

Scrutiny Report

Evaluation  
of the  
Shadow Scrutiny Process



November 2005  
SR7/2005

The Privileges and Procedures Committee fully endorses the Shadow Scrutiny Evaluation report and has agreed that as the evaluation process was undertaken by the Chairmen's Committee the report should be presented to the States by Deputy R.C. Duhamel, Chairman of that Committee and not by the Privileges and Procedures Committee as originally envisaged.

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**EXECUTIVE SUMMARY**

The Chairmen's Committee has recently undertaken an evaluation of the Shadow Scrutiny process based on the draft guidelines as contained in the Appendix to P.186/2003 and wishes to officially record that the process has served as an excellent learning and developmental opportunity. In view of its experiences throughout the shadow phase, the Committee has concluded a set of recommendations

which are set out below. It is hoped that these will form a sound basis for the future Scrutiny function as we move into the new government structure. However, it is recognised that Scrutiny will continue to develop and learn from future experiences and any future Chairmen's Committee should undertake to monitor further developments.

The Chairmen's Committee believes that, as a reminder, it is appropriate in this executive summary to stress the difference between the rôle of the Public Accounts Committee and the Scrutiny Panels. The PAC, with the aid of the Comptroller and Auditor General will be responsible for questioning Officers to ensure that States of Jersey policy has been implemented in the most efficient and effective manner. The Scrutiny Panels' role is to ensure that the ministers have reached their policy decisions in an appropriate manner and have addressed all of the issues that are relevant.

The Chairmen's Committee is currently preparing a draft Code of Practice for Scrutiny which will be made available to all States members for consultation.

## KEY RECOMMENDATIONS

The recommendations below are fully explored throughout the report. Relevant paragraphs are indicated at the end of each recommendation

### *Active participation in the Scrutiny process [Section 7]*

- It will be essential under the ministerial system of government for all non-Executive members of the Assembly to be actively involved in the Scrutiny process. [7.6 (i)]
- All members of the Scrutiny function should be committed to on-going training, including both in-house training and training in specific skills such as chairing and questioning techniques. [7.6 (ii)]

### *Chairmen's Committee [Section 7]*

- A strong and effective Chairmen's Committee will be vital to the smooth operation of scrutiny. Its rôle is that of a co-ordinating body between the four panels and the Public Accounts Committee and should be to confirm final work programmes, allocate resources fairly between the Panels and monitor the progress of reviews. [7.11]
- The Chairmen's Committee will also be the representative body for the Scrutiny function and should seek to develop good communication links with the Council of Ministers [7.12]

### *Contact with States' departments [Section 7]*

- Departments should maintain full information and financial audit trails which support the Minister's course of action. These should be made readily available to future Scrutiny Panels upon request. [7.15]

### *Working practices (witnesses, reports, collaborative working) [Section 7]*

- Preparation and structured questioning are critical elements in a well-organised hearing. Witnesses should be given an adequate briefing on the areas the Panels wants to explore. The level of detail in briefings should be given further consideration by the Chairmen's Committee. [7.19]
- Collaborative working practices must be developed between the Executive and Scrutiny Panels

in order to avoid unnecessary conflict. This includes willingness on the part of all involved to discuss openly forthcoming work programmes. In order to achieve a more transparent approach it is important that the Panels invite Ministers to discuss the priorities of their Departments at an early stage of the planning process. Further details of this approach will be contained in the draft Codes of Practice which are currently in the course of preparation by the Chairmen's Committee. [7.27]

- The Panels and respective Ministers should also meet regularly to consider the outcome of Scrutiny reviews and the implementation of Scrutiny recommendations. This should be monitored by the Chairmen's Committee and Council of Ministers. [7.29]

#### *Resources [Section 9]*

- It is essential that in the future all Scrutiny Panels including the PAC are fully supported by appropriately experienced staff. A Comptroller and Auditor General has recently been appointed by the States and it is anticipated that he will have the support of two Value for Money Auditors. [9.7]

#### *Advisors [Section 10]*

- Scrutiny Panels identify the need for an independent advisor, they should select advisors whom they consider have the appropriate level of expertise to assist them in their enquiries, in accordance with the procedures set down in the relevant States-approved Code of Direction. [10.25]

#### *Call-In [Section 11]*

- The Chairmen's Committee should work closely with the Executive and consider the decision-making process used by the Executive. It should consider carefully whether the system needs to be strengthened to allow Panels to call for immediate reconsideration of decisions before they are implemented. An essential element of this monitoring will be an assessment of the system of promulgating key decisions. This must operate effectively if the Panels are to fulfil their key function of holding decision-makers to account for their actions. [11.20]

#### *Conflicts of Interest [Section 12]*

- The Privileges and Procedures Committee concluded that the Scrutiny process was an objective evaluation of the evidence presented which was reflected in the conclusions and recommendations made to the Assembly and in that regard the need for a witness to withdraw through a conflict of interest should only occur in the rarest of circumstances. <sup>[1]</sup>[12.6 (iv)]
- It was agreed that
  - i) Should a person perceive that he has a conflict of interest, he should make this fact known to the Panel at the first available opportunity;
  - ii) it was for the Panel to determine whether that witness should appear and give evidence before it.
  - iii) If the Panel decided to take evidence, it would as a matter of course make a statement in its final report that a declaration of conflict of interest had been made.

iv) With regard to a third party assessment of a declared conflict of interest, the Chairmen's Committee has confirmed with the Privileges and Procedures Committee that this is inappropriate.

v) Future Panel members must not be conflicted from participating in specific reviews because of previous Committee membership.

#### *Legal advice [Section 13]*

- The Panels believe that they should have the same right to request Law Officers to disclose legal advice already given to the Executive for the purpose of conducting effective scrutiny. [13.8]
- The Panels believe that the possibility of taking independent legal advice allows Scrutiny to consider genuinely alternative perspectives on current policies in the same way that Scrutiny is entitled to engage other forms of alternative professional expertise. [13.12]
- The Panels also do not believe that it is necessary nor in the best interests of the public for legal advice to remain private as a matter of course. Scrutiny is based on the principle of open access to information. Exemptions to this principle should be confined to occasions when strictly necessary and should be justified according to clearly defined criteria on a case by case basis. [13.14]
- The Panels believe that their requirement for legal advice is likely to grow once the Scrutiny function is fully established. [13.15]

#### *Legislative scrutiny [Section 14]*

- The aspirations for effective legislative scrutiny will not be realised until certain conditions are in place, including adequate notice of draft legislation, good briefing and documentation from the Executive on the purposes of the legislation, realistic deadlines for scrutiny to report, and the provision of adequate legal assistance. [14.6]
- If in the future there is to be a Legislation Executive Sub-Committee, it would seem appropriate that this is balanced with a Legislation Scrutiny Panel; with clear lines of communication to the Legislation Sub-Committee.;

#### *Budget scrutiny [Section 15]*

- The Privileges and Procedures Committee met with the Presidents of the Policy and Resources and Finance and Economics Committees, Senator P.F.C. Ozouf and officers, on 3rd February 2005 and agreed the proposal that scrutiny should be able to shadow the whole process of formulating the States Business Plan and Budget with presence at meetings at key points during the process, but acknowledged that the process for each would be slightly different. [15.8]

#### *Powers of Summons [Section 16]*

- It will be essential for Scrutiny Panels to be provided with powers to issue a summons regarding a person to appear before it to give evidence and produce documents. Regulations governing the powers of Scrutiny Panels are in preparation. [16.2]

#### *Training [Section 18]*

- The Chairmen's Committee and Panels have recognised the benefits of training to date and see

this as an ongoing part of the developmental process of the Scrutiny function. Training for new Scrutiny members will be essential especially in work planning and questioning and chairing skills. Refresher training for re-elected members is also seen as an important part of the process. [18.28]

## **1. BACKGROUND**

1.1 On 28th September 2001, the States adopted P.122/2001 which agreed that the Island's present Committee system of government would be replaced by a ministerial system combined with a system of scrutiny.

1.2 In adopting P.79/2003 "Machinery of Government: Establishment of Scrutiny Panels and Public Accounts Committee" on 24th July 2003, the States approved a trial period of shadow scrutiny.

1.3 This was established in Jersey following the adoption of P.186/2003 "Shadow Scrutiny: Arrangements and Approval of Chairmen and Members" on 27th January 2004. The purpose of the Shadow period was -

- i) to create opportunities for training both members and officers in developing new skills;
- ii) to include a wide range of members in the shadow process;
- iii) to provide a learning experience
- iv) to develop the practical arrangements for a scrutiny system appropriate for Jersey
- v) to develop guidelines for the Scrutiny process
- vi) to assess the resource requirements for scrutiny
- vii) to develop awareness of the scrutiny function.

1.4 On 27th January 2004, the States adopted a proposition of the Privileges and Procedures Committee, and –

- i) agreed that Presidents of Committee and members of the Privileges and Procedures Committee should be precluded from serving on Shadow Scrutiny Panels and on the Shadow

Public Accounts Committee;

- ii) agreed that the States should, subject to the restriction in paragraph (a) above, appoint forthwith by ballot 2 members to be Chairmen of the 2 Shadow Scrutiny Panels for an initial period of 12 months;
- iii) agreed that the States should, subject to the restriction in paragraph (a) above, appoint forthwith by ballot a member to be the Shadow Chairman of the Shadow Public Accounts Committee for an initial period of 12 months;
- iv) appointed the following as members of the Shadow Scrutiny Panels, and agreed that the Chairmen appointed in accordance with the provisions of paragraph (b) above should rotate membership of the Panels over the initial 12 month period ensuring all the members appointed were able to participate in the shadow scrutiny process –

Senator J.A. Le Maistre;  
Senator P.V.F Le Claire;  
Senator E.P. Vibert;  
Connétable of St Brelade;  
Connétable of St Mary;  
Connétable of St Helier;  
Connétable of Grouville;  
Deputy R.C. Duhamel of St. Saviour;  
Deputy of St. John;  
Deputy G.C.L. Baudains of St. Clement;  
Deputy J.L. Dorey of St. Helier;  
Deputy G.P. Southern of St. Helier;  
Deputy S.C. Ferguson of St. Brelade;  
Deputy J.A. Hilton of St. Helier;

- v) approved the protocols and guidelines for the operation of shadow scrutiny as outlined in the Appendix of the report of the Privileges and Procedures Committee dated 4th December 2003;
- vi) charged the Privileges and Procedures Committee, in accordance with its terms of reference –
  - (a) to maintain an oversight of the shadow scrutiny process to ensure that the process was used to develop a robust scrutiny framework after the introduction of ministerial government; and
  - (b) to report to the States on the operation of the shadow scrutiny process, after consultation with the Chairmen and members of the Shadow Scrutiny Panels, at not less than 5 months before the introduction of ministerial government.

1.5 At the same meeting, the States appointed Senator E.P. Vibert and Deputy J.L. Dorey as Chairmen of the Shadow Scrutiny Panels and Deputy S.C. Ferguson as Chairman of the Shadow Public Accounts Committee. [2]

## **2. FINANCIAL AND MANPOWER ISSUES**

2.1 In adopting P.186/2003, the States noted that the Privileges and Procedures Committee had a budget of £250,000 for 2003 and a similar sum for 2004, with the unspent balance from 2003 being carried forward to 2004. A bid would be made by that Committee in the 2005-2007 Fundamental Spending Review process for the funding required for the full scrutiny process in the ministerial system of government.

2.2 With regard to manpower, five secondment positions were made available, these being for four Shadow Scrutiny Officers and a Scrutiny Administrator. Three of the Shadow Scrutiny Officer secondments (Mr M. Haden, Mrs. C. Le Quesne and Mrs. K. Tremellen-Frost) were filled on 9th February 2004 with the fourth post (Mr. C. Ahier) commencing on 10th May 2004. The administrator (Mrs. F. Bryans) moved to the Scrutiny section during April 2004.

### **3. CHAIRMANSHIP OF SHADOW PANELS AND SHADOW PUBLIC ACCOUNTS COMMITTEE (SPAC)**

Senator E.P. Vibert <sup>[3]</sup>	27.01.04 to 26.01.05	Note: Senator Vibert continued as Chairman of the Panel reviewing the draft Waste Strategy until 31.03.05
Deputy J.L. Dorey	27.01.04 to 26.10.04	
Deputy R.C Duhamel	27.01.05 to date	
Deputy G.P. Southern	27.01.05 to date	
Deputy S.C. Ferguson <sup>[4]</sup>	27.01.04 to date	SPAC

#### 4. MEMBERSHIP CHANGES

4.1 Since the date of appointment of the original members above, there have been numerous changes of membership over the Shadow Scrutiny period. This was largely due to the pressure of work as some members were serving on both the Scrutiny Panels and Committees or were Parish Connétables.

4.2 The following members resigned as follows -

Senator P.V.F. Le Claire <sup>[5]</sup>	18.02.04	Became member of PPC
Connétable of St. Mary	20.04.04	Workload
Connétable of St. Helier	19.05.04	Workload. Later reappointed on 27.01.05
Connétable of St. Brelade	08.10.04	Ill health
Deputy J.L. Dorey	26.10.04	Became member of EPSC
Deputy G.P. Southern	08.10.04	Review issue - reappointed 26.10.04
Connétable of Grouville	26.01.05	Move to SPAC
Deputy G.C.L. Baudains	13.05.05	Negative responses to scrutiny.

4.3 The following members were appointed to the Scrutiny process subsequent to 27th January 2004 -

Deputy J. Reed	17.02.04	appointed to SPAC, subsequently also appointed to Chairmen's Committee on 01.03.05
Deputy F.J. Hill	25.05.04	
Deputy M. Dubras	30.06.04	
Deputy J. Martin	18.01.05	
Deputy J. Bernstein	01.02.05	
Deputy J.L. Dorey	01.03.05	appointed to Chairmen's Committee

## **5. CHAIRMEN'S COMMITTEE**

5.1 The principle behind the establishment of a Chairmen's Committee was to confirm and allocate the final work programme, discuss progress and ensure consistency of approach, allocate resources and advise the Privileges and Procedures Committee on progress and issues occurring during the shadow phase.

5.2 The intention was that the Chairmen of the Scrutiny Panels and the SPAC, together with the Shadow Chairman of SPAC would constitute the Chairmen's Committee

5.3 In the first year of the operation of Shadow Scrutiny the Chairmen's Committee met on just one occasion. Since January 2005 when new Chairmen were elected to the Scrutiny Panels, the Chairmen's Committee has met on regular occasions and has held seven meetings between January and August 2005. On 1st March 2005 the States appointed Deputies J.L. Dorey and J. G. Reed to serve on the Chairmen's Committee as independent members.

5.4 Mr. T. Dunningham stepped down from the Chairmen's Committee in April 2005 as he felt that the Committee was a political forum and it was inappropriate for him to express views at this level.

## 6. SHADOW SCRUTINY PANELS

### Meetings

6.1 The Panels have held the following number of Panel meetings -

	Dorey	Vibert	Duhamel	Southern	SPAC	Total
Planning meetings	12	19	13	12	24	80
Public hearings	3	17	1 <sup>[6]</sup>	6	2	29
Private and Confidential hearings	1	2	0	1	8 <sup>[7]</sup>	12

*Note: SPAC has also held a number of informal meetings for presentations by departmental officers.*

6.2 The total number of witnesses to have attended on the Panels to give evidence since the first hearing of 31st March 2004 to the time of writing is as follows:

	AES	Drug Use	GST	Migration	Tourism Relocation	Trust Port	Waste Management	Water Resources
Witnesses	20	17	2	15	6	12	42	18
Appearances	24	17	2	17	6	12	52	18
Organisation/Committee	13	13	2	10	4	8	20	9

### Review Areas

6.3 The Scrutiny Panels have undertaken and completed a total of eight reviews as follows -

- Agri-Environment Scheme
- Responding to Drug Use
- Future of Jersey Harbours
- Draft Water Resources Law 200-
- Draft Waste Management Strategy (Interim and final report)
- Jersey Tourism - relocation and lease
- Migration Policy: monitoring and regulation
- Goods and Services Tax (Interim Report currently being drafted)

6.4 A table illustrating the time span the reviews have taken is included at **Appendix A**.

### 6.5 Costs Per Review

The costs detailed below show the breakdown of expenditure per Scrutiny review. They do not include other costs related to such matters as accommodation, staffing etc.

**Agri-Environment Scheme (2004)**

£

Advertising	128.48
Fees & Expenses (Advisers)	2127.95
Transcription	3423.80
Other	181.90
<b>Total</b>	<b>5862.13</b>

**Trust Port (2004)**

£

Advertising	125.87
Fees & Expenses (Advisers)	697.74
Transcription	2164.20
Other	120.00
<b>Total</b>	<b>3107.81</b>

**Waste Management Strategy (2004)**

£

Advertising	242.75
Fees & Expenses (Advisers)	9705.08
Transcription	4803.50
Other	5159.84
<b>Total</b>	<b>19911.17</b>

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**Waste Management Strategy continued (2005)**

£

Advertising	
Fees & Expenses (Advisors)	1041.40
Transcription	1500.00
Other	144.00

<b>Total</b>	<b>2685.40</b>
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**Water Resources Law (2004)**

£

Advertising	206.28
Fees & Expenses (Advisors)	11186.95
Transcription	1675.50
Other	266.00
<b>Total</b>	<b>13334.73</b>

**Migration Policy (2005)**

£

Fees & Expenses (Advisors)	4000.00
Transcription	3582.00
Meals/entertainment	107.50
<b>Total</b>	<b>7689.50</b>

**GST (2005)**

£

Advertising	214.20
Fees & Expenses (Advisors) Approximation	11000.00
Transcription	552.00
Meals/entertainment	275.50
<b>Total</b>	<b>12041.70</b>

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**Tourism relocation and lease (2005)**

£

Transcription	764.00
<b>Total</b>	<b>764.00</b>

**Responding to Drug Use (2004)**

£

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Advertising	103.14
Other	23.29
<b>Total</b>	<b>126.43</b>

6.6 The Chairmen's Committee agreed that in future, any evaluation of the Scrutiny function should include a more detailed analysis of expenditure.

