

STATES OF JERSEY



Jersey

DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 3) LAW 202-

**Lodged au Greffe on 17th February 2021
by the Minister for Home Affairs
Earliest date for debate: 20th April 2021**

STATES GREFFE



DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 3) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft States of Jersey Police Force (Amendment No. 3) Law 202- are compatible with the Convention Rights.

Signed: **Connétable L. Norman of St. Clement**
Minister for Home Affairs

Dated: 11th February 2021

REPORT

1. Introduction

The States of Jersey Police force, like the police forces of most western jurisdictions, is independent from government and safeguards are in place to ensure that operational policing is not subject to political involvement. However, the police are responsible to the public for the delivery of economic, efficient and effective policing services and in order to hold the force accountable to the public there must be some connection to the democratic process.

In different jurisdictions legislative and administrative arrangements have developed to acknowledge the unique nature of policing. In the United Kingdom a corporate body such as a ‘Police Authority’ or an individual – a ‘Police and Crime Commissioner’ – provides that independence between government and the police force.

Considerable effort is invested into balancing independence with accountability for the States of Jersey Police. In order to do so various functions are split between the Chief of Police, the Police Authority, the Minister for Home Affairs and the States Employment Board.

2. Background

In January 1995, the States Assembly adopted a proposition of the Defence Committee – Policing System of Jersey – independent review (P.94/1994). The review resulted in the Clothier One Report (Police Services in Jersey, July 1996). There were 38 recommendations, one of which called for the establishment of a Police Authority.

The Defence Committee Proposition [P.49/1998](#), set out amongst other matters:

What the Police Authority had responsibility for –

- Securing the maintenance of effective and efficient policing throughout the Island.
- Setting local objectives and performance targets for the States of Jersey Police Force.

The States approved the establishment of a Police Authority on the 19th May 1998, ([P.49/1998 – Policing of the Island](#)) pending the passing of the necessary legislation. Subsequently, the Home Affairs Committee set up a ‘Shadow’ Jersey Police Authority to commence the process of establishing a Police Authority in law. However, by 2003 it was evident the shadow authority was foundering, and the Home Affairs Committee reported on the reasons for this in [R.C.35/2003](#). A formal meeting of the shadow Police Authority had not been held since September 2001. By early 2008 a Draft Police Force (States) (Jersey) Law 200- was finally issued for consultation.

On the 16th November 2011, the Minister for Home Affairs, lodged [P.182/2011](#), the Draft States of Jersey Police Force Law 201-. The draft Law contained provisions to establish the Police Authority in accordance with the principles as published [P.192/2010](#). The Police Authority would act as a valuable enhancement to the governance arrangements for the States of Jersey Police by strengthening the safeguards of the operational independence as well as the scrutiny and accountability of the service.

The [States of Jersey Police Force Law 2012](#) commenced on 24th July 2013.

The Office of the Comptroller and Auditor General (C&AG) undertook a review into the Governance of the States of Jersey Police and issued a report dated 22nd March 2018 ([R.32/2018](#)).

The review considered the overall arrangements for the Governance of the States of Jersey Police and focussed on two specific areas:

- One relating to a human resource issue; and
- One relating the development of the Medium-Term Financial Plan.

The new law will reflect the commitment made by the then Minister for Home Affairs to act on the C&AG's findings as expeditiously as possible.

3. Current Arrangements

To preserve police operational independence, the Chief of Police has command, direction and control of the States of Jersey Police; the Police Authority has limited powers over the Chief of Police. As Accounting Officer, the Chief of Police is personally responsible for the proper financial management of the States of Jersey Police.

The Chief of Police is line managed by the Chief Executive of the Government of Jersey and the Minister is normally advised by the Chief of Police on operational policing matters, with criminal justice policy advice falling to the Director General of Justice and Home Affairs.

4. This Law, if adopted, would amend the States of Jersey Police Force Law 2012 to –

- Realign the governance powers and duties of the Minister, the Police Authority and the Chief Officer.
- Change the membership of the Police Authority.
- Require regular inspection of the States Police Force; and require the Annual Policing Plan to cover 4 years, rather than one.

