

STATES OF JERSEY

CODE OF PRACTICE FOR SCRUTINY PANELS AND THE PUBLIC ACCOUNTS COMMITTEE

As adopted by the States as amended 28th April 2009

STATES GREFFE

CONTENTS

	<i>Page</i>
1. Introduction.....	3
2. Chairmen’s Committee	3
3. Powers of PAC and Panels	4
4. Scrutiny Panels: remit and membership.....	5
5. Scrutiny Panels: Expert Witnesses and Advisers.....	9
6. Scrutiny Panels: Meetings.....	9
7. Scrutiny Panels: Planning the Forward Work Programme	11
8. Scrutiny Panels: Planning a review.....	12
9. Scrutiny Panels: Gathering evidence	13
10. Scrutiny Panels: Public hearings.....	18
11. Scrutiny Panels: Reports	20
12. Scrutiny Panels: Resources	22
13. Public Accounts Committee	23
14. Compliance	25
15. Appendix 1 – Access to Council of Ministers Part B background reports: Confidentiality Agreement	26
16. Appendix 2 – The Rôles of Scrutiny Panels vs the Public Accounts Committee.....	27
17. Appendix 3 – Standing Orders relating to PAC and Scrutiny Panels	29
18. Appendix 4 – Standing Orders relating to Code of Practice.....	30

Chairmen's Committee

Code of Practice for Scrutiny Panels and PAC

1. Introduction

- 1.1 The Scrutiny Panels and the Public Accounts Committee (PAC) have been established by the States as an integral part of the reforms to the machinery of government in Jersey.
- 1.2 Scrutiny Panels exist to hold the Executive to account for its policies and actions and to undertake reviews into any matters of public importance. The role of the PAC is to consider the use of public funds and the adequacy of corporate governance arrangements.
- 1.3 The Chairmen's Committee, in accordance with Standing Order 143(f) and (g), [Appendix 3(1)] has prepared this code of practice for the proceedings of the PAC and Scrutiny Panels for approval by the States. Standing Orders 134(6) [Appendix 3(2)] and 141 [Appendix 3(3)] require the PAC, Scrutiny Panels, a Sub-Panel of a Scrutiny Panel and any member of a Scrutiny Panel to comply with this Code.
- 1.4 It is recognised that the Code is a "live" document which will need to be updated from time to time and amended in the light of further experience.
- 1.5 The Chairmen's Committee, in consultation with the Executive and the Privileges and Procedures Committee (PPC), will keep the Code of Practice under review to ensure that it meets the needs of the Panels, witnesses and the public and develops to ensure that the scrutiny function operates as efficiently and effectively as possible.

2. Chairmen's Committee

- 2.1 The Chairmen's Committee is comprised of six ex officio members, that is: the Chairmen of the five Scrutiny Panels and the Chairman of the PAC.
- 2.2 The President of the Chairmen's Committee is appointed by the States in the manner prescribed in Standing Order 121 [Appendix 3(4)].
- 2.3 The Chairmen's Committee has responsibility for oversight, co-ordination and review of the work of the PAC and the Scrutiny Panels. The full terms of reference of the Committee are set out in Standing Order 143 [Appendix 3(5)].
- 2.4 The Chairmen's Committee, in liaison with individual Chairmen, will try to ensure that all non-Executive members of the States who wish to participate in the Scrutiny function are involved in the work of Sub-Panels.
- 2.5 The Chairmen's Committee is a co-ordinating body, ensuring, with the Scrutiny Manager, that resources are allocated fairly across the Panels and there is no unintentional overlap or gaps in the programme of scrutiny over the three year term of office.
- 2.6 The Committee will ensure that the work programme chosen by the PAC and the Panels can be undertaken within the financial and manpower resources available. The Committee, however, does not have any sort of 'veto' over the programmes drawn up by the PAC and the Panels.

- 2.7 The Chairmen's Committee will be advised by all Panel Chairmen of any forward work programme as appropriate, planned reviews, and at the start of each review of the scoping documents detailing financial and manpower implications and terms of reference. It will also be advised of any planned work on the Executive's strategic priorities.
- 2.8 The Chairmen's Committee, in accordance with Standing Orders will co-ordinate the preparation of an annual report on the work of the PAC and Scrutiny Panels.
- 2.9 The Chairmen's Committee has an important role in maintaining close contact with the Council of Ministers to ensure that there is good two-way communication between the Scrutiny function and the Executive on their respective work programmes.
- 2.10 The Chairmen's Committee and the Chief Minister will meet on at least a twice yearly basis in order to discuss the respective work programmes of the Executive and the Scrutiny function and any other matters which might arise.

3. Powers of PAC and Panels

- 3.1 Scrutiny Panels and the PAC have the power to issue summonses in accordance with the States of Jersey (Powers, Privileges and Immunities) (Jersey) Regulations 2006. In accordance with the statutory requirement Panels will nevertheless take all possible steps to obtain voluntary compliance before using the powers contained in the Regulations.
- 3.2 Members of the States are not covered by the Regulations as they are required to co-operate with Panels by the Code of Conduct. Panels will nevertheless use the procedures set out below, that mirror those set out in the Regulations, when seeking evidence from Ministers, Assistant Ministers and other Members of the States.
- 3.3 Every effort will be made to obtain voluntary cooperation from Ministers and other Members to provide the documentary evidence required by the Panel and to attend hearings to give oral evidence. If a Member refuses to co-operate when requested, a formal letter from the Chairman of the Panel will be sent setting out the evidence required and, if appropriate, the proposed date and time of the hearing.
- 3.4 In common with members of the public who are able to challenge a summons, Members of the States will be able to write to the Greffier asking for a review of the request to provide evidence if they consider –
 - (a) that the Panel has not taken adequate steps to seek voluntary cooperation from the Member or to deal with evidence confidentially if appropriate;
 - (b) that the evidence is, or the documents are, not relevant or necessary to the matter that the Panel is investigating;
 - (c) that the evidence is, or documents are, legally privileged;
 - (d) that the prejudice to the Member that would ensue from appearing before the Panel and giving the evidence and, where required, producing the documents, so far outweighs the usefulness of the evidence or documents to the Panel that it would be unreasonable to require the Member to appear.

- 3.5 The Greffier will immediately refer the matter to the Privileges and Procedures Committee [PPC] which will review the matter and, subject to the preservation of legal professional privilege and the privilege against self-incrimination, direct whether or not the Minister or Member concerned should comply with the request. If a Member fails to comply when directed by PPC to do so he or she will be regarded as being in breach of the Code of Conduct and the appropriate disciplinary process will be initiated.

4. Scrutiny Panels – remit and membership

Terms of reference

- 4.1 The formal terms of reference for the Scrutiny Panels are set out in Standing Order 136 [Appendix 3(6)].

Remit

- 4.2 Standing Orders stipulate the establishment of five Scrutiny Panels each undertaking responsibility for scrutinising broad topic areas designed to cover the full range of ministerial departments. The five Panels and the departments to which they are related are –

Panel	Ministry
Corporate Services	Chief Minister Treasury and Resources
Economic Affairs	Economic Development
Education and Home Affairs	Education, Sport and Culture Home Affairs
Health, Social Security and Housing	Health and Social Services Housing Social Security
Environment	Planning and Environment Transport and Technical Services

- 4.3 In general, each Panel has the freedom to select its own programme of reviews within its remit. Each Panel has the responsibility of ensuring that a fair measure of scrutiny is undertaken across the full range of ministerial departments within its remit during the course of the lifetime of the Panel.
- 4.4 Panels may consider matters which are referred to them by the States, the Executive, the Chairmen’s Committee, individual States members, interest groups or the general public but they are under no obligation to undertake reviews which are referred to them by any of these bodies.
- 4.5 Consideration will be given to the Executive’s strategic priorities relevant to the Panels’ remit and the relevant Minister advised of Panels’ actions in this respect.
- 4.6 Panels will prepare an annual report of the work undertaken during the previous year for timely submission to the Chairmen’s Committee at the start of each year.
- 4.7 Panels will monitor and follow up the Executive’s responses to Panel recommendations arising from reviews.

