

MACHINERY OF GOVERNMENT: STRUCTURE OF THE EXECUTIVE

**Lodged au Greffe on 22nd October 2002
by the Policy and Resources Committee**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

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

to refer to their Act dated 28th September 2001 in which they agreed reforms to the machinery of government and -

- (a) to agree that the executive function of government should be structured as set out in the Appendix to the report of the Policy and Resources Committee dated 21st October 2002 in relation to the following matters, namely -

- (i) the Council of Ministers;
- (ii) the appointment of the Chief Minister and ministers;
- (iii) the Chief Minister;
- (iv) the Minister;
- (v) the dismissal and replacement of ministers;
- (vi) the Assistant Minister; and
- (vii) policy formulation;

and to vary its decision of 28th September 2001 accordingly;

- (b) to direct the Privileges and Procedures Committee in accordance with the Act of the States of 26th March 2002, to incorporate the matters set out in the said Appendix, where appropriate, in the revised States of Jersey Law and the Standing Orders of the States of Jersey.

POLICY AND RESOURCES COMMITTEE

- Notes:
1. The Finance and Economics Committee's comments are to follow.
 2. The Human Resources Committee's comments are to follow.
 3. The Privileges and Procedures Committee's comments are to follow.

REPORT

1. Introduction

- 1.1 On 28th September 2001 the States adopted an amended report and proposition of the Policy and Resources Committee ('Machinery of Government: Proposed Reforms' (P.122/2001)) and agreed to move to a ministerial system of government. This historic decision will result in major changes to the Island's government. It means that a team of ministers, working under the leadership of the Chief Minister and with support from assistant ministers, will carry out the executive function of government on behalf of the States. This new, simpler structure of government will mean that decision-making will become more timely and efficient, whilst taking full account of public opinion through improved methods of consultation with other States members, scrutiny committees, and the public.
- 1.2 The report accompanying P.122/2001 commented in some detail on the roles and responsibilities that are envisaged for the main participants in this new system of government. The purpose of this report and proposition is to develop this thinking further so as to provide a more detailed account of how it is intended that the executive will work in practice.
- 1.3 As part of the proposition adopted by the States, it was agreed that -
- "the States will appoint a Chief Minister of Jersey from among their number, by a process to be agreed, who will nominate a team of ministers to form the Council of Ministers, with the executive function of government vested in the Chief Minister and the Council of Ministers".
- 1.4 The proposals in respect of the executive were subsequently developed in some detail in Section 6 of the 'Implementation Plan - Machinery of Government: Proposed Reforms', published by the Policy and Resources Committee on 27th November 2001. The Implementation Plan also listed the various reports and propositions that the Committee intended to bring to the States in order to carry forward the process of government reform, including this report and proposition on the structure of the executive.
- 1.5 Since the publication of the Implementation Plan the Committee has given further consideration to the structure and nature of the executive, and has taken note of the views that have been expressed by States members and the public. The proposals set out in this report and proposition represent the Committee's considered view on how the executive should function, including the roles and responsibilities of the key participants.
- 1.6 The Committee would like to emphasise that its proposals should not be seen in isolation, but as part of the wider framework for the Island's machinery of government. The executive needs to be seen in the context of its relationship to the States, to the scrutiny function, and to the public. This report accordingly comments on how it is envisaged the executive will relate to this wider context, which will develop over time.
- 1.7 This report is a development of the proposals that were set out in both 'Machinery of Government: Proposed Reforms' (P.122/2001) and the Implementation Plan. As with the Implementation Plan, the Committee's approach in this report is to describe the roles and responsibilities of the key participants in the executive, and these are set out below. It will be seen that in many cases the Committee has remained close to the text of the Implementation Plan, and in these areas the Committee has maintained the position that it described in the Plan. There are some areas however where the Committee has moved to a degree from the position described in the Plan, and the reasons for these changes are explained in the text.

2. The Council of Ministers

- 2.1 The Council of Ministers will be established by law. Among its core functions will be overall economic and political strategy, the development of strategic policies and new legislation, resource allocation, and the prioritisation of capital projects. Ministers who head departments will, by right, be members of the Council of Ministers. The question of the legal status of the minister is a matter for resolution in the States of Jersey Law.
- 2.2 In accordance with the approach set out in Section 6.8 of the Implementation Plan, the Committee proposes that one of the key tasks for the Council of Ministers at the beginning of its term of office should be to develop a strategic policy programme for consideration by the States. This document would set out the broad direction which the Council of Ministers was proposing to follow during its term of office. The strategic policy programme would be followed up by an annual debate on the States' budget, and by a separate debate on an annual Business Plan in which the Council of Ministers would present its proposals for the year ahead.

