

STATES OF JERSEY



DRAFT STATES OF JERSEY (MODIFICATION AND TRANSITIONAL PROVISIONS) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 11th October 2005
by the Privileges and Procedures Committee**

STATES GREFFE



Jersey

DRAFT STATES OF JERSEY (MODIFICATION AND TRANSITIONAL PROVISIONS) (JERSEY) REGULATIONS 200

REPORT

Introduction

Article 49 of the States of Jersey Law 2005 allows the States to make Regulations to cover the transition between the present Committee system and the future ministerial system. It is clearly important that there is a seamless transition between the two systems and, in particular, necessary to ensure that there is no period with no identifiable “government” in place in Jersey during the changeover. These Regulations cover a number of different matters that need to be addressed as part of the transition.

Regulation 1

This Regulation contains the interpretation of terms used in the Regulations and, as can be seen, there is reference to both the existing legislation and the new legislation that will replace it when the ministerial system begins.

Regulation 2

There is particular provision in Article 49(3) of the States of Jersey Law 2005 for Article 19 of that Law, which refers to the time that the Chief Minister and Ministers take office, to be amended in relation to the first selection process. Regulation 2 makes such a modification. Although, in the future, a Council of Ministers will leave office when the last Minister is appointed to a replacement Council of Ministers, it is necessary to cover the appointment of the first Council. As can be seen in this Regulation the intention is that the Chief Minister designate and the Ministers selected by the States will take office on the day following the day on which the States make the appointments. In practice this means that they will take office at midnight following their appointment. It is anticipated that the selection process for Ministers will take some considerable time and will probably not be finished until late afternoon. It therefore appears logical, in order to obtain legal certainty for the future, that the Committee system will fall away and the Council of Ministers take office the following midnight. If the Council were to take office immediately after the last Minister was appointed there would, for the future, be legal uncertainty about the exact time on that date when the changeover took place. PPC does not believe that, in practice, there will be any difficulty for the previous system to continue in its “caretaker” mode (see Regulation 5) for these few hours.

Regulation 3

The new Standing Orders, when in force, will require the future PPC to notify members no later than the end of September in each year of the proposed list of meeting dates of the States for the following year. This requirement cannot be complied with for 2006 as the new Standing Orders are not yet in force and this Regulation simply provides that the meeting days for 2006 that will be fixed in 2005 will apply for the purposes of the new Standing Orders.

Regulation 4

The new Standing Orders provide entirely new provisions on the manner in which propositions are lodged and the time for which they must be lodged before debate. The Committee therefore gave careful consideration to the manner in which any propositions lodged under the present legislation should be dealt with if they are not debated before the changeover to the new system.

As a general rule PPC does not believe it will be appropriate for Committees to lodge propositions in the last weeks of their existence unless the propositions are to be debated before the changeover. It would not, as a matter of principle, appear appropriate for a Committee to lodge a proposition knowing that it will need to be dealt with

in due course by a Minister who may not support the policy being put forward. The Committee considered whether a transitional arrangement should be made stating that all propositions fell away at the start of the new system but concluded that there could be some urgent or unforeseen matters that will need to straddle the two systems. In addition, it appears unfair to private members who may remain in office between the two systems to simply provide that all propositions are deemed to be withdrawn in December.

Regulation 4 provides a transition for any proposition that is lodged before the coming into force of the new system. As can be seen propositions are deemed to have been lodged in accordance with the new Standing Orders and the day on which a proposition was lodged under the old rules is taken to be the day on which the proposition is lodged for the purposes of new rules. The lodging periods under the new Standing Orders will apply so that, for example, a proposition that will require a six week lodging period under the new Standing Orders that has only been lodged for three weeks before the changeover will require a further three week period before a debate is possible.

As all propositions will need to have a date for debate fixed at all times under the new Standing Orders, Regulation 4(6) requires proposers of propositions that were lodged before the coming into force of the new Standing Orders to agree a debate date with the Greffier within one month. In this way the new system of fixing dates will be fully operative before the start of the first session in 2006. In the unlikely event that a member who has a proposition that moves between the two systems does not comply with the requirement to agree a date with the Greffier, the proposition shall be deemed to be withdrawn.

Under the 1966 Standing Orders any proposition that was not debated within 12 months was deemed to be withdrawn. Under the new Standing Orders this period is reduced to 6 months. In order to provide an appropriate transition between the two systems Regulation 4(8) allows a six month period from December 2006 for any propositions that are not debated before the coming into force of the new system before an automatic withdrawal occurs. The Committee believes this is an appropriate compromise between the two systems.

Regulation 5

It is clearly important that there is a seamless transfer between the Committee system and the Ministerial system. In the past new Committee Presidents have been appointed on one single day, being the day that the new members of the States are sworn in, and there has therefore been an almost immediate move from one set of Committee Presidents to another.

