

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY SENATOR K.L. MOORE
ANSWER TO BE TABLED ON TUESDAY 4th FEBRUARY 2020**

Question

Will H.M. Attorney General outline for the Assembly the legal implications and consequences, if any, of a failure to publish the list of political responsibilities as required under Article 30A of the States of Jersey Law 2005?

Answer

Article 30A(1) of the States of Jersey Law 2005 (the “2005 Law”) requires the Chief Minister to establish, maintain and publish a consolidated list of the functions discharged by Ministers (including the Chief Minister) and delegated pursuant to Article 28 of the 2005 Law. By virtue of Article 30A(2) of the 2005 Law that list must also specify whether a Minister is discharging the functions of a Minister or the Chief Minister due to their temporary absence or incapacity.

There are two legal issues that I address in relation to circumstances where a list is not published in accordance with Article 30A of the 2005 Law:

- a) *Does the failure to publish the list affect the legality of a Minister or the Chief Minister exercising functions pursuant to a delegation or during any period of temporary absence of incapacity?*

In brief, Article 30A of the 2005 Law requires that information about the arrangements for the performance of public functions be collated. However, it is clear from the context of the 2005 Law that preparation of the consolidated list is not intended as a pre-requisite for the lawful conferral of functions, either by operation of Article 27 of the 2005 Law, or by their being delegated pursuant to Article 28 of that Law.

This construction is reflected in Article 30A(3), which provides that information need not be incorporated into the consolidated list where the period for which a delegation is in effect, or during which functions are discharged, is brief. If it were the case that the list must be compiled for a function to be lawfully exercised, then the exercise of discretion that Article 30A(3) anticipates could not exist.

It follows that the failure to publish a list does not affect the legality of anything that might be done by a Minister or the Chief Minister pursuant to Article 27 or a delegation under Article 28 of the 2005 Law.

- b) *The manner in which the Chief Minister’s obligation in Article 30A of the 2005 Law may be enforced.*

The purpose of the provision in Article 30A of the 2005 Law would appear to be to ensure that those who exercise a Minister’s functions pursuant to Articles 27 and 28 of the 2005 Law can be easily identified and held accountable. There is no specific legal enforcement mechanism provided in the 2005 Law in respect of the obligation in Article 30A of the 2005 Law and the enforcement of this obligation is therefore primarily a matter for the Assembly, which may hold the Chief Minister to account for the discharge of his functions, including the preparation of the consolidated list, politically.