

MACHINERY OF GOVERNMENT: ESTABLISHMENT OF AN APPOINTMENTS COMMISSION

**Lodged au Greffe on 17th April 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 approved the establishment of an independent Appointments Commission, comprising persons who are not members of the States, with responsibility for ensuring that senior appointments to the civil service and autonomous and quasi-autonomous public bodies are properly made, and which as its first task will recommend to the States a person for appointment as Chief Executive and;

to agree that the Commission should be established on the basis of the 'Constitution and Terms of Reference' contained in Appendix 1 of the report of the Policy and Resources Committee dated 28th March 2002.

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.

REPORT

1. Introduction

1.1 On 28th September 2001 the States adopted a proposition, as amended, of the Policy and Resources Committee ('Machinery of Government: Proposed Reforms' P.122/2001) and agreed that the Island's present committee system of government should be replaced by a ministerial system, combined with a system of scrutiny.

1.2 As a part of its original proposition, the Policy and Resources Committee had recommended that an Appointments Commission should be established to ensure that senior civil service appointments were properly made. An amendment was subsequently proposed by Senator C.G.P. Lakeman that would have the effect of extending the terms of responsibility of the Commission to include senior appointments to autonomous and quasi-autonomous public bodies. This amendment was accepted by the Policy and Resources Committee and adopted by the States. The amended proposition stated that -

"the States will establish an independent Appointments Commission, comprising persons who are not members of the States, with responsibility for ensuring that senior appointments to the civil service and autonomous and quasi-autonomous public bodies are properly made, and which as its first task will recommend to the States a person for appointment as Chief Executive."

1.3 As a result of the States' decision, the proposal to establish an Appointments Commission was examined in detail by an officer working group, chaired by the Chief Executive of States Human Resources. The group formulated a set of draft proposals for consideration by a Sub-Committee of the Policy and Resources Committee. This Sub-Committee was chaired by Deputy J.L. Dorey, President of the Human Resources Committee, and the remaining members were Senator T.A. Le Sueur, Deputy R.G. Le Hérisssier and Mr. D. Witherington.

1.4 The Policy and Resources Committee would like to thank the working group and the Chairman and members of the Sub-Committee for the work that they have undertaken on the Committee's behalf. The Committee has given careful consideration to the Sub-Committee's report and has used this as the starting point for its own deliberations.

2. The need for an Appointments Commission

2.1 Before considering the Committee's proposals in detail, it would be useful to review the reasons behind the decision to establish an Appointments Commission. These were examined in some detail in section 4.8 of the Implementation Plan, published in November 2001, and for ease of reference the relevant extract of the plan is reproduced here -

"It should be emphasised at the outset that the Committee does not consider that the present arrangements for senior appointments are fundamentally unsound. There is in fact a framework in place to help ensure that public service appointments are properly made.

For example, the Human Resources Committee has produced guidelines on good practice for recruitment and selection which all States Departments are required to follow. These guidelines are regularly reviewed and updated by the States Human Resources Department, and that department also organises a comprehensive programme of training courses on recruitment and selection practice.

These safeguards are designed to ensure that appointments are properly made on merit and on the basis of fair and open competition. However, it could be argued that at the present time, despite these safeguards, there is the potential for appointments to be unduly influenced at a political level. It seems that the potential for such influence could be greater at a more senior level, partly because the posts carry greater responsibility, and also because the postholders will be more likely to be working closely with States members.

In the Committee's view the best way to ensure that appointments are properly made is to establish an independent body to review, monitor and, when necessary, participate in the recruitment and selection process. The principle of appointing an independent commission to oversee recruitment to senior positions is now well established in the United Kingdom. Separate commissions have been formed for the UK public service and for appointments to 'quangos'. The Civil Service Commission (CSC), for example, provides a recruitment code for the civil service, and is consulted on the most senior appointments."

2.2 The Committee reaffirms these views as expressed in the Implementation Plan and now presents its detailed proposals for establishing an Appointments Commission.

