

Consultation Paper – Judicial Independence and the Establishment of a Judicial and Legal Services Commission

Department for Community and Constitutional Affairs



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Chief Minister's Foreword

In Jersey we are fortunate to have a dedicated, professional and independent judiciary and Law Officers, respected both nationally and internationally. The importance of the work of the judiciary and Law Officers cannot be understated, not only in maintaining the rule of law but also in ensuring that Jersey is, and remains, a well governed and respected jurisdiction in which people feel safe and protected and where people want to do business. I have every confidence in our judiciary and Law Officers in carrying out their vital roles.

The proposals made in this Consultation Paper seek to strengthen the independence of the judiciary. As part of my responsibility within the executive for justice policy and resources, safeguarding human rights, constitutional reform and strengthening democracy¹, I have been working with the Bailiff, Deputy Bailiff, Attorney General and Solicitor General to consider how best to maintain and, if possible, enhance protections for the independence of the judiciary and the Law Officers. During those discussions it has become clear that current provisions for the selection, appointment and tenure of the judiciary and Law Officers have developed on a piecemeal basis over a long period of time and would benefit from an overarching review. I am grateful for the agreement of the Bailiff, Deputy Bailiff, Attorney General and Solicitor General in bringing forward the following proposals on which the views of the public are sought:

Firstly, that the current independence of the judiciary should be supported by specific legislative protections. It is proposed, for example, that a clear duty should be placed on the Chief Minister, Ministers and all members of the States Assembly to uphold the continued independence of the judiciary.

Secondly, it is proposed that an independent Judicial and Legal Services Commission be established that would be responsible for maintaining a transparent and

¹ <http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.092-2013.pdf>

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accountable system for the selection and appointment of the judiciary and Law Officers.

Thirdly, it is proposed that clear and consistent protections for the tenure of members of the judiciary should also be established in law.

These reforms would be of real and lasting importance. This paper is intended to promote discussion and debate among the public, the legal profession and the judiciary. I hope that as many people, with as wide a range of views as possible, will respond.

Senator Ian Gorst

Chief Minister

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Executive Summary

This Consultation Paper sets out proposals by the Chief Minister, agreed with the Bailiff, Deputy Bailiff, the Attorney General and the Solicitor General, which are intended to confirm and protect the independence of the judiciary in Jersey and establish a modern, clear and transparent legislative framework for the selection, appointment and tenure of the judiciary and Law Officers.

This paper sets out a number of proposals, and some specific questions, on which the views of the public, the legal profession and the judiciary are sought. As many people, with as wide a range of views as possible, are invited to respond.

The proposals relate to:

- The judiciary and guarantees of judicial independence;
- The representation of the judiciary;
- The establishment, functions, membership and administration of a Judicial and Legal Services Commission;
- Selection criteria and selection and appointment processes for the judiciary, including specific consultation questions relating to the Jurats of the Royal Court;
- Standards for judicial conduct and complaints and disciplinary processes for the judiciary;
- Tenure and remuneration of the judiciary;
- Selection criteria and selection and appointment processes for the Law Officers;
- Complaints and disciplinary processes for the Law Officers; and
- Tenure and remuneration of the Law Officers.

These proposals take into account existing practice and draw on international standards and legislation in other jurisdictions relating to the independence, selection, appointment and tenure of the judiciary and prosecutors.

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Introduction

1. Judicial independence is a fundamental pillar of any modern democracy. The importance of the independence of the judiciary is recognised by many international standards².
2. Protections for the independence of the judiciary and the structure and current provisions for the selection, appointment and tenure of the judiciary and Law Officers in Jersey (see Appendix 1) have developed over a long period of time and in a piecemeal fashion and have never been subject to an overarching review.
3. This Consultation Paper sets out proposals by the Chief Minister, agreed with the Bailiff, Deputy Bailiff, the Attorney General and the Solicitor General, which are intended to confirm and protect the independence of the judiciary in Jersey and establish a modern, clear and transparent legislative framework for the selection, appointment and tenure of the judiciary and Law Officers.
4. In making these proposals, this Paper takes into account existing legislation and practice (see Appendix 1), previous independent advice (see Appendix 2); draws upon international standards relating to the independence of the judiciary and prosecutors (see Appendix 3); and legislation in other jurisdictions relating to judicial independence and the appointment, selection and tenure of the judiciary and Law Officers (see Appendix 4).

Structure of this Paper

5. This paper comprises the following:

² See Appendix 3

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- a. Part 1 sets out proposals intended to confirm and protect the independence of the judiciary;
- b. Part 2 sets out proposals in respect of the selection, appointment and tenure of the Law Officers;
- c. Appendix 1 sets out current provisions for the selection, appointment and tenure of the judiciary and Law Officers in Jersey;
- d. Appendix 2 provides information on previous independent advice relating to judicial selection, appointment and tenure;
- e. Appendix 3 provides information on international standards and recommendations relating to judicial independence and the selection, appointment and tenure of the judiciary and prosecutors; and
- f. Appendix 4 provides information on judicial independence and the selection, appointment and tenure of the judiciary and Law Officers in other jurisdictions.

