

# STATES OF JERSEY



Jersey

## DRAFT STATES OF JERSEY (DEPUTY CHIEF MINISTER) AMENDMENT LAW 202-

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Lodged au Greffe on 29th May 2024  
by the Chief Minister  
Earliest date for debate: 16th July 2024

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STATES GREFFE



Jersey

## **DRAFT STATES OF JERSEY (DEPUTY CHIEF MINISTER) AMENDMENT LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft States of Jersey (Deputy Chief Minister) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy L.J. Farnham of St. Mary, St. Ouen and St. Peter**  
*Chief Minister*

Dated: 22nd May 2024

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## Report

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### Summary

The draft States of Jersey (Deputy Chief Minister) Amendment Law 202- (“the draft Amendment Law”) has been lodged together with the proposition titled “Amendment to Standing Orders – Deputy Chief Minister.” These two propositions should be read in conjunction with one another.

The primary purpose of the draft Amendment Law and the associated amendment to Standing Orders is to allow for the delegation of specific responsibilities from the Chief Minister to the Deputy Chief Minister. This would mirror the arrangements that are already in place for Assistant Chief Ministers (and indeed all Assistant Ministers in respect of their Minister).

The draft Amendment Law also addresses a lacuna in the [States of Jersey Law 2005](#) (“the 2005 Law”) in respect of the Deputy Chief Minister, whereby there is currently provision for the appointment and dismissal of the Deputy Chief Minister, but no specific provision allowing for the resignation of the Deputy Chief Minister.

Further consequential and other necessary amendments (not related to the role of Deputy Chief Minister) are also included as part of the Amendment Law, and are covered in this report. It should be noted that some of the consequential amendments relate to matters on which the Council of Ministers would not normally take a lead, as they are in the remit of the Privileges and Procedures Committee, but the opportunity is being taken to remove provisions which are now spent.

### Background

Article 24 of the 2005 Law requires that the Chief Minister shall appoint one of the members of the Council of Ministers to be Deputy Chief Minister. The Chief Minister also has authority to dismiss a Minister from the post of Deputy Chief Minister. The Chief Minister is required to inform the States of any such appointment or dismissal.

The main legal function of the Deputy Chief Minister is to discharge the functions of the Chief Minister during “the temporary absence or incapacity of the Chief Minister” or “a vacancy in the office of Chief Minister” (set out in Article 27(1) of the 2005 Law). In addition, the Deputy Chief Minister also frequently deputises for the Chief Minister as a normal part of managing the day-to-day duties and obligations of Government.

The remaining legal function of the Deputy Chief Minister (and one which has been used rarely) is to designate another Minister to discharge the functions of the Chief Minister on occasions where the Chief Minister is temporarily absent or incapacitated, the Deputy Chief Minister is also to be temporarily absent or incapacitated at the same time, and no other Minister has been pre-designated by the Chief Minister to discharge the functions of the Chief Minister in that event (Article 27(1B) of the 2005 Law).

### Limits on the role of Deputy Chief Minister

At present, there is no provision for the Chief Minister to delegate specific responsibilities to the Deputy Chief Minister, as can be done for an Assistant Chief Minister. The Chief Minister can ask the Deputy Chief Minister to take the lead responsibility on a particular matter, but this could only be undertaken on an informal basis. It follows that the Deputy Chief Minister does not, or cannot, answer questions with notice in the States Assembly on matters for which the Chief Minister might have asked him/her to take lead responsibility.

At present, the only way to enable the Deputy Chief Minister to hold formal responsibility for specific areas as delegated by the Chief Minister, and to be held accountable as appropriate in the

States Assembly, would be to also appoint the Deputy Chief Minister as an Assistant Chief Minister. This arrangement has been necessary in the past.

Under current arrangements, the Deputy Chief Minister would only answer questions with notice if the Chief Minister were absent (for any reason) from the Assembly and subject areas arose that had not been delegated to an Assistant Chief Minister. In the case of questions without notice, under existing arrangements the Deputy Chief Minister can respond in the absence of the Chief Minister (and has on past occasions).

### **Delegating functions to the Deputy Chief Minister**

It is inconsistent, and unnecessarily bureaucratic, for the Deputy Chief Minister to also need to be appointed as an Assistant Chief Minister in order to undertake delegated responsibilities. As with Assistant Chief Ministers, the Deputy Chief Minister is appointed by the Chief Minister. The distinction is that the Deputy Chief Minister must also be a Minister, appointed to a post by the States Assembly.

Accordingly, Article 8 of this draft Amendment Law would substitute the existing Article 28 of the 2005 Law so that the Chief Minister can delegate functions vested in the Chief Minister to the Deputy Chief Minister. This would be in addition to the current position where functions can be delegated to an Assistant Chief Minister and, in respect of certain functions, to an officer.

The bulk of the existing provision in Article 28 which allows for all ministerial delegations would become part of a new Article 28A of the 2005 Law. In practice, this has the effect of splitting the existing Article 28 into a substituted Article 28 – which sets out arrangements for delegations by the Chief Minister – and a new Article 28A, which provides for delegations by all other Ministers.

