

**MACHINERY OF GOVERNMENT: ESTABLISHMENT OF A PRIVILEGES AND PROCEDURES COMMITTEE**

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**Lodged au Greffe on 12th February 2002  
by the Policy and Resources Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## PROPOSITION

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

to refer to their Act dated 28th September 2001 in which they approved the establishment of a Privileges and Procedure Committee and -

- (a) to agree to vary their decision of 28th September 2001 and establish, with immediate effect, a Committee of the States to be known as the Privileges and Procedures Committee;
- (b) to agree that the terms of reference of the Privileges and Procedures Committee should be as follows -
  - (i) to review the practices and procedures of the States Assembly, including access to official information by States members, and to bring forward, for approval by the States, amendments to, or the redrafting of, the Standing Orders of the States of Jersey to facilitate the introduction and successful operation of the new system of government, and thenceforth to keep the Standing Orders under review;
  - (ii) to develop and bring forward, for approval by the States, the terms of reference, conditions and facilities for Scrutiny Committees, and the Public Accounts Committee, and the cost implications and budgetary requirements thereof and, following the introduction of a ministerial system of government, to keep under review the arrangements for scrutiny to ensure successful operation of the new system of government;
  - (iii) to review, and keep under review, in consultation with the Bailiff, as President of the States, the Greffier of the States, and following the introduction of a ministerial system of government, the Chief Minister, the general procedures for the timely and efficient management of public business in the States Assembly, including the arrangements for dealing with private members' propositions;
  - (iv) to review, keep under review and, as necessary, bring forward for the approval of the States, proposals for the provision of the accommodation, services and facilities for members and officers of the States Assembly;
  - (v) to review, keep under review and, as necessary, bring forward for the approval of the States, proposals for changes to the remuneration and expenses available to elected members, and proposals concerning how such payments should be determined;
  - (vi) to develop and bring forward for approval by the States a Code of Conduct for all members of the States, to keep this Code under review, to put in place suitable arrangements for the enforcement of the Code, and in this context to promote high standards amongst members and to champion and defend the privileges of members;
  - (vii) to bring forward for the approval of the States proposals for the provision of information to the public about the work of the States Assembly, and, following the introduction of a ministerial system, about the work of the Scrutiny Committees, and the Public Accounts Committee, and to keep these public information services under review;
  - (viii) to review and keep under review the Code of Practice on Public Access to Official Information adopted by the States on 20th July 1999 and, if necessary, bring forward proposals to the States for amendments to the Code including, if appropriate the introduction of legislation, taking into account the new system of government;
  - (ix) in consultation with the Greffier of the States, to bring forward proposals, including resource requirements, for the approval of the States for the establishment of a service for the recording and transcription of States proceedings and, should the States so decide, for the recording and transcription of the proceedings of Scrutiny Committees, and the Public Accounts Committee;
  - (x) to bring forward proposals to the States on the future composition of the Privileges and Procedures Committee, its powers and resource requirements, following the introduction of a ministerial system and, if necessary, to make proposals for revised or additional terms of reference for the new Committee;
  - (xi) in carrying out the responsibilities described in (i)-(x) above, to have regard to the legislative programme that will be in progress to enable the transition to a new system of government;

- (c) to agree that, once established, the Privileges and Procedures Committee should bring forward proposals to the States on the matters identified at (b) above, in the following time scale -

**Before the end of August 2002:**

- (i) on the formation of scrutiny committees, in accordance with the Act of the States dated 28th September 2001, including the composition of, proposed method of appointment to, terms of reference of, and provision of facilities for Scrutiny Committees together with a detailed resource plan;
- (ii) on a Code of Conduct for members;
- (iii) on the provision of appropriate accommodation, services and facilities for members;
- (iv) on the remuneration and expenses provision for elected members of the States, including roles such as ministers, chairmen of scrutiny committees, assistant ministers and others;

