
STATES OF JERSEY



MACHINERY OF GOVERNMENT REVIEW SUB-COMMITTEE: INTERIM REPORT APRIL 2013

**Presented to the States on 30th April 2013
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

EXECUTIVE SUMMARY

In February 2012, the Privileges and Procedures Committee (PPC) established the Machinery of Government Review (MOGR) Sub-Committee and charged it with conducting a diagnostic review of the existing system. It did so having recognised that the structure of ministerial government, the ‘Troy’ rule and the question of whether Assistant Ministers should be able to serve on Scrutiny were beyond the remit of the Electoral Commission.

Our interim report sets out our initial findings and recommendations following a desktop study, a comprehensive programme of one-to-one interviews with a majority of Senators, Connétables, Deputies and members of the Corporate Management Board and, subsequently, a series of meetings with Scrutiny, the Public Accounts Committee and the Privileges and Procedures Committee.

We acknowledge that Ministerial government seems to have had positive consequences. High-level focus on strategic policy is thought to have improved, and the capacity of the executive to get things done is believed to have increased markedly (although this is not a unanimous view). The system is also described as being better suited to the development of Jersey’s international identity and external relations generally. We have nevertheless identified a strong and consistent belief among stakeholders that the existing system needs further reform in order to function effectively.

There is a clear consensus that 2 issues need addressing with relative urgency. These are –

- (1) blurred lines of accountability, and
- (2) a prevailing silo mentality.

We have received some strongly diverging views on how these issues might best be tackled. What has consistently been clear, however, is that greater clarity is needed on how government policy is formulated and who is accountable for its development, its delivery and its effectiveness. Accepting that Ministers are accountable as corporations sole, that their work is coordinated through the Council of Ministers and that all are politically accountable to the States, we have found that the reality is rather more complex. Policy seems to be advanced within various advisory and oversight groups on which various combinations of Ministers, other Members and senior civil servants sit. Some of these report to the Council of Ministers directly. Others appear to have been commissioned by an individual Minister, notwithstanding their consideration of cross-cutting policy. The membership, terms of reference and rate of progress of these groups can be difficult to establish, both for States Members and concerned members of the public. We believe that this lack of clarity is one of several issues that are weakening lines of accountability and, in some cases, allowing policies to develop in relative isolation.

Our first 3 recommendations are relatively straightforward proposals intended to improve the availability of information regarding the various advisory and oversight groups involved in policy development. They are as outlined below.

Recommendation 1 – Advisory or oversight groups that are intended to progress the development or revision of policy falling within the remit of 2 or more Ministers should be constituted by the Council of Ministers, with a commensurate decision being recorded in the Part A (open) minutes of the Council wherever possible.

Recommendation 2 – A decision of an individual Minister to form an advisory or oversight group to assist with the development or revision of policy within his or her remit should –

- (a) be recorded by way of a formal and public Ministerial Decision, and
- (b) that Ministerial Decision should record at least the outline terms of reference, the membership and anticipated duration of each group and, where relevant, the budget allocated to the group to complete its work.

Recommendation 3 – The Council of Ministers should be required to publish, and to keep updated, a collated list of all advisory and oversight groups formed to progress the development or revision of policy.

Our 4th recommendation is perhaps more contentious. It reflects the balance of opinion we received having questioned witnesses on whether a Chief Minister with the power to appoint, reshuffle and, if necessary, dismiss individual Ministers would improve the accountability of the executive. While we detected a consensus among States Members that the Chief Minister should be able to dismiss a Minister, the majority seemed to be in favour of the States retaining the power to appoint.

Recommendation 4 – PPC should lodge ‘*au Greffe*’ an amendment to the States of Jersey Law 2005 that, if adopted, would empower the Chief Minister to dismiss a Minister.

We have devised a further recommendation following our consideration of collective responsibility at the Council of Ministers' table. Our view is that collective responsibility will be difficult to enforce, unless every Minister is afforded a meaningful opportunity to express to their colleagues any informed concerns they might have regarding emerging legislation or policy. In order to do that, Ministers need sufficient notice of that emerging legislation of policy. Our investigations into the process indicate that some members of the Council of Ministers have not always been fully apprised of the ongoing work programmes of their colleagues.

Recommendation 5 – The Council of Ministers should have as a standing item on its agendas a documented summary update on the work programmes of each individual Minister.

Although we have referred to 2 issues that need addressing with relative urgency, we have provisionally identified a further 4 issues affecting the performance of the existing system. They are –

- (3) insufficient inclusivity,
- (4) insufficient use of States Members' talents and expertise,
- (5) ineffective lines of communication, and
- (6) a civil service that potentially wields too much power.