Rôle of Chairman

- 4.8 The Chairman of each Panel is appointed by the States in the manner set out in Standing Order 120 [Appendix 3(7)]. The term of office for each Chairman is for the duration of the States Assembly until the beginning of the first States meeting following the next ordinary election.
- 4.9 The responsibilities of the Chairman are as follows –
- (a) (a) to develop and provide strong and fair leadership and clear guidance to members and Officers involved in the Scrutiny function;
 - (b) (b) to develop clear understanding of the Panels’ terms of reference in Standing Orders and to ensure these are fulfilled during the term of office;
 - (c) (c) to ensure that the Panels are effective in developing a process that will contribute to the achievement of the States’ strategic aims and priorities and the continuous improvement in services and implementation of best practice;
 - (d) (d) to agree all agendas for the Panel’s meetings and take a lead in ensuring that Panels are aware of all areas of possible review within the Panel’s remit
 - (e) (e) to meet on a regular basis and consult with the other Panel Chairmen and the Chairman of the Public Accounts Committee through the Chairmen’s Committee;
 - (f) (f) to ensure that the appropriate members of the Executive are briefed about the work of the Panel;
 - (g) (g) to develop a clear brief and Terms of Reference for each review topic;
 - (h) (h) to have overall responsibility for liaison with Ministers and Chief Officers responsible for services within the Panel’s programme;
 - (i) (i) to undertake on behalf of the Panel all contact with the media including press releases and interviews. A Panel Chairman will delegate the above responsibilities to a Sub-Panel Chairman or lead member as appropriate;
 - (j) (j) to ensure that requests for information are fair and reasonable;
 - (k) (k) to decide, in consultation with Panel Members and Scrutiny Officers, which witnesses to invite to hearings;
 - (l) (l) to chair Scrutiny hearings in public, ensuring fairness to witnesses;
 - (m) (m) to conduct an evaluation of each review to assess the effectiveness of the process and identify problems.
- 4.10 The Chairman may delegate certain functions, for example, chairing a public hearing or contacting the media, to another member of the Panel.

Membership

- 4.11 Each Panel consists of the Chairman and up to four elected States members who are appointed to the Panel by the States in the manner set out in Standing Order 125 [Appendix 3(8)].
- 4.12 Each Panel selects a Vice-Chairman to fulfil the functions of the chairman in his/her absence.
- 4.13 The quorum for each Panel is one half of its membership, rounded up to the next whole number.
- 4.14 Without a quorum, a Panel may not make substantial decisions at a meeting on its work programme, the terms of reference of specific reviews, appointment of an

adviser or financial expenditure or a report following a review. These decisions must all be formally minuted. A public or private hearing also requires a quorum of members.

- 4.15 In practice Panels make most of their decisions by consensus without the need to vote. Where a vote is necessary, each member of the Panel has one vote. The Panel Chairman does not have a deciding vote in the event of a tied vote. It is not possible to proceed with a decision on a tied vote.

Co-option

- 4.16 Panels may co-opt an additional non-executive Member onto a Panel for the purposes of assisting with a specific review.
- 4.17 A member can only be co-opted onto a Panel if (s)he is not already a member of two Scrutiny Panels.
- 4.18 The co-opted Member must only take part in discussions on the specific review for which (s)he has been co-opted and not in any other Panel business.

Sub-Panels

- 4.19 Under Standing Order 139 [Appendix 3(9)], the Panels are entitled to set up sub-Panels to deal with particular issues, such as draft legislation, or to undertake a review which cuts across the responsibility of more than one Panel.
- 4.20 Sub-Panels may contain elected members who are not members of the Panel in question (provided that they are not Ministers or Assistant Ministers).
- 4.21 Sub-Panels operate on behalf of the Panel which has appointed them and only with the authorisation of that Panel. The appointment, remit and timescale must be agreed by the full Panel and recorded in the Minutes. The Sub-Panel will appoint its own Chairman, who will be a Member of the main Panel. It is the responsibility of the Sub-Panel Chairman to report to the full Panel on a regular basis. The quorum for a Sub-Panel is one half of its members, rounded up to the next whole number. The report prepared by the Sub-Panel on its review will be presented to the States in the name of the full Panel.
- 4.22 Sub-Panels may call upon the financial and manpower resources available to the Panel. This is subject to the other commitments of the Panel and to the agreement of the Chairmen's Committee and Scrutiny Manager
- 4.23 There is no power of co-option: i.e. a non-Panel Member cannot be co-opted onto the main Panel as an additional Member for a review.

Rapporteurs

- 4.24 Under Standing Order 140 [Appendix 3(10)], the Panels are also entitled to appoint a single member, or rapporteur, to deal with a specific issue within the Panel's remit.
- 4.25 Rapporteurs operate on behalf of the Panel, on the same basis as a Sub-Panel, as set out above. Rapporteurs will progress their investigations on their own initiative and direction, but ultimately report back to the Panel. Rapporteurs should liaise with the Chairman on a regular basis.

Declaration of interests

- 4.26 A member of the Panel must declare an interest and withdraw from part or all of a review being conducted by the Panel if he/she considers that this interest would prejudice, or appear to prejudice, his or her ability to participate in the Panel proceedings in an impartial manner.
- 4.27 It is inappropriate for a Panel member who represents, or is a member of, a particular interest, stakeholder group or other organisation to participate in a review of a topic directly related to that group. The member may, however, give evidence to the Panel as a witness, having withdrawn from the Panel for the duration of the particular review.
- 4.28 Questions about a potential conflict of interest on the part of a member of a Panel should be referred in the first instance to the Chairmen's Committee for consideration who will refer the matter to the Privileges and Procedures Committee if a satisfactory resolution cannot be achieved.
- 4.29 If a witness believes that he/she has a potential conflict of interest, this fact should be made known to the Panel at the earliest opportunity.
- 4.30 In the final analysis, the Panel will determine whether the witness should appear before it to give evidence, having taken into account the reasons given by the witness.
- 4.31 If the Panel decides that it wishes to proceed with taking evidence from the witness, it will make a statement in its final report noting that a declaration of potential conflict of interest had been made by the witness.

5. Scrutiny Panels: Expert Witnesses and Advisers

- 5.1 The Panels may consider the appointment of expert witnesses and advisers to assist them in their work and offer technical support. The Scrutiny function has a budget allocation for this purpose, overseen by the Chairmen's Committee.
- 5.2 Panels appoint advisers to assist them in studying Executive policies. Panels have the freedom to select advisers whom they consider to have an appropriate level of expertise.
- 5.3 Advisers are normally appointed for a specific issue and for a specific period of time. They always report to a specific Panel. A Panel may wish to appoint a single adviser or a number of advisers, if it requires a range of expertise or opinion and has the budget to do so.
- 5.4 Advisers may be used for a range of tasks including technical assessment of evidence, advising on the selection and questioning of witnesses and providing briefing papers for the Panel. Advisers generally attend oral evidence sessions, and may ask questions regarding technical matters of witnesses appearing before the Panel who are not States members. An adviser may also be invited in a hearing to act as an expert witness.
- 5.5 In selecting an adviser, the Panels must adhere to Financial Direction No. 5.1 on the engagement and use of consultants.
- 5.6 The first stage in appointing an adviser is for the Panel to agree, in principle, that it wishes to appoint an adviser, to define the specification of the task to be undertaken,

to prepare a project brief and to estimate a budget for the appointment. The selection of an adviser must be agreed by the Panel. In most cases, the Panels will consider more than one candidate. The Chairmen's Committee will be advised of the selection process and appointment.

- 5.7 The Panels may search for suitable advisers from a variety of sources. They may, for example, approach accredited bodies or professional organisations, consult States departments for lists of professional advisers or take advice from local interest groups. The Scrutiny Office will endeavour to develop a register of potential local advisers to support the Panels.
- 5.8 It is impossible to be prescriptive about the levels of remuneration for advisers. Much depends on the individual, their professional background and their charging structure.

6. Scrutiny Panels: Meetings

Scheduling of meetings

- 6.1 The Panels will agree for each calendar year a schedule of regular meetings which will be held to plan and consider the progress of enquiries being undertaken by the Panel. When this schedule has been agreed, it will be published on the Scrutiny website.
- 6.2 Panel meetings will commonly be held in the rooms which have been designated for Scrutiny (Le Capelain and Blampied). However, a Panel may meet at any location of its choice.
- 6.3 The Panels will publish an agenda at least four working days in advance of each scheduled meeting. The Agenda will be available on the Scrutiny website and in the States Bookshop. The Scrutiny Officers will work with the Chairman in drafting the agenda.
- 6.4 The agenda papers will normally be sent to Panel members in hard copy. Agenda Papers which are related to matters to be discussed in private (see paragraph 6.7 below), however, will not be published.
- 6.5 Minutes of each meeting will be published electronically and in hard copy as soon as possible after each meeting. The Minutes will be signed by the Chairman once the Panel has agreed that they represent a true record of the proceedings.