#### *Protocols*

6.7 The Shadow Panels initially devised protocols under which they would conduct their business and be able to monitor the shadow scrutiny process. These are available on the website -

- i) Panel members - evidence and witnesses
- ii) Witness protocols
- iii) Media and Panel Member Protocols
- iv) Members of the public during hearings
- v) Guidelines for officers

#### *Administration of individual reviews*

6.8 The general administration of each review took the following procedure -

- i) Decision of review topics<sup>[8]</sup>
- ii) Scoping of review
- iii) Terms of Reference
- iv) Call for evidence
- v) Consideration of appropriate witnesses
- vi) Preparation and compilation of questions for witnesses
- vii) Briefing witnesses prior to hearing
- viii) Holding of public (or private) hearings - recorded, log-notes taken and in most reviews transcription undertaken
- ix) Transcripts circulated to witnesses for comment on technical matters
- x) Consideration of evidence and further hearings/research if necessary
- xi) Assimilation of all evidence, drafting of report, consideration of findings and recommendations.
- xii) Presentation of final report to States
- xiii) Response from Executive within three months

#### *Information gathering*

6.9 Panels employed a range of means of gathering evidence beyond the request for information from the relevant Committees and beyond a public call for written submissions through usual media channels. Officers undertook a wide range of in-depth research into most review areas which involved not just use of the internet but also engaging with colleagues in other jurisdictions to benefit from experience in these areas. On one occasion, a call for evidence was sent to libraries and parish halls for display on notice boards but it is not believed that this generated much response. In another review, a range of measures were taken to encourage individuals to make their views known on a confidential basis. Specific interest groups were also contacted directly for one of the reviews and asked to forward any written submissions they felt to be relevant to the terms of reference of that review. In one of the larger reviews, a considerable number of site visits were undertaken to ensure that the information which had been forthcoming was accurate and to gain a deeper understanding of current practices and potential technical processes.

#### *Engaging with the public and the media*

6.10 The House of Commons Liaison Committee in its 2003-2004 Annual Report stated: -

“Gaining the attention of the public and the media is a worthy objective for two principal reasons: if the public are better informed about how they are governed as a result of Ministers and officials having publicly to explain their actions as part of a select Committee inquiry, a fundamental requirement of a functioning democracy has been served; secondly, the more public interest there is in a particular inquiry, the greater will be the public debate that it generates, and the more pressure there will be for the Government to recognise the importance of the recommendations based on the evidence received. Therefore, gaining the attention of the public and the media is a necessary select committee objective”<sup>[9]</sup>

Whilst there has been an attempt to engage the public, it is considered that this is an area which will merit from ongoing development.

#### *Transcription*

6.11 Three out of the four Panels decided that transcription would be essential for accurate recall of information and to assist in developing further questions and the final report. There being no suitable local company to provide this service, the Panels decided to outsource this. Two companies were trialled, namely, Smith Bernal Wordwave and Marten Walsh Cherer Limited. It was decided that the latter provided a speedy, accurate and efficient service and all three Panels using transcription decided to use the services of this company.

6.12 Some research was undertaken to retain the services of a partially sighted individual recommended by the Employment and Social Security Department. This was investigated by the States Greffe but not pursued due to equipment and accommodation difficulties.

#### *Review Evaluation*

6.13 It was determined that a review group for each individual review as constituted in P.186/2003 would be inappropriate given some of the issues which had arisen throughout the shadow period. The review has, however, been undertaken as described below.

6.14 The Vibert/Duhamel and Southern Panels undertook a review of the overall process based on the terms of reference as set out in P.79/2003 and the Guidelines set out in P.186/2003.<sup>[10]</sup>

6.15 An evaluation of the overall process for each specific review has been undertaken and has taken the following format.

- i) Scrutiny Panels undertook own evaluation of each review
- ii) States members who appeared as witnesses were requested to feedback through the Scrutiny Office to Deputy J.G. Reed who was nominated by the Chairmen’s Committee to undertake this evaluation as an independent member of that Committee who had not been involved in the work of any of the four Scrutiny Panels
- iii) Departmental Officers were given the opportunity to feedback either in written form or at a meeting with Scrutiny Officers
- iv) Scrutiny Officers provided feedback to Deputy Reed who was acting in the same capacity as with States members appearing as witnesses.
- v) The Department Officers who had attended on the Shadow Public Accounts Committee

(SPAC) provided feedback to Deputy J.L. Dorey who had been nominated by the Chairmen's Committee to undertake this as an independent member of that Committee and not involved in the work of SPAC

6.16 In the main, feedback was readily forthcoming, especially from Departmental Officers. Feedback on some of the reviews from some States members remains outstanding which is disappointing. A summary of the feedback comments received is contained at **Appendix B**.

6.17 The following matters have been afforded a separate section specifically dedicated to them as they have been a major focus throughout all the reviews. They are:-

- Advisers
- Call-In
- Declaration of Interest
- Legal Advice
- Legislative scrutiny
- Budget Scrutiny
- Powers of Subpoena
- Training

#### *Committee Responses*

#### **Responding to Drug Use**

6.18 The Health and Social Services and Home Affairs Committees provided a detailed response to the Panel's 21 recommendations, concluding that the review had confirmed that 'we are going in the right direction' as well as highlighting some areas to address. (SR1 Res)

6.19 The response also drew attention to the cost of the review to the Departments concerned in terms of the time commitment of senior officers working on submissions and responses to the review. They recommended that, where possible, Committees are given sufficient notice of the intention to conduct a scrutiny review in order to allow key officers the opportunity of re-prioritising their workload.

#### **Agri-environment Scheme**

6.20 The need for a response to the Panel's report was circumvented by a report and proposition to the States P.220/2004 from Senator R.J. Shenton which was approved by the States on 8th December 2004.

#### **Future of Jersey Harbours**

6.21 No formal response has been received from the Committees involved, namely the Harbours and Airport, Policy and Resources and Finance and Economics Committees.

#### **Draft Water Resources (Jersey) Law 200-**

6.22 The Environment and Public Services Committee provided a detailed response to the Panel's recommendations, rejecting the Panel's principal conclusion that the introduction of the Law should be delayed pending further investigations. A group was set up by the Department to discuss with the Water Diviners and Engineers Association the possibility of further investigations into deep water resources.

6.23 The Committee declared its intention to present the draft Law to the Assembly for debate as soon as practicable. The Law is currently awaiting confirmation of human rights compliance from the Attorney General.

## **Jersey Tourism: relocation and lease**

6.24 There was no formal response from the Economic Development Committee as a debate in the States on its deferred proposition proceeded as soon as the Panel's report was presented to the States.

## **Draft Waste Management Strategy (Interim and final report)**

6.25 A response from the Environment and Public Services Committee was presented to the States on 31st May 2005. The Committee commented that it recognised "the contribution of the Scrutiny Panel in raising the level of debate on the Solid Waste issues, and wishes to thank the Panel for its work and effort in putting this important matter into the public domain". Further work was undertaken in respect of the draft Solid Waste Strategy which was adopted by the States, as amended, following substantial work by one of the Scrutiny Panels, on 13th July 2005.

### **Migration Policy: monitoring and regulation**

6.26 The Policy and Resources Committee responded to the key findings and recommendations in the Panel's report. The Committee supported each of the recommendations in principle with the exception of the final recommendation to delay the debate of the policy in the States. P.25/2005 was subsequently adopted by the States.

## **Goods and Services Tax**

6.27 The Panel's interim report was lodged on 6th September 2005. The response of the Finance and Economics Committee is awaited.

### *Monitoring*

6.28 The Panels believe that it is important to develop a system of monitoring progress in the implementation of recommendations accepted by the Executive. The Panels should request a progress report from Ministries on key developments subsequent to the completion of reviews.

## 7. EVALUATION OF DRAFT GUIDELINES FOR SHADOW SCRUTINY PANELS

7.1 The Panels reviewed the shadow process based on the draft Guidelines for Shadow Scrutiny Panels which were contained in the Appendix to P.186/2003<sup>[11]</sup>

The terms of reference were as follows -

- i) to hold reviews into such issues and matters of public importance as the Panel. After consultation with the Chairmen's Committee, may decide, and to report to the States with recommendations if appropriate;
- ii) to consider and report on the existing and proposed policy of the Executive;
- iii) to scrutinize all primary legislation, consider possible amendments if appropriate, and report thereon to the States before the legislation is adopted by the States;
- iv) to consider subordinate legislation before it is made by the States, or after it is made by a Minister as appropriate and, if the Panel so decides, scrutinise such legislation and report thereon to the States and the Executive with recommendations;
- v) to scrutinise proposed international conventions and agreements before they are extended to the Island;
- vi) to scrutinise the draft annual Resource Plan and Budget and other financial proposals of the Executive and report thereon with recommendations;
- vii) to liaise with the Public Accounts Committee through the Chairmen's Committee to ensure appropriate co-ordination of the scrutiny function.

There were four main areas that the Shadow Scrutiny Panels were tasked to consider. These were -

- a) Policy
- b) Primary/Subordinate legislation
- c) Resource plan/Budget
- d) Other matters of public interest

**7.2 The Chairmen's Committee will be presenting to all States Members for consultation all States members a draft Code of Practice for Scrutiny developing the comments contained in the following paragraphs.**

*Terms of Reference: General*

7.3 The Panels have focussed in the Shadow period on reviews into matters of public importance and existing and proposed policies of the Executive. They have not attempted to follow the process outlined in P.79/2003 in respect of legislative scrutiny. It was considered that it would not have been possible to consider all primary legislation and if this were to be adopted by the States for the future Scrutiny Panels, together with the scrutiny of subordinate legislation, a dedicated Panel would be required with dedicated resources. Further consideration of legislative scrutiny is contained in Section 13 of this report.

7.4 Further to the above, it had proved impractical to scrutinise proposed international conventions before they are extended to the Island. It became apparent that it was necessary for the Executive to inform the Scrutiny Panels of international conventions under consideration for a Panel to be able to undertake such scrutiny.

7.5 There had been an attempt to scrutinise the Budget but not the Resource Plan due to insufficient resources. The implications in scrutinising the entire Budget are enormous both in manpower requirements and time-input of Panel members. Following one area of the budget through the process is in itself, an extremely large and lengthy task. Further consideration of Budget scrutiny is contained in Section 14 of this report.

### *Objectives of Shadow Scrutiny*

7.6 The majority of the objectives listed in the Guidelines had been achieved within the Shadow phase with the exception of the inclusion of a wide range of members. The Panels commented on the objectives as follows -

(i) **Including a wide range of members:** Despite continued attempts to encourage more members to join the shadow scrutiny function, the numbers involved have been limited. The Panels recognise that the workload of Scrutiny Panel members is substantial and time-consuming and understand that during the shadow phase some members would have been unable to manage such a workload and their Committee workload. There are, however, members who have served on neither scrutiny nor Committees and this is of concern. **The Panels believe that it will be essential under the ministerial system of government for all non-Executive members of the Assembly to be actively involved in the Scrutiny process.**

(ii) **Providing a learning experience - A wide range of training opportunities** had been made available during the Shadow period. Further consideration of Scrutiny training is contained in Section 17 of this report. **Panel members stressed the importance of on-going training including both in-house training and specific training in chairing and questioning techniques.**

(iii) **Developing Guidelines and practical arrangements** Protocols have been formulated and assessed in practice. Feedback forms completed by witnesses following attendance at a hearing had all been positive. It is recognised that the Guidelines will be under continuous development as the process beds in.

(iv) **Assessing Resource requirements:** Experience during the Shadow period has proved the importance of adequate resourcing. While financial resourcing has been satisfactory to meet the needs of the Shadow Panels, it is clear that expenditure on external advisers has the potential to absorb significant amounts of the budget allocation to scrutiny. In addition, the manpower resources available to support the Panels have been stretched to meet the programme of work which the Panels wished to undertake. It has been necessary to postpone some work due to the current limitations of scrutiny officer support. It is likely that the Panels will wish to undertake even more work in the future once Non-Executive members relinquish their Committee responsibilities and this is a matter which the Chairmen's Committee will need to keep under review.

### *Chairmanship*

7.7 The Shadow process has demonstrated to those involved that the range of skills required in the Chairman of a Panel is very different to those of a President of a traditional States Committee.

7.8 In accordance with the Guidelines the chairmanship of the Panels was changed after the initial

period of twelve months to give various members the opportunity to experience the role. In one of the Panels, chairing of public hearings took place on a rotation basis in order to provide each member with learning opportunities.

7.9 Training in the art of chairing has also taken place during the shadow period.

#### *Shadow Chairmen's Committee*

7.10 In the first year of the operation of Shadow Scrutiny the Chairmen's Committee met on just one occasion as it had difficulties in establishing itself. The vacuum left by this was filled by the Privileges and Procedures Committee until January 2005 when new Chairmen were elected to the Scrutiny Panels. Since that date, the Chairmen's Committee has met on regular occasions and has held seven meetings between January and August 2005. On 1st March 2005 the States appointed Deputies J.L. Dorey and J. G. Reed to serve on the Chairmen's Committee as independent members. The Chairmen's Committee believes that it has served a valuable purpose in the last year in having an overview of the shadow scrutiny function and in the co-ordination of that process. Any future Chairmen's Committee should continue to operate in a similar manner.

**7.11 The Panels believe that a strong and effective Chairmen's Committee will be essential to the smooth operation of scrutiny. Its role should be to co-ordinate functions such as final work programmes, allocate resources fairly between the Panels and monitor the progress of reviews. It should also continuously review practice and procedures and ensure value for money.**

**7.12 The Chairmen's Committee as the representative body for the Scrutiny function should seek to develop good communication links with the Council of Ministers.**

#### *Code of Conduct (Panel Members)*

7.13 **Personal criticism:** The Panels believe that robust questioning of other members in positions of Executive responsibility has been, and must always remain, a key element of scrutiny. The focus should remain on political judgement and this should not be confused with personal criticism.

7.14 **Personal agendas:** The Panels are aware that there has been some criticism during the Shadow period of Panel members pursuing issues which have previously concerned them either as members of Committees or in individual campaigns. The Panels believe that it is natural for members to persist in investigating issues where they believe that a satisfactory resolution has not been achieved. Individual members will need to persuade other Panel members that their interests deserve a priority against any other issues proposed for scrutiny. This will provide an adequate safeguard against undue intrusion of personal agendas.

#### *Contact with States Departments*

7.15 With regard to contacts with States Departments most of the terms of reference had been fully achieved with some divergence between the working styles of different Panels. It was recognised that States Departmental officers had been very co-operative, however, **departments would benefit from maintaining full information and financial audit trails which support the Minister's course of action. These should be made readily available to future Scrutiny Panels upon request.**

7.16 The Panels noted that the Guidelines stated that they would not be permitted to question departmental officers directly other than as witnesses at a properly convened hearing. The reasons behind this are understood: it is important that officers are not approached without a co-ordinated plan and that all information collected in response from officers is properly collated through the Scrutiny office. However, the evaluation has shown that a blanket prohibition on approaching officers for information is too inflexible. Suitably prepared fact-finding visits to discuss operational or service details with senior officers can be very beneficial to the Panel in understanding the implications of policy

developments. Feedback has also been received that some officers would welcome this opportunity.

7.17 Officers have on several occasions proved to be important witnesses in the course of a review, giving evidence either in support of the Committee President or on an individual basis. The Panels recognise that questions to officers must be confined to matters of fact and technical operation. Officers should not be put in the position of commenting on the merits of policy.

#### *Witnesses*

7.18 The principal matter of debate arising from the section on witnesses was the issue of briefing forthcoming witnesses of the topics and questions about which they would be asked.

7.19 In general, Panels have endeavoured to inform witnesses in good time about the chief areas of interest and likely lines of questioning so that they can prepare thoroughly for an oral evidence session. Sometimes, however, reviews have gathered pace and time constraints have created difficulties in undertaking this in good time.

7.20 There have also been mixed views from the Panels about the depth to which witnesses should be briefed prior to attending on the Panels. This is a matter for further consideration by the Chairmen's Committee.

**7.21 Training provided by Mr. John Sturrock QC in questioning skills clearly showed that preparation was an essential part of any hearing both on the part of the questioner and the witness and consequently hearings would produce a more beneficial outcome.**

#### *Work Programmes*

7.22 The Panels endorsed the section of the Guidelines on selection of topics and work programming. They believe that adequate scoping of each individual review is an essential element in the overall effectiveness of the scrutiny process. There was a pressure point during 2004/2005 when three reviews were developing concurrently and there was a reduction in manpower due to prolonged sickness. This was an important learning point. Workload and time-scales are important issues which need thorough consideration when planning a review. It is also understood that sufficient time for report drafting and finalisation should be incorporated in the planning phase.

7.23 Reviews should be programmed to commence at different stages throughout the year. Experience showed that starting a number of reviews concurrently placed an extreme workload on both Panel members and Scrutiny officers.

7.24 The work programme should allow sufficient flexibility for the Panels to undertake ad hoc reviews on matters of public interest.

7.25 Developing a forward work programme is a key element in the establishment of an effective scrutiny function. While some forward planning was undertaken at the beginning of each year by the Panels, they believe that such forward planning will be essential through collaborative working with the Executive. **In order to achieve a more transparent approach it is important that the Panels invite Ministers to discuss the priorities of their Departments at an early stage of the planning process. Further details of this approach will be contained in the draft Codes of Practice which are currently in the course of preparation by the Chairmen's Committee.**

7.26 The importance of work programming will be included at an early stage in the training programme for Panel members.

#### *Presentation of Reports*

7.27 The Panels have generally sent relevant draft sections of their reports to principal witnesses in advance of publication so that they might make any factual corrections. **The Panels do not believe that it is appropriate to give advance notice of their findings and recommendations, however, do believe that it is appropriate to issue the report to the relevant ministry at the same time as it is circulated to the media to allow the Minister sufficient time to consider the report prior to being requested for an interview by the media.**

7.28 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 seek a States debate to pursue their concerns

### *Conclusion*

7.29 **The Chairmen's Committee believes that it is imperative to establish collaborative working practices between the Executive and the Scrutiny Panels. This should be two-pronged: there should be regular meetings between the Chairmen's Committee and the Council of Ministers. Secondly, the Chairmen's Committee should encourage regular meetings between the Scrutiny Panels and Ministers of departments as appropriate. These meetings should address forward work programmes and monitoring of whether review recommendations have been implemented.**

## **8. SHADOW PUBLIC ACCOUNTS COMMITTEE (SPAC)**

### *Modus Operandi*

8.1 The Scrutiny Panels examine and challenge policy whilst the SPAC questions whether the policy is delivering value for money.

