

**MACHINERY OF GOVERNMENT: COMPOSITION AND ROLE OF PRIVILEGES AND PROCEDURE AND
SCRUTINY COMMITTEES (P.175/2001) - COMMENTS**

**Presented to the States on 12th February 2002
by the Policy and Resources Committee**



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Comments

The Policy and Resources Committee will shortly be lodging a report and proposition on the Privileges and Procedures Committee, which will set out the proposed terms of reference and the initial programme of work for this important new committee.

Senator Syvret's proposals for the Privileges and Procedures Committee should be seen in the context of this report and proposition, as well as the States decision on 28th September 2001 to move to a ministerial system of government, combined with a system of scrutiny - 'Machinery of Government: Proposed Reforms' (P.122/2001), as amended.

In making this decision, the States agreed that -

“(v) the States will form a Privileges and Procedure Committee to be responsible to the States for all aspects of Assembly procedure including, in particular, scrutiny arrangements, facilities, remuneration, services for members of the States, the production of a Hansard-type transcript of States proceedings, public information services, and an appropriate code of conduct for all members of the States”.

Taking each of Senator Syvret's proposals in turn, the Committee comments as follows -

“(a) the Privileges and Procedure Committee should be comprised of members of the States not involved in the Executive;”

It has been assumed by the Committee that this proposal refers to the period after the introduction of a ministerial system, because at the present time it could be said that all members of the States are part of the executive since they are members of one or more committees.

In its report and proposition on the Privileges and Procedures Committee, the Policy and Resources Committee will be proposing that the new Committee should be asked to bring forward proposals on its future composition, after the introduction of a ministerial system.

In the Implementation Plan on the 'Machinery of Government: Proposed Reforms', the Policy and Resources Committee has suggested that non-executive members should be in the majority on the Privileges and Procedures Committee after the introduction of the ministerial system, and that two of the members of the Committee should be from the executive, reflecting the composition of the Assembly itself. If the States were to accept Senator Syvret's proposition, this would mean that a significant and important portion of the House would be unrepresented to the detriment of its work.

The Policy and Resources Committee's proposition seeks to establish the Privileges and Procedures Committee as separate from both the executive and scrutiny bodies, but serving both in relation to the Assembly.

“(b) the Privileges and Procedure Committee should be responsible, in addition to a code of conduct for members of the States, for the production of a code of conduct for the Chief Minister and Ministers;”

The production of a Code of Conduct for the Chief Minister and Ministers is an issue which relates to the executive, and the Committee is of the opinion that it would be wrong for this matter to be considered in isolation from others which relate to this area of government. As a part of its report and proposition on the structure of the executive, therefore, the Committee will include a draft Code of Conduct for the Chief Minister and Ministers for consideration and approval by the States. This Code would be refined and developed, if necessary, by the Council of Ministers once it has been appointed, and re-submitted for approval by the States.

Sub-paragraphs (a) and (b) combine to mean that under Senator Syvret's proposals the Privileges and Procedures Committee will have no representation from the executive, and yet would be charged to produce a Code of Conduct for the executive. The Committee believes that this confers powers on the Privileges and Procedures Committee relating to the executive that are entirely inappropriate.

“(c) the Hansard-type transcript should extend to the proceedings of Scrutiny Committees;”

The States has already agreed that there should be a 'Hansard-type transcript' of States proceedings, and the Implementation Plan includes a summary of the indicative costs of running this type of service (Section 4.6).

In its Implementation Plan the Committee recommends that the Privileges and Procedures Committee should address the question of whether a recording and transcription service (i.e. a 'Hansard-type' service) should also be extended to the

scrutiny committees. The Committee has not yet taken a view on this matter and believes that it merits further investigation before the States is asked to take a decision. The Committee will therefore be recommending in its report and proposition that the Privileges and Procedures Committee should examine this matter and bring forward proposals for consideration by the States before the end of December 2002. These proposals would include estimates of costs that are presently uncertain.

