

STATES OF JERSEY



DRAFT AMENDMENT (No. 13) OF THE STANDING ORDERS OF THE STATES OF JERSEY

Lodged au Greffe on 1st April 2010
by the Privileges and Procedures Committee

STATES GREFFE



Jersey

DRAFT AMENDMENT (No. 13) OF THE STANDING ORDERS OF THE STATES OF JERSEY

REPORT

Introduction

On 16th October 2009, the Privileges and Procedures Committee (PPC) presented a Report to the States setting out the conclusions of its review of the Code of Conduct for Elected Members and the disciplinary sanctions available to the Assembly in cases of breaches of that Code. These amendments to Standing Orders implement the proposals set out in that Report, as no comments were received from members during the consultation period suggesting that the proposals were inappropriate.

The most serious disciplinary sanction available to the Assembly, other than expulsion, is suspension from office and these amendments relate principally to the practical consequences of suspension from the Assembly. Suspension from the States is clearly a serious matter for any member and it is thankfully over 13 years since the States have had cause to vote on a suspension. In reviewing the present Standing Orders, PPC was nevertheless concerned that they were not sufficiently flexible or robust enough to act as a reasonable deterrent to members.

Suspension from the States Assembly may arise in a number of circumstances. A proposition to suspend a member could, for example, be lodged as a result of a serious breach of the Code of Conduct for Elected Members or some other incident outside the Assembly. In these circumstances a proposition must be lodged for 2 weeks and then debated in the usual way, with the only exception from the normal debating rules being that the member who is the subject of the proposition is able to speak twice.

Suspension may also be considered to be a necessary and more immediate sanction following an incident of disorderly behaviour in the States Assembly itself. Suspension of parliamentarians across the world often happens in these circumstances. For example in the UK House of Commons on 15th January 2009, during questions that followed a statement made by the Secretary of State for Transport on future transport infrastructure in the United Kingdom, Mr. John McDonnell, the MP for Hayes and Harlington, rose and lifted the Mace as a protest against the proposals for the expansion of Heathrow Airport. He was immediately 'named' by the Deputy Speaker and the matter of his suspension put to the vote immediately without debate. In accordance with Standing Order 44(2) he was suspended for 5 sitting days.

At present, under Standing Order 110, the presiding officer can, after giving appropriate warnings, require a member to withdraw from the Chamber if the member has (a) obstructed the meeting; (b) conducted himself or herself in a grossly disorderly

manner; (c) used offensive, objectionable, unparliamentary or disorderly words and refused, when directed by the presiding officer, to withdraw the words or apologise; (d) persistently or wilfully refused to conform to any standing order; or (e) persistently or wilfully disregarded the authority of the presiding officer. If the presiding officer exercises his or her powers in this way, the presiding officer can direct that the exclusion should last for the remainder of the day or for a lesser period if the presiding officer considers that to be more appropriate.

If a member is excluded by the presiding officer in these circumstances Standing Order 111 then allows any other member to propose without notice, on the next day that the States meet, that the member who had been excluded on the previous sitting day should be suspended from the States. Standing Order 111 specifies that any member can make this proposal if he or she considers that the requirement to withdraw on the previous sitting day was 'insufficient sanction for the actions of the member'. Whether or not such a proposition will be considered appropriate will obviously depend on the circumstances of the exclusion. If a member has simply made an intemperate remark but, in the heat of the moment, refused to withdraw it and been excluded, other members may consider that no further sanction is required. If, however, a member has, for example, been grossly disorderly and had to be physically removed from the Chamber, other members may consider that suspension is an appropriate sanction and decide to propose this under Standing Order 111.

Any proposition to suspend a member made under Standing Order 111 would also be debated in the normal way, with all members able to speak and the member who was the subject of the debate able to speak twice. PPC has reviewed whether this procedure, which is clearly appropriate in any other debate on suspension, is equally appropriate in the very particular circumstances of a proposition brought under Standing Order 111 on the next sitting day after exclusion. In practice all members would be fully aware of the events of the previous sitting day and would already have formed a view on whether any further sanction was necessary. It could be argued that to allow the matter to be debated at length could easily lead to a situation where the disorderly member simply decided to repeat the disorderly behaviour leading to a vicious circle of further exclusion from the Chamber. The previous Committee's research found no other parliament where proposed suspension immediately after disorderly conduct was subject to a full debate, the normal parliamentary procedure being for the Speaker to put the matter to the vote immediately without debate.

Although PPC considered whether to propose amendments to the current procedures to restrict the scope of any debate in these circumstances the Committee concluded that, as the process has never been used to date (and hopefully will never need to be), there was no current evidence of a 'problem' that needed to be addressed and there would be significant disadvantages in restricting a member's right to defend himself or herself. As a result, PPC has decided not to bring any amendments to the Standing Order 111 procedure at the present time. As a result, the debating procedure for any proposition to suspend a member, whether after 2 weeks' lodging or without notice under Standing Order 111, would remain as at present and the member who was the subject of the proposition would be able to speak twice in the debate.

