

STATES OF JERSEY



DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 8) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 5th October 2016
by the States Employment Board**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 8) (JERSEY) REGULATIONS 201-

REPORT

Purpose

The States are asked to approve changes concerning the functions of the Jersey Appointments Commission (“the Commission”) following a review of the relevant provisions of the Employment of States of Jersey Employees (Jersey) Law 2005 (“the Law”) by the States Employment Board (“SEB”) with the Commission, and consultation with independent bodies covered in the guidelines for recruitment produced by the Commission.

Background

A renewed focus in the function of the Commission has resulted in wider engagement with the SEB, the States of Jersey Human Resources Department (“HR”), and independent bodies. As a result of this, the Commission has looked to simplify its processes and provide greater clarity as to its role, and has produced a revised set of guidelines.

The proposed changes are being made, following consultation with independent bodies, HR and the SEB.

Jersey Appointments Commission

Part 4 of the Law covers the function, responsibilities and ways of working of the ‘Commission’.

The key changes are outlined below under the relevant Article headings.

Article 14: Interpretation

The main effect of the amendments is that appointees and employees of independent bodies are no longer referred to as “States’ appointees” and “States’ employees” for the purpose of the Commission exercising its functions.

The key definitions are:

“Independent Bodies” captures –

- (a) appointees of independent bodies;
- (b) employees of independent bodies;

“Senior Posts” captures –

- (a) States of Jersey employees;

- (b) States appointees;
- (c) appointees of independent bodies;
- (d) employees of independent bodies.

In addition, the definition of recruitment has been refined to mean recruitment to a “senior post” or to any post in an “administration of the States” or in an “independent body”, whether or not under a contract of employment. This covers all roles for which the Commission have responsibility.

Article 16: Posts to which this applies

The definitions have been amended to reflect that the list of senior posts produced by the SEB, in consultation with the Commission, can be drawn from any “States’ appointee”; “States’ employee”; “independent body appointee” and “independent body employee”.

Consulting with the Commission supports the intent of working collaboratively, while recognising the list remains the full responsibility of the SEB.

Article 23: Function of Commission

The proposed changes reflect the simplification of the process to reflect the overall function of the Commission and their focus within the recruitment process on the key principles of fairness, best practice and meritocracy. It still allows for a recruiting body to specifically request support from the Commission as required.

Article 24: Guidelines for recruitment

The proposed changes provide for the Commission to consult with the SEB in producing their guidelines for any recruitment process. Consulting with the SEB supports the intent of working collaboratively, while recognising that the guidelines remain the full responsibility of the Commission.

Article 26: Recruitment to senior posts

In practice, a recruiting body for a post on the list will notify the HR team of the requirement to recruit and the need for a Commissioner. HR will inform the Chairman of the Commission, who will nominate a Commissioner. The Chairman will inform HR of the name of the nominated Commissioner, and then HR will inform the recruiting body.

The proposed amendments are designed to simplify the notification process and reflect the operational practice outlined above.

The other key change in Article 26, which covers the core duties of oversight expected to be performed by the Commission, is to stipulate that the Commission must chair the meetings involved during the recruitment process, but must not be involved in making any decisions about who is selected for interview or who is to be offered the post. This again reflects what happens in practice, but provides clarity and avoids any ambiguity.

Article 26AA: Determination by the States Employment Board in relation to senior posts

The Commission may, from time to time, be required to move from their role of oversight to one of carrying out the recruitment of a senior role by performing a decision-making function. For example, the appointment of the Chief Executive Officer for the States of Jersey. This new Article has been introduced to draw a clear distinction of the role the Commission would be expected to perform in this instance.

In addition, it allows for the provision of another body to provide the important oversight role that would have been carried out by the Commission.

Financial and manpower implications

There are no direct financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations amend the Employment of States of Jersey Employees (Jersey) Law 2005 (“principal Law”) concerning the functions of the Jersey Appointments Commission (“Commission”).

Regulation 1 defines the principal Law.

Regulation 2 inserts some new definitions in the principal Law which are used in the amendments explained below. The main effect of the amendments is that appointees and employees of independent bodies are no longer referred to as “States’ appointees” and “States’ employees” for the purpose of the Commission exercising its functions. This Regulation also makes amendments so as to define “recruitment” to mean recruitment to a “senior post” or to any post in an “administration of the States” or in an “independent body”, whether or not under a contract of employment. “Administration of the States” and “independent body” are currently defined in Article 1 of the principal Law and their definitions remain unchanged. The expression “senior post” is construed in accordance with the new Article substituted by *Regulation 4*.

Regulation 3 repeals the Article in the principal Law which requires the States Employment Board (“SEB”) and the Commission to agree a list of offices in, or types of employment with, independent bodies for the purpose of the Commission exercising its functions under the principal Law.