### **Resignation of the Deputy Chief Minister**

As referenced above, Article 24 of the 2005 Law currently provides for the Chief Minister to appoint one member of the Council of Ministers to be Deputy Chief Minister, and to dismiss the Deputy Chief Minister. It is likely an inadvertent omission that no provision has been included for the Deputy Chief Minister also to be able to resign from the role in accordance with the 2005 Law. This is a minor omission, but one which this Amendment Law provides the opportunity to rectify.

By way of comparison, Article 25 of the 2005 Law similarly already provides for the appointment and dismissal of Assistant Ministers (including Assistant Chief Ministers) and specifically allows for the resignation from office by an Assistant (Chief) Minister.

Article 24 is accordingly amended by Article 5 of the Amendment Law to include a resignation provision for the Deputy Chief Minister. As is currently the case for an appointment or dismissal to this role, the States would need to be informed of any resignation.

### **Consequential and other necessary amendments**

Articles 2, 6, 7, 9, and 10 make minor and consequential amendments to the 2005 Law.

Articles 3 and 4 are similarly consequential provisions, although in these instances they delete Articles in the 2005 Law which make transitional arrangements for the 2022 general election. These Articles are now spent.

Article 11 deletes Article 44B of the 2005 Law, which is also now spent – the remuneration review has been conducted, the final report published and the outcome implemented, with the changes commencing on 1st January 2024.

**Human Rights notes**

The Law Officers have confirmed that the draft States of Jersey (Deputy Chief Minister) Amendment Law 202- raises no issues of compliance with the European Convention on Human Rights.

**Financial and staffing implications**

There are no additional resource implications that would arise from the adoption of this draft Amendment Law.

**Children's Rights Impact Assessment**

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

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## EXPLANATORY NOTE

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This draft Law, if passed, will amend the States of Jersey Law 2005 (the “2005 Law”) to –

- allow the Chief Minister to delegate certain functions (which can already be delegated to Assistant Ministers) to the Deputy Chief Minister;
- allow the Deputy Chief Minister to resign;
- make minor housekeeping amendments to the 2005 Law; and
- update some wording in the 2005 Law to align with current drafting practice.

*Article 1* provides that the Law amends the 2005 Law.

*Article 2* amends Article 1 of the 2005 Law to update the definition of “standing orders” (which changed as a result of a previous amendment to the 2005 Law).

*Articles 3 and 4* delete Articles 5A and 21B of the 2005 Law. These Articles made transitional arrangements for the 2022 ordinary election but are now spent.

*Article 5* substitutes Article 24 of the 2005 Law. The substituted Article 24 now includes provision for the resignation of the Deputy Chief Minister (and aligns with current drafting practice).

*Article 6* makes a minor housekeeping amendment to the heading of Article 25 of the 2005 Law to better reflect the content of that Article.

*Article 8* amends the 2005 Law to allow the Chief Minister to delegate certain functions to the Deputy Chief Minister. These functions can already be delegated to the Chief Minister’s Assistant Ministers by the existing Article 28 (which now effectively becomes Article 28A, and the opportunity has been taken to update it in line with current drafting practice). The new provisions in relation to the Deputy Chief Minister are inserted as Article 28.

*Articles 7, 9 and 10* make minor amendments to Articles 27, 30 and 30A, respectively, of the 2005 Law as a consequence of Article 28 being substituted with 2 new Articles. The opportunity has also been taken to update these Articles in line with current drafting practice.

*Article 11* deletes Article 44B of the 2005 Law. This Article made transitional arrangements for the initial review of remuneration payable to elected members of the States but is now spent.

*Article 12* gives the title of the Law and provides for it to come into force 7 days after it is registered.



Jersey

## **DRAFT STATES OF JERSEY (DEPUTY CHIEF MINISTER) AMENDMENT LAW 202-**

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Jersey

## DRAFT STATES OF JERSEY (DEPUTY CHIEF MINISTER) AMENDMENT LAW 202-

A **LAW** to amend further the [States of Jersey Law 2005](#) to provide for the delegation of functions to, and the resignation of, the Deputy Chief Minister, and for connected purposes.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

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**1 Amendment of [States of Jersey Law 2005](#)**

This Law amends the [States of Jersey Law 2005](#).

**2 Article 1 (interpretation) amended**

In Article 1(1), in the definition “standing orders”, for “standing orders prepared and adopted under Article 48” there is substituted “the Standing Orders of the States of Jersey”.

**3 Article 5A (transitional provision for the 2022 ordinary election) deleted**

Article 5A is deleted.

**4 Article 21B (transitional provision for the 2022 ordinary election) deleted**

Article 21B is deleted.

