

Stakeholder Consultation

Responding to the Consultation

The Consultation begins on Friday 15 January 2022 and ends on Monday 14 February 2022. If you wish to submit comments, please complete this form either online at www.gov.je or on paper and return it by post or email to the addresses below.

Feedback is welcome on all the proposals outlined below. Following the conclusion of the consultation, draft legislation will be developed, taking into account consultation feedback.

How we will use your information

The purpose of this consultation is to gain your views on proposals to replace the Jersey Appointments Commission with a new body corporate which will be called the Jersey Public Appointments Commission. This consultation does not require any personal information to be provided. If any personal information is divulged this will not be shared outside of the team developing the proposed legislation within the Department for Strategic Policy, Planning and Performance or published online as part of the consultation.

The information you provide will be anonymous unless you are providing a response on behalf of an organisation, in which case you may choose to provide the name of that organisation. Your responses will be included in any summary of statistical information received and views expressed.

The Government of Jersey may quote or publish responses to this consultation (send to other interested parties on request, send to the Scrutiny Office, quote in a published report, report in the media, publish on www.gov.je, list on a consultation summary etc.) but will not publish the names and addresses of individuals – comments from organisations may be attributed if they so choose. This will be done in compliance with the Data Protection (Jersey) Law 2018 for the purposes of this consultation. Further information on how we will use this information can be found in the privacy notice. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it, but no personal data will be released.

If you would like to provide feedback on the proposals or require any further information about this consultation, please email the **Public Appointments Consultation Team**:

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1. Introduction

- 1.1 The Jersey Appointments Commission (JAC) is currently established under Part 4 of the Employment of States of Jersey Employees (Jersey) Law 2005 (the “2005 Law”). It is intended that the JAC, as established under the 2005 Law, should be replaced by a new body corporate which will be known as the Jersey Public Appointments Commission (“the Commission”). It is envisaged that the Commission will be established in a new standalone law reflecting the fact the Commission’s remit is currently broader than States of Jersey employees, and likely to become broader still.
- 1.2 The newly established Commission will have jurisdiction to oversee the appointment of States’ employees and appointees, in addition to appointment to senior States’ offices and independent States bodies, as currently provided under Articles 14 to 16 of the 2005 Law. This will be simplified to ensure that the Commission has jurisdiction over all Jersey public appointments in general, excluding parishes. To be clear, political appointments to ministerial offices and appointments made by the States Assembly to committees, panels and other bodies, such as appointments to the States Employment Board and Public Accounts Committee, will also fall outside the Commission’s jurisdiction.
- 1.3 The Commission will continue to, broadly, hold the powers and functions of the JAC, as provided under Articles 23 to 29 of the 2005 Law, although amendments are requested to enable the Commission’s functions to be extended by Regulation. See section 10, below, for further details.

2. Background

- 2.1 The 2005 Law is one of the principal pieces of legislation underpinning Jersey’s public sector. In summary, the law:
 - a) establishes the States Employment Board (SEB), including its membership, powers, functions and duties;
 - b) provides for the employment of persons by the States Employment Board on behalf of the States or an administration of the States;
 - c) provides for the establishment of the Jersey Appointments Commission, including its membership, powers, functions and duties in relation to the oversight of recruitment practice, and the audit of recruitment practices;
 - d) establishes the role and functions of the Chief Executive Officer, and the process for appointment to the post;
 - e) regulates certain political activities relating to States’ employees.
- 2.2 In March 2019, the Comptroller and Auditor General published a report on the [‘Role and Operation of the States Employment Board’](#). The Comptroller and Auditor General identified both strengths and weaknesses in the framework governing States’ employment practices, including in relation to the JAC. The report noted that “there are demonstrable strengths in the functions, duties and powers of the JAC:
 - there are clear arrangements for determining and communicating the bodies and individuals to which its specific powers apply;

- it has a duty to undertake audits of recruitment practices or ensure that they are undertaken. It is therefore concerned with reviewing implementation in practice as well as prescribing a framework. The audit process of itself promotes compliance and learning; and
- there are wide-ranging powers and duties to report to SEB.”¹

2.3 However, the report also identified certain weaknesses in the JAC’s arrangements, including that the JAC’s legal status, as a commission internal to the States, does not secure its independence. It also found that the JAC’s funding and resourcing arrangements create a conflict of interest with the States’ human resources function, given its role in regulating the States’ employment activities and practices.²

2.4 In March 2019, the Council of Ministers agreed to bring forward changes to the 2005 Law to address weaknesses in the Law which were identified by the Comptroller and Auditor General, alongside other matters. This work was delayed due to COVID-19 and it is now intended to amend the Law in phases. These law drafting instructions relate to phase 1 of the proposed changes, the establishment of the Commission as an independent body corporate, with future phases providing for matters relating to the functions of the States Employment Board and the role of the Chief Executive Officer.

2.5 These law drafting instructions have been developed with reference to evidence from other jurisdictions and best practice in their civil services.