Public and private meetings

- 6.6 Standing Order 138(6) [Appendix 3(11)] provides that the public may observe a Panel meeting, or a hearing, unless the Panel decides otherwise. A States member who is not a member of a Panel may observe any of its meetings or hearings, provided that the Panel is not in private session.
- 6.7 The Panel may decide to take all or part of a meeting in private. The agenda will normally indicate in advance of the meeting those items which will be taken in private session. The Panel may, however, decide in the course of a meeting that it should continue in private session.
- 6.8 It is not possible to give a complete list of reasons why a Panel might consider it appropriate to meet in private. The decision remains at the discretion of the Panel. Among the reasons why a Panel might consider it appropriate to meet in private are –

- Discussion of the merits of potential advisers
- Discussion of questions to be put to witnesses
- Discussion of draft Panel reports.

6.9 States members and members of the public who are admitted to a Panel meeting or hearing will be expected to comply with the conditions of behaviour determined by the Chairman. Their attendance will be on the basis of an observer. No intervention into the meeting or hearing will be permitted, except with the express permission of the Chairman.

6.10 The Chairman may request that any member of the public who does not observe these conditions be removed from the meeting room and excluded from the remainder of that meeting or hearing. In the event that a member of the public refuses to leave the meeting, the Chairman may close the meeting.

7. Scrutiny Panels: Planning the Forward Work Programme

7.1 At the start of each year the Panels will consider their forward work programme based on the work programme of the relevant Departments and any other areas of public interest. They will endeavour to identify topics for review and develop a draft forward programme.

7.2 As part of this initial planning, the Panels will invite Ministers relevant to their remit to discuss the business plan and forward priorities of their Departments. Good communication and information from Ministers about the Department's forward work plan at this stage should enable Scrutiny to develop a work programme which will co-ordinate appropriately with the Executive's legislative and strategic business plans.

7.3 Panels and their respective Minister(s) should meet at least every quarter to update the other on respective work programmes.

7.4 The Panels may also invite interest groups and stakeholders relevant to their remit to make presentations on possible future topics for review.

7.5 The Panels will also consider suggestions for reviews from other States members and from members of the public. Proposal forms are available from the Scrutiny Office for this purpose. Scrutiny Officers will advise anyone wishing to make a proposal on the current priorities of the Panel.

7.6 The Panels will take account of the Executive's 'Discussion Papers' and 'Draft Policy Papers' in planning its work programme. These consultation papers should enable the Panels to have a clear view of the planning process for a major policy proposal or important new legislation and should help the Panels to determine the most appropriate opportunity to conduct a review.

7.7 The Panels will seek to be co-operative in the planning process and will determine how best to participate in public consultation. Once the Executive has completed its consultation, the Panels will not normally commence a separate investigation into a policy proposal unless there is evidence that significant factors have been ignored by the Executive.

7.8 Communication is a two-way process and the Panels will seek to give good notice to the Executive of their intention to scrutinise a policy in development so that the

scrutiny process does not unduly delay the programme set out by the Executive in its business plan.

7.9 In developing a balanced work programme, the Panels will take account as far as possible of the four main roles of scrutiny, namely –

- Policy
- Primary/subordinate legislation
- Annual Business Plan/Budget
- Matters of public interest.

7.10 In selecting topics for review, the Panels will consider if they –

- are linked to States strategic objectives;
- are a community/corporate priority area;
- are a key issue for the public;
- are likely to result in an improved service to the public;
- relate to a service/issue where there is a high level of dissatisfaction.

7.11 Topics will be rejected if they –

- are already being addressed by others
- are sub judice or prejudicial to States interests;
- fall within a complaints procedure;
- are an individual disciplinary/grievance matter;
- are unlikely to result in an improved service.

7.12 Matters of best value, efficiency and effectiveness of policy implementation are properly the rôle of the Public Accounts Committee.

7.13 The Panels, in accordance with Standing Order 72 [Appendix 3(12)], may consider draft legislation which has been referred to them by the States Assembly after agreement on the principles of the draft legislation and before the second reading. The process of legislative scrutiny will operate more effectively if the Panels are given good advance notice by the relevant Department of their intentions with regard to the draft legislation.

7.14 Panels will not normally scrutinise individual decisions made by a Minister or delegated to their Officers, particularly decisions in respect of development control, licensing, registration, consents and other permissions. In particular, Scrutiny should not be used as an alternative to normal appeals procedures, nor must it become involved in what would amount to a disciplinary investigation against Officers.

7.15 Once a Panel has developed a draft forward work programme it will firstly advise the Chairmen's Committee, then the relevant Minister(s) for information. Finally, the work programme will be published on the website and sent to the media.

7.16 The Panels will need to revisit their forward work programme on a regular basis in order to take into account new developments in the Executive's policies and matters of public importance. The Panels, for example, may request without prior notice, in accordance with Standing Order 79 [Appendix 3(13)], that a proposition being debated by the States Assembly should be suspended and referred to it for investigation. The Panels will therefore need to retain a degree of flexibility in their

forward planning which will enable them to re-prioritise their programme of work as new circumstances arise.

8. Scrutiny Panels: Planning a review

- 8.1 Adequate scoping of each individual review is an essential element in the overall effectiveness of the scrutiny process. Scoping will include some or all of the following: research undertaken by Panel members and/or Scrutiny Officers; consultation with the Executive and with interested parties; discussion with expert witnesses and advisers.
- 8.2 At this stage the Panels may consider it advisable to invite a briefing from the relevant Minister or department on the key issues to be reviewed in order to clarify the current position and the strategic intentions of the Executive.
- 8.3 The outcome of the initial scoping will be a definition of the objectives for the review; drafting of terms of reference; an action plan specifying methods of gathering evidence; an estimation of the timescale and costs of the review; and an allocation of Scrutiny Officers' time in support of the enquiry.
- 8.4 The Panels will confirm specific terms of reference for each review before calling for evidence. The Panels will consult the relevant Minister on the terms of reference before publication as this may avoid misunderstandings and help the scrutiny process to focus effectively on key issues. The Panels, however, always retain discretion in setting their own terms of reference.
- 8.5 At the beginning of a review, the Panels will write to the relevant Minister(s) formally announcing the terms of reference and clarifying the Panel's expectations regarding information and documentation required, written and oral submissions, and timescales.
- 8.6 The Panels will aim to give the Executive good notice of the subject under review and allow a reasonable timescale for requests for written submissions and attendance at public hearings. Co-operation will be enhanced if negotiations between the Panels and the Executive commence at an early stage.
- 8.7 The Panels will also publicly announce their review and terms of reference on the website and to the media.
- 8.8 The Panels will need to keep the stated terms of reference under review throughout the scrutiny process to ensure that these adequately cover their objectives taking into account any developments which may arise as a result of consideration of the evidence received.

9. Scrutiny Panels: Gathering evidence

- 9.1 A large part of the Panels' workload will involve taking evidence and gathering views. Panels will gather evidence formally through written submissions and oral evidence sessions. They will consider documentation provided by the Executive and may conduct fact-finding visits in order to clarify technical and practical issues.
- 9.2 The Panels are free to seek evidence from whoever they wish and may request papers and records from private bodies and individuals where these are relevant to the Panel's remit.

- 9.3 Within the context of the Scrutiny Public Engagement Strategy, the Panels will need to consider how best to engage stakeholders, the media and the general public in the issues under review. They may choose innovative and imaginative information-gathering activities. For example, rather than planning a series of meetings, the Panels might hold a seminar or workshop for stakeholders or make a visit to people and places of relevance to the subjects under review.
- 9.4 Panel members involved in fact-finding visits and other information-gathering activities, be that to a Department or further afield, will be accompanied by a Scrutiny Officer who will prepare a note of the findings to be considered as evidence in the preparation of the final report.

