

STATES OF JERSEY

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DRAFT JERSEY OVERSEAS AID COMMISSION (JERSEY) LAW 200-

**Lodged au Greffe on 25th January 2005
by the Overseas Aid Committee**

STATES GREFFE



Jersey

DRAFT JERSEY OVERSEAS AID COMMISSION (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Overseas Aid Committee has made the following statement –

In the view of the Overseas Aid Committee the provisions of the Draft Jersey Overseas Aid Commission (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy J.J. Huet of St. Helier**

REPORT

This draft Law gives effect to the decision of the States of 23rd July 2002 in relation to the way in which Overseas Aid should be administered under the future ministerial system. On that date the States adopted an amendment of the Overseas Aid Committee to P.70/2002 and agreed that an Overseas Aid Commission should be established as follows –

1.13. Overseas Aid

1.13.1 An Overseas Aid Commission, reporting directly to the States, will be established outside the executive structure of government to manage the overseas aid function. The Chairman of the Commission will be a member of the States appointed by the States. There will be six other members appointed by the States, three of whom shall be members of the States and three of whom shall be non-States members.

1.13.2 Funding for Overseas Aid will be agreed by the States and reviewed every 5 years to ensure that appropriate funding is provided for the Commission.

1.13.3 Detailed proposals and terms of reference for the Commission will be brought forward by the Overseas Aid Committee during the transitional period.

The reasons for bringing forward the amendment were set out in the following terms in the report accompanying the Committee's amendment –

“The Overseas Aid Committee is of the strong view that the current form of administration is positive, able to react quickly to appeals for emergency aid and is extremely thorough in its allocation of funds for grant aid and community work projects.

In simple terms it sees no purpose in changing the current administration and fears that its purpose, focus and sympathetic approach will not be so readily available in the bureaucracy of ministerial government notwithstanding the desire of a Minister or of the Chief Minister to be so focused. The demands, particularly in the early years, of ministerial government will not, in the estimation of the Overseas Aid Committee, allow this.”.

This draft Law establishes the Overseas Aid Commission and sets out the initial Constitution of the Commission in Schedule 1.

As can be seen the Commission will be a body corporate but the Commissioners will all be appointed by the States. The Commission will consist of a Chairman, who will be a States member, and 5 other Commissioners, 2 of whom will be States members (the ‘States Commissioners’) and 3 of whom will be persons who are not members of the States (the ‘non-States Commissioners.’) Although the original amendment referred to on the previous page suggested a Commission of 7 members the Committee believes it is appropriate to propose the smaller membership of a Chairman and 5 others as set out in this draft Law. The Chairman of the Commission will be appointed first and will then make nominations for the other Commissioners. The Overseas Aid Committee is hopeful that persons with a wide range of relevant experience will be able to serve as non-States Commissioners making a valuable contribution to the work of the Commission.

The Constitution has been designed to ensure some continuity in the Commission. If the draft Law is approved by the States it is intended that the first Chairman will be appointed before the summer recess in 2005 and that person will nominate the remaining Commissioners in early autumn 2005. The Commission will be established on a day agreed by the States in an Appointed Day Act with the appointed day coordinated with the completion of the initial appointments. On the appointed day the Overseas Aid Committee will be abolished with its functions and budget transferred to the Commission. It is planned that this will take place by the end of October 2005 at the very latest.

The 3 non-States Commissioners will initially be appointed for one, 2 and 3 years so that there will be on-going continuity. As their initial terms of office expire these Commissioners will be re-appointed (or new non-States

Commissioners appointed in their place) for a full 3-year period. The Chairman and 2 States Commissioners will initially be appointed until the next elections after the 2005 elections although it would, of course, be necessary for any casual vacancies to be filled after those elections if the members appointed lost their seats or decided not to stand for re-election.

