

# **STATES OF JERSEY**



## **DRAFT STATES OF JERSEY LAW 200- (P.124/2004): THIRD AMENDMENTS**

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**Lodged au Greffe on 26th October 2004  
by Senator S. Syvret**

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**STATES GREFFE**

DRAFT STATES OF JERSEY LAW 200- (P.124/2004): THIRD AMENDMENTS

1: PAGE 29, ARTICLE 2 –

*In paragraph (2) after the word ‘Assembly’ add the words –*

“except that those members who are not elected members shall speak only on such subjects or occasions, or in such circumstances, as shall be prescribed”

2: PAGE 29, ARTICLE 2 –

*After paragraph (2) insert the following paragraphs and renumber the remaining paragraph accordingly –*

“(3) The duration of, or the number of members of the States who speak in, a debate on a proposition, or an amendment to a proposition, may only be limited, by standing orders or otherwise, where the proposition or amendment concerns the regulation of the proceedings and business of the States.

(4) The reference in paragraph (3) to a proposition or amendment concerning the regulation of the proceedings and business of the States shall not include any proposition for the making of standing orders.”

3: PAGE 29, ARTICLE 2 –

*After paragraph (2) insert the following paragraph and renumber the remaining paragraph accordingly –*

“( ) Nothing in standing orders or any procedure otherwise adopted shall prevent an elected member lodging any proposition.”

4: PAGE 30, ARTICLE 7 –

*Delete paragraph (2) and renumber the remaining paragraph accordingly.*

5: PAGE 30, ARTICLE 8 –

*Delete paragraph (1)(c) and renumber the remaining sub-paragraphs accordingly.*

6: PAGE 32, ARTICLE 10 –

(a) *In the heading, for the words “**holding office or employment in the service of the States**” substitute the words “**holding certain offices or employments**”*

(b) *At the end of paragraphs (1) and (2) add the words “or in the service of any parochial authority”*

7: PAGE 34, ARTICLE 15 –

*For the number “ 24” substitute the number “ 27”.*

8: PAGE 35, ARTICLE 18 –

*In paragraph (2)(e) after the word “for” insert the words “referral to one or more Scrutiny Panels established under standing orders and”*

9: PAGE 35, ARTICLE 18 –

*After paragraph (3) add the following paragraphs –*

- “(4) The minutes of the proceedings of a meeting of the Council of Ministers shall be -
- (a) drawn up and entered, by an officer provided by the Greffier of the States, in a book kept for that purpose by the Greffier of the States; and
  - (b) signed at the same or an ensuing meeting of the Council by the person presiding at the meeting.
- (5) The minutes so drawn up and entered in the book shall be complete and accurate in all material particulars.”

10: PAGE 35, ARTICLE 19 –

*In paragraph (1) after “shall,” insert the words “in accordance with the prescribed procedures and”*

11: PAGE 35, ARTICLE 19 –

*For paragraphs (4) to (7) substitute the following paragraphs –*

- “(4) An elected member –
- (a) may, within the prescribed period, nominate one or more elected members for appointment as Ministers; and
  - (b) shall, when making such a nomination, propose the Ministerial office to which each nominee would be assigned.
- (5) The States shall then, in accordance with the prescribed procedures, select, for each Ministerial office, from the persons nominated and proposed for assignment to that office, an elected member for appointment as a Minister and assignment to that office.
- (6) The Chief Minister designate may, at any time before his or her appointment to office under paragraph (7), inform the States of his or her wish to step down and, upon doing so, shall cease to be Chief Minister designate.

- (7) Upon the States completing the selection of all the Ministers and signifying the Ministerial office to which each of them shall be assigned, the Chief Minister designate and the persons selected are appointed to office.”

12: PAGE 36, ARTICLE 20 –

*In paragraph (3) delete “or” at the end of sub-paragraph (a) and insert after sub-paragraph (b)*

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“or

- (c) the States voting that they have no confidence in the Minister.”

13: PAGE 36, ARTICLE 20 –

*For paragraphs (4) and (5) substitute the following paragraphs -*

“(4) Only the States may dismiss a Minister.

(5) Only the Chief Minister may lodge a proposition for dismissal of a Minister.

(6) The Chief Minister may only lodge a proposition for dismissal of a Minister –

(a) after the Minister proposed to be dismissed has been given an opportunity to be heard by the other Ministers; and

(b) with the agreement of the majority of those Ministers.

(7) A proposition for dismissal of a Minister shall state the reasons for dismissal.”