Under the new system the Chief Minister designate will be elected on the day that new members are sworn to office but there will need to be a period of at least two working days before the Ministers are selected. For the future the old Council of Ministers will remain in office until the day that the new Council is appointed but it has been necessary to design an appropriate transition between the Committee system and the Ministerial system for this one occasion.

As can be seen the Committee is proposing that Committees should remain in office between the swearing in day (on which the Chief Minister designate will be appointed) and the appointment of Ministers. This Regulation contains provisions to cover situations where some members, and even Presidents, of Committees will no longer be in office. As can be seen if both the President and Vice-President of a Committee are no longer elected members the most senior member will assume the rôle of acting President for this short period. Even if a Committee is reduced to below the normal quorum it will, by virtue of Regulation 5(b)(iv) be deemed to be lawfully constituted. It is not anticipated that Committees will take any significant decisions during this short period and it is made clear in Regulation 5(b)(v) that a Committee may only undertake routine administration. There are nevertheless urgent matters that may arise, for example a temporary prisoner release for the Home Affairs Committee or a mental health law application for the Health and Social Services Committee, where it is necessary to have an appropriate authority in place. In addition, in the hopefully unlikely event of a major civil emergency, it would be necessary to know which members of the States would form the Emergencies Council.

If, as anticipated, the committee system lasts until midnight on Thursday 8th and the Council of Ministers takes office on Friday 9th December 2005, the transitional Committee arrangements set out in Regulation 5 will only last for four days. It is theoretically possible that the Chief Minister designate, having seen the appointments made by the States during the appointment of Ministers, may exercise his or her option under the Law to step down from office in which case the entire appointment procedure of Chief Minister would need to recommence. In these hopefully unlikely circumstances the transitional arrangements for Committees would need to continue for a further period until a Council of Ministers could be appointed.

Regulation 6

This Regulation provides that any Committee of Inquiry that was appointed under the 1966 Law would continue as if it were appointed under the 2005 legislation. This will allow the Committee of Inquiry into the St. Helier Waterfront telephone poll to continue its work after December if it has not yet completed its task and the Regulation will also apply to any other committee of inquiry appointed before the end of the present States, even though, in practice, there are unlikely to be any more.

Regulation 7

It is possible that some States' Committees and departments may find themselves using statutory forms that have been printed with reference to "Committees" after the start of the new system. This transitional regulation makes it clear that there is no legal impediment to doing this although the Committee hopes that, in the interests of clarity, all States administrations will take steps to use new forms referring to the Ministerial departments as soon as possible.

Financial and manpower implications

There are no additional financial or manpower implications arising from these Regulations.

Explanatory Note

Regulation 1 is the interpretation provision.

Regulation 2 modifies Article 19 of the States of Jersey Law 2005 with the effect that the first Council of Ministers will take office at midnight on the day on which the last Minister is selected.

Regulation 3 provides for the meeting days in 2006 to be set in accordance with the standing orders made under the States of Jersey Law 1966.

Regulation 4 makes transitional arrangements for propositions lodged, but not debated, or only partly debated, when the change to ministerial government takes effect.

Regulation 5 makes transitional arrangements for the continuation of government by Committees after the new members of the States are sworn in, until the first Council of Ministers takes office.

Regulation 6 provides that, in the event that there is a committee of inquiry appointed under the 1966 Law which is still in progress when the change to ministerial government takes effect, the committee is taken to have been appointed under standing orders made under the 2005 Law.

Regulation 7 provides that, after the change to ministerial government, the use of a prescribed form is not invalidated by reason only that the form refers to a Committee rather than to the Minister to whom the Committee's functions have been transferred.

Regulation 8 is the citation and commencement provision.



Jersey

DRAFT STATES OF JERSEY (MODIFICATION AND TRANSITIONAL PROVISIONS) (JERSEY) REGULATIONS 200

Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Modification of Article 19</u>
<u>3</u>	<u>Meeting days in 2006</u>
<u>4</u>	<u>Continuation of propositions lodged under 1966 Standing Orders</u>
<u>5</u>	<u>Continuation of Committees pending appointment of Council of Ministers</u>
<u>6</u>	<u>Continuation of committees of inquiry</u>
<u>7</u>	<u>Use of prescribed documents</u>
<u>8</u>	<u>Citation and commencement</u>



Jersey

DRAFT STATES OF JERSEY (MODIFICATION AND TRANSITIONAL PROVISIONS) (JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 49(1)(c), (3) and (4) of the States of Jersey Law 2005, have made the following Regulations –

1 Interpretation

In these Regulations –

“1966 Law” means the States of Jersey Law 1966;^[1]

