

STATES OF JERSEY



DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201-

Lodged au Greffe on 18th March 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft States of Jersey (Amendment No. 8) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 17th March 2014

REPORT

Introduction

1. The States of Jersey (Amendment No. 8) Law 201- is the result of an extensive 2 year consultation process. It seeks to amend Jersey's machinery of government in order to improve its function. The proposed amendment seeks to implement those recommendations of the Machinery of Government Sub-Committee that gained broad support through an extensive consultation process. It introduces collective responsibility for the Council of Ministers and enables the States to make subsequent decisions regarding arrangements for Scrutiny through Standing Orders.
2. Under the new system, the Chief Minister will be responsible for the overall organisation of the Council of Ministers and the allocation of functions to Ministers. This will result in a more flexible system of government that is able to respond to new challenges, changing organisational needs and the policy priorities upon which the Chief Minister is elected by the States.
3. In order to implement these changes there will need to be corresponding amendments to the Standing Orders of the States of Jersey. The Draft Amendment (No. 00) of the Standing Orders of the States of Jersey is attached at **Appendix 1** to this report. It is not possible for the amendment to Standing Orders to be lodged at the present time, as Royal Assent is required in the first instance in respect of the States of Jersey (Amendment No. 8) Law 201-. If the States adopt the States of Jersey (Amendment No. 8) Law 201-, the appended amendment to Standing Orders will be updated as necessary and lodged for debate with a view to its coming into force on the same day as the amendments to the States of Jersey Law 2005 in time for the appointment of a new Chief Minister after the October elections.

Background

4. Since the introduction of ministerial government in 2005, numerous propositions have been lodged proposing changes to the machinery of government. The Council of Ministers' draft 'Strategic Plan 2012: Green Paper' (R.5/2012) suggested that the 2011 elections had "highlighted a loss of public confidence in the States Assembly and government in general". It suggested that the apparent loss of public confidence may have stemmed from factors such as –
 - politicians' frustration with executive government;
 - personality politics;
 - lack of information on government decision-making;
 - increased numbers of States questions and propositions;
 - a 'less than robust' system of scrutiny;
 - unduly lengthy speeches resulting in extended States Sittings¹.
5. In the light of these comments, the Machinery of Government Sub-Committee was established by the Privileges and Procedures Committee (PPC) in February 2012 to undertake a review of the structures and functions of

¹ Strategic Plan 2012: Green Paper (R.5/2012), page 9.

government in Jersey. The Machinery of Government Review Sub-Committee was constituted as follows –

Deputy M. Tadier of St. Brelade, Chairman
Senator A.J.H. Maclean
Connétable L. Norman of St. Clement
Deputy J.A.N. Le Fondré of St. Lawrence
Deputy T.A. Vallois of St. Saviour
Deputy G.C.L. Baudains of St. Clement
Deputy J.H. Young of St. Brelade

Following the resignation of Connétable A.S. Crowcroft of St. Helier as Chairman of the Privileges and Procedures Committee on 16th July 2013; and the reconstitution of PPC on 18th July under the chairmanship of Deputy J.M. Maçon of St. Saviour, the Machinery of Government Sub-Committee was reconstituted as follows –

Deputy M. Tadier of St. Brelade, Chairman
Connétable L. Norman of St. Clement
Deputy J.A.N. Le Fondré of St. Lawrence
Deputy T.A. Vallois of St. Saviour
Deputy G.C.L. Baudains of St. Clement
Deputy J.H. Young of St. Brelade

Deputy T.A. Vallois of St. Saviour resigned from the Sub-Committee on 28th August 2013.

6. The Sub-Committee presented its interim report to the States in April 2013 (R.39/2013 refers). In examining the current machinery of government, the Sub-Committee found –
 - (1) blurred lines of accountability,
 - (2) a prevailing silo mentality,
 - (3) insufficient inclusivity,
 - (4) insufficient use of States Members' talents and expertise,
 - (5) ineffective lines of communication, and
 - (6) a civil service that potentially wields too much power.
7. The Sub-Committee undertook a programme of interviews with 48 States Members and senior officers, and had held an 8 week public consultation in the summer of 2012. Its final report (R.105/2013) was presented to the States by PPC on 9th September 2013, and included a series of recommendations that were intended to address its findings. The recommendations were based upon an understanding that public expectations of the standards that should be adhered to, both here and in other jurisdictions, are rising, and that the States should expect those higher standards to be achieved.
8. PPC agreed that the States should be requested to hold an 'in Committee' debate on the recommendations contained within the report, in accordance with Standing Order 89(c) of the Standing Orders of the States of Jersey. The debate was held on 9th October 2013 and covered subject areas including: the executive, Scrutiny, non-executive members, States members' resources and the appointment of an Ombudsman. Following the debate, the PPC agreed that

a Steering Group should be formed to take forward those recommendations that had gained broad support during the debate. The Steering Group was established as follows –

- Deputy J.M. Maçon of St. Saviour, Chairman, Privileges and Procedures Committee and Steering Group Chairman
 - Deputy M. Tadier of St. Brelade, Vice-Chairman, Privileges and Procedures Committee and Chairman of the former Machinery of Government Review Sub-Committee
 - Deputy T.A. Vallois of St. Saviour, President, Chairmen’s Committee and former Machinery of Government Review Sub-Committee member
 - Senator I.J. Gorst, Chief Minister.
9. The Steering Group held its first meeting on 24th October 2013 and agreed to consult with the Council of Ministers, the Chairmen’s Committee and PPC regarding the Sub-Committee’s recommendations, with the exception of those relating to Non-Executive Members, which were not considered to have had the support of members during the ‘in Committee’ debate. The outcome of those discussions and the decision on whether or not to take forward each of the Sub-Committee’s recommendations is detailed in the table attached at **Appendix 2**. The members of the Machinery of Government Steering Group met with the PPC on 6th March to discuss the lodging of the draft amendment. PPC did not find a majority in favour of lodging all of the amendments in the name of the Committee. The Chief Minister therefore offered to lodge the draft amendment if this was felt to be helpful, and it was concluded that this would be the best way in which to ensure that the States Assembly had an opportunity to express a view on the draft amendment. The Council of Ministers considered this matter on 12th March 2014 and a majority supported that the draft Law should proceed to lodging by the Chief Minister in order to ensure that the States Assembly can decide upon the recommendations.

Amendments to the machinery of government

Executive amendments

10. The States of Jersey (Amendment No. 8) Law 201- provides for a number of changes to the structure of the executive. Most importantly, it introduces collective responsibility for the Council of Ministers and Assistant Ministers.
11. Under the new procedures set out in Amendment (No. 00) of the Standing Orders of the States of Jersey, the States will meet to appoint a Chief Minister designate 21 days after an ordinary election (see Appendix 1, Amendment 2). Candidates for the post will be required to submit their nomination 5 working days before the meeting and will be questioned for one hour by the States Assembly during the selection process. The successful candidate will be elected by majority vote, as is presently the case.
12. The meeting to appoint the Council of Ministers will take place 5 working days after the Chief Minister designate has been appointed. The number of Ministers in the Council of Ministers will no longer be specified in the Law (see Article 2 of the States of Jersey (Amendment No. 8) Law 201-). Instead, the Chief Minister designate will be able to propose the team that he or she considers best suited to the delivery of policy, which may involve the abolition or creation of Ministerial offices and transfers of functions (see Article 3). The Council will be proposed *en bloc* and members will not be able to make alternative nominations. The States Assembly will have one hour for

questions, then will vote to either accept or reject the proposed slate. The Chief Minister designate would make up to 3 attempts to achieve a majority vote in favour of his or her Council. In order to ensure that a Council is formed, if the States reject the Chief Minister designate's proposal 3 times, the Chief Minister designate then decides the membership and structure of the Council of Ministers, without States approval. If members consider this decision to be a poor reflection upon the post-holder, it is within their gift to bring a vote of no confidence.

