

STATES OF JERSEY



MINISTERIAL GOVERNMENT: REVIEW

Lodged au Greffe on 28th July 2020
by Deputy J.H Young of St. Brelade

STATES GREFFE

PROPOSITION

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

- (a) to agree that an independent panel should be established to review the operation of the current machinery of government in Jersey and, in particular, to consider –
 - (i) the role of the Council of Ministers, Ministers and Assistant Ministers and whether the current division of duties and responsibilities between these and officers is appropriate.
 - (ii) the government departmental structure and whether the current political oversight, direction and control of government departments is effective and appropriate.
 - (iii) the role of scrutiny panels and the Public Accounts Committee.
 - (iv) the role of Policy Development Boards.
 - (v) whether the current machinery of government enables all elected States members to make an effective and meaningful contribution to policy development and its implementation and, if not, what changes would be appropriate to enable greater involvement of all elected members in these matters.
- (b) to agree –
 - (i) that the Chair and members of the panel should be appointed by the States and that the panel should be chaired by an appropriately qualified person and be comprised of four other members, all with relevant knowledge and experience.
 - (ii) that the panel should, on completion of its review, produce and present to the States, through the Privileges and Procedures Committee, a report setting out its findings and recommendations.
 - (iii) that the panel should be requested to complete its review no later than the end of July 2021 to enable its recommendations to be considered and, where appropriate, implemented at the time of the appointment of the new Council of Ministers after the May 2022 elections;
- (c) to request the Chairman of the Privileges and Procedures Committee, in consultation with the President of the Scrutiny Liaison Committee and Chief Minister, with administrative support from the Greffier of the States –

- (i) to take the necessary steps to identify, for approval by the States, the Chair, and members of the panel through a transparent process agreed with the Jersey Appointments Commission.
- (ii) to draft, for early approval by the States, detailed terms of reference for the panel.

DEPUTY J.H. YOUNG OF ST. BRELADE

REPORT

1. Introduction

Over the last 15 years, we have seen the transformation of Jersey's democratic Government to a highly centralised Ministerial Government. I have experienced this change, as a senior Civil Servant, an elected Member chairing a Scrutiny Panel and, most recently, as a Minister. All these experiences have prompted me to propose this review. This transformation has concentrated political control and decision in comparison to when Members shared power and built consensus in the former Committee System.

The centralisation of power has been recently consolidated by the empowerment of a Chief Executive Officer with control over all Civil Servants and States of Jersey spending. The changes made to Civil Service structure in 2018 replaced single Departments serving individual Ministers with a tightly controlled corporate organisation.

2. Questions

Since the system was first introduced, many people in our community still question whether these changes are right for our small, self-governing island. I, too, share these doubts. Some question whether public policy making is now decided by a few influential and able Members. Others question whether our Government machinery can maintain effective democracy in this system: a system which lacks an electoral mandate for Government policies.

Many question whether Ministers are really in charge of this system at all. Some ask whether centralised Government, with its vastly increased complexity, has made it too difficult for lay elected Members to be effective. Is it the corporate Civil Servants who are effectively in charge?

These unanswered questions have been around an exceptionally long time, but for the last three months our attention has been diverted to surviving through the Covid pandemic. As things recover our business as usual agenda has reappeared. With under two years to the 2022 Election, I believe it is important that we set a plan in place to help us answer these big questions. We need to examine, in detail what we have learnt, gained and lost from these organisational changes and whether the system can be improved.

Our success in dealing with the Covid pandemic so far has highlighted the strengths of the Ministerial system. The centralised operational control has allowed quick decisions and fast implementation of them. However, some disadvantages surfaced. Concerns have been voiced about our decision-making structures which have tended to distance non-executive Members, excluded some Ministers from policy development, and provided less transparency to the public. These concerns point to improvements required in our civil emergency structures. But, as we begin to return to normal, our success in dealing with the pandemic is not a reason against the review of

our Ministerial system which I am proposing. The organisational requirements in a national emergency are hugely different to those required for democratic public policy making in normal circumstances, as history records.

3. Evolution of our Machinery of Government

Nearly 20 years ago States Members decided that it should end the government of the Island by Committees of the States and introduce the Ministerial system of government. It did so after establishing an independent Review Body ([*Clothier review into the Machinery of Government*](#)) charged with hearing evidence and making recommendations for improvements.