“1966 Standing Orders” means the Standing Orders of the States of Jersey made on the 8th November 1966;^[2]

“2005 Law” means the States of Jersey Law 2005;^[3]

“2005 Standing Orders” means the Standing Orders of the States of Jersey 2005;^[4]

“commencement day” means the day Article 42(3) of the 2005 Law comes into force;

“ordinary election” means the ordinary election in 2005;

“prescribed” means prescribed by Regulations or Order;

“Transfer of Functions Regulations” means the States of Jersey (Transfer of Functions from Committees to Ministers) (Jersey) Regulations 2005.^[5]

2 Modification of Article 19

Article 19 of the 2005 Law shall apply to the selection and appointment of a Chief Minister and Ministers following the ordinary election as if, for paragraph (7), there were substituted the following paragraph–

“(7) The Chief Minister designate and persons selected are appointed to office on the day following the day on which the States make the last selection under paragraph (5) required to complete the constitution of the Council of Ministers.”.

3 Meeting days in 2006

Notwithstanding standing order 4 of the 2005 Standing Orders, the Bailiff shall, before the end of the first week in January in 2006, inform members of the States, in writing, of the days for meetings of the States in the 1st and 2nd sessions in 2006.

4 Continuation of propositions lodged under 1966 Standing Orders

- (1) This Regulation applies to a proposition lodged in accordance with the 1966 Standing Orders but not debated, or only partly debated, before the commencement day.
- (2) The proposition shall be deemed to have been lodged in accordance with the 2005 Standing Orders.
- (3) If the proposition was lodged by the Privileges and Procedures Committee established by the States on 26th March 2002, it shall be deemed to have been lodged by the Privileges and Procedures Committee established by the 2005 Standing Orders.
- (4) Without prejudice to the generality of the Transfer of Functions Regulations, if the proposition was lodged by any other Committee of the States, it shall be deemed to have been lodged by the Minister to whom the functions to which the proposition relates are transferred by those Regulations.
- (5) The day the proposition was lodged in accordance with the 1966 Standing Orders shall be deemed to be the day it was lodged in accordance with the 2005 Standing Orders.
- (6) Notwithstanding standing order 30(1) of the 2005 Standing Orders, the person who lodged or is deemed to have lodged the proposition shall, within the period of one month following the commencement day, agree with the Greffier the meeting for which, after the expiry of the minimum lodging period applicable to the proposition, the proposition will be listed for debate.
- (7) If the person who lodged or is deemed to have lodged the proposition does not comply with paragraph (6), the proposition shall be deemed to have been withdrawn upon the expiry of the period of one month following the commencement day.
- (8) Notwithstanding standing order 34(2) of the 2005 Standing Orders, if the proposition is not debated within 6 months of the commencement day, it shall be deemed to have been withdrawn at the end of that period.

5 Continuation of Committees pending appointment of Council of Ministers

Notwithstanding Part 7 of the 1966 Standing Orders –

- (a) the States shall not meet to appoint Presidents of Committees and other delegations of the States following the ordinary election; and
- (b) during the period from the day the persons elected at the ordinary election take the oath of office until the commencement day –
 - (i) the elected members who, immediately before the start of that period, held office as members of a Committee shall continue to hold such office,
 - (ii) where both the President and Vice-President of a Committee are no longer elected members, the person who is, according to the roll of elected members, the most senior of the remaining members of the Committee shall act as President and, for this purpose, notwithstanding standing order 39(2) of the 1966 Standing Orders, a member of the States may act as President of more than one Committee,
 - (iii) the States shall not appoint any replacement where a member of a Committee has ceased or ceases to hold office as an elected member,
 - (iv) a Committee shall be lawfully constituted notwithstanding that, by virtue of one or more of its members ceasing to hold office as an elected member, it would otherwise be inquorate, and
 - (v) a Committee shall undertake routine administration only.

6 Continuation of committees of inquiry

Any committee of inquiry appointed under Article 36B of the 1966 Law which, on the commencement day,

has not completed its inquiry shall continue in force as if appointed under the 2005 Standing Orders.

7 Use of prescribed documents

Without prejudice to the generality of the Transfer of Functions Regulations, the use, on or after the commencement day, of any prescribed document in the form in which it was prescribed before the commencement day shall not be invalid by reason only that the document used refers to a Committee of the States instead of to the Minister to whom that Committee's functions have been transferred.

8 Citation and commencement

These Regulations may be cited as States of Jersey (Modification and Transitional Provisions) (Jersey) Regulations 200- shall come into force on 24th November 2005.

[1] Chapter 16.800.

[2] Chapter 16.800.15.

[3] L.8/2005.

[4] R&O.109/2005.

[5] R&O.41/2005.