3. Establishment of the Jersey Public Appointments Commission as a Body Corporate

3.1 As stated above, it is envisaged that the Jersey Public Appointments Commission will be established under a new piece of legislation. This is because the Commission’s remit will include oversight of public appointments in general (excluding parishes and appointments made by the States Assembly) and associated matters as opposed to only the appointment of those who are employees of the States of Jersey directly, where the States Employment Board is the appointing authority. It is therefore suggested that Articles 17 to 22 of the 2005 Law which establish the Jersey Appointments Commission should be repealed from the 2005 Law. The new Commission under the new legislation will replace the JAC as constituted under the 2005 Law – it will be a new, replacement body and not a successor body to the JAC.

3.2 The Law should establish the Commission as a body corporate with perpetual succession and common seal. See Article 2 of the Data Protection Authority (Jersey) Law 2018 (the “2018 Law”) for an example of the establishment of a body corporate. Body corporate status will enable the Commission to hold property and enter contracts, and ensures that obligations and liabilities, both statutory and contractual, continue notwithstanding any change in commissioners. Further examples of corporation soles under Jersey legislation include the Data Protection Authority and the Jersey Care Commission.

¹ Office of the Comptroller and Auditor General, ‘Role and Operation of the States Employment Board,’ 29 March 2019, paragraph 2.10, pp.8-9

² Ibid, paragraph 2.11, p.9

3.3 The Commission shall consist of a Chair and no fewer than 3 and not more than 7 Commissioners. The States shall appoint the Chair of the Commission and the Chair shall have responsibility for recommending the appointment of the other Commissioners to the Chief Minister. The Commissioners will act as the board of the Commission. As a body corporate, the Commission will be able to contract with individuals, including former commissioners, who will assist the Commission in performing its statutory functions during periods of peak activity. Where the Commission engages contractors, the Commission would retain responsibility for ensuring that those statutory functions are performed appropriately.

4. Appointment and Dismissal of Commissioners

4.1 The Chair of the Commission will be appointed by the States. The Law should give the Chief Minister responsibility for putting forward a candidate to the States by lodging a proposition to this effect in the Assembly. The Assembly will then debate the proposition in camera (in private) and, if the States vote to approve the proposition, the candidate will be appointed to the role. It is intended to include similar provisions to paragraph 4(1) and (2) of the Schedule to the Commissioner for Children and Young People (Jersey) Law 2019 (the “2019 Law”), excluding the requirement for the Chair of the Scrutiny Liaison Committee (SLC) to sign the proposition as well as the Chief Minister.

4.2 As the Chair cannot oversee their own recruitment process, it is necessary to vest responsibility for overseeing recruitment of the Chair in another individual. The new legislation should therefore provide that the Chair of the SLC must nominate the individual who should hold responsibility for overseeing the recruitment process of the Chair. It is proposed that the Chair of the SLC does so as this provides an appropriate balance to that of the Chief Minister who will hold responsibility for nominating the candidate to be Chair of the Commission to the Assembly (Note: This partly mirrors the present appointment process of a new Chief Executive Officer (CEO), as under Article 26AA(4) of the 2005 Law, the States Employment Board has responsibility for nominating a person to oversee the recruitment of the CEO).

4.3 The new legislation should provide that the Chair of the SLC must not appoint an individual to oversee the recruitment of the Chair unless the Chair of the SLC is satisfied that the individual has the expertise and experience necessary to oversee the recruitment process. This individual must satisfy the conditions set out under paragraph 4.4 (a), (b) and (c) in order to be deemed to have the necessary expertise and experience for the role. The individual appointed to oversee the recruitment process must ensure that a fair and open recruitment process takes place which ensures that candidates for the role are put forward based on merit. The Law should also provide that the recruitment process for the Chair must comply with the Commission’s standards (or in the event that the Commission has not yet brought forward its standards, those of the JAC) and will be subject to the provisions of the new Law as if the recruitment was being overseen by the Commission. At the conclusion of the recruitment process, the Chief Minister must be presented with a choice of candidates to put forward to the Assembly for the role.

4.4 The Law should provide that the Chief Minister must not put, to the Assembly, a candidate for the role of Chair unless the Chief Minister is satisfied that they are suitably qualified and experienced to discharge the functions of the office. The Chief Minister must also only

recommend a candidate if such a recommendation upholds the independence of the Commission. See paragraph 4(5) of the Schedule to 2019 Law for a provision to this effect. Furthermore, a provision which is similar to Article 18(3) of the 2005 Law is required. This should ensure that the Chief Minister must not propose a person for appointment as Chair of the Commission unless the Chief Minister is satisfied that the person has the expertise and experience necessary to discharge the functions of the office, including expertise and experience in –

- a) recruitment within public offices/bodies or the private sector;
- b) management at a senior level in the public, private, academic or voluntary sectors; and
- c) other matters relevant to the powers and functions of [the] Commissioner.

4.5 The Chief Minister may determine the length of the Chair of the Commission's appointment up to a maximum of 5 years – this may be shorter than 5 years. The Chief Minister may propose an existing Chair of the Commission to the Assembly for reappointment, but they may not serve in the role for more than 9 years in total, regardless of whether the Chair has served consecutive or separate terms in office. See Article 3(5) of the 2018 Law for an example of a similar provision. Currently, Commissioners on the JAC may be appointed for a maximum of 9 years under Article 18(4) of the 2005 Law, which may be extended by up to 12 months in exceptional circumstances under Article 18(5). There should be no provision to extend the appointment of the Chair or other Commissioners beyond 9 years under the new legislation.

