

# STATES OF JERSEY



## **DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 7) (JERSEY) REGULATIONS 201-**

---

**Lodged au Greffe on 2nd June 2015  
by the States Employment Board**

---

**STATES GREFFE**





Jersey

# **DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 7) (JERSEY) REGULATIONS 201-**

## **REPORT**

---

### **Purpose**

The States are asked to approve changes to the role of the States Employment Board (“SEB”) and the Jersey Appointments Commission (“JAC”) following the arrangements put in place in 2005 when Ministerial Government commenced and the SEB became a legal entity under the Employment of States of Jersey Employees (Jersey) Law 2005 (the “2005 Law”).

### **Background**

When the planning was being undertaken for the move from Committee to Ministerial Government, the original intent was that the Council of Ministers would be formally constituted in law, and as such it would be the employing body for all States’ employees with the exception of Crown appointments and Police Officers.

As the arrangements for Ministerial Government were being concluded by the previous Policy and Resources Committee, consideration had to be given as to how a States’ employee would be employed if the Council of Ministers was not legally constituted due to late amendments being made to the States of Jersey Law 2005 (the “SoJ Law”).

As a result of approved changes to the SoJ Law, the current Law was introduced, and SEB was formally constituted as the employing body for all States’ employees with the exception of Crown appointments and Police Officers.

The original constitution of SEB was the Chief Minister or another Minister nominated by the Chief Minister to chair the Board, and 3 other Ministers or Assistant Ministers. In 2009, following concerns raised about the role of SEB over the number of suspensions of employees and the length of time it was taking to resolve suspensions, the former Deputy of St. Martin lodged a Proposition (P.175/2009) proposing a change to the make-up of SEB. This change was accepted by the States, and SEB is now constituted with the Chief Minister or his nominee as Chairman, 2 Ministers or Assistant Ministers and 2 backbench Members, both of whom are elected by the States.

The current functions of SEB are covered by Article 8 of the 2005 Law as follows –

### **PART 3**

#### **EMPLOYMENT OF MEMBERS OF PUBLIC SERVICE**

#### **8 Functions of States Employment Board**

- (1) *The States Employment Board shall have the following functions –*
  - (a) *to determine policy relating to the employment of, and the terms and conditions of employment of, States' employees, other than procedures for recruitment of States' employees;*
  - (b) *to ensure that the public service conducts itself with economy, efficiency, probity and effectiveness; and*
  - (c) *to ensure the health, safety and well-being of States' employees.*
- (2) *The States Employment Board shall also have the following functions –*
  - (a) *to employ persons on behalf of the States and administrations of the States;*
  - (b) *where appropriate, to consult or negotiate with States' employees, or representatives of States' employees, collective agreements as to the terms and conditions of employment of States' employees;*
  - (c) *to determine the employee training and development needs of States' employees and appropriate procedures for appraisal and transfer of States' employees;*
  - (d) *to discipline, suspend, or terminate the employment of, States' employees;*
  - (e) *to determine salaries, allowances, pensions and gratuities as required under the Departments of the Judiciary and the Legislature (Jersey) Law 1965;*
  - (f) *to determine other matters that may reasonably be considered necessary for the proper administration and management of States' employees;*
  - (g) *any other function conferred on it by or under an enactment.*

When the last SEB came into office at the end of 2011, the Board expressed some reservations about its position in relation to agreeing complex Human Resources (HR) policies and employment matters without a degree of external support being available to scrutinise effectively the proposals of officers when necessary. The SEB appointed an advisor in early 2012 with extensive knowledge of HR matters in both the public and private sectors, which has proven to be of great benefit, as the SEB is regularly dealing with matters on its agenda that go well beyond the development of pure policy as set out in the 2005 Law.

Given the success of the advisor's role in supporting the SEB, it is proposed under the amendments to the 2005 Law to formalise the role of the advisors. Their appointment would be through a formal recruitment and appointments process overseen by the Jersey Appointments Commission as required, and the SEB would appoint up to 2 advisors with relevant industrial/commercial/public sector experience and/or experience in employing large numbers of staff in a multi-disciplinary and complex organisation.