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Part 1 – Independence of the Judiciary

The Judiciary of Jersey

6. The judiciary include all persons exercising judicial functions, for example, by interpreting and applying the law³ in judicial decision-making in courts and tribunals. This includes both professional judges and non-professional judges⁴.

7. The judiciary in Jersey comprises the judges who sit in the in the courts of Jersey. For the purposes of this paper, the judiciary of Jersey include the following.

- a. in the Court of Appeal and the Royal Court: the Bailiff; Deputy Bailiff; Ordinary Judges of the Court of Appeal; Commissioners of the Royal Court; Jurats; the Master of the Royal Court; and the Family Court Registrars;
- b. in the Magistrate's Court, Petty Debts Court and Youth Court: the Magistrate; Assistant Magistrate; Relief Magistrates; and Youth Court Panel Members; and
- c. in the Jersey Employment and Discrimination Tribunal: the legally qualified Tribunal Chairman and Deputy Chairmen.

8. It should be noted that there are other persons who also exercise judicial functions in the tribunals of Jersey, for example: the lay members of the Jersey Employment and Discrimination Tribunal; Health and Safety at Work Appeal Tribunal; Commissioners of Appeal for Taxes; Social Security Medical Appeal Tribunal; Social Security Tribunal; Income Support Medical Appeal Tribunal; Mental Health Review

³ II(a) 2003 Commonwealth Latimer House Principles; IV) 2003 Commonwealth Latimer House Principles

⁴ Para. 1 2010 Council of Europe Recommendation; Para. 2 2010 Council of Europe Recommendation

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Tribunal; Rent Control Tribunal; and Rate Appeal Board. These offices are outside the scope of this paper pending the final recommendations of the Jersey Law Commission in respect of administrative redress in Jersey⁵. Further consideration will be given in due course to whether the proposals set out in this Paper should also be extended to cover such offices.

9. The Viscount, Deputy Viscount and certain Viscounts Substitute also exercise judicial functions in respect of inquests. These offices are also outside the scope of this paper. However, further consideration will be given in due course to whether the proposals set out in this paper should also be extended to cover such offices.

10. Lastly, the Judicial Greffier, Deputy Judicial Greffier and certain Greffiers Substitute⁶ also exercise limited judicial functions in the courts of Jersey. Given the limited judicial functions performed these are also currently outside the scope of this paper. However, further consideration will also be given in due course to whether the proposals set out in this paper should also be extended to cover such persons.

Proposals – The Judiciary of Jersey

11. *The following should be recognised in legislation as comprising the judiciary of Jersey: the Bailiff, Deputy Bailiff, Ordinary Judges of the Court of Appeal; Commissioners of the Royal Court; Jurats; the Magistrate; Assistant Magistrate; Relief Magistrates; Youth Court Panel Members; and the Chairman and Deputy Chairmen of the Jersey Employment and Discrimination Tribunal.*

⁵ <https://www.jerseylawcommission.org.je/completed-projects>

⁶ The Master of the Royal Court and Family Court Registrars, although appointed as Greffier Substitutes, are covered by the proposals in this paper.

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12. *That the role of the Master of the Royal Court and Family Court Registrars should no longer be that of Greffiers Substitute, but should be specifically recognised as part of the judiciary of the Royal Court.*

Guarantees of Judicial Independence

13. This section sets out proposals for enshrining current protections for judicial independence in legislation.

14. International standards suggest that the independence of the judiciary should be guaranteed by the State and enshrined in the constitution or the law of the country⁷ and that all necessary measures should be taken to respect, protect and promote the independence and impartiality of judges⁸. Currently in Jersey the principle is accepted by convention and has not been challenged, however it is not protected by legislation.

15. International standards also suggest that the State has the duty to respect and observe the independence of the judiciary⁹. This includes the following:

- a. Although legitimate public criticism of judicial functions is a means of ensuring accountability¹⁰, if commenting on judges' decisions, the executive and legislative branches of government should avoid criticism that would undermine the independence of or public confidence in the judiciary¹¹. The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions¹².

⁷ Art.1 1985 UN Principles; Art. 1.2 1998 Charter; Para. 7. 2010 Council of Europe Recommendation

⁸ Para. 13. 2010 Council of Europe Recommendation

⁹ Art. 1 1985 UN Principles

¹⁰ VI) 1.(b)(i) 1998 Latimer House Guidelines

¹¹ Para. 18. 2010 Council of Europe Recommendation

¹² VII) 2003 Commonwealth Latimer House Principles; VI) 1.(b)(ii) 1998 Latimer House Guidelines

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- b. The executive and legislature should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal.¹³
- c. Decisions of judges should not be subject to any revision other than appellate or re-opening proceedings, as provided for by law¹⁴ and with the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions.¹⁵

16. Further, in respect of resourcing, international standards also suggest the State also has the duty to provide adequate, sufficient and sustainable resources, facilities and equipment to the judiciary and the courts in order that they can properly perform their functions to the highest standards¹⁶, efficiently¹⁷ and within a reasonable period¹⁸, without any undue constraints which may hamper the independence sought,¹⁹ and in order to support international co-operation and relations between judges²⁰. Further, it is suggested that such funds should be protected from alienation or misuse and should not be used as a means of exercising improper control over the judiciary.²¹