Regulation 4 substitutes the current Article in the principal Law which requires the SEB and the Commission to agree a list of posts, whether of independent bodies or States’ employees, which are to be “senior” for the purpose of the Commission exercising its functions. The substituted Article requires the SEB to specify a list of posts that are to be “senior” after consultation with the Commission. The list can be drawn from any “States’ appointee”; “States’ employee”; “independent body appointee” and “independent body employee”. “States’ employee” is already defined in the principal Law. The other terms are each defined in the amendments made by *Regulation 2*.

Regulations 5, 8 and 10 makes an amendments to existing Articles so that they are consistent with the new definitions inserted by *Regulation 2*.

Regulation 6 substitutes the current Article in the principal Law which sets out the Commission’s function. The main effect of the substituted Article is to make it consistent with the new definitions inserted by *Regulation 2*.

Regulation 7 substitutes the current Article in the principal Law setting out the Commission’s role in producing guidelines for recruitment. The current Article confines the Commission’s role to producing guidelines only for “States’ appointees” that is, appointees of independent bodies that are on a list agreed by the SEB and the Commission. The substituted Article requires the Commission to produce guidelines for any recruitment as defined in the amendments made by *Regulation 2*. The SEB must be consulted about any guidelines made by the Commission.

Regulation 9 substitutes the current Article in the principal Law which sets out the procedures for recruiting persons to senior posts. The substituted Article makes it clear that a Commissioner who is selected to oversee recruitment to a senior post must, if the Commissioner decides to attend any recruitment meeting, chair every such meeting but must not be involved in deciding which candidates shall be interviewed, which candidates have met the required standard or which candidate is to be offered the post.

Regulation 9 also inserts a new Article which allows the SEB to determine that in relation to a particular senior post, a person other than a Commissioner shall oversee the recruitment process and that such Commissioner or Commissioners as SEB shall determine shall take part in the recruitment process by deciding which candidates shall be interviewed, which candidates have met the required standard or which candidate is to be offered the post.

Regulation 11 deletes a reference to the Article which is repealed by *Regulation 3*.

Regulation 12 sets out the title of these Regulations and provides that they will come into force 7 days after the day they are made.



Jersey

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EMPLOYEES (AMENDMENT No. 8) (JERSEY)
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Arrangement

Regulation

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Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 42 of the Employment of States of Jersey Employees (Jersey) Law 2005¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Law” means the Employment of States of Jersey Employees (Jersey) Law 2005².

2 Article 14 substituted

For Article 14 of the principal Law there shall be substituted the following Article –

“14 Interpretation

(1) In this Part –

‘Director of Human Resources’ means a States’ employee holding the post of Director of Human Resources in a department of the States for which the Chief Minister is responsible;

‘former Appointments Commission’ means the Appointments Commission established by Act of the States on 28th May 2002;

‘Human Resources department’ means the Human Resources department for which the Chief Minister is responsible;

‘independent body appointee’ means a person who is appointed to an office or post (however described) of an independent body;

‘independent body employee’ means a person other than a States’ employee, who is employed by an independent body under a contract of employment;

‘recruiting body’ means a body or person responsible for recruiting a person to a senior post;

‘senior post’ shall be construed in accordance with Article 16(1);
‘States appointee’ means a person, not being a States’ employee,
who is appointed by the States or a Minister to an office or post
(however described) of an administration of the States.

- (2) For the purposes of paragraph (1) it is immaterial whether the appointment of a person specified in that paragraph is by any person or body –
 - (a) acting with another person or body; or
 - (b) acting after consultation with, or on the recommendation or approval of, another person or body.
- (3) In this Part references to ‘recruitment’, unless the context indicates otherwise, mean any of the following –
 - (a) recruitment to a senior post;
 - (b) recruitment to any post in an administration of the States or an independent body whether or not under a contract of employment,and ‘recruitment process’ shall be construed accordingly.’.

3 Articles 15 repealed

Article 15 of the principal Law is repealed.

4 Article 16 substituted

For Article 16 of the principal Law there shall be substituted the following Article –

“16 Posts to which this Part applies

- (1) The States Employment Board shall specify, after consultation with the Commission, a list of posts which are to be “senior posts” for the purposes of this Part.
- (2) The posts specified on the list under paragraph (1) shall be any office or employment (however described and whether specified individually or as a class) that is held by any of the following –
 - (a) a States’ appointee;
 - (b) a States’ employee;
 - (c) an independent body appointee;
 - (d) an independent body employee.
- (3) The States Employment Board shall ensure that the list under paragraph (1) is available for viewing by any person.’.

5 Article 19 amended

In Article 19(2)(c) of the principal Law for the words “the appointment of States’ employees or States’ appointees” there shall be substituted the word “recruitment”.