Requests for information

- 9.5 The States have conferred powers on the Panels to call for any persons, papers or records relevant to the subject of a review and to require any person to attend before them, providing that the correct procedures are observed. (*See Section 3 above.*) Elected members are required under the Code of Conduct set out in Schedule 3 of Standing Orders to co-operate when requested to appear and give evidence before or produce documents to a Scrutiny Panel. In the vast majority of cases, the Panels expect that requests for information will be met on the basis of co-operation and negotiation rather than compulsion.
- 9.6 The prime responsibility for providing information to the Panels on Executive policies rests with the relevant Minister. Once the Panel Chairman has advised the Minister of a forthcoming review topic, requests for information regarding a review will be undertaken by the Scrutiny Officer to the Department Scrutiny Liaison Officer. Invitations to appear before Panels as witnesses will be addressed to the Minister by the Panel Chairman. Panels will not use their statutory powers to summons officers in Departments when a request should more properly be made to the Minister.
- 9.7 Information provided to Panels by the Executive will normally be in the form of a written submission, replies to Panels' questions in writing and oral evidence from Ministers and officials. The Panels may request all documents relevant to its review, including internal files, advice or working papers.
- 9.8 Panels may press for information not readily provided which they feel is necessary to their enquiry. In this case, a formal request would be made to the Liaison Officer by the Scrutiny Officer.
- 9.9 Panel members will not question departmental officers directly other than as witnesses at a properly convened hearing [see also paragraph 10.7] or in the course of a formally arranged fact-finding visit to the department or a formally arranged visit of an officer to the Scrutiny Office. The Panels may, however, make requests for information to departmental officers, through the Scrutiny Office, during the course of the review.
- 9.10 In the event that information from a Department is not forthcoming, the Panel Chairman will contact the Minister directly and the Scrutiny Officer will advise the Scrutiny Manager, who will contact the relevant Executive Officers.

Written Submissions

- 9.11 Requests for written submissions from the Executive will normally be made in advance of the start of oral evidence sessions. However, questions may arise during the course of oral evidence which require a formal response from the Executive.
- 9.12 It is expected that written submissions from the Executive will be based on the formal request from the Panel. However, it is beneficial to the overall process for the Executive to provide any additional relevant information, whether or not this is specifically requested, to ensure that all aspects of the topic are comprehensively covered.
- 9.13 In undertaking an enquiry, it is likely that Panels will wish to invite comment and information from potential interested parties. For this purpose, the Panels will make an open call for evidence through various means, which may include the website, press releases, media coverage and formal notification in the press. In addition, the Panels may make a direct request for information and comment to individual organisations.
- 9.14 The Scrutiny Officers are responsible for the receipt and collation of all written evidence. If the Chairman or Panel members receive evidence directly they should pass it to the Scrutiny Officers in the first instance.

Treatment of personal or confidential information

- 9.15 The Panels are committed to the principle of open access to information.
- 9.16 Anonymous submissions will not be considered.
- 9.17 Submissions from Members of the public will be treated in accordance with the Data Protection (Jersey) Law 2005.
- 9.18 In principle, all written evidence received by the Panel will be published on the website. However, where the Executive or any other witness considers that the information to be provided is of a sensitive or private nature, a request should be submitted to the Panel Chairman, in advance, for the information to be treated in confidence. In addition, the Panel may decide itself that certain information should be treated in confidence.
- 9.19 Any disagreement on the part of a witness as to the Panel's intended or actual treatment of information should be referred in the first instance to the Chairmen's Committee and thereafter to the Privileges and Procedures Committee if a resolution is not found.

Access to Council of Ministers Part B background reports

- 9.20 The Council of Ministers will provide a copy of the list of Part B Agenda items to the Scrutiny Manager before the meeting of the Council.
- 9.21 The Scrutiny Manager will circulate this list to all members of the Chairmen's Committee, all scrutiny members and to Scrutiny Officers.
- 9.22 The list of Part B agenda items will not be circulated or discussed with anyone other than members of the Chairmen's Committee, the Scrutiny Panels, or the Scrutiny Office.

- 9.23 Any Panel Chairman may request a copy of a Part B report from a Minister whose department falls within the Panel's terms of reference, as set out in paragraph 4.2 of this Code of Practice. There is a presumption that material will be released to the Panel Chairman for consideration by the relevant Panel. However, if the Minister considers the material to be of a sensitive or commercial nature, or if there are exceptional circumstances surrounding the release of information, those circumstances will be explained to the relevant Panel Chairman by the Minister. The information will then be provided in accordance with a signed confidentiality agreement (see Appendix 1). All Part B reports will be treated as confidential until the Minister specifies otherwise, or until the report is made public.
- 9.24 Part B reports from Council of Ministers meetings will be promptly forwarded following consideration by the Council and the relevant Minister.
- 9.25 In the event that another Scrutiny Panel wishes to be provided with a copy of the same Part B report, as referred to in paragraph 4 above, the Chairman of that Panel will need to submit a request to the relevant Minister. There will be a presumption that the Minister will release the paper and will decide whether the release should be under confidential cover in which case the Panel will be requested to sign the confidentiality agreement referred to in section 4 above. Any exceptional circumstances which might surround the release of information will be explained to the Panel Chairman who requested the information.
- 9.26 In the event of a disagreement about access to a Part B report, the matter will be referred to the Chief Minister, the President, Chairmen's Committee and the Chairman, Privileges and Procedures Committee for resolution.

Legal advice

- 9.27 For the reasons that –
- (i) the States Assembly is not a proper forum for argument about which of two sets of competing legal advice is correct; and
 - (ii) there will be a potentially significant cost to the public purse if Scrutiny Panels engage external lawyers on a regular basis,

it is desirable, where possible, that Ministers, the Scrutiny Panels and the PAC seek legal advice from the Law Officers' Department rather than the private sector. It will be the duty of the Law Officers to seek to ensure that, to the extent that they are advising more than one party on the same set of facts, the advice is given on a consistent basis and does not by any inconsistency cause embarrassment to States members. It is understood that Ministers, Panels or PAC are absolutely entitled to seek private sector advice however if they choose to do so, or if the Law Officers advise that, for whatever reason, they are unable to advise a Minister, a Panel or the PAC on a particular matter.

- 9.28 It is essential that there is no inhibition on Ministers and their departments, who will usually also be taking advice from the Law Officers, both from seeking that advice, and, when it is sought, from giving the Law Officers all the relevant facts. If such inhibitions do exist, there is the probability that from time to time no advice or the wrong advice will be given, with maladministration as a result. Protection of the confidentiality of communications between the Law Officers and Ministers and their departments is therefore essential.

9.29 It is recognised by the States and the Law Officers that the process of seeking and taking legal advice from the Law Officers is confidential. There are three primary underlying reasons for this –

- (i) to ensure that there is no damage done to the public interest by the publication of legal advice given by the Law Officers;
- (ii) to ensure that there is no inhibition on the part of Ministers, the Scrutiny Panels or the PAC in taking advice;
- (iii) to ensure that there is no inhibition on the part of the Law Officers or lawyers within their Department in giving full and frank advice on all the matters which are raised with the Law Officers or one of the Departmental lawyers for advice, or which the Law Officers or the advising lawyer consider should reasonably be volunteered to the Minister, the Panel or the PAC for consideration.

9.30 For these reasons, the Protocol agreed between the Scrutiny Panels and the Law Officers, which covers the taking and giving of legal advice, is as follows –

- (1) Neither the Scrutiny Panels (which includes for this purpose their officials) nor the Law Officers will publish without the consent of the other:
 - • The fact that legal advice has been sought.
 - • The facts which have been given to the Law Officers for the purposes of taking advice.
 - • The legal advice which has been given to the Panel (or its officials) on the facts presented to the Law Officers.
- (2) Nothing in paragraph (1) prevents a Panel making a statement in a Report to the States as to what in its opinion the law is, or as to what its understanding is of the legal basis of the policy followed or decision taken. The Law Officers will be afforded the opportunity to review Reports made in order to ensure confidentiality about legal advice is maintained.
- (3) In making a statement under paragraph (2), Panels should be careful to ensure that no implication is given that their statement has been endorsed by the Law Officers.
- (4) Scrutiny Panel members recognise and accept that Ministers and their officials will maintain their claim to legal advice privilege, except in exceptional circumstances, if questioned by a Panel, and will not seek to interfere with that privilege. Such exceptional circumstances are likely to arise only where there is a coordinated Law Officer, Ministerial and Scrutiny approach to the release of the advice, where there would be no adverse impact on actual or possible legal proceedings in the court, and where there would be no undesirable precedent set as a result.
- (5) Scrutiny Panels and the Law Officers recognise that, in exceptional cases, the public interest, which is both different from and wider than the political interests of the Panels and the professional interests of the Law Officers, may override the very strong public interest factors set out in paragraphs 9.27 to 9.29 above, and make it desirable that the legal advice given to Scrutiny Panels is published. In such cases, the Panel and the Law Officers undertake

to discuss how the public interest can best be accommodated. If there is no agreement between them, the views of the Privileges and Procedures Committee will be sought. If at the end of those discussions, there remains a lack of consensus, the question of publication or not will be a matter for the judgment of the individual Panel.