The structure of the current Law has led to the SEB becoming involved in determining operational elements of employment, as well as the development of new major HR/employment policies as set out in the 2005 Law.

To achieve separation between the role of SEB acting as policy formulator, and its function as employer with responsibility for the employment and care of States' employees, it is proposed that the use of delegation as set out in Article 10 of the 2005 Law is expanded and more formal schemes of delegation are used. This would be supported through the application of a set of "Codes of Practice" approved by SEB. Their status and application would be prescribed in the Law as part of the functions of SEB under Article 8.

The purpose of this new structure is to ensure that SEB's primary role is to set policy and overall direction, and to make more use of the specialist skills of the external advisors to provide assurance that the functions of the employer are being fully discharged by the Human Resources Department and employing departments. One of the key benefits of the new structure would be to ensure that appropriate governance arrangements are in place at a corporate level, so that all departments must apply consistent employment practice to the employment and care of their employees in accordance with the Codes of Practice and the direction of the SEB.

### **Introducing Codes of Practice**

In a similar way to the Public Finances (Jersey) Law 2005 (the "Finance Law"), where Financial Directions describe the manner in which financial management should be applied by departments, SEB Codes of Practice would prescribe corporate standards and framework for departments to work within when developing procedures for the employment, care and health, safety and welfare of employees. SEB would formally delegate the functions to the HR department for corporate governance and the design and application of corporate policies, and to departments for the day-to-day application of the Codes.

SEB, and in particular the advisors, would ensure that the Codes are being applied through constructive challenge to the corporate HR function and departmental Chief Officers to account for their application.

In a similar manner in which Chief Officers are "Accounting Officers" under the Finance Law, SEB would, through formal delegation under the Employment of States of Jersey Employees (Jersey) Law 2005, make Chief Officers accountable for the application of the Codes, to ensure that best employment practice is being implemented.

### **The role of the Chief Executive**

Currently, the 2005 Law states that the Chief Executive Officer is responsible for the administration and general management of the Public Service. It is proposed that the Chief Executive Officer should lead the Chief Officers of Ministerial Departments in the administration and general management of the Public Service **and** in the implementation of corporate and strategic policies. As the leader, this would give the Chief Executive Officer the ability to require a Chief Officer to account for administration, management and implementation in his or her Ministerial Department. In addition, it is proposed that the Chief Executive Officer may give a Chief Officer directions as to his or her duties, as a States' employee. However, a Chief Officer already has certain statutory duties, and these are not affected by the proposed changes that enable the Chief Executive Officer to require a Chief Officer to account for administration, management and implementation of policy in their Department.

Chief Officers will retain their role as policy advisors to their respective Ministers as set out under Article 26(6) of the SoJ Law, and will continue to discharge their responsibilities and accountability as Accounting Officers, as set out under Article 38(1) of the Finance Law.

## **The Role of the Advisor**

Essentially the role is to provide objective challenge and constructive criticism. They bring independent expertise and judgment to bear on issues of strategy, performance and resources, including standards of conduct (governance). They may as required, advise on key appointments. They will be chosen for their knowledge, experience, calibre and personal qualities. They will have knowledge to provide valuable advice to SEB. Importantly, their independence will bring a degree of objectivity to SEB deliberations and monitoring of executive management.