6 Article 23 substituted

For Article 23 of the principal Law there shall be substituted the following Article –

“23 Function of Commission

- (1) The function of the Commission is to oversee recruitment so as to ensure that, as far as practicable –
 - (a) the recruitment process is fair, efficient and conducted in accordance with best practice principles and procedures;
 - (b) persons are recruited on merit;
 - (c) individual members of the States are only involved in the recruitment process in accordance with codes of practice issued under Article 8 or guidelines produced under Article 24, as the case may be.
- (2) The function in paragraph (1)(c) is subject to any direction by the States Employment Board that, in its opinion, it is appropriate for a Minister to participate any recruitment.
- (3) The Commission may, if requested by any person or body conducting a recruitment to a post, oversee, observe or participate in that recruitment on such terms as the Commission agrees with the requesting person or body.”.

7 Article 24 substituted

For Article 24 of the principal Law there shall be substituted the following Article –

“24 Guidelines for recruitment

- (1) The Commission, after consulting the States Employment Board, shall from time to time produce, review and revise guidelines that are to apply to any recruitment process.
- (2) Guidelines produced under paragraph (1) shall contain details as to –
 - (a) how the recruitment is to be performed;
 - (b) the grounds on which persons are to be selected; and
 - (c) the circumstances in which a member of the States may be involved in any recruitment process.

- (3) The Commission shall ensure that guidelines produced under paragraph (1) are available for viewing by any person.
- (4) The Commission shall ensure that guidelines produced under paragraph (1) are followed in relation to any recruitment.”.

8 Article 25 amended

In Article 25 of the principal Law –

- (a) in paragraph (1) for the words “States’ employees and States’ appointees” there shall be substituted the words “any recruitment process that has been undertaken”;
- (b) in paragraph (4) for the words “States’ employees, or States’ appointees of an independent body” there shall be substituted the words “any audit to which paragraph (3) does not apply”.

9 Article 26 substituted

For Article 26 the principal Law there shall be substituted the following Articles –

“26 Recruitment of persons to senior posts

- (1) Not less than 14 days before the date that a recruiting body intends to start the recruitment process for a senior post, that recruiting body shall notify the Director of Human Resources who shall, in turn, notify the Chairman of the Commission.
- (2) Following the notification under paragraph (1) –
 - (a) the Chairman of the Commission shall select a Commissioner who will be responsible for overseeing the recruitment process and the Chairman shall notify the Director of Human Resources accordingly; and
 - (b) the Director of Human Resources shall inform the recruiting body of the name of that Commissioner (‘nominated Commissioner’).
- (3) The nominated Commissioner shall take such action as he or she considers necessary or expedient to ensure that the recruitment process complies with the guidelines under Article 24.
- (4) Such action may include any of the following –
 - (a) attending a meeting for the purpose of deciding which candidates for the senior post are to be interviewed;
 - (b) attending a meeting at which candidates for the senior post are interviewed;
 - (c) attending a meeting for the purpose of assessing candidates following interview.
- (5) The nominated Commissioner shall not, in any circumstances, be involved in deciding any of the following –

- (a) which candidates for recruitment shall be interviewed;
 - (b) which candidates following interview have met the required standard for recruitment;
 - (c) which candidate is to be offered the senior post or, as the case may be, which candidate (which may be more than one) is to be recommended for appointment.”.
- (6) Subject to paragraph (5), if the nominated Commissioner decides to attend any meeting during the recruitment process, he or she shall chair that meeting, including the meeting at which candidates are interviewed.

26AA Determination by the States Employment Board in relation to senior posts

- (1) The States Employment Board may from time to time determine that, in relation to the recruitment of a person to such senior post as specified by the States Employment Board, a person other than a Commissioner shall carry out the functions of the nominated Commissioner under Article 26 and, in making the determination, the States Employment Board shall specify the name of that other person.
- (2) Where the States Employment has made a determination under paragraph (1), Article 26 shall be construed as if the references to the nominated Commissioner were references to that specified person.
- (3) Where the States Employment Board has made a determination under paragraph (1), the States Employment Board shall determine that such Commissioner or Commissioners of the Jersey Appointments Commission as it directs shall take part in the recruitment to the senior post and that this shall include the Commissioner or Commissioners being involved in deciding –
 - (a) which candidates for recruitment shall be interviewed;
 - (b) which candidates following interview have met the required standard for recruitment;
 - (c) which candidate is to be offered the senior post or, as the case may be, which candidate (which may be more than one) is to be recommended for appointment.”.

10 Article 27 amended

In Article 27(1)(a) of the principal Law for the words “the recruitment of a States’ employee or States’ appointee” there shall be substituted the words “any recruitment process that was carried out”.

11 Article 28 amended

In Article 28(8) of the principal Law the words “Article 15(1) or (3) or” shall be deleted.

12 Citation and commencement

These Regulations may be cited as the Employment of States of Jersey Employees (Amendment No. 8) (Jersey) Regulations 201- and shall come into force 7 days after the day they are made.

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- ¹ *chapter 16.325*
² *chapter 16.325*