# CONSULTATION

**New Public Inquiries Law (Jersey)**

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## The purpose of this consultation

The Chief Minister is consulting on the development of Jersey's first ever Public Inquiries Law. A public inquiry is a major investigation that has the powers to compel testimony and other forms of evidence. The main function of a public inquiry is to find out what happened, why it happened, who was responsible and what can be learnt, in order to prevent reoccurrence

Jersey law does not currently provide for public inquiries. To date, major investigations such as the Independent Jersey Care Inquiry, have been established as Committee of Inquiries by the States Assembly. The proposed new law, which will build on lessons learnt from review and analysis of the UK's Private Inquiries Act of 2005, will provide a more robust framework for the set up and delivery of independent public inquiries, including matters related to management of data and financial spend.

We welcome feedback on all matters set out in this consultation document, including your response to the four key questions set out in the body of the document.

## CONSULTATION PROCESS

This consultation report is divided into two sections. Section 1 provides background information about public inquiries; Section 2 sets out the proposed provisions of the Law. Section 2 includes four key questions which you may wish to answer. We would also welcome feedback on all other matters set out in the consultation document.

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| Public consultation | 20 October to 1 December 2021 |
| Publication of feedback report summarising the responses to consultation | Mid December |

The next step, post consultation, is to proceed with the development of the Law taking into account consultation feedback.

**You can comment by mail or post using the details below-**

Email: inquiriesconsultation@gov.je

Post: Strategic Policy, Planning and Performance Department
Government of Jersey
19-21 Broad Street
St Helier
JE2 3RR

**Closing date for comments: 20th December 2021**

**Data Protection**

A full privacy notice is available on the Inquiries Law consultation page on www.gov.je.

Your personal information will not be shared outside of the team developing this legislation or published online as part of the consultation, but we may use it to notify you of progress and/or further consultations relating to development of the Law. Under Jersey's Data Protection Law you have the right to ask us not to contact you again (withdraw your consent to the further processing of your information). This will, however, mean that we will be unable to keep you informed throughout the various stages of the project. Should you wish to exercise this right please email us at inquiriesconsultation@gov.je.

We may quote or publish responses to this consultation including information being sent to the Scrutiny Office, quoted in a published report, reported in the media, published on www.gov.je, listed on a

consultation summary, but will not publish the names and contact details of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. 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 may be released.

For further information on how we handle personal data please visit gov.je/howweuseyourinfo.

Q1. Do you give permission for any comments you submit to this consultation to be quoted?

☐ No

☐ Yes, anonymously

☐ Yes, attributed

If yes, name to attribute comments to:

Email address:

Organisation to attribute comments to, where applicable:

# Inquiries Law: Consultation

The Chief Minister wishes to bring forward a Public Inquiries Law for Jersey. This consultation document sets out the proposed provisions of that law.

Several key stakeholders have already commented on these provisions. Some of their comments have been incorporated into the provisions set out below and some are still in the process of being incorporated. In the meantime, members of the public and all other stakeholders are invited to comment on the draft provisions.

We would welcome feedback on all matters set out in this consultation document, including your response to the four key questions set out in the body of the document.

## Section 1: Background

What is a public inquiry?

1. A public inquiry is a major investigation that has the powers to compel testimony and other forms of evidence. The main function of a public inquiry is to address four key questions in order to prevent reoccurrence:

    a. What happened?
    b. Why did it happen?
    c. Who is responsible?
    d. What can we learn from this?

2. Inquiries start by looking at what happened. They do this by collecting evidence, analysing documents and examining witness testimonies. Inquiries usually then form recommendations, often having drawn on information and advice from experts and professionals. The recommendations are intended to guide the government and others to make changes that will prevent a recurrence of what previously happened.

3. Although initiated and funded by government public inquiries are run independently (although the Minister who establishes the inquiry does have the power to remove a Chair/other Panel member or terminate the whole process).

4. Examples of significant recent UK public inquiries include:

    - Leveson Inquiry 2011 - 2012 - established to examine the culture, practices and ethics of the press and to specifically investigate charges of phone hacking

- Mid Staffordshire NHS Foundation Trust Inquiry 2010-2013 - established to investigate the circumstances that led to serious failings in standards of care at Mid Staffordshire Hospital

- Scottish Child Abuse Inquiry 2014 - established to investigate historical cases of child abuse by care institutions in Scotland

- Grenfell Inquiry 2017 - established to investigate the circumstances surrounding the fire in Grenfell Tower in 2017

Public Inquiries in Jersey

5. Jersey law does not currently provide for public inquiries, although provision is made for Committees of Inquiry under Standing Orders of the States of Jersey and investigations by the Commissioner for Children and Young People under the Commissioner for Children and Young People (Jersey) Law 2019, Competition and Regulatory Authority under the Competition (Jersey) Law 2005 and Information Commissioner under the Data Protection Authority (Jersey) Law 2018. This is in addition to inquiries established by Scrutiny Panels or non-statutory investigations which may be established by a Minister, for example, in response to a complaint.

6. Where someone has died, a coroner's inquest is another form of public inquiry. In some circumstances the scope of a coroner's inquest is limited and a formal public inquiry as proposed with its broader remit may be more appropriate. In the UK, many, but not all, mass fatality incidents will be the subject of a public inquiry.

7. Committees of Inquiry[1] are currently the closest equivalent to a public inquiry in that they have similar subpoena powers[2] plus the ability to take evidence under oath and in private[3] if deemed appropriate. Examples of Committee of Inquiries include inquiries into the Bus Tendering Process (P.99/2004), Reg's Skips – Planning Applications (P.50/2009) and Historical Child Abuse (P.118/2012)

8. Committees of Inquiry are established by the States Assembly not by a Minister, which creates some significant operational and structural differences. This means that whilst Committees of Inquiry may provide for the establishment of inquiries on a smaller scale , such as the sale of public property or planning issues, they do not readily lend themselves

[1] Whilst there are similarities between Committees on Inquiry and other committees established by the Assembly, there are also some key differences including:

- Committees of inquiry are discretionary by contrast, unlike the PPC, PAC, planning committee, scrutiny panels and Chairmen's committee.
- The constitution and powers conferred upon Committee of Inquiry and other committees also differs by dint of various provisions in Standing Orders and the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007. For example, Members cannot ask questions relating to proceedings of a Committee of Inquiry (SO 10(2)), Committees of Inquiry cannot lodge propositions (SO 19(h)).

[2] In the 2007 Regulations this power is referred to as a "power to issue summons".

[3] Standing Order 147(2): "Proceedings before a committee of inquiry shall be held in public unless the committee, in the interests of justice or the public interest, decides that all or any part of the proceedings shall be in private."

to larger scale, more wide ranging and potentially more controversial issues, such as the independent Jersey Care Inquiry (IJCI) into historic child abuse, the provision of children's homes and childcare practice and policy. Challenges include:

a. As Accounting Officer for the Assembly, the Greffier of the States is accountable for the financial arrangements of committees of inquiry. The Greffier does not, however, have an appropriate governance framework in relation to costs of the inquiry and expenses of participants and witnesses.
b. Committees of Inquiry are committees of the States Assembly and are, therefore, currently covered by parliamentary privilege which may not always be appropriate in the case where a Committee of Inquiry seeks to operate as a quasi-judicial body.
c. The legislation that provides for Committees of Inquiry does not make provisions in relation to data protection, freedom of information and management of public records, which previously generated some specific challenges in relation to the Jersey Care Inquiry.

9. It is proposed that the Assembly may, post the introduction of an Inquiries Law, still establish Committees of Inquiry where the Assembly determines that a committee of inquiry is the best vehicle to investigate an issue. Invariably this will be where the issue to be investigated is a more minor in nature.

## Section 2: Proposed provisions of a public inquiries law

10. It is proposed that a draft law is brought forward which makes provision for the holding of public inquiries in Jersey.

11. The proposed provisions are described below. It is envisaged that some of those provisions will be provided in a framework primary law, with others being provided in regulations. This document does not set out which will be primary law provisions, although it does set out proposed Order making powers.

12. The proposed provisions are largely based on the UK's Inquiries Act 2005 except where they have been amended to:
    a. make them relevant to Jersey
    b. reflect the findings and recommendations of the following reviews of public inquires:
        - House of Lords Select Committee[4] in 2014
        - Institute of Government[5] in 2017
        - A network of UK parliamentarians, academics, public and voluntary sector staff and members of current and recent inquiries through the Scottish Universities Insight Institute (SUII) in 2019.[6]

<u>Powers to establish an inquiry (reference to section 1 of the 2005 Act)</u>

13. The Inquiries Law and associated Order making power will be the responsibility of the Chief Minister but the draft law should provide that any Minister may establish an inquiry under the law.

**Question 1**
In the UK any Minister can establish an inquiry, as proposed in this document.

Do you think that, in Jersey, an inquiry should be established by:
a. any Minister?
b. just the Chief Minister?
c. only the States Assembly?

Please tell us why.

**Question 2**

[4] House of Lords Select Committee on the Inquiries Act 2005 *The Inquiries Act 2005: post-legislative scrutiny* The Stationery Office 2014 https://www.parliament.uk/inquiries-act-2005
[5] https://www.instituteforgovernment.org.uk/publications/how-public-inquiries-can-lead-change
[6] https://www.scottishinsight.ac.uk/Portals/80/ReportsandEvaluation/Programme%20reports/Public%20Inquiries_Summary%20Report.pdf?ver=2017-09-27-161533-463

As set out in Section 1 above, it is proposed that, post the introduction of an Inquiries Law, the States Assembly should retain the power to set up Committees of Inquiry.

Do you think that Committees of Inquiry should be retained:

a. yes?
b. no?
c. only if public inquiries are to be established by a Minister or the Chief Minister (as opposed to by the States Assembly)?

14. Inquiries cost money and take time. Before establishing an inquiry, the Minister should consider whether there are more suitable ways to inquire[7] into a matter rather than to establish an inquiry under the Inquiries Law with all the attendant cost and time implications. For example, if the nature of the matter to be investigated does not require witnesses to be compelled to give evidence etc (as will be provided under Inquiries Law), the Minister may instead commission some form of non-statutory independent review. Whilst the UK Cabinet Office has published guidance to support a Minister to determine whether to establish a public inquiry there are no express duties in the 2005 Act that require a Minister to give due consideration to other alternate forms of inquiry.

15. Given the very significant cost implications of an inquiry, this may legitimately be considered an oversight. Consequently, prior to establishing an inquiry, the draft law should require the Minister to determine whether it is in the public interest to establish an inquiry under this law, as opposed to a non-statutory inquiry or an inquiry under another law. In making that determination, the draft law should provide that the Minister must consider the following factors;
    a. the time that the inquiry may take
    b. the circumstances (see below)
    c. the financial cost of the inquiry
    d. the value derived to the public (will inquiry findings justify the expense?)
    e. any other factors the Ministers believes may be relevant.

16. The circumstances in which a Minister may wish to establish an inquiry are potentially very broad, for example it may be in response to a single catastrophic event or series of events or where there is concern that something failed to happen. The law should, therefore, not be too prescriptive or narrow in providing for the circumstances in which an inquiry may be established. It should set out that the Minister may establish in inquiry when it appears to the Minister that it is in the public interest to do so because:
    a. a particular event/s has caused public concern (for example, a fire or a building collapse), or are capable of causing public concern (for example, a number of aggressive planning consents generates concerns about systemic corruption or systems failures)

[7] This may include a Committee of Inquiry; subject to it being determined that Committees of Inquiry should be retained.

b. there is public concern that particular events may have occurred (for example, a failure to protect vulnerable people).

17. Note: Whilst is it proposed that the Minister must give consideration to the factors set out above, it is not intended that those factors are, in of themselves, a reason to hold, or not hold a public inquiry. For example:

    a. the circumstances described above may exist but the Minister may nevertheless determine that an inquiry is not in the public interest. For example, there may be concern that there was a historical failure to protect vulnerable people however, there may be no evidence to support that concern or other related inquiries negate the need for a further inquiry

    b. having consider the factors above, the Minister may determine that, even if the financial cost of an inquiry is very high, the public interest is such that any inquiry should be held. However, if the Minister determines that the public interest is marginal and the costs of any inquiry are prohibitive, the Minister may not wish to proceed. (Note: having regard to the potential costs of an inquiry at the outset is in addition to the provisions set out below in relation to good financial governance).

18. In determining if the circumstances may warrant an inquiry the Minister does not need to know something to be the case (the purpose of the inquiry is to provide knowledge and evidence) but that something appears to the Minister to be the case and there must be reasonable grounds for it to appear to be so[8]. For example, the Minister may not know that failures in governance resulted in a failure of public services to respond to a catastrophic event, but the Minister may consider it likely based on an initial understanding of events.