4.6 The Law should impose certain disqualifications from chairing the Commission. Transitional arrangements set out under section 12, below, will ensure that members of the JAC will not be excluded from being Chair of the Commission. The Law should prohibit anyone from holding the office who:

- is a States Member or was a Member within the preceding 4 years;
- has been the holder of a Jersey public office (this includes States employees within the meaning of Article 2 of the 2005 Law and office holders listed under Schedule 1 to the 2005 Law but excludes those who are or have been a member of the Commission of the JAC) within the preceding 4 years; or
- has any other interest, financial or otherwise, in any States' administration within the preceding 4 years of their appointment.

4.7 A provision based on paragraph 6 of the Schedule to the 2019 Law is required to enable the States to provide a mechanism to terminate the Chair of the Commission's appointment. The Law should provide that the States may revoke the appointment of the Chair by approving a proposition signed by the Chief Minister. The proposition must be debated in camera (in private). The report accompanying the proposition must set out the evidence on which the Chief Minister relies upon to support the allegations raised. The proposition must allege one of the following grounds for termination, that the Chair of the Commission:

- has become disqualified for appointment on the grounds set out under paragraph 4.6, above, excepting their role as Commissioner for Jersey Public Appointments;
- is incapacitated by physical or mental illness;
- has failed to discharge their statutory functions without reasonable excuse; or

- has behaved in a way that is not compatible with their continuing in office or is otherwise unable or unfit to discharge the functions of their office.³

- 4.8 As under paragraph 6(7) to (10) of the Schedule to the 2019 Law, the Chair of the Commission must be provided with a copy of the report accompanying a draft proposition to terminate their office and with reasonable time to provide a written response. This written response must be lodged alongside the proposition. In anticipation of lodging a proposition to remove the Chair from office, the Chief Minister may suspend the Chair from office. The Chair, if suspended by the Chief Minister during the interim period, must be restored to office if the proposition to remove them is withdrawn; is not approved by the States after debate; or is not debated by the States within 3 months of being lodged.
- 4.9 The Chair may decide the number of fellow Commissioners (providing there are more than 3 and no more than 7 at any one time including the Chair) and may select those individuals for nomination to the Chief Minister, who will determine who to appoint. This is how the Jersey Care Commission is organised under paragraph 3(1) of Schedule 2 to the Regulation of Care (Jersey) Law 2014 (the “2014 Law”). The maximum and minimum number of Commissioners should be amendable by Regulations as is the case under Article 35(4) of the 2014 Law in respect of the Care Commission. The Chair must only nominate candidates who have, in the Chair’s opinion, the appropriate expertise and experience to perform the role. The requirements under Article 18(3) of the 2005 Law, referenced at paragraph 4.4, above, should apply to the Chair when selecting candidates to nominate as Commissioners. Commissioners will be disqualified from being appointed to or holding this position if they satisfy the conditions for disqualification from appointment as the Chair set out at paragraph 4.6, above.
- 4.10 The Chief Minister shall appoint Commissioners from those individuals nominated by the Chair and shall specify the terms of their appointment by instruments in writing (Ministerial Decision). For the purposes of clarity, the Chair should present to the Chief Minister a selection of candidates who, based on merit, could act as Commissioner, in order that the Chief Minister may determine who to appoint. As per paragraph 3(4) of Schedule 2 to the 2014 Law, Commissioners may be appointed for not less than 3 and not more than 5 years. Commissioners may serve for no more than 9 years in total on the Commission.

Note: Contract for services

Whilst not a matter for the law, it should be noted that the Commissioners will be engaged on contract for services that provides for the Chair to ‘draw down’ the hours necessary to deliver the functions of the office. These hours will fluctuate on a month-by-month basis depending on the appointment cycles of bodies that fall within the Commission’s remit.

- 4.11 The Chief Minister may terminate the appointment of a Commissioner (other than the Chair) only on the recommendation of the Chair of the Commission on the basis of the grounds for termination of the Chair’s appointment under paragraph 4.7, above. The Chief Minister must report the fact of a termination to the States. See paragraph 7(2) and (3) of Schedule 2 to the 2014 Law for a similar provision.
- 4.12 There should also be a power for the Chief Minister to appoint an acting Chair of the Commission. The Law should provide that in the event that the Chair is incapacitated, dies

³ See paragraph 6(5)(a) to (d), Schedule to the Commissioner for Children and Young People (Jersey) Law 2019

in office, is suspended, resigns and no replacement has been appointed, is unable to perform their duties for any reason, or the office is vacant, the Chief Minister may appoint an acting Chair. An individual will be disqualified from holding the role of acting Chair in the same way that the Chair would be, as set out at paragraph 4.6, above (if they are a member of the States or a States appointee/employee). The requirements under Article 18(3) of the 2005 Law, referenced at paragraph 4.4, above, should apply to the Chief Minister when appointing an acting Chair. The Chief Minister should not be required to appoint a current Commissioner to the role of acting Chair. The Chief Minister should have the power to appoint another suitably qualified individual to the role if they think that do so is appropriate in the circumstances.

