

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

25<sup>th</sup> June, 2019

**Proposition P.2019/40**

**Policy & Resources Committee**

**Policy & Resource Plan – 2018 Review and 2019 Update**

**AMENDMENT**

Proposed by: Deputy G St Pier  
Seconded by: Deputy Le Tocq

To insert the following Propositions:

"4. To resolve that:

- (a) The Policy & Resources Committee should be directed to prioritise the action required by Resolution 14 of Billet d'État XII of 2015<sup>1</sup> and having consulted with other States Committees (including for the avoidance of doubt Authorities and Boards), report back to the Assembly with its recommendations no later than December 2019;
- (b) The Policy & Resources Committee should be directed to consider the conventions that apply in other democracies in respect of the relationship between elected members and the civil service especially as regards employment matters and to ensure that its recommendations reflect best practice."

**EXPLANATORY NOTE**

This amendment is intended to ensure that the intent behind Amendment no. 7 in respect of elected members' desire to be directly involved in recruitment and other employment matters can be effected in a proportionate and lawful way in accordance with constitutional and good governance principles.

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<sup>1</sup> To agree that ..... the Policy & Resources Committee, once constituted in May, 2016, shall, following examination of the issues, lay recommendations before the States to reform the political arrangements in connection with the States' role as an employer.

The Amendment as drafted does not conform to generally accepted constitutional or good governance principles and, in particular, ignores the fundamental requirement for the civil service to be, and to be seen to be, politically impartial. If agreed, the Amendment could therefore expose the States of Guernsey to considerable reputational risks as well as potential legal challenges. The current proposals risk potential impact upon - extant employment contracts. They also risk candidates being perceived to be, or being, either appointed, retained or dismissed, on the basis of personal or political patronage.

In Guernsey, the position of the civil service is very similar to that of the UK, with all civil servants being obliged to respect the Civil Service Code (based upon the UK model) as part of their employment contracts. In other democracies the relationship between elected members and the civil service exists by virtue of convention or statute often coupled with, the creation of published frameworks for matters such as recruitment, which, at least in the UK, are independently monitored.

Since the 2016 machinery of government changes, Rule 56 has been added to the Parliamentary Rules and touches on these important issues. In practice, this has led to a blurring of the lines of accountability between the roles of senior civil servants and elected members. It is not considered appropriate in a 21<sup>st</sup> century democracy for employment issues to be dealt with via Parliamentary Rules of Procedure. This does not uphold the values of openness, transparency and accountability expected by the community and enshrined within the Civil Service Code.

Recognising that the current arrangements need to change, the Policy & Resources Committee believes that a review would be helpful, with the aim of producing a clearer understanding of the relationship between the civil service and elected members, which reflects good governance and basic constitutional principles.

Legal advice has been secured and is shared for consideration by the Assembly.

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**To:** Policy & Resources Committee  
**From:** HM Procureur & Advocate Emily Bamber  
**Cc:** n/a  
**Date:** 19<sup>th</sup> June 2019

**Client/Matter:** P & R  
**Reference:** P & R plan amendments  
**Subject:** Proposed Amendment [7] (& others) of the Rules of Procedure of the States of Deliberation and their Committees, Rule 56; Constitutional and legal issues

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This advice has been compiled in some haste due to time pressures – it is therefore presented in this memo by way of key points but can be expanded upon, if required, in Committee –

#### **Constitutional issues**

- a) It is a key constitutional principle that civil servants are impartial and that appointments to the civil service are made on merit and through open competition.
- b) Whilst there are arguments which could be explored (with the benefit of more time) about the extent to which politicians should be consulted about appointments to the senior civil service, Amendment 7 potentially impacts not just upon appointments, but upon the selection, retention, promotion and disciplining of members of the civil service. It therefore risks civil servants being perceived to be, or being, either appointed, retained, promoted or dismissed, on the basis of personal or political patronage. The amendment therefore risks politicising (or being seen to politicise) Guernsey's fundamental, independent and impartial civil service function.
- c) As a matter of good governance, the States Rules of Procedure are not the appropriate forum for introducing the employment related provisions proposed in the Amendment. The States Rules of Procedure are designed to govern how business is conducted in the Assembly, not to prescribe the functions of the States as employer and its relationship with the civil service.
- d) Provisions touching upon the complex relationship between elected members and civil servants and particularly relating to civil service appointments, are best reached after due consideration, consultation and research and in accordance either with statute or with published recruitment/ appointment principles, as exist, for example, in both the UK and Jersey. P & RC could usefully further research this area.

## **Employment issues**

- a) There are potential employment law consequences if Amendment 7 is passed. It is foreseeable that there may be a marked rise in claims of constructive dismissal by senior officers, who may face a significant degree of political involvement in their employment, (which was not the case at the time of their original appointments to the States of Guernsey) and which is beyond the managerial and HR structure of the Guernsey civil service. At present, if constructive dismissal claims are brought against the States, they are usually defensible on legal principles. If the amendment is carried, employees may in future more readily succeed in constructive dismissal claims, e.g. by arguing there has been unwarranted political interference in their roles, which has effectively usurped established States employment directives and guidance.
- b) To constitute a 'fair' dismissal, an employer must show that a dismissal falls within one of the statutory 'fair' reasons for a dismissal. The evidential burden falls upon the employer i.e. in this case the States. Further, the employer must demonstrate that it has followed a reasonable process in reaching the decision to dismiss and that decision itself must be reasonable. It may be (especially given recent practice by some Committees relying upon the current Rule 56) that political intervention in dismissal of senior officers causes technical or substantive breaches in disciplinary or capability processes, or perhaps requires such processes to be circumvented altogether. Amendment 7 goes much further than the current Rule 56 and will make it harder to defend cases before the Guernsey Courts (for contractual claims) and before the Employment & Discrimination Tribunal (which deals with unfair/constructive dismissal; sex discrimination and, in due course following the introduction of proposed legislation, disability discrimination). Further, Deputies may be called to give evidence as witnesses in such cases, to date, this would be unprecedented given the clear employment structure and accountabilities within the Guernsey civil service.
- c) There are adverse reputational issues for the States in being seen to breach basic employment law principles. The Employment & Discrimination Tribunal has made it clear on more than one occasion that, as the largest employer on the island, the States should set the highest employment and HR standards. It is unlikely to be persuaded that, by Members seeking unilaterally and without wider public consultation to resolve to approve Amendment 7, it would become lawful to seek to interfere in the employment contracts of both extant and future civil service staff.

## **Other amendments**

In the time available, amendment 4 - 6 also raise potential good governance and employment issues, in this regard it would help to better understand the intention behind those amendments, P & RC may wish to explore this further with the proposers.

Megan Pullum and Emily Bamber (BY EMAIL)

**H M Procureur and Advocate E Bamber**