

STATES OF JERSEY



IMPLEMENTATION OF EUROPEAN UNION LEGISLATION (S.R.3/2014): RESPONSE OF THE MINISTER FOR EXTERNAL RELATIONS

Presented to the States on 18th July 2014
by the Minister for External Relations

STATES GREFFE

**IMPLEMENTATION OF EUROPEAN UNION LEGISLATION (S.R.3/2014):
RESPONSE OF THE MINISTER FOR EXTERNAL RELATIONS**

Ministerial Response to: S.R.3/2014

Review title: Implementation of European Union Legislation

Scrutiny Panel: Corporate Services Scrutiny Panel

INTRODUCTION

The following table is presented by the Minister for External Relations, at the request of the Corporate Services Scrutiny Panel, summarising the responses of the Minister to the review findings and recommendations.

FINDINGS

	Findings	Comments
1	The Minister for External Relations currently has the authority to make Orders that give effect to EU sanctions measures, delegated authority which dates back to 1999.	Agreed. The authority, originally assigned to the Policy and Resources Committee in 1999, was subsequently transferred to the Chief Minister upon the introduction of Ministerial government and then transferred to the Minister for External Relations in 2013.
2	It is not solely the 1996 Law which provides the legal authority for Ministers to give effect to EU legislation. Such legislation may also be given effect by Ministerial Orders under the authority of other Laws. This position would not be affected were the 1996 Law to be repealed and replaced by the draft Law. When any Law is adopted in which Order-making powers are given to a Minister, there is therefore a possibility that such powers could be used to give effect to EU legislation.	Agreed. Ministerial Orders under other Laws to give effect to EU legislation would, of course, depend on the necessary <i>vires</i> to exist.
3	Jersey is obliged to implement EU legislation which is directly applicable and binding on the Island under Protocol 3. A choice can be made to extend EU legislation voluntarily which is not binding but where it is considered beneficial to do so.	Agreed.

	Findings	Comments
4	The draft Law has been proposed as a means of improving the mechanisms by which Jersey gives effect to sanctions measures.	Agreed.
5	Jersey is obliged to implement sanctions measures agreed in resolutions of the UN Security Council.	Agreed.
6	Sanctions measures are now implemented in Jersey more often by the extension of EU restrictive measures to the Island than by the use of a UK Order in Council.	Agreed.
7	There needs to be clarity as to whether or not sanctions Orders adopted in Jersey have their origin in a resolution of the UN Security Council.	This recommendation is noted, and consideration will be given to the most appropriate way to indicate the origin of the sanctions measures.
8	The Common Policy on External Relations of the Council of Ministers includes provision for the extension and implementation of UN sanctions measures and EU restrictive measures to Jersey.	Agreed.
9	Guernsey and the Isle of Man have similar legislative frameworks to Jersey for the implementation and extension of EU legislation. Both the other Crown Dependencies have provision whereby decisions can be delegated from their respective parliaments to another body.	Agreed.
10	The draft Law has in part been proposed in order that recommendations arising from the visit of the International Monetary Fund in 2009 and identified inefficiencies within the sanctions-making process can be addressed.	Agreed.
11	The draft Law, if adopted, would give the Minister for External Relations new, limited Order-making powers by which the Minister could give further effect to any EU provision that is directly applicable to Jersey.	Agreed.
12	The draft Law, if adopted, would maintain Order-making powers which the Minister for External Relations already has to implement provisions which relate to the EU's Common Foreign and Security Policy and which typically involve the introduction of sanctions measures.	Agreed.

	Findings	Comments
13	The introduction of ambulatory references under the draft Law would lead to the enactment of fewer Ministerial Orders in respect of sanctions measures than are currently required. This would lessen the administrative burden on the Chief Minister's Department and Law Draftsman's Office. The use of ambulatory references would not be automatic.	Agreed.
14	Article 3 of the draft Law is intended to address one of the recommendations made in 2009 by the IMF that Jersey's legal framework should be amended to expressly include all types of financial services and related activities which are regulated in Jersey.	Agreed.
15	The States Assembly's Regulations-making powers in relation to the implementation and extension of EU legislation would not be materially affected by adoption of the draft Law.	Agreed.
16	The changes to terminology and references proposed in the draft Law are to be welcomed.	This view is appreciated.
17	Adoption of the draft Law would not in itself amend the Island's constitutional relationship with the EU under Protocol 3.	Agreed.
18	Orders made by the Minister for External Relations to implement EU restrictive measures in Jersey would refer to the EU's Common Foreign and Security Policy. That Policy is not binding on the Island, however, and adoption of the draft Law would ensure that the Policy was explicitly excluded from the list of Treaties under which the arrangements for Jersey have legal effect, thereby recognising that it is not binding.	Only sanctions Orders would relate to the CFSP; other Orders to implement EU legislation which applies to Jersey could relate to other policy areas (e.g. trade).
19	Adoption of the draft Law would give the Minister for External Relations the power to make Orders that would ensure Jersey's legislation in future could be amended quickly to reflect changes in terminology. This would be a new Order-making power but is uncontroversial.	Agreed.

	Findings	Comments
20	Articles 2(5) and 2(6) of the draft Law would establish reasonable limits on the power to implement and extend EU legislation, particularly in relation to the Minister's Order-making powers.	Agreed
21	The Minister for External Relations does not consult the Council of Ministers before making an Order to implement EU restrictive measures as it is the policy of the Council that such measures should be implemented.	Agreed.
22	The Order-making process contains sufficient checks and balances: Ministerial Orders are published and notification of their enactment and publication is provided in the Jersey Gazette and on the States Assembly's Order Papers. The Assembly is ultimately able to annul Orders which have been enacted.	Agreed.
23	The Scrutiny Review has raised broader questions about the authority of Ministers to give effect to EU legislation by Order. However, in terms of what the draft Law in itself seeks to deliver, the draft Law provides appropriate updates and amendments to existing legislation, and there is, as a result, no reason why the draft Law should not be adopted.	The Minister welcomes the recommendation of the Scrutiny Panel that this Law should be adopted.

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	When signing future Ministerial Decisions for the implementation of sanctions measures, the Minister for External Relations should confirm whether or not the measures have their origins in a resolution of the UN Security Council and, if so, provide the reference for that resolution.	ER	Accept	Reference to the origin of a sanctions measure can be included in the reasons for a Ministerial Decision.	Immediate

CONCLUSION

The Minister for External Relations welcomes the careful and informed scrutiny of this draft legislation by the Panel, and is pleased to agree with the findings and recommendations.