13. The new procedure for the appointment of the Council of Ministers allows the States Assembly to indicate its confidence in the collective government of the Council of Ministers, rather than in individual Ministers, as is presently the case. In appointing the Council of Ministers as a slate, the States Assembly will be demonstrating the requirement for individual Ministers to act in accordance with the principle of collective responsibility (see Article 2). Under collective responsibility, Ministers will be required to represent and implement agreed government policy, which will be set out in the States-approved Strategic Plan. The States Assembly will appoint the Council of Ministers in the knowledge that Ministers will be required to adhere to a Code of Practice, to be agreed at its first meeting, a draft of the principles for which is attached at **Appendix 3**. In addition, the Council of Ministers will be able to direct a Minister in respect of policy matters (see Article 2) and the Chief Minister will have the power to dismiss a Minister (see Article 4).
14. There will continue to be a limit on the number of States Members in the executive (see Article 8), with the aggregate of the Chief Minister, Ministers and Assistant Ministers required to be no more than 21 (see Appendix A, Amendment 5). The limit on the number of Assistant Ministers that a Minister may have has, however, been removed (see Article 7). This enables the Council to determine the appropriate apportionment of resources within its limit of 21 executive members. Assistant Ministers are also bound by collective responsibility in relation to the policy of the ministerial department they are in and the draft Law makes it clear that they will cease to hold office when their Minister ceases to hold office. The requirement for collective responsibility for Assistant Ministers is intended to improve communication between Ministers and Assistant Ministers and to enhance their relationship. At present, Ministers are not able to delegate the power to make an enactment or to decide an appeal under an enactment. Article 10 amends this to enable Ministers to delegate these functions to an Assistant Minister, further strengthening their role.
15. The Chief Minister will be able to propose the creation of a Ministerial office, or propose that a Minister be moved from one office to another and the States will be able to accept or reject the proposal (see Articles 6 and 11). Any formal transfer of ministerial functions will be undertaken by Order made by the Chief Minister. If a vacancy arises for a Minister, or if a new Ministerial Office is created, the Chief Minister will nominate a member for appointment and there will be up to 15 minutes of questions (see Appendix 1, Amendment 4). In the same way that members are not able to nominate candidates during the election of the Council of Ministers, members will not be able to propose alternatives to the candidate proposed by the Chief Minister. This reflects the new procedures under the principle of collective responsibility. If the States Assembly votes against the appointment of the Chief Minister's candidate, the Chief Minister will be able to make another

nomination. The ‘three strikes’ rule that was applicable to the initial Council of Ministers slate will not apply in this instance. If the Chief Minister has been unable to secure an appointment after several nominations and members consider this to be a poor reflection upon the post-holder, it is within their gift to bring a vote of no confidence. The power to create new Ministerial offices, re-shuffle or dismiss Ministers does not extend to the Deputy Chief Minister in the case of the absence or incapacity of the Chief Minister (see Article 9).

Scrutiny amendments

16. The States of Jersey (Amendment No. 8) Law 201- includes one amendment to the Scrutiny provisions contained within the States of Jersey Law 2005. This amendment continues to require the States to make Standing Orders for the conduct of Scrutiny, but ceases to be prescriptive about numbers of panels and how they are appointed (see Article 12). Standing Orders may then make such arrangements for Scrutiny as the States decide upon. The only other suggested amendments to the Scrutiny function are contained within the draft Amendment (No. 00) of the Standing Orders of the States of Jersey (see Appendix 1).
17. The amendments to the Scrutiny system that were recommended by the Sub-Committee received support during the ‘in Committee’ debate, but not all of the proposals attracted the full support of Scrutiny during the subsequent consultation process. Rather than adopt the system recommended by the Sub-Committee, Scrutiny was of the view that the present Scrutiny structure might be retained and updated to account for the proposed executive amendments. The Scrutiny changes included in Amendment (No. 00) of the Standing Orders of the States of Jersey reflect the changes requested by the Chairmen’s Committee.
18. Amendment 6 of the Amendment (No. 00) of the Standing Orders of the States of Jersey (see Appendix 1) re-assigns the topic of housing from the Health, Social Security and Housing Panel to the Environment and Technical Services Panel. This will enable a more even distribution of work-load among the Panels. In addition, the amendment removes the references to the titles by which the Panels are known and simply retains the topic areas which are assigned to them. This introduces more flexibility in the naming of Panels, without the requirement for legislative change.
19. Amendment 7 of the Amendment (No. 00) of the Standing Orders of the States of Jersey (see Appendix 1) enables the Chairmen’s Committee to establish review panels to consider a particular matter, including cross-cutting issues. The members of review panels will be appointed by the Chairmen’s Committee and be members who are not part of the executive. The review panel will appoint a chairman, prepare its terms of reference and determine a date for the completion of its review in consultation the Chairmen’s Committee and, where relevant, the scrutiny panel responsible for the topics that fall within the scope of its review. The review panel’s report will be submitted to the Chairmen’s Committee and laid before the States by the Chairmen’s Committee. The review panel will be required to comply with the code of practice for scrutiny panels and the Chairman of a review panel will be able to make a statement in the Assembly about the work undertaken by the panel.

Additional recommendations

20. The following recommendations made by the Sub-Committee were supported by members, but do not require legislative changes in order to be implemented. It is accordingly recommended that, should the States of Jersey (Amendment No. 8) Law 201- be adopted, the following recommendations should also be implemented –

- The Council of Ministers should have as a standing item on its Agendas a documented summary update on the work programmes of each individual Minister (recommendation 5).
- The precise terms and limitations of collective responsibility should be specified within the Code of Conduct for Ministers, which should be adopted at the very first meeting of each new Council and, subsequently, be presented to the States as a report in the ‘R.’ series (recommendation 14, see Appendix 3).
- Assistant Ministers should have identical rights of access to information to those of their Minister (recommendation 19).
- There should be scheduled opportunities for new Members to visit States departments and meet senior management teams (recommendation 35).
- The Code of Practice for Scrutiny and the PAC should be reviewed (recommendation 37).
- The Council of Ministers should ensure that all Ministers are obtaining appropriate input from the Law Draftsman’s Office on significant pieces of draft legislation prior to lodging (recommendation 44).
- The structure and resourcing of the Scrutiny Office should be reviewed with a view to enhancing internal research capacity and enabling easier access to specialist external advice (recommendation 46).

Financial and manpower implications

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

Human Rights

The Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues.



DRAFT AMENDMENT (No. 00) OF THE STANDING ORDERS OF THE STATES OF JERSEY

REPORT

Explanatory Note

These amendments make miscellaneous changes to the Standing Orders of the States of Jersey.

Amendment 1 provides for the construction of references to standing orders by number only.

Amendment 2 alters the procedure for the selection of a Chief Minister designate. Paragraph (1) provides for the meeting at which the Chief Minister designate is selected to commence within 21 days after the ordinary election. Currently, the meeting must be held within 28 days after the ordinary election. Paragraph (2) provides for the meeting to appoint Ministers to be convened 7 clear working days after the close of the meeting at which the Chief Minister designate is selected. Currently, the meeting to appoint Ministers takes place 2 clear working days after the close of the meeting at which the Chief Minister designate is selected. Paragraph (3) provides that a nomination of an elected member as a candidate for the office of Chief Minister must be submitted to the Greffier of the States by 5 p.m. on the working day that is 5 clear working days before the day on which the meeting to select a Chief Minister designate commences. Currently, the nomination has to be submitted not less than 2 clear working days before the day on which the meeting to select a Chief Minister designate commences. Paragraph (4) increases from 40 minutes to one hour the time allowed for questioning of a candidate for the office of Chief Minister.

Amendment 3 makes amendment to the procedure for appointment of Ministers, consequentially upon the changes made by Article 3 of the States of Jersey (Amendment No. 8) Law 201- (P.**/2014). The substantive changes are as follows. Paragraph (2) provides for the meeting to appoint Ministers to take place 5 clear working days after the close of the meeting at which the Chief Minister designate is selected. Currently, the meeting to select Ministers commences 2 clear working days after the close of the meeting to select the Chief Minister designate. Paragraph (3) substitutes standing order 117. Currently, standing order 117 specifies that there are 10 Ministerial offices, which are named in the standing order, requires the Chief Minister designate to submit his nominations for appointment to those offices and then enables

elected members to nominate alternative candidates, with the appointment to each Ministerial office being voted separately.

Under the revised process, the Chief Minister designate must nominate his or her Ministerial team and must specify any changes in the discharge of Ministerial functions that he or she intends to make. The Chief Minister designate is not obliged to nominate 10 Ministers. He or she may propose the abolition or creation of Ministerial offices and transfers of functions.

Once the Chief Minister designate has proposed his or her Ministerial team, elected members have up to one hour for questions. The amendments made to Article 19 of the 2005 Law by Article 3 of the States of Jersey (Amendment No. 8) Law 201- provide that elected members may not nominate alternative candidates for appointment.

If the Chief Minister designate's proposed Ministerial team is rejected by the States, he or she must submit a second proposal to the Greffier by 9.30 a.m. on the next working day, at the latest. The States would then reconvene on the following working day, although they may decide to reconvene earlier. If the Chief Minister designate's second proposal is rejected by the States, he or she must submit a third proposal for debate by the States, using the same timetable as applied to the second proposal.