8.2 In this SPAC is more straightforward than the Policy Scrutiny Panels. There is an underlying premise that transactions should provide value for money for the States. It follows that it should also comply with Codes of Practice and the operations of the States should comply with the principles of Corporate Governance.

8.3 It should be remembered that the Value for Money concept does not necessarily mean the cheapest price. There are other qualities of goods and services to take into account. These might include length of life or adaptability.

8.4 Corporate governance principles provide a framework for the manner in which the States goes about its business. As far as SPAC, and the Audit Commission before it, are concerned accountability and transparency are particularly important.

8.5 There are areas where there it is possible that there might be an overlap with the Scrutiny Committees. This underlines the importance of the Chairman's Committee and the discussion of future programmes. Examples of these are shown in the **Appendix D**.

### *Structure of SPAC*

8.6 The policy of the Audit Commission was to assemble a team of members with specialised knowledge in a wide variety of areas. SPAC recognises that this variety is not always possible with the elected members and the States has agreed to retain the presence of independent members so that the advantage of this broad experience will be continued.

### *Approach of SPAC*

8.7 SPAC is not a political committee as policies do not come into the remit of SPAC. The objective is more efficient use of resources and hence more cost effective government.

8.8 On the whole SPAC hearings have been detailed and searching but not hostile.

8.9 There have been two types of hearing conducted by SPAC. The first type has been informational hearings conducted with the Chief Officer and perhaps the financial or other officer. Certain generic questions have been supplied beforehand with follow-up questions relating to matters brought up in the discussion or to areas where SPAC members have a particular interest.

8.10 The second type of hearing is directed towards a particular topic. For example sickness levels throughout the States or discussion of a particular audit report. In this second type of hearing, the subject is focussed. Some broad general queries have been supplied beforehand where the subject is extensive.

8.11 The discussion of the report of the external auditors to the States falls into this second category. The format of this is slightly different in that the auditors make a presentation which is then followed by questions.

### *Subject Matter of SPAC*

8.12 Subjects for investigation have arisen from a number of sources. The main source is that of the audit reports issued by the Chief Internal Auditor. However, other topics represent a review of areas formerly investigated by the Audit Commission in order to establish progress in following the recommendations of the Commission. Some investigation has followed up reports to the States whilst other concerns have arisen from observation and knowledge of the operations of the public sector.

#### *Opinion of SPAC*

8.13 SPAC has not been able to cover as much ground as it would have liked due to the lack of personnel. This is due to a combination of circumstances. The Audit Commission had two value for money auditors devoted exclusively to the Commission. The two posts were removed from the Internal Audit Department as part of the FSR spending cuts and were then held in abeyance prior to the appointment of the Comptroller and Auditor General. Consequently, for the first year of the SPAC, a considerable amount of work was done by the Chief Internal Auditor in addition to her normal workload. This was not the most efficient method of working as well as causing certain apparent conflicts of interest. As a result SPAC was allocated a newly appointed part time scrutiny clerk. This clerk, although extremely competent, has had to deal with normal scrutiny work as well as a great deal of SPAC work in areas with which he was unfamiliar. [Section 9 refers]

8.14 This “practice” period of operations for SPAC was extremely useful and should enable the Committee to “hit the ground running” when the PAC commences operations under ministerial government. It is, perhaps, unsatisfactory that certain projects may not be completed due to the lack of manpower but solid groundwork has been laid.

**8.15 An evaluation of the Shadow PAC scrutiny process, based on comments from witnesses, was undertaken by Deputy J. Dorey. The report of this evaluation is included at Appendix E.**

## **9. MANPOWER RESOURCES**

9.1 Officer support was provided through the States Greffe as previously stated in Section 2.2 of this report and four full time Scrutiny Officers and an administrative assistant were in post by early May 2004.

9.2 The intention had been that the four officers would provide support to the two Shadow Scrutiny Panels and some administrative assistance to the Shadow Public Accounts Committee.

9.3 Initially a large amount of work was undertaken for the SPAC by the Chief Internal Auditor. This was in addition to her normal workload.

9.4 This working practice gave cause for concern regarding a potential conflict of interest: namely the Chief Internal Auditor reporting to the Treasurer of the States and also undertaking work on behalf of SPAC which could be investigating Treasury matters.

9.5 Due to these circumstances, it became necessary to release one of the Scrutiny Officers from part of the work of the Scrutiny Panels to undertake in-depth SPAC work. This eventually necessitated releasing that Officer completely from the work of the Scrutiny Panels. This situation was far from satisfactory in that it had an effect on the work of the Scrutiny Panels and the Officer was unfamiliar with the specific work of SPAC.

9.6 It was unfortunate that further manpower difficulties were experienced due to long-term sickness in the Scrutiny Office which, in effect, meant that the two Scrutiny Panels were being supported by two full time officers to undertake a large amount of outstanding work.

### *Conclusion*

9.7 It is essential that in the future all Scrutiny Panels including the PAC are fully supported by appropriately experienced staff. A Comptroller and Auditor General has recently been appointed by the States and it is anticipated that he will have the support of two Value for Money Auditors.

9.8 In order to provide the necessary manpower resources to future Scrutiny Panels, support from the Scrutiny Office to the PAC will be limited and consideration of this is ongoing.

## 10. ADVISORS

### *Introduction*

10.1 This paper outlines the experience of the Panels during the Shadow period in respect of the appointment of advisors and how the appointment process might be undertaken by Panels under the new ministerial system of government. The principal issues are -

The identification of suitable advisors  
Recruitment process to be used  
Terms of employment and project brief  
Budget and remuneration in accordance with Treasury Code of Direction No. 27

### *Advisors retained during the Shadow period*

10.2 The Panels have during the Shadow Scrutiny period, retained the services of a number of advisors for some to the reviews dependant upon the complexity of the subject and the experience of the Panel members. The appointment of advisors was in accordance with details provided in P.186/2003 where it is stated -

'In addition to designated officers, a small budget has been allocated for the engagement of consultants where appropriate. The allocation of this budget will be at the discretion of the Chairmen's Committee in liaison with the Privileges and Procedures Committee.'

Details of those appointments are as follows -

#### *(a) Agri Environment Scheme Review - Mrs. J. Dwyer*

10.3 The Panel selected Dr. Janet Dwyer on the basis that she had previously been retained by a States Department and was well respected within the industry. The selection of Dr. Dwyer was endorsed by the Chairman's Panel and the Privileges and Procedures Committee. The criteria for the appointment was as follows and was outlined in the Agri -Environment Scheme Report SR2/2004 published in November 2004-

- i) The Panel employed Dr. Janet Dwyer, MA (Natural Sciences), PHD (Agricultural Economics), who is currently employed as Reader in Rural Studies at the University of Gloucester as an independent adviser to the Panel.
- ii) Dr. Dwyer has considerable experience of sustainable agriculture and rural development, including mechanisms for, effective nature conservation and landscape management in the United Kingdom and throughout Europe. She has also served as a specialist adviser to Parliamentary inquiries on hedgerows and biodiversity.
- iii) Dr. Dwyer had gained considerable knowledge about Jersey's countryside whilst reviewing and providing an analysis and comparison of the Agri-Environment aspect of the Policy Report 2001 with other schemes in the United Kingdom and Europe.

10.4 The total cost of retaining the services of Dr. Dwyer inclusive of her daily fee, travel and subsistence costs was £2127.95. Dr. Dwyer charged the Panel the same fee which she is paid when retained by UK authorities which is £100 daily plus reasonable expenses. The Panel felt that it received value for money and that the brief that it had agreed with Dr. Dwyer prior to her engagement had been fully met.

*(b) Water - Dr. S. Sutton*

10.5 The Panel decided that given the level of technical information to consider with this review it would need the assistance of an advisor. The Panel approached two candidates and decided that Dr. Sutton's expertise better matched its requirements and on that basis it sought to retain his services.

10.6 Dr. Stuart Sutton was an Associate Director Entec United Kingdom Limited and had previously provided comments on the report of the British Geological Survey on Jersey Groundwater.

10.7 The Panel sought the endorsement of the Chairman's Panel and the Privileges and Procedures Committee.

10.8 The total cost of retaining the services of Dr. Sutton was approximated at £7,110. The final cost inclusive of travel and subsistence was £11,186.05. The Panel received a written quotation from Dr. Sutton prior to his services being retained, his daily remuneration was set at £790 per day plus reasonable expenses and it was provided with his terms of business. The Panel was content that Dr. Sutton had fulfilled the brief he had been provided with.

Dr. Sutton was retained by the Panel as its advisor and also gave evidence as a witness. This dual role has not been applied with all advisors.

*(c) Waste Management - Professors J. Swithenbank and C. Coggins.*

10.9 The Panel initially decided to appoint one advisor to the Panel and having identified Professor Swithenbank as suitably qualified, appointed two advisors to this review to deal with the various technological aspects -

10.10 Professor J. Swithenbank, B.Sc., Ph.D., EEng., FInst.E., FCh.E - Chartered Engineer, Director of Sheffield University Waste Incineration Centre

("Note: During December 2004, the Panel was advised that Professor Swithenbank had become Chairman of SELCHP (South East London Combined Heat and Power) which is owned by a consortium including two of the London Local Authorities and three industrial Companies, only one of which is ONYX. The appointment was designed to provide an independent balance between the various interests.")

Professor P. C. Coggins, BSc., PhD., FCIWM., FRGS (with IBG)

10.11 Professor Swithenbank had extensive expertise in incineration whilst Professor Coggins provided the Panel with expertise in alternative technologies and treatment of waste streams. Professor Swithenbank was identified as a potential advisor on recommendation and through his links with the University of Sheffield. Professor Coggins was recommended to the Panel by Professor Swithenbank.

10.12 Professor C. Coggins was retained by the Panel as its advisor and also gave evidence as a witness. This dual role was not required of Professor J. Swithenbank

10.13 The total advisor cost for the review inclusive of all expenses was £10,746.48 the daily rate in respect of both advisors was negotiated at £450 per day.

*(d) Goods and Services Tax - Mr. P. Frith and Mr. R. Murphy*

10.14 The Panel approached a number of official bodies including The Chartered Institute of Taxation (CIOT) and the Institute for Fiscal Studies (IFS) to identify potentially suitable individuals to undertake the role of advisor for the review. The Panel also approached individuals from the local finance industry

to assist them in the selection of potential advisors. The following review advisors were selected upon recommendation and were appointed on the basis of their individual expertise in addition to their availability. The Panel interviewed both advisors prior to their engagement.

- i) Mr. Paul Frith, Fellow of the Chartered Institute of Taxation, Member of the Society of Trust and Estate Practitioners. Mr. Frith did not charge the Panel for his services.
- ii) Mr. Richard Murphy BSc FCA, Chartered Accountant, Director, Tax Research Limited. Mr. Murphy was retained on the basis of 14 days at £450 and subsequently £750 per day (8 hours). The total advisor cost to date for the review inclusive of all expenses was £9,266.07

10.15 The Panel received correspondence expressing concern over the selection of Mr. Murphy as one of its advisors. The Panel consulted the Privileges and Procedures Committee and subsequently decided to retain the advisor of its choice. At the time of the appointment of its advisor it was aware of his views on the local tax position. However, it did not consider that the outcome of the review could be pre-judged on that basis. The Panel retained the services of Mr. Paul Frith, a locally based professional to ensure an alternative view and to provide what it considered would be a balanced approach to the review. This model of two advisors working on other reviews with differing views or perspectives had previously been successful. The Panel was of the opinion that it was difficult to identify an expert individual who would not have made a statement in public on one side or another on this important subject.

*(e) Migration - Advocate T. Hansen, Hansen Renouf Partners*

10.16 On this occasion the Panel decided to retain the services of a legal advisor on the basis that it was unable to obtain the necessary support from the Law Officers Department on the basis of time constraints. *See separate section.*

*The use of independent Panel Advisors in addition to professional advice received by the Ministry Policy/Decision under Review*

10.17

<b>Advisor role</b>	<b>Agri Env</b>	<b>Water</b>	<b>Waste</b>	<b>GST</b>
Involvement in drafting Terms of Reference	No	No	No	No
Preparation of questions	Yes informally	Yes written questions prepared and submitted	Yes informally	Yes written questions prepared and submitted
Questioning at the hearing	Yes	Yes	Yes	Yes
Giving evidence	No	Yes	Prof. Coggins <b>Yes</b> Prof. Swithenbank	No

			<b>No</b>	
Producing summary and analysis of the evidence received	No	Yes	No	Informally
Producing information briefs	No	Yes technical assessment	Yes	Yes
Assist with the drafting of the review report	No	No	No	Key points only provided

#### *Experience during the Shadow period*

10.18 The Panel had positive experiences when using advisors to assist with reviews. The Panel faced some challenges in identifying suitable individuals to meet its requirements and was obliged to seek the expertise from the United Kingdom. The diversity of costs was marked with advisors having differing views on their charging structure although the quality of the advice received was considered by the Panels to be satisfactory to the requirements of the reviews and the project briefs were met on each occasion. It may be of benefit to consider at what point advisors are sought in the review process and whether they might be involved as early as developing the defined terms of reference following the initial subject scope. It will also be important for Panels to decide to what extent they wish advisors to participate in the reviews and whether they should attend all hearings to ensure that they are fully conversant with the progress and direction of the review.

#### 10.19 Matters for further consideration -

- i) How might suitable advisors be identified?
- ii) Should they only be identified through accredited bodies and professional associations?
- iii) Should the Department related to the review be asked to provide a list of professional organisations which could be approached to identify a suitable individual for the role?
- iv) Should an advisor be called as a witness?
- v) Is it acceptable that timescales dictate the ability of a Panel to fully investigate and select a suitable advisor?
- vi) Should Panels tender both locally and in the UK for advisors?
- vii) Should a definitive brief be provided to the advisor together with a Contract and terms of employment?
- viii) What are considered to be acceptable levels of remuneration?

#### *Freedom to select advisors*

10.20 The Panels have been challenged on selection processes particular with regard to the GST review and although the process was questioned the Panel maintained its choice. It was suggested that the Panels should be free to select the advisor of their choice on the basis of that individual's expertise and experience without consulting the Executive and that subject to the justification of retaining a particular advisor and outlining the draft budget for the appointment it should be endorsed by the Chairmen's Committee. Advisors were identified through their association to recognised professional bodies or through recommendation.

#### *Views of the Privileges and Procedures Committee*

10.21 The Privileges and Procedures Committee has during the Shadow Scrutiny period supported the Panel's selection on each occasion that they have appointed advisors. An anticipated budget has been provided with the request for consideration in most instances.

#### *Independent legal advice*

10.22 The Panels have on one occasion sought external legal advice and this area is covered comprehensively in another section of the report.

#### *Development of a register of potential local advisors to provide support for the Panels*

10.23 The appointment of advisors during the Shadow period has identified a huge variance in cost dependant upon the individuals and their charging structures. The additional cost of transport from the UK has been the norm with the appointment of advisors in most instances. The retention of one advisor on the same rate as paid by Select Committees £100 per day and one advisor at no charge was achieved. It may be that Scrutiny will in the future be in a position to secure the services of more local professionals to assist the panels for a reduced daily fee or at no charge. Through contact with the Committee Secretariat it has been recognised that many jurisdictions develop a register of advisors over a period of time.

#### *The Audit Report*

10.24 Whilst the process for the appointment of advisors including the tendering programme, development of terms of employments and costs are broadly in line with Code of Direction No.27 it would benefit from closer adherence to the guidelines outlined for the management of consultancy projects.

#### *Conclusion*

10.25 A number of points have been learned about the appointment of advisors and there remain outstanding considerations which the Chairmen's Committee will continue to address (detailed in 9.19]. However, when **Scrutiny Panels identify the need for an independent advisor, they should select advisors whom they consider have the appropriate level of expertise to assist them in their enquiries, in accordance with the procedures set down in the relevant States-approved Code of Direction.**

## 11. CALL-IN

### *Background*

11.1 The ability to 'call-in' Executive decisions has been identified as one of the key mechanisms introduced in the United Kingdom Local Government Act 2000 for holding the Executive to account. Recent evidence, however, shows that its use has been infrequent and its capacity to provide a critical challenge to the Executive has been misunderstood (Leach 2005)<sup>[12]</sup>.

11.2 'Call-in' is essentially the ability for Scrutiny Panels to delay the implementation of 'key decisions' taken by the Council of Ministers, individual Ministers, or officers with delegated authority from their Ministers if it is felt that the decision in question is inconsistent with approved policies, appropriate consultation has not taken place or some relevant consideration has been overlooked.

11.3 The 'call-in' mechanism was considered by the States for inclusion among the powers of Scrutiny Panels. However, it was decided, on the recommendation of the Privileges and Procedures Committee, not to introduce this feature during the initial Shadow period. Instead, the Chairmen's Committee was charged to review the matter during the first year of operation of the Panels.

11.4 Although not recommending a 'call-in' mechanism for the Shadow period, the Privileges and Procedures Committee set out how 'call-in' might operate in Jersey. This is included at **Appendix F** to this report.

### *Experiment in 'call-in'*

11.5 The Southern Panel undertook an experiment in 'call-in' when it decided to review the proposition of the Economic Development Committee to relocate the offices of Jersey Tourism (P.22/2005). The Committee agreed voluntarily to a request from the Panel to defer the States debate on its proposition for a two week period to allow the Panel to examine background papers and to interview the President, the Chairman of the Tourism Board and officers involved in the preparing the proposition.

11.6 Strictly speaking this was not a matter of delaying the implementation of an Executive decision. A decision had not actually been taken. The matter was for the consideration of the States, not a 'ministerial' decision. However, other circumstances made this a useful exercise in which to assess the implications of 'call-in':

- i) The issue adequately fulfilled the criteria set out in the appendix to P.79/2003 for calling in a key decision -

The decision involved the financial and environmental benefits the States might receive from the commercial development of the derelict island-site;

The decision would have a significant impact on Liberation Square, an important location in the town area, and on the development of the planned Transportation Centre;

The Tourism Board appeared to not to be supportive of the proposal

The brief delay did not prejudice the commercial development of the area.

