

**Presented to the States on 24th September 2002
by the Policy and Resources Committee**



STATES OF JERSEY

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Comments

1. The proposition of Senator S. Syvret on the 'Machinery of Government: Freedom of Representation' (P.142/2002) is virtually identical to a proposition with the same title that was lodged 'au Greffe' by Senator Syvret on 19th February 2002 and withdrawn on 27th August 2002 (P.25/2002). The only difference between the two propositions is that the new proposition includes the words '*regardless of any position they may hold within the Island's machinery of government*'.
2. The report accompanying P.142/2002 does not elaborate on why Senator Syvret has decided to withdraw P.25/2002, and indeed the report is identical to the one which accompanied P.25/2002. However, it would appear the new proposition has been brought by Senator Syvret in response to Senator P.F. Horsfall's amendment to P.25/2002 which was lodged 'au Greffe' on 11th June 2002. The effect of this amendment was to maintain the view of the Policy and Resources Committee that ministers should be subject to some form of collective responsibility.
3. The Policy and Resources Committee remains of the view expressed in its comments on P.25/2002 (presented to the States on 9th April 2002) that collective responsibility is a very important element of an effective and accountable ministerial system of government. Senator Syvret's proposition would have the effect of negating this principle of collective responsibility, and the Committee has therefore brought an amendment, lodged 'au Greffe' on 10th September 2002, which proposes that the following words should be added at the end of sub-paragraph (a):

"except that all members of the Council of Ministers shall be bound by any rules on collective responsibility which may be agreed by the States".

4. The comments on P.25/2002 are equally relevant to P.142/2002, and they are therefore reproduced below for ease of reference -

"The States appointed the Review Panel on the Machinery of Government (the 'Clothier Panel') and has embarked upon a series of debates and discussions with the aim of changing the machinery of government to provide for a more effective and accountable system. The Policy and Resources Committee has published an Implementation Plan to provide a framework for the current discussions which will result in a series of debates allowing the States to decide the future form of government. That Implementation Plan continues to be the subject of discussions with States members, both formal and informal, which will allow the changes to the Machinery of Government to best fit the requirements of the community, with the aim of making the government more effective and accountable.

In his report and proposition on 'Machinery of Government: Freedom of Representation' (P.25/2002), Senator Syvret refers to the 'doctrine of collective responsibility' and states that this doctrine will place a severe restriction upon those States members who will be in the executive in the new ministerial arrangements. He also states that collective responsibility will override these members' freedom of expression, and that they will surrender their right to represent the electorate.

The Policy and Resources Committee does not agree with this view, and believes that it is important to consider collective responsibility in the wider context of its proposals for the Council of Ministers and for the ministerial system in general. These proposals will be based on the principles of collective decision-making and the view that once the Council has made a decision as a group it would wish to maintain that decision through collective responsibility.

The Committee believes that the Council of Ministers should provide a forum in which Council members will be able to express themselves freely and openly. The members of the Council will have been appointed by the States, following nomination by the Chief Minister, and one of the Chief Minister's main selection criteria will undoubtedly be the ability of his or her nominees to work as part of a team. Working as part of a team does not mean blind obedience to whoever speaks loudest, nor does it mean grudging acceptance simply because the other party has had the final say. On the contrary, a member of the team would be expected to express his or her views, and to listen carefully to the views that are expressed by others. It is anticipated that the discussions around the table at the Council of Ministers will be vigorous, with all Council members playing an active part. This will lead to decision-making that can be said to be truly collective, with all members making a contribution and having ownership of decisions.

This would not appear to be the interpretation placed by Senator Syvret upon the operation of the Council of Ministers. In paragraph 7 of his report, for example, he states that a minority of Council members will have to choose between "subjugation or exclusion". This conveys the notion that differing views will not be taken into account during Council discussions, and that decisions will be reached at the Council of Ministers simply because

one opposing view will prevail over another. The Committee believes that this is based on a misunderstanding of how the Council will work in practice, and it does not reflect the approach that has been advocated by the Committee in 'Machinery of Government: Proposed Reforms' (P.122/2001) and the Implementation Plan.