- (6) The provision of legal advice to a Scrutiny Panel must take reasonable account of the timetable in which a review is being conducted. If pressure of workload on the Law Officers' Department prevents a prompt response to a request from a Scrutiny Panel for advice, the Law Officers should notify the Panel Chairman as soon as possible so that other arrangements can be made. It is further understood that the Law Officers will endeavour to advise Scrutiny Panels in all cases unless there are exceptional reasons, whether practical or theoretical why they feel unable to do so.
- (7) The Law Officers have requested that where a Scrutiny Panel seeks advice from them, the Panel ensures that where reasonably possible it makes available to the Law Officers a detailed summary of the facts and documents on which the advice is sought.
- (8) Where a Scrutiny Panel takes legal advice from the private sector, it is desirable that it should consider disclosing that advice to the Law Officers in order that any potential disagreement about what the law is can be identified and so that, in the event of such disagreement, discussions where appropriate can take place between the Panel and the Law Officers so as to minimise any difficulties for States members as a result.

10. Scrutiny Panels: Public hearings

- 10.1 Witnesses have a key role to play in helping Scrutiny Panels to fulfil the objectives of their Review, whether this is as the Minister, or his or her Senior Officers in clarifying and responding to questions on Executive policies and decisions, or as interested parties voicing and highlighting areas of public concerns.
- 10.2 The Panels will decide who they wish to invite as witnesses. Witnesses may include individuals or organisations that have submitted written evidence, but do not have to be limited to those. No organisation or individual has the automatic right to give evidence – it is for the Panel to decide who it wishes to invite but Panels will make every reasonable effort to consider all relevant evidence.
- 10.3 The Panels will inform witnesses of the intended broad areas of questioning but will not supply full detailed questions to witnesses.
- 10.4 The primary purpose of oral evidence sessions is to put questions to witnesses in order to elicit information and views which the Panel will subsequently consider in preparing its report. It is the responsibility of the Chairman to ensure that members keep their questioning constructive, short and to the point. He/she should not allow the evidence session to develop into a Panel debate on the matter under investigation.
- 10.5 The Panels do not, in principle, remunerate witnesses for travel expenses or for loss of earnings due to attendance at oral hearings. Panels may, however, consider at their discretion reasonable claims for expenses.

Treatment of witnesses

- 10.6 Ministers are accountable to the States for their policies and the actions of their officials in pursuit of these policies and it is on this basis that the Minister generally appears as the principal witness giving evidence to a Panel.
- 10.7 The departmental Chief Officer, or an officer designated by the Chief Officer, may be invited by a Panel to appear individually, or asked for information, as part of the process of overseeing ministerial responsibility. They can only answer questions relating to the facts with regard to a policy matter and its implementation. The departmental Chief Officer will have the right to accompany an officer when s/he appears before a Panel.
- 10.8 Ministers normally decide which official or officials should represent them, in consultation with their Chief Officers. Ministers, however, will normally take account of requests by Panels to take evidence from a particular named official.
- 10.9 It is the responsibility of the Chairman to ensure that Panel members direct questions on policy matters to the Minister.

Organisation of hearings

- 10.10 The Panels will arrange and publish dates for oral evidence to be given at public hearings, providing witnesses with reasonable notice of all the Panel's requirements. The Panels will inform the witnesses of the key areas of questioning it wishes to focus on at least five working days in advance of the hearing. This is to enable witnesses to prepare themselves fully to address the objectives of the Panel.
- 10.11 Evidence taken at public hearings will be recorded and, unless otherwise decided by the Panel, transcribed and published on the website. Meeting rooms have been set up for this purpose in the States Building but the Panels may choose to hold a hearing at an alternative venue.
- 10.12 Panel Members will endeavour to put witnesses at their ease. Witnesses should not be made to feel as if they are under interrogation. Nor should the process be unduly confrontational, which would risk a defensive approach from witnesses rather than openness and co-operation.
- 10.13 Following the proceedings, witnesses will be provided with a draft copy of the transcription before its publication for correction of any inaccuracies in the text. Substantial revisions to the verbatim text will not be permitted at this stage. However, the Panels may accept further clarification from the witness regarding points made during oral evidence.
- 10.14 The Panels may agree to take oral evidence in private session if the matters under consideration are of a sensitive, confidential or private nature.
- 10.15 Throughout the hearing phase, the Panels will need to keep the review objectives constantly in mind and assess the information gathered against these. The Chairman is responsible for keeping the Panel and the witnesses focussed on the task in hand.

11. Scrutiny Panels: Reports

- 11.1 Once all the evidence, both written and oral, has been collected the Chairman will liaise with the Scrutiny Officers in preparing a draft 'Heads of Report' document based on an assessment of the evidence received. The Panel will subsequently meet to consider and analyse it.

- 11.2 Panel Members will discuss how the evidence gathered helps to meet the objectives set for the Review and will begin to formulate their findings and recommendations. It is the role of the Chairman to ensure that all members have had an opportunity to contribute their views.
- 11.3 The Panel's discussion at this stage will generally be held in private as this will allow a more frank exchange and development of views and an opportunity to reflect on the evidence received. It is important that the Panel's preliminary views are not broadcast prematurely.
- 11.4 It is important that both the findings and the recommendations of the review are drawn out of the evidence and adequately supported by it.
- 11.5 The Scrutiny Officers will then prepare a draft report for further consideration and approval by the Panel. The report should give a balanced view of all the main evidence received, leading up to the findings and recommendations of the Panel.
- 11.6 The Panel will consider the draft report and amend accordingly, including its findings and recommendations. Scrutiny reports should use objective language only, avoid personal, political agendas and subjective criticism of a Minister or Department
- 11.7 In order to ensure that the evidence received is fairly and accurately reported, the Panel will circulate relevant draft sections of the report to all witnesses and allow five working days for comment in advance of finalising the report. Normally these draft sections will be factual or descriptive passages.
- 11.8 Panels will circulate finalised draft reports in confidence and, when possible, allow five working days for comments on matters of a technical or factual nature only.
- 11.9 The Panels will carefully consider the comments received from all witnesses but retain discretion in determining any amendments to the main body of the draft report.

Approving and publishing Reports

- 11.10 Once the Panels have finalised and approved their report it will be formally presented to the States for information in a specific series of reports for Scrutiny. (S.R. series). The report, together with its findings and recommendations, remains confidential to the Panel until it has been so presented.
- 11.11 Copies of the finalised report will be released in advance to the appropriate Minister under embargo. This is to enable the Minister to prepare an informed comment in response to the report's findings and recommendations.
- 11.12 The Panels may also decide to release an advance copy of the report under embargo to the media in order that they might prepare appropriate news coverage.
- 11.13 The Panels may decide to arrange a media launch of their report at the time of publication. It is for the Chairman to decide the arrangements for making news releases or media briefings.
- 11.14 A copy of the report will be sent, on publication, to all witnesses and the relevant Minister(s).

Executive response

- 11.15 The Executive will respond to Panel and Public Account Committee Reports in accordance with the Protocol for Executive responses to Scrutiny Reports. The Executive will normally provide a detailed response to the findings and recommendations of the Panel within six weeks of publication of the Report. Where the Executive is only able to provide an interim report within this timescale, a full response will be expected to be provided within three months.
- 11.16 The responsibility for implementing any recommendations made by the Panels rests with the Executive who will decide on any appropriate course of action.
- 11.17 Where Panel members are dissatisfied with progress or the actions taken by the Executive, the Panels may decide that further scrutiny should be undertaken. The Panels may decide to lodge a proposition in order to seek a States debate to pursue their concerns.

Monitoring the recommendations

- 11.18 The Panels may request, at an appropriate interval, a progress report from the Executive on the actions taken in respect of accepted recommendations made in the report or on key developments regarding the policy or issue in question.
- 11.19 The Panels may convene a public hearing to seek information on how the recommendations have been followed up by the Minister.
- 11.20 Contributors to the Review and relevant stakeholders and interest groups will be given appropriate feedback on the outcome of the Review.