- 4.13 The acting Chair shall be responsible for fulfilling all of the functions of the Chair under the Law and any other enactments but will be referred to as the acting Chair. This is simply to ensure that the statutory functions of the Chair can continue to be exercised until a permanent appointment can be made. The Chief Minister must report that an acting Chair has been appointed to the States as soon as practicable. The Chief Minister should also be placed under a duty to put forward a candidate for the role of Chair to the States as soon as is reasonably practicable following the office becoming vacant. The appointment process for the replacement Chair will be as set out above.
- 4.14 The Chair of the Commission should have the power to delegate any of their functions under the Law or any other enactment to Commissioners or to officers working under them. The Chief Statistician has such a power under Article 3(3) of the Statistics and Census (Jersey) Law 2018. This power may extend to enabling the Chair to designate a deputy Chair of the Commission, if required.

5. Independence of the Commission

- 5.1 As noted in paragraph 1.3, above, the Commission will hold a similar statutory function to that of the JAC under Articles 23 to 29 of the 2005 Law – see section 10, below, for further instructions relating to the Commission’s function and powers. The duty to deliver this function, including oversight of SEB appointments, requires the Commission to be established as an independent entity, separate from the Government of Jersey and other public bodies.
- 5.2 A provision is, therefore, required to establish the Commission’s independence. It is suggested that this should be based upon Article 10(1) of the Commissioner for Standards (Jersey) Law 2017 (the “2017 Law”). This provides that the Commissioner must not be directed on how any function of the office is carried out.
- 5.3 In addition, the Law should provide that the terms of the appointment of the Chair and other Commissioners should not be considered a contract of employment between the Chief Minister, the States and the appointed persons. See paragraph 2(3) of the Schedule to the 2019 Law and paragraph 2(3) of Schedule 2 to the 2014 Law for similar provisions. It is important that Commissioners are not actually or perceived as government employees. The specific terms of the appointment of the Chair of the Commission and other Commissioners must be agreed between the Chief Minister and the Chair of the Commission. Article 4(1) of the Comptroller and Auditor General (Jersey) Law 2014 provides an example of an equivalent provision currently enacted.

- 5.4 Ultimately, the Chief Minister will determine the remuneration of the Chair and the Commissioners and any entitlement to allowances or pension. In doing so, the Chief Minister must have regard to the civil service pay structure and arrangements in relation to allowances and pension. A provision of this nature is necessary so that the pay of the Chair and Commissioners is not set at a disproportionately high (or low) level in comparison to civil servants who undertake work which requires a similar level of skills and experience to that required by/held by commissioners. In practice, it is envisaged that the remuneration of Commissioners will be pinned to established civil service pay grades. Commissioners are likely to be paid a day rate which would account for the grossing up of civil service salary rates to reflect usual pension and annual leave entitlements.
- 5.5 It should be noted that, in the case of the Children's Commissioner under paragraph 8 of the Schedule to the 2019 Law, it is for SEB to determine the Children's Commissioner's remuneration, allowances and entitlement to a pension but it is suggested that this duty should not fall to SEB in relation to the Chair and Commissioners of the Jersey Public Appointments Commission as it may be perceived to impact on the Commission's independence if SEB, who will be the largest employer falling within the Commission's remit, are responsible for determining its remuneration. The Chief Minister must, however, consult the SEB before deciding the remuneration and entitlements of the Chair and the Commissioners.

6. The Jersey Public Appointments Commission

- 6.1 To guarantee that the Commission is properly resourced to fulfil its statutory functions, the new Law should place a duty on the Chief Minister to this effect. The Chief Minister must ensure that the States Assembly considers the financial and administrative resources, and other support including staff, services, equipment and accommodation so as to enable the Commission to discharge its functions under the Law, or under any other enactment economically, efficiently and effectively. In considering the resources that the Commission requires, the Chief Minister should be placed under a duty to consult the Chair of the Commission.
- 6.2 The requirement for the Chief Minister to provide the States Assembly with their assessment of the resources which the Commission requires fits appropriately into the statutory accounting framework for public authorities provided under the Public Finances (Jersey) Law 2019. This is because, in practice, the Chief Minister will submit the Commission's resource requirements to the States Assembly in the Government Plan for the next financial year and the States Assembly will consider this and either approve or amend the Chief Minister's funding proposal. The requirement for the Chief Minister to ensure the States considers the resources which the Commission requires to perform its functions economically, efficiently and effectively also fits within the context of the Public Finances (Jersey) Law 2019, as it mirrors the duty placed on the Principal Accounting Officer to ensure that public bodies use resources in this way under Article 39(1)(b).
- 6.3 As with the office of the Children's Commissioner, as provided under Paragraph 9(2) of Schedule 1 to the 2019 Law, any States' employee working under the direction of the Chair of the Commission should be treated as a member of the Commission's staff. It is anticipated that, as per the arrangements with the Children's Commissioner, Charity

Commission and Care Commission, the staff working for those corporate bodies/corporation soles will be SEB employees who are deployed to work for the Commission, thus ensuring efficiency with public monies as such an arrangement avoids the overheads associated with a number of small bodies directly employing staff. (Note: this does not mean, however, that the Law should preclude direct employment of staff if the Commission, as a corporate body, determine this course of action).

