

MACHINERY OF GOVERNMENT: PROPOSED DEPARTMENTAL STRUCTURE AND TRANSITIONAL ARRANGEMENTS (P.70/2002) - FIFTH AMENDMENTS

(1) *In paragraph (a) after the words “dated 25th April 2002,” insert the words -*

“except that in the said Appendix 2 -

(i) *at the beginning of Section 1.5 the following new paragraph shall be inserted -*

‘1.5.1 The principle of separating regulatory and operational functions, as in paragraph 2.4 of the Report of the Policy and Resources Committee dated 25th April 2002, should apply with regard to responsibilities for the protection and enhancement of the natural environment of the Island.

(ii) *in the said Section 1.5, after the new paragraph 1.5.1 referred to in (i) above, the following new paragraphs shall be inserted -*

‘1.5.2 The Policy and Resources Committee should be requested to bring forward, as soon as possible during the transitional period, proposals to establish an Environmental Commission, outside the departmental structure, to undertake the necessary regulatory functions in these areas - in order to ensure that the proposals concerning future departmental structure clearly separate regulatory from operational functions with regard to responsibilities for the protection and enhancement of the natural environment of the Island,

The functions of the Environmental Commission will include the necessary regulation of all aspects of the natural environment, including (referring to paragraphs 4.5.3 of the Report of the Policy and Resources Committee dated 25th April 2002) -

- *environmental regulation;*
- *regulation of environmental aspects of energy and transport policy;*
- *land use regulation;*
- *water resource regulation;*
- *waste management regulation.*

The functions of the Environmental Commission will also include the development of an over-arching strategy with regard to the natural environment of the Island, with which operational departments would be expected to comply.’

(iii) *in Section 1.5 for the word ‘Environment’ substitute the word ‘Planning’;*

(iv) *in the original paragraph 1.5.1 -*

(a) *for the words ‘Environment Department’ substitute the words ‘Planning Department’;*

(b) *delete the following words -*

- *environmental policy and regulation;*
- *environmental aspects of energy and transport policy;*
- *water resources regulation;*

- waste management regulation.

(c) *for the word 'regulation' after the words 'land use policy and' substitute the word 'control'; and*

(d) *renumber paragraph 1.5.1 as 1.5.3;*

(v) *in paragraph 1.3.1, after the words 'Agriculture and Fisheries' delete the words '(save for marine environmental responsibilities)'.*

(2) *in paragraph (a)(iv) of the proposition for the word 'Environment' substitute the word 'Planning' and make consequential changes to the name of the Department as appropriate in Appendices 2 and 3.*

AGRICULTURE AND FISHERIES COMMITTEE

REPORT

1 Introduction

1.1 This amendment proposes a number of changes to Proposition P.70/2002 with regard to responsibilities for protecting and enhancing the natural environment of the Island.

1.2 These changes are designed to achieve the necessary separation of regulatory and operational functions. This separation is one of the three key principles referred to in the report accompanying the Proposition (paragraph 2.4) but it is not achieved in the Policy and Resources Committee proposals for department structure with regard to responsibilities for the environment. Contrary to this principle the Policy and Resources Committee proposals include significant regulatory, operational and policy responsibilities in a single department.

1.3 The important objective of separating regulatory and operational functions can best be achieved by establishing an Environmental Commission that would take responsibility for regulatory functions. In addition the Commission would influence the policies of all operational departments that have responsibilities with regard to the natural environment by developing and maintaining an over-arching strategy with which operational departments would be expected to comply.

2 Advantages of an Environmental Commission

The establishment of an Environmental Commission would have a number of important advantages -

- a. It would demonstrate that protecting and enhancing the natural environment of the Island is to be given very high priority.
- b. It would achieve the necessary separation of regulatory and operational functions.

This key principle needs to be satisfied if the risk of self-regulation (the poacher-gamekeeper issue) is to be avoided. Placing the responsibility for regulation with the Commission would also avoid the prospect of one government department prosecuting another.

- c. It would ensure best use of the Island's limited environmental skills and resources

Because the Commission would have a complete overview, duplication of effort and unnecessary costs would

be avoided. It would also (see paragraph 3.1 below) render unnecessary the creation of the proposed new Environment Department, so avoiding the extra costs involved.

3 Consequences of establishing an Environmental Commission

3.1 The establishment of an Environmental Commission, with the responsibilities outlined in paragraph 5 below, would have a number of consequences for departmental structure, as stated in the Amendment:

- a. All regulatory functions currently proposed for the Environment Department (see paragraph 1.5.1 of Appendix 2 of Proposition 70/2002) would be assumed by the Environmental Commission.
- b. Most of the remaining functions listed in paragraph 1.5.1 are aspects of planning and would become the responsibility of a Planning Department. This department would have responsibility only for those environmental issues that are directly related to planning. The Planning Department would relate to the Environmental Commission in the same way as other operational departments (see paragraph 7 below).
- c. The other functions listed in paragraph 1.5.1 are operational functions that should either stay with, or move to, those departments whose responsibilities directly affect the relevant aspects of the natural environment. Significantly, the Policy and Resources Committee acknowledges this to be the best way forward with regard to the Proposition concerning Public Services (paragraph 4.5.2). The same logic applies, however, to the several other departments with environmental responsibilities. Thus, referring to the operational functions listed in paragraph 1.5.1, 'environmental aspects of energy and transport policy' would stay with the departments currently responsible. The only remaining operational function listed, namely 'environmental services and habitat management' could stay with the Planning Department, although not many of these functions actually need to be part of a planning department. The Policy and Resources Committee is invited to consider, during the transition period, the most appropriate department to have responsibility for these functions.
- d. Since this accounts for all the functions proposed for the Environment Department, there would be no need for that department to be created.