**Before the end of December 2002:**

- (v) on the provision of information to the public about the work of the States Assembly, and, following the introduction of a ministerial system, about the work of the Scrutiny Committees;
  - (vi) on the Code of Practice on Public Access to Official Information;
  - (vii) on the establishment of a recording and transcription service for the States Assembly and, should the States so decide, on the establishment of a recording and transcription service for the Scrutiny Committees;
  - (viii) on proposals for amending the Standing Orders of the States of Jersey;
- (d) to agree that adequate resources, both financial and manpower, be made available to the Privileges and Procedures Committee from the date of its establishment; and
- (e) to agree that the House Committee should be disbanded from the date of establishment of the Privileges and Procedures Committee and to approve the draft Transfer of Functions (Privileges and Procedures Committee) (Jersey) Act 200- attached at the Appendix.

**POLICY AND RESOURCES COMMITTEE**

- Notes:
1. The Finance and Economics Committee's comments are to follow.
  2. The Human Resources Committee's comments are to follow.

## REPORT

### 1. Introduction

1.1. On 28th September 2001 the States of Jersey decided to approve the Policy and Resources Committee's report and proposition 'Machinery of Government: Proposed Reforms' (P.122/2001), as amended, and in doing so agreed with the Committee that a new Procedure Committee would have an important role to play in the new arrangements.

1.2. The Committee's proposals for a 'Procedure Committee', were amended by Senator C.G.P. Lakeman who recommended that the new committee should be known as the 'Privileges and Procedure Committee' and that the Committee's responsibilities should include 'facilities, remuneration, (and) services for members of the States' and by Deputy A.S. Crowcroft, who recommended that its responsibilities should include 'the production of a Hansard-type transcript of States' proceedings, (and) public information services. The proposition that was adopted by the States in respect of the Privileges and Procedure Committee accordingly read as follows -

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

*(vi) the States will establish, upon the basis of conditions and terms of reference to be drawn up by the Privileges and Procedure Committee, a small number of scrutiny committees, comprised of members of the States not involved in the Executive, the function of such committees being, in support of the overriding role of the States Assembly in such matters, to contribute to the development of policy, to scrutinise legislation (including subordinate legislation), and to examine the performance of government”.*

1.3. In sub-paragraph (a) of the current proposition, the Committee is proposing that the title of the new committee should be varied so that the word 'Procedures' should be in the plural. This is felt to be more in keeping with its proposed responsibilities, which range across a variety of procedural matters. In accordance with views expressed during the States debate on P.122/2001, the Committee is also proposing in sub-paragraph (a) that the Privileges and Procedures Committee should be appointed with immediate effect, as this will mean that the new committee will be in a position to bring forward proposals on scrutiny committees and other important matters before the introduction of a ministerial system.

### 2. Background

2.1. Since the States decision on 28th September, the Policy and Resources Committee has been considering how the reforms to the machinery of government should be progressed. Its proposals in this respect are set out in the 'Machinery of Government: Proposed Reforms - Implementation Plan', published on 27th November 2001, where it is made clear that the Committee intends to bring forward a series of reports and propositions relating to major aspects of implementation. The Committee's current view on the sequence and timing of debates is set out in Section 2.4 of the Plan, where it may be seen that the first step proposed is the establishment of the proposed Privileges and Procedures Committee.

2.2. The States has decided that a key committee in the machinery of government reforms should be the Privileges and Procedures Committee. During the debate on P.122/2001, States members clearly indicated that the work of this committee should start as soon as possible, a view with which the Policy and Resources Committee wholeheartedly agrees. Some have suggested that the work of the Privileges and Procedures Committee, encompassing such areas as the arrangements for scrutiny, a recording and transcription service, and a code of conduct for members, could be undertaken by the House Committee. However, the Policy and Resources Committee believes that the States should be given the opportunity to create a new committee with broader responsibilities and that the States should be able to nominate members to carry out this task. This would not, of course, be possible if the task was given to the existing House Committee.