14: PAGE 37, ARTICLE 22 –

*For paragraph (3) substitute the following paragraphs –*

“(3) Where a nomination has been made under paragraph (1), an elected member may, within the prescribed period, nominate an elected member for appointment as Minister for assignment to the Ministerial office proposed under paragraph (1).

(4) The States shall then, in accordance with the prescribed procedures, select, from the persons nominated, an elected member for appointment as a Minister and assignment to the Ministerial office proposed and, upon the selection being made, the person selected is appointed to office.”

15: PAGE 37, ARTICLE 24 –

*Delete paragraph (2) and renumber the remaining paragraphs and the cross reference in paragraph (5) accordingly.*

16: PAGE 38, ARTICLE 25 –

*After paragraph (5) insert the following paragraph and renumber the remaining paragraph accordingly –*

“(6) The senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction.”

17: PAGE 38, ARTICLE 25 –

*After paragraph (5) insert the following paragraph and renumber the remaining paragraph accordingly -*

“( ) Neither the Chief Minister or the Council of Ministers shall prevent a Minister speaking publicly on, or bringing to the States, any matter, proposition, question, bill, petition or other thing relating or of relevance to his or her portfolio.”

18: PAGE 38, ARTICLE 25 –

*For paragraph (6) substitute the following paragraph –*

“(6) In this Article –

‘Minister’ includes the Chief Minister;

“officer” means a person employed under the Civil Service Administration (Jersey) Law 1948 whose duties are wholly or mainly administrative, professional, technical or clerical.”

*Note: This amendment is consequential upon amendment 16.*

19: PAGE 38, ARTICLE 27 –

*For paragraph (1) substitute the following paragraph –*

“(1) A Minister –

(a) may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey to -

(i) one of his or her Assistant Ministers, or

(ii) an officer;

and

(b) shall keep a record of all such delegations and, unless a delegation is of less than 7 days’ duration, inform the States of the delegation.”

20: PAGE 40, ARTICLE 28 –

*Delete paragraph (4) and renumber the subsequent paragraph accordingly.*

21: PAGE 40, ARTICLE 29 –

*Substitute the following Article –*

**“29 Duty to maintain list of ministerial responsibilities**

The Chief Minister shall establish, maintain and publish a list of Ministers and Assistant Ministers and the functions exercisable by each of them and by the Chief Minister personally.”

22: PAGE 42, ARTICLE 33 –

*In paragraph (a) after the words “report to” insert the words “the Council of Ministers,”*

*Delete the word “or” at the end of paragraph (a) and add that word at the end of paragraph (b).*

*After paragraph (b) add the following paragraph -*

“(c) for any words spoken or written to the Chief Minister or any other Minister, by the member of the States in his or her capacity as such.”

23: PAGE 42, ARTICLE 35 –

*After paragraph (1) insert the following paragraph and renumber the remaining paragraph accordingly -*

“( ) No consent shall be required under paragraph (1) for the giving of evidence in criminal proceedings.”

24: PAGE 45, NEW ARTICLE –

*After Article 42 insert the following Article and renumber remaining Articles accordingly –*

**“[ ] Remuneration of Elected Members**

No scheme, agreement or other arrangement whatsoever for the remuneration of, or the payment of any allowance to, elected members out of the general revenue of the States shall provide for different elected members to receive different amounts of remuneration or allowance.”

25: PAGE 45, NEW ARTICLE –

*After Article 43 insert the following Article and renumber remaining Articles accordingly –*

**“[ ] Offence of offering bribe**

A person who offers to any member of the States, officer of the States or member of a committee of inquiry established by standing orders any bribe, fee, compensation, gift or reward in order to influence him or her in his or her conduct as such member or officer, or for, or in respect of the promotion or of opposition to any matter, proposition, question, bill, petition or other thing submitted or intended to be submitted to the States, the Council of Ministers, the Chief Minister, any other Minister, an Assistant Minister or any committee or panel established under standing orders, or who is a party to such an offence, shall be guilty of an offence and liable to imprisonment for a term of 5 years and a fine.”

26: PAGE 45, NEW ARTICLE –

*After Article 43 insert the following Article and renumber remaining Articles accordingly -*

**“[ ] Offence of blackmail, menace or compulsion**

A person who blackmails or attempts to blackmail or who offers any threat, assault, obstruction or molestation or attempt to compel by force or menace any member of the States, member of a committee of inquiry established under standing orders or officer of the States in order to influence him or her in his or her conduct as such member or officer, or for, or in respect of the promotion of or of opposition to any matter, proposition, question, bill, petition or other thing submitted or intended to be submitted to the States, the Council of Ministers, the Chief Minister, any other Minister, an Assistant Minister or any committee or panel established under standing orders, or who is a party to such an offence, shall be guilty of an offence and liable to imprisonment for a term of 5 years and a fine.”

