

STATES OF JERSEY



DRAFT OFFICIAL ANALYST (JERSEY) LAW 202- (P.41/2022): COMMENTS

Presented to the States on 13th April 2022
by the Corporate Services Scrutiny Panel

STATES GREFFE

COMMENTS

The [Draft Official Analyst \(Jersey\) Law 202-](#) [P.41/2022] (hereafter the “draft Law”) was lodged on 7th March 2022 by the Chief Minister and proposes to provide an updated statutory basis for the Official Analyst (OA), ensuring that they, as well as officers working under their direction, are able to carry out their work independently. The draft Law would if adopted:

- (a) provide for the appointment and dismissal of the OA;
- (b) establish the overarching functions of the OA; and
- (c) provide for the resourcing and accountability of the OA.

The Corporate Services Scrutiny Panel [the Panel] was privately briefed on the draft Law by the relevant Government Officer on 25th January 2022 and the Environment, Housing and Infrastructure Scrutiny Panel also joined the briefing.

Appointment of Official Analyst

The Panel observes that the draft Law would continue to provide for the role of Official Analyst and that Article 2 of the draft Law, if adopted, would give the Chief Minister responsibility for the appointment of the Official Analyst following consultation with the Jersey Appointments Commission. The Panel acknowledges that the States Assembly would be granted two weeks’ notice of the Chief Minister’s intention to appoint in the draft Law.

The Panel notes that Article 2 (5) of the draft Law would require the Official Analyst to either hold a master’s degree in Chemical Analysis awarded by the Royal Society of Chemistry, or to demonstrate sufficient knowledge to perform these functions and hold a qualification in analytical chemistry.

The Panel further notes that if the Chief Minister appoints a person who does not hold a mastership in Chemical Analysis then the Chief Minister must set out the reasoning. The Panel is concerned that no timetable or detail as to how the Chief Minister will provide this specific information in relation to qualification is provided to the Assembly in the draft Law.

The Panel has lodged an Amendment that the Official Analyst qualification level upon appointment, and any required qualification reasoning, be included in the advanced notice of the appointment to be given to the States, two weeks before, to enable the Assembly to hold sufficient detail to approve the appointment.

Dismissal from office as Official Analyst

The Panel notes that Article 3 of the draft Law would formalise powers for the Chief Minister to dismiss or suspend the Official Analyst and includes provision to appoint an acting Official Analyst until a new Official Analyst be appointed. The Panel notes that the Chief Minister must provide the Official Analyst with an opportunity to respond to any allegations and requires notice of termination to be presented to the States.

The Panel also notes that Article 5 sets out the function of the Official Analyst in the use of chemical and microbiological analysis to advise on and investigate matters where it is in the public interest to do so.

The Panel would like to highlight that Article 3 of the [Statistics and Census \(Jersey\) Law 2018](#) approved by the Assembly clarified the management responsibilities of the Chief Statistician in detail and covered areas such as setting of policies and priorities whilst ensuring quality, relevance and integrity. However, this clarification has not been provided within the Draft Official Analyst (Jersey) Law 202- and this raises concern for the Panel as to the framework which the Chief Minister would refer should the dismissal be due to the failure or discharging of the responsibilities of the Official Analyst.

The Panel holds concerns in relation to the dismissal powers granted to the Chief Minister in Article 3 of the draft Law. The responsibilities of the Official Analyst do not appear to have been defined in the draft Law and subsequently the framework for the Chief Minister to dismiss is unclear. Therefore, the Panel have lodged an Amendment stating that prior to making any direction under Article 3 and within 6 months of this Law coming into force, the Chief Minister must commission an independent evaluation of the matter under Article 3 and must lay the report of the evaluation before the Assembly for its consideration.

Independence of the Official Analyst

Article 6 of the draft Law provides for the independence of the Official Analyst when discharging their functions under the draft Law.