Their Terms of Reference were wider than I now propose, the parts relevant to this Proposition are –

To consider whether the present machinery of government in Jersey is appropriate to the task of determining, co-ordinating, effecting and monitoring all States' policies and the delivery of all public services, including:

- *the composition, operation, and effectiveness of the Committees of the States*
- *the role and respective responsibilities of the States*
- *the Committees and Departments in achieving an efficient and effective strategic and business planning and resource allocation process.*
- *the transparency, accountability and democratic responsiveness of the States' Assembly and Committees of the States*
- *whether the machinery of government is presently subject to checks and balances sufficient to safeguard the public good and the rights of individuals.*

To make recommendations... on how the present machinery of government could be improved

In 1999 the Panel, chaired by the late Sir Cecil Clothier, with a group of expert academics and local people of influence and strong credentials, began its work. Their Report examined both the political structure of the States of Jersey and the electoral system.

After a long period of consultation, the Clothier Report was received by the States in 2001. The ministerial form of government was adopted and, after a transitional period, in December 2005 replaced Committees with individual Ministers, each with executive authority over their services. The States set up political Scrutiny Panels which it intended would keep the use of ministerial power in check. It put in place the Public Accounts Committee (“PAC”) to retrospectively review civil servants’ performance.

In an act which history has judged to be “cherry picking”, the States rejected the Panel’s recommended changes to the electoral system which were intended to provide the democratic oversight and control over the executive.

In 2005 the States adopted a new States of Jersey Law after a fierce debate over the degree of centralisation of power in the new system. To provide a safeguard and to preserve the individual political accountability inherent in the committee system, the States decided that each Minister should have sole legal powers over its business (the corporation sole).

The number of Ministers in government, together with their Assistant Ministers, was also restricted to a minority of elected Members (the ‘Troy Rule’) so it was theoretically possible for it to be removed from office by a Vote of no confidence. The individual ministerial and scrutiny panel roles were enshrined in the legislation and the rules set out. After a short period of transitional Committees, which combined previously separate Committees into quasi-Ministries, Ministerial Government proper commenced in December 2005.

Civil Service departments were reorganised, each to support one Minister, and each headed by a departmental Chief Officer to serve each Minister. Neither the Council of Ministers nor the Chief Executive had controlling powers.

This led to tensions over the years. Members who sought tight central control were disappointed. The expected coordination of strategic policies was under-achieved and previous Chief Executive Officers (“CEOs”) were considered to be powerless in the face of “silo politics” where Ministers directed individual Chief Officers. Most Ministers considered that the ever-increasing cost of the public sector had escalated and needed to be reduced and kept in check by adopting austerity policies. This was despite the demand for improvement in services from public expectations fuelled by population growth.

More changes to the States of Jersey Law were made in 2014. These introduced the collective responsibility of Ministers and also empowered the Chief Minister to fire Ministers. These changes were not universally popular, collective responsibility was subject to criticism.

A third phase of change was made early in 2018, enabling a fully empowered Chief Executive Officer with a ministerial mandate to restructure the States of Jersey departments into “One Government”, providing the authority which had not been available to previous CEOs. The Chief Minister was given power to change the structure of Ministries, to reassign their responsibilities and, at the same time, remove the “corporation sole” from Ministers. This allows all decisions to be made in the name of the Council of Ministers as a “single legal entity” (Government of Jersey). This fundamental change was adopted, in principle, with strong dissenting voices in the Council of Ministers. Ministerial collective responsibility was removed from the States of Jersey Law - perhaps because it was considered superfluous under a single legal entity Government as a dissenting Minister could easily be overridden.

Before this change to a single entity can be implemented, the States will need to approve regulations, which are likely to be complex to avoid conflicts of interest, and, to date these Regulations have not been lodged nor can the change be implemented without the States approving an Appointed Day Act, to bring Part IV of the [States of Jersey \(Amendment No 8\) Law 2018](#) into effect. In my opinion this fundamental change should NOT be made before completing the proposed review of the workings of the ministerial system.

The transformation of the Civil Service in 2018 to the CEO's One Government executive structure, has radically reformed the civil service and States employees into a small number of new departments each headed by a Director General ("DG"), appointed by and accountable to the CEO, not to Ministers. This structure has been designated the "target operating model" ("TOM") and consists of several levels of personnel of which DGs are Level 1 (the highest paid), supported by Service Heads at Level 2, and so on in a pyramid structure. The cost of this reorganisation has been significant, and the benefits not, as yet, realised. It is still in progress; some parts are not fully resolved or remain uncertain.

