

# **STATES OF JERSEY**

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## **MACHINERY OF GOVERNMENT: ESTABLISHMENT OF SCRUTINY PANELS AND PUBLIC ACCOUNTS COMMITTEE**

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**Lodged au Greffe on 10th June 2003  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## PROPOSITION

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

to refer to their Act dated 28th September 2001 in which they agreed that there should be established a small number of scrutiny committees comprised of members of the States not involved in the Executive, and a Public Accounts Committee comprised of the chairmen of the scrutiny committees together with at least one other member of the States not involved in the Executive; and to their Act dated 26th March 2002 in which they agreed that the Privileges and Procedures Committee should bring forward for approval by the States the terms of reference, conditions and facilities for scrutiny committees and the Public Accounts Committee and –

- (a) to agree that from the date of the introduction of a ministerial system of government there shall be established four scrutiny committees, to be known as Scrutiny Panels, with the following areas of responsibility –
  - (i) Corporate Services, Policies and External Relations;
  - (ii) Environment and Public Services;
  - (iii) Economic Affairs and Development;
  - (iv) Social, Education and Home Affairs;
  
- (b) to agree that each Scrutiny Panel, within its designated area of policy, shall have the following terms of reference –
  - (i) to hold reviews into such issues and matters of public importance as the Panel, after consultation with the Chairmen's Committee, may decide, and to report to the States with recommendations if appropriate;
  - (ii) to consider and report on the existing and proposed policy of the Executive;
  - (iii) to scrutinise all primary legislation, consider possible amendments if appropriate, and report thereon to the States before the legislation is adopted by the States;
  - (iv) to consider subordinate legislation before it is made by the States, or after it is made by a Minister as appropriate, and, if the Panel so decides, scrutinise such legislation and report thereon to the States and the Executive with recommendations;
  - (v) to scrutinise proposed international conventions and agreements before they are extended to the Island;
  - (vi) to scrutinise the draft annual Resource Plan and Budget and other financial proposals of the Executive and report thereon with recommendations;
  - (vii) to liaise with the Public Accounts Committee through the Chairmen's Committee to ensure appropriate co-ordination of the scrutiny function;
  
- (c) to agree that –
  - (i) each Scrutiny Panel shall be comprised of a Chairman and four other members of the States who are not members of the Executive;
  - (ii) the Chairmen of the four Panels shall be appointed by the States after the appointment of the Chief Minister, the Ministers and the Chairman of the Public Accounts Committee;
  - (iii) no member of the States shall be a member of more than one Scrutiny Panel;

- (d) to agree that the terms of reference of the Public Accounts Committee shall be as follows –
  - (i) to receive reports from the Comptroller and Auditor General on the results of the audit of the annual accounts of the States, associated organisations and companies as well as the annual accounts of the Social Security Fund, the Social Security (Reserve) Fund and the Health Insurance Fund and to report to the States on any significant issues arising from these audits;
  - (ii) to receive reports from the Comptroller and Auditor General on the adequacy of the corporate governance arrangements within the States and associated organisations and companies;
  - (iii) to receive reports from the Comptroller and Auditor General on the results of investigations into the value for money achieved by States' Departments and other public bodies, and to report to the States on any significant issues arising;
  - (iv) to assess whether public funds have been applied for the purposes intended by the States, that extravagance and waste are eradicated and that sound financial practices are applied throughout the States administration;
  - (v) to hold hearings and to send for persons, papers and records as required for such hearings, and to report to the States as appropriate on the outcome of any such hearings;
- (e) to agree that the Chairman of the Public Accounts Committee, who shall not be a member of the Executive, shall be appointed by the States after the appointment of the Chief Minister and the Ministers and that the Chairman shall have the power to co-opt onto the Committee other members of the States not involved in the Executive for such periods as he or she may decide;
- (f) to agree that the Scrutiny Panels and the Public Accounts Committee shall have the power to call for any papers or records relevant to the matter under consideration and the power to require any person to attend before them;
- (g) to agree that the proceedings of the Scrutiny Panels and the Public Accounts Committee shall be covered by parliamentary privilege so that no civil or criminal proceedings may be instituted against any member or officer, or against any person giving evidence to a Panel or the Public Accounts Committee, for any act done, or words spoken before, or written in a report to, or by, the Scrutiny Panels or Public Accounts Committee;
- (h) to agree that the Chairman of the Public Accounts Committee, the Chairmen of the Scrutiny Panels, and 2 other members of the States not involved in the Executive appointed by the States, shall form a Chairmen's Committee to –
  - (i) act as a co-ordinating body for the work of the Public Accounts Committee and the Scrutiny Panels;
  - (ii) oversee the prioritisation and allocation of resources to the Public Accounts Committee and the Scrutiny Panels;
  - (iii) report to the Privileges and Procedures Committee on the operation of the scrutiny function and to make recommendations for change as appropriate and, in particular, no later than 12 months after the establishment of the Scrutiny Panels, to make recommendations on the desirability or otherwise of introducing a mechanism to enable the 'call-in' of Executive decisions;
- (i) to agree that adequate financial and manpower resources shall be made available to the Public

Accounts Committee and the Scrutiny Panels from the date of their establishment as set out in Appendix Five to the report of the Privileges and Procedures Committee dated 10th June 2003;

- (j) to agree that two shadow Scrutiny Panels shall be established in advance of the introduction of the ministerial system of government, once appropriate resources have been identified, and to request all Committees of the States to provide the fullest support and co-operation to the shadow Panels to enable them to operate effectively;
- (k) to charge the Privileges and Procedures Committee to bring forward for approval the necessary legislation, as part of the new States of Jersey Law and Standing Orders of the States of Jersey, to give effect to the proposals in paragraphs (a) to (h) above.

## PRIVILEGES AND PROCEDURES COMMITTEE

**REPORT**  
**CONTENTS**

	Section
<b>Background</b>	
Introduction	1
Scrutiny and the Clothier Report	2
Privileges and Procedures Committee: Terms of Reference	3
Research into scrutiny in other jurisdictions	4
<b>The Committee’s proposals for the establishment of Scrutiny Panels</b>	
Introduction	5
The number and structure of Scrutiny Panels	6
The terms of reference of Scrutiny Panels	7
(a) Holding reviews into issues and matters of public importance	8
(b) Considering the policy and proposed policy of the Executive	9
(c) Scrutinising primary legislation once lodged ‘au Greffe’	10
(d) Considering subordinate legislation	11
(e) Scrutinising proposed international conventions and agreements	12
(f) Scrutinising the annual draft Resource Plan and Budget	13
(g) Liaising with the PAC through the Chairmen’s Committee	14
The powers and privileges of Scrutiny Panels	15
Composition and appointment of Scrutiny Panels	16
The Chairmen’s Committee	17
Dedicated staffing resources for scrutiny	18
Specialist and consultancy advice	19
Recording and transcription of evidence	20
Publication of reports	21
Facilities for Scrutiny Panels	22
Funding for Scrutiny Panels	23
Legal advice for Scrutiny Panels	24

'Call-in' of Executive decisions	25
Measuring the results of scrutiny	26
Conditions for effective scrutiny	27
Shadow Scrutiny Panels	28
<b>Public Accounts Committee</b>	
Introduction	29
Role of the Public Accounts Committee and relationship with the Comptroller and Auditor General	30
Terms of reference of the Public Accounts Committee	31
Membership and method of appointment	32
Conduct of meetings	33
Powers and privilege	34
Outcome of the Public Accounts Committee's work	35
Resources for the Public Accounts Committee	36
Relationship between the Public Accounts Committee and the Scrutiny Panels	37
<b>Conclusion</b>	38
<b>SUMMARY OF RECOMMENDATIONS</b>	
Bibliography	
<b>Appendix One - Experience of scrutiny in other jurisdictions</b>	
UK local government experience of scrutiny	I.1
Lambeth Borough Council	I.2
Birmingham City Council	I.3
Experience of scrutiny in a national context	I.4
Scottish Parliament	I.5
<b>Appendix Two – Flowchart showing proposed legislative process for primary legislation</b>	
<b>Appendix Three – Examples of Powers in other jurisdictions</b>	
Australia Capital Territory – Standing Orders	III.1
Canada – Legislative Assembly of Alberta – Standing Orders	III.2
Indian Lok Sabha (Lower House) – Standing Orders	III.3

Nambia – Extract from the Namibian Constitution	III.4
New Zealand – House of Representatives – Standing Orders	III.5
Malta – House of Representatives – Standing Orders	III.6
U.K. House of Commons – Factsheet produced by the Parliament	III.7

**Appendix Four – ‘Call-in’ of Executive decisions**

**Appendix Five – Resource Requirements**

## BACKGROUND

### 1. Introduction

- 1.1 Following the publication in January 2001 of the Report of the Review Panel on the Machinery of Government in Jersey (the 'Clothier' Report), the States took the decision on the 28th September 2001 to move from a committee to a ministerial system of government combined with a system of scrutiny. The Privileges and Procedures Committee was later established to, amongst other things, bring forward detailed proposals on scrutiny.

### 2. Scrutiny and the Clothier Report.

- 2.1 On 2nd March 1999, the States agreed to appoint a body to undertake a review of all aspects of the machinery of government in Jersey. The Clothier Report was published in January 2001.
- 2.2 The Report stated that *"an effective democracy requires not just an Executive, but the balance of a strong Assembly which holds the Executive to account and scrutinises its actions as well as contributing to the formation of policy.....it is not necessarily adversarial or destructive."* The Report recommended *" the setting up of 3 or 4 Scrutiny Committees to cover between them the whole range of government functions"*
- 2.3 On the issue of public expenditure, the Panel recommended that *"the Chairmen of these Scrutiny Committees should combine with one other member of the States to form a Public Accounts Committee to oversee and scrutinise public expenditure with powers sufficient for those purposes. This Public Accounts Committee should have the right to co-opt appropriate persons, not being members of the States, to assist them"* and further recommended *"the institution of the post of Auditor General as an officer of the States with powers to provide the Public Accounts Committee with an investigative capacity"*

### 3. Privileges and Procedures Committee: Terms of Reference

- 3.1 The Privileges and Procedures Committee was established on 26th March 2002. In addition to other terms of reference, the Committee was charged with developing and bringing forward, for approval by the States, the terms of reference, conditions and facilities for Scrutiny Committees and the Public Accounts Committee, including the cost implications and budgetary requirements. Following the introduction of a ministerial system of government, the Committee will be charged with keeping under review the arrangements for scrutiny to ensure its successful operation in the new system of government.

### 4. Research into scrutiny in other jurisdictions.

- 4.1 Organised or structured scrutiny is novel to Jersey. The Committee felt that it would be prudent initially to undertake visits to some jurisdictions where scrutiny is practised to gain the benefit of their experience and consider if any of them would present a suitable model for Jersey. Several seminars were also held to give members and officers the opportunity of hearing of the experience of scrutiny elsewhere.
- 4.2 Five members of the Committee as previously constituted visited the House of Commons in April 2002, to inform the Committee as to the operation of Select Committees. Select Committees were witnessed in action and meetings were held with Clerks involved in the preparation of work plans and commissioning research.
- 4.3 In June 2002 the President and former Senator Stein visited the Scottish Parliament for an insight into the Committee system of Scrutiny in that Parliament, as well as taking advantage of the visit to learn about the production of Hansard, members' questions, information services provided to members of the Scottish Parliament and the public, and standards and procedures relating to members' conduct. There was an opportunity to witness a Committee in action as well as the Scottish Parliament itself in plenary session.
- 4.4 A seminar for States members and Chief Officers was held in July 2002, at which Mr. Chris Game BA, MA, Institute of Local Government Studies, University of Birmingham made a presentation on



'Scrutiny – Experience from U.K. Local Government'. This event was very informative in identifying the role of scrutiny in the English local government context, together with the practical considerations necessary in operating such a system. The seminar provided an opportunity for attendees to discuss issues and concerns surrounding the process of scrutiny during a breakout group session.

- 4.5 The President and Deputy Le R.G. Hérisier visited Lambeth in August 2002 and met the Chair of the Scrutiny Panels and two officers supporting the Panels. It was suggested that it was important not to overload the programme of work which should remain flexible to be responsive to changing circumstances. In addition they were advised that it was necessary to provide appropriate training. It was noted that all Lambeth councillors working on Panels had received training.
- 4.6 In October 2002, three members and the Executive Officer of the Privileges and Procedures Committee visited Birmingham City Council to examine the scrutiny process in place there. The Scrutiny Office is a semi-independent body of the City Council whose role is to monitor the performance of the City Council. This is achieved by regularly checking new decisions being made as well as by reviewing existing policies, procedures and practices in an attempt to continually bring about service improvements. The Committees are primarily concerned with the agreed Council policies, practices and procedures and do not deal with individual complaints which are dealt with by the City Council itself. The delegation observed the Health and Social Services Scrutiny Committee in action and was struck by the apparent emphasis on reviewing audit and inspection information. Members who visited Birmingham were concerned by the agenda and officer led approach which seemed to replicate the previous Committee system, a model which the Committee would not want to recommend for Jersey.
- 4.7 In February and March 2003, the Committee hosted two seminars for members and officers, drawing on the experience of guest speakers from Lambeth, Birmingham, and the Scottish Parliament. The latter gave an insight of scrutiny in a national legislature but also referred to local government issues in Scotland and presented some useful references for the proposals contained further on in this report.
- 4.8 In May 2003 five members of the Committee visited the Greater London Assembly whose principal function is to scrutinise the work of the Mayor of London who exercises wide executive powers within the matters for which he is responsible.
- 4.9 A summary of some of the Committee's research concerning procedures in other jurisdictions is given in Appendix One. The Committee is sensitive to the desire expressed by a number of members that a precise, detailed, structure for scrutiny should be developed to ensure that the system can withstand pressure. Nevertheless this desire must be counterbalanced with the incontrovertible evidence from the Committee's research which shows that successful scrutiny, whilst obviously being adequately resourced, should operate within a flexible framework, should not be overly-ambitious at the outset and should be capable of evolving gradually. Once established, Panels will need to decide how they wish to undertake their work within the terms of reference agreed by the States. It is clear that systems in other jurisdictions have had to be adapted in the first months or years of their operation. It is vital that this flexibility is retained in Jersey within the broad framework that will be established. In addition it is inevitable that successive Chairmen and members will have different approaches to the manner in which they approach scrutiny and they must be given the flexibility to do this within a broad framework that ensures a robust system. The Committee is confident that it has achieved this balance in its proposals.