- 2.3 In this connection the Committee believes it to be important that there should be full compatibility between the decisions taken by the States on the overall policy programme and those taken on the annual budget, and it is accordingly recommended that both the strategic policy programme and annual business plans should provide an indication of spending priorities for the year ahead. These priorities would be developed in more detail in the annual budget, which would indicate how much was to be spent on each of the ten departments of government, together with other relevant information. This approach should ensure that there will no incompatibility between the States' decision on the policy programme and their decision regarding the budget.
- 2.4 It is proposed that the strategic policy programme should be lodged 'au Greffe' by the Council of Ministers within four months of taking office. During this period the Council may consult both with the non-executive members of the States, including the scrutiny committees, and the general public. In subsequent years, it is proposed that the annual Business Plan should be debated no later than September, whilst the Budget would be for debate in December, with sufficient provision being made for proper scrutiny of both documents. This timetable would be adjusted if the States should decide to hold spring elections.
- 2.5 With regard to the meetings of the Council, ministers will be expected to speak to items tabled by them in the name of their departments. The Council may also be attended from time to time by assistant ministers, heads of departments, or officers as required. Assistant ministers will not have a vote.
- 2.6 The Attorney General will be entitled to attend all meetings of the Council of Ministers to provide legal or constitutional advice, but will not have a vote. The reason for this is, first, that there will often be times when legal or constitutional advice is required and it is appropriate that this should be readily available to the Council of Ministers just as it is available to the States. Secondly, the Chief Minister will, with the Council of Ministers, have responsibility for the Island's external relations both with the United Kingdom and, where appropriate, with other jurisdictions, and it is obviously necessary that the Attorney General should continue to be directly involved in giving advice in this area. In his attending the meetings of the Council of Ministers, the role of the Attorney General will therefore be to defend the interests of the States as a whole, as well as to advise the Council on specific matters.
- 2.7 The Attorney General will remain available to advise the States and the scrutiny and other committees on matters of law.
- 2.8 The Council of Ministers will meet for the purpose of taking decisions, and for regulating and co-ordinating the executive business of government. Decisions taken by the Council will concern matters that do not fall within the province of individual ministers and which therefore need to be considered on a collective basis, e.g. the annual budget, general policy matters, strategic issues, and matters which cut across ministerial boundaries. The Council will be served by a secretariat, provided by the Chief Minister's Department, to ensure that its decisions are well-recorded, known by those concerned and effectively carried out.
- 2.9 In order to secure the effective overall conduct of business it is neither necessary nor possible for the Council of Ministers to consider every issue arising over the extremely wide field of government activity.
- 2.10 The Council of Ministers will reach its decisions through discussion and debate. This will be much more efficient than the present inter-committee process. It will also lay the ground for ensuring that once a decision has been made, that decision will be effectively and efficiently carried out, especially as the departmental framework and corporate processes will be much more streamlined. There will be agreement around a single table on turning words into actions.
- 2.11 The primary function of the Council will be to determine the strategic direction of government, but the Council will also have the function of resolving issues that may arise.
- 2.12 What are the issues which ought to come before the Council for decision? The Committee might answer this question by saying that the Council should certainly have an opportunity to consider any matter which may involve the credit, cohesion or standing of the government, whether inside or outside the activities of the States. In deciding whether a question is within this category, a substantial element of judgement will naturally be involved.
- 2.13 Because the question of reference to the Council of Ministers is, to a very large extent, a matter of judgement, it would be impracticable to lay down any set of comprehensive rules. Clearly, however, there are certain matters which inevitably involve the credit, cohesion, or standing of the government. Paramount among these is the question of legislation.
- 2.14 The Council will consider first all proposals for the preparation of legislation, as there would be little point in

wasting the time of officers and law draftsmen in preparing laws which the Council was not prepared to support in principle. Secondly, the Council must consider draft legislation, as prepared for presentation to the States. The consideration of legislative proposals and of draft propositions will constitute a very important part of the Council's work. The position regarding subordinate legislation will be covered in Standing Orders and/or the States of Jersey Law, to ensure accountability.

2.15 Since ministers will be making the type of executive decisions presently made by committees, they will also make Orders, and from time to time it may be necessary for the Council to review the parameters within which these Orders are made.

2.16 In addition to its own propositions, the Council will want to consider all propositions from private members because a statement to the States of the Council's attitude or intention is likely to be necessary in each case. Because of Jersey's constitutional arrangements, the Council of Ministers will also have to examine legislation, or proposals for legislation, emanating from the United Kingdom and the European Union insofar as these may affect the Island's interests. The Attorney General's presence will ensure that particular attention continues to be paid to the Island's constitutional arrangement with the Crown.

