

# STATES OF JERSEY

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## SHADOW SCRUTINY: ARRANGEMENTS AND APPROVAL OF CHAIRMEN AND MEMBERS

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Lodged au Greffe on 9th December 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 –

- (a) to agree that Presidents of Committee and members of the Privileges and Procedures Committee should be precluded from serving on Shadow Scrutiny Panels and on the Shadow Public Accounts Committee;
- (b) to agree that the States should, subject to the restriction in paragraph (a) above, appoint forthwith by ballot 2 members to be Chairmen of the 2 Shadow Scrutiny Panels for an initial period of 12 months;
- (c) to agree that the States should, subject to the restriction in paragraph (a) above, appoint forthwith by ballot a member to be the Shadow Chairman of the Shadow Public Accounts Committee for an initial period of 12 months;
- (d) to appoint the following as members of the Shadow Scrutiny Panels, and to agree that the Chairmen appointed in accordance with the provisions of paragraph (b) above shall rotate membership of the Panels over the initial 12 month period ensuring all the members appointed are able to participate in the shadow scrutiny process –

Senator J.A. Le Maistre;  
Senator P.V.F Le Claire;  
Senator E.P. Vibert;  
Connétable of St Brelade;  
Connétable of St Mary;  
Connétable of St Helier;  
Connétable of Grouville;  
Deputy R.C. Duhamel of St. Saviour;  
Deputy of St. John;  
Deputy G.C.L. Baudains of St. Clement;  
Deputy J.L. Dorey of St. Helier;  
Deputy L.J. Farnham of St. Saviour;  
Deputy G.P. Southern of St. Helier;  
Deputy S.C. Ferguson of St. Brelade;  
Deputy J.A. Hilton of St. Helier;

- (e) to approve the protocols and guidelines for the operation of shadow scrutiny as outlined in the Appendix of the report of the Privileges and Procedures Committee dated 4th December 2003;
- (f) to charge the Privileges and Procedures Committee, in accordance with its terms of reference –
  - (i) to maintain an oversight of the shadow scrutiny process to ensure that the process is used to develop a robust scrutiny framework after the introduction of ministerial government; and
  - (ii) to report to the States on the operation of the shadow scrutiny process, after consultation with the Chairmen and members of the Shadow Scrutiny Panels, at not less than 5 months before the introduction of ministerial government.

### PRIVILEGES AND PROCEDURES COMMITTEE

## **REPORT**

### **1. Introduction**

1.1 In adopting P.79/2003 – “Machinery of Government: Establishment of Scrutiny Panels and Public Accounts Committee”, the States approved a trial period of shadow scrutiny. The Privileges and Procedures Committee subsequently presented its plans for the shadow scrutiny process in its report to the States (R.C.45/2003). In the report, the Committee described the purposes of the shadow scrutiny process as –

- Creating opportunities for training both members and officers – in particular developing new skills.
- Including a wide range of members in the shadow scrutiny process.
- Providing a learning experience.
- Developing the practical arrangements for a system of scrutiny appropriate for Jersey.
- Developing guidelines governing the scrutiny process.
- Assessing the resource requirements for scrutiny.
- Developing awareness of the scrutiny function.

The first stage of the process is to appoint the Chairmen and members of the Shadow Scrutiny Panels.

### **2. Preclusion of Committee Presidents and Members of the Privileges and Procedures Committee**

2.1 As the shadow process is intended to be a training and development exercise, the Privileges Procedures Committee initially felt that there should be no restriction on which members could serve on a Shadow Scrutiny Panel, as long as safeguards were put into place to ensure that members of Panels could not carry out investigations into subjects within the purview of any Committee of which they were a member.

2.2 After receiving comments from the meeting of Committee Presidents, the Privileges and Procedures Committee agreed that the Assembly should be asked to decide whether it was appropriate for Committee Presidents to sit on Shadow Scrutiny Panels. The Committee also agreed that, to enable it to monitor the process independently and transparently, it would be inappropriate for members of the Privileges and Procedures Committee to be members of the Shadow Panels. Any member of the Committee wishing to take part in the process would need to resign from the Committee if and when appointed to a panel.

### **3. Appointment of the Chairmen of Shadow Scrutiny Panels**

3.1 The Assembly is requested to appoint 2 Chairmen for the Shadow Scrutiny Panels. The Privileges and Procedures Committee, after receiving comments from the meeting of Committee Presidents, agreed that nominations for the Chairmen should come from the full Assembly. Nominations, which will require a proposer and seconder, will therefore be invited from the Assembly as soon as this proposition has been accepted.

