

STATES OF JERSEY



DRAFT STATES OF JERSEY (AMENDMENT No. 8) LAW 201- (P.33/2014): THIRD AMENDMENT

**Lodged au Greffe on 14th April 2014
by Deputy J.H. Young of St. Brelade**

STATES GREFFE

1 PAGE 44, ARTICLE 7 –

- (1) For paragraph (a) substitute the following paragraph –
- “(a) for paragraphs (1) and (2) there shall be substituted the following paragraphs –
- ‘(1) The Chief Minister may –
- (a) appoint one or more elected members as his or her Assistant Ministers;
- (b) appoint, in relation to any other Minister, one or more elected members as the Assistant Ministers to that Minister; and
- (c) dismiss any Assistant Minister.
- (2) The Chief Minister may only appoint or dismiss an Assistant Minister to another Minister with that Minister’s prior consent.’”.
- (2) After paragraph (b) insert the following paragraph and renumber the remaining paragraph accordingly –
- “(c) in paragraph (4) for the words “the Minister that he or she assists.” there shall be substituted the words “the Chief Minister.”.

2 PAGE 45, NEW ARTICLE –

After Article 8 insert the following Article and renumber the remaining Articles accordingly –

“9 Article 26A inserted

After Article 26 there shall be inserted the following Article –

‘26A Regulations: advisory panels

- (1) The States shall, by Regulations, provide for the establishment of panels to advise Ministers (‘advisory panels’).
- (2) Regulations under paragraph (1) shall, in particular, provide for –
- (a) the constitution of advisory panels;
- (b) the appointment and dismissal of members of advisory panels;
- (c) the functions of advisory panels;
- (d) the provision of resources to advisory panels; and
- (e) the duties of a Minister in relation to any material produced by an advisory panel in the discharge of its functions.

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- (3) Regulations under paragraph (1) may also provide for the establishment of advisory panels to advise Assistant Ministers and, in particular, provide for the duties of an Assistant Minister in relation to any material produced by an advisory panel in the discharge of its functions.’”.

DEPUTY J.H. YOUNG OF ST. BRELADE

REPORT

1. Introduction

The Committee system of Government was replaced 9 years ago by the Ministerial system. Apart from an aspiration that government would become more efficient, quicker and cheaper; other than by close followers of public affairs, this change was seen as remote and largely academic by the public. However, past and present States members who have worked to implement public policy and achieve improvements in our public services have acquired a wealth of experience of the system in practice.

Over the years, there have been several internal reviews which have highlighted the system's successes and failures and identified modifications, but have not achieved sufficient consensus amongst States members to enable any change. As a member of the Machinery of Government Review (MOGR) Sub-Committee, I was present at the majority of States members' interviews and am convinced the need for improvement is widely recognized by members. The public submissions to the Electoral Commission included a number highlighting changes to the machinery of government; we have seen letters to the Jersey Evening Post editorials, and I believe the public now recognize the need for improvements.

2. Previous Government Reviews

The latest Machinery of Government Review (R.105/2013) identified 6 characteristics of the system which required changes to be made –

- (1) blurred lines of accountability,
- (2) a prevailing silo mentality,
- (3) insufficient inclusivity,
- (4) insufficient use of States Members' talents and expertise,
- (5) ineffective lines of communication, and
- (6) a Civil Service that potentially wields too much power.

The evidence gleaned very much concurred with the conclusions of the previous working party of members which reported 3 years earlier (in P.70/2010), and led to proposals "*for a more inclusive system to be established with the aim of giving all States members greater opportunities to influence executive decision-making*" (see P.120/2010), which proposal was defeated by 28 votes to 21.

Unfortunately the debate about the actual changes we require to our system has tended to polarize opinion between those whose vision of democracy favours tight centralization of policy-setting and decision-making, and those who favour a more distributed system of power.

This debate is difficult for us in the absence of a party political structure in Jersey, which it is argued provides an external discipline, and brings additional checks and balances to the government system, which are otherwise absent. So far, neither side of the local debate has been open to considering the alternative view. My amendment is not a complete answer, but the 2 changes I propose are intended to contribute, together with other members' amendments, to move towards a rebalanced set of changes.

3. The Chief Minister's proposed changes

The Chief Minister's proposals are largely focused on strengthening the role and authority of the Chief Minister. It is perhaps not surprising that there may not be a majority amongst the Ministers themselves for the Chief Minister's changes.

Events have shown that, in practice, the present role of our Chief Minister can be effectively limited by the exercise of the power and statutory authority held by Ministers to that of chairman/facilitator of the Council of Ministers. I believe it is in no-one's interest to have a Chief Minister without the tools to be fully effective in the task and able to deliver the States' agreed objectives. Unfortunately, the Chief Minister has omitted the essential checks and balances from his proposals; these safeguards are essential to counterbalance the very strong new powers being sought. Without these checks being added and in the absence of political parties, the Chief Minister's proposals will weaken governance.

4. The need for checks and balances

The recommendations of the Machinery of Government Sub-Committee (R.105/2013) included such safeguards. As a member, I know their final proposals were a compromise, since its members represented both sides of the political divide, both power centralizers and those prepared to share and devolve power. Their recommendations included new powers for the Chief Minister, but were accompanied by a more inclusive system by appointing non-executive members (NEMs) i.e. those members who are not members of the government executive, to carry out the following role in respect of each Minister –

- (a) to provide preliminary advice and constructive challenge throughout the development of ministerial policy and the formulation of departmental initiatives;
- (b) to act generally as a political sounding-board or source of informal political advice on general matters pertaining to the department,
- (c) to safeguard the public interest by providing real-time oversight of matters arising within departments, including Ministerial Decisions;
- (d) to carry out early monitoring of the performance of departmental management in meeting goals and objectives of the Minister.

