

STATES OF JERSEY



MACHINERY OF GOVERNMENT: AMENDED STRUCTURE

Lodged au Greffe on 3rd June 2010
by Senator A. Breckon

STATES GREFFE

PROPOSITION

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

- (a) to agree that the current system of government in Jersey should be amended so that a more inclusive system is established with the aim of giving all States members greater opportunities to participate in executive decision-making, and that to achieve this aim –
 - (i) the current restriction on the total number of Assistant Ministers should be removed and all Ministers should have a minimum of 3 and a maximum of 5 Assistant Ministers;
 - (ii) the current method of appointment of Assistant Ministers should be amended so that they are elected and can be removed from office by the States;
 - (iii) Ministers should be required to consult with their Assistant Ministers at a properly constituted departmental meeting before taking significant ministerial decisions;
 - (iv) the current system of 5 scrutiny panels with defined remits should be replaced by a more flexible overarching system of scrutiny where *ad hoc* panels could be established to review individual matters of public interest, with all members other than Ministers able to participate in such panels and with the panels also able to co-opt persons who are not members of the States to participate in reviews;
- (b) to charge the Privileges and Procedures Committee, in consultation with the Council of Ministers, to take the necessary steps to bring forward the necessary legislation to give effect to the changes with a view to introducing the revised system in 2011 after the next ordinary elections.

SENATOR A. BRECKON

REPORT

It was with great expectations that as part of a root-and-branch reform of the “machinery of government” with Ministerial areas of responsibility replacing the Committee system being heralded as the new (and perceived by some as the only) “business-like” way to proceed, that a former States Assembly voted by a majority to move to a Ministerial system of government – with, of course, appropriate checks and balances in place. So although no politicians have or had mandate from the electorate they were to forge ahead anyway into this brave new business-like manner that the people were crying out for – greater decisiveness and accountability, speedier decision-making, etc.

So the proof, as they say, is in the pudding, so what has actually happened?

From my memory recall there were 4 main strands to the effective change from Committees to Ministers –

- (1) Some Committees would merge together into fewer Departments/Ministries.
- (2) Ministers in general terms would assume the role and responsibilities of a former Committee.
- (3) Scrutineers would provide the checks and balances.

Accompanied by –

- (4) Easy access to information supplied by Ministers, with greater transparency and supported by a Freedom of Information Law.

The reason why the above was carried out and why we are where we are today flows from the Report and Recommendations of 19th December 2000 of the Review Panel on the Machinery of Government in Jersey, more commonly known as the “Clothier Report.”

Setting aside other issues touched upon in the Clothier Report, such as – who should sit in the States, for how long and what they should be called – and staying with the move to Ministers from Committees the Report made a number of comments.

To set the general scene the Report said this –

“Jersey Today

On the face of it Jersey is a prosperous and fortunate society. With its economy buoyed up on a tide of revenue driven by a burgeoning financial services industry, the Island is well able to maintain high standards of public services. When most societies around the world are concerned to promote and foster development, Jersey’s problem has been to keep such development within bounds. The insular authorities have been able to cope with unforeseen overspends and with ill co-ordinated decision-making because the Island has been driven forward by a favourable wind.”

This is probably a polite way of saying that we had money coming out of our ears and any fool could run the place!

The Report goes on to suggest that the forming of an Executive could diminish the role of other Members, but suggests a “strong Assembly” may be a remedy for this – “which holds the executive to account.” Interestingly quite recently some Members, including Ministers, find this a bit bothersome when they could be off somewhere being a bit more important! Why should they waste their time listening to back-benchers or answering boring questions?

Clothier had this to say at paragraph 3.4 –

“3.4 *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. The evidence we received suggests that the States have not adequately performed either their executive or their critical functions. A number of those who presented evidence to us suggested that the establishment of a central Executive would in effect remove other Members of the States from the political leadership of the Island.”*

So has this in fact happened – how precious has the Council of Ministers become? Set out below is an “AGENDA” from the Council of Ministers’ meeting of Thursday 27th May 2010.

Clothier had a view that States Members would be “contributing to the formation of policy”: as can be seen below, any information is being virtually censored, even something as cutting-edge as a “traffic and transport strategy” is kept under wraps in case anyone gets too excited about the content.

