

MC/MH/124  
Re-issued 04.05.18

COUNCIL OF MINISTERS

(100th Meeting)

14th March 2018

**PART A (Non-exempt)**

All members were present.

Senator I.J. Gorst, Chief Minister  
 Senator L.J. Farnham, Minister for Economic Development, Tourism,  
 Sport and Culture  
 Deputy S.G. Luce of St. Martin, Minister for the Environment  
 Senator Sir P.M. Bailhache, Minister for External Relations  
 Senator A.K.F. Green, M.B.E, Minister for Health and Social Services  
 Deputy K.L. Moore of St. Peter, Minister for Home Affairs  
 Deputy A.E. Pryke of Trinity, Minister for Housing  
 Deputy E.J. Noel of St. Lawrence, Minister for Infrastructure  
 Deputy S.J. Pinel of St. Clement, Minister for Social Security  
 Senator A.J.H. Maclean, Minister for Treasury and Resources

In attendance -

Senator P.F. Routier, M.B.E., Assistant to the Chief Minister  
 Deputy S.M. Wickenden of St. Helier, Assistant to the Chief Minister  
 C. Parker, Chief Executive, States of Jersey  
 Dr. M. Egan, Greffier of the States  
 R.J. MacRae, Q.C., H.M. Attorney General (not present for part of A3  
 and B1-B3)  
 R. Bell, Treasurer of the States  
 P. Bradbury, Director, Corporate Policy, Chief Minister's Department  
 D. Scott, Director, Economic Development, Tourism, Sport and Culture  
 (present for part of A3 and B1 only)  
 Captain W. Sadler, Harbourmaster, Ports of Jersey (present for part of  
 A3 only)  
 K. Nutt, Head of Service, External Relations (present for B2 only)  
 I. Burns, Chief Officer, Employment and Social Security Department  
 (present for part of A3 and B4 only)  
 S. Duhamel, Policy and Strategy Director, Employment and Social  
 Security Department (present for part of A3 and B4 only)  
 M. Fitzgerald Wilkins, Work-shadowing the Greffier of the States  
 M. Clark, Clerk to the Council of Ministers

Note: The Minutes of this meeting comprise Part A and Part B.

- Welcome. A1. The Chief Minister welcomed Ms. M. Fitzgerald Wilkins, who was work-shadowing the Greffier of the States, and advised Members that this was the one hundredth meeting of the present Council of Ministers.
- Minutes. A2. The Minutes of the meetings of 19th January 2018 (Part A), 24th January 2018 (Part A and B) and 7th February 2018 (Part A and B), having previously been circulated, were taken as read and were confirmed.

States Business 20.03.18 1240/7/1(1) A3. The Council, with reference to its Minute No. A2 of 7th February 2018, discussed with the Director, Corporate Policy, Chief Minister's Department and H.M. Attorney General present, the list of public business scheduled for consideration by the States Assembly on 20th March 2018 and commented specifically on the following items:

**Jersey Lifeboat Service: establishment of an independent lifeboat station – petition (P.7/2018); and Committee of Inquiry: actions taken by the R.N.L.I. and the Jersey Government which led to the removal of the All Weather Lifeboat (P.36/2018) and amendments.**

The Council welcomed the Harbourmaster, Ports of Jersey, and the Director, Economic Development, Tourism, Sport and Culture (EDTSC), to the meeting.

The Council noted that Senator S.C. Ferguson sought the approval of the States to support the Jersey Independent Lifeboat Service Committee in establishing an independent Jersey Lifeboat Station, disassociated from the R.N.L.I., and further noted that Senator Ferguson also sought the approval of the States to:

- (a) agree that a Committee of Inquiry should be established in accordance with Standing Order 146 to inquire into the circumstances leading to the formation of the Jersey Lifeboat Association (JLA), in order to investigate the actions taken by the R.N.L.I. and the Jersey Government which led to the removal of the All Weather Lifeboat; and
- (b) request the Chief Minister to take the necessary steps to select a suitable Chairman and members to undertake the Inquiry and to bring forward to the States for approval the necessary proposition relating to their appointment and the approval of detailed terms of reference for the Inquiry.

The Council was content to learn from the Harbourmaster that, following the events of April to November 2017 inclusive, there now existed a much greater degree of cooperation between the R.N.L.I. St Helier and St Catherine's Lifeboat Stations, the Jersey Fire and Rescue Service and the Jersey Coastguard. The Harbourmaster advised that an appeal for new crew members, following the standing down of the previous St. Helier Lifeboat Crew, had attracted 89 applicants; new crew members were now undergoing R.N.L.I. training and it was anticipated that the Station would be exclusively staffed by local crews within 6 months. The Harbourmaster took the view that Jersey was now equipped with an effective and resilient life-saving capability which would be able to respond to emergencies in both local waters and those of its immediate neighbours.