If the Chief Minister designate's third proposal is rejected, Article 19(5B) of the States of Jersey Law 2005, as amended by Article 3 of the States of Jersey (Amendment No. 8) Law 201-, has the effect that the Chief Minister designate may then decide Ministerial offices, their functions and who is appointed to them. The Chief Minister designate must inform the States of his or her decision, either immediately after the third proposal is rejected, later in the same day, or at 9.30 a.m. on the next working day.

An example of the combined changes in time limits and procedures made by *Amendments 2 and 3* follows (assuming that there are no intervening bank holidays or public holidays).

Wednesday 15th October	ordinary election
Friday 24th October	5 p.m. deadline for submission to Greffier of nominations for the office of Chief Minister
Monday 3rd November	date fixed for selection of Chief Minister designate, being a date within 21 days following the ordinary election
Monday 10th November	9.30 a.m. deadline for Chief Minister designate to deliver to Greffier the proposal as to Ministerial appointments and any transfers of functions, etc.
Tuesday 11th November	meeting to appoint Ministers, assuming Chief Minister designate is selected on 3rd November. States reject Chief Minister designate's proposal

Wednesday 12th November	9.30 a.m. deadline for Chief Minister designate to deliver second proposal to Greffier of the States
Thursday 13th November	States debate Chief Minister designate's second proposal (assuming it was delivered on the morning of the 12th) States reject Chief Minister designate's second proposal
Friday 14th November	9.30 a.m. deadline for Chief Minister designate to deliver third proposal to Greffier of the States
Monday 17th November	States debate Chief Minister designate's third proposal (assuming it was delivered on the morning of the 14th) States reject Chief Minister designate's third proposal
Tuesday 18th November	Chief Minister designate must announce his or her decision as to Ministerial offices and appointments at 9.30 a.m. (unless announced earlier).

Amendment 4 introduces a new standing order to establish a procedure for the appointment of a Minister when a vacancy arises in an office or if a new Ministerial office is created. Currently, standing order 117 applies to the appointment of a Minister in these circumstances, and allows elected members to nominate alternative candidates. Under the new standing order 126, the Chief Minister proposes the elected member that he or she wishes to appoint to the Ministerial office in question. Elected members have up to 15 minutes to question the Chief Minister about the proposed appointment. Article 23(2) of the States of Jersey Law, as amended by Article 6 of the States of Jersey (Amendment No. 8) Law 201-, provides that elected members cannot amend the Chief Minister's proposal.

Amendment 5 prescribes the limit on the aggregate of the Chief Minister, Ministers and Assistant Ministers for the purposes of Article 25A of the 2005 Law. Article 25A, inserted in the 2005 Law by Article 8 of the States of Jersey (Amendment No. 8) Law 201-, prohibits the aggregate of Chief Minister, Ministers and Assistant Ministers exceeding the limit set in standing orders. The limit is set at 21, being the limit that would have been applied by Article 5 of the States of Jersey (Miscellaneous Provisions) Law 2011 following the ordinary elections in October. Article 5 is repealed by the States of Jersey (Amendment No. 8) Law 201-.

Amendment 6 re-assigns the topic "housing" from the health, social security and housing scrutiny panel to the environment and technical services scrutiny panel. It also removes the references to the titles by which the panels are known, as it seems unnecessarily prescriptive to set these in standing orders.

Amendment 7 allows the establishment of review panels by the chairmen's committee.

A review panel would be established to review and report upon a particular matter. The matter may (or may not) fall within the topic areas of one or more scrutiny panels.

The chairmen's committee appoints the members of a review panel from amongst elected members who are not part of the executive. The review panel appoints its chairman, prepares its terms of reference and determines a date by which it should complete its review but, in doing so, it must have the agreement of the chairmen's committee. In addition, if the matter that the panel is reviewing falls within the topic area of a scrutiny panel, the review panel must also consult that scrutiny panel when preparing its terms of reference.

The chairman of a review panel may make a statement in the Assembly regarding the panel's work (*amendment 7(2)*). The chairmen's committee is bound to ensure that the work of review panels is co-ordinated, prioritised and resourced alongside the work of the Public Accounts Committee and scrutiny panels (*amendment 7(3)*).

A review panel must comply with the code of practice that applies to scrutiny panels.

Once a review panel has prepared its report on the matter assigned to it, the panel must submit the report to the chairmen's committee. The chairmen's committee must then lay it before the States.

Amendment 8 provides for the citation and commencement of these Amendments.



**DRAFT AMENDMENT (No. 00) OF THE STANDING
ORDERS OF THE STATES OF JERSEY**

Arrangement

Regulation

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DRAFT AMENDMENT (No. 00) OF THE STANDING ORDERS OF THE STATES OF JERSEY

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 48 of the States of Jersey Law 2005,
have made the following Amendments to the Standing Orders of the States of
Jersey –

1 Interpretation

In these Amendments, a reference to a standing order is a reference to the
standing order of that number in the Standing Orders of the States of Jersey.

2 Arrangements for selection of Chief Minister designate

- (1) In the table in standing order 112(1), in the second column, opposite the
item “1. selection of Chief Minister designate”, for the words “28 days”
there shall be substituted the words “21 days”.
- (2) In standing order 113(1) for the words “4 clear working days” there shall
be substituted the words “7 clear working days”.
- (3) For standing order 115(1)(d) there shall be substituted the following sub-
paragraph –
 - “(d) submitted to the Greffier no later than 5 p.m. on the working
day that is 5 clear working days before the day the meeting
during which the selection is to be made commences.”.
- (4) In standing order 116(5) for the words “40 minutes” there shall be
substituted the words “one hour”.

3 Arrangements for proposal of Ministers by Chief Minister designate

- (1) In the table in standing order 112(1) –
 - (a) in the first column, for the item “2. selection of Ministers” there
shall be substituted the item “2. appointment of Ministers”;

- (b) in the second column, opposite the item "2. appointment of Ministers" for the words "2 clear working days" there shall be substituted the words "5 clear working days".
- (2) In standing order 113(2) for the words "2 clear working days" there shall be substituted the words "5 clear working days".
- (3) For standing order 117 there shall be substituted the following standing order –

"117 Ministers: nomination

- (1) The Chief Minister designate shall deliver to the Greffier his or her proposal as to –
 - (a) Ministerial offices; and
 - (b) the elected members to be appointed to each of those offices.
- (2) The Chief Minister designate's proposal shall also, as required –
 - (a) identify any Ministerial office that the Chief Minister designate proposes to abolish and specify the Minister or Ministers to whom the functions of that office will be transferred;
 - (b) name any Ministerial office that the Chief Minister designate proposes to establish and specify the functions to be conferred upon or transferred to that office;
 - (c) specify any further transfers of functions from one Ministerial office to another that the Chief Minister designate intends to make.
- (3) The proposal shall be delivered to the Greffier no later than 9.30 a.m. on the working day preceding the day on which the meeting to appoint the Ministers commences.
- (4) The Greffier shall, as soon as possible –
 - (a) distribute a copy of the Chief Minister designate's proposal to members of the States; and
 - (b) publish the proposal on the website on which the Greffier publishes information about the States.
- (5) The distribution required by paragraph (4)(a) may be in electronic format.
- (6) At the meeting to appoint the Ministers, the presiding officer shall invite the Chief Minister designate to move his or her proposal.
- (7) After the Chief Minister designate has moved his or her proposal, the presiding officer shall allow up to one hour for elected members to question the Chief Minister designate.

NOTE: Article 19(5A) of the Law provides that the States may not amend the Chief Minister designate's proposal.
- (8) When the questions are concluded, a recorded vote shall be taken.

- (9) If the Chief Minister designate's first proposal is rejected, paragraphs (1) to (8) shall apply to his or her second or third proposal (as the case requires) as they apply to the first proposal save that –
- (a) following the rejection of a proposal, the Chief Minister designate must inform the States of the day and time by which he or she will deliver to the Greffier a second or third proposal (as the case requires);
 - (b) the day and time referred to in sub-paragraph (a) must be no later than 9.30 a.m. on the first working day following the day on which the Chief Minister designate's first or second proposal (as the case requires) was rejected;
 - (c) the presiding officer shall adjourn the meeting until 9.30 a.m. on the second working day following the day on which the Chief Minister designate's first or second proposal (as the case requires) was rejected.
- (10) If the day and time notified by the Chief Minister designate under paragraph (9)(a) is earlier than the day and time required by paragraph (9)(b), the States may decide to reconvene earlier than the day and time required by paragraph (9)(c).
- (11) Following the rejection of a third successive proposal by the Chief Minister designate, the Chief Minister designate shall inform the States of his or her decision under Article 19(5B) of the Law by announcing it in the Assembly –
- (a) immediately;
 - (b) later in the same day; or
 - (c) at 9.30 a.m. on the next working day.
- NOTE: Article 19(5B) of the Law provides that if the States reject 3 successive proposals of the Chief Minister designate, he or she then decides his or her Ministerial team and informs the States of his or her decision.
- (12) If the Chief Minister designate does not intend to announce his decision under Article 19(5B) of the Law immediately –
- (a) he or she shall inform the States of the time at which and, if not the same day, the day on which he or she will make the announcement; and
 - (b) the presiding officer shall adjourn the meeting until that time and, if not the same day, that day.
- (13) If, for any reason apart from his or her appointment to office as Chief Minister, the Chief Minister designate ceases to be such, the procedure under this standing order shall cease.
- NOTE: By virtue of Article 19(7) of the Law, the Council of Ministers takes office upon the States adopting the Chief Minister designate's proposal or, if the States have rejected 3 successive proposals of the Chief Minister designate, upon the Chief Minister informing the States of his or her Ministerial team."

