

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY SENATOR S.C. FERGUSON
ANSWER TO BE TABLED ON TUESDAY 30th APRIL 2019**

Question

Will H.M. Attorney General provide a list of all the legal provisions which currently define the organisational structures of States departments; and advise which of these provisions will need to be considered for change as a consequence of the ‘One Gov’ programme?

Answer

It would not be practicable to provide a list of all the legal provisions that *define* the organisational structures of departments and ministries of the States and the Government of Jersey. However, it may assist States Members if this is explained.

In general, the organisational structure of States departments is not defined by legislation. Provision is made with respect to the establishment of Ministerial portfolios, responsibilities and the conferral of functions and powers on Ministers in the States of Jersey Law 2005 (the “**2005 Law**”). The structure of departments is then determined and implemented through the exercise of powers in the 2005 Law to delegate functions to civil servants and Assistant Ministers (Article 28) and through general powers conferred in the Public Finances (Jersey) Law (including Article 8) to provide resources to specific departments and other public bodies and the Employment of States of Jersey Employees (Jersey) Law 2005 in relation to the management of finances and delegation of responsibilities.

The 2005 Law and the other enactments mentioned above are silent about the organisation of departments and do not need to be amended in order to organise civil servants to support ministers in new ways. However, insofar as powers are exercised by officers as delegates of a Minister under Article 28, any form of organisation must accommodate the Minister electing to involve him or herself directly in delegated powers. This will necessarily cease to be the case when Part 4 of the Machinery of Government (Miscellaneous Provisions) (Jersey) Law 2018 is brought into effect.

However, Ministers are charged with delivering particular statutory functions and services, and departments are, in practice, often structured in order to most effectively deliver those functions and services. This is a matter that was recently considered by the Assembly in relation to the “target operating model” for the Justice and Home Affairs Department, where (for example) customs and immigration service is structured and staffed by civil servants in a particular way in order to deliver that service for which the Minister for Home Affairs is responsible in accordance with the requirements of the Customs and Excise (Jersey) Law 1999.

This is not an arrangement which is particular to the Justice and Home Affairs Department. The Planning Law requires that there be a Chief Officer responsible for the delivery of the functions in that Law, the Education Law gives certain functions to a Chief Officer of the Education Department and so on. How each statutory function that may be exercised by Government may be affected by the implementation of the One Gov programme. That is a question for the Government, which is responsible for the delivery of these reforms.

Of course Members may seek Law Officers’ advice on the construction of specific enactments and the effect that particular aspects of these reforms may have on a case by case basis in respect of any plans for Governmental re-organisation. This is advice which the Law Officers’ Department stands ready to provide as demonstrated by the recent written answer to the Assembly WQ108/2019 tabled on 26 February 2019.