3. The composition of the Appointments Commission

- 3.1 The Committee firmly endorses the previously-expressed States' view that all the members of the Appointments Commission, including the Chairperson, should be independent of the States. This will ensure that there are no potential conflicts of interest, and it will also mean that the input from the Commission will be entirely separate from the States.
- 3.2 It is proposed that the Appointments Commission should have up to five members, including the Chairperson, and that they should be remunerated for their services. Members should be appointed on the basis of individual merit, and all of them should have expertise and experience relevant to the making of appointments at a senior level. Nominations for membership of the Commission would be subject to consultation with the Chairperson, as it is important that the Commission should be able to work well as a team.
- 3.3 It is proposed that the Chairperson and members will be appointed for terms of office of up to four years, with all appointments being made by the States. In order to ensure continuity, it is proposed that the terms of office will be staggered: the Chairperson and one member will be appointed to serve initial terms of four years, whilst the remaining members will serve initial terms of one, two and three years respectively. Both the Chairperson and members would be eligible to serve a second four-year term of office, either as the Chairperson or as a member, and there would be a maximum limit of eight years' continuous service.
- 3.4 In this connection, it is proposed that nominations for these appointments should be submitted to the States initially upon the recommendation of the Policy and Resources Committee, and later upon the recommendation of the Council of Ministers, once the Council has been established. These nominations would be submitted only after vacancies had been advertised in the local press and following an agreed selection process, thereby ensuring as wide a pool as possible from which the nominations can be made.

4. Senior appointments to the Public Service

- 4.1 In the first instance the primary objective of the Commission will be to ensure that senior civil service appointments are properly made, and in the new ministerial arrangements these senior appointments will include the Chief Executive to the Council of Ministers and the directors of the new departments.
- 4.2 The Committee believes that it is desirable that the Commission should also be able to consider other senior public service appointments, in addition to those civil service appointments referred to in paragraph 4.1. These would include the most senior corporate posts such as, for example, the Medical Officer of Health and the Chief Officer of Police.
- 4.3 The Commission will have several key tasks in relation to these senior public service appointments. First, it will no doubt want to review the current guidelines on good practice for recruitment and selection, in line with paragraph 3(a) of its terms of reference (see **Appendix 1**), including setting proper limits for political involvement in such processes. If the Commission is not satisfied with one or more aspects of the guidelines, it will have the duty to amend them. This process will no doubt involve appropriate consultation, notably with the Human Resources Department.
- 4.4 Secondly, the Commission will need to establish procedures for monitoring the recruitment and selection process, in order to satisfy itself that its guidelines are being correctly followed. Day to day management of the process, including advertising, would remain as a responsibility of the States Human Resources Department, but the Commission would monitor the general procedures adopted during this process.
- 4.5 Thirdly, the Commission will need to decide how it should meet its duty, under paragraph 3(c) of its terms of reference, to participate actively in the selection process, for example as a member of the interview panel. It will be for the Commission to decide if or when this should happen, but it is likely to become the norm in respect of all senior posts, save for particular cases such as temporary appointments or highly specialist posts where the Commission may decide it is not essential.
- 4.6 Once the selection panel has made its choice, the Commission will be required to confirm that the appointment of the preferred candidate has been properly made, on merit and in accordance with guidelines, and then to authorise the employing authority to make the appointment. With regard to any particular appointment, the Commission would be able to delegate its authorisation responsibilities to the Commissioner who is a member of the appointments panel, or to the Chairperson of the Commission. This means that senior appointments will not be made

by an employing committee or autonomous or quasi-autonomous body unless they have the authorisation of the Commission.

4.7 The Committee has considered the composition of selection panels for these senior appointments, and it believes that there are two principles to be taken into account. First, the process should be subject to independent monitoring and validation; this will be provided by the Appointments Commission. Secondly, membership of panels should include persons with a direct knowledge and understanding of the States organisation.

4.8 The proposition adopted by the States on 28th September 2001 stated that the first task of the Commission would be to “recommend to the States a person for appointment as Chief Executive”. It may be that the initial stages of advertising and shortlisting this post will be put into effect before the Commission is appointed, in order to meet the timetable for government reform, but it is important that the Commission should participate in the selection process and authorise this appointment before it is brought to the States for approval.

4.9 The new Chief Executive to the Council of Ministers, in her or his capacity as head of the Public Service, will need, as an early task, to establish due procedures regarding selection panels, in consultation with the Appointments Commission and others. It will be of the first importance to ensure that all arrangements for appointments are beyond reproach in every respect.

