

APPOINTMENTS MADE BY THE STATES: REVIEW OF PROCEDURES

**Presented to the States on 2nd April 2002
by the House Committee**



STATES OF JERSEY

STATES GREFFE

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APPOINTMENTS MADE BY THE STATES: CONSULTATION DOCUMENT

Background

On 17th July 2001 the States considered a proposition of Deputy R.G. Le Hérisssier concerning appointments made by the States. Following approval of the proposition, the House Committee was requested to review all current procedures relating to appointments made by the States and to report back to the States with recommendations for change including, if appropriate, the need for different procedures to be adopted for different types of appointment.

The Committee, as part of the review, wrote to each Committee of the States which had been identified in the list accompanying the proposition as being responsible for presenting appointments to the States for approval. The Committees were asked to consider the need for States' involvement in those appointments and, in particular, to provide responses to the following questions -

Does the Committee consider that there is any valid reason for the appointment to be made by the States? If so, why?

Alternatively, would the Committee be prepared to recommend a different method of appointment and, if so, what method would be suitable? If changes to legislation are required to introduce an alternative method of appointment, would the Committee be prepared to promote those changes?

The House Committee has received replies from each of the relevant Committees and, having considered their comments, has made its own observations on the appointments (*see* attached Appendix).

The House Committee, in undertaking this task, was aware that the mood of the States on 17th July 2001 was that appointments should not generally be made by the States unless there was a very compelling reason to do so.

Subsequent to 17th July 2001, the Policy and Resources Committee established an Appointments Commission Sub-Committee to prepare the ground for the creation of such a Commission, which would play a part in certain appointments. The House Committee has passed on copies of the comments it has received to that Sub-Committee.

Conclusion

The Committee recognised that different procedures were needed in relation to different types of appointments. It noted the following main types -

- (a) **Prominent Public Appointments** (for example, Chairman of Jersey Arts Trust, Jersey Heritage Trust, Jersey Child Care Trust) - The Committee was of the view that the States should continue to make appointments where a significant amount of public money was entrusted to an external body.
- (b) **Senior Civil Service Appointments** - The Committee recognised that such appointments were made following professional recruitment and assessment processes. It supported the creation of an Appointments Commission which would ensure that all senior appointments were properly made and free from undue political interference.
- (c) **States Directors** (Jersey Electricity Company Limited, Jersey New Waterworks Company Limited and the Waterfront Enterprise Board) - The Committee recognised that the first two cases would cease in 2003. It was of the view that the States should continue to make the latter appointment, which was to a prominent public responsibility.
- (d) **Tribunals and Appeal Boards** - These should be appointed independently of the States in accordance with Human Rights legislation, by an Appointments Commission.
- (e) **Appointments directly responsible to the States** - (The Greffier of the States, Jersey Delegation to the Commission Amicale, Bailiff's Consultative Panel) These appointments should continue to be made by the States or with the consent of the States. (The Greffier of the States is appointed by the Bailiff with the consent of the States.)
- (f) **A number of appointments which could be made by Committees** - There was agreement that there was no valid reason why a number of appointments should continue to be presented to the States. The House Committee was of the view that such appointments could be made by Act of Committee.

The House Committee recognises that legislative changes would be required to change the current procedures. Furthermore, it is aware that the move to a ministerial system following the Review of the Machinery of Government is likely to have a significant impact on the current procedures. Accordingly, it would seem appropriate that further consideration of the issue should continue to be reviewed as part of the process to Ministerial Government.

APPENDIX

<i>Committee/ Relevant Positions</i>	<i>Comments from relevant Committees</i>	<i>House Committee comments</i>
Agriculture and Fisheries Committee: Agricultural Loans and Guarantees Advisory Board	<p>There is no valid reason why the Board should be appointed by the States. The appointment could be made by the Agriculture and Fisheries Committee.</p> <p>A mechanism should be in place for appointments by Committees to be open to challenge to avoid any suggestion of cronyism.</p>	<p>The House Committee concurs with the views of the Agriculture and Fisheries Committee.</p>
Education Committee: Jersey Arts Trust (Chairman); Jersey Child Care Trust (Chairman); Westaway Trust Council	<p>The current procedure enables appointments to be made openly and impartially. Furthermore, it ensures that the Chairperson of each Trust is not overtly influenced by the Committee which acts as an overseeing body.</p> <p>The appointments are sufficiently significant to warrant the consideration of the States. The current procedure should be maintained.</p>	<p>The House Committee concurs with the view that prominent public appointments, such as the Chairmen of the Jersey Arts Trust and the Jersey Child Care Trust, which hold responsibility for the use of significant amounts of public money, should continue to be made by the States.</p>
Employment and Social Security Committee: Tribunals and Appeal Boards: Attendance Allowance Board; Family	<p>With regard to Tribunals and Appeal Boards, the advice received to date on the Human Rights aspect was that such Boards should be appointed and funded by a neutral body. This need not be the States. It</p>	<p>The House Committee concurs with the views of the Employment and Social Security Committee.</p>
Allowances Tribunal; Health and Safety Appeal Tribunal; Health Services Disciplinary Tribunal; Social Security Tribunal Boards of Management: Jersey Council for Safety and Health at Work	<p>could be the States Greffe, but they certainly need to be appointed independently.</p> <p>In terms of Boards of Management, the Department has recently begun to adopt the more modern practice of advertising the positions.</p>	

