
**Lodged au Greffe on 5th November 2002
by Senator S. Syvret**



STATES OF JERSEY

STATES GREFFE

150

2002

P.191 Amd.

Price code: B

MACHINERY OF GOVERNMENT: STRUCTURE OF THE EXECUTIVE (P.191/2002) - AMENDMENTS

In paragraph (a) of the proposition -

- (1) *At the end of sub-paragraph (ii), insert the words “except that paragraph 2.5 shall be deleted and subsequent paragraphs renumbered accordingly”.*
- (2) *At the end of sub-paragraph (iii), insert the words -*
“except that -
 - (i) *in paragraph 3.1 after the words ‘circulated for’ insert the word ‘public’, and after the word ‘consultation,’ insert the words ‘subjected to the States scrutiny function,’;*
 - (ii) *in paragraph 3.2 after the words ‘Ministers and’ delete the remainder of paragraph and substitute the following words ‘will have responsibility for organising its agenda and place and time of meetings, which shall be done in co-operation with the Ministers.’;*
 - (iii) *in paragraph 3.3, in the fourth bullet point, after the words ‘Council meetings’ insert the words ‘although the States Greffe shall be responsible for the recording and retention of the official Minutes of Council decisions, to which all members of the States shall have access’;*
 - (iv) *in paragraph 3.4 after the words ‘departments of the executive.’ delete the remainder of paragraph and substitute the following words ‘In this capacity the Chief Executive will co-operate with heads of departments to ensure the efficient management and implementation of Council of Ministers functions, responsibilities and decisions.’;*
 - (v) *at the end of paragraph 3.4 insert the words ‘The States Greffe shall have responsibility for the recording and retention of corporate management board minutes, to which all members of the States shall have access.’”*
- (3) *At the end of sub-paragraph (iv), insert the words -*
“except that -
 - (i) *in paragraph 4.2, for the words ‘In Council, the Chief Minister will invite’ there shall be substituted the words ‘The Council of Ministers shall elect’;*
 - (ii) *for paragraph 4.3 there shall be substituted the following paragraph - ‘A Minister may have assistant ministers, who shall be elected members of the States, to help with the running of his or her department, provided that the total number of assistant ministers shall not exceed 8. A Minister may choose his or her own assistant minister, such choice being commensurate with the legal responsibility for decision-making resting with individual ministers who are to be legally accountable for their own areas of government.’”*
- (4) *At the end of sub-paragraph (v), insert the words “except that in paragraph 5.6 after the words ‘replacement minister.’ there shall be inserted the words ‘The revised Standing Orders of the States of Jersey shall include provision to enable the Assembly, when considering the appointment of the replacement minister, to be able to discuss any matter concerning the dismissal.’”*
- (5) *At the end of sub-paragraph (vi), insert the words -*
“except that -
 - (i) *in paragraph 6.2 for the words ‘It is likely, however, that this will be a rare occurrence.’ there shall be substituted the words ‘and there shall be no more than 8 assistant ministers.’;*
 - (ii) *in paragraph 6.3 after the word ‘However’ for the words ‘the Chief Minister may invite’ substitute the words ‘a minister may ask’”*

- (6) *At the end of sub-paragraph (vii), insert the words “except that in the third bullet point of paragraph 7.2 the words ‘The programme will be a development of the strategic policies in place at that time.’ shall be deleted;”*

SENATOR S. SYVRET

Report

I describe the purpose of each of the amendments in turn.

- (1) No evidence has been produced that the present Oath of Office is in any way deficient. A second Oath of Office may even be incompatible with the existing oath. It has been suggested that the existing oath may be changed. The States should know what changes may be proposed to the existing oath and what form the additional oath is to take before deciding that such a measure is necessary. It would, for example, be incompatible with independent representation of electors if the second oath were to require members of the executive to swear some kind of quasi allegiance to the Council of Ministers, instead of having first loyalty to the public.
- (2)(i) It is essential, for the avoidance of doubt, that any strategic policy programme should be subject to both public consultation and the States scrutiny function.
- (2)(ii) The power to determine the agenda, its place and time would give wildly excessive power to one individual who would have dramatic control over Council business. Only a directly elected President of Jersey could, with any democratic legitimacy, wield such power. The amendment places responsibility for organising the business of Council with the Chief Minister but introduces the public safeguard that he or she must do so in co-operation with his or her ministerial colleagues.
- (2)(iii) For a variety of democratic, legal and constitutional reasons it is essential that the proceedings of the Council are independently recorded and held. All members of the States presently have access to the Policy and Resources Committee minutes. No credible reason has been advanced as to why such access should not continue.
- (2)(iv) This amendment is of the utmost importance. It is clearly stated that ministers are to have legal responsibility for decision making and are to be legally accountable for their own areas of government. It is then simply not credible to place this burden of *legal* responsibility and accountability upon the shoulders of an individual minister and then place him or her in the position of their chief officer not being ultimately responsible to them, but instead being subject to the 'direction' of the Chief Executive. It would also be an act of gross irresponsibility if the States were to place heads of departments in the clearly impossible position of having to attempt to serve two masters: their minister *and* the Chief Executive. If, as is clearly stated, the burden of legal responsibility and accountability is to be placed upon the ministers, then *they* must have the power to direct their head of department. If this is not the case, then the ministers will have public responsibility for the performance of their department but not the authority to direct their chief officer. It would be an impossible situation.