The detail of the amendments being put forward in this proposition is as follows.

Amendment 2 – New Standing Order 21A

As lodging a proposition for suspension is a serious sanction which should only be recommended following a proper investigation, and not in any way manipulated for political purposes, PPC believes that Standing Orders should be amended to provide that, subject to the exception below, only the Privileges and Procedures Committee can lodge a proposition to suspend a member. New Standing Order 21A gives effect to this proposal. Under this provision a full investigation would be undertaken by the Committee, which represents all members of the States Assembly, before the suspension proposition was lodged. Under new Standing Order 21A, should PPC be requested to investigate a suspension and decide not to proceed, there is provision that any other member could then bring a proposition in his or her own name. Nevertheless, in these circumstances, to ensure that the proposition brought against the advice of PPC had a measure of support, it would need to be signed by at least 6 members before it could be lodged. This exception would preserve the right of all members to bring forward matters for debate, whilst ensuring that no suspension could be lodged before PPC had at least considered the matter. In practice, of course, if PPC was to investigate a matter and decide not to lodge a vote of suspension this, in itself, would undoubtedly be an important factor for members to consider during the debate if the proposition was then brought by another member.

PPC is conscious that certain complaints against members have taken some considerable time to deal with in the past. In some cases there have been unavoidable reasons for these delays, such as the interaction with police investigations or court proceedings, but PPC believes it is important to take all possible steps to bring complaints to a conclusion as soon as possible. PPC therefore intends to issue a protocol setting out the manner in which complaints should be handled so that all members are aware of the process that will be followed.

Because there will now be more flexibility in fixing the length of suspension (see Amendment 4 below) new Standing Order 21A(3) requires any suspension proposition to specify the proposed length of suspension, although this will be subject to the maximum periods set out in revised Standing Order 164.

Amendment 3 – Amendment to Standing Order 111

It should be noted that new Standing Order 21A above does not affect the procedure under Standing Order 111 referred to above where a suspension can be proposed on the day after disorderly conduct as, in that case, the proposal is brought without notice by any member and does not need to be lodged as a proposition in advance or considered by PPC. The small amendment contained in this change to Standing Order 111 is related to the requirement mentioned above that any proposal for suspension must specify the proposed length of the suspension, although once again this will be subject to the proposed maximum periods.

Amendment 4 – Standing Order 164 substituted

This amendment substitutes Standing Order 164 which sets out the effect of the suspension of a member. PPC considers that suspension should not only be seen as a sanction but also, equally as importantly, as a deterrent. If the possibility of suspension is to have any deterrent effect to encourage members to conduct themselves in an appropriate way, the effect of suspension must be seen to be sufficiently serious. Having reviewed the current wording of Standing Order 164, PPC does not consider that the present provisions meet that test. PPC is therefore proposing through this

revised Standing Order 164 that the present provisions should be amended. The comparison between the present provisions and the proposed changes can be summarised as follows –

Access to the States Chamber and members' facilities – 164(1)

At present a member who is suspended cannot access the Chamber and the members' facilities when the States are meeting. PPC wishes to amend this so that access would be totally prohibited during the period of suspension. The Committee believes that it is curious that the States can vote to suspend a member only for that member to be able to access all the normal facilities throughout the suspension as long as the States are not meeting.

Undertaking official responsibilities – 164(2)(a) and (3)

At present a suspended member cannot take part in any meeting of a committee such as PPC or PAC or a Scrutiny Panel, but there is currently no restriction on a Minister continuing to undertake ministerial duties during a period of suspension from the States. In practice it is possible that a Minister may not survive politically after being suspended from the States as a result of misconduct, but PPC thinks that it is important to make it a formal requirement that a suspended member cannot undertake ministerial duties during a period of suspension. The Chief Minister, or another Minister nominated by him or her, would have to discharge the functions during the period of suspension, as if the Minister was absent or indisposed.

Lodging propositions, presenting reports and questions – 164(2)(b)

At present a suspended member cannot lodge propositions or submit oral or written questions, and only one minor change is proposed to specify that a suspended member cannot present Comments or a Report to the States.