- ii) Within three working days the Panel received from the Department for Economic Development and the Property Services Department copies of files containing all reports and background papers relating to the proposition
- iii) Key witnesses attended a public hearing with the Panel at short notice to explain the reasons for the proposed relocation.

- iv) The Panel prepared a report with detailed findings and recommendations in time to inform the debate in the States.

#### *Conclusions from the experiment*

11.7 Experience of this review showed clearly that 'call-in' is resource intensive, demanding a considerable commitment of time of elected members and officers from both the Scrutiny and the Executive sides. It was necessary to suspend work of all other Panel priorities for the two week period in order to focus on the issue which had been called in.

11.8 The Committee's proposition was approved by the States notwithstanding the Scrutiny Panel's challenge to reconsider the proposed course of action. Nevertheless the Panel believed that this was a valuable exercise in 'holding the Executive to account' -

- i) It revealed weaknesses in the decision-making process - alternative options for Jersey Tourism building had not been properly examined;
- ii) Serious questions were raised about the value the States was receiving through the transaction. The Economic Development Committee was obliged to disclose details of the financial arrangements to States members in camera during the States debate;
- iii) States members were better informed about the implications of the relocation.

#### *The case against 'call-in'*

11.9 The arguments against the introduction of 'call-in' as part of the machinery of government changes in Jersey are set out in section 25 of P.79/2003 on the Establishment of Scrutiny Panels and the Public Accounts Committee. They are summarised below:

- i) 'Call-in' could be very resource intensive with few tangible and useful results;
- ii) 'Call-in' might be over-used and unduly delay decision-making by the Executive;
- iii) 'Call-in' would require Panels to monitor long lists of ministerial decisions on a daily basis;
- iv) 'Call-in' is not a feature of national parliaments;
- v) 'Call-in' suggests that the Executive is not to be trusted;
- vi) Scrutiny will be more effective when it sets its own priorities for policy review and development rather than when it simply requests reconsideration of decisions already made.

#### *Why the States should adopt 'call-in'*

11.10 The arguments against the introduction of 'call-in' in P.79/2003 emphasise the proactive role of Scrutiny in conducting in-depth reviews of developing Executive policy as opposed to the reactive nature of scrutinising decisions that have already been made. Indeed, the Panels have focussed on policy review and development in the reports they have produced during the Shadow period. Effective scrutiny, however, has a broader role which includes monitoring the actions of the Executive. This was clearly envisaged in the Clothier report<sup>[13]</sup>:

*"An effective democracy requires not just an Executive but the balance of a strong Assembly which holds the executive to account and scrutinises its actions as well as contributing to the formation of policy"* (paragraph 3.4).

11.11 'Call-in' provides non-Executive members with an important tool which can wield a powerful influence over the Executive. The fact that a decision can be halted for a brief period and the Executive required to explain in public the reasons for its actions can make an important contribution to the democratic vitality of the States, even if the eventual outcome does not bring about a change to the original decision. Sandford (2005)<sup>[14]</sup> writing about the tools and intended outcomes of effective scrutiny in the United Kingdom, acknowledges that scrutiny committees in all tiers of government have limited powers over Executive policy and decision-making:

*"Their actual power rests almost entirely on influence within the political process, strong arguments and attracting public attention. ... The power of 'call-in' of a policy decision gives them a strong sanction against being entirely ignored".* (paragraphs 34 & 35)

11.12 'Call-in' need not be used often in order to be effective. Indeed it is evident that Panels would not have the time or resources to call in decisions on a regular basis. The capacity for Scrutiny to intervene at the last moment should mean that the Executive will keep Scrutiny members informed well in advance of a key decision being taken. This should ensure that Scrutiny members are able to participate, object or submit alternative proposals.

11.13 It is argued in P.79/2003 that if a decision was not called in the Executive might claim, at a later date, that the decision already had the tacit approval of the relevant Scrutiny Panel. Thus any future scrutiny of the decision would be compromised. The Panels do not accept this argument. The Panels may decide that an investigation is required in the future into the operation of a decision to determine whether the objectives set out in the original decision have been met in reality.

11.14 Good means of communication and sharing information with Scrutiny members on key decisions must be developed to enable effective scrutiny to operate. This should not necessarily result in a burdensome and complex system of publishing information as modern electronic systems should enable the easy dissemination of documents. Key decisions, those which have a significant impact on a broad section of the community, will be limited in number and should not overwhelm the Scrutiny Panels in the way envisaged in P.79/2003.

11.15 The fact that 'call-in' is not available to Scrutiny Committees in national parliaments should not necessarily rule out the introduction of this mechanism for Jersey. The States Assembly has a unique constitution composed of independent members without currently a strong political party system to provide a check and balance on the Executive. A Scrutiny function was recommended by the Report of the Review Panel on the Machinery of Government in Jersey (the "Clothier Report"). It stated: *"an effective democracy required not just an Executive, but the balance of a strong Assembly which holds the Executive to account and scrutinises its actions as well as contributing to the formation of policy...it is not necessarily adversarial or destructive".* The report recommended *"the setting up of 3 or 4 Scrutiny Committees to cover between them the whole range of government functions."*

The States now has the opportunity to mould its own system of scrutiny adapted to the unique characteristics of the Assembly drawing on effective tools from any tier of government.

11.16 A major reservation about the introduction of 'call-in' is the suspicion that the mechanism might be used irresponsibly, merely as a tool of opposition to block effective decision-making by the Executive. Negative use of 'call-in', however, will be self-defeating and scrutiny resources will be wasted. On the other hand, the potential for 'call-in' to provide a positive challenge to policies and decisions in a way that adds value has been highlighted by Leach (2005):

*"If scrutiny is to be taken seriously, it must be based on rational argument and the collection and rigorous analysis of evidence. Explicit party political challenges through scrutiny are pointless. It is of no value for an opposition member to 'call in' a cabinet decision (or to try to) on the basis that he or she does not agree with it. There is considerable value in their doing so if they can demonstrate that the proposed decision is based on faulty logic, or that relevant information has*

not been considered, or that a viable option has not been explored, or that the policy has not met the objectives that had been set for it. Challenge mounted on these kinds of arguments should stimulate a lively debate and put pressure on the Executive to take the recommendations from Scrutiny seriously, at the very least, by requiring it to provide a convincing repudiation of the arguments presented". (page 19)

#### *Examples of situations where call-in might be appropriate*

11.17 In order to appreciate how 'call-in' might operate a few theoretical examples are set out below. Some are adapted from examples of issues which have actually been 'called-in' by Scrutiny Committees in the United Kingdom.

- i) A decision by the Minister of Health and Social Services, in the light of budget restraints, to introduce charging for and/or limitations in patient transport services;
- ii) A decision by the Minister of Planning and Environment to approve a planning development brief for a particular site in the town area;
- iii) A decision by the Minister of Housing to privatise property management services;
- iv) A decision by the Minister of Education, in the light of budget restraints, to cut a Youth Counselling facility in the town area;
- v) A decision by the Minister of Transport to agree to certain alterations in bus routes
- vi) A decision by the Airport Director to change the hours of opening at the Airport

#### *Conclusion*

11.18 The Chairmen's Committee favours the principle of introducing a 'call-in' mechanism for the Scrutiny function for the following reasons -

- i) 'Call-in' would provide a mechanism for Panels to play a part in the decision-making process prior to implementation of policies or final adoption by the States.
- ii) 'Call-in' would encourage the Executive to adopt rigorous and open methods of recording and promulgating decisions and proposed decisions. In the event that collaborative working practices develop, there might only be rare, if any occasions when the 'call-in' procedure needs to be used.
- iii) 'Call-in' would provide Scrutiny with the necessary counter-balance against the power and resources of the Executive.

11.19 The Chairmen's Committee recognises that practical reasons prevent the immediate introduction of 'call-in'. Primary legislation in the form of an amendment to the States of Jersey Law would be required in order to introduce this mechanism. It would take time to prepare and introduce this. Meanwhile, the full Scrutiny function will come into force without the power to delay the implementation of Executive decisions.

**11.20 The Chairmen's Committee should work closely with the Executive and consider the decision-making process used by the Executive. It should consider carefully whether the system needs to be strengthened to allow Panels to call for immediate reconsideration of decisions before they are implemented. An essential element of this monitoring will be an assessment of the system of promulgating key decisions. This must operate effectively if the Panels are to fulfil their key function of holding decision-makers to account for their actions.**

## 12. CONFLICTS OF INTEREST

12.1 During the course of the shadow process the issue of declaration of conflict of interest has arisen on a few occasions. This led to the matter being referred to the Privileges and Procedures Committee and a considerable amount of work has been undertaken by this Committee.

12.2 The question of whether potential conflicts of interest other than those of a purely financial nature should be regulated, particularly with regard to the operation of Scrutiny Panels, has already been raised under the transitional period leading to ministerial government.

12.3 There are, however, a number of additional issues to consider. These are matters of degree and proportionality and they include –

- i) the degree to which the interest in question is personal to the Member in question,
- ii) the relevance of interests held by friends or relatives, and
- iii) the relevance of non-pecuniary interests.

### *Witnesses*

12.4 In one instance, during the course of its review of the Agri-environment Scheme a key witness declared a conflict of interest and declined to appear before the Panel in a public hearing. The Panel was requested to accept a substitute witness instead. In the Panel's view this witness had actually been overly cautious in declaring an interest.

### *Panel members*

12.5 During the same time issues arose concerning Panel members having potential conflicts of interest in respect of –

- i) the appropriateness of a Panel member asking questions at public hearings when they had had previous involvement in the review topic whilst serving on the relevant Committee was queried;
- ii) the possibility of a Panel member appearing as a witness because of that previous knowledge;
- iii) a witness appearing before a Shadow Scrutiny Panel contended that he should not be questioned by a particular Panel member who had been a former member of the very group about which he was asking the witness questions.

12.6 The Panel requested that the Privileges and Procedures Committee consider the matter as part of its ongoing review of Standing Orders. After researching these areas and subsequent to considerable deliberation, the Privileges and Procedures Committee decided that

- i) in the first case of declaration of a conflict of interest that the witness had misunderstood the rôle of scrutiny and misconstrued the threat posed by his appearance before the Panel.
- ii) It also determined that it would be inappropriate for Panel members to also appear as witnesses.
- iii) In the case of a witness contending that he could not be questioned by a Panel member due to previous membership of a relevant Committee, the Privileges and Procedures Committee did not support this view. It stated "*were the Scrutiny Panels operating as a court, rather than as a political process, the requirements in relation to the objectivity of the Panel members might be more rigorous. However, the Scrutiny Panels are indeed a political process and there are a number of examples of situations occurring in the Select Committees of the UK House of*

*Commons which might be perceived as being similar to the situation experienced by the Deputy. For example, Crispin Blunt MP has, since 1997, been a member of the Defence Committee, which is engaged in a review of the continuing military operations in Iraq. The fact that he rose to the rank of Captain in the British Army and that, prior to being elected, he was employed as a Special Adviser to the Conservative Secretary of State for Defence and the Secretary of State for Foreign Affairs between 1993 and 1997 did not preclude his appointment.”*

- iv) The Privileges and Procedures Committee concluded that the Scrutiny process was an objective evaluation of the evidence presented which was reflected in the conclusions and recommendations made to the Assembly and in that regard **the need for a witness to withdraw through a conflict of interest should only occur in the rarest of circumstances.** [15]

12.7 It was agreed that

- i) should a person perceive that he has a conflict of interest, he should make this fact known to the Panel at the first available opportunity;
- ii) it was for the Panel to determine whether that witness should appear and give evidence before it.
- iii) If the Panel decided to take evidence, it would as a matter of course make a statement in its final report that a declaration of conflict of interest had been made.
- iv) With regard to a third party assessment of a declared conflict of interest, the Chairmen’s Committee has confirmed with the Privileges and Procedures Committee that this is inappropriate.

12.8 Future Panel members must not conflicted from participating in specific reviews because of previous Committee membership. [11.8]

## **13. LEGAL ADVICE**

### *Legal advice to Scrutiny Panels*

- 13.1. Legal advice has been sought by the Panels on a number of occasions during the Shadow period as part of the preliminary process of gathering evidence on which to base their investigation of the policies of the Executive. Thus, the Panels have approached the Law Officers Department for advice on:
- i. the ownership of underground water, springs and flowing surface water;
  - ii. international conventions relating to the transportation of waste across international boundaries;
  - iii. the Covenant with the Parish of St. Helier regarding disposal of refuse at Bellozanne; and
  - iv. the human rights implications of the Migration Policy in respect of housing and employment regulations.
- 13.2. The Panels have found that legal advice is often an essential element of the technical knowledge which they must acquire in order to comprehend fully the issues under review. In line with paragraph 24.3 of P.79/2003, they have sought in some cases to gain access to advice already given by the Law Officers' Department to the Executive. This issue has been a matter of discussion between the Attorney General and both Panels.
- 13.3. In other cases, for example the transportation of waste, the Panels have asked for clarification of issues which they felt had not been fully covered by the relevant Committee.
- 13.4. In addition, the Southern Panel has exercised the option of seeking private legal advice with regard to the human rights implications of the Migration Policy.
- 13.5. At the time of writing, a full report on the experience of both Panels during the Shadow Scrutiny period regarding the provision of legal advice, including recommendations for the full Scrutiny function, is being prepared by the Southern Panel. It is anticipated that this report will be presented to the States before the end of the current Assembly.

## 14. LEGISLATIVE SCRUTINY

### *Background*

14.1 Legislative scrutiny was highlighted in P.79/2003 as a major innovation for the States. The establishment of a system of scrutiny was seen as an opportunity to introduce a new and improved method of dealing with primary legislation. It was envisaged that a relevant Scrutiny Panel would fulfil the function of a Committee Stage in other jurisdictions once the general principles of the draft legislation had been considered and approved by the States Assembly. This would enable a Panel -

- i) to conduct detailed analysis of complicated legislation;
- ii) to call Ministers and officers from the instructing Department to explain the reasoning behind the content during an article by article consideration of the draft Law
- iii) to hear from Law Officers and/or Law Draftsman
- iv) to invite comments from interest groups, professional bodies or members of the public affected by the draft legislation
- v) to report back to the States and to propose amendments.

### *Experience during Shadow Scrutiny*

14.2 The Panels, however, have not attempted during the Shadow period to follow the process outlined in P.79/2003. Two draft pieces of legislation were, however, considered for pre-legislative scrutiny, that is before they were finalised and lodged au Greffe by the sponsoring Committee:

**Draft Water Resources (Jersey) Law 200-** The Vibert Panel was principally interested in examining the policy rationale for the legislation spending relatively little time on detailed examination of the provisions in the draft. It concluded that the introduction of the legislation as a whole should be delayed pending further investigations into the Island's water resources. The sponsoring Committee, which had brought over to the Island for the scrutiny hearings the environmental lawyer, who had been advising them on the legislation, in order to deal with the detail of the legislation, found itself instead defending the case for the need for the law itself rather than the detail of particular provisions in the draft. The Committee ultimately found little reason to amend the draft as a result of the review and decided that it would proceed in due course to lodge the draft au Greffe for debate in the States in the traditional manner .

**Draft Consumer Safety (Jersey) Law 200-** The Dorey Panel considered scrutinising this draft before it was finalised. However, after a preliminary survey of the draft, the Panel decided not to pursue any further scrutiny.

### *Impediments to legislative scrutiny*

14.3 Whilst being aware that the Law Drafting Programme is approved by the States within the Resource Plan, during the shadow process, the Panels had been unable to determine how the legislative programme was developing in practice. Instead of scrutinising draft legislation, the Panels have focussed on other areas of their terms of reference which allowed for broader challenges to the Executive, namely investigations into matters of public interest and reviewing existing and proposed policy of the Executive. These have proved more attractive to Panels than detailed legislative scrutiny which is a function which has traditionally been undertaken by Committees. There are a number of reasons behind the reluctance of Panels to engage in this process -

- i) The scrutiny of draft legislation involves Panels being responsive to an Executive-driven programme rather than being able to initiate their own enquiries. It is unsurprising that legislative scrutiny has been given lower priority;
- ii) The Panels need to have good advance notice of the Executive's legislative programme if they are to make a constructive contribution, particularly in view of the limited time envisaged under the new draft Standing Orders for Panels to deal with a draft before the second reading in the Assembly (draft Standing Order 72 specifies that the second reading should not be later than the 4th meeting following the debate upon the principles, that is 8 weeks in most cases) **If in the future there is to be a Legislation Executive Sub-Committee, it would seem appropriate that this is balanced with a Legislation Scrutiny Panel with clear lines of communication to the Legislation Sub-Committee.;**
- iii) Legislative scrutiny is time-consuming. It has the potential to dominate the activity of the Panels and impose an extra burden on resources. 18 primary laws and 26 amendments, together with numerous Regulations and Orders, have been presented to the States during the period of Shadow Scrutiny. The Panels have the capacity in time and manpower support to deal with only a small percentage of this outflow of legislation;
- iv) Legislative scrutiny requires a grasp of technical detail. The Panels need to have access to appropriate expert advice, including specialist legal assistance from Law Officers and/or Law Draftsmen, in order to understand the potential implications of the legislation. There must be a firm commitment on behalf of the Executive to ensure that this support is available to the Panels on a regular basis;
- v) The Executive, in the form of sponsoring Committees, have traditionally been resistant to amendments of draft legislation once it has been lodged. The willingness of the Executive to respond to amendments from Scrutiny is yet to be tested;
- vi) In the two cases mentioned above, the sponsoring Committee had already conducted public consultation on its legislative proposals thus limiting the Panel's scope for engagement with interest groups and the general public. On the one hand, there is a risk that the Panel's call for evidence from the public might duplicate work already carried out by the Executive side; on the other, there is a risk that Panels may become a focus for interest groups and others who are opposed to the legislation in principle or feel that their views have been ignored. It may be that it would be more appropriate for the Panels to conduct the public consultation on a draft on behalf of the Executive, providing an independent viewpoint on the legislative proposals. This could be done without the Panels being drawn into apparent support of the Executive programme. Therefore, there needs to be good communication between the Executive and the relevant Panel on the consultation process and its purpose.

