

MINISTERIAL DECISIONS

SUPPLEMENTARY GUIDANCE TO THE
MINISTERIAL CODE

R.128/2024

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Introduction

The Codes of Conduct & Practice for Ministers and Assistant Ministers (“the Ministerial Code”) enables the Chief Minister, in consultation with the Council of Ministers, to produce and publish supplementary guidance to support interpretation of the Ministerial Code.¹

This document provides guidance to Ministers and Assistant Ministers (collectively “Executive Members”) relating to Ministerial Decisions and replaces any previously issued guidance.

1. Interpretation

Ministerial Decisions (“MDs”) refers collectively to the paperwork used to record a decision of an Executive Member. At a minimum, an MD will contain a Decision Summary (“DS”) and a Written Report (“WR”). Where needed, MDs may also include additional Supporting Documents.

2. The Purpose of Ministerial Decisions

As a document, MDs provide Executive Members and the Government of Jersey a mechanism for recording notable and/or significant decisions. Furthermore, they provide:

- via an accompanying WR, a record of advice provided to the Executive Member when making a decision;
- good governance by demonstrating clear lines of accountability;
- a record of significant decisions that can then be scrutinised;
- an historical record and point of reference in the event that a decision should be challenged or form part of an investigation;
- if appropriate, a public record of decisions; and
- a record of the action needed to implement a decision, if forward looking.

The absence of an MD can have a number of consequences, including but not limited to, exposure to criticism for a lack of a formal record, accountability, transparency, clarity, or authority for a decision.

It is important to recognise that as an MD is a recording mechanism, it must not be relied upon in such a way that prevents public servants, or those acting in a similar capacity, from acting on the decision of an Executive Member until such time that an MD has been produced, reviewed, and published. Regardless of whether an MD is produced or not, Executive Members can discharge the powers and functions of their ministerial office and instruct public servants accordingly.

However, there should be discretion in acting without an MD as this introduces an element of risk which can be avoided when there is an official record that can then be used to trigger other processes and functions. In such a scenario, confirmation in writing, such as an email or contemporaneous note, can mitigate this risk until such time an MD can be produced.

3. The Ministerial Code

MDs must be compliant with relevant aspects of the Ministerial Code including but not limited to conflict of interest, gifts and hospitality, travel and expenses, consultation with Law Officers and legal advice, election periods, advice from public servants, bringing matters to the Council of Ministers, Council of Ministers’ directions, announcements, appointments, and adherence.

4. Decisions That Should Be Recorded via Ministerial Decision

As a general rule, notable and significant decisions presented to or required of an Executive Member should be recorded via an MD. For avoidance of doubt, this includes decisions to either approve or refuse.

This general rule does not apply when there is a minute produced by the States Greffe or where a public MD would otherwise be justified.

The standard types of MDs are:

MD Type	Examples
Appointment(s)	<p>Appointments to a statutory role, group, body, or similar association as required by statute, decisions of the States Assembly, or where otherwise an MD would be appropriate.</p> <p>When producing MDs of this type, consideration should be given as to whether the appointment(s) needs to be made by the States Assembly or by the Minister. If by the Minister, this type of MD should be used, however, if by the States Assembly the 'lodging a proposition' type should be used.²</p>
Delegating	<p>Delegating functions to a Minister, Assistant Minister, or public servant pursuant to the States of Jersey Law 2005 must be recorded.³</p> <p>Delegation of policy to Assistant Ministers should also be recorded via MD unless otherwise recorded in a report produced under Article 30A of the States of Jersey Law.⁴</p>
Determination(s)	<p>Formal requests to grant, provide consent, or record permissions pursuant to statutory provisions or other discretion. For example, a determination of an application by a Minister. For avoidance of doubt, both decisions to consent or reject an application or similar instrument should be recorded.</p>
Drafting Instructions	<p>Drafting instructions for the Legislative Drafting Office to prepare primary and/or secondary legislation.</p>
Establishment	<p>Established sub-groups of the Council of Ministers, commonly known as 'Ministerial Groups', must be recorded via an MD by the Chief Minister. The MD should also include the Terms of Reference, which will be published to the Government of Jersey's website.⁵</p> <p>If establishing a board or similar body, consideration should be given to extant States Assembly decisions, notably whether a proposition to the States Assembly is required in the first instance.⁶</p>
Fees levied	<p>Where fees to be levied by the Government of Jersey require the agreement of an Executive Member and, if required, approval of the Treasurer of the States to increase fees above inflation.⁷</p>
Land Transactions	<p>Standing Orders of the States Assembly require land transactions to either be approved by the States Assembly or, if approval is not required, formal notification to the States Assembly.⁸</p>
Letters of Instruction	<p>Letters of instruction with regard to financial matters only.⁹</p>
Lodging	<p>Decisions to lodge a proposition or an amendment to a proposition as defined in Standing Orders.¹⁰</p>