5. The Programme of work

5.1 At a relatively early stage in its life the Commission will, in consultation with all relevant interests, need to consider the extent to which its brief should extend to other senior public sector appointments, beyond those at the top level which will be its immediate concern. General guidelines on the appointments process will apply to all public sector appointments, but the Commission will need to decide on the level of its own direct involvement, which in practice will have to be limited to a relatively small number of cases.

5.2 In line with the States decision of 28th September, the Commission will also be required to consider its brief in relation to senior appointments to ‘autonomous and quasi-autonomous public bodies’. In this connection it should be noted that there is no universally-agreed definition of what actually constitutes an autonomous or quasi-autonomous public body (‘quango’). An autonomous body could be regarded as being an independent body which is self-governing, whilst a public body could be defined as a body which is integrated into a system of statutory or public regulation. The Commission will need to examine this subject in more detail, together with the Policy and Resources Committee, other interested Committees, and the organisations concerned. The Commission could then make recommendations as to which autonomous and quasi-autonomous public bodies should be regarded as falling within its terms of reference and hence which positions would be overseen, with a view to recommendations being brought to the States by the Policy and Resources Committee (or the Council of Ministers) in due course.

5.3 In relation to the above two paragraphs, due regard will also need to be taken of the valuable work recently completed by the House Committee and now published in R.C.8/2002.

5.4 The Commission, together with interested States Committees and other organisations, may also wish to consider at an early stage whether it would be appropriate to introduce separate arrangements for appointments to tribunals to be overseen by the Commission. In Jersey there are many different tribunals which adjudicate upon decisions taken by States Committees and departments, and at present the members of these tribunals are nominated by the Committees concerned. It could be argued that this method of nomination does not offer a guarantee of independence, and thus fails to comply with the basic criterion underlying the States decision on the Appointments Commission, i.e. that appointments should be ‘properly made’. This review may well be undertaken alongside wider consideration as to whether it might be better to establish an independent tribunals service along the lines recommended in the UK Leggatt Report (“Tribunals for Users: One System, One Service” - Report of the Review of Tribunals by Sir Andrew Leggatt, 2001). Once the Commission is established, the Committee will invite it to participate in these deliberations, along with all other interested parties, including the Royal Court, with a view to establishing recommendations on the best way forward.

5.5 For the purposes of this report, it has been assumed that the Commission’s brief will not include the most senior appointments in the judicial departments, the Law Officers’ Department, or the States Greffe (i.e. the Crown Officers, the Judicial Greffier and Deputy Judicial Greffier, the Viscount and Deputy Viscount, and the Greffier and Deputy Greffier of the States). These appointments are subject to the provisions of the Departments of the Judiciary and the Legislature (Jersey) Law, 1965, as amended, and are subject to different terms of appointment. For example, the Attorney General is appointed by the Crown, and the Greffier of the States is appointed by the Bailiff with the consent of the States. It is, however, likely that the relevant authorities will wish to have careful regard to the guidelines on best practice on appointments emanating from the Commission; and it would naturally need to be open

to the Commission to participate in such appointments should it be invited to do so.

5.6 The proposed constitution and terms of reference for the Commission are outlined at **Appendix 1**.

6. Financial and manpower implications

6.1 As already stated, it is proposed that the role of the Appointments Commission should be to monitor and keep under review the appointments process, rather than to be directly engaged in the day to day operation of this process.

6.2 It is proposed that professional support to the Commission should be provided by the States Human Resources Department. This department has responsibility for maintaining and developing recruitment and selection procedures, and for designing and organising the assessment processes for the most senior public service appointments. The establishment of the Appointments Commission will undoubtedly place an extra demand upon the department, especially during the Commission's first 12-18 months, but the Chief Officer of the Department has confirmed that it is anticipated that this demand can be met within existing staff resources. Separate allowance will however need to be made for the provision of secretarial services to the Commission.

6.3 With regard to the running costs of the Commission, it is not envisaged that these will be especially significant. It will be necessary to remunerate the Chairman and members of the Commission, probably on a 'per diem' basis and all Commissioners should be entitled to reimbursement for reasonable expenses incurred during their work. It will also be necessary, of course, to account for incidental expenses relating to the workings of the Commission and its meetings, and the main item of expenditure would relate to the independent audits of the appointments procedures followed by States departments and public bodies. It has been estimated that to ensure reasonable coverage, a budget of some £25,000 per annum should be set aside for the purpose.