As part of its deliberations the Council considered an Independent Report into the Breakdown of Relationships within the Jersey Search and Rescue Community, commissioned by the Department for Economic Development, Tourism, Sport and Culture, prepared by the Guernsey Harbourmaster, and a letter to the Chief Minister dated 13th March 2018 from the Chairman of the Jersey Harbour Authority, setting out its position with regards to the JLA.

The Council understood that the JLA aimed to provide an alternative to the R.N.L.I. St. Helier Lifeboat, and the Harbourmaster advised that he was not currently in possession of sufficient information to assess whether the JLA would be able to offer a workable alternative to the R.N.L.I. provision. The Council was clear, however, that Jersey did not need 2 all-weather lifeboats. Concern was expressed regarding funding, and how the JLA proposed to provide effective cover during periods when its lifeboat might be temporarily out of service.

100th Meeting  
14.03.18 (Re-issued 04.05.18)

Senator Sir P.M. Bailhache reminded the Council that he had tabled an amendment which sought to ensure that all the relevant circumstances surrounding the breakdown of the relationships between the R.N.L.I. and the former Coxswain and Crew of the St. Helier Lifeboat Station were fully investigated and placed in the public domain.

The Council accordingly decided:

- (i) that no public funding should be advanced to the JLA;
- (ii) that the report of the Guernsey Harbourmaster, along with the letter to the Chief Minister from the Chairman of the Jersey Harbour Authority, should be presented to the States Assembly for information as soon as possible;
- (iii) that it was not supportive of the petition lodged by Senator Ferguson; and
- (iv) that it did not support the convening of a Committee of Inquiry at this juncture, although it was acknowledged that (at some future date) this could be the only mechanism capable of establishing the facts of the matter to the satisfaction of all parties.

The Harbourmaster and the Director, EDTSC, having been thanked for their participation, then withdrew from the meeting.

#### **Draft Discrimination (Disability) (Jersey) Regulations 201- (P.20/2018)**

The Council welcomed the Chief Officer and the Policy and Strategy Director, Social Security Department, to the meeting.

The Council noted that the Minister for Social Security sought the approval of the States to amend the Discrimination (Jersey) Law 2013 (DJL) by Regulation to introduce protection against discrimination on grounds of disability. The Council recalled that the DJL was the overarching legislation which prohibited discrimination in a number of areas including recruitment, paid work, voluntary work, goods and services, partnerships, professional bodies, education, training, public premises, clubs and associations. The draft Regulations amended the primary legislation by, *inter alia*:

- (1) setting out circumstances in which acts relating to a disabled person would and would not constitute direct discrimination;
- (2) adding ‘disability’ to the list of characteristics (along with race, sex, sexual orientation, gender reassignment and age) in relation to which a person might indirectly discriminate against another;
- (3) inserting a new Article 7A in the DJL so that failure to make reasonable adjustments to prevent a disabled person from being put at a substantial disadvantage compared to non-disabled persons is an act of indirect discrimination. The failure could relate to a provision, criterion or practice of a person, physical features of premises or the provision of an auxiliary aid or service; and
- (4) amending the DJL by adding ‘disability’ to the Law as a protected characteristic and making provision for what that means, namely having one or more long-term physical, mental, intellectual or sensory impairments which could adversely affect a person’s ability to engage in any activity in respect of which an act of discrimination was prohibited under the Law.

It was noted that, if approved, the Regulations would come into force on 1st September 2018, although the provisions requiring alternations to premises would not become effective until 1st September 2020, to allow owners of properties and businesses sufficient time to comply. The Policy and Strategy Director, Social Security Department, advised that the Health and Social Security Scrutiny Panel, during a Ministerial hearing on 1st March 2018, had questioned the carve-out in the draft Regulations relating to addiction, as the Panel felt addiction should be included within the definition of disability. The Council noted this concern, however felt that this could be addressed separately, and should not delay the debate of the draft Regulations by the Assembly. The Council accordingly agreed that the Regulations should be supported.

The Chief Officer and the Policy and Strategy Director, Social Security Department, having been thanked for their participation, then withdrew from the meeting.

**Assignment of a long lease (sale) of the Royal Yacht Al Fresco area by the States of Jersey Development Company (SOJDC): rescindment of Ministerial Decision (P.17/2018)**

The Council noted that Connétable C.H. Taylor of St. John sought the approval of the States to:

- (a) request the Minister for Treasury and Resources to rescind the Ministerial Decision MDTR-2018-0004 relating to the sale of the assignment of a long lease (sale) of the Royal Yacht Al Fresco area by the SOJDC and instead bring the matter forward for approval by the States;
- (b) agree that appropriate amendments should be made to Standing Order 168, to provide that any land transactions recommended by a body established by the States to manage land and buildings owned by the public of Jersey must be presented to the States at least 15 working days before any binding arrangement was made; and
- (c) request the Privileges and Procedures Committee to bring forward for approval the necessary amendments to give effect to the proposals.