17. In 2013, the States Assembly recognised the importance maintaining the independence of the courts as part of upholding the rule of law and acknowledged that there is an obligation upon Ministers to uphold and defend the continued

¹³ Para. 18. 2010 Council of Europe Recommendation

¹⁴ Para. 16. 2010 Council of Europe Recommendation

¹⁵ Para. 17. 2010 Council of Europe Recommendation; Art. 4 1985 UN Principles

¹⁶ Art. 7 1985 UN Principles

¹⁷ Para. 33. 2010 Council of Europe Recommendation

Para. 43. 2010 Council of Europe Recommendation

¹⁸ Art. 1.6 1998 Charter

¹⁹ IV)(c) 2003 Commonwealth Latimer House Principles

²⁰ Para. 43. 2010 Council of Europe Recommendation

²¹ II) 2. 1998 Latimer House Guidelines

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independence of the judiciary and, in particular, that Ministers must not seek to influence particular judicial decisions²².

18. In respect of judicial and court resources, the States Assembly also confirmed in 2013 that the Chief Minister has democratic responsibility within the executive branch of government for justice policy and resources and that Ministers have an obligation to provide sufficient resources to the judiciary²³. This is also reflected in current legislation²⁴.

Proposals – Guarantees of Judicial Independence

19. *Judicial independence should be further protected in Jersey by enshrining it in legislation and by confirming the obligation on Ministers and others to respect, observe and where necessary defend that independence.*

20. *In addition to the judiciary of Jersey, the Chief Minister, Ministers, the Law Officers, members of the States Assembly and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, must uphold and defend the independence of the judiciary.*

21. *In particular, the Chief Minister, Ministers, the Law Officers and members of the States Assembly must not seek to influence particular judicial decisions through special access to the judiciary. "Special access" is intended to refer to any access over and above that which might be exercised by a member of the general public. So the duty does not, for example, limit what may be said on a Minister's behalf in court in the course of presenting a case to the court in the usual way.*

²² See page 4 - P.92/2013: Justice Policy and Resources
<http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.092-2013.pdf>

²³ See page 4 - P.92/2013: Justice Policy and Resources

²⁴ See, for example: Art. 1(1)(e) Departments of the Judiciary and the Legislature (Jersey) Law 1965
https://www.jerseylaw.je/laws/revised/Pages/16.300.aspx#_Toc188234907 ; Designation of "Non-Ministerial States funded body" in Public Finances (Jersey) Law 2005
<https://www.jerseylaw.je/laws/revised/Pages/24.900.aspx>

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22. *In accordance with his responsibility for justice policy and resources, the Chief Minister must have regard to:*

- a. The need to defend that independence;*
- b. The need for the judiciary to have the support necessary to enable them to exercise their functions.*

23. *These protections for the independence of the judiciary should extend not only to the judiciary of Jersey but also to those exercising judicial functions in respect of Jersey: in the Judicial Committee of the Privy Council; and, in any international court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of any agreement which has been extended to Jersey to which the United Kingdom or the Government of Jersey is a party, or a resolution of the Security Council or General Assembly of the United Nations.*

Representation of the Judiciary

24. This section sets out proposals for supporting relations and communication between the judiciary, the public, the legislature and the executive to ensure that the views of the judiciary of Jersey can be expressed whilst protecting judicial independence.

Proposals – Representation of the Judiciary

25. *Legislative provision should be made for the representation of the judiciary in order to ensure that the views of the judiciary can be properly represented in discussions relating to, for example, the support necessary to enable the judiciary to exercise their functions, or in regard to matters relating to the judiciary or otherwise to the administration of justice.*

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26. *In order to ensure that there is a single representative for all members of the judiciary, the legislation would provide that the Bailiff as the Chief Justice of Jersey (or in his absence, the Deputy Bailiff as Deputy Chief Justice) is the head of the judiciary of Jersey.*

27. *The Bailiff as Chief Justice, would be responsible for ascertaining (for example, through the Jersey Judicial Association) and representing the views of the judiciary. The Bailiff, as Chief Justice, would represent the views of the judiciary when, for example, speaking on behalf of the judiciary in public or when making representations to the Chief Minister in respect of the Chief Minister's responsibility within the Government of Jersey for justice policy and resources, or the States Assembly, for example, when responding to consultations or appearing before Scrutiny Panels. This would enable the views of the judiciary to be expressed while maintaining the separation of powers.*

Establishment of a Judicial and Legal Services Commission

28. This section sets out proposals for legislation providing for the establishment, membership and administration of an independent body to be responsible for judicial selection and appointment procedures.

Functions of a Judicial and Legal Services Commission

29. International standards suggest that the process governing the selection and appointment of the judiciary should be established in law and overseen by an independent organisation in order to protect judicial independence.

