

STATES OF JERSEY



DRAFT STATES OF JERSEY POLICE FORCE LAW 201- (P.182/2011): COMMENTS

**Presented to the States on 14th May 2012
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

1. In September 2008 the then Education and Home Affairs Scrutiny Panel conducted a pre-legislative review of the Draft Police Force (States) (Jersey) Law 200-. The draft Law at that time was at a relatively early stage and had been distributed by the then Minister of Home Affairs to States Members, Law Officers, the Judiciary and the Honorary Police for comment.
2. The Scrutiny Panel undertook initial research at that stage and appointed Professor S. Savage and Mrs. J. Creaton of the Institute of Criminal Justice Studies and Professor of Criminology, University of Portsmouth, to act as advisers.
3. The Panel considered at that time submissions received by the Home Affairs Department, held a hearing with the Minister and submitted a report. The Panel identified a number of issues of concern, particularly around clarification of the division of responsibility between the Police Authority and the Minister for Home Affairs.
4. The Panel's report was not published at the time as the draft Law was still in development and it was considered that a public report was premature.
5. In December 2011, the current Scrutiny Panel noted that the Minister for Home Affairs had now finalised a revised draft Law (P.182/2011) and had lodged this for debate. The Panel requested Professor Savage to review the latest draft and provide a briefing paper with comments on the current proposals to assess whether the current draft Law adequately addressed the concerns raised during the previous review. Included in this review were the Minutes of the Consultative Group of States Members established by the Minister to assist him in revising the draft Law.
6. The adviser's briefing paper is provided as an Appendix to these Comments.

Adviser's comments – summary

7. Professor Savage did not attempt to provide a full checklist of the recommendations contained in the report, but commented on the fundamental issues related to the vision and ethos of the current draft Law. The Panel was content that the specific comments of the previous Panel on Articles in the previous draft had been given due consideration in the revision process.
8. In the adviser's view, the current draft Law provided much greater clarity in the key areas identified by the previous Panel, including –
 - Where responsibilities lay for the production of the Annual Policing Plan in terms of the role of the Police Authority and the Minister;
 - The status of the Honorary Police in relation to new arrangements for governance of policing in Jersey;

- The status of the ‘operational independence’ of the Chief Officer of Police.
9. Professor Savage suggested that the draft Law embodied a relatively different, or ‘hierarchical’, model compared to police authorities in the United Kingdom in the sense that the Jersey Police Authority was charged with ‘delivering’ the key aims and objectives of the Minister, and that the draft Law appeared to place the Jersey Police Authority on a footing not dissimilar to the ‘police and crime panels’ currently emerging in British law.

Proposed amendments to the draft Law

10. Following the suggestions in the adviser’s comments, the Panel discussed with the Minister for Home Affairs the following possible amendments to the draft Law¹ –

- Amend Article 19 in order – (i) to clarify whether the Jersey Police Authority had a ‘degree of independence’ from the Minister in drawing up the Annual Policing Plan; and (ii) to make some explicit linkage with Article 4 on the functions of the Police Authority.

The Minister commented that the situation in Jersey is different from the UK in that there is not the same distance between national/ministerial and local oversight. Therefore it was appropriate for the Minister to retain ultimate responsibility for the Policing Plan; and for the role of the Police Authority in Jersey to be to deliver the Minister’s key aims and objectives through the Annual Policing Plan rather than set any policies independently of the Minister. The Minister controls the ultimate form of the Annual Policing Plan as he retains the right to amend the Plan.

The Minister agreed that it would be useful to make a specific linkage between the 2 Articles as suggested above. He also suggested that a linkage between Article 19 and Article 3(b) would be useful.

- Amend Article 3(b) in order to specify that the Minister should consult the Chief Officer as well as the Police Authority in setting police force management policies. The Minister agreed with this suggestion.
- In relation to this consideration it was also suggested that it would be appropriate to define within legislation or supporting schedules what functions would come under the ‘management policies’ which the Minister would set, and those that would or should not. The Minister, however, said that it would be too difficult to define ‘management policies’ in legislation in the way suggested by the adviser. He thought that there would always be room for some dispute between the Minister and Chief Officer over possible encroachment into operational matters, no matter how tightly defined, just as there might be dispute between the PA and Chief Officer.

¹ This discussion was held during an informal briefing session with the Minister on 27th January 2012.

Conclusion

11. The Panel has considered and endorses the amendments proposed by the Minister.
12. In the light of its adviser's comments, the Panel considers that further detailed legislative scrutiny is not required.

