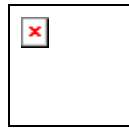


**MACHINERY OF GOVERNMENT: COMPOSITION AND ROLE OF PRIVILEGES AND PROCEDURE AND
SCRUTINY COMMITTEES**

**Lodged au Greffe on 13th November 2001
by Senator S. Syvret**



STATES OF JERSEY

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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 proposed reforms to the machinery of government and to agree that -

- (a) the Privileges and Procedure Committee should be comprised of members of the States not involved in the Executive;
- (b) the Privileges and Procedure Committee should be responsible, in addition to a code of conduct for members of the States, for the production of a code of conduct for the Chief Minister and Ministers;
- (c) the Hansard-type transcript should extend to the proceedings of Scrutiny Committees;
- (d) the Privileges and Procedure and Scrutiny Committees (including the Public Accounts Committee) should be able to call for all papers and information relevant to their work, including information classified as exempt under the Code of Practice on Public Access to Official Information and, although they should normally meet in public, should also be able to meet '*in camera*' when discussing information classified as exempt;
- (e) the Privileges and Procedure and Scrutiny Committees (including the Public Accounts Committee) should have at their disposal powers and procedures in accordance with those currently available to a Committee of Inquiry under Part IIIA of the States of Jersey Law 1966, as amended, and such powers could be invoked providing notice of the intention to do so, including a statement of the purpose of invoking them, had been given in writing at least seven days in advance to members of the Assembly and published;
- (f) the Public Accounts Committee, in addition to its work in scrutinising expenditure, should be charged with the scrutiny of public income, and the management and valuation of public assets.

SENATOR S. SYVRET

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

REPORT

The States has taken the decision to abolish the committee system of government and replace it with an executive system which will centralise power. The Chief Minister and his chosen Ministers will exercise all meaningful executive power in respect of public policy and administration; the welfare and future of the community will be in the hands of a de facto cabinet.

This system of government, whilst new to Jersey, is commonplace elsewhere. However, most other jurisdictions that have an actual executive 'Government' have political environments that differ from Jersey's in several important ways: party politics; those who form the government can claim to have electoral endorsement for their philosophy and programme of policies; an organised opposition whose task is to challenge the government and propose alternative views; a second chamber to scrutinise and revise the government's policies; a diverse and independent media containing expert analysis, detailed commentary and specialist insight; and a clear separation between judiciary and legislature. Jersey has none of these things.

It was broadly recognised during the debate that this executive structure would wield a significant degree of power; for that reason much emphasis was placed upon the system of scrutiny which would, in theory, monitor the performance of the executive and act as some kind of check and balance. However, upon reflection, the proposition as amended and adopted by the assembly contains lacunae and a number of dangerous weaknesses. It is these points this proposition seeks to address.

Paragraph (a): The proposition as adopted by the assembly charges the Privileges and Procedure Committee (PPC) to draw up the 'conditions and terms of reference' of the Scrutiny Committees. The whole process of scrutiny committees has its origination in and from the PPC. It is therefore imperative that the PPC be completely independent of the Executive.

Paragraph (b): In addition to general rules or codes of conduct for elected members, other jurisdictions often have additional, more specific codes for Ministers and Prime Ministers. For the avoidance of ambiguity the PPC should have responsibility for all such codes.

Paragraph (c): Given that much essential discussion, debate and questioning will take place at meetings of the Scrutiny Committees, it is of great importance that a Hansard-type transcript be made of their proceedings.

Paragraph (d) The Scrutiny Committees will, manifestly, be unable to remotely begin to fulfil their purported function if their ability to scrutinise information is restricted to only that information already publicly available under the Code of Practice on Access to Official Information. How, for example, is a Scrutiny Committee to meaningfully contribute to the 'development of policy' when 'draft policies' are exempt under the Code of Practice? Members of the States already have a right of access to information held by departments if needed in connection with their duties. It would be perverse indeed if the much vaunted scrutiny function - which is supposed to hold to account the powerful executive - were to have less power than an existing back bench member of the States.

Paragraph (e): Notwithstanding the objective of paragraph (d), and the supposed existing right of any States member to access information needed in connection with their duties, it is still possible for information to be withheld, manipulated, spun or given in a partial form. Additionally, the experience of certain other jurisdictions has shown that on occasion those called before scrutiny committees can be less than co-operative. In the final analysis the scrutiny function of a parliament must have teeth if it is to hold the Executive to account and safeguard the public good.

Paragraph (f): The Public Accounts Committee (PAC) is at present to be limited to scrutinising public expenditure. Whilst of central importance, 'expenditure' is but one side of public accounts. If the PAC is to fulfil the function of examining whether the people of the Island are getting value for money from the assets they own and their government, it will need the ability to examine such questions as charges, capital accounting, asset management and valuation and the realisation of maximum returns if public assets should be sold.

Financial and manpower implications

There will clearly be financial and manpower implications if a Hansard-type transcription is made of the Scrutiny Committees but I believe that this additional expense can be justified if the Committees are to operate effectively. There may also be some relatively minor additional resource implications from some of the other proposals. Nevertheless it is clear that the extra expense arising out of this proposition will be only a small proportion of the substantial additional cost that will arise out of the overall process of reforming the system of government.