## THE COMMITTEE'S PROPOSALS FOR THE ESTABLISHMENT OF SCRUTINY PANELS

### 5. Introduction

5.1 Although the Committee has considered scrutiny systems in a number of jurisdictions it is convinced that an appropriate system should be designed for the Island which does not simply replicate systems in place elsewhere. The Committee has no desire to simply import the U.K. local authority scrutiny system as Jersey has its own unique constitution exercising quasi-national responsibilities, including enacting its own legislation, whilst exercising some functions that are more akin to local government responsibilities. Whilst learning from elsewhere a template for scrutiny cannot simply be lifted from other places but must be adapted to the needs and context of the Island.

### 6. The number and structure of Scrutiny Panels

6.1 The Committee does not consider that it would be appropriate to mirror the system in place in other jurisdictions where a scrutiny or select committee 'shadows' every single Ministry or government department. This would clearly be far too complex and costly a structure for a small legislature and there would be a practical difficulty, assuming the number of members remains the same, as there would be insufficient non-Executive members to sit on the Panels.

6.2 The Committee proposes that there should be four permanent Scrutiny Panels, namely –

- Corporate Services, Policies and External Relations;
- Environment and Public Services;
- Economic Affairs and Development;
- Social, Education and Home Affairs.

This structure is identical to the one proposed in the Committee's First Report presented to the States on 22nd October 2002 except for the addition of 'External Relations' to the first proposed Panel which has been added following comments received during the consultation period.

6.3 It is possible that changes will need to be made to the structure proposed above in the light of experience and the Committee proposes that adequate flexibility should be built into the new States of Jersey Law and Standing Orders to enable the States to make changes to the number of Panels and their areas of responsibility as appropriate.

### 7 The terms of reference of Scrutiny Panels

7.1 The Committee believes that each of the four Scrutiny Panels listed above, within its designated area of policy, should have the following terms of reference –

- |     |   |
|-----|---|
| (a) | to hold reviews into such issues and matters of public importance as the Panel, after consultation with the Chairmen's Committee, may decide, and to report to the States with recommendations if appropriate;        |
| (b) | to consider and report on the existing and proposed policy of the Executive;  |
| (c) | to scrutinise all primary legislation, consider possible amendments if appropriate, and report thereon to the States before the legislation is adopted by the States;   |
| (d) | to consider subordinate legislation before it is made by the States, or after it is made by a Minister as appropriate, and, if the Panel so decides, scrutinise such legislation and report thereon to the States and |

the Executive with recommendations;

- (e) to scrutinise proposed international conventions and agreements before they are extended to the Island;
- (f) to scrutinise the draft annual Resource Plan and Budget and other financial proposals of the Executive and report thereon with recommendations;
- (g) to liaise with the Public Accounts Committee through the Chairmen's Committee to ensure appropriate co-ordination of the scrutiny function.

7.2 Each of these terms of reference is expanded below.

## 8. (a) Holding Reviews into issues and matters of public importance

8.1 The Committee believes that the holding of reviews into issues of public importance will represent one of the most significant and important parts of the work of the Panels. This role is akin to the type of work undertaken by Select Committees at the House of Commons and by similar Committees in many Parliaments around the world. In the United Kingdom reports from such Committees often attract considerable media attention on publication and can prove to be extremely influential even if the Executive is not obliged to follow any of the recommendations.

8.2 Panels will prepare an annual, or six-monthly, plan of such reviews in advance. The terms of reference require the Panel to consult with the Chairmen's Committee (see Section 17) before finalising topics for review to ensure that the overall programme of the Panels is co-ordinated. In addition, as specified later in this report, Scrutiny Panels will need to adopt a realistic and achievable work programme within the financial and manpower resources available to them.

8.3 Each review is likely to take a period of weeks or even months and Panels will undoubtedly wish to hear evidence from interested persons or groups, undertake their own research, call for papers and evidence from Ministers and officers of departments, and consult widely before drawing up a final report with recommendations. Reviews are likely to be a useful means of engaging the public, professional bodies and special interest groups in the work of the States and it is hoped that some of the techniques the Committee has seen in use in other places, such as holding meetings in different venues and organising civil participation events and seminars, can be used in Jersey. By simply announcing that it is to undertake a particular investigation a Panel may promote public debate on the subject at issue and it is hoped that the work of the Panels will allow more direct contact between members of the public and the States.

8.4 The Committee believes that Scrutiny Panels will be at their most effective if they are able to conduct in-depth reviews into issues of their choice and produce a set of well-reasoned and well-researched conclusions and recommendations. The Panels may be able to concentrate on issues in a way that would be difficult for the Executive to do because of the pressures of managing day-to-day administration.

8.5 Although it is hoped that the overall programme of reviews will be planned in advance it will also be important for the Scrutiny Panels to be able to hold *ad hoc* reviews into issues that arise at short notice and that are of significant public concern. These may, on occasions, be suitable for a sub-committee or *rapporteur* as explained in paragraph 16.4 below.

8.6 Scrutiny Panels will produce reports following their reviews and these will be presented to the States. In each case the Panel will specify whether or not it wishes the Executive to respond. It is anticipated that the response of the Executive will be sought in the majority of cases and this will be required within a period not exceeding 8 weeks.

- 8.7 When requested, the response of the Executive will be required to set out in full its response to the issues and recommendations made by the Scrutiny Panel's report. The Executive will also be required to explain what action, if any, it intends to take to implement the recommendations.
- 8.8 A Panel, or an individual member, may wish to seek a States' debate on a particular report if they remain unsatisfied with the response of the Executive. It must nevertheless be stressed that the recommendations of Scrutiny Panels will not be binding on the Executive as this would, effectively, lead to the creation of two separate forms of executive power in the Island. It is, however, likely that political and public pressure will go some way to ensuring that the work of the Panels is carried through. Members will be aware that Select Committee reports from the U.K. House of Commons often receive extensive media coverage and it is likely that reports from Scrutiny Panels will be well reported in the local media and have a major impact on the Executive.
- 8.9 It will be important for Scrutiny Panels to follow up their reports at regular intervals to ensure that the recommendations have not been ignored, especially if the Executive has given any undertakings in its response to take certain action. Officers working for the Panels will need to maintain adequate 'bring forward' systems to enable regular reviews. It is suggested that Panels should produce an annual report for the States summarising their work over a 12 month period.

**9. (b) Considering the policy and proposed policy of the Executive**

- 9.1 The Clothier Report put forward the recommendation that Scrutiny Panels should have an important role in overseeing the policy and proposed policy of the Executive.
- 9.2 Scrutiny Panels may wish to consider existing policies of the Executive or may be invited to comment on proposed policies. Unlike the reviews undertaken in accordance with part (a) of the terms of reference, which will be on issues and topics chosen by the Scrutiny Panels themselves, the review of policy and proposed policy of the Executive under this part of the terms of reference will be in response to existing or proposed policies of the Executive. It is inevitable, of course, that some of the reviews held by Scrutiny Panels under part (a) above will, directly or indirectly, examine and comment on the policy of the Executive and there will, therefore, be some overlap between these two parts of the terms of reference. Furthermore, it is hoped that there can be co-ordination, without overriding the prerogatives of the Comptroller and Auditor General, between audit and scrutiny so that audit reports support scrutiny reports and vice versa, as explained in Section 37 below.
- 9.3 Experience in other jurisdictions has shown that 'pre-scrutiny' of decisions can give scrutiny committees and panels real influence. Those involved in scrutiny feel able to participate in the decision-making process and have their voice heard. It is likely that, with the introduction of a more formal system of consultation papers (similar to U.K. 'Green' and 'White' Papers), Scrutiny Panels will be invited to comment on and scrutinise draft policies in the course of development. This will also ensure that members who are not in the Executive have new and positive ways of being involved in policy formation and are able to contribute to the policy debate.
- 9.4 Scrutiny Panels will nevertheless need to consider the extent to which they become involved in scrutinising and considering draft policies in the course of preparation by the Executive. Although there could, if the present absence of political parties continues, be some merit in seeking to obtain a consensus through consultation as set out above, the Committee was also interested to note, during the seminar on 28th March 2003, that Committees of the Scottish Parliament do not tend to consider draft policies, as they take the view that it can later be claimed, when the Committees wish to comment on the implementation of the policy, that the lack of any critical comment at the draft stage amounted to a tacit endorsement of the policy. It may also be difficult for the Scrutiny Panels to seek the views of the public and interested bodies at a time when the Executive itself is seeking comments during the consultation stage. The Committee is nevertheless of the view that 'pre-scrutiny' is highly desirable as long as it is made absolutely clear that it does not imply endorsement of the proposed policies.
- 9.5 The Committee believes that it cannot be unduly prescriptive about the way in which future Scrutiny

Panels should interpret this part of the terms of reference and the Committee does not intend to propose that Scrutiny Panels should be required to scrutinise and comment on all draft policy proposals of the Executive even when requested to do so. The Committee is not convinced that failure to comment critically on a draft policy would be seen as tacit approval in the manner described above but this is a matter where Scrutiny Panels will need to develop and adapt working practices in the light of experience.

#### **10. (c) Scrutinising primary legislation once lodged ‘au Greffe’**

10.1 It is generally accepted that the present method of dealing with primary legislation in the States is unsatisfactory. The following general criticisms of the present system may be made –

- complicated legislation is frequently not subject to detailed analysis;
- those promoting the legislation are not always required to explain the effect of particular provisions;
- there is frequently a very short delay, sometimes no more than the minimum two week lodging period, between the lodging of the legislation and its adoption, and almost invariably no delay between adopting the draft in second reading and adopting it in third reading;
- the process for dealing with amendments does not work as well as it might. Often amendments are lodged late, or presented with the minimum of 4 days’ notice, and on many occasions residual concerns about the draft are expressed during the debate without any formal amendment being presented, meaning that the draft is either adopted or rejected but not developed.

10.2 The establishment of a system of scrutiny provides the opportunity for structured scrutiny of primary legislation. It is possible that policy proposals leading up to the drafting of the legislation will have been subject to comment by Scrutiny Panels but the Committee is proposing that Standing Orders should provide that any draft Law or draft Triennial Regulations should systematically be referred to the relevant Scrutiny Panel for consideration before the legislation is finally adopted by the States.

10.3 The proposed legislative process would operate as follows. After any particular draft Law or Triennial Regulations had been lodged ‘au Greffe’ a date would be fixed for a debate on the general principles of the draft. This debate would be similar to the debate currently described as the ‘debate on the preamble’, and would allow members to discuss issues of principle in relation to the underlying rationale of the draft Law or Triennial Regulations as a whole, or issues of principle raised by particular provisions within the draft. Standing Orders would allow greater latitude to members than at present to comment on particular Articles at this stage so that concerns could be noted.

10.4 At the end of this debate the Assembly would vote in the normal way on whether or not to approve the principles of the draft. If the States rejected the draft it would clearly progress no further but it can be assumed that, as at present, most items will pass this stage.

10.5 After adoption of the principles the draft would be referred systematically to the relevant Scrutiny Panel for a Committee stage. As members may be aware, Jersey is almost unique in not having such a stage in dealing with legislation and the Committee believes that this stage would go some way to addressing the present defects listed in paragraph 10.1 above. For items such as minor amending laws, the Scrutiny Panel might decide very quickly that no detailed consideration was required and the matter could be returned to the States with a brief report to that effect. On occasions the Scrutiny Panel may even be able to make this decision before a date is fixed for a debate on the principles. Major and/or controversial items (such as, for example, a new draft Planning or Firearms Law) could be given detailed consideration by the Panel.

10.6 Scrutiny Panels would be expected to call the relevant Minister and officers of the instructing Department so that they could give details of the reasoning behind the content during an Article by Article consideration of the draft Law. Those promoting the draft will need to be prepared to be questioned as to

exactly what each Article means, and to tackle any points of principle or difficulty which arise on each Article. It is likely that Panels would also wish to hear the views of the members of the Law Officers' Department and/or the Law Draftsman's Office on the draft. Panels could also, in the normal way, invite comments from any interest groups, professional bodies or member of the public who wished to comment on the draft legislation and may, on occasions, wish to commission their own research.

10.7 The Scrutiny Panel will be able to consider whether certain Articles in the draft should be amended during this detailed consideration stage. These amendments could be tabled by –

- (i) the Panel itself;
- (ii) by the Minister proposing the draft if he/she accepts that changes are needed; or
- (iii) by any other States member with concerns about particular aspects of the draft.