4. **The Proposed Review.**

The timetable for the proposed review is tight but achievable. If the review proposes fundamental changes which are approved by the States these will almost certainly take another States term to implement, but it should be possible to enable adaptations and improvements during the remainder of this term.

I have proposed the scope of the review and a process for appointing the Review Panel based on precedent. Funding will be required; a budget will be required. This will need to provide for Panel remunerations, admin support, facilities, logistics and research all of which would need to be decided by the Privileges and Procedure Committee with the assistance of the States Greffe.

The scope of the review proposed in the Proposition is very much an initial proposal. Members will have suggestions for additions, and some may feel it is too wide and should be reduced. I anticipate requesting a debate in early in the Autumn to allow time for Members to consider amendments. The timetable proposed requires the current States to consider the Panel's report and recommendations before the summer of 2021 recess.

Neither the proposed review nor this report includes the electoral system as this issue stands alone.

Issues to be considered in the review include –

- The degree of centralisation of authority
- The Ministers / Government Departments / TOM Interface
- The effectiveness of Scrutiny
- The effectiveness of the role of non-executive Members
- Democratic responsiveness
- Implications of the One Government TOM
- Checks and balances of accountability and transparency

A re-reading of the Clothier report reveals that since their report was adopted there have been many departures from Clothier's recommendations by *ad hoc* States decisions, ministerial direction and incremental drift. For example, their proposal was for a Chief Secretary directly accountable to the States for implementation as part of the checks and balances rather than a CEO accountable to the Council of Ministers. I recommend Members re-read (Chapters 4-6 of Clothier: *An improved Structure, the business of Administration*), as it will prompt other issues worthy of review.

The following examples (paras a-d) illustrate **some** of these issues in more detail

(a) Structure of the Executive

Clothier's central recommendation to adopt the Ministerial system concluded –

“We recommend that they (departments) should be reduced to a much smaller number of portfolios consisting of groups of executive function having some mutual relevance. We recommend that there be substituted a number of departments, which could be as few as seven. These would constitute the major departments of government. We further recommend that the political direction of each department should be the responsibility of a Minister and one or two other members. These small teams should work together to produce policies for their Departments which would be subject to the approval of a Council of Ministers presided over by a Chairman of the Council, who would be elected by the States to be the “Chief Minister” of the Island’s government”

“The political direction of each department should be the responsibility of a Minister and one or two other members “

The States approved this principle which defined the relationship between the paid Executive and elected Ministers ([P.122/2001](#)) Paragraph (a) (iii) was approved on 28th September 2001.

“ not more than ten departments of government would be established, each headed by a minister, with power to appoint up to two other members of the States to assist in his or her executive work, subject to the approval of the Chief Minister and to the condition set out in paragraph (vii) below, with such members being able, if appropriate, to be so involved in the work of more than one department”

This principle has not been followed by the current “One Government” (or TOM) organisational restructuring of the civil service. This new structure departs from the structure which was approved by States’ Proposition and has not yet been submitted nor approved by the States. Arguably the current civil service organisational structure is operating without a States mandate.

The States ministerial appointments are defined in the States of Jersey Law, but the TOM has not adopted the Clothier principle of a single Minister setting the political direction of each individual civil service department. Departments in the One Government civil service structure no longer match ministerial responsibilities and cross the boundaries of ministerial statutory responsibilities. I believe this has confused and seriously weakened political accountability and oversight.

The stronger centralised control of government has tended to further distance non – Executive (backbench) Members. We have seen in the Comptroller and Auditor General (“CAG”) and PAC reports the significant gaps in our statutory and procedural checks and balances. Accountability and transparency in executive Government has been weakened. Such measures are essential to safeguard against abuse of power and without them the integrity of government is at risk, with potential for reputational damage and loss.

Because of its wide scope and increased complexity, the system functions with a very high degree of delegation to our Civil Service. The new Public Finances (Jersey) Law 2019 empowers the CEO, as Principal Accountable Officer, to control all public spending within the framework of our Government Plan and each department has an Accounting Officer who is directed by the CEO. States Employment Board (“SEB”) deals with all employment matters separately from Ministers.

My work as Minister, with services for which I carry political responsibility, has been through the Service Heads where the experience and local knowledge resides. However, those personnel are directed by the relevant Director General who operates one step removed from these services. Accountability is therefore divided between Minister and the DG's. This structure, which is still being implemented, has been successful in corporate areas but has caused uncertainty and had disruptive effects for some operational services. It is argued the outcome will be advantageous, but it will take many years to achieve.

