
STATES OF JERSEY



CODE OF CONDUCT AND PRACTICE FOR MINISTERS AND ASSISTANT MINISTERS

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by the Council of Ministers

STATES GREFFE

CODE OF CONDUCT AND PRACTICE FOR MINISTERS AND ASSISTANT MINISTERS

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**Code of Conduct and Practice for Ministers and Assistant Ministers
("the Code")**

1. Ministers and Assistant Ministers are expected to uphold the highest standards of propriety through observance of the Seven Principles of Public Life (selflessness, integrity, objectivity, accountability, openness, honesty, leadership) as outlined in **Appendix 1**. As members of the States Assembly, Ministers are required to comply at all times with the Code of Conduct for Elected Members.
2. Whether in person or through their Assistant Ministers, Ministers have a duty to the States Assembly to account for matters for which they are responsible, including for the policies, decisions and actions of the departments and agencies which discharge their responsibilities.
3. Ministers should place the highest priority possible on participating in the business of the States Assembly generally. It is nonetheless recognised that holding a ministerial portfolio is demanding, and that Ministers will need to be absent on occasion from parliamentary business due to their ministerial responsibilities.
4. Ministers should uphold the principle of collective responsibility, save where it is explicitly set aside by the Chief Minister in relation to a "free vote" (most commonly used on an 'issue of conscience') or "agreement to differ" (as the Chief Minister may determine in exceptional cases). Collective responsibility requires that Ministers should be able to express their views frankly and freely in private, while maintaining a united position when decisions have been reached. This includes not disclosing the internal process through which a decision has been made by the Council of Ministers ("Council"), and extends to all exchanges between Ministers in the furtherance of the functions of the executive.
5. The principle of collective responsibility also extends to the Assistant Ministers of the Minister proposing a matter to the States Assembly, and, where it is the Council as a whole that is proposing a matter, to the Assistant Ministers who assist the Minister who has the principal policy responsibility and who would be the main rapporteur.
6. Matters wholly within the responsibility of a single Minister and which do not fall under the functions of the Council need not be brought to the Council. However, matters that affect more than one Minister should be brought to the Council. A Minister may also ask to bring a matter of sole responsibility to the Council for guidance, and the Chief Minister may request that a matter be considered by the Council. As a guide, the Council should consider matters of importance, and the more important a matter, the stronger the rationale for bringing it to the Council.
7. It is the responsibility of the proposing Minister to ensure that a matter is brought before the Council, and to have discussed the matter with other relevant Ministers in advance of the Council meeting, including having attempted to resolve any policy differences with those Ministers before the matter is considered by the Council. Wherever possible, these discussions

should take place through ministerial groups established by the Council to provide the fullest opportunity for policy matters to be considered.

8. The Council is able to give direction to a Minister or Assistant Minister as to how their functions should be discharged, having consulted with the Minister or Assistant Minister first. This direction cannot relate to individual determinations under statute or other instrument. However, directions can relate to policies which may in due course affect the overall framework within which determinations are made.
9. The Council has responsibility for the development and presentation of a statement of their strategic priorities, and the prioritisation of legislative proposals across the ministerial portfolios. The Council is also responsible for discussing and agreeing their common policy regarding external relations. The Council should keep these matters under review by considering reports on progress against strategic priorities, including prioritising initiatives within any single calendar year.
10. The Council comprises the Chief Minister and Ministers, and is chaired by the Chief Minister, and in the absence of the Chief Minister, by the Deputy Chief Minister. In the absence of a Minister, and where one exists, an Assistant Minister shall attend in their place and, in any event, Assistant Ministers may attend for agenda items where the principle of collective responsibility applies to them. The Chair may invite other persons to attend Council meetings to inform and support the conduct of business. This includes Assistant Ministers and Officers in relation to relevant agenda items, and as a matter of normal practice, standing invites to attend exist for the Assistant Ministers to the Chief Minister; the Chairman of the Comité des Connétables; the Chief Executive; the Attorney General; and the Greffier of the States. The meetings of the Council will be supported by administrative staff of the Chief Minister's Department and recorded by the States Greffe, and papers, agendas and minutes will be circulated and published in accordance with prevailing rules on access to government information.
11. When the States Assembly is in Session, the most important announcements of policy should be made in the first instance in the Assembly, and in any event, States Members should be notified in advance of the media.
12. Before making a policy announcement relating to their ministerial responsibilities, with a consequence for the image and reputation of the executive, other than minor, and however so made and by whatever media or means, Ministers and Assistant Ministers shall consider whether it raises issues which fall under the functions of the Council and, if so, bring the matter to the Council prior to any publication. In any event, the Chief Minister shall be notified of the intention to make an announcement for the purposes of co-ordinating the publication of government business, save for minor matters. Furthermore, public announcements shall avoid the appearance of a breach of the principle of collective responsibility and support the united position of the Council.

