

STATES OF JERSEY



STATES OF JERSEY LAW 2005: REMOVAL OF RESTRICTIONS ON NUMBER OF MINISTERS AND ASSISTANT MINISTERS

Lodged au Greffe on 22nd August 2011
by Senator B.E. Shenton

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that appropriate amendments should be brought forward for approval to the States of Jersey Law 2005 to remove –
 - (i) the current provision that restricts the permitted total number of Ministers and Assistant Ministers, and
 - (ii) the current restriction that provides that each Minister may appoint no more than 2 Assistant Ministers;
- (b) to request the Privileges and Procedures Committee to bring forward for approval the necessary legislation to give effect to the decision.

SENATOR B.E. SHENTON

REPORT

I very much doubt that anyone would argue that the introduction of the Ministerial System has been a complete success. Indeed some may argue that it has been an utter failure. In terms of the stated performance objectives – *quicker decision making, focus on strategic rather than operational issues, fewer meetings, reduced paperwork, more open and accountable government, avoidance of overspends and a joined-up, corporate, approach* – none have been achieved.

What I find incredible is that Jersey is the only place in the world that has set in law the fact that the “Government” must be in the minority. In terms of “Government” I am referring to the executive members responsible for policy.

I have worked for over 30 years in investment markets. As a general rule investment markets do not like uncertainty or weak governments. Yet we have legislated for both – it is just plain stupid. When people vote for their politicians they do so because they agree with their policies and would like them to be part of the “Government”. Yet a majority of members are outside of the executive – wasting their talents in an ineffective and expensive scrutiny or, worse still, picking up a salary whilst staying outside the system completely. Many of the policies contained in private member propositions could have been fully considered at development stage if the proposer had a greater input into policy development.

Minority governments are held to be unstable and incompatible with a properly functioning democracy, except in the form of a caretaker government. The fact that the government has no majority often leads to passive legislation which is compromised and imperfect. The Council of Ministers is therefore structurally weak and exposed to parliamentary defeat, and lacks the authority and support necessary to handle serious problems. Minority cabinets are often portrayed as governments of lowered effectiveness and, in some cases, decisional paralysis or immobilism may result. The negative consequences of such minority rule need not be confined to the legislative arena. A pervasive erosion of political responsibility may result. This erosion of responsibility, together with a possible loss of control over crucial decision-making processes, introduces extraordinary personal stress on members of the Executive. Indeed the Council of Ministers seem to spend more time contemplating how to defeat the opposition, or worrying whether they can get an important piece of legislation through, than they do in formulating Government policy and strategy for the good of the Island.

There is no doubt that the perception of scrutiny as defined by Clothier is flawed as it fails to take into account the individual aspirations and political nuances of politicians elected with their own specific agendas. Legislative scrutiny, a worthy aspiration, is unlikely to ever operate efficiently due to the constraints of the system that is in place and the lack of incentive for those with a political mandate to undertake the role. As the majority of members have no role in the executive development of policy they can distance themselves from any criticism by the public of the “Government” and take no responsibility for dealing with the problems faced by the Island. Indeed there is little accountability on the non-executive side of Government other than at the ballot box.

This is not fully understood by the electorate who believe that they are voting for their “Government” – whereas the majority of candidates will be barred from being part of government due to the constraints of the current structure. I have been in the Chamber for 6 years and during that time I have seen so much knowledge wasted because

members are forced to scrutinise or do nothing officially rather than develop policy and use their talents for the benefit of the Island.

There will be some members that consider that the present system works, or that piece-meal reform should be avoided. However I would remind them that this proposition simply seeks to remove a piece-meal amendment. I am lodging it now so that it can be debated by Members that have actually worked within the system and fully understand its current weaknesses.

This change will simply allow the Ministers to appoint the optimum number of Assistant Ministers that they require. Hopefully this will lead to more inclusive Government, the increased ability of Assistant Ministers to be able to focus on specific roles which have hereto been neglected, and incorporation of their views into the policy formation – thereby giving representation a wider political universe. It is a proposition that removes a piece-meal amendment that has, in my opinion, been the greatest obstacle to an efficient Government system.

Financial and manpower implications

There are no financial or manpower implications in respect of this proposition – other than the work required to undertake a very simple change to the Law.

Paragraphs 26 and 27 from P.79/2003 “Machinery of Government: establishment of Scrutiny Panels and Public Accounts Committee”.

26. Measuring the results of scrutiny

26.1 Measuring the results of scrutiny will not be a simple task. However, Panels should be able to identify, in general terms, tangible and substantive outcomes. The Executive system of government, to which the States of Jersey has committed itself, aspires to a number of stated improvements, including quicker decision making, focus on strategic rather than operational issues, fewer meetings, reduced paperwork, more open and accountable government, avoidance of overspends and a joined-up, corporate, approach. Scrutiny, as a key element in the new arrangements in the provision of the necessary checks and balances, needs to be clear about its intended outcomes. The non-Executive members must not be sidelined and must be able to find in scrutiny arrangements the opportunity to make a real difference. This means that they must be able to demonstrate that they have –

- held the Executive to account;
- supported the development of effective policies and initiatives;
- provided an opportunity to engage the public properly;
- positively impacted on the work of external agencies in receipt of public funds;
- provided an effective means for all States members to influence the work of the public service; and
- helped to improve the performance of the Executive and informed the States and the public about the performance of the Executive.

27. Conditions for effective scrutiny

27.1 A recent report from the Office of the Deputy Prime Minister looked at many examples of innovative good practice in the United Kingdom in the development of the potential of scrutiny. In its final chapter, it explored the key issue of how to identify effective scrutiny and points towards a number of conditions for successful scrutiny. Similar conditions are likely to apply in the Jersey context –

- **Member Leadership and Engagement** – Scrutiny can only work in the longer term if scrutiny members drive the process and provide genuine leadership. This is not a task just for the Chairmen and Deputy Chairmen but a wider number of members must be actively engaged and enthusiastic about scrutiny. These members also have to demonstrate the appropriate skills, to undertake this work and to have the trust of fellow members.

- **Responsive Executive** – A responsive Executive, which is willing to listen to and be influenced by scrutiny, is a pre-requisite for effective scrutiny. However, where the Executive ‘stone-walls’ scrutiny it will still be possible for Panels to work to combat this, through influencing the States, engaging and influencing partners and the public.
- **Effective Support and Management of Scrutiny Processes** – Whilst members must lead and ‘own’ the scrutiny processes, officer support is required to manage the range of scrutiny processes, including work programmes, meetings, agenda, identifying and contacting witnesses, preparing briefing notes, minutes and so on. The findings from a number of studies clearly identify a link between investment in officer support and effectiveness of scrutiny arrangements. Those U.K. local authorities that have invested more in terms of officer support (and other resources, including training and payment of expert witnesses) have reaped the rewards.
- **Senior Officers** – A culture where senior officers working for the Executive support and encourage for scrutiny is just as important as a responsive Executive. In certain circumstances decision-making members and senior officers can work to blunt the effectiveness of overview and scrutiny. It is an important condition for effective working that senior officers welcome the challenge and added value that scrutiny can bring. In particular, senior officer support is vital in terms of ensuring the general responsiveness of officers in departments to the requests and demands from scrutiny.
- **High Level of Awareness and Understanding of the Work of Scrutiny** – A pre-condition for effective scrutiny is that internal and external individuals and organisations are aware of, and understand, the work of this function. Educating officers and non-scrutiny members about the role and potential of scrutiny is an important task, as is raising the awareness of the work of Scrutiny Panels with partners, the public and the local media.