- (4) In standing order 117A for the words “After the selection of Ministers under standing order 117 is complete,” there shall be substituted the words “After the Chief Minister and Ministers are appointed to office, in accordance with Article 19(7) of the Law,”.

4 Arrangements for appointment of Minister otherwise than following ordinary election

After standing order 125 there shall be inserted the following standing order –

“126 Appointment of Minister otherwise than following an ordinary election

- (1) This standing order applies when there is a vacancy in a Ministerial office or a new Ministerial office is created.
- (2) The Chief Minister shall deliver to the Greffier his or her proposal as to the elected member to be appointed to the Ministerial office.
- (3) The Chief Minister shall –
 - (a) notify the Greffier of the day, during a meeting, on which the Chief Minister intends to propose the appointment; and
 - (b) deliver the proposal to the Greffier no later than 9.30 a.m. on the working day preceding the day notified under subparagraph (a).
- (4) The Greffier shall, as soon as possible –
 - (a) distribute a copy of the Chief Minister designate’s proposal to members of the States; and
 - (b) publish the proposal on the website on which the Greffier publishes information about the States.
- (5) The distribution required by paragraph (4)(a) may be in electronic format.
- (6) The States may agree that the Chief Minister may move a proposal notwithstanding that paragraph (3)(b) has not been complied with.
- (7) The presiding officer shall invite the Chief Minister designate to move his or her proposal.
- (8) After the Chief Minister has moved his or her proposal, the presiding officer shall allow up to 15 minutes for elected members to question the Chief Minister.
- (9) When the questions are concluded, a recorded vote shall be taken.

NOTE: Article 23(2) of the Law provides that the States may not amend the Chief Minister’s proposal for the appointment of an elected member to a Ministerial office.”.

5 Limit on number of Ministers and Assistant Ministers

After standing order 112 there shall be inserted the following standing order –

“112A Limit on number of Ministers and Assistant Ministers

The number of individuals prescribed for the purposes of Article 25A(1) of the Law is 21.”

6 Topics assigned to, and names of, scrutiny panels

(1) In the table in standing order 112(1) for item 5 in the left hand column there shall be substituted the following item –

“5. Appointment of chairmen of scrutiny panels in the order in which the panels appear in standing order 135(1).”

(2) In standing order 135(1) –

- (a) in clause (a) the words “(‘corporate services’)” shall be deleted;
- (b) in clause (b) the words “(‘economic affairs’)” shall be deleted;
- (c) in clause (c) the words “(‘education and home affairs’)” shall be deleted;
- (d) for clauses (d) and (e) there shall be substituted the following clauses –
 - “(d) a scrutiny panel which is assigned the topics of environment, housing and technical services;
 - (e) a scrutiny panel which is assigned the topics of health and social services and social security.”

7 Review panels

(1) In standing order 1(1) after the definition “Public Finances Law” there shall be inserted the following definition –

“‘review panel’ means a review panel established under standing order 145A;”

(2) In standing order 17(1) after sub-paragraph (e) there shall be inserted the following sub-paragraph –

“(ea) a chairman of a review panel;”

(3) In standing order 143 –

- (a) in sub-paragraph (a), for the words “the PAC and scrutiny panels,” there shall be substituted the words “the PAC, scrutiny panels and review panels;”;
- (b) in sub-paragraph (b), for the words “and scrutiny panels” there shall be substituted the words “, scrutiny panels and review panels”.

(4) After standing order 145 there shall be inserted the following standing order –

“145A Review panels

(1) The chairmen’s committee may establish review panels.

- (2) A review panel may be established for the purpose of reviewing a particular proposal, issue or project, determined by the chairmen's committee.
- (3) The proposal, issue or project may be one –
 - (a) that falls within the topics assigned to more than scrutiny panel;
 - (b) that falls within the topics assigned to one scrutiny panel, if the chairman of that panel has assented to the establishment of the review panel.
- (4) The chairmen's committee shall appoint elected members as the members of a review panel.
- (5) Ministers and Assistant Ministers cannot be members of review panels.
- (6) A review panel must, with the agreement of the chairmen's committee –
 - (a) appoint one of its members as chairman;
 - (b) prepare its terms of reference for the review; and
 - (c) identify a date by which the review should be completed.
- (7) A review panel must obtain the agreement of the chairmen's committee to –
 - (a) an appointment under paragraph (6)(a);
 - (b) the panel's terms of reference; and
 - (c) the date by which the review should be completed.
- (8) In preparing its terms of reference, a review panel must also consult with a scrutiny panel if the proposal, issue or project to be reviewed by the review panel falls within a topic assigned to that scrutiny panel.
- (9) A review panel shall comply with any code referred to in standing order 141.
- (10) A review panel shall prepare a report upon the proposal, issue or project assigned to it.
- (11) The review panel shall present the report to the chairmen's committee.
- (12) The chairmen's committee shall present the report to the States.
- (13) The chairmen's committee may disband a review panel at any time.”.

8 Citation and commencement

These amendments may be cited as Amendment (No. 00) of the Standing Orders of the States of Jersey and shall come into force [.....].

APPENDIX 2

Executive Recommendations

No.	Recommendation	R.105/2013 page reference	Supported by Steering Group following consultation?	Action
3	Amend Standing Order 115 to require that written statements setting out a vision for a strategic policy and the manner in which a candidate proposes to discharge their duties as Chief Minister should be published not less than 5 working days before the meeting at which the Chief Minister Designate is to be elected.	Page 18	Yes	See Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 2 (attached at Appendix 1).
4	Amend Standing Order 116(5) to allow up to one hour of questioning of each candidate for the office of Chief Minister.	Page 18	Yes	See Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 2 (attached at Appendix 1).
5	The size of the executive should continue to be constrained in accordance with the Troy rule.	Page 19	Yes	Principle of Troy rule retained. See Draft States of Jersey (Amendment No. 8) Law 201-, Articles 7 and 8
6	Empower the Chief Minister to change ministerial portfolios and determine the optimum number of Ministerial appointments once he or she has been elected as Chief Minister Designate.	Page 20	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 6. See also Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 3 (attached at Appendix 1).
7	Chief Minister Designate to continue to be required to secure the endorsement of the States Assembly for his or her ministerial team.	Page 21	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 6. See also Draft Amendment (No. 00) of the Standing Orders of

				the States of Jersey, amendment 3 (attached at Appendix 1).
8	Only the Chief Minister Designate should be able to nominate candidates for Ministerial positions.	Page 21	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 6. See also Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 3 (attached at Appendix 1).
9	The timescale outlined at Standing Order 112 should be amended to require that the Chief Minister Designate nominate his or her preferred slate of Ministers to the States within 5 working days.	Page 22	Yes	See Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 3 (attached at Appendix 1).
10	The States should vote for or against the list of proposed Ministers on an individual basis.	Page 22	No	The list of proposed Ministers to be voted for as a slate. See the Draft States of Jersey (Amendment No. 8) Law 201-, Article 3.
11	The Chief Minister Designate should be able to propose a maximum of 3 Ministerial teams.	Page 23	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 3. (Does not apply in the case of a re-shuffle)
12	The Council of Ministers should be bound by collective responsibility.	Page 24	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 2. Detail to be set out in the Code of Conduct for Ministers.
13	Assistant Ministers should also be bound by collective responsibility in respect of any matters falling directly within the ministerial portfolios to which they are attached.	Page 24	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 7. Detail to be set out in the Code of Conduct for Ministers.