Proposals – Functions of a Judicial and Legal Services Commission

30. *There should be established in law a Judicial and Legal Services Commission ("the Commission").*

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31. *The Commission would have the following legal functions:*

- a. to establish procedures for the selection of applicants for appointment to judicial office;*
- b. to select applicants and make recommendations for appointment to:*
 - i. Her Majesty, in the case of the Bailiff and Deputy Bailiff (see below); or*
 - ii. the Bailiff, in the case of Commissioners of the Royal Court, the Master of the Royal Court and Family Court Registrars, the Magistrate, Assistant Magistrate, Relief Magistrates; Youth Court Panel Members and the Chairman and Deputy Chairmen of the Jersey Employment and Discrimination Tribunal (see below); and*
- c. any other function given to the Commission by law (see below).*

32. *In the exercise of its functions the Commission should not be subject to the direction or control of any person.*

Membership and Administration of the Commission

33. It is proposed that the Commission would have a membership comprising members drawn from the judiciary, the legal profession, and the public and that half of the members should be drawn from across the judiciary of Jersey with representation from the Court of Appeal, the Royal Court, the Magistrate's Court and the Tribunals. This would ensure that the Commission would have input from a

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membership from across the judiciary and with a wide variety of backgrounds and experience when carrying out its functions.

34. It is also proposed that legislative provision should be made to ensure good governance and facilitate the efficient and transparent administration of the Commission. Further, although the Commission is to be independent of the States Assembly, it is also important that the Commission should be responsible for informing both the public and the States Assembly of its activities.

Proposals – Membership of the Commission

35. *There would be 10 members of the Commission (“the JLSC Commissioners”).*

36. *The JLSC Commissioners would be: the Bailiff (ex officio, in his role as Chief Justice, President of the Royal Court and President of the Court of Appeal); an Ordinary Judge of the Court of Appeal (the “Court of Appeal Commissioner”); the Deputy Bailiff (ex officio); the Magistrate (ex officio); the Chairman of the Jersey Employment and Discrimination Tribunal (ex officio) (the “Tribunal Commissioner”); 3 lay Commissioners (“the Lay Commissioners”); 2 lawyer Commissioners (“the Lawyer Commissioners”).*

37. *The Bailiff as Chief Justice would be, ex officio, the Chairman of the Commission.*

38. *The Court of Appeal Commissioner would be appointed by the Ordinary Judges of the Court of Appeal.*

39. *The Lay Commissioners would be appointed by the Jersey Appointments Commission following a public appointments process²⁵. The Lay Commissioners*

²⁵ Carried out in accordance with procedures set out in the Employment of States of Jersey Employees (Jersey) Law 2005

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would be persons who: have been resident in Jersey for 5 years; have never been a member of the judiciary; have never practised or been employed as a lawyer; and selected by reference to their knowledge, expertise and independence including recruitment within the public or private sectors, management at a senior level in the public, private, academic or voluntary sector, or other matters relevant to the powers and functions of a Commissioner.

40. The Lawyer Commissioners would be appointed by the Jersey Appointments Commission following a public appointments process²⁶. The Lawyer Commissioners would be persons who: have been resident in Jersey for 5 years; who have been at least 10 years in practice as an Advocate or Solicitor in Jersey, whether as a Law Officer or otherwise, or as a Barrister or Solicitor in England and Wales, Scotland, Northern Ireland, Guernsey, the Isle of Man or any other Commonwealth jurisdiction.

41. Lay Commissioners and Lawyer Commissioners shall not be a member of the States Assembly or a States employee.

42. Lay Commissioners and Lawyer Commissioners shall on first appointment take the oath or make the following affirmation before the Royal Court: “I swear [affirm] that I will undertake my duties as Commissioner under the [Judicial and Legal Services Commission (Jersey) Law 201-] impartially without fear or favour, and to the best of my ability”.

43. The Bailiff, Deputy Bailiff, Magistrate and Tribunal Commissioner would hold their office as Commissioner ex officio their own judicial offices.

44. The Court of Appeal Commissioner, Lay Commissioners and Lawyer Commissioners would hold office for 4 years and, having served for a period of 4

²⁶ Carried out in accordance with procedures set out in the Employment of States of Jersey Employees (Jersey) Law 2005

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years, would be eligible for service as a Commissioner for one further period of four years.

45. *The Court of Appeal Commissioner, Lay Commissioners and Lawyer Commissioners may resign office as a Commissioner in writing to the Chairman.*

46. *A JLSC Commissioner is liable to be removed from office if found to have come within the grounds for discipline or removal of a judicial officer (see below);*

47. *The Bailiff would have responsibility for complaints and disciplinary procedures in the case of complaints against JLSC Commissioners when acting as JLSC Commissioners (save for the Bailiff and Deputy Bailiff). The Lieutenant Governor would have responsibility for complaints and disciplinary procedures in the case of complaints against the Bailiff or Deputy Bailiff when acting as JLSC Commissioners. The complaints and disciplinary process would be as for the judiciary. The sanctions available would be as for the judiciary (see below).*

48. *If the office of Chairman is vacant or the officeholder is for any reason unable to perform the functions of the office, then until a person has been appointed to and assumed those functions or the Chairman has resumed those functions, they are to be performed by the Deputy Bailiff, or in his absence by an interim Chairman elected by the JLSC Commissioners from among their number.*