Because Scrutiny Panels will be made up exclusively of non-Executive members of the States the Committee does not believe that the Panel considering the draft legislation should have the power to incorporate amendments into the draft unless the amendments are accepted by the promoter of the legislation (normally the Minister) although it is hoped that many amendments may be accepted by the promoter at this stage.

10.8 In order to avoid undue delay, some mechanism will need to be established in the revised Standing Orders for a timetable to be agreed by the States for the committee stage. At the conclusion of this stage the draft legislation would be referred back to the States accompanied by the report of the Panel. If amendments had been accepted by the promoter of the legislation during the committee stage these would be incorporated in the revised version of the draft legislation which would be clearly marked to show the changes. Amendments tabled by the Panel itself, or by an individual member, which had been considered during the committee stage, but which had not been accepted by the promoter, would be included as an Appendix to the revised draft if the Panel or member concerned wished to put the amendment to the full States Assembly for consideration. These amendments would be accompanied by the report of the Panel and, in the case of an amendment by an individual member, by the report of that member as well.

10.9 After the revised draft was referred back to the States there would be an appropriate delay to enable members to consider the changes (if any) and, if they wished, to present further amendments. The Committee believes it is important for members to retain this final opportunity to present amendments even though it is hoped that members who have concerns about certain parts of a piece of draft legislation will seek to engage during the Committee stage where amendments will be given detailed consideration and will receive the comments of the Scrutiny Panel when they are referred to the States.

10.10 The final stages of dealing with the draft legislation would be similar to the present 'second reading' process although there would obviously not be a further debate on the general principles of the draft. The Articles would be considered individually and amendments that had not been accepted by the promoter during the Committee stage would be debated in the usual way as at present. Once all Articles had been adopted, and once all amendments had been dealt with, the draft would be given its final approval in 'third reading'. A flowchart setting out the proposed process of dealing with draft Laws and Triennial Regulations is included at [Appendix Two](#).

10.11 The Committee accepts that this proposed method of dealing with draft legislation will require considerable work by members and by the Scrutiny Panels. It will, nevertheless, address some of the present concerns about the passage of primary legislation and greater scrutiny will be of benefit in the new ministerial system when the Minister concerned may be the only politician to have had input during the drafting process, unlike the present situation when all members of a Committee consider drafts.

10.12 It is accepted that the passing of legislation may take longer than at present but this should be viewed as a positive change because items will be scrutinised in a much more systematic way. There may need to be a mechanism for agreeing the passage of items which are considered to be urgent but these are likely to be

rare, especially as all draft Laws must obtain sanction by the Privy Council. This does, of course, mean that new Laws cannot be enacted at very short notice.

#### **11. (d) Considering subordinate legislation**

- 11.1 Subordinate legislation (principally Regulations made by the States and Orders, currently made by Committees but which will be made by Ministers in the new system of government) is usually less significant and far-reaching than primary legislation that requires Royal Assent.
- 11.2 The Committee considered whether all subordinate legislation should be referred to a Scrutiny Panel before being made but concluded that this was likely to be impractical and unnecessary. Many items of subordinate legislation relate to extremely minor and routine items and the rationale behind inserting an Order-making power in a principal law is that the matter does not need the involvement of the entire States.
- 11.3 There are nevertheless some items of subordinate legislation that may be controversial and that would benefit from closer scrutiny and review than they receive at present. In relation to Regulations (that are made by the States) it is proposed that Scrutiny Panels should be able to request that they be referred for a Committee stage after the debate on the principles in a similar way to the compulsory referral described in Section 10 above for primary legislation. In practice it is unlikely that this would happen in many instances but the option would be available to the relevant Scrutiny Panel if it had concerns about a particular item or if it was aware that an item was particularly controversial.
- 11.4 For Orders, which in the ministerial system will be made by individual Ministers, it is proposed that Scrutiny Panels should simply decide, after the Order is made and tabled in the States, whether or not they wish to review it. If a Scrutiny Panel should decide to do so, and if, after its inquiries, it has serious concerns about the content of the Order that cannot be resolved following discussions with the Minister, a proposition to annul the Order could be lodged 'au Greffe' by the Panel and debated by the States in the normal way. In addition individual members would, of course, retain the right to bring a proposition to annul the Order as at present.

#### **12. (e) Scrutinising proposed international conventions and agreements**

- 12.1 The current method of dealing with the extension to the Island of new or revised international conventions and agreements, with the majority of decisions apparently made by the Policy and Resources Committee after consultation with the Law Officers, means that the impact of these agreements is not subject to scrutiny by the majority of members of the States. At present many members are unaware of decisions that have been taken until the annual, or six-monthly, report on international conventions and agreements is presented to the States many months later.
- 12.2 The establishment of the Scrutiny Panel structure provides the ideal opportunity for such agreements to be scrutinised in a more rigorous and open manner. It is proposed that, unless there is a manifest urgency (in which case the relevant Scrutiny Panel should be notified), no decision should be taken to request the extension to the Island of any international convention or agreement until the matter has been considered by a Scrutiny Panel. It is likely that the Panel will wish to hear evidence not only from the relevant Minister but also from persons with an interest in the subject matter and who could have concerns about the implications of the proposed extension. If the Scrutiny Panel had serious concerns it could report to the States setting out details of these concerns.
- 12.3 In relation to any European Union legislation which is applicable, or needs to be given legal effect, in the Island the Committee notes that different considerations will apply depending on the nature of the legislation concerned. Some E.U. legislation has direct effect because it falls within Protocol 3 to the Treaty of Accession and there would not seem to be any role for scrutiny in these circumstances as there is nothing for members to do other than to be aware that such legislation exists, something that does not always happen at present. Other legislation is put before the States Assembly because Member States of the E.U. are required to enact their own legislation and the subject matter requires the Island, pursuant to

Protocol 3, to have appropriate legislation. In these circumstances the function for the Scrutiny Panels would be similar to the process used for other legislation although the consideration of the principle underlying the legislation would not generally be a matter to consider if Jersey, as a matter of law, was committed to having such legislation in place. There will be some occasions when the Executive in Jersey considers that E.U. legislation ought to be adopted pursuant to the European Communities Legislation (Implementation) (Jersey) Law 1996, not because the E.U. legislation concerned applies or needs to be enacted, but because the Executive considers that it is desirable for the Island. In these circumstances the normal scrutiny processes for subordinate legislation, as set out in Section 11, would apply.

### **13. (f) Scrutinising the annual draft Resource Plan and Budget**

13.1 Although, as mentioned in paragraph 9.4 above, Scrutiny Panels may wish to exercise caution when deciding whether or not to conduct in-depth inquiries into draft policies of the Executive, the Committee is proposing that the draft annual Resource Plan and Budget and other financial proposals of the Executive should be subjected to systematic scrutiny before they are presented to the States.

13.2 Whatever method is used in the future for prioritising resources, the process is likely to be a complex and lengthy task involving discussions over a protracted period between Ministers and senior officers. Once the final version of the Resource Plan and Budget are presented to the States for approval it will therefore always, in practice, be difficult for non-Executive members to propose amendments even if these will, of course, continue to be possible in theory. The Executive will rightly be able to claim that the final Resource Plan and Budget are the product of a lengthy and systematic process, taking due account of income forecasts and expenditure requirements and that they are, as such, a complicated ‘jigsaw’ that should not be dismantled by amendments.

13.3 As a result it is proposed that the annual Resource Plan and Budget should be subject to scrutiny before they are presented to the States. Ministers and others could be asked to justify the proposals and priorities used and any concerns expressed by the relevant Scrutiny Panel could be considered by the Council of Ministers before the final proposals are presented to the States. If the Council was not responsive to the concerns, the Scrutiny Panel could present a report to the States accompanied, if the Panel considered it appropriate, by amendments.

### **14. (g) Liaising with the Public Accounts Committee through the Chairmen’s Committee**

14.1 The relationship between the Scrutiny Panels and the Public Accounts Committee is considered in more detail in Section 37 below. The Committee believes that, despite the important differences between the two, there will be a need for close co-ordination between the scrutiny and the audit function. Liaison through the Chairmen’s Committee will ensure close co-operation, enabling programmes of work which will maximise the overall benefit of both scrutiny and audit.

### **15. The powers and privileges of Scrutiny Panels**

15.1 Experience from other jurisdictions has convinced the Committee that Scrutiny Panels must have adequate statutory powers to undertake their task effectively. Eugene Windsor, Clerk Team Leader from the Scottish Parliament, speaking during the seminar on 28th March 2003, stated –

*“Committees need adequate powers to do the job: I think this is the most important lesson that we have learned over the first session. They need the stick, they need details in the legislation of what they can do and, although they may not always have to use them, powers do need to be there, they need to have the teeth.”*

15.2 The Committee has researched the powers given to similar Committees in other jurisdictions and a sample of extracts of procedures from other legislatures is attached at [Appendix Three](#) for information. The Committee is proposing that Scrutiny Panels should have statutory power to call for any persons, papers or records relevant to the subject of the review and to require any person to attend before them.



- 15.3 The Committee has given careful consideration to this proposal as it is conscious that some members may consider that these proposed powers are heavy-handed and unnecessary. The Committee has nevertheless concluded that scrutiny will be hampered in the absence of these powers as anything less will mean that vital papers may be withheld from Panels or persons may refuse to attend to answer questions. It is interesting to note that, although the Committees of the Scottish Parliament are given similar powers in Section 23(1) of the Scotland Act 1998 (with criminal sanctions for non-compliance), officers of that Parliament have confirmed that the powers have, in practice, never been used as their mere existence is sufficient to obtain what is required voluntarily. In Scotland there have apparently been occasions when there has been a reluctance to produce certain documents, due to considerations such as commercial confidence or disclosure of personal information, and such situations have been resolved by agreement between the Committee concerned and the person being asked to produce the information. There will undoubtedly be occasions when Panels will need to consider issues in private if information of a personal or particularly sensitive nature is under consideration.
- 15.4 In the case of reluctance to appear or to produce the information, the Committee believes that the Privileges and Procedures Committee, which will continue in existence under the new system of government as a Committee representing the interests of all members (whether or not they are members of the Executive), should be asked to adjudicate on the matter. The Committee also believes that clear guidelines will need to be drawn up to cover matters such as the manner in which third parties should be asked to provide information to Scrutiny Panels. Although there may be occasions when Panels will wish to obtain information from outside bodies in relation to a particular review or investigation it would clearly be inappropriate for Panels to use the extensive powers that will be given to them to obtain information that may be commercially sensitive or otherwise confidential unless such information is clearly of direct relevance to the matter under review.
- 15.5 The proceedings of Panels will be considered to be proceedings that are covered by parliamentary privilege. As a result those participating, whether members or those giving evidence, will be protected from being sued or prosecuted for anything they say during the proceedings. Written evidence received by Panels, and the reports produced, will be similarly protected.
- 15.6 The combination of the powers and privilege will ensure that Panels will be able to get comprehensive, factual and truthful information.

## **16. Composition and appointment of Scrutiny Panels**

- 16.1 As set out in the Committee's First Report it is proposed that the Chairmen of the Scrutiny Panels should be appointed by the States immediately after the election of the Ministers and the Chairman of the Public Accounts Committee but before the Assistant Ministers have been chosen.
- 16.2 It is proposed that each Scrutiny Panel should consist of a Chairman and four other States members. In accordance with the existing decisions of the States these members could not be Ministers or Assistant Ministers and any member of a Panel who was subsequently elected as a Minister or appointed as an Assistant Minister would have to resign from the Scrutiny Panel. As with the present method of appointing members to Committees the Chairman of each Panel would, after consultation with the other Chairmen, nominate a list of the proposed members for approval by the States and members would be free to nominate alternatives. If additional names were proposed a ballot would be held. It is proposed that a member of the States could only be part of one Panel.
- 16.3 The Committee has given further consideration to the matter of allowing non-States members to be co-opted onto Panels for particular reviews and has concluded that this would not be appropriate. The Committee considers that it would not be right for non-States members to have a full 'decision-making' role in the drafting of recommendations and as a result it would be preferable for persons with appropriate expertise to be treated as witnesses or experts by the Panels rather than as co-opted members.
- 16.4 The Committee believes that there will be occasions when a sub-committee of a Scrutiny Panel could be charged with a particular review or issue. This could, for example, be useful for the scrutiny of draft

legislation if it was felt that a particular item did not require the involvement of the full Panel. In addition the Committee was impressed with the Scottish concept of a reporter (or '*rapporteur*' in the local context) who would be one member of a Scrutiny Panel appointed by the Panel to research a particular matter and report. It should nevertheless be stressed that it is not proposed to allow a *rapporteur* to exercise the full powers of the Scrutiny Panel as set out in Section 15 above.

## **17. The Chairmen's Committee**

17.1 Coordination of the scrutiny function will be vital to ensure that there is no unintentional overlap between the work being undertaken by the various Panels and to ensure that all aspects of the Executive's work are covered over a period of time. In addition it will be necessary for the operation of the scrutiny system to be kept under review so that appropriate changes can be recommended if necessary.

17.2 The Committee proposes that the Chairmen of the Scrutiny Panels, together with the Chairman of the Public Accounts Committee, should form a Chairmen's Committee which would act as the co-ordinating body for the scrutiny function. To ensure that the views of all non-Executive members were taken into account it is suggested, as set out in the Committee's First Report, that two other non-Executive members, who may or may not be members of Scrutiny Panels, should be elected by the States to sit on the Chairmen's Committee. The Chairmen's Committee would liaise as appropriate with the Privileges and Procedures Committee to ensure that arrangements for scrutiny are kept under review in the light of the experience gained by the Panels.

