

STATES OF JERSEY



DRAFT THE LAW SOCIETY OF JERSEY (AMENDMENT No. 4) LAW 201- (P.136/2016): COMMENTS

**Presented to the States on 28th April 2017
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

1. P.136/2016 ([Draft The Law Society of Jersey \(Amendment No. 4\) Law 201-](#)) was lodged by the Chief Minister on 20th of December 2016.
2. The Proposition was called in by the Corporate Services Scrutiny Panel during the sitting on 14th of February 2017, after the principles of the Proposition had been adopted. It was agreed that the Panel would report back by 2nd May 2017.
3. In reviewing the Proposition, the Panel received a briefing on 7th March 2017, from relevant stakeholders. These included the CEO of the *Law Society of Jersey*, the Executive Officer to the Legislation Advisory Panel and Officers from both the Law Officers' Department and the Financial Services Unit.
4. The Panel also contacted those States Members who had expressed concern with the Proposition, to identify any specific areas in which to focus the review.
5. As outlined in detail below, whilst the Panel did not find any specific cause for concern within the changes made to the Law by the Proposition, it did identify the need for a wider consideration regarding the system of self-regulation of the legal services industry in the Island.

The Law Society of Jersey Law 2005

6. The existing [Law Society of Jersey Law 2005](#), sets out the Law Society of Jersey's remit in the administration and disciplinary control of advocates and solicitors of the Royal Court.
7. The Report accompanying *P.136/2016* states that the amendments in the Proposition have 2 core purposes, these being –
 - *“to make provision in the 2005 Law for the recognition and disciplinary control of legal service bodies; and*
 - *to revise and improve the procedure in the 2005 Law for dealing with complaints of professional misconduct against advocates, solicitors and legal service bodies.”*
8. The first point above makes allowances for the inclusion of Limited Liability Partnerships (LLPs) within the Law. There are specific nuances within the structure of these relatively new entities which meant the Law required updating through this draft amending Law.
9. The second area of focus is the refinement of the area of the 2005 Law which deals with the procedure for complaints of professional misconduct against Jersey advocates or solicitors. The amendments included in *P.136/2016* are based on the findings made by Advocate John Kelleher in a review commissioned by the Law Society in May 2011.

10. Several of the recommendations made by Advocate Kelleher in his report of October 2012, as well as other revisions, are within this draft amending Law. The Proposition notes that the changes have been subject to consultation with members of the legal profession and have been provided to the Bailiff and Deputy Bailiff for comment.

Panel comments

11. The first part of *P.136/2016* is a structural change to reflect the emergence of new working practices within the Legal Services industry. The Panel has no particular observations to make on this part.
12. In the briefing from Officers and the CEO of the Law Society, it was explained to the Panel that the changes to the disciplinary process surrounding professional misconduct are to refine and improve the existing system which was implemented around 10 years ago.
13. For example, the current system requires a *complainant* to present their case before a disciplinary committee established to hear a case of professional misconduct. However with complaints of this nature, it is more appropriate that the *Law Society* brings the professional misconduct case against the advocate or solicitor concerned. The complainant will still have a right to be present at the hearing. By consequence, the right of appeal of the complainant is also removed. There have, however, been no instances of a complainant using the right of appeal in the last 10 years.
14. Having considered the points raised in the briefing and having had the opportunity to question Officers, there is nothing in the detail of the changes included in the Proposition which the Panel considers requires further work or that it wishes to bring to the attention of States Members. However, there are some wider issues that the Panel wishes to comment on.

Wider issues

15. The Panel raised a number of questions with Officers about the issue of self-regulation within the legal services industry. This reflects the concerns expressed by some States Members to the Panel.
16. The Panel understands that the disciplinary system in Jersey is similar to that of other small jurisdictions and that efforts are made to ensure impartiality in the system and to avoid conflicts of interest. However, the Panel considers that a wider review of the system of self-regulation is required at a subsequent date, this falling outside the scope of the review of the Proposition.
17. One specific example that the Panel has considered is the potential for establishing a Legal Ombudsman or similar body, which would stand separately and distinct from the *Law Society of Jersey* and the local legal profession. A precedent for this type of independent adjudicator has already been set with the establishment of the Channel Islands Financial Ombudsman. It might be possible that this structure could be replicated for the legal services industry

(possibly even sharing administrative resources), and the Panel recommends that further work is undertaken by the relevant departments to explore the feasibility of this, with a report back to the States Assembly within 6 months.