49. *If the office of a JLSC Commissioner becomes vacant the office must be filled as soon as reasonably possible.*

50. *The terms and conditions of service of JLSC Commissioners are to be determined by the States Employment Board.*

Proposals – Administration of the Commission

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51. *The Commission shall meet at least two times each year and as often as necessary, and in any event within 30 days of the occurrence of a vacancy in a judicial office.*

52. *Seven clear days' notice must be given for a meeting of the Commission.*

53. *The Chairman may of his or her own volition at any time convene a special meeting of the Commission, and must do so within seven days of receiving a written request to that effect signed by at least three JLSC Commissioners.*

54. *A quorum of the Commission is six JLSC Commissioners, of whom at least three must be judicial members.*

55. *The Commission may meet in the absence of the Chairman by providing that the Deputy Bailiff shall act as Chairman, or in the absence of the Deputy Bailiff the Commission shall appoint one of the JLSC Commissioners to act as the Chairman.*

56. *The Commission may invite any person to attend at, and to speak at a meeting of the Commission.*

57. *In the absence of consensus, decisions of the Commission are to be determined by a majority of the JLSC Commissioners present and voting, and in the event of a tie it shall have been taken to have been lost.*

58. *A decision of the Commission is not affected by reason of a vacancy in its membership.*

59. *The Chairman may, where he or she considers it necessary, order that a vote be taken by secret ballot.*

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60. *The Commission must keep a full record of its meetings.*

61. *The Commission shall, within 3 months after the end of each calendar year, present to the States Assembly, a report on the Commission's activities during that calendar year and any other matter that the Commission thinks fit.*

62. *Subject to any provisions set out in law, the Commission may regulate its own proceedings.*

63. *In addition, legislative provision would also be made, for example, in respect of: the avoidance of conflicts of interest; confidentiality; protections from personal liability; a Secretary and Executive Officer for the Commission; funding and accounts; offences in respect of false or misleading statements, influencing or attempting to influence JLSC Commissioners and breaches of confidentiality*

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Judicial Selection and Appointment

64. This section sets out proposals for legislation relating to judicial selection and appointment processes, including responsibility for judicial selection, appointments and selection criteria.

Proposals – Selection Criteria

65. *All appointments to judicial office in Jersey should be on the basis of merit. In selecting applicants for appointment to judicial office on merit regard should be given to: professional qualification and experience; intellectual capacity; integrity; independence; objectivity; authority; communication skills; efficiency; and ability to understand and deal fairly with all persons served by the courts.*

66. *The Bailiff and Deputy Bailiff shall have been at least 10 years in practice as an Advocate or Solicitor of the Royal Court (including as a Law Officer) or in judicial office in Jersey.*

67. *Ordinary Judges of the Court of Appeal, Commissioners of the Royal Court, the Magistrate, Assistant Magistrate and Relief Magistrates shall have 10 years legal practice in Jersey (including as a Law Officer) or the Commonwealth or in judicial office in Jersey or the Commonwealth.*

68. *The Master of the Royal Court, Family Court Registrars, and the Chairmen and Deputy Chairmen of the Jersey Employment and Discrimination Tribunal shall have 7 years legal practice in Jersey (including as a Law Officer) or the Commonwealth.*

69. *The qualifications for the office of Jurat shall continue to be that the person has attained the age of 40 years and is a British subject and born in Jersey or has during the 5 years preceding the day of appointment been ordinarily resident in Jersey²⁷.*

70. *No member of the judiciary should be a person who may be directed or supervised in the discharge of his or her duties as such by the Chief Executive Officer,*

²⁷ Article 2(1) Royal Court (Jersey) Law 1948

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the States Employment Board, a Minister, a person acting on behalf of such a person or an elected member of the States Assembly.

Proposals – Judicial Selection Processes

71. Judicial selection and appointment processes shall take place as set out below.

72. In carrying out selection and appointment processes the Bailiff, Commission or selection panel may consult with members of the judiciary and any other office or body that it considers appropriate as to the suitability of an applicant and any information supplied is to be kept confidential.

73. The Bailiff, Commission or selection panel may request the Jersey Appointments Commission to oversee, observe or participate in selection and appointment processes on such terms as the Commission may agree with the Jersey Appointments Commission.

74. The Commission shall consult with the Jersey Appointments Commission so as to ensure that selection and appointment processes are in accordance with principles and procedures consistent with human resources best practice for senior public servants established by the Jersey Appointments Commission.

75. Save as specified in the legislation, the Commission may regulate its own procedure. The Commission shall also have an inherent power to make decisions that may be necessary for the ends of justice or to prevent abuse of the process of the Commission.

76. All selection and appointment procedures agreed, published, and maintained by the Commission shall set out specific provisions for the advertising of vacancies, and application, selection and appointment procedures.

