

STATES OF JERSEY



DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201- (P.33/2014): SEVENTH AMENDMENT

**Lodged au Greffe on 15th April 2014
by Deputy J.A.N. Le Fondré of St. Lawrence**

STATES GREFFE

1 PAGE 41–42, ARTICLE 2 –

In paragraph (c), in the inserted Article 18(3A)(b) after the words “agree and” insert the words “, within 3 months of being appointed to office under Article 19(7),”.

2 PAGE 42–43, ARTICLE 3 –

In paragraph (a), in the substituted Article 19(5B) for the words “3 successive proposals” substitute the words “the prescribed number of successive proposals”.

3 PAGE 42–43, ARTICLE 3 –

(1) In paragraph (a) –

(a) in the substituted Article 19(5B) for the words “under paragraph (3),” to the end of the paragraph substitute the words –

“under paragraph (3) the Chief Minister designate shall, in accordance with the prescribed procedures and within the prescribed period –

(a) decide the matters described in sub-paragraphs (a) and (c) of paragraph (3) and inform the States of his or her decision; and

(b) nominate one or more elected members for appointment as Ministers, and, when making such a nomination, propose the Ministerial office to which the nominee would be assigned.”;

(b) for the substituted Article 19(5C) there shall be substituted the following paragraphs –

“(5C) The Chief Minister designate’s decision under paragraph (5B)(a) as to the matters described in sub-paragraphs (a) and (c) of paragraph (3) may be the same as one of his proposals under paragraph (3) that the States have rejected.

(5D) Following nominations by the Chief Minister designate under paragraph (5B)(b) –

(a) an elected member may, within the prescribed period and in accordance with the prescribed procedures, nominate one or more elected members for appointment as Ministers and, when making such a nomination, shall propose the Ministerial office to which the nominee would be assigned; and

(b) the States shall then, in accordance with the prescribed procedures, select, for each Ministerial office, from the persons nominated and proposed for assignment to that

office, an elected member for appointment as a Minister and assignment to that office.”;

- (2) In paragraph (b), for the substituted Article 19(7)(b) substitute the following sub-paragraph –

“(b) the States making the last selection under paragraph (5D)(b) required to complete the constitution of the Council of Ministers.”.

4 PAGE 43, ARTICLE 4 –

Delete paragraph (c).

5 PAGE 43–44, ARTICLE 6 –

In the substituted Article 23 –

- (a) for paragraph (2) substitute the following paragraph –

“(2) A proposal under paragraph (1) for the creation of a Ministerial office and appointment of an elected member to that office shall be made so that the States may approve the creation of the office but reject the proposal as to the elected member to be appointed to that office.”;

- (b) for paragraphs (5) and (6) substitute the following paragraphs –

“(5) Except as provided by paragraph (6), the States may not amend a proposal by the Chief Minister under paragraph (1).

(6) If the States reject 3 successive proposals by the Chief Minister for the appointment of an elected member to a Ministerial office –

(a) the Chief Minister shall, in accordance with the prescribed procedures and within the prescribed period, nominate an elected member for appointment to that office (who may be one of the persons previously proposed by him or her);

(b) an elected member may, in accordance with the prescribed procedures and within the prescribed period, nominate an elected member for appointment to that office; and

(c) the States shall then, in accordance with the prescribed procedures, select an elected member for appointment to that office.

(7) A person proposed under paragraph (1) and approved by the States or selected under paragraph (6)(c) for appointment to a new Ministerial office, is appointed to that office upon the office being created under Article 29 or, if later, upon the States approving the proposal under paragraph (1) or making the selection under paragraph (6)(c).

(8) Any other person proposed under paragraph (1) and approved by the States or selected under paragraph (6)(c) for appointment to a Ministerial office is appointed to that office upon the States approving the proposal or nomination.”.

6 PAGES 45–47, ARTICLE 11 –

In the substituted Article 29A(1) for the words “proposal or decision referred to in Article 19(7)” substitute the words “proposal referred to in Article 19(7)(a) or decision referred to in Article 19(5B)(a)”.

DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE

REPORT

Introduction

The proposed amendment to the States of Jersey Law splits into a number of distinctive areas. The amendments being proposed below apply solely to areas relating to the Executive.

The first 2 amendments are intended just to be procedural. The third amendment proposes an alternative to the '3 strikes and you are in' proposed appointment process for Ministers. It would only take effect if the Chief Minister is not successful in having his/her team approved by the States Assembly after the third attempt.

The fourth amendment relates to the power to dismiss a Minister and will probably be the most controversial.

The remaining 2 amendments are consequential.

Amendment 1: *Inserts a time period for the presentation of the Code of Conduct to the Assembly*

This is a simple amendment to give a definitive period of time by which the Code of Conduct for Ministers must be presented to the Assembly. It amends the proposed Article 18(3A)(b) by inserting a time period of 3 months from the date of appointment of the Chief Minister and the Ministers.