COUNCIL OF MINISTERS

Meeting to be held at 9.30am on Thursday 27th May 2010 in the 9th Floor Meeting Room, Cyril Le Marquand House, The Parade, St. Helier.

AGENDA

Part A – OPEN

A1 TRANSFER OF ITEMS TO THE ‘A’ AGENDA

Part B – Confidential

The part ‘b’ agenda includes the following 5 items of business –

- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)

Is this what the public were promised or what they thought they were getting?

What happened to inclusive Government with transparency and reasonable access to information whilst respecting situations that merit a degree of privacy?

The Clothier Report at Chapter 10 –

“Towards a more Open Democracy

10.1 *It is of the greatest importance that the moves we recommend towards a clearer distinction between “executive” and “parliamentary” responsibility should not have as a consequence a reduction in the democratic influence of individual citizens and voters. We have already noted fears about creating an “elective dictatorship” under which an assembly and the public during the lifetime of a government, surrender to the members of that government undue power and influence. (my emphasis) This is, perhaps, an extreme view, since as we have remarked Scrutiny Committees (and in particular a Public Accounts Committee) can be effective forums for accountability, particularly where members have no rigid party positions and can consider issues on their merits. Nevertheless we believe that if a Council of Ministers is to be constituted in Jersey, composed of men and women whom the States have confidence, we need to ensure that members of the States occupying executive office enable and encourage “back-benchers” and the public not merely to scrutinise and if necessary criticise policy and executive action after the event, but also to be partners with Jersey’s Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens. (my emphasis)*

10.2 *For this pattern of democratic partnership to flourish, there must be a preference for transparency and dialogue as opposed to secrecy and governmental dogmatism.(my emphasis) One mechanism increasingly used in other jurisdictions around the world is a Freedom of Information Act, and no doubt the Jersey institutions will wish to consider the extent to which they rely upon this device. It is, however, inevitable that certain information has to be held in confidence, particularly to allow a debate about policy options designed to produce a conclusion acceptable to all. People in ministerial office ought to be able to argue a case amongst their colleagues with vigour, and without embarrassment of those colleagues or themselves. We have already pointed out that if a Council of Ministers is to be established in Jersey, one of the early items on its agenda should be to decide whether, and to what extent, to observe a convention of collective responsibility.”*

One of the perceived benefits of those that were gung-ho about Ministerial Government was basically that a group of people will sit in a room – decide to do something – then come out and get on with it – this off course is not either how it is or how it works, or indeed how it should be.

10.3 *“While we do not think it would be feasible or desirable for a Council of Ministers to meet in public or to publish a detailed account of the exchanges between its members, we could see real benefit in making available immediately after the meeting a brief summary of the business under discussion and any decisions made. If consideration of a particular issue is conducted in total secrecy until the announcement of a firm government decision, other opinions can only be expressed after the die is cast. It is an observable characteristic of governments everywhere that they are extremely reluctant to be diverted from the firm policy already announced.”*
(my emphasis)

I wonder if this is ringing any bells, alarms or otherwise – something like the Council of Ministers have considered all the options and this is the best, indeed only way forward – dismissing other options for say taxation – in secrecy.

10.4 *“Unless the determination of policy is a matter of demonstrable urgency, we recommend regular use of consultative or discussion papers (often referred to elsewhere as “Green Papers”) which fully present relevant data and underlying arguments and set out options for discussion and debate. On the basis of such papers, the relevant scrutiny committee of the States could summon and hear evidence from Ministers and officials, invite views from the wider public and prepare reports which should be given due weight by Jersey’s Ministers in the final determination of policy.”*

There are a number of tensions in the above paragraphs –

- (1) As can be demonstrated by the Council of Ministers’ Agenda, they are very precious with sharing information – virtually everything is ‘policy in development’ and therefore secret.
- (2) Only tea and biscuits are on an ‘A’ Agenda.
- (3) Ministerial Decisions compound the above with secrecy – coming in under the radar with no clear reporting structure.
- (4) The ability to encourage “back-benchers” and the public not merely to scrutinise, and if necessary criticise, policy and executive action is not apparent and in any case is happening after the event. Also to be partners with Jersey’s Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens is not happening – the public are not engaged – but are kept in the dark most of the time along with most States Members – except when perhaps “comfort consultation” is required or can be used as a convenient stalling mechanism.