## **Jersey Appointments Commission**

Under the Employment of States of Jersey Employees (Jersey) Law 2005 (the “Law”), the Jersey Appointments Commission (“JAC”) is formally constituted and provides the following functions as set out in Article 23 –

### **23 Function of Commission**

*The function of the Commission is to oversee the recruitment of States’ employees so as to ensure that, as far as practicable –*

- (a) the recruitment of persons as States’ employees is fair, efficient and conducted in accordance with best practice principles and procedures;*
- (b) States’ employees are appointed on merit; and*
- (c) members of the States are only involved in the recruitment of States’ employees in accordance with guidelines made under Article 24 or otherwise in circumstances where, in the opinion of the Commission, it is appropriate that they be involved.*

The 2012 Annual Report prepared by the Chairman of the Commission and presented to SEB at its meeting on 25th June 2013 identified that in the previous year, the JAC had been engaged in 42 appointments – 10 for senior civil servants and the remainder for external organisations/quangos. In 2013, the JAC were engaged in 19 recruitments for States appointments and 32 recruitments for external organisations/quangos. An Audit Report prepared by internal audit for the Chairman of the Commission made several recommendations to strengthen the JAC’s role.

Based on the latest statistics for 2012 and 2013, the majority of the JAC’s workload appears to have been spent on external appointments.

Under the proposed changes to the functions of the States Employment Board, it is proposed that a Code of Practice for recruitment is agreed with the JAC, which will become mandatory. The JAC will always directly oversee the most senior appointments, but the role would be strengthened to audit/oversee the application of the Code of Practice. This model would not be dissimilar to the current Finance Law, which sets out the roles and responsibilities for Accounting Officers and then provides a framework of Financial Directions that all Accounting Officers and senior staff must follow.

This approach will reduce the requirement of JAC to sit on so many appointments, but they will always sit on the most senior appointments. The JAC will always be part of the recruitment and appointment process for the Chief Executive to the Council of Ministers and Head of the Public Service, and all Chief Officers, and also the Chairman and Chief Executives of the various outside bodies/quangos. The JAC will be required under the proposed new legislation to audit departments’ compliance with the Code of Practice on recruitment, and will have the power to step in and oversee departmental appointments if standards are not being met.

The recruitment of the new Chairman has been completed, and she has recruited the new Commissioners subject to the approval of the States of Jersey. Subject to the approval of these Regulations, the JAC will be directly involved in the preparation of the Code of Practice relating to recruitment.

**Financial and manpower implications**

The cost of the advisors will be met from within the existing Human Resources budget.

The cost of changes to the Jersey Appointments Commission will be met from within existing annual expenditure incurred by the JAC which is within the HR budget. There are no direct manpower implications arising from these changes, other than to increase the advisors by one, which will not be an increase in FTE.

## Explanatory Note

---

These Regulations amend the Employment of States of Jersey Employees (Jersey) Law 2005 (the “2005 Law”).

*Regulation 1* provides for the interpretation of references to provisions of the 2005 Law.

*Regulation 2* expands upon the role of the Chief Executive Officer as the head of the public service. Currently, Article 3 of the 2005 Law states merely that the Chief Executive Officer is responsible for the administration and general management of the public service. As amended, Article 3 requires the Chief Executive Officer to lead the chief officers of Ministerial departments, in the administration and general management of the public service and in the implementation of corporate and strategic policies. As the leader, the Chief Executive Officer is given the power to require a chief officer to account for such administration, management and implementation in his or her Ministerial department. In addition, the Chief Executive Officer may give a chief officer directions as to his or her duties, as a States’ employee. However, a chief officer already has certain statutory duties, and these are not affected by the new powers of the Chief Executive Officer to hold the officer to account or give him or her directions. The existing statutory duties are – the chief officer’s accountability to his or her Minister in respect of policy direction (Article 26(6) of the States of Jersey Law 2005); his or her duties as an accounting officer under the Public Finances (Jersey) Law 2005; and, if it applies to the chief officer, the new duty to comply with employment codes of practice, imposed by the new Article 10A of the 2005 Law, inserted by *Regulation 6*. In addition, the Chief Executive Officer cannot hold a chief officer to account for, or give that officer directions as to, or influence, the discharge of a function delegated to him or her by a Minister, or imposed by an enactment.

*Regulation 3* provides that the members of the States Employment Board (the “Board”) will be appointed following an ordinary election and cease to hold office at the next ordinary election. The membership of the Board is not altered. The Chief Minister is the Chairman, and appoints 2 Ministers or Assistant Ministers as members of the Board. The States appoint 2 elected members as members of the Board.