27: PAGE 45, NEW ARTICLE –

*After Article 43 insert the following Article and renumber remaining Articles accordingly –*

**“[ ] Offence by member concerning covert recordings**

- (1) A member of the States who makes, or procures another person to make, or who is a party to the making of, an audio or video recording of another member of the States, officer of the States or member of a committee of inquiry established by standing orders, in such a manner as is calculated to ensure that the person so recorded is unaware that such recording is taking place, shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine of level 4 on the standard scale.
- (2) A member of the States who attempts to do anything that would be an offence under paragraph (1) shall also be guilty of an offence under that paragraph.”

28: PAGE 45, NEW ARTICLE –

*After Article 43 insert the following Article and renumber remaining Articles accordingly -*

**“[ ] Offence by officer concerning the provision of information**

- (1) An officer who, in the course of his or her duties –

- (a) provides a Minister with any information or document, knowing it to be false in a material particular;
- (b) knowingly misleads a Minister, by omitting to provide the Minister with any information or document in the officer's possession or which the officer knows to exist which is material to any decision to be made by the Minister in the discharge of the Minister's functions; or
- (c) knowingly permits the provision, or the omission of the provision, of any information or document under sub-paragraph (a) or (b),

shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine of level 4 on the standard scale.

(2) Paragraph (1) shall not apply to any omission to provide information or a document where its provision is prohibited by any enactment or rule of law.

(3) In this Article -

“Minister” includes the Chief Minister and any Assistant Minister;

“officer” means a person employed under the Civil Service Administration (Jersey) Law 1948 whose duties are wholly or mainly administrative, professional, technical or clerical.”

29: PAGE 45, NEW ARTICLE –

*After Article 43 insert the following Article and renumber remaining Articles accordingly -*

**“[ ] Offence by member concerning declaration of interests**

A member of the States who, when required by standing orders to declare his or her interests, knowingly -

- (a) makes a false declaration; or
- (b) fails to make a declaration,

shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine of level 4 on the standard scale.”

30: PAGE 46, ARTICLE 44 –

*In paragraph (4)(a) for the word “one” substitute the word “two”.*

31: PAGE 48, NEW ARTICLE –

*After Article 47 insert the following Article and renumber the remaining Articles accordingly –*



**“[ ] Right to a fair trial and hearing**

- (1) Any member or person subject to any disciplinary action in respect of this Law or standing orders shall have the right to a fair trial or hearing as defined in Article 6 of the European Convention on Human Rights;
- (2) Paragraph (1) shall not prevent the person presiding at a meeting of the States from exercising such authority as may be prescribed and necessary for the immediate restoration of good order during the meeting.”

32: PAGE 54, SCHEDULE 3, PART 3 –

*After paragraph 3 add the following paragraph –*

**“4 Order in Council dated 19th March 1824**

In the Order in Council dated 19th March 1824 delete the words “, nor to the *Procureur* and *Avocat du Roi* in the exercise of their Right to speak in the said Assembly upon any subject which may be brought under consideration”

*Note: this amendment is consequential upon amendment 1.*

## EXPLANATORY NOTES

I give below a description of the purpose and objective of each amendment. The amendments are referred to by amendment number. Some of the amendments are consequential upon others, but most can be taken on a 'stand-alone' basis. These amendments have gone through numerous iterations with the approach and wording of some amendments being extensively revised. I have had extensive help in this respect from the law drafting department for which I am extremely grateful.

### **Amendment 1:**

Amendment 1 establishes by law that those members of the States who are not elected and thus not democratically accountable shall have the right to speak in the Island's parliament only for those purposes and occasions as shall be defined by standing orders. Obviously the specific wording of the standing orders would need to be consulted upon. To give some examples, the standing orders might state that the Bailiff shall speak to give communications from the chair, address the Assembly on matters pertaining to the Crown or constitution, to give rulings upon points of order, and, obviously, to be able to speak in relation to running the Assembly's meetings and maintaining order. In the case of the Attorney General or Solicitor General the standing orders would need to specify that they may speak to clarify points of law, to provide interpretations of laws, to inform the Assembly of relevant case law, to explain legal principles and answer legal questions. In the case of the Dean, the standing orders may specify his right to speak upon religious or spiritual matters.