In October 2005 under the (then) Policy and Resources Committee, a publication was produced that was widely distributed.

“A guide to Ministerial government in Jersey

In December 2005 a new system of government will be established in Jersey. The introduction of Ministerial system is the most important change in the Island's government for many years.

The States of Jersey has produced this leaflet to explain how this new style of government will work. The leaflet does not cover other issues that will be looked at, such as the question of whether there should be any changes to the make up and election of the States Assembly.

Why change?

In July 2000 the Clothier Review Panel commissioned a survey of attitudes to the Island's government.*

Many people expressed the following views about the States:

- *Too big – too many States Members*
- *Too slow at making decisions*
- *Not sufficiently accountable*
- *No clear leadership*
- *Doesn't listen to voters' views*

Since 2000, the States have introduced a number of measures to address many of these concerns. The single most important one is the introduction of Ministerial government, combined with a Scrutiny system.

Benefits of change

The reorganisation of Jersey's government should make its structure more logical and easier to understand. It should speed up decision-making, improve communication and co-ordination between different departments and provide the best possible value for money. The aim is to create a more efficient and more effective government for the Island. (My emphasis)

So this is all very laudable to “create a more efficient and more effective government for the Island” – but what is the reality – where is the evidence? What has actually happened, and are Ministers actively managing their areas of responsibility or has political influence disappeared overtaken by an increase in officer input without proper accountability?

Evidence suggests that Ministers' portfolios are too big; and that effective and engaging contact with the public has been lost. Large areas of responsibility, e.g. Health and Education, are not well-served without active political involvement and this cannot be achieved by 2 or 3 people. Having more politicians involved will lead to greater accountability, better service delivery to the public and better links with staff and the public.

Examples with the Incinerator Contract, in Health, Police, with Court and Case Costs, Property Management, Waterfront Enterprise Board, have more than a suggestion that

situations have got out of control and more importantly no-one seems accountable; but that's alright then – we can “move on” – as some may say – but at what cost?

Who really did decide (in an election year) to scrap prescription charges and do the States have an office strategy? If we do – who is responsible for it and where is it? I believe that on occasions someone politically really needs to be on the case otherwise things just do NOT happen.

Another glaring example of inertia and procrastination.

Do we have a joined-up population, migration plan or strategy – it looks pretty fragmented to me, demonstrating a total lack of up-to-date statistical information on which to base future policies for health, housing, education, planning, employment, elderly care, etc., etc., etc. Surely this is a massive failure for Ministerial Government – not joined-up and working together.

At a hearing of the:

**“Health, Social Security and Housing Scrutiny Panel on Tuesday 13th
APRIL 2010**

The Chief Minister: Said this

I have not brought any other officers because I think this is really cross-departmental. I could have brought 10 or 20 but that does not seem a particularly good use of our time and I think we need to focus, for a start, on why I am here appearing before Health, Social Security and Housing scrutiny panel when as Chief Minister I normally have dealings with the Corporate Services scrutiny panel. My interpretation was that there are certain issues which cut across various different departments and in that context the Chief Minister is not the puppeteer but holds the strings between the different departments and performs that sort of continuity. So I think there may be times when I will say this is not really a matter for me, this is something for a particular department, and if we focus on matters which are cross-departmental issues I think we will get better use out of the time.”

Members can make their own mind up about whether this is joined-up Government.

Within the document earlier referred to circulated in October 2005 it stated –

“How the Ministerial system will work

*Each Minister will be legally and politically accountable for their area of government. **There will be up to a further 13 Assistant Ministers, each with an area of political responsibility, but they will not be part of the Council of Ministers.**” (My Emphasis)*

Here, I believe we have a very grey area – Assistant Ministers – they are appointed by Ministers with the approval of the Chief Minister, but not elected by the States. There is no recognised structure for them to work in – there are no terms of reference for their role. The information booklet in 2005 clearly stated that “they will not be part of the Council of Ministers” – however, on many occasions they clearly are – so why is

this? They are not elected or accountable to the States, so how democratic or inclusive is this? So what are the qualifications to be an Assistant Minister – is it about what you know or who you know? My reason for stating that is I do not know the answer.