Further considered analysis of these issues needs to be completed – with reference to the outcome of the referendum on the constitution of the States – before we can propose a full package of recommendations to address these 4. Our difficulty at this stage has been the extent to which those provisional issues mean different things to different Members.

Although we anticipate needing to make further recommendations in due course, we believe that we can express a view on 2 specific matters now. The first relates to the so-called 'Troy rule,' under which the executive remains in the minority. While we acknowledge that there are polarised views in the Assembly regarding the need for minority government in Jersey, a narrow majority of those we consulted expressed a view similar to that of Clothier; that is, if some degree of collective responsibility is to apply and if the executive is to continue to be balanced by independent and effective scrutiny in the absence of political parties, minority government needs to be retained.

Recommendation 6 – Minority government must be retained in the ongoing absence of political parties and irrespective of the outcome of the forthcoming referendum on the constitution of the States Assembly.

The 2nd matter concerns the subsidiary recommendation 2 as made by the Electoral Commission in its final report. Although we are inclined to agree with the Commission that the States would benefit from taking a more considered look at emerging draft legislation, we are not yet clear that a dedicated review body is needed to take this matter forward. Our view is that the Chairmen's Committee should be invited to consider subsidiary recommendation 2 and discuss its views with PPC.

Recommendation 7 – The Chairmen's Committee should be invited to consider the Electoral Commission's subsidiary recommendation on legislative scrutiny and report its views to the PPC.

1. CONTEXT

Together, the States and the Council of Ministers are a small local government with national functions to fulfil and, given the ongoing absence of party politics, with a need to ensure that the Island community has adequate opportunities to influence decision making. These duties have been at the forefront of our thinking during our review of the ministerial system.

Our review is the 3rd commissioned since the advent of ministerial government in December 2005. We commenced work some 11 years after the States were invited to endorse the Policy and Resources Committee's proposal for ministerial government as set out in P.122/2001. The report accompanying P.122/2001 gave the States the following assurance –

“...the ministerial system... will not detract from the power of the States Assembly, and the function of the Assembly as the Island's seat of government will remain paramount. The States would continue to be the Island's legislature, and general policies would be approved by the Assembly as they are now. The Assembly would also continue to take those major executive decisions that do not fall within States-approved policies. Examples are decisions to adopt the capital and revenue expenditure budgets, to build a new school or hospital, or to create a Territorial Army Unit.”¹

This was essentially the same message as that contained in the Clothier report of the previous year – that the ministerial system would not lead to the abandonment of the long-established tradition of consensus government by independent politicians. Adoption of P.122/2001 then triggered a 4 year programme of machinery of government reform.

It took only 12 months for the States to put in place their first review of the ministerial system, which resulted in a series of incremental refinements being made. The second review in 2010 culminated in the development of [P.120/2010](#) ('Machinery of Government: Establishment of Ministerial Boards and Revised System of Scrutiny'). P.120/2010 was produced by a working group comprised of –

Connétable J. Gallichan of St. Mary:	Chairman of the Privileges and Procedures Committee (working group chairman);
Deputy C.H. Egré of St. Peter:	Vice-Chairman of PPC and Chairman of the States Business Organisation Sub-Group;
Senator T.A. Le Sueur:	Chief Minister;
Senator A. Breckon:	Proposer of P.70/2010;
Deputy T.A. Vallois of St. Saviour:	Chairman, Scrutiny Code of Practice Review Working Party.

¹ Paragraphs 6.1 and 6.4 of the report accompanying P.122/2001

It set out rather more radical proposals, the most significant being the establishment of ministerial boards and a restructuring of Scrutiny. To some, the proposition reflected a concern that the system was not operating quite as had been envisaged in 2001. P.120/2010 suggested –

‘... that many members of the Assembly currently felt “excluded” and many talents were being wasted as a result of this exclusion which could, in turn, lead to negative confrontation taking place.’

In the event, the proposition was amended and then, ultimately, rejected by margin of 7 votes. As to why P.120/2010 failed, a review of Hansard reveals 3 broad schools of thinking among the States Members of the day. Some were fundamentally opposed and questioned whether P.120 was effectively advocating a return to committee government (which had not been the intention). Others could accept the diagnosis but not the solution on offer. Within this group were those who expressed concern that the ministerial boards would blur the distinction between the executive and non-executive arms of government and cloud the role of scrutiny to the point that its future would be in doubt. Of the minority who voted in favour, several expressed a wish to see more detail before they would fully commit to the model.