14	The precise terms and limitations of collective responsibility should be specified within the Code of Conduct for Ministers, which should be adopted at the very first meeting of each new Council and, subsequently, be presented to the States as a report in the 'R' series.	Page 25	Yes	To be included in Code of Conduct for Ministers.
15	The Council of Ministers should be invested with sufficient powers to direct individual departments if necessary.	Page 25	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 2.
16	The title 'Junior Minister' should henceforth be substituted for that of 'Assistant Minister.'	Page 27	No	n/a
17	The States of Jersey Law 2005 should be amended to make Junior Ministers the default port of call for an executive decision whenever the Minister is out of the Island or is otherwise indisposed.	Page 27	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 10.
18	One Junior Minister should by default represent their department at the Council of Ministers whenever the Minister is out of the Island or is otherwise indisposed	Page 27	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 10.
19	Junior Ministers should have identical rights of access to information to those of their Minister.	Page 27	Yes	Included as a recommendation in accompanying report to the Draft States of Jersey (Amendment No. 8) Law 201-.
21	Following a resignation or dismissal, the Chief Minister alone should be able to propose a new Minister. He or she would require the endorsement of the States for that appointment.	Page 30	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 6.

22	A Chief Minister should be entitled to 3 attempts to appoint a new Minister.	Page 30	No	States endorsement required for new appointments but 3 attempts applied only to recommendation 11.
23	The Chief Minister should require the prior endorsement of the States for any reshuffling of Ministers between existing portfolios.	Page 31	Yes	Included in the Draft States of Jersey (Amendment No. 8) Law 201-, Article 6.
24	The period for development of the draft Strategic Plan cited in Article 18(2)(e) of the States of Jersey Law 2005 should be reduced to a maximum of 60 days.	Page 32	No	n/a
44	The Council of Ministers should ensure that all Ministers are obtaining appropriate input from the Law Draftsman's Office on significant pieces of draft legislation prior to lodging.	Page 42	Yes	Recommendation included in accompanying report to the Draft States of Jersey (Amendment No. 8) Law 201-.

Scrutiny recommendations

No.	Recommendation	R.105/2013 page reference	Supported by Steering Group following consultation?	Action required
32	There should be a Scrutiny Management Committee (SMC) consisting of 5 non-executive States Members elected by the States, together with the Chair of the Public Accounts Committee.	Page 39	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	Alternative approach agreed in consultation with Scrutiny, involving the review of the current distribution of work-load among Panels and the creation Review Groups. Included in the Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7, attached at Appendix 1.
33	Only non-executive States Members should be permitted to cast votes during the election of the SMC or for a replacement member of the SMC.	Page 39	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).
34	Dismissal and replacement of individual members of the SMC should be a matter determined by the States following debate on a no confidence proposition, to be lodged by a member of the non-executive only.	Page 39	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).
35	There should be scheduled opportunities for new Members to visit States departments and meet senior management teams.	Page 40	Yes	Recommendation included in accompanying report.

36	Any questions regarding the responsibility for cross-cutting review topics should be resolved by the Scrutiny Management Committee.	Page 40	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 7 (attached at Appendix 1).
37	The Code of Practice for Scrutiny and the PAC would need to be reviewed to take account of the changes we recommend.	Page 40	Yes	Review to be undertaken by the Chairmen's Committee
8	Any non-executive States Member not already serving on the SMC should be able to volunteer to serve on a scrutiny committee established by the SMC to conduct a topic review.	Page 41	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).
39	Scrutiny committees formed to conduct a review of a particular issue should be comprised of between 3 and 5 non-executive members.	Page 41	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).
40	Membership of scrutiny committees should be approved by the SMC.	Page 41	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).
41	Terms of reference for individual scrutiny committees should be approved by the member of the SMC with oversight responsibility for that topic area.	Page 41	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).

42	A scrutiny committee constituted to conduct a particular topic review will be authorised to approve its own final report for presentation to the States.	Page 42	Alternative approach requested by Chairmen's Committee following consultation with Scrutiny	See recommendation 32 and Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendments 6 and 7 (attached at Appendix 1).
43	Responsibility for conducting legislative scrutiny should remain with the established Scrutiny function.	Page 42	Yes	None
45	Junior Ministers should not be permitted to serve on Scrutiny.	Page 43	Yes	Ministers and Assistant Ministers cannot be members of review panels. See Draft Amendment (No. 00) of the Standing Orders of the States of Jersey, amendment 6 (attached at Appendix 1).
46	The structure and resourcing of the Scrutiny Office should be reviewed with a view to enhancing internal research capacity and enabling easier access to specialist external advice.	Page 43	Yes	Separate project.

Non-executive recommendations

No.	Recommendation	R.105/2013 page reference	Supported by comments during in Committee debate?	Action required
25	NEMs should be appointed to provide advice and other assistance to each Minister.	Page 36	No	n/a
26	NEMs should be appointed by the States on the recommendation of the Chief Minister.	Page 36	No	n/a
27	NEMs should only be selected from members of the Assembly who are actively available to participate in scrutiny reviews.	Page 37	No	n/a
28	PPC should consider establishing procedures to define and ensure that NEMs are 'actively' available to participate in scrutiny reviews (such procedures to be implemented at the same time as NEMs are created).	Page 37	No	n/a
29	NEMs should be permitted to serve on scrutiny committees but not the SMC, and not in respect of any ministerial portfolio for which they act as a NEM.	Page 37	No	n/a
30	NEMs should have full and unfettered access to information held by, and the officers working within, the States departments falling within the relevant Minister's portfolio.	Page 37	No	n/a
31	PPC should consider bringing an amendment to the Code of Conduct for Elected Members to take account of the creation of NEMs.	Page 38	No	n/a

INTERIM RECOMMENDATIONS

	Recommendation	Comments of Chief Minister in correspondence addressed to PPC Chair dated 22nd May 2013	Action required
1	Advisory or oversight groups that are intended to progress the development or revision of policy falling within the remit of 2 or more Ministers should be constituted by the Council of Ministers, with a commensurate decision being recorded in the Part A (open) minutes of the Council wherever possible.	The first recommendation will be adopted as a procedural improvement for the constitution of advisory or oversight groups that are intended to progress the development or revision of policy which affects two or more Ministers and so will reflect the function of the Council to discuss and agree such policy.	Adopted. No further action required.
2	A decision of an individual Minister to form an advisory or oversight group to assist with the development or revision of policy within his or her remit should – (a) be recorded by way of a formal and public Ministerial Decision, and (b) that Ministerial Decision should record at least the outline terms of reference, the membership and anticipated duration of each group and, where relevant, the budget allocated to the group to complete its work.	This recommendation will be adopted as a procedural improvement for the constitution of advisory or oversight groups formed by an individual Minister to assist him or her with the development or revision of policy.	Adopted. No further action required.
3	The Council of Ministers should be required to publish, and to keep updated, a collated list of all advisory and oversight groups formed to progress the development or revision of policy.	This recommendation will be adopted and I will seek to publish as soon as possible and on an annual basis thereafter, a Report to the States Assembly containing a list of advisory and oversight groups formed to progress the development or revision of policy.	Adopted. No further action required.
4	PPC should lodge ‘au Greffe’ an amendment to the States of Jersey Law 2005 that, if adopted, would empower the Chief Minister to dismiss a Minister.	I am content for the PPC to proceed with lodging such an amendment to the States of Jersey Law 2005, which will reflect the recommendation of Sir Cecil Clothier’s Report of the Review Panel on the Machinery of Government in Jersey, published in December 2000, which recommended the “Chief Minister to have	Amendment to States of Jersey Law to enable the Chief Minister to dismiss a Minister included in

