

STATES OF JERSEY



COMMITTEE OF INQUIRY: CHILDREN'S CARE HOMES

**Presented to the States on 31st March 2008
by the Council of Ministers**

STATES GREFFE

REPORT

The Chief Minister and the Council of Ministers have made it clear since the announcement of the police investigation into historic child abuse that all required resources will be made available to enable the investigation and any subsequent criminal proceedings to be completed effectively. At this time this must be the top priority for the Island.

It is nevertheless almost inevitable that, at the conclusion of the current criminal process, there will still be a very large number of unanswered questions about the way in which children have been cared for in Jersey in previous decades.

The Council of Ministers believes that the only way to ensure that there is total transparency in relation to this issue is for a full public inquiry to be held in due course, and the Council is hopeful that all members of the States will share this view. The most effective way to undertake any such inquiry is through a Committee of Inquiry established under the States of Jersey Law 2005.

The Council of Ministers has approved the attached draft proposition relating to this issue (see Appendix) in order to illustrate the nature and extent of the Inquiry that is envisaged. The purpose of this Report is to place the matter in the public domain. The Council does not, however, consider it would be appropriate to lodge this proposition 'au Greffe' until the criminal process has been completed. This would firstly be inappropriate because lodging and debating this proposition now could risk compromising the ongoing criminal process. Secondly, until that process is complete, it remains unclear exactly what questions will remain unanswered at the end of the process, and this proposition may need to be amended. It could be some time before it is possible to lodge and debate this, but the Council nevertheless believes that this should be done as soon as it becomes possible.

Council of Ministers

DRAFT**PROPOSITION**

(to be finalised once the criminal process has been completed)

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

to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 in order to investigate any issues which remain unresolved in relation to historic abuse in the Island.

COUNCIL OF MINISTERS

Note: The membership and terms of reference of the Committee of Inquiry to be agreed by the States at that time.

REPORT

Since the announcement of the police investigation into alleged historic child abuse in the Island, the Council of Ministers has made it clear that the Island's first priority must be to give full support to the police investigation and any subsequent prosecutions to ensure that anyone found guilty of abuse can be brought to justice. The Council has also made it clear that anyone who, while not necessarily acting criminally, covered up evidence or who deliberately or negligently failed to act upon information they received will be dealt with appropriately. The Council has undertaken to ensure that all the necessary resources will be made available to achieve this objective.

In a statement made on Monday 25th February 2008, just after the discovery of the fragment of a skull at Haut de la Garenne, the Chief Minister stated that *"The protection of children is our highest priority and we are totally committed to supporting the Police and Criminal Justice authorities in uncovering any historic abuse and bringing those responsible to justice. There will be no hiding place for anyone who abused children or in any way colluded with or helped to cover up that abuse. We will commit whatever resources are necessary to the investigation and any subsequent criminal cases."*

Experience in other jurisdictions that have faced similar investigations in the past has shown that there are always a large number of unanswered questions that remain at the end of the investigation and prosecution process. It is therefore probable that the future conviction of any guilty parties in Jersey will only go some small way towards answering the many questions that local residents and others outside the Island have been asking in recent weeks. These are likely to include questions such as –

- How have the Island's children's homes been run in recent decades?
- What procedures were in place to recruit staff and how was the performance of staff monitored? Should other steps have been taken to monitor performance?
- What measures were taken to address inappropriate behaviour from staff when it was discovered, and if those measures were insufficient, what other measures should have been taken?
- How did those in authority at political and officer level deal with problems that were brought to their attention?

- What processes were in place to assess the performance of the homes and what action was taken as a result of any problems that were identified?
- Were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when concerns were voiced?

The Council of Ministers believes it is essential that its undertaking to ensure that there is complete transparency in relation to these issues is translated into a firm commitment to hold a full inquiry into any unanswered questions in due course. It is, of course, the case that the inquiry will not be able to begin until the conclusion of the current police investigations and any associated prosecutions, but the Council nevertheless considers that it is important for the States to be advised now of the Council's commitment that this inquiry should take place so that work can start as soon as possible after the conclusion of any criminal trials. There have been many comments in recent days in the international press alleging a 'culture of secrecy' and 'cover-up' in Jersey and a public commitment at this stage to hold a full transparent inquiry would demonstrate in a practical way that this is simply not the case in 2008.

The Council of Ministers believes that the inquiry should take the form of a States Committee of Inquiry established in accordance with the procedures set out in the States of Jersey Law 2005 and the Standing Orders of the States of Jersey. This would enable the States as a whole to agree the terms of reference of the inquiry and its membership. In addition, a Committee of Inquiry has the advantage of having all the powers and immunities conferred by the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007 (see Appendix) which enable it to summon evidence and witnesses if necessary, and also provide protection against civil and criminal proceedings. These powers and immunities will be essential to ensure that the Committee can discover the full facts without any inhibition.

