

PM/SC/342

COUNCIL OF MINISTERS

(93rd Meeting)

22nd November 2017**PART A (Non-exempt)**

All members were present, with the exception of Senator I.J. Gorst, Chief Minister; Deputy R.G. Bryans of St. Helier, Minister for Education; and Deputy A.E. Pryke of Trinity, Minister for Housing, from whom apologies for absence were received.

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

In attendance -

Senator P.F. Routier, M.B.E., Assistant to the Chief Minister
 Deputy S.M. Wickenden of St. Helier, Assistant to the Chief Minister (for item B2)
 Connétable J.M. Refault of St. Peter, Assistant Minister for Treasury and Resources (for item B1)
 R. Bell, Acting Chief Executive, States of Jersey
 Dr. M. Egan, Greffier of the States
 R.J. MacRae, Q.C., H.M. Attorney General
 Dr. H. Miles, Director – Criminal Justice, Community and Constitutional Affairs, Community and Constitutional Affairs Department (for item A1)
 R. Summersgill, Comptroller of Taxes and Competent Authority, Treasury and Resources Department (for item B1)
 P. Eastwood, Deputy Comptroller of Taxes – Policy, International and Transformation, Treasury and Resources Department (for item B1)
 C. Haws, Head of Financial Planning, Treasury and Resources Department (for item B1)
 S. Graves, Policy Officer, Treasury and Resources Department (for item B1)
 J. Williams, Director – Business Change, Chief Minister’s Department (for item B2)
 P. Bradbury, Director - Corporate Policy, Chief Minister's Department
 C. Keir, Assistant Director - Ministerial Support and Communications (for a time)
 P. Monamy, Clerk to the Council of Ministers

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

Minutes. A1. The Minutes of the meetings held on 6th, 8th and 28th September; and 11th October 2017 (all Part A and Part B); and 20th and 21st September; and 4th and 18th October 2017 (all Part A), having been previously circulated, were taken as read and were confirmed.

States business
28.11.2017.
1240/7/1(1) A2 The Council, with reference to its Minute No. A2 of 8th November 2017, discussed with the Director – Corporate Policy, Chief Minister’s Department the list of public business scheduled for consideration by the States Assembly on 28th November 2017 and commented specifically on the undermentioned items as indicated:

Draft Budget Statement 2018 (P.90/2017) and Amendments
[See Minute B2 of this meeting]

Draft Public Employees (Pensions) (Deferred Pensions, Transfer Payments and Refund of Contributions) (Miscellaneous Amendments) (Jersey) Regulations 201- (P.93/2017) and Amendment

The Council noted that the Regulations would permit a member of the Public Employees Contributory Retirement Scheme (PECRS) on leaving employment to –

- choose to defer his or her pension until it becomes payable, regardless of qualifying service;
- choose to apply for a transfer payment out of the Fund into another pension scheme on leaving the Scheme, regardless of whether or not the member was eligible to draw his/her pension at that time; And
- choose to receive a refund of all his or her own pension contributions on leaving the Scheme, if the member had completed less than 5 years’ qualifying service.

The Council supported the draft Regulations.

Draft Loi (201-) Amendement No. 6) sur la propriété foncière (P.94/2017)

The Council noted that, further to a recommendation of the Legislation Advisory Panel, resulting from a recommendation of the Jersey Law Commission in 2008, the draft Loi would make it possible to register a hypothec for a percentage of the value of a property as an alternative to a specific capital sum. The draft Loi would thereby facilitate the introduction of shared equity schemes in Jersey. The amendment would also extend the prescription period for the renewal of a judicial hypothec in relation to acknowledgements of debt from 10 to 30 years. The Council supported the draft Law.

Draft Finance (2018 Budget) (Jersey) Law 201- (P.98/2017) and Amendment

The Council noted that the draft Law would give effect to the proposals described in the Draft Budget Statement 2018 (P.90/2017). The Council supported the draft Law.

Draft EU Legislation (Payment Services – SEPA) (Amendment) (Jersey) Regulations 201- (P.99/2017)

The Council noted that the draft Regulations would ensure Jersey’s continuing membership of the Single European Payments Area (SEPA) – and therefore Jersey banks’ access to SEPA payments systems – by updating the current SEPA Regulations to reflect, to the extent relevant to the Island’s membership of the SEPA, the changes made to Titles III and IV of Payment Services Directive (PSD) 1 by PSD2. The Council supported the draft Regulations.

Short-Term Incapacity Allowance: lower threshold (P.102/2017)

The Council noted that Deputy G.P. Southern of St. Helier sought the agreement of the States to request the Minister for Social Security to bring forward an amendment to the Social Security (Jersey) Law 1974 to provide that, where the annual and quarterly contribution factors for a claimant were lower than the figures contained in Schedule 2 of the Law, then the sum payable should be proportionate to the contributions which had been made, notwithstanding the lower earnings limit. It was recognised that the proposal would not support the aims of promoting financial independence or providing well-targeted benefits, and that its implementation would have significant administrative costs and add complexity to the benefit system.

Minimum Wage: revocation of Social Security Order (R&O.109/2017) and amendment of States Act dated 21st April 2010 (P.109/2017)

The Council noted that Deputy S.Y. Mézec of St. Helier sought the agreement of the States to (a) request the Minister for Social Security to revoke the Employment (Minimum Wage) (Amendment No. 11) (Jersey) Order 2017 (due to come into force on 1st April 2018, increasing the minimum wage to £7.50 per hour) and to make a new Order fixing the minimum wage at £7.88 per hour from 1st April 2018; and (b) to amend the Act of the States dated 21st April 2010 so as to set the minimum wage at 60 per cent of median weekly earnings by 2020 (instead of 45 per cent of average earnings, to be achieved over a period of not less than 5 years and not greater than 15 years from April 2011, as at present). The Council agreed that both parts of the proposition should be rejected, on the grounds that part (a) overrode the considered work of the Employment Forum; and that part (b) was higher than the preference expressed by Ministers, and so had a larger impact when there was already some concern, and work to be done, around supporting lower paid sectors.