Receiving remuneration – 164(4) and (5)

At present, a member who is suspended continues to receive his or her remuneration in the usual way. In some ways this could be said to reduce the effectiveness of the suspension, and PPC notes that in the United Kingdom House of Commons remuneration is stopped completely during the period when a member cannot undertake his or her official duties as a result of suspension. As indicated below, the proposed provisions on suspension are based on a form of graduated scale where the penalties available for a second or third period of suspension during a term of office are more severe than on the first occasion. PPC is proposing a similar graduated system in relation to remuneration. These amendments provide that remuneration would not be ceased during a first suspension during each 3 year States cycle. However, on the second suspension during the 3 year period, PPC proposes that a member should lose half of his or her remuneration for the period of suspension. On any third and subsequent suspension, the member's remuneration would be totally removed. In the event of a suspension lasting up to 4 weeks, this would represent a significant financial penalty (currently some £3,375) and PPC is hopeful that it would therefore act as a significant deterrent in the very unlikely event that a member is suspended for a third time in a 3 year period.

Length of suspension – 164(6)

At present, periods of suspension are fixed and there is no flexibility to adapt the period of suspension to the seriousness or otherwise of the matter for which the member is being suspended. PPC does not believe this is appropriate. In addition, the Committee does not consider that the present periods are appropriate.

At present, the period of suspension is counted by a number of States meeting days as follows –

1st suspension during a term of office – 2 meeting days

2nd suspension during a term of office – 4 meeting days

3rd and subsequent suspension during a term of office – 6 meeting days

In each case the day on which the suspension starts counts as the first of the above days, meaning that a first suspension only lasts for one more meeting day after the day on which the States vote on a suspension. If the States were meeting for 3 consecutive days, and the suspension was agreed on the first day (Tuesday) the suspended member would be able to return on day 3 (Thursday) and this can hardly be described as a serious sanction, particularly as the member is currently remunerated throughout any period of suspension. PPC would point out that the current provisions are also inequitable, as the actual length of a period of suspension is totally dependent on the schedule of States meeting dates. In the example above, a member could return on day 3 of a 3 day Sitting, whereas if, for example, the suspension began on the last Sitting day before the summer recess, it could last for over 8 weeks.

PPC believes that much greater flexibility should be given to the States when voting on suspension, but remains of the view that maximum periods are important to ensure that unduly lengthy or open-ended suspensions can never be approved. PPC also believes that the maximum periods should be related to a number of weeks and no longer be related to a certain number of States meetings. This will ensure that the period is not affected by the effect of periods of recess. In addition, to ensure fairness for all members in the present structure where the term of office of Senators is not the same as the term of office for Connétables and Deputies, PPC is proposing that the ‘graduated’ scale of sanction for a first, second or third and subsequent suspension should relate to the 3 year States electoral cycle and not to a member’s individual term of office.

Under PPC’s proposals, any proposition to suspend a member would, in future, need to specify a proposed period of suspension which would, in the normal way, be open to amendment. The proposition and any amendments would nevertheless be subject to a maximum period of suspension to avoid open-ended suspensions of indefinite duration. The proposed maximum periods are as follows, and PPC believes that these represent an appropriate balance between the need for a suspension to be effective whilst not being unduly oppressive –

1st suspension during a 3 year States cycle – 1 week (with no loss of remuneration)

2nd suspension during a 3 year States cycle – 2 weeks (with loss of 50% of remuneration)

3rd and subsequent suspension during a 3 year States cycle – 4 weeks (with loss of all remuneration).

PPC believes that these periods are sufficient to act as a realistic deterrent and, because they are only maximum periods, it is possible that any proposition relating to a suspension would propose a period that was shorter than the maximum possible.

Amendment 5 – Schedule 3 (Code of Conduct) amendment

When PPC was asked to investigate a potential matter of privilege in early 2009 when information from an ‘*in camera*’ debate was made public by a member, it became clear that, although it has always been implicit that members should respect confidentiality, there was no formal requirement in Standing Orders to maintain the confidentiality of *in camera* proceedings. This amendment makes it a formal breach of the Code of Conduct to disclose information from an *in camera* session; and any member who did so could be investigated and sanctioned as a result.

Financial and manpower statement

These amendments have no financial or manpower implications for the States.

Explanatory Note

Amendment 1 is the interpretation provision.

Amendment 2 inserts standing order 21A. This standing order has the effect that, as a first rule, only the Privileges and Procedures Committee may lodge a proposition for the suspension of a member of the States by reason of that member's actions. However, if that Committee has, in any case, considered whether to lodge such a proposition in respect of certain actions of the member, but decided not to do so, another member of the States may lodge the proposition, provided that it is signed by at least 6 members of the States. The proposition must also propose the duration of the suspension, subject to the maximum periods specified by *Amendment 4*. These requirements do not affect the right of any member of the States to propose without notice the suspension of another member who has been required by the presiding officer to withdraw from the States Chamber (standing order 111).

Amendment 3 amends standing order 111 to make it clear that, when a member of the States proposes, without notice, the suspension of another member of the States, he or she must, at the same time, propose the duration of the suspension, subject to the maximum periods specified by *Amendment 4*.