2.17 Outside the legislative field, it is impossible to be prescriptive about what may need consideration by the Council of Ministers. Certainly any issue with major social, economic, environmental, political or constitutional policy implications ought to be considered. Exactly what comes to the Council table will evolve over time.

2.18 The Council of Ministers must not become the place for resolving differences which could be resolved elsewhere. To the maximum extent possible in the time available, inter-departmental discussion should have reduced questions at issue between departments to major points of principle. Financial implications should have been fully discussed, and if possible cleared, with the Minister or Department of Treasury and Resources. Where more than one department has been involved, the possibility of an agreed submission should be considered, even in terms of alternative solutions.

2.19 For the most part, the Council of Ministers should work to an agreed process, and papers presented to it will use a format that will need to be developed by the Chief Minister's Department. At the very least they will include the aims of the proposition, performance indicators where appropriate, and details of the way in which those indicators will be monitored. The way in which this will be achieved will be for detailed consideration.

3. The Chief Minister

3.1 At the very outset it is important to say that Jersey's Chief Minister will derive her or his authority from the States Assembly and it follows, therefore, that she or he must command the confidence of the States.

3.2 In order to ensure this, it is proposed that the proposal in respect of a certain States member must be presented in writing, signed by six (6) members of the States, and accompanied by a written statement in which the candidate sets out her or his vision of the general direction of policy should she or he be elected. This would form a first basis for the Council of Ministers' ensuing work on a strategic policy programme for consideration by the States.

3.3 A timetable will be established which will provide for the nomination of a Chief Minister soon after the general election while allowing sufficient time for members of the States to consider the candidates. A nomination, which will be submitted to the Greffier of the States, shall be accompanied by the candidate's policy statement. The successful candidate must poll more than half of the votes cast. If none of the candidates achieves this, a second ballot will be held after a short adjournment to allow members time to consider how they wish to vote in the second round (and so on, until the required level of more than 50% is achieved). In each round the lowest polling candidate will drop out until an absolute majority is reached. The Chief Minister will only be elected by States members in accordance with the rules to be established by the Privileges and Procedures Committee.

3.4 The Chief Minister will take soundings among States' members before proposing the members of the Council of Ministers. When proposing the Council members, the Chief Minister will nominate each candidate as the head of a designated department. The States will then vote on the composition of the Council as an entity and it will not be open to members to express their displeasure at the inclusion of one particular minister except by voting against the whole proposal. If the Chief Minister's proposal does not command majority support in the States, then she or he will return to the House with alternative proposals following an adjournment. The States will then vote on these revised proposals.

3.5 Once the States has reached a decision, the Chief Minister and ministers will swear an oath of office before the

States, in acknowledgement of the fact that they derive their authority, and their roles and responsibilities, from the Assembly. First the Chief Minister will swear an oath, and later in the same sitting an oath will be sworn by the other ministers.

- 3.6 The Chief Minister will not only be the senior minister of the Council of Ministers. She or he will have her or his own department - the Chief Minister's Department - which will be responsible for corporate strategy and policy, the external relations of the Island, the general performance and activities of the Executive as a whole, and also for supporting generally the Council of Ministers.
- 3.7 The Committee believes the Chief Minister must take special responsibility for the formulation, execution and monitoring of the Island's strategic policy programme. This document will be formulated by the Council of Ministers, circulated for consultation, and lodged 'au Greffe' not more than four months after the Council's election, and debated by the States as soon as possible thereafter. With this responsibility in mind, candidates for the office of Chief Minister will be expected to set out their vision for the future of the Island.
- 3.8 On a day-to-day basis, the Chief Minister will be the chairman of the Council of Ministers and will determine its agenda and place and time of meeting. Responsibility for the agenda is not, of course, an absolute thing. It is inconceivable that a Chief Minister should resist the strong desire of any minister to have an issue discussed in the Council, although she or he might have views on the timing of the discussion. In practice, subject to timing, the Council will no doubt decide to discuss any matter which an individual minister wishes to raise. Perhaps the most important aspect of the Chief Minister's position in relation to the agenda is that he or she can prompt ministers to bring matters forward for council discussion. In this regard the Council of Ministers will be no different from any other corporate organisation led by a board, committee or whatever.
- 3.9 In addition to the circulation to the Council of Ministers of Memoranda and of the Agenda, the Chief Minister will determine who is to be invited to attend a particular meeting. All ministers belong to the Council as of right, and their duty to attend is therefore a matter of course. But the Chief Minister may also invite any other person whose presence she or he considers will be of assistance.
- 3.10 After the meeting of the Council of Ministers has taken place, it will be the task of the Chief Minister's Department, under the political direction of the Chief Minister, to prepare and circulate to ministers the conclusions of the meeting. As explained elsewhere, the Council of Ministers is, above all else, a forum for the making of decisions. Accordingly, the conclusions will be, by definition, primarily a clear and unambiguous record of decisions, together with such of the discussion as is necessary to make these decisions understandable, and they will be published.
- 3.11 The Chief Minister's Department will be headed by the Chief Executive to the Council of Ministers and Head of the Public Service. In addition to ensuring that the Council receives proper administrative support, the Chief Executive will be the principal adviser to the Chief Minister and Council of Ministers. She or he will also chair a Corporate Management Board, as agreed by the States in its decision of 28th September 2001, comprising the heads of all the departments of the executive. In this capacity, the Chief Executive will be ultimately accountable for the good management of the public service. She or he will lead and direct her or his colleagues insofar as necessary to ensure the efficient management and implementation of the Council of Ministers' functions, responsibilities and decisions.

