

STATES OF JERSEY



STATES ASSEMBLY: SELECTION AND APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS – RETURN TO SECRET BALLOTS (P.73/2017) – COMMENTS

Presented to the States on 7th September 2017
by the Privileges and Procedures Committee

STATES GREFFE

COMMENTS

1. The questions of secret ballots and the election of Scrutiny Panel Chairman, both raised by Deputy R. Labey of St. Helier's proposition [P.73/2017](#), have previously been considered by the Privileges and Procedures Committee.
2. The Committee's consideration was prompted by recommendations from the Standing Orders and Internal Procedures Sub-Committee (comprising Senator P.F.C. Ozouf and Deputy J.A. Martin of St. Helier), which reported in 2016. The Sub-Committee examined a number of areas, including the procedures governing the election of candidates. During its work, the Sub-Committee canvassed Members' views: it held a workshop, consulted the Chairmen's Committee and received written submissions.
3. These comments are intended to advise Members of the Committee's consideration and of the work it has undertaken. It is apparent from this work that these matters are ultimately ones where there are differing political views on what should be done; and that a clear steer from the Assembly on what should happen would be beneficial. We therefore welcome the opportunity presented by Deputy Labey's proposition for the Assembly to debate and decide upon these issues.

Secret Ballots

4. Deputy Labey seeks the re-introduction of secret ballots for the election of the Chief Minister; all Ministers; all Scrutiny Panel Chairmen; and the Chairmen of the Privileges and Procedures Committee, the Public Accounts Committee, and the Planning Committee. Standing Orders currently stipulate that, for these positions, a recorded vote must be taken via the electronic voting system or by an open ballot.
5. It was a recommendation of the Standing Orders and Internal Procedures Sub-Committee that the current procedure should remain in place. The Sub-Committee investigated the situation elsewhere and reported that: "*in Guernsey, elections to the positions of Chief Minister, Minister, Chairmen and members of Committees, and Chairman and members of non-governmental bodies are all held by secret ballot, in accordance with paragraph 20(2) of the Rules of Procedure of the States of Deliberation. Paper ballots are held in the Isle of Man House of Keys and in Australian House of Representatives in order to select committee members. In the Scottish Parliament, the membership of committees is decided by the Parliament on a motion of the Parliamentary Bureau.*"
6. From the consultation it had undertaken, the Sub-Committee also reported that "*members were of the view that, while there were benefits and negatives to having an open vote, transparency should take precedence. The Chairmen's Committee disagreed, however, and concluded that ballots should be held in secret in order to reduce the opportunity for members to feel pressurised to vote for a particular candidates for motives/reasons other than who would simply be the best candidate for the job.*" This was therefore not a matter which the Committee itself pursued; though we recognise that a decision by the Assembly would be beneficial.

7. We have noted that Deputy Labey's proposition does not refer to the President of the Chairmen's Committee or the Chairman of the Jersey Overseas Aid Commission. The President of the Chairmen's Committee is currently elected by recorded vote, whilst the Chairman of the Commission is elected by open ballot. This would remain the case if they were not included in any amendment to Standing Orders required by the adoption of Deputy Labey's proposition.