### 3. Implementation Plan

3.1. The role of the Privileges and Procedures Committee was discussed in the 'Machinery of Government Proposed Reforms: Implementation Plan'. The following extract provides the context for this proposition (Section 4.7)-

*“The Policy & Resources Committee has given careful consideration to the issue of the composition of the Privileges and Procedures Committee. On the one hand, it is suggested that the Privileges and Procedures*

*Committee should be made up of exclusively non-executive members (some even say elected by only non-executive members); others argue that both the executive and non-executive members should be represented.*

*The Policy & Resources Committee considers that the Privileges and Procedures Committee must bring together those different interests in one forum, to address the procedural and related issues for the Assembly. It recommends that once the new system of government is in place, the non-executive members should be in the majority but with two representatives of the executive. This will ensure that all opinions are represented proportionately; that the Executive cannot control the Privileges and Procedures Committee in any way. Any decision on procedural changes would, in any event, be for the Assembly as a whole.*

*The States will be asked to approve modified terms of reference, including the above matters but also:*

- to review and keep under review the practice and procedures of the States, including in consultation with the President and Greffier, the arrangements for the timely and efficient management of public business;*
- to have responsibility for freedom of information and to recommend a system which will allow Scrutiny Committees access to information used by the executive in reaching decisions;*
- those matters referred to above including matters covered in other jurisdictions (for example the Committee on Standards and Privileges of the House of Commons);*
- in consultation with the Scrutiny Committees to review and to keep under review the procedures, and the effectiveness of arrangements, for scrutiny; and*
- to bring forward recommendations on and to review (and keep under review) the arrangements for the provision of information to the public about the work of the Assembly and its committees.*

*In order to achieve its objectives, the Privileges and Procedures Committee should have powers similar to a Scrutiny Committee, essentially the power to send for persons, papers and records; as well as the power to require the attendance of a member before it.*

### ***Public Information Services***

*P.122/2001 specifically requires the Privileges and Procedures Committee to have responsibility for the provision of information to the public. At the present time, the information about Committees, departments and government activity is produced in different formats, with value for money not always being achieved and a great deal of waste. The Policy & Resources Committee would expect the Privileges and Procedures Committee to work with the Greffe to bring forward for debate proposals on public information services, making the best use of public money and to:*

- make full use of information technology;*
- ensure the availability of official documents in a cost-effective manner;*
- achieve a consistent standard wherever possible, with clear language (with translations where possible); and*
- keep under review the arrangements for the Jersey Gazette.”.*

3.2 In preparing this report and proposition, the Policy and Resources Committee has further developed these proposals in line with comments and suggestions. The Privileges and Procedures Committee must be the ‘champion of the States’ needs’ (as suggested in the Boulton Report (R.C. 11/1996)) because the States Assembly remains the primary decision- making body.

3.3 Ensuring that the States Assembly and the elected members of that Assembly are able to work effectively is, therefore, a central objective for the Privileges and Procedures Committee. In order to facilitate that role, the Policy and Resources Committee believes that it is essential that the Privileges and Procedures Committee is clearly established as a committee of States members with its responsibilities separate from both executive and scrutiny, but working to ensure that both fulfil their duties and responsibilities in the service of the Island.