There fore I believe that the role of Assistant Minister should become a more integral part of the democratic process.

Scrutiny Review

Much good work has been done by a number of different Panels; however, the results have met with varying responses from Ministers and Departments. Some have received widespread acclaim and been acted upon; others have been virtually ignored.

A great deal of dedication, time, effort and energy has been required to produce individual reports, however, I am of opinion, having had first-hand experience for nearly 5 years, that the Scrutiny function would be better served under one umbrella – with reviews carried out by topic rather than a defined area – for example elderly care could go into areas of Health, Social Security, Housing, Planning and Treasury without restriction and be more beneficial than having demarcation lines.

Panel Members could be drawn from all Members of the States – except for Ministers. Membership of Panels should include people from the community – this is a tremendous asset that could provide a great public benefit. I believe there are many people who are willing to give up their time and effort on behalf of others on a particular project.

To my knowledge School Governors and the Public Accounts Committee benefit from the interest and contribution of lay Members and some Scrutiny Panels have also benefited. I believe this is a resource from the community we should not ignore.

The recent Report

STATES BUSINESS ORGANISATION SUB-GROUP: REPORT (R.59/2010)

Presented to the States on 24th May 2010 by the Privileges and Procedures Committee.

“Foreword (Page 2)

In November 2009 the Privileges and Procedures Committee established a small Sub-Group to look at the organisation of States business. The decision to set up the group came in response to concerns about the significant increase in the number of States meetings during 2009, and the associated increase in the number of questions and the length of debates.

On 18th May 2010 the Sub-Group presented its Report to the Privileges and Procedures Committee.

The Sub-Group’s Report indicates very clearly that in its view the current system of government established in December 2005 should be reviewed and that the matters that gave rise to concern during 2009 such as the rise in the number of Questions or the length of States Sittings are, in fact merely, symptoms of a wider problem.”

“Ministerial Government (Pages 18 & 19)

During the Sub-Group’s review, comparisons were drawn between the current ministerial system of government and the former Committee system. While a diverse group of members would participate in each Committee, it was noted that fewer members were involved in each piece of work under ministerial government. This had resulted in the discussion and information-gathering stages of the Committee system being transported into the States Chamber, with questions, repetition and misunderstanding the Chamber being perceived as time-wasting. It was accordingly suggested that the design of ministerial government was more suited to a party political structure: “I feel that a lot of the efficiency is wasted – if you see it as being wasted – in the design of the ministerial structure. Because I feel perhaps it was more designed towards a party-political structure rather than a system where you officially have independent members” (Deputy Jeremy Maçon)

This view has echoed by Senator B.E Shenton: “Part of the problem is Ministerial Government. This ill-conceived proposal was not intelligently thought through and it has a number of what are likely to be terminal failings. In this case the splitting of the Chamber into ‘executive’ and the ‘non-executive’ was always going to be adversarial and only an idealistic dreamer would argue otherwise. No doubt we will persist in trying to make this concept work but eventually all the sticking plasters in the world won’t keep it together” Senator Shenton suggested that the structure of Ministerial government was flawed, in that the Chamber was divided, causing unnecessary friction and duplicating both work and costs. “Consultants are hired by both the Executive and Scrutiny to examine the same policy, Scrutiny members do not feel part of the Government and are frustrated by the lack of power, and the position of Minister lacks the checks and balances necessary for such a powerful role.”

Problems were also cited in respect of the role of Ministers. “Because of lack of understanding of their portfolios I do feel that, to a certain extent Ministers do get led by the nose ... I think that perhaps there is a case whereby there’s a perception that Ministers seem to be led by the civil servants and don’t necessarily have as much understanding as they should.” (Deputy Maçon)

“When you attain the position of Minister you often rely on the advice of your Chief Officer and feel very isolated if you have concerns regarding their recommendations. There is no one to discuss the matter with, no one to input an alternative view, no one to provide some form of checks and balances. If we had a party system the party would help keep the Minister in line by ensuring that he sticks to agreed policy... By electing independents into the role, in effect a party of one, there is no structure to keep the Minister in line or tie the whole Council of Ministers together.”