19. As set out above, the circumstances in which a Minister may wish to establish an inquiry are potentially very broad which mirrors UK provision. However, this may give rise to tensions in a small jurisdiction where political oversight powers are, for good reason, limited by statute. Therefore, consideration must be given as to the extent to which the draft law should maintain, as opposed to potentially override, existing provisions related to statutory independence (for example, if a regulatory body has existing powers to investigate, even where that investigation is not in public, should the law provide that a public inquiry may invest in public a matter usually investigated in private)

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[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60808/cabinet-secretary-advice-judicial.pdf. In the UK there are no fixed threshold that identifies when there should be an inquiry but in 2010 the UK Cabinet Secretary issued a guidance note on the establishment of inquiries, which noted common characteristics of the events that had led to previous inquiries -

- large scale loss of life
- serious health and safety issues
- failure in regulation
- other events of serious concern.

**Note**

It should be noted that:

a. a Minister may be requested to establish an inquiry by means of a backbench proposition to the Assembly, although the Minister cannot be compelled to do so
b. the Council of Ministers may give a direction to a Minister with regard to policy (Article 18, States of Jersey Law) but this power does not extend to directing a Minister to establish an inquiry.

Therefore, the power to establish an inquiry under this law would rest with the Minister, albeit in making that determination the Minister would, no doubt, consider the wishes of the Assembly and the Council of Ministers.

Determination of liability (reference to section 2 of the 2005 Act)

20. The aim of an inquiry is to help restore public confidence in systems or services by investigating the facts and making recommendations to prevent recurrence - an inquisitorial process not an adversarial process. All parties are there to examine the facts and find out what happened, not to establish liability or to punish anyone.

21. The draft law should therefore provide that an inquiry Panel cannot rule on or determine a person's criminal or civil liability as this is the function for the courts, but that the inquiry Panel should not be inhibited in discharging its functions due to concerns about, or the likelihood of, liability being inferred either from findings it makes, the facts it determines, or the recommendations it makes.

22. The provisions above would not preclude the findings of an inquiry being admissible as evidence in any civil or criminal proceedings, as the findings will be a matter for public record. Furthermore, the evidence provided to the inquiry that supports the inquiries findings will be admissible unless that evidence is subject to a restriction notice and cannot be provided via a different route (see below).

Duty to make a Statement to the States Assembly (reference to Section 6 of the 2005 Act)

23. The law should provide that a Minister who proposes to establish an inquiry:
    a. must as soon as is reasonably practical make a statement to the Assembly (under Article 17 of Standing Orders of the States of Jersey) and
    b. may present an "accompanying report" to the Assembly.

24. The statement must set out Minister's intention to establish an inquiry and must explain:
    a. the matter/s to which the inquiry relates

b. the reasons why the Minister considers the public interest threshold has been meet.

25. Under the UK Act the Minister must inform Parliament but may do so either orally or in writing. It is proposed that the draft law make provision for a statement, as this provides for a period of up to 15 minutes of questions from other members (with potential for up to 30 minutes).

26. The Minister may also lay an "accompanying report" as this will provide for more detailed information to be set out, albeit depending on the circumstances some of that detail may not be known at the point at which a statement is made. For example, the "accompanying report" may set out:
    a. the anticipated costs / financial and resource implications
    b. the terms of reference for the inquiry
    c. the anticipated setting up date
    d. the anticipated timeframe for the inquiry
    e. the name and/or qualifications of the person who the Minister proposes to appoint as Chair
    f. whether the Minister proposes to appoint other Panel members and if so, how many Panel members.

27. The Law does not need to provide that any "accompanying report" must laid at the same sitting as the statement is made.

28. Where an "accompanying report" is provided, includes some the information set out above, this does not preclude the duty placed on the Minister to provide all information set out above in a report / reports to the Assembly at least two weeks before:
    a. the inquiry setting up date, if the inquiry has not already started, or
    b. the date specified on amended terms of reference as the coming into force date if the inquiry has already started (see below).

**Note**
The requirement to make a statement to the Assembly (with the ability to present an accompanying report) does not preclude a Minister from laying a proposition before the Assembly, asking the Assembly if they agree with the establishment of a public inquiry, if the Minister determines that it is appropriate to do so. In so doing, the Minister may request for truncated lodging period.

<u>Cost of inquiry</u>

29. The Minister must set out the anticipated costs / financial and resource implications of the inquiry in a report to the Assembly. There are four potential funding routes dependent on the anticipated overall costs and the availability of departmental resources.

a. Option 1- funding is provided through existing departmental budgets (this does not require a decision of the States Assembly)
b. Option 2 – funding is provided by a transfer from another head of expenditure (as set out in Article 18 of the Public Finances (Jersey) Law 2019)
c. Option 3 – funding is allocated from the Reserve (as set out in Article 15 of the Public Finances (Jersey) Law 2019
d. Option 4 – funding is provided by an amendment to the Government Plan.

30. In the event that the anticipated costs are such that the Minister determines that an amendment to the Government Plan is required, the Council of Ministers must lodge a proposition requesting that such an amendment is made (as per Article 16 of the Public Finances (Jersey) Law 2019). Currently, if a proposition was laid before the Assembly requesting an amendment to the Government Plan, this proposition could be amended by a member of the Assembly thereby allowing any aspect of the Government Plan to be debated / amended, not just those elements of the Government Plan that the Council propose are amended to fund a public inquiry. This is not as intended. The draft law should therefore bring forward a consequential amendment to the 2019 law setting that where a proposition is lodge by the Council of Minister seeking to amend the Government Plan for the purposes of funding a public inquiry that proposition can only be amended so as to:
    a. amend the total amount sought (this can be a greater or lesser amount than that set out in the proposition)
    b. amend the proposed source of the funding adjustment.

<u>Inquiry Panel (Art 3 2005 Act)</u>

31. The law must provide that an inquiry will be undertaken by an inquiry Panel ("the Panel") which must include:
    a. a Chair, or
    b. a Chair and at least two other Panel members. UK law provides that a Panel may be the Chair plus one other member however, consultation feedback to date suggests that a Panel of two may generate some complexity).

32. Depending on the scope and scale of the inquiry the Minister may determine that it is sufficient just to appoint a Chair - who may be supported by Assessors (see below) – or the Minister may determine that a number of Panel members should be appointed to ensure a range of expertise. It is notable that in the UK and other jurisdictions even very large-scale public inquires have a relatively small number of Panel members (for example; the UK's Dunblane primary school inquiry had a single Chair with no other Panel members).

33. The Minister must appoint the Chair and must appoint the other Panel members if other members are required (see provisions relating to appointment set out below).

Terms of reference (Section 5 of the 2005 Act)

34. In setting the proposed terms of reference the Minister must determine the following matters which must be included in the terms of reference ("ToR"):
    a. the matter/s to which the inquiry relates
    b. the purpose of the inquiry
    c. the matters to which the inquiry Panel is to determine the facts [Note: specifying the matters will help create understanding of what the inquiry is, or is not doing, and support consideration of time frame and financial implications. The matters set out may be amended as part of the arrangement of amending ToR set out below if it is deemed necessary. For example, the ToR for an inquiry into a building which collapses may, at the outset, set out that it will inquire into why Building A collapsed. During the inquiry it may become clear that it is also necessary to inquire into why Building B and C did not collapse)
    d. whether the inquiry is to only determine facts or to review policy in the given area
    e. whether an inquiry must make recommendations (note: the law should provide that a Panel may make recommendations even when it is not required to by the terms of reference; see section below on *reporting*)
    f. to whom the inquiry must report
    g. target date by which the inquiry is to report
    h. the financial and resource implications
    i. financial control and governance arrangements
    j. any other matters relating to the scope of the inquiry which the Minister may specify
    k. total number of inquiry members to be appointed in addition to the Chair
    l. matters relating to copyright of the inquiry report and associated materials produced by the inquiry Panel[9].

35. Before setting out the proposed terms of reference the Minister:
    a. must consult the person s/he has appointed/proposes to appoint as Chair
    b. must give consideration to consulting the parties whom the Minister determines to be interested parties, including victims and their families (if relevant). The draft law should not compel the Minister to consult but should compel the Minister to consider whether or not to consult. This will require the Minister to make a decision which can then be scrutinised
    c. may consult any other person s/he considers appropriate to consult.

36. If the Minister determines not to consult interested parties the Minister must publish his / her reasons for not doing so. Grounds not to consult with interested parties may include, but are not limited to;
    a. time constraints

[9] The requirement to set out matters relating to copyright is not provided for in UK law but it is a recommendation of the national archive that the terms of reference set out that the copyright rests with the 'crown' to ensure public access to these materials

b. resource constraints
c. it being impractical to do so, for example if there are too many interested parties.

37. The consultation correspondence between the Minister and the Chair must be published . Other correspondence may be published with the consent of the other consultees. It may need to be redacted prior to publication for data protection reasons, or if it is considered by the Chair to be prejudicial to the inquiry.

Note: These provisions are not made in UK law but, in the interests of transparency, is a proposed provision in Jersey law.

38. Having consulted the Chair (and any other parties as the case may be) the Minister must, present a report to the States Assembly, at least 2 weeks before the inquiry's setting up date (see below), setting out the proposed terms of reference to the inquiry.[10]

**Note: Report and Proposition**

As set out above, the duty to present a report to the Assembly which will be imposed by the law does not preclude a Minister from laying a report and proposition before the Assembly, asking the Assembly if they agree the terms of reference, if the Minister determines that it is appropriate to do so.

39. The Minister must then adopt the terms of reference by Ministerial decision. The terms of reference as adopted may have been amended to reflect any decisions taken by the Assembly that arise subsequent to the proposed terms of reference being presented to them and any subsequent debate. The report accompanying the Ministerial decision must set out the rationale for those changes.

40. The Minister cannot adopt the terms of reference by Ministerial decision until the two-week period set out above has expired.

41. The Minister must publish the terms of reference and the consultation correspondence, as set out above, before the setting up date. It must be published in a manner which ensures public access and the information must be kept up to date [Note: as the final ToR are adopted by Ministerial Decision and these may be different / amended ToR to those presented to the States Assembly, there is a risk that the public may not access the final version. It is therefore envisaged that the Minister will establish a central on-line deposit for information relating to inquiry up until the point at which the inquiries own website is established].

[10] In the event an Assembly member does not support the ToR they may lodge a proposition requesting a variation to the ToR or calling for the Minister to hold an inquiry.

Amending the terms of reference

42. The Minister may amend the terms of reference at any point;
    a. if the Minister considers it is in the public interest to do so,
    b. in response to a request to so do from the Chair / the person the Minister proposes to appoint as Chair (for example; amending the date on which the inquiry is to report if it transpires that the Inquiry cannot report on that date; amending number of Panel members).

43. Before amending the terms of reference, the Minister:
    a. must consult the person he / she has appointed/proposes to appoint as Chair unless the amendments are in response to a request from the Chair
    b. must consider whether to consult the parties whom the Minister determines to be interested parties, including victims and their families (if relevant).
    c. may consult any other person he / she considers it appropriate to consult.

44. Having consulted the Chair / interested parties the Minister must present a report to the Assembly if the Minister determines that the proposed amendments are of such as level or degree that they impact the nature or scope of the inquiry. For example, if the Chair were to request that the target date by which the inquiry is to report is adjusted by a minor period the Minister may conclude that a report is not warrant but, if the matters to which the inquiry relates were to be amended, the Minister may determine a report is required.

45. The report setting out the amended terms of reference must be lodged at least two weeks before:
    a. the inquiry setting up date, if the inquiry has not already started, or
    b. the date specified on the amended terms of reference as the coming into force date, if the inquiry has already started

46. The Minister must adopt the amended terms of reference by Ministerial decision. The amended terms of reference may have been further amended to reflect any comments received by the Assembly (if a report was laid before the Assembly). The report accompanying the Ministerial decision must set out the rationale for amendments to the terms of reference.

47. The Minister must publish the amended terms of reference and the consultation correspondence. It must be published in a manner which the Minister deems appropriate to ensuring public access [Note: as the final ToR are adopted by Ministerial Decision and these may be different / amended ToR to those presented to the States Assembly, there is a risk that the public may not access the final version. It is therefore envisaged that the Minister will establish a central on-line deposit for information relating to inquiry up until the point at which the inquiries own website is established]

**Note: Provisions relating to Terms of Reference**

In 2012 the Cabinet Office[11] issued guidance setting out that Ministers must give careful consideration as to exactly what purpose an inquiry is to serve, and that Ministers may stress the need for discipline in the management of the inquiry in the terms of reference.

