

# STATES OF JERSEY



## **DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201- (P.33/2014): AMENDMENTS (P.33/2014 Amd., Amd.(2), Amd.(3), Amd.(5), Amd.(6), Amd.(7), Amd.(7)Amd., Amd.(8)) – COMMENTS**

---

**Presented to the States on 25th April 2014  
by the Chief Minister**

---

**STATES GREFFE**

## COMMENTS

### **P.33/2014 Amd.**

**Lodged by Deputy J.A. Martin of St. Helier**

The rationale for proposing this change is based upon the improvements to be made to the role of Assistant Minister, whereby Assistant Ministers will become the first port-of-call for an executive decision whenever their Minister is out of the Island or indisposed, will attend the Council of Ministers in place of their Minister, and will have identical rights of access to information to those of their Minister. It is argued that these changes would mean that Assistant Ministers will have the same powers as the Minister they assist, and so the appointment of Assistant Ministers should be decided upon by the States Assembly. It is also argued that the adoption of collective responsibility will result in Assistant Ministers having greater influence in the Assembly.

However, notwithstanding the positive changes to be made to the role of Assistant Minister, the Machinery of Government Review intended that some difference between Ministers and Assistant Ministers should be maintained. As a result, the clearer responsibilities to be introduced for Assistant Ministers would be under the delegated authority of the Minister, who would continue to retain the prime responsibility. Also, the Machinery of Government Review recommended that Assistant Ministers should be bound by collective responsibility only in respect of matters falling directly within the ministerial portfolios to which they are attached. The draft Law is therefore clear that an Assistant Minister adheres to the principle of collective responsibility only as it applies to the assistance given to the Minister by whom he or she was appointed. Lastly, this amendment is not consistent with the *Report of the Review Panel on the Machinery of Government Chaired by Sir Cecil Clothier* (December 2000), which concluded that Ministers should choose the States member or members they wished to assist them, subject to the approval of the Chief Minister.

For these reasons, it seems appropriate that the existing provisions relating to the appointment of Assistant Ministers by members of the executive are retained. I am, therefore, not able to support this amendment.

### **P.33/2014 Amd.(2)**

**Lodged by Deputy T.A. Vallois of St. Saviour**

I see no difficulty in principle with the Council of Ministers adopting and publishing a code of practice to sit alongside an improved code of conduct. There may be some benefit in Ministers setting out their working practices in such a clear manner. I am, therefore, content to support this amendment.

### **P.33/2014 Amd.(3)**

**Lodged by Deputy J.H. Young of St. Brelade**

Whilst I can understand the logic in proposing this change in order to ensure that all of the States members appointed to executive roles can feel that they are fully part of the Chief Minister's team, I am content to support whatever decision is made by States members regarding this aspect of the amendment.

I continue to support the involvement of a greater number of States members in both the Executive and Scrutiny functions, in order that we can make the most of the wide range of talents and expertise represented in the Assembly. I note that the proposed Advisory Panels would, as the name suggests, have an advisory function only, would be focused upon policy development only and would not be involved with executive decision-making. On this basis, I am not opposed in principle to the establishment of Panels to advise Ministers if this is the wish of the majority of States members. However, I would need to be reassured that: (a) the advice which would be provided by members of the Panel to Ministers regarding executive policy development would be open and transparent, with any relevant interests being declared in full; (b) that Scrutiny would be able to hold Panel members to account for the advice provided; (c) that the resources required to support the Panels would not place an additional burden upon taxpayers; and (d) that the Council of Ministers, Chairmen's Committee and Privileges and Procedures Committee would together agree the Regulations regarding such Panels, which would be accompanied by a code of conduct and a code of practice for the Panels. This proposal would seem to require further work in order to address these points and, therefore, I am not able to support this aspect of the amendment at the present time.

**P.33/2014 Amd.(5)**

**Lodged by the Scrutiny Chairmen's Committee**

I am content to support this proposal by the Chairmen's Committee that there should be a requirement to have a code of practice between the Scrutiny and Executive functions in order to set out the respective roles, responsibilities and processes required of both parties.