## **18. Dedicated staffing resources for Scrutiny**

18.1 The Committee's research has shown beyond doubt that scrutiny will only be effective if adequate resources are available to service the Scrutiny Panels. Experience from elsewhere shows clearly that scrutiny, whilst being entirely politically led, will only work well if the Panels have dedicated officer support to make all practical arrangements in relation to managing the Panels' business, undertaking research, attending meetings and preparing draft reports for consideration by the members.

18.2 It is important to remember that Scrutiny Panels will not be able to rely on any other executive support and the range of work undertaken by the officers will be considerably wider than the work undertaken by the present Committee Clerks working in the States Greffe. It may be useful to set out some of the functions that will need to be undertaken by the Scrutiny Officers on behalf of the Panels. These will include –

- Assisting Chairmen and members of Scrutiny Panels to identify suitable scrutiny subjects;
- Establishing a draft programme of scrutiny for each Panel for approval by the Chairmen's Committee;
- Establishing a detailed work plan for each review undertaken;
- Providing dedicated research support to Panels as appropriate;
- Engaging specialist consultants and advisers where appropriate;
- Arranging meetings of Panels, preparing agendas and minutes as appropriate, making all practical arrangements for the meeting (location, public notification, recording facilities, attendance of those giving evidence, etc);
- Providing briefing notes to members of Panels in advance of meetings on matters such as CVs of witnesses and, if required, draft lines of questioning;
- Assisting members to identify persons who could be called to give evidence to Panels and briefing

such persons on procedural and practical matters in advance of hearings;

- Advising members and witnesses on procedural matters during meetings;
- Preparing draft reports for consideration by Panels;
- Making arrangements for reports to be formally presented to the States and to be publicised in the Island including through liaison with the media, publication on the internet and the production of summary reports as appropriate;
- Producing newsletters, annual reports and generally ensuring that the work of Scrutiny Panels is publicised and understood by all members of the States, by public sector employees and by the public;
- Assisting new members of Panels through the production of handbooks and the provision of induction training;
- Maintaining contacts with officers in other jurisdictions to ensure that the system of scrutiny in Jersey is adapted in line with experience and best practice;
- Managing budgets and making recommendations on resource allocation priorities for Scrutiny Panels.

18.3 At the seminar of 28th March 2003 the Head of the Scottish Parliament Committee Office explained that each Committee of that Parliament is assisted by a team of four dedicated officers together with access to researchers from the Parliament's Information Centre. The Committee believes that a similar level of staffing will not be necessary in Jersey which is obviously a much smaller jurisdiction and where practical matters such as identifying interest groups and other interested parties, and arranging attendance at meetings, is less complex. The Committee therefore proposes that each of the four Scrutiny Panels should be serviced by two Scrutiny Officers of appropriate seniority and that the Panels should be assisted by a small team of three researchers and two administrative/secretarial staff. As the Public Accounts Committee (see Section 36 below) would be assisted by staff of the Comptroller and Auditor General it is anticipated that there would only need to be one officer working for that Committee. One of the Scrutiny Officers will be appointed to lead the team of officers. It is intended that these officers would be a discrete section within the States Greffe and, although there will be a need to allocate additional resources to the States Greffe to create this team of 14 scrutiny/research officers, the PPC believes that this number of staff represents the absolute minimum number possible if the scrutiny function is to operate effectively. Staffing may need to be reviewed in the light of experience.

18.4 With this level of staffing, which the Committee believes to be appropriate, it will be important for each Scrutiny Panel to adopt a realistic approach to the workload it can undertake taking due account of the level of resources available to it to avoid setting unachievable goals.

18.5 The Committee is also conscious that the establishment of a formal scrutiny structure will place additional demands on Departments that are being scrutinised and the Committee supports the proposal of the Policy and Resources Committee that the new Departmental Directors will be required, as part of their job descriptions, to support the scrutiny process. The Committee believes that it will be necessary for the resource implications of this to be borne in mind by all Committees when the departmental restructuring takes place in the coming months. Experience from other jurisdictions has shown that it is essential for each government Department to nominate at least one Scrutiny Liaison Officer who would be the senior officer acting as the first point of contact in the Department for members and officers of Scrutiny Panels even though the Departmental Director (Chief Officer) would, of course, remain responsible for ensuring an appropriate and timely response.

## **19. Specialist and consultancy advice**

- 19.1 There will be a requirement for Scrutiny Panels to seek specialist research and consultancy advice on occasions. It was estimated in the Implementation Plan produced by the Policy and Resources Committee in November 2001 that an annual sum of £250,000 for each Panel should be allocated for this purpose. The Committee believes that it is difficult to assess the actual requirement for such advice until the Panels are in operation but considers that a more realistic annual sum of £150,000 should be allowed for each of the four permanent Panels. The Committee proposes that a total research/consultancy budget of £600,000 per annum should be made available and this would be shared as required depending on the varying research requirements of the four Panels. The Chairmen's Committee would be charged with allocating and prioritising this budget on receipt of requests from each Panel.
- 19.2 The Committee was interested to learn during its visit to the Greater London Assembly on 2nd May 2003 that the budget required for external consultancy had been reduced as the Scrutiny Managers working for the Assembly had gained experience and become able to undertake more of the required research 'in-house' and it is possible that this could also be the case in the Island in the future. The Committee proposes that adequate training is given to staff with the long term aim, once they have gained experience, of reducing the consultancy budget.

## **20. Recording and transcription of evidence**

- 20.1 The Committee considers that Scrutiny Panels will wish to record all oral evidence given to them and may then wish to receive a transcript of some or all of this evidence. It is common practice in other jurisdictions for all evidence given before Parliamentary Select or Scrutiny Committees to be transcribed. There will be an initial capital sum required to purchase the necessary recording equipment for the rooms to be used for this purpose (see paragraph 22.1 below). The management of the transcription service itself will be undertaken by the States Greffe in conjunction with the transcription of the proceedings of the Assembly. Brief Minutes of the proceedings of meetings of the Panels where no evidence was heard would be taken but these meetings would not be recorded.

## **21. Publication of reports**

- 21.1 It will be important to ensure that the reports produced are widely available in an attractive and accessible manner including publication on the internet. The States Assembly website will be adapted for this purpose.
- 21.2 The Committee was impressed with the small summaries of scrutiny reports published by the Greater London Assembly which provide an overview of the investigation and its conclusions as well as providing details of how the full report can be obtained. The Committee proposes that such summaries should be produced in Jersey. Panel members will need to become skilled at dealing with the media to ensure that appropriate coverage is given to the work of Panels as public awareness of the outcome of the Panels' work will be one of the most powerful means of ensuring their effectiveness.

## **22. Facilities for Scrutiny Panels**

- 22.1 It will be necessary to have available at least two dedicated rooms for use by the Panels that are fully accessible and equipped for persons with special needs. These will be equipped with the necessary recording equipment and will be set out to allow appropriate access and facilities for witnesses, members of the public and the media. The Committee is currently liaising with the Department of Property Services over the future use of space in Morier House to assess if suitable accommodation could be identified in that building. It is hoped that Scrutiny Panels may, subject to adequate access and facilities for persons with special needs being available, be able to meet in locations such as Parish Halls in an attempt to increase public interest and participation in their work and it is also possible that some may, on occasions, meet in the States Chamber itself.
- 22.2 Each Panel will, of course, require an annual budget to cover matters such as stationery, IT and other equipment, advertising, refreshments etc. This is in addition to the staffing costs associated with such

matters referred to above.

### **23. Funding for Scrutiny Panels**

- 23.1 The Committee's research has shown that scrutiny will, if it is to have any chance of being successful, require considerable resources. Nevertheless it is considered that money spent on effective scrutiny will represent value for money as the recommendations of the Scrutiny Panels should bring about improvements in services to the public and may also identify areas where savings could be made. It is considered that the work of Panels will lead to better decision-making and it would be wrong to suggest that the value of their work can be measured in monetary terms alone. It has been stated on many occasions that the ministerial system will lead to considerable savings and efficiencies and it should therefore be possible for resources to be devoted to scrutiny without increasing overall States' expenditure.
- 23.2 The Committee is currently working on proposals to identify an appropriate mechanism to set the budget for the operation of the States Assembly and the States Greffe which will manage the scrutiny officers. It is important that, as in other jurisdictions, there is a body representing all members which discusses and agrees the necessary level of resources without interference from the Executive. The Committee will be bringing forward detailed proposals on this matter later this year.

### **24. Legal advice for Scrutiny Panels**

- 24.1 The Committee is aware that in many jurisdictions, including Westminster, Scotland and the Greater London Assembly, Committees have access to their own independent legal advisers. In addition the Committee is conscious that the States have already agreed that *'the Attorney General will be entitled to attend all meetings of the Council [of Ministers] to provide legal or constitutional advice, but will not have a vote'*. (P.191/2002 – Appendix paragraph 1.3)
- 24.2 The Committee does not envisage that Scrutiny Panels will often be dealing with issues that require legal advice as they will principally be scrutinising policy (except when they are scrutinising legislation) and should not need to become involved with legal matters. There will, however, be some occasions when Panels will need to receive legal advice. This may be because –
- the Panel wishes to access legal advice that has already been given to the Executive;
  - the Panel wishes to receive advice on a subject where no advice has been sought or obtained by the Executive; or
  - the Panel may wish, for whatever reason, to obtain separate legal advice on a matter where legal advice has already been given to the Executive.
- 24.3 The Committee is hopeful that Scrutiny Panels will be able to access advice already given by the Law Officers' Department to the Executive.
- 24.4 When no advice has been given to the Executive on a matter, the Committee believes that it will normally be possible for Scrutiny Panels to seek the advice of the Law Officers' Department who can advise on an impartial basis as legal advisers to the States of Jersey.
- 24.5 Although advice may normally come from the Law Officers' Department there will undoubtedly be occasions when Scrutiny Panels wish to obtain advice from other sources. The Panels will have a budget for research and consultancy purposes and the Committee believes it is very important that Panels have the option of seeking private legal advice if they believe this is necessary and an appropriate use of their budget. Panels would be expected to inform the Attorney General out of courtesy of their intention to do this.

## 25. 'Call-in' of Executive decisions

- 25.1 The Committee has thoroughly researched the operation of the 'call-in' mechanism which has been an innovation in the local government modernisation programme in the United Kingdom. After considerable thought the Committee has decided to propose that a 'call-in' mechanism should not be included as part of the initial proposals although the matter should be kept under review in the first year of operation of the new system of government and the Chairmen's Committee will be charged by the States, as set out in paragraph (h)(iii) of the proposition, to *'report to the Privileges and Procedures Committee on the operation of the scrutiny function and to make recommendations for change as appropriate and, in particular, no later than 12 months after the establishment of the Scrutiny Panels, to make recommendations on the desirability or otherwise of introducing a mechanism to enable the 'call-in' of Executive decisions'*.
- 25.2 In essence, a 'call-in' mechanism would give Scrutiny Panels the ability to delay the implementation of 'key decisions' taken by the Executive, if it was felt that the decision in question was inconsistent with approved policies or strategies, appropriate consultation had not taken place or some relevant consideration had been overlooked. Further details on how a 'call-in' mechanism could operate are set out in Appendix Four.
- 25.3 The principal concern of the PPC is that the introduction of 'call-in' could simply lead to disillusionment on the part of non-Executive members as the mechanism would, effectively, be without any real power. The Council of Ministers, or individual members of the Executive, could be asked to reconsider decisions but could not, because of the legal power vested in Ministers, be required to change a decision. This could lead to frustration and criticism similar to that which has been voiced when the recommendations of Boards of Administrative Appeal or Committees of Inquiry are ignored by Committees at the present time. There is therefore a danger that 'call-in' could be very resource intensive with few tangible and useful results. In evidence given to a House of Commons Select Committee the Labour Group on Essex County Council stated *"Our experience over the last few months makes us conclude that the 'call-in' procedure is failing in its primary role of holding the executive to account (...) For example the cost of call-ins at Essex has been considerable, with little outcome to show for that financial expenditure"*. The Committee's research to date has led it to conclude that the benefits of 'call-in' are not yet proven.
- 25.4 The operation of 'call-in', in dealing with controversial issues, was considered by the House of Commons Transport, Local Government and the Regions Select Committee in its fourteenth report of the 2001-2002 session, entitled 'How the Local Government Act 2000 is Working'. It noted the following submission from the Liberal Democrat Group at the Local Government Association (LGA 12) –

*'Those that feel their scrutiny committees have a real influence tend to be from those authorities where a substantial amount of pre-decision scrutiny is taking place ... Making all the information available to scrutiny members, members of the public and stakeholder organisations well in advance of a decision being taken is a key part of effective pre-decision scrutiny and ensures they are able to participate, object or submit alternative proposals.'*

The Select Committee comment was as follows:

*'It is therefore surprising that Government guidance on overview and scrutiny under executive arrangements is dominated by provisions for the 'call-in' of a decision after it has been made and before it is implemented. Councils should give emphasis to a high quality pre, rather than post, decision scrutiny of controversial matters.'*

- 25.5 The Committee's research has also shown that many U.K. local authorities were wary of this innovation in the early days, concerned that it would be over-used and bring the decision making to a halt. In a paper for the Local Government Association 'A Hard Nut to Crack: Making Overview and Scrutiny Work' (April, 2001) Stephanie Snape and Frances Taylor commented: *'it will be a challenge for all authorities to develop the right balance...Too hostile and adversarial, and the Executive will simply refuse to co-operate, producing dangerous, damaging divisions within an authority. But too cosy and*

