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# STATES OF JERSEY



## **STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR HOME AFFAIRS – ADDITIONAL DELEGATIONS MARCH 2020, AND APPOINTMENT OF AN ADDITIONAL ASSISTANT MINISTER**

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**Presented to the States on 31st March 2020  
by the Minister for Home Affairs**

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**STATES GREFFE**

## REPORT

On 27th March 2020, the Minister for Home Affairs made a Ministerial Decision delegating certain of his functions under Articles 28, 30 and 30A of the [States of Jersey Law 2005](#) (see Decision reference MD-HA-2020-0022, available at [www.gov.je](http://www.gov.je)).

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

### “28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
  - (a) one of his or her Assistant Ministers;
  - (b) an officer.
- (1A) A Minister shall not delegate to an Assistant Minister any function the delegation of which is wholly prohibited by an enactment.
- (1B) Where a Minister delegates to an Assistant Minister a power to make an enactment, paragraphs (4) and (5) of Article 26 shall apply to the making of an enactment by the Assistant Minister, in exercise of the delegated power, as they would apply to the making of the enactment by the Minister.
- (2) A Minister shall not delegate to an officer –
  - (a) any power to make an enactment;
  - (b) any power to decide an appeal under an enactment;
  - (c) any function the delegation of which is prohibited wholly, or to an officer, by an enactment.
- (3) The delegation of functions by a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article –
 

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.
- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

**“30 Ministerial delegations to be presented to States**

- (1) A Minister who delegates functions under Article 28 shall present to the States a report specifying the functions delegated and to whom.
- (2) A Minister shall not be required to present a report under paragraph (1) where the delegation is so immediate and of such brief duration that it is not practicable to present the report before the delegation ends.

**30A List of delegations to be published**

- (1) The Chief Minister shall cause to be established, maintained and published a consolidated list of –
  - (a) the functions for the time being discharged by the Chief Minister and by each Minister;
  - (b) the functions for the time being delegated by the Chief Minister and each Minister under Article 28, and to whom.
- (2) The list shall also specify which Minister is discharging, for the time being, the functions of another Minister under Article 27(1) or (2).
- (3) The information described in paragraph (1)(b) or (2) is not required to be incorporated in the list where the period for which the delegation has effect or for which one Minister’s functions are being discharged by another is so immediate and of such brief duration that it is not practicable to amend and publish the list to incorporate the information before the end of the period.
- (4) It shall be sufficient if the list is published on a website.”

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The terms of the delegations, and the legislation under which those delegations were made, were recorded in a Report attached to the Ministerial Decision, as shown below –

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**Increase in ministerial resilience**

In light of the current Coronavirus outbreak, it is recommended that the Minister ensures he has enough capacity within his ministerial team in the event that he or his Assistant Minister are unavailable. The Minister currently only has one Assistant Minister, Deputy G.C.U. Guida of St. Lawrence.

It is therefore recommended that the Minister for Home Affairs appoints an additional Assistant Minister, Deputy L.B.E. Ash of St. Clement, having received the consent of the Chief Minister, and that he delegates all functions to Deputy Ash, but only during those periods when the Minister or the existing Assistant Minister, Deputy Guida, are unavailable. The normal expectations thereon apply, including that the Assistant Minister so appointed and delegated acts in liaison with the Minister wherever and insofar as practical.

In accordance with Article 28 of the States of Jersey Law 2005, the Minister has therefore decided to delegate all powers and functions conferred upon or vested in him, including the power to make enactments, and all other areas where the Minister has authority to act, to Deputy L.B.E. Ash of St. Clement as an additional Assistant Minister for Home Affairs.

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**Legal vires**

Article 25(1) of the [States of Jersey Law 2005](#) allows a Minister to appoint elected members as his or her Assistant Ministers. Under Article 25(2) of the Law, a Minister may only appoint an Assistant Minister with the prior consent of the Chief Minister.

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions conferred upon or vested in the Minister to an Assistant Minister. The Minister can delegate part, or all, of the functions conferred upon or vested in the Minister, unless the delegation of that function is wholly prohibited by an enactment.