Financial and manpower implications

The adoption of this draft Law will have no direct financial or manpower implications. The budget for Overseas Aid is established according to a formula agreed by the States on a periodic basis and it is intended that the same system will continue for the Commission. There are no additional manpower implications as it is anticipated that officers working for the Committee will transfer to work for the Commission.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 17th January 2005 the Overseas Aid Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Overseas Aid Committee the provisions of the Draft Jersey Overseas Aid Commission (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 contains the interpretation provisions.

Article 2 establishes the Jersey Overseas Aid Commission.

Article 3 provides for a Constitution for the Commission, which may be changed by the States after consultation with the Commission.

Article 4 incorporates the Jersey Overseas Aid Commission and specifies that the Commission shall have the membership, purposes, functions, powers, duties and responsibilities set out in its constitution and shall have responsibility for any other matters assigned to it under Schedule 2.

Article 5 enables the schedules to have effect and for different commencement dates to be set in relation to them.

Schedule 1

Schedule 1 contains the Constitution of the Commission.

Clause 1 of the Constitution contains the interpretation provisions.

Clause 2 of the Constitution explains that the Commission was incorporated by the Law.

Clause 3 of the Constitution sets out the objects of the Commission.

Clause 4 of the Constitution sets out the Commission's powers and places restrictions on the Commission's powers to borrow money.

Clause 5 of the Constitution sets out the membership of the Commission. (The initial membership of the Commission, however, shall be established in accordance with Part 1 of Schedule 2.)

Clause 6 of the Constitution specifies when a Commissioner shall cease to hold office. States Commissioners must remain elected members of the States to remain in office as a Commissioner. Conversely, a Non-States Commissioner will cease to hold office if he or she becomes a member of the States (whether elected or otherwise).

Clause 7 of the Constitution sets out how vacancies in the office of Commissioner are to be filled.

Clause 8 of the Constitution sets out how the Commission shall conduct its meetings. The Commission is required to meet at least once every 3 months. The Chairman may call meetings as he or she thinks fit, but must call a meeting if one third of the Commission (or thereabouts) request it. Resolutions may be reached otherwise than at meetings.

Clause 9 of the Constitution permits Commissioners to be reimbursed for their expenses but prevents Commissioners (other than Commissioners who are employees of the Commission) from being paid by the Commission.

Clause 10 of the Constitution permits the Commission to hire employees and engage agents.

Clause 11 of the Constitution requires the Commission to keep accounts in the form requested by the overseeing authority, which shall be a person or body designated by the States.

Clause 12 of the Constitution requires the Chairman to provide to the States each year a report of the activities of the Commission, and the audited accounts, in relation to the previous year.

Schedule 2

Part 1 of the Schedule establishes the initial membership of the Commission as follows:

The Greffier of the States shall publish in the Jersey Gazette a notice calling for nominations to the office of Non-States Commissioners. The States shall elect a Chairman Designate who shall be an elected member of the States. The Chairman Designate shall recommend to the States both the States Commissioners, and the Non-States Commissioners, who the States shall appoint. The appointments of the Non-States Commissioners are staggered over 3, 2 and one years. The States Commissioners shall hold office until the date the States are first reconstituted after the 2005 elections for Deputies.

Part 2 of the Schedule transfers functions, rights, duties and liabilities of the Overseas Aid Committee to the Commission established by this Law, in the standard manner used for transferring such matters from one

Committee to another.



Jersey

DRAFT JERSEY OVERSEAS AID COMMISSION (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Jersey Overseas Aid Commission established</u>
<u>3</u>	<u>Constitution</u>
<u>4</u>	<u>Incorporation</u>
<u>5</u>	<u>Schedule 2</u>
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<u>7</u>	<u>Citation and commencement</u>

