the creation of proposed Ministerial offices, whilst it is the Chief Minister who appoints States members into those offices. The amendment does not require the Assembly to decide on the abolition of Ministerial offices.

Questioning the Chief Minister Designate

If this amendment is successful, I would envisage matching amendments to Standing Orders which would increase the amount of time for questioning the Chief Minister Designate on his/her decisions for the structure and membership of the Council. It might seem strange to have a question period when there will be no vote, but this would be a vital chance for the Assembly to probe the Chief Minister Designate's thoughts as to how his/her proposed structure will work and to outline the work which they foresee each Minister undertaking and what we can expect to feature in the Strategic Plan. I am minded to suggest that rather than have a fixed time period, there should be a basic 15 minutes of questioning, and then an additional 10 minutes for each Ministerial position being considered.

The Strategic Plan will continue to be decided upon by the States Assembly, and that will provide an early opportunity for the Assembly to hold the Chief Minister to account and examine whether the contents of that important policy document match up to the pledges made during the previous questioning period.

Financial and manpower implications

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