This structure of an extra level of DGs (Level 1) is expensive. I question whether it has yet added value to our public service delivery. It also remote from day to day operations, these are run by Service Heads and Directors.

Collectively the CEO and DGs form the Executive Leadership Team. This body has authority of the business of Government of Jersey. Its authority is strengthened in law under the Public Finances (Jersey) Law approved in 2019, which gives it control of all States resources approved in the Government Plan. Its political interface is via the CEO and individual DGs to the Council of Ministers.

My experience is that its processes are not yet sufficiently developed. We have yet to achieve the required high level of political engagement, oversight and accountability. This is especially true where there is no direct accountability of a Director General to a single Minister.

This executive structure replaced the previous one to one working relationships between each Minister and a Service Head Chief Officer. The majority of these were successful as officers were responsive to politicians and achieved very significant service improvements. However, I recognise a few of these historical relationships were dysfunctional and changes of personnel were necessary. I question whether the revised structure organisation will be as responsive to politicians.

The changes have weakened the opportunity of some Ministers to ensure political oversight of the Executive. In one example, Growth Housing and Environment Department, we have four Ministers being served by one DG. There is potential for DGs being faced with Ministers with conflicting policy priorities. Whilst this structure may work well for UK local Government, which mainly implements policy determined by UK Central Government, our Ministers decide both policy and oversee its implementation in accord with public expectations.

The TOM organisational changes were made only two years ago and have yet to settle in. It is essential at some point before 2022 to evaluate the benefits and disbenefits to our public services against the very substantial cost.

(b) Scrutiny

There have been several inconclusive States debates which considered and rejected changes to the system. These were in response to calls for greater inclusivity of elected Members in government. The rejected proposals were put forward to make more effective use of the wide range of skills and potential of non-executive States Members to contribute to policy development.

Members not holding office as a Minister or Assistant Minister in government mostly participate in the scrutiny process and join Scrutiny Panels. In this term we have seen an extremely high degree of participation and improvements in the level of scrutiny. The States approve these appointments, but they are largely self-selecting and the election is usually a formality. There are still concerns over the effectiveness of the interaction between government and scrutiny, and the adequacy of processes to ensure scrutiny has unfettered access to information and sufficient opportunity to influence States policy. This has come under stress during the Covid emergency, where the government has not been able to allow enough time or adequately consider scrutiny.

As a Scrutiny Chair I experienced the frustrations at the inefficiency inherent in the system voiced by current Members. After the first Government Plan debate in 2019, Members of Scrutiny invested great amounts of personal time and commitment only to find themselves having a marginal effect on the policy outcome, with only minimal changes to detail. The system relies greatly on the personalities comprising the Council of Ministers or the inclination of individual Ministers to enable Scrutiny to have effective access to policy setting. Some consider well-considered scrutiny amendments as being rejected as “not invented here” or being unnecessarily denigrated. The Chief Minister has worked to try to avoid this, but there is no guarantee that all Ministers or a future Chief Minister will do the same. A system which relies so heavily on individuals and personalities to work effectively needs review.

There is a body of opinion that the introduction of party politics into Jersey would improve matters but at the present time we have but one party, and party politics requires organised plurality of political opinion. Except for Reform Jersey, there tends to be an opinion from every Member.

(c) Hybrid System

There have been several States debates on a hybrid proposal, including an Amendment to the original P.122/2001 structure to enable more Members to assist each Minister – a proposal which was narrowly rejected (28-22). More recently, the alternative of the States additionally electing Members to serve on standing Ministerial Advisory Boards to assist each Minister in policy development was debated on several occasions. These proposals were rejected, Members considering this would be inconsistent with the scrutiny structure. Such a hybrid arrangement would require Members to serve on more than one Advisory Board so it would improve cross ministerial working.

During the present term, the Chief Minister has set up several *ad hoc* Policy Development Boards to work with officers to advise the Council of Ministers on major issues selected by the Chief Minister to achieve greater inclusion of non-executive States Members. Members of these Boards have been appointed by the Chief Minister and have included selected Ministers, some Scrutiny members and some chosen non-elected people. Opinion is divided whether this trial is democratic and whether it has been successful. The logistics mean this arrangement can only handle a limited number of policy issues. Its *ad hoc* nature also has the potential to overlap with and confuse scrutiny reviews when these policies come forward to the States.

