

STATES OF JERSEY



STATES EMPLOYEES ENGAGING IN POLITICAL ACTIVITIES: DRAFT PROPOSALS

**Presented to the States on 22nd March 2005
by the Policy and Resources Committee**

STATES GREFFE

REPORT

Introduction

The issue of liberalising the approach that is taken with regard to States' employees engaging in various forms of political activity has been considered several times in the recent past as a result of both employee and employer initiatives. At those times, conservative responses have tended to outweigh a call for change that would have enabled employees to engage in such activities and no particular action was taken. The issue remained unresolved.

However, when the matter was raised again during consideration of proposed amendments to the States of Jersey Law, when it was proposed to increase the number of States employees who could stand for the States, a commitment was made during the recent debate and the Policy and Resources Committee has now given fresh consideration to this matter and wishes to consult with those likely to be affected on a possible approach.

The Committee sets out its views in this Report in order to encourage comment and deliberation and to ensure that there is a measure of support for the proposed more liberalised approach, before committing scarce law drafting resources to producing the appropriate legislative amendments for debate later this year.

Background

At present, under the terms of Article 16 of the Civil Service Administration (General) (Jersey) Rules 1949, all civil servants are debarred from standing as a member of the States. Similarly, legislation relating to certain other employees holding specific roles, such as Prison Officers, is also in place to debar such employees from standing for election. However, other public sector employees, such as manual workers and nurses, are not subject to similar restrictions.

In essence, the approach that is being recommended is designed to ensure that certain employees who hold offices which are linked to policy formulation or legal responsibilities should be debarred from standing for election whilst still employed by the States. This group is referred to subsequently as "politically ineligible". Others, who are not involved in such areas, would be given entitlement, under certain conditions, to pursue their candidature as a States member. This group is referred to subsequently as "politically eligible".

It is considered that designation of "politically eligibility" and "politically ineligibility" be in accordance with the **attached** Schedule.

Such an approach is designed to provide a much wider opportunity for those States employees who hold designated roles to stand for election. The United Kingdom, as well as certain other smaller jurisdictions such as the Isle of Man, Malta and Gibraltar have also taken a similar route.

Proposed way forward

1. Standing for election

In the case of those categorised as "politically eligible", the following procedures should be followed if employees wish to stand for membership of the States –

- The employees should inform their employer as early as possible of their intention to stand for the States, in order that practical steps can be taken to plan for the consequential effects.
- They will be deemed to be on unpaid leave with effect from the date of their formal nomination as a candidate for the States.
- They will be entitled to contribute voluntarily to the Public Employees Contributory Retirement

Scheme/Teachers Superannuation Scheme for the period of their unpaid leave. The employee will be responsible for paying both elements (employer and employee) of those contributions.

In the event that these employees are successful in their election to the States –

- Their employment with the States of Jersey will be deemed to have terminated on the day preceding the day on which they are to be sworn in as members of the States.

In the event that these employees are unsuccessful in being elected to the States –

- They would be expected to return to their previous role within 4 weeks after the date of the election in which they stood.
- They will thereafter undertake the same duties and be entitled to the same terms and conditions of service that related to them immediately prior to the commencement of their period of unpaid leave.

It is proposed that those who are “politically ineligible” should be obliged to behave in accordance with the following procedures in the event that they wish to stand for election to the States –

- They should inform their employer as early as possible of their intention to stand as a member of the States.
- The employee will be deemed to have resigned with effect from the day previous to that on which they publicly commence campaigning or from their formal nomination, whichever is the earlier.
- No remuneration will be paid to the employee following their resignation.
- If the employee is unsuccessful, s/he will be free to take up employment with the States of Jersey after a “cooling-off” period of 8 weeks after the Election Day. This must occur in open competition and the employee will be treated equally with all other applicants for such vacancies in accordance with the Recruitment Code that has been issued by the Jersey Appointments Commission.