13. Ministers and Assistant Ministers should engage with the Scrutiny Panels in the manner outlined in the Code of Practice for Engagement between Scrutiny and Ministers and Assistant Ministers.
 14. Ministers and Assistant Ministers should record decisions in compliance with the “Ministerial Decisions Guidelines” issued by the Chief Minister, as included as **Appendix 3** and updated periodically.
 15. The Chief Minister is responsible for the allocation of responsibilities between Ministers, other than in so far as prescribed in statute, and the Chief Minister’s approval must be sought to any changes proposed which affect the allocation of responsibilities, save for minor matters. Where the Chief Minister seeks to exercise his responsibilities around the overall organisation of the Executive, the Ministers affected should be notified, provided with the rationale, and be given an opportunity to be heard by the Chief Minister, who in turn should inform the Council and the States Assembly of any such decisions.
 16. Ministers may bring propositions to the Assembly in their capacity as private members where that proposition does not relate to any matter governed by collective responsibility, whether that be an area of settled policy, or a matter that the Council may wish to adopt as its policy (in which event Council should be consulted). This is noting that exceptions to collective responsibility can be made as outlined in paragraph 4. This applies to Assistant Ministers in so far as the principle of collective responsibility applies to them, as outlined in paragraph 5.
 17. Ministers and Assistant Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private interests or any other public role they hold, ensuring that their actions do not compromise their judgement or place themselves under an improper obligation. They should be guided by the general principle that they should either dispose of the interest giving rise to the actual or perceived conflict or take alternative steps to prevent it. In some cases, it may not be possible to devise a mechanism to avoid such a conflict of interest. In any such case, the Chief Minister must be consulted, and it may be necessary for the Minister to cease to hold ministerial office. The avoidance of conflict includes, but is not restricted to –
 - (a) Gifts, hospitality, travel or any other perceived benefits, which should generally not be accepted, other than in so far as offence may be caused if refused, or where the gift may be appropriately displayed by a Department. Where accepted, items over £40 should be recorded in departmental gift registers.
 - (b) The commencement of legal proceedings that do not relate to their ministerial responsibilities, considering the implications for their ministerial responsibilities.
 18. Ministers should keep their ministerial and constituency responsibilities separate. Ministers are free to make their views known about constituency matters, to the responsible Minister, by correspondence or by personal interview, provided they make clear that they are acting as their constituents’
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representative and not as a Minister. Ministers should be mindful of the principle of collective responsibility and should avoid public comment or action that is contrary to the policy of the Council of Ministers, unless collective responsibility is waived by the Chief Minister. Ministers must take particular care to avoid any conflict of interest if they have to take decisions which impact principally on the district or parish they represent, and should seek to arrange their responsibilities so as to avoid perceived conflicts of interest, for example by delegating those decisions where possible. Where a function has been delegated to an Assistant Minister, the same principles apply, and so an Assistant Minister should not make decisions that impact principally on the district or parish they represent, and instead their Minister should make any such decision.