More recently, the Council of Ministers proposed a wholesale review in 2011 (P.76/2011 refers), although that proposition was withdrawn prior to debate due to a build-up of public business.

A further machinery of government proposition lodged by Deputy G.C.L. Baudains o St. Clement in November 2011 (Machinery of Government: review by Privileges and Procedures Committee (P.187/2011)) offered the Privileges and Procedures Committee a chance to take the pulse of the newly reconstituted States Assembly before it too was withdrawn. It led PPC to establish the Machinery of Government Review Sub-Committee, the membership and terms of reference of which are reproduced at **Appendix 1**.

What follows are our initial conclusions regarding the effectiveness of the existing system and a series of recommendations to bring about further improvement. These have been arrived at following completion of the programme of work outlined at **Appendix 2**.

2. WHERE ARE WE NOW?

The ministerial system has now been in operation for some 7 years which, in our view, is ample time for the system to have bedded in and for both the positives and negatives to be identified.

Ministerial government does seem to have had positive consequences. A significant number of those we have interviewed remember that the States and the public were promised '*better decisions quicker.*' In this regard, a narrow majority of Members share the view that this promise has been delivered to some extent, if not in full. High-level focus on strategic policy is thought to have improved and the capacity of the executive to get things done is believed to have increased markedly (although this is not a unanimous view). The system is also described as being better suited to the development of Jersey's international identity and external relations generally.

Our evidence nevertheless indicates that both the majority of those who support the ministerial system and those who remain to be fully convinced of its benefits have an appetite for further reform. Both groups cite a need to address –

- (1) blurred lines of accountability, and
- (2) a prevailing silo mentality.

Opinions nevertheless begin to diverge on other aspects of the present system. Advocates of ministerial government describe a watered-down and insufficiently balanced system created following changes made to the original proposals between 2002 and 2005. Sceptics cite a more adversarial and ill-informed States Assembly and argue that these symptoms show the system is not working as it should be. The comments from both have led us to provisionally identify 4 further issues with ministerial government –

- (3) insufficient inclusivity,
- (4) insufficient use of States Members' talents and expertise,
- (5) ineffective lines of communication, and
- (6) a civil service that potentially wields too much power.

Our citing of the latter 4 issues is provisional because we note that they mean quite different things to different people. For example, some describe insufficient inclusivity as too much power and too many policy decisions being made by too few Members. Others cite a tendency for Ministers and executive departments to be too insular in their approach to information sharing. Several Members perceive that the act of giving offices to Ministers within their respective departments has isolated them from their peers in the Assembly and helped the department to 'capture' all but the stronger-willed Ministers. There are also Members who think their peers could take more advantage of offers to meet with Ministers and key public servants.

None of the above issues are particularly new or novel. Reproduced below are just a few of the Clothier Panel's related observations at the turn of the century –

'4.2.2 ... despite the much vaunted democracy in Jersey, policy tends to come not from the elected representative but from the civil servants...'

'4.2.4 ... Each Committee is a virtual law unto itself, with no obligation to ensure that its decisions are consistent with a policy already agreed upon by the States...'

'4.4 ... There remains, therefore, an incoherence in government which is the cause of many of the problems which were heard in evidence...'

'5.19 ... members ... are so divided amongst themselves that they have difficulty in arriving at and maintaining any decision... for many years there has in reality been government by a small number of States Members'

There are a number of possible conclusions that can be drawn from this state of affairs. For example, it is conceivable that the Clothier Panel's definition of the problem was wide of the mark. Another possibility would be that the Clothier Panel was correct and that these problems have persisted because the implementation of ministerial government was not quite as Clothier recommended.

Recognising that the problems with the existing system are far more complex than they might initially appear, we plan to conduct further research before making a second series of substantive recommendations to address the more structural issues we have found. The fact that a referendum on the constitution of the States is being held on 24th April, and that the referendum may have a major impact on the scope for machinery of government reform, has further convinced us of the need to pause for thought. We nevertheless believe that some improvements can and should be made with in short order, and irrespective of the referendum outcome. We therefore set out below our thoughts on some key principles for reform and we set out our first 6 recommendations that are intended to further those key principles.

3. KEY PRINCIPLES FOR REFORM

At an early stage of this review we agreed that any changes to the Island's system of government must maintain, and ideally enhance, the following –

accountability,
corporate governance
objectivity,
prudence,
transparency, and
consensus government by independent members.