3.2 It is proposed that the appointments will be for an initial twelve-month period. This will give other members the opportunity to serve as Chairman for a period prior to the introduction of ministerial government.

#### **4. Appointment of the Shadow Chairman of the Shadow Public Accounts Committee**

- 4.1 The Assembly is also asked to appoint a Shadow Chairman for the Shadow Public Accounts Committee. The Finance and Economics Committee is bringing forward a report and proposition with arrangements for disbanding the States Audit Commission and forming a Shadow Public Accounts Committee. Whilst the Chairmen of the Shadow Scrutiny Panels will sit on this body as members, a States member will also be required to work closely with the non-executive Chairman of the States Audit Commission who, if the States agree, will be appointed Chairman of the Shadow PAC.
- 4.2 Members were asked by the Privileges and Procedures Committee to indicate whether, or not, they were interested in being nominated as the Shadow Chairman of the Shadow Public Accounts Committee. Many of the members who responded by e-mail did not do so, therefore nominations, which will require a proposer and seconder, will be requested from the Assembly as soon as this proposition has been adopted.

#### **5. Appointment of the Members of Shadow Scrutiny Panels**

- 5.1 The Privileges and Procedure Committee wrote to all States members asking for declarations of interest from those members interested in serving on the Shadow Scrutiny Panels. Members who have declared an interest are –

Senator J.A. Le Maistre;  
Senator P.V.F Le Claire;  
Senator E.P. Vibert;  
Connétable of St Brelade;  
Connétable of St Mary;  
Connétable of St Helier;  
Connétable of Grouville;  
Deputy R.C. Duhamel of St. Saviour;  
Deputy of St. John;  
Deputy G.C.L. Baudains of St. Clement;  
Deputy J.L. Dorey of St. Helier;  
Deputy L.J. Farnham of St. Saviour;  
Deputy G.P. Southern of St. Helier;  
Deputy S.C. Ferguson of St. Brelade;  
Deputy J.A. Hilton of St. Helier.

- 5.2 It is proposed that the Assembly approves all of these members as members of Shadow Scrutiny Panels, notwithstanding that these individuals may also be nominated as a Shadow Panel Chairman.
- 5.3 The shadow chairmen will be asked to appoint 4 members from the list of approved members to serve for an appropriate period, which will ensure that the remaining members can serve for an equivalent period and will also provide for the remaining members to be co-opted onto the Panels for particular reviews. How this will be achieved to ensure fairness will be agreed between the members involved in the shadow process and the Privileges and Procedures Committee. It is intended that all of the nominees will receive training at the same time.

#### **6. Protocols and Guidelines for the Operation of Shadow Scrutiny Panels**

- 6.1 It is proposed that one of the objectives of the shadow process will be to develop guidelines and protocols for the operation of scrutiny. This will include the powers of the Panels, the roles and responsibilities of the Panels, and the responsibilities of departments to provide information. These will need to be developed in conjunction with Departments and the Chief Executive to ensure the practicality and fairness of the process. Some of these protocols will be included in the revised Standing Orders which will be

presented to the States for agreement in due course; others will be contained in the guidelines which will be presented to the States by the Privileges and Procedures Committee towards the end of the shadow process.

6.2 Guidelines for the shadow process will be clear and unambiguous to ensure that the various parties understand their roles and that the process is fair to all participants. The more detailed guidelines will be developed in the light of experience of the shadow process and after consultation with the Executive and other relevant parties. The proposed guidelines are attached at the Appendix.

## **7. Financial and Manpower Implications**

7.1 The Privileges and Procedures Committee has a budget for Scrutiny of £250,000 for 2003 and a similar sum for 2004. The Finance and Economics Committee has already agreed that the unspent balance from 2003 will be carried forward to 2004. The Privileges and Procedures Committee will be making a bid in the 2005-2007 Fundamental Spending Review process for the funding required for the full scrutiny process in the ministerial system of government.

7.2 The Committee has received permission for 5 secondment positions and officers are being appointed to these positions to work for the Shadow Scrutiny Panels.

4th December 2003

**DRAFT GUIDELINES FOR SHADOW SCRUTINY PANELS**

The terms of reference set out in P.79/2003 for Scrutiny Panels are as follows –

- (a) to hold reviews into such issues and matters of public importance as the Panel, after consultation with the Chairman'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 scrutinize 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.