MD Type	Examples
Making of an Order	When making an Order, an MD should be prepared explaining the reason for making it. While the Explanatory Note supporting the Order will state the effect of the Order, it will not state why the Executive Member was minded making the Order.
Miscellaneous	<p>Other matters where an Executive Member, whether personally or on the advice of public servants, is of the mind that a decision should be recorded in the interests of transparency and good and appropriate governance.</p> <p>For MDs under this category, advice should be sought from the Ministerial Office or the States Greffe in the first instance to avoid unnecessary MDs being produced and to highlight if this guidance needs to be reviewed.</p>
Presenting	Presenting a report, comments, or document to the States Assembly as detailed in Standing Orders. ¹¹
Significant matters	For significant matters, and notwithstanding that in some circumstances Chief Officers hold their own statutory powers and functions (delegated or otherwise), Executive Members should record their decisions when there is an absence of any other record. For example, a significant matter agreed as part of an adopted budget would not require an MD whereas a significant matter not recorded in the same or similar instrument would.
Transfers of budget	Transferring budgets between heads of expenditure.

5. Council of Ministers

For matters that would otherwise require an MD from an individual Executive Member, the Council of Ministers can instead rely upon a minute produced by the States Greffe or written approval from a majority of its membership, usually in the form of an email.

Endnotes

¹ See 'The Codes of Conduct and Practice for Ministers and Assistant Ministers' (R.31/2024), presented by the Council of Ministers, 27 February 2024, States Assembly ([link](#)).

² See 'Appointments Made by the States - Revised Procedures' (P.205/2009), lodged by the Privileges and Procedures Committee, 1 December 2009, States Assembly ([link](#)).

³ See Articles 27 & 28 of the 'States of Jersey Law 2005', Jersey Legal Information Board ([link](#)).

⁴ See Article 29A of the 'States of Jersey Law 2005', Jersey Legal Information Board ([link](#)).

⁵ At time of writing, see 'How the Council of Ministers Works', 'Ministerial Groups' section, Government of Jersey ([link](#)).

⁶ See 'Shadow Boards and Ministerial Boards: Approval by the States' (P.170/2010), lodged by Deputy Le Claire, 11 November 2010, States Assembly ([link](#)).

⁷ See 'Anti-Inflation Strategy' (P.125/2000), lodged by the Finance and Economics Committee, 4 April 2000, States Assembly ([link](#)).

⁸ See Standing Order 168: Land Transactions of the 'Standing Orders of the States of Jersey', States Assembly ([link](#)).

⁹ See the 'Public Finances Manual', Government of Jersey ([link](#)) and the 'Public Finances (Jersey) Law 2019', Jersey Legal Information Board ([link](#)).

¹⁰ See 'Propositions' section of the 'Standing Orders of the States of Jersey', States Assembly ([link](#)).

¹¹ See 'Reports and Comments' and 'Presenting or Laying a Document' sections of the 'Standing Orders of the States of Jersey', States Assembly ([link](#)).