*cordial, and overview and scrutiny will have failed to undertake its 'critical friend' role.*

- 25.6 The Committee's overall conclusion is experience in the U.K. to date has been somewhat inconclusive. In some local authorities 'call-in' appears to operate in a positive way whereas in others it is regarded as being of marginal benefit. The Committee has given detailed consideration to the finely balanced arguments on both sides and considers that scrutiny will be considerably more effective, and more satisfying for those involved in it, if it sets its own priorities for reviews and investigations rather than constantly looking again at decisions made by the Executive. It is also likely that the Executive will be more responsive to reports from Scrutiny Panels when they are related to issues chosen by the Panels rather than if reports are simply requests for the Executive to reconsider decisions already taken. The Committee is proposing a system of scrutiny where non-Executive members can feel they have a positive and effective role to play and does not, at present, think that the operation of 'call-in' would necessarily meet this objective.
- 25.7 The Committee believes that scrutiny will be at its most effective when the Scrutiny Panels set their own priorities and decide to investigate issues in a proactive and novel way. The introduction of a 'call-in' mechanism could hamper this effectiveness. There will be many decisions taken each year by Ministers and by the Council of Ministers and a system of 'call-in' might require Scrutiny Panels to consider long lists of these decisions on a daily basis to ascertain whether or not the decisions should be called in. This could lead the Scrutiny Panels to be extremely reactive to the Executive's agenda and the Panels could spend a disproportionate amount of time investigating decisions being made by the Executive. The Committee would nevertheless stress that it believes that it will be important for all non-Executive members to have access to full information about decisions being taken so that those involved in the scrutiny function can monitor the actions of the Executive.
- 25.8 In reaching its decision the Committee has been conscious that 'call-in' is very much a feature of local government, not used at the House of Commons or parliaments with delegated powers such as Scotland, and the Committee can find no evidence that it exists in any national parliaments. The Committee believes that the States of Jersey have more in common with these national parliaments than with local authorities especially once the new system of government is introduced and a clear distinction between the legislature and the Executive is created for the first time. Jersey is not a local authority, and to introduce a mechanism that could lead to a perception that the Island was, could be inappropriate at a time when the Island's policy is to assert a greater, if limited, international personality.
- 25.9 In many U.K. local authorities all key decisions would be taken by the Council as a whole whereas in Jersey legal authority for decisions will be vested in individual Ministers, meaning that a complex system of publishing decisions would need to be researched by Scrutiny Panels and others to identify any decisions capable of being called in. Although it is important that the Executive is subject to adequate checks and balances this must be weighed against the fact that the Committee's research, as described elsewhere in this report, has shown that one of the most effective ways to 'kill' scrutiny is to burden Panels with too much information and to recreate a traditional Committee system where long agendas are imposed on Panels rather than allowing Panels to create their own priorities.
- 25.10 The States have agreed to move forward to a new ministerial form of government. One of the reasons for doing this is to enable decisions to be made in a more timely and effective way than through the present Committee system. It is clear that some of the benefits of the new system could be lost if decision making was subject to 'call-in' which would prevent decisions being implemented for a minimum of some 2 to 3 weeks. The new system of government will require a degree of trust between the Executive and the non-Executive and the introduction of 'call-in' could be seen to suggest that, not only will the Executive not be trusted, but that the political system to control the Executive is not trusted.
- 25.11 The Committee is conscious that Scrutiny Panels will wish to remain free to choose issues for investigation and comment on the full range of the Executive's policies. The existence of a 'call-in' mechanism could, paradoxically, hamper the Scrutiny Panels' ability to do this. If a decision was not called in, the Executive could, at a later date, claim that the decision had already had the tacit approval of the relevant Scrutiny Panel and of other non-Executive members, being able to argue, with some

justification, that if the Scrutiny Panel had had any concerns about the decision it should have called it in.

25.12 Procedures under the new system of government will inevitably need to be amended and adapted in the light of experience. The Committee is hopeful that a genuine spirit of co-operation will exist between the Executive and the Scrutiny Panels, notwithstanding the tensions that will inevitably, and quite properly, exist on occasions. The new system of government will not be able to operate properly if there is not cooperation and trust between the members of the Executive and other members of the States. If the Executive operates in an open and transparent manner, ensuring that major decisions are notified publicly before they are made so that comments can be received from Scrutiny Panels and others, the Committee does not believe that a system of 'call-in' will be required. However the Committee accepts that for some members of the States this is an issue of some concern as they believe that the new system of government may be investing too much power in the Executive. It is for this reason that the Committee is proposing that this matter should be reviewed in 12 months time as, by then, it should be possible to make a preliminary assessment of whether the broad thrust of scrutiny, together with the traditional powers still exercisable by members, will make 'call-in' unnecessary. As noted above the Chairmen of the Scrutiny Panels will be asked to bring forward recommendations after the new system has been operating for 12 months. If, in the light of their recommendations, it is clear that more formal methods of intervening in the decision-making process are required, it will be open to the non-Executive members, who will, it should be remembered, always, numerically, be in the majority, to bring forward a proposition to introduce a 'call-in' mechanism at a later date.

## 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.

## 28. Shadow Scrutiny Panels

- 28.1 The legislative changes required to bring the new system of government into operation are likely to take some considerable time to complete and, as a result, the system of scrutiny as set out in this report will not be able to be introduced for some 18 months to two years.
- 28.2 The Committee considers that there would be considerable merit in starting some form of ‘shadow’ or ‘trial’ scrutiny in advance of the introduction of the new system. The trial would clearly not operate within the same legal framework as future Panels and this will, in some ways, restrict the effectiveness of the Panels, but the Committee has concluded that, on balance, the advantages will outweigh any disadvantages of starting scrutiny at an early stage.
- 28.3 The establishment of Shadow Scrutiny Panels will create opportunities for training for both members and officers. Experience in other jurisdictions has shown that membership of Scrutiny Committees or Panels requires members to learn different skills to move away from the traditional way of working in executive Committees as exist in the Island at present. The Committee is hopeful that a wide range of members will participate in shadow scrutiny so that some of the necessary skills can be learnt in advance of the introduction of the new system. The Committee is currently investigating training opportunities and, although training for members may be a novel and unusual concept, the Committee believes it would be extremely useful. The Shadow Panels will also provide a useful learning experience for officers supporting the Panels as they adapt and train to serve scrutiny in the future.
- 28.4 The main difference between the Shadow Panels and future Panels will be that the Shadow Panels will

not possess any powers to require attendance by witnesses or to require the production of papers. The proceedings will not be covered by privilege. Although these differences from future Scrutiny Panels may in some way hamper the work of the Panels, the Committee is hopeful that all Committees and Departments will co-operate with the work of the Shadow Panels and provide information on request. The Committee has already contacted all Committees informally about their likely attitude to the establishment of shadow scrutiny and has received a very positive response. The wording in the proposition, requesting all Committees '*to provide the fullest support and co-operation*' to the Shadow Panels, mirrors the wording used in the 1994 proposition establishing the States Audit Commission.

28.5 Although it will not, in the present structure, be possible to make a strict distinction between 'executive' and 'non-executive' members (as some members invited to join Shadow Panels may also be members of other Committees) it would clearly be inappropriate for members who sit on any of the most 'major' Committees to be invited to sit on a Shadow Panel. For the purposes of shadow scrutiny the Panels are likely to scrutinise policy that covers a range of different Committee responsibilities, such as social policy or external relations, so that a review does not simply focus on one single Committee and Department. It will be necessary not to be over-ambitious with the shadow system and it will be important to consider carefully the criteria for selecting a topic for review.

28.6 If shadow scrutiny is to operate successfully it will be necessary for adequate staff resources to be made available to assist the Shadow Panels. As stated in Section 18 above a small team of dedicated officers will be established in the States Greffe in due course and it is anticipated that the current Committee Clerks will become part of this team. For shadow scrutiny, as with the future Panels, it is estimated that two officers will be required per Panel and there will need to be additional officers appointed to assist with the current work of Committee Clerks to enable appropriate support to be available for the Shadow Panels. It is the Committee's intention that two Shadow Panels be created, requiring four additional posts to be created.

## **PUBLIC ACCOUNTS COMMITTEE**

### **29. Introduction**

- 29.1 When the States agreed to move to a ministerial system of government, with a system of scrutiny, on 28th September 2001, it was agreed that there should be a Public Accounts Committee charged with scrutinising all aspects of public expenditure. It was also agreed that the Public Accounts Committee would be supported by an Auditor General (now referred to as the Comptroller and Auditor General to avoid confusion with the Attorney General) who would be responsible for providing auditing leadership and co-ordination of the audit function across all aspects of public expenditure.
- 29.2 The Committee is grateful to the Public Accounts Committee and Auditor General Working Party which, under the chairmanship of the Treasurer of the States, thoroughly researched this issue and put forward recommendations on the terms of reference, membership and working methods of the Public Accounts Committee. The Committee has adopted and reproduced the majority of the Working Party's recommendations in these proposals and, where its views differ, this is made clear in this section.

### **30. Role of the Public Accounts Committee and relationship with the Comptroller and Auditor General**

- 30.1 The Public Accounts Committee will be a very different type of Committee from the Scrutiny Panels. Its work will be to scrutinise all aspects of public expenditure, income and assets. Essentially such scrutiny activity will be after the event and its work will not extend to the formulation or development of policy although it may wish to comment on the financial implications of the policies of the Executive. The work of the Public Accounts Committee will be primarily concerned with the manner in which policy is administered.
- 30.2 The work of the Public Accounts Committee will be intrinsically linked with the work of the Comptroller and Auditor General. The Comptroller and Auditor General will be an independent officer of the States and he or she will not therefore be subject to the control of the Executive. The Comptroller and Auditor General will be responsible for providing independent assurance, information and advice to the States on the proper accounting for, regularity and propriety of, expenditure, revenue and assets and the economy, efficiency and effectiveness with which States bodies use their resources.
- 30.3 The Public Accounts Committee will need to develop a close relationship with the Comptroller and Auditor General whilst recognising and respecting the independent nature of the postholder's role. To avoid duplication, the Public Accounts Committee will use the resources of the Comptroller and Auditor General rather than employing its own auditors to undertake reviews on its behalf. The Comptroller and Auditor General will consult the Public Accounts Committee on the annual programme of value for money studies and these will be received by the Committee once they have been completed. A large percentage of the reports issued by the Comptroller and Auditor General will be examined further by the Public Accounts Committee as described below. The Comptroller and Auditor General will attend all meetings of the Public Accounts Committee and will provide a presentation and briefing to the Committee on each report for which a hearing is to be held. Following a hearing the Comptroller and Auditor General will draft the Public Accounts Committee's report.

### **31. Terms of Reference of the Public Accounts Committee**

- 31.1 The Committee proposes that the Terms of Reference of the Public Accounts Committee should be as follows –

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|---|
| <p>(a) to receive reports from the Comptroller and Auditor General on the results of the audit of the annual accounts of the States, associated organisations and companies as well as the annual accounts of the Social Security Fund, the Social Security (Reserve) Fund and the Health Insurance Fund and to report to the States on any significant issues arising from these audits;</p> |
|---|

- (b) to receive reports from the Comptroller and Auditor General on the adequacy of the corporate governance arrangements within the States and associated organisations and companies;
- (c) to receive reports from the Comptroller and Auditor General on the results of investigations into the value for money achieved by States' Departments and other public bodies, and to report to the States on any significant issues arising;
- (d) to assess whether public funds have been applied for the purposes intended by the States, that extravagance and waste are eradicated and that sound financial practices are applied throughout the States administration;
- (e) to hold hearings and to send for persons, papers and records as required for such hearings, and to report to the States as appropriate on the outcome of any such hearings.

## **32. Membership and method of appointment**

- 32.1 On 28th September 2001 the States decided that the Public Accounts Committee should be comprised of the Chairmen of the Scrutiny Committees (now known as 'Panels') together with at least one other member of the States who was not a member of the Executive. The Working Party considered this matter and concluded that this membership could lead to a potential conflict of interest arising from States members scrutinising value for money arising out of policies they had previously scrutinised. As a result the Working Party concluded that all Public Accounts Committee members should be independent of both the Executive and the Scrutiny Panels.
- 32.2 The PPC has noted that the Policy and Resources Committee as previously constituted considered this issue on 25th April 2002, did not agree with the recommendations of the Public Accounts Committee Working Party, and concluded that the original decision of the States on membership should stand.
- 32.3 The PPC has given careful consideration to this matter and has concluded that original States' decision should stand and that the Public Accounts Committee should indeed comprise a Chairman, who would not be a member of the Executive or of any Scrutiny Panels, together with the Chairmen of the Scrutiny Panels. The Committee has reached this conclusion for a number of reasons.
- 32.4 As set out in Section 37 below it will be important for there to be close co-operation and co-ordination between the work of the Public Accounts Committee and the work of the Scrutiny Panels, notwithstanding the important and significant differences between their responsibilities. The PPC believes that this co-operation will be enhanced if the Public Accounts Committee is comprised of the Chairmen of the Scrutiny Panels.
- 32.5 In addition it is necessary to take a practical view in a small legislature such as Jersey. Unlike the U.K. House of Commons, with 659 MPs, there will be a relatively small number of members to choose from when the Scrutiny Panels and the Public Accounts Committee are established.
- 32.6 The Committee believes that the Public Accounts Committee will be strengthened if the Chairmen of the Panels, who will be, by definition, members of some standing, serve on it. It may be necessary to allow other members not involved in the Executive to be co-opted onto the Public Accounts Committee for particular enquiries and the Committee is therefore proposing that the Chairman should have the ability to do this. This would ensure that no conflict of interest could arise if an issue that has been considered by a Scrutiny Panel was under consideration or if the Public Accounts Committee was looking at the expenditure of the Scrutiny Panels themselves.

