

STATES OF JERSEY

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DRAFT LAW SOCIETY OF JERSEY LAW 200- (P.154/2003): SECOND AMENDMENTS (P.154/2003 AMD.(2))– AMENDMENTS

Lodged au Greffe on 14th September 2004
by Deputy R.G. Le Hérisier of St. Saviour

STATES GREFFE

DRAFT THE LAW SOCIETY OF JERSEY LAW 200- (P.154/2003): SECOND AMENDMENTS
(P.154/2003 Amd.(2))– AMENDMENTS

(1) *On page 3, under the heading “PAGE 26, ARTICLE 23” –*

(a) *insert the amendment –*

In paragraph (1)(b), for the words “either by way of a public reprimand or a private rebuke, by so reprimanding or rebuking” substitute the words “by way of a public reprimand, by so reprimanding”;

(b) *in the substituted paragraph (2) omit the words “unless the decision is to privately rebuke the practitioner”.*

(2) *On page 4, under the heading “PAGE 26, ARTICLE 24(1)(a)” insert the amendment –*

For the words “either by publicly reprimanding or privately rebuking” substitute the words “by publicly reprimanding”.

(3) *On page 4, under the heading “PAGE 27, ARTICLE 24(1)(c)” insert the amendment –*

Omit the words “or privately rebuke”.

(4) *On page 4, under the heading “PAGE 27, ARTICLE 24” insert the amendments –*

In paragraph (4)(b) omit the words “a private rebuke or”;

In paragraph (5)(b) for the words “neither a private rebuke nor a public reprimand is” substitute the words “public reprimand is not”.

(5) *On page 4, after the amendment headed “PAGE 27, ARTICLE 24” insert the amendment –*

“PAGE 28, ARTICLE 26 –

In paragraph (8) omit subparagraph (a) and renumber the remaining subparagraphs accordingly.”.

DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

REPORT

This Amendment is necessary to rectify an anomaly produced by the amendments previously made to P.154/2003.

Had these amendments stood, they would have led to an anomalous situation whereby a public hearing could have resulted in a private rebuke. Clearly, this would have undermined the intention of making the process more open.

There was also some doubt as to how significant a difference existed between a Rebuke and a Reprimand.

The opportunity has been taken to remove the sanction of a Rebuke and to rely, instead, upon a Reprimand. It has been argued that as a Reprimand is a response to a lesser "offence" so the whole process which leads to it should be in private. Given the strong desire to move to more transparent processes in terms of the management of the professions, this is, on balance, a retrograde step.

There are no financial or manpower implications arising from this amendment.

[The amendments, when incorporated with the second amendments lodged on 6th July 2004, would appear as follows –

PAGE 23, ARTICLE 18 –

For Article 18 substitute the following Article –

“18 The disciplinary panel of the Law Society

- (1) There shall be a disciplinary panel consisting of –
 - (a) 7 fit and proper persons, as lay members of the panel; and
 - (b) 4 ordinary members of the Law Society.
- (2) The lay members of the disciplinary panel shall be appointed by the States on the recommendation of the Jersey Appointments Commission established with the approval of the Act of the States dated 28th May 2002, after consultation by that Commission with the Law Society.
- (3) A person shall be eligible for appointment to the disciplinary panel as a lay member if, but only if, he or she –
 - (a) is not an advocate or solicitor; and
 - (b) is not admitted in any other jurisdiction as a legal practitioner.
- (4) The members of the disciplinary panel who are ordinary members of the Law Society shall be appointed by the Society in general meeting.
- (5) An ordinary member of the Society shall be eligible for appointment to the disciplinary panel if, but only if, he or she –
 - (a) is in private practice; and
 - (b) is a practitioner of at least 10 years' standing.
- (6) However, Committee members, the Bâtonnier and the President of the Chambre des Ecrivains shall not be eligible for appointment to the disciplinary panel.”.

PAGE 24, ARTICLE 19, PARAGRAPH (1) –

For the figure “5” substitute the figure “3”.

PAGE 24, ARTICLE 19, PARAGRAPH (2) –

For paragraph (2) substitute the following paragraph –

- “(2) The member shall be entitled, if he or she so requests in writing, to be re-appointed for one further term of 3 years commencing on the expiry of his or her first term, but shall not be otherwise eligible for re-appointment.”.

PAGE 24, ARTICLE 20, PARAGRAPH (4)(b) –

After the words “any member” insert the words “(being a lay member of the disciplinary panel)”.

PAGE 25, ARTICLE 21, PARAGRAPH (1)(b) –

For the words “2 persons who are ordinary members of the Society and one person who is a lay member of the panel” substitute the words “2 persons who are lay members of the disciplinary panel and one person who is an ordinary member of the Society”.

PAGE 25, ARTICLE 21, PARAGRAPH (1)(c) –

For the word “ordinary” substitute the word “lay”.

PAGE 25, ARTICLE 22 –

For paragraph (3) substitute the following paragraphs –

- “(3) The disciplinary committee shall sit in public unless –
- (a) on the application of the complainant or the practitioner; and
 - (b) for reasons that the disciplinary committee shall state in writing, the disciplinary committee decides to sit privately.
- (4) There shall be a right of appeal, in accordance with Article 24, against a decision of the disciplinary committee on an application to which paragraph (3) refers.”.

Renumber the existing paragraphs (4), (5) and (6) as (5), (6) and (7) accordingly.

PAGE 26, ARTICLE 23 –

In paragraph (1)(b), for the words “either by way of a public reprimand or a private rebuke, by so reprimanding or rebuking” substitute the words “by way of a public reprimand, by so reprimanding”.

For paragraph (2) substitute the following paragraphs –

- “(2) If the disciplinary committee has sat in public to hear the complaint, it shall deliver its decision in public.
- (3) The disciplinary committee shall provide written copies of its decision and of its reasons for the decision to –

- (a) the complainant, the practitioner, the Attorney General and the Secretary; and
- (b) the Bâtonnier or the President of the Chambre des Ecrivains, if he or she has been heard on the matter.”.

Renumber the existing paragraph (3) accordingly.

PAGE 26, ARTICLE 24(1)(a) –

For the words “either to” substitute the words “to grant or refuse an application to sit privately to hear his or her complaint or to”

For the words “either by publicly reprimanding or privately rebuking” substitute the words “by publicly reprimanding”

PAGE 27, ARTICLE 24(1)(c) –

For the word “to” substitute the words “to grant or refuse an application to sit privately to hear the complaint or to”.

Omit the words “or privately rebuke”.

PAGE 27, ARTICLE 24 –

For paragraph (2) substitute the following paragraph –

“(2) The appeal shall be lodged within one month after the decision to which it relates is given, or within such further time as the Royal Court may allow.”.

In paragraph (4)(b) omit the words “a private rebuke or”;

In paragraph (5)(b) for the words “neither a private rebuke nor a public reprimand is” substitute the words “public reprimand is not”.

PAGE 28, ARTICLE 26 –

In paragraph (8) omit subparagraph (a) and renumber the remaining subparagraphs accordingly.

PAGE 31, ARTICLE 37(2) –

For the words “the members of the disciplinary panel under Article 18(1)” substitute the words “members of the disciplinary panel under Article 18(4)”.]