- 6.4 As per Article 21(1) of the 2005 Law, the Commission must continue to meet at least 4 times each year. The Chair must attend every meeting of the Commission unless they are unable to do so. In this case, the Chair may delegate the role to a deputy Chair, or the Chief Minister must appoint an acting Chair and the acting Chair must be present in the Chair's place. Either the Chair/acting Chair or a deputy Chair must preside over every meeting of the Commission. The requisite quorum for the meeting will be the Chair (or acting Chair/Deputy Chair) and at least one other Commissioner. Articles 21(2)(d), (e), (f), (3) and (4) of the 2005 Law should be retained. This will provide for the rules on voting, the provision of papers in advance of meetings and the attendance of non-Commissioners at meetings.
- 6.5 Aside from the matters outlined in paragraph 6.4, above, the Law will provide the Commission with the power to determine its own procedures for conducting business. The only further duty on the JAC in this regard should be to keep proper minutes of its proceedings and to publish these minutes in as much detail as it is possible to provide as soon as practicable after each meeting, having regard to the requirements of the Data Protection (Jersey) Law 2018 (excluding, for example, personal or commercially sensitive information). The Commission should be included under Schedule 1 of the Freedom of Information (Jersey) Law 2011 as a scheduled public authority for the purposes of that Law.
- 6.6 The Commission should be required to produce a written procedure for identifying, receiving, investigating and considering complaints or representations made to the Commission. In developing the complaints procedure, the Commission must consult the Chief Minister. The procedure must be published so that it is accessible to the public. The Commission must handle all complaints in accordance with its complaints procedure. The Law should provide that the Commission must ensure that a written record is made of any complaint, the action taken in response to it and the outcome of the investigation. (Note: in the event that a Public Service Ombuds is established the Commission's complaints process will need to accord with the minimum standards for complaints management as brought forward by the Ombuds.)
- 6.7 The Law should require the Chair of the Commission to prepare and to publish a Code of Conduct which will apply to all Commissioners. The Chair should be required to consult with Chief Minister, and may consult with any other relevant person, when preparing or amending the Code of Conduct. All Commissioners, including the Chair, should be required to adhere to the Code of Conduct. Commissioners who fail to comply with the Code may be dismissed on the grounds that they have behaved in a way that is not compatible with their continuing in office, as set out under paragraph 4.6, above. Expected general conduct requirements of the Code are likely to cover the use of public funds, use of official resources and official information, political activity and employment and appointments. The [Cabinet Office, Code of Conduct for Board Members of Public Bodies](#) provides an example of a standard code of conduct which could be adapted for these purposes.

7. Annual Reports and Accounts

- 7.1 The Commission must produce an annual report on the performance of its functions during each financial year. The report must include an accountability report, reviewing the work undertaken by the Commission and the functions discharged by the Commission during that year, including information arising from any audit carried out by the Commission or any inquiry into public appointments procedures and practices (as per Article 6 of the Public Appointments Order in Council 2017).⁴ The accountability report must also set out the work to be undertaken and functions to be discharged by the Commission during the following year, and describe why that work is in the public interest. As part of the annual report there must be a statement of the Commission's responsibilities and a governance report and staff report. The Chief Minister will be able to prescribe the minimum information which the annual report must contain by Order so that this provision can be easily amended in future.
- 7.2 The report must also include the accounts for the Commission. The Chair of the Commission must ensure that proper accounts and proper records in relation to the accounts are kept, and that these are prepared annually. It should be noted that the duty is not on the Chair of the Commission to do this themselves, necessarily – the duty is for them to ensure that these are kept by somebody, that may require the Chair to do so personally or for them to guarantee that the Government of Jersey is doing so on their behalf.
- 7.3 Similar provisions to those contained under paragraph 12(4), (5) and (6) of Schedule 2 to the Regulation of Care (Jersey) Law 2014 are required. This is to require that the accounts of the Commission are audited and prepared in accordance with generally accepted accounting principles. However, the Commission's accounts should be audited by auditors appointed by the Comptroller and Auditor General (and not the Minister for Treasury and Resources as under the Regulation of Care (Jersey) Law 2014).
- 7.4 Two additional caveats are also required. Firstly, the auditors may only be appointed to audit the Commission's accounts if an audit of their accounts is not being or has not already been carried out in respect of that financial year as part of the Government of Jersey's accounts prepared under Articles 31(3) and 37 of the Public Finances (Jersey) Law 2019 and audited as per Article 12 of the Comptroller and Auditor General (Jersey) Law 2014. Secondly, the Commission must not prepare its own accounts in line with generally accepted accounting principles when they are being prepared under the terms of the Public Finances (Jersey) Law 2019, under Articles 31(3) and 37. Provisions should allow the Minister for Treasury and Resources to make further stipulations about the contents of the Commissioner's accounts by Order.
- 7.5 The annual report, including accounting information, must be presented by the Chair of the Commission to the Chief Minister as soon as practicable after the end of the financial year to which it pertains. The Chief Minister must then lay a copy of the report as soon as practicable before the States.