**5 Article 24 (appointment and dismissal of Deputy Chief Minister) substituted**

For Article 24, there is substituted –



**“24 Appointment, dismissal and resignation of Deputy Chief Minister**

- (1) The Chief Minister –
  - (a) must appoint one of the Ministers to be Deputy Chief Minister; and
  - (b) may dismiss the person appointed.
- (2) The Deputy Chief Minister may resign from office by notice in writing, signed by the Deputy Chief Minister and delivered to the Chief Minister.
- (3) The Chief Minister must inform the States of the appointment, dismissal or resignation of the Deputy Chief Minister.”.

**6 Article 25 (appointment and dismissal of Assistant Ministers) heading amended**

In Article 25, in the heading, for “Appointment and dismissal” there is substituted “Appointment, dismissal and resignation”.

**7 Article 27 (power for Minister to act in the absence of another Minister) amended**

In Article 27(4) for “shall not affect any delegation made by that other Minister under Article 28” there is substituted “does not affect a delegation made by that other Minister under Article 28 or 28A”.

**8 Article 28 (power of Minister to delegate functions) substituted**

For Article 28 there is substituted –

**“28 Power of Chief Minister to delegate functions**

- (1) The Chief Minister may delegate, wholly or partly, functions conferred upon or vested in the Chief Minister by or under this Law, any other enactment, or any enactment of the United Kingdom having effect in Jersey –
  - (a) to the Deputy Chief Minister;
  - (b) to one of the Chief Minister’s Assistant Ministers;
  - (c) to an officer.
- (2) The Chief Minister must not delegate a function to the Deputy Chief Minister or to an Assistant Minister if the delegation of that function is wholly prohibited by an enactment.
- (3) Article 26(4) and (5) applies to an enactment made by the Deputy Chief Minister or an Assistant Minister, in exercise of a delegated power, in the same way as those provisions would apply if the Chief Minister made the enactment.
- (4) The Chief Minister must not delegate to an officer –
  - (a) any power to make an enactment;
  - (b) any power to decide an appeal under an enactment;
  - (c) any function that an enactment –
    - (i) wholly prohibits from being delegated, or
    - (ii) prohibits from being delegated to an officer.

- (5) The delegation of functions under this Article by the Chief Minister does not prevent the Chief Minister from exercising those functions personally.
- (6) No criminal proceedings arise in respect of an act by a person if –
  - (a) the person acted in good faith and in accordance with the terms of a licence, permit or authorisation granted in the purported exercise of functions delegated under paragraph (1); and
  - (b) it later transpires that the functions had not been delegated or that any requirement attached to the delegation had not been complied with.
- (7) In this Article and in Article 28A, “officer” means a States’ employee as defined by Article 2 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 2021.
- (8) The States may by Regulations amend the definition “officer” in paragraph (7).

#### **28A Power of Minister to delegate functions**

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law, any other enactment, or any enactment of the United Kingdom having effect in Jersey –
  - (a) to one of the Minister’s Assistant Ministers;
  - (b) to an officer.
- (2) A Minister must not delegate a function to an Assistant Minister if the delegation of that function is wholly prohibited by an enactment.
- (3) Article 26(4) and (5) applies to an enactment made by an Assistant Minister in exercise of a delegated power in the same way as those provisions would apply if the Minister who delegated the power made the enactment.
- (4) A Minister must not delegate to an officer –
  - (a) any power to make an enactment;
  - (b) any power to decide an appeal under an enactment;
  - (c) any function that an enactment –
    - (i) wholly prohibits from being delegated, or
    - (ii) prohibits from being delegated to an officer.
- (5) The delegation of functions under this Article by a Minister does not prevent the Minister exercising those functions personally.
- (6) No criminal proceedings arise in respect of an act by a person if –
  - (a) the person acted in good faith and in accordance with the terms of a licence, permit or authorisation granted in the purported exercise of functions delegated under paragraph (1); and
  - (b) it later transpires that the functions had not been delegated or that any requirement attached to the delegation had not been complied with.”.

**9 Article 30 (Ministerial delegations to be presented to States) amended**

In Article 30 –

- (a) in paragraph (1), for “A Minister who delegates functions under Article 28 shall” there is substituted “A Minister who delegates functions under Article 28 or 28A must”;
- (b) in paragraph (2), for “A Minister shall not be required to present a report under paragraph (1) where” there is substituted “A Minister is not required to present a report under paragraph (1) if”.

**10 Article 30A (list of delegations to be published) amended**

In Article 30A –

- (a) in paragraph (1) –
  - (i) for “shall” there is substituted “must”,
  - (ii) in sub-paragraph (b), for “Chief Minister and each Minister under Article 28” there is substituted “Chief Minister under Article 28 and each Minister under Article 28A”;
- (b) in paragraph (2), for “shall” there is substituted “must”;
- (c) in paragraph (4), for “shall be” there is substituted “is”.

**11 Article 44B (transitional provisions relating to initial remuneration review process) deleted**

Article 44B is deleted.

**12 Citation and commencement**

This Law may be cited as the States of Jersey (Deputy Chief Minister) Amendment Law 202- and comes into force 7 days after it is registered.