<p>(Chairman); Jersey Dental Scheme Board of Management (Chairman); Training and Employment Partnership, Employment Forum; Jersey Advisory and Conciliation Board</p>	<p>However, even doing this and using the strict criteria on which to base appointments, the Committee was still open to criticism of appointing its own people.</p> <p>The Committee is concerned to ensure that the appointments system is demonstrably fair. Whilst it has no difficulty with the proposal for a more independent appointments system removed from the States or Committee influence, this should be carefully thought through if the right people are to be appointed to the right jobs.</p> <p>The Committee would like to have more information as to the processes that might lie</p>	
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	<p>behind such a system before giving a definitive answer.</p>	
<p>Finance and Economics Committee: Agent of the Impôts; Official Analyst; Commissioners of Appeal for Income Tax; Jersey Financial Services Commission Parish Rate Appeal Board Public Employees Contributory Retirement Scheme - Committee of Management - Chairman States Audit Commission (Chairman) States Auditors</p> <p>Jersey Electricity Co Ltd (States Directors); Jersey New Waterworks Co Ltd (States Directors)</p>	<p>In view of the ongoing government reforms being proposed under the Clothier Report, which proposed the establishment of an Appointments Commission for senior positions within the Civil Service, it would be inappropriate to agree to any changes at the present time.</p>	<p>The House Committee is of the view that an Appointments Commission should be established to deal with senior positions within the Civil Service.</p> <p>The House Committee notes that the appointment of States Directors to the Jersey Electricity Co. Ltd and the Jersey New Waterworks Co. Ltd. would cease in 2003.</p>

Jersey Heritage
Trust (Chairman)

The House Committee is of
the view that the
appointment of the
Chairman of the Jersey
Heritage Trust should be
made by the States, in the
same way as

		the Chairmen of the Jersey Arts Trust and the Jersey Child Care Trust.
<p>Gambling Control Committee: Public Lotteries Board</p>	<p>When the Public Lotteries Board was set up in the 1960s, the States at that time apparently felt that the Gambling Control Committee should not be too closely involved in the conduct of the actual Lottery draws and members of the public should be involved to emphasise the community aspects.</p> <p>Times have changed since the Lottery was first established. It is possible that the Channel Islands Lottery will be discontinued in the near future in the light of the possible extension of the United Kingdom National Lottery to the Channel Islands.</p> <p>The Committee is not opposed to appointment of the Public Lotteries Board by the Committee rather than by the States. However, this might become a somewhat academic point if the CI Lottery is discontinued.</p>	The House Committee notes these views.
<p>Home Affairs Committee:</p> <p>Chief Officer, States of Jersey Police;</p>	<p>There is no valid reason why any of the three appointments should be made by the States.</p> <p>In the case of the appointment of the Chief Officer, States of Jersey Police, it would be appropriate for the</p>	The House Committee recognises that a professional recruitment process is required for appointments such as the Chief Officer, States of Jersey Police.

<p>Jersey Police Authority (Chairman and two independent members); Jersey Police Complaints Authority</p>	<p>appointment to be made by the Committee or the Jersey Police Authority (once enacted). This matter was currently under discussion in connexion with the law drafting instructions for constituting the Jersey Police Authority.</p> <p>Regarding the posts of Chairman of the Jersey Police Authority and Chairman of the Police Complaints Authority, appointments could be made by the Committee.</p>	<p>It is of the view that such appointments should be confirmed by the Committee.</p>
<p>Housing Committee: Rent Control Tribunal</p>	<p>It is not essential for the current procedure to be retained. The Committee would support an alternative approach, possibly by Order, for the appointment of the Rent Control Tribunal.</p>	<p>The House Committee concurs with this view.</p>
<p>Human Resources Committee:</p> <p>Agent of the Impôts; Official Analyst;</p> <p>Comptroller of Income Tax; Treasurer of the States;</p>	<p>The appointments of the Agent of the Impôts, the Official Analyst, the Comptroller of Income Tax and the Treasurer of the States should not be referred to the States for approval; rather they should be appointed by the Committee, with the consent of the Finance and Economics Committee. Appointment by the States, rather than adding a certain status or cachet, as has been suggested, is more likely to create embarrassment for the 'candidate'; and in any event, appointment by a Committee</p>	<p>The House Committee recognises that a professional recruitment process is required for such appointments such appointments should be confirmed by Act of the Committee.</p>