**P.33/2014 Amd.(6)**

**Lodged by the Connétable of St. Mary**

This proposal highlights the tension found within the *Report of the Review Panel on the Machinery of Government* Chaired by Sir Cecil Clothier (December 2000), which suggested that the Chief Minister would choose his or her team of Ministers which he would present to the Assembly for approval. In practice, if the Assembly approves the team that is chosen by the Chief Minister, then this tension is resolved. However, if the Assembly rejects the team chosen by the Chief Minister, then the inherent contradiction in this approach is highlighted, and subsequent difficulties are inevitable in terms of the Chief Minister's full and unambiguous accountability to the Assembly. The report accompanying this amendment also highlights that the other systems of ministerial executive government to be found in the UK, Scotland, Wales and the Isle of Man have recognised the need to resolve this issue in favour of the head of government choosing their own team of Ministers and so being held clearly to account by their respective parliaments.

This proposal represents a well-reasoned compromise between the Chief Minister choosing his or her own team of Ministers and the Assembly deciding beforehand upon the creation of Ministerial offices. However, I also recognise that the proposal evolves further the recommendations made by the *Machinery of Government Review Sub-Committee: Final Report* in September 2013 ([R.105/2013](#)). I am, therefore, content to support the proposal that the Assembly would decide upon the

establishment of Ministerial offices as a sensible safeguard against the formation of a Council whose membership may be considered to include too many Ministers in order solely to expand the boundaries of collective responsibility. I am also content to accept whatever decision is made by States members regarding whether, in these circumstances, the Chief Minister should decide upon the appointment of elected members as Ministers.

**P.33/2014 Amd.(7) and amendment thereto**  
**Lodged by Deputy J.A.N. Le Fondré of St. Lawrence**

A requirement for the Council of Minister to present the code of conduct for Ministers and Assistant Ministers to the Assembly within 3 months of appointment is consistent with the relevant recommendation of the *Machinery of Government Review Sub-Committee: Final Report* (R.105/2013), and so I am content to support this proposal.

I can see no difficulty with moving the prescribed number of proposals by the Chief Minister designate for appointments to Ministerial offices to Standing Orders so that this can be changed more easily in the future. If States members decide in favour of a system of appointing Ministers involving a prescribed number of proposals, then I am content to support this proposal to move the prescribed number to Standing Orders.

Whilst I understand the concerns that may exist regarding the ‘failsafe’ mechanism proposed within P.33/2014, I believe that introducing an amended version whereby after 3 attempts to secure a positive decision from the Assembly the system for making appointments to Ministerial offices reverts to the existing one, will create as many problems as it seeks to resolve. The question is probably whether the Chief Minister should ultimately choose his or her team of Ministers and so be held to account fully by the Assembly for the performance of the Council; or whether the Assembly should ultimately decide upon any or all of the team of Ministers and so simply require that the Chief Minister does his or her best with the team they are given. I believe that the Island expects that their representatives in the Assembly should be able to hold the Chief Minister to account in full for the performance of the Council, and so the ‘failsafe’ mechanism must default in favour of the Chief Minister designate choosing his or her own team of Ministers. I am, therefore, unable to support this aspect of the amendment either with or without the associated ability of the Assembly to amend proposed Ministerial offices.

The *Report of the Review Panel on the Machinery of Government* Chaired by Sir Cecil Clothier (December 2000) made the clear and unambiguous recommendation that Chief Minister should have the power to dismiss Ministers. This recommendation was also included in the *Machinery of Government Review Sub-Committee: Interim Report* in April 2013 ([R.39/2013](#)). The *Machinery of Government Review Sub-Committee: Final Report* in September 2013 (R.105/2013) noted that the *Interim Report* had already made clear that the Chief Minister should be empowered to dismiss a Minister and that this remained the position. I do not believe that short-term considerations based around a single specific circumstance should drive our decision-making – exceptional cases are known to make bad law. We should follow the objective advice which was provided by Sir Cecil Clothier in 2000 and repeated in our own more recent *Machinery of Government Review* in 2013. I am therefore unable to support the removal of the provision whereby the Chief Minister may dismiss a Minister.

**P.33/2014 Amd.(8)**

**Lodged by Senator P.F.C. Ozouf**

I have noted the comments made within the *States Members' Remuneration Review Body: Recommendations for 2014*, as presented to the States on 7th October 2013 by the Privileges and Procedures Committee ([R.125/2013](#)), where the Review Body expressed the hope that the opportunity would be taken to address the issue of an appropriate and modern remuneration structure for States members, and noted that there is a growing recognition, both from the public and among States members, that some form of special responsibility increment might apply within the States to Ministers and to the Chairmen of Scrutiny Panels and other Committees. I am, therefore, content to support this proposal in order that the independent States Members' Remuneration Review Body can be asked to consider the issue of differentiated remuneration and make recommendations.