

STATES OF JERSEY



CODE OF PRACTICE FOR ENGAGEMENT BETWEEN ‘SCRUTINY PANELS AND THE PUBLIC ACCOUNTS COMMITTEE’ AND ‘THE EXECUTIVE’

Lodged au Greffe on 27th February 2018
by the Chairmen’s Committee

STATES GREFFE

PROPOSITION

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

to approve the Code of Practice for Engagement between ‘Scrutiny Panels and the Public Accounts Committee’ and ‘the Executive’ as set out in the Appendix to the report accompanying this proposition.

CHAIRMEN’S COMMITTEE

REPORT

In May 2014 the States Assembly approved, as amended, the [*Draft States of Jersey \(Amendment No. 8\) Law 201-, P.33/2014*](#). A consequence of this decision was the amendment of the States of Jersey Law 2005, to make provision for a Scrutiny function but not prescribe its structure or operation. Consequently, any such details would instead be included within Standing Orders. The intention was that, should further amendments to those areas be required over time, they could be more efficiently progressed.

Following up P.33/2014, the Chairmen's Committee brought forward various amendments (via the [*Draft Amendment \(No. 25\) of the Standing Orders of the States of Jersey, P.133/2014*](#)) to Standing Orders, which were subsequently adopted in September 2014. Amongst other matters, this resulted in –

- The expectation that the existing single 'Code of Practice for Scrutiny Panels and the PAC' would be replaced by new discrete Codes of Practice for each area, i.e. separating out PAC from Scrutiny Panels.
- The expectation that matters of engagement with the Executive would be split from matters of internal processes and proceedings into separate Codes of Practice (taken with the point above it would therefore be required to have 2 Codes for Scrutiny and 2 for the PAC).
- Agreement that the 2 'engagement' Codes of Practice would be subject to approval by the States Assembly.
- Agreement that the 2 'proceedings' Codes would not need be subject to States' approval. In future, those Codes could be amended by the Chairmen's Committee in consultation with Scrutiny Members and presented to the Assembly accordingly.

Since that time, the Chairmen's Committee has been working to implement the decision made by the Assembly. In respect of the Code of Practice for Engagement between Scrutiny/PAC and the Executive, this work has been undertaken in conjunction with the Council of Ministers. The Law Officers' Department has also been consulted on the sections contained in both Codes relating to the provision of and access to legal advice.

As work progressed, there was a growing consensus that favoured reducing the number of proposed Protocols and Codes. As well as simply reducing the inherent confusion and inefficiency in having 4 similar codes, there is considerable overlap and procedural similarities between the work of PAC and Scrutiny Panels, albeit that it is recognised that PAC is not strictly a 'Scrutiny Panel' as defined in Standing Orders. The decision was taken by the Chairmen's Committee that in place of the 4 proposed documents there should be 2: a joint Scrutiny/PAC Code of Practice for Engagement with the Executive, and a joint Code of Practice for Scrutiny and PAC Proceedings. Notable differences in PAC process are clearly identified, and there are standalone sections in each Code to cover matters that are relevant only to the PAC.

After much work, the Chairmen's Committee is pleased to present both Codes of Practice to provide for a seamless and complete transition from the existing Code to the new structure. As required by Standing Orders, the Code of Practice for Engagement between Scrutiny/PAC and the Executive is lodged for debate by the Assembly, having

been signed off by both the Committee and the Council of Ministers. The Scrutiny/PAC Proceedings: Code of Practice does not require States' approval, but will be presented to the States as a Report.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this Proposition.



**CODE OF PRACTICE FOR ENGAGEMENT
BETWEEN
'SCRUTINY PANELS & THE PUBLIC ACCOUNTS COMMITTEE'
AND
'THE EXECUTIVE'**
[Hereafter known as the 'Scrutiny/PAC Engagement Code']