19. Ministers and Assistant Ministers have a duty to give fair consideration and weight to the advice of officers; must uphold the political impartiality of officers and not ask them to act in a way which would conflict with their responsibilities and obligations; and should act with courtesy and respect at all times toward officers, recognising their obligations as a good employer, for example, in promoting an environment that excludes bullying and discrimination and supports the open expression of views. In turn, officers have a duty to show the same consideration to Ministers and Assistant Ministers, recognising the authority of the ministerial office.
20. Ministers and Assistant Ministers are personally responsible for deciding how to conduct themselves in the light of the Code and for justifying their actions and conduct to the Chief Minister, the States Assembly and the Public, and should inform the Chief Minister immediately of any possible breach of the Code.
21. The Chief Minister determines compliance with the Code and any associated actions, in the manner in outlined in **Appendix 2**.
22. During an election period (normally being between the nomination meetings and the election of the last Minister into office), Ministers retain executive responsibilities, and the essential business of government must be carried on. However, they should observe discretion in initiating any new action of a continuing or long-term character; and decisions on matters of policy on which a new Council or Minister might be expected to want the opportunity to take a different view should be postponed where possible, provided that such postponement would not be detrimental to the Island's best interests or wasteful of resources. Furthermore, Ministers should apply sensible restrictions on the publicity they issue in connection with their role as a Minister during this period. This all applies to Assistant Ministers in so far as the principle of collective responsibility applies to them, as outlined in paragraph 5.
23. Ministers and Assistant Ministers must only use information obtained in the course of their ministerial responsibilities, and the resources available to them from Departments, including staff, for the purposes of discharging their ministerial responsibilities, and in accordance with relevant statutes, and not for any other reason, including other public offices, and return all information

and devices obtained in the course of their ministerial office on ceasing to hold that office.

24. The Law Officers' Department should be consulted in good time on significant decisions involving legal and constitutional considerations.
25. Ministers and Assistant Ministers should avoid providing direction in any individual or specific enforcement, compliance, or policing investigation undertaken by their Departments, dealing only with matters of general policy.
26. If there is doubt on the part of a Minister or Assistant Minister about the application of this Code, or difficulty in applying the code, then they should approach the Chief Executive, who will provide or facilitate the provision of advice, or as they may wish, approach the Chief Minister.
27. The Code is not designed as a means of appealing administrative decisions, including those taken by a Minister or an Assistant Minister, other than in so far as the Minister's or Assistant Minister's personal conduct in undertaking those decisions is such that a breach of the Code is likely. Instead, appealing administrative decisions is a matter for internal departmental appeals processes, the States of Jersey Complaints Board, and ultimately the courts.

APPENDIX 1**The Seven Principles of Public Life****Selflessness**

Holders of public office should act solely in terms of the public interest.

They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2**Procedure in relation to alleged breaches of the Code**

1. Save as the context otherwise requires, any reference to the Chief Minister shall, in the case of a complaint about the Chief Minister, be interpreted as a reference to the Deputy Chief Minister.
 2. Any complaint against a Minister that there has been a breach of the Code must be made in writing.
 3. The Chief Minister may decline to entertain a complaint which appears to the Chief Minister –
 - (a) not to refer to a breach of the Code;
 - (b) to be minor, frivolous or vexatious;
 - (c) save in exceptional circumstances, to relate to a matter that occurred more than 12 months prior to the date of the complaint;
 - (d) to relate to an action by the Minister of an administrative nature, or in discharge of that Minister's ministerial responsibilities, in respect of which an appropriate avenue of appeal under the Law governing such activities otherwise lies,but, in all other cases he shall cause the complaint to be investigated.
 4. The Chief Minister may of his own volition initiate an investigation into a potential breach of the Code where he suspects that a breach may have been committed.
 5. The Chief Minister shall notify any Minister who is the subject of a complaint or investigation that a complaint has been made and/or investigation initiated into a potential breach of the Code. Such notification shall include an outline of the complaint made or an explanation for the decision by the Chief Minister to initiate an investigation.
 6. The investigation shall be limited to the matters notified to the Minister, and no new matters will be added other than to the extent that the investigation identifies the existence of such matters, in which event the Chief Minister will notify the Minister concerned of the additional matters.
 7. The Minister shall be afforded a period of 10 days to respond to the initial notification and to any subsequent notification. The Chief Minister may extend or shorten this period as shall be fair in all the circumstances, should they deem the matter so urgent, or should the ability of the Minister to respond be justifiably constrained. In responding, the Minister shall be afforded the opportunity to be heard in person by the Chief Minister.
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8. In order to determine a complaint, the Chief Minister may, in any manner he deems appropriate, commission an investigation to gather facts or make findings of fact. Those carrying out the investigation should seek to ascertain the facts and report its findings of fact to the Chief Minister. Those findings may be made on the balance of probabilities.
9. The conclusions of any investigation and any report underpinning those conclusions should be shown to the Minister who is the subject of the complaint, and the Minister should be afforded a further opportunity to respond within such period as the Chief Minister shall determine. At this point, a Minister should also have the opportunity to be heard by the Chief Minister.
10. A decision as to whether or not a breach of the Code has taken place is for the Chief Minister, who shall also determine the appropriate sanction in the event that a breach of the Code has been found. In doing so, the Chief Minister may consult with the Council of Ministers. Any decision, together with any sanction, should be notified to the Minister in writing and, other than in exceptional circumstances, to States Members in advance of any public announcement.
11. That is, save as otherwise provided for within this Appendix, the Chief Minister shall determine all matters of procedure, including the extent to which other Ministers and the Council of Ministers should be involved in the disciplinary process.