Forthcoming
announcements.

A2. The Council, with reference to its Minute No. A3 of 4th October 2017, discussed with the Director – Corporate Policy, Chief Minister’s Department forthcoming announcements.

The Council noted that

- (a) the Report of the Comptroller and Auditor General entitled ‘Decision Making – Selecting a Site for the Future Hospital’ (R.125/2017) would be presented to the States on 23rd November 2017;
- (b) the planning application submitted by Andium Homes in respect of the former Gas Works site and the proposed extension to the Millennium Town Park was due to be considered by the Planning Committee on 23rd November 2017;
- (c) the planning application submitted by Andium Homes in respect of the proposed Ann Court development was due to be considered by the Planning Committee on 23rd November 2017;
- (d) a further meeting was to be held shortly with representatives of the Royal National Lifeboat Institution (RNLI) in order to discuss the closure of the Jersey Lifeboat Station and the removal of the all-weather lifeboat.

Draft Criminal
Procedure
(Jersey) Law
201-: lodging
‘au Greffe.’
1015/27/99(1)

A4. The Council, with reference to its Minute No. B6 of 26th April 2017, discussed with the Director - Criminal Justice, Community and Constitutional Affairs, Community and Constitutional Affairs Department a report, dated 17th November 2017, concerning the draft Criminal Procedure (Jersey) Law 201-, the purpose of which was to prescribe the procedure to be followed in, or in connection with criminal proceedings against a person charged with, or convicted of an offence.

Having noted the background to the present position, the Council recognised that criminal procedure legislation in Jersey had not kept pace with developments in criminal justice practices in the Island and elsewhere in the British Isles. It was accepted as essential that practice in the criminal courts underpinned a legal framework that enabled the courts, public bodies and the legal profession to deliver just outcomes for defendants and which protected the interests of victims and witnesses.

The Council recalled that it was widely accepted that the laws upon which the Jersey criminal justice system was based were outdated and in need of urgent revision and modernisation, with the main area of concern being the *Loi (1864) réglant la procédure criminelle*, which remained the principal source of law for criminal procedure and rules, and was considered to have served the Island well. Although this legislation and other legislative provisions which comprised the Island's criminal procedure framework had been compiled in a piecemeal way over many years and had created a unique and effective criminal justice system, it was recognised that that system experienced certain practical difficulties in the 21st century.

H.M. Attorney General outlined the significant provisions of the draft Law and the changes to be made to current Magistrate's Court and Royal Court procedures. The Council congratulated the Attorney General, together with the Legislation Steering Group, which was accountable through the Criminal Justice Working Group to the Criminal Justice System Board, for the work undertaken in formulating the draft Law. A number of questions were raised on the detail of Articles 72, 75 and 76 in particular, regarding the Conduct of jury, Verdicts, and Procedure where no retrial, and these were addressed by the Attorney General.

It was agreed that the new Law would provide a justice system that would be, and would be seen to be, modern and in touch with local communities, efficient, fair, responsive to all users with modern and effective case management to remove unnecessary delays from the system, whilst at the same time being cost-effective. It was noted that the new Law would repeal the *1864 Loi* and a number of other existing enactments, and would consolidate provisions, in English, that were appropriate for now and for the future.

Having noted that the new Law contained several detailed parts, the Council also recognised that it would also provide appropriate powers to enact secondary legislation and rules of court that would supplement the framework and ensure flexibility, so that criminal procedures could continue to adapt and take advantage of developments in best practice and new technologies. The Council noted that the responses received from the 8-week period of public consultation which had closed on 15th September 2017 were constructive and the feedback had been taken into account where appropriate.

In conclusion, the Council recognised that previous attempts at wholesale reform of the criminal justice system in Jersey had been unsuccessful, primarily due to the lack of the necessary level of dedicated resource. The Laws upon which the current system was organised had existed without significant revision for over 150 years: there was a broad consensus that the proposed adjustment was long overdue. Whilst there were many aspects of the existing system which were worthy of preservation, it was accepted that the legal framework as a whole needed to be made more transparent and cohesive so that it could fulfil its objectives. It was agreed that, in particular, a unified criminal courts system was required which ensured that effective case management took place at an early stage.

The Council noted that the draft Law represented the culmination of a detailed programme of work undertaken over several years with input from a broad range of stakeholders. It was recognised that the content of the draft Law had recently been approved by the Criminal Justice System Board and that it would improve the criminal justice system for defendants, victims and witnesses.

The financial and staffing implications of the draft Law were noted as being that significant investment would be needed in time and resource across the criminal justice system in order to implement the many changes to be brought about by the new Law in 2018. In order to effect this change, it was noted that a 2-year project was being funded by Public Sector Reform monies to manage the development and implementation of the revisions that would be required by the draft Law.

The Council accordingly approved the draft Criminal Procedure (Jersey) Law 201- and, subject to the preparation of an explanatory report to accompany the projet – finalisation of which was delegated to the Minister for Home Affairs in conjunction with the Attorney General – decided to proceed to lodging ‘au Greffe’ in the name of the Council on the basis that the Chief Minister would, in due course, sign a Ministerial Decision to that effect.