

STATES OF JERSEY

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A PEOPLE'S ADVOCATE (P.202/2004): COMMENTS

**Presented to the States on 1st February 2005
by the Privileges and Procedures Committee**

STATES GREFFE

COMMENTS

The Privileges and Procedures Committee does not support this proposition as it believes that the creation of a post of People's Advocate would inevitably be an expensive option and would not necessarily bring the benefits suggested by Senator Syvret.

It is not, for example, clear how members would be able to choose between conflicting advice if an alternative view to that of the Law Officers was provided. In addition, although the People's Advocate is described as being 'independent' it is, in fact, likely that the postholder might be tempted to give advice that was favourable to a majority of States members as he or she would be appointed and dismissed by the States.

Senator Syvret refers in his proposition to the requirement for Scrutiny Panels to receive independent legal advice. The Privileges and Procedures Committee addressed this issue in the report accompanying P.79/2003 (Machinery of Government: establishment of Scrutiny Panels and Public Accounts Committee) which was approved by the States on 24th July 2003 and which stated –

24.2 The Committee does not envisage that Scrutiny Panels will often be dealing with issues that require legal advice as they will principally be scrutinising policy (except when they are scrutinising legislation) and should not need to become involved with legal matters. There will, however, be some occasions when Panels will need to receive legal advice. This may be because –

- the Panel wishes to access legal advice that has already been given to the Executive;*
- the Panel wishes to receive advice on a subject where no advice has been sought or obtained by the Executive; or*
- the Panel may wish, for whatever reason, to obtain separate legal advice on a matter where legal advice has already been given to the Executive.*

24.3 The Committee is hopeful that Scrutiny Panels will be able to access advice already given by the Law Officers' Department to the Executive.

24.4 When no advice has been given to the Executive on a matter, the Committee believes that it will normally be possible for Scrutiny Panels to seek the advice of the Law Officers' Department who can advise on an impartial basis as legal advisers to the States of Jersey.

24.5 Although advice may normally come from the Law Officers' Department there will undoubtedly be occasions when Scrutiny Panels wish to obtain advice from other sources. The Panels will have a budget for research and consultancy purposes and the Committee believes it is very important that Panels have the option of seeking private legal advice if they believe this is necessary and an appropriate use of their budget. Panels would be expected to inform the Attorney General out of courtesy of their intention to do this.

Notwithstanding its opposition to the concept of a People's Advocate, the Privileges and Procedures Committee believes that Senator Syvret's proposition has again drawn attention to the need for a full review of the rôle and functions of the Law Officers and, indeed, of the other unelected members. This review could be undertaken by the Policy and Resources Committee or by a Special Committee established for this purpose. The issues that should be covered in any such review would include –

- the breadth of the present rôle of the Attorney General and Solicitor General;
- the present rules on the absolute right of speech on any issue presently available to the Law Officers as members of the States;

- the manner in which legal advice given to the ‘executive’ can be made available to Scrutiny Panels and individual members (linked possibly to new rules on confidentiality requirements as part of the code of conduct);
- whether it remains appropriate for the Crown to be responsible for making the appointments.