

STATES OF JERSEY



DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 8) (JERSEY) REGULATIONS 201- (P.11/2017): COMMENTS

**Presented to the States on 27th March 2017
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

1. The Draft Employment of States of Jersey Employees (Amendment No. 8) (Jersey) Regulations 201- were originally lodged by the States Employment Board (“SEB”) as [P.105/2016](#) on 5th October 2016. The SEB subsequently lodged an [Amendment](#) on 23rd December 2016 and a [second Amendment](#) (intended to replace the previous one) on 31st January 2017.
2. The Corporate Services Scrutiny Panel presented a [Comments Paper](#) on 12th January 2017 highlighting its initial concerns regarding P.105/2016 and the Amendment lodged by the SEB on 23rd December 2016.
3. Following the concerns raised by the Panel and discussions with the Chief Minister and officers, P.105/2016 was withdrawn and a new set of draft Regulations lodged as [P.11/2017](#) on 14th February 2017.
4. In gathering evidence for this Comments Paper, the Panel received 2 briefings from the Chief Minister and departmental officers, and also received evidence from the Bailiff of Jersey.

The Draft Regulations (P.11/2017)

5. The [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) (“the Law”) sets out the legal basis on which members of the public service are employed. Part 4 of the Law covers the role of the Jersey Appointments Commission (“the Commission”) in overseeing recruitment to certain positions within the public service.
6. The new Draft Regulations lodged on 14th February 2017 (P.11/2017) amend 2 specific areas of the Law. The first is an administrative amendment to align the terms of office of members of the Commission with the guidance provided by the Commission. The second is a change to the process for appointing the Chief Executive of the States to enable the Commission to take a more active role in the recruitment of the Chief Executive.
7. The Panel has been advised that the change to the process for appointing the Chief Executive of the States is required in order for the recruitment process for that post to commence. The contract of the current Chief Executive Officer is due to expire at the end of May 2018.
8. As explained in more detail below, following the intervention of the Panel, the Draft Regulations have been simplified from the initial version lodged in October 2016. The majority of the Panel’s work concerned the earlier version of the Draft Regulations, and the areas highlighted by the Panel as being of potential concern have been removed. The Panel therefore has no further comments to make about the Draft Regulations as now lodged.

The original Draft Regulations (P.105/2016) and Amendment

9. The original Draft Regulations lodged in October 2016 contained various changes to the functions of the Jersey Appointments Commission. They were lodged following a review of the relevant provisions of the Law by the SEB and the Commission.
10. The changes related to 3 key areas: 1. Appointments to senior posts within “independent bodies” (i.e. bodies established or maintained by the States); 2. Recruitment of the Chief Executive Officer; 3. Other changes to the functions of the Commission.
11. The Amendment lodged on 23rd December 2016 introduced a substantial change to the Draft Regulations by including “Crown appointees” under the definition of “independent bodies”. This would have given statutory power to the Jersey Appointments Commission to oversee the recruitment to senior posts for Crown appointees (including the Lieutenant-Governor, the 4 Crown Officers, the Dean, the Receiver-General, Court of Appeal Judges and Rectors) and other members of the Judiciary.
12. The current position is that the recruitment of some of the Crown Officers in Jersey (Lieutenant-Governor, Bailiff, Deputy Bailiff, Attorney General and Solicitor General) and members of the Judiciary other than some tribunal chairmen is overseen by the Bailiff; the appointment of others (Receiver-General, Dean and Rectors) is overseen by the Lieutenant-Governor. Recent convention has been that the Commission is invited to participate in the recruitment process for certain posts, although this does not extend to all members of the Judiciary. The move to widen the current arrangements and place them on a statutory basis led to the Panel raising concerns around the potential for political involvement in the appointment of members of the Judiciary. This was highlighted in the Panel’s Comments paper in relation to P.105/2016.
13. Following the concerns raised by the Panel, the 23rd December Amendment was withdrawn by the SEB and a second Amendment was lodged on 31st January 2017, omitting any reference to Crown Appointees. The Panel understands that work is proceeding on the formation of a Judicial and Legal Services Appointments Commission to oversee judicial appointments in the future.
14. The Panel received a briefing from the Chief Minister and departmental officers in relation to the second Amendment, which was scheduled for debate on 14th February 2017. Following the briefing, the Panel still had concerns regarding the changes to the treatment of independent bodies under the Law. The Panel informed the Chief Minister that it was likely to call the legislation in for scrutiny during the debate. However, the SEB took the decision to withdraw the Draft Regulations and the second Amendment and lodge P.11/2017 instead.

Conclusion and future work

15. The Panel notes that further scrutiny is likely to be required in relation to the proposals to establish a Judicial and Legal Services Commission, or if any future changes are brought in relation to the treatment of independent bodies. The Panel hopes that Ministers and officers will involve Scrutiny at an early stage in the development of these proposals. In any event, the Panel intends to look in more detail at the position of independent bodies under the existing Law as a future piece of work.
16. The Panel is grateful to the Chief Minister and the SEB for their pro-active responses to the concerns raised. However, this does raise questions about the process followed by the SEB in lodging the initial version of the Draft Regulations. It seems clear to the Panel that there was insufficient consultation with key stakeholders, particularly around the changes to the appointment process for Crown appointees. It would also appear that the Draft Regulations lodged in October 2016 cannot have been considered in sufficient depth if the SEB needed to lodge its own amendment less than 3 months later, in December 2016.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

The Panel apologises for the late delivery of these comments, which is due to the deadline coinciding with a number of other priority pieces of work for the Panel at present.