

# STATES OF JERSEY



## **PRISON BOARD OF VISITORS: COMPOSITION (P.84/2011) – COMMENTS**

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**Presented to the States on 11th July 2011  
by the Minister for Home Affairs**

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**STATES GREFFE**

## COMMENTS

I am able to support this Proposition subject to certain additional considerations which are set out in these comments.

As acknowledged in the Report by the Education and Home Affairs Scrutiny Panel, in my letter to the Chairman of the Scrutiny Sub-Panel dated the 4th December 2009, I accepted the recommendation for a review of the role of the Prison Board of Visitors in Jersey. I also advised at that time that I would need to seek advice on some of the Sub-Panel's recommendations and I suggested that no further action should take place on the report's recommendations until I had had the opportunity to consider this advice. Whilst I would acknowledge that this has taken a long time to achieve, I have only fairly recently received that advice from which it is clear that there are a number of important issues which need to be considered carefully in deciding the future role and composition of the Prison Board of Visitors. I have also sought to involve the Chairman of the Prison Board of Visitors and the Jurats who serve on the Board in constructing an objective and balanced response to the Sub-Panel's report and to P.84/2011.

Before coming to the specific parts of the proposition, I should like to reiterate some general points that I made to the Scrutiny Sub-Panel. Firstly, I regard the skilful and sensitive approach taken by Jurats who have served on the Board of Visitors over the years to be a contributory factor in the excellent staff / prisoner relationships that we currently enjoy. Secondly, I have to say that, when I first read the report, it appeared to me that the important role performed by the Board of Visitors was not fully understood. Thirdly, the recommendations of the Scrutiny Panel created a particular problem for me in that the Report indicated that the Scrutiny Panel had received legal advice to the effect that Jurats could not properly remain on the Prison Board of Visitors and yet there was a recommendation for a new Prison Board of Visitors which could include Jurats. I felt it necessary to obtain legal advice on the points as to whether –

- (a) the Prison Board of Visitors could properly continue with its present constitution of all Jurats; and
- (b) as to whether the Prison Board of Visitors could properly be reconstituted with some Jurats remaining on the Board.

On (a) above the outcome of the advice is that there is a substantial risk of a successful challenge to the present constitution of the Board. On (b) above the outcome of the advice is that it may be possible for some Jurats to remain on a reconstituted Board of Visitors provided that safeguards are built into the way in which the reconstituted Board would operate.

Fourthly, the Board of Visitors' function is a relatively small part of a Jurat's role. Indeed, they have a wide remit both as an integral part of the criminal justice system in Jersey and as an important part of our civic structure. Consequently, when they attend the Prison, they are not there simply to see that processes and procedures are being adhered to. They have the welfare of prisoners very much in mind and they bring all their experience and skill to bear in seeing that issues are resolved sensibly. If this involves liaising with agencies outside of the prison, they are content to do this in the interest of prisoner welfare. This goes beyond the formal role of the Board of Visitors as laid down in the Prison (Board of Visitors) (Jersey) Regulations 1957. I am not

confident that an independent monitoring board, along UK lines, provides this depth of service. Moreover, the Board has an additional role under Article 94 of the Prison (Jersey) Rules 2007 in hearing appeals against disciplinary charges against prisoners.

Although I am normally reluctant to interfere with a system which I believe generally works very well for the benefit of those in custody, I nevertheless accept that the present arrangement cannot continue much longer in the light of the Human Rights based legal advice. I would add, however, that any conflict of interest is a perceived one. In practice, Jurats have been able to identify any possible conflicts in advance and deal with them accordingly.

I do not believe that there is any suggestion whatsoever that the Jurats would tolerate any form of ill-treatment towards prisoners. However, it could be perceived that, given their judicial function, the Jurats might not be sufficiently independent in order to provide the necessary safeguards in order to ensure proper compliance with Human Rights principles. If that is accepted, then the membership of the Board would have to be expanded to include suitable members of the public or the Board would have to be reconstituted entirely without Jurats. This is the purpose of part (a)(i) of the proposition.

Although the hearing of appeals in disciplinary matters by the Jurats satisfies the requirements of Article 6 as it applies to those that have the nature of civil proceedings, we would need to make sure that those involving any suspected criminal conduct should fall to be dealt with by the courts. The Sub-Panel's report also mentions a right under Article 14. Whilst there is no evidence of discrimination within the Prison, we would clearly wish to ensure that prisoners who are foreign nationals enjoy equal rights under the ECHR.

Although I support part (a)(i) of the Proposition, having consulted the Board of Visitors and the Prison Governor, I am of the view that there will need to be a thorough review of the roles currently performed by the Board in order to determine what roles need to be fulfilled and how they can best be fulfilled. If some Jurats are to remain on the reconstituted Board, then careful consideration will need to be given as to how this can properly occur. Furthermore, consideration will have to be given to the appropriate administrative support for the reconstituted Board. At present, administrative support is provided by the Judicial Greffe because of their natural link with the Jurats.

To a large extent, the precise future role of the Board will influence a decision as to what is the appropriate mix of Jurats and members of the public. It could, therefore, be argued that this decision should flow from the outcome of the above review of roles, and that the setting of numbers in part (a)(ii) of the Proposition is premature. However, in order to avoid an unnecessary debate, I am accepting this part of the Proposition, subject to the comments which I have made above and below. In reaching this conclusion, I have considered carefully the views of Jurats with whom I have consulted closely. It is highly unlikely that the Jurats would want to participate in a 'split' Board of Visitors because their contribution to the role could not remain the same in the sense that a Board with mixed membership would have to operate in a different way. The consensus amongst them is that it may be better, on balance, to have a fully lay member Board simply for reasons of practicality. For example, if the number of Jurats was to be reduced to a maximum of 3, given their current duties, there may be an issue as to whether the Board could achieve the required quorum consistently enough if it is intended that there should always be a mix of members.

Given such difficulties, and the yet to be clearly defined role of the new Board of Visitors, it would be unwise in my view to make a binding decision as to what the exact composition of the Board should be.

Notwithstanding their views on a 'split' Board, the Jurats would be willing to continue with their role under Article 94 of the Prison (Jersey) Rules 2007 in hearing appeals in relation to disciplinary charges against prisoners. I believe this to be a positive indication on their part; however, their approach to appeals is likely to be affected by the less regular contact that they would have with the Prison under revised Board of Visitors arrangements.

The Assembly needs to be aware that it will be necessary to amend Article 6 of the Prison (Jersey) Law 1957 and the Prison (Board of Visitors) (Jersey) Regulations 1957. This is not achievable within the life of this Assembly, if only because of the need for law drafting time to be allocated, and it will be necessary, therefore, for the Minister for Home Affairs in the next administration to bring the new legislation forward. I reiterate, however, that this should be preceded by a thorough review of the Board's role and what composition of members would be most appropriate to fulfil that role. This review should be led by the Home Affairs Department, in consultation with the present Prison Board of Visitors and the Education and Home Affairs Scrutiny Panel, and could commence forthwith. Therefore, I am supportive of part (b) of the proposition with these provisos.

#### **Financial and manpower considerations**

Finally, at the moment the Jurats are not paid for their work and the administrative support is provided by the Judicial Greffe. There will, undoubtedly, be some setting up and training costs associated with the proposed changes and there may well be some increased costs, although it should be possible to absorb these within the existing Home Affairs Department budget.