

# STATES OF JERSEY



## GOVERNMENT PLAN 2021–2024 (P.130/2020): NINETEENTH AMENDMENT

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Lodged au Greffe on 1st December 2020  
by Deputy M.R. Higgins of St. Helier

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STATES GREFFE

**1 PAGE 2, PARAGRAPH (f) –**

After the words “Appendix 2 – Summary Tables 5(i) and (ii) of the Report” insert the words –

“, except that in Summary Table 5(ii) the overall head of expenditure shall be reduced by £200,000 through the removal of funding allocated to States of Jersey Police Firearms Range, and that the overall head of expenditure in Summary Table 5(i) shall be increased by £200,000 to allow for a grant to be given to the Institute of Law in order that the Institute can provide pro bono legal services for those who cannot afford lawyers or legal aid, assist litigants in persons with cases that they wish to bring, and help with any perceived miscarriages of justice”

DEPUTY M.R. HIGGINS OF ST. HELIER

**Note:** After this amendment, the proposition would read as follows –

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

to receive the Government Plan 2021 – 2024 specified in Article 9(1) of the [Public Finances \(Jersey\) Law 2019](#) (“the Law”) and specifically –

- (a) to approve the estimate of total States income to be paid into the Consolidated Fund in 2021 as set out in Appendix 2 – Summary Table 1 to the Report, which is inclusive of the proposed taxation and impôts duties changes outlined in the Government Plan, in line with Article 9(2)(a) of the Law;
- (b) to approve the amounts to be transferred from one States fund to another for 2021, in line with Article 9(2)(b) as set out in Appendix 2 – Summary Table 2 to the Report;
- (c) to approve the proposed borrowing to be obtained for 2021, in line with Article 9 (2)(c), up to and including the amount set out in Appendix 2 – Summary Table 3 to the Report;
- (d) to approve each major project that is to be started or continued in 2021 and the total cost of each such project and any amendments to the proposed total cost of a major project under a previously approved government plan, in line with Article 9(2)(d), (e) and (f) of the Law and as set out in Appendix 2 - Summary Table 4 to the Report;
- (e) to endorse the efficiencies and other re-balancing measures for 2021 contained in the Government Plan as set out in Appendix 2 Summary Table 6 and reflected within each gross head of expenditure in Appendix 2 – Summary Table 5(i);

- (f) to approve the proposed amount to be appropriated from the Consolidated Fund for 2021, for each head of expenditure, being gross expenditure less estimated income (if any), in line with Articles 9(2)(g), 10(1) and 10(2) of the Law and set out in Appendix 2 – Summary Tables 5(i) and (ii) of the Report, except that in Summary Table 5(ii) the overall head of expenditure shall be reduced by £200,000 through the removal of funding allocated to States of Jersey Police Firearms Range, and that the overall head of expenditure in Summary Table 5(i) shall be increased by £200,000 to allow for a grant to be given to the Institute of Law in order that the Institute can provide pro bono legal services for those who cannot afford lawyers or legal aid, assist litigants in persons with cases that they wish to bring, and help with any perceived miscarriages of justice.
- (g) to approve the estimated income, being estimated gross income less expenditure, that each States trading operation will pay into its trading fund in 2021 in line with Article 9(2)(h) of the Law and set out in Appendix 2 – Summary Table 7 to the Report;
- (h) to approve the proposed amount to be appropriated from each States trading operation’s trading fund for 2021 for each head of expenditure in line with Article 9(2)(i) of the Law and set out in Appendix 2 – Summary Table 8 to the Report;
- (i) to approve the estimated income and expenditure proposals for the Climate Emergency Fund for 2021 as set out in Appendix 2 – Summary Table 9 to the Report; and
- (j) to approve, in accordance with Article 9(1) of the Law, the Government Plan 2021-2024, as set out at Appendix 3 to the Report.

## REPORT

Imagine you are arrested and charged with a criminal offence which you have not committed, or you or one of your family have been seriously injured through the negligence of others, or that you have been subject to a miscarriage of justice and have been sent to prison for a crime you did not commit. What can you do about it?

Believe it or not it largely depends on your wealth.

Although this statement is a simplification it is largely true.

If you are relatively poor, on income support, or in social housing, and have no assets then you can apply to the Bâtonnier (a representative of the legal profession in Jersey) for a legal aid certificate, and an Advocate will be appointed from the Tour de Rôle to provide you with legal representation. The cost is mostly paid for by the legal profession, although some cases are funded by the Government. If you have sufficient money and/or assets you will be expected to contribute to the costs of your legal defence or action. Although it is not always true, it is usually a relatively junior Advocate or newly qualified Advocate with limited experience who will be appointed to represent you.

If you are a '1(1)(k)', or as we now call them '2(1)(e)'s, in other words "loaded" with a million pounds or much more in cash and/or assets you can afford whoever you like to represent you. No doubt a highly experienced and successful lawyer. But after all you can afford it.