		<p>the power to dismiss Ministers”. The Report states: <i>“The Chief Minister would choose his or her team of Ministers which he would present to the States for approval. Should that approval not be forthcoming the Chief Minister would submit a revised team of Ministers. These would choose the member or members they wished to assist them, subject to the approval of the Chief Minister. The latter should have the power to dismiss Ministers, but the substitute Ministers should be subject to States approval.”</i></p> <p>I note from your letter that since publication of the report the Sub-Committee is considering modifying its fourth recommendation to take into account an appointments process for Ministers which would be fully consistent with the Clothier Report’s recommendations (as above). Given that Sir Cecil Clothier intended this as a coherent system for appointments and dismissals, taking forward these two elements together would be advisable and I am content for PPC to lodge these two amendments together. I also note that PPC have commented elsewhere that the existing rules do not allow the Chief Minister to align ministerial portfolios to fit the strategic priorities he or she identifies at the commencement of his or her term of office and that an argument could be constructed in favour of giving the Chief Minister greater flexibility in this regard. The power to make changes by Regulations under Article 29 might be amendment to an Order making power exercised by the Chief Minister, similar to that which exists in the UK and the Isle of Man. The Chief Minister may also require more than a day or two to consider his or her preferred ministerial portfolios and to select ministers. Again, this would seem to be part of the same overall system and I would be grateful if PPC could progress this matter at the same time.</p>	<p>proposition.</p>
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5	The Council of Ministers should have as a standing item on its Agendas a documented summary update on the work programmes of each individual Minister	This is an interesting proposal which may prove to be a useful suggestion if and when collective responsibility is adopted. However, until a conclusion is reached on whether the Council should be bound by collective responsibility, I note this recommendation as a helpful suggestion for the future.	To be taken forward by the Council of Ministers.
6	Minority government must be retained in the ongoing absence of political parties and irrespective of the outcome of the forthcoming referendum on the constitution of the States Assembly.	I support the principle that, in the absence of political parties, the executive function should continue to be constrained to a minority collective vote in the States Assembly. As you know, I am not convinced that the Amendment lodged by Deputy Troy (P.122/2001) is the ideal way to meet Sir Cecil Clothier's recommendation that "there must be a majority of Members of the States not in executive office to provide scrutiny of those who are, by means of 3 or 4 Scrutiny Committees". However, I hope that as we move to make the changes necessary following the result of the Referendum, we may be able to agree a future approach which clarifies the application of collective responsibility, continues to constrain the executive to a minority collective vote, and which is also more inclusive.	Limit on the number in the executive retained.
7	The Chairmen's Committee should be invited to consider the Electoral Commission's subsidiary recommendation on legislative scrutiny and report its views to the PPC.	I support the suggestion that the Chairmen's Committee should progress the Electoral Commission's subsidiary recommendation 2 contained within their Electoral Commission Final Report January 2013 (R.2/2013) that: <i>"A separate body should be established to consider whether parliamentary democracy in the Island would be strengthened by the constitution of a second legislative chamber or a new parliamentary committee dedicated to legislative scrutiny."</i>	MoG Sub-Committee's final report recommended no change for legislative scrutiny. No action required.

APPENDIX 3

The final form and content of a new Code of Conduct for Ministers would be a matter for the incoming Council of Ministers to consider at its first meeting, as recommended by the Machinery of Government Review. However, the Council provided broad agreement on 12th March 2014 to the principles to be contained in any future Code, in order to enable the Chief Minister to give an indication to the States Assembly of the likely framework for a new Code, as outlined below.

Summary of principles for a new Code of Conduct for Ministers

1. Ministers are expected to uphold the highest standards of propriety through observance of the Seven Principles of Public Life (honesty, integrity, objectivity, accountability, openness, honesty, leadership). As members of the States Assembly, Ministers are required to comply at all times with the Code of Conduct for Elected Members.
2. Ministers have a duty to the States Assembly to account for matters for which they are responsible, including for the policies, decisions and actions of the departments and agencies which discharge their responsibilities.
3. Ministers should uphold the principle of collective responsibility, save where it is explicitly set aside by the Chief Minister in relation to a “free vote” (most commonly used on an “issue of conscience”) or “agreement to differ”. This principle extends to the Assistant Ministers of the Minister proposing a matter to the States Assembly, and, where it is the Council of Ministers as a whole that is proposing a matter, to the Assistant Ministers whom assist the Minister who has the principal policy responsibility and who would be the main rapporteur.
4. The Council is able to give direction to a Minister as to how the Minister’s functions should be discharged, having consulted with the Minister first. This direction cannot relate to individual determinations under statute or other instrument. However, directions can relate to policies which may in due course affect the overall framework within which determinations are made.
5. Matters wholly within the responsibility of a single Minister and which do not fall under the functions of the Council of Ministers need not be brought to the Council. A Minister may ask to bring a matter of sole responsibility to Council for guidance and the Chief Minister may request that a matter be considered by the Council.
6. It is the responsibility of the proposing Minister to ensure that the matter is placed before the Council of Ministers, and to have discussed the matter with other relevant Ministers in advance of the Council meeting, including having resolved any policy differences with those Ministers before the matter is considered by the full Council.
7. Before making a policy announcement, however so made, including publishing a policy statement or a consultation paper, Ministers should consider whether it raises issues which fall under the functions of the Council of Ministers, and if so, bring the matter to the Council prior to any publication. In any event, the Chief Minister should be notified of the intention to make an announcement for the purposes of co-ordinating the publication of government business, save for minor matters.

8. When the States Assembly is in session, the most important announcements of policy should be made in the first instance in the Assembly, and in any event, States Members should be notified in advance of the media.
9. The Chief Minister is responsible for the overall organisation of the Executive and the Chief Minister's approval must be sought to any changes proposed which affect the allocation of responsibilities, save for minor matters. Where the Chief Minister seeks to exercise his responsibilities around the overall organisation of the Executive, the Ministers affected should be notified, provided with the rationale, and be given an opportunity to be heard by the Chief Minister, who in turn should inform the Council of Ministers and the States Assembly of any such decisions.
10. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, and ensure that their actions do not compromise their judgement or place them under an improper obligation. This includes the receiving of gifts, hospitality, travel or any other perceived benefits, which should be registered.
11. Ministers must uphold the political impartiality of public employees and not ask public employees to act in a way which would conflict with their responsibilities and obligations as outlined in their code of conduct, and should act with courtesy at all times toward public employees.
12. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code of Conduct for Ministers and for justifying their actions and conduct to the Chief Minister, the States Assembly and the public, and should inform the Chief Minister immediately of any possible breach of the Code.
13. The Chief Minister determines questions of compliance with the Code of Conduct for Ministers, but must commission an independent investigation to establish the facts to inform that determination. The Minister affected should be notified of the independent investigation, be given the opportunity to make a submission as part of the investigation, and be heard by the Chief Minister prior to making a determination. The Chief Minister must also inform the Council of Ministers and the States Assembly of the determination.
14. Ministers must only use information obtained in the course of their ministerial responsibilities for the purposes of discharging their ministerial responsibilities, and not for any other reason, and return all such information so obtained on ceasing to hold office.

Explanatory Note

This Law amends the States of Jersey Law 2005 (the “2005 Law”).

Article 1 provides for the construction of references to an Article or other sub-division of a Law.

Article 2 amends Article 18 of the 2005 Law. The amendments have the following effect –

1. The 2005 Law shall no longer specify the number of Ministers in the Council of Ministers (“the Council”).
2. The Council are required to adhere to the principle of collective responsibility.
3. The Council must agree a code of conduct that applies to them and to Assistant Ministers. The code must be presented to the States.
4. The Council is empowered to give directions to a Minister, concerning a policy for which the Minister has responsibility. Directions may only be given where the policy falls within the functions of the Council of Ministers described in Article 18(2) of the 2005 Law and the policy affects the public interest. The functions of the Council of Ministers under Article 18(2) include co-ordinating Ministerial policies and administration; discussing and agreeing policies that affect 2 or more Ministers and agreeing and lodging a statement of their common strategic policy. Directions cannot be given as to the exercise of a statutory function nor so as to influence the exercise of such a function.

Article 3 amends Article 19 of the 2005 Law regarding the process for selection and appointment of the Chief Minister. Currently, after a person is selected as Chief Minister (“the Chief Minister designate”) he or she must nominate elected members as Ministers. Each nomination is voted on separately, and elected members may nominate other candidates for a Ministerial office. The amendments have the following effect –

1. The Chief Minister proposes, en bloc, his or her Council. In doing so, he or she decides the number of Ministers to be comprised in the Council and the functions of those Ministers. Existing Ministerial offices can be abolished and new Ministerial offices created. Functions can be transferred between Ministers.
2. An elected member cannot propose an amendment to the Chief Minister designate’s proposal: the States may only accept or reject it.
3. However, if the States reject the Chief Minister designate’s proposal 3 times, the Chief Minister designate then decides the membership and structure of the Council of Ministers, without States approval. In making that decision, he or she may choose a membership and structure that was one of the 3 proposals previously rejected by the States, or may choose a different membership and structure.

Article 4 amends Article 21 of the 2005 Law.

The principal amendment made by this Article is in paragraph (c), which provides that only the Chief Minister has the power to dismiss a Minister, whereas the power of dismissal currently rests with the States.

The amendment made by paragraph (a) is to add the rules in clauses (i) and (ii) to Article 21(1)(b) of the 2005 Law, so as to make it clear that a Minister ceases to hold one Ministerial office when he or she is appointed to another Ministerial office. A person cannot, then, hold 2 Ministerial offices. In addition, it is made clear that an individual ceases to be a Minister when his or her Ministerial office is abolished.

The amendment made by paragraph (b) adds a rule that a Minister ceases to hold office when he or she resigns.

Article 5 repeals Article 21A of the 2005 Law. Article 21A gives the Chief Minister power to suspend a Minister pending a debate, in the States, on whether to dismiss the Minister. The power of suspension is not needed if the Chief Minister has the power to dismiss a Minister with immediate effect, as proposed.

Article 6 substitutes Article 23 of the 2005 Law. Currently, Article 23 is concerned with the arrangements for appointment of a Minister at any time after the Chief Minister and Ministers take office under Article 19 of the 2005 Law. Under the existing arrangements, the Chief Minister makes his or her nomination and then elected members may nominate alternatives.