In 2017 the Institute for Government report on inquiries concluded that *"to be effective and deliver change, inquiries need a clear sense of purpose"* and that the terms of reference are key to the success of an inquiry. The report noted that that the Saville Inquiry into the events of Bloody Sunday in Northern Ireland, criticised for its length (12½ years) and costs (£191.5m), was hampered in part by its particularly loose and wide-ranging terms of reference.

To this end, the provisions set out above go beyond those set out in the 2005 Act as they place an explicit duty on the Minister to consider the inclusion of certain matters in the terms of reference.

**Note: Consultation on terms of reference**

The UK Act does not require the Minister to consult on the terms of reference, however, the House of Lord Select Committee[12] recommended:

A. that interested parties, in particularly victims and their families, should have an opportunity to make representation about the terms of reference
B. there should be a short period of reflection and consultation regarding draft terms of reference before these become fixed

The UK Government's response to Recommendation A was, whilst accepting that consultation could be helpful an acceptable conclusion could be reached with interested parties, to conclude consultation would be problematic in cases where there are multiple victims or where government needed to respond swiftly to an issue. For this reason, it is proposed that the draft law does not place an explicit duty on the Minister to consult but does place a duty on the Minister to consider whether or not to consult and publish reasons for not consulting.

Recommendation B was also rejected but it is not considered that the two-week notice period set out above addresses this issue as it, in effect, provides for a two-week period of reflection.

[11] Cabinet Office *Inquiries Guidance: Guidance for Inquiry Chairs, Secretaries and Sponsor Departments* 2012
[12] https://www.parliament.uk/inquiries-act-2005

Setting up date

48. The Minister must set out in a report to the Assembly the setting up date for the inquiry.

49. The report must be laid before the Assembly at least 2 weeks before the setting up date. This report may be the same report that sets out the terms of reference or may be a different report if the terms of reference are established in advance.

50. The setting up date is the date on which the inquiry formally comes into existence as an independent body. The law must provide that the inquiry cannot begin considering evidence until the setting up date, but this would not preclude the Panel planning for its operation such as finding offices and staff, commencing working planning etc before the setting up date.

Appointment of Chair and other Panel members (reference to Section 4 of the 2005 Act)

51. The law must provide that an inquiry may not be set up unless a Chair has been appointed and is in post.

52. The Minister must appoint a person who appears to the Minister to be suitable to be Chair of the Inquiry. The Minister must appoint the Chair by Ministerial decision.

53. The Minister must, at least 2 weeks before appointing the Chair, present a report to the States Assembly setting out thier intention to make the appointment (this may, or may not be the same report in which the proposed terms of reference and / or setting up date are set out)

54. Before appointing any Panel member other than the Chair, the Minister must:
    a. consult the Chair (or the person the Minister proposes to appoint as Chair)
    b. at least 2 weeks before appointing other Panel member present a report to the States setting out her/his intention to make the appointment (this may, or may not be the same report in which the proposed terms of reference and / or setting up date and / appointment of the Chair are set out)

55. The other members of Panel must also be appointed by the Minister by Ministerial decision.

56. The Minister may at any time (either before the setting up date or during the course of the inquiry) having consulted the Chair and having presented a report giving at least 2 weeks' notice to the Assembly, appoint a new member to the Panel to:
    a. fill a vacancy that has arisen on the Panel, or

b. increase the number of Panel members providing that, once the new member is appointed, the total number of Panel members does not exceed the total number set out in the terms of reference.

57. The consultation correspondence between the Minister and the Chair must be published in a manner deemed appropriate by the Minister.

58. This may be needed, for example, if it transpires that a different expertise needs to be represented on the Panel or adjustments needs to be made to the overall balance of the Panel members (see reference to 'balance' below)

59. Where a replacement Chair is required because the role of Chair has become vacant either before the setting up date or during the course of the inquiry, a member of the Panel may be appointed as Chair, or another person whom the Minister deems appropriate may be appointed a Chair.

60. As above, the Minister must, at least 2 weeks before appointing the new Chair by Ministerial decision, present a report to the States Assembly setting out thier intention to make the appointment.

61. The Minister may appoint a member of the Panel to act as Chair on an interim basis until the point at which a new Chair is in post.

62. If the person appointed as the new Chair is a Panel member, the Minister must appoint a new Panel member and present a report giving at least 2 weeks' notice to the Assembly.

63. Consideration has been given as to whether the draft law should provide that the Jersey Appointments Commission (JAC) is involved in the appointment of the Chair and Panel members. There are distinct benefits to JAC involvement, as oversight by an independent regulators support transparency and public confidence in the process which needs to be balanced against:
    a. potential necessity to make appointments in a very tight timeframe
    b. necessity for involvement, and associated justification of costs, if the inquiry is small scale or Panel is drawn from potentially very limited pool of experts
    c. the roles of Chair and Panel members are neither contracts of employment nor substantive office holders unlike, for example, the Charities Commissioner, C&AG etc.

64. It is therefore proposed that the draft law does not require the JAC oversees the selection of the Chair and Panel members but the draft law should place a duty on the Minister to give consideration to requesting the JAC to oversee the selection process as the Minister determines appropriate. The Chair of the JAC may then determine whether or not to concede to the request. [Note: The UK Act does not require the Commissioner for Public Appointments to have oversight of the appointment of the Chair or Panel members].

65. The functions conferred by law on an inquiry Panel, or on the member of a Panel, may only be exercised within the terms of reference for the inquiry.

Suitability of Panel members (reference to Section 8, 9 and 10 of the 2005 Act)

66. The law needs to place a duty on the Minister when appointing Panel members to have regard to the collective expertise of those members and their individual impartiality. Given that a key function of an inquiry is to help to restore public confidence in systems or services, the public must be assured that Panel members have the right skills and can be trusted to act without bias.

67. Expertise: In appointing a Panel member, including the Chair, the Minister must have regard to:
    a. the need to ensure that the Panel, as a whole, has the necessary expertise (i.e. skills, knowledge and experience) to undertake the inquiry
    b. the need for balance in the composition of the Panel whilst having regard to the terms of reference of the Panel. ('Balance' requires consideration of experience that different Panel members bring, such as balance between different subject areas or between academic and practical experience. Balance does not necessary mean the Panel must contain people who would be seen as representing all the interested parties – indeed the Minister should avoid appointing Panel members who, in the light of their backgrounds, are likely to tend towards a particular viewpoint).

68. When considering the expertise required by the Panel as a whole, the Minister must also give consideration to the expertise and assistance that will be provided by any assessor the Minister has appointed/proposes to appoint (see below).

69. Impartiality: The Minister must not appoint a person as Chair or as a Panel member if it appears to the Minister that the person has:
    a. has a close association with an interested party
    b. a direct financial interest in the matters to which the inquiry relates, or
    c. an interest in the matters to which the inquiry relates, the extent of which the Minister determines may affect, or may reasonably be considered to effect, their impartiality.

70. Note: The UK Act references a 'close association' or a 'direct interest' but it is proposed that a slightly amended approach is taken in Jersey law in recognition of the fact that, in a small island, it can be difficult to identify people who have no 'interest' in a matter (for example, if there were to be a major service failing in Jersey it would be may difficult to identify a resident who was not affected and therefore any resident could be disqualified because they are deemed as having an interest). Conversely 'direct interest' may be perceived as too low a bar for disqualification in a small island where there are known

concerns around ‘the establishment’/’the Jersey Way’. It is therefore proposed that the draft law should provide for ministerial judgement about the degree of level of interest.

71. The draft law should provide that a person may be appointed, despite that person’s interest or close association, if the Minister has determined that the appointment could not be regarded as affecting the impartiality of the Panel. This may arise, for example, if it were beneficial to the inquiry to appoint a person with a close association (for example, Panel member may be specialists in a limited field who has professional contacts with a witness who works in the same field) but only where it could be regarded as not affecting the impartiality of the Panel as a whole.

72. The law must provide that:

    a. before a person is appointed to the Panel, the person must notify the Minister of any matters of any interests or close associations that may affect the impartially of the Panel
    b. if at any time before the setting up or during the course of the Panel, a Panel member becomes aware of any interest or close association, they must notify the Minister in writing as soon as practicable. This includes during a period in which the inquiry is suspended (see *Power to suspend inquiry* below)
    c. a Panel member must not, before the setting up or during the course of the Panel, undertake any activity that could reasonably be regarded as affecting their suitability to act as a Panel member or their impartiality. This includes during a period in which the inquiry is suspended (see *Power to suspend inquiry* below).

73. Where a Panel member (including the Chair) notifies the Minister of any interests or close associations but the Minister determines this does not have a bearing on their members (ie. because the Minister does not consider it to affect the impartiality of the Panel, the Minister must publish details of the interest / close association and the rational for it not having a bearing on the impartiality of the Panel.

74. The draft law should provide that the Chief Minister may issue guidance on impartiality to support the Minister and Panel members to determine when a Panel member may be considered not to be impartial.

75. If the Minister proposes to appoint:
    a. a member of the judiciary as a Panel member s/he must first consult the Bailiff
    b. a tribunal member as a Panel member s/he must first consult the Tribunal Chair

<u>Duration of appointment of Panel members</u>

76. A person is appointed as a member of the Panel until the inquiry comes to an end unless:
    a. the person dies before then
    b. the person resigns before then

c. the Minister terminates their appointment as a Panel member.

77. A Panel member may resign at any time by giving notice in writing to the Minister. There is no notice period for resignation.

78. A Minister may by written notice terminate their appointment on the following grounds:

a. if, by reason of physical or mental illness the Panel member is unable to carry out the duties of a Panel member. Where the illness or the other reasons (for example, a bereavement in the member's family) means that the Panel member is unable to carry out their duties on temporary basis, as opposed to permanent basis the Minister should consider whether they may therefore be able to continue as a Panel member, or whether the envisaged end date for the inquiry means they cannot realistically continue as a Panel member
b. the Panel member has failed to comply with any duty imposed on him by this law
c. the Panel member has an interest or close association which could reasonably be regarded as affecting the Panel's impartiality, providing the Minister did not know about this interest or association before appointment (see above: the Minister may have appointed someone whom the Minister knows to have an interest or close association but only where the Minister had determined that this interest or association could not be regarded as affecting the impartiality of the Panel)
d. the Panel member has, since their appointment, become bankrupt and that the matters to which the inquiry relates means they are unsuited to be a member of the Panel (i.e. becoming bankrupt is not an automatic bar to Panel membership but it may be bar if, for example, the inquiry related to matters of governance)
e. the Panel member has, since their appointment, been guilty of a criminal offence
f. the Panel member has, since their appointment, engaged in conduct which makes them unsuited to be a member of the Panel
g. if, for any other reason, the Panel member is unable to discharge their functions
h. if, the Panel members has not been discharging their functions and, on the basis of failure to discharge their functions, the Chair requests the Minister to terminate their appointment and the Minister agrees with that request (this would cover, for example, failure to attend inquiry meetings or poor performance which are not duties imposed by law as per b. above

79. Before terminating the appointment of a Panel member, the Minister must:
a. inform the member in writing of the reasons for the proposed decision and take into account any representations made by the member in response to those reasons, and
b. if the Panel member is not the Chair, the Minister must also consult the Chair and take into account any representations made by the Chair in response to the reasons for termination of employment.

80. The letter informing the Panel member (and the Chair if applicable) of the proposed decision to terminate the member's appointment must set out the timeframe in which any representations must be received from the Panel member (and the Chair if applicable). That timeframe must be at least 5 working days.

81. The Minister may, if the Panel member so requests, consult other Panel members about the proposed termination and take into account any response they may make.

82. The Minister must, as soon as practically possible, present a report to the Assembly setting out that the appointment has been terminated. (Note: The draft law should not place a duty on the Minister to set out the grounds for termination in the written report in case, for example, termination is on the grounds of ill health. This does not, however, prevent the report referencing any grounds that may already be in the public domain).

83. The Minister may suspend a Panel member whilst any allegations that may result in termination of appointment are investigated. The Minister must:
    a. inform the Panel member in writing of the suspension and the allegations to be investigated, and
    b. inform the Chair in writing that a Panel member is to be suspended, if that Panel member is not the Chair (Note: the Chair may then determine what action needs to be taken during the period of suspension. This may include re-arranging date of hearings, appointing assessors to provide some of the expertise provided by the suspended Panel member)
    c. if the Panel member is the Chair, the Minister must inform all other Panel members in writing (if there are other Panel members) and must set out the arrangements during the period of suspension of the Chair. The draft law should provide that arrangements could include, for example:
        - requesting an existing Panel member to act as Chair in the interim
        - requesting another person act as Chair in the interim
        - requesting that the officials supporting the Inquiry proceeding re-arrange hearing dates etc.