Reviewing the Scrutiny process

- 11.21 At the end of each review each Panel will evaluate the effectiveness of the process and report any problems which have occurred to the Chairmen's Committee. The Chairmen's Committee will also consider any comments which the Executive wishes to make on the process of a particular review. The Chairmen's Committee may establish a Sub-Committee consisting of the two non-Chairmen on the Committee to assess a particular review if it considers this to be appropriate.

12. Scrutiny Panels: Resources

- 12.1 Each of the Panels will be provided with executive and administrative support by one or more Scrutiny Officers, as directed by the Scrutiny Manager.
- 12.2 The rôle of the Scrutiny Manager is to manage and oversee the Scrutiny Section and its work, including financial and manpower resources.
- 12.3 The Scrutiny Manager will also provide an executive support function to the Chairmen's Committee.
- 12.4 The role of the Scrutiny Officers will be to –
- obtain and collate information, documents, written and verbal reports and other appropriate information or evidence relevant to the issue under scrutiny;

- obtain appropriate professional and technical information and expert advice when necessary;
- advise on States approved procedures and protocols and processes for conducting scrutiny reviews;
- undertake research;
- provide executive and administrative support;
- arrange, attend and record meetings and hearings;
- liaise with witnesses regarding submission of evidence, transcripts and representation of their views by the Panel;
- draft reports for consideration by the Panel;
- liaise with ministerial departments, other non-executive governmental organisations, media, pressure groups, stakeholders and other relevant external bodies;
- ensure that the scrutiny website is updated.

12.5 The Scrutiny Officers must be, and must be seen to be, politically impartial at all times. They have a responsibility to ensure that the evidence received in the course of a review is presented to the Panel objectively and fairly. However, in assessing the evidence and finalising their recommendations and findings, the Panels take full responsibility for the contents of their reports.

13. Public Accounts Committee

- 13.1 The general approach of the PAC will reflect that adopted by the Scrutiny Panels. There are certain differences in operation which arise from the different remit of the PAC.
- 13.2 Scrutiny Panels review policy in contrast to the PAC which reviews implementation of the policy. The PAC will normally question the Chief Officers (Accounting Officers) and other Departmental Officers and not the Ministers.
- 13.3 The remit of the PAC is set out in Standing Order 128 [Appendix 3(14)].
- 13.4 A summary of the differences in approach between the Public Accounts Committee and the Scrutiny Panels can be found in Appendix 2.
- 13.5 The Chairman of the PAC is appointed in the manner prescribed in Standing Order 119 [Appendix 3(15)].
- 13.6 Administrative liaison between the PAC and the Comptroller and Auditor General (“C&AG”) will be handled by the States Greffe.
- 13.7 The Committee will be comprised of at least 4 members, 50% of whom shall be elected members and 50% shall be non-elected members.

- 13.8 Where possible the independent members of the PAC should represent different areas of expertise.
- 13.9 The PAC may hold private meetings for the purpose of discussing reports by the C&AG or when preparing for a public hearing. There will also be other instances when the matter under discussion may concern particularly sensitive material. The decision on whether to hold private or public meetings will be decided by the PAC in conjunction with the C&AG.
- 13.10 The PAC is neither political nor adversarial in its approach to questioning witnesses at hearings. This is particularly important since the witnesses are normally public employees without the power of public reply.
- 13.11 It is unlikely that the PAC will require expert witnesses as advice will be supplied by the C&AG.
- 13.12 Meetings will be scheduled in conjunction with the C&AG.
- 13.13 Information and papers submitted from States Departments to the PAC will be treated as confidential until a report has been made to the States.

The C&AG should make two sets of papers available to the PAC as follows –

- (a) Reports which would have been published before submission to the PAC; and
 - (b) Briefings which would be intended to assist the committee in deciding how to approach a matter which had been the subject of a published report. This may, for example, suggest areas of enquiry which the committee might wish to take further or questions that it might wish to ask. Briefings would be confidential.
- 13.14 Premature disclosure of material submitted to the PAC may affect the effectiveness of its work and that of the C&AG.
- The C&AG will discuss reports prior to circulation with the Chairman, PAC in order to check any political sensitivities.
- PAC members will be informed of the publication of a report from the C&AG seven days prior to its publication.
- Copies of all C&AG's reports will be made available to PAC members at the same time as other States members and the media.
- 13.15 All disclosures and Press Releases will be subject to agreement between the C&AG and the PAC.
 - 13.16 The PAC and the C&AG are both independent, answerable only to the States Assembly. The C&AG has a statutory duty to liaise with the PAC and will attend all meetings of the PAC. It is essential that the PAC and C&AG should work together whilst remembering that neither shall dictate to the other.
 - 13.17 The C&AG will draw up a programme of work and will consult with the PAC on items to be included.

- 13.18 The C&AG will undertake the research and analysis and produce a report containing conclusions and recommendations.
- 13.19 The C&AG and the PAC will discuss the reports and decide whether the conclusions are of such public interest that they should be the subject of a public hearing. A report will be published, following the hearing, which includes the comments of the PAC on the report and the findings of the hearing.
- 13.20 The C&AG will conduct further investigations to establish the extent of the implementation of recommendations.

The C&AG will as a matter of normal course review the extent to which recommendations made in any report of the PAC (and any report of the C&AG) are implemented. Any observations arising from such a review will either be the subject of a further report or will be covered by the C&AG's annual report.

Before completing its own hearings and consideration of any matter, the PAC will consider inviting Chief Officers to undertake to implement changes in their arrangements to deal with problems that have been identified. Where appropriate, these undertakings will be included in the PAC's report.

- 13.21 If the report prepared by the C&AG concludes that there have been problems with the implementation of recommendations then the PAC may hold further hearings with Ministers and public employees. The Executive will respond to Public Account Committee Reports in accordance with the Protocol for Executive responses to Scrutiny Reports [as in 11.15].
- 13.22 If the PAC considers that a very significant and unexpected matter has arisen then the PAC will consult with the C&AG as to the possibility of including this in the existing work programme.
- 13.23 The PAC has some resources with which to commission its own reports. This is exceptional and will first be discussed with the C&AG.

14. Compliance

Any alleged infringements of the Code of Practice for Scrutiny Panels and the Public Accounts Committee must be reported to the Chairmen's Committee which will determine an appropriate course of action. Where the issue cannot be satisfactorily resolved with the Chairmen's Committee, the matter may be referred to the Privileges and Procedures Committee.

15. Appendix 1 – Access to Council of Ministers Part B background reports

CONFIDENTIALITY AGREEMENT

The information contained in the named document(s) should be treated as strictly confidential, and is intended only for the use of the Scrutiny Panel to whom it is addressed. Access to the information by anyone else, including members of other Scrutiny Panels, is unauthorised without the permission of the Minister. The document(s), or information contained within them, should not be disseminated, distributed, copied to any 3rd party or referred to in any report produced by the Panel without the permission of the Minister.

[document(s)]

I undertake to abide by the above confidentiality agreement

16. Appendix 2

**THE ROLES OF SCRUTINY PANELS VS
THE PUBLIC ACCOUNTS COMMITTEE**

SCRUTINY PANELS	PAC
REVIEW POLICY	REVIEW IMPLEMENTATION OF POLICY
Laws	Whether the Law is being applied/enforced
Policy decisions	Whether policies are being implemented with due regard to cost, efficiency and effectiveness
Capital programme	Individual capital projects – whether a project has been delivered to time and within budget and whether the expenditure has achieved value for money – the PAC would not question the need for the project in the first place as that is a policy decision
Strategy	–
Budget high level – e.g. taxation and spending policies	Detail of the budget – outcomes expected from expenditure
–	The annual accounts

Concentrate on questioning Ministers (Panels) “the policy makers”

Concentrate on questioning Chief Officers (Accounting Officers) “the policy implementers”

By asking the appropriate question of the appropriate person in the appropriate forum we will make them accountable for their decisions. If we muddle this area we will not be able to ask clear questions and therefore will not get clear answers. By forcing both the Ministers and the public employees to understand their responsibilities we will ensure better government.

Examples of areas which the PAC examine –

Purchasing of goods and services across the States; the role of the Corporate Procurement Department

Cost of overtime

Control of sickness absence

Building maintenance

Service reviews of organisations to report on whether they are exercising their duties with due regard to value for money

Grants paid to third parties – whether these are achieving value for money and are in support of States objectives

Savings and costs arising from the Machinery of Government reforms

Terms and conditions of employment of States employees – the cost and appropriateness of these

Performance measurement

Some examples of grey areas – Scrutiny Panel or PAC or both?