As with most compromises, the MOGR Sub-Committee proposals were weakened and ill-defined compared with those discussed, and those for Ministerial Boards which were previously considered and rejected by the States in P.120/2010. Having re-read both proposals, I believe neither the roles of the Boards or NEMs was properly explained nor distinguished from the task of executive decision-making, which is wholly the Ministers' role. I believe this why they were rejected by the States. My amendment is different. It is not a return to Committees by the back door.

5. Changes to Governance in the UK – Cornwall County Council

During work on our MOGR Sub-Committee report, it became known that UK local authorities were reviewing their governance to try to restore public confidence in local democracy as permitted by the Localism Act 2011. Some have reverted to the Committee system, but Cornwall County Council, a major authority, was actively working to identify a unique hybrid system which modified their cabinet government structure. The Sub-Committee intended to examine the suitability of the Cornwall hybrid for Jersey before it was wound up. Cornwall County Council have since approved and implemented these changes earlier this year, to achieve their objectives –

Enhancement of democracy and the democratic process;

Improved communication and transparency across and throughout all decision-making processes;

Inclusivity must be promoted whereby all Members have the opportunity to be appropriately involved in decision-making processes;

Decision-making processes must be informed, transparent and open;

Governance founded on an expectation of trust and respect, simplicity, common sense and equality;

Effective risk management through the decision-making processes;

Effective and timely decision-making;

Follows the principles in the CIPFA/OPM guidance document ‘Good Governance Standard for Public Services’.

Cornwall retained its leader and cabinet system, but established Portfolio Advisory Committees (PACs) of their elected members, together with a Scrutiny Management Committee (SMC) and Select Committees. Each of Cornwall’s PACs supports and challenges their cabinet members and has a key role in developing policies, provides a forum for policy development and advice for their cabinet member, who retains full responsibility for decision-making.

Cornwall’s Scrutiny members have input into PAC agendas and their PAC system allows members to play a greater role in shaping and influencing their policies. It is intended to strengthen communication and the relationship between their elected members and their cabinet. This system is considered to be more open and transparent and better able to respond to public views expressed through their PAC members. Eight-weekly formal public meetings of their PACs are scheduled, at which the public and members can submit questions in advance, with more frequent informal meetings.

Full details of the governance reforms in Cornwall can be found on their website:

<http://www.cornwall.gov.uk/council-and-democracy/councillors-and-democracy/portfolio-advisory-committees/>

I believe the principle of establishing a number of advisory panels of elected members to constructively challenge Ministers is a very good model for Jersey to adopt, and would bring very significant improvements. It would provide member inclusion and greatly improve 4 of the 6 problems inherent in the present system as identified by the MOGR Sub-Committee. This would give the public confidence, increase community engagement and enhance democracy. My amendment proposes establishing advisory panels “to advise Ministers”. The Regulations would set out their role; my intention is that this would be limited to policy development, leaving Scrutiny free to concentrate on evidence-based review work. The advisory panels I propose would have no role in executive decision-making.

6. My amendment – power to establish advisory panels by Regulations

The most progressive element of the Chief Minister’s changes is the flexibility proposed to be introduced into the ministerial structure. This will allow the Chief Minister-elect to structure a government to meet the agreed political priorities, and populate it with the people best able to deliver. I believe this change has the potential to break down the silos which have for many years inhibited efforts to reform the public service. In my view, whilst we have a mutually dependant, one-on-one Minister to Civil Service Department Chief Officer structure, departmental restructuring will continue to be inhibited.

The effect of the change to the Ministerial structure proposed by the Chief Minister will mean that the States could be asked to approve anything between 20 Ministers appointed with no Assistant Ministers and one Minister and 19 Assistants. Consequently, it will not be possible to decide on the best structure for Scrutiny until the Ministerial structure is known after the election of a Chief Minister. Neither will we be able to decide the number of the advisory panels which I propose to be established in advance. Depending on the number of Ministries, advisory panels will need to work with more than one Minister. Hence my amendment proposes that, similar to the power to establish Scrutiny proposed by the Chief Minister, the power to establish advisory panels is also included in the Law to enable this by Regulations, and allows time for the rules for the establishment, role and appointment of the advisory panels to be decided by PPC at a later date.

7. My amendment – appointment and firing of Assistant Ministers

The MOGR Sub-Committee proposed strengthening the Assistant Minister roles, to give them proper delegated authority, which has been reflected in the Chief Minister’s proposed changes. As a consequence, I believe it important that Standing Orders are amended to require Assistant Ministers to answer questions in the States, in their own right and account for their actions. The proposal to impose collective responsibility on them in their roles also increases the significance of their roles. It is also likely that the Chief Minister’s proposed structure will allocate significant policy areas to Assistant Ministers. I believe it will no longer be appropriate for Assistant Ministers to be appointed by Ministers and fired by them. I propose a small change so that Assistant Ministers are seen to be a full part of the Chief Minister’s team, so that they will be appointed by and fired by the Chief Minister.

8. Financial and manpower implications

There will be a modest additional administrative cost in serving the advisory panels. In view of the underspending at year end, I believe it should be possible to absorb this from existing budgets and from within existing manpower in departments.