A. Introduction

1. The States Assembly Scrutiny Panels and the Public Accounts Committee (PAC) are integral parts of the machinery of government in Jersey.
2. The Scrutiny/PAC Engagement Code should be considered in conjunction with the Code of Conduct for Elected Members, the Code of Conduct and Practice for Ministers and Assistant Ministers and the Scrutiny & PAC Proceedings Code of Practice.
3. For the purpose of this Code, the 'Executive' shall mean Ministers, Assistant Ministers and relevant Officers.
4. Although it carries out a scrutiny role, PAC is not a 'Scrutiny Panel' as defined by Standing Orders. It is established under separate Standing Orders with discrete terms of reference. However, its procedural and administrative engagement with the Executive is broadly similar to that of the Scrutiny Panels. Where a provision in this Code applies only to a Scrutiny Panel, the term 'Panel' is used. 'Panel/PAC' is used where it applies to both, and 'PAC' where it applies only to PAC. Standalone paragraphs relevant only to the work of PAC are also contained in section K.
5. For the avoidance of doubt, where reference is made in this Scrutiny/PAC Engagement Code to engagement by Ministers and Assistant Ministers, in matters relating to PAC such requirements as contained should be assumed to normally refer to Chief Officers/Accounting Officers, with the exception of paragraph 26.
6. The Scrutiny/PAC Engagement Code is a 'live' document which will be kept under review (see 8).

B. Responsibilities

7. **The President** of the Chairmen's Committee, in conjunction with the Committee, will oversee the Scrutiny/PAC Engagement Code and the Scrutiny & PAC Proceedings Code of Practice.
8. **The Chief Minister and the President** of the Chairmen's Committee, in conjunction with the Chief Executive of the States and the Head of Scrutiny, will review this Scrutiny/PAC Engagement Code at least once a term (or as required). This process should include consultation with the Chairmen's Committee and the Council of Ministers.
9. **Chairmen and the President** will ensure their respective Panels/Committee, Sub-Panels and Rapporteurs abide by Standing Orders, the Scrutiny/PAC Engagement Code and the Scrutiny & PAC Proceedings Code of Practice.
10. **The Chairmen's Committee** will ensure that all Review Panels, which it establishes, abide by Standing Orders, the Scrutiny/PAC Engagement Code and the Scrutiny & PAC Proceedings Code of Practice.
11. **Ministers and Assistant Ministers** engaging with Scrutiny will abide by Standing Orders, the Protocol, the Code of Conduct for Elected Members and the Code of Conduct and Practice for Ministers and Assistant Ministers.
12. **The Chief Minister, Ministers and the Council of Ministers** will use best endeavours to try to ensure that all Propositions on major policies and legislation are lodged '*au Greffe*' at least 6 months before the date of the next elections so that sufficient time is factored in for Scrutiny purposes.
13. **The Chief Executive to the Council of Ministers and Head of the Public Service** will ensure that each Department/Ministry nominates a suitably authorised official based within it to act as Scrutiny Liaison Officer (SLO) to the relevant Panel/PAC. Scrutiny Officers will conduct all liaison with Departments/Ministries via the SLOs unless otherwise agreed with those Officers.

C. Initial Consultation with Ministers and Relevant Officers

14. Prior to the Panels drawing up a schedule of Reviews, Ministers (or Assistant Ministers as delegated) will, at the request of a Panel, promptly provide a private briefing on the forthcoming work and priorities of their Departments, including target completion dates.
15. Relevant Executive Officers (in accordance with paragraph 13) will liaise with Scrutiny Officers to provide detailed information on forthcoming work including draft policy papers and legislation.
16. Requests to Departments for initial background information should be acknowledged promptly by relevant Officers to the relevant Scrutiny Officer, and best endeavours undertaken to provide the information requested within 5 working days. In requesting information, it is helpful for Panels to focus their requests so as to aid a quick response by Departments.