Election of Scrutiny Panel Chairmen

8. Deputy Labey has proposed that the Minister, or Ministers, subject to review by a corresponding Scrutiny Panel, should be excluded from voting for the Chairman of that particular Panel. Deputy S.Y. Mézec of St. Helier has subsequently lodged an amendment seeking the exclusion of all Ministers from the election of all Scrutiny Panel Chairmen.
9. The Standing Orders and Internal Procedures Sub-Committee considered this issue; and its seventh recommendation was that Ministers should not be permitted to vote during the election of Scrutiny Panel Chairmen or that a Committee consisting of all Members who are not Ministers should be established to vote for Scrutiny Panel Chairmen.
10. In making this recommendation, the Sub-Committee took into account earlier considerations by the Committee itself that it was not appropriate for Ministers to be permitted to vote during the election of Scrutiny Panel Chairmen. It also considered the view of the Chairmen's Committee that: *"so as not to unduly restrict the participation of members in the business of the Assembly, [the Chairmen's Committee] would propose that the restriction on voting should only apply on a case by case basis rather than en bloc. This is to say that the Minister(s) that would fall directly within the jurisdiction of the Panel whose Chairman was subject to election should not be permitted to vote during that process."*
11. The Sub-Committee ultimately concluded that: *"as Scrutiny reviews could have a cross-cutting reach across the policies of the whole of the executive, it would be more appropriate for the rule to apply to every Minister."* There was a concern, however, about restricting the participation of Members, and the Sub-Committee had therefore considered: *"whether the recommendation should be revised to recommend that a Committee of the States should be established consisting of all members who are not Ministers to vote for Scrutiny Panel Chairman."* It therefore raised both possibilities in its recommendation to the Committee.
12. This is a matter which the Committee pursued, although it is not a matter in respect of which there is unanimity amongst Committee members. On the one hand, there is a view that there should be no exclusion of Ministers from the election process for Scrutiny Panel Chairmen, as no Member of the States should be barred from participating in a proper democratic process. An alternative view is that it would be in Ministers' interests to have weak Scrutiny Panel Chairmen and, accordingly, no Minister should participate in choosing the Chairmen. We note that Deputy Mézec has pursued that latter option with his amendment to Deputy Labey's proposition, and this is consistent with the stance Deputy Mézec took during the Committee's discussions.

13. Notwithstanding the different views on the Committee, we have investigated potential amendments to Standing Orders. We initially looked at an amendment which would have seen all Ministers excluded from both nominating, and voting upon, candidates for Scrutiny Panel Chairmen. However, following subsequent discussions, we agreed that it would be more appropriate for the relevant Minister to be prevented from doing so – in line with what Deputy Labey is proposing – with the Chief Minister prevented from nominating, or voting upon, the election of any Scrutiny Panel Chairman.
14. Within both of these possible amendments, Ministers (whether all of them or the relevant ones) would have been prevented from nominating, or voting upon, candidates; however, they would have been allowed to take part in the questioning of candidates during the election process. These exclusions would not have applied to the election of the Chairman of the Public Accounts Committee, in which all Ministers would have been free to take part at every stage of the process.
15. From a practical perspective, excluding only the relevant Ministers from the process would require specifying which Ministers are attached to each Panel. We understood this to be inconsistent with moves made by the Chairmen's Committee in other contexts, where the Chairmen's Committee has avoided specifying which Ministers are so attached (instead choosing to specify the remits of Panels by reference to subject area). It was therefore noted that further engagement with the Chairmen's Committee would be beneficial. We have yet to reach the end of that process. However, a decision by the Assembly at this time on Deputy Labey's proposition (and, indeed, Deputy Mézec's amendment) will provide a clear steer on which amendment, if any, should be pursued.

Nomination of Chief Minister

16. Deputy Labey has also proposed that the nomination of an elected member to be Chief Minister could be made by 2 elected Members, both of whom would be restricted to nominating one candidate only.
17. This is not a matter which the Committee has previously considered; nor indeed was it a subject which the Sub-Committee touched upon in its recommendations. The Committee has not therefore previously taken a view on this subject. We note that reducing the required number of nominations to 2 Members would effectively place the nomination of a candidate for Chief Minister on the same footing as nominations for other positions (where a proposer and a seconder are required).
18. It has always been the case that candidates for Chief Minister must be nominated by (at least) 6 other elected Members. This provision was incorporated within Standing Orders as a result of the Assembly's approval of 'Machinery of Government – structure of the Executive' (P.191/2002). The report accompanying that proposition stated that: "*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.*" The Committee imagines that a higher threshold was set for candidates for Chief Minister (in terms of the number of nominations required) in order that candidates could demonstrate to a greater extent that they could feasibly achieve such authority within the Assembly.