PANEL ADVISER'S BRIEFING PAPER

“ DRAFT STATES OF JERSEY POLICE FORCE LAW 201-
Observations and Comments

1. Preamble

1.1 This report follows a request from the Education and Home Affairs Panel for expert review of the Draft States of Jersey Police Law 201-, with the broad terms of reference of ‘whether the current law adequately addresses the concerns raised during the previous review’, concerns which were formerly presented in the document ‘*Comments: Draft Police Force (States) (Jersey) Law 200-*’, published in September 2008. Accordingly, the author of this report, one of the advisors to the proceedings of the 2008 Education and Home Affairs Scrutiny Panel during the process leading to the ‘previous review’, understood this brief to be concerned not as such with a ‘checklist’ of which recommendations were subsequently adopted or reflected in the new Draft Law and which were not but rather with more fundamental issues of vision and ethos contained in the 2008 document and their relationship with the new draft legislation (if such a ‘checklist’ is indeed sought, then the author of this report would be fully prepared to provide it). Of greater significance, it is respectfully suggested, are the ‘big questions’ which proposals for a Jersey Police Authority are oriented towards and the extent to which the Draft Law addresses them.

1.2 The ‘big questions’ in this regard relate to the proposed relationships between the Minister, the Jersey Police Authority and the Chief Officer of Police, together with their specific functions as laid out in the Draft Law. They include:

1.2.1 The extent to which the Minister is charged with identifying the *strategic direction* of the Jersey Police and how that authority sits with the ‘operational independence’ of the Chief Officer of Police and the role of the new Jersey Police Authority

1.2.2 The role of the Police Authority in setting *annual plans* for the Jersey Police and how that role sits with the authority of the Minister to set the strategic direction of the Jersey Police

- 1.2.3** The aim of enhancing the *accountability* of the Chief Officer of Police and how that aim sits with the powers of the Minister to determine or govern aspects of the ‘internal’ machinery of the Jersey Police for which the Chief Officer is in turn to be held ‘accountable’
- 2.** An overall comment to be made in relation to relationship between the Draft Law and the concerns raised by the 2008 Scrutiny Panel is that there would now seem to be much greater *clarity* in the provisions of the new legislation, in particular in the following key areas:
- 2.1** Where responsibilities lie for the production of the Annual Policing Plan in terms of the role of the Police Authority and the Minister (re para- 2.12 of the 2008 Scrutiny Report)
- 2.2** The status of the Honorary Police in relation to the new arrangements for governance of policing in Jersey (re para- 2.20 & 2.21 of the 2008 Scrutiny Report)
- 2.3** The status of the ‘operational independence’ of the Chief Officer of Police (re para- 3.32 of the 2008 Scrutiny Report)
- 3.**
- 3.1** Another general comment relates to what might be called the ‘ethos’ underpinning the proposals for a Jersey Police Authority as they currently sit. The long-running debate within Jersey leading to the current proposals for a Jersey Police Authority would appear, at least in some respects, to have been infused with concerns for the need for a governance framework whereby a focused ‘third party’ could to be added to the existent two-party arrangements of Minister for Home Affairs and Chief Officer of Police. Given that this debate was informed, at least in part, by the status and experience of police authorities in England and Wales (a status which is itself of course now about to be transformed with the creation of elected ‘Police and Crime Commissioners), part of the deliberations of the 2008 Scrutiny Panel were concerned to draw from the England and Wales governance framework fundamental principles which could inform the establishment of a Jersey Police Authority (as at para 2.8 of the 2008 Report). Police authorities in England and Wales, in arriving at their own Policing Plans, have two key functions in this respect. Firstly, they provide a degree of *balance* to the

other parties in the 'tripartite system', the Home Secretary and Chief Police Officers. In particular, the police authorities are charged with *balancing* the national responsibilities of the Home Secretary with their 'local' priorities and concerns. Secondly, and in relation to that, the police authorities are required to obtain the *views of their communities* on crime and policing matters. In other words, the police authorities are designed to bring a degree of *independence* or local *discretion* to police policy-making. Local Policing Plans are as such to contain *more* than that laid down as policing priorities by the Home Secretary, something evident in the fact that the Police Authorities only have to 'have regard to' national priorities in the formation of their local policing plans.