Each of the above should, we believe, be delivered whilst upholding the public interest.

The question of how to take our key principles forward has been informed by the results of our own research, by feedback received during our programme of interviews with 48 States Members and senior officers, and by the submissions we received during an 8 week public consultation in the summer of 2012.

We have been mindful of developments in this area in both the political and the corporate world over the last 20 years. Enactment of the UK Localism Act 2011 has brought changes to local authority governance. Several councils have reverted, or are in the process of reverting to committee government or hybrid systems. Our thoughts on accountability and corporate governance have also been informed by developments in the corporate world. We have considered the refinements to the role non-executive directors that were prompted by the Higgs review, which reported to the UK government in 2003. This research has led us to question the role that politicians outside the executive play in –

constructively challenging and contributing to the development of strategy;
scrutinising the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
satisfying themselves that financial information is accurate, and
establishing that financial controls and systems of risk management are robust and defensible.

4. WHAT MIGHT REFORM LOOK LIKE?

Our evidence tells us that incremental refinement of the present system is the preferred way forward.

Although the existing version of ministerial government does not seem to have been an unqualified success, we sense little appetite for a return to the committee system. Committee government is described by a good number of those who have experienced it as being ponderous, administratively frustrating, lacking co-ordination and beset by a strong silo mentality. Moreover, the inclusiveness of the committee system is thought by a number of those having experienced it to have been somewhat illusory in practice, with committee presidents being far more aware and in control of goings-on than their committee colleagues.

It would nevertheless be right to acknowledge the positive feedback on the committee system we received. A number of knowledgeable witnesses recall that committee government achieved notable successes with cross-cutting policy, while Members that served on several committees at a time recall being better informed at the strategic level and consequently being well placed to contribute to policy development. We have heard also that the system improved markedly when the number of committees was reduced in the period 2002 – 2005. Some witnesses suggested that the advent of modern communication technologies, if implemented correctly, could have given the committee system a new lease of life.

Our initial tranche of recommendations nonetheless reflects the desire for incremental refinement and is designed to build momentum in this regard.

Transparency of Policy Development

Modern democracy has perhaps inevitably become more complex, reflecting the increasing complexity of modern life. We therefore endeavoured to fully map out and understand the individual workings of our current system before we contemplated making any changes to it. We therefore feel we should place on record the surprising level of difficulty we experienced in establishing the full extent of the policy and decision-making processes that now exist.

The committee system may be long gone but the process of policy formulation and review under ministerial government is frequently being delegated to dedicated advisory or oversight groups with several States Members among their number. This can be a logical way to proceed and, although we see a need to examine in more detail how policy development beneath the Council of Ministers is progressed and how all Members can contribute constructively to that process, we see no fundamental reason why such groups should not continue to exist; that is, as long as their existence is transparent, their remit is unambiguous and reporting lines are clear. What we have discovered, however, is a distinct lack of clarity regarding the existence of advisory and oversight groups, who sits on them, what their terms of reference are and to whom they report. In many cases it is difficult or even impossible for a member of the public to establish which groups are doing what. In one or two cases it seems that the existence of a particular group is not widely known inside the States of Jersey either. One or 2 are acknowledged in the Part A minutes of the Council of Ministers or are referenced in a published Ministerial Decision on www.gov.je. In other cases, records seem rather scarce.

A written question to the Chief Minister tabled in the States on 9th October 2012 by Deputy J.A.N. Le Fondré of St. Lawrence revealed the existence of well over 100 groups with a primarily officer-based membership – but on which one or more politicians may sit – that influence policy development or the workings of a department. Subsequent enquiries with the Chief Minister’s Department confirmed the existence of a further series of advisory or oversight groups with a primarily political membership. These include (in no particular order of significance) –

the 2013 Bus Operator Contract Political Steering Advisory Group

the Children’s Policy Group

the Vulnerable Adults Policy Group

the Housing Transformation Steering Group

the Regeneration Steering Group

the Health and Social Services Redesign Ministerial Oversight Group

the Public Sector Reform Political Steering Group

the Energy Policy Steering Group.

We suspect that the list we have been given is not exhaustive and that several other politically led groups, including an affordable housing policy group, may exist. This lack of transparency does not seem to be at all intentional but is, in our view, less than justifiable. We think that all States Members and, importantly, the public, have a right to know to whom their Ministers and the Council as a whole have delegated key policy development work.

