



Machinery of Government Sub-Committee

Decision making in the States Assembly

Introduction

This paper explains the various types of decision making in the States Assembly. Firstly, it briefly explains the parliament in Jersey and its functions. Then it describes how States Members can be held to account (by other States Members and the public). Lastly, it explains the specific decision-making processes of government including ministerial decisions and ministerial orders.

Jersey's parliament

There are generally considered to be three branches of parliament in Jersey: the Legislature (the States Assembly with a scrutiny function), the Executive (Ministers and the public administration) and the Judiciary (courts).

The Legislature (States Assembly)

The Legislature can be described as a body of elected representatives that makes laws. The prime functions of the States Assembly include:

- holding the government to account;
- making and amending laws and regulations;
- approving the amount of public money to be spent by the Government every year;
- approving the amount of tax to be raised;
- determining through debate major internal and external policies.

The legislature also provides a forum for public participation through lobbying their elected representatives, contributing to the work of Scrutiny, or participating in consultations and petitions.

The way in which the States Assembly operates is set out in various pieces of legislation. In addition, the [Standing Orders of the States](#) are a comprehensive set of rules that govern the way in which the Assembly conducts its business including the terms of reference of the various committees and panels of the Assembly.

Scrutiny

The States Assembly scrutinises policy and legislative proposals through five Scrutiny Panels and the Public Accounts Committee (PAC). The PAC comes under the Scrutiny umbrella but is different to a Scrutiny Panel in that it focusses on implementation, rather than policy. Rather than holding Ministers to account, it principally holds officers to account for what has happened in the past so that it is able to make recommendations for meaningful and lasting improvement¹.

Along with the Standing Orders of the States of Jersey, there are two Codes of Practice that set out the rules by which the Panels and PAC operate. One code governs [engagement with the Government](#) with the other covering the [proceedings of panels and PAC](#) work.

The Scrutiny Liaison Committee (SLC) is an oversight body which comprises the Chairs of the five Scrutiny Panels and the Chair of PAC. It has responsibility for maintaining oversight of the work of the Scrutiny Panels and PAC, including Scrutiny expenditure.

The Executive

The Executive consists of the Chief Minister and the Council of Ministers. The Chief Minister's role is to provide long-term strategic direction for Jersey. The Chief Minister is supported by a number of Ministers and Assistant Ministers who are allocated political responsibility for a range of policy areas and operational departments. All Ministers are appointed individually by the States Assembly to a number of ministerial offices.

The Chief Minister chairs the Council of Ministers, which is responsible for the Island's common strategic policy, co-ordinating the Government's policies and administration, and prioritising executive and legislative proposals².

How are Members held to account?

States Members (executive and non-executive)

Accountability of States Members begins with their elections. Manifestos delivered by each candidate are a declaration of intentions, motives or views which are published before each election to let the voter know which set of policies they stand for and would wish to implement if they were elected. In theory, the electorate can then hold the Member to account on the performance of their election pledges throughout their term of office (if they are elected) and, if they haven't delivered, cast their vote elsewhere at the next election.

Ministers (executive)

Ministers are accountable to the Assembly for the actions of government. This means that Ministers have to explain and provide information on what is happening in their area of responsibility. Part 5 of the [Codes of Conduct and Practice for Ministers and Assistant Ministers](#) states that Ministers have a duty to the States Assembly to account for matters for

¹ [Comptroller and Auditor General: Governance: A Think Piece.](#)

² [R.10/2020](#)

which they are responsible, including for the policies, decisions and actions of the departments and agencies which discharge their responsibilities.

There are many ways the Assembly can scrutinise and hold Ministers to account. The main ones include:

- **Oral/written questions** - submitted by other members to be answered in the Assembly.
- **Scrutiny** - Ministers (and government officials) appear before the Panels and the Public Accounts Committee to answer questions.
- **Correspondence** - Scrutiny often write to Ministers to raise issues. These are published (unless of a confidential nature) which increases pressure on Ministers to respond.

The electorate can also hold Ministers to account by contacting non-executive members, who may be able to explore matters of public importance on their behalf through the above means.

What influence do non-executive members have?

In terms of what influence non-executive members have over government – this would be the envy of parliamentarians in many other democracies. There are a number of examples of policy changes which have been driven by non-Executive Members and the government has sometimes had to fight for every vote to get its priorities through the Assembly. There are a number of examples of non-Executive Members influencing policy including the declaration of a climate emergency ([lodged by Deputy Rob Ward](#)) and banning the sale of single-use carrier bags ([lodged by Deputy Inna Gardiner](#)). Members have a lot of influence over government in Jersey's political system, but it needs the initiative of the member to actively seek out to lodge propositions to initiate change.