*Regulation 4* makes new provision for the appointment of advisors to the Board. The Board may appoint 1 or 2 advisors. The appointment of the advisors terminates upon the Board itself being reconstituted following an ordinary election. An advisor may attend and speak at a meeting of the Board and may ask for a meeting of the Board to be convened, but has no voting rights. In addition, new provision makes it clear that the protection from liability for acts done in the discharge of functions under the 2005 Law that is given to the Board, its advisors and delegates, does not extend to acts that breach the European Convention on Human Rights.

*Regulation 5* amends the period of appointment of the Chairman of JAC. Currently, the Chairman of JAC holds office for a fixed period of 4 years. The amendment introduces flexibility, by providing that the appointment is for a fixed period of up to 4 years. It remains the case that the Chairman may be re-appointed. Other Commissioners are already appointed for a fixed period of up to 4 years.

*Regulation 6* revises the functions of the Board and creates a duty to comply with codes of practice issued by the Board.

Currently, the Board is directly responsible for the terms and conditions of employment of States’ employees and for consulting or negotiating with States’ employees and their representatives upon those terms and conditions. The Board is



also, currently, expressed to be directly responsible for the day-to-day management of States' employees, such as training and development, performance review and appraisal, and disciplinary matters. Whilst the Board will continue to be the employer of States' employees, the amendments remove the Board's direct responsibility for negotiating terms and conditions and for day-to-day management. Instead, the Board is given the power to issue directions regarding the negotiation of terms and conditions and to issue codes of practice regarding training and development, performance and appraisal and disciplinary matters. In addition, the Board is given a new power to issue codes of practice regarding recruitment and selection of States' employees.

An accounting officer in a States funded body is required to comply with codes of practice issued by the Board regarding the recruitment and employment of States' employees in that body.

*Regulation 7* revises the general functions of the JAC.

Currently, the JAC and the States, by Regulations, have parallel powers to specify descriptions of employees of independent bodies to whom Part 4 of the 2005 Law should apply as if they were States' employees, and to specify appointed or elected officeholders of independent bodies who are to be States' appointees for the purposes of Part 4 of the 2005 Law. Regulations have not been made under this power, but the JAC has made a determination. Under the revised procedure, it will be for the Board and the JAC to agree lists of the descriptions of employees that are to be treated as States employees under Part 4 of the 2005 Law, and of officeholders who are States' appointees for the purposes of that Part. If the Board and JAC fail to agree, the opinion of the Board prevails, but the JAC may then report the failure to the States (see *Regulation 9*).

For the most part, the other amendments made by *Regulation 7* are consequential on the new power of the Board to issue codes of practice for recruitment of States' employees.

The JAC will be required to advise the Board on the preparation of codes of practice for the recruitment of States' employees. The Board, in turn, must have regard to the advice given by the JAC.

The JAC continues to have the power to issue guidelines under Article 24 of the 2005 Law, but only in relation to the recruitment of States' appointees. The JAC will no longer have the power to issue guidelines for the recruitment of States' employees.

Currently, under Article 25 of the 2005 Law, the JAC has a discretion as to whether it carries out or commissions audits of recruitment practices. In future, the JAC will be required to carry out sample audits and to carry out an audit in any situation where it has cause to believe that codes of practice (in the case of recruitment of a States' employee) or its own guidelines (in the case of recruitment of a States' appointee) have not been complied with.

The JAC is given a power to intervene in the recruitment of a particular States' employee or, generally, in the recruitment of States' employees on behalf of the States Employment Board, if it believes that any code of practice relating to recruitment is not being complied with. A code of practice will specify the form that intervention may take.

Lastly, it is made clear that the JAC may, in addition to its statutory functions, accept requests for it to oversee, observe or participate in, other recruitments.