3.2 The Draft Law would appear to embody a relatively different model, one which the 2008 Scrutiny Panel referred to as a 'hierarchical' rather than 'triangular' model (as at para 2.10 of the 2008 Report), in the sense that the Jersey Police Authority is charged with 'delivering' the key aims and objectives for set by the Minister (Article 4 (1b)). This 'hierarchical' relationship between the Minister and the Police Authority would seem to be confirmed by the Minister's own statement in the meeting of the Police Authority Consultative Group of 28th April 2010 (p3), where the role of the Police Authority is referred to as one of 'implementation' of policing policy as set by the Minister. This model may indeed be more appropriate for the States of Jersey, given that there is much less of a variance between 'national' and 'local' issues than is the case in England and Wales. Nevertheless the distinction between this model and the model for England and Wales (at least as currently holds), is acknowledged. Indeed, as it currently stands the model for the Jersey Police Authority appears closer to the emerging institution of 'police and crime panels' created for England and Wales by the *Police Reform and Social Responsibility Act 2011* than to the police authorities as such. Police and crime panels have the primary function of 'scrutinising' the decisions and actions of the elected Police and Crime Commissioners than determining local policing policies and priorities as such. The Draft Law appears to place the Jersey Police Authority on a footing not dissimilar to the 'police and crime panels' emerging now in British law.

This is in effect reflected in a statement by the Minister for Home Affairs to the Police Authority Consultative Group Meeting of 4th October 2010 (p2).

3.3 In this context it is suggested that Article 19 of the Draft Law might clarify whether, in drawing up the Annual Policing Plan, the Police Authority should seek to ‘deliver’ the Minister’s key aims and objectives for policing *or* alternatively to ‘have regard to’ those aims and objectives, which would, as in British law, enshrine a degree of ‘independence’ of decision-making or discretionary decision-making for the police authorities. It is noted that in earlier forms of the Draft Law the ‘Authority’ is entitled the ‘Independent Jersey Police Authority’ (e.g. ‘Comments’ on Draft Law as presented to the States of Jersey on 19th March 2010); however, this nomenclature was subsequently changed to simply ‘Jersey Police Authority’. A question is whether the Draft Law now is designed to enable a *degree of independence*, particularly in the realm of the drawing up of the Annual Policing Plan. As the Law currently stands, the relationship between the Annual Policing Plan and the Minister’s ‘key aims and objectives’ for policing might be made more explicit. In other words, some explicit linkage between Article 4, on the functions of the Police Authority, and Article 19, on the Annual Policing Plan, might be advised.

4.

4.1 Another area of general comment relates to the ‘independence’ of the *chief officer of police*. As noted above, the operational independence of the chief officer is enshrined in the Draft Law (Article 18 (6)). In recent political debate in England and Wales, the sensitive issue of operational independence has been approached by distinguishing between the ‘what’ and ‘how’ of policing. For example, The British Home Secretary recently introduced a document on the ‘Shadow Strategic Requirement’ (key aims for national policing as set out by the Home Secretary) by stating that “It respects the operational of the police, advising *what*, in strategic terms, they need to achieve but not *how* they should achieve it” (p3 – emphasis added). This distinction is increasingly used in political debate to seek to allow for authorities other than the police themselves to ‘have a say’ in policing policy, whilst avoiding undue influence in how policy is implemented operationally, i.e. as a means of maintaining

the independence of the chief officer. In this regard reference in the Draft Law to 'management policies' of the States of Jersey Police is significant.

- 4.2** Article 3 (Functions of Minister) at (3) (b) lays with the Minister the function that 'after consulting the Police Authority' he or she 'may set management policies of the States of Jersey Police Force in areas which may impact on the Force's reputation or image or on the reputation of Jersey and its people'. Clearly this clause has a history and may be included to deal with areas of particular sensitivity. However, regarding the points raised above, 'management policies' would seem to relate directly to the 'how' of policing, which might normally be the province of chief police officers. Resting the powers to set 'management policies' (or at least some of them) in the hands of the Minister might arguably leave out of the control, or limit the control, of the Chief Officer over Police matters for which he or she might then be held 'accountable'.
- 4.3** In so far as the Draft Law seeks to empower the *Minister* to set police force management policies, and in that sense part of what might be seen as the 'how' of policing, it is suggested that further consideration be given to who or what should be consulted in advance of that process. More specifically, might it not be appropriate that the setting by the Minister of police force management policies involves consultation not only with the Police Authority but also with the *Chief Officer*, who will ultimately be called to account for the performance of his or her police force?
- 5.** In relation to this consideration it may also be appropriate to define within the legislation itself or in supporting schedules what functions would come under the 'management policies' which the Minister would set and, alternatively management processes that would or should not.

Professor Steve Savage

23rd January 2012 "