

STATES OF JERSEY



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

**Lodged au Greffe on 6th March 2018
by the Chief Minister**

STATES GREFFE

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

1 PAGE 19, ARTICLE 3 –

In the substituted Article 38 of the Public Finances Law –

- (a) in paragraph (1) after the words “is answerable to the States” insert “and is accountable to the Council of Ministers”;
- (b) in paragraph (1)(c) –
 - (i) for the words “paragraph (2)” substitute the words “paragraphs (2), (3) and (4)”,
 - (ii) in clause (i) after the words “Article 37(1)(a) to (c)” insert the words “(other than non-Ministerial States funded bodies)”;
- (c) after paragraph (2) insert the following paragraphs and renumber the remaining paragraphs accordingly –
 - “(3) An appointment of an accountable officer under paragraph (1)(c) for a body included in Article 37(1)(a) shall be with the concurrence of either –
 - (a) the Minister responsible for that body; or
 - (b) the Council of Ministers.
 - (4) In determining the functions of an accountable officer for a body included in Article 37(1)(a), under paragraph (1)(d), the PAO must consult with either –
 - (a) the Minister responsible for that body; or
 - (b) the Council of Ministers.”;
- (d) after paragraph (6) (renumbered as paragraph (8)) insert the following paragraph –
 - “(9) The PAO must publish a list of each independently audited States body and each States aided independent body for which the PAO considers it appropriate, for the purpose of exercising his or her functions under this Law, to appoint an accountable officer under paragraph (1)(c).”.

2 PAGE 20, ARTICLE 3 –

For the substituted Article 38A(3) of the Public Finances Law substitute the following paragraph –

- “(3) Except to the extent that an enactment specifies otherwise, an accountable officer is answerable to –
 - (a) the States; and
 - (b) in the case of a body included in Article 37(1)(a), the Minister responsible for that body,for the exercise of the functions that apply to that accountable officer under paragraph (2).”.

3 PAGE 22, ARTICLE 8 –

- (1) In paragraph (a) for the words “following paragraph” substitute the words “following paragraphs”.
- (2) After the inserted paragraph (1B) of Article 18 of the Public Finances Law add the following paragraph –
“(1C) Before giving notice under paragraph (1B), the Minister shall, in relation to any States funded body, consult the Minister responsible for that body.”.

4 PAGE 23, ARTICLE 9 –

In the substituted Article 26 of the States of Jersey Law –

- (a) in the heading for the words “Jersey Ministers” substitute the words “the Government of Jersey”;
- (b) in paragraphs (1), (2), (3) and (5) for the words “Jersey Ministers” substitute the words “Government of Jersey”;
- (c) in paragraph (2)(e) for the words “their functions as Ministers” substitute the words “its functions”;
- (d) in paragraph (4) for the words “of the Jersey Ministers shall be exercisable by any of them” substitute the words “referred to in paragraph (3) shall be exercisable by any Minister”;
- (e) in paragraph (6) –
 - (i) for the words “Jersey Ministers” in the first place they appear substitute the words “Government of Jersey”,
 - (ii) for the words “Jersey Ministers’ ” substitute the words “Government of Jersey’s”.

5 PAGE 23, ARTICLE 9 –

In the substituted Article 26 of the States of Jersey Law –

- (a) in paragraph (4) after the words “Assistant Minister” add the words “if, in the case of an Assistant Minister, those functions have been delegated to him or her under paragraph (5)”;
- (b) after paragraph (4) insert the following paragraph –
“(5) Functions referred to in paragraph (3) may be delegated to an Assistant Minister and any reference in this Law or any other enactment to any act (however described) of an Assistant Minister refers to an Assistant Minister acting in the course of exercising such delegated functions.”;
- (c) renumber the remaining paragraphs accordingly.

6 PAGE 23, ARTICLE 9 –

In the substituted Article 26A of the States of Jersey Law, in the heading and in paragraphs (1), (2), (3), (4) and (6), for the words “Jersey Ministers” substitute the words “Government of Jersey”.

7 PAGE 24, ARTICLE 9 –

In the substituted Article 26B of the States of Jersey Law, in paragraph (1) for the words “Jersey Ministers” substitute the words “Government of Jersey”.

8 PAGE 24, ARTICLE 11 –

In the substituted Article 28 of the States of Jersey Law –

- (a) in the heading for the words “Jersey Ministers” substitute the words “the Government of Jersey”;
- (b) in paragraph (1) (in both places) and in paragraph (3) for the words “the Jersey Ministers” substitute the words “the Government of Jersey”;
- (c) in paragraph (2) for the words “Jersey Ministers” substitute the words “The Government of Jersey”;
- (d) in paragraph (3) for the words “by Jersey Ministers” substitute the words “by the Government of Jersey”.

9 PAGE 25, ARTICLE 13 –

For the words from “In Article 18(3A)” to the end of that sentence, substitute the following text –

“In Article 18(3A) of the States of Jersey Law, for sub-paragraph (a) substitute the following sub-paragraph –

- (a) for the purpose of reaching policy decisions, provide policy direction to officers, having given fair consideration and due weight to informed and impartial advice from such officers; and’.

10 PAGE 25, ARTICLE 15

In the substituted Article 29, after the words “office to another” insert the words “, provided that, before the date of such notice, not less than 6 months have elapsed after the date Ministers are appointed to office under Article 19(7)”.