Under the substituted Article 23 the Chief Minister may, as before, propose an individual for appointment to a Ministerial office. In addition, the Chief Minister may propose the creation of a Ministerial office or propose that an individual is moved from one Ministerial office to another. The States no longer have any power to amend the proposal: they can only accept or reject it.

Article 7 amends Article 25 of the 2005 Law, which is concerned with the appointment and dismissal of Assistant Ministers.

The amendment of paragraph (1) of Article 25 removes the limit on the number of Assistant Ministers that a Minister may have.

The repeal of paragraphs (3) and (5), which contained the “Troy” rule, is consequential on the addition of Article 25A to the 2005 Law (see *Article 8*, below).

The addition of paragraphs (5) and (6) to Article 25 firstly makes it clear that an Assistant Minister ceases to hold office when the Minister by whom he or she was appointed ceases to hold office and secondly provides that an Assistant Minister is bound to assist his or her Minister in accordance with the principle of collective responsibility.

Article 8 adds Article 25A to the 2005 Law. Article 25A imposes the limit on the aggregate of the Chief Minister, Minister and Assistant Ministers. The limit itself is prescribed in standing orders.

Article 9 amends Article 27 of the 2005 Law, which is concerned with the power of one Minister to act in the absence of another. The amendment makes it clear that the Deputy Chief Minister, when discharging the functions of the Chief Minister during the latter’s temporary absence or incapacity, or a vacancy in the office, does not have the power to dismiss Ministers. Nor does the Deputy Chief Minister have the power to make an Order under Article 29 of the 2005 Law, as substituted by *Article 11*, below, or to propose the creation of a Ministerial office, the appointment of an individual to a Ministerial office or the appointment of an individual who is already a Minister to another Ministerial office.

Article 10 amends Article 28 of the 2005 Law. Article 28 confers power on a Minister to delegate functions to Assistant Ministers and officers. Currently, there is an absolute prohibition of the delegation of any function of making an enactment, any function of deciding an appeal under an enactment or of any function, the delegation of which is prohibited by an enactment. The amendment revises the prohibition so that a Minister may delegate to an Assistant Minister a power to make an enactment or a power to decide an appeal under an enactment.

Article 11 substitutes Article 29 of the 2005 Law and adds new Article 29A.

Paragraph (1) of the existing Article 29 provides that the Chief Minister may move a Minister from one Ministerial office to another Ministerial office. This is replaced by paragraph (1)(c) of Article 23 as substituted by *Article 6*, above.

The remaining paragraphs of the existing Article 29 empower the States to make Regulations establishing or abolishing Ministerial offices and transferring functions. In the substituted Article 29, the Chief Minister is, instead, empowered to make these changes by Order. However, if he or she wishes to create a new Ministerial office, he or she must first seek the approval of the States, under Article 23 of the 2005 Law, as substituted by *Article 6*, above. The Chief Minister cannot delegate to an Assistant Minister the power to make an Order under this Article.

The new Article 29A makes provision for the interim discharge of functions from the time when the Chief Minister and Ministers are appointed to office under Article 19 of the 2005 Law to the time when the Chief Minister makes an Order giving effect to any changes in Ministerial offices and functions that he or she proposed or decided under Article 19 of the 2005 Law, as amended by *Article 3*, above. Any functions that are to be transferred from one Minister to another will continue to be discharged by the transferring Minister pending the Order being made. However, if no-one has been appointed to the office of the transferring Minister, because that office is to be abolished, the Chief Minister may either discharge the functions personally, or designate another Minister to discharge them, pending the Order being made.

Article 12 amends Articles 48 and 49 of the 2005 Law. Article 48 is the power for the States to make standing orders. Currently, the power requires the States to make standing orders that establish 2 or more scrutiny panels and specifies that the States appoint members of scrutiny panels from amongst elected members who are not Ministers or Assistant Ministers. As amended, the power still requires the States to make standing orders for the conduct of scrutiny, but ceases to be prescriptive about numbers of panels and how they are appointed. Standing orders may, then, make such arrangements for scrutiny as the States think fit. The amendment to Article 49 is consequential on the amendment to Article 48. The amendment has the effect that the power of the States to make Regulations conferring powers, privileges and immunities on committees and panels that are established by standing orders is extended to committees and panels that are established under standing orders.

Article 13 amends the Public Finances (Jersey) Law 2005 so as to make it clear that, when an Order is made transferring functions or creating or abolishing Ministerial offices, the Minister for Treasury and Resources must approve the changes in heads of expenditure that reflect the changes made by the Order.

Article 14 repeals Article 5 of the States of Jersey (Miscellaneous Provisions) Law 2011. This repeal is associated with the re-enactment of the “Troy” rule by Article 8, described above. Article 5 would have reduced the limit from 22 to 21 following the ordinary elections in October 2014. The limit of 21 will instead be prescribed in standing orders.

Article 15 amends the Gambling Commission (Jersey) Law 2010. That Law empowers the States, by Regulations, to transfer to the Gambling Commission functions that relate to gambling. The Regulations could, then, divest a Minister of a function. The amendment reserves to the Chief Minister the power to lodge the Regulations, as is consistent with the effect of the *Articles 3 and 11*, above.

Article 16 provides for the citation and commencement of this Law.



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201-

Arrangement

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Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201-

A **LAW** to amend further the States of Jersey Law 2005 and to make consequential amendments to other enactments

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 (except Articles 13 to 15) a reference to an Article or Schedule by number is a reference to the Article or Schedule of that number in the States of Jersey Law 2005¹.

2 Article 18 amended

In Article 18 –

- (a) for paragraph (1) there shall be substituted the following paragraph –
 - “(1) There shall be a Council of Ministers whose members shall be the Chief Minister and the Ministers.”;
- (b) in paragraph (2)(f) after the words “such other matters as” there shall be inserted the words “the Chief Minister or”;
- (c) after paragraph (3) there shall be inserted the following paragraphs –
 - “(3A) The Chief Minister and Ministers shall –
 - (a) adhere to the principle of collective responsibility; and
 - (b) agree and present to the States a code of conduct for Ministers and Assistant Ministers.
 - (3B) The Council of Ministers may, after consultation with a Minister, give the Minister directions concerning a policy for which the Minister is responsible, where the policy –

- (a) falls within the functions of the Council of Ministers, described in paragraph (2); and
 - (b) appears to the Council of Ministers to affect the public interest.
- (3C) Directions may not be given as to the exercise of any function conferred by an enactment, or so as to influence the exercise of such a function.
- (3D) A Minister shall comply with directions given to him or her under paragraph (3B).”.

3 Article 19 amended

In Article 19 –

- (a) for paragraphs (3) to (5) there shall be substituted the following paragraphs –
 - “(3) The Chief Minister designate shall, in accordance with the prescribed procedures and within the prescribed period, propose –
 - (a) Ministerial offices;
 - (b) the elected members to be appointed to those Ministerial offices; and
 - (c) any changes in the functions assigned to Ministers.
 - (4) If the Chief Minister designate’s proposal under paragraph (3) includes the establishment of a new Ministerial office, or a change in the functions of an existing Ministerial office, the proposal shall also, as the case requires, describe the functions of the new Ministerial office or the change in the functions of the existing Ministerial office.
 - (5) If the Chief Minister designate’s proposal under paragraph (3) includes the abolition of a Ministerial office, the proposal shall indicate the Minister to whom the functions of the abolished office are to be transferred.
 - (5A) The States may not amend a Chief Minister designate’s proposal under paragraph (3).
 - (5B) If the States reject 3 successive proposals of the Chief Minister designate under paragraph (3), the Chief Minister designate shall, in accordance with the prescribed procedures and within the prescribed period, inform the States of his or her decision as to the matters described in sub-paragraphs (a), (b) and (c) of paragraph (3).
 - (5C) The Chief Minister designate’s decision under paragraph (5B) may be the same as one of his or her proposals that the States have rejected.”;
- (b) for paragraph (7) there shall be substituted the following paragraph –
 - “(7) Upon –

- (a) the States adopting the Chief Minister designate's proposal under paragraph (3); or
- (b) the Chief Minister designate informing the States of a decision under paragraph (5B),

the Chief Minister designate and the persons proposed or decided by him or her for appointment as Ministers are appointed to office.”.