Of the advisory and oversight groups we were able to identify, we found that the reporting lines of these groups were sometimes rather vague. Some groups are clearly concerned with development of high-level cross-cutting policy, which we believe is the domain of the Council of Ministers as per Article 18(2)(b) of the States of Jersey Law 2005 – but we were left unclear as to whether the Council or the Minister had formed them and who they reported back to.

Our view is that groups working on cross-cutting policy should be formally commissioned by and accountable to the Council, which will necessarily need to determine at least their outline terms of reference. Where Ministers are commissioning a group to deal with policy matters within their own portfolios, that decision should be recorded and made public by way of a formal Ministerial Decision.

Recommendation 1 – Advisory or oversight groups formed to progress the development or revision of policy falling within the remit of 2 or more Ministers should be constituted by the Council of Ministers, with a commensurate decision being recorded in the Part A (open) minutes of the Council wherever possible.

Recommendation 2 – A decision of an individual Minister to form an advisory or oversight group to assist with the development or revision of policy within his or her remit should –

- (a) be recorded by way of a formal and public Ministerial Decision, and
- (b) that Ministerial Decision should record at least the outline terms of reference, the membership and anticipated duration of each group and, where relevant, the budget allocated to the group to complete its work.

Recommendation 3 – The Council of Ministers should be required to publish, and to keep updated, a collated list of all advisory and oversight groups formed to progress the development or revision of policy.

Appointment and Dismissal of Ministers

Based on the strength of feedback received, the consensus is that the Chief Minister should be empowered to remove a Minister whose performance is unsatisfactory or whose conduct falls markedly below the standards expected. As for whether a dismissed Minister should be permitted to stand again for the same role immediately, there seems to be a consensus that he or she should be able so to do. Such an election would allow the States to pass judgment on the original decision to dismiss. We acknowledge that a decision of the States to reappoint the dismissed Minister might be tantamount to a vote of no confidence in the Council.

As to whether the Chief Minister should also be permitted to appoint and reshuffle his or her Council, our evidence tells us that the States are not ready to grant a Chief Minister that level of autonomy. On the one hand, a Chief Minister with the power to hire could be said to carry the corresponding responsibility for ensuring that the team performs – knowing full well that the States could pursue a vote of no confidence in him or her if the standards of the team slipped. In that sense, lines of accountability become clear and plain. The balance of feedback nevertheless indicates a prevailing concern that the present electoral system and the absence of political parties make it difficult for the Chief Minister to demonstrate that their mandate has been directly tested at the ballot box. Ultimate accountability to the public is, therefore, in doubt.

Recommendation 4 – PPC should lodge ‘*au Greffe*’ an amendment to the States of Jersey Law 2005 that, if adopted, would empower the Chief Minister to dismiss a Minister.

Collective Responsibility

We acknowledge that we detected strong feelings on this issue, both for and against, and that we propose to do further work on this topic before making a recommendation.

The Sub-Committee has thought long and hard about this issue and has had plenty of comment upon it. First, however, it is perhaps worth reflecting on what collective responsibility means.

A UK House of Commons research paper of 2004 refers to 3 core principles of collective responsibility, as follows –

- “i) *the confidence principle: a government can only remain in office for so long as it retains the confidence of the House of Commons, a confidence which can be assumed unless and until proven otherwise by a confidence vote.*
- ii) *the unanimity principle: perhaps the most important practical aspect is that all members of the government speak and vote together in Parliament, save in situations where the Prime Minister and Cabinet themselves make an exception such as a free vote or an ‘agreement to differ’.*
- iii) *the confidentiality principle: this recognises that unanimity, as a universally applicable situation, is a constitutional fiction, but one which must be maintained, and is said to allow frank ministerial discussion within Cabinet and Government.”.*

To some, the notion of ministerial government without collective responsibility is utterly counter-intuitive. Others suggest that applying the above principles in the Jersey context could undermine the Island’s tradition of independent politics.

Although we are not yet in a position to make a definitive recommendation on collective responsibility, we are already somewhat concerned that its application at the Council table may prove unworkable in any event unless every Minister has been afforded a meaningful opportunity to express to their colleagues any informed concerns they might have regarding emerging legislation or policy. This would not be a concern were it not for the fact that our investigations into the process of policy formulation have indicated us to conclude that some policy development work may have had rather limited input from the Council of Ministers in recent years.