5. Why do we need new legislation?

The States of Jersey Police Force Law 2012 has not been reviewed since its commencement on 24th July 2013, with only minor amendments since that time. The States of Jersey Police has been subject to oversight by a Police Authority since the enactment of that Law. The governance of police services is inherently complex. The police need operational independence and accountability and the Police Authority provides a buffer between government and the police force.

- The Police Authority

The Jersey Police Authority has less resources than comparable bodies in larger jurisdictions and is dependent upon the information provided by the Chief of Police. Unlike the United Kingdom and Ireland, it does not have access to routine inspection reports. While the Minister is empowered to direct the Authority to secure an inspection this would require additional funding. The last inspection from Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services was between 2017 and 2018. The Police Authority is reliant upon the skills of its members for whom there is very limited training and support. The makeup of the membership locally with 2 elected States Members, is inconsistent with Scotland and Ireland where there is statutory

prohibition on serving members of the legislature sitting on the Authority. This helps to reinforce the operational independence of the police service.

The Jersey Police Authority has responsibility for ensuring delivery of economic and effective policing and the aims and objectives of the States of Jersey Police. With current resources and powers, it cannot fulfil these functions.

- The Minister

The powers of the Minister for Home Affairs are more extensive than in other jurisdictions which may jeopardise the operational independence of the States of Jersey Police. For example, the Minister can in law determine the numbers of each junior rank that may be appointed, clearly an operational matter. Additionally, the Minister may require the Authority to report to them any matter concerning the States of Jersey Police which could potentially threaten the independence of the States of Jersey Police. There is also no requirement for the Minister to consult with the Chief of Police on the appointment of a Deputy Chief of Police and no statutory basis or framework for line management of the Chief of Police by the Chief Executive.

- Human Resources

The respective responsibilities of the States Employment Board, the Chief of Police and the Minister need to be clearly understood by all parties. A previous incident involving a decision made by the Chief of Police being overruled by a previous Minister highlighted that the responsibilities of different parties were not clear. In other jurisdictions human resource issues – other than in respect of the most senior officers – are a matter for the Chief of Police with perhaps a role for the Police Authority.

- Finance

Although the Chief of Police is personally responsible for the financial management of the States of Jersey Police, there is no separate allocation of budget for the States of Jersey Police as part of the Government Plan process. The Police Authority has a statutory duty to prepare an Annual Policing Plan and to seek from the Minister additional resources where it considers these necessary to enable the States of Jersey Police to deliver the key aims and objectives set by the Minister. However, it has no routine input into setting the budget for the States of Jersey Police.

The C&AG report made 14 recommendations including:

- Functions of the Minister
- Duties of the Police Authority
- Power of the Minister to direct the Police Authority
- Membership of the Police Authority
- Appointment of police officers
- Roles and responsibilities of the Police Authority, Chief Officer and Minister related to human resource and financial matters
- Several of the recommendations related to amending the States of Jersey Police Force Law 2012.

6. What does the law do?

- Establish routine and regular independent inspections of the States of Jersey Police Force in order to appraise its performance and drive service improvements.
- Establish independent inspection of the Police Authority in relation to fulfilling its duties.
- Reform the membership of the Police Authority to ensure its clear independence from the political process (by removing the two States members from the JPA).
- Remove the Police Authority's responsibility for *ensuring* the delivery of an efficient and effective States of Jersey Police Force as one of its statutory duties. This responsibility now rests with the Chief Officer.
- Include a new statutory duty of the Policy Authority to promote and support continuous improvement in the policing of Jersey.
- Include a requirement that the Annual Policing Plan consider the economy, efficiency and effectiveness of the States of Jersey Police Force in delivering the key aims and objectives set by the Minister.
- Remove the function of the Minister to determine numbers of police officers to be appointed to each rank. This responsibility now rests with the Chief Officer.
- Remove the power of the Minister to *require* and- replace it with *request* – the Police Authority to enquire into and provide a report to the Minister on any matter relating to the States of Jersey Police Force.
- Provide that the Minister must consult with the Chief of Police prior to appointing a Deputy Chief of Police.
- Re-assign human resource responsibilities from the Minister to the Chief of Police and Police Authority to reinforce the operational independence of the States of Jersey Police Force.
- Provide for the Police Authority to have a routine role in advising the Minister in respect of the budget for the States of Jersey Police Force.
- Align the annual service and financial planning for the States of Jersey Police Force to the Government Plan by moving to a multi-year policing plan.
- Separately identify the resources allocated to the States of Jersey Police Force in future Government Plans.
- Provide clarity that generally police staff will fall under the auspices of the Chief Officer to assist the operation of the police force.