⁴ [The Public Appointments Order in Council 2017](#)

8. Limitation of Liability

- 8.1 The legislation should limit the Commission's liability and those working under the Commission in pursuance of its functions. It should not be possible to sue the Commission, or those supporting the Chair of the Commission or other Commissioners in pursuing their functions, unless the Commission has acted in bad faith or has acted in breach of Article 7(1) of the Human Rights (Jersey) Law 2000.
- 8.2 Article 40 of the Regulation of Care (Jersey) Law 2014 which limits the liability of the Jersey Care Commission could equally be applied to the Commission under the new legislation. This sort of provision has been applied widely to statutory bodies in Jersey.
- 8.3 The provision of indemnity for Commissioners would be covered by the contract between Commissioners and the Commission.

9. Jurisdiction of the Commission

- 9.1 Articles 15 and 16 of the 2005 Law effectively establishes a position where the extent of the jurisdiction of the JAC is negotiated and agreed by the Commission and the States Employment Board, with the opinion of States Employment Board prevailing where the two bodies do not agree. In future, these Articles are not required. If the Commission is to be genuinely independent, it is important that its jurisdiction is not subject to negotiation with the States Employment Board as just one of many bodies that will fall under the Commission's jurisdiction. The law should, therefore, provide that the Commission's jurisdiction will:
 - a) include appointments made by the States Employment board and all those bodies that the States have determined should be included on a Schedule to the Law⁵ (except in relation to any persons elected to those bodies); and
 - b) not include the Parishes.
- 9.2 The Law should provide that the Schedule to the Law may:
 - a) be amended by Regulations (bodies may be added to the Schedule or removed from the Schedule). Prior to bringing forward proposed Regulations for consideration by the Assembly, the Chief Minister must ask the Chair of the Commission to provide them with recommendations as to which public bodies should be added to or removed from the Schedule. The Chair of the Commission must consult the public bodies which the Chair wishes to propose is added to, or removed from, the Schedule prior to providing the Chief Minister with their recommendations. The Chair of the Commission must publish their recommendations. The Chief Minister may then decide whether to uphold these recommendations prior to lodging amendments to the Schedule or not [Note; whilst it will be a legal duty for the Chief Minister to ask the Chair for recommendations, this does not preclude the Chair, or a public body which wishes to be added to the Schedule, or removed from the Schedule, from proactively asking the Chief Minister to consider bringing forward amendments. Where the Chair has requested the Chief Minister bring forward proposed

⁵ It is proposed that the Schedule of public authorities under the Law will be based on the list of public bodies which currently fall under the JAC's remit. This list can be found in the JAC's Recruiting Guidelines on pages 9 and 10 ([P JAC recruiting guidelines 20160517 MN.pdf \(gov.je\)](#)) and has been reproduced in the Appendix.

amendments, and the Chief Minister has declined to do so, the Chair may determine to report on this in the Commission’s Annual report]; and

- b) include any named bodies or categories or sub-categories of bodies providing those bodies are public authorities for the purposes of Article 1(1) of the Freedom of Information (Jersey) Law 2011, excluding Parishes i.e. the Assembly may only include on the Schedule a body or a category or sub-category of body that is a public authority but does not need to include all public authorities or categories of public authority on that Schedule. Furthermore, this may include sub-categories, for example, it may include a body which is in receipt of funding at least half of which is from the States in one or more years, as per Article 1(1) (h) (i) of the Freedom of Information of Law, but not where that body is a registered charity.

Article 1 of the Freedom of Information (Jersey) Law 2011

“public authority” means –

- (a) the States Assembly including the States Greffe;
- (b) a Minister;
- (c) a committee or other body established by a resolution of the States or by, or in accordance with, standing orders of the States Assembly;
- (d) an administration of the States;
- (e) a Department referred to in Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;
- (f) the States of Jersey Police Force;
- (g) a parish;
- (h) to the extent not included in paragraph (a) to (g) above, any body (whether incorporated or unincorporated) –
 - (i) which is in receipt of funding at least half of which is from the States in one or more years,
 - (ii) which carries out statutory functions,
 - (iii) which is appointed, or whose officers are appointed, by a Minister,
 - (iv) which appears to the States to exercise functions of a public nature, or
 - (v) which provides any service under a contract made with any public authority described in paragraphs (a) to (g), the provision of such service being a function of that authority;

9.3 The Law will provide that Commission may exercise its jurisdiction over an appointment made by the SEB or by any public body on the Schedule providing:

- a) the appointment is:
 - an appointment, reappointment or extension of appointment but is not a role to which an individual is elected; and
 - not already overseen by a comparable independent appointments regulator (for example, Her Majesty’s Commissioner for Public Appointments); and
- b) the Commission does so in accordance with its published scheme of oversight.

9.4 The Law will provide that the Commission must bring publish a scheme of oversight setting out how it will exercise its powers and function (see section 10, below) in relation to appointments made by the SEB and all scheduled bodies. For example, the Commission’s scheme of oversight could state that it will directly oversee the appointment of all tier 1, tier 2 and tier 3 civil service appointments as senior appointments plus Jersey Financial Services Commission Board appointments but will audit others.