For collective responsibility to work, we believe that the Council would need a robust ‘no surprises’ policy that kept Ministerial colleagues apprised of ongoing work programmes across each other’s portfolios. While a number of Ministers and their departments are reportedly getting better at keeping their corresponding Scrutiny Panels briefed, we have heard that the mechanisms in place for information sharing across the Council of Ministers table may be less successful. We are told that this issue is sometimes exacerbated by complex agenda papers being made available to Ministers less than 24 hours before the commencement of a Council meeting. We wonder how a Minister will feel if collective responsibility results in a Minister being all but required to endorse a major policy matter that only 24 hours before he or she genuinely knew very little about.

The Silo Mentality

We plan to make recommendations on this matter once we have finalised our thinking on the application of collective responsibility. There is nevertheless one straightforward recommendation that we feel able to make immediately. In the section above, we highlight our concern that information flows at the Council of Ministers table are possibly in need of improvement. To the best of our knowledge, the Council does not have on its agendas a standing update summarising the work programmes of individual Ministers. We suspect that such an item could be compiled with minimal additional effort and added to agendas for noting only, with the caveat that Ministers would be better placed to ask questions at the Council table if slippage on a key policy proposal became evident or if the scope for impact of one Minister's new policy proposal was perceived to risk generating adverse impact on the portfolio of another.

Recommendation 5 – The Council of Ministers should have as a standing item on its agendas a documented summary update on the work programmes of each individual Minister.

Inclusivity

Paragraph 4.15 of the Clothier report advocated –

“...an Assembly in which a clear majority of members are not holders of executive office but are numerous enough to constitute a number of bodies sufficiently detached from the business of government to provide an independent scrutiny.”

Its rationale for this recommendation was set out in paragraphs 7.4 and 8.11, as follows –

“Those members who would carry out the scrutiny function could then be said to be truly independent, because they would not have a particular stake in any one aspect of the executive. It is also proposed that those who are not involved in the executive should be in the majority.”

“The notion that the legislature, the executive and the judiciary are three separate estates in any constitution is intellectually satisfying but practically inaccurate ... What evolved in almost all democratic countries, however, including for all practical purposes the United Kingdom, was a fusion of the executive and legislative powers in membership of a national assembly, but with an independent judiciary. In the assembly some held office and some did not. What we believe to be essential is that there should be some form of audit of the former by the latter, whether a party system exists or not, and that on no account should a majority of the members hold executive office.”

This later became known as the Troy rule in recognition of a successful amendment, brought by the then Deputy P.N. Troy of St. Brelade, to the primary machinery of government reform proposition P.122/2001. That amendment prescribed a 10% difference in numbers between the executive and scrutiny functions.

Our interviews with States Members and senior officers identified a significant minority who sense that the Troy rule is causing more problems than it solves, primarily because it is thought to stand in the way of greater inclusivity in the decision-making process. The majority tend, however, to align themselves more closely to the Clothier Panel's view. They perceive a need for some degree of collective responsibility and an executive that must be balanced by independent and effective scrutiny. They acknowledge also that a ministerial executive working in accordance with collective responsibility would by implication create a strong block vote in the Assembly. In the continued absence of political parties with a mandate tested at the ballot box, the majority think that there is still a place for minority government in 2013. We agree.

Recommendation 6 – Minority government must be retained in the ongoing absence of political parties and irrespective of the outcome of the forthcoming referendum on the constitution of the States Assembly.

Utilising Members Better

Our consideration of Member utilisation has concentrated on 3 areas in particular: the role of Assistant Ministers; the relative success of the scrutiny function and, thirdly, the question of legislative scrutiny.

Turning first to the role of Assistant Ministers, we note that Clothier envisaged Ministers and their Assistant Ministers working closely together as a team. Paragraph 5.2 of the Clothier Panel's report states –

“We further recommend that the political direction of each department should be the responsibility of a Minister and one or two other members. These small teams should work together to produce policies for their Departments”.

This vision of team-working appears to have been implemented in different ways from department to department. In fact, our feedback indicates that the role of an Assistant Minister is unclear, inconsistent and, in some cases, less than meaningful. Whereas some substitute for their Minister during periods of absence and some have substantial powers delegated to them, the role of others appears to be confined to that of a stand-in at public functions and a sounding-board role on specific topics only.

We have yet to finalise our thinking on the question of the Assistant Minister role, not least because of the forthcoming referendum on the constitution of the States. That referendum raises the prospect of a 42 member Assembly, which may well affect our scope to make recommendations. Our provisional view, however, is that if the role of Assistant Minister remains, it should be more consistent across ministerial portfolios and become a more important and intensive position than, in some cases, it currently

is. What we mean by that is that we see scope for giving Members more opportunities to shadow a more experienced colleague. We can see a case for amending the States of Jersey Law 2005 to make Assistant Ministers the default port of call for an executive decision and the automatic choice to represent their department whenever the Minister is out of the Island or otherwise indisposed. Finally, we wonder whether Assistant Ministers could make a greater contribution to the development of cross-cutting policy.