7. Consultation history

Consultation has taken place with the States of Jersey Police, Jersey Police Authority, the C&AG and other interested parties. In April 2019 an implementation group ("the group") was established to take forward the recommendations, finalise outstanding

policy issues raised by the report and make recommendations to the Minister prior to drafting legislative instructions.

The group consisted of the Senior Justice and Home Affairs Officer, Police Authority representative, States of Jersey Police representative and a Strategic Policy, Performance and Population representative.

The Group in taking forward the principles and direction of the C&AG looked at further aspects of the current Law not fully considered by C&AG, as this was an appropriate opportunity to do so given amending legislation would be required to implement several C&AG's recommendations.

The Law as drafted is a culmination of this work and will give effect to the C&AG recommendations as endorsed by the Minister.

8. Financial and manpower implications

There will be a requirement for the JPA to be funded to cover the expense of routine inspections (however frequent).

It follows that the Jersey Police Authority have the power to select an appropriate body to commission routine and frequent independent inspections and should be funded to do so.

This will also provide both the JPA and SOJP with better oversight of the budget.

9. Human Rights

The draft Law has been reviewed by the Law Officers' Department and have advised that there are no human rights issues raised by the Draft States of Jersey Police Force (Amendment No. 3) Law 202-.

There is therefore no separate Human Rights Note appended to this report.

Re-issue Note

This publication is re-issued to add a report reference number "R.32/2018" and a hyperlink to that report.

EXPLANATORY NOTE

This Law, if adopted, would amend the States of Jersey Police Force Law 2012 (the “principal Law”) to –

- realign the governance powers and duties of the Minister, the Jersey Police Authority and the Chief Officer;
- change the membership of the Police Authority;
- require regular inspection of the States Police Force; and
- require the Annual Policing Plan to cover 4 years, rather than one.

Article 1 states that this Law amends the principal Law.

Article 2 amends Article 3 of the principal Law to require the Minister to consult the Police Authority before determining the ranks in the States Police Force. The requirement for the Minister to determine the number of police officers to be appointed to each rank in the States Police Force is removed (this responsibility is given to the Chief Officer under new Article 17(1B) as inserted by *Article 6*).

Article 3 replaces Article 4 of the principal Law, which specifies the main duties of the Jersey Police Authority. The Police Authority’s main duties are stated as promoting and supporting continuous improvement in the policing of Jersey and overseeing the performance of policing services by the States Police Force. The duty of the Police Authority to ensure that the States Police Force is an efficient and effective police force is removed (this responsibility is given to the Chief Officer under new Article 17(1A) as inserted by *Article 6*). The new Article 4 also requires the Police Authority to seek from the Minister any additional resources needed to enable the Police Authority to perform its duties, in addition to the existing requirement to seek the resources needed to enable the States Police Force to deliver its key aims and objectives.

Article 4 amends Article 5 of the principal Law, which provides for membership of the Police Authority. The amendments prevent members of the States from being members of the Police Authority.

Article 5 amends Article 7 of the principal Law to remove from that provision the ability for the Minister to direct the Police Authority to submit the States Police Force to an inspection. Inspection requirements are now set out in new Articles 28AA and 28AB as inserted by *Article 9*.

Article 6 amends Article 8 of the principal Law to require that, before appointing a person to carry out the functions of the Deputy Chief Officer, the Minister consult the Chief Officer if practicable, rather than where possible. This aligns with the amendment made by *Article 11*.