States Decision Tracker

It is worth mentioning here that the Privileges and Procedures Committee is planning to lodge an amendment to Standing Orders to introduce the development and maintenance of a decisions tracker (as part of its Terms of Reference).

The intention behind this is to make it easier for Members and the media to question Ministers about the implementation of decisions and to scrutinise the reasons given for any delay. Where Ministers have decided not to implement a decision, the reasons would need to be stated publicly and Members would have the information they need to question Ministers on this, both in scrutiny and in the Assembly.

In terms of the development and maintenance of the tracker, the Committee agreed that it should be administered and owned by the Members' Resources Team at the State Greffe but be maintained through correspondence and engagement with Government.

The tracker would be updated every quarter and published on the States Assembly website to ensure accessibility for States Members, the public and media.

Decision making processes

Ministerial Orders

The Legislation (Jersey) Law (2021) contains a number of provisions about legislation that were previously contained in various separate pieces of legislation. One of the purposes of the Law was to bring together in one place all of those provisions, including new provisions about the functions of the Legislative Drafting Office. The Law repealed the Subordinate Legislation (Jersey) Law 1960 which introduced the power to make subordinate legislation (this includes Regulations and Orders).

Prior to the implementation of Ministerial government in 2005, Committees had Order making powers (and every Law since 1960 when the Subordinate Legislation Law came into force included the power to make subordinate legislation).

Scrutiny

In Standing Orders, section 136 provides the Terms of Reference for Scrutiny Panels and lists various areas which may be subject to scrutiny. In the list, paragraph d relates to Ministerial Orders (as they are subordinate enactments made by Ministers): “to scrutinize subordinate enactments which have been made by a Minister [i.e. Ministerial Orders]”.

Procedurally, this implies that Scrutiny Panels are able to review Ministerial Orders once they have been signed. Whether or not Ministers share a draft Ministerial Order with a Panel is a political matter. If Panels felt it was necessary to review all Ministerial Orders before they are signed, they may consider asking the Ministers under their respective remits to share them as a matter of course (procedurally though, it is the Minister’s decision whether or not they are shared).

Ministerial Orders cannot be called in by a Panel but Panels are able to review them either before they are signed (if the Minister shares them in draft form) or after (once they are published). In the first instance, it would be wise for a Panel to communicate its concerns with a Minister. If a Panel gathers evidence that suggests the Ministerial Order should be rescinded or changed, the Minister would have the power to do so.

If the Minister decides not to rescind or change the Ministerial Order, the States Assembly can agree to rescind/overturn it but this can only be agreed through a proposition. It’s worth noting that if a proposition is lodged in relation to the annulment of an Order, it has a minimum lodging period of 2 weeks (Standing Order 26 (3) (e)).

Ministerial Decisions

Ministerial Decisions provide a public record of important events and decisions to enable review by scrutiny, the public and the media.

The need for a standard form of record for ministerial decisions was highlighted shortly after the States took the decision in September 2001 to move to a ministerial system of government.

In terms of what should be recorded as a Decision, there are a number of prompts where a decision is required including a decision to:

- consult the public on a draft policy which must then be **presented** to the States
- approve and **lodge** “au Greffe” a report and proposition for debate by the States

- approve and **present** a comment on another proposition
- bring forward changes to legislation, for consideration by the States (and subject to the agreed prioritisation process)
- grant consent or permission under a statutory provision
- delegate functions to one of his or her Assistant Ministers or officers, in accordance with Article 28 of the States of Jersey Law
- make an Order under powers conferred upon the Minister by legislation
- approve submissions for the Government Plan/budget for forwarding to the Council of Ministers and the States
- allocate significant resources (financial, manpower etc.) which cannot be dealt with under delegated powers (and don't need to be referred to the Council of Ministers or the States)
- award a contract, in accordance with Treasury Financial Directions
- nominate or appoint a person as a member of a trust, working party, advisory panel, or other body (subject to approval, if necessary, by the Council of Ministers and/or the States)
- appoint an authorised signatory for the expenditure of funds
- deal with a matter of policy that does not need to be determined by the Council of Ministers or the States
- Land transactions (StandingOrder168):
 - Disposal, acquisition, letting or rental of land (report to States for 15 days before binding contract possible)
 - Grant or acquisition or rights or servitudes
 - Lease –new or renewal/ Extension or variation
 - Approval of plans

The Minister is accountable for decisions he/she makes and therefore has ultimate responsibility for the decisions signed.