84. In extreme circumstances (for example, if the Chair is suspended / terminated) the draft law should not inhibit the Minister from using the Inquiry suspension provisions below.

<u>Assessors (reference Section 11 of the 2005 Act)</u>

85. Assessors is the term used in the UK law although they might also be referred to as advisors. The role of assessors will vary from inquiry to inquiry, but in essence they are experts in their own particular field whose knowledge can provide the Panel with the expertise it needs in order to fulfil an inquiry's terms of reference (for example, an inquiry into child abuse may include a consultant pediatrician as an assessor). Assessors are not inquiry Panel members and do not have any of the inquiry Panel's powers and are not

responsible for the inquiry report or findings. As they are not responsible for the report, or any associated recommendations, the Minister/Chair does not have to give consideration to the need for balance in the composition of the assessors, although the Minister/Chair must give consideration to their expertise.

86. The law should provide that one or more persons may be appointed as assessors to assist the Panel. There should be no limit on the numbers of assessors appointed. Control on expenditure is provided via the duty placed on the Chair to have regard to the need to avoid any unnecessary cost (See Evidence and procedure section below)

87. The Minister may appoint before the setting up date, having consulted the Chair/proposed Chair in advance.

88. The Chair may appoint during the course of the inquiry (regardless of whether or not the Minister has appointed assessors).

89. The Minister and Chair may only appoint people as assessors if it appears to the Minster or Chair (which ever the case may be), that the person has expertise / knowledge that makes them suitable to assist the Panel.

90. An assessor may be appointed for the duration of the inquiry or for part of the inquiry, for example to assist when evidence on a particular subject was being considered. This duration of their involvement will be set out in their contract for services, but the law should not limit their term of appointment.

91. The Minister may terminate the appointment of an assessor before the setting up date, having consulted the Chair (or person proposed as Chair) in advance.

92. The Chair may, at any time, during the course of the inquiry terminate the appointment of an assessor but must have the consent of the Minister if the Minister appointed the assessor. (It is noted that if the Minister did not consent this may put the Chair is a difficult position; however, this needs to be weighted up against the fact the Minister will require some checks and balances on a Chair who may want to dismiss assessors who present an alternative voice to other assessors)

<u>Power to suspend inquiry</u>

93. The type of events which may cause a Minister to establish an inquiry, may also give rise to other forms of investigation (for example, health and safety and/or criminal or civil proceedings). In the event there are other such investigations, this could present a challenge to the timings of the inquiry; it would be important to ensure that the inquiry did not prejudice a criminal prosecution and it may be that the findings of other investigations are helpful to the inquiry and allow to Panel to avoid any duplication of effort. Provision

needs to be made in law for an inquiry to be suspended if any other official investigation is commenced after the inquiry has started.

94. The Law should provide that the Minister may at any time (i.e. either before the setting up date or during the course of the inquiry) suspend the inquiry for the period that appears to the Minister to be necessary to allow for:
    a. the completion of any other investigation relating to any of the matters to which the inquiry relates, or
    b. the determination of any civil or criminal proceedings arising out of any of the matters to which the inquiry relates, including proceedings before any form of disciplinary / misconduct proceedings

> **Note**
>
> Consideration is being given as to whether the Minister 'may', or whether the Minister 'must' suspend an inquiry where there are legal proceedings / anticipated legal proceedings.

95. As set out above, if the Chair is suspended / or their appointment has terminated, the Minister may suspend the inquiry whilst a new Chair is recruited. Albeit it is envisaged that this power will only be used in extreme circumstances.

96. The draft law should provide that the Attorney General may request, in writing, that the Minister suspends an inquiry if the Attorney General believes that it is necessary to do so to allow for the determination of other proceedings or pending proceedings which arise from the matters the inquiry relates to. The draft law should provide the Minister must give consideration to the AG's request and, if the Minister determines not to concede to the request, must set out in writing the Minister's reasons for not doing so.

97. The draft law should also provide that any other person may also request that the Minister suspends the inquiry. This is not limited to persons who have been identified as core participants (see below) as there may be other people with a valid interest who, as of the time of their request, have not yet be recognised by the Chair as core participants (for example, regulators). The Minster may give consideration to any such request, but it should not be compelled to give consideration to a request as it may a nuisance or vexatious request.

98. To suspend the inquiry the Minister must give written notice to the Assembly and the Chair as soon as reasonably practicable.

99. Prior to the giving of that notice the Minister must have consulted the Chair (or the person proposed to be appointed as Chair).

100. The written notice:

a. may set out whether the inquiry is suspended until a specified day, until a specified event has happened or until the Minister gives further notice to the Chair.
b. must set out the Minister's reasons for suspending the inquiry.

101. In issuing the written notice, and in determining if the inquiry is suspended until a specific date, the Minister must need to take care to ensure the Minister does not prejudice an ongoing investigation and will need to consider whether, with regard to criminal trial, then time should be allowed for the expiry of any appeal period, or determination of an appeal if there should be one.

102. The period of suspension:
    a. begins on the day set out in the notice the Minister provides to the Chair and the Assembly
    b. ends on the date specified in the written notice OR on the day the specified events happen OR on date set out by the Minister in the further notice provided to the Chair and the Assembly by the Minister.

103. The Minister may suspend the inquiry regardless of whether or not the investigations or proceedings have begun (i.e. the inquiry may be suspending before the setting up date, or the inquiry may have begun but have not yet concluded).

104. Note: it is an anticipated that whilst the draft law will provide the power to suspend an inquiry, this would not equate to preventing an inquiry being set up if the subject of inquiry is subject to legal proceedings before a court or a tribunal. To do so could, for example, prevent an inquiry into a failing hospital because death in the hospital is subject to proceedings. This is different from the provisions of Article 10 (5) (b) of the Commissioner for Children and Young People (Jersey) Law 2019 sets out that the Commissioner cannot conduct an investigation if the matter to be investigated is subject to proceedings.

<u>End of Inquiry</u>

105. An inquiry will usually end when the Chair has submitted the inquiry report to the Minister and has done any work necessary to wind up the inquiry. There may, however, be situations in which it is no longer necessary or possible for an inquiry to continue. For example:
    a. evidence emerges that negates the need for an inquiry or which demonstrates that the event/s should be investigated in a different way (for example, if a building collapsing is an act of sabotage rather than a systemic failing, it is the police who should investigate as opposed to public inquiry being held)
    b. there may be an unforeseen event such as the death of a witness, which means that an inquiry will no longer have access to the evidence it needs to conduct an effective investigation.

106. In such cases the Minister must be able to end the inquiry, albeit ending the inquiry cannot be a retrospective act. Any proceedings up to the date that the inquiry ends would be valid (i.e. the proceedings would not be invalidated just because the inquiry is ended by the Minister and any information held or created by the inquiry up until the day it ends would form part of the inquiry record)

107. The draft law should provide that:
    a. the Chair may request the Minister, in writing, to end an inquiry if the Chair determines there are reasonable grounds to do so. The Minister will determine whether to end the inquiry on receipt of that request. [note: if the Minister declines to end the Inquiry, the Chair may determine to resign]. In the event that the Chair has requested that the Minister ends of the Inquiry the Minister does need to consult the Chair before giving written notice (see below)
    b. as with the suspension of an inquiry, any other person may also request that the Minister ends the inquiry. This is not limited to persons who have been identified as core participants (see below) as there may be other people with a valid interest in the ending of the inquiry who are not recognised by the Chair as core participants. The Minster may give consideration to any such request, but it should not be compelled to give consideration to a request as it may a nuisance or vexatious request.

108. The law should set out than an inquiry comes to an end on:
    a. the date on which the Chair notifies the Minister the inquiry has fulfilled its terms of reference (this date must be after the Chair has delivered the report of the inquiry to the Minister), or
    b. on any earlier date specified in a written notice presented to the Chair and the Assembly by the Minister (the date specified in the written notice cannot be earlier than the date on which the notice is given by the Minister).

109. It is possible that the Minister does not agree with the Chair that the inquiry has fulfilled its terms of reference (see a. above), however it is not proposed that the draft law should provide for this possibility. If the Chair appointed by the Minister because the Chair is trusted to run an inquiry, the Chair should be trusted to determined when the inquiry has fulfilled its terms of reference.

110. The Minister must consult the Chair before giving the written notice. The notice given by the Minister must set out the Minister's reasons for bringing the inquiry to an end.

111. As set out above in the section on terms of reference, the Minister may in the terms of reference specify the date by which the inquiry is asked to report but this date is not to be taken to be the end date of the inquiry as, in order to fulfil its terms of reference, the inquiry may need to continue to work post submission of the report (for example, if the terms of reference require the inquiry to undertake any post-reporting following up work with victims)

Power to convert other inquiry into an inquiry under this law (section 15 UK law)

112. Where a form of inquiry or investigation ("other inquiry") has been established in Jersey other than under this law, there should be a mechanism via which that other inquiry can be converted into an inquiry under this law. The draft law should not limit the reasons why the Minister may deem conversion necessary. The non-exhaustive reasons could include, for example, it becomes clear that:
    a. there needs to be powers to be able to compel witnesses to give evidence
    b. the other inquiry will not sufficiently address the issues of concern.

113. The law should provide that the other inquiry (which is being held or is due to be held) may be converted into an inquiry under this law if:
    a. the Minister has given notice to the person who caused the other inquiry to be established (if the person is someone other than the Minister)
    b. that person consents to their inquiry being converted into an inquiry under this law.

114. The Minister may only issue a notice seeking to convert an inquiry into an inquiry under this law if the Minster has determined that – as set out above - it appears to the Minister that:
    a. a particular event/s has caused public concern
    b. a particular event/s is capable of causing public concern
    c. there is public concern that particular events may have occurred.

115. It will also appear to the Minister that the matter is better dealt with via an inquiry under this law.

116. It is not intended that the conversion provisions should be used to convert other types of inquiries, such as planning inquiries; it is only the inquiries that meets the conditions set out above. Planning inquires are examinations by Planning Inspectors into a plan or planning application and used to set forward the case for or against a decision, rather than an investigation into an event or events causing public concern.

117. For purposes of clarity, this may include an inquiry in matters related to health and social care as provided for under the Part 5 of Regulation of Care (Jersey) Law 2014 Law or an investigation under Part 3 of the Commissioner for Children and Young People (Jersey) Law 2019. As set out above, however, the person who established their inquiry must consent to conversion under this law (ie. this law cannot interfere with the existing statutory right of regulators and others to inquiry into matters where they deem it appropriate to do so).

118. As with provisions relating to suspension/end of an inquiry, the draft law should provide that any person may request that the Minister converts an inquiry. This is not limited to persons who have been identified as core participants (see below) as there may be other

people with a valid interest who are not recognised as core participants. The Minster may give consideration to any such request, but it should not be compelled to give consideration to a request as it may a nuisance or vexatious request.

119. The person who originally caused the other inquiry to be established may be another Minister, the States Assembly if the inquiry has been established as a Committee of Inquiry by the States Assembly, or an independent statutory body. If established by the Assembly, the notice will take a form of a report and proposition to be considered by the Assembly.

120. Before issuing a notice, the Minister must consult the Chair of the other inquiry (or the person who it is intended will be the Chair of the other inquiry), this will include consulting the Chair if, in the notice, the Minister is amending the terms of reference of the other inquiry.

121. The notice must set out:
    a. the date on which the other inquiry will become an inquiry under this law – this is known as the "conversion date"
    b. if the inquiry Panel consists of more than one person identify who the Chair of the inquiry Panel is
    c. the terms of reference for the converted inquiry (note; these terms of reference may be different to those of the other inquiry)

122. The Minister may, after setting out the terms of reference in the notice, amend them if s/he considers it appropriate to do so (regardless of whether the terms of reference in the notice were different to those of any other inquiry). The Minister must, however, consult the Chair before doing so.

123. The draft law should provide that once an inquiry has been converted, the appointment of the other inquiry Panel members (and others) continues as if made under the draft law and subject to the provisions in the draft law that relate to duration of appointment of Panel member i.e. a person who at the date of conversion was engaged to deliver a function / role in relation to the other inquiry will continue in that function as if appointed under the provisions of the draft law. This includes:
    a. a person holding, or due to hold, the other inquiry (a Panel member)
    b. an assessor or legal advisor to the other inquiry, or
    c. engaged to provide assistance to the other inquiry.

124. Where a Committee of Inquiry is converted to a public inquiry any material or evidence submitted to the Committee on Inquiry and transferred to the public inquiry will no longer be covered by parliamentary privilege.