Amendment 4 substitutes standing order 164, altering the rules for suspension of a member of the State in the following ways –

- (a) a member of the States who is suspended shall not be allowed to enter the precincts of the States at any time during the period of suspension (currently, the member can enter when the States are not meeting);
- (b) instead of specifying the period of suspension, Standing Orders shall specify a maximum period of suspension, as follows –
 - (i) for a 1st suspension during the 3 year life of a States Assembly, 7 days;
 - (ii) for a 2nd suspension during the 3 year life of a States Assembly, 14 days;
 - (iii) for a 3rd or subsequent suspension during the 3 year life of a States Assembly, 28 days;
- (c) a member who is suspended for a 2nd time during the 3 year life of a States Assembly shall, during the period of suspension, only receive one half of the remuneration and allowances to which he or she would otherwise be entitled;
- (d) a member who is suspended for a 3rd or subsequent time during the 3 year life of a States Assembly shall not, during the period of suspension, receive any of the remuneration or allowances to which he or she would otherwise be entitled.

Amendment 5 revises the code of conduct for elected members, so as to make it clear that, unless allowed by the States, a member must not disclose publicly, or to a third party, things said in, or information produced in, a States debate that is held in camera.

Amendment 6 is the citation and commencement provision.



Jersey

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Arrangement

Amendment

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Jersey

DRAFT AMENDMENT (No. 13) 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 2005¹,
have made the following amendments to Standing Orders –

1 Interpretation

In these amendments, a reference to a standing order is to the standing order of that number in the Standing Orders of the States of Jersey².

2 Standing order 21A inserted

After standing order 21 there shall be inserted the following standing order –

“21A Additional requirements for proposition to suspend member

- (1) A proposition that a member of the States be suspended as a sanction for certain actions of that member may be lodged by the PPC.
- (2) A proposition that a member of the States be suspended as a sanction for certain actions of that member may only be lodged by a member or members other than the PPC if –
 - (a) the PPC has considered whether, and decided not, to lodge such a proposition in respect of the member of the States and the actions in question; and
 - (b) the proposition is signed by 6 members of the States.
- (3) A proposition that a member of the States be suspended, whether lodged by the PPC or any other member or members of the States, must propose the duration of the suspension.”

3 Standing order 111 amended

In standing order 111, after paragraph (1) there shall be inserted the following paragraph –

“(1A) The member of the States proposing the suspension must also propose the duration of the suspension.”.

4 Standing order 164 substituted

For standing order 164 there shall be substituted the following standing order –

“164 Suspension of member of the States

- (1) A member of the States who is suspended must leave the precincts of the States immediately and, during the period of suspension, not return.
- (2) A member of the States who is suspended cannot, during the period of suspension –
 - (a) discharge the functions of any Ministerial office, or of membership of any committee or panel, to which he or she is appointed in accordance with these standing orders; or
 - (b) in his or her own right –
 - (i) lodge a proposition,
 - (ii) give any question to the Greffier, or give notice to the Greffier of any question, that is to be answered by the tabling of a written reply in a meeting or orally during a meeting, or
 - (iii) present any report or comment to the States.
- (3) For the purposes of provision being made for the discharge of the functions mentioned in paragraph (2)(a), the member of the States who is suspended shall be taken to be temporarily absent during the period of suspension.
- (4) A member of the States who is suspended on a second occasion during a 3 year term shall, whilst suspended, receive one half of the remuneration and allowances to which he or she would otherwise be entitled as a member.
- (5) A member of the States who is suspended on a third or subsequent occasion during a 3 year term shall not, whilst suspended, receive any remuneration or allowance to which he or she would otherwise be entitled as a member.
- (6) The maximum period for which a member may be suspended is –
 - (a) in the case of a 1st suspension during a 3 year term, 7 days;
 - (b) in the case of a 2nd suspension during a 3 year term, 14 days;
 - (c) in the case of a 3rd or subsequent suspension during a 3 year term, 28 days.

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- (7) The day on which a suspension occurs shall count as the 1st day of the suspension.
 - (8) A period of suspension lapses upon the expiry of the member concerned's term of office.
 - (9) A reference in this standing order to a 3 year term is a reference to any period commencing upon the persons elected in an ordinary election taking the oath of office and ending upon the persons elected in the following ordinary election taking the oath of office.”.

5 Schedule 3 amended

At the end of paragraph 8 there shall be added the following statement –

“Elected members must not disclose publicly, or to any third party, things said, or information produced, in a meeting of the States that is conducted in camera, unless the States have permitted such disclosure.”.

6 Citation and commencement

These amendments may be cited as Amendment (No. 13) of the Standing Orders of the States of Jersey and shall come into force 7 days after they are made.

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- ¹ *chapter 16.800*
² *chapter 16.800.15*