

STATES OF JERSEY



DRAFT MACHINERY OF GOVERNMENT (MISCELLANEOUS AMENDMENTS) (JERSEY) LAW 201- (P.1/2018): COMMENTS

**Presented to the States on 19th February 2018
by the Chairmen's Committee**

STATES GREFFE

COMMENTS

1. The proposals contained within [P.1/2018](#) – Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- (“the draft Law”) – contain significant and extensive proposed changes to the operation of Ministerial Government and the structure of the Civil Service.
2. Following initial briefings to both the Chairmen’s Committee and the Corporate Services Scrutiny Panel, a Review Panel was formed to review the proposals in more detail. The Review Panel is comprised of members of the Chairmen’s Committee as follows: Deputy S.M. Brée of St. Clement (Chairman), the Connétable of St. John (Vice-Chairman), Deputy J.A.N. Le Fondré of St. Lawrence, and the Deputy of St. Mary.
3. Following initial consideration of the proposals, the Panel has identified a number of areas of great concern which require more detailed examination before the debate on the principles of the draft Law takes place. In particular, the Panel has concerns in relation to the proposals that have an impact on the operation of Ministerial Government and the States Assembly. These changes, if accepted, would significantly alter the balance of power between the Chief Minister and his Ministers, as well as between the Chief Minister and the States Assembly. The Panel is not aware of any consultation having taken place with Members during the drafting of P.1/2018 regarding the changes it enables.
4. We have particular initial concerns in relation to the proposed changes to the [States of Jersey Law 2005](#) (“the States of Jersey Law”) and the [Public Finances \(Jersey\) Law 2005](#) (“the Public Finances Law”), including the fundamental changes to the way Ministers and their budgets are transferred. We also consider that the proposals to move to a single legal entity for government require more consideration than a 6 week lodging period allows. We would also question whether some of the proposed changes are more appropriate to be brought by the new Chief Minister or the new States Assembly following the elections.
5. We have specific concern with the proposed new Article 37 of the Public Finances Law, as set out on pages 18–19 of P.1/2018. This Article identifies the Chief Executive as the Principal Accountable Officer for numerous bodies and organisations, including –

“37 Principal Accountable Officer

- (1) The Chief Executive Officer shall be the Principal Accountable Officer with functions, as provided in this Part, in relation to –
 - (a) States funded bodies excluding non-Ministerial States funded bodies;
 - (b) independently audited States bodies;
 - (c) States aided independent bodies; and
 - (d) any fund established by Part 2, any special fund, any States income, any money derived from taxation or any money forming part of trust assets.”

6. The Panel’s understanding, after being provided with a draft list of the organisations that this Article covers, is that such a change will provide the Chief Executive with the ability to oversee the financial arrangements of an extensive number of organisations in Jersey, even those with negligible levels of States of Jersey financial support. The list of organisations seen by the Panel, although only a draft, contains a great number of organisations that the Panel believes should fundamentally not be under such scrutiny.
7. The draft Law (under Article 2) also proposes to insert the following definition into the Public Finances Law –

“States aided independent body” means a body (including an individual and a corporation sole), whether or not incorporated, that in a financial year receives an amount of money from the States to aid it to carry out its activities;”
8. This, in effect, means that any organisation that receives a sum of money from the States of Jersey, even if only one pound, will be subject to the potential oversight of the Chief Executive. Whilst we acknowledge that the intention of such a change may be to allow the States of Jersey to review how the money it grants to organisations is spent, we are still concerned that this potentially allows unwarranted or unnecessary levels of intrusion into organisations who are not currently accountable to the States of Jersey.
9. The Panel would suggest that a full explanation of the reasons for including such a sweeping responsibility is given during the debate, including what limits and safeguards on its use have been included in the draft Law.
10. The Panel would also recommend that a full list of the organisations encapsulated under these definitions be made public and, further, be published in time for the debate, in order for Members to fully understand the implications.
11. In our view, these important matters relate to the principles of the draft Law, and it would therefore be of grave concern to the Panel if the debate were to go ahead on 20th February as currently scheduled. Without full, comprehensive scrutiny of the Proposition and its potentially far-reaching consequences, the Panel does not consider the Assembly will have a full understanding of the implications of its decision.
12. The draft Law is split into 7 Parts. We have not yet had the opportunity to take evidence on each of the proposals nor to understand their implications. However, to aid Members’ understanding in the event that the debate should go ahead on 20th February, the scope of each part of the draft Law is set out in the following table.