“(d) the Privileges and Procedure and Scrutiny Committees (including the Public Accounts Committee) should be able to call for all papers and information relevant to their work, including information classified as exempt under the Code of Practice on Public Access to Official Information and, although they should normally meet in public, should also be able to meet ‘in camera’ when discussing information classified as exempt;”

In this connection it should be noted that there is a distinction between information that is available to the public, through the Code of Practice on Public Access to Official Information, and that which is available to States members in accordance with the advice issued by the Attorney General in 1987. In the latter case a States member can have access to information in the custody of the States Greffe, and this may include information which is classified as exempt under the Code of Practice. This distinction is not addressed in Senator Syvret’s proposition, but it will need to be taken into account when the Privileges and Procedures Committee considers the issue of access to information.

In the Implementation Plan the Policy and Resources Committee recommends that the scrutiny committees should have the power to call for relevant information and papers, as well as the power to require the attendance of a member before it. The Privileges and Procedures Committee will not be a scrutiny committee, but will simply be making recommendations to the States with regard to the arrangements for these committees as one of its terms of reference. Nonetheless, if the need were to arise, it is envisaged that the Privileges and Procedures Committee should have powers similar to those of a scrutiny committee (Implementation Plan, section 4.7).

A question that has not been fully explored in Senator Syvret’s proposition is the extent to which ‘exempt’ information should be made available to scrutiny committees and, in the Committee’s view; this is a subject which deserves to be considered by the Privileges and Procedures Committee. There is clearly a presumption in favour of access to information, but the scrutiny committees will also need to have due regard to the provisions of the Data Protection and Human Rights Laws, both in collecting information and in publishing any records of their deliberations.

In its report and proposition the Committee will be recommending that the current arrangements for access to information should be reviewed by the Privileges and Procedures Committee. If necessary, that Committee will then be in a position to bring forward proposals to the States for changes to the existing arrangements, taking into account the new system of government. If appropriate, these new arrangements may include the introduction of legislation relating to access to information.

The Committee would emphasize that all these matters are due to be examined by the Privileges and Procedures Committee once formed, and the States should not, in advance, tell that Committee what its conclusions should be.

“(e) the Privileges and Procedure and Scrutiny Committees (including the Public Accounts Committee) should have at their disposal powers and procedures in accordance with those currently available to a Committee of Inquiry under Part IIIA of the States of Jersey Law 1966, as amended, and such powers could be invoked providing notice of the intention to do so, including a statement of the purpose of invoking them, had been given in writing at least seven days in advance to members of the Assembly and published;”

This is also a matter which the Committee believes should be examined by the Privileges and Procedures Committee, for the reasons given in (d) above, before the States are asked to take a decision.

The States of Jersey Law confers powers upon Committees of Inquiry to call for information and summons witnesses, and the Privileges and Procedures Committee will almost certainly wish to consider the present arrangements for Committees of Inquiry and whether these will be appropriate for the new scrutiny committees.

“(f) in addition to its work in scrutinising expenditure, the Public Accounts Committee should be charged with the scrutiny of public income, and the management and valuation of public assets.”

The Committee has already dealt with this issue in Section 5.9 of the Implementation Plan, where it recommends that “the Public Accounts Committee should be responsible for scrutinising all aspects of public expenditure, income and asset management.”.

Conclusion

In presenting this response to Senator Syvret's proposition, the Policy and Resources Committee is conscious that members will also be able to refer to its own proposition relating to the establishment of a Privileges and Procedures Committee (to be lodged "au Greffe" on 12th February 2002). The very detailed report accompanying that proposition, and the text that has already appeared in the Machinery of Government Implementation Plan, illustrate that considerable thought has been given to the way in which the new committee might work. It is the Policy and Resources Committee's view that such issues cannot be debated before the States are informed by the deliberation of the new Privileges and Procedures Committee itself. Not only does Senator Syvret's proposition provide insufficient information on which to reach a decision, it also pre-empts the work of those States members who will sit on the new committee.

The Committee believes that it would be unusual in the extreme for the States to appoint a new committee to perform a task and also to tell that committee, in advance, what its conclusions should be. The Privileges and Procedures Committee should be allowed to fulfil its terms of reference and present its recommendations in the normal way. The States can then accept, reject, or amend those recommendations as it sees fit.

The Committee recommends that the proposition be rejected.