4 Article 21 amended

In Article 21 –

- (a) for paragraph (1)(b) there shall be substituted the following sub-paragraph –

“(b) an elected member shall continue in a Ministerial office until –

- (i) he or she is appointed to another Ministerial office under Article 23,
- (ii) the Ministerial office is abolished, or
- (iii) a further appointment takes effect under Article 19(7).”;

- (b) in paragraph (3), before sub-paragraph (a) there shall be inserted the following sub-paragraph –

“(aa) his or her resignation under Article 22;”;

- (c) for paragraphs (4) to (7) there shall be substituted the following paragraphs –

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

(5) The Chief Minister shall take steps, as soon as possible, to inform the following persons of the dismissal of a Minister –

- (a) the Minister dismissed;
- (b) other States members; and
- (c) States employees working in any administration of the States for which the dismissed Minister was assigned responsibility.”.

5 Article 21A repealed

Article 21A shall be repealed.

6 Article 23 substituted

For Article 23 there shall be substituted the following Article –

“23 Subsequent appointments, and changes of office, of Ministers

- (1) The Chief Minister may, in accordance with the prescribed procedures, propose –
 - (a) the creation of a Ministerial office;
 - (b) that an elected member is appointed as a Minister (whether to fill a vacancy in a Ministerial office or upon the creation of a Ministerial office);
 - (c) that an elected member who is a Minister is appointed to another Ministerial office.
- (2) The States may not amend a proposal by the Chief Minister under paragraph (1).
- (3) Subject to paragraph (4), a proposal to fill a vacancy that has arisen in a Ministerial office shall be made within the prescribed period.
- (4) The Chief Minister shall not be required to make a proposal under paragraph (1) to fill a vacancy –
 - (a) if, within the period referred to in paragraph (3), he or she abolishes the Ministerial office by Order under Article 29; or
 - (b) where, within the period referred to in paragraph (3), the States are required to make a selection under Article 19(1).
- (5) A person proposed under this Article, and approved by the States, for appointment to a new Ministerial office is appointed to that office upon the office being created by Order under Article 29.
- (6) Any other person proposed under this Article for appointment to a Ministerial office is appointed to that office upon the States approving the Chief Minister’s proposal.”.

7 Article 25 amended

In Article 25 –

- (a) in paragraph (1) for the words “no more than 2” there shall be substituted the words “one or more”;
- (b) paragraphs (3) and (5) shall be repealed;
- (c) after paragraph (4) there shall be added the following paragraphs –
 - “(5) An Assistant Minister shall cease to hold office upon the Minister whom he or she assists ceasing, for any reason, to hold office.
 - (6) An Assistant Minister shall adhere to the principle of collective responsibility, as it applies to the assistance to be given by an Assistant Minister to the Minister by whom he or she was appointed.”.

8 Article 25A inserted

After Article 25 there shall be inserted the following Article –

“25A Limit on number of Ministers and Assistant Ministers

- (1) The aggregate of the Chief Minister, Ministers and Assistant Ministers shall not exceed the prescribed number of individuals.
- (2) An appointment of a Minister or Assistant Minister that would cause the prescribed number of individuals to be exceeded shall be of no effect.”.

9 Article 27 amended

In Article 27 –

- (a) after paragraph (1F) there shall be inserted the following paragraph –
“(1G) The Deputy Chief Minister or any other Minister, when discharging the functions of the Chief Minister, does not have the powers in Articles 21(4), 23(1) and 29.”;
- (b) at the beginning of paragraph (3) there shall be inserted the words “Except as provided in paragraph (1G),”.

10 Article 28 amended

In Article 28 –

- (a) after paragraph (1) there shall be inserted the following paragraphs –
“(1A) A Minister shall not delegate to an Assistant Minister any function the delegation of which is wholly prohibited by an enactment.
(1B) Where a Minister delegates to an Assistant Minister a power to make an enactment, paragraphs (4) and (5) of Article 26 shall apply to the making of an enactment by the Assistant Minister, in exercise of the delegated power, as they would apply to the making of the enactment by the Minister.”;
- (b) in paragraph (2) –
 - (i) after the words “A Minister shall not delegate” there shall be inserted the words “to an officer”,
 - (ii) for sub-paragraph (c) there shall be substituted the following sub-paragraph –
“(c) any function the delegation of which is prohibited wholly, or to an officer, by an enactment.”.

11 Article 29 substituted

For Article 29 there shall be substituted the following Articles –

“29 Creating and abolishing Ministers and transferring functions between Ministers

- (1) The Chief Minister may by Order –

- (a) subject to the procedures in Article 19 or the prior approval by the States of a proposal under Article 23(1), establish Ministers;
 - (b) abolish Ministers;
 - (c) determine the name by which any Minister shall be described;
 - (d) transfer all or any of the functions exercisable by one Minister to another Minister; and
 - (e) direct that the functions exercisable by any Minister shall be, or shall cease to be, exercisable concurrently with another Minister.
- (2) An Order made under paragraph (1) may contain such incidental, consequential, supplemental and transitional provisions as may be necessary or expedient, including provisions –
 - (a) for the transfer of any movable property held, any rights enjoyed and any liabilities (whether civil or criminal) incurred by a Minister in connection with any function transferred, including any such rights and liabilities in respect of which, at the time of transfer, no claim has been made or no proceedings have been commenced;
 - (b) for the carrying on and completion by or under the authority of a Minister to whom functions are transferred of anything commenced, before the Order has effect, by or under the authority of the Minister from whom the functions are transferred;
 - (c) for the amendment of enactments relating to any functions transferred or to any Minister who is renamed;
 - (d) for the construction of enactments of the United Kingdom having effect in Jersey relating to any functions transferred or to any Minister who is renamed;
 - (e) for the construction and adaptation of any instrument, contract or legal proceedings made or commenced before the Order has effect, relating to any functions transferred or to any Minister who is renamed; and
 - (f) where an Order establishes or abolishes Ministers or determines the name by which any Minister shall be described, for the consequential amendment of standing orders.
- (3) In paragraphs (1)(d) and (e) and (2)(a) to (e), ‘Minister’ includes the Chief Minister.
- (4) The Chief Minister may not delegate the power to make an Order under this Article to an Assistant Minister.

29A Interim arrangements following appointment of new Council of Ministers

- (1) This Article applies if a Chief Minister designate's proposal or decision referred to in Article 19(7) requires, for its implementation, an Order to be made under Article 29.
- (2) Notwithstanding any other enactment, whenever passed or made, from the time the Council of Ministers is appointed to office under Article 19(7) until the Order referred to in paragraph (1) comes into force –
 - (a) if the proposal or decision includes the renaming of a Minister, the functions of that office shall continue to be discharged in the former name of the Ministerial office;
 - (b) if no appointment has been made to a Ministerial office, by reason that the office is to be abolished, the Chief Minister may discharge the functions of that Minister or designate another Minister to discharge the functions of that Minister;
 - (c) otherwise, functions that are to be transferred from one Minister to another shall continue to be discharged by the Minister from whom they are to be transferred.”.

12 Articles 48 and 49 amended

- (1) In Article 48, for paragraph (4) there shall be substituted the following paragraph –

“(4) Standing orders made under paragraph (1) shall make provision for the conduct of scrutiny.”.
- (2) In Article 49, for the words “established by standing orders”, in each place that they appear, there shall be substituted the words “established by or in accordance with standing orders”.

13 Public Finances (Jersey) Law 2005 amended

In Article 18 of the Public Finances (Jersey) Law 2005² –

- (a) in paragraph (1) the word “or” shall be added after sub-paragraph (a) and sub-paragraph (b) shall be deleted;
- (b) in paragraph (1)(c) the words “or (b)” shall be deleted.
- (c) after paragraph (3) there shall be inserted the following paragraphs –

“(3B) If the Chief Minister makes an Order under Article 29(1) of the States of Jersey Law 2005, the Minister shall approve such variations in heads of expenditure as are necessary to give effect to the Order.

(3C) In paragraph (3B) the variations may include –

 - (a) the creation of a new head of expenditure, where a new Minister is established;

- (b) the removal of a head of expenditure where a Minister is abolished; and
- (c) transfers between heads of expenditure where functions are transferred from one Minister to another.”.

14 States of Jersey (Miscellaneous Provisions) Law 2011 amended

Article 5 of the States of Jersey (Miscellaneous Provisions) Law 2011³ is repealed.

15 Gambling Commission (Jersey) Law 2010 amended

In Article 3 of the Gambling Commission (Jersey) Law 2010⁴ after paragraph (2) there shall be inserted the following paragraph –

“(2A) Only the Chief Minister may lodge Regulations under paragraph (2).”.

16 Citation and commencement

This Law may be cited as the States of Jersey (Amendment No. 8) Law 201- and shall come into force on such day or days as the States may by Act appoint.

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- ¹ *chapter 16.800*
 - ² *chapter 24.900*
 - ³ *L.13/2011 (incorporated in chapters 16.800 and 16.250)*
 - ⁴ *chapter 11.280*