D. Reviews – Process and Access to Information

17. The Executive should allow sufficient time for Reviews to be undertaken. Commonly Reviews, especially but not exclusively those addressing non-legislative matters, will take a minimum of 3 months to complete. Regular communication about progress on Departmental policies and legislation programmes will assist both parties. Equally, Panels will endeavour to undertake as much preparatory work as possible, in advance of lodging to help enable debates to proceed without undue delay. This includes outlining to Departments as far in advance as reasonably possible their requirement for information and arranging advisors as early as practically possible. This approach is best supported by continuing dialogue between Scrutiny Officers and SLOs and Panels, Panel Chairs, and Ministers.
18. Ministers, Assistant Ministers and relevant Officers will attend on a Panel/PAC if requested to provide an initial briefing (in private if required) on the topic under consideration. Briefings may be held before completion of scoping and terms of reference. Normally, only Officers are expected to attend in the case of PAC.
19. Once a scoping document and terms of reference have been approved by a Panel/PAC and subsequently the Chairmen's Committee, the relevant Minister(s) (Chief Officer/Accounting Officer in the case of PAC) and Department(s) will be advised of the terms of reference. Panels will give consideration to any feedback received.
20. Panels/PAC can ask for information as the topic requires, and can call Ministers, Assistant Ministers and relevant Officers to further briefings and hearings. Such requests will normally be directed to Officers in the case of PAC.
21. When requested, Departments will provide Panels with a full list of policies and legislation which relate to the topic under review.
22. Requests for information to a Department in relation to an established Review should be acknowledged promptly and the information provided within 5 working days, or, if clarification is needed, a date given by which the information will be provided, which shall not be greater than 10 working days. In the event that requested information does not exist, or does so but not in the form requested, Panels/PAC will be notified accordingly within 5 working days.
23. The importance of evidence to an effective scrutiny process is recognised by all parties. Ministers, Assistant Ministers, Chief Officers/Accounting Officers and other applicable Departmental Officers will therefore actively assist Panels/PAC in the conduct of their work by volunteering any additional material information held by them, or otherwise under their control, in respect of a Review topic which may not have been specifically requested, to enable the Scrutiny Panels/PAC to comprehensively review the matter. Where there is uncertainty over the relevance of information held, within 5 working days of the request the SLO should contact the respective Scrutiny Officer, who will inform the Panel/PAC and arrange with the SLO for the material in question to be assessed for its relevance by the Panel/PAC.

24. Where information provided will include items of a confidential nature and relevant exempt Ministerial decisions, confidentiality will be respected by all Members involved in Scrutiny/PAC.
25. All written information will normally be sent by email to the States Greffe (Scrutiny section) by the relevant SLO, will be clearly named, and will be indexed where appropriate.
26. At the request of the relevant Panel/Committee, the Minister responsible, and/or the Minister designated as the shareholder representative, for any States owned body subject to a request for information from a Panel/PAC during a Scrutiny/PAC Review, shall communicate with the respective body within one week endeavouring to facilitate the voluntary provision of that information, should the body have failed to comply. The relevant Minister will use best endeavours to achieve compliance, communicating to the Panel on the extent and outcome of those endeavours within a maximum of 2 weeks.

E. Fact-finding Visits

27. Panels/PAC may conduct fact-finding visits in relation to potential or confirmed Review topics.
28. Panels/PAC undertaking fact-finding visits will be accompanied by a Scrutiny Officer, who will prepare an independent note of the visit.

F. Access to Council of Ministers Supporting Agenda Papers

29. Through the Chief Minister's Department, the Council of Ministers will provide a copy of the Part A agenda to the Head of Scrutiny before the meeting of the Council of Ministers.
30. The Head of Scrutiny will circulate this agenda to all Members of the Chairmen's Committee and to the Scrutiny Officers.
31. The Part A agenda will not be circulated or discussed with anyone other than members of the Scrutiny Panels/PAC, and Scrutiny Office staff.
32. Via the Head of Scrutiny, any Chairman may request a copy of all material relating to their Panel/PAC remit that was provided to the Council of Ministers as part of the Part B agenda items. There is a presumption that such material will be released to the Chairman by the Council of Ministers for consideration by the relevant Panel/PAC. If the Council of Ministers considers the material to be of a particularly sensitive or commercial nature, or if there are exceptional circumstances surrounding the release of information, those circumstances will be communicated to the relevant Chairman by the Council of Ministers (or designated Minister), via the Head of Scrutiny in the first instance.
33. Requested Part B material will be forwarded promptly to the Head of Scrutiny following the relevant meeting of the Council of Ministers, for subsequent distribution to the relevant Chairman. All Part B material will be treated as confidential by Panels/PAC until the relevant Minister determines otherwise.

Confidential information should be clearly marked by the Executive in accordance with paragraph 44 of this Protocol.