RECORDING OF MINISTERIAL DECISIONS

**GUIDELINES FOR MINISTERS AND DEPARTMENTS
PUBLISHED BY THE CHIEF MINISTER'S DEPARTMENT**

January 2015

RECORDING OF MINISTERIAL DECISIONS

1. Introduction

This guide provides clarity on the Ministerial Decisions process, and assists in managing and recording Ministerial Decisions to ensure they are of an appropriate quality and produced when required.

2. Why record Ministerial Decisions?

Recording Ministerial Decisions properly and accurately is vital to the effective governance of the States of Jersey. Ministerial Decisions, properly recorded, are required to –

- Demonstrate that good governance and clear lines of accountability are in place. In particular, the separation of advice to Ministers, the actual process of decision-making, and the implementation of decisions.
- Provide a record of decisions and actions that will be available for examination by Scrutiny Panels, States Members, the Public and the media.
- Provide a historical record and point of reference in the event that a decision should be challenged or form part of an investigation or legal challenge.
- Provide a record of the action needed to implement the decision (normally by the Department).

The absence of a properly recorded Ministerial Decision can have a number of consequences, not least exposure to criticism over decisions that are not formally recorded, lack of clarity over advice provided, decisions which may not be supported in law, and decisions which may not be in line with established practice, e.g. Standing Orders. **The process for doing this must be robust to ensure the highest quality.**

3. When will Ministerial Decisions need to be recorded?

A list of the type of Ministerial Decisions that should be recorded is set out below. This is not a comprehensive list, because there may be other decisions that a Department feels should be recorded by way of a Ministerial Decision. For example, a decision that is regarded as significant should be recorded as a Ministerial Decision. What is “significant” will depend on the circumstances and require the judgement of officers and Ministers.

- A decision to delegate functions to an Assistant Minister or officer, in accordance with Article 28 of the States of Jersey Law 2005 (this only relates to statutory functions, including the functions conferred on a Minister by the States of Jersey Law).
- A decision to grant consent or permission under statutory provision, unless delegated to an officer.

- The making of an Order under powers conferred upon the Minister by legislation.
- A decision to approve a draft report and proposition, or other document, for submission to the States, e.g. a comment on another proposition, unless presented and approved by the Council of Ministers.
- A decision to bring forward changes to legislation, whether primary or subordinate, for consideration by the States (and subject to the agreed prioritisation process in the States of Jersey Law), including decisions relating to drafting instructions.
- A decision to approve a Green or White Paper which must then be presented to the States, unless presented and approved by the Council of Ministers.
- A decision on a matter of policy that does not need to be referred to the Council of Ministers or the States, unless a minor matter.
- A decision to approve a draft budget for forwarding to the Council of Ministers and the States.
- A decision to award a contract or to enter into an equivalent instrument creating a financial liability, unless such powers are delegated to an officer by a separate Ministerial Decision. Such a delegation should be put in place, up to a financial limit to be determined by each Minister, to secure effective administration. This is designed to ensure transparency as to the respective functions of Ministers and officers.
- A decision to nominate or appoint a person as a member of a trust, working party, advisory panel, or other body. (This does not extend to internal ministerial policy advisory groups, in which case the approval of the Council of Ministers is sufficient to establish and constitute.)
- Decision to allocate significant resources, in particular, financial and manpower resources.