125. The draft law should provide that any obligation arising under an order of the other inquiry – if there should be any - may only be enforced using the powers the inquiry had at the

time of making the order. For example, if the Chair of a converted inquiry had made a request for evidence prior to conversion, the person could not be prosecuted under the provision of the draft law for failure to comply. If the evidence was still required, the Chair would need to request the information under the provision of the draft law (including the converted inquiry's new powers of compulsion which, it is envisaged, will be a key factor in the decision to convert).

Evidence and procedures (reference Section 17 of the 2005 Act)

126. An inquiry, once established by the Minister, must be independent of the Minister expect for where the law provides the Minister specific powers (for example, the power to terminate the appointment of the Chair). The law must therefore provide that the procedures and conduct of an inquiry are to be as the Chair directs. This must, however, be subject to other provisions set out in the law and to any Order brought forward by the Chief Minister (see section on Orders below).

127. The law must provide that in making decisions about the procedures or conduct of an inquiry, the Chair must act:
    a. with fairness (for example, must consider if participants need their legal representation funded in order to ensure they are treated fairly or, in the case of child, their advocate and / or trusted adult), and
    b. with regard to the need to avoid any unnecessary cost. This is whether those are costs that are met by public funds or costs incurred by witnesses or otherwise. The need to control costs is a valid consideration when the Chair is determining whether or not to admit evidence, hold hearings or allow for legal representation.

128. The draft law must provide that the Chair may:
    a. take evidence on oath (i.e. oral evidence given under oath by a witness in answer to questions asked by the Panel members or any other person permitted by Order to ask questions), and
    b. administer oaths for the taking of that evidence.

129. The draft law must provide that the Chief Minister may, by Order, make arrangements for the recognition of legal representatives (as set out in Rules 6 and 7 of the Inquiries Rules 2006[13]). Consideration will be given as to whether there may be circumstances in which legal representatives may not be recognised – i.e. the public inquiry proceeds without the involvement of legal representatives.

130. Consideration is to be given as to whether evidence submitted to an inquiry would be admissible in criminal / civil proceedings and whether this would:
    a. include evidence submitted to an inquiry that had finished and published its report, or

[13] https://www.legislation.gov.uk/uksi/2006/1838/made

b. would also include evidence submitted to an inquiry that is ended by the Minister (i.e. the inquiry does not finish its work). This includes consideration of whether the law would engage Article 6 of the ECHR - the right to fair trial.

131. The draft law must provide that the Chief Minister may, by Order, make arrangements for questioning of witnesses (for example, The UK Inquiries Rules set out that where a witness gives oral evidence only counsel to the inquiry and the inquiry Panel may ask questions, except in cases where the Chair directs that the recognised legal representative of that witness, or the recognised legal representative of a core participant, may ask questions).

132. In making that Order the Minister must give consideration to arrangements relating to the questions on child witnesses, including appointment of advocates / trusted adults.

<u>Public access to inquiry proceedings and information plus restrictions (reference Section 18 of the 2005 Law)</u>

133. A public inquiry should, by its very nature be as transparent as possible. It should seek to:
    a. conduct itself in public
    b. make publicly available all witness statements
    c. make publicly available as much documentary evidence as possible as part of the Inquiry record so that both during the course of the inquiry and after the inquiry, those documents can be examined by other people.

134. Whilst the emphasis should always be on the 'public' nature of the inquiry it is the case that, in some circumstances, part or all of an inquiry may need to be held in private (i.e. where a person is required to attend an inquiry to give evidence, they will do so in public unless the Chair has issued a notice restricting attendance at the inquiry to anyone except for the witness, the Panel and legal representative (see below). Note: In the UK over a third of inquires held over the past fifteen years have had some forms of restrictions on public access; some have been wholly private inquiries and some being mainly public inquiries with restricted access to only highly sensitive material.

135. The draft law must provide that the Chair - subject to any restrictions imposed by notice (see below) - must take the steps that the Chair considers reasonable to ensure that members of the public (which includes reporters and journalists) are able to:
    a. attend the inquiry or to see and hear a simultaneous transmission of the inquiry proceedings, and
    b. obtain or view a record of evidence and documents given, produced or provided to the inquiry.

136. It is for the Chair to judge what is reasonable unless the Minister has imposed restrictions as per the provisions set out below.

137. The Freedom of Information (Jersey) Law 2014 ("FoI Law") provides for two public interest tests and, whilst an Inquiry is not a schedule public authority for the purposes of the FoI Law (ie. the Chair is not required to release information in response to freedom of information requests) consideration is to be given as to whether the draft law should impose similar tests when the Chair is determining the extent to which it is reasonable to impose a restriction notice. Those tests being:
    a. a public interest test - Article 9 (2) of the FoI Law provides that a scheduled public authority must supply qualified exempt information unless satisfied that the public interest in supplying the information is outweighed by the public interest in not doing so, and
    b. a 'harm' test - Part 5 of the FoI law provides that consideration must be given as to the extent to which disclosure of qualified exempt information would harm, or prejudice, the interest which the qualified exemption exists to protect.

138. A determination of reasonability would include consideration of the following, in addition to any explicit test/s that may be provided for in law:
    a. whether or not documents and evidence provided to the inquiry are relevant to the inquiry and, if they are irrelevant the Chair may decide not to make the documents available (i.e. the inquiry may request evidence which, on receipt, transpires not to be relevant to the inquiry. The Chair does not have to make everything that the inquiry receives available to core participants or the public - only that which is relevant to the inquiry)
    b. whether or not documents / testimony should be in private. The law should provide that the Chair may determine documents / testimony should be in private when a witness requests this on the basis that making their data public may constitute a risk to their rights and freedoms.

139. The draft law should provide that the Chair must give particular consideration to the need to protect the privacy of a child where a child is giving evidence and / or the subject of a matter of investigation by the inquiry.

140. Core participants are people with a particular interest in the inquiry (for example, victims, people who may be subject to criticism during course of the inquiry etc). Core participants have certain rights. All relevant evidence will be shared with them in advance of hearings, plus core participants may suggest lines of question that should be pursued by the inquiry. Designation of core participants will be provided for by Order. As set out below, the Law will need to make provision for the Minister to bring forward that Order. In making that Order the Minister must give consideration to any special arrangements that may need to apply when a child is a core participant.

141. Whilst reporters and journalists will have public access to proceedings and information as 'members of the public' the draft law must provide that no recording or broadcast may be made of the inquiry proceedings except:
    a. at the request of the Chair, or
    b. with the permission of the Chair.

142. All recordings or broadcasting must be in accordance with the terms of the Chair's request or permission, and the request or permission must not enable a person to see or hear anything that the person is prohibited by a restriction notice from seeing or hearing (*see restrictions notices below).*

143. Note: In determining whether or not to request / permit the Chair will need to consider whether recording or broadcasting proceedings would interfere with witnesses' human rights (including Article 8 of the ECHR - the right to respect for a private and family life). 'Broadcasting' includes live or prerecorded video and sound. 'Recording' can include sound recording, photography and drawings.

144. In the UK tribunals under Tribunals of Inquiry (Evidence) Act 1921 are covered by section 9 of the Contempt of Court Act 1981, which places restrictions on sound recording. These restrictions do not apply to proceedings under the Inquires Act 2005. In Jersey, Article 61 and 62 Criminal Procedure (Jersey) Law 2018 and Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002 provide for restrictions on recordings. Consideration needs to be given as to how, in Jersey, we provide for sound recordings for Inquiries whilst ensuring that we do not prejudice other safeguards (for example, protection for victims of sexual crime).

145. The draft law should provide that restrictions on public access may be imposed. Restriction can relate to:
    a. attendance at an inquiry or at any part of an inquiry (this is called an *attendance restriction*) and/or
    b. disclosure or publication of any evidence or documents given, produced or provided to an inquiry (this is called a *disclosure restriction*).

146. *Attendance restrictions* may:
    a. exclude certain categories of people (for example, not allowing the press to attend, but allowing interested parties to attend such as family members, investors who have been defrauded etc.)
    b. exclude everyone except the Panel, the witness, any associated legal representatives and, where a child is the witness any person appointed to support that child (for example, an advocate or trusted adult)
    c. be applied just to certain hearings – for example, where a particular witness was giving evidence or where evidence was heard on a specified topic – or they may be imposed on all hearings. The nature of the attendance restriction will depend upon the reasons for it.

147. A restriction notice which excludes everyone except the Panel, the witness and any associated legal representatives has the effect of creating a private hearing. A private hearing may be considered necessary or appropriate by the Chair where, for example the witness's health / wellbeing is at risk. Restricting attendance does not mean that the evidence provided by that witness, or the fact that that witness gave evidence, is subject to any disclosure restrictions. The Minister may issue guidance on private hearings.

148. A range of disclosure restrictions may also be imposed on the disclosure or publication of evidence or documents (i.e. some evidence may be disclosed, some might not, some may only be disclosed to certain categories of person).

149. The law should provide that restrictions may be imposed by:
    a. being specified in a written restriction notice given by the Minister to the Chair (*ministerial restriction notice*) at any time before the end of the inquiry (i.e. before the setting up date or during the course of the inquiry) and/or
    b. being specified in a written restriction notice made by the Chair during the course of the inquiry *(Chair's restriction notice).* The Chair cannot issue a restriction notice before the setting up date because, until that point in time, the inquiry is not formally established.

150. The provisions above allowing a minister to impose a restriction notice may been seen as imposing in the independence of the inquiry, however, this may be required if, for example, matters of national security came into play. The UK Act makes the same provisions. An example of where these provisions have been used in the UK are in the Manchester Arena Inquiry where operationally sensitive content was restricted as it included plans setting out actions the emergency services would take in response to a terrorist attack, which might aid terrorists in planning attacks or make them more deadly.

151. Consideration needs to be given as to the circumstances in which a restriction notice may be given and the extent to which that restriction notice would legally prohibit disclosure in all circumstances, for example by limiting disclosure in response to a Freedom of Information request under FoI law.

152. A restriction notice may only specify restrictions that:
    a. are required by a statutory provision, enforceable obligation or rule of law, or
    b. the Minister or Chair considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard to:
        i. the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern (a key purpose on an inquiry);
        ii. matters related to the confidentiality of the information that a person has given, or is to give, to the inquiry.
        iii. the extent to which not imposing restrictions could delay the inquiry, impair its efficiency or effectiveness OR to result in additional cost - this could be cost to

the public, to witnesses or to others. (It is the case that some inquiries might be conducted more efficiently or effectively if public access is restricted or partly restricted, for example, access may be restricted to interested parties only, such as the relatives of people who the subject of the inquiry is opposed to all members of the public)

iv. any risk of harm or damage that could be avoided or reduced by the introduction of restrictions. Harm or damage includes, but is not restricted to:

- death or injury
- damage to Island security, national security or international relations
- damage to the Island's economic interests
- damage caused by the disclosure of commercially sensitive information (i.e. information that is not simply confidential, but which confers a competitive advantage and may, therefore, require more protection)

153. As set out above consideration is to be given as to whether the draft law should provide a public interest test and / a harm test as per the FoI Law.

**Note**
A person may hold information which they would usually be prevented in law from disclosing, such as the Financial Services Commission holding confidential information in its role as a regulator and being prevented from disclosing that information under other legislation.

It is envisage that the inquiries power of compulsion may override those restrictions (subject to the Chair or the Minister determining that the information should be subject to a restriction notice to prevent it being disclosed more widely), however it is noted that this may give rise to range of negative consequences, such as potential violation of Article 8 (respect for private and family life) of the European Convention on Human Rights or dissuading people, such as whistle-blowers, from providing information to regulators. This needs to be given consideration.

154. Restrictions set out in a restriction notice issued by the Minister or Chair will be in addition to any restrictions already specified in earlier notices (unless an earlier notice has been revoked or varied – see below).

155. The Minister and Chair may issue further restriction notices, or vary or revoke their own restriction notices, at any time before the end of the inquiry, however, the Minister cannot vary or revoke the Chair's restriction notices or vice versa (although the law should not prevent the Chair from asking the Minister to consider exercising her/his discretion to vary a notice, or vice versa). A power to vary restriction notices may be needed if it becomes apparent that more information can be made public than was originally envisaged or, conversely, if it becomes apparent that further restrictions are necessary.

156. Consideration needs to be given as to if, and how, the issuing of restriction notices may be challenged and by whom.

157. The law should therefore provide that:
    a. the relevant ministerial notice may be varied or revoked by the Minister at any time before the end of the inquiry (this will be done by the Minister giving the Chair a further notice)
    b. the relevant Chair's notice may be varied or revoked by the Chair during the course of the inquiry.