The Bus Strategy and the contract with Connex

Haut de la Garenne

Hip replacements

Waste Management Law

Outsourcing

Parks & Gardens

Support to industries – Agriculture, Tourism, Finance

17. Appendix 3 – Standing Orders relating to PAC and Scrutiny Panels

1. SCRUTINY OF LEGISLATION – 72-74

- Referral of draft Law or Regulations for scrutiny

2. SUSPENSION OF DEBATE FOR THE PURPOSES OF SCRUTINY –

79

3. APPOINTMENT PROCESS – 119-126

- Chairman of PAC
- Chairman of Scrutiny Panel
- President of Chairmen’s Committee
- Elected and unelected members of PAC
- Members of Scrutiny Panel
- Appointed members of Chairmen’s Committee

4. PUBLIC ACCOUNTS COMMITTEE – 131-134

- Establishment and Constitution
- Terms of reference
- Term of office and resignation of chairman or member
- proceedings

5. SCRUTINY PANELS – 135-141

- Establishment and Constitution
- Terms of reference
- Term of office and resignation of chairman or member
- proceedings

6. CHAIRMEN’S COMMITTEE – 142-145

- Establishment and Constitution
- Terms of reference
- Term of office and resignation of Chairman or member
- proceedings

7. REQUIREMENT TO CO-OPERATE WITH SCRUTINY – 155

- CODE OF CONDUCT – Schedule 3 paragraph 9

18. APPENDIX 4 – STANDING ORDERS RELATING TO CODE OF PRACTICE

[1] 134 Public Accounts Committee: proceedings

- (6) The PAC shall comply with any code of practice prepared by the chairmen's committee and approved by the States.

[2] 141 Code of practice for scrutiny panels

A scrutiny panel, a sub-panel of a scrutiny panel and any member of a scrutiny panel appointed to undertake any review shall comply with any code of practice prepared by the chairmen's committee and approved by the States.

131 President of the chairmen's committee: appointment processⁱⁱ⁽⁴⁰⁾

- (1) The presiding officer shall invite elected members to make nominations for the office of president of the chairmen's committee from amongst the persons who are members of that committee.ⁱⁱⁱ⁽⁴¹⁾
- (2) If only one person is nominated, that person is appointed as president of the chairmen's committee.
- (3) If more than one person is nominated, the presiding officer shall then, according to the order in which the candidates were nominated, invite each candidate to speak for up to 10 minutes.
- (4) After a candidate has spoken, the presiding officer shall allow up to 20 minutes for elected members to question the candidate.
- (5) While a candidate is speaking or being questioned, other candidates must withdraw from the Chamber to a place where they cannot hear the proceedings in it.
- (6) When the speeches and questions are concluded, a secret ballot shall be held.
- (7) The candidate who receives more than half of the votes cast is appointed as the president of the chairmen's committee.
- (8) If no candidate is appointed by a ballot, the candidate with the lowest number of votes shall withdraw from the contest and a further secret ballot shall be held.
- (9) If, in the circumstances described in paragraph (8), there are 2 or more candidates who receive the same number of votes as each other, but fewer votes than all the other candidates, there shall be a secret ballot to select which of them shall remain in the contest and the candidate who receives the fewest votes shall withdraw from it.
- (10) A candidate may withdraw his or her candidacy at any time.
- (11) In the event that, by reason of the withdrawal of a candidate, only one candidate remains, the remaining candidate is appointed as president of the chairmen's committee.

[4] 143 Chairmen's Committee: terms of reference

The terms of reference of the chairmen's committee are –

- (a) to act as a co-ordinating body for the work of the PAC and scrutiny panels, to ensure that there is no unintended overlap in the work undertaken by them and to ensure that all aspects of the work of the Council of Ministers are, over time, reviewed;
- (b) to oversee the prioritization and allocation of resources to the PAC and scrutiny panels;
- (c) to keep under review the operation of the scrutiny function and, as appropriate, to make recommendations for change;
- (d) to co-ordinate the preparation of an annual report on the work of the PAC and scrutiny panels for inclusion in the annual report produced by the PPC upon the work of the States and of committees and panels established by standing orders;
- (e) to maintain close contact with the Council of Ministers and to ensure that –
 - (i) the PAC and scrutiny panels are kept aware of the future work programme of the Council, and
 - (ii) the Council of Ministers is kept aware of the future work programme of the PAC and scrutiny panels;
- (f) to prepare, keep under review and lodge for approval by the States, codes of practice for the proceedings of the PAC and scrutiny panels which shall include –
 - (i) the manner in which the PAC or a scrutiny panel shall prepare and make public the terms of reference and timetable for any review it proposes to conduct,
 - (ii) the manner in which the PAC or a scrutiny panel should select and, if appropriate, remunerate, expert witnesses and advisers,
 - (iii) the manner in which a hearing by the PAC or a scrutiny panel must be organized and conducted,
 - (iv) the manner in which a person called to give evidence before the PAC or a scrutiny panel is dealt with before, during and after the hearing,
 - (v) the time when any assessment or scrutiny of a policy of the Council of Ministers should be undertaken,
 - (vi) the manner in which personal or confidential information given in evidence before or contained in documents produced to the PAC or a scrutiny panel is to be treated,
 - (vii) how the PAC or a scrutiny panel should obtain legal advice and treat the advice obtained,
 - (viii) rules for the declaration of interests by members of the PAC or a scrutiny panel during one its meetings or hearings;
- (g) to prepare, keep under review and lodge for approval by the States, codes of practice as to the manner in which and the time within which the Council of Ministers must present a report or comment in response to a report by the PAC or a scrutiny panel which is referred to it.

[5] 136 Scrutiny panels: terms of reference

The terms of reference of a scrutiny panel are, in relation to the topics assigned to it –

- (a) to hold reviews into such issues and matters of public importance as it, after consultation with the chairmen's committee, may decide;
- (b) to consider the existing and proposed policy of the Council of Ministers;
- (c) to scrutinize draft Laws and draft subordinate enactments which are to be made by the States and consider possible amendments to them, if appropriate;
- (d) to scrutinize subordinate enactments which have been made by a Minister;
- (e) to scrutinize international conventions and agreements before they are extended to Jersey;
- (f) to scrutinize the draft Annual Business Plan, the Budget and other financial proposals of the Council of Ministers;
- (g) if appropriate, to the report to the States upon any matter reviewed, considered or scrutinized by the panel and make recommendations in respect of the matter; and
- (h) to liaise, through the chairmen's committee, with the PAC so as to ensure appropriate co-ordination of the scrutiny function.

[6] 120 Chairman of a scrutiny panel: appointment process

- (1) The presiding officer shall invite elected members to make nominations for the office of chairman of the scrutiny panel.
- (2) If only one person is nominated that person is appointed as chairman of the scrutiny panel.
- (3) If more than one person is nominated, the presiding officer shall then, according to the order in which the candidates were nominated, invite each candidate to speak for up to 10 minutes.
- (4) After a candidate has spoken, the presiding officer shall allow up to 20 minutes for elected members to question the candidate.
- (5) While a candidate is speaking, or being questioned, other candidates must withdraw from the Chamber to a place where they cannot hear the proceedings in it.
- (6) When the speeches and questions are concluded, a secret ballot shall be held.
- (7) The candidate who receives more than half of the votes cast is appointed as chairman of the scrutiny panel.
- (8) If no candidate is appointed by a ballot, the candidate with the lowest number of votes shall withdraw from the contest and a further secret ballot shall be held.
- (9) If, in the circumstances described in paragraph (8), there are 2 or more candidates who receive the same number of votes as each other, but fewer votes than all the other candidates, there shall be a secret ballot to select which of them shall remain in the contest and the candidate who receives the fewest votes shall withdraw from it.
- (10) A candidate may withdraw his or her candidacy at any time.
- (11) In the event that, by reason of the withdrawal of a candidate, only one candidate remains, the remaining candidate is appointed as chairman of the scrutiny panel.