Senator L.J. Farnham declared his interest as a director of the company which owned the Royal Yacht Hotel.

The Council noted that the report accompanying the Proposition raised certain issues regarding the authority of the SOJDC to sell certain assets, how the costs of maintaining Weighbridge Square would be financed in future, and the provisions of P.73/2010 (Property and Infrastructure Regeneration: The States of Jersey Development Company Limited), which the report suggested required certain properties to be returned to States ownership. The Council recalled that P.73/2010 specified that SOJDC should only retain assets in certain circumstances, after which such assets should either be sold, or, if a strategic case existed for long-term ownership, be transferred to the States at market value. The Council observed that the full implications of P.73/2010 did not appear to have been considered in the proposition.

Deputy E.J. Noel of St. Lawrence the timing of the proposed sale of the long lease, given the ongoing requirement to fund the upkeep of Weighbridge Place and the potential cost of any capital projects to be undertaken in connection with the 75th Anniversary of the Liberation in 2020.

100th Meeting  
14.03.18 (Re-issued 04.05.18)

The Council also noted that an independent valuation on the land had been obtained; Jersey Property Holdings had confirmed that there was no strategic reason for the land concerned to remain in States ownership (although Weighbridge Square remained in public ownership through SOJDC) and advice from the Law Officers Department had confirmed that the process undertaken and the Ministerial Decision signed were fully compliant with the requirements of P.73/2010. Further, the Council considered that the proposition lacked clarity regarding the entities and types of transactions to which it was intended to apply, and therefore had the potential to create unintended consequences for both the SOJDC and other States owned bodies entering into property transactions in future.

The Council accordingly concluded that the proposition should be rejected.

**Draft Sexual Offences (Jersey) Law 201-** (P.18.2018) and amendments.

The Council recalled that the objective of the draft Law was to ensure that Jersey adequately met the needs and expectations of the Police, prosecutors, modern Jersey Society and international standards regarding sexual offences.

The draft Law revised the definition of sexual consent, detailed non-consensual offences and made specific provision regarding offences by adults against children (aged 15 or younger), with special consideration given to offences against children aged 12 or younger. It also covered offences arising due to the presence of a defined relationship between an adult and a child which created a position of trust on the part of the adult, and extended protection in those situations to children aged 16 and 17. The draft Law also detailed offences relating to prostitution, replacing some old legislation and adding new provisions, and dealt with female genital mutilation offences, in order that the Island would comply with the Council of Europe Convention on preventing and combating violence against women and girls (the Istanbul Convention). The Council noted that the draft Law had been the subject of wide-ranging consultation, including a full public consultation.

The Education and Home Affairs Scrutiny Panel had considered the draft Law and had lodged 3 separate amendments thereto. The first Amendment added the act of defecation to the list of bodily secretions that fell within the definition of 'sexual touching' contained within Article 1(4)(b) of the draft Law; the Council considered that this amendment was uncontroversial and should be supported.

The second Amendment had been proposed following consultation with Jersey Action Against Rape (JAAR) and recommended amending Article 41 of the draft Law, such that statutory offences contained in Part 2 (non-consensual offences), Part 3 (offences by adults against children aged 12 or younger), and Part 4 (offences by adults against children aged 13 to 15) would be tried by the Inferior Number of the Royal Court, rather than, by jury, as currently drafted. The Council noted JAAR's submission that public misconceptions existed regarding whether the victims of rape and sexual assault could have in some manner contributed to the offences committed against them by their dress, actions or behaviour. The second Amendment therefore proposed trial by Jurats in cases of rape and indecent assault, as a means of mitigating many of the issues caused by the possible prejudices existing amongst potential jurors. Senator Sir P.M. Bailhache cautioned against adopting this amendment without having fully consulted with members of the judiciary, and stressed the fundamental right of an individual to be tried by a jury of their peers for customary law offences. The Council was sympathetic to the position of JAAR and concluded that the matter should be investigated further; the Minister for Home Affairs undertook to approach the Education and Home Affairs Scrutiny Panel with a view to delaying debate of the second Amendment pending further consideration with Law Officers and Judges.

The third Amendment sought to clarify that, where 2 people were engaged in a relationship, there was no presumption of consent between them. The Council noted that advice obtained from Law Officers had concluded that this Amendment was in fact unnecessary as the principle it sought to introduce was covered elsewhere in the legislation, and accordingly agreed that this Amendment should not be supported. The Minister for Home Affairs was requested to lodge an appropriately drafted comment for the benefit of the Assembly.