We turn next to the question whether the scrutiny function as it currently stands is proving to be a good use of Members' time. Scrutiny and the PAC were a major topic of comment during the course of the Sub-Committee's interview programme and its preliminary public consultation this summer.

The PAC is highly regarded and its recommendations carry significant weight. We concur with that view and see no reason for change.

In the case of Scrutiny, we have 3 observations to make at this stage. First, we are convinced that an independent and effective scrutiny function must exist in order for ministerial government to work properly. Secondly, we have been persuaded that Scrutiny showed some notable signs of improvement during 2012 in both its working practices and in the quality of its output. Thirdly, we have received a number of thoughts on how Scrutiny's output and, ultimately, its influence might improve further.

Common themes included –

that Scrutiny's methodologies and resources needed reviewing with the aim of ensuring that it can work quickly enough to influence emerging policy;

that Scrutiny's access to information should be monitored in order to establish whether shortfalls in the quality of public sector records management or other related issues were affecting its ability to function effectively, and

that Scrutiny could become still more effective if it concentrated on following up key recommendations in its reports (a subject that the Sub-Committee acknowledges is already being actively tackled by the Chairmen's Committee).

Our analysis of those issues has led us to consider whether a variation of the Ministerial Boards model proposed in P.120/2010 might be the answer. We envisaged a series of Boards with Members supporting the Minister by fulfilling a role akin to that of a non-executive director. The intended result would be some real-time scrutiny of lower level emerging policy and an additional degree of inclusion, leaving Scrutiny free to concentrate its resources on the major cross-cutting policy issues of the moment. We acknowledge, however, the risk that a blurring of roles might compromise the Scrutiny function. There is also the need to consider the potentially significant reduction in the number of States Members that could conceivably result from the forthcoming referendum. On balance, we accept that the jury is out on Ministerial Boards. We therefore propose to give further thought to this issue once the outcome of the referendum is known.

We conclude this section by addressing the issue of legislative scrutiny. When this issue was raised during our programme of interviews, it was suggested that the States had a tendency to pass some lengthy, complex and technical pieces of legislation with comparatively minimal debate. Examples given included limited liability partnerships and intellectual property legislation. The Electoral Commission has since laid out its case for a dedicated review body to consider this issue. Although we are inclined to agree that the States would benefit from taking a more considered look at emerging draft legislation, we are not yet clear that dedicated review body is needed. We also remain to be convinced that a second chamber is needed to deliver the requisite degree of legislative scrutiny.

Recommendation 7 – The Chairmen's Committee should be invited to consider the Electoral Commission's subsidiary recommendation on legislative scrutiny and report its views to the PPC.

Communication

Earlier in our report we acknowledged that communication was a provisional cause for concern. Ineffective communication is suspected of creating 'long chain' decision-making, increasing cost, inertia and even a degree of suspicion between the executive and non-executive Members.

States Members in the ministerial system seem to be operating in relative isolation compared with their predecessors in the committee system, and in a system that is inevitably more confrontational than that which existed before 2006. One respondent to the preliminary consultation described the committee system as '*convivial*'. While that may perhaps be stretching the definition of convivial a little, it is probably true to say that the committee system required varied groups of States Members to get together regularly to discuss politics, policies and to share knowledge. Ministerial government has tended to operate with smaller and less varied groups of Members. Aggravating this position is the fact that Members' accommodation is somewhat limited in comparison with that available in other jurisdictions (such as the Isle of Man) and that even the communal lunch for Members on States days, which brought executive and non-executive members together, has been withdrawn. The Sub-Committee notes that the PPC has an ongoing facilities review. It hopes that the outcome of this work will have a positive impact on States Member interaction. In the intervening period, we acknowledge that we have more work to do in this area before we can make substantive recommendations.

5. CONCLUSION AND NEXT STEPS

Our initial recommendations described above are designed to deliver some initial improvements to accountability in the ministerial system and to promote open and collaborative working. We will be in a position to complete our work and make further recommendations following the referendum on 24th April 2013.