*Regulation 8* revises the role of the JAC in relation to senior States' offices. Currently, the States, by Regulations, and the JAC, by instrument, have parallel powers to decide what is a senior States' office. The amendment provides that the Board and JAC will agree a list of offices, or classes of office, that are to be senior States' offices. In addition, the list will distinguish between senior States' offices where a JAC observer of a recruitment will be required under Article 26 of the Law, and senior States' offices where the JAC will have a discretion whether to observe a recruitment, under Article 26. If the Board and JAC fail to agree a list, the opinion of the Board prevails, but the JAC may report the failure to the States (see *Regulation 9*).

*Regulation 9* confers 2 new reporting powers on the JAC. Firstly, the JAC has a new power to report to the Board upon any failure to comply with recruitment codes of practice or any impropriety in recruitment practices. The JAC may further require the Chief Minister to lay the report before the States, if the JAC is of the opinion that the Board has not acted in response to it. Secondly, if the Board and JAC fail to agree a list of employments in independent bodies that are to be treated as States' employees under Part 4 of the 2005 Law, or a list of States' appointees or senior States' offices, the Board may prepare a report upon the failure, which the Chief Minister must then lay before the States.

*Regulation 10* makes it clear that the Data Protection Commissioner is not a States' employee.

*Regulation 11* provides for the citation and commencement of these Regulations.



Jersey

## **DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 7) (JERSEY) REGULATIONS 201-**

### **Arrangement**

---

#### **Regulation**

1	Interpretation .....	13
2	Role of Chief Executive Officer.....	13
3	Members of States Employment Board.....	14
4	Advisors to the States Employment Board.....	14
5	Term of appointment of Chairman of Jersey Appointments Commission.....	15
6	Functions of States Employment Board.....	15
7	Functions of Jersey Appointments Commission – general .....	16
8	Functions of Jersey Appointments Commission – senior States’ offices .....	19
9	Reports by Jersey Appointments Commission.....	20
10	Status of Data Protection Commissioner.....	20
11	Citation and commencement .....	20





Jersey

## **DRAFT EMPLOYMENT OF STATES OF JERSEY EMPLOYEES (AMENDMENT No. 7) (JERSEY) REGULATIONS 201-**

*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 2005<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations a reference to an Article by number only is a reference to the Article of that number in the Employment of States of Jersey Employees (Jersey) Law 2005<sup>2</sup>.

### **2 Role of Chief Executive Officer**

For Article 3(3) there shall be substituted the following paragraphs –

- “(3) As the Head of the Public Service, the Chief Executive Officer shall lead chief officers in –
  - (a) the administration and general management of the public service; and
  - (b) the implementation of corporate and strategic policies.
- (4) In so leading chief officers, the Chief Executive Officer shall have the power –
  - (a) to require a chief officer to account for the matters in paragraph (3)(a) and (b), so far as the Ministerial department for which he or she is the chief officer is responsible for them; and
  - (b) to direct a chief officer as to the duties to be undertaken by him or her in the course of his or her employment as a States’ employee.
- (5) The powers in paragraph (4) –
  - (a) do not override a chief officer’s accountability under –
    - (i) Article 26(6) of the States of Jersey Law 2005<sup>3</sup>,

- (ii) Article 38(1) of the Public Finances (Jersey) Law 2005<sup>4</sup>, or
- (iii) Article 10A of this Law; and
- (b) cannot be used to direct or seek to influence a chief officer –
  - (i) in the discharge of a function delegated to him or her by a Minister, or
  - (ii) in the discharge of a function imposed on him or her by any enactment.
- (6) In this Article –
  - ‘chief officer’ means the senior States’ employee in a Ministerial department;
  - ‘Ministerial department’ means an administration of the States for which a Minister is assigned responsibility.”.

### 3 Members of States Employment Board

- (1) In Article 1 after the definition “member” there shall be inserted the following definition –
  - “ ‘ordinary election’ means an ordinary election for Deputies held under Article 6(2) of the States of Jersey Law 2005<sup>5</sup>.”.
- (2) After Article 5(2) there shall be added the following paragraph –
  - “(3) A member of the States Employment Board shall hold office until a Chief Minister is appointed to office, under Article 19(7) of the States of Jersey Law 2005<sup>6</sup>, following the next ordinary election, unless the member of the Board resigns or is removed from office earlier.”.