CHIEF MINISTER

REPORT

Following the lodging of the Draft Machinery of Government (Miscellaneous Amendments) (Jersey) Law 201- [\[P.1/2018\]](#) (“the draft Law”), discussions with Members have identified some points of detail where there is an opportunity to provide additional clarity, to put certain matters beyond doubt, or to provide an option for the Assembly to consider. The proposed amendments are summarised below.

CEO and PAO Accountability

The Chief Executive Officer (“CEO”) is the ‘Chief Executive to the Council of Ministers and Head of the Public Service’, as specified in Article 3 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#).

This amendment would, for the avoidance of doubt, clarify that the Principal Accountable Officer (“PAO”) is accountable to the Council of Ministers for the exercise of their functions, to align with the existing accountability of the CEO.

This would not replace the provisions in the draft Law which ensure that the PAO is answerable to the Assembly for the exercise of their functions (proposed Article 38(1) of the [Public Finances \(Jersey\) Law 2005](#) (“PFL”). Rather, the PAO would be both *answerable* to the Assembly and *accountable* to the Council of Ministers.

Ministers

There are some provisions within the draft Law which would involve the relevant Minister(s). The amendments proposed would include this clearly within the draft Law, in order to assist openness and transparency, and for the avoidance of doubt, as outlined below.

- (a) the function of the PAO to appoint Accountable Officers (“AOs”) (proposed Article 38(1) of the PFL), in the case of States funded bodies, would be exercised with the concurrence of the Minister(s) with responsibility for the relevant States funded body or bodies, or with the concurrence of the Council of Ministers;
- (b) in addition to AOs being answerable to the Assembly for the exercise of their functions (proposed Article 38A(3) of the PFL), in the case of States funded bodies, an AO would also be *answerable* to the Minister(s) with responsibility for the States funded body or bodies;
- (c) when the PAO determines the functions of AOs (proposed Article 38(1) of the PFL), in the case of States funded bodies, the PAO would consult with the Minister(s) with responsibility for the relevant States funded body or bodies or with the Council of Ministers;
- (d) when the Minister for Treasury and Resources makes budget transfers, having consulted the Chief Minister and the PAO, and before giving the Assembly at least 2 weeks’ notice (proposed Article 18(1B) of the PFL), in relation to any States funded body, the Minister for Treasury and Resources would first consult the Minister(s) with responsibility for that States funded body or bodies;

- (e) functions exercisable by Assistant Ministers on behalf of the Government (proposed Article 26(4) of the [States of Jersey Law 2005](#) (“SoJL”)) would be restricted to circumstances where authority has been delegated to them by the relevant Minister;
- (f) the convention that Ministers make decisions regarding policy, having considered informed and impartial advice, and may provide policy direction to officers, would be reflected in the draft Law through an addition to Article 18(3A) of the SoJL;
- (g) the ability of the Chief Minister to move Ministers from one Ministerial office to another (proposed Article 29 of the SoJL) would not be capable of being used until at least 6 months had elapsed since the Council of Ministers was appointed into office by the States Assembly.

Independently audited States bodies and States aided independent bodies

The ability to assign AOs, where appropriate and necessary, to independently audited States bodies and States aided independent bodies, seeks to address a vulnerability in the existing structures by ensuring that there can be accountability for the best use of public resources even when delivery is conducted at arm’s-length.

The definition of ‘independently audited States body’ is as currently defined in Article 1(1) of the Public Finances Law. The definition of ‘States aided independent bodies’ mirrors that contained within Article 14(1) of the [Comptroller and Auditor General \(Jersey\) Law 2014](#). Using the same definitions ensures an alignment of scope between PAO and audit responsibilities.

A Financial Direction is currently being developed, which will reflect the differing nature of the responsibilities of the PAO in relation to such bodies, and the differing nature of an AO’s responsibilities in ensuring the effective stewardship of public assets as part of existing arm’s-length governance structures.

The intention would not be that the PAO should assign AOs to all such bodies. A proportionate approach would be taken, with AOs only being assigned in such bodies where they are responsible for significant public resources and/or assets. Any bodies considered to be in scope would be consulted on the Financial Direction in due course in order to ensure that assurance requirements are framed in a way which is both proportionate to the risks and consistent with existing arm’s-length governance structures.

The Review Panel has suggested that it would assist the Assembly if the relevant bodies are listed in order to clarify this detail. This amendment would, therefore, require the PAO to publish a list of those independently audited States bodies or States aided independent bodies considered to be in scope for assigning an AO with responsibility for the stewardship of public resources and/or assets. To assist the Assembly, the bodies initially considered as being likely to be in scope are as listed below (in advance of the development of a draft Financial Direction and subsequent consultation with those bodies).

- Jersey Overseas Aid Commission
- States of Jersey Development Company Limited (including subsidiary companies)
- Andium Homes Limited
- Ports of Jersey Limited
- Jersey Post International Limited
- JT Group Limited.

Government of Jersey

Some Members have expressed a preference for the more established concept of the 'Government of Jersey' rather than 'Jersey Ministers'.

This amendment would substitute throughout the phrase 'Government of Jersey' for 'Jersey Ministers', in order that the States Assembly has an opportunity to consider this option.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

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