

**THE STATES assembled on Thursday,
21st November 2002 at 9.30 a.m. under the
Presidency of Michael Nelson de la Haye, Esquire,
Greffier of the States.**

All members were present with the exception of -

Senator Corrie Stein - out of the Island
Shirley Margaret Baudains, Deputy of St. Helier- out of the Island
Robin Charles Hacquoil, Deputy of St. Peter- out of the Island

Prayers read by the Greffier of the States

Acting Greffier of the States

The Greffier of the States informed the Assembly that in accordance with Article 5(2) of the Departments of the Judiciary and the Legislature (Jersey) Law 1965, as amended, the Bailiff had appointed the Assistant Greffier of the States, Mr. David Charles Guy Filippini, to discharge the functions of the Greffier of the States and the Deputy Greffier of the States in the event of their absence or incapacity and had that morning administered the appropriate oath to Mr. Filippini in accordance with the provisions of Article 7(2) of the Law.

Machinery of Government: structure of the Executive - P.191/2002. Comments P.191/2002 Com., Com.(2) Com.(3). Amendments P.191/2002 Amd. and Comments P.191/2002 Amd.Com.

THE STATES resumed consideration of the proposition of the Policy and Resources Committee on the Machinery of Government: structure of the Executive and rejected an amendment of Senator Stuart Syvret that at the end of sub-paragraph (iv), there be inserted the words-

“except that in paragraph 4.2 of the Appendix, for the words ‘In Council, the Chief Minister will invite’ there shall be substituted the words ‘The Council of Ministers shall elect’;”

Members present voted as follows -

“Pour” (19)

Senators

Le Maistre, Syvret, Kinnard, Le Claire.

Connétables

Grouville, St. Martin, St. Mary, St. John, St. Peter, Trinity.

Deputies

Breckon(S), St. John, St. Ouen, G. Baudains(C), Dorey(H), Troy(B), Bridge(H), Martin(H), Southern(H)

“Contre” (29)

Senators

Horsfall, Bailhache, Norman, Walker, Le Sueur, Lakeman.

Connétables

St. Ouen, St. Saviour, St. Brelade, St. Lawrence, St. Clement.

Deputies

H. Baudains(C), St. Mary, Trinity, Duhamel(S), Routier(H), Layzell(B), Grouville, Huet(H), St. Marti Le Main(H), Vibert(B), Dubras(L), Voisin(L), Scott Warren(S), Farnham(S), Le Hérissier(S), Ozouf(H) Fox(H).

THE STATES rejected an amendment of Senator Stuart Syvret that -

for paragraph 4.3 of the Appendix there shall be substituted the following paragraph- ‘A Minister may have assistant ministers, who shall be elected members of the States, to help with the running of his or her department, provided that the total number of assistant ministers shall not exceed 8. A Minister may choose his or her own assistant minister, such choice being commensurate with the legal responsibility for decision-making resting with individual ministers who are to be legally accountable for their own areas of government’.

Members present voted as follows -

“Pour” (10)**Senators**

Le Maistre, Syvret, Kinnard, Le Claire.

Connétable

Grouville.

Deputies

Breckon(S), G. Baudains(C), Le Hérissier(S), Martin(H), Southern(H).

“Contre” (40)**Senators**

Horsfall, Quérée, Bailhache, Norman, Walker, Le Sueur, Lakeman.

Connétables

St. Martin, St. Ouen, St. Saviour, St. Brelade, St. Lawrence, St. Mary, St. John, St. Peter, St. Cle: St. Helier, Trinity.

Deputies

H. Baudains(C), St. Mary, Trinity, Duhamel(S), Routier(H), Layzell(B), Grouville, Huet(H), St. Marti St. John, LeMain(H), Vibert(B), Dubras(L), St. Ouen, Dorey(H), Troy(B), Voisin(L), Scott Warren(S), Farnham(S), Ozouf(H), Fox(H), Bridge(H).

THE STATES rejected an amendment of Senator Stuart Syvret that at the end of sub-paragraph (vi), there be inserted the words -

except that in paragraph 6.2 of the Appendix for the words ‘It is likely, however, that this will be a rare occurrence.’ there be substituted the words ‘and there shall be no more than eight assistant ministers.’

Members present voted as follows -

“Pour” (13)

Senators

Le Maistre, Syvret, Kinnard, Le Claire.

Connétable

Grouville.

Deputies

H. Baudains(C), Duhamel(S), Breckon(S), St. John, G. Baudains(C), Bridge(H), Martin(H), Southern(H)

“Contre” (37)

Senators

Horsfall, Quérée, Bailhache, Norman, Walker, Le Sueur, Lakeman.

Connétables

St. Martin, St. Ouen, St. Saviour, St. Brelade, St. Lawrence, St. Mary, St. John, St. Peter, St. Cle
St. Helier, Trinity.

Deputies

St. Mary, Trinity, Routier(H), Layzell(B), Grouville, Huet(H), St. Martin, Le Main(H), Vibert(B)
Dubras(L), St. Ouen, Dorey(H), Troy(B), Voisin(L), Scott Warren(S), Farnham(S), Le Hérissier(S)
Ozouf(H), Fox(H).