It should also be borne in mind that the decisions and discussions in the Council of Ministers will be taking place in a wider context. In P.122/2001 the Committee advocated a more open and consultative approach to government, which could be achieved partly through a system of 'green' and 'white' papers. This approach is developed further in the Committee's Implementation Plan, particularly in those sections relating to the executive and to policy formulation. One of the first tasks for the Council of Ministers will be to draw up and seek States' approval to a comprehensive programme of policy objectives, and this will involve extensive discussions and consultation both within and outside the States. In addition, it is anticipated that major policy initiatives will also be subject to extensive consultation involving scrutiny committees and the general public, thereby strengthening the bond between the executive and the electorate. These major proposals would then be submitted to the States for approval. The Council for the most part will therefore be working to important States' decisions. For example, the States may decide to agree an overall budget, but it will be for the Council of Ministers to determine the division of that budget between departments, in line with any relevant policies previously approved by the States.

It would be wrong, therefore, to view the Council of Ministers as working in isolation. Indeed, a Council of Ministers that failed to take proper note of the need for consultation would soon be called to account by one of the scrutiny committees or by the States. Once a decision has been taken, it is considered reasonable that Council members should be expected to take collective responsibility for this decision. This is because there is a need for unity and coherence in government, and it is self-evident that this would not survive if its members were in open disagreement with each other on issues of public importance.

The proposition of P.25(a) calls for all States members to have the right to bring private members' propositions to the States for debate. The Committee wholeheartedly supports this view in relation to members who are not ministers and also in relation to ministers where the subject matter is not contrary to Council of Ministers' policy. The Committee will expect the Privileges and Procedures Committee to safeguard these rights in the new Standing Orders when it draws them up.

However, it should be clearly understood that if the proposition at paragraph (a) of P.25 is approved, this would lead to ministers having an inalienable right, on matters not covered by exemptions, to bring a private members' proposition to the States, contrary to a decision of the Council, without the minister having to resign and with the Chief Minister and Council of Ministers as a whole, being unable to take any action or object in any way. It is the Committee's resolute view that the Council could not conceivably function properly under the possibility of this constant threat.

There will of course be exceptions to the principle of collective responsibility, and there will be cases in which Ministers and Assistant Ministers will have the freedom to speak publicly against the policies and decisions of the Council of Ministers. In this connection it is useful to refer to the 'Guidelines on Collective Responsibility' for ministers in the Isle of Man, which make provisions for ministers to speak publicly against the policies of the Council of Ministers on matters of conscience, on constituency matters, and in other circumstances.

Since the publication of the Implementation Plan the Committee has received significant representations on the issue of collective responsibility. These representations have convinced the Committee that there should be exemptions to collective responsibility for ministers along the lines described in the preceding paragraph, and that collective responsibility should not apply to Assistant Ministers in those areas in which they have not been involved in the decision making. These provisions will be included in the report and proposition on the executive that the Committee has undertaken to bring forward to the States for debate later this year.

The Committee believes that collective decision-making and collective responsibility should be considered in the context of these proposals for the executive, and not before. The Committee therefore strongly opposes both part (a) and (b) of the proposition which, if approved, would destroy any notion of collective responsibility which is a very important element of an effective and accountable ministerial system of government."

5. It will be noted that the penultimate paragraph of the comments on P.25/2002 refers to the report and proposition on the executive that the Committee has undertaken to bring to the States: this document is now almost ready, and will be lodged 'au Greffe' in the near future.
6. As with P.25/2002, the Committee strongly opposes both parts (a) and (b) of the proposition. It recommends that part (a) should be amended in the manner proposed by the Committee, and that part (b) of the proposition should be

rejected.