#### *Pre-legislative scrutiny*

14.4 An alternative to the legislative scrutiny process outlined in P.79/2003 would be for the Panels to undertake further pre-legislative scrutiny, that is, dealing with draft legislation before it has been finalised and lodged 'au Greffe'. It is worth noting that this form of scrutiny is being promoted as part of the modernisation agenda for Select Committees in Westminster. The advantages of this form of scrutiny for Panels are -

- i) they would be able to deal with broader issues of principle and policy rather than being limited to the provisions;
- ii) they could be involved at an earlier formative stage and exert greater influence over the final legislation provisions;

- iii) they could have more flexible deadlines to deal with complex issues.

### *Training*

14.5 In order to promote a better understanding of the potential of legislative scrutiny, the Chairman's Committee is currently investigating the possibility of providing a training opportunity for members involved in Scrutiny to be led by an experienced member from one of the Committees of the Scottish Parliament. A major part of the Committee's work in Scotland is the scrutiny of legislation. Valuable lessons can be learnt from their experience.

### *Conclusion*

14.6 In summary, it is clear that further thought needs to be given to the purposes of legislative scrutiny and the ways in which Scrutiny Panels can an effective contribution to the work of the Assembly. **The aspirations for legislative scrutiny will not be realised until certain conditions are in place -**

- i) **Adequate notice of draft legislation**
- ii) **Good briefing and documentation on the purposes of the legislation**
- iii) **Realistic deadlines for scrutiny to report**
- iv) **A commitment to provide adequate legal assistance**

## 15. BUDGET SCRUTINY

15.1 Scrutiny of the Budget and the States Business Plan was proposed as part of the original proposition setting up Shadow Scrutiny. During this phase it has proved very difficult for the Scrutiny Panels to undertake a comprehensive review of this area due to both time and resource constraints. A successful meeting was held on 3rd February between the Privileges and Procedures Committee, Presidents of the Policy and Resources and Finance and Economics Committees, Senator P.F.C. Ozouf and officers. This meeting agreed that scrutiny should be able to shadow the whole process of formulating the States Business Plan and Budget with presence at meetings at key points during the process, acknowledging that the process for each would be slightly different.

The Panel attended four workshops involving the Committee of Presidents as observers and conducted additional ad hoc meetings. However, no complementary public or private hearings were held.

15.2 Following approval of the approach to Budget Scrutiny, an ad-hoc sub-panel was convened at various stages of the Budget/Business Plan process and the following States members, representing both the Shadow Scrutiny panels and the Shadow Public Accounts Committee (SPAC), have participated at various times over the course of the review:

- Deputy R. C. Duhamel
- Deputy R. G. Le Herissier
- Deputy S. C. Ferguson
- Deputy G. P. Southern
- Deputy J. L. Dorey
- Deputy J. G. Reed

The full report of this sub-panel is included in **Appendix G**

15.3 Discussions between officers of the Scrutiny Section, officers and the President of Policy and Resources Committee and officers and the President of Finance and Economics Committee had previously identified the following aims for the scrutiny process:

- i) inform States members about the processes involved;
- ii) suggest improvements to the processes;
- iii) evaluate whether the outcomes are a fair reflection of the processes;
- iv) assess the impact of proposals on stated strategic aims, eg impact of the agri-environment scheme on environmental aims;
- v) reporting to States members on the above.

15.4 A framework and timetable was developed for this process. However a number of factors conspired to prevent the model being fully applied. These included:

- i) The workload of the Panels. The work programme had already been set and reviews were underway.
- ii) Timing: There was relatively short notice as it had previously been decided that there was insufficient time and resources. Subsequently it was felt that the Budget/Business Plan should be scrutinised in some way during the shadow phase.

- iii) There were misgivings about the appropriateness and depth of scrutiny that could be attributed in this area.
- iv) States members involved in Scrutiny had little time to spare and, as such, it was difficult to form a Panel to deal with this area.
- v) There were diverging opinions about the best approach to carrying out scrutiny in this area. There were also diverging opinions about desired outcomes.

15.5 As a result of the scrutiny of the States Business Plan/Budget the following suggestions were discussed in order to enhance future budget scrutiny:

- i) The introduction of a dedicated panel to enable sustained and in depth scrutiny. It became evident during the shadow phase that it is extremely difficult to incorporate Business Plan/Budget scrutiny into the workload of a Scrutiny Panel;
- ii) The States Treasury was very thorough in allowing access to all relevant papers concerning the Committee of Presidents meetings that the Scrutiny Panel attended. However, it was felt that complete access to all meetings of officers and politicians during the process would add value to scrutiny;
- iii) It was further suggested that a scrutiny member be appointed to shadow the Treasury & Resources Ministry and thus add a greater understanding and knowledge of the process and discussions that have lead to the formulation and production of the States Business Plan/Budget.

15.6 The following sets out the timeline for the new process:

*December*

- From December through to January the financial framework is set by the Council of Ministers, this involves a prioritisation process and the setting of 3 year cash limits for Committees/Ministries. From January through to March the Committees produce Business Plans based upon these cash limits. As Committees adopt three year rolling business plans the third year of the business plan would be updated although the preceding two years would also be re-evaluated by the relevant Committee.

*April*

In April the Council of Ministers assesses the departmental business plans.

*May*

In May a revised States Business Plan is produced.

*June*

In June the States Business Plan is lodged

*July*

In July the States Business Plan is debated by the States

15.7 The resulting document, the States Business Plan, provides the basis for the Budget once approved by the States.

15.8 In view of the above meetings, a positive outcome has been achieved and a proposal agreed that scrutiny should be able to shadow the whole process of formulating the States Business Plan and Budget with presence at meetings at key points during the process, but acknowledged that the process for each would be slightly different.

## **16. POWERS OF SUMMONS**

16.1 The Panels have on occasion, been forced to look at alternative routes to obtain information that they have required for reviews, due to not having the power to summon individuals or information during the Shadow period. The difficulties were highlighted by two invited witnesses in the Trust Port Review refusing to attend upon the Panel. It should be noted that neither of the witnesses were employed by the States of Jersey at that time. Whilst the Panel did obtain the information it required through other means it was a longer process and the lack of co-operation did cause a delay to the review process. The inability to require written information has arisen with a recent review and been more problematic as the information was not available through an alternative source.

**16.2 It will be essential for Scrutiny to be provided with powers to summon both individuals and information if it is to operate efficiently and effectively. Regulations governing the powers of Scrutiny Panels are in preparation.**

## **17. SCRUTINY WEBSITE/DATA PROTECTION**

17.1 Early in the Shadow process a scrutiny website linked to the States Assembly website was created. In order to differentiate from the States Assembly areas a different colour to that of the Assembly was used. The site has been developed throughout the process and will continue to develop as we move into the ministerial system.

**17.2 As scrutiny is a transparent process it has been the intention that all evidence received has been uploaded with the exception of any confidential material.**

17.3 Advice has been taken in respect of the Data Protection (Jersey) Law 2002 and amendments to documentation will occur to comply with this and ensure that as much information as possible will be uploaded to the website.

17.4 A Guestbook facility has been added to the website in order to promote feedback from the public on the reviews that have been undertaken.

## **18. TRAINING**

### **States Members**

#### *Initial training*

18.1. A three-day training session was organised in Jersey in March 2004 for members who had been appointed to the Shadow Scrutiny Panels and the Shadow Public Accounts Committee. The course, attended by 12 members, was provided by RIPA International (Royal Institute of Public Administration). RIPA offers management consultancy and training to senior personnel in government and public service organisations and private sector companies throughout the world. The trainer was Richard Harbord, former Chief Executive of two London Boroughs, responsible for the implementation of scrutiny in Hammersmith and Fulham for three years.

18.2. The course covered the principles of Scrutiny; the operation of Scrutiny in United Kingdom central and local government; evidence-based reviews; the selection of a work programme; the conduct of meetings; questioning and chairing skills; budget scrutiny; involvement of external agencies; management and clerking and the preparation of reports. The training approach included general discussion and group work, commentary on videos of Select Committees in action, and case studies of reviews undertaken by various Scrutiny Committees in the United Kingdom.

18.3. During the course of the training, Panel members began practical work on planning their initial work programme with a consideration of topic areas which might be explored. These suggestions were used by the two Scrutiny Panels as the starting point for their work programme in 2004.

18.4. The final session included a meeting with the Chairman and members of the Shadow PAC to discuss the relative roles of Scrutiny and PAC.

18.5. Despite initial scepticism on the part of some members about the value of committing three days to training out of their busy schedule, participants in the course were in agreement at the end of the course that the experience had given a valuable insight into the potential strengths of the scrutiny process and the culture change required for those involved as members of Panels, as well as examples of good practice elsewhere. Some commented that this was the first opportunity they had had for extended training in their role as elected members.

#### *Further training opportunities*

18.6. Following the initial training session a small group of Panel members visited the Scottish Parliament to get first-hand experience of the working of the Scottish Committee system, including its research and information provision. The visitors were particularly impressed with the innovation of a Public Petitions Committee.

18.7. An opportunity was also arranged in June 2004 for other States members not directly involved in Scrutiny to attend a similar, one-day awareness-raising course, held in Jersey and led by the same tutor. One of the key issues to arise from discussions during this course was the lack of awareness on the part of most States members about what was involved in the process of a Scrutiny review. Those involved in the Panels should be confident in proclaiming the potential of Scrutiny and communicating what the Panels were doing in order to ensure that both States members and the general public gained a better understanding of what could be achieved through the process.

18.8. In February 2005, a group of six States members visited the Greater London Assembly, Lambeth City Council and the Centre for Public Scrutiny in London with a particular view to learning more about Budget Scrutiny.

18.9 In April 2005, eleven States members attended a one-day workshop delivered by RADA in Business in the art of conducting a successful meeting. The course was designed to practice and explore the key elements of effective communication.

### *Questioning skills*

18.10 The most successful Scrutiny training event during the Shadow period took place later in April 2005 when Mr. John Sturrock, a Scottish QC and Director of Core Solutions Group, was invited to deliver a course on skills in questioning witnesses. The course was provided over a day and a half in which members could opt to join one or more half-day sessions. An evening session was included to allow greater flexibility for those who wished to attend.

18.11 Twenty-one States members in total participated in the sessions which were open to all members of the States, and offered training in skills required when appearing as a witness for those in the Executive as well as those involved as questioners on the Panels.

18.12. The course began with a presentation and discussion on effective preparation strategies for witness sessions, the components of effective communication and methods of directing and controlling witnesses through use of deliberate question techniques. Members then had the opportunity to practice these skills through role play. They were split into small groups with one member from each group being nominated to play the role of witness. Members were then given background information on a topic of local relevance and time to prepare their questioning strategy.

18.13. The evidence sessions were then run as a Panel meeting would normally be conducted. John Sturrock offered comments and constructive criticism throughout the session. Each session was filmed and the footage played back so that members could see themselves in action and other members could peer review their performance.

18.14. The training encouraged members to think about many practical aspects about the treatment of witnesses and how to refine their questions in order to develop probing lines of questioning. A key point of learning was the importance of thorough preparation in formulating questions. It was essential to gather as much information as possible in advance of deciding on which witnesses to call for evidence sessions with the Panel. Equally witnesses should be given the opportunity to prepare themselves for these sessions with an adequate briefing on the areas of questioning.

18.15. The feedback from participants in these sessions was very positive. A number of members commented that there should be a follow-up to enable as many members as possible to take part in these opportunities.

### *Next steps*

18.16. The period after the 2005 elections will present an important opportunity for induction training for newly elected members and for returning members to enhance their skills through further training opportunities in advance of launching the Panels' work programme for the new States session in 2006.

18.17. Newly elected members will be contacted as soon as the elections to the Panels have been completed with a view to in-house induction into the procedures and protocols involved in the Scrutiny process. This will be followed as soon as possible with a one-day introductory training course for all new Panel members provided by an experienced facilitator in new political arrangements, followed by more detailed work in early January 2006 on work programming.

18.18. Early in February 2006 it is proposed to offer Panel members further training by John Sturrock

in questioning and chairing skills. Returning Members will be able to assess whether they have used the skills and to build on the points made at the previous session. Newly elected members will experience for the first time how a Panel hearing is conducted.

18.19 Panel members will be offered further specialised training at an early stage in the year to enable them to reflect on the skills required for the scrutiny of legislation and of the Resource Plan and Budget. These are important and complex elements of the Panels' terms of reference which have yet to be put into operation. Assistance will be sought from other jurisdictions with experience in conducting both forms of scrutiny.

18.20 The PAC with the Comptroller and Auditor General will consider and organise specific training for members of that Committee

### **Scrutiny Officers**

18.21. The three officers originally seconded to support the Panels visited the Scottish Parliament in February 2004 to observe the operation of the Committee system and discuss the review process with clerks.

18.22. The officers subsequently attended a one-day course in Jersey arranged through States Human Resources Department provided by the Centre for Management and Policy Studies (Civil Service College). The course tutors were experienced in the working of Select Committees in Westminster and provided an insight into the relationship between officers and Panel members in managing the review process.

18.23. The Scrutiny Officers also attended and facilitated training events for elected members and chief/senior officers.

18.24. The Scrutiny Officers have participated in twice yearly meetings of the Committee Secretariat Network, comprised of clerks from the national assemblies in the United Kingdom, and meetings of the Inter-parliamentary Research Network.

18.25. In addition, officers have attended the Annual Conference for the Centre for Public Scrutiny linked with the Scrutiny Officer Development Day in London. The Centre aims to define, promote and support effective scrutiny in modern government. Officers are members of the Scrutiny Officer Development Forum which is designed to facilitate professional development opportunities for officers.

18.26. It is intended to link further training opportunities for Scrutiny officers to the visits of the training providers for States members.

### **Chief officers/Senior officers**

18.27. One-day training courses have been arranged by the States Human Resources Department for chief officers and senior departmental officers who may be called as witnesses by the Scrutiny Panels or the Public Accounts Committee. The courses, which were provided by the Centre for Management and Policy Studies, dealt with the principles of scrutiny and financial accountability and the role of officers in supporting politicians called to appear before Panels. Participants found role playing exercises as witnesses enabled them to consider strategies for facing differing lines of questioning. The courses, which have been over-subscribed, will be repeated regularly.

18.28 The Chairmen's Committee and Panels have recognised the benefits of training to date and see this as an ongoing part of the developmental process of the Scrutiny function. Training for new Scrutiny members will be essential especially in work planning and questioning and chairing skills. Refresher training for re-elected members is also seen as an important part of the process.



**19. APPENDICES**

**APPENDIX A**





## APPENDIX B - SCRUTINY PANELS - FEEDBACK COMMENTS

In order to produce a balanced evaluation report, feedback comments are non-attributable and take a generic approach rather than itemising matters under each review and thereby avoiding duplication.

The following are the main points which have arisen from the feedback undertaken. It should be noted that the comments listed below do not represent the views of the Panels:

Choice of Review Topics	
Agri-environment scheme	<ol style="list-style-type: none"> <li>1. Should not have been top of the list</li> <li>2. Reasonable</li> </ol>
Draft Waste Management Strategy	<ol style="list-style-type: none"> <li>3. Very important to Island and especially residents in and around both Bellozanne and La Collette</li> <li>4. Reasonable</li> </ol>
Migration Policy: monitoring and regulation	<ol style="list-style-type: none"> <li>5. A high profile, economic and social issue of great importance and entirely appropriate for scrutiny</li> </ol>
General comments	<ol style="list-style-type: none"> <li>6. Reviews should not have focussed on one Department as it places too much burden on resources.</li> <li>7. Undertaking large reviews concurrently makes it likely that justice is not done to any</li> <li>8. The selection of topics should have been impartial to avoid Panel members being conflicted in any way.</li> </ol>
<b>NOTE:</b> No definitive comments regarding the selection of the other reviews were forthcoming	