SCHEDULE 1

CONSTITUTION

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Incorporation</u>
<u>3</u>	<u>Objects</u>
<u>4</u>	<u>Powers of Commission</u>
<u>5</u>	<u>Membership of Commission</u>
<u>6</u>	<u>Vacancy in office of Commissioner</u>
<u>7</u>	<u>Filling of vacancies in office of Commissioner</u>
<u>8</u>	<u>Proceedings of Commission</u>
<u>9</u>	<u>Expenses of Commissioners</u>
<u>10</u>	<u>Appointment and remuneration of staff and agents</u>
<u>11</u>	<u>Accounts</u>
<u>12</u>	<u>Accountability to States of Jersey</u>

SCHEDULE 2

TRANSITIONAL PROVISIONS

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Establishment of initial membership of Commission</u>
<u>3</u>	<u>Construction and transitional provisions</u>



Jersey

DRAFT JERSEY OVERSEAS AID COMMISSION (JERSEY) LAW 200-

A LAW to incorporate the Jersey Overseas Aid Commission, to abolish the Overseas Aid Committee, and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, unless the contrary intention appears –

“commencement day” means the day on which Article 2 comes into force;

“Commission” means the Jersey Overseas Aid Commission established by Article 2;

“Constitution” means the Constitution of the Commission as in force from time to time.

2 Jersey Overseas Aid Commission established

The Jersey Overseas Aid Commission shall be established.

3 Constitution

(1) There shall be a Constitution in respect of the Commission.

(2) The Constitution shall be as set out in Schedule 1.

(3) The States may, by Regulations, amend the Constitution set out in Schedule 1.

(4) The States may only make Regulations under paragraph (3) if it has considered a report, provided to it by the member of the States who is proposing that the Constitution be amended by Regulations made under that paragraph, setting out –

(a) the attempts made to ascertain the opinion of the Commission in relation to the proposed amendment; and

(b) the opinion, if any, of the Commission in relation to the proposed amendment.

4 Incorporation

- (1) The Commission shall be a body corporate with perpetual succession and may –
 - (a) sue and be sued in its corporate name; and
 - (b) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.
- (2) The Commission shall have –
 - (a) the objects specified in the Constitution;
 - (b) the membership specified in the Constitution;
 - (c) the functions, powers, duties, rights and responsibilities specified in the Constitution; and
 - (d) the functions, powers, duties, rights and responsibilities assigned to the Commission by Part 2 of Schedule 2.

5 Schedule 2

- (1) Part 1 of Schedule 2 shall have effect for the purpose of establishing the initial membership of the Commission.
- (2) Part 2 of Schedule 2 shall have effect for the purpose of transferring certain functions, powers, duties and responsibilities to the Commission.

6 Overseas Aid Committee abolished

The Committee of the States of Jersey known as the Overseas Aid Committee shall be abolished.

7 Citation and commencement

- (1) This Law may be cited as the Jersey Overseas Aid Commission (Jersey) Law 200.
- (2) This Article, Articles 1 and 5(1), and Part 1 of Schedule 2, shall come into force on the seventh day after this Law is made.
- (3) The remaining provisions of this Law shall come into force on a day to be appointed by the States.

SCHEDULE 1

(Article 3(2))

CONSTITUTION

TABLE OF PROVISIONS

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 9. Expenses of Commissioners
 10. Appointment and remuneration of staff and agents
 11. Accounts
 12. Accountability to States of Jersey
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1 Interpretation

- 1.1. In this Constitution, unless the context otherwise requires –
 - “Commission” means the Jersey Overseas Aid Commission;
 - “Commissioner” includes the Chairman of the Commission;
 - “Law” means the Jersey Overseas Aid Commission (Jersey) Law 200-;
 - “overseeing authority” means the Finance and Economics Committee or another body, or person, designated from time to time by the States.

2 Incorporation

- 2.1 The Jersey Overseas Aid Commission is incorporated by the Jersey Overseas Aid Commission (Jersey) Law 200-.

3 Objects

- 3.1 The objects of the Commission are to manage and administer the monies voted by the States of Jersey for overseas aid, so as to enable humanitarian aid to be provided overseas for the purposes of –
 - (a) assisting in the reduction of poverty;
 - (b) providing medical and health care and education;
 - (c) providing effective education and training;

- (d) providing safe drinking water and food; and
- (e) assisting in emergency and disaster needs, including the subsequent restoration of facilities, and other purposes, relating to the provision of humanitarian aid overseas, that the Commission may from time to time consider appropriate.