4. The Minister

- 4.1 Each department of the States will be under the direction and control of a minister. As already noted in section 3, the Chief Minister will invite members to become ministers and the proposed members of the Council of Ministers will be submitted to the States for approval, a reminder that executive responsibility will be discharged on behalf of the States Assembly.
- 4.2 In Council, the Chief Minister will invite one of the ministers to act as Deputy Chief Minister and that minister will be expected to fulfil the duties of the Chief Minister in his/her absence.
- 4.3 A minister will be entitled to have up to two assistant ministers to help with the running of his or her department, but the appointment of these assistant ministers must be carried out in close consultation with the Chief Minister. Indeed, it would be quite wrong for a minister to invite a member of the States to act as an assistant minister only to discover that the Chief Minister was not prepared to sanction the appointment. Instead, ministers will put forward names for consideration by the Chief Minister and only when agreed will they approach the Member concerned.

- 4.4 On the subject of ministerial authority, it is proposed that legal authority for decision-making in particular areas of government should rest with individual ministers, whilst the Council of Ministers should be responsible for taking general policy decisions (i.e. those affecting more than one ministry), and for the overall policy aim of departments. Under these arrangements, individual ministers will have a clearly defined role, and they will also be legally accountable for their own areas of government.
- 4.5 There should be the facility for the power of delegation from one minister to another in order to cover for periods of absence. The procedures for delegation will need to cover such eventualities as the prolonged absence of a minister due to sickness, and the death of a minister whilst in office.
- 4.6 For the day-to-day operation of a department, a minister may choose to allocate specific areas of responsibility to assistant ministers, but all assistant ministers will be discharging their responsibilities in the name of the minister.
- 4.7 As with the Council of Ministers, it is important that there should be proper standard arrangements for the recording of ministerial decisions. Ministers (and assistant ministers) will normally be asked to take decisions based upon a short paper prepared by officers of their departments who will be required to produce a standard form of concise minute when formally recording an executive decision. This is especially important to replace the present system of committee Acts and in order to ensure transparency and accountability in decision-taking. In this context it should be noted that the Privileges and Procedures Committee has been charged with bringing forward proposals on the Code of Practice on Public Access to Official Information, as well as on the provision of information about the work of the Council of Ministers, and the Committee's work may well be of relevance in this respect.