Another important factor to consider is that a Chief Executive may have particular political allegiances or views which may not be the same as those of particular ministers. In such a case, were it to arise, a democratically elected and democratically accountable minister may be completely undermined if his head of department were to be subject to the authority and direction of the Chief Executive.

- (2)(v) This new sentence seeks to establish that there shall be an official record of corporate board proceedings and that that record should be independently recorded and held.
- (3)(i) In the reform process much use has been made of the word 'consensual' when referring to decision making. It is therefore somewhat perverse that the Deputy Chief Minister should be appointed *ex cathedra* by the Chief Minister instead of being collectively chosen by all members of the Council of Ministers.
- (3)(ii) This amendment addresses two failings in the proposition, the text of which asks the Assembly to approve the structure as set out in the Appendix. Comforting noises are made elsewhere concerning the need to keep sufficient numbers of States members out of an executive role to ensure sufficient numbers are available to fill the scrutiny function and maintain the majority of the non-executive part of the states. But it is the wording of the Appendix we are being asked to approve. According to the proposed wording all ministers would be able to have up to two assistant ministers. Assuming ten ministers, the only restriction upon there being 30 members involved in the executive is the States decision that the executive must always be in a minority. However if no other limit is placed upon the number of assistant ministers we can be quite sure the executive will use the maximum possible number thus ensuring the Cabinet comes to the Assembly with a ready-made block vote, only needing to persuade a handful of members to support it, making it virtually impossible to defeat an executive proposal. To ensure that a convincing majority of un-aligned members of the States must be achieved, the amendment limits the number of assistant ministers to a maximum of 8. The Council would have to decide in which departments this assistance was most needed. The relevant ministers would then choose their assistants. It will be protested that the party whip of collective responsibility will not apply to assistant ministers on votes outside of their particular ministry. This is a

laughable argument. How plausible is it likely to be that assistant ministers will be queuing up to vote against the Cabinet and that which their bosses are collectively seeking to implement? It is not plausible; at least if those assistant ministers harbour any ambitions to move up in the world of the executive. The latest suggestion that a significantly higher rate of pay will be available to those involved in the executive largely sets the prospect of dissenting assistant ministers off the radar screen.

The second point of this amendment is to give the choice of assistant ministers to the ministers themselves without the Chief Minister having the power of veto over their choice. As has been touched upon already, ministers are to be legally responsible for decision making and legally accountable for their own areas of government. It is utterly unreasonable to place such responsibility upon an individual and then deny them their choice of assistant.

It is not specified in the Appendix that assistant ministers need be States members. The amendment stipulates that they should be elected members of the States.

- (4) It has been repeatedly asserted that there need be no concern about the Council of Ministers having the power to dismiss one of their number - notwithstanding their appointment by the States - because the Council would have to return to the States to appoint a replacement. It is stated in the report that "This is a very powerful position for the States Assembly and will be an important 'check and balance' on the way in which the Council of ministers will work." These will be hollow words unless the Standing Orders enable the Assembly to actually debate the dismissal and appointment.
- (5)(i) This amendment is consequential on the amendment in (3)(ii) above.
- (5)(ii) Again the legal responsibility for decisions and legal accountability for their own areas of government is to reside with ministers. Given that responsibility, a minister may wish his or her assistant minister to represent an item in their absence. An assistant minister may well be much more familiar with that department's policies and functions than the minister of another department.
- (6) The sentence that this amendment seeks to delete could be straight from the pen of Kafka or the pages of Catch 22. Consider: the public have just elected new politicians. The States has just elected a new Chief Minister. The States appoint a new Council of Ministers. The island will have in essence a new Government – a supposed objective of Clothier. And this *new* government is to be prevented from pursuing its own policies and instead must be tied to "a development of the strategic policies in place at the time." This not simply undemocratic, it is positively anti-democratic. This type of rule would prevent the public from choosing a different set of strategic policies through the ballot box at election time.

These amendments have no financial or manpower implications.