Members involved in the process should understand that the objectives of shadow scrutiny are to –

- create opportunities for training both members and officers – in particular developing new skills;
- include a wide range of members in the shadow scrutiny process;
- provide a learning experience;
- develop the practical arrangements for a system of scrutiny appropriate for Jersey;
- develop guidelines governing the scrutiny process;
- assess the resource requirements for scrutiny;
- develop awareness of the scrutiny function.

The purpose of shadow scrutiny is not to –

- provide an opposition to States policy;
- further personal or political agendas;
- examine minor matters, individual complaints, internal disciplinary matters, or other matters prejudicial to the public interest.

Shadow scrutiny is not attempting to provide a fully functioning scrutiny system from the outset (although this may be an outcome of the work done).

## **Chairmen of Shadow Scrutiny Panels**

The Chairman of each Panel will be appointed by the States and will serve for an initial period of 12 months. The States will then be asked to appoint a replacement for a further 12 months, or until the introduction of ministerial government.

The Chairman of the shadow panel shall –

- develop and provide strong and fair leadership and clear guidance to members and officers involved in the shadow scrutiny function;
- develop clear understanding of the terms of reference of the Shadow Scrutiny Panel and the scope and range of the scrutiny functions;
- ensure that the Panels are effective in developing a process that will contribute to the achievement of the States' strategic aims and priorities and the continuous improvement in services and implementation of best practice;
- agree all agendas for the Panel's meetings and take a lead in developing a forward work programme and ensuring that it is adhered to within the resources available;
- meet on a regular basis and consult with the other Panel Chairman and the Shadow Chairman of the Shadow Public Accounts Committee through the Chairmen's Committee;
- ensure that the appropriate members of States Committees are briefed about the work of the Panel;
- have overall responsibility for liaison with chief officers responsible for services within the Panel's programme;
- ensure that requests for information are fair and reasonable;
- seek to involve all scrutiny members in the work of the Panel;
- decide, in consultation with officers, which witnesses to invite to hearings;
- chair scrutiny hearings in public, ensuring fairness to witnesses;
- develop a clear brief for each piece of work;
- chair the post-review meeting between the Panel and the Committee to assess the effectiveness of the process and identify problems.

In addition, the Chairmen of the Panels and the Shadow Chairman of the Shadow Public Accounts Committee will form a Shadow Chairmen's Committee, which shall –

- confirm and allocate the final work programme;
- meet to discuss progress and ensure consistency of approach;
- allocate resources;
- advise the Privileges and Procedure Committee on progress and issues.

## **Members of Shadow Scrutiny Panels**

The Chairman of each panel will select 4 members from the list of members approved by the States. Each member will be given the opportunity to serve on a panel for a similar length of time. This may be through each members serving for a fixed period. Alternatively, all selected members can be co-opted onto Panels from the outset, but allocated in fours to specific reviews.

Members shall –

- refrain from personal criticism of other members;
- not permit personal agendas, rivalries and differences to deflect them from properly fulfilling their duties as scrutiny members;
- declare any interest in the matters under scrutiny, pecuniary or otherwise;
- attend all scrutiny training sessions where possible.

## **Meetings**

A Chairman and 2 members will be a quorum for the purpose of holding meetings and hearings.

If the Chairman cannot attend then the members may appoint a temporary Chairman from their number for the duration of the meeting.

The Shadow Chairmen's Committee should meet not less than four times per year to review progress.

## **Resources**

Each Shadow Scrutiny Panel will be resourced with 2 Shadow Scrutiny Officers.

The role of the Scrutiny Officer will be to –

- provide the Panel with professional and technical information and advice relevant to the issue under scrutiny;
- obtain and collate information, documents, written and verbal reports and other appropriate information or evidence;
- obtain appropriate expert advice when necessary;
- undertake research;
- provide executive and administrative support;
- arrange, attend and record meetings and hearings;
- draft reports;
- liaise with States departments, other parliamentary services, media, pressure groups, stakeholders



and other relevant external bodies;

- ensure that the scrutiny website is updated;
- provide executive support to the Shadow Chairmen's Committee;
- provide executive and administrative support to the Shadow Public Accounts Committee.

In addition to designated officers, a small budget has been allocated for the engagement of consultants where appropriate. The allocation of this budget will be at the discretion of the Chairmen's Committee in liaison with the Privileges and Procedures Committee.