4 The following paragraphs indicate the intended responsibilities of the Environmental Commission, how it would relate to government, how it would relate to operational departments, how it would operate in relation to ministerial responsibility etc.

5 Responsibilities of the Environmental Commission

5.1 The Commission would exist outside the framework of operational departments and would have the following responsibilities:

- developing and implementing an appropriate regulatory framework;
- developing and maintaining an over-arching environmental strategy for the natural environment of the Island as a whole, addressing all significant environmental issues;
- monitoring the implementation, by operational departments, of their environmental policies and monitoring the outcomes.

6 The relationship of the Environmental Commission to government

6.1 The Commission would be established by Statute, as an autonomous body, with a defined constitution, terms of reference and responsibilities. The Commission would then act independently of government, developing its regulatory framework and over-arching strategy and establishing the necessary working relationships with government departments. It would not formally report to a government department but could, where it is in the public interest to do so, be guided or given general directions by a minister with regard to the work of the Commission. The Commission would have a duty to have regard to any guidance and to follow any directions given

to it. The terms of reference and responsibilities of the Commission could be amended by the States.

7 **The Environmental Commission and ministerial responsibility**

7.1 Operational departments, under ministerial control, are those with operational responsibilities with regard to the natural environment. Thus several Ministers will have responsibilities with regard to the natural environment. Ministers are responsible for developing policies and for their implementation and this applies to those aspects of the natural environment for which they are responsible. Moreover, all government departments should be expected, in formulating their policies, to consider the potential impact of these policies on the natural environment and should therefore have regard to the Commission's over-arching strategy.

7.2 The operation of the Commission would not cut across ministerial responsibility. It should not take away from operational departments their responsibilities concerning the natural environment or for developing environmental policies and implementation strategies. Departmental policies would, however, be expected to comply with the Commission's over-arching strategy and regulation.

7.3 The Commission would require those departments:

- to develop and maintain policies and implementation strategies, consistent with the Commission's over-arching environmental strategy, covering their particular areas of responsibility;
- to review their policies and strategies periodically in consultation with the Commission;
- to implement their policies and strategies;
- to report regularly to the Commission on the implementation of the departmental policies and strategies and the outcomes from implementation.

8 **Efficiency of operations**

8.1 The operational departments would not need to duplicate the 'strategic' expertise that the Commission would have, because they would be focused on their operational responsibilities. In developing their policies, however, departments could request guidance from the Commission on strategic issues.

8.2 The departments, under ministerial control, would be responsible for developing appropriate policies and implementation strategies, discussing them with the Commission, and then for implementing them. The risk of operational departments duplicating one another's roles or resources would be minimised by the fact that the Commission would have a complete overview of operational responsibilities and activities and so would ensure, through its regulatory and advisory roles (and possibly also through service level agreements), that duplication did not occur. Responsibilities for operational roles and activities would, however, rest with ministers.

9 **The Commission's expertise and size**

9.1 The Commission would be a small organisation - because it would not be undertaking operational roles. The Commission would need to have high level knowledge and expertise in-house concerning all local natural environmental issues, and also concerning international developments and obligations, but this role would require only a small number of people. An important responsibility of the Commission would be to monitor the implementation of policies by operational departments and to monitor their outcomes, but this would not necessarily require significant resources within the Commission itself. Any detailed monitoring required could, and probably should, be undertaken by other independent organisations, from within the Island or elsewhere, operating under contract with the Commission. This is likely to be more effective and less expensive than directly employing people (a 'standing army') to undertake monitoring. The Commission would need in-house resources in connection with its regulatory functions, but here again the amount of resource could be small.

9.2 **Manpower implications:** Most of the resources required by the Commission could be drawn from staff with the necessary expertise already employed in States departments.

9.3 **Financial implications:** Although there is potential for income to the Commission from its regulatory functions (in connection, for example, with the Water Pollution Law, the proposed Water Resources Management Law and the proposed Waste Management Law), the Commission would require States funding. On the other hand, the States would not incur the costs involved in establishing and running a new government department. Because the Commission would have a complete overview of operational responsibilities and resources, it would ensure that duplication of work and costs did not occur. Thus the Commission 'model' would certainly result in lower overall cost to the States than the alternatives.

10 Implications of pursuing the Environmental Commission 'model'

10.1 The establishment of an Environmental Commission would, because of its regulatory functions and its influence on the environmental policies of Departments, have significant implications for the operational departments that currently have a range of responsibilities with regard to the natural environment. For this reason the Environmental Commission would clearly need to be established before any changes were made with regard to operational departments. The Commission's over-arching strategy will influence the operational functions required: this strategy and the regulatory framework need to be developed first, after which the environmental functions of the operational departments will be decided or confirmed.

10.2 In deciding or confirming the functions of operational departments it will be necessary to recognise -

- that several departments currently have environmental responsibilities at the operational level;
- that these responsibilities are very diverse in nature;
- that these responsibilities are often closely intertwined with other (non-environmental) functions;
- that they are often carried out by the same staff - thereby achieving efficiency gains.

The Environment Commission model fully recognises these points, whereas the proposed Environment Department does not. The Commission would, however, be in a unique position to recommend changes of approach and responsibilities at departmental level in the interests of efficiency and cost savings.

10.3 The establishment of an Environmental Commission would lead, with regard to responsibilities for the natural environment, to a different departmental structure from that indicated in the Proposition. The model based on an Environmental Commission, as outlined in this amendment, has clear advantages. It establishes high priority for environmental issues, it achieves the separation of regulatory and operational functions, it would result in more effective use of skills and other resources, and it would reduce costs.