32.7 To recognise the significance of the Public Accounts Committee it is proposed that the Chairman should be appointed by the States after the Chief Ministers and Ministers have been appointed but before the Chairmen of the Scrutiny Panels are appointed.

32.8 The Committee is conscious that in the majority of legislatures the position of Chairman of the Public Accounts Committee is reserved for an opposition party member. If the present absence of party politics continues in Jersey it may not be possible to make any such formal distinction although the Chairman will not be a member of the Executive. It will therefore be entirely a matter of political judgement for the States to choose a Chairman who will, in members' opinion, bring a sufficient degree of independence to this position.

### **33. Conduct of meetings**

33.1 As mentioned above the work of the Comptroller and Auditor General will form the basis of the Public Accounts Committee's business whether this is to consider value for money reports or financial audit activity.

33.2 Under the new Public Finances Law it is being proposed that the Departmental Directors and the Chief Officers of non-Executive Departments (e.g. Judicial Greffe or States Greffe) will be designated as 'Accounting Officers' who will be held responsible for the propriety and regularity of the finances of their Department, the proper keeping of accounting records, prudent and economical administration, avoidance of waste and extravagance and the efficient and effective use of all resources available to them.

33.3 These officers will be expected to come before the Public Accounts Committee to answer questions about the management of the finances of their Department in the areas set out above. They will be expected to appear in person although they may wish to bring advisers with them (for example Departmental Finance Officers, or external consultants who have been employed on a particular project). Accounting Officers will be required to answer questions and provide any information requested. States members will not normally be called as witnesses before the Public Accounts Committee as it will be solely concerned with the implementation and administration of policy although the Committee will regulate its own proceedings and may on occasions wish to call Ministers. This could, for example, be the case if information came into the public domain suggesting that a Minister had taken the decision to overrule a decision taken by an Accounting Officer in a particular case.

33.4 Meetings of the Public Accounts Committee will normally take the form of hearings and Accounting Officers and others will be requested to attend. In addition to Accounting Officers the Public Accounts Committee may wish to hear from other witnesses if it sees fit. For example in the case of a building or engineering project the Committee may wish to hear from the contractors or engineers.

33.5 The Comptroller and Auditor General will brief members of the Public Accounts Committee on the matter before them and will assist as required with preparing initial lists of the line of questioning that may be appropriate. Hearings will normally be in public although, as with Scrutiny Panels, the Committee could meet in private in certain limited circumstances.

### **34. Powers and Privilege**

34.1 It is proposed that the Public Accounts Committee should have the same powers and privilege as the Scrutiny Panels, as set out in Section 15 above. The Committee believes that the power to require the attendance of persons, and to call for papers and records, will be necessary even if it is hoped that, in practice, these powers will only rarely need to be formally invoked.

### **35. Outcome of the Public Accounts Committee's work**

35.1 After each hearing, or series of hearings on one issue, the Public Accounts Committee will present a report with recommendations to the States. The Public Accounts Committee's report will, in practice, be

drafted with the assistance of the Comptroller and Auditor General for approval by the full Committee and, as with the reports of Scrutiny Panels, the Public Accounts Committee will inform the Executive whether it requires a response. If so, the response will be expected within a period not exceeding 8 weeks. If the Public Accounts Committee is not satisfied with the response given, the matter would be drawn to the attention of the States by way of a report from the Committee and the Committee itself, or an individual member, could seek a States debate on a particular report if that was considered appropriate.

35.2 As with the reports of the Scrutiny Panels it will be important that adequate steps are taken to produce the reports of the Public Accounts Committee in a readable and attractive manner and to publicise them widely through the media and on the internet.

### **36. Resources for the Public Accounts Committee**

36.1 Because of the close involvement of the Comptroller and Auditor General with the Public Accounts Committee it will require less executive support than the Scrutiny Panels which will, as set out in paragraph 18.3 above, have access to no other executive support. Nevertheless the Committee concurs with the view of the Working Party that one Clerk should be made available as part of the team of Scrutiny Officers to assist the Public Accounts Committee. This post will not necessarily be a full-time position and the officer could also undertake work in other areas of scrutiny.

36.2 The financial and manpower resources required to establish the office of the Comptroller and Auditor General are outside the terms of reference of the PPC and will need to be addressed separately by the Policy and Resources Committee and Finance and Economics Committee. The Committee would nevertheless wish to point out that the Public Accounts Committee will only be able to undertake its work effectively if the Office of the Comptroller and Auditor General is correctly established and resourced.

### **37. Relationship between the Public Accounts Committee and Scrutiny Panels**

37.1 As mentioned above the Committee believes that there must be a very close working relationship between the Public Accounts Committee and the Scrutiny Panels. This is important to ensure that there is no duplication or overlap between the work but also to ensure that there are no unnecessary and rigid boundaries between the two functions.

37.2 For the reasons set out throughout this report the Committee does not share the view of the Working Party that the main thrust of the work of Scrutiny Panels will be *'to scrutinise policies and legislation proposed by the Executive'*. The Committee's research into scrutiny at both national and local government level has shown that each Scrutiny Panel will consider issues that will inevitably touch on the implementation of policies in the area covered by its terms of reference just as the work of the Public Accounts Committee will, on occasions, raise questions about policy.

37.3 The Committee was interested to hear, during the seminar with officers of the Scottish Parliament, that experience in that jurisdiction had shown that there was some overlap between the two functions and consideration was being given to allowing Subject Committees of that Parliament to consider reports from the Auditor General for Scotland. The Committee believes that the exact division between the two functions will develop with experience although the fact that, normally, only officers will appear before the Public Accounts Committee will, at the outset, create a clear distinction in that regard.

## 38 Conclusion

- 38.1 The establishment of a scrutiny system presents a significant opportunity for the States of Jersey to establish a new and effective means of holding the Executive to account and scrutinising policy that has not been possible in the present Committee structure. Developing the system will not, however, be without challenges.
- 38.2 In their paper for the Local Government Association ‘A Hard Nut to Crack: Making Overview and Scrutiny Work’ (April, 2001) Stephanie Snape and Frances Taylor point to some of the difficulties that have been encountered in U.K. local authorities when they have been involved in developing effective scrutiny arrangements: *‘It is clear that developing overview and scrutiny arrangements will be one of the most difficult tasks facing authorities over the next two to five years. Everyone working in local government – its members and officers – is well aware of the scale of the task facing them. Scrutiny is a hard nut to crack. Many of the experimenting authorities – those that have been running scrutiny committees for two or more years – are still struggling to make scrutiny work. Why? There are a multitude of reasons: the unfamiliarity of scrutiny ways of working; insufficient officer support; distrust from cabinet members and chief officers; disengaged scrutiny councillors and poor management of scrutiny processes. However, scrutiny has to be made to work and to pay dividends.’*
- 38.3 Snape and Taylor underline both the potential and common pitfalls and risks for scrutiny and many of these, as set out below, are likely to be of relevance for Jersey.

### 38.3.1 Potential for Scrutiny

*‘It could add substantial value, providing gains in terms of:*

- *better informed members, who become adept at investigating below the surface of policies and strategies and consequently develop a range of useful skills;*
- *complementing the strategic and policy setting work of the executive;*
- *overall, providing an interesting and valued role for non-executive members;*
- *developing deeper, more knowledgeable relationships with partner organisations, through involving them in scrutiny work or through scrutinising their own work;*
- *encouraging public involvement in political management arrangements;*
- *tackling key ‘cross-cutting’ or ‘wicked issues’ such as social exclusion, ill health and poverty and low educational standards;*
- *stimulating a more reflective, evaluative and evidence-based culture within local government; and*
- *contributing significantly to local councils’ community leadership and planning role and giving meaning to the new power of well-being.*

### 38.3.2 Common pitfalls and risks

- *conflicting definitions of overview and scrutiny;*
- *re-creating the committee system;*
- *under-resourcing overview and scrutiny;*

- *unrealistic and unmanageable work programmes;*
- *poor management of scrutiny processes;*
- *lack of co-ordination of scrutiny committee work;*
- *inexperienced chairing.*

- 38.4 The new machinery of government offers a new Executive form of structure aimed at more effective decision making. In some respects members who are not part of the Executive may feel they have lost the influence they formerly enjoyed over policy and decision making through the Committee system. However, scrutiny will enable members to hold the Executive to account for its decisions. It will give members the opportunity to exercise a different but nevertheless influential role and the formal scrutiny structure will enable more effective scrutiny than can be practised at present by individual members, particularly because they will be backed up by officer support.
- 38.5 In this report and proposition the Committee has set out its recommendations for the operation of the new system of scrutiny. As can be seen the proposition itself contains only the minimum matters that the Committee considers should be subject to a formal States decision at this stage to allow the drafting of the new States of Jersey Law to proceed. Matters relating to the detailed operation of the new system, as set out in this report, will be incorporated in the new Standing Orders of the States and the Committee will be able to take account of any comments made during the debate on this proposition and adapt suggested procedures as appropriate. It is also important to point out that Scrutiny Panels will largely establish their own working procedures within the agreed overall framework and it is also certain that the operation of the Panels will evolve in the light of experience.
- 38.6 The detailed financial and manpower implications of this proposition are set out at [Appendix Five](#). The Committee recognises that effective scrutiny will need significant additional resources but these are considered to be essential if the system is to operate effectively.



## SUMMARY OF RECOMMENDATIONS

	<b>Reference</b>
<b>SCRUTINY PANELS</b>	
An appropriate system of scrutiny should be designed for Jersey which does not simply replicate systems elsewhere.	5.1
There should be 4 permanent Scrutiny Panels.	6.2
Adequate flexibility should be built into the new States of Jersey Law and Standing Orders of the States to enable the States to make changes to the number of Panels and their areas of responsibility.	6.3
The holding of reviews into issues of public importance will represent one of the most significant and important parts of the work of the Panels.	8.1
Scrutiny Panels will prepare an annual, or six-monthly, plan of reviews in advance. The work programme will need to be realistic and achievable.	8.2
Scrutiny Panels should be able to hold <i>ad hoc</i> reviews into issues that arise at short notice.	8.5
The Executive will be required to respond to the report of a Panel within 8 weeks when requested to do so.	8.6
Scrutiny Panels, or individual members, will be able to seek a States' debate on a particular report if dissatisfied with the Executive's response.	8.8
Scrutiny Panels will need to follow up their reports at regular intervals to ensure that recommendations have not been ignored.	8.9
'Pre-scrutiny' of decisions can give Scrutiny Panels real influence.	9.3
Draft Laws and Triennial Regulations should systematically be referred to a Scrutiny Panel before they are adopted by the States.	10.2
Scrutiny Panels should be able to scrutinise subordinate legislation if they wish to do so.	11.3
Unless there is manifest urgency, no decision should be taken to seek the extension of an international convention or agreement to the Island unless the matter has been referred to a Scrutiny Panel.	12.2
The draft annual Resource Plan and Budget should be subjected to systematic scrutiny before they are presented to the States.	13.1
There should be close co-ordination between the audit and scrutiny function.	14.1
Scrutiny Panels should have the statutory power to call for any persons, papers or records relevant to the subject of the review.	15.2
The proceedings of the Scrutiny Panels will be covered by parliamentary privilege.	15.5
The Chairmen of the Scrutiny Panels should be appointed by the States immediately after the election of the Ministers and the Chairman of the Public Accounts Committee.	16.1

Each Panel should consist of a Chairman and four other members of the States not involved in the Executive.	16.2
Each member of the States could only be part of one Panel.	16.2
Sub-Committees and ' <i>rapporteurs</i> ' could be appointed by the Scrutiny Panels for specific tasks.	16.4
The Chairmen of the Scrutiny Panels and the Public Accounts Committee, together with two other members appointed by the States, should form a Chairmen's Committee to co-ordinate the scrutiny function.	17.2
Each Scrutiny Panel should be assisted by two Scrutiny Officers and should have access to a shared team of researchers and administrative staff.	18.3
Each Department should nominate a Scrutiny Liaison Officer and Departmental Directors should ensure adequate co-operation of Departments with the scrutiny functions.	18.5
A total research/consultancy budget of £600,000 should be made available to the four Scrutiny Panels.	19.1
Scrutiny Panels will record all oral evidence given to them and may wish to receive transcripts of this.	20.1
Reports should be made widely available in an attractive and accessible manner.	21.1
Two dedicated rooms should be made available to Scrutiny Panels with appropriate facilities and access.	22.1
There should be an appropriate mechanism for setting the budgets for scrutiny without undue interference from the Executive.	23.2
Although it will normally be possible for Scrutiny Panels to seek legal advice from the Law Officers' Department they may wish to obtain separate advice on occasions.	24.4 & 24.5
The issue of the introduction of a 'call-in' mechanism should be kept under review by the Chairmen's Committee during the first 12 months of operation of the new system.	25.12
Two Shadow Scrutiny Panels should be established as soon as possible to enable members and officers to learn new skills and prepare for the new system.	28.6
<b>PUBLIC ACCOUNTS COMMITTEE</b>	
The Public Accounts Committee should comprise a Chairman, who would not be a member of the Executive, together with the Chairmen of the Scrutiny Panels.	32.3
The Chairman of the Public Accounts Committee should be able to co-opt other non-Executive members of the States onto the Committee as required.	32.6
The Chairman of the Public Accounts Committee should be appointed by the States immediately after the appointment of the Chief Minister and the Ministers.	32.7
Accounting Officers will be expected to come before the Public Accounts Committee to answer questions about the management of the finances of their Department.	33.3
The Public Accounts Committee should have the same powers and privileges as the Scrutiny	34.1

Panels.	
There should be a close working relationship between the Public Accounts Committee and the Scrutiny Panels.	37.1

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## EXPERIENCE OF SCRUTINY IN OTHER JURISDICTIONS

The Committee has undertaken considerable research of scrutiny experience in other jurisdictions and the summaries below give an indication of some of the main points of this research.