#### **4. Terms of reference and programme of work**

- 4.1 The terms of reference and the initial programme for the work of the new Committee are set out in the proposition, and it will be seen that the Committee will be requested to report back to the States on various matters by the end of August and December 2002. Although the Committee will have much to do during 2002, it should be noted that at least some of the background work has already been done (e.g. in respect of a recording and transcription service), and the Committee will be able to refer to the material that has been assembled in both P.122/2001 and the Implementation Plan.
- 4.2 In drawing up the proposed terms of reference for the Privileges and Procedures Committee, the Policy and Resources Committee invited comments from States members and the public. A detailed submission was received from the House Committee, and many of that Committee's suggestions have been incorporated either in the Committee's proposition or in the report. For example, the House Committee has suggested that the new committee should examine the resource requirements of a recording and transcription service for the States Assembly. Although it was clearly understood by the Policy and Resources Committee that the proposals for a recording and transcription service should include a statement of the resource requirements, this was not specifically mentioned in the earlier draft of the proposition, and for the avoidance of doubt it is helpful that it should now be included. Sub-paragraph (b)(ix) of the proposition now includes a statement to this effect.
- 4.3 It has also been suggested by members of the House Committee that the Privileges and Procedures Committee should be responsible for developing and bringing forward the new States of Jersey Law that will be required in order to bring about the move to a ministerial system and a system of scrutiny. This is clearly a key item of legislation, and the Committee believes that it is essential to share this work with the Privileges and Procedures Committee, particularly in those aspects of the States of Jersey Law that relate to its terms of reference. It is accordingly proposed that the preparation of this new Law should be overseen by a Working Group consisting of representatives of both the Policy and Resources and Privileges and Procedures Committees. This Working Group would report to the Policy and Resources Committee, which would be the Committee with responsibility for bringing the draft Law to the States. In this context it should be noted that the new Law will cover the whole range of government activity, including the role and nature of the Council of Ministers and the executive function of government. In addition, in reviewing the existing States of Jersey Law, the Working Party may decide that there are elements of this Law that do not need to be retained in the new Law, but might be dealt with more effectively under Standing Orders. The Privileges and Procedures Committee could then take this forward as a part of its work on reviewing Standing Orders.
- 4.4 In carrying out the tasks described in the terms of reference, the Privileges and Procedures Committee will be invited to examine and make recommendations on various subjects highlighted in the Implementation Plan for reforms to the machinery of government, including the powers and functions of Committees of Inquiry (Implementation Plan - para. 5.10.2). As an element of its work on the proposed scrutiny committees, the Privileges and Procedures Committee could investigate the development of a framework for the scrutiny of extraordinary measures, a matter which would be further developed by the scrutiny committees themselves in due course (Implementation Plan - para. 5.1.6). It could also examine the possible introduction of procedures to allow for open debates to be held in the Assembly, i.e. in which the States could be asked to debate a subject without having to approve or reject a proposition.
- 4.5 In developing the proposals for the Public Accounts Committee, the Privileges and Procedures Committee would be expected to take into account the valuable work that has already been undertaken by the Working Party on the Public Accounts Committee and the Auditor General. In sub-paragraph (b) of the proposition a distinction has been made between the Public Accounts Committee and the scrutiny committees. This is because the Public Accounts Committee will be charged with scrutinising all aspects of public expenditure, income and asset management, but unlike the scrutiny committees it would not be involved in reviewing legislation or participating in policy development.
- 4.6 The Privileges and Procedures Committee will clearly have a very important role to play in the new system, both in the period leading up to and after the introduction of a ministerial system. The Policy and Resources Committee expects that there will be a continual dialogue with the Privileges and Procedures Committee in the preparation of the propositions on the Machinery of Government Reforms to be presented to the States. One such will be the proposals for the structure of the executive, which will be considered by the States later this year.
- 4.7 The States decision on P.122/2001 requires the Policy and Resources Committee to present to the States for approval detailed proposals for the executive, as outlined in the Implementation Plan. It has been suggested that the

Privileges and Procedures Committee should also take on responsibilities for some issues which relate to the executive, and that these duties could include the development of standards of corporate governance, the preparation of a Code of Conduct for Ministers, the drafting of an Oath of Office for Ministers and Assistant Ministers, and the development of proposals for information services on the work of the Council of Ministers and Ministers. The Policy and Resources Committee has concluded that it would be wrong to fragment the consideration of the workings of the executive. The States will be asked to approve a report and proposition which will include a draft Code of Conduct for Ministers (this Code would be refined and developed, if necessary, by the Council of Ministers once it has been appointed, and re-submitted for approval by the States). The proposition will also set out how, in conjunction with its duties under the Code of Practice on Public Access to Official Information and members' access to official information, the executive will communicate its decisions to the States Assembly, scrutiny committees and the public. The Policy and Resources Committee will publish draft proposals for consultation in advance of the formal lodging of a report and proposition.