THE STATES adopted an amendment of Senator Stuart Syvret that at the end of sub-paragraph (v), there be inserted the words -

except that in paragraph 5.6 of the Appendix after the words ‘replacement minister.’ there be inserted the words ‘The revised Standing Orders of the States of Jersey shall include provision to enable the Assembly, when considering the appointment of the replacement minister, to be able to discuss any matter concerning the dismissal.’

Members present voted as follows -

“Pour” (26)

Senators

Le Maistre, Bailhache, Syvret, Kinnard, Le Claire.

Connétables

Grouville, St. Martin, St. Lawrence, St. Mary, St. John, St. Clement, Trinity.

Deputies

Duhamel(S), Breckon(S), Huet(H), St. Martin, St. John, Vibert(B), St. Ouen, G. Baudains(C), Dorey(f)
Troy(B), Le Hérissier(S), Bridge(H), Martin(H), Southern(H).

“Contre” (24)

Senators

Horsfall, Quérée, Norman, Walker, Le Sueur, Lakeman.

Connétables

St. Ouen, St. Saviour, St. Brelade, St. Peter, St. Helier.

Deputies

H. Baudains(C), St. Mary, Trinity, Routier(H), Layzell(B), Grouville, Le Main(H), Dubras(L), Voisin(L), Scott Warren(S), Farnham(S), Ozouf(H), Fox(H).

THE STATES adopted an amendment of Senator Stuart Syvret that -

in paragraph 6.3 of the Appendix after the word 'However' for the words 'the Chief Minister may invite', there should be substituted the words 'a minister may ask'.

Members present voted as follows -

“Pour” (26)

Senators

Le Maistre, Bailhache, Syvret, Kinnard, Le Claire.

Connétables

Grouville, St. Martin, St. Brelade, St. Mary, St. John, St. Clement, Trinity.

Deputies

H. Baudains(C), Duhamel(S), Breckon(S), Huet(H), St. Martin, St. John, Le Main(H), Vibert(I), St. Ouen, G. Baudains(C), Troy(B), Le Hérissier(S), Martin(H), Southern(H).

“Contre” (24)

Senators

Horsfall, Quérée, Norman, Walker, Le Sueur, Le Claire, Lakeman.

Connétables

St. Ouen, St. Saviour, St. Lawrence, St. Peter, St. Helier.

Deputies

St. Mary, Trinity, Routier(H), Layzell(B), Grouville, Dubras(L), Dorey(H), Voisin(L), Scott Warren(S), Farnham(S), Ozouf(H), Fox(H), Bridge(H).

THE STATES adopted an amendment of Senator Stuart Syvret that at the end of sub-paragraph (vii), there be inserted the words -

except that in the third bullet point of paragraph 7.2 of the Appendix the words 'The programme will be a development of the strategic policies in place at that time.' shall be deleted.

Members present voted as follows -

“Pour” (35)

Senators

Horsfall, Le Maistre, Syvret, Walker, Kinnard, Le Sueur, Le Claire.

Connétables

Grouville, St. Martin, St. Ouen, St. Brelade, St. Mary, St. John, St. Peter, St. Helier, Trinity.

Deputies

Duhamel(S), Routier(H), Breckon(S), St. Martin, St. John, Le Main(H), Vibert(B), St. Ouen, G. Bauda (C), Dorey(H), Troy(B), Voisin(L), Scott Warren(S), Le Hérissier(S), Ozouf(H), Fox(H), Bridge(H), Martin(H), Southern(H).

“Contre” (15)

Senators

Quérée, Bailhache, Norman, Lakeman.

Connétables

St. Saviour, St. Lawrence, St. Clement.

Deputies

H. Baudains(C), St. Mary, Trinity, Layzell(B), Grouville, Huet(H), Dubras(L), Farnham(S).

THE STATES adopting a proposition of the Policy and Resources Committee, as amended, referred to their Act dated 28th September 2001, in which they approved reforms to the Machinery of Government and -

- (a) agreed 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, except that paragraph 2.5 should be deleted and subsequent paragraphs renumbered accordingly;
 - (iii) the Chief Minister, except that in paragraph 3.1 after the words ‘*circulated for*’ there should be inserted the word ‘*public*’, and after the word ‘*consultation,*’ there should be inserted the words ‘*subjected to the States scrutiny function,*’;
 - (iv) the Minister;
 - (v) the dismissal and replacement of ministers, except that in paragraph 5.6 after the words ‘*replacement minister.*’ there should be inserted the words ‘*The revised Standing Orders of the States of Jersey shall include provision to enable the Assembly, when considering the appointment of the replacement minister, to be able to discuss any matter concerning the dismissal.*’;
 - (vi) the Assistant Minister, except that in paragraph 6.3 after the word ‘*However*’ for the words ‘*the Chief Minister may invite*’ there should be substituted ‘*a minister may ask;* and
 - (vii) policy formulation, except that in the third bullet point of paragraph 7.2 the words ‘*The programme will be a development of the strategic policies in place at that time.*’ should be deleted;

and varied their decision of 28th September 2001 accordingly;

- (b) directed 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.