34. In the event that another Panel/PAC wishes to be provided with a copy of the same Part B material, the Chairman of that Panel/PAC will also need to submit a request to the relevant Minister via the Head of Scrutiny. There will be a presumption that the Minister will release the material under confidential cover. Any exceptional circumstances which might surround the release of information will be explained to the Chairman who requested the information, via the Head of Scrutiny in the first instance.
35. 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.

G. Legal advice

36. 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 3 primary reasons for this –
 - i) to ensure that there is no damage done to the public interest by the publication of legal advice given by Law Officers; publication of such advice would risk politicising the Law Officers' Department and would inhibit the Law Officers from giving frank advice;
 - ii) to ensure that there is no inhibition on the part of Panels/PAC in taking advice for fear of its publication. It is in the public interest that decisions are taken on a correct legal basis and that adequate confidential legal advice is obtained to assist;
 - 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 Panels/PAC for consideration; and to ensure that the Scrutiny Panels make full disclosure to the Law Officers of all material relevant to the advice sought.
37. It is recognised that the same principles apply in respect of advice given by the Law Officers to Ministers and their Departments.
38. It is accepted that advice given by the Law Officers to a Minister or to the Council of Ministers or to departmental officials and/or the fact that advice has been sought will not be disclosed to a Panel/PAC.
39. Panel/PAC 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/PAC, and will not seek to interfere with that privilege. Such exceptional circumstances are likely to arise only where there is a co-ordinated Law Officer, Ministerial and Scrutiny/PAC approach to the release of the advice, where there would be no adverse impact on actual or possible legal proceedings in court, and where there would be no undesirable

precedent set as a result. In such circumstances the written prior permission of the Attorney General must be obtained before the advice is disclosed to a Panel/PAC, and also before any legal advice or reference to it is published by the Panel/PAC.

H. Personal or Confidential Information

40. Panels/PAC are committed to the principle of open access to information and will publish all information unless there are appropriate confidentiality or personal reasons not to do so. Documents received in confidence will remain so until otherwise agreed with the Executive.
41. For the avoidance of doubt, the fact that information is confidential is not a reason for delay in providing it to a Panel/PAC.
42. Information which contains personal data or relates to a third party will not be made public if doing so could contravene relevant data protection legislation.
43. If a Minister or Chief Officer/Accounting Officer believes that information to be provided to a Panel/PAC is either confidential or personal, the Panel/PAC must be advised of the reasons via the Scrutiny Office.
44. All confidential or personal information provided in written format shall be clearly marked as such by the Department concerned (where feasible on each relevant page), with a rationale supplied as to the reason for the confidentiality in accordance with the Freedom of Information (Jersey) Law 2011.

I. Hearings

45. There is a presumption that all Scrutiny & PAC hearings will be held in public. Exceptions will be determined by the Panel/PAC in the case of sensitive or confidential information.
46. Panels and PAC reserve the right to reject any request to conduct a hearing in private.
47. The relevant SLO will be provided with the intended broad areas of questioning in advance of a hearing, but will not receive a detailed question plan, unless in exceptional circumstances so determined by the relevant Panel, PAC, Sub-Panel or Review Panel.
48. Whilst the powers of Summons are not applicable for States Members, Ministers and Assistant Ministers will attend hearings in accordance with Schedule 3(9) of the Standing Orders of the States of Jersey.
49. Department Chief Officers/Accounting Officers, and/or other relevant Officers, will attend Hearings as requested. In the case of Scrutiny Panels this is restricted to the purpose of answering questions relating to the facts with regard to policy matters and implementation thereof.

50. Panel/PAC members, Ministers, Assistant Ministers and Officers will behave in a professional manner with each other. The Executive are expected to be forthcoming in providing information at hearings.
51. Unless otherwise decided by the Panel/PAC, public hearings will be webcast live, the audio will be recorded and transcripts uploaded to the Scrutiny website as soon as they are available following the hearing.
52. At that time, the relevant SLO will be sent the transcript for the purpose of clarifying any matters of fact only. Any clarification will be provided within 5 working days, unless otherwise agreed by the Panel/PAC. Any subsequent amendment to the transcript will be a matter for the Scrutiny Office and Panel/PAC.
53. Scrutiny Panels will normally hold hearings about the work programmes of their respective Ministers and Assistant Ministers on a quarterly basis ('Quarterly Hearings'). This paragraph does not apply to PAC.