### **Amendment 2:**

To establish by law the right of the people of the Island to full representation in their parliament through the mechanism of guaranteeing that their elected representative shall have the right to speak on any substantive question or issue. If accepted, this amendment would strike out the guillotine procedure.

### **Amendment 3:**

Amendment 3 will establish by law that the public of the island can enjoy unencumbered representation from their elected representatives by guaranteeing to those representatives the right to lodge propositions on any issues for debate in the Island's parliament.

### **Amendment 4:**

Paragraph (2) of Article 7 actually prevents an entire swath of the Island's population from seeking election unless they resigned from their job first. I do not accept that such a clause is acceptable in the 21<sup>st</sup> century. Accordingly the amendment seeks to strike it out.

### **Amendment 5:**

As with amendment 3, amendment 4 seeks to allow an officer of a parish to stand for election without first resigning their post.

### **Amendment 6:**

Amendments 3 and 4 seek to give people the right to seek election without first resigning. However, the requirement to resign from a States post if elected remains. This amendment has the effect of requiring a person who is employed by a parish to give up that employment if elected to the States.

### **Amendment 7:**

At present the States has 53 elected members, virtually all of whom now accept some form of payment. I do not consider it satisfactory that a quorum should be less than half, hence the amendment seeks to raise the quorum from 24 to 27.

**Amendment 8:**

This amendment seeks to ensure that formal scrutiny will be a requirement of a common strategic policy.

**Amendment 9:**

Creates a requirement that the States Greffe shall record and keep the minutes of the Council of Ministers. It further includes a requirement that those minutes be accurate and complete. It is important that if minutes are to be kept that they be accurate. Unfortunately the Policy and Resources Committee took to using a code word to describe the subject in its discussions of the Les Pas issue. Such practice subverts the purpose of taking minutes.

**Amendment 10:**

This amendment ensures that the Chief Minister is selected in accordance with procedures that will be laid down in standing orders. It is important that the Law makes it plain that there will be prescribed procedures in standing orders to follow for the election of a Chief Minister.

**Amendment 11:**

As presently drafted, the Law would have the effect of excluding from the Assembly – the Island’s parliament – an entire class of propositions, namely the ability to vote upon which members occupy which ministerial posts. It appears perverse that such a restriction upon the actions, powers and freedoms of a parliament should be written into law, whereas in most democracies the ability of the leader to secure his or her wishes rests upon their ability to command a majority vote in the house. It is doubtful that the present proposal is democratically credible.

The amendment therefore seeks to ensure that the Assembly retains the ability to vote upon questions of Ministerial appointment.

**Amendment 12:**

This amendment has the effect of ensuring that a Minister ceases to hold office if a vote of no confidence succeeds.

**Amendment 13:**

If the Assembly is to retain its sovereign powers as described above by electing Ministers, it follows that in the event of the dismissal of a Minister, the Assembly should be the final arbiter.

**Amendment 14:**

This amendment seeks to ensure that in the event of a vacancy occurring, the States shall retain the right to select a replacement Minister.

**Amendment 15:**

This deletes the requirement that a Minister can only appoint or dismiss an Assistant Minister with the permission of the Chief Minister.

**Amendment 16:**

It is important that members fully appreciate the fact that the move to ministerial government means more than simply replacing committees with individuals; a change in both powers and accountabilities will take place. I refer members to Article 25, Status of Minister, on page 37. I suggest that we should pay particular attention to paragraphs 1 to 5 of this Article. These paragraphs describe a dramatic range of powers, and of responsibilities that will lay with the individual Ministers. It is because of the existence of such powers that this amendment and amendments 17 and 28 are necessary. It was my original intention to include a more extensive form of words as a type of preamble to these three

amendments but the words were deemed superfluous in an actual Article of law. Nevertheless I reproduce them here to illustrate the context of the amendments:

“In accordance with the powers, responsibilities and potential civil and criminal liability described in paragraphs 1 to 5,”

In the light of such powers and responsibilities, the amendment makes it clear by law that a Minister has political policy authority over his or her Chief Officer. Ministers are to be civilly and criminally liable. Yet under the present proposals they do not have final authority over their Chief Officers; that lies with the Chief Executive to the Council of Ministers. This state of affairs is intolerable in that it leaves the Ministers with tremendous responsibilities, yet ultimately not the power. This situation also makes a mockery of the public who have a right to expect their elected representatives who carry high office, to actually have democratically accountable power over public departments as opposed to such power residing with a non-elected civil servant. The amendment establishes that democratic policy authority resides with the Minister.