Part 1	Interpretation Article.
Part 2 <i>(the Public Finances Law)</i>	Changes to the Civil Service – including designating the Chief Executive Officer as “Principle Accountable Officer”.

Part 3 <i>(the Public Finances Law)</i>	Changes in relation to how the Minister for Treasury and Resources may transfer budget allocations in certain circumstances.
Part 4 <i>(the States of Jersey Law)</i>	Introduction of a single legal entity for government, to be called “the Jersey Ministers”.
Part 5 <i>(the States of Jersey Law)</i>	Gives the Chief Minister the power to move Ministers from one ministerial office to another by Order. This replaces the current powers of the States to make such changes by Regulations. Removes Collective Responsibility.
Part 6 <i>(the Standing Orders of the States of Jersey)</i>	Changes to the timings of the first States meetings following elections.
Part 7	Consequential amendments.

13. In light of our concerns regarding the principles of the draft Law, we asked the Chief Minister to consider deferring the debate on P.1/2018 until 20th March 2018. The Chief Minister did not agree to this, and indicated that he wished to proceed with a debate on 20th February 2018, but that the Articles could then be subject to further scrutiny. The Panel considers that avoiding scrutiny of the principles sets a worrying precedent for future legislation. It remains our view that the principles of the Draft Law should not be debated on 20th February 2018, and that the debate should be deferred until the Sitting of 20th March 2018. Even then, we would record our concern that this is exceedingly ‘last minute’ for such an important set of changes to be debated fully, given the upcoming elections in May. We are concerned with placing demands on the new Assembly to debate and vote on any changes made under P.1/2018 soon after its creation, and without any new Members having participated or voted in the original debate on the principles.
14. We also acknowledge the Comments relating to the draft Law which were presented to the States as [P.1/2018 Com.](#) by the Privileges and Procedures Committee (“PPC”) on 14th February 2018. PPC highlights several of the same concerns as held by the Panel. These include –
- (a) Concerns surrounding the Chief Minister’s ability to transfer Ministers and responsibilities, potentially soon after the Assembly has elected those Ministers on the basis of their suitability for that specific role. The PPC comments that Standing Orders will also need to be reviewed in order to reflect any changes made by the adoption of P.1/2018.
 - (b) PPC also identifies the impact to the Scrutiny function of the Chief Minister’s ability granted under P.1/2018, to freely move Ministerial portfolios and responsibilities. Under the present structure of Standing Orders, PPC highlight that this would result in a lengthy delay between the change to any Ministerial function and the subsequent change to the respective Scrutiny Panels’ remit and oversight.

15. With the comments of PPC in mind, the Panel repeats that there are numerous implications from the adoption of P.1/2018 (without full understanding of the wider legislative changes required) that are of very great concern. The Panel feels that a full list of the legislative changes that would be required, including summaries of what these changes would entail, are necessary in order for a comprehensive (and meaningful) debate on P.1/2018 to take place. Without such an understanding, the Panel is strongly of the view that any debate by the States Assembly would be premature [and would be taking place without fully knowing the extent of the legislative changes being agreed to].
16. To conclude, it is the Panel's considered view that a debate by the Assembly of the principles of the draft Law on 20th February would be taking place without the benefit of Scrutiny's ability to contribute and perform its role. There has been insufficient time for the Panel to fully understand the implications of adopting P.1/2018, and the Assembly would therefore be voting "blind". The Panel and PPC have already identified a number of concerns with the Proposition in the limited time available, as set out above and in the PPC Comments. We would therefore strongly recommend to the Chief Minister that he defer the debate on the principles to the Sitting of 20th March 2018 but, if the debate *does* take place on 20th February contrary to our recommendation, we also strongly recommend that the Assembly should then reject the principles.