J. Reports, Responses and Implementation

54. Once a Panel/PAC has approved the body of a report (i.e. minus findings and recommendations), relevant excerpts will be sent in confidence to the SLO of the Department whose Minister/Assistant Minister or Officers have contributed evidence. Five working days should be provided for the SLO to submit comment on matters of a factual nature only relating to the evidence provided by those witnesses. It will be accepted, however, that time pressures may lead to occasions when less than 5 days will be given.
55. Panels/PAC reserve the right to determine whether amendments are to be accepted.
56. Once the report is finalised, wherever possible copies will be released in advance to the relevant Minister(s) (Chief Officer(s)/Accounting Officer(s) in the case of PAC) under embargo and in confidence before presentation to the States under the S.R. or P.A.C. series.
57. Reports remain confidential until presented to the States Assembly.
58. Ministers (Chief Officers/Accounting Officers in the case of PAC) will respond to the Scrutiny/PAC Report using the Ministerial/Executive Response template format respectively within 6 weeks of the publication of the Report. The templates may be revised as required by agreement between the Council of Ministers and the Chairmen's Committee.
59. Where Ministers (Chief Officers/Accounting Officers in the case of PAC) are unable to respond in the given timescale, an interim response should be presented within 6 weeks and a full response presented within 3 months.
60. Responses will be presented directly to the States Assembly via the Ministerial Decision process.

61. Ministers (Chief Officers/Accounting Officers in the case of PAC) will implement the accepted recommendations in a timely manner as detailed in the response, and advise the Panel/PAC when these have been completed.
62. Ministers (Chief Officers/Accounting Officers in the case of PAC) will, on request, provide an update to Panels/PAC on progress against accepted recommendations.

K. Public Accounts Committee (PAC)

63. In general, the approach of (and towards) PAC will reflect that adopted by (and towards) the Scrutiny Panels – see paragraphs 4 and 5. This section addresses those matters that relate only to PAC.
64. In developing a balanced programme of Review topics, PAC will ordinarily prioritise the consideration of reports presented to the States by the C&AG. Having received a report that has been presented to the States by the C&AG, PAC will write to the relevant Chief Officer(s)/Accounting Officer(s) (in accordance with paragraph 13 of this Code) and request a response, using the PAC's response template format, to any recommendations made in the report within a period not exceeding 6 weeks. The deadline for the requested response will be specified in the correspondence.
65. Once the response(s) to the recommendations made by the C&AG have been received from the relevant Officer, PAC will present the response to the States and determine whether to commence a follow-up Review of the topic addressed in the C&AG's report.
66. In the event that one or more responses are not received from Officers within the deadline set, PAC may invoke an escalation procedure and/or commence a follow-up Review of the topic addressed in the C&AG's report.

L. Compliance

67. Any alleged infringements of the Scrutiny/PAC Engagement Code should be reported to the Chairmen's Committee, which will seek to determine an appropriate course of action.
68. Actions available to the Chairmen's Committee include writing to and/or requesting a meeting with the member concerned, or the relevant Accounting Officer/Chief Executive in the case of PAC. In appropriate cases, the matter will be raised between the President and the Chief Minister who will endeavour to achieve an appropriate resolution.
69. Where the issue cannot be satisfactorily resolved, it may be referred to the Privileges and Procedures Committee.
70. It is recognised that alternative processes by which matters might be addressed, particularly those of a more serious nature, are also provided by Standing Orders. These include options of direct recourse to the States Assembly.

M. Summary of Timings

Information from Executive to Panel/PAC on general information requests	Within 5 working days.
Information from Executive to Panel/PAC on Review material	Routinely: within 5 working days Exceptional circumstances: within 10 working days
Clarification from SLO on matters of fact in Public Hearing transcripts	Within 5 working days
Executive comments on draft sections of reports (technical/factual comments only)	Within 5 working days
Presentation to States of Official Response to Panel/PAC Reports	Routinely: within 6 weeks from date of presentation of report Exceptional circumstances: Interim response within 6 weeks, full response within 3 months
Response to PAC of recommendations contained in C&AG reports	Within 6 weeks from date of presentation of report