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77. *Procedures for the selection and appointment of Ordinary Judges of the Court of Appeal shall reflect the close relationship with the Court of Appeal of Guernsey and the need for co-ordination with the Crown, the UK Ministry of Justice, the Bailiff of Guernsey and Senior Members of the Judiciary in England and Wales, Scotland and Northern Ireland as expressed in current procedures.*

78. *Procedures for the selection and appointment of Commissioners of the Royal Court from outside of Jersey shall reflect the need for co-ordination with the Bailiff of Guernsey or Senior Members of the Judiciary in England and Wales, Scotland and Northern Ireland as expressed in current procedures.*

Proposals – Selection and Appointment Processes for the Deputy Bailiff and Bailiff

79. *On vacancy in office of the Deputy Bailiff, and in accordance with a procedure agreed, published, and maintained by the Commission, the Commission shall:*

- a. appoint a selection panel of no fewer than five JLSC Commissioners who shall select a person for recommendation for appointment; and*
- b. make a recommendation for appointment, through Her Majesty's Lieutenant Governor, to the Privy Councillor with responsibility for relations with Jersey, for recommendation to Her Majesty.*

80. *Her Majesty would continue to have responsibility for appointing the Deputy Bailiff.*

81. *On vacancy in office of the Bailiff, and in accordance with a procedure agreed, published, and maintained by the Commission, the Commission shall, unless there is some good reason to the contrary, make a recommendation that the Deputy Bailiff be appointed Bailiff.*

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82. *The recommendation shall be made, through Her Majesty's Lieutenant Governor, to the Privy Councillor with responsibility for relations with Jersey, for recommendation to Her Majesty.*

83. *Her Majesty would continue to have responsibility for appointing the Bailiff.*

Proposals – Selection and Appointment Processes for Ordinary Judges of the Court of Appeal of Jersey

84. *The Bailiff shall continue to be, ex officio, the President of the Court of Appeal of Jersey.*

85. *The Deputy Bailiff shall continue to be, ex officio, a Judge of the Court of Appeal of Jersey.*

86. *Where appointment is required to the office of Ordinary Judge of the Court of Appeal, in accordance with a procedure agreed, published, and maintained by the Commission, the Bailiff as Chief Justice, having consulted with the Commission, may make a recommendation for appointment as an Ordinary Judge of the Court of Appeal of Jersey of any retired Bailiff or Deputy Bailiff of Jersey, Bailiff of Guernsey (ex officio), the First Deemster of the Isle of Man (ex officio) and, any person able or formerly able to preside over the High Court of England and Wales, the Court of Session or High Court of Justiciary in Scotland, or the High Court of Northern Ireland.*

87. *The recommendation shall be made, through Her Majesty's Lieutenant Governor, to the Privy Councillor with responsibility for relations with Jersey, for recommendation to Her Majesty.*

88. *Her Majesty would continue to have responsibility for appointing Ordinary Judges of the Court of Appeal of Jersey.*

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Proposals – Selection and Appointment Processes for Commissioners of the Royal Court

89. *Where appointment is required to the office of Commissioner of the Royal Court, in accordance with a procedure agreed, published, and maintained by the Commission, the Bailiff as Chief Justice, having consulted with the Commission, may appoint as a Commissioner of the Royal Court any retired Bailiff or Deputy Bailiff of Jersey or any person able or formerly able to preside over the High Court of England and Wales, the Court of Session or High Court of Justiciary in Scotland, or the High Court of Northern Ireland, or the Royal Court of Guernsey.*

90. *In any other case where appointment to the office of Commissioner of the Royal Court is required, in accordance with a procedure agreed, published, and maintained by the Commission, the Commission shall,:*

- a. appoint a selection panel of no fewer than five JLSC Commissioners who shall select a person for recommendation for appointment; and*
- b. make a recommendation for appointment by the Bailiff.*

91. The Bailiff shall continue to have responsibility for appointing Commissioners of the Royal Court.

Consultation Question – Selection and appointment Process for Jurats

92. This Consultation Paper seeks views on the process for the selection and appointment of Jurats.

93. The office of Jurat is a highly valued and ancient part of the judiciary in Jersey. It is therefore vital that this opportunity is taken to consider whether existing measures

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to protect the independence of the Jurats might be strengthened so as to ensure that this important part of our justice system is safeguarded and maintained into the future.

94. Particular concerns might include that:

- a. suitable candidates might be put off from putting themselves forward for the office of Jurat because of the Electoral College process;
- b. the Electoral College has insufficient information in regard to a candidate's qualities or qualifications, or lack thereof, to make an informed choice when selecting Jurats; and
- c. due to changing demographics and socio-economic position in Jersey, fewer members of the public might put themselves forward for election as Jurat in the future.

95. Views are therefore sought on the following questions:

- a. *Can the current Electoral College process for selecting the Jurats be improved?* For example, Jurats are currently elected only on the basis of speeches made by their proposers and seconders in support of their candidacy. Should more information on candidates be available to the Electoral College in advance of the election process?
- b. *Should the current Electoral College process be replaced by selection by the Judicial and Legal Services Commission and appointment by the Bailiff or should the present system of election by the Electoral College continue?* For example, selection by the Commission might encourage more persons to put themselves forward for Jurat as the

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Electoral College process might be off-putting to potential candidates who might otherwise put themselves forward for the important role of Jurat. This might be so both because of the very public risk of failure should a candidate not be successful (regardless of whether the unsuccessful candidate had the necessary qualities and qualifications for appointment), and also because of the 'electoral' nature of the process. On the other hand, does election by the Electoral College provide a public and transparent process that provides important legitimacy to the role of Jurat?

