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# STATES OF JERSEY



## STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR HOME AFFAIRS – REVISED DELEGATIONS FEBRUARY 2021

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Presented to the States on 12th February 2021  
by the Minister for Home Affairs

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STATES GREFFE

## REPORT

On 1st February 2021, 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-2021-0010, available at [www.gov.je](http://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.”

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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 –

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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 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.

R.41/2020, presented to the States Assembly on 21st April 2020, confirmed that the Minister for Home Affairs had delegated certain functions to the Prison Governor to allow for the management of the Prison population in response to the COVID-19 pandemic during the period 21st April 2020 to 30th September 2020.

On 19<sup>th</sup> December 2020 The Minister for Home Affairs made an amendment to the Prison Rules, the Prison (Amendment No. 4) (Jersey) Rules 2020. This amendment extended the application of Rule 63 (which allows the remission of sentences of imprisonment) and Rule 64 (which allows prisoners to be temporarily released) to prisoners in youth detention. These Rules were previously only applicable to those serving a sentence of imprisonment and were amended to address the inequality which existed between young offenders and other prisoners.

R.122/2019 included delegations to the Prisoner Governor in respect of Rules 63 and 64. Now that these Rules have been amended, it is necessary to amend the relevant delegations.

Accordingly, the following delegations are made to the Prison Governor by the Minister. The delegations accord with Article 28(2) of the 2005 Law:

<b>Legislation:</b>	Prison (Jersey) Rules 2007
<b>Delegate:</b>	Prison Governor or, in his absence, the Deputy Prison Governor
<b>Functions delegated:</b>	The power under Rule 63 to grant a prisoner remission of a portion of their term of imprisonment or youth detention, not exceeding one third of the whole, on the grounds of their industry and good conduct.
<b>Scope of delegation:</b>	The remission of a portion of the term of imprisonment shall not reduce the term to less than 5 days.

<b>Legislation:</b>	Prison (Jersey) Rules 2007
<b>Delegate:</b>	Prison Governor or, in his absence, the Deputy Prison Governor
<b>Functions delegated:</b>	The power under Rule 64 to temporarily release a prisoner serving a sentence of imprisonment or youth detention from La Moye prison to enable them to engage in employment or receive training, and to recall them to prison.

<b>Scope of delegation:</b>	Notification to be submitted to the Minister for Home Affairs at the earliest opportunity.
<b>Legislation:</b>	Prison (Jersey) Rules 2007
<b>Delegate:</b>	Prison Governor or, in his absence, the Deputy Prison Governor
<b>Functions delegated:</b>	The power under Rule 64 to grant a prisoner, serving a sentence of imprisonment or youth detention, temporary Release, within and outside of Jersey, for compassionate reasons, and to recall them to prison.
<b>Scope of delegation:</b>	Notification to be submitted to the Minister for Home Affairs at the earliest opportunity.