6.4 An estimate of the costs of running the Appointments Commission during its first two years of operation is given in Appendix Two. The budget requirements for 2002 will be allocated from within resources allocated already to the Machinery of Government Reforms (MOGR) work, while the £50,000 estimated for 2003 is the subject of one of the 2003 MOGR growth bids.

6.5 Although a budget estimate for Commissioner remuneration is included in this report, it is proposed that the Human Resources Committee should, in the first instance and within funds allocated, set the daily rate to be paid to Commissioners, in line with practice both locally and in the UK, and that that Committee should also put into place an appropriate mechanism as to how this rate should alter over time.

7. Review

7.1 The Commission, once established, must obviously be allowed to carry forward its work without being subject to external pressures. However, the Committee also believes that the Commission should have a duty to keep the public informed about its work and, to this end, it is proposed that the Commission will be required to present an annual report of its work to the States.

8. The establishment of the Commission

8.1 Advice has been sought from the Attorney General as to the best method for establishing the Commission. It was clear from this advice that the Commission could be set up either by statute or by Act of the States. The former option would involve the preparation and enactment of legislation, which would mean a lengthy delay, whereas the advantage of the latter option is that the Commission could be set up with almost immediate effect. This would not rule out the option of bringing forward legislation in future to establish the Commission by statute, should this ever be felt to be desirable.

8.2 The Committee is accordingly proposing that the Appointments Commission should be established by Act of the States. Subject to States approval of the proposals set out in this report and proposition, the Committee plans to advertise the posts of Chairperson and members of the Commission with a view to establishing the Commission at an early opportunity.

**THE JERSEY APPOINTMENTS COMMISSION
CONSTITUTION AND TERMS OF REFERENCE**

1. Name:

The Commission will be called “The Jersey Appointments Commission”.

2. Aim:

To ensure that senior appointments to the Public Service, and to autonomous and quasi-autonomous public bodies, are properly made and to keep the appointments process, as a whole, under review.

3. Duties:

In seeking to meet its aim, the Commission will -

- (a) set and keep under review guidelines on, and processes for, public service appointments in line with recognised best practice;
- (b) ensure, in particular, that selection processes for senior appointments follow approved guidelines and are, at all times, properly undertaken;
- (c) actively participate in the selection process for senior appointments;
- (d) authorise the making of such appointments on the basis that it is wholly satisfied that they have been properly made;
- (e) ensure independent audits of recruitment and selection practices and processes are carried out and properly reported on;
- (f) develop, maintain and keep under review arrangements for appointments to identified senior positions on autonomous and quasi-autonomous public bodies;
- (g) assist in and, if required, take the lead in developing, monitoring and reviewing arrangements for appointments to independent tribunals;
- (h) refer to the employer, as appropriate, any case where in its judgement the appropriate processes have not been properly followed;
- (i) produce an annual report to the States on its work.

4. Powers:

To achieve its aim, the Commission may -

- (a) establish and keep under review guidelines on good practice for recruitment and selection and in doing so, set the proper limits for political involvement in such processes;
- (b) participate in the selection process, for example through the participation of a Commissioner on the interview/assessment panel(s) for senior appointments;
- (c) carry out or commission independent audits of recruitment and selection practices in States departments and in autonomous and quasi-autonomous public bodies and make recommendations thereon;
- (d) in circumstances where, in its view, an appointment has not been properly made, decline to authorise an appointment.

- (e) advise the employer and, if necessary, the States if any particular recruitment and/or selection process(es) does not meet or has not met with good and acceptable practice.