Ministerial Decisions will need to be recorded individually, on a decision template, and each template will need to be signed by the Minister, or if a function has been appropriately delegated, by an Assistant Minister, and by a senior officer.

As already noted, this list of Ministerial Decisions is not exhaustive and some issues may not be clear. In such instances, the advice and support of the States Greffe should be sought, reference should be made to this guide, or the advice of the Chief Executive sought. In doing this, it should be clear that the individual Department and Minister is responsible for adhering to this guidance and making decisions thereunder. **If there is doubt as to whether or not a decision needs to be recorded, err on the side of caution and obtain a signed Ministerial Decision.**

4. What overall governance arrangements are required?

While these guidelines for recording Ministerial Decisions set out the formal process, there are some important points which will ensure that there is an appropriate departmental governance arrangement in relation to the separation of advice to Ministers, the actual process of decision-making and the implementation of decisions.

This involves ensuring that appropriate arrangements are put in place for Ministers to receive advice, ensuring the right information is available to support the decision, ensuring decisions are within the legal and resource framework of the States, and ensuring that senior officers are aware of their responsibilities as part of the decision-making process.

Specifically, the following governance arrangements must be followed –

1. It is inappropriate for Ministers to take decisions without receiving advice from their officers. Where matters are particularly significant or controversial, that advice should, whenever possible, be reviewed by the Chief Officer.
2. A Minister must make it clear at the beginning of a meeting where no officer is present that no decisions can be taken at the meeting. In all but the most urgent of cases, the Minister should not be expected to make a decision on the spot. The Minister should be afforded the opportunity to reflect upon the matter and consider appropriate advice and evidence.
3. A Minister might indicate his or her intent verbally or by other means, but a decision will only be made when the Ministerial Decision is signed or, *in extremis*, agreed remotely and in writing, e.g. by e-mail.
4. The decision form must as far as possible be fully completed and supported by appropriate information and a trail to relevant documents, such that the Ministerial Decision and supporting documentation can stand substantially on its own as record and rationale for the decision.
5. The officer providing advice and/or completing the decision form is accountable for the advice given. It should be complete and balanced and reflect the officer's best professional advice. Ministers, as the decision-takers, are free to take a different view and a contrary decision to the advice received. The Minister's reasoning should be recorded.
6. Officers will be expected to implement Ministerial Decisions regardless of the advice given. If, however, a decision were to result in an illegal act, contravene financial directions or create a significant risk to the States or the Island, the officer should refer the matter to the Chief Officer of the Department or, if the officer is a Chief Officer, to the Chief Executive to the Council of Ministers. Those senior officers will be expected to discuss the matter with the Minister or the Council of Ministers in order to resolve it appropriately.
7. In the case of a decision which contravenes financial directions or would otherwise contravene the role of Accounting Officer, the Minister will have to issue a directive in the form a letter of instruction. In doing so, the Accounting

Officer will follow the rules laid out for such matters in the Financial Direction titled “Accounting Officers”.

8. Chief Officers are personally responsible for ensuring that Ministers are appropriately supported, and that all appropriate officers are fully aware of and trained to fulfil their responsibilities. This includes where the Minister takes a view that a Ministerial Decision is not required with reference to this guidance.
9. Ministers are personally responsible for ensuring that they follow the rules and guidelines to ensure that their actions are subject to sufficient governance, and that there is appropriate separation of advice and recording of decisions.
10. In order to ensure appropriate segregation of responsibilities, Ministers should whenever possible refrain from implementing their own decisions.

5. Process for recording of Ministerial Decisions

To support the required governance arrangements, the process as outlined in Appendix 1 has been established for the recording of Ministerial Decisions.