[7] 125 Members of scrutiny panel: appointment process

- (1) The chairman of the scrutiny panel shall indicate the number of members (not exceeding 4) that he or she wishes the panel to have and shall nominate elected members who are neither Ministers or Assistant Ministers as candidates for appointment as those members.
- (2) The presiding officer shall invite elected members to nominate other candidates.
- (3) If no other candidates are nominated the persons nominated by the chairman of the scrutiny panel are appointed as members of the scrutiny panel.
- (4) If other candidates are nominated there shall be a secret ballot and the number of candidates equal to the number of members the panel is to have who receive the highest number of votes are appointed as members of the scrutiny panel.
- (5) In a ballot an elected member shall have the same number of votes as there are members to appoint, although a member need not use all of his or her votes.
- (6) In the event that 2 or more candidates receive the same number of votes in a ballot, being a number which, if received by one candidate, would be the lowest number of votes required for that candidate to be appointed as a member of the scrutiny panel, there shall be a further secret ballot between those candidates and the candidate receiving the greater number of votes shall be appointed as a member of the scrutiny panel.
- (7) This process shall also apply, with the necessary modifications, whenever the chairman of a scrutiny panel wishes to appoint one or more members of the panel (provided that the membership does not exceed 4).

[8] 139 Scrutiny panels: establishment of sub-panels

- (1) A scrutiny panel may establish a sub-panel to review, consider, scrutinize or report or liaise upon any particular matter.
- (2) A scrutiny panel may appoint an elected member who is not a member of the scrutiny panel or a Minister or Assistant Minister to be a member of a sub-panel.
- (3) A scrutiny panel may not allocate any of its resources to a sub-panel without the agreement of the chairmen's committee.

[9] 140 Scrutiny panels: appointment of member to undertake review etc.

A scrutiny panel –

- (a) may appoint one of its members to review, consider, scrutinize or report or liaise upon any particular matter; but
- (b) may not allocate any of its resources to the member for the purpose without the agreement of the chairmen's committee.

[10] 138 Scrutiny panel: proceedings

- (6) The public may observe a meeting of or hearing by a scrutiny panel, unless the scrutiny panel decides otherwise.

[11] 72 Referral of draft Law or Regulations for scrutiny

- (1) If the States agree to the principles of a draft Law or draft Regulations, the draft shall be referred to the relevant scrutiny panel if the chairman of that panel has

previously informed the States or confirms, when asked by the presiding officer, that he or she wishes to have the draft referred to the panel.

- (2) If the chairman of the relevant scrutiny panel informs the States that he or she does not wish to have the draft referred to the panel, any member of the States may propose, without notice, that the States request the panel to reconsider the decision.
- (3) If the States agree to the proposal –
 - (a) the 2nd reading of the draft shall not continue at the meeting; and
 - (b) the presiding officer shall, at the next meeting, ask the chairman of the relevant scrutiny panel whether, the panel having reconsidered the matter, he or she wishes to have the draft referred to the panel.
- (4) A draft shall not be referred to the relevant scrutiny panel if it has previously been referred to that panel.
- (5) When a draft is referred to the relevant scrutiny panel or has been so referred previously, but the panel has not reported on it, the States must decide at which meeting the 2nd reading of the draft shall be listed to continue.
- (6) The meeting must not be later than the 4th meeting following the debate upon the principles, disregarding any additional meeting day.
- (7) The relevant scrutiny panel is the scrutiny panel or panels assigned scrutiny of the topic to which the draft relates.
- (8) If there is doubt as to which is the relevant scrutiny panel, the presiding officer shall take the advice of the president of the chairmen's committee.
- (9) If both the chairman and vice chairman of the relevant scrutiny panel are absent when a question is to be put to the chairman by the presiding officer pursuant to this standing order, the presiding officer shall instead ask the members of that panel who are present, and any one of them may answer.
- (10) This standing order shall not apply to any relevant taxation draft included in a budget proposition for a financial year.

[12] 79 Suspension of debate for the purposes of scrutiny

- (1) Any member of the States may propose without notice that –
 - (a) the debate on any proposition be suspended; and
 - (b) the States request the relevant scrutiny panel to consider having the proposition referred to it.
- (2) A proposal cannot be made in relation to –
 - (a) a proposition that has previously been referred to the scrutiny panel in question; or
 - (b) a budget proposition for a financial year, including any relevant taxation draft.
- (3) If the States agree to the proposal, the debate shall be suspended until the next meeting.
- (4) At the next meeting, the presiding officer shall ask the chairman of the relevant scrutiny panel whether he or she wishes to have the proposition referred to the panel and –

- (a) if the chairman confirms that, the panel having considered the matter, he or she does not wish to have the proposition referred to the panel, the States may either resume the debate immediately or decide at which meeting the debate shall be listed to resume; or
 - (b) if the chairman confirms that, the panel having considered the matter, he or she wishes to have the proposition referred to the panel, the States must decide at which meeting the debate shall be listed to resume.
- (5) The debate must be listed to resume at a meeting which is not later than the 4th meeting, disregarding any additional meeting day, following the meeting at which the chairman confirms the panel's decision.
 - (6) The debate on the proposition may resume, notwithstanding that the scrutiny panel has not reported on it.
 - (7) The relevant scrutiny panel is the scrutiny panel or panels assigned scrutiny of the topic to which the proposition relates.
 - (8) If there is doubt as to which is the relevant scrutiny panel, the presiding officer shall take the advice of the president of the chairmen's committee.
 - (9) If both the chairman and vice chairman of the relevant scrutiny panel are absent when a question is to be put to the chairman by the presiding officer pursuant to this standing order, the presiding officer shall instead ask the members of the panel who are present, and any one of them may answer.

[13] 128 Privileges and Procedures Committee: terms of reference

The terms of reference of the PPC are –

- (a) to keep under review the composition, the practices and the procedures of the States as Jersey's legislature and bring forward for approval by the States amendments to the Law and standing orders as considered appropriate;
- (b) to keep under review the rules for enfranchisement and for the conduct of elections and to bring forward for approval by the States amendments to the Public Elections (Jersey) Law 2002 as considered appropriate;
- (c) to be responsible, in accordance with Article 10 of the Public Finances (Jersey) Law 2005, for the preparation of the estimates of income and expenditure for the States and their services, and to ensure that the budget of the States is utilised in the most effective and cost-effective manner possible;
- (d) to be responsible for the provision of accommodation, services and facilities for members of the States and to bring forward for approval, as appropriate, recommendations for improvements and changes to these facilities;
- (e) to liaise as necessary with any person or body directed by the States to review the remuneration and expenses of elected members on all matters relating to such remuneration and expenses, and to bring forward for approval, as necessary, proposals relating to the terms of reference of any such person or body or to the arrangements relating to the remuneration of elected members;
- (f) to take the necessary steps for the enforcement of the code of conduct for members of the States and in this context to promote high standards amongst members of the States and to champion and defend the privileges of members of the States;

- (g) to be responsible for the provision of information to the public about the work of the States and the work of the Council of Ministers, the scrutiny panels, and the PAC, and to keep these public information services under review;
- (h) to keep under review the procedures and enactments relating to public access to official information and the procedures relating to access to information for elected members;
- (i) to produce, in consultation with the Bailiff, the chairmen's committee and the Greffier, an annual report on the work of the States and of committees and panels established by standing orders and present the report to the States.

[14] 119 Chairman of the PAC: appointment process

- (1) The presiding officer shall invite elected members to make nominations for the office of chairman of the PAC.
 - (2) If only one person is nominated that person is appointed as chairman of the PAC.
 - (3) If more than one person is nominated, the presiding officer shall then, according to the order in which the candidates were nominated, invite each candidate to speak for up to 10 minutes.
 - (4) After a candidate has spoken, the presiding officer shall allow up to 20 minutes for elected members to question the candidate.
 - (5) While a candidate is speaking or being questioned, other candidates must withdraw from the Chamber to a place where they cannot hear the proceedings in it.
 - (6) When the speeches and questions are concluded, a secret ballot shall be held.
 - (7) The candidate who receives more than half of the votes cast is appointed as chairman of the PAC.
 - (8) If no candidate is appointed by a ballot, the candidate with the lowest number of votes shall withdraw from the contest and a further secret ballot shall be held.
 - (9) If, in the circumstances described in paragraph (8), there are 2 or more candidates who receive the same number of votes as each other, but fewer votes than all the other candidates, there shall be a secret ballot to select which of them shall remain in the contest and the candidate who receives the fewest votes shall withdraw from it.
 - (10) A candidate may withdraw his or her candidacy at any time.
 - (11) In the event that, by reason of the withdrawal of a candidate, only one candidate remains, the remaining candidate is appointed as chairman of the PAC.
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