### 4 Advisors to the States Employment Board

- (1) After Article 6 there shall be inserted the following Article –

#### “6A Advisors to States Employment Board

- (1) The States Employment Board may appoint one or 2 advisors.
- (2) An appointment shall be on such terms as the States Employment Board determines, but shall end upon the Chief Minister being appointed to office, under Article 19(7) of the States of Jersey Law 2005<sup>7</sup>, following the next ordinary election, unless the advisor resigns or is removed from office earlier.
- (3) An advisor has the right to attend and speak at a meeting of the States Employment Board.
- (4) The Chairman shall convene a meeting of the States Employment Board if requested to do so by notice in writing signed by an advisor.”.

- (2) In Article 7(1), for the words “unless the act or omission was in bad faith.” there shall be substituted the words –

“unless –

- (a) it is shown that the act or omission was in bad faith; or
  - (b) liability arises in respect of an act or omission that is unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>8</sup> (acts of public authorities incompatible with Convention rights).”.
- (3) In Article 7(2), after the words “any member of the States Employment Board,” there shall be inserted the words “any advisor to the States Employment Board,”.

## **5 Term of appointment of Chairman of Jersey Appointments Commission**

In Article 18(4), for the words “for 4 years” there shall be substituted the words “, subject to this Law, for a period of not more than 4 years,”.

## **6 Functions of States Employment Board**

- (1) For Article 8 there shall be substituted the following Article –

### **“8 Functions of States Employment Board**

- (1) The States Employment Board shall –

- (a) employ persons on behalf of the States and administrations of the States;
- (b) ensure that the public service conducts itself with economy, efficiency, probity and effectiveness;
- (c) ensure the health, safety and well-being of States’ employees;
- (d) determine any other matter that may reasonably be considered necessary for the proper administration and management of States’ employees; and
- (e) discharge any other function conferred on it by or under any enactment.

- (2) The States Employment Board shall, for the purpose of the discharge of the functions described in paragraph (1)(a) to (c) –

- (a) give directions regarding consultation or negotiation with States’ employees, or with representatives of States’ employees, concerning the terms and conditions of employment of States’ employees;
- (b) issue codes of practice concerning –
  - (i) the training and development needs of States’ employees,
  - (ii) the procedures for recruitment of States’ employees,

- (iii) the procedures for appraisal of the performance of States' employees,
  - (iv) the procedures for disciplining, suspending and terminating the employment of States' employees, and
  - (v) interventions by the Commission under Article 26A.
- (3) The States Employment Board may issue codes of practice concerning any other matter relating to the employment of States' employees.
- (4) In paragraph (2)(b)(ii), 'States' employees' includes a person who is to be treated as a States employee by virtue of Article 15(2).
- (5) The functions referred to in paragraph (1)(e) include the functions conferred by Article 8(1) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965<sup>9</sup>, Article 3 of the Loi (1864) concernant la charge de Juge d'Instruction<sup>10</sup> and Article 41(5) of the States of Jersey Law 2005<sup>11</sup>."
- (2) After Article 10 there shall be inserted the following Article –

**“10A Compliance with codes of practice concerning States' employees**

- (1) The accounting officer in a States funded body (including a non-Ministerial States funded body) shall be accountable for ensuring that codes of practice issued under Article 8 are complied with in the recruitment and employment of States' employees to work within that body.
- (2) Any person to whom a power or function is delegated under Article 10 shall, when exercising the power or discharging the function, comply with codes of practice issued under Article 8.
- (3) In this Article, 'accounting officer', 'States funded body' and 'non-Ministerial States funded body' have the same meanings as in the Public Finances (Jersey) Law 2005<sup>12</sup>."