158. Whilst restrictions on attendance will not be relevant once the inquiry ends, there are some restrictions that might need to continue beyond the end of the inquiry. For example, if the Chair issues a restriction notice protecting the identity of a witness as they are at risk of harm that notice must continue to protect that witness after the inquiry had ended. The draft law should therefore provide that a restriction notice that relates to a disclosure restriction will come into force indefinitely unless—
    a. the relevant notice (ministerial or Chair's) sets out the restrictions expire at the end of the inquiry or at some other time, or
    b. the relevant notice is varied or revoked by the Minister / Chair at any time before the end of the inquiry as above, or
    c. after the end of an inquiry (i.e. when the Chair is no longer in office) the Minister chooses to publish a notice:
        - revoking any disclosure restrictions that are still in force in a ministerial restriction notice or a Chair's restriction notice or
        - varying the ministerial or Chair's restriction notice so as to remove or relax any of the restrictions (the Minister may publish this notice in any way the Minister considers suitable)

159. The Minister may also issue a restriction notice after the end of inquiry but may only do so where the Minister determines it is in the public interest to impose should a restriction to avoid risk of harm or damage, in accordance with the arrangement of the FoI law.

160. Restrictions that continue beyond the end of the inquiry are, in effect, a form of enduring injunction. The draft law must therefore provide a mechanism via which such a restriction can be lifted, regardless of whether the restriction was imposed by the Chair or the Minister.

161. In the first instance the person who is applying for the restriction to be lifted should request, in writing to the Minister, that the Minister revokes or varies the restriction. The Minister has a duty to consider that request and respond in writing. If the Minister determines the restriction is no longer necessary, the Minister must lift or vary the restriction. If the restriction is lifted the Minister must, as data controller, give consideration to the provisions of the data protection law (i.e. the restriction may be lifted but redaction etc. may still be required under the provision of the data protection law).

162. The Minister may determine the restriction is no longer necessary on the grounds that the harm no longer exists (and / or the public interest in restricting the information is no longer outweighed by the public interest not restricting the information if a public interest test were introduced and / or the prejudice or harm that may arise is less than probable).

163. The law should provide that, when determining whether to lift a restriction in response to a request to do so, the Minister must, as far as reasonably practical, consult any person who is the subject of the restricted notice. For example, it may be reasonably practical to consult a living person who was a witness to the inquiry or the subject of a witness's testimony or to consult the directors of a company that was a subject of the inquiry, but it would not be reasonably practical to consult every person who was an employee of a company.

164. In the event the Minister determines not to revoke or vary a restriction, a person would need a route of recourse. Consideration is to be given as to whether this should be to the Information Commissioner or the Royal Court. The Royal Court potentially being a prohibitively expensive option.

165. Note: Article 10 of the ECHR provides for the right of freedom of expression and information – therefore the Chair and the Minister must exercise their powers to impose restrictions in a way that complies with Article 10.

**Note**

In order for a decision to be made as to whether restrictions should be imposed, the Minister and / Chair will, in many circumstances, require access to information in the first instance (as opposed to a description of the information). This, in of itself, may be difficult to manage where that information is restricted under the provisions of other legislation (for example, information which may be held by Jersey Financial Services Commission). Arrangements for management must, therefore, be considered in developing the draft law.

<u>Limitations on restrictions notices</u>

166. The purpose of a restriction notice is to restrict disclosure of information either:
    a. in the context of any inquiry, or
    b. by those who have received the information only by virtue of it being given to the inquiry (i.e. they mostly likely would not have known this information if it had not been given to the inquiry).

167. Disclosure restrictions should not prevent a person from disclosing information that is in that person's possession through means unconnected with the

inquiry, even if that information might be included in documents that are covered by a restriction notice.

Example 1:

- there was an inquiry into the death of a hospital patient
- the inquiry is considering a range of information, including hospital policies which are already in the public domain
- a restriction notice is issued excluding the public from proceedings and preventing the publication of transcripts of evidence (which includes reference to hospital policies)
- the restriction notice does not prevent hospital staff from providing people copies of the hospital policy.

Example 2: The HSS Minister has provided information to an inquiry held in private. A freedom of information request is made to the HSS Minister, as a public authority for the purposes of the Freedom of Information Law, for some of that information. The HSS Minister could not refuse to provide the information purely on the grounds that it has been provided to the Inquiry and was covered by an inquiry restriction notice, because the Minister would have held that information even if the inquiry had never happened.

Example 3: A witness to the inquiry may pass to another person documents that s/he himself has given to an inquiry (either whilst the inquiry is going on or after it has ended), even if those documents are covered by a restriction notice. However, a witness or another person could be prevented by the terms of a restriction notice from passing on information that s/he has learnt as a result of attending or being involved in, an inquiry.

Freedom of Information/access to public records

168. The Freedom of Information (Jersey) Law 2011 ("FoI Law") applies to all information held by public authorities. It gives the right to people to access that information but exempts personal information. A request for personal information about someone other than the requester will be handled under the FOI Law, but the principles in the Data Protection (Jersey) Law 2018 ("Data Protection Law") must be applied. If the information cannot be released without breaching the Data Protection Law, the request should be refused.

169. The Data Protection Law applies to and protects personal data only. It gives a right to people to access information held about themselves, but not others. A request for personal information about the requester will be handled under the Data Protection Law.

170. The Public Records (Jersey) Law 2002 (the "Public Records Law") provides for access to records that concern States and other public functions once they have become archives.

171. A public inquiry is:
    a. a public authority for the purposes of the FoI Law, as distinct from a scheduled public authority
    b. a public authority for the purposes of the Data Protection Law
    c. a public institution for the purposes of the Public Records Law.

172. As a public authority for the purposes of the FoI law, the Chair is not required to release information in response to freedom of information requests. Indeed, even if a public inquiry was a scheduled public authority for the purposes of that law, certain information would be exempt from the requirement to release information under Article 24 (3) if that information had been created for the purpose of the inquiry, for example, a witness statement as opposed to, for example, a hospital policy, which had been created outside of the inquiry

173. As a public authority under the Data Protection Law, the Chair of the public inquiry will be a data controller for the purposes of that Law and must accord with the duties of a data controller. This includes being registered as the data controller as per Article 17 of the Data Protection Authority (Jersey) Law 2017.

174. As a public institution for the purpose of the Public Records Law, the inquiry will need to provide assistance to the Archivist to carry out appraisals of the inquiry record and comply with the provisions of the retention schedule provided by the Archivist.

175. The draft law should provide that, at the end of an Inquiry:

    a. the Chair must make arrangements for the actual record (printed and electronic information, website, broadcasting etc) to be transferred to the Archivist for archiving (i.e. the Archivist employed under the Public Records Law). Under the UK Act the inquiry record can transfer to a public records office or a Government department for archiving as directed by the Minister (i.e. this can be the Department of the Minister, or any government department as deemed appropriate by the Minster). However, it is proposed that Jersey's inquiry law should provide that the record must be archived by the Jersey Heritage Archivist in order to provide clarity in a small island community where concerns may exist around transparency

    b. ownership of the Inquiry record will transfer from the Inquiry to the Minister who will be the data controller for that Inquiry record under the Data Protection law. Consideration is to be given as to whether the law should provide that the Minister who will be data controller, post transfer of inquiry record, may be different from the Minister who established the Inquiry. This is in the event that the Inquiry findings or recommendations give rise to public concerns about the establishing Minister being the data controller once the inquiry has ended.

Transfer to the Archive

176. Once the record is transferred to the Archivist, the Archivist will, in accordance with the Public Record Law, have management of inquiry record. For the purposes of clarity, whilst the Archivist will hold and manage those records, the Minister will remain the data controller under the Data Protection law.

177. In order to facilitate access to the inquiry record post inquiry, the draft law should provide that:
    a. during the course of the inquiry, the Chair must ensure that the record of the inquiry is comprehensive and well-ordered; and
    b. prior to the transfer of the inquiry record, the Chair must have taken all reasonable steps to ensure the record is appropriately appraised and ordered. The draft law must provide that, in the event that the inquiry record has not been appraised and ordered prior to transfer and the end of the inquiry, the costs of doing so must be met by the Minister (for example; if the Archivist incurs costs because the record has not been properly redacted or catalogued etc the Minister will meet those costs)

178. In the UK provisions broadly mirroring those above are a matter for the Inquiry Rules as opposed to Act. In Jersey it is proposed they are included in Regulations to give certainty to the archiving of the inquiry record as this was an area of contention with regard to the Independent Jersey Care Inquiry.

179. The draft law should define what is meant by the Inquiry record, this being information created or received by the Inquiry. The inquiry record does not include information provided to the inquiry which the Chair determined was not relevant. This information may be in any form; written, recorded, electronic, website etc.

180. Under the provisions of the Public Records Law, the Archivist already has a statutory duty to:
    a. advise the Chair on the management of the inquiry record
    b. provide the inquiry with a retention and disposal schedule
    c. agree the selection of the inquiry record in all formats for permanent preservation

**Question 3**
Do you think the law should provide that management of the inquiry record:
    a. may only be transferred to Jersey Archive?
    b. may be transferred to Jersey Archive or a Minister?

Minister to be data controller

181. As set out above, consideration is to be given as to whether the law should provide that the Minister who will be data controller, post transfer of inquiry record, may be different from the Minister who established the Inquiry. In the event it is determined that this should be a feature of law, the draft law will need to include a regulation making power by which the Assembly may determine the factors to be considered in determining which Minister should be data controller post the end of an inquiry and any associated transfer process.

**Question 4**

Do you think the law should provide that ownership of the inquiry record:

a. should only transfer to Minister who established the Inquiry?
b. may transfer to a different Minister?

Please tell us why.

182. At the point at which the information has been passed from the Inquiry to a Minister as data controller, the provisions of the FOI Law will apply, except that the draft law should provide that the exemption in set out in Article 24 (3) of the FoI law would, with regard to the Inquiry Record, apply as if it were qualified exempt information as opposed to absolute exempt information. If this were not to be the case, and the Inquiry Record was to be treated as absolute exemption information, this would have the effect of 'closing' the Inquiry record to the public and this is not intended. [Note: Section 32 (2) of the FOI Act 2002 makes a similar provision which is also disapplied via the 2005 Act).

183. Other than as set out above no other exemptions to the FoI Law should be prevented by the draft law from applying to information in the inquiry records once the records are held by the Minister, nor should the provisions of the draft law prevent the provisions of the FoI Law from applying to any inquires that are not held under this law.

184. The draft law needs to provide that, at the end of the inquiry, the disclosure restrictions do not prevent the Chair transferring the inquiry record to the Archivist and do not prevent the Archivist from receiving, holding and managing that information, except if the Archivist was to do so in such a way that breached disclosure restrictions (for example, if the Archivist was to allow access to parts of the inquiry record that are subject to a restriction as per Section 20 (6) of the UK Act) or which did not accord with the Freedom of Information (Jersey Heritage Trust) (Jersey) Regulations 2014.

<u>Data protection</u>

185. A public inquiry will fall within sub para (k) of the definition of public authority in Article 1 of the Data Protection (Jersey) Law 2018, even though an Inquiry is not a scheduled public authority for the purposes of the FOI law. This is as desired. Therefore, an inquiry will need to comply with the requirements of the Data Protection Law including;

a. publishing a privacy notice setting out how the inquiry will process personal and special category data (process includes publishing, allowing access to, repurposing etc.)
b. redacting personal data before making it publicly available or disseminating to core participants
c. redacting information that is not relevant inquiry or breaches national security.

Consideration is to be given as whether Article 59 of the Data Protection Law should apply to a public inquiry. Article 59 provides that personal data is exempt the transparency and subject rights provided for in the Data Protection law to the extent required to avoid an infringement of the privileges of the Assembly.

186. In determining whether the draft will need to further suspend any parts of the Data Protection Law consideration would need to be given to the use of inquiry evidence for different purposes. For example, where evidence is provided to Inquiry A, it is done so for the purpose of Inquiry A. If that evidence becomes part of the public record, it may be then be used for Inquiry B. If, however, the evidence is not made public, then the Minister, as the data controller, would need to determine the purpose for Inquiry B is compatible with the purpose in Inquiry A (as per Article 13(2) of the Data Protection Law). Consideration is, therefore, to be given as to whether the draft law should explicitly state that provision of information for the purpose of a public inquiry means for the purpose of all public inquiries.

187. Consideration is to also be given as to whether evidence submitted to a public inquiry, which is not public information, can be submitted for the purpose of any subsequent legal proceedings.

<u>Powers of Chair to require evidence etc.</u>

188. It is generally the experience in other jurisdictions that when an inquiry makes an informal request for evidence that request is complied with, however, the draft law does need to provide power to compel people to provide evidence. Whilst these powers are needed in relation to people who choose not to respond to an informal request, they are also necessary where a person is happy to comply but has concerns about possible consequences (for example, they are concerned they may be breaking confidentiality agreements) or where a person cannot provide the information unless they are compelled to do so due to some form of statutory bar on disclosure.