- 9.5 In bringing forward, or amending, its scheme of oversight, the Commission must consult the relevant public body. The Commission must also consult the Chief Minister and the Chair of the Scrutiny Liaison Committee. The Commission must provide these parties with a minimum of 21 days' notice of its intention to amend the scheme of oversight. This statutory consultation period may be shortened if there is an act pending which relates to the Commission's functions. A public body will have a right to appeal about the terms under which it appears on the Scheme (for example, SEB could appeal a decision of the Commission to oversee tier 3 appointments). The Commission must create, publish and adopt guidance which sets out how it will deal with such appeals. In determining an appeal, the legislation will stipulate that the Commission must:
- a) hear appeals from public authorities over which it has had jurisdiction at any time;
 - b) inform the Chief Minister and the Chair of the SLC that it has received an appeal from a public authority;
 - c) take account of any information provided to it by a public authority; and
 - d) hear appeals in a timely manner.
- 9.6 When it is finalised, the scheme of oversight must be published as a report to the States Assembly. The scheme must be presented to the Chief Minister by the Chair as soon as is practicable following its approval by the Commission. The Chief Minister must then present the report to the States as soon as is practicable. The Commission may update the scheme as it sees fit. If the Commission updates the scheme, the Chair must ensure that the approved updated scheme is provided to the Chief Minister as soon as is practicable.

10. Powers and Function of the Commission

- 10.1 As stated above, the Commission will continue to, broadly, hold the powers and function of the present JAC, under Articles 23 to 29 of the 2005 Law. Some amendments are required to these provisions as set out below. Where no reference is made to a provision, it should be assumed that these should continue to be provided for under the new legislation.
- 10.2 The functions provided under Article 23(1) of the 2005 Law continue to be required under the new legislation except that Article 23 refers to the recruitment of "States' employees" or "States' appointees." Given that it is intended to refine the jurisdiction of the Commission so that it oversees Jersey public appointments in general, all references to States employees and States appointees should be amended accordingly so that all public appointments are included in the Commission's remit. Article 23(2) of the 2005 should be repealed. In conjunction with this change, an equivalent of Article 23(1)(d) of the 2005 Law is required but it should state that the Commission cannot – either in guidance or in practice – preclude a minister from participating in a recruitment process if that minister has a legal duty to either appoint or to recommend an appointment to a role.
- 10.3 It is noted that under Article 5 of the Public Appointments Order in Council 2019 in the UK "*the Commissioner [for Public Appointments] may, at the request of a Minister of the Crown, carry out such additional functions as may be agreed between the Minister and the Commissioner.*" This is a provision which is reflected under Section 17(1) the Constitutional Reform and Governance Act 2010 and which sets out that "*the Minister for the Civil Service and the [Civil Service] Commission may agree that the Commission is to carry out functions in relation to the civil service in addition to those given to it under the other provisions of this*

Chapter.” A similar broad power to extend the Commission’s functions is also required in Jersey Law.

10.4 The Law should therefore provide that the States may, by Regulations:

- a) extend the Commission’s functions to include other functions connected to Jersey public appointments; and/or
- b) amend the Law to introduce corresponding additional powers to enable it to carry out those extended functions effectively. A broad Regulation making power is requested in section 11, below.

10.5 The functions currently provided under Article 24 should be provided for under the new legislation but references to “States’ appointees” under Article 24 of the 2005 Law should be amended to reflect the new remit of the Commission, which extends to all public appointees in Jersey. Currently, States’ appointees are defined as persons appointed to or elected to certain offices which feature on a list agreed by the States Employment Board and the Commission. In future, the Commission will have no jurisdiction over elected officials, but nor will it be limited to which appointees it may oversee by agreement with the States Employment Board. Under the new legislation, an equivalent provision to Article 24(2)(a) of the 2005 Law should stipulate that the Commission must bring forward guidance on recruitment and selection which must set out matters related to:

- a) recruitment processes that seek to identify appointable candidates as distinct from recommending a candidate for appointment; and
- b) the need of public authorities to implement workforce planning processes and strategies fairly and transparently, such as succession planning.

10.6 References to “States’ appointees” and “States employees” under Article 25 of the 2005 Law should be amended under the new legislation to, again, reflect the new remit of the Commission to oversee all public appointments by bodies listed under the Schedule to the Law. Notwithstanding this change, the Commission should remain responsible for conducting audits of recruitment practices as per Article 25 of the 2005 Law.

10.7 Provisions which are equivalent to Article 26 of the 2005 Law, providing the Commission with direct oversight of the recruitment of senior public appointees, are also required under the new legislation. The key difference under the new legislation will be that, as set out under paragraph 9.4, above, the Commission will ultimately decide which public offices these provisions will apply to and for which it thinks it is appropriate for the Commission to be involved in the recruitment process. The Commission must describe on its scheme of oversight, those office holders or classes of office holders to which these provisions will apply.