It would be premature at this stage to speculate on the precise scope of the Committee's terms of reference, as these may depend in part on the outcome of the current police investigations. The Council is determined that nothing should be done or proposed at this time that could, in any way, prejudice the current police investigation. When it is possible to establish the Committee it will, however, be essential to ensure that the terms of reference are far-reaching so that every concern expressed and every allegation made can be fully investigated. Whilst it may be too late to right the wrongs of the past, it will be important for the people of Jersey that all relevant issues are brought out into the open so that the truth of what may have happened in recent decades can be established.

Under Standing Orders a Committee of Inquiry can be comprised of between one and 5 people and the appropriate membership will need to be considered once the precise terms of reference can be drawn up. In order to ensure a proper degree of independence, it is nevertheless almost certain that it will be necessary to appoint one or more members with appropriate professional qualifications and experience from outside the Island. The Committee will require considerable administrative support to undertake its work effectively and it would be naïve to imagine that there will not be a significant cost associated with its work. The Council nevertheless believes that this will be an essential and worthwhile use of public funds in the light of recent events.

Financial and manpower implications

As explained above it is likely to be many months, or even years, before this Committee of Inquiry can begin work and there are therefore no immediate resource implications arising from this proposition. When a further proposition is brought in due course to appoint members of the Committee and agree terms of reference, a full resource implication statement will be included, together with details of the proposed source of those resources.

Jersey ^[r1]

STATES OF JERSEY ^[r2] (POWERS, PRIVILEGES AND IMMUNITIES) (COMMITTEES OF INQUIRY) (JERSEY) REGULATIONS 2007

*Made**16th July 2007**Coming into force**23rd July 2007*

THE STATES, in pursuance of Article 49 of the States of Jersey Law 2005^[1], have made the following Regulations –

1 Interpretation^[r3]

Expressions defined in standing orders have the same meaning in these Regulations.

2 Power of committee of inquiry to issue summons

- (1) Before issuing a summons requiring a person to appear before it and to give evidence and produce documents to it, a committee of inquiry must –
 - (a) request the person to so appear;
 - (b) accommodate any reasonable request by the person as to the day and time of the appearance; and
 - (c) where it would be appropriate to do so, having regard to the nature of the evidence or any document, undertake to receive the evidence or document in confidence.
- (2) If a person refuses to comply with a request made under paragraph (1) a committee of inquiry may summons the person to appear before it and to give evidence and produce any document to it if the committee is satisfied that the evidence or document is, or might reasonably be, relevant to the matter that it is inquiring into.

3 Procedure for issue of summons by a committee of inquiry

- (1) A committee of inquiry shall inform the Greffier of its decision to issue a summons.
- (2) The Greffier shall prepare the summons and sign it.
- (3) The summons shall –
 - (a) state the day and time when and place where the person is required to appear;
 - (b) indicate, in general terms, the issues on which the committee of inquiry proposes to question the person;
 - (c) be accompanied by information regarding –
 - (i) how the summons may be challenged, and

- (ii) the offences in Regulation 12.
- (4) The summons may require the person to produce –
 - (a) all documents;
 - (b) specified documents;
 - (c) documents described by reference to their subject matter or any other factor,
which are or might reasonably be relevant to the matter that the committee of inquiry is inquiring into.
- (5) The day on which the person is to appear must be at least 10 working days after the day the summons is served on the person.
- (6) The Greffier shall cause the summons to be served on the person by personal service or by ordinary service.

4 Challenging a summons issued by a committee of inquiry

- (1) A person may challenge a summons issued by a committee of inquiry on any of the following grounds –
 - (a) that Regulation 2(1) was not complied with before the summons was issued;
 - (b) that the condition in Regulation 2(2) in respect of the evidence or a document has not been satisfied;
 - (c) that any requirement of Regulation 3 was not complied with in respect of the summons;
 - (d) that the evidence or a document is privileged;
 - (e) that the prejudice to the person that would ensue from appearing before the committee of inquiry and giving the evidence and, where required, producing a document so far outweighs the usefulness of the evidence or document to the committee of inquiry that it would be unreasonable to require the person to appear or produce the document;
 - (f) that it would be contrary to the public interest for the evidence to be given or a document produced.
- (2) The person must notify the Greffier, in writing, that he or she wishes to challenge the summons and of the grounds for his or her challenge.
- (3) Once the person has so notified the Greffier –
 - (a) the Greffier shall inform the PPC and the committee of inquiry of the challenge; and
 - (b) the person shall not be required to obey the summons unless, on review, it is upheld by the PPC.

5 Review of challenge of summons issued by a committee of inquiry

- (1) The PPC shall review the challenge as soon as is practicable.
- (2) A member of the PPC who is connected with or involved in the matter being inquired into by the committee of inquiry whose summons is being challenged, or who is a member of that committee, shall not take any part in the review.
- (3) The PPC shall undertake such investigations into the matter as it sees fit and may, as part of the investigations, request submissions, either in writing or in person, from –
 - (a) the chairman and any member of the committee of inquiry;
 - (b) the person who has challenged the summons;
 - (c) any other person whose submission is, in the opinion of the PPC, relevant to its review of the challenge.