189. The draft law therefore needs to provide that the Chair may, by notice, require a person to attend the inquiry, at a time and place stated in the notice, to
a. give evidence
b. produce any documents in that person's custody or under that person's control (i.e., if the documents are in that person's possession or the person has a right to possession of those documents) that relate to a matter in question at the inquiry

c. produce any other thing in that person's custody or under that person's control for inspection, examination or testing by or on behalf of the inquiry Panel.

190. The Chair may, by notice, require a person to:
    a. provide evidence to the inquiry Panel in the form of a written statement
    b. provide any documents in that person's custody or under that person's control that relate to a matter in question at the inquiry
    c. produce any other thing that person's custody or under that person's control for inspection, examination or testing by or on behalf of the inquiry Panel.

191. A person who is attending the inquiry may be accompanied by a legal representative. The draft law should also provide that the Chief Minister may provide in guidance, for the circumstances in which a person may be accompanied by a person other than, or in addition to, a legal presentative (for example, by an appropriate adult if the person is a minor or has support needs). This may take a similar form to support provided by the Commissioner for Children and Young People who can provide assistance to a child or young person in relation to legal proceedings and provide advice on processes and procedures.

192. The notice to attend / provide evidence, documents or produce other things for inspection etc. must
    a. explain the possible consequences of not complying with the notice
    b. indicate what the recipient of the notice should do if the recipient wishes to make a claim that either:
        - s/he is unable to comply with a notice (for example, s/he does not hold that information) or
        - it is not reasonable in all the circumstances to require her/him to comply with such a notice. (Grounds for it not being reasonable may include, for example, too difficult to get the information, take too much time, involve spending too much money, the evidence will not be of material assistance to the inquiry.)

193. The draft law needs to set out that the Chair must determine the claim. Having determined the claim, the Chair may then revoke or vary the notice on grounds set out in the claim. In deciding whether to revoke or vary a notice on the ground that it is not reasonable to require compliance with the notice (the Chair must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information).

194. For example, the Chair issues a notice to a company setting out they must provide information in two-week time frame. The company must search thousands of files but claims it cannot do so in the two-week timeframe as it will require engagement of extra staff and cost. The Chair needs to consider whether the public interest in obtaining the information within two-week timeframe outweighs the cost, based on how important the

information may be. The Chair might vary her/his notice by, for example, extending the deadline or narrowing the scope of the information requested.

195. It is not intended that the draft law provides powers of search, seizure or surveillance, however, on occasions, it is possible that the evidence being requested may be an intercepted communication. The draft law should provide that there is the case the information should be provided in accordance with the provisions of the Regulation of Investigatory Powers (Jersey) Law 2005.

Privileged information

196. Inquiry witnesses should be treated in the same manner as witnesses in civil proceedings in relation to provision of information. This means that an inquiry witness should be able to refuse to provide evidence which:
    a. is covered by legal professional privilege
    b. might incriminate the witness, spouse or civil partner
    c. relates to something that has taken place in the Assembly (this is to provide for parliamentary privilege)

197. Furthermore, the draft law should provide that a person who is asked to give evidence from should be able to assert that documents or information should be withheld from the inquiry or from public disclosure on the grounds of public interest immunity. The draft law should make direct reference public interest immunity or should, instead, make reference to other relevant grounds for immunity from disclosure (It is understood that that *public interest immunity* is only recognised in Jersey law in the Extradition (Code of Practice for Treatment of Detained Persons) (Jersey) Order 2005) and limited Jersey case law).

198. The draft law would need to provide that where a person asserts public interest immunity, the Inquiry Panel having viewed the documents or information would need to balance the public interest in disclosing the information against the public interest in maintaining confidentiality to determine whether or not to uphold the claim for immunity and any associated terms (i.e. will the information be withheld, disclosed or redacted)

199. The draft law should therefore provide that a person may not be required to give, produce or provide any evidence or document if s/he could not be required to do so if the proceedings of the inquiry were civil proceedings in the Royal Court

200. The law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquiry established under this law as they apply in relation to civil proceedings in a court.

Note: In the UK the Attorney General has, in relation to some inquiries, given an undertaking to people giving evidence to the inquiry that the evidence will be not used against them in criminal proceedings (unless those proceedings relate to giving false evidence to the inquiry)

Risk of damage to the economy (Art 23 of UK law)

201. Article 23 of the UK Act provides that the Crown, the Bank of England, the Financial Conduct Authority and the Prudential Regulation Authority may submit an application to the Inquiry that there is information held by any person (i.e. not just the Crown, FCA etc.) which if revealed to anyone who is not a member of the inquiry Panel could risk damage to the economic interests of the United Kingdom or of any part of the United Kingdom.

202. The UK Act provides that the Panel must not permit or require the information to be revealed, or cause it to be revealed, unless satisfied that the public interest in the information being revealed outweighs the public interest in avoiding a risk of damage to the economy. In deciding the Panel must take account of any restriction notice in place, or which is proposed should be in place.

203. As with decisions relating the privileged information the Panel will need to balance the public interest in the information being revealed to the public and to other participants against the public interest in avoiding a risk of damage to the economy. If the inquiry Panel determines that the information should not be disclosed, the Panel will not be able to publicly refer to the existence of the information but may nevertheless take the information into account in its deliberations. (Nothing precludes the Panel from sharing information in confidence to the Minister.)

204. These provisions should not impact upon the general principles of public interest immunity; they exist in addition to them.

Warning letters

205. Rules 13-15 of the UK Inquiries Rules set out arrangements for warning letters, which the Chair may send to any person who has been subject to criticism in the inquiry proceedings or may be subject to criticism in the report, or interim report. Any explicit or significant criticism must not be included in the report, or interim report, unless a warning letter has been sent and the person has been given a reasonable opportunity to respond. The House of Lords Select Committee[14] saw these arrangements as going far beyond what is necessary and adding considerably to the time and costs of an Inquiry process. The Select Committee recommended rules 13-15 be revoked. The draft law must provide that the

[14] Paragraphs 244-251, p.74-6 *The Inquiries Act 2005: post legislative scrutiny*

Chief Minister may, by Order, make arrangements for warning letters, but further consideration will be needed around any such arrangements before an Order is made to ensure those subject to significant criticism have fair warning and an opportunity to respond without adding to costs and complexity of any inquiry.

Submission of the inquiry report / interim report

206. The law should provide that the Chair must deliver a report to the Minister setting out:
    a. the facts determined by the Panel
    b. the Panel's recommendations where the Panel is required to make recommendations under the Inquiry's terms of reference.

207. The law should also provide that the report may also contain anything else that the Panel considers relevant to the terms of reference. This may include any recommendations the Panel sees fit to make even where they are not required to do so by the terms of reference.

208. If an inquiry is brought to an end at earlier date than specified by the Minister in notice (as opposed to ending on the date on which the Chair informs the Minister that inquiry has fulfilled it terms of reference) the Chair has the power to deliver a report but is not compelled to do so (i.e. they 'may' as opposed to 'must').

209. The 2005 Act provides that before making the report, the Chair may deliver an interim report to the Minister. Depending on the nature of the inquiry, an interim report could allow for any specific recommendations/learning to be adopted in the shortest possible timeframe to help prevent reoccurrence of an incident, particularly if publication of the full report may be delayed due to factors such as criminal proceedings being conducted. It is a recommendation of the Institute of Government that Inquiry Panels make greater use of interim reports to disseminate learning. Therefore, the draft law should provide that the if the Chair considers it appropriate to do so, the Chair may deliver an interim report to the Minister, which may contain anything that the report will contain, or all that the report will contain (as per the 2005 Act).

210. In determining the terms of reference, the Minister is not required to determine whether or not an interim report is required because the question of whether it is beneficial to issue an interim report is one that can best be determined once any inquiry has commenced.

211. The report (and in the interim report if there is one) must be signed by each member of the Panel.

212. If the inquiry Panel is unable to produce a unanimous report (or interim report) the report (or interim report) must reasonably reflect the points of disagreement.

Publication of the inquiry report / interim report

213. It is the duty of the Minister to arrange for the report (or interim report) of an inquiry to be published, or the duty of the Chair if:
    a. before the setting up date the Minister notified the Chair that the Chair was responsible for arranging publication of the report, or
    b. at any time after the setting up date the Minister invites the Chair to accept responsibility for arranging publication and the Chair accepts that responsibility.

214. The report (including any interim report) of an inquiry must be published in full – i.e. unredacted - except that the Minister or the Chair (whichever is responsible or arranging publication of the report) may withhold material in the report (or interim report) from publication:
    a. if this is required by any statutory provision, enforceable EU obligation or rule of law (this allows, for example, the Minister or Chair to redact personal information as required by the Data Protection Law) or,
    b. as the Minister/Chair (whichever is responsible for arranging publication of the report) considers to be necessary in the public interest, having regard to the following matters:
        - the extent to which withholding material might inhibit the allaying of public concern;
        - any risk of harm or damage that could be avoided or reduced by withholding any material ("harm or damage" are the same factors that need to be consider when making restriction notice, except for the references to cost, effectiveness and efficiency of the inquiry, which are no longer relevant in the context of reports)
        - any conditions as to confidentiality subject to which a person acquired information that s/he has given to the inquiry.

215. Any decision to withhold material on the grounds that it is necessary to do so in the public interest does not affect any obligation on the Minister, or any other public authority, that may arise under the Freedom of Information Law.

216. The Minister must lay the report (interim report) before States either at the time of publication or as soon as reasonability practicable after publication.

217. Arrangement for the distribution of the report (or interim report) may be amended by Order.

Follow up on actions taken in response to a public inquiry

218. In the UK, both the House of Lords Select Committee and the Institute of Government have concluded that Parliament should do more to hold ministers to account on

responding to, and delivering on, any recommendations that arise from public inquiry; yet the UK Act makes no such provision.

219. In Jersey, the Care of Children in Jersey Review Panel[15] was established by the Scrutiny Liaison Committee to examine the Government's response to the IJCI, which monitored the government response to the IJCI. The Review Panel was established under Standings Orders 145A and 145B.

220. The draft law should provide that the Minister must lay a report before the States Assembly setting out his response to the Inquiry report. The response report should be presented to the Assembly within no more than 3 months of the date on which the Minister laid the Inquiry report before the Assembly except for where Assembly agrees a period that is longer than 3 months (i.e. the Minister may present a report and proposition before the Assembly asking the Assembly to extend that time period)[16].

Offences (Section 35 of the 2005 Act)

221. The law should provide for offences.

222. It is an offence for a person to fail, without reasonable excuse, to do something that is required by the Chair by notice, including:
    a. failing to attend to give evidence, produce documents or any other things in her/his control or custody
    b. failing, with the specified period to, provide written evidence or produce documents or any other things in her/his control or custody.

223. It is an offence for a person, during the course of an inquiry, to do anything which it intended to (or which the person knows or believes is likely to have the effect of:
    a. distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the inquiry Panel, or
    b. preventing any evidence, document or other thing from being given, produced or provided to the inquiry Panel.

224. It is an offence if a person, during the course of an inquiry:
    a. intentionally suppresses or conceals a document that is, and that s/he knows or believes to be, a relevant document (i.e. a relevant document is a document that it is

[15] https://statesassembly.gov.je/Scrutiny/Pages/ScrutinyPanel.aspx?panelId=37
[16] Consideration was given to amending Standing Order 145 to state that the Chairman's Committee (now called the Scrutiny Liaison Committee) must a) determine whether it is reasonable not to establish a review panel to hold Ministers to account for the delivery of any inquiry recommendations b) it is not reasonable, they must establish a review panel. This option was rejected as it should be for Scrutiny/the Assembly to determine how best to hold Ministers to account, not to have any such duty imposed on them via law. The Scrutiny Liaison Committee may want to consider whether guidance on response to public inquires should be built into future versions of the Scrutiny code.

likely that the inquiry Panel would, if aware of its existence, wish to be provided with it), or

b. intentionally alters or destroys any such document.

225. It is only intended that an offence is committed if a person deliberately or intentionally distorts or conceals evidence, i.e., they will not have committed an offence if they do so unwittingly by, for example, destroying a document they did not realize was relevant.

226. A person does not commit the offences set out above if the person is doing anything that s/he is authorized or required to do:
    a. by the inquiry Panel, or
    b. because it falls within the privileged information provisions (for example, the evidence is covered by legal privilege). The fact that the evidence falls within the privileged information provisions provides "reasonable excuse" not to do something required by the Chair by notice.