The intention is that the Code of Conduct will be discussed and approved at the first meeting of the newly formed Council of Ministers, but there is no actual period specified in the Law. Given the ability of things being left to drift, I think it prudent to include a date by which this particular commitment needs to be achieved by any newly formed Council of Ministers.

Amendment 2: *Relocates the actual number of times the schedule of Ministers can be presented into Standing Orders*

Article 19(5B) specifically identifies the number of times a Chief Minister may present the proposed schedule of Ministers and Ministerial positions. There has been a certain amount of debate surrounding this particular amendment, and one part of the argument is over how many times the Chief Minister may present the proposed schedule before some other action has to take place. At present, the amendment by the Chief Minister suggests that the schedule can be presented 3 times.

All this amendment seeks to achieve is to move the actual figure – at present '3' – into Standing Orders. Therefore members can debate the principle of having a slate, etc., without having to decide how many attempts the Chief Minister should have.

Thereafter, if the principle is agreed, but Members wish to amend the number of times the proposals can be made, then a simple amendment to Standing Orders will be required, whether now, or in the future, as opposed to an amendment to primary Law.

[Note: if this amendment is accepted, then a very similar amendment will be proposed to my proposed amendment to Article 23 below.]

Amendment 3: *An alternative to the ‘three strikes and you are in’ part of the proposition*

One of the key proposals in P.33/2014 is the ability of the Chief Minister to propose his or her team without it being amended from the floor of the Assembly. However, both the Machinery of Government report, and indeed the previous proposals when the present Ministerial Government structure was created (*see* P.124/2004) provided for a system often described as ‘3 strikes and you are out’. Namely, that if the Chief Minister designate was unable to present his/her ‘slate’ to the Assembly and have it approved within 3 attempts, he/she would be forced to stand down. The argument being that if the Chief Minister designate was unable to form a team (after 3 attempts) which had majority support from the Assembly, it would be unlikely that he/she would garner support for any policies/strategies that emerged from that team over the period of the Assembly.

The Chief Minister is proposing a system which might be described as ‘3 strikes and you are in’. In essence, this means that if he or she is unable to create a team which does not meet with majority support from the Assembly, after the 3rd attempt he/she can simply inform the Assembly of the team they are having, and the Assembly will have no further influence. This could therefore mean that a team previously rejected by the Assembly could be appointed by default.

To me that does not seem satisfactory. I reluctantly accept the argument that ‘3 strikes and you are out’ MAY create the risk of a hung parliament for a period of time, although this was obviously not a concern when these proposals were first mooted some 10 years, or more, ago.

However, to have a system which blatantly opens up the possibility of a future Chief Minister being able to completely ignore the view of an Assembly cannot, in my view, be satisfactory either.

Accordingly, I propose what I hope might be considered to be a compromise position. I therefore suggest that we maintain the principle that the Chief Minister should be given the opportunity to select his/her own team, and the nature of Ministerial posts that should be created at the time. However, should the Chief Minister NOT obtain the approval of the Assembly for the schedule being proposed, and that lack of approval occurs 3 times (as presently drafted), then the Chief Minister would then present a further list of Ministerial positions, and be able to nominate candidates to those positions. However, the Assembly could also then nominate alternative candidates to any position, and we would effectively revert to the system we have in place today.

Some members will no doubt argue that the Chief Minister MUST at all costs have the ability to select his team. I accept that perspective; however, if the Chief Minister cannot obtain the backing of the Assembly for that team, particularly after 3 occasions, then the present proposal from the Chief Minister seems to me to be a poor solution. My recommendation is that we should amend the intended process, to what I consider to be a compromise situation, whereby the ultimate authority of the Assembly is still retained.

[Note: at the time of drafting it is intended that there will be a further option presented to members surrounding this Article. The question that arises from this amendment is

what should Members be allowed to amend if the 3 attempts by the Chief Minister have failed. Should it just be the actual candidates for the various Ministerial Posts – which is the proposal under this main amendment – or should it also be the proposed schedule of Ministerial positions? My view is that the Chief Minister should probably be given the ability to at least retain control over the schedule of positions. In theory at least, this should have had some basis arising from the Chief Minister's strategic vision or where he/she intends to take the Island over the next 4 years.

However, there is also a view that one of the reasons that the schedule may be rejected is that the majority of Members feel that either a position is missing, or they vehemently disagree with a position proposed (even if they broadly still support the Chief Minister designate). Accordingly it is presently proposed that there will be an amendment to this amendment to allow Members the choice of whether to include the ability for the Assembly (after 3 attempts) to challenge not only the candidates for certain Ministerial positions, but also the very positions themselves.