Terms of Reference	<ol style="list-style-type: none"> <li>1. These need to be established only after full discussion with the Committee/Minister as an accurate understanding of the situation was not represented in the Terms of Reference.</li> <li>2. Good</li> <li>3. Reasonable</li> <li>4. These were challenged by the Committee</li> <li>5. Very wide-ranging</li> <li>6. Wide terms of reference were drawn up for one review due to the fact that insufficient preparatory work had been undertaken by the appropriate Committee.</li> <li>7. Appropriate for the review</li> <li>8. Well-formulated and achievable</li> <li>9. Care needs to be taken that the terms of reference do not unduly restrict the course of a review and if necessary, the terms of reference should be revised during a review</li> <li>10. Should have focussed on one specific area rather than broadening the review to consider financial aspects</li> <li>11. Advisers involvement (See employment and rôle of advisers)</li> <li>12. If terms of reference are changed during a course of a review, the Minister and Department should be informed immediately</li> </ol>
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Written submissions	<ol style="list-style-type: none"> <li>1. This was requested at extremely short notice</li> </ol>
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	<ol style="list-style-type: none"> <li>2. Difficulties been faced by Department by constant requests for information.</li> <li>3. Good</li> <li>4. Contacted independent interest groups directly</li> <li>5. Timely Committee submission provided but it was very broad brush</li> <li>6. Committee submission was thorough, timely and well-prepared</li> <li>7. It was necessary to be proactive in requesting submissions as they were not immediately forthcoming</li> <li>8. Some matters refused as they had been submitted to Committee on confidential basis</li> </ol>
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Contact with Departments	<ol style="list-style-type: none"> <li>1. Scrutiny officers met with Department Officers for pre-briefing</li> <li>2. No presentation to Panel but would have been helpful</li> <li>3. Good. Fully co-operative</li> <li>4. Excellent - extremely helpful and never obstructive</li> <li>5. A briefing for the Panel would have been of more value at the start of the review process in a non-confrontational setting</li> <li>6. Need closer working relationship with Ministers and Department officers</li> </ol>
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Public Engagement	<ol style="list-style-type: none"> <li>1. Fair level of public interest</li> <li>2. Moving out of the Hearing Room to contact members of the public was essential</li> <li>3. Witnesses came forward in confidence</li> <li>4. No real input from public</li> </ol>
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Fact-finding visits	<ol style="list-style-type: none"> <li>1. Officer-level fact-finding visits useful but that was after the establishment of the terms of reference</li> <li>2. Very useful overall for obtaining overall picture of current situation</li> <li>3. Meaningful and valuable</li> <li>4. Time-consuming to organise but provided essential understanding</li> <li>5. Panels and Ministers need to work more closely together on such visits</li> </ol>
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Employment and use of advisers	<ol style="list-style-type: none"> <li>1. There were issues relating to the appointment of the Panel adviser and the perception of personal interest.</li> <li>2. Advisers had provided a valuable aspect although their rôles had been unclear</li> <li>3. Advisers selected by Panel members through personal contacts and should be appointed through the tendering process</li> <li>4. Varied rôles of advisers (as witness for example)</li> <li>5. The Panel decided not to release advise provided by the Adviser to the Committee but had they so done discussion of the evidence would have been stronger</li> <li>6. Appropriate independent adviser with local knowledge, excellent advice and at a very economical cost</li> <li>7. Departments hold lists of organisations which give details of advisers but departments were not asked for this by the</li> </ol>
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	<p>Scrutiny Panels</p> <ol style="list-style-type: none"> <li>8. Advisers should accompany members on fact-finding visits</li> <li>9. Advisers were not involved from the very start of a proposed review and were not, therefore, involved in drawing up the terms of reference which should occur after a presentation from the Minister/department</li> <li>10. Advisers should brief Panel members on technical issues, prepare questions, brief on visits with technical input, provide Panels with summaries of technical outcomes from hearings</li> <li>11. Advisers did not attend all hearings and therefore were not fully conversant with developments.</li> </ol>
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<p>Pre-hearing Briefings</p>	<ol style="list-style-type: none"> <li>1. Timing and depth of information varied from review to review</li> <li>2. Specific questions not provided</li> <li>3. Insufficient preparation time given to allow for thorough preparation</li> <li>4. Mixed views as to whether witnesses should be briefed at all and if so to what extent</li> <li>5. These should remain generic and the Panel reserved the right to ask any questions which arose from information presented at the hearing</li> <li>6. There was a lack of consistency between the generic areas anticipated to be discussed in the hearing and what actually was discussed</li> <li>7. Clearly understandable and timely</li> <li>8. Short notification of question areas</li> </ol>
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<p>Hearings</p>	<ol style="list-style-type: none"> <li>1. Very important process</li> <li>2. The manner in which the Panel conducted itself was impressive</li> <li>3. The hearing was conducted in a relaxed manner and opportunities were given for the explanation of the position of the Committee.</li> <li>4. Repeated hearings had been difficult to accommodate into a busy schedule</li> <li>5. Confusion as to who was chairing the hearing</li> <li>6. Concerns from invited witnesses who declined due to perceived bias within the terms of reference.</li> <li>7. Well organised</li> <li>8. Held more than had been anticipated and some difficulty in access to witnesses.</li> <li>9. No public participation</li> <li>10. One confidential hearing held</li> <li>11. Arrangements for a number of witnesses had not been made</li> <li>12. Adequate time per witness should be made available to allow for comprehensive addressing of all issues</li> <li>13. Hearing rooms are inappropriately furnished</li> <li>14. The Chairperson is a strong and key rôle at hearings</li> <li>15. Polite and courteous</li> <li>16. Too politically and sensitively charged</li> <li>17. Incorporated too many areas into one hearing instead of focussing on one specific area per hearing.</li> <li>18. Concern expressed by a witness at inappropriate use of oral</li> </ol>
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	evidence by a Panel member in another political context before the review had been finalised.
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Questioning	<ol style="list-style-type: none"> <li>1. The questions tended to ask for personal opinion rather than facts</li> <li>2. With experience and training in questioning techniques improvement should have occurred</li> <li>3. Some questions were “off-topic” and more relevant to other areas of scrutiny</li> <li>4. The Panel’s questions were clearly put</li> <li>5. Some questions digressed significantly from the Terms of Reference</li> <li>6. Thorough preparation of questions is needed before a hearing</li> <li>7. More training on questioning techniques is required.</li> </ol>
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Transcription	<ol style="list-style-type: none"> <li>1. Good quality and significant value</li> <li>2. Some difficulties when members/witnesses are quietly spoken or not near the microphones</li> <li>3. Some difficulties when people cough or overspeak</li> <li>4. Panel not disadvantaged by not having transcription but some witness statements can achieve more impact when transcribed verbatim</li> <li>5. Transcription preferable to note taking for reasons of accuracy, transparency and objectivity</li> <li>6. Essential when checking evidence and formulating report</li> </ol>
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Timing and Timescale	<ol style="list-style-type: none"> <li>1. This was initially too short but was extended in recognition of the preparatory work and research being undertaken within the Department.</li> <li>2. Good</li> <li>3. Should be shorter but “it takes two to tango”.</li> <li>4. Review slowed down due to Panel recess</li> <li>5. Panel met target deadline</li> <li>6. Two weeks because of commitment to report within that time</li> <li>7. Target date for report presentation changes which had impact on workload</li> <li>8. Review took longer than initially planned as further questions arose from public hearings, a delay in the Committee response and the length of time to draft and finalise the final report (approx 6 weeks)</li> <li>9. The target date for presentation of the report had been met within 21 days</li> <li>10. Report preparation is a time-consuming part of a review</li> <li>11. The timescale impacted on the department in that other administrative tasks had to be postponed</li> <li>12. Due to the report having to meet very tight deadlines for presentation, the evidence sections could not be referred back to the Department for checking. This would have alleviated some subsequent difficulties</li> <li>13. Moving timescales were difficult to manage</li> <li>14. Relevant for Scrutiny as it was ahead of the States debate and therefore avoided duplication and met its deadline</li> <li>15. Timing in terms of the decision to scrutinise could have been</li> </ol>
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	better
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Follow-up	<ol style="list-style-type: none"> <li>1. No response from Committee despite request for this in the Panel's report</li> <li>2. None required as subsequent States decision superseded a Committee response</li> <li>3. Committee responded within three months.</li> <li>4. Immediate States debate.</li> </ol>
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Conflict of Interest	<ol style="list-style-type: none"> <li>1. Panel members with any previous knowledge of a topic under review should have withdrawn from the Panel.</li> <li>2. Impartiality of Panels should be monitored.</li> </ol>
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General	<ol style="list-style-type: none"> <li>1. The procedures which were followed appeared to work smoothly</li> <li>2. Generally the process was satisfactory</li> <li>3. Process allowed expression of public viewpoint</li> <li>4. It was appropriate to have the opportunity to comment on the report's recommendations</li> <li>5. Notification of reviews occurred through the media</li> <li>6. Public hearings were a less effective and reliable method of gathering evidence than objective analysis of documentation which should be undertaken in full prior to any hearing dates being arranged.</li> </ol>
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During the evaluation period, suggestions regarding how the process might be improved were also received. These included -

It was recognised that Scrutiny was a vital part of the forthcoming government structure but that it should maintain the right focus in order to achieve the best results.

A balanced approach must be taken to reviews to ensure the future credibility of scrutiny.

the Chairmen's Committee has a vital role to play in the finalisation of work programmes and ensuring that the timing of reviews is appropriate and at a useful stage of the policy development

work programmes should be released in advance and organised to include commencement and completion dates;

the decision to undertake a review should not result from a wish to delay the States decision making process;

the Scrutiny process should not provide a forum for the pursuance of personal interests;

it should be recognised that, with the powers that will come with Scrutiny there will come a greater responsibility to undertake reviews judiciously, carefully and fairly;

terms of reference should be tight and focused;

it may be beneficial for Panels to receive a detailed presentation from the relevant Department prior to finalising its Terms of Reference;

there were some confidentiality issues with regard to provision of evidence material and contact with the press, appropriate use of the media should be assured;

questioning in hearings should be undertaken in a structured way and should be focused on the terms of reference not the individual President/Minister;

training provision on questioning skills had been excellent as had the initial training and much more of this should be provided;

press releases should be included on the website which was considered to be very useful;

closed session hearings should be held when sensitive information was being considered;  
press attendance had been consistent;  
the provision of transcripts was very helpful and the quality had improved significantly as time went on;  
clear information should be provided on who is responsible for leading a review as a lack of clarity is problematic;  
approaches made directly by States members to Departments for information can be problematic and does not provide for an adequate audit trail of information exchange nor does it ensure its dissemination to all involved in the review;  
the final report should be made available to the Minister in draft form;  
the content of the reports could be more succinct with less padding, the value of the report and its potential effectiveness should be considered prior to its release.  
reports should be easy to read;  
the use of expert advisors and their role should be examined further;  
advisors should not have a dual rôle as witnesses;  
advisors should have a clear and defined function in the review process which is made clear to all participants;  
the issue of independents appointed to Panels should be considered;  
Scrutiny Officers should be provided with more powers  
Panels should be cautious in using anecdotal evidence and the means by which they evaluate and weight evidence.

## **APPENDIX C - DRAFT GUIDELINES FOR SHADOW SCRUTINY PANELS**

The terms of reference set out in P.79/2003 for Scrutiny Panels are as follows –

- (a) to hold reviews into such issues and matters of public importance as the Panel, after consultation with the Chairman's Committee, may decide, and to report to the States with recommendations if appropriate;
- (b) to consider and report on the existing and proposed policy of the Executive;
- (c) to scrutinize all primary legislation, consider possible amendments if appropriate, and report thereon to the States before the legislation is adopted by the States;
- (d) to consider subordinate legislation before it is made by the States, or after it is made by a Minister as appropriate and, if the Panel so decides, scrutinise such legislation and report thereon to the States and the Executive with recommendations;
- (e) to scrutinise proposed international conventions and agreements before they are extended to the Island;
- (f) to scrutinise the draft annual Resource Plan and Budget and other financial proposals of the Executive and report thereon with recommendations;
- (g) to liaise with the Public Accounts Committee through the Chairmen's Committee to ensure appropriate co-ordination of the scrutiny function.

Members involved in the process should understand that the objectives of shadow scrutiny are to –

- create opportunities for training both members and officers – in particular developing new skills;
- include a wide range of members in the shadow scrutiny process;
- provide a learning experience;
- develop the practical arrangements for a system of scrutiny appropriate for Jersey;
- develop guidelines governing the scrutiny process;
- assess the resource requirements for scrutiny;
- develop awareness of the scrutiny function.

The purpose of shadow scrutiny is not to –

- provide an opposition to States policy;
- further personal or political agendas;
- examine minor matters, individual complaints, internal disciplinary matters, or other matters prejudicial to the public interest.

Shadow scrutiny is not attempting to provide a fully functioning scrutiny system from the outset (although this may be an outcome of the work done).

### **Chairmen of Shadow Scrutiny Panels**

The Chairman of each Panel will be appointed by the States and will serve for an initial period of 12 months. The States will then be asked to appoint a replacement for a further 12 months, or until the introduction of ministerial government.

The Chairman of the shadow panel shall –

- develop and provide strong and fair leadership and clear guidance to members and officers involved in the shadow scrutiny function;
- develop clear understanding of the terms of reference of the Shadow Scrutiny Panel and the scope and range of the scrutiny functions;
- 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;
- agree all agendas for the Panel's meetings and take a lead in developing a forward work programme and ensuring that it is adhered to within the resources available;
- meet on a regular basis and consult with the other Panel Chairman and the Shadow Chairman of the Shadow Public Accounts Committee through the Chairmen's Committee;
- ensure that the appropriate members of States Committees are briefed about the work of the Panel;
- have overall responsibility for liaison with chief officers responsible for services within the Panel's programme;
- ensure that requests for information are fair and reasonable;
- seek to involve all scrutiny members in the work of the Panel;
- decide, in consultation with officers, which witnesses to invite to hearings;
- chair scrutiny hearings in public, ensuring fairness to witnesses;
- develop a clear brief for each piece of work;
- chair the post-review meeting between the Panel and the Committee to assess the effectiveness of the process and identify problems.

In addition, the Chairmen of the Panels and the Shadow Chairman of the Shadow Public Accounts Committee will form a Shadow Chairmen's Committee, which shall –

- confirm and allocate the final work programme;
- meet to discuss progress and ensure consistency of approach;
- allocate resources;
- advise the Privileges and Procedure Committee on progress and issues.

### **Members of Shadow Scrutiny Panels**

The Chairman of each panel will select 4 members from the list of members approved by the States. Each member will be given the opportunity to serve on a panel for a similar length of time. This may be through each members serving for a fixed period. Alternatively, all selected members can be co-opted onto Panels from the outset, but allocated in fours to specific reviews.

Members shall –

- refrain from personal criticism of other members;
- not permit personal agendas, rivalries and differences to deflect them from properly fulfilling their duties as scrutiny members;
- declare any interest in the matters under scrutiny, pecuniary or otherwise;
- attend all scrutiny training sessions where possible.

### **Meetings**

A Chairman and 2 members will be a quorum for the purpose of holding meetings and hearings.

If the Chairman cannot attend then the members may appoint a temporary Chairman from their number

for the duration of the meeting.

The Shadow Chairmen's Committee should meet not less than four times per year to review progress.

## **Resources**

Each Shadow Scrutiny Panel will be resourced with 2 Shadow Scrutiny Officers.

The role of the Scrutiny Officer will be to –

- provide the Panel with professional and technical information and advice relevant to the issue under scrutiny;
- obtain and collate information, documents, written and verbal reports and other appropriate information or evidence;
- obtain appropriate expert advice when necessary;
- undertake research;
- provide executive and administrative support;
- arrange, attend and record meetings and hearings;
- draft reports;
- liaise with States departments, other parliamentary services, media, pressure groups, stakeholders and other relevant external bodies;
- ensure that the scrutiny website is updated;
- provide executive support to the Shadow Chairmen's Committee;
- provide executive and administrative support to the Shadow Public Accounts Committee.

In addition to designated officers, a small budget has been allocated for the engagement of consultants where appropriate. The allocation of this budget will be at the discretion of the Chairmen's Committee in liaison with the Privileges and Procedures Committee.

## **Contact with States Departments and Other Witnesses**

Contact with States Departments will initially be between the Chairman of the Panel and the President of the Committee and the Chief Officer.

Presidents/Chief Officers will be informed of the Shadow Scrutiny work programme as soon as it is agreed. Copies of terms of reference for reviews will be provided to Committees/Departments as soon as they are available to give maximum notice of the subject under review.

The Chairman may request that the Panel visit the department to discuss the scope of a particular review, or to receive an overview of a particular service.

The Scrutiny Officer will make requests for specific information thereafter in writing either directly to the Chief Officers or his/her nominee.

Requests for information should be reasonable. Non co-operation or other difficulties should be reported to the Chairman who will contact the President of the Committee in the first instance and the Privileges and Procedures Committee thereafter if the issue cannot be resolved.

Panels will have automatic access to non-restricted (Part A) Committee minutes. Access to restricted (Part B) minutes will be through a request by the Panel Chairman to the Greffier of the States.

Panel members will not be permitted to question departmental officers directly other than as witnesses at a properly convened hearing, although direct requests for information will be progressed by the Scrutiny Officer.

Shadow Scrutiny Panels will invite witnesses to appear before them as required. In such circumstances, the Panel will –

- inform the witness of the time, date and place of the scrutiny meeting at which their evidence is to be taken;
- inform the witness of the matters about which the scrutiny body wish to ask them. Inform the witness of any documents that the Panel wish to have produced for them;
- provide reasonable notice of all the requirements of the Panel to enable the witness to respond in full at the earliest opportunity;
- provide copies of all relevant reports, papers and background information;
- ensure that all witnesses are treated with courtesy and respect and that all questions to witnesses are made in an orderly manner as directed by the Chairman of the Panel;
- following the proceedings, write to the witness to confirm their testimony.

## **Work Programme**

The selection of topics for scrutiny is the first, most critical step in the entire scrutiny process to ensure that the objectives set for it are achieved.

Scrutiny should add value to the work of the States and produce worthwhile outcomes. The programme for each of the Shadow Panels will be determined through discussion with all of the members nominated by the States as Panel members.

Where possible, the programme should be based on a policy theme.

Each Panel should ensure that the four main roles of scrutiny are included in the work programme i.e. –

- Policy
- Primary/subordinate legislation
- Resource Plan/budget
- Other matters of public interest

Reviews selected should be capable of completion within an appropriate period and add to the overall training experience. The workload should also not exceed the capacity to do a thorough job.

The programme will be refined by the Shadow Chairmen's Panel, which will consist of the Chairmen of the Shadow Scrutiny Panels and the Shadow Chairman of the Shadow Public Accounts Committee. The programme will be endorsed by the Privileges and Procedures Committee to ensure that it meets the objectives of the shadow scrutiny process.

Terms of reference will be drawn up for each policy review or any review into a matter of public interest. These will be supplied to the relevant States Committee/Department prior to the commencement of the review.

A review group comprising the Shadow Panel, scrutiny officers and the chief/departmental officers, involved in each review and Privileges and Procedures Committee officers, will assess the effectiveness of the process and identify problems encountered by either side during the review process.

## **Selecting Topics**

Topics should be considered if they –

- meet the criteria as a training exercise i.e. not too long, not too complex;
- are likely to result in improved service;
- are a community/corporate priority area;
- are linked to States strategic objectives/plans;
- are a key issue for the public;
- relate to a poor performing service;
- relate to a service/issue where there is a high level of dissatisfaction.

Topics should be rejected if they are –

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

### **Presentation of Reports**

The findings of the Panel will be incorporated into a report prepared with the assistance of the Scrutiny Officer.

The report will be submitted to the Committee concerned for consideration and comment. The Committee concerned shall consider every report within 3 months.

Subject to any amendments, the report will be presented to the States for information.

### **Role of the Privileges and Procedures Committee**

The role of the Privileges and Procedures Committee will be to –

- provide resources for the shadow scrutiny process – within the limits of the budget allocated;
- monitor the effectiveness of the process;
- develop and provide an effective training programme for scrutiny members and officers;
- comment on the appropriateness of the work programme;
- develop a scrutiny awareness programme across the public sector;
- provide advice if required;
- provide liaison if required;
- develop and recommend to the States the framework for full scrutiny;
- develop these guidelines based on the experiences of the shadow process.