Article 7 amends Article 17 of the principal Law to require the Chief Officer to ensure that the States police force is an efficient and effective police force (this responsibility is currently the Police Authority’s) and to allow the Chief Officer to determine the number of police officers to be appointed to each rank (this power is currently the Minister’s).

Article 8 amends Article 19 of the principal Law to require that the Annual Policing Plan covers not just the next financial year, but also the 3 years after that. The amended provision specifies factors that the Police Authority must consider in preparing the Annual Policing Plan.

Article 9 inserts new Article 25A into the principal Law. New Article 25A provides that States' employees working for the States Police Force report to, and are subject to the direction of, the Chief Officer. New Article 25A does not apply to legal advisors.

Article 10 inserts new Articles 28AA and 28AB into the principal Law. New Article 28AA requires the Police Authority to arrange for the States Police Force to be inspected by a suitably qualified independent body at regular intervals. New Article 28AB allows the Minister to direct a suitably qualified independent body to inspect the Police Authority.

Article 11 amends Regulation 6 of the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017 to require the Minister to, if practicable, consult the Chief Officer before appointing a Deputy Chief Officer.

Article 12 amends the States of Jersey Police Force (General Provisions) (Jersey) Order 2016. The amendments transfer to the Chief Officer the powers of the Minister to promote an officer and to extend, reduce, or dispense with the period of probation that applies to an officer.

Article 13 gives the short title of the Law and provides that it comes into force 7 days after it is registered.



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DRAFT STATES OF JERSEY POLICE FORCE (AMENDMENT No. 3) LAW 202-

A LAW to amend the States of Jersey Police Force Law 2012.

Adopted by the States

[date to be inserted]

Sanctioned by Order of Her Majesty in Council

[date to be inserted]

Registered by the Royal Court

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Amendment of the States of Jersey Police Force Law 2012

This Law amends the States of Jersey Police Force Law 2012¹.

2 Article 3 (functions of Minister) amended

For Article 3(4) there is substituted –

- “(4) The Minister must, after consulting the Police Authority and the Chief Officer, determine the ranks in the States Police Force.”.

3 Article 4 (Jersey Police Authority) substituted

For Article 4 there is substituted –

“4 Jersey Police Authority

- (1) The Jersey Police Authority is established.
- (2) The Jersey Police Authority’s main duties are –
- (a) to promote and support continuous improvement in the policing of Jersey; and
- (b) to oversee the performance of policing services by the States Police Force.

- (3) The Jersey Police Authority must seek from the Minister any additional resources needed to enable –
- (a) the States Police Force to deliver the key aims and objectives referred to in Article 3(3)(a); and
 - (b) the Police Authority to perform its duties.”.

4 Article 5 (membership of the Police Authority) amended

- (1) In Article 5(1)(b) for “up to 4 members” there is substituted “up to 6 members”.
- (2) In Article 5(2) there is deleted “under paragraph (1)(a) or (b)”.
- (3) In Article 5(3) there is deleted “appointed under paragraph (1)(a) or (b)”.
- (4) For Article 5(6)(d) there is substituted –
 - “(d) a member of the States (as defined by Article 1(1) of the States of Jersey Law 2005²);”.
- (5) For Article 5(8) there is substituted –
 - “(8) A member of the Police Authority may resign from office by giving written notice of resignation to the Minister.”.
- (6) In Article 5(9) there is deleted “appointed under paragraph (1)(a) or (b)”.
- (7) In Article 5, paragraphs (1)(c), (4), (5), (6)(e) and (11) are deleted.

5 Article 7 (power of Minister to direct the Police Authority) amended

- (1) For Article 7(1) there is substituted –
 - “(1) The Minister may request that the Police Authority enquire into and provide a report to the Minister on any matter relating to the States Police Force.”.
- (2) In Article 7(2) there is deleted “or inspection”.
- (3) After Article 7(2) there is inserted –
 - “(3) If a report of an inspection undertaken under Article 28AB identifies that the Police Authority is not adequately carrying out its duties, the Minister may direct the Police Authority to take remedial measures.”.