Members present voted as follows -

“Pour” (42)

Senators

Horsfall, Le Maistre, Quérée, Bailhache, Walker, Kinnard, Le Sueur, Lakeman.

Connétables

Grouville, St. Martin, St. Ouen, St. Saviour, St. Brelade, St. Lawrence, St. Mary, St. John, St. F St. Clement, St. Helier, Trinity.

Deputies

H. Baudains(C), St. Mary, Trinity, Duhamel(S), Routier(H), Layzell(B), Grouville, Huet(H), St. Marti Le Main(H), Vibert(B), Dubras(L), St. Ouen, Dorey(H), Troy(B), Voisin(L), Scott Warren(S) Le Hérissier(S), Ozouf(H), Fox(H), Bridge(H), Martin(H).

“Contre” (4)

Senators

Syvret, Le Claire.

Deputies

St. John, G. Baudains(C).

As an aide memoire the Appendix to the report of the Policy and Resources Committee dated 21st October 2002, as amended, is reproduced immediately after this set of minutes.

Deputy of St. Peter- attendance

The Deputy of St. Peter, having returned to the Island, arrived in the Chamber after the lunch adjournment prior to consideration of proposition of the Planning and Environment Committee concerning Planning and Building Core Service: strategy for future funding and was present for the remainder of the meeting.

Planning and Building Core Service: strategy for future funding - P.203/2002

THE STATES commenced consideration of a proposition of the Planning and Environment Committee on Planning and Building core services: strategy for future funding, and rejected a proposition of Deputy Michael Edward Vibert of St. Brelade to move to consideration of the next item on the Order Paper.

Members present voted as follows -

“Pour” (10)

Senator

Bailhache.

Connétable

St. Peter.

Deputies

Routier(H), St. Martin, Vibert(B), G. Baudains(C), Voisin(L), Scott Warren(S), Farnham(S), Ozouf(H).

“Contre” (22)

Senators

Quérée, Syvret, Kinnard, Le Claire.

Connétables

St. Ouen, St. Mary, St. John, St. Clement, St. Helier.

Deputies

H. Baudains(C), Trinity, Duhamel(S), Layzell(B), Breckon(S), Huet(H), St. John, St. Peter, Dubras(L), St. Ouen, Dorey(H), Fox(H), Bridge(H).

THE STATES, adopting a proposition of the Planning and Environment Committee -

- (a) approved, with effect from January 2003, a ‘user-pays’ strategy and agreed that income from fees for applications for development and building permission should be used to fund the cost of services provided by the Planning and Environment Committee;
- (b) agreed that, as soon as practicable, the Department of Planning and Building Services should be established as an independent business unit as an initial step towards achieving this strategy;
- (c) agreed that the strategy should be implemented from January 2003 through the appointment of additional professional and administrative staff to improve the Planning and Environment Committee’s core services, with the increased costs of doing so to be funded wholly by increases in application fees agreed by the Finance and Economics Committee, and with the creation of additional posts to be subject to the approval of the Human Resources Committee;
- (d) (i) agreed, in principle, that to enable the Planning and Building (Jersey) Law 2002 to be brought into force, there should be further increases in fees to enable the Planning and Building Services Department to carry out its additional responsibilities;
(ii) agreed, in principle, that additional revenue funding should be made available, subject to the States’ revenue spending priority process, to fund the operation of the independent Planning and Building Appeals Commission which was to be established in accordance with the provisions of the Planning and Building (Jersey) Law 2002; and
- (e) agreed that the new Environment and Public Services Committee to be appointed in December 2002 should, in consultation with other Committees as appropriate, assess the feasibility of establishing a Planning and Building Agency, and should report to the States on this matter as soon as practicable.

Members present voted as follows -

“Pour” (26)

Senators

Quérée, Norman, Walker.

Connétables

St. Ouen, St. Saviour, St. Lawrence, St. John, St. Clement, St. Helier.

Deputies

H. Baudains(C), Trinity, Duhamel(S), Routier(H), Layzell(B), Breckon(S), Huet(H), St. Peter, Dubras(L), St. Ouen, Voisin(L), Scott Warren(S), Farnham(S), Le Hérissier(S), Ozouf(H), Fox(H), Bridge(H).

“Contre” (11)

Senators

Bailhache, Syvret, Kinnard, Le Claire.

Connétables

St. Mary, St. Peter.

Deputies

St. John, Vibert(B), G. Baudains(C), Dorey(H), Martin(H).

THE STATES rose at 5.25 p.m.

D.C.G. FILIPPONI

Assistant Greffier of the States.

Machinery of Government: structure of the Executive - P.191/2002, as amended.

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.

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 public consultation, subjected to the States scrutiny function, 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. The revised Standing Orders of the States of Jersey shall include provision to enable the Assembly, when considering the appointment of the replacement minister, to be able to discuss any matter concerning the dismissal.

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, a Minister may ask 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 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.