## APPENDIX D

### THE ROLES OF SHADOW SCRUTINY COMMITTEES VS THE SHADOW PUBLIC ACCOUNTS COMMITTEE

<b>SCRUTINY COMMITTEES</b>	<b>PAC</b>
<b>REVIEW POLICY</b>	<b>REVIEW IMPLEMENTATION OF POLICY</b>
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  
(Committees) “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 civil servants to understand their responsibilities we will ensure better government.

**Examples of areas which the PAC examines:**

Purchasing of goods and services across the States; the role of the Corporate Supplies 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 Committee 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

## **APPENDIX E**

### **SPAC PROCESS EVALUATION**

#### **1. Introduction**

It was agreed by the Chairmen's Panel that I should solicit comments from Shadow Public Accounts Committee ('SPAC') 'witnesses', and collate those comments in order to provide structured feedback on the PAC scrutiny process.

Contact was made with the officers who had been interviewed by the SPAC, and comments were received from all but one of those canvassed by the middle of August (one was on leave). One officer had recently retired, and was not initially approached. I asked that he should be contacted if at all possible.

I have taken the view that the Chairmen's Panel, and the SPAC, are likely to be interested in what was said, rather than in who said it, and have therefore not attributed any comments to any individual. (It was previously agreed by the Panel that any other approach would run the risk of inhibiting frankness.) I have therefore tried to distil the responses received, and then appended my own assessment in italics.

#### **2. Responses**

##### **2.1 Selection of scrutiny area**

Views on this varied widely, from "No comment" and "The selection of items of review is not a matter on which an officer should comment", through "... considered ... a legitimate area for scrutiny – it clearly has significant financial consequences for the States", all the way to "...my impression was that the agenda was far too wide for a body undertaking its first steps into scrutiny. The meeting necessitated a huge amount of preparatory work in the department ...the Shadow PAC were most grateful for the effort put into this but frankly, without it, the PAC would not have been able to conduct the meeting."

*While the purist view would be that topic selection is a matter purely for the SPAC to decide (and some officers appear to agree with that view) it seems clear that best results will be achieved when there is a shared understanding between SPAC and the 'witness' Departmental officers as to the appropriateness of the review being undertaken (not to mention a shared understanding of its objectives, and resource implications).*

##### **2.2 Pre-hearing briefing/notification**

N.B. Some respondents made no distinction between this and the next issue on which views were specifically sought (Time of notification in respect to hearing date).

Generally, witnesses appeared content with this aspect of the process – "... impressed by the level of information that had been supplied to us in connection with the areas that would be covered by the Scrutiny Panel and the arrangements attaching to the meeting" – "guidance given to the department prior to the meeting was sufficient to enable us to research the subject matter properly and provide a comprehensive brief" – "time of notification about the hearing was good and there are no criticisms about the organisation or process" – "no problem - the review's information requirements and scope were made available in advance" – "arrangements for notification of invitation to attend SPAC were adequate, allowing ample time for preparation".

There were some reservations, however, (including from the same respondents quoted above) around issues which a number of respondents also raised under the heading 'Any other matters':

"The only difficulty experienced was in compiling the large volume of detailed information which the Scrutiny Committee required" – "had we known how much work would be involved, I would have liked at least two month's notice. I think it was only about a month" – "if members were given areas of questioning to prepare prior to the hearing and adhere to these this might lead to a more focussed hearing" – "the arrangements for pre-hearing briefing could be improved".

*Generally, the consensus view would appear to be that, although officers fully recognise the legitimacy of SPAC inquiries, and will do everything possible to co-operate, they feel that the process could be improved, and therefore lead to better outcomes, if more effort was devoted to preparation. Officers would like to begin an inquiry with a clear shared understanding of the objectives and resource demands of an investigation, a recognition on the SPAC's part that information sometimes requires time to collate, and a clear sense that the SPAC's investigations, and lines of questioning, were structured. Officers are prepared to accept that the overall objective is to seek out the facts in a co-operative manner – but unannounced lines of questioning tend to shake that belief.*

### **2.3 Time of notification in respect to hearing date**

As stated above, a number of respondents made little or no distinction between this issue and the previous one. As such – with the particular proviso about resource demands – comments were generally positive.

### **2.4 Conduct/organisation of hearing**

It will come as no surprise to the SPAC that one issue was raised, in relation to information being released by the SPAC to the media before witnesses had been given an opportunity to comment/refute.

*I understand that this was an isolated incident, fully discussed in the interim, and from which lessons have been learned. My only comment here, then, on this particular matter, is that it is important that the 'adversarial' aspect of investigations should be kept to the minimum compatible with doing the job effectively, and that officers, whatever the outcome of an inquiry, should always perceive the process as a fair one.*

Other comments were generally positive – "hearing had been fair and responsible" – "hearings have been courteous" – "meetings were conducted in a courteous and business-like manner" – "On the whole, felt that the investigation of the issues ...was very thorough" "...discussions lasted for about three hours... felt stretched by the experience. However, the ground that we covered and the questions that were posed were all fair and acceptable."

The one consistent reservation about conduct of meetings related to the unstructured nature of questioning – "more focussed briefing could lead to the more effective use of time" – "found the hearing to be rather disorganised and unstructured with little, if any, continuity between members of the Panel. The result was that lines of questioning were not developed, indeed often broke down, making it very difficult for the Panel to obtain a holistic review of the subject and a clear, consistent understanding of the issues."

*It seems clear, from the feedback received, that inquiry sessions have sometimes been testing – as they should be – but without leaving witnesses feeling either 'ambushed' or 'on trial'. I believe, however, that the witnesses themselves clearly believe that their contribution could have been more productive if the SPAC had devoted more time and effort to (a) preparing consistent lines of questioning and (b)*

*making it clear, in advance, to witnesses, what those lines of questioning would be, and what they were aiming at. One respondent did make a point of saying, "I am sure the Shadow PAC was 'feeling its way' at that time and my comments should be considered with that in mind" – but these comments would seem to indicate that it would be desirable for members to make a reasonably long-term career of PAC/scrutiny, in order to hone the requisite questioning skills.*

## **2.5 Any other matters on which comments received**

As might be expected, this final area drew out more responses than any other – but most of the matters raised had already been touched on, in one way or another, in comments under other headings.

A number of respondents referred to the resource implications of preparing for a hearing, while recognising that the process of inquiry is both necessary and valuable - "The only other issue that we would wish to highlight is the amount of time that it took to prepare for the meeting. Clearly, we were both anxious to ensure that we were fully briefed and prepared for our encounter with the Shadow PAC and this preparation took up a significant part of our time. Nevertheless, we do recognise and accept that the executive and its officers must be held to account for their actions and the scrutiny process is a legitimate way in which to achieve this."

Respondents were as keen to see the time of the Committee effectively used, as their own - "more is likely to be gained from such scrutiny if the subject matter is kept very focussed on specific issues rather than taking a 'state of the nation' approach. Additionally, departments should be given ample time to prepare properly and marshal their records and evidence" - "... a considerable amount of time was expended at the beginning of the meeting exploring decisions which have been made over time. I observed that it proved difficult for Members of the Committee to clarify the areas under examination... It appeared to me that this process was frustrating for both parties and did not lead to an entirely satisfactory or satisfying outcome. I appreciate that the examination of issues by the Committee will inevitably result in unanticipated lines of enquiry but remain convinced that advanced notice of the major areas for consideration would prove helpful to all parties by facilitating meaningful and well-informed discussion." – "Allowing for the inexperience of the Shadow PAC, I would go as far as to say that the momentum of the meeting was dictated by (us). There were many situations where they weren't quite sure what questions to ask so we volunteered information by making assumptions as to what they needed to know. I am sure that the Shadow PAC has since become far more adept at questioning and probing."

As mentioned previously, the importance of structure and preparation was repeatedly stressed – "There should be a professional review before any hearings and hearings should remain focussed on the specific matter and not allowed to stray into wider areas." – "A clear programme of reviews for the year would be beneficial for all with target timings." – "My perception is that the hearing was undertaken before the facts had been agreed, which probably contributed to the unstructured hearing. I would suggest that in the future the facts be agreed with all parties before the hearing to enable a more informed and structured discussion".

Witnesses felt that a shared understanding of timescale, and follow-up, were as important as effective preparation – "This review has been underway for several months and is still continuing; to the best of my knowledge a report, even an interim one, has not been published. I feel that in future every review should have a plan / timetable by which to monitor progress, create clarity around the objectives and outcomes and advise all parties involved as to the actions at each stage and the associated timescales (I am sure that the Panels themselves would expect to see evidence of such plans for the projects which they review!)" – "I would expect to hold a meeting, to update shadow PAC of progress, towards the end of the year as I believe a proactive engagement is far better than a reactive one."

One respondent made a comment which was particularly instructive, since it relates to a perception of what PAC is 'for': "There might be a danger of SPAC slipping into an overall critical mode and selecting

reviews based on matters that have gone wrong rather than being more objective and selecting a balanced range. It is important that reviews look to improvements in the future and do not necessarily solely apportion blame." *Most politicians, at least, seem to have taken the view that the purpose of the SPAC (as distinct from scrutiny generally) is to investigate areas where they believe there may be a problem. If this is also the SPAC's own belief, it is vitally important that (a) it should make that fact clear to all potential 'witness' Departments and (b) it should continue in the path that it would appear to have already chosen, of courteous and fair investigations.*

*Overall, the feedback received would seem to point to a need for the SPAC to 'work within itself', concentrating on a relatively small number of highly-prepared, highly-focussed investigations, making every allowance for the need of both the witnesses and the Committee itself to be quite clear about the objectives of each inquiry, and with a clear, time-lined program from well before the hearings all the way through to following up recommendations.*

Jerry Dorey

17<sup>th</sup> August 2005

## APPENDIX F

### 'CALL-IN' OF EXECUTIVE DECISIONS

- IV.1 Although, as set out in Section 25, the PPC has decided not to recommend the immediate introduction of a 'call-in' mechanism the Committee believes that it is helpful to set out how such a system could operate if introduced at a later date.
- IV.2 It would almost certainly be necessary to define 'key decisions' of the Executive which would be those capable of being called in. These might be ones that involving significant expenditure or savings and/or would be significant in terms of their effect on the community. Typical criteria for a key decision might be that –

the decision involved expenditure of over £100,000;

the decision appeared to be contrary to one or more of the approved policies or strategies of the States;

the decision appeared to be inconsistent with any form of policy approved by the Council of Ministers;

the decision appeared to be inconsistent with recommendations previously made by a Scrutiny Panel and accepted by the States or the Council of Ministers;

the Minister or the Council of Ministers appeared to have overlooked some relevant and material consideration in arriving at the decision;

the Minister or Council of Ministers appeared to have failed to consult relevant stakeholders or other interested persons before arriving at the decision;

the decision in question had already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Scrutiny Panel, was likely to do so;

the decision appeared to be particularly novel and therefore likely to set an important precedent.

Panels would, nevertheless be expected to satisfy themselves that –

the decision in question was more than 'a day to day management or operational decision of the type normally taken by officers' – such a decision should not normally be called in;

that the request for 'call-in' was not intended simply to delay or slow down the decision making process;

that the delay which would ensue as a consequence of calling in the decision in question was unlikely to cause prejudice to the interests of the States of Jersey, the public or third parties; and

the request for 'call-in' might not be dealt with more appropriately in another way, for example through a question, complaint or appeal procedure.

- IV.3 If a 'call-in' mechanism were introduced the request for 'call-in' would need to be made within a

set period, typically three working days of the decision being recorded and published. It is important to stress that the fixed period would run from the date of publication of the decision, not from the date it was made, and if there was any delay by the Executive in recording and publishing the decision this would not prevent 'call-in' although it would, of course, increase the time between a decision being made and its possible implementation. It would be vital that all decisions made by Ministers and by the Council of Ministers were correctly recorded and published, with supporting papers and reasons for the decision being made available, so that non-Executive members could consider whether or not a decision met the criteria of a 'key decision' capable of being called in.

- IV.4 Once a request to 'call in' a decision had been notified to the Executive a meeting of the relevant Scrutiny Panel would be held within a set period, typically within eight working days, to consider the matter. The opportunity for any action to be taken would lapse if the meeting was not held within the fixed period.
- IV.5 The members requesting 'call-in' would be required to prepare a report giving their reasons for taking this action (in accordance with one or more of the criteria set out for 'call-in') and the relevant Minister and/or officers would be requested to attend the meeting of the Scrutiny Panel to discuss the matter. All the reports and background papers on which the original decision was based would be available to the Scrutiny Panel and officers who prepared the reports would attend the meeting to provide relevant advice and information.
- IV.6 If the Scrutiny Panel decided to take no action after its initial inquiries, the Executive would be notified and the decision could be implemented. Alternatively the Scrutiny Panel might decide to ask the Minister or Council of Ministers to reconsider the decision.
- IV.7 The reconsideration would have to take place as soon as possible, as the decision would not be capable of implementation until the Executive had responded to the Scrutiny Panel. The Chairman of the relevant Scrutiny Panel and/or any other members who made the original request would have the right to be heard to set out the reasons why they believed the decision should be reconsidered.
- IV.8 The Minister concerned, or the Council of Ministers in the case of a Council decision, would decide whether or not to amend the original decision in the light of the request for reconsideration. The outcome would be notified to the relevant Scrutiny Panel and, as soon as this had been done, the decision, amended or not as the case might be, could be implemented. It is important to stress that the Executive could not be forced to amend the decision and might decide to maintain the original decision notwithstanding the 'call-in' request. There would be no second round of 'call-in'.

## APPENDIX G

### Scrutiny of the States Business Plan and Budget Initial Comments by the States Shadow Scrutiny Panels and Shadow Public Accounts Committee on the Resource Allocation Process 2006-2008

These initial comments on behalf of the Shadow Scrutiny Panels and the Shadow Public Accounts Committee (SPAC), relating to the Resource Allocation Process, are based upon the meeting of Committee Presidents held at the RJA&HS on Monday 7<sup>th</sup> February 2005. They form an isolated part of an ongoing review.

The briefing notes received prior to the meeting in question laid out the following statement in the 'Background' information:

*'The States Strategic Plan 2005-2010 includes the initiative "Agree rolling three-year spending plans in its Annual Business Plans, with clear targets for service improvements" with a success indicator of "Resources allocated in accordance with the Strategic Plan".'*

The briefing notes also included one particularly important and relevant quote:

*'Feedback received during the three resource allocation processes from 2003 to 2005 has indicated the following: "There was a strong desire of States Members, repeated during the recent Budget debate, for a more strategic, high level approach to apportioning resources between Committees."'*

Generally the process appeared much more businesslike than before. It was clear from the papers supplied, and the explanations provided by both Senator T. A. Le Sueur and Mr. W. Ogley, that a determined attempt had been made to allocate resources, based on the States Strategic Plan 2005 to 2010. However, where policies did not fully comply with strategic aims, it would have been helpful to know the rationale behind this as the following list demonstrates the strategic approach may not have been entirely successful:

- In section 4 of the resource allocation proposals, the Policy and Resources Committee put forward a 'Further reduction in Secretarial Training Scheme' with a stated impact of '...numbers will be cut from six to four and the further reduction of trainees will have a major impact on the availability of secretaries throughout the States.' This would appear to run counter to the States Strategic Plan 2005-2010. In 2.2, it is stated that the States will 'Develop a strategy to broaden and enhance the skills base of the Island, support business development and provide employment for the resident population. The success indicators for such an aim are listed in 2.2 as follows 'A rise in the level of appropriately skilled and qualified people resident in the Island; A better match of skills vs. skills shortages; and A reduction in the demand for migrant labour'. The proposals by the Policy and Resources Committee would also appear to contradict the aim, as set out in 5.2 of the States Strategic Plan, to 'Improve access to a range of educational and training opportunities so that young people can maximise the educational, career and job opportunities available to them';
- In section 5 of the resource allocation proposals, the Privileges and Procedures Committee put forward a reduction to the Scrutiny Function budget. This action appears to be in direct conflict with the stated aims of sections 8.1 and 8.2 of the States Strategic Plan, i.e. to 'Take steps to encourage all States Members to feel fully engaged and to develop a fuller understanding of the work of the public service' and to 'Implement the proposed scrutiny system to ensure that there is full accountability to States' Members and the public' respectively;
- The Economic Development Committee put forward proposals in section 7 that cut 8% from the total marketing budget. Their proposal itself states 'These cuts do not allow the department to be consistent with either the States or the Tourism strategies which require additional investment and greater effort to achieve the economic targets which have been set';

- In section 8, the proposals from the Environment and Public Services Committee, includes a cut to their Building Control Trainee Scheme about which they state 'A reduction in the Building Control Trainee Scheme will reduce the Department's ability to plan for future succession'. It would seem that this proposal also contradicts the stated aims of 5.2 in the States Strategic Plan 2005-2010;
- In section 12, the proposals don't appear to have taken into account the possible effects of the proposed Goods and Services Tax and its impact on those with a low income or claiming transport allowance as set out in section 3.4 of the States Strategic Plan; and
- Section 13, the Housing Committee proposals, outlines service reductions '...to come from Maintenance and Operations. There is no where else'. The proposal further states that the impact will be as follows 'Further dilapidations & more homes not meeting basic homes standard. Cleaning and grounds maintenance on estates will be further reduced. The estates will become dirty and untidy'. This appears to run counter to the States' stated aim as set out in 3.2 of the States Strategic Plan 2005-2010 i.e. Enable the provision of good standard, secure and affordable accommodation for all. One of the 'success indicators' of 3.2 are listed as 'The availability of affordable accommodation which meets the Island's needs'.

The change to a three year cycle of allocating resources is welcome but despite the new approach to the process there are still important areas that raise some concern. It could be argued that those taking part in the process are not able to ask the right questions because they don't have all of the relevant information. There was a general lack of evidence that overall, Committees have reviewed all existing Services for savings and growth figures could be more clearly presented to explain whether they are to maintain existing services or for the introduction of new ones. The Committee Presidents don't have access to the proposed growth or savings that were not included in the final proposals. It is an important question, and as long as the focus is on individual proposals rather than taking a high level view, the question is unlikely to be answered to anyone's satisfaction, and allow continued accusations of gamesmanship and shroud-waving.