	of the States is an official 'States appointment' in every significant sense.	
Greffier of the States;	Given that the Greffier of the States is appointed to serve the States directly, he or she should continue to be appointed by the States, on the recommendation of the Bailiff.	The House Committee notes that the Greffier is in fact appointed by the Bailiff with the consent of the States and believes this should continue.
Data Protection Tribunal	Members of the Data Protection Tribunal should be appointed by the Committee, not the States.	
Manual Workers Joint Council (Employers' side)	The appointments to the Manual Workers Joint Council (Employers' side) should be made by the Committee, with the Parish of St. Helier and the Comité des Connétables continuing to make one appointment each to the Employers' side. The requirement to bring a proposition for debate creates delay for no good reason	The House Committee notes these views.
Public Employees Contributory Retirement Scheme - Committee of Management members (other than Chairman)	The seven Employer Side Trustees should be appointed by the Committee, as employer, not the States. The Finance and Economics Committee should continue to nominate three of the seven Trustees. The question of the States appointments, insofar as they involve individual posts, should be deferred until after the review of the Machinery of Government has been	

	<p>completed. There is good reason to expect that we will have an Appointments Commission which will advise on senior appointments. Other changes may impact on the current situation.</p>	
<p>Industries Committee:</p> <p>Jersey Competition Regulatory Authority (Chairman); Jersey Consumer Council (Chairman); Financial Service Committee (future)</p>	<p>The Committee supports the view that appointments should not generally be made by the States but should be the responsibility of the individual Committee concerned, so as to avoid any uncertainty regarding the legitimacy of a suitably-qualified individual to a particular post by way of structured interview and assessment processes.</p> <p>Furthermore, the need for an independent appointment was imperative to protect the integrity of any potential action against the interests of the States, or against or in criticism of States policy. Therefore, the matter of appointments, particularly in respect of the Chairman of the Jersey Competition Regulatory Authority and the Chairman of the Jersey Consumer Council should not be a matter for the legislature but for those in whom it has vested executive responsibility.</p> <p>As for the mechanisms of appointment, an Appointments Commission is the most appropriate way forward, as this model would retain</p>	<p>The House Committee is of the view that the Jersey Consumer Council should not be the responsibility of the Industries Committee.</p> <p>The institution of confirmation hearings, as in the United States of America, is not one which immediately meets with the</p>

	<p>impartiality while being bound on reporting procedures to the States. Alternatively, and in similar fashion to the model adopted in the United States of America, the States could institute confirmation hearings that would offer transparency to the process of appointment of individuals and allow effective scrutiny while not compromising the position of those actually charged with the responsibility for making appointments. This process could even run alongside the proposed Appointments Commission.</p>	<p>support of the House Committee.</p>
<p>Legislation Committee:</p> <p>Industrial Disputes Tribunal (Chairman and Deputy Chairman)</p> <p>Jersey Law Commission</p>	<p>The position of Chairman and Deputy Chairman of the Industrial Disputes Tribunal will fall away naturally, in the fullness of time, pending the introduction of the new Employment (Jersey) Law.</p> <p>The current procedure in respect of the appointment of the Jersey Law Committee gives the necessary credence, status and recognition to those persons involved, and to the fact that appointments are on an honorary basis and the work of the Commission is entirely funded by public money.</p>	<p>The House Committee notes this view.</p>
<p>Planning and Environment Committee:</p> <p>Ecology Fund (Chairman)</p>	<p>There is no valid reason why the appointment should be made by the States. The Chairman should be a States member appointed by the Committee.</p>	<p>The House Committee notes this view.</p>
<p>Policy and Resources Committee:</p> <p>Statistics User Group (Chairman)</p> <p>Waterfront Enterprise Board (States Directors)</p>	<p>The appointments could be better and more conveniently made by the Committee itself.</p>	<p>The House Committee is of the view that the appointment of States Directors to the Waterfront Enterprise Board is a prominent public appointment, as are the Chairmen of the Jersey Arts Trust, the Jersey Heritage</p>

	Any changes to current procedures should be considered in the context of the machinery of government debate.	Trust and the Jersey Child Care Trust and should continue to be made by the States.
Senior member of the States: Bailiff's Consultative Panel (three members to be appointed by the States)		The House Committee agrees that it seems logical for the States to make the appointment given that the Panel members are drawn from the body of States Members
Special Committee to consider the relationship between Committees and the States Administrative Appeal Panel members		The House Committee is of the view that the Special Committee or an independent body such as an Appointments Commission should appoint the members of the Administrative Appeals Panel

Jersey Delegation to the Commission Amicale	In view of the fact that members of the Jersey delegation represent the States and the Island in its facilitation, establishment and continuation of links outside the Island, it is important to retain appointment by the States.	The House Committee concur with this view.
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