4 Powers of Commission

4.1 The Commission shall have the following powers –

- (a) to have and to use a special seal to certify all acts, contracts, agreements and undertakings;
- (b) to take, acquire, hold and possess all kinds of movable and immovable property, whether in perpetuity or on lease, to receive, hold and possess all kinds of gifts and legacies of movable and immovable property which may be made to it and to lease, sell or otherwise dispose of such property;
- (c) to borrow the amounts that it may from time to time consider necessary or desirable, provided that –
 - (i) the Commission shall not, without the prior written consent of the overseeing authority, borrow an amount which will cause the total debt of the Commission to be more than £5,000, and
 - (ii) the Commission shall not, without the prior written consent of the Treasurer of the States, borrow an amount which will cause the total debt of the Commission to be more than £500; and
- (d) all other powers necessary to achieve its objects.

5 Membership of Commission

5.1 The Commission shall consist of –

- (a) a Chairman, who shall be an elected member of the States;
- (b) 2 States Commissioners, who shall be elected members of the States; and
- (c) 3 Non-States Commissioners, who shall not be members of the States.

5.2 For the duration of his or her appointment each Commissioner shall be an officer of the Commission.

5.3 A person who has been a Commissioner is eligible for reappointment as a Commissioner.

5.4 The Commissioners shall appoint a Vice-Chairman from amongst their number.

6 Vacancy in office of Commissioner

6.1 Subject to paragraph 2 of Part 1 of Schedule 2 of the Law and this clause, the term of office of the Chairman and the States Commissioners shall expire on the day on which the States are reconstituted after the next ordinary elections for Deputies following the appointment of the Chairman and the States Commissioners.

6.2 The Chairman may resign by giving notice in writing to the Greffier of the States.

6.3 A Commissioner, other than the Chairman, may resign by giving notice in writing to the Chairman or to another person whom the Commission may from time to time designate to receive notices of resignation.

6.4 A Commissioner shall cease to hold office if –

- (a) he or she becomes bankrupt;
- (b) a curator is appointed to administer the Commissioner's property and affairs;
- (c) the Commissioner appoints an attorney without whom the Commissioner may not act in matters real and personal;
- (d) he or she is sentenced to a term of imprisonment by a court of competent jurisdiction;

- (e) he or she ceases to be ordinarily resident in Jersey;
- (f) in the case of a States Commissioner or the Chairman – he or she ceases to be an elected member of the States; or
- (g) in the case of a Non-States Commissioner – he or she becomes a member of the States.

7 Filling of vacancies in office of Commissioner

- 7.1 If the office of Chairman becomes vacant the States shall by ballot appoint to be the Chairman an elected member of the States.
- 7.2 If the office of a States Commissioner becomes vacant the States shall, on the recommendation of the Chairman, appoint as a States Commissioner an elected member of the States.
- 7.3 If the office of a Non-States Commissioner becomes vacant, the Commission shall cause to be published in the Jersey Gazette a notice stating that the office has become vacant and inviting persons to nominate themselves for appointment to the office.
- 7.4 If the office of a Non-States Commissioner becomes vacant because the term of the office has expired, the States shall, on the recommendation of the Chairman, appoint as a Non-States Commissioner a person who is not a member of the States and who has nominated himself or herself for appointment to the office.
- 7.5 A Commissioner appointed under clause 7.4 holds office for a period of 3 years on and from the date of his or her appointment.
- 7.6 If the office of a Non-States Commissioner becomes vacant otherwise than because the term of the office has expired, the States shall, on the recommendation of the Chairman, appoint as a Non-States Commissioner a person who is not a member of the States and who has nominated himself or herself for appointment to the office.
- 7.7 The States is not required to (but may choose to) appoint a Non-States Commissioner under clause 7.6 if the balance of the period of the term of office of the person who last vacated the office is less than 8 weeks.
- 7.8 A Commissioner appointed under clause 7.6 holds office, on and from the date of his or her appointment for the balance of the period of the term of office of the person who last vacated the office.
- 7.9 In making recommendations for appointment to the office of Commissioner the Chairman shall use his or her best endeavours to ensure that the Commissioners shall be a diverse and balanced group of people in terms of gender, age, experience and skills, who share a commitment to the promotion of the objects of the Commission.