### I.1. U.K. Local Government Experience of Scrutiny

I.1.1 The experience of local government in the United Kingdom in carrying out the modernisation programme initiated by the Local Government Act 2000 has been of particular interest to the Committee because of its parallels with Jersey's experience of establishing an entirely new ministerial system with scrutiny as the counterbalance. The Committee has examined a number of examples of good practice in the local government context whilst recognising that it would be wrong to concentrate solely on local government experience as Jersey's position is more akin to a national or regional government than to a U.K. local authority.

I.1.2 In a report, entitled 'The Development of Overview and Scrutiny in Local Government', prepared for the Office of the Deputy Prime Minister in September 2002, to review the progress made by local authorities in establishing new political constitutions, the following comment is made: *'The Committee system had developed over more than a century into a very familiar way of working for members and officers... The introduction of new political management arrangements fundamentally challenges these familiar ways of working. And the introduction of overview and scrutiny is perhaps the greatest challenge to the traditions and culture of the previous system.'*

I.1.3 The report highlights the fact that there has been a tremendous diversity in structuring and operating 'overview and scrutiny' (the commonly used term in local government) in the United Kingdom. It sees 'overview and scrutiny' as the most exciting and powerful element of the entire local government modernisation process, *'the mechanism by which Councils can achieve active community leadership, good governance and by which Councillors can become powerful and influential politicians'*. Nevertheless, it points out that many authorities have struggled to develop effective scrutiny arrangements, in contrast to setting up Cabinet working which has proceeded comparatively effectively.

### I.2 Lambeth Borough Council

I.2.1 Lambeth was praised in ODPM report for its project management approach. Its Scrutiny Manual has been identified as best practice by the Improvement and Development Agency.

I.2.2 Mr. Sabindha Sanghera, Head of Scrutiny in Lambeth in his address to the Second Scrutiny Seminar in Jersey identified a number of key lessons learnt in Lambeth in the first three years of operation and these can be summarised as follows –

- Prioritising the focus of scrutiny

*'One of the things we have learnt about Scrutiny is that it can be everything and anything'*, he told members. In his view, scrutiny in Lambeth should be directly linked into the priorities identified through the Comprehensive Performance Assessment (CPA) process which all Councils in England and Wales have to go through. In this way, scrutiny would be working alongside the Executive, to the same goals, addressing the same weaknesses in the organisation. This would help to ensure that scrutiny added real value to the process, and would not be scrutiny simply for the sake of it.

- 'Critical friend'

Council Officers originally regarded scrutiny with much suspicion. A key task, for the Scrutiny

team in the early stages was to develop a relationship with Council officers. Designated departmental link officers were appointed to make sure that scrutiny was taken seriously right across the organisation. It took a long time to break down the barriers with the departments but the scrutiny team was able to prove, over a period of time, that it wanted to work in co-operation with departments, but with independent agenda and mandate.

- Managing the process

Many Local Authorities had made the mistake at the beginning of trying to do too much and not giving the bigger issues enough time. Members and scrutiny officers had to learn to work in a completely different way with slim agendas, doing away with long officer reports and recommendations. Scrutiny had to start from a different perspective, asking what the public or officers thought about a particular service or policy, how the service was being developed, how the policy was being implemented on the ground. Members then decided how they wanted to take the issue forward, with a scrutiny support team at hand to guide them, give them advice, do the necessary research and outline best practice. A typical scrutiny paper would provide members with a lot more options than they had in traditional Committee reports so that they could think through the issues from different angles, think about how to involve the public, how to test and develop Executive policies.

### **I.3. Birmingham City Council**

I.3.1 A key feature of the Scrutiny arrangements in Birmingham City Council is its dedicated database for the management of Executive business called ADMES. All decisions taken by the Cabinet collectively or by individual Cabinet members are published here along with relevant agendas and papers. A Forward Plan indicates specific dates for key decisions to be taken by Cabinet up to three months in advance. Decisions taken by individual Cabinet members, however, are not flagged up.

I.3.2. This extensive database is considered essential for the effective operation of the Scrutiny system in Birmingham. The Council believes it important to make as much information as possible available for public access. Scrutiny members need to access the database regularly in order to keep in touch with developments and to be aware of decisions which might be subject to 'call-in'.

### **I.4. Experience of Scrutiny in a National Context – Westminster**

I.4.1 The traditional model for Scrutiny in a national context is the Parliamentary Select Committee system in Westminster. Select Committees can investigate any issue, organisation, agency or policy that they wish within their remit. They can set their own agenda. They have powers to enable them to conduct their investigations and failure to co-operate is a contempt of Parliament.

I.4.2 The Select Committee on the Modernisation of the House of Commons, in its First Report of the Session 2001-02, recommended the following model as an illustration of what it would regard as the principal objectives of Departmental Select Committees –

“It shall be the duty, where appropriate, of each Select Committee:

- to consider major policy initiatives;
- to consider the Government’s response to major emerging issues;
- to propose changes where evidence persuades the Committee that present policy requires amendment;
- to conduct pre-legislative scrutiny of draft Bills;

- to examine and report on main Estimates, annual expenditure plans and annual resource accounts;
- to monitor performance against targets in the public services agreements;
- to take evidence from each Minister at least annually;
- to take evidence from independent regulators and inspectorates;
- to consider the reports of Executive Agencies;
- to consider, and if appropriate report on, major appointments by a Secretary of State or other senior ministers;
- to examine treaties within their subject areas.”

I.4.3 A Select Committee chooses a topic or series of topics for inquiry. It may begin by having private briefings and taking specialist advice. It then embarks on a process of information gathering, taking oral and written evidence. Some witnesses called before a Select Committee may be experts in their field, others may be responsible for drawing up and implementing policy. Ministers too are often requested to appear before a Select Committee to explain and account for their Department’s policies. The oral and written evidence is published. Select Committees may also commission reports from civil servants. They usually have professional advisers for each enquiry. Select Committees gather evidence in public and then meet in private to consider the evidence.

I.4.4 Most inquiries lead to the Committee making a report to the House which usually includes recommendations, most of which will be addressed to the Government. The Government is expected to reply to a report within two months of publication.

## **I.5. Scottish Parliament**

I.5.1 The Committee has been particularly impressed by the arrangements for scrutiny put in place in the Scottish Parliament. The re-establishment of the Parliament provided the opportunity to establish a representative body with new working practices, adapting best practice from around the world and based on wide public consultation. The Scottish Parliament thus avoided some of the cynicism and disillusionment that can be endemic in a long established traditional system.

I.5.2 The Scotland Act 1998 established a Parliament to ‘*embody and reflect the sharing of power between the people of Scotland, the legislators and the Scottish Executive*’. The Act provided for an Executive led by a First Minister chosen by the Parliament on the basis of the majority party or coalition. The Scottish Executive sets policies within which Ministers take decisions in government. The Executive has to present to Parliament an annual Budget Bill to fund the implementation of its policies. It also submits for approval legislation required to implement its policies.

I.5.3 The Parliament holds the Executive accountable in a variety of ways:

- through the work of Committees;
- written questions;
- question time;
- First Minister’s questions;
- non-Executive debates; and
- private members’ debates.

I.5.4 The Committee system was given a vital role to play in the work of the Parliament in scrutinising the Executive. This was because it was felt that Committees would –



- encourage significant public involvement in the Parliament's activities;
- provide MSPs with significant, worthwhile and satisfying parliamentary work; and
- lead to more efficient transaction of business, including law-making.

I.5.5 Committees in Scotland have wide-ranging investigative functions. They have the capacity to –

- consider and report on the policy and administration of the Scottish Administration;
- conduct inquiries, on their own initiative or as required by the Parliament, into issues within their remit (these are known as 'competent matters');
- scrutinise primary and secondary legislation and proposed European legislation, international conventions or agreements;
- consider the need for law reform;
- initiate legislation;
- scrutinise financial proposals and administration of the Scottish Executive (including variation of taxes, estimates, appropriation and audit); and
- scrutinise procedures relating to Parliament and its members.

In all cases, Committees report to the Parliament with recommendations.

I.5.6 The role of Committees in Scotland in achieving an accessible, open and responsive Parliament is very important. The Scottish Parliament is committed to the active involvement of areas of Scotland other than Edinburgh. Committees on occasions meet and take evidence outside Edinburgh. They are expected to take into account the views of interested bodies when examining policy matters, conducting enquiries or considering legislation. They are encouraged to adopt a variety of consultation and participation mechanisms appropriate to the issue under consideration.

I.5.7 The legislative process in Scotland relies heavily on scrutiny carried out by Committees. They have a formal role at stages 1 and 2 of Bills presented to the Parliament. At stage 1, Committees are requested to scrutinise proposals, take evidence and prepare a report on the general principles of the Bill, generally within a six to eight week period. At stage 2, Committees conduct a line by line scrutiny of the Bill and consider any amendments lodged by members. This is the major revising stage of the Bill, following which the draft is presented for approval to the plenary session of the Parliament. Initially, it was envisaged that Committees would get involved in a pre-legislative consultation stage but this has become less of a feature, mainly for two reasons –

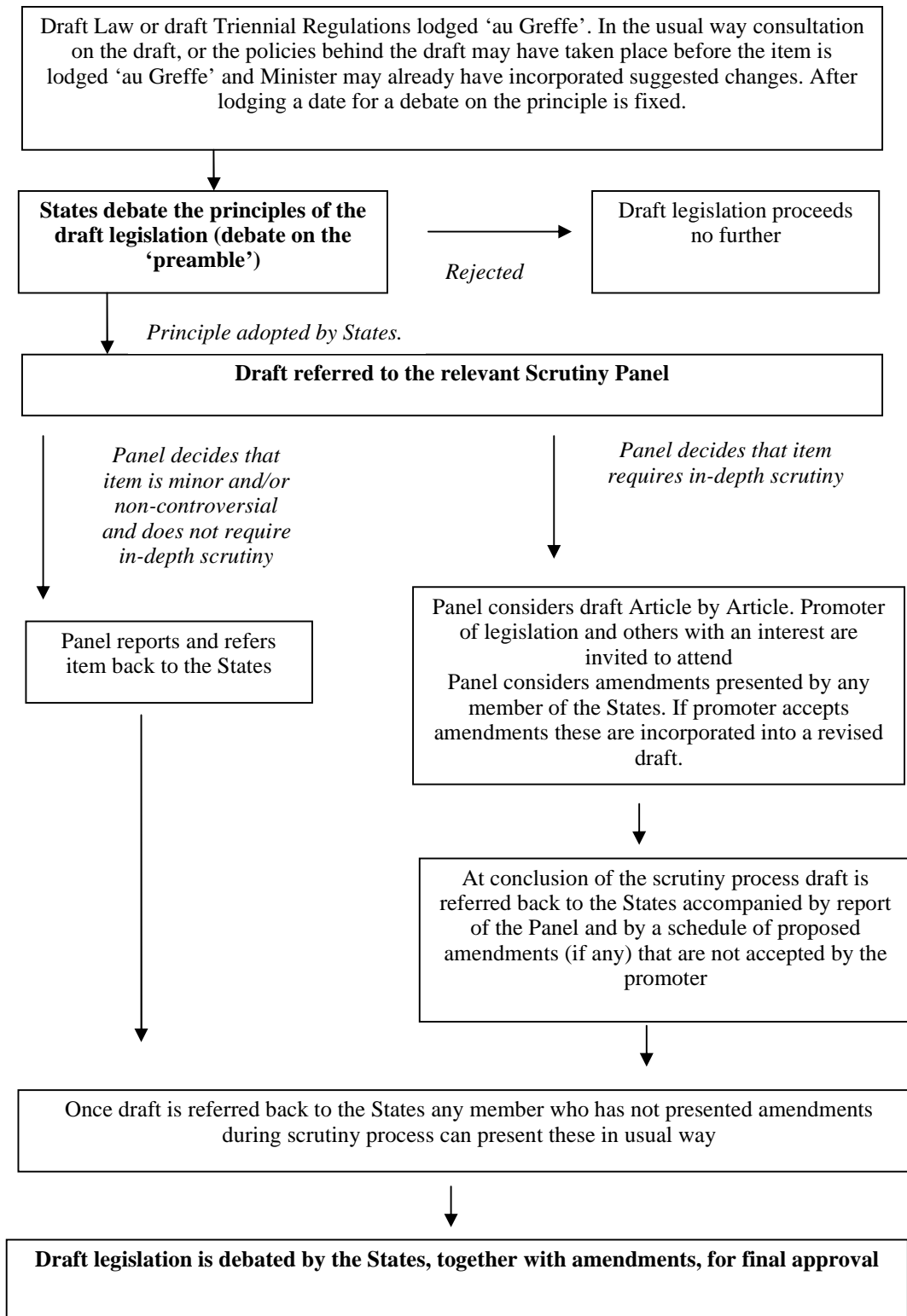
- (i) Experience has shown that if Committees engaged too much in the pre-legislative phase, it was difficult for them to be critical in later scrutiny stages.
- (ii) Furthermore, Committees naturally wanted to operate from a position of knowledge and so began to call for witnesses and papers at the same time as the Executive was also conducting its own consultation. Witnesses found they were being approached on two sides. Committees generally decided that they would hold back in the pre-legislative phase and conduct their inquiries into whether or not the proposals in a Bill meet the aspirations and requirements of stakeholders.

