

STATES OF JERSEY

r

DRAFT STATES OF JERSEY (AMENDMENT No. 3) (JERSEY) LAW 200

Lodged au Greffe on 5th July 2005
by Senator S. Syvret

STATES GREFFE



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 3)(JERSEY) LAW 200

REPORT

The amendment made by *Article 2* relates to the independence and freedom of speech of elected representatives. Given that many people in Jersey prefer to vote for independent candidates and given the likelihood that there will continue to be a significant number of independent members elected to the house, it is democratically essential that the public's right to be governed through independent members is safeguarded. Since the assembly last debated this question we have seen the successful launch of a political party in Jersey and will, quite possibly, see further parties formed. There are conflicting views concerning the desirability or otherwise of organised politics. However, if there is to be any chance of the traditional approach of independent members surviving the transition to ministerial government, it is essential that the public can vote for independent candidates and be confident that those candidates, if elected, will be able to be genuinely independent when involved in the executive function. Some members of the public have recently come together with a view to fighting the 2005 elections on an expressly independent platform. They have expressed the view that the way forward for politics in Jersey should be its traditional approach to independent candidates. Those who share their views will strongly support this amendment which guarantees the *genuine* independence of elected members. Some of those in favour of party politics have expressed to me the view that they hope this amendment fails, the reasoning being that the failure of the States to safeguard real independence makes the successful growth of party politics inevitable.

If States members in the executive are to be genuinely independent – as they simply must be if elected on that basis – the ability of those members to speak their mind, to be able to be independent in thought and action and to lodge propositions must be explicitly safeguarded. If this is not to be the case, then the voting public will be swindled out of the independent representation they thought they were voting for – and even worse than this – we will end with a party political system by stealth; a prime ministerial cabinet pursuing a party line that nobody actually voted for.

Of great importance to maintaining genuine independence amongst States members must be the right of Ministers to enjoy free speech. This safeguard is essential for a number of reasons. When electing independent candidates, the public has a democratic right to expect that choice to be honoured by the island's government. If freedom of speech for Ministers is not protected, the States will be saying "we, and the political apparatus we have put in place, has a right to dictate the modus operandi of States members, to an extent that transcends the democratic choice of the public." This will be the reality if government or cabinet mechanisms permit and allow constraints to be placed upon the free political expression of politicians the public have elected as 'independent'. It would be difficult to think of an approach more likely to disconnect politics from the public.

A further problem arises if Ministers are not able to bring matters before the States for decision. This will lead to those members who hold the greatest responsibility for areas of administration, the Ministers, not actually being able to lead key debates if their cabinet colleagues overrule them. This also disenfranchises the States assembly. It is increasingly recognised that the 'government', that is, principally the cabinet, is out of control in the United Kingdom and that parliament has been seriously weakened in its ability to hold the executive to account. We should not repeat those mistakes here.

The amendment made by *Article 3* addresses the possibility of a member *knowingly* making a false declaration of interests, or *knowingly* failing to declare an interest which should have been declared. The principal Law already makes it a criminal offence for candidates to make false declaration. The same standard must apply to elected members. When previously debated, many considered this amendment to be fairly uncontentious and expected it to be approved. The rejection of this amendment came as a real shock to many people. However, members now

have another chance to demonstrate their commitment to standards in public life.

Finance and manpower statement

No additional financial or manpower requirements arise from these draft amendments.



Jersey

DRAFT STATES OF JERSEY (AMENDMENT No. 3)(JERSEY) LAW 200

Arrangement

Article

- 1 Interpretation
- 2 Article 25 amended
- 3 Article 43A inserted
- 4 Citation and commencement



Jersey

STATES OF JERSEY (AMENDMENT No. 3) (JERSEY) LAW 200-

A LAW to amend further the States of Jersey Law 2005.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the States of Jersey Law 2005.^[1]

2 Article 25 amended

After paragraph (5) of Article 25 of the principal Law there shall be inserted the following paragraph –

“(5A) Neither the Chief Minister nor the Council of Ministers shall prevent a Minister speaking publicly on, or bringing to the States, or bringing to the attention of a scrutiny panel established under standing orders, any matter, proposition, question, bill, petition, or other thing relating or of relevance to his or her portfolio.”.

3 Article 43A inserted

After Article 43 of the principal Law there shall be inserted the following Article –

“43A Offence by member concerning declaration of interest

A member of the States who, when required by standing orders to declare his or her interests, knowingly –

- (a) makes a false declaration; or
- (b) fails to make a declaration,

shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine of level 4 on the standard scale.”.

4 Citation and commencement

- (1) This Law may be cited as the States of Jersey (Amendment No. 3) Law 200.

- (2) If Article 25 of the principal Law is in force on the day this Law is registered, Article 2 of this Law shall come into force forthwith; otherwise, Article 2 of this Law shall come into force on the same day as Article 25 of the principal Law.
- (3) This Article and Articles 1 and 3 shall come into force 7 days after this Law is registered.

^[1] *Recueil des Lois, Volume 2005, page 345.*