**7 Functions of Jersey Appointments Commission – general**

- (1) In the long title, the words “States' employees and” shall be deleted.
- (2) In Article 14 for the definitions “States' appointee” and “States' employee” there shall be substituted the following definitions –
  - “ ‘States' appointee’ means a person who is, by virtue of Article 15(4), a States' appointee;
  - ‘States' employee’ includes an employee who is, by virtue of Article 15(2), to be treated as a States' employee.”.
- (3) For Article 15 there shall be substituted the following Article –

**“15 Extension of Part 4 to independent bodies**

- (1) The States Employment Board and the Commission may, for the purposes of paragraph (2), agree a list of offices, or classes of



- office, being offices in which persons are employed by independent bodies.
- (2) A person employed in an office, or class of office, listed under paragraph (1) is, for the purposes of this Part, to be treated as a States' employee.
  - (3) The States Employment Board and the Commission may, for the purposes of paragraph (4), agree a list of offices, or classes of office, being offices to which persons are appointed or elected in or with independent bodies.
  - (4) A person appointed or elected to an office, or class of office, listed under paragraph (3) is, for the purposes of this Part, a States' appointee.
  - (5) If the States Employment Board and the Commission cannot agree a list under paragraph (1) or (3), the opinion of the States Employment Board shall prevail.
  - (6) The States Employment Board shall ensure that a list produced under paragraph (1) or (3) is available for viewing by any person.”.
- (4) In Article 23 –
- (a) at the beginning there shall be inserted the paragraph number “(1)”;
  - (b) the word “and” at the end of paragraph (1)(b) shall be deleted;
  - (c) for paragraph (1)(c) there shall be substituted the following sub-paragraphs –
    - “(c) members of the States are only involved in the recruitment of States' employees in accordance with codes of practice issued under Article 8; and
    - (d) members of the States are only involved in the recruitment of States' appointees in accordance with guidelines made under Article 24 or otherwise in circumstances where, in the opinion of the Commission, it is appropriate that they be involved.”;
  - (d) after paragraph (1) there shall be added the following paragraphs –
    - “(2) The function in paragraph (1)(d) is subject to any direction by the States Employment Board that, in its opinion, it is appropriate for a Minister to participate in a recruitment of a States appointee.
    - (3) The Commission may, if requested by any person or body conducting a recruitment in connection with which the Commission does not have any functions under this Part, oversee, observe or participate in the recruitment, on such terms as the Commission agrees with the requesting person or body.”.
- (5) After Article 23 there shall be inserted the following Article –

**“23A Duty to advise on preparation of codes of practice for recruitment of States’ employees**

- (1) The Commission shall advise the States Employment Board on the preparation of codes of practice under Article 8 concerning the procedures for recruitment of States’ employees.
  - (2) The Commission shall inform the States Employment Board if, in its opinion, a new code of practice concerning the procedures for recruitment of States’ employees should be prepared or an existing code of practice for such procedures amended or revoked under Article 8.
  - (3) The States Employment Board shall have regard to advice given under this Article.”.
- (6) At the end of the heading to Article 24 there shall be added the words “for recruitment of States’ appointees”.
- (7) In Article 24, the words “States’ employees or”, in each place that they appear, shall be deleted.
- (8) In Article 25 for paragraph (1) there shall be substituted the following paragraphs –
- “(1) The Commission shall, as required by paragraph (1A), carry out, or order to be carried out, audits of recruitment practices in relation to States’ employees and States’ appointees.
- (1A) Audits shall be carried out –
- (a) of a sample of recruitments that are representative of the recruitments described in paragraph (1);
  - (b) of recruitments where the Commission has cause to believe that –
    - (i) codes of practice issued under Article 8 have not been complied with, or
    - (ii) guidelines produced under Article 24 have not been complied with.”.
- (9) After Article 26 there shall be inserted the following Article –

**“26A Power of intervention in recruitment of States’ employees**

- (1) The Commission may intervene in the recruitment, on behalf of the States Employment Board, of a States’ employee, or States’ employees, if the Commission believes that any code of practice issued under Article 8(2)(b)(ii) is not being complied with.
- (2) The intervention shall be in accordance with any code of practice issued under Article 8(2)(b)(v).
- (3) The Commission shall notify the States Employment Board and the administration of the States conducting the recruitment on behalf of the Board, of its decision to intervene and the reasons for it.”.