I.5.8 Committees in Scotland have the power to conduct joint meetings and inquiries. Committees are also able to establish one or more expert panels and/or appoint advisers to assist them in their work. Panels are

normally appointed to cover a specific issue for a specific period of time and will always report to the Committee. Appointments are made on merit and every effort is made to reflect a comprehensive range of opinion and expertise.

- I.5.9 A Committee in Scotland may consider the appointment of one or more of its members as ‘reporters’. These might fulfil a number of roles, including taking responsibility for researching, investigating an issue within the Committee’s remit, or the drafting of a Committee report on a particular subject. Alternatively, the reporter may act as a link person with another Committee or outside body.
- I.5.10 Committees in Scotland have a very heavy workload, particularly during periods when they are considering draft legislation from the Executive. Conveners, or Committee Chairs, meet to agree and coordinate the work programme of the Parliament’s 17 statutory and subject Committees and to negotiate with the Executive on the legislative programme. Committees can meet for a day and a half per week when the Parliament is not meeting. They are staffed by teams of clerks and administrative support, generally four members of staff for each Committee, who play a key role in managing the Committee’s work programme. In addition, Committees share research staff, with generally four researchers between two Committees. They may also commission external research. The Committees’ staff are employed by the Parliament itself, so, while they are public servants, they are independent of the government and, acting solely on behalf of the Parliament, have a duty to advise/assist all members impartially.
- I.5.11 The Committee noted the following key conclusions in respect of the Scottish scrutiny system, as presented by the speakers at its Seminar on the Scottish Parliament –
- Committees need adequate powers to do their job – During the first four years of the Parliament powers to summons people and papers have never formally been invoked as witnesses have generally been keen to co-operate. However, it is considered essential that adequate powers are written into the legislation to give the force of Law if ever required;
  - Members need to buy into a consensual approach – This has taken time to develop in the new situation in Scotland but has worked reasonably well;
  - Committees are very resource intensive – The original resource allocation was fairly generous but turned out to be not nearly enough; and
  - Staff skills need to go well beyond administration – Staff need to understand the political environment and know how to operate within it.

**FLOWCHART SHOWING PROPOSED LEGISLATIVE PROCESS FOR PRIMARY LEGISLATION**



**EXAMPLES OF POWERS OF COMMITTEES IN OTHER JURISDICTIONS**

**III.1 Australia Capital Territory – Standing Orders**

**Power to send for persons, papers and records**

239. A committee shall have power to send for persons, papers and records.
240. The Presiding Member of a committee may direct the secretary to the committee to summon witnesses to be examined before the committee.

**III.2 Canada – Legislative Assembly of Alberta – Standing Orders**

**Committee witnesses**

- 66(1) No witness shall be summoned to attend before any committee of the Assembly except by order of the committee or the Assembly.

**III.3 Indian Lok Sabha (Lower House) – Standing Orders**

**Power to take evidence or call for documents**

- 269(1) A witness may be summoned by an order signed by the Secretary-General and shall produce such documents as are required for the use of a Committee.
- (2) It shall be in the discretion of the Committee to treat any evidence given before it as secret or confidential.
- (3) No document submitted to the Committee shall be withdrawn or altered without the knowledge and approval of the Committee.

**Power to send for persons, papers and records**

270. A Committee shall have power to send for persons, papers and records –

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final:

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

**III.4 Namibia – Extract from the Namibian Constitution**

**Article 59 Rules of procedure, Committees and Standing Orders**

- (1) The National Assembly may make such rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and procedures of committees, and formulate such standing orders, as may appear to it to be expedient or necessary.

- (2) The National Assembly shall in its rules of procedure make provision for such disclosure as may be considered to be appropriate in regard to the financial or business affairs of its members.
- (3) For the purpose of exercising its powers and performing its functions any committee of the National Assembly established in terms of Sub-Article (1) hereof shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it.

### **III.5 New Zealand – House of Representatives – Standing Orders**

#### **POWERS OF COMMITTEES**

##### **197 Seeking evidence**

- (1) The chairperson of a select committee may, on behalf of the committee, request any person to attend and give evidence before the committee.
- (2) The chairperson may, on behalf of the committee, request that papers and records that are relevant to its proceedings be produced.

##### **198 Exercise of power to send for persons, papers and records**

A committee with power to send for persons, papers and records –

- (a) may direct that any person be summoned to attend and be examined and give evidence before the committee, and
- (b) may direct that any person be summoned to produce papers and records in that person's possession, custody or control, that are relevant to the committee's proceedings.

Any such summons is signed by the Speaker and served upon the person concerned under the Speaker's direction.

##### **199 Application to Speaker for summons**

- (1) A select committee without power to send for persons, papers and records may apply to the Speaker, in writing, seeking the Speaker's agreement to a person being summoned to attend before the committee to be examined and give evidence or to produce papers and records in that person's possession, custody or control.
- (2) If, after application from the committee, the Speaker is satisfied that it is necessary for a summons to be issued and that the committee has taken all reasonable steps to obtain the evidence, papers or records, the Speaker may issue a summons accordingly. Any such summons is signed by the Speaker and served upon the person concerned under the Speaker's direction.

### **III.6 Malta – House of Representatives – Standing Orders**

- 132.** Any Standing Committee and any Select Committee shall have power to summon witnesses and to order the production of documents and reports before it, at such time and place as may be indicated in the relative warrant and at such place and time to which the meeting of the Committee may be adjourned. Witnesses may be ordered to attend by means of a warrant issued by the Chairman of the relative Committee and signed by the Clerk; any oath or affirmation taken or made by any witness may be

administered by the Chairman or by the Clerk attending such Committee.

### **III.7 House of Commons – Factsheet produced by U.K. Parliament**

#### ***Formal Powers of Select Committees***

29. Select committees have powers to –

- (a) *send for persons, papers and records*. This effectively means they have the power to secure the attendance of witnesses and the production of written evidence. However, with the exception of the Committee on Standards and Privileges with regard to Members of the Commons, a committee cannot order the attendance of Members of either House of Parliament, though Members may attend voluntarily. While a committee cannot, therefore, insist on Ministers attending one of its hearings, Ministers will normally accept an invitation to give evidence. Similarly committees can only request that Government departments send papers and records. Governments have frequently reaffirmed that Ministers and civil servants will attend committees when requested and provide committees with the information necessary to their inquiries.

The power to send for persons, papers and records is not given to the Joint Committee on Statutory Instruments (but see paragraph 36(c)), nor to the Standing Orders Committee.

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**‘CALL-IN’ OF EXECUTIVE DECISIONS**

IV.1 Although, as set out in Section 25, the PPC has decided not to recommend the immediate introduction of a ‘call-in’ mechanism the Committee believes that it is helpful to set out how such a system could operate if introduced at a later date.

IV.2 It would almost certainly be necessary to define ‘key decisions’ of the Executive which would be those capable of being called in. These might be ones that involving significant expenditure or savings and/or would be significant in terms of their effect on the community. Typical criteria for a key decision might be that –

- the decision involved expenditure of over £100,000;
- the decision appeared to be contrary to one or more of the approved policies or strategies of the States;
- the decision appeared to be inconsistent with any form of policy approved by the Council of Ministers;
- the decision appeared to be inconsistent with recommendations previously made by a Scrutiny Panel and accepted by the States or the Council of Ministers;
- the Minister or the Council of Ministers appeared to have overlooked some relevant and material consideration in arriving at the decision;
- the Minister or Council of Ministers appeared to have failed to consult relevant stakeholders or other interested persons before arriving at the decision;
- the decision in question had already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Scrutiny Panel, was likely to do so;
- the decision appeared to be particularly novel and therefore likely to set an important precedent.

Panels would, nevertheless be expected to satisfy themselves that –

- the decision in question was more than ‘a day to day management or operational decision of the type normally taken by officers’ – such a decision should not normally be called in;
- that the request for ‘call-in’ was not intended simply to delay or slow down the decision making process;
- that the delay which would ensue as a consequence of calling in the decision in question was unlikely to cause prejudice to the interests of the States of Jersey, the public or third parties; and
- the request for ‘call-in’ might not be dealt with more appropriately in another way, for example through a question, complaint or appeal procedure.

IV.3 If a ‘call-in’ mechanism were introduced the request for ‘call-in’ would need to be made within a set period, typically three working days of the decision being recorded and published. It is important to stress that the fixed period would run from the date of publication of the decision, not from the date it was made, and if there was any delay by the Executive in recording and publishing the decision this would not

prevent 'call-in' although it would, of course, increase the time between a decision being made and its possible implementation. It would be vital that all decisions made by Ministers and by the Council of Ministers were correctly recorded and published, with supporting papers and reasons for the decision being made available, so that non-Executive members could consider whether or not a decision met the criteria of a 'key decision' capable of being called in.

IV.4 Once a request to 'call in' a decision had been notified to the Executive a meeting of the relevant Scrutiny Panel would be held within a set period, typically within eight working days, to consider the matter. The opportunity for any action to be taken would lapse if the meeting was not held within the fixed period.

IV.5 The members requesting 'call-in' would be required to prepare a report giving their reasons for taking this action (in accordance with one or more of the criteria set out for 'call-in') and the relevant Minister and/or officers would be requested to attend the meeting of the Scrutiny Panel to discuss the matter. All the reports and background papers on which the original decision was based would be available to the Scrutiny Panel and officers who prepared the reports would attend the meeting to provide relevant advice and information.

IV.6 If the Scrutiny Panel decided to take no action after its initial inquiries, the Executive would be notified and the decision could be implemented. Alternatively the Scrutiny Panel might decide to ask the Minister or Council of Ministers to reconsider the decision.

IV.7 The reconsideration would have to take place as soon as possible, as the decision would not be capable of implementation until the Executive had responded to the Scrutiny Panel. The Chairman of the relevant Scrutiny Panel and/or any other members who made the original request would have the right to be heard to set out the reasons why they believed the decision should be reconsidered.

IV.8 The Minister concerned, or the Council of Ministers in the case of a Council decision, would decide whether or not to amend the original decision in the light of the request for reconsideration. The outcome would be notified to the relevant Scrutiny Panel and, as soon as this had been done, the decision, amended or not as the case might be, could be implemented. It is important to stress that the Executive could not be forced to amend the decision and might decide to maintain the original decision notwithstanding the 'call-in' request. There would be no second round of 'call-in'.



## RESOURCE REQUIREMENTS

As set out in the body of this report there will be considerable resource implications in establishing a system of scrutiny and the Committee believes it is important that the States make a decision on this issue at this stage to enable the necessary planning to begin and so that the resource requirement can be included in the resource allocation process. The Committee would point out that the total resource requirements set out below are broadly in line with the sums suggested in the Policy and Resources Committee's Implementation Plan of November 2001 and the Committee's own First Report of March 2002 although the individual totals have been adjusted following additional research and recalculation. The costs have been updated to June 2003 salary levels.

	Unit cost (£)	No. required 4 Scrutiny Panels and 1 Public Accounts Committee	TOTAL (£)
<b>Staff costs</b>			
Scrutiny Officers (see Note 1)	52,000	8	416,000
Director to PAC	52,000	1	52,000
Secretarial/Administrative staff	32,500	2	65,000
Search officers (see Note 2)	52,000	3	156,000
<b>Search costs</b>			
Commissioning of specialist support	150,000	4	600,000
<b>Transcription</b>			
Preparation of 70 days per annum	2,000	70	140,000
<b>Publication of reports</b>			
Reports per year per Committee	2,000	40	80,000
Internet publication	20,000	1	20,000
<b>Cost of accommodation (see note 2)</b>			
Dedicated Committee rooms	63,000	2	126,000
<b>Stationery costs</b>			
Stationery, equipment, advertising etc	30,000	4	120,000
<b>TOTAL ANNUAL COST OF 4 SCRUTINY PANELS AND PAC (see note 3)</b>			<b>1,755,000</b>
Estimated saving from current cost of 5.5FTE Committee Clerk posts and 2 Secretarial/Administrative staff		Less	(300,000)
<b>TOTAL NET ADDITIONAL COST</b>			<b>1,455,000</b>

NOTES

The staff costs for Scrutiny Officers and Research Officers have been averaged and it is likely that there will be some variations in salary within the total given to reflect the relative seniority of the officers.

It is intended that the 3 Research Officers would also provide research facilities for individual members as part of improved members' services.

The cost of 2 specialised rooms is based on the actual cost of the Ground Floor area of Morier House which has been identified as a suitable area for use by Scrutiny Panels and the Public Accounts Committee. There will be some one-off conversion and equipment costs that are not identified here.

The costs identified assume that many of the costs associated with the Public Accounts Committee will be met through the budget of the Comptroller and Auditor General as set out in the body of this report