

STATES OF JERSEY



MINISTER FOR JUSTICE AND DEPARTMENT OF JUSTICE: REPORT

Lodged au Greffe on 13th November 2012
by Senator L.J. Farnham

STATES GREFFE

PROPOSITION

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

to request the Chief Minister to investigate the possibility of establishing a new ministerial office of Minister for Justice in Jersey with an associated Department of Justice and, in consultation with the Council of Ministers, to report to the States with recommendations or proposals no later than 31st July 2013.

SENATOR L.J. FARNHAM

REPORT

Impartiality and independence of the judiciary and prosecuting authorities

All modern systems of government can be divided into 3 main elements: the executive (also known as the Government), the legislature (the law making body or parliament, in Jersey's case an Assembly), and the judiciary (the law courts and public officials who administer justice). Within a modern system of government it is vital that the judiciary are impartial and independent of all external pressures so that the public can have confidence that cases will be decided fairly and in accordance with the law. Judges must be free of any improper influence which might arise from a range of sources, including the executive or the legislature, individual litigants, pressure groups, the media, self-interest or other judges. It is also vital that there is independence for the prosecuting authorities in taking prosecution decisions. The principle of impartiality and independence for both the judiciary and prosecuting authorities is reflected in the constitutional arrangements of most democratic countries.

Executive Government in Jersey is performed by the Council of Ministers, supported by Assistant Ministers to whom functions may be delegated and whom may deputise for the Ministers. Whilst this proposition asks that the proper role of the executive Government in justice matters is considered, the proposition does not seek to interfere with, or override, the principle of impartiality and independence for the judiciary and prosecuting authorities.

United Kingdom

Whilst our unique constitutional arrangements may mean that it is not always appropriate to consider parallels with the United Kingdom (UK), we share a number of common features in our respective constitutional arrangements and so the UK structure provides a helpful background. The main elements of the UK structure are summarised below.

- (a) The *Lord Chief Justice* became Head of the Judiciary of England and Wales in 2006, a role previously held by the Lord Chancellor, and is also President of the Courts of England and Wales.
- (b) The *UK Attorney General* is responsible for providing legal advice to the Crown and also for superintending the prosecuting departments, which comprise the Crown Prosecution Service, Revenue and Customs Prosecutions Office and the Serious Fraud Office. Whilst the Law Officers are part of the executive, a protocol was published in 2009 which clarifies the Attorney General's relationship with the superintended prosecuting authorities and underlines the independence of the prosecutors in taking prosecution decisions.
- (c) The Home Office is the lead UK department for immigration, passports, counter-terrorism, policing, drugs and crime. Four agencies, the UK Border Agency, the Identity and Passport Service, the National Fraud Authority and the Criminal Records Bureau, provide directly managed frontline services from within the Home Office. The Home Office is headed by the *Home Secretary* and 5 other ministers.

- (d) The UK Ministry of Justice was formed in 2007, superseding the Department of Constitutional Affairs (formerly the Lord Chancellor's Department) and incorporating some functions from the Home Office. The Ministry of Justice is responsible for policy on the overall criminal, civil, family and administrative justice system, as well as the courts, tribunals, legal aid and constitutional reform. The Ministry is also responsible for strengthening democracy and safeguarding human rights. The Ministry oversees a number of arms-length organisations, including the Courts Funds Office, the Judicial Appointments and Conduct Ombudsman, the Sentencing Council, the Law Commission, and the National Offender Management Service which includes the Prison and Probation Services. The Ministry is headed by the *Lord Chancellor* and *Secretary of State for Justice* and 4 other ministers. The Lord Chancellor has a special responsibility to defend judicial independence and to consider the public interest in respect of matters relating to the judiciary. The Lord Chancellor is also under a general duty to provide sufficient resources to support the business of the courts in England and Wales. The Privy Counsellor with responsibility for the Crown Dependencies is currently the Lord Chancellor.
- (e) The creation of the Ministry of Justice in 2007 established a trilateral arrangement, with the Secretary of State for Justice working with the Home Secretary and the Attorney General to deliver improvements in the criminal justice system. This trilateral arrangement was supported by a *National Criminal Justice Board*, which brought together the Ministry of Justice, Home Office and Attorney General's Office.

Jersey

With the exception of a Minister for Justice, the structure is similar in Jersey, as summarised below.

- (a) The Head of the Judiciary in Jersey is the *Bailiff*, assisted by the Deputy Bailiff who may also deputise for, and exercise the functions of, the Bailiff.
- (b) *H.M. Attorney General* is the head of the Law Officers' Department, which provides legal advice to the Crown and the States, including States ministries and other departments, and is also responsible for the provision of a criminal prosecution service. The Attorney General and the Law Officers' Department do not form part of the executive.
- (c) The Home Affairs Department aims to improve the quality of life of everyone living in Jersey by helping create a safe, just and equitable society. The Department also oversees criminal justice policy, guided by the policy agreed by the States Assembly in 2007. In addition, the Home Affairs Department oversees the following States' departments: States of Jersey Police; States of Jersey Fire and Rescue Service; Jersey Prison Service; Jersey Customs and Immigration Service; Jersey Field Squadron; and Office of the Superintendent Registrar. The Department is headed by the *Minister for Home Affairs* and supported by an Assistant Minister.
- (d) There is no Minister for Justice in Jersey. As in the UK, some aspects of criminal justice are picked-up by the Home Affairs Department, but there is

no function within the executive with specific responsibility for justice matters. In the States Assembly, questions on matters relating to justice are often answered by the Chief Minister, or are addressed as an extension to the impartial legal advice provided to Members by the Attorney General, given that there is no Minister for Justice to be held to account or scrutinised by the Assembly.

- (e) There is already in place a *Jersey Justice System Board*, chaired by the Bailiff, whose role is to set the strategic direction for the delivery of justice services in Jersey. Membership of the Board includes the Chief Minister and the Minister for Home Affairs. The Board is supported by a Justice Working Group, chaired by the Attorney General.

In light of the gap in the executive function highlighted above, and against the background of the on-going evolution of our system of government, it would appear sensible to consider the creation of a Minister for Justice with an associated Justice Department.

Representative democracy and justice policy

This proposition does not seek to criticise or undermine any existing policy or procedure. It is borne solely out of an interest in protecting and, where possible, improving our island's unique system of government. It therefore aims to ensure that, within our system of representative democracy, due consideration has been given to how those elected into office and exercising executive functions can take appropriate responsibility for justice matters and so be held to account by Islanders and their representatives.

The States may by Regulations establish and abolish Ministers and confer functions upon a Minister. Only the Chief Minister may lodge such draft Regulations. Therefore this proposition is not prescriptive, but requests the Chief Minister to investigate the possibility of establishing a new Ministerial office and Department and to bring forward appropriate proposals after a period of due consideration.

In considering the need for a Department of Justice to support such a Ministerial office, it is anticipated that the Chief Minister will be mindful of the programme for public sector modernisation and the need to operate within the constraints of the spending limits set within the Medium Term Financial Plan.

This course of action proposed in this proposition will ensure that a properly informed debate on the subject can be held at the appropriate time when the Chief Minister returns to the States with proposals and recommendations in 2013.

Financial and manpower implications

The Chief Minister's Department has indicated that they are able to complete this task from within the existing resources of the department and accordingly there will be no additional financial or manpower implications arising from this proposition at this stage.