8 Proceedings of Commission

- 8.1 At a meeting of the Commission –
 - (a) 4 Commissioners shall form a quorum;
 - (b) the Chairman, or, in the absence of the Chairman, the Vice-Chairman, or in the absence of both the Chairman and the Vice-Chairman, another Commissioner who is present at the meeting and is elected by the Commissioners present, shall preside;
 - (c) each Commissioner shall have one vote on each matter for deliberation; and
 - (d) if the votes on a matter are equal, the person presiding over the meeting in accordance with sub-clause (b) shall have a casting vote in addition to his or her own vote.
- 8.2 A resolution shall be a valid resolution of the Commission, even though it was not passed at a meeting of the Commission, if –
 - (a) it is signed or assented to by a majority of the Commissioners; and
 - (b) proper notice of the proposed resolution was given to all the Commissioners.
- 8.3 The Commission shall keep proper minutes of its proceedings, including minutes of any business

transacted in accordance with paragraph 8.2.

8.4 The Commission shall meet not less than once every 3 months and otherwise as convened by the Chairman.

8.5 The Chairman –

- (a) may convene a meeting of the Commission of his or her own motion; and
- (b) shall convene a meeting of the Commission if requested to do so by notice in writing signed by not less than one third of the Commissioners (or the nearest number to that number, if the number of Commissioners at the material time is not divisible by 3).

8.6 Subject to this Constitution, the Commission may regulate its own proceedings (including the period of notice, which shall not be less than 24 hours, to be given of any meeting of the Commission) and may adopt, alter, amend or vary rules for that purpose.

9 Expenses of Commissioners

9.1 Commissioners may be reimbursed for all reasonable out-of-pocket or other expenses occasioned in the course of carrying out their duties.

9.2 Except in accordance with clause 9.1, a Commissioner shall not be remunerated unless he or she is an employee or agent of the Commission.

10 Appointment and remuneration of staff and agents

10.1 The Commission may employ the staff, and appoint the agents, that it considers necessary for carrying out its objects.

10.2 The Commission may make the arrangements it thinks fit concerning the remuneration, expenses, pensions and other conditions of the staff and agents of the Commission.

11 Accounts

11.1 The Commission shall keep accounts in a form that is acceptable to the overseeing authority.

12 Accountability to States of Jersey

12.1 The Chairman shall present annually to the States –

- (a) a report of the activities of the Commission during the previous year; and
- (b) the audited accounts for the previous year.

SCHEDULE 2

(Articles 4 and 5)

TRANSITIONAL PROVISIONS

PART 1 – COMMENCEMENT OF COMMISSION MEMBERSHIP

1 Interpretation

In this Schedule –

“authorized revenue expenditure” has the meaning it has in the Public Finance (Administration) (Jersey) Law 1967;^[1]

“Committee’s functions” means the functions of the Overseas Aid Committee in so far as those functions are, on the commencement day, objects of the Commission that are specified in the Constitution;

“liabilities” means any liabilities, debts, or obligations, whether present or future and whether vested or contingent;

“rights” means any rights, powers, privileges, or immunities, whether present or future and whether vested or contingent.