**Amendment 17:**

Again, this amendment seeks to ensure that Ministers – who are carrying the burden of civil and criminal liability – can exercise the right commensurate with such responsibilities to speak publicly on any matter and bring matters of relevance to their public duties to the island’s parliament. Such provision also safeguards a degree of democratic accountability and transparency. This amendment would ensure that no rules on any form of collective responsibility can be imposed by the Council of Ministers or the Chief Minister.

**Amendment 18:**

This amendment defines both ‘Ministers’ and ‘officers’ in a way that copies definitions used elsewhere in the Law except that police officers and customs officers are excluded. The amendment is consequential on amendment 15.

**Amendment 19:**

Maintains a requirement that where powers are delegated such delegation should be notified to the States unless only temporary and of less than seven days duration. In either case a record must be kept.

**Amendment 20:**

This amendment seeks to strike out what can only be described as a quite extraordinary assault upon representative democracy. Again, as with the Assembly not being able to vote upon questions of Ministerial appointment, an entire class and category of questions are to be de-barred from being brought for debate by all but one elected member.

**Amendment 21:**

Creates a clear and unambiguous requirement that the list of Minister, Assistant Ministers and their functions are actively published.

**Amendment 22:**

The draft seeks to re-produce a degree of ‘privilege’ already established under the existing States of Jersey Law. It could appear that the privilege which effectively protects the work of Committees and States members at present may not extend to their replacement: the Ministers and Council. The amendment seeks to sustain such privilege.

**Amendment 23:**

As presently framed the draft law would enable the Assembly or related bodies to withhold evidence that may be germane to criminal proceedings. For the avoidance of doubt the amendment makes it clear that consent is not required for the obtaining of evidence in such circumstances.

**Amendment 24:**

This amendment would provide that any scheme of whatever type for the payment of States members would have to, by Law, not differentiate between elected members. Thus whether a backbencher, Assistant Minister, Minister or Chief Minister, the rate of pay would be the same. This protects the public interest from the potential abuse of the power of patronage. If higher rates of pay were available for say, Ministers or Assistant Ministers, this would build into the operation of the States of Jersey an inducement mechanism by which members may be tempted to be obedient and servile to those in a position to offer the higher paid jobs. This is manifestly counter to the public good.

**Amendment 25:**

The offence of accepting a bribe is rightly reproduced in the new Law. It is surprising that the offence of offering a bribe is not also reproduced. The amendment rectifies this omission.

**Amendment 26:**

The existing States of Jersey Law has a passage concerning threats and molestations towards members. The draft Law is very surprisingly silent on this question. The amendment is based upon the existing wording in the present law, but is modified somewhat.

**Amendment 27:**

Regrettably this Article is now necessary given that we have had the example of one States members employing a private detective to pose as a journalist and seek to entrap other members of the States into making allegedly defamatory comments whilst covertly recording the conversations. The potential that exists for the compromising of States members through such covert recording machinations is obviously highly undesirable from the perspective of the public good. We must be able to rely upon our States members being free agents, and being able to operate without the concern that they may be the subjects of such surveillance. A States member engaging in the covert surveillance of another must be committing more than a mere breach of privilege. It should be forbidden by law.

**Amendment 28:**

As explained previously in respect of amendments 16 and 17, Ministers are to carry dramatic powers and responsibilities on behalf of the people of the Island. This will include being responsible for the public good and the potential of facing criminal prosecution in the event of some departmental failing. It cannot therefore be contentious that publicly employed officers are required by Law to not *knowingly* mislead in any way, a Minister in the course of their duties.

**Amendment 29:**

It seems strange that at present it is not an offence to *knowingly* make a false declaration in such declaration of interests as may be required by standing orders. This amendment rectifies that omission.

**Amendment 30:**

This amendment seeks to establish by law that there shall be a minimum of 2 scrutiny panels.

**Amendment 31:**

This amendment should be uncontroversial, after all the draft Law does claim to be Human Rights compliant. This amendment ensures a fair hearing in the event of disciplinary action, whilst retaining the right of the Chair to enforce order and discipline when necessary for immediate purposes during a meeting of the Assembly.

**Amendment 32:**

This amendment, which is consequential on amendment 1, removes words conferring an uninterrupted right to speak upon the Attorney General and the Solicitor General.

**Financial and manpower implications**

As the great majority of these amendments would simply bring about variations on either existing procedure or procedures that will be adopted in any event, any additional cost or manpower requirements would be minimal. The only obvious cost arising would be in the event of the approval of Amendment No. 4 when, if a States employee were to run for election, it is probable that they would take a sabbatical from their employment and thus cover may be needed for their post.