- c. *Are there any other ways in which people might be further encouraged to put themselves forward for election for Jurat or that the role, selection or protections for the independence of the Jurats might be further strengthened?* For example, by improving public awareness of the role of the Jurat and any vacancies in office, by amending the selection criteria or length of time in office of Jurats, or by permitting resignation prior to 72.

Proposals – Selection and Appointment Processes for the Master of the Royal Court, Family Court Registrars, Magistrate, Assistant Magistrate, Relief Magistrates, Youth Court Panel Members and the Chairman and Deputy Chairmen of the Jersey Employment and Discrimination Tribunal

96. *Where appointment to the office of Master of the Royal Court, Family Court Registrar, Magistrate, Assistant Magistrate, Relief Magistrate, Youth Court Panel Member or Chairman or Deputy Chairman of the Jersey Employment and Discrimination Tribunal is required, in accordance with a procedure agreed, published, and maintained by the Commission, the Commission shall:*

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- a. *appoint a selection panel of no fewer than three nor more than five JLSC Commissioners who shall select a person for recommendation for appointment; and*
- b. *make a recommendation for appointment by the Bailiff.*

Urgent Appointments Process

97. In certain circumstances there may be an urgent need for the immediate and temporary appointment of a Commissioner of the Royal Court, Relief Magistrate or Jurat. Such circumstances may include the urgent need to ensure that cases are dealt with as efficiently, fairly and quickly as possible, where a certain judicial specialism is required, where conflicts of interest, perceived or otherwise, prevent existing members of the judiciary from presiding or some other urgent reason in the interests of justice.

Proposals – Urgent Appointments Process

98. *Where an urgent need for immediate and temporary appointment of a Commissioner of the Royal Court, Relief Magistrate or Jurat arises, in accordance with a procedure agreed, published, and maintained by the Commission, the Bailiff would select and appoint an appropriately qualified person.*

99. *In the case of a Commissioner of the Royal Court or Relief Magistrate, such a person shall already hold judicial office in England and Wales, Scotland, Northern Ireland, Guernsey or the Isle of Man, or have 10 years legal practice in Jersey.*

100. *In the case of a Jurat, the person shall be a Jurat of the Royal Court of Guernsey.*

101. *The Bailiff shall inform the Commission of such appointments and the steps taken.*

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Judicial Complaints and Discipline

102. This section sets out proposals for legislation relating to judicial standards and complaints and discipline procedures.

Standards for Judicial Conduct

103. Historically, the Bailiff and the Jurats of the Royal Court have from time to time set judicial standards for the judiciary of Jersey “*governed foremost by conscience and a faithful regard to their oaths of office*”²⁸.

104. On 17th July 2007 the Jersey Judicial Association set out in writing a Code of Ethics and Conduct for all members of the judiciary in Jersey in the form of the ‘Code of Conduct for Members of the Judiciary of Jersey’²⁹.

105. The Bailiff Complaints Procedure and the Judicial Complaints Procedure (see below) both define “*misconduct*” as a breach of the Code of Conduct for Members of the Judiciary of Jersey as amended from time to time³⁰. The Code of Conduct is therefore currently of central importance when establishing standards of judicial conduct in disciplinary proceedings.

Proposals - Standards for Judicial Conduct

106. *All members of the judiciary of Jersey shall take an oath of office before the Royal Court.*

107. *The setting of standards for judicial ethics and conduct is rightly, and should remain, a matter for the judiciary of Jersey through the Jersey Judicial Association.*

²⁸ Preamble, Code of Conduct for Members of the Judiciary of Jersey, 17th July 2007

²⁹ <https://www.gov.je/Government/NonexecLegal/JudicialGreffre/Pages/CodeConduct.aspx>

³⁰ Art. 4 Bailiff Complaints Procedure; Art. 4 Judicial Complaints Procedure

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108. The Jersey Judicial Association should be encouraged to review and publicise these standards from time to time to ensure that they continue to support the maintenance of the highest judicial standards in Jersey by reference to international judicial and ethical standards.

Complaints and Disciplinary Processes

109. In 2015, following consideration of analogous procedures for dealing with complaints against the judiciary in other jurisdictions, including England and Wales, and consultation with the Crown, the Bailiff published a Bailiff Complaints Procedure³¹ and a Judicial Complaints Procedure³².

110. The Bailiff Complaints Procedure sets out a process for the making, investigation and determination of complaints and the sanctions available in respect of the conduct of the Bailiff and Deputy Bailiff.

111. The Judicial Complaints Procedure sets out a process for the making, investigation and determination of complaints and the sanctions available in respect of the conduct of: a Commissioner of the Royal Court; Magistrate, Assistant Magistrate, or Relief Magistrate; Ordinary Judge of the Court of Appeal, the Judicial Greffier, Deputy Judicial Greffier or any Greffier Substitute discharging the judicial functions of the Judicial Greffier. The procedure has been agreed to extend to the Viscount, Deputy Viscount and Viscounts Substitute when discharging judicial functions and the Chairmen and Deputy Chairmen of certain Tribunals.