5. Appointment of Commissioners:

- (a) The Commission shall consist of a Chairperson and up to four other members who will be appointed on the basis of individual merit and expertise and experience relevant to the making of appointments at a senior level.
- (b) The Chairperson will be appointed by the States for a period of four years on the recommendation of the Policy and Resources Committee (or, once established, the Council of Ministers) following public advertisement. The other Commissioners will be appointed similarly, but their initial terms will be between one and four years to ensure continuity when the time comes for reappointments.
- (c) All Commissioners may, subject to no Commissioner holding office for more than eight consecutive years, offer themselves for reappointment.
- (d) If any Commissioner, without reasonable cause and without giving reasonable notice, fails to attend three consecutive meetings of the Commission, or otherwise fails to carry out her or his duties as Commissioner diligently, the Commission may seek to terminate her or his membership of the Commission.
- (e) Should a Commissioner lose her or his independence, either by becoming a member of the States or for any other reason, that Commissioner will with immediate effect terminate her or his membership of the Commission.
- (f) Should a Commissioner act in a manner deemed to be detrimental to the aim and objectives of the Commission, the Commission may seek to terminate her or his membership of the Commission.
- (g) Should clauses 5(d) to 5(f) be invoked or should a vacancy arise, then the Chairperson of the Commission will advise the Policy and Resources Committee (or, once it is established, the Council of Ministers) which will initiate the process to appoint a replacement, in the first instance to complete the term of office of the Commissioner being replaced.

6. Procedures for Meetings of the Commission:

- (a) The Commission shall meet formally not less than four times in every calendar year and a quorum at any meeting of the Committee shall consist of three Commissioners including the Chairperson or Vice-Chairperson, or another member acting in that official capacity by agreement of the meeting.
- (b) The Commission shall appoint one of its members to be Vice Chairperson to act in the absence of the Chairperson.
- (c) The Commission may, as it sees fit, invite any person to attend its meetings and/or provide advice to it.
- (d) The Chief Executive of the States Human Resources Department (or her or his successor post) will act as Secretary and Executive Officer to the Commission.
- (e) All decisions of the Commission will be binding provided they are achieved through a simple majority of those members attending a properly constituted meeting. The Chair will have a second vote, to be cast in the event of there being a tied vote.
- (f) Minutes of all formal meetings of the Commission will be recorded and maintained by the Secretary. Such minutes will be considered and, subject to any amendment being agreed, approved at the meeting immediately following that which they record. Such minutes will be available to Commissioners for inspection at any reasonable time.

7. Accounts:

The Commission shall cause to be kept proper accounts of its finances, which accounts will be audited at least once per year.

8. Finance:

The financial year of the Commission shall be from January 1st to December 31st.

9. Reporting:

The Commission will prepare an annual report which will be presented by the Policy and Resources Committee (or subsequently by the Council of Ministers) to the States.

10. Alteration to the Constitution:

The Commission may recommend alterations to this Constitution and Terms of Reference provided that no alteration shall be effective until approved -

- (i) by the Policy and Resources Committee (or the Council of Ministers once established); and thereafter
- (ii) by the States Assembly.

11. Dissolution:

The Commission may be dissolved with the agreement of the States on the recommendation of the Policy and Resources Committee or, once established, the Council of Ministers.

APPOINTMENTS COMMISSION - INDICATIVE BUDGET 2002/3

This is an estimate of the budget that will be required for the Appointments Commission in its first two years of operation.

During the remainder of 2002 the Commission will need to devote time to reviewing guidelines for recruitment and selection, especially with regard to senior appointments, as well as to the process for the recruitment and selection of the Chief Executive and directors for the other States departments. This process may extend into 2003 and, as from the beginning of 2003 onwards, it is envisaged that, apart from its core work on the public sector appointments process, the Commission will begin to carry out or commission independent audits of recruitment and selection practices in States departments and, in due course, other public bodies. These audits will need to be carried out on a selective basis, with the estimates in this note being based on up to three departments or other bodies being audited in any one year. A separate allowance has been made for travel (e.g. a visit to the U.K. to meet the Civil Service Commission).

2002

(a) Meetings (up to 8)

	£
Postage, publications, secretarial and incidental expenses	6,200
Remuneration of Chairperson at a rate of, say, £400/day	3,200
Remuneration of up to 4 other members at a rate of, say, £300/day	9,600

(b) Travel

	£
Visits to UK Civil Service Commission, conference attendance, etc.	6,000

Estimated expenditure in 2002 **25,000**

2003

(a) Meetings (up to 10)

	£
Postage, publications, secretarial and incidental expenses	4,500
Remuneration of Chairperson at a rate of, say, £400/day	4,000
Remuneration of up to 4 other members at a rate of, say, £300/day	12,000

(b) Travel (as for 2002) £4,000

(c) Recruitment Audits x 3 £25,500

Estimated expenditure in 2003 **£50,000**