5. The appointment and dismissal of ministers

- 5.1 The Policy and Resources Committee has considered some examples of how the relationship between the States and Scrutiny Committees and the Council of Ministers may work in practice. This practical approach has greatly helped the understanding of what otherwise appears as a purely theoretical set of proposals, and in some cases this has resulted in proposals which are slightly different from what was described in the report accompanying P.122/2001 (e.g. paragraph 6.17 of P.122/2001 regarding the dismissal of ministers).
- 5.2 It is important to remember that it is the States Assembly that appoints ministers, on the nomination of the Chief Minister, and on the basis of each nominee having responsibility for a department. When the Council of Ministers is first proposed after a general election, the States will be asked to agree the team proposed by the Chief Minister, and to assist the States in making their decision, it is proposed that candidates should be nominated for designated departments. Following a resignation or dismissal of a minister, the States will be asked to appoint a replacement. This is a very powerful position for the States Assembly and will be an important 'check and balance' on the way in which the Council of Ministers will work.
- 5.3 A minister may resign for a variety of reasons, totally unrelated to the business of government. It is essential that this possibility is allowed for and that the replacement minister can be appointed without significant delay or difficulty.
- 5.4 The Policy and Resources Committee has rejected the notion that the States Assembly could debate a vote of confidence in an individual minister. She or he would be a member of a team (the Council of Ministers) and it would be inappropriate to challenge one member of that team for matters that will have been a collective decision or deemed to be a collective decision.
- 5.5 On that basis, therefore, the Policy and Resources Committee believes that the new States of Jersey Law should permit a proposition of no confidence in the Council of Ministers, but not individual ministers. In accordance with Standing Orders, there should be a requirement that any such proposition should have a minimum number of States members' signatures.
- 5.6 However, if it becomes clear that a minister has lost the confidence of the States Assembly, the Chief Minister has a number of choices. S/he may support the minister and seek to rally the Council of Ministers to his/her support; as a result there may be changes to policy or whatever and this may be enough to satisfy the critics. Supporting an unpopular minister, however, runs the risk of a vote of no confidence in the Council of Ministers.
- 5.7 If the Chief Minister finds that the Council of Ministers has also lost confidence in the minister, s/he may ask the minister to resign. In that eventuality, again the critics may be satisfied and the Council of Ministers will seek a replacement and resume.

- 5.8 If the minister refuses to resign, the Policy and Resources Committee believes that the Chief Minister should be able to ask the Council of Ministers to endorse his or her proposed dismissal of the minister. The Chief Minister should not have this power on his/her own.
- 5.9 If the Council of Ministers agrees to dismiss the minister, the minister would be removed from the Council; however, the Chief Minister would have to go to the States Assembly to nominate the replacement minister. At this stage, the checks and balances of the proposals would offer full scrutiny of the reasons for the dismissal of the minister and would either lead to the States Assembly endorsing the reasons for dismissal or refusing the Chief Minister's recommendation. Repeated refusal by the States Assembly would effectively become a vote of no confidence in the Council of Ministers.
- 5.10 The Policy and Resources Committee believes that placing the onus on the team of ministers (the Council of Ministers) to resolve matters of dispute and disagreement is by far the best way to proceed. The States Assembly remains the master of the situation by retaining the power to appoint new ministers and the ultimate sanction of a vote of no confidence. These two powers alone are sufficient to keep the Council of Ministers in check, whilst not creating a situation whereby the Council of Ministers is prevented from resolving disputes.
- 5.11 The deterrent effect of a vote of no confidence is more effective as a check and balance, than the actual use of such a measure.

6. The Assistant Minister

- 6.1 As noted in Section 4, ministers will be entitled to have up to two assistant ministers to help run their department, but the appointment of these assistant ministers must be carried out in close consultation with, and the approval of, the Chief Minister.
- 6.2 For the day-to-day operation of a department, a minister may choose to allocate specific areas of responsibility to assistant ministers, but it will be important for assistant ministers to remember that they are supporting their minister; indeed, their executive decisions are taken in the name of the minister. The areas of allocation will be set out in advance, and these may include specific decision-making powers. The new States of Jersey Law will need to make provision for the delegation of specific decision-making powers to assistant ministers.
- 6.3 In order to maintain the executive at a manageable size, and also to have regard to the overall balance between the executive and scrutiny functions, the Policy and Resources Committee is proposing that assistant ministers should be able to serve more than one department. However, care must be taken to avoid conflicts of interest involving different departments, and in the event of such a conflict, the assistant minister would be required to inform the ministers concerned and take no further part in the matter.
- 6.4 Assistant ministers will not normally attend the Council of Ministers. If a minister is unavoidably absent for a discussion on a matter concerning his/her department, s/he will ordinarily ask another minister to present the item. However, the Chief Minister may invite an assistant minister to be present if s/he has particular knowledge of the subject under discussion.

7. The Conduct of Ministers

- 7.1 Both ministers and assistant ministers will be expected to behave according to the highest standards of conduct in the course of their duties. In this context it should be noted that the Privileges and Procedures Committee has been charged with bringing forward a Code of Conduct for States members for approval by the States, and this code will of course apply to all members of the executive as members of the States. Draft proposals for a Code of Conduct for States members are contained in the First Report of the Privileges and Procedures Committee that is being presented to the States on 22nd October 2002.
- 7.2 All ministers will participate actively in the meetings of the Council of Ministers, which will work on the basis of consensual and collective decision-making. Ministers will need to decide upon the degree of collective responsibility under which they wish to operate, and also to agree on standards of conduct relevant to the particular demands that will be placed upon them. For example, one would assume that a minister will be held accountable to the States for the work of his or her department, and that a minister will need to ensure that no conflict arises between his or her ministerial position and his or her private financial interests. The actual rules or conventions relating to collective responsibility and the conduct of ministers will be agreed and promulgated by the Council of Ministers once it has taken office.