**8 Functions of Jersey Appointments Commission – senior States’ offices**

- (1) In Article 1, the definition “senior States’ office” shall be deleted.
- (2) In Article 14, after the definition “former Appointments Commission” there shall be inserted the following definition –  
“ ‘senior States’ office’ means an office listed under Article 16(1);”.
- (3) For Article 16 there shall be substituted the following Article –

**“16 Senior States’ offices**

- (1) The States Employment Board and the Commission may agree a list of offices of States’ employees or States’ appointees, or classes of offices of States’ employees or States’ appointees, that are to be senior States’ offices for the purposes of this Part.
- (2) A list under paragraph (1) shall further specify whether, under Article 26, the Commission is required to observe a recruitment to a senior States’ office or has a discretion to observe a recruitment to the office.
- (3) However, if the States Employment Board and the Commission cannot agree a list under paragraph (1), the opinion of the States Employment Board shall prevail.
- (4) The States Employment Board shall ensure that a list produced under paragraph (1) is available for viewing by any person.”.
- (4) For Article 26(1) there shall be substituted the following paragraphs –  
“(1) The Commission –
  - (a) shall give a notice under this paragraph in relation to the recruitment of a person to a senior States’ office, or an office that is in a class of offices that are senior States’ offices, where a list under Article 16(1) requires the Commission to observe a recruitment to the office; and
  - (b) may give a notice under this paragraph in relation to the recruitment of a person to a senior States’ office, or an office that is in a class of offices that are senior States’ offices, where a list under Article 16(1) confers a discretion on the Commission to observe a recruitment to the office.
- (1A) A notice under paragraph (1) shall be given to –
  - (a) the Chief Executive Officer;
  - (b) the head of an administration of the States; or
  - (c) the head of an independent body.”.
- (5) In Article 26(2) for the words “before the commencement of recruitment” to the end of the paragraph there shall be substituted the words “before a recruitment to the office commences”.

**9 Reports by Jersey Appointments Commission**

After Article 28(5) there shall be added the following paragraphs –

- “(6) The Commission may, at any time, prepare and deliver to the States’ Employment Board a report upon the recruitment of one or more States’ employees, where the Commission is of the opinion that a code of practice issued under Article 8(2)(b)(ii) has not been complied with or that there has been any impropriety in the recruitment process.
- (7) If the Commission is of the opinion that the States Employment Board has not taken any or appropriate action in response to a report under paragraph (6) –
  - (a) the Commission may request the Chief Minister to lay the report before the States, together with any addendum subsequently prepared by the Commission; and
  - (b) the Chief Minister shall comply with the request within 30 days.
- (8) If the States Employment Board and the Commission cannot agree a list, as described in Article 15(1) or (3) or Article 16(1) –
  - (a) the Commission may prepare a report upon the failure to agree and request the Chief Minister to lay it before the States; and
  - (b) the Chief Minister shall comply with the request within 30 days.”.

**10 Status of Data Protection Commissioner**

At the end of the list in Schedule 1 there shall be added the office “Data Protection Commissioner”.

**11 Citation and commencement**

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

- 
- <sup>1</sup> *chapter 16.325*
  - <sup>2</sup> *chapter 16.325*
  - <sup>3</sup> *chapter 16.800*
  - <sup>4</sup> *chapter 24.900*
  - <sup>5</sup> *chapter 16.800*
  - <sup>6</sup> *chapter 16.800*
  - <sup>7</sup> *chapter 16.800*
  - <sup>8</sup> *chapter 15.350*
  - <sup>9</sup> *chapter 16.300*
  - <sup>10</sup> *chapter 07.525*
  - <sup>11</sup> *chapter 16.800*
  - <sup>12</sup> *chapter 24.900*