[Note also: Amendment 6 is a consequential amendment]

Amendment 4: *Dismissal of Ministers*

As members should be aware, one of the other key changes arising from the main proposition is the removal of the authority of the Assembly with regard to the dismissal of Ministers. Presently, only the Chief Minister can LODGE a proposition to dismiss a Minister (as opposed to a vote of no confidence), and only the Assembly can DISMISS that Minister. I was originally very supportive of the proposal to give the power to the Chief Minister to be able to dismiss a Minister without recourse to the States Assembly. I would add that was, of course, as part of a package of measures being proposed by the MOGR Sub-Panel, which included various checks and balances, and addressed the issue of inclusion of States Members.

Unfortunately, firstly not all of the proposals found favour with the Assembly. However, and most importantly, events which occurred over the recent winter period, particularly December 2013 and January 2014 have caused me to reconsider the matter, and I think it important that the Assembly does properly have the opportunity to retain the status quo should it so wish.

If the arguments to dismiss a Minister are weak, then should that Minister be dismissed, without recourse to the Assembly, particularly as it will be very likely that the Chief Minister will have appointed that individual in the first place?

To me it is very clear that circumstances in January would have been very different if that final check and balance of the OBLIGATION to have the support of the Assembly to dismiss a Minister had not existed.

The answer that under the new proposed system a vote of no confidence would be brought against a Chief Minister for abuse of a power of dismissal is probably disingenuous. There is a huge difference between not supporting a move to remove a Minister, and turning full circle and actively supporting a proposal to remove the Head of the Council of Ministers, and in so doing, bring down the entire political Executive. Past experience does also demonstrate that the Assembly HAS supported the Chief Minister when a very clear and strong case was presented to the Assembly for the removal of a Minister.

Equally, under the proposed amendment to the States of Jersey Law 2005, the concept of collective responsibility is being introduced. A Code of Conduct will be presented to the States, as well as (if another amendment is adopted), a Code of Practice. All of this is NEW to the States of Jersey Law. Therefore, if there is an errant Minister on the Council of Ministers who simply feels unable to abide by the principles of collective responsibility, it will become very clear that they simply will not adhere to the principles to which they have previously agreed. In my view, it would therefore be very likely that the Assembly would back any Chief Minister seeking to remove an errant Minister.

Any issue of poor performance should also be very clear. However, the ability of the Chief Minister to simply dismiss a Minister (with no recourse to the Assembly) would be an absolute. It has been suggested that the Chief Minister requires the power to dismiss in order to enforce collective responsibility. That is surely an erroneous argument.

The Council of Ministers will have signed up, for the first time, to the principles of Collective Responsibility. That is a significant step change from the present system. It will therefore be the case that the impact of a majority view of the Council of Ministers will keep Ministers in line most of the time. This combined with the ability of that same Council of Ministers (by a majority vote) to direct any Minister on matters concerning policy, represent a significant improvement in the present system, as well as a significant change in the power of the Council of Ministers.

It is often the case that the Leader of an Executive (in other jurisdictions) has some form of political party (and all its attendant apparatus) behind him/her. That acts as a check and balance over the wrong exercise of such power. To date we do not have such structures in any significant manner, if at all. Therefore, other than the nuclear option of a Vote of No Confidence in a Chief Minister by the Assembly, which would (in my view) be extremely unlikely ever to occur, what is the check against any dismissal when it is not justified? When, for example, it might be a matter of personality rather than performance?

Therefore, I think it is important that members do satisfy themselves as to whether they wish to make such a significant addition to the Chief Minister's powers, when the checks and balances do not appear to have been improved at the same time.

If members are inclined to support this amendment, they should also vote AGAINST the repeal of Article 21A of the main Law (*see* Article 5 of the Draft States of Jersey (Amendment No. 8) Law 201-, page 43 of P.33/2014), which thereby retains the power of the Chief Minister to suspend a Minister prior to the lodging of a motion to dismiss.

Amendment 5: *Subsequent appointments*

This amendment is consequential upon the third amendment. Namely, that in the event that the Chief Minister wants to create a Ministerial position, or propose another candidate to an existing position (following, for example, a resignation), the process is brought into line with the process outlined in the new Article 19 when Ministers were originally appointed. Therefore, after 3 attempts, the Assembly can then nominate an individual. I have not included the ability to amend the Ministerial position, on the

basis that if the Assembly does not support the creation of the Ministerial post, it will simply vote against the proposition as a whole.

Conclusion

Jersey has (rightly) long prided itself on its deep-rooted democratic traditions. The amendments to the States of Jersey Law 2005 as proposed by the Chief Minister represent a significant change in how that democracy is applied. They certainly represent a further significant shift of power away from the States Assembly towards a much smaller group of individuals, particularly in the form of the Chief Minister. I hope members will feel that the amendments I propose represent a compromise between enabling the Chief Minister to continue to select his or her team, and yet retaining the authority of the Assembly as the duly elected body of the Island, in the last resort.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this amendment.