- (4) Notwithstanding paragraph (3), any person requested to make a submission may elect to make it in person.
- (5) After it has concluded its investigations the PPC shall –
 - (a) uphold the summons as served;
 - (b) uphold the summons with such alterations as it considers appropriate; or
 - (c) direct that the person is not required to comply with the summons.
- (6) The PPC may reach its decision on the ground in Regulation 4(1)(f) or, as the case requires, Regulation 7(1)(d), notwithstanding that the challenge is not made on that ground.
- (7) Where the PPC upholds a summons it may also impose conditions on the giving of the evidence and the production of a document and their use.
- (8) The PPC shall inform the person who challenged the summons, and the committee of inquiry, of its decision and the reasons for it.

6 Power to administer oath

- (1) A committee of inquiry may require a person appearing before it to give evidence on oath.
- (2) The chairman of a committee of inquiry is authorized to administer the oath for this purpose.

7 Challenge and review of question put by a committee of inquiry

- (1) A person appearing before a committee of inquiry in answer to a summons may challenge a question put by the committee on the ground that –
 - (a) the question is not relevant or necessary to the matter that the committee is inquiring into;
 - (b) the evidence sought is privileged;
 - (c) the prejudice to the person that would ensue if he or she answered the question so far outweighs the usefulness of the answer to the committee of inquiry that it would be unreasonable to require the person to answer; or
 - (d) it would be contrary to the public interest for the question to be answered.
- (2) Once the person has made the challenge, he or she is not required to answer the question unless the PPC directs that it must be answered.
- (3) Paragraphs (1) to (4) and (6) of Regulation 5 shall apply to a review of a challenge to a question as they apply to a review of a challenge to a summons.
- (4) After it has concluded its investigations the PPC shall direct –
 - (a) that the question must be answered; or
 - (b) that the question need not be answered.
- (5) Where the PPC directs that a question must be answered, it may impose conditions on the giving and use of the answer.
- (6) The PPC shall inform the person who challenged the question and the committee of its decision and the reasons for it.

8 Privileges and immunity of person appearing before or producing documents to a committee of inquiry

- (1) A person asked or required to give evidence or produce documents before a committee of inquiry shall be entitled, in respect of such evidence and documents, to legal professional privilege and privilege against self-incrimination.

- (2) An answer given by a person to a question put to that person, or an oral or written statement made by that person, or a document produced by a person in the course of his or her appearance before a committee of inquiry shall not, except in the case of proceedings for the offence of perjury or for an offence under these Regulations, be admissible in evidence against that person in any civil or criminal proceedings.
- (3) Paragraph (2) shall not apply to evidence given or documents produced by that person which he or she knows to be untrue.

9 Immunity of member of a committee of inquiry who is not a member of the States

No civil or criminal proceedings may be instituted against a member of a committee of inquiry who is not also a member of the States for any words –

- (a) spoken or written before or within the committee of inquiry; or
- (b) reproduced or recorded in a report presented to the committee of inquiry or a report presented by the committee of inquiry to the States.

10 Personal service

- (1) For the purposes of these Regulations, personal service of a summons is effected by leaving it with the person to be served.
- (2) In the case of personal service on a body corporate, such service may be effected by leaving the summons with the president or chairman, or the secretary, treasurer or other similar officer of the body corporate or by leaving it at or delivering it to the registered office of the body corporate.

11 Ordinary service

- (1) For the purposes of these Regulations, ordinary service of a summons is effected –
 - (a) in the case of service on an individual –
 - (i) by leaving it at the last known address or last known place of business of the person to be served, or
 - (ii) by sending it by ordinary post to the last known address or last known place of business of the person to be served;
 - (b) in the case of service on a body corporate –
 - (i) by leaving it at or sending it by ordinary post to the registered or principal office of the body corporate, or
 - (ii) by leaving it at or sending it by ordinary post to the last known place of business of the body corporate.
- (2) Without prejudice to Article 7 of the Interpretation (Jersey) Law 1954^[2] a document sent by post to an address in Jersey shall, unless the contrary is proved, be deemed to have been served on the 2nd day after the day on which it was posted, days on which there is no collection or delivery excepted.

12 Offences

- (1) A person shall be guilty of an offence if he or she, without reasonable excuse –
 - (a) disobeys any requirement of a summons issued under these Regulations; or
 - (b) when summoned under these Regulations refuses to comply with a requirement to be examined before, or to answer any lawful and relevant question put by, the committee of inquiry which issued the summons.

- (2) A person guilty of an offence under this Regulation shall be liable to imprisonment for a term of 2 years and to a fine of level 4 on the standard scale.

13 Citation and commencement

These Regulations may be cited as the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007 and shall come into force 7 days after they are made.

M.N. DE LA HAYE

Greffier of the States

[1]

chapter 16.800

[2]

chapter 15.360