

STATES OF JERSEY



REVIEW OF THE ROLES OF THE BAILIFF, ATTORNEY GENERAL AND SOLICITOR GENERAL: TERMS OF REFERENCE

Lodged au Greffe on 31st March 2009
by the Council of Ministers

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 4th February 2009 in which they agreed that an independent review should be conducted into the roles of the Bailiff, the Attorney General and the Solicitor General; and

- (a) to approve the draft terms of reference of the review as set out in the Appendix to the report of the Council of Ministers dated 31st March 2009; and
- (b) to approve the process for the appointment of the Chairman and members of the Panel as set out in the said report and to vary their decision of the 4th February in relation to the appointments process accordingly.

COUNCIL OF MINISTERS

REPORT

On 4th February 2009 the States, adopting the proposition of the Deputy of St. Martin, as amended, agreed that –

- (a) an independent review be conducted into the current roles of the following unelected members of the States, namely the Bailiff, the Attorney General and the Solicitor General;
- (b) the Council of Ministers, after consultation with the Privileges and Procedures Committee, be requested to submit to the States for approval no later than 31st March 2009 –
 - (i) the names of the proposed Chairman and members of the Panel to conduct the review;
 - (ii) the terms of reference of the Panel and the proposed target dates for the start of the review and the publication of the Panel's subsequent report and recommendations which publication date shall be no later than one year after the appointment of the Chairman and members of the Panel;
- (c) the Minister for Treasury and Resources be requested to assess whether the review could be funded from within existing resources and, if not, to bring forward for approval a request under Article 11(8) of the Public Finances (Jersey) Law 2005 for the necessary additional funding to cover the cost of the review.

Basic principles

It is clear from the debate on 4th February that the following points were generally accepted by the States Assembly –

- (a) The review should be independent – i.e. to be conducted by impartial persons who are not members of the States;
- (b) The review should extend to the full range of roles of the Bailiff, Attorney General and Solicitor General (not only their functions within the States Assembly);
- (c) The main issues in the debate related to the constitutional principle of separation of the judiciary and the legislature; democratic accountability; and human rights compliance;
- (d) The findings of the review should be authoritative and dependable in order to inform the decisions of the States;
- (e) The views of local interest groups and the public should be a relevant consideration in formulating any recommendations;
- (f) The review would require knowledge and expertise in constitutional law, human rights judgements and the functioning of parliamentary democracies;

- (g) Whilst the review needs to be meaningful and robust, the costs of the review should be the least possible to achieve all the above requirements.

It is considered the review must seek and take into consideration the views of the public and interest groups in Jersey, and formal meetings and hearings should ordinarily take place in public and submissions to the Panel should be made available to the public.

The proposed terms of reference of the review are included in the Appendix.

Appointment of Panel

In view of the level of knowledge and expertise required to conduct a sufficiently authoritative and conclusive review, an independently chaired review should be commissioned under the leadership of a suitably qualified and experienced chairman, together with 2 suitable independent respected members of the Jersey community.

Subsequent to the previous debate, enquiries have been made regarding a potential Chairman of the Panel, and it is understood that it would be possible to identify one or more willing and experienced, retired senior members of the United Kingdom judiciary from whom the Chief Minister, in conjunction with the Privileges and Procedures Committee, could nominate a person who is appropriate to chair the Panel.

It is reasonable that a prospective chairman would wish to know the final approved terms of reference before agreeing to be considered to conduct the review and, in addition, would wish to have some input in the selection of potential local candidates for the Panel. However, this process will require a few weeks to complete, and it would not be possible to complete the process before 31st March.

Since the Chairman of the Panel cannot be selected before the terms of reference are agreed by the States, it is now considered that the Chairman and named local members of the Panel should be proposed to the States, after consultation with the Chairman of the Privileges and Procedures Committee, for approval in a second Proposition, to be lodged as soon as possible after the terms of reference have been approved.

Financial and manpower implications

In accordance with the previous decision of the States, the Minister for Treasury and Resources has assessed the resource implications of the review. In view of the reduced size of the operation it is confirmed that it can be conducted within a total budget of £200,000. For 2009 the monies can be found within existing resources.

The manpower implications of the review will comprise a research and project officer for the duration of the work involved, whose costs are included within the above figure.

31st March 2009

Independent review of the current roles of the Bailiff, the Attorney General and the Solicitor General

TERMS OF REFERENCE

1. In accordance with the decision of the States on 4th February 2009 that an independent review shall be conducted into the current roles of the Bailiff, the Attorney General and the Solicitor General, and with particular regard to –

Part 1 – roles of the Bailiff (and Deputy Bailiff)

- The role of the Bailiff as Chief Justice, President of the States and civic head of the Island;

Part 2 – roles of the Attorney General and Solicitor General

- The roles of the Attorney General (and Solicitor General) as legal adviser to the States of Jersey, to the Council of Ministers and to Scrutiny Panels, chief prosecutor, head of the Jersey honorary police, and acting in the interests of the Crown in Jersey;

and taking into consideration –

- (1) the principles of modern, democratic and accountable governance and human rights,
- (2) the nature of a small jurisdiction, the Island's traditions and heritage, the resources required, and the difficulties (if any) which have arisen in practice, and
- (3) such other matters as the Panel may consider relevant,

to prepare a report for consideration by the States –

- (a) on whether the current roles should be changed, and
- (b) if so, how they should be changed and what the likely cost implications of any such change might be.

2. The views of the public and local interest groups in Jersey should be sought and all such views taken into consideration.
3. Formal meetings and hearings of the Review Panel should be held publicly in Jersey unless the Panel believes that there are reasonable grounds for holding a meeting or hearing *in camera*.
4. The content of all written submissions to the Review Panel will be made available to the public, unless the Panel believes that there are reasonable grounds for non-disclosure of a submission or part of a submission, and should be attributed unless the submitter explicitly requests that a submission shall be non-attributed and the Panel accepts the reasons for such a request.