

STATES OF JERSEY



DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 8) (JERSEY) REGULATIONS 201- (P.105/2016): AMENDMENT

**Lodged au Greffe on 23rd December 2016
by the States Employment Board**

STATES GREFFE

1 PAGE 11, REGULATION 1 –

After Regulation 1 insert the following Regulation and renumber the existing Regulations 2 to 4 as Regulations 3 to 5 respectively –

“2 Article 1 amended

In Article 1 of the principal Law –

- (a) after the definition ‘contract of employment’ there shall be inserted the following definition –

“ ‘Crown appointee’ means –

- (a) a person who is appointed to an office by the Crown;
- (b) either of the following (other than a States’ employee) –
- (i) a person (person A) appointed by a person described in paragraph (a),
- (ii) a person appointed by person A;”;
- (b) in the definition ‘independent body’ after the word ‘office’ there shall be inserted the words ‘including an office held by a Crown appointee’.

2 PAGE 12, REGULATION 4 (RENUMBERED REGULATION 5) –

After the renumbered Regulation 5 insert the following Regulation and renumber the remaining Regulations accordingly –

“6 Article 18 amended

In Article 18 of the principal Law –

- (a) for paragraphs (4) and (5) there shall be substituted the following paragraphs –

‘(4) Subject to paragraph (5), a Commissioner shall not hold office for a period exceeding 9 years regardless of whether, during the period of holding office, the Commissioner holds office as Chairman or for a term that is less than 9 years and is re-appointed.

(5) In exceptional circumstances, a Commissioner’s appointment (whether or not as Chairman) may be extended by a period of not more than 12 months beyond the period of 9 years referred to paragraph (4) for the purpose of facilitating a transition period before a replacement is appointed.

(5A) Where paragraph (5) applies, the total period that a Commissioner holds office shall not, in any event, extend beyond a period of 10 years.’;

- (b) paragraphs (7) and (8) shall be deleted;
- (c) in paragraph (9) the words ‘For the purposes of paragraphs (7) and (8),’ shall be deleted.”.

3 PAGE 13, SUBSTITUTED ARTICLE 23 –

In the substituted Article 23 –

- (a) in the substituted paragraph (2) after the word “participate” insert the word “in”;
- (b) for the substituted paragraph (3) substitute the following paragraph –
 - “(3) The Commission may, if requested by any person or body conducting a recruitment to a post (whether or not the Commission otherwise has functions in relation to that post), oversee, observe or participate in that recruitment on such terms as the Commission agrees with the requesting person or body provided that such terms do not breach any other provision in this Part.”.

4 PAGE 14, SUBSTITUTED ARTICLE 26 –

In the substituted Article 26 –

- (a) in paragraph (6) for the words “paragraph (5)” there shall be substituted the words “paragraphs (5) and (7)”;
- (b) after paragraph (6) there shall be added the following paragraph –
 - “(7) Where recruitment is for a Crown appointee, the nominated Commissioner shall not chair any meeting during the recruitment process.”.

5 PAGE 15, SUBSTITUTED ARTICLE 26AA –

In the substituted Article 26AA after paragraph (3) there shall be added the following paragraph –

- “(4) The States Employment Board shall not make a determination under paragraph (1) in relation to the recruitment of a Crown appointee.”.

STATES EMPLOYMENT BOARD

REPORT

Purpose

The States are asked by the States Employment Board (“SEB”) to decide upon proposed amendments to [P.105/2016 \(Draft Employment of States of Jersey Employees \(Amendment No. 8\) \(Jersey\) Regulations 201-\)](#) regarding changes concerning the functions of the Jersey Appointments Commission (“the Commission”), following a review of the relevant provisions of the Employment of States of Jersey Employees (Jersey) Law 2005 (“the Law”) by the SEB with the Commission, and consultation with independent bodies covered in the guidelines for recruitment produced by the Commission.

Background

A renewed focus in the function of the Commission has resulted in wider engagement with the SEB, the States of Jersey Human Resources Department (“HR”), and independent bodies. As a result, the Commission has looked to simplify its processes and provide greater clarity as to its role, and has produced a revised set of guidelines.

These additional changes have arisen after the initial lodging by the SEB, following a formal Jersey Appointments Commission meeting where an inconsistency between the guidelines and the legislation was discussed. It was deemed appropriate to rectify this matter by lodging an amendment. During the course of this amendment being developed, the opportunity was taken to clarify the approach which should be taken with regard to Crown appointments.

The overarching purpose of these amendments is to ensure that the legislation captures all relevant parties and allows for more consistency in approach.

Jersey Appointments Commission

Part 4 of the Law covers the function, responsibilities and ways of working of the Commission. The proposed amendments are outlined below under the relevant Article headings.

Article 1: Interpretation

Following engagement as requested, with the Ministry of Justice, and their subsequent endorsement in relation to the inclusion of Crown appointments within the legislation, this amendment would include coverage of offices held by Crown appointees as part of the definition of independent bodies. This would mean that the recruitment of Crown appointees would be obliged to follow the guidelines for recruitment which are produced by the Commission under Article 24 of the Law, and that the Commission would oversee the recruitment of any Crown appointee which is listed as a senior post under Article 16 of the Law. This is consistent with practice elsewhere; including, for example, the functions of the UK Commissioner for Public Appointments and the Civil Service Commission respectively, in the oversight of UK Crown appointments.

Article 18: Membership of Commission

This amendment is being proposed to achieve consistency and reflect the guidance being provided by the Commission in their guidelines to independent bodies in relation to the length of terms of office that may be held. As it is currently drafted, the legislation provides for different terms for the Commission, which has never been the intention of the Commission. The SEB and the Commission wish to remove this discrepancy by applying the same rules to the Commission. In summary, this amendment allows for a Commissioner to be appointed for the same period (9 years) as any other independent body, inclusive of time as the Chairman.

Article 23: Function of Commission

The amendments made by P.105/2016 clarify the Commission's remit within the recruitment process so that it could, for example, play an active role in the recruitment of persons to posts which fall within its guidance, but which have not been designated as "senior posts". Under the existing legislation, the Commission can already take part in any recruitment process that is conducted by any person who is not otherwise subject to the Commission's functions. The purpose of the further amendment is to ensure that this existing function continues.

Article 26: Recruitment of persons to senior posts

The legislation has been amended to reflect the role of the Commission in providing oversight to the recruitment process for a Crown appointee and, therefore, allows for the Commissioner not to chair the meetings as part of the recruitment process.

Article 26AA: Determination by the States' Employment Board in relation to senior posts

The legislation allows for the SEB to engage with the Commission to undertake specific recruitment on their behalf, and to appoint an external Commissioner to oversee the recruitment process. With the inclusion of Crown appointees, this part of the legislation has been amended to ensure that the SEB are not able to instruct the Commission to undertake the recruitment process on their behalf for Crown appointments.

Financial and manpower implications

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