10.8 Article 26AA of the 2005 Law governs the recruitment of the Chief Executive Officer (CEO) of the Government of Jersey and, currently, it provides that the JAC shall be involved in the process of appointing the CEO, including deciding which candidate is offered the post. As an independent appointments regulator, it is not considered appropriate for the Commission to hold responsibility for deciding which candidate to appoint, however, neither it is considered appropriate for SEB, as a political body, to select who should be appointed CEO. It is therefore proposed that Article 26AA is amended to provide that:

- a) the SEB must appoint a suitably qualified person to act as the decision maker in the CEO appointment process (i.e. to decide those matters set out in 26AA (3) (a) – (c)). The SEB may only appoint a person who has the expertise and experience necessary to act as decision maker in a senior appointment process and must lay a report before the Assembly, for at least 2 weeks, setting out their intention to appoint that person to act as independent decision maker. SEB cannot appoint the person until the two-week period has expired; and
- b) the Chair of the Commission should be provided with responsibility for those matters currently set out under Article 26AA(4) of the 2005 Law, including ensuring that the recruitment is conducted in a fair and efficient manner and that the successful candidate is appointed on merit. The Chair of the Commission should hold responsibility for chairing interviews of the candidates but should not be involved in the decision on whether to recruit a particular candidate, as per Article 26AA(5) of the 2005 Law

- 10.9 It is proposed that provisions relating to the recruitment of the CEO should be retained in the 2005 Law and not placed in the new legislation which establishes the Commission. As it currently stands, the 2005 Law provides that the appointments regulator will act as the independent appointment decision maker, with the SEB nominating a third party to act as the appointments regulator. The changes set out above provide that the independent appointments regulator will act as such, with the SEB nominating an independent, suitability qualified person to act as the appointment decision maker – i.e. they ensure the appointment decision making process is separated from SEB whilst retaining and upholding the role of the independent regulator.
- 10.10 Provisions equivalent to Article 26A of the 2005 Law are required under the new legislation. Article 26A of the 2005 Law should continue to refer to States employees and not all public appointees because it specifically relates to recruitment undertaken by the SEB.
- 10.11 In addition to the duty of the Commission to provide a copy of a relevant report to the States Employment Board under Article 27(1) of the 2005 Law, the Commission should also be required to issue a report to any other body and/or individual if that individual or body was responsible for the recruitment of the public appointee to which the report relates. The extension of this duty so that it applies to other recruiting bodies is required, given the extension of the Commissions remit to all public appointees – the States Employment Board is not responsible for the recruitment of all public roles. The distinction between States' employees and States' appointees under Article 27(1)(a) of the 2005 Law is, for the aforementioned reasons, no longer required. This should, instead, refer to all public appointees.
- 10.12 Article 28(8) of the 2005 Law is not required as there will no longer be a requirement for the Commission to agree a list of office holders for the purposes of Article 15(1) or Article 16(1) with the States Employment Board.

11. Regulation Making Power

- 11.1 The proposed new law provides for oversight of matters relating to public appointments in Jersey. As such it is considered that the Assembly should be provided with a broad Regulation making power to amend any part of the primary law post enactment. Any broad

Regulation making power must incorporate purpose/function of the regulation making powers as described above.

12. Transitional Arrangements

- 12.1 When the new legislation comes into force, the Jersey Appointments Commission established under the 2005 Law will be abolished. Members of the JAC will cease to hold positions as Commissioners. Prior to the enactment of the new legislation, recruitment for the Chair of the Commission will be undertaken. When the new Law comes into force, this individual will be known as the acting Chair until their appointment is confirmed by the States Assembly.
- 12.2 The acting Chair will exercise the functions of the Chair, including recommending other Commissioners for appointment.

Appendix – Public Authorities Currently Regulated by the JAC

Name of Body
Charities Commission
Charities Tribunal
Data Protection Tribunal
Data Protection Supervisory Authority
Digital Jersey*
Jersey Competition Regulatory Authority*
Jersey Financial Services Commission*
Jersey Overseas Aid Commission*
Office of the Comptroller and Auditor General
Office of the Information Commissioner
Children's Commissioner
Jersey Community Relations Trust
Jersey Police Authority
Jersey Police Complaints Authority
Jersey Safeguarding Partnership Board
Association of Jersey Charities *+
Depositor's Compensation Scheme
Financial Services Ombudsman
Jersey Arts Centre Association*
Jersey Arts Trust*
Jersey Business Ltd*
Jersey Consumer Council
Jersey Finance Ltd*
Jersey Gambling Commission
Jersey Heritage Trust*
Innovation Fund
Jersey Opera House*
Royal Jersey Agricultural and Horticultural Society
Jersey Sport*
Tourism Development Fund
Visit Jersey Ltd*
Early Years and Childcare Partnership
Jersey Childcare Trust
Citizen's Advice Bureau
Jersey Care Commission
States of Jersey Development Company
Andium Homes
Jersey Post
Jersey Telecom/JT
Ports of Jersey
Jersey Advisory and Conciliation Service*
Jersey Employment Trust*
Jersey Health and Safety Council
Income Support Medical Appeal Tribunal
Social Security Appeal Tribunal
Social Security Social Security Medical Appeal Tribunal
Commissioner for Standards
Referendum Commission

Fiscal Policy Panel

Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund

- * Body receiving statutory funding of £250,000 or more per annum
- + Body whose chair is elected by a ballot of members