The draft Law prohibits any person from directing the Official Analyst on how to function and allows further ability to designate any of their functions to a member of their staff or designate for a deputy Official Analyst.

The Panel concludes that this does provide some definition to the independent remit of the Official Analyst. It notes, however, that the definition for the Chief Statistician outlined in the [Statistics and Census \(Jersey\) Law 2018](#) refers to the right to act independently. The Panel concludes that there should be a unilateral definition of independence provided to assist transparency.

The Panel would request that definition of independence to assist transparency and understanding be considered by the Chief Minister and clarification provided prior to the Assembly debate.

Office of the Official Analyst

Under Article 7 of the draft Law the Chief Minister must ensure that the Official Analyst is provided with the financial and administrative resources, and other support, including staff, services, equipment and accommodation, necessary to ensure the Official Analyst to discharge the functions of the Official Analyst economically, effectively and efficiently. It is noted that the Chief Minister must consult with the Official Analyst on the figures prior to their submission, The Panel are concerned by the wording of section 7 (1) in which the Chief Minister 'must ensure that the Official Analyst is provided with' as the States Assembly are ultimately the sovereign in decisions over the funding and oversight of the Official Analyst and therefore the Chief Minister is in the position of assessment rather than decision maker.

The Panel observes that underfunding could risk preventing the Official Analyst fulfilling its role and that the reference to the Public Finances Manual in the Proposition would work to generate greater transparency. The Panel is aware of the tension that can exist between independent organisations and adequate funding.

The Panel would highlight that it is the Assembly through its approval of the Government Plan who will ultimately determine whether to approve or to determine the level of funding for the Official Analyst and therefore the Chief Minister is providing recommendations for Assembly consideration.

The Panel has therefore lodged an Amendment to the Proposition to redraft Article 7 (1) and require the Chief Minister to make an annual assessment of the funding required for the Office of the Official Analyst. The Amendment also specifies that it is the Assembly who will ultimately determine whether to approval or to amend the level of funding for the Official Analyst.

Annual Report & Other Reports

The Panel is aware that Article 9 and Article 10 of the draft Law stipulates that the Official Analyst is required to produce an annual report and have its accounts included in the Government of Jersey's accounts. The draft Law also highlights that the annual report and accounts must set out why the work undertaken in the financial year is in the public interest and that it complies with the Public Finances Manual issues under Article 31 of the 2019 Law as it applies to the annual reports of public bodies. The Panel is pleased to note that the accountability report will provide an opportunity to highlight concerns over resourcing and funding by the Official Analyst.

It is also highlighted in the draft Law that the Chief Minister is able to request the Official Analyst prepare reports to commission work from the Official Analyst.

The Panel notes that the report which accompanies the draft Law details the structuring of fees in some detail and that the Minister may, by order, alter the charging of fees. **To ensure transparency is provided to the Assembly the Panel have lodged another Amendment to ensure that a schedule of charges under Article 12 of the draft Law will be provided within the Annual Report of the Official Analyst.**

Conclusion

The draft Law makes progress in modernising the legislation regarding the office of the Official Analyst and ensuring its independence. As such the Panel is in broad agreement with the sentiment of P.41/2021, however it has identified areas which require greater clarification and has therefore lodged Amendments to strengthen the draft Law in the following areas:

- Assembly notification of Official Analyst qualifications and related reasoning prior to appointment by Chief Minister.
- Independent evaluation report of Article 3 which relates to the dismissal from office of Official Analyst within 6 months of the Law coming into force, commissioned by the Chief Minister and laid before the Assembly for its consideration.

- Redrafting of Article 7 (1) to require the Chief Minister to make an annual assessment of the funding required for the Office of the Official Analyst and include clarification that it is the Assembly who will ultimately determine whether to approval or to amend the level of funding for the Official Analyst.
- Schedule of charges under Article 12 of the Law be provided within the Annual Report of the Official Analyst to the Assembly.