Laws are passed by the States after three Readings but are often taken as read and go largely unchallenged. Scrutiny’s support resource for their review in

detail has historically been inadequate but this is now being increased in an initiative led by the States Greffier

(d) Committee System

Every elected Member is part of government administration in the Committee system. Previously Members sat on several committees which were interlinked. They decided policy and directed its implementation. The system was argued to be complex, slow to make decisions and inefficient. Most criticism arose because the Members operated in teams which were categorised as silos, their business was thought to be processed bureaucratically through Independent Committee Clerks and was sometimes slow in operation. These operational criticisms were overstated, but it is true that at the top-level Committees were not sufficiently integrated to deal fully with the issues which crossed committee boundaries. Delivering housing, control of population, the balance of tax and spend; these strategic issues remain current challenges in the ministerial system.

There were few voices reflecting the strengths of the Committee system at the time of their demise. The public considered Government was democratic because policy was in the hands of elected Members, for better or worse. It was more responsive to public opinion, arguably volatile, compared to the current disconnect with people. Poorly performing committees and mistakes were quickly identified and corrected. Votes of “no confidence” and resignations of individual members followed differences of opinion.

Clothier highlighted one disadvantage of Committees:

“the president cannot enforce discipline, for instance over a member who fails to attend meetings or to pull his or her weight, who is disloyal or destructive, or whose political ideology is the opposite of that of the president and perhaps the rest of the Committee, and who refuses to resign on being required so to do by the president. In such cases the president can only use the cumbersome procedure of referring the matter for a vote by the whole House.”

However poorly thought out policy and projects were weeded out early in contrast to the ministerial system. Currently projects can progress without a States consensus to an advanced stage risking wasted time and resources. The best example is our abortive hospital project which I believe would have been avoided under the Committee system.

Leading civil servants were accountable to their Committees, non-performing executives were removed, and overly assertive executives who challenged the committee’s political authority were brought into line or departed. The system was able to react to public opinion quickly. At critical times, major decisions could be made very quickly.

Leading members at the time considered the disadvantage of the Committee system outweighed the advantages, judging in favour of pursuing executive efficiency. At this time, they may have been influenced by the UK who gave direction to major UK local authorities to replace their Committees with cabinet structures. Years later, this policy was reversed permitting local authorities to

decide on its own form of government. Those who had cabinet structures could revert to Committees or develop their own structures including hybrids, suitable to local circumstances. Cornwall Council was one such: their cabinet was removed replacing it with elected member boards.

Clothier concluded on Committees –

“The insular authorities clearly need the capacity to act or re-act both rapidly and decisively, as much on external as on internal issues, in a way which is not easy to achieve through consensual mechanisms of government. Lacking a clear centre of governmental authority, 24 Committees provide no machinery for rapid and decisive reaction to the many challenges which Jersey will have to face both in regulating its own internal affairs and in responding to challenges and opportunities flowing from outside influences

Democracy, rule by the people, cannot mean that all the people rule. Such a fragmentation of power would result in no one person, or even group of persons, having enough power to get anything done. For the opposite of democracy, the Greeks produced autocracy, where all the power resides in one person who, as has so often been remarked, may eventually be corrupted by it. Presumably, the trick, the most difficult in human affairs, is to find the point of balance between the extremes of authoritarianism and the wholesale decentralisation of power. The human race is constantly trying and often failing to balance on this invisible point. In the spectrum of democracy, we believe on the evidence that Jersey has gone too far in the direction of distributing power with the results to which we have referred.”

There were potential solutions to the problems of the Committee system which were not considered. The number of Committees could have been reduced; a Strategic Coordinating Committee formed from Committee chairs was possible as were changes in their procedures. In finding where the ‘Clothier balance’ lies, some consider Jersey has now tipped in the opposite direction of concentrating too much power.

Section 6: Conclusion

The case for a review of Ministerial government after 15 years is strong. The system has evolved beyond the mandate set by the States and the issues that I have highlighted show that the subsequent adaptations have had significant impact and need to be reviewed and assessed. The benefits and disbenefits of these changes need to be identified and weighed against a shift to an alternative system.

Alternatively the scope for modification and improvement in the present ministerial system should be considered together with recommendations to do so. The review should engage with the public and stakeholders in providing answers to long standing questions. It will inform future Assemblies and offer the potential to improve government and increase the public’s confidence in it, benefitting democracy.

Financial and manpower implications

A budget will be required. This will need to provide for panel remuneration and expenses, administrative support, facilities, logistics and research. I would put the minimum additional cost at £100,000 to provide for administrative support, remuneration and expenses of the Panel Chairman but the actual cost may be greater depending on the decisions of PPC in the logistical details.