227. Under the 2005 Act, a person who is guilty of the offences set out above is liable to a fine not exceeding level three on the standard scale or to imprisonment for a term not exceeding the relevant maximum, or to both. The Attorney General is asked to advise on the terms for the draft law.

228. The offences should not apply to children.

Immunity from suit (Section 37 of the 2005 Act)

229. The draft law needs to provide immunity for the inquiry Panel, their legal advisers and assessors, plus other people engaged to provide assistance to the inquiry from any civil action for anything done or said whilst carrying out their duty to the inquiry. No action lies against them in respect of anything they do (or omit to do) in the execution of their duty to the inquiry or in good faith in the purported execution of their duty.

230. The immunity only applies to acts done (or omissions made) during the course of the inquiry not including during any period of suspension.

Defamation (Section 37(3) of the 2005 Act)

231. The 2005 Act provides that, for the purposes of the law of defamation in the UK, witness statements and inquiry reports will be covered by the same privilege as proceedings before a court (i.e. for the purposes of the law of defamation, the same privilege attaches to:
    a. any statement made in or for the purposes of proceedings before an inquiry (including the report and any interim report of the inquiry), and
    b. reports of proceedings before an inquiry

as would be the case if those proceedings were proceedings before a court in the relevant part of the United Kingdom.

232. There is no law of defamation in Jersey, however, it is established by customary law that a person cannot defame another person. It would, therefore, be the case that, in relation to an inquiry held under this law a person may not make a statement or may not set out in a report a statement which is defamatory.

Time limit for applying for judicial review

233. The 2005 Act provides a for time limit for an application for judicial review of decision made by the Minister or a member of the Panel. That time limit being for 14 days from the time the applicant became aware of a decision. The aim is to reduce the time limit for judicial reviews which could halt / hamper the inquiry until the issue has been resolved by the Court. For example, a challenge regarding a decision as to whether a witness could give evidence anonymously would mean that the inquiry could not require evidence from that individual until the court had decided the matter. The UK time limit does not extend to challenges about the contents of reports or interim reports. (Note: this provision does not apply in Scotland).

Payment of expenses

234. The law should provide that the following costs of an inquiry must be met[17] :
    a. expenses incurred in holding the inquiry (for example, room hire, web development, documents management etc.) except for those costs set out below which may be met
    b. publishing the inquiry report (and interim report if there is one) even where the Chair is responsible for arranging publication
    c. the cost of witness expenses awarded by the Chair (see below).

235. The draft law should also provide that the Minister may agree to pay renumeration and expenses that the Minister determines are reasonable to:
    a. Panel members, including the Chair
    b. any assessor
    c. any legal advisors engaged to support the inquiry, and
    d. any person engaged to provide assistance to the inquiry.

[17] The Charities Law makes matching provision: "*The Minister must make available to the Commissioner such number and descriptions of staff as the Minister considers are required for the proper and effective discharge of the Commissioner's functions/ The Minister must provide such accommodation and equipment as the Minister considers are required for the proper and effective discharge of the Commissioner's functions*.

236. An Inquiry established under the Law will require an Accountable Officer whose duty it is to ensure value for money in arrangements relating to the operation of the Inquiry as per the Public Finances (Jersey) Law 2019. Consideration needs to be given as to whether:
    a. the Accountable Officer for the sponsoring Ministerial department should act as Accountable Officer
    b. the Chair should act as Accountable Officer, or
    c. the Principal Accountable Officer should appoint a person to act as Accountable Officer.

237. In determining who should act as Accountable Officer it needs to be noted that the Principal Accounting Officer may not appoint the Chair as Accountable Officer because Article 39 (1) (5) of the 2019 Law sets out that any person appointed by the Principal Accounting Officer must be a States employee and, as the Chair is not a States employee, the Chair may not be appointed as Accountable Officer by the Principal Accounting Officer.

238. In determining who should be Accountable Officer, and whether or not this should be the Chair, consideration should be given to the National Audit Office report *Investigation into government-funded inquiries 2018.*

239. The Public Accounts Committee would, as per its terms of reference under Standing Order 132, receive from the Comptroller and Auditor General any reports relating to audit, investigations or adequacy of arrangements which may pertain to any Inquiry undertaken under the Law.

240. It has been suggested that the law should provide that the Accountable Officer must present a financial report to PAC on a 6-monthly basis however, this is seen as overly burdensome as PAC may simply request the information as and when it wishes to receive this information.

241. Where the costs of the inquiry are projected to exceed the budget allocated and projected to be greater than set out in the report presented to the Assembly (see para 14 above), the law should be a mechanism to revert to the Assembly for additional funding which would not trigger the possibility of amending the entirety of a Government Plan, as referred to in paragraph 16.

<u>Payment of expenses when acting outside terms of reference</u>

242. Where the Minister believes the inquiry is, or is likely to, act in matters outside of its terms of reference, and the Minister has given notice to the Chair setting out what those matters are and why the Minister believes they fall outside the terms of reference, any related amounts / expenses relating to those matters will not be paid where the related amounts / expenses are incurred after the date on which that notice is given (this does not preclude payment of amounts / expenses which were incurred before the date of the notice but which are due after the date of the notice)

243. This does not preclude payment of expenses being resumed once the Minister is satisfied that the inquiry is working back within the terms of reference. Whilst the law needs to make provision for the withdrawal of funds, as a matter for working practice it is envisaged that this would only occur in exceptional circumstances. In most cases, the Minister would notify the Chairman if s/he had any concerns that the inquiry was working outside terms of reference, giving the inquiry an opportunity to address those concerns and avoid the need to remove funding.

244. The draft law should provide that, within a reasonable time after the end of the inquiry, the Minister must publish the total amount paid for the inquiry/what remains liable to be paid. This requirement to publish costs does not extend to costs for which the Minister is not responsible for the payment of, such as costs borne by witnesses or others which are not funded/refunded by public monies.

Witness expenses

245. The draft law needs to provide that the Chair may award reasonable witness expenses (as set out above the Minister must pay the witness expenses which are award by the Chair). Those expenses may be:
    a. an amount in relation to the person's legal presentation where the Chair considers it appropriate
    b. an amount to compensate the person for loss of time (including trusted adults who support a child's participation in an inquiry)
    c. an amount in respect of other expenses the person has properly incurred, or will incur (for example, travel, substance, childcare etc) in relation to attendance at the inquiry or producing documents.

246. Where a child is participating in the inquiry, it is envisaged that the law should provide that the costs associated with advocacy / trusted adult support for a child must be provided for.

247. A person may only be awarded witness expenses if:
    a. the person attended to inquiry to give evidence or produce any document or other thing, or
    b. the person has, in the opinion of the Chair, such a particular interest in the proceedings or outcome of the inquiry to justify such as an award

248. For the purpose of clarity this may include people attending the inquiry as witnesses, or people attending the inquiry to hear proceedings where they have a particular interest in those proceedings (for example, the family members of people who died in an event which is the subject of the inquiry).

249. The Chair may only award of witness expenses in accordance with:

a. the provisions of any Order that may made by the Chief Minister under the law, and / or
b. any conditions or qualifications determined by the Minister in relation to the inquiry in question (note: The Minister may determine not to pay any expenses or to only pay to expenses to certain categories of people in certain circumstances. This means that the law should not place a duty on the Minister to pay witnesses expenses even when the witness has been required by the Chair to attend the inquiry / produce documents).

250. The law does not need to provide for the matters that the Minister may want to consider when determining what conditions/qualifications may be applied but, for illustrative purposes could include:
a. the legal costs of those considered to have a direct interest in the inquiry where they are unable to fund themselves
b. the legal costs of large organisations giving evidence to the inquiry
c. the legal costs for GoJ staff or ex-staff who are witnesses (including where those staff are from a different department from the Minister)
d. the expenses, including loss of time expenses, for those who are not witnesses but have a direct interest in attending.

**Note**

The legal costs of participants are often very significant. Therefore, whilst the law provides that the Chair may pay legal costs if the Chair considers it appropriate, the Chair can only do so in accordance with any qualifications that the Minister places on that power (i.e. the Minister will generally set out any broad conditions under which payment may be granted, and the Chair will then take the individual decisions). In UK public inquiries it has generally been the case that the Minister will not meet the legal costs of large organisations but may meet the legal costs of people who are unable to pay for their own legal representation but who have a direct interest in the inquiry.

The legal costs of Government witnesses might be met by the Department of the Minister that has established the inquiry, or by the department for which they work.

<u>Guidance and Orders</u>

251. The law should provide that the Chief Minister may issue guidance on the following matters. The guidance does not need to be issued before the law comes into force:
a. matters relating to the selection and appointment of the Chair and Panel members including, but not limited to, factors for considering when determining expertise, impartiality and balance
b. designation of core participants (Note; this in Orders in the UK but has been criticised for lack of flexibility so it is proposed that provision is made in Guidance)

252. The law should provide that the Chief Minister may make Orders relating to the following matters. The Orders do not need to be made before the law comes into force. Orders may be made in relation to:
    a. matters of evidence and procedure in relation to inquiries including:
        - recognition of legal representatives (note: Standing Order 140 of the States of Jersey currently provides that any person appearing before a Committee of Inquiry may be represented by, for example, an advocate or solicitor who is qualified to practice law in any jurisdiction, as opposed to be qualified to practice in Jersey. The Chief Minister must consider whether, in making provision for recognition of legal representatives for Order, those legal representatives do, or do not, need to be Jersey qualified. Similarly, consideration will need be given as to whether Standing Order 149 should also be amended to bring into line with any such Order)
        - requests for and giving of evidence, including questioning of witnesses
        - making of opening and closing statements (for example, the UK Inquiries Rules sets out that recognised legal representatives of core participants may also make opening and closing statements to the inquiry Panel and the draft law must provide that the Chief Minister may, by Order, make similar arrangements)
        - disclosure of potentially restricted evidence (prior to determination that the evidence is subject to restriction notice)
        - issuing of warning letters to people subject to criticism in the inquiry proceedings
        - distribution of the inquiry report / interim report pre-publication
    b. further provisions relating to records management during the course of the inquiry or after the end of an inquiry
    c. the award of witness expenses, including matters relating to how the amount of an award made by the Chair is to assessed and by whom (which could include assessment being undertaken by the inquiry Panel or a person nominated by the Panel to undertake that assessment) plus how an assessment can be reviewed if the person is dissatisfied.

<u>Amendments to other legislation</u>

253. Consideration has been given as to whether Standing Orders of the States of Jersey should be amended to remove standing orders 146 – 151 which provide for arrangements relating to Committees of Inquiry as:
    a. it is not clear that these arrangements will be required at the point at which an Inquiries Law is introduced, and
    b. other matters, which do not necessitate a public inquiry may be addressed:
        - through other routes of redress (e.g. commissioners and regulators, Complaints Panel, public inquiries under the Planning and Building (Public

Inquiries) Order, judicial and quasi-judicial proceedings, such as civil and criminal proceedings, inquests and tribunals.), or

- via Scrutiny sub Panels or review Panels as per Standing Order 139 and 145A and B.

However, on balance it is not clear that there is appetite for removal of Committees of Inquiry so it is proposed that there are retain in law unless / until it is demonstrated that they are not required.

254. Amendments to the Public Finances (Jersey) Law 2019 may be required, depending on the solution proposed for financing any inquiry with a cost greater than can be met by a transfer from the Reserve and for an inquiry which costs more than anticipated.

255. Amendments to Inquests and Post-mortem Examinations (Jersey) Law 1995 to provide that the Viscount must suspend an inquest (and / or investigation) into a death where:

a. the cause of death is likely to be adequately investigated by the public inquiry that is being held, or is to be held under the Inquiries Law, and
b. the Minister has appointed a senior judge as Chair of that inquiry; and
c. the terms of reference of the inquiry cover the statutory requirements of the Viscount's inquest. These being:
    - who the deceased was, and
    - how, when and where the deceased came by his or her death.

This broadly mirrors the provisions made under Article 3, Schedule 1 of the Coroners and Justice Act 2009, except that under the UK Act, the Lord Chancellor must also have requested the suspension. Consideration is, therefore, to be given as to whether the Viscount must be similarly requested to suspend an inquiry and, if so, by whom.

Where an inquest is suspended, the Viscount may discharge any jury summons under Article 7 (1) of the 1995 law.

Powers must also be provided for the Viscount to resume a suspended investigation if the Viscount believes that there are sufficient reasons for resuming it. (See Article 8, Schedule 1 of the 2009 Act).

256. Amendments to the Freedom of Information (Jersey) Law 2011, Data Protection (Jersey) Law 2018, Regulation of Investigatory Powers (Jersey) Law 2005.