### **Contact with States Departments and Other Witnesses**

Contact with States Departments will initially be between the Chairman of the Panel and the President of the Committee and the Chief Officer.

Presidents/Chief Officers will be informed of the Shadow Scrutiny work programme as soon as it is agreed. Copies of terms of reference for reviews will be provided to Committees/Departments as soon as they are available to give maximum notice of the subject under review.

The Chairman may request that the Panel visit the department to discuss the scope of a particular review, or to receive an overview of a particular service.

The Scrutiny Officer will make requests for specific information thereafter in writing either directly to the Chief Officers or his/her nominee.

Requests for information should be reasonable. Non co-operation or other difficulties should be reported to the Chairman who will contact the President of the Committee in the first instance and the Privileges and Procedures Committee thereafter if the issue cannot be resolved.

Panels will have automatic access to non-restricted (Part A) Committee minutes. Access to restricted (Part B) minutes will be through a request by the Panel Chairman to the Greffier of the States.

Panel members will not be permitted to question departmental officers directly other than as witnesses at a properly convened hearing, although direct requests for information will be progressed by the Scrutiny Officer.

Shadow Scrutiny Panels will invite witnesses to appear before them as required. In such circumstances, the Panel will –

- inform the witness of the time, date and place of the scrutiny meeting at which their evidence is to be taken;
- inform the witness of the matters about which the scrutiny body wish to ask them. Inform the witness of any documents that the Panel wish to have produced for them;
- provide reasonable notice of all the requirements of the Panel to enable the witness to respond in full at the earliest opportunity;
- provide copies of all relevant reports, papers and background information;
- ensure that all witnesses are treated with courtesy and respect and that all questions to witnesses are made in an orderly manner as directed by the Chairman of the Panel;

- following the proceedings, write to the witness to confirm their testimony.

## **Work Programme**

The selection of topics for scrutiny is the first, most critical step in the entire scrutiny process to ensure that the objectives set for it are achieved.

Scrutiny should add value to the work of the States and produce worthwhile outcomes. The programme for each of the Shadow Panels will be determined through discussion with all of the members nominated by the States as Panel members.

Where possible, the programme should be based on a policy theme.

Each Panel should ensure that the four main roles of scrutiny are included in the work programme i.e. –

- Policy
- Primary/subordinate legislation
- Resource Plan/budget
- Other matters of public interest

Reviews selected should be capable of completion within an appropriate period and add to the overall training experience. The workload should also not exceed the capacity to do a thorough job.

The programme will be refined by the Shadow Chairmen's Panel, which will consist of the Chairmen of the Shadow Scrutiny Panels and the Shadow Chairman of the Shadow Public Accounts Committee. The programme will be endorsed by the Privileges and Procedures Committee to ensure that it meets the objectives of the shadow scrutiny process.

Terms of reference will be drawn up for each policy review or any review into a matter of public interest. These will be supplied to the relevant States Committee/Department prior to the commencement of the review.

A review group comprising the Shadow Panel, scrutiny officers and the chief/departmental officers, involved in each review and Privileges and Procedures Committee officers, will assess the effectiveness of the process and identify problems encountered by either side during the review process.

## **Selecting Topics**

Topics should be considered if they –

- meet the criteria as a training exercise i.e. not too long, not too complex;
- are likely to result in improved service;
- are a community/corporate priority area;
- are linked to States strategic objectives/plans;
- are a key issue for the public;
- relate to a poor performing service;

- relate to a service/issue where there is a high level of dissatisfaction.

Topics should be rejected if they are –

- already being addressed by others;
- subjudice or prejudicial to States interests;
- fall within a complaints procedure;
- an individual disciplinary/grievance matter;
- unlikely to result in improved service.

### **Presentation of Reports**

The findings of the Panel will be incorporated into a report prepared with the assistance of the Scrutiny Officer.

The report will be submitted to the Committee concerned for consideration and comment. The Committee concerned shall consider every report within 3 months.

Subject to any amendments, the report will be presented to the States for information.

### **Role of the Privileges and Procedures Committee**

The role of the Privileges and Procedures Committee will be to –

- provide resources for the shadow scrutiny process – within the limits of the budget allocated;
- monitor the effectiveness of the process;
- develop and provide an effective training programme for scrutiny members and officers;
- comment on the appropriateness of the work programme;
- develop a scrutiny awareness programme across the public sector;
- provide advice if required;
- provide liaison if required;
- develop and recommend to the States the framework for full scrutiny;
- develop these guidelines based on the experiences of the shadow process.