If you are a Member of the States relying on your salary, or someone earning average or above average earnings, or have assets that have considerable value, such as the home you have purchased or are still buying on a mortgage to live in (which because of the price of housing in Jersey may be valued at anywhere between £300,000 up to say, £1.25 million) then you cannot qualify for legal aid and nor can you afford the most experienced and successful lawyers who may be charging circa £500 an hour, and possibly £200 for a para-legal to assist them with your case.

And as even the simplest of cases take hours and hours of preparation: attending client meetings; carrying out research; attending case conferences; directions; hearings etc, in addition to time spent dealing with paperwork, various procedural motions and the almost inevitable delays that occur even before you get to the trial itself, which depending upon its complexity could last days, or in extreme cases, weeks, perhaps over an extended period of time, the costs of going to court soon mount up.

It is not unusual that when you factor in legal fees, court costs, fines in criminal cases, and damages and your opponent's legal costs if you lose in civil cases, then you may have to sell your home and your other assets to settle the debt or take out a bank loan to be repaid out of income over time. If you are considered credit worthy. I have come across a number of people over the last 12 years who have ended up with costs ranging between one hundred and over a million pounds, who have had to sell their family home to cover legal fees. In a number of these cases the quality of legal advice and representation received was extremely poor.

The Magic Circle Law Firms who specialize in dealing with corporations, financial structures, mergers and acquisitions and very high net worth clients will not do legal aid

work as it costs them too much money in lost revenue. It is easier for them to pay one of the smaller and cheaper law firms to do it for them.

If you are very lucky you may have a legal insurance policy, either with your house, car, or contract of employment, that enables you to hire a lawyer to fight or conduct your case. The problem with many of these policies is that they are like all insurance policies - full of exclusion clauses, usually contained in the small print, which enable the insurance company to wriggle out of their obligations just when you need them. Perhaps after paying thousands of pounds over the years in premiums for the cover.

If you aren't eligible for legal aid because of your income and/or assets are outside the limits, don't have legal insurance that actually covers you, or because you are not a very wealthy 2(1)(e), then you either have to give up and accept the injustice or fight the case as a litigant in person.

A Litigant in Person is a person who represents themselves in court.

Because they are representing themselves against trained and experienced Advocates, or publicly funded Law Officers, and have little or no idea of the time it takes to prepare a case, the mental stresses they will experience throughout, or the strict court procedures, processes that have to be followed to strict timetables, or know how to research the legislation and legal precedents that may determine the case and how to present their arguments before the court, they are basically on a hiding to nothing and it may be the source of why Abraham Lincoln once said, "He who represents himself has a fool for a client".

However, litigants in person in Jersey may have no alternative and even though judges are expected to give them greater leeway due to their lack of knowledge and experience it is still an uphill struggle, and they are very rarely successful.

### **Purpose of the Amendment**

The purpose of this amendment is to try and redress the balance and give litigants in person and others who don't qualify for legal aid a fighting chance of getting justice in a court of law or tribunal. It may also enable those who have been subject to a miscarriage of justice, which can happen in Jersey just as it can elsewhere in the world, to have their cases re-examined.

It is proposed to take £200,000 from the £1.2 million allocated to pay for a new Police firing range at Crabbe in the Home Affairs budget and give it to the Institute for Law, at University College, Highlands.

The Institute will use the money to:

- a. employ a legally qualified Advocate, or two, to lead and guide students to help Litigants in Person to prepare, and assist them with their cases; to conduct some pro bono legal work (i.e. work for free); and to assist those who have been subject to a miscarriage of justice to appeal their cases; and

- b. to enable a legal practice company to be established; legal insurance to be obtained and a client management system to be purchased.

It also allows law students at the Institute to get practical hands-on training as they learn.

Jersey is very fortunate to have appointed Ms. Janine Griffiths-Baker as Dean of the Institute of Law. Professor Griffiths-Baker was previously the Dean of the Nottingham Law School, which is part of Nottingham Trent University, one of the leading providers of academic and professional legal education in Great Britain.

In 2015 the school set up a regulated law firm which operates a Legal Advice Centre. Its aim being to provide high quality legal advice and information while offering practical experience for its law school students, who work under the supervision of qualified lawyers.

The Centre delivered vital legal services to individuals, businesses, charities, organisations and community groups. The students offered advice and pro bono assistance on employment, housing law, business support and commercial law, social justice, criminal law, community legal issues and tribunal and court representation.

Over the five years to 2019 the 2,100 student volunteers recovered over £4 million in compensation/benefit for their 1900 clients.

### **Financial and manpower implications**

It is my contention that the Justice and Home Affairs Department is buying a gold-plated firing range for its £1.2 million and that a lesser sum could be used to up-grade existing Crabbé firing ranges which could be shared with other users.

As the department can also obtain the funds in needs for the firing range from other sources not available to most other departments i.e. the ring-fenced Criminal Offences Confiscation Fund, which is earmarked for anything that is used for the reduction or suppression crime, they can easily replace the £200,000 that I wish to transfer from their budget to the Institute of Law for the reasons stated above.