4.8 It is important in this connection to take note of the role of the Privileges and Procedures Committee, which the States has agreed should be responsible for all aspects of Assembly procedure. The Privileges and Procedures Committee is a committee separate from both the executive and scrutiny bodies, responsible for many procedural matters, including overseeing the good order of the Assembly, and carrying out its work on behalf of ALL members.

## **5. Financial and manpower implications**

5.1 The Committee agrees that the Privileges and Procedures Committee should be provided with adequate financial and manpower resources with which to carry out its work. The States Greffe already provides excellent executive support to the House Committee, and the Greffe will be requested to provide an appropriate degree of support to the new committee once it has been established. The new Privileges and Procedures Committee may decide that it needs additional resources, and the actual nature of any additional resources would be a matter for the new committee to determine once it has been appointed. The Committee believes it is nevertheless important to ask the States to give a clear assurance that the new committee should have adequate resources, as set out in sub-paragraph (d) of the proposition. The exact details of the resources required will, of course, be the subject of discussions between the new committee and the Finance and Economics and Human Resources Committees in due course. Although the existing budget for the House Committee can be transferred to the new committee, it is possible that additional funds will be required in 2002 if the new committee decides that it requires further resources.

5.2 It should be noted that the Privileges and Procedures Committee will be bringing forward proposals to the States during the next 12-18 months which will undoubtedly have financial and manpower implications. However, these will be the subject of separate reports and propositions, and it will be necessary to report on any such implications when they are submitted for consideration.

5.3 The Policy and Resources Committee has already commented in its Implementation Plan on the potential manpower and financial implications of, for example, the new scrutiny committees, but these have been provided for illustrative purposes only, and it will be for the Privileges and Procedures Committee to make its own recommendations to the States.

5.4 The States is asked to agree to the proposed establishment of a Privileges and Procedures Committee on the basis described in this report.



**States of Jersey Law 1966**

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TRANSFER OF FUNCTIONS (PRIVILEGES AND PROCEDURES COMMITTEE) (JERSEY) ACT 200-

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(*Promulgated on the*                      *day of*                      200-)

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**STATES OF JERSEY**

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The                      day of                      200-

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**THE STATES**, in pursuance of Article 29 of the States of Jersey Law 1966,<sup>[1]</sup> as amended,<sup>[2]</sup> and all other powers enabling them in that behalf, have made the following Act -

1. There are hereby transferred to the Privileges and Procedures Committee the functions of the House Committee.

2.-(1) In the construction of, and for the purposes of, any judgment, award, contract, certificate or other document passed or made before the coming into force of this Act, anything which is, or is to be construed as, a reference to the House Committee shall, so far only as may be necessary for and in consequence of the transfer of functions effected by this Act, be construed as a reference to the Privileges and Procedures Committee.

(2) The transfer of functions effected by this Act shall not prejudice the operation of any appointment, determination, direction, instruction, approval, consent, requirement, authorization or other thing made, given or done by the House Committee in relation to the functions transferred by this Act and before the coming into force thereof, but such matter shall, if then in force, continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Privileges and Procedures Committee.

(3) Anything commenced before the coming into force of this Act by or under the authority of the House Committee may, so far as it relates to any functions transferred by this Act, be carried on and completed by or under the authority of the Privileges and Procedures Committee.

(4) Where at the coming into force of this Act any legal proceeding is pending to which the House Committee is a party and the proceeding has reference to any of the functions transferred by this Act, the Privileges and Procedures Committee shall be substituted in the proceeding for the House Committee, and the proceeding shall not abate by reason of the substitution.

3. The Act dated 21st June 1988 establishing the House Committee shall be rescinded.

4. This Act may be cited as the Transfer of Functions (Procedures and Privileges Committee) (Jersey) Act 200- and shall come into force on the                      day of                      200-.

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<sup>[1]</sup> Recueil des Lois, Volume 1966-1967, page 16.

<sup>[2]</sup> Recueil des Lois, Volume 1996-1997, page 803.