Proposals - Complaints and Disciplinary Processes

³¹<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Bailiff%20Complaints%20Procedure%2020150901%20JR.pdf>

³²<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Judicial%20Complaints%20Procedure%2020150901%20JR.pdf>

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112. The grounds for removal of a member of the judiciary should be: misconduct or incapacity.

113. The Bailiff as Chief Justice would continue to have responsibility for complaints and disciplinary procedures in the case of complaints against any member of the judiciary of Jersey (save for the Bailiff and Deputy Bailiff).

114. A complaints and disciplinary process for all other members of the judiciary including the grounds for discipline or removal and the sanctions available should be established in legislation. This process should be modelled on the current Judicial Complaints Process.

115. The Lieutenant Governor would continue to have responsibility for complaints procedures and making disciplinary recommendations to Her Majesty in the case of the Bailiff and Deputy Bailiff.

116. A complaints and disciplinary process for the Bailiff and Deputy Bailiff, including the grounds for discipline or removal and the sanctions available should be established in legislation. This process should be modelled on the current Bailiff Complaints Process.

Judicial Tenure and Remuneration

117. This section sets out proposals for legislation relating to judicial tenure and remuneration.

Proposals – Judicial Tenure

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118. Provisions in respect of judicial tenure should be protected by being set out in legislation.

119. No member of the judiciary of Jersey should hold office beyond the age of 72, save for Jurats³³ and Commissioners of the Royal Court who would ordinarily retire at 72, may continue to be appointed by the Bailiff to act in that office for any period or in relation to any cause or matter as the Bailiff may determine, to the age of 75.

120. The following members of the judiciary of Jersey should be permanent appointments: Bailiff; Deputy Bailiff; Ordinary Judges of the Court of Appeal; Jurats; Master of the Royal Court; Family Court Registrars; Magistrate; Assistant Magistrate; Chairman and Deputy Chairmen of the Jersey Employment and Discrimination Tribunal.

121. The following should be time-limited appointments: Commissioners of the Royal Court; Relief Magistrates; Youth Court Panel Members.

Proposals - Remuneration

122. Provisions for judicial remuneration should be made consistent and protected by being set out in legislation.

123. The States Employment Board, having consulted with the Bailiff, should be responsible for determining the remuneration of all members of the judiciary of Jersey.

³³ Article 9(2) Royal Court (Jersey) Law 1948

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Part 2 – The Independence of the Law Officers

The Law Officers

124. The proposals for legislation would also cover the Law Officers. The Law Officers are Her Majesty's Attorney General and Solicitor General.

Proposals – Functions of the Judicial and Legal Services Commission

125. In addition to the functions set out above, the Commission would also have the function of selecting applicants for appointment to the office of Attorney General and Solicitor General and making recommendations for appointment to Her Majesty in accordance with a procedure established in law.

126. The Attorney General, ex officio, shall be a member of the Commission when discussing matters relating to the Law Officers.

Proposals – Selection Criteria

127. The Attorney General and Solicitor General would be subject to the same merit-based criteria for selection as for the judiciary as set out above.

128. The Attorney General and Solicitor General shall have been in legal practice in Jersey as an Advocate or Solicitor of the Royal Court for 7 years.

Proposals – Selection and Appointments Process

129. On vacancy in office of the Attorney General or Solicitor General, and in accordance with a procedure agreed, published, and maintained by the Commission, the Commission shall:

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- a. appoint a selection panel of no fewer than five JLSC Commissioners, who shall select a person for recommendation for appointment;*
- b. where a selection panel is formed to select the Solicitor General, the selection panel would, save in exceptional circumstances, include the Attorney General; and*
- c. make a recommendation for appointment, through Her Majesty's Lieutenant Governor, to the Privy Councillor with responsibility for relations with Jersey, for recommendation to Her Majesty.*

130. Her Majesty would continue to have responsibility for appointing the Attorney General and Solicitor General.

Proposals – Complaints and Disciplinary Processes

131. The grounds for removal of Law Officers should be: misconduct or incapacity.

132. The Lieutenant Governor would continue to have responsibility for complaints procedures and making disciplinary recommendations to Her Majesty in the case of the Attorney General and Solicitor General in accordance with a procedure established in law.

133. A complaints and disciplinary process for the Attorney General and Solicitor General including the grounds for discipline or removal and the sanctions available should be established in legislation. This process should be modelled on the current Law Officer Complaints Process³⁴.

³⁴<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Law%20Officers'%20Complaints%20Procedure%2020160805%20ALS.pdf>

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Proposals – Tenure and Remuneration of Law Officers

134. Provisions relating to the tenure and remuneration of the Law Officers should be provided for in legislation.

135. The Attorney General and Solicitor General should continue to cease to hold office at the age of 70 years.

136. The Attorney General and Solicitor General shall be permanent appointments.

137. The States Employment Board should be responsible for determining the remuneration of the Attorney General and Solicitor General.