
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR HOME AFFAIRS – TEMPORARY DELEGATIONS TO PRISON GOVERNOR

**Presented to the States on 21st April 2020
by the Minister for Home Affairs**

STATES GREFFE

REPORT

On 21st April 2020, the Minister for Home Affairs made a Ministerial Decision delegating certain of his functions under Articles 28, 30 and 30A of the [States of Jersey Law 2005](#) (see Decision reference MD-HA-2020-0032, available at www.gov.je).

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

“28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
 - (a) one of his or her Assistant Ministers;
 - (b) an officer.
- (1A) A Minister shall not delegate to an Assistant Minister any function the delegation of which is wholly prohibited by an enactment.
- (1B) Where a Minister delegates to an Assistant Minister a power to make an enactment, paragraphs (4) and (5) of Article 26 shall apply to the making of an enactment by the Assistant Minister, in exercise of the delegated power, as they would apply to the making of the enactment by the Minister.
- (2) A Minister shall not delegate to an officer –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited wholly, or to an officer, by an enactment.
- (3) The delegation of functions by a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article –

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.
- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

“30 Ministerial delegations to be presented to States

- (1) A Minister who delegates functions under Article 28 shall present to the States a report specifying the functions delegated and to whom.
- (2) A Minister shall not be required to present a report under paragraph (1) where the delegation is so immediate and of such brief duration that it is not practicable to present the report before the delegation ends.

30A List of delegations to be published

- (1) The Chief Minister shall cause to be established, maintained and published a consolidated list of –
 - (a) the functions for the time being discharged by the Chief Minister and by each Minister;
 - (b) the functions for the time being delegated by the Chief Minister and each Minister under Article 28, and to whom.
- (2) The list shall also specify which Minister is discharging, for the time being, the functions of another Minister under Article 27(1) or (2).
- (3) The information described in paragraph (1)(b) or (2) is not required to be incorporated in the list where the period for which the delegation has effect or for which one Minister’s functions are being discharged by another is so immediate and of such brief duration that it is not practicable to amend and publish the list to incorporate the information before the end of the period.
- (4) It shall be sufficient if the list is published on a website.”

The terms of the delegations, and the legislation under which those delegations were made, were recorded in a Report attached to the Ministerial Decision, as shown below –

[R.88/2018](#), presented to the States Assembly on 10th July 2018, confirmed that the Minister for Home Affairs had approved the delegation of all the functions conferred upon or vested in him to the Assistant Minister for Home Affairs, Deputy G.C.U. Guida of St. Lawrence.

[R.32/2020](#), presented to the States Assembly on 31st March 2020, confirmed that the Minister for Home Affairs had appointed an additional Assistant Minister for Home Affairs, Deputy L.B.E. Ash of St. Clement. The report also confirmed that the Minister for Home Affairs had approved the delegation of all the functions conferred upon or vested in him to Deputy Ash, but only during those periods when the Minister or the existing Assistant Minister, Deputy Guida, were unavailable. This appointment and delegation were made to increase capacity in the ministerial team in response to the Covid-19 pandemic.

In accordance with Article 28(1A) of the [States of Jersey Law 2005](#) (the “2005 Law”), the Minister did not delegate any function the delegation of which is wholly prohibited by an enactment.

[R.122/2019](#), presented to the States Assembly on 20th September 2019, confirmed that the Minister for Home Affairs had delegated certain functions to relevant officers. The delegations accorded with Article 28(2) of the 2005 Law.

In response to the Covid-19 pandemic, the Minister for Home Affairs decided to amend the [Prison \(Jersey\) Rules 2007](#) (the “Prison Rules”) to make further provision in respect of his powers to recall prisoners temporarily released from H.M. Prison La Moye. These amendments were made having regard to the need to manage the Prison population during the pandemic.

Prisons are high-risk infection settings both for prisoners and staff. It is standard operational practice to look safely and lawfully to reduce the residential Prison population in this context, in order to reduce the risk of infection and relieve pressure on resources.

Some offenders are already released on licence as part of the Conditional Early Release (“CER”) Scheme to engage in employment, receive training, or for compassionate reasons. Offenders selected for release are assessed on their risk to the Public. Only low-risk offenders are released. Offenders are supervised while in the community. The same processes will apply to offenders who are released in order to manage the Prison population during the Covid-19 pandemic.

The amendment to the Prison Rules was made by Order by the Minister for Home Affairs on 21st April 2020 (*see* [Prison \(Temporary Amendment – Covid-19\) \(Jersey\) Rules 2020](#)). The provisions are time-limited until 30th September 2020. During this period, the Minister has delegated this function under the Prison Rules, with respect to the release and recall of prisoners, to the Prison Governor. This delegation will cease to have effect when the Order expires.

H.M. Prison La Moye

Legislation:	Prison (Jersey) Rules 2007
Delegate:	Prison Governor or, in his absence, the Deputy Prison Governor
Functions delegated:	The power under Rule 64 to grant a prisoner temporary release from H.M. Prison La Moye to manage the Prison population in response to the Covid-19 pandemic, and the power to recall a prisoner to the Prison.
Scope of delegation:	Notification to be submitted to the Minister for Home Affairs at the earliest opportunity.