Deputy P.V.F. Le Claire considered that the move to Ministerial government had cut off the flow of information and had left some members without a function. He considered that the Council of Ministers did not run on collective responsibility and suggested that a smaller Committee-system would have

been involved in the decision-making process, resulting in fewer questions and great levels of trust between members.”

“Senator Shenton suggested that a revised system be introduced as follows –

- Each Minister has a Deputy Minister and 3 Assistant Ministers*
- Ministerial Decisions have to be signed by the Minister and at least to Assistant Ministers*
- Any dissent from signing by any Assistant Minister would have to be reported*
- A person may hold a maximum of 2 Assistant Minister positions*
- Assistant Ministers may also sit on Scrutiny Panels providing this does not conflict with any Assistant Minister positions held*
- Assistant Ministers would not be able to chair Scrutiny Panels or the Public Accounts Committee”*

“Findings (Pages 20 & 21)

The Sub-Group does not consider that making small adjustments around the number of propositions that may be lodged, time limits on speeches, the number of questions – to mention a few items – will make any appreciable difference without looking more deeply at why the increases in questions and individual members’ propositions is occurring.

The Sub-Group is of the view that the exclusivity of the ministerial system of government, which provides that only a small number of people have real insight into government, means that most do not have access to the decision-making process or to the information on which it is based. Consequently, contrary to the expectations of the public, few members of the States are able to answer their queries on the many issues that concern them.

The Sub-Group believes that the number of questions has increased so much because members, and Scrutiny, are unable to access the information in a timely fashion, in any other way. In addition, given that many decisions are being made in relation to States activity by just 10 people out of 53 members, asking questions gives an opportunity to members to bring checks and balances to the decisions made and to hold the Ministers to account. The Group felt that Ministers might also be overwhelmed by the amount of business within the department, the complexity and depth of the detail, and, realistically, would be unable to interrogate and verify the draft proposals put to them by officers. Such a situation leads to the supposition that senior civil servants are ‘running the show’.

The Sub-Group also considers that the reason why the number of propositions proposed by individual members has increased is because this is the only way in which members are able to influence policy and ensure that their suggestions are adopted, in a climate where Ministers are reluctant to be diverted from their own programmes and plans.

By contrast, in the former Committee system of government, draft policy was thrashed out by up to 7 people on a Committee, and they were able together to think through in more depth all the proposals and recommendations. That element of discussion or even ‘thinking aloud’, while mulling over the best

way forward, has disappeared. Members on a Committee might each have taken an area of specialism from the department, and developed a greater understanding of that area, with the ability to lead discussions on that item. While some Assistant Ministers have specialised areas of responsibility, there is no evidence that this occurs in all departments, and there is still a lot of ground to cover between 2 or 3 members.

The Group is of the view that there are fundamental questions about the ministerial system of government that require review, as the new system of government, which may be good in parts, is not working as a whole as it was intended. Members of the Group received many comments from the members, both formally and informally, indicating that the theoretical benefits of the ministerial system as set out by the Clothier Panel were not being realised in practice because many members felt totally unable to make the positive contribution to government in the Island that they had hoped to make when elected. The Sub-Group was particularly struck by the following extract from a submission made by Senator B.E. Shenton – “When Members are elected they are, in the eyes of the public and themselves, members of Government. They expect to have influence in the decisions of State and the fascinating mixture of political views in the Chamber should provide a diverse and encompassing Government. The weakness of the system is that the Troy rule divides the Chamber, causes unnecessary friction, and duplicates both work and costs. Consultants are hired by both the Executive and Scrutiny to examine the same policy, Scrutiny members do not feel part of the Government and are frustrated by a lack of power, and the position of Minister lacks the checks and balances necessary for such a powerful role.” ”

I think some of those comments from colleagues speak for themselves – they share my concern for the way Executive Government is NOT working for the benefit of the people.

Financial and manpower implications

I believe that there are significant economies that will flow from a more joined-up system of Government.

The adoption of this Proposition will not require any additional manpower in my opinion.