The process, however simplified and strategic this time, still doesn't allow for full, fair comparison across Committees. The only Committee almost exposed to a proper scrutiny of its whole budget examined was the Privileges & Procedures Committee (PPC), but that discussion appeared somewhat chaotic and it seemed less than clear what was actually being proposed and what the implications would be to those participating in the discussion. All other Committees only had a very narrow selection of their current activities examined, which begs the question of whether these proposed savings were more appropriate than others unmentioned (as Senator S. Syvret said, "Why secretaries and not 'spin doctors'?"). The same principle obviously applies to growth proposals, which cannot be assessed rationally unless you have a chance to look at what else the Committee in question is doing. There should, perhaps, also be greater consideration and discussion given to the manpower implications, on both savings and growth proposals, as they do not appear to be of great concern in the present process.

During the discussions it became evident that a number of proposals required greater explanation and/or understanding before a decision could be made. This included a dispute over a £400,000 discrepancy in the Health & Social Services proposals and the issue of the required levels of manpower in the Education, Sport & Culture proposals. During the course of the discussions it was questionable whether all Committee Presidents were able to demonstrate a complete understanding of the proposals contained in their Committee submissions. This may be due to their disconnection with the earlier part of the process undertaken by the Chief Officers, without political input, in which the various proposals were considered according to the aims as set out in the States Strategic Plan 2005-2010.

Within the context of overall spending it doesn't matter where Committees spend money within their whole area of responsibility – what matters is how much they spend, and whether the allocation of resources to that Committee represents better value for money than would be gained by applying the same resources to a different sector. However, the limitations of the process exposed the superficial nature of discussions in this area.

A further area of concern relates to the lack of backbench involvement in the process. Apart from an invitation to make comments at the end of the deliberations, they had no involvement. It is arguable that they should be accorded the opportunity to contribute in some way.

#### *Shadow Public Accounts Committee (SPAC) comments*

It appeared that some of the Presidents were not fully au fait with the corporate approach to doing business, nor yet even the necessity to produce a spoken factual rather than emotive analysis. The written analyses were, on the whole, factual rather than emotive but some tended to be somewhat verbose.

It would be helpful to develop a standardised approach to setting out service reductions and growth proposals. It is to be hoped that this will be addressed by the Corporate Management Board in due course.

Not all Departments made proposals for service reductions or efficiencies in operation of services. Others appeared to have chosen easily identified and discrete blocks of spending. There were also cases where strategies involved the allocation of resources to particular plans where an overlap with the private sector occurs. There was also mention of cases where it seemed that there was a reluctance to address difficult issues on the premise that this would be difficult and complex.

There is perhaps scope for an executive course for Presidents which could give them grounding in finance, budgets and other intricacies of public business. Warwick Business School appear to have researched this area of political life. It is possible some Chief Officers might well find such a course useful.

The discussion underlines the importance of Departments having qualified financial officers with line management to their Chief Officer but with reporting lines to the Treasury. This will be a necessary development following the introduction of accountability of Chief Officers.

There were also indications that Presidents were not always sure what the costs of operations in their departments were. This, added to their reluctance to contemplate savings, underlined the necessity for tighter accounting.

It appeared probable that certain of the States policies may have to be shelved for the immediate future if financial rigour is to be maintained – e.g. Hansard. This underlined the necessity for States Members to be more sensitive to the financial results of their propositions particularly in the overall context of States spending. There are still decisions in the States that are attractive short term/pre-election, but not in the context of the overall budget.

It appears that the corporate approach to preparation of the budget has eliminated, so far, much of the horse trading over different projects and services which took up so much time in previous years. This would seem to be an improvement in the efficiency of the process. The success of this depends on all the Presidents developing a corporate approach as well as the Corporate Board;

It was also not clear as to whether the various commitments and carry-forwards were taken into account as part of the Corporate Board discussions and it was also not clear as to the use made of the benchmarking report in the overall analysis of the allocation of resources. There was also no mention of the mechanism to be employed to ensure that service programs discussed by the Corporate Board would not be changed once the cash limits were decided.

It is vital that the progress of the efficiency savings is monitored and the proposals put forward by the Chief Officers seem sound. It would be helpful if SPAC can review these arrangements, including the results of the efficiency savings, as part of their review of the Visioning Process.

#### *Methodology of approach*

The decision to delegate the responsibility of developing a methodology for a high level approach to

resource allocation is in itself a good idea. However, it is not clear what specific guidance was given by the Presidents or the Finance and Economics Committee to create an efficient methodology which would meet the requirements of Government.

Did the agreed principals of the decision making recognise the fact that the Fiscal Strategy states total expenditure growth should be at 1% below the underlying RPI, the Resource plan specifies 2.5% for net revenue expenditure, the Strategic Plan lays out the need for balanced budgets or that the States agreed to reduce the Capital programme from £50 million to £45 million.

It follows that if the criteria used to make any decisions are not clearly defined how can the methodology produce the desired result.

There are a number of specific areas of concern raised by this initial meeting:

- Were Chief Officers told to ensure that all States strategies and Policies should be reflected in any proposals made;
- Were they also instructed to separate out provision for existing services and any new proposed expenditure or growth;
- Was the Benchmarking information used to determine the need or otherwise of further or existing expenditure;
- Where is the detailed information not only to support the £4 million pound efficiency savings as proposed but future efficiencies allowing monitoring to take place;
- What instructions were the Chief Officers given regarding manpower levels and overall manpower costs;
- Were they told to ensure that the end result should produce a balanced budget;
- Were the Chief Officers asked to consider Gross revenue expenditure against net revenue expenditure, in other words taking account of Individual Departmental income streams when looking at the prioritisation and allocation of resources.

*Ongoing areas of concern:*

Whilst the process attempted to make decisions on a strategic basis there remains some significant questions left unanswered, such as;

- How are essential capital infrastructure projects to be funded i.e. roads, the Prison, the Airport, waste disposal, property maintenance, drains;
- Should we be increasing total manpower levels without identifying the ongoing effects that this will have on our overall expenditure;
- How do we fund new proposals such as the Economic Development plan;
- How do we address the general failure to identify all costs relating to new legislation and regulation proposed and accepted by the States;
- There are still concerns over carry forwards and commitments and how these should be addressed in the future;
- Neither of the options, A and B, included retaining the Capital expenditure to the agreed £45 million;
- Equally both options showed a projected deficit when it has been agreed that we should have a balanced budget.

Both the Shadow Scrutiny Panels and the Shadow Public Accounts Committee will continue to review the Resource Allocation Process with a view to addressing areas of concern and to suggesting improvements.



**Budget Resource Allocation 2006-2008**  
**28<sup>th</sup> February 2005**  
**at Societe Jersiaise**

At the previous meeting on the 7<sup>th</sup> February a number of Committees had been requested to provide greater detail in respect of their proposed growth and/or savings packages. An additional meeting was scheduled at the Societe Jersiaise meeting room in order for the Committee of Presidents to consider these revised bids within the overall context of the Resource Allocation Process.

Each Committee in turn presented the additional information that had been requested. The Committee of Presidents discussed the proposals and their relative priority. Some Committee Presidents were uneasy about the artificial timescales for Presidents to speak and one President commented upon the lack of political input into the proposals going on to say that there had been no instruction on the amount of political input required in the process.

There is some discussion between Presidents on the content and validity of the respective proposals. At frequent intervals Chief Officers are consulted or questioned directly. A considerable amount of time is spent debating the validity of the proposals put forward by the Education, Sport and Culture Committee. Senator P. F. C. Ozouf queries the size of their carry forward and asks why this sum could not offset some of the Department's growth bid. There is further discussion amongst the Committee Presidents about the possibility of saving posts in the primary schools now that the population bulge has moved through into the secondary schools.

Senator T. A. Le Sueur expressed his concerns about the non-executive departments sitting within the process. Following on from this statement the Attorney-General set out the proposals concerning his departments. There was considerable discussion about the use of monies contained within the Criminal Offences Confiscation Fund and the Drugs Trafficking Confiscation Fund to fund these proposals.

There is considerable debate between the President of Environment & Public Services Committee and the Deputy of St. Peter (representative of the Harbours & Airport Committee) about which should have responsibility for the oversight and funding of the Meteorological Department.

The Presidents further discussed the States commitment to increasing the Overseas Aid Budget. The President of the Housing Department pointed out that the President of Overseas Aid had not been invited to the Committee of Presidents meeting. Senator T. A. Le Sueur explained that he had not anticipated that the Presidents would consider freezing or in another way altering the Overseas Aid budget and hence the President of Overseas Aid would not be required.

Following the conclusion of discussions on the Committee proposals Senator Le T. A. Sueur did a re-calculation of the growth and savings proposals. As part of the calculations a reference was made to 'creative accounting' as a solution to the funding required by the Economic Development Committee for their efforts to 'grow the economy'.

The Presidents subsequently decided that funding for non-executive departments would be forthcoming from the Criminal Offences Confiscation Fund though they acknowledge that this is not a sustainable arrangement.

The Presidents also agreed that to the proposal that the Overseas Aid budget be frozen and acknowledged that this would need to be agreed in the States as the rate of growth had been a States approved decision.



**Capital Resource Allocation Process**  
**5<sup>th</sup> May 2005 at**  
**The Royal Jersey Agricultural & Horticultural Society Headquarters**

Senator T. A. Le Sueur acted as facilitator, explaining the format of the day and the money available for Capital projects based upon the decisions made in the earlier Budget Allocation process. He went on to explain that the bids would have to be ranked in order of priority.

The Presidents started to consider the growth proposals:

Senator M. E. Vibert asked why the proposed funding for the Waste Management Strategy was now being included in the process when it was previously going to be funded from outside the capital programme. The President of the Environment and Public Services Committee explained that the funding for the Strategy was now unlikely to be forthcoming from 'user pays' proposals and, as such, it was now necessary for the funding to come from the capital budget.

Senator M. E. Vibert went on to state that the decision to fund the waste strategy should not be made on a strategy that has not yet been approved by the States. He further stated that there had yet to be a feasibility study made and this study was part of the criteria for the process of resource allocation the other Committee Presidents were following. As such he questioned the planning that had been undertaken in this instance. Senator P. F. C. Ozouf explained that if they waited for the States debate on the strategy the funding would not be available in this cycle of Capital Resource Allocation and the delay to the strategy would be unacceptable.

Senator S. Syvret commented that this situation exemplified the lack of forward planning in budgeting for large scale replacement capital projects. He contended that there should be a fund set aside for future replacements. At this point he suggested inviting a representative of the Scrutiny Panel investigating the Draft Waste Management Strategy to comment. Senator T. A. Le Sueur agreed to this request. Deputy R. C. Duhamel set out the findings of the Scrutiny Panel. It was agreed that regardless of the option chosen by the States there was a residual amount of between £20 and £30m required. Senator W. Kinnard expressed concern that once a rough figure (which was all that was being proposed at present) was included in the process there was no incentive to reduce this amount at a later stage as that funding was already guaranteed. There was general discussion around the issues raised, the health implications of continuing to run the incinerator and the legitimacy of the bid within the framework agreed. As a result of discussions the Presidents accepted that the initial £20m bid must be included in the process but that the reference to £88m be taken out until the States have agreed the Waste Strategy.

The Presidents continued to discuss the other bids in turn. Amongst the issues discussed were value for money, iconic and historic value of projects, the impact of decisions made upon the construction industry.

The Presidents discussed the amount set aside for the 2010 essential new bids and its impact upon the construction industry. There was a divergence of opinion as to whether a keynesian approach to management of the construction industry was effective.

The President of the Housing Committee stated that there would also be massive implications for the capital programme if the States rejected their corporatisation proposal. This could potentially cost £88m. The Presidents discussed the Housing Development Fund repayments and the consequences of any postponement.

The Presidents went on to consider the proposed reductions:

Each of the proposed reductions were discussed and ranked. Senator P. F. C. Ozouf questioned the

commitment of the States to urban renewal if the E&PSC bid of £0.4m in this respect was rejected. There was also significant discussion regarding the bids by the Education, Sport and Culture Committee for replacing temporary classrooms at St. Martin's Primary school and repairs and refurbishment at Mont a L'Abbe school. The Presidents went on to discuss the proposals for a sheltered employment training unit. The President of the Employment & Social Security Committee confirmed that he would bring an amendment in the States if the proposals were left out. Senator T. A. Le Sueur pointed out that there were ongoing revenue costs associated with this proposal.

The Presidents considered the new bids scheduled for the 2010 programme. The discussion assessed whether or not any of the bids scheduled for the 2010 programme were deemed to be more essential than the current agreed or put forward. As part of the discussions it was agreed that 'user pays' measures be introduced to fund road infrastructure measures.

Having concluded their discussions of the individual proposals the Presidents assessed the rankings attributed to each proposal and selected those of greatest importance which could be accommodated within the funds available.

Following the conclusion of discussions between the Committee of Presidents Senator T. A. Le Sueur invited comments from the observers.

## **Shadow Scrutiny Panels Scrutiny of the Dummy States Business Plan**

Scrutiny of the Budget and the States Business Plan was proposed as part of the original proposition setting up the Shadow Scrutiny Phase. During this phase it has proved very difficult for the Scrutiny Panels to undertake a comprehensive review of this area due to both time and resource constraints.

As such, an ad-hoc sub-panel was convened at various stages of the process and the following States members have participated at various times over the course of the review:

- Deputy R. C. Duhamel
- Deputy R. Le Herissier
- Deputy S. C. Ferguson
- Deputy G. Southern
- Deputy J. Dorey
- Deputy J. Reed

In respect of the dummy States Business Plan, Deputy R. C. Duhamel Chaired a sub-panel comprising Deputy S. C. Ferguson and Deputy R. Le Herissier. The Panel appreciate the help given by the Finance & Economics Committee and their officers and the speedy dissemination of information. The following key points were noted as a result of the review:

- i. There were insufficient qualitative measures in the States Business Plan. The link between quantitative aims and qualitative outcomes was also seen to be insufficient;
- ii. The Panel commented that they didn't want to see Key Performance Targets, such as literacy and numeracy rates in the prison, written in stone;
- iii. The Panel recognise the significant difficulties in a complicated process with broad objectives. However, the members believe that the high level aims contained in the States' Strategic Plan are too wide and as such it is difficult to hold Departments or in future, under the Ministerial system of Government, Ministers to account;
- iv. In future, in order to properly evaluate the States Business Plan it would be helpful if Scrutiny were able to examine how the Departments took their decisions. It would assist understanding if Scrutiny were aware which savings and growth packages were considered and why;
- v. The Panel are concerned that States members will not have the opportunity to influence the distribution of monies at an early stage in the process under the new system;
- vi. The Panel believe that the States Business Plan should include a rationale for the savings on each page and how those savings were worked out;
- vii. No States members, other than Ministers, will have a detailed knowledge of Ministries and their objectives. As such, it will fall to Scrutiny Panels to examine the business plans of individual Ministries and inform the States and relevant debates. There needs to be an assurance that States members will have the opportunity to examine Ministries' priorities in good time and prior to the Business Plan being finalised;
- viii. Capital expenditure: The Panel believes that there is some attempt to link Strategic aims to the States Business Plan but that this needs to be tightened up. However, currently there doesn't appear to be any indication how savings will be measured, affected or tracked;
- ix. Revenue Expenditure: The Panel are satisfied that sound forecasts have been used to inform budgets. However, there is concern that under the new Ministerial system there will not be the opportunity to have philosophical debates on the priorities for the Budget at a meaningful stage of the process;
- x. The Panel would like to see the policy basis for decisions included in the Business Plan;
- xi. The Panel would also like to see the unsuccessful departmental bids included in the Business Plan as well as the revenue and manpower implications;

- xii. Further detail is required in relation to whether or not the savings listed are real or simply re-distributed;
- xiii. Legislation: The Panel noted that financial implications are included and view this as helpful. It would also be helpful to have some indication of the breakdown of legislation in relation to socially related areas and finance. The Panel also believe that all major policy initiatives should be disclosed with all manpower and financial implications;
- xiv. The Panel members believe that it is unclear how meaningful scrutiny will be applied to the States Business Plan under the Ministerial system of Government. They believe that a great deal of work still needs to be done in establishing a framework for meaningful scrutiny;
- xv. The Panel also have concerns as to how the backbench States members will be able to properly evaluate the Strategic Plan brought forward by the Council of Ministers without associated costs also being presented;
- xvi. The Panel are also concerned that although Scrutiny may be able to examine policies in isolation, a micro level debate alone will not be enough and a macro level debate is essential. However, as there will be a cyclical review of all major policy areas by Scrutiny Panels under the proposed dedicated panel structure this may alleviate these concerns.
- xvii. There is an implicit assumption that all items in the budget have undergone a value for money assessment. However, a cursory examination shows that considerable more work has to be done in this area. There is no evidence apparent that this has been done. It should also be emphasised that value for money is not done post hoc, but that relevant analysis should be ongoing from the earliest stage.

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[1] Correspondence from Privileges and Procedures Committee 11th May 2005

[2] An evaluation of the work of the Shadow Public Accounts Committee is included at the end of this report.

[3] Senator Vibert was appointed Panel Chairman but the Panel agreed that each member should have chairmanship experience and consequently rotated this rôle for different reviews.

[4] Mr. T. Dunningham remained as Chairman with Deputy Ferguson as Shadow Chairman

[5] Senator Le Claire was reappointed to Scrutiny on 19.01.05 when the States approved members of the Privileges and Procedures Committee to serve on Scrutiny Panels.

[6] This is due to the draft Waste Strategy Review being extended under the Chairmanship of Senator Vibert until 31st March 2005 restricting the Duhamel Panel from starting a new review whilst this was ongoing.

[7] Two additional fact-finding visits to Guernsey were undertaken.

[8] Ongoing research was undertaken throughout the process

[9] HoC Annual Report 2003 - 2004 446, para68

[10] The Dorey Panel undertook an evaluation of its specific review but not of the overall process in the terms of P.79 or P.186/2003

[11] The full Guidelines are included at **Appendix C** to this report for ease of reference.

[12] Leach S: Practice, Progress and Potential: an assessment of the Local Government Overview and Scrutiny function, The Centre for Public Scrutiny, London, July 2005

[13] Report of the Review Panel on the Machinery of Government in Jersey, December 2000

[14] Sandford M: Effective Scrutiny: tools and intended outcomes, The Constitution Unit, London, February 2005

[15] Correspondence from Privileges and Procedures Committee 11th May 2005