2 Establishment of initial membership of Commission

- (1) The Greffier of the States shall cause to be published in the Jersey Gazette a notice stating that the offices of Non-States Commissioners under the Constitution are required to be filled and inviting persons to nominate themselves for appointment to those offices.
- (2) The States shall, by ballot, appoint an elected member of the States to be the Chairman Designate of the Commission on and from the date of the appointment until the commencement day.
- (3) The States shall, on the recommendation of the Chairman Designate of the Commission –
 - (a) appoint to be States Commissioners for the purposes of the Constitution 2 elected members of the States; and
 - (b) appoint to be Non-States Commissioners for the purposes of the Constitution 3 persons who are not members of the States and who have nominated themselves for appointment to the office of Non-States Commissioner.
- (4) The States shall appoint under sub-paragraph (3)(b) one of the Non-States Commissioners for a period of 3 years, one for a period of 2 years and one for a period of one year.
- (5) In making recommendations for the appointment of Commissioners the Chairman Designate shall use his or her best endeavours to ensure that the Commissioners shall be a diverse and balanced group of people in terms of gender, age, experience and skills, who share a commitment to the promotion of the objects of the Commission.
- (6) On and from the commencement day, the Chairman Designate shall become the Chairman of the Commission for the purposes of the Constitution.
- (7) The Chairman, and each States Commissioner, who is appointed under this paragraph, shall hold office on and from the commencement day until the date on which the States are first reconstituted after the first ordinary elections for Deputies that are held after the 2005 elections for Deputies, unless his or her office becomes vacant earlier under the Constitution.
- (8) A person appointed to be a Non-States Commissioner under sub-paragraph (3) shall hold office on and from the commencement day for the period specified by the States under sub-paragraph (4) as

his or her period of appointment.

PART 2 – TRANSFER OF COMMITTEE’S FUNCTIONS

3 Construction and transitional provisions

- (1) In an enactment, a reference to the Overseas Aid Committee in relation to the Committee’s functions shall be construed as a reference to the Commission.
- (2) In the construction of, and for the purposes of, any enactment, judgment, award, contract, certificate or other document passed or made before the commencement day, anything that is, or is to be construed as, a reference to the Overseas Aid Committee or its officers and relates to the Committee’s functions shall be construed as a reference to the Commission or its officers.
- (3) Nothing in this Law shall prejudice the operation of any appointment, determination, direction, instruction, approval, consent, requirement, authorization or other thing made, given or done by the Overseas Aid Committee in relation to the Committee’s functions before the commencement day.
- (4) A matter referred to in sub-paragraph (3) shall, if it is in force immediately before the commencement day, continue in force after the commencement day to the like extent and subject to the like provisions as if it had been duly made, given or done by the Commission.
- (5) The rights and liabilities enjoyed or incurred by the Overseas Aid Committee in connection with the Committee’s functions before the commencement day shall, after the commencement day, by virtue of this Schedule become the rights and liabilities of the Commission.
- (6) The operation of sub-paragraph (5) shall not be regarded –
 - (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.
- (7) For the purposes of sub-paragraph (6), to the extent that a contract, or other instrument, which creates or passes a right or liability of the Overseas Aid Committee specifies that it is incapable of transfer or assignment, the contract or instrument shall be of no effect.
- (8) Anything that is, before the commencement day, commenced by or under the authority of the Overseas Aid Committee may, so far as it relates to the Committee’s functions, or its rights or liabilities in relation to the Committee’s functions, be carried on and completed by or under the authority of the Commission on or after the commencement day.
- (9) The amount, if any, of the authorized revenue expenditure of the Overseas Aid Committee in relation to the Committee’s functions that has not, on the commencement day, been expended by the Committee, shall be transferred to the Commission on the commencement day.
- (10) If any legal proceeding to which the Overseas Aid Committee is a party is pending on the commencement day and relates to the Committee’s functions, or to the Committee’s rights or liabilities in relation to the Committee’s functions, the Commission shall be substituted in the proceeding for the Overseas Aid Committee and the proceeding shall not abate by reason of the substitution.

[\[1\]](#) *Volume 1966-1967, page 589 and Volume 1996-1997, page 291.*