

STATES OF JERSEY



DRAFT POLICE (COMPLAINTS AND CONDUCT) (JERSEY) LAW 202- (P.22/2022) : COMMENTS

**Presented to the States on 25th March 2022
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Draft Police (Complaints and Conduct) (Jersey) Law 202- (hereafter the ‘draft Law’) has been lodged by the Minister for Home Affairs in order to consolidate and update legislation relating to the handling of complaints and conduct matters within the States of Jersey Police Force and Honorary Police Force, in order to bring it in line with other jurisdictions in the British Isles.

The Children, Education and Home Affairs Panel (hereafter ‘the Panel’) has reviewed the proposals and received an initial briefing in relation to the draft Law on 2nd December 2021, prior to it being lodged, where it was informed of the proposals that would be contained within it.

Once the draft Law had been lodged the Panel arranged a second briefing that took place on 17th February 2022 and raised a number of questions in writing with the Minister in order to clarify specific points. The Panel has agreed it will detail these to Members to provide information ahead of the debate taking place. The Panel is broadly supportive of the draft Law, noting that its purpose is to align with other jurisdictions how complaints and conduct matters are dealt with in the States of Jersey and Honorary Police Forces.

Rationale for change

The current system (based on legislation from 1999 and 2000 respectively) is based on the UK system as it was at that time and does not take into account changes to how police complaints are currently handled as a matter of best practice. It is noted by the Panel that the draft Law intends to create the Jersey Police Complaints Commission (JPCC), which would replace the Jersey Police Complaints Authority (JPCA) and in turn increase its oversight and make provisions for sharing information. It is also noted that the reason for the change of name is twofold; firstly, to align Jersey with the British Isles in terminology and also to remove potential confusion with the Jersey Police Authority (JPA), which has a similar name but an entirely different function. For clarity, the Panel sought to understand whether the Independent Police Complaints Commissioner in the UK has any jurisdiction in Jersey, to which it was informed that it does not. It is, however, noted that Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFR) has no power in Jersey, but is invited in to undertake reviews as Jersey has no domestic capability to do so itself.

Enabling Law – detail to follow in Regulations

It was explained to the Panel during the briefings that the draft Law is an ‘enabling’ Law which sets out the framework from which, if adopted, draft Regulations could be brought forward to provide detail as to how the complaints and conduct systems would work in practice. It was noted by the Officers briefing the Panel that these draft Regulations are appended to the draft Law for reference, however, they would need to be brought forward in the new States Assembly for approval should the Assembly adopt the draft Law. The Panel questioned whether this approach was appropriate and whether it could lead to confusion as to what the States Assembly was being asked to approve given the size and scope of the Regulations. The Officers explained that the reason for including the draft Regulations as they are currently drafted is in order to provide States Members with an idea as to the direction of travel that would be taken should the draft Law be adopted. The Panel suggested that a reference copy without the draft

Regulations appended should be put together for States Members' reference as well. It is also important to note that the draft Law and supporting Regulations would only come into force after a date the States has specified in an Appointed Day Act.

Level of detail within the draft Law

During the briefing on 17th February, the Panel questioned a number of points in relation to the level of detail provided in the draft Law compared to the Regulations that would follow. An example was raised that, in the draft Regulations, the Deputy Chief Officer of the States of Jersey Police is the first point of call for a complaint being made. However, in the draft Law this is not stipulated. The Panel was informed that this is an example of where the draft Regulations could provide further clarity for States Members, as outlined previously. It is also noted that the JPCC would be required to set out the processes in which this would operate should the draft Law be adopted. Furthermore, in relation to the Honorary Police, it was explained to the Panel that the Connétable of the respective Parish will be responsible for managing the recording and escalation of a complaint (again once, suitable arrangements have been made and are overseen by the JPCC), however, their involvement will end at the investigation stage. The Panel would stress that complaints across the Parishes appear to be dealt with differently depending on the Parish and it is important that a common approach is pursued within this framework. It is noted, however, that the Attorney General would be responsible for designing the recording structure.

JPCC Resourcing

The Panel raised a question as to whether the draft Law places a requirement on the Minister for Home Affairs to ensure that the JPCC is adequately resourced. It was confirmed to the Panel that the Minister has a duty to provide resources where the JPCC could identify a need that assisted it to carry out its functions under the draft Law. It is also noted that the Minister is required to cover expenses of the JPCC where reasonably required. However, the Minister can refuse this if it is not deemed to be as such. The Panel questioned whether there was a test for determining what is reasonably required, however, it was informed that there is not a bespoke test. Furthermore, the resourcing of the JPCC is a matter to be considered by the JPA.

