

STATES OF JERSEY



DRAFT OFFICIAL ANALYST (JERSEY) LAW 202- (P.41/2022): AMENDMENT (P.41/2022 AMD.) – COMMENTS

Presented to the States on 21st April 2022
by the Chief Minister

STATES GREFFE

COMMENTS

The Corporate Services Scrutiny Panel (the “Panel”) have proposed four amendments to the draft Official Analyst Law 202- (the “draft Law”) which would, in my view, strengthen it. I, therefore, ask Members to accept the Panel’s Amendments 1, 3, 4 and 5.

I also accept Amendment 2, but on the basis that this should not just be a narrow evaluation of the procedure for dismissing the Official Analyst.

While I am uncomfortable with placing a provision such as this in an enduring primary Law, I recognise that the Panel wish to ensure that some form of evaluation is carried out. To expend up to £12,000 of public funds on a review of the process for dismissing a single statutory office holder would not be in the public interest. Therefore, in accepting this amendment, I do so with the clear intention that such a review must encompass dismissal processes and procedures across a wide range of statutory office holders.

The process for dismissing the Official Analyst is based on existing processes for the dismissal of other statutory office holders. Article 3(1)(b) of the draft Law states that the Chief Minister “may dismiss the Official Analyst only if the Official Analyst has, without reasonable excuse, failed to discharge the functions of the Official Analyst.” The functions of the Official Analyst are set out under Article 5(1) of the draft Law.

Article 5 of the draft Law

(1) The function of the Official Analyst is to use chemical and microbiological analysis to advise on and investigate matters where it is in the public interest to do so, including in relation to –

- (a) law and order;
- (b) public health and safety;
- (c) environmental protection;
- (d) consumer interests;
- (e) government policies and functions.

This provides a power to dismiss the Official Analyst for failing to provide the services for which their office has been established. This sort of provision is commonplace across legislation which establishes public offices, as it is necessary and in the public interest to be able to remove public officials who are not performing the functions of their office. Examples of provisions of similar effect can be found under the following legislation:

- Paragraph 6(5)(c) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019;
- Article 5(3)(c) of the Commissioner for Standards (Jersey) Law 2017;
- Article 7(3)(c) of the Comptroller and Auditor General (Jersey) Law 2014; and
- Paragraph 7(1)(f) of the Regulation of Care (Jersey) Law 2014 (governing the dismissal of Care Commissioners).

As well as providing a mechanism to dismiss public office holders for failing to discharge their functions or duties, legislation must also ensure that public office holders

can be dismissed if they have behaved improperly. In cases, for example, when an office holder has misappropriated public funds or has conducted an inappropriate relationship. Again, provisions to the effect of Article 3(1)(c) of the draft Law can be found across legislation to ensure that office holders can be dismissed in such cases.

The Panel has drawn comparisons with Article 3(1) of the Statistics and Census (Jersey) Law 2018 which lists the responsibilities of the Chief Statistician. There are, however, no provisions to govern the dismissal of the Chief Statistician under that Law, which is something that the Statistics Legislation Steering Group has been working to address.

In conclusion, as Article 3(1) of the draft Law is representative of provisions governing the dismissal of several statutory public office holders, all of which intersect with wider employment law, it would be wasteful to expend public resources on a review of the dismissal process of the Official Analyst only. I support this amendment on the basis that a wider review of the sufficiency of statutory dismissal processes across all similar legislation should be carried out at the same time as the evaluation of the process for dismissing the Official Analyst. I shall recommend that this work should be taken forward by the next Council of Ministers.

Comment under Standing Order 37A

This comment was provided late to the States Greffe due to an administrative delay.