8. Policy formulation

8.1 Fundamental to the change to a ministerial system of government is the establishment of an Executive, the Council of Ministers, to ensure that policies decided by the States are put into practice. In the debate on P.122/2001, great emphasis was placed on the importance of the executive working within the strategic policies agreed by the States Assembly.

8.2 It should be remembered that there already exists a body of strategic policies. Therefore, as each Council of Ministers is formed, there will be a process of change and development based on the existing strategic policies.

8.3 As a guide to how policies will be developed under the ministerial system of government, it is proposed that the process of policy development would be as follows -

- During elections, candidates for the States will set out their manifestos for the public to consider and the success or otherwise of each candidate will be determined, in part, on those policies espoused.
- The first task of the newly elected States Assembly will be the election of the Chief Minister.
- The candidates for Chief Minister will put forward a programme of policy objectives. It is probable that this programme will be developed in conjunction with other States' members and will reflect a consensual approach to solving the issues of the day, but will no doubt draw upon the election manifestos of those elected members. The consensual nature of this approach will, of necessity, lead to some manifesto proposals being compromised or changed, but there will clearly be an advantage to the most successful candidates in the election to argue for their policy proposals. The programme will be a development of the strategic policies in place at that time.
- The successful candidate for the post of Chief Minister will then be expected to put together a team of ministers whose job will be to put into place the programme proposed by the Chief Minister. One of the first tasks for the Council of Ministers, within four months of its election, will be to bring forward a strategic policy plan for consideration by the States.
- There would be nothing to prevent further review of the strategic policy framework during the period of office of the Council of Ministers. Indeed it is likely that some policy development will take considerable time. These changes to the strategic policies would be subject to further debate by the Assembly.
- Every year the Council will publish a Business Plan for debate no later than September. The Business Plan will describe the proposals which are intended for consideration by the States during the year ahead, as well as setting out an indication of general spending priorities.
- The Council of Ministers will subsequently present its annual Budget proposals to the States for debate in December. The Budget document will reflect the general spending priorities agreed by the States in their debate on the Business Plan.
- Sufficient provision will be made during this process for the proper scrutiny of the strategic policy programme, the Business Plan, and the annual Budget.

9. Conclusion

9.1 In this report the Committee has endeavoured to provide a detailed description of the structure of the executive. A summary of the principles of executive government, including the roles and responsibilities of the key participants, is given in the attached Appendix.

9.2 It will be seen from the proposition that the Privileges and Procedures Committee is being asked to incorporate these principles, where appropriate, in its proposals for the revised States of Jersey Law and the Standing Orders of the States of Jersey. The Privileges and Procedures Committee has been consulted and will produce its comments in due course.

9.3 This report and proposition represents a further step along the path to a ministerial system of government. Subject to endorsement by the States, and with the continuing support of States members, the principles set out in the report will provide a solid foundation upon which to build the ministerial system.

10. Financial and manpower implications

- 10.1 The Committee considers that the present committee system of government is unwieldy and demanding in terms of resources, not only on the services provided by the States Greffe, but also on the time of senior officers in other States departments. A single Council of Ministers will be much less demanding in terms of both financial and manpower resources. It is the Committee's view that the resource savings will be substantial, and the actual nature and extent of these savings will be explored in more detail by the Chief Executive and departmental directors in the transitional period leading up to the introduction of a ministerial system.
- 10.2 The report comments at some length on the arrangements for the appointment and dismissal of ministers. These are essentially procedural matters and they do not have significant resource implications.

21st October 2002.

STRUCTURE OF THE EXECUTIVE - SUMMARY**1. The Council of Ministers**

- 1.1 The Council of Ministers will meet for the purpose of taking decisions, and for directing, regulating and co-ordinating the executive business of government.
- 1.2 The membership of the Council of Ministers will consist of the Chief Minister and the other ministers. The Council may also be attended, from time to time, by assistant ministers, heads of departments, or other officers as required.
- 1.3 The Attorney General will be entitled to attend all meetings of the Council to provide legal or constitutional advice, but will not have a vote. In attending the meetings of the Council the role of the Attorney General will be to defend the interests of the States as a whole, as well as to advise the Council on specific matters.
- 1.4 The Council's responsibilities will include the following -
- To consider any issue with major social, economic, environmental, political or constitutional policy implications.
 - To consider any matter involving the credit, cohesion or standing of the government.
 - To develop a strategic policy programme within four months of taking office, for consideration by the States.
 - To prepare and publish an annual Business Plan for consideration by the States.
 - To prepare and publish an annual budget for consideration by the States.
 - To consider all proposals for the preparation of legislation, to consider legislation before it is presented to the States, and, where appropriate, to consider proposals for subordinate legislation.
 - To examine legislation, or proposals relating to legislation, emanating from the United Kingdom and the European Union, insofar as these may affect the Island's interests.
 - To consider all propositions from private members in case a comment to the States is necessary.