6 Article 8 (Chief Officer and Deputy Chief Officer) amended

In Article 8(3) for “where possible” there is substituted “if practicable”.

7 Article 17 (functions and status of Chief Officer) amended

- (1) After Article 17(1) there is inserted –
 - “(1A) The Chief Officer must ensure that the States Police Force is an efficient and effective police force.
 - (1B) The Chief Officer may determine the number of police officers that may be appointed to each rank.”.
- (2) In Article 17(2) there is deleted “, in so far as circumstances permit,”.

8 Article 19 (Annual Policing Plan) amended

- (1) In Article 19(1)(a), after “financial year” there is inserted “and for the 3 financial years following the next financial year”.
- (2) After Article 19(1) there is inserted –
 - “(1A) In preparing an Annual Policing Plan, the Police Authority must consider –
 - (a) the key aims and objectives set by the Minister;
 - (b) the efficiency and effectiveness of the States Police Force; and
 - (c) the resources available to the States Police Force.”.

9 New Article 25A (States’ employees working for Police Force) inserted

After Article 25 there is inserted –

“25A States’ employees working for Police Force

- (1) States’ employees who are employed to assist the operation of the police force are, in the carrying out of their functions, subject to the direction and control of the Chief Officer.
- (2) This Article does not apply to a States’ employee whose employment duties involve providing legal advice.

10 New Articles 28AA (Inspection of States Police Force) and 28AB (Inspection of Police Authority) inserted

After Article 28 there is inserted –

*“Inspections***28AA Inspection of States Police Force**

- (1) The Police Authority must arrange for the States of Jersey Police Force to be inspected.
- (2) The inspections must –
 - (a) be performed by an independent body that, in the opinion of the Police Authority, is suitably qualified; and
 - (b) be undertaken at regular intervals determined by the Police Authority, subject to the Police Authority having adequate resources to commission an inspection.

28AB Inspection of Police Authority

- (1) The Minister may direct an independent body that, in the opinion of the Minister, is suitably qualified to –
 - (a) inspect the Police Authority; and

- (b) provide a report to the Minister on the findings of the inspection.
- (2) The body that undertakes the inspection must, before finalising a report, –
 - (a) provide a copy of the draft report to the Police Authority;
 - (b) give the Authority 28 days to respond; and
 - (c) consider any response from the Police Authority.
- (3) As soon as practicable after receiving a final report, the Minister must –
 - (a) provide a copy of the report to the Police Authority; and
 - (b) present the report to the States.”.

11 Amendment to States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017

- (1) In Regulation 6(3) of the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017³ there is deleted “or Deputy Chief Officer”.
- (2) After Regulation 6(3) of the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017 there is inserted –
 - “(3A) Before the Minister appoints a person to the office of Deputy Chief Officer, the Minister must –
 - (a) consult the Police Authority;
 - (b) if practicable, consult the Chief Officer; and
 - (c) present to the States notice of the Minister’s intention to make the appointment at least 2 weeks before the appointment is made.”.

12 Amendment to States of Jersey Police Force (General Provisions) (Jersey) Order 2016

In the States of Jersey Police Force (General Provisions) (Jersey) Order 2016⁴, –

- (a) in Article 5(3) for “The Minister may, on the recommendation of the Chief Officer,” there is substituted “The Chief Officer may”;
- (b) in Article 5(4) for “Minister” there is substituted “Chief Officer” in both places;
- (c) in Article 6(1) for “The Minister, on the recommendation of the Chief Officer,” there is substituted “The Chief Officer”;
- (d) in Article 6(6)(b) for “Minister” there is substituted “Chief Officer”.

13 Citation and commencement

This Law may be cited as the States of Jersey Police Force (Amendment No. 3) Law 202- and comes into force 7 days after it is registered.

ENDNOTES

Table of Endnote References

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|----------|--------------------------|
| <u>1</u> | <i>chapter 23.820</i> |
| <u>2</u> | <i>chapter 16.800</i> |
| <u>3</u> | <i>chapter 23.820.10</i> |
| <u>4</u> | <i>chapter 23.820.30</i> |