APPENDIX 1

Membership and terms of reference

The Machinery of Government Review Sub-Committee is constituted as follows –

Deputy M. Tadier of St. Brelade, Chairman

Senator A.J.H. Maclean

Connétable L. Norman of St. Clement

Deputy J.A.N. Le Fondré of St. Lawrence

Deputy T.A. Vallois of St. Saviour

Deputy G.C.L. Baudains of St. Clement

Deputy J.H. Young of St. Brelade.

Its detailed terms of reference are as follows –

AIM

To undertake a diagnostic review of the machinery of government so as to identify any issues arising and to make recommendations for improvement.

OBJECTIVES

To analyse the machinery of government in Jersey

To identify any problems with the current machinery of government

To agree a series of findings and recommendations in respect of the machinery of government

To present a report and recommendations to PPC

DELIVERABLES

A report to PPC that sets out the Sub-Committee's findings in respect of the issues to be addressed. This report should define any problems with the current machinery of government and should also contain recommendations to resolve any identified problems with the current machinery of government.

*SCOPE*Included

Consideration of the extent to which the current allocation of roles and responsibilities ensures that –

plans and policies are developed in the most effective manner to meet the needs of the Island and to ensure the delivery of unified solutions across all departments;

States members have the opportunity to be engaged in the process of government;

All parts of the States and related contracts and organisations are subject to appropriate accountability to States members and the public; including consideration of the effectiveness of Scrutiny in this role.

The review will therefore consider –

the roles of the Council of Ministers; the Chief Minister; Ministers and the States Employment Board;

the relationship between the ministerial structures and the civil service structures in relation to policy development, implementation and operational management;

the roles and responsibilities of the Chief Executive; Treasurer of the States; chief officers and the Corporate Management Board;

the roles and responsibilities of Assistant Ministers, including whether Ministers should also be allowed to be appointed as Assistant Ministers (and vice versa) and whether Assistant Ministers should be able to serve on Scrutiny Panels;

how each of the aforementioned parties should be held to account for performance in the most effective and transparent manner;

how Scrutiny and the Public Accounts Committee could most effectively hold the executive to account; and

whether current ministerial portfolios and departments remain appropriate or whether there is an alternative structure which will deliver greater effectiveness and value for money.

Excluded

matters in relation to the efficient use of resources to achieve value for money;

the maintenance of standards of performance though financial management and forms of governance;

consideration of the accounting officer structure.

APPENDIX 2

Methodology

The Sub-Committee adopted a phased approach to its work. Phase 1 involved a desktop study of the functions performed by democratic governments. Preparatory work included –

- (i) a review of related propositions lodged ‘*au Greffe*’ since December 2005;
- (ii) consideration of the systems of government in operation in Guernsey and the Isle of Man;
- (iii) consideration of written submissions made to the Sub-Committee by individual members of the Sub-Committee;
- (iv) revisiting the debate on the draft States of Jersey Law 2005 (P.124/2004) and the various amendments to the same;
- (v) a considered review of Part 4 of the States of Jersey Law 2005;
- (vi) a review of minutes of the then Policy and Resources Committee concerning the Machinery of Government Reform programme; and
- (vii) consideration of a report concerning the operation of Scrutiny.

In Phase 2, the Sub-Committee resolved to identify which elements of the existing system in Jersey were working well, which elements required improvement, and to make recommendations accordingly. It was thought that those persons working directly within Jersey’s relatively unique system of government were inherently best placed to comment on its efficiency and effectiveness. On that basis, the Sub-Committee interviewed some 48 States Members and senior officers, obtaining feedback on a range of issues highlighted in the ‘Scope’ section of its detailed terms of reference (see **Appendix 1**). The 48 persons interviewed included 8 Senators, 7 Connétables and 19 Deputies. This work was supplemented by a preliminary public consultation during August and September, which elicited 5 thoughtful responses.

The Sub-Committee was mindful that elements of its terms of reference might cause it to explore matters that were also within the remit of the States of Jersey Electoral Commission. Cross-cutting issues arguably included the number of States Members needed for effective democratic government and whether the existing unicameral legislature was sufficient to deliver effective legislative scrutiny. It was the Sub-Committee’s considered view that the best way of answering the question ‘*how many States Members are needed?*’ would be to devise the suitable structure for government in Jersey first. Having devised the system, it would then be a comparatively straightforward matter to calculate the minimum number of States Members needed for the system to operate as intended.

The Sub-Committee produced a draft interim report in November 2012. This was initially considered by the PPC on 14th November 2012 and was referred to Scrutiny Panels and the Public Accounts Committee for comment. These comments were reflected in a revised interim report, which was considered by the PPC on 14th March 2013.