2. Other political activities by States’ employees

In addressing the issues surrounding whether public sector employees should be permitted to stand for election for the States, it became apparent that other matters relating to the freedom of public sector employees to openly engage in political activities should also be considered. Under Article 17 of the Civil Service Administrator (General) (Jersey) Rules 1949 (R&O 2430) it is stated that–

“17. No officer shall take a public part in any political matter.”

Similar provisions apply to other public sector pay groups.

In view of the fact that it is being proposed that certain public sector employees should be granted eligibility to stand for the States in future, it is considered that arguments can also be advanced to permit certain public sector employees to provide support openly to those who are standing for the States or to make public statements on what could be considered politically controversial matters. In fact, it is particularly timely that these issues have come to the fore in view of the need to take account of the provisions of the European Convention on Human Rights and the new approach identified by the States with regard to Freedom of Information.

Under Article 10.1 of the Convention on Human Rights –

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”

This is a qualified right and, in certain circumstances set out in the Convention, it is possible to impose restrictions on this freedom. However, such restrictions must be prescribed by law and identified as necessary in a democratic society. For example, in the case of the latter qualification, it could be considered that States members are entitled to expect support from officers who are politically neutral and who are loyal to the States as a whole. Notwithstanding this qualification, any actions taken in this area must be proportional and therefore not deemed to be excessive to achieve the overall aim that is being sought. In the light of these considerations, it is apparent that care must be taken to ensure that any approach that is adopted will conform to the European Convention on Human Rights.

On the face of it, it could be argued that eligibility to support candidates standing for the States and to comment publicly on political matters could be granted to those identified as “politically eligible” in paragraph 1 of the Schedule to this Report. However, this might be considered too broad an approach for the purposes of the Convention. As a consequence, the Committee will need to give further careful consideration to these matters and come back to the States with proposals later this year.

Recommendation

With regard to standing for election, the Policy and Resources Committee feels that the above approach provides greater opportunity for a significantly larger number of public sector employees to stand as a candidate for the States where this is considered to be consistent with their role within the States of Jersey. However, it recognises that such an approach might be considered contentious and has, therefore, determined to open the matter up for comment first in order to allow for the views of individual members to be raised and considered. It would, therefore, be pleased for comments from States’ members and others to be forwarded to the Acting Chief Officer of States Human Resources by the end of April 2005. In addition, consultation will also take place with employee representative groups and States departments.

Depending upon the outcome of this consultative process, the Policy and Resources Committee would then initiate appropriate legislative amendments to the States of Jersey Law later this year and bring these forward for approval by the States.

Further, the Committee would also encourage members and other interested groups to comment upon the other issue that has been broached above concerning States employees publicly supporting candidates for election and making public comment on political issues. The Policy and Resources Committee will take these into account when determining how it would wish to proceed in this area. The Committee envisages bringing a Report to the States about this issue for consideration later this year.

SCHEDULE

1. Those employees of the States who should be designated “politically eligible” are as follows –
 - Manual workers
 - Airport Electricians
 - Employees in the Airport Fire Service
 - Marine Section Employees
 - Officers of the States of Jersey Fire and Rescue Service, excluding those officers identified in paragraph 2 below
 - Nurses and Midwives
 - Medical Consultants
 - Junior Doctors
 - Ambulance Service Employees
 - Teachers
 - Education Support Staff
 - College Lecturers
 - Prison Officers, excluding those officers identified in paragraph 2 below
 - All civil servants who are appointed to posts which are graded 11 or below and who do not fall within the “politically restricted” category.

2. Those employees of the States who should be designated as “politically ineligible” are as follows –
 - Officers referred to in the Departments of the Judiciary and the Legislature (Jersey) Law 1965 (L.22/65)
 - Crown Advocates and Legal Advisers employed in the Law Officers’ Department
 - Officers of the States of Jersey Police Force
 - Chief Officer and Deputy Chief Officer of the Fire Service
 - Prison Governor and Deputy Governor
 - Head Teachers and Deputy Head Teachers
 - All civil servants who are appointed to posts which are graded 12 or above.