

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

**Presented to the States on 19th November 2002
by the Privileges and Procedures Committee**



STATES OF JERSEY

STATES GREFFE

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Comments

The Privileges and Procedures Committee has carefully considered the report and proposition of the Policy and Resources Committee on the Structure of the Executive and notes that many of its suggestions have been accepted and incorporated into the final report.

There remains, however, one significant issue where agreement has not been reached with the Policy and Resources Committee regarding the relationship of the H.M. Attorney General to the Council of Ministers and the impact of this on his role as impartial adviser to the States (paragraph 2.6 of the Report).

The Privileges and Procedures Committee met with H.M. Attorney on 27th June 2002 to discuss this issue and has scheduled a further meeting. The Committee is concerned that the position of H.M. Attorney General as independent legal adviser to the States will be compromised by the perception that he/she will be too closely associated with the Executive. In addition, the Committee foresees that conflicts of interest might arise between the Executive and Scrutiny Committees where it might be seen that H.M. Attorney General has already taken a position on the side of the Executive. It is possible that a Scrutiny Committee might wish to take legal advice on a particular decision of the Executive which was under investigation. This might put the H.M. Attorney General in a difficult position.

The Committee suggested that the words 'entitled to attend' be omitted from paragraph 2.6, as it believes that the notion of entitlement compromises the position of H.M. Attorney General by at best appearing to make him/her a member of the Executive.

The Committee is of the view that H.M. Attorney General should be the final arbiter for legal opinion, possibly with two sets of legal advisers within his/her office providing advice separately to the Executive and to Scrutiny Committees. The Committee believes that this would obviate the perception that might develop that H.M. Attorney General was taking on a more political role, with the Scrutiny Committees having less direct access, less often, to the advice of H.M. Attorney General in comparison with the Executive which would have first call on H.M. Attorney General's services.

Furthermore, the Committee considers it important that separate resources should be available to enable Scrutiny Committees and private members to obtain independent legal advice when required. This reflects the situation in the House of Commons, Scottish Parliament and many other jurisdictions.

However, the Committee, in submitting these comments, wishes to point out that a further meeting with H.M. Attorney General is planned, when it is intended to discuss these issues further.