2. The appointment of the Chief Minister and ministers

- 2.1 The Chief Minister will derive his or her authority from the States and it is therefore important that there should be clearly-established procedures for his or her appointment.
- 2.2 It is proposed that any States member seeking appointment as Chief Minister should first submit a nomination paper to the Greffier of the States, to be signed by six serving members of the States, and accompanied by a written statement in which the candidate sets out her or his vision of the general direction of policy.
- 2.3 The successful candidate must poll more than half of the votes cast. If none of the candidates achieves this majority, a second ballot will be held but only after a short adjournment to allow members time to consider how they wish to vote in the second round (and so on, until the required level of more than 50% is achieved). In each round the lowest polling candidate will drop out until an absolute majority is reached.
- 2.4 Following his or her election, the Chief Minister will come back to the States with nominations for the Council of Ministers. When proposing the Council members, the Chief Minister will nominate each candidate as the head of a designated department. The States will then vote on the composition of the Council as an entity and it will not be open to members to express their displeasure at the inclusion of one particular minister except by voting against the whole proposal. If this happens, the Chief Minister will return to the House with alternative proposals following an adjournment. The States will then vote on these revised proposals.
- 2.5 Following their election, the Chief Minister and ministers will swear an oath of office before the States. Firstly the Chief Minister will swear an oath, and later in the same sitting an oath will be taken by the other ministers.

3. The Chief Minister

- 3.1 The Chief Minister will take special responsibility for the formulation, execution and monitoring of the Island's strategic policy programme. This document will be formulated by the Council of Ministers, circulated for consultation, and lodged 'au Greffe' within four months of the Council's election, for debate by the States as soon as possible thereafter.
- 3.2 The Chief Minister will be the chairman of the Council of Ministers and will determine its agenda and place and time of meeting.
- 3.3 The Chief Minister will have his/her own department - the Chief Minister's Department - which be responsible for, *inter alia*, -
- corporate strategy and policy;
 - the general performance and activities of the Executive as a whole;
 - the external relations of the Island;
 - generally supporting the Council of Ministers, and in this capacity preparing and circulating to ministers a record of the decisions taken at Council meetings.
- 3.4 This department will be headed by the Chief Executive to the Council of Ministers. In addition to ensuring that the Council receives proper administrative support, the Chief Executive will be the principal adviser to the Chief Minister and Council of Ministers. He or she will also chair a corporate management board, comprising the heads of all the departments of the executive. In this capacity, the Chief Executive will be ultimately accountable for the good management of the public service, and he or she will lead and direct his or her colleagues insofar as necessary to ensure the efficient management and implementation of the Council of Ministers' functions, responsibilities and decisions.

4. The Minister

- 4.1 Each department of the States will be under the direction and control of a minister.
- 4.2 In Council, the Chief Minister will invite one of the ministers to act as Deputy Chief Minister, and that minister will be expected to fulfil the duties of the Chief Minister in his/her absence.
- 4.3 A minister will be entitled to have up to two assistant ministers to help with the running of his or her department, but the appointment of these assistant ministers must be carried out in close consultation with the Chief Minister. Ministers will put forward names for consideration by the Chief Minister, and only when these are agreed will they approach the States member concerned.
- 4.4 Legal authority for decision-making in particular areas of government should rest with individual ministers, in line with their departmental responsibilities, whilst the responsibility for taking general policy decisions (e.g. those affecting more than one ministry), and for the overall policy aim of departments, should rest with the Council of Ministers. Ministers will therefore be legally accountable for their own areas of government.
- 4.5 There should be the facility for the power of delegation from one minister to another in order to cover for periods of absence. The procedures for delegation will need to cover such eventualities as the prolonged absence of a minister due to sickness, and the death of a minister whilst in office.
- 4.6 As with the Council of Ministers, it is important that there should be proper standard arrangements for the recording of ministerial decisions. Ministers (and assistant ministers) will normally be asked to take decisions based upon a short paper prepared by officers of their department. The officers will be required to produce a standard form of concise minute when formally recording an executive decision, thereby ensuring that a proper record exists of the decisions taken.