**Draft Criminal Procedure (Jersey) Law 201-** (P.118/2017) and amendments.

The Council noted that the draft Law prescribed the procedure to be followed in, or in connection with criminal proceedings against a defendant, repealing and modifying certain existing legislation as detailed therein. The draft Law also introduced new measures to provide for the quashing of acquittals by the Court of Appeal and amended the Police Procedures and Criminal Evidence (Jersey) Law 2003 in relation to hearsay and bad character evidence in criminal proceedings.

The Council recalled that the proposition had been approved in first reading on 18th January 2018 and had been referred to the Criminal Justice Sub-Panel (CJSP), a sub-Panel of the Education and Home Affairs Scrutiny Panel, under Standing Order 72.

The CJSP had lodged an amendment to the Proposition which would remove the recognition of hung juries and the capacity of the prosecution to ask the court for a retrial where the jury was hung. Without this provision, any defendant who was found guilty by less than 10 jurors would be permanently acquitted. H.M. Attorney General advised that the amendment could lead to an anomalous outcome, whereby the proceedings concluded without a verdict being reached. Furthermore, H.M. Attorney General opined that the number of retrials, based on the available evidence from other jurisdictions, was likely to be very limited. The Council noted that the majority of common law jurisdictions permitted retrials as an intrinsic part of the operation of their jury system, and did not agree with the conclusion of the CJSP that retrials could not be conducted fairly in small jurisdictions. The Council accordingly decided that the amendment of the CJSP should be rejected, and instructed the Minister for Home Affairs to lodge an appropriate comment, explaining the Council's reasons for rejecting the amendment, to assist the Assembly in its deliberations.

It was noted that the Minister for Home Affairs had lodged a second amendment which made some improvements to the draft Law, as recommended by the CJSP, which the Council considered should be supported.

The Council recalled that it had a single policy position on the proposition and, as such all Ministers and the Assistant Minister for Home Affairs would be bound by the principle of collective responsibility to support the proposition. At the request of Senator Sir P.M. Bailhache, the Council agreed that he would be exempted from the principle of collective responsibility in respect of this proposition.

**Public Services Ombudsman: establishment of office** (P.32/2018)

The Council noted that Senator P.F.C. Ozouf sought the approval of the States to, *inter alia*, progress the recommendations from the Clothier Report on the Machinery of Government in Jersey and the Jersey Law Commission that 'An Ombudsman should be appointed to hear and determine complaints of maladministration' as a matter of priority.

The Council recalled that the matter had been discussed on 13th March 2018, by the

100th Meeting  
14.03.18 (Re-issued 04.05.18)

Legislation Advisory Panel, which it noted did not support the proposition of Senator Ozouf. The Panel considered that the proposition, if adopted, would have the effect of pre-empting its own deliberations in relation to the findings of the report of the Jersey Law Commission entitled ‘Improving Administrative Redress in Jersey’ (1/2017/TR) and the Chief Minister’s interim response thereto, which had been presented to the States Assembly on 2nd January 2018 (R.1/2018).

The Greffier of the States advised that the Privileges and Procedures Committee would be publishing its own comments in due course, including an assessment of the role and function of the Complaints Panel, established under the Administrative Decisions (Review) (Jersey) Law 1982.

The Council acknowledged that work was also being undertaken by the Chief Operating Officer of the States of Jersey regarding how complaints were dealt with across the organisation, including liaising with Guernsey on the feasibility of establishing a pan-island oversight function.

The Council therefore concluded that the proposition should not be supported at this time.

Items to note.

A4. The Council noted the following items for information:

- (1) that all applications from high net worth individuals seeking Entitled status under Regulation 2(1)(e) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 were subject to a thorough and robust vetting process, involving multiple agencies both within Jersey and elsewhere, before their application was determined;
- (2) that the Minister for Health and Social Services would be asking the Assembly to agree to consider the following draft Regulations, currently scheduled to be debated on 10th April 2018, at its sitting on 20th March 2018:
  - (a) Draft Capacity and Self-Determination (Amendment) (Jersey) Law 201- (P.42/2018);
  - (b) Draft Capacity and Self-Determination (Capacity and Liberty – Assessors) (Jersey) Regulations 201- (P.43/2018);
  - (c) Draft Capacity and Self-Determination (Independent Capacity Advocates) (Jersey) Regulations 201- (P.44/2018);
  - (d) Draft Capacity and Self-Determination (Supervision of Delegates etc.) (Jersey) Regulations 201- (P.45/2018);
  - (e) Draft Mental Health (Guardianship) (Jersey) Regulations 201- (P.46/2018);
  - (f) Draft Mental Health (Independent Mental Health Advocates) (Jersey) Regulations 201- (P.47/2018); and
  - (g) Draft Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 201- (P.48/2018); and
- (3) that the Minister for Infrastructure would shortly be signing a Ministerial Decision to commence the process of compulsorily purchasing land necessary for the construction of the new Les Quennevais School.

674

100th Meeting

14.03.18 (Re-issued 04.05.18)