While there is no intention to constrain different ways of interacting with a particular Minister in differing circumstances, it is important that a core process is established which is followed by all departments. Some departments may wish to add to this process with additional stages and steps, but it is important that the core elements are followed by all departments. This process recognises that there will be informal discussion with the Minister at various stages.

6. What are the main roles and responsibilities?

The preparation of papers and Ministerial Decisions and the management of the interaction with the Minister is the responsibility of senior officers within the Department. There are, however, a number of other roles which are set out below:

The Chief Minister’s Department

The Chief Minister’s Department is responsible for the overall process and ensuring the provision of training as necessary, and that all appropriate information and guidance is provided to departments and Ministers about the process.

The States Greffe

The States Greffe is responsible for the **Quality Assurance** of Ministerial Decisions, as well as the **formal recording and publishing of Decisions** made.

The **States Greffe must review all decisions before they are signed** and indicate in comments in LiveLink if changes are considered to be necessary. The States Greffe will provide advice on matters relating to procedure, legislation, and exemptions from publishing, in so far as practicable, noting that it is the Department’s responsibility to make these assessments, seeking legal advice as needed.

Departments

Departments are responsible for bringing to the attention of their Ministers matters that require a Ministerial Decision under this guidance.

Departments are responsible for ensuring that the process for decisions taken by their Minister is appropriate and the outcome is properly recorded, which includes complying with this guidance. This includes –

- ensuring interaction with the Minister is appropriate
- ensuring documentation provided to the Minister is complete
- preparing the Ministerial Decision template to the desired standard
- ensuring the right level of ‘internal’ Quality Assurance takes place
- ensuring the Ministerial Decision is processed correctly and signed at the correct time
- and, when making Decisions in relation to Standing Orders and other legislation, and exemptions from the requirement to publish under the Freedom of Information (Jersey) Law 2011, seeking legal advice as needed, and noting any advice provided by the States Greffe in the course of their Quality Assurance.

Ministers

The duty of Ministers is to ensure that they are aware of what they are signing and are happy with the supporting documents. Ministers have a duty to the States to account, and be held to account, for the policies, decisions and actions of their Department and agencies for which their Department has responsibility. It is the duty of Ministers to remember that, ultimately, any decision they sign rests with them and it is their responsibility to answer for it and defend it.

In noting these respective responsibilities, it should nevertheless be recognised that the conduct of the business of government is often complex, and where roles and responsibilities are not discharged in accordance with this guidance, that the earliest correction is needed and an appropriate investigation should be undertaken.

7. When should items be exempt?

The accessibility of the item is directed by the Freedom of Information (Jersey) Law 2011, and reference should be had to the exemptions in the Law when processing a Ministerial Decision.

8. Legal issues

Legal advice should not be referred to as part of the Decision, nor should there be a reference to it which could lead to a Freedom of Information request. This is to protect legal privilege and to ensure the confidentiality of communications between the

Minister and the Law Officers consistently with the decision of the States on 12th March 2008 in relation to P.198/2007.

There is no reason, however, why the Ministerial Decision should not state what the Law is, if that is the material factor which led to it being made. It is suggested that there is discussion with the Law Officers if it is thought that a statement of the Law will be included in the formal Decision.

9. Storage of Ministerial Decisions

The States Greffe acts as record-keeper for the States of Jersey, so offers support to departments in the storage of Ministerial Decisions. However, it must be noted that the responsibility for maintaining a robust record of Ministerial Decisions ultimately rests with individual departments.

10. Training

Each new Council of Ministers, and any new Ministers appointed during the term of the Council, will receive an induction/refresher session in this guidance.

The Chief Minister's Department will also ensure that the guidance has a prominent location on the Intranet, and is circulated periodically to Chief Officers and Senior Managers, and in particular at the start of each term of the Council of Ministers.

The Chief Minister's Department will allocate responsibility for the above tasks to a senior officer, whose responsibilities include the above, as well as liaising with the States Greffe to identify any concerns that may give rise to further general or targeted training, or reminders, or other remedial action; for example, a further updating of this guidance. Any departmental officer with responsibilities for Ministerial Decisions, and the States Greffe, or individual Ministers, may contact this individual through the Chief Executive.