5. The dismissal and replacement of ministers

- 5.1 A minister may resign for a number of reasons, totally unrelated to the business of government. It is essential that

this possibility is allowed for and that the replacement minister can be appointed without significant problems.

- 5.2 The States Assembly should not be able to debate a vote of confidence in an individual minister. The minister is a member of a team (the Council of Ministers) and it would be inappropriate to challenge one member of that team for matters that relate to the team as a whole. On that basis, therefore, the new States of Jersey Law should facilitate a proposition of no confidence in the Council of Ministers, but not individual ministers. There should be a requirement in Standing Orders that any such proposition should have the signatures of a given number of States members.
- 5.3 However, if it becomes clear that a minister has lost the confidence of the States Assembly, the Chief Minister has a number of choices. He or she may support the minister and seek to rally the Council of Ministers to his or her support; as a result there may be changes to policy or whatever and this may be enough to satisfy the critics. Supporting an unpopular minister, however, runs the risk of a vote of no confidence in the Council of Ministers.
- 5.4 If the Chief Minister finds that the Council of Ministers has also lost confidence in the minister, he or she may ask the minister to resign. In that eventuality, again the critics may be satisfied and the Council of Ministers will seek a replacement.
- 5.5 If the minister refuses to resign, the Chief Minister should be able to ask the Council of Ministers to endorse his or her proposed dismissal of the minister. The Chief Minister should not have this power on his or her own.
- 5.6 If the Council of Ministers endorses a decision to dismiss the minister, the minister would be removed from the Council. However, the Chief Minister would have to go to the States Assembly to nominate the replacement minister.
- 5.7 Under these arrangements the States Assembly will retain the power to appoint new ministers and the ultimate sanction of a vote of no confidence. These two powers alone are sufficient to keep the Council of Ministers in check, whilst not creating a situation whereby the Council of Ministers is prevented from resolving areas of dispute.

6. The Assistant Minister

- 6.1 For the day-to-day operation of a department, a minister may choose to allocate specific areas of responsibility to assistant ministers, but all assistant ministers will be discharging their responsibilities in the name of the minister. The areas of allocation will be set out in advance, and these may include specific decision-making powers. The new States of Jersey Law will need to make provision for the delegation of specific decision-making powers to assistant ministers.
- 6.2 In order to maintain the executive at a manageable size, and also to have regard to the overall balance between the executive and scrutiny functions, it is proposed that assistant ministers should be able to serve more than one department. It is likely, however, that this will be a rare occurrence.
- 6.3 Assistant ministers will not normally attend the Council of Ministers. If a minister is unavoidably absent for a discussion on a matter concerning his or her department, he or she will ordinarily ask another minister to present the item. However, the Chief Minister may invite an assistant minister to be present if he or she has a particular expertise in the subject under discussion.

7. Policy formulation

- 7.1 One of the key features of the ministerial system is the creation of an Executive, the Council of Ministers, to ensure that the policies decided by the States are put into effect.
- 7.2 As a guide to how policies will be developed under the ministerial system of government, it is proposed that the process of policy development would be as follows -
 - During elections, candidates for the States will set out their manifestos for the public to consider and the success or otherwise of each candidate will be determined, in part, on those policies espoused.
 - The first task of the newly elected States Assembly will be the election of the Chief Minister.
 - The candidates for Chief Minister will put forward a programme of policy objectives. It is probable that this programme will be developed in conjunction with other States' members and will reflect a consensual

approach to solving the issues of the day, but will no doubt draw upon the election manifestos of those elected members. The consensual nature of this approach will, of necessity, lead to some manifesto proposals being compromised or changed, but there will clearly be an advantage to the most successful candidates in the election to argue for their policy proposals. The programme will be a development of the strategic policies in place at that time.

- The successful candidate for the post of Chief Minister will then be expected to put together a team of ministers whose job will be to put into place the programme proposed by the Chief Minister. One of the first tasks for the Council of Ministers, within four months of its election, will be to bring forward a strategic policy programme for consideration by the States.
- There would be nothing to prevent further review of the strategic policy framework during the period of office of the Council of Ministers. Indeed it is likely that some policy development will take considerable time. These changes to the strategic policies would be subject to further debate by the Assembly.
- Every year the Council will publish a Business Plan for debate no later than September. The Business Plan will describe the proposals which are intended for consideration by the States during the year ahead, as well as setting out an indication of general spending priorities.
- The Council of Ministers will subsequently present its annual Budget proposals to the States for debate in December. The Budget document will reflect the general spending priorities agreed by the States in their debate on the Business Plan.
- Sufficient provision will be made during this process for the proper scrutiny of the strategic policy programme, the Business Plan, and the annual Budget.