Access to Government of Jersey Employees

It was noted by the Panel during its second briefing that Officers from the Government of Jersey could be used to resource the JPCC in certain circumstances. The Panel raised concerns over how this could impact the perceived independence of the JPCC. It is noted that other independent entities (including the JPA) access Government Human Resources and Information Technology support due to their small size as it is not efficient to create these functions within them. The Panel notes and understands this point but questioned whether legal advice would be provided by the Law Officers' Department (LOD), especially noting the context of the Honorary Police, the role of Attorney General, and how this could be perceived to not be 'above board'. The Panel was informed that independent entities often rely on external legal advice, and it is likely that, given the Minister is responsible for incurring expenses of the JPCC, this would also include legal advice. It is also noted that the LOD do not bill for their services, so it is likely that expenses could relate to legal advice from external council. The Panel would stress the importance of this point in relation to perceived conflicts of interest

and also in terms of openness and accountability and would suggest that, as a matter of principle, the JPCC should seek external legal counsel in this regard.

Death and Serious Injury (DSI)

The draft Law creates a new pathway to investigate and manage matters where death or serious injury (DSI) has occurred when someone has died after direct or indirect involvement with the Police. It is noted that, at present, there is no duty to commence an investigation as a matter of course in this instance, however, it is best practice to do so. During the briefing the Panel was informed that, under the draft Law, the Deputy Chief Officer (DCO) would be required to take a position as to whether an investigation was required or not and then report to the JPCC their decision. The JPCC could recommend whether to proceed with an investigation or not, at which point the DCO could accept or refuse the recommendation. The Panel questioned why the JPCC does not have the power to order an investigation to take place, and it was confirmed that it would be difficult to order the DCO to conduct an investigation where they had already confirmed it was not required.

It was explained that as part of its reporting function, the JPCC could publicly raise this refusal to investigate in its annual report. It was felt that it would be difficult to see why the Police would allow this to happen given the negative implications it could bring on the force. It was also noted in practice that, were an investigation to take place, the DCO would usually bring in assistance from another police force and would be required to inform the Attorney General and JPCC upon its commencement.

Membership of JPCC – period of appointment

The Panel notes that the draft Law specifies that the period of appointment for a member of the JPCC is no more than four years, however, the Minister may reappoint a member upon the expiry of their appointment. It is also noted that no overall maximum term is set as to how long a member could be reappointed for. The Panel would suggest that, under the Jersey Appointments Commission guidelines, appointments of this manner should be no longer than nine years (which could be exceeded by a person who is reappointed a number of times). The Panel would like further clarification from the Minister during the debate on this matter.

Public Consultation

The Panel questioned what public consultation has been undertaken in respect of the draft Law. It was explained that there had not been any public consultation undertaken in respect of the draft Law itself, as it was felt that the draft Regulations would be more appropriate to consult publicly on given the detail of the processes that would directly affect members of the public. It is noted that stakeholders in the criminal justice system have been consulted at various stages during the development of the draft Law. During the briefing the Panel requested that a side-by-side comparison of the draft Law and the current legislation be provided in order to detail to the Assembly the changes that are being made and why they improved on the current system. The Panel would like to thank Officers for providing this information, which has helped to inform its own views on the legislation.

Concern over debate close to the election

Finally, the Panel would express its concern that the draft Law has been brought forward for debate so close to the election. It is noted that the COVID-19 pandemic has delayed the legislation and that it has been a priority area for the Minister to address for some time. It is also noted that the draft Law will not come into effect until the draft Regulations have been adopted and the States has adopted an Appointed Day Act to bring it into force. The Panel was informed that, as a result of the requirement for draft Regulations to be brought forward, it was considered more expedient to seek approval of the Assembly prior to the election period so that, if it was adopted, the Privy Council process could be completed and allow for the draft Regulations to be debated for full implementation at the start of 2023, if approved by the next States Assembly. It was explained that one of the risks of delay would be that a new system could be delayed for a further 18 months. The Panel understands this rationale; however, it has proven difficult to conduct full and rigorous scrutiny on the proposals given the timeline and other Panel work priorities. The Panel would refer the Minister to the [Code of Practice for Engagement between Scrutiny Panel's and the Public Accounts Committee and the Executive](#) where part B, paragraph 12 sets out the following:

The Chief Minister, Ministers and the Council of Ministers will use best endeavours to try to ensure that all Propositions on major policies and legislation are lodged 'au Greffe' at least six months before the date of the next elections so that sufficient time is factored in for Scrutiny purposes.

Whilst the impact of the COVID-19 pandemic has played a part in a number of pieces of legislation being delayed, the Panel would suggest that greater consideration should have been given in relation to the point set out in the engagement code. Nevertheless, the Panel would like to place on record its thanks to the Minister and Officers for providing it with sufficient information in order to examine the proposals in the time it has had available to do so.

Conclusion

As stated previously, this draft Law is the first step in the legislative process and lays the foundations for an updated system to address how complaints and conduct matters are handled within the States of Jersey and Honorary Police. The Panel is satisfied that the framework is sufficient, however, it is in the Regulations that the detail as to how each process will operate will be set out. As such, the Panel would recommend that, should the draft Law be adopted, a full review is undertaken of the draft Regulations as and when they brought forward in the next States Assembly. The Panel will ensure this is detailed as an area for consideration of its successor Panel in its legacy report.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A due to Panel Members having to prioritise the Bridging Island Plan debate.