

STATES OF JERSEY



COMPETENT AUTHORITIES MINISTERS: RELEASE OF MINUTES OF MEETINGS TO SCRUTINY

Lodged au Greffe on 6th September 2021
by the Corporate Services Scrutiny Panel
Earliest date for debate: 2nd November 2021

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

that, on request by the Scrutiny Liaison Committee, any approved minutes of meetings of the Competent Authorities Ministers should be shared in confidence and without redactions by the Chief Minister with that Committee for distribution to the relevant Scrutiny Panels.

CORPORATE SERVICES SCRUTINY PANEL

REPORT

Introduction

The Corporate Services Scrutiny Panel (the Panel) has lodged this proposition to ensure transparency and accountability of the decision-making processes and principles adopted by the Competent Authorities Ministers (“CA Ministers”) to justify policy in response to the COVID-19 Pandemic.

Background

The CA Ministers are appointed by act of the Emergencies Council under the [Emergency Powers and Planning \(Jersey\) Law 1990](#), and hold power under that law. The current iteration of the CA Ministers consists of:

- The Chief Minister;
- The Minister for Economic Development, Tourism, Sport and Culture;
- The Minister for Health and Social Services;
- The Minister for External Relations and Financial Services; and,
- The Minister for Infrastructure.

The [COVID-19 Strategy](#) published in June 2020 confirmed that the Minister for Treasury and Resources and Minister for Education had been included in invitations to meetings given the importance of the portfolio to pandemic events on public finances and schools.

CA Ministers cannot make collective decisions, as their powers are individual, narrow by definition in the Emergency Powers and Planning (Jersey) Law 1990 and executed by making orders. However, they can confer and advise each other, and they do largely hold the core powers, whether as Ministers, or as CA Ministers, that are needed in the event of an emergency. The Chief Minister informed the Panel in a public hearing held on 29th June 2020:

We have kept the core as the competent authorities, with the other invited Ministers in, and then when it has been necessary other Ministers have been involved.¹

CA Ministers have acted effectively as a ‘cabinet’ sub-committee, who can process responses, which must then be formally ratified. Previously decisions (i.e., the approval of courses of action) are taken by individual Ministers or by the Council of Ministers. At times the CA Ministers have sought the endorsement, support, or agreement of the Council of Ministers.

All of the above forums of decision-making are properly recorded, by way of Ministerial Decision or a formal minute.

The Chief Minister’s response to the Panel’s COVID-19 interim report confirmed to the Panel that he does not envisage the CA Ministers being disbanded until after the Global Pandemic is over.

¹ [Transcript – Quarterly Hearing with the Chief Minister – 29th June 2020](#)

Codes of Practice

Current access by Scrutiny to agendas, papers and minutes for meetings of the Competent Authorities Ministers meetings, is treated in the same way as Council of Ministers items under the engagement code, that is:

The Council of Ministers will consider providing Panel/PAC Chairmen with relevant items of Part B minutes of Council of Ministers meetings upon request, in accordance with the process and criteria established for Part B reports.²

The Minutes have not, however, been published or shared with Scrutiny, despite requests. The Chief Minister stipulated in the Panel's hearing of 5th February 2021,³ and has reiterated to the Assembly, that this would remain the case as those exempt aspects of meetings should remain a "safe space" in which views can be expressed without fear or favour, however they would remain historical records.

It is important to note that the terms of engagement also highlight that any documents received in confidence by Scrutiny will remain so until otherwise agreed with the Executive, furthermore:

For the avoidance of doubt, the fact that information is confidential is not a reason for delay in providing it to a Panel/PAC.⁴

Transparent Decision-Making

There is a clear need and will for transparency in decision-making by the general public within the Island, this does not cease due to an emergency situation and in many ways is in fact of more consequence and can be observed in [Freedom of Information](#) requests made in this regard. The Panel acknowledges the need for decisions to be made, sometimes in a quick manner and some will be confidential in nature, however it remains unclear on what information these decisions are taken and what debate of options has occurred.

These decisions have, without doubt, had both positive and negative impacts on Islanders, businesses, Jersey's economy and Public Health; therefore, oversight is necessary.

This need for oversight and understanding of decision-making has been well debated throughout the course of the pandemic, and this Assembly has previously backed the sentiment through adoption of P.88/2020 which enabled the release of minutes of the Scientific and Technical Advisory Cell (STAC).

The Scrutiny function has formally requested sharing of minutes on multiple occasions, both at a Scrutiny Liaison Committee and Standing Panel level, however these requests have been denied.

² [Code of Practice for Engagement Between 'Scrutiny Panels & The Public Accounts Committee' and 'The Executive'](#)

³ [Transcript – COVID-19 Review \(Witness: The Chief Minister\) – 5th February 2021](#)

⁴ [Code of Practice for Engagement Between 'Scrutiny Panels & The Public Accounts Committee' and 'The Executive'](#)

The Chief Minister indicated to the Assembly on 19th July 2021 that he believed that the CA Ministers required a “safe space” to have frank discussions, a position similarly stated to the Panel, including in a Quarterly Hearing held 10th March 2021.

The Chief Minister further indicated that should the minutes be published; they would become an “anodyne set of bullet points that say this is what has been done and there will be no background as to what the deliberations were”. As seen in the minutes of STAC, a specialist secretariat staff within the States Greffe produce a detailed and impartial record of meetings and the Panel finds it concerning that the Chief Minister insinuates that CA Ministers would specifically avoid deliberations in a formal setting.

Presenting decisions in a clear and transparent manner is a key element of trust between the Public, Politicians and the Government. This Proposition does not go as far to request publication of exempt minutes, as it is acknowledged these may contain confidential information, however sharing these with scrutiny will enable due oversight to build confidence outside of the CA Ministers.

There has indeed been a move away from involvement of those outside of the CA Ministers within decision-making which has previously taken place. The Chief Minister had indicated to the Panel in a Quarterly Hearing held 29th June 2020:

Essentially the health issues we have had to move fast and swiftly, if that is not just repetition, when we have needed to. Therefore, having the competent authorities' body has been particularly useful but for things like the economic side that have wider impacts, it is absolutely right that should go to the Council of Ministers and that is the decision-making body.⁵

Indeed, this Assembly had previously been asked to decide upon important factors such as the reopening of the Island's borders through P.84/2020 – A Safer Travel Period: States Assembly Approval. However, it is clear through lack of debates upon COVID-19 response policy and strategy that this is no longer the case. It could be suggested that alternate views and concurrent oversight is purposefully being excluded from the decisions being made and policies being developed. Certainly, a number of reviews have been impacted by the lack of clarity in decision-making being provided, a point that continues to be reviewed by the Panel as part of its COVID-19 Response and Recovery Review.

Conclusion

By adopting this proposition, the Assembly will enable oversight and understanding of the decision-making being undertaken by the CA Ministers and support its Scrutiny function in completing its work. Whilst the Panel appreciates the meetings of the CA Ministers are necessarily confidential there must be an ability to scrutinise the actions of Government whilst not revealing the detail in a public domain which could undermine the work of Government. Scrutiny should be allowed to review the decision-making principles which resulted in the development of policy. The proposition does not seek to publish minutes, only to allow the confidential analysis of vital context through the Scrutiny function.

⁵ [Transcript – Quarterly Hearing with the Chief Minister – 29th June 2020](#)

Financial and manpower implications

Any financial or manpower implications would be very marginal as a result of this proposition.