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

Presented to the States on 19th November 2002
by the Policy and Resources Committee

STATES OF JERSEY

STATES GREFFE

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COMMENTS

Introduction

In the view of the Policy and Resources Committee, the amendments, taken together, would totally destroy the efficacy of the new ministerial and departmental structure that has been agreed by the States. They will also prevent the new arrangements from providing corporate leadership and joined-up government, which is a key purpose of the whole reform process.

These Amendments would have a fundamental impact on the decision taken by the States to move to a ministerial system of government and, if accepted, would derail the whole process of government reform. Some of these Amendments are little short of rescindment motions in disguise, for their acceptance would be a significant departure from the States decision of 28th September 2001 to approve P.122/2001 and move to a ministerial system of government.

All the amendments are opposed.

Amendment 1

This amendment seeks to delete the provision in paragraph 2.5 of the Appendix that the Chief Minister and other Ministers should swear an oath of office before the States. The argument is put that the States should know what such an oath would actually be before deciding this question. It is said in the report accompanying the Amendments that the oath would entrench the 'quasi-allegiance' of ministers to the Council of Ministers, rather than to the public.

The point that is missed is that the proposed Ministers' oath will be before the States, not the Royal Court, thus emphasising Ministers' accountability to the States above all other. The Minister will of course have previously sworn the States members' oath before the Royal Court. This is very important, and the States will naturally have the opportunity in due course to consider the form of the Ministers' oath. The Committee has not yet given detailed consideration to the exact wording of this oath, but it is envisaged that it will be compatible with the wording of the oath of office for States members. It will also state that ministers will serve as members of the Council of Ministers on behalf of the States, and in the best interests of the people of Jersey.

In the report accompanying his Amendments, Senator Syvret has stated that 'it has been suggested that the existing oath may be changed', and it is assumed that he is referring to the existing oath of office for States members. It is not clear from the report who may have proposed this change, but such a proposal or suggestion has not been made by the Policy and Resources Committee.

The Committee is not aware of any plans to change the existing oath for States members, which will of course be sworn by all States members.

Amendment 2(i)

The effect of the amendment would be to subject the Council of Ministers' strategic policy programme to formal scrutiny under the new scrutiny function before it was lodged 'au Greffe' (within four months of the Council taking office). This would cut across the whole process of preparing the strategic policy programme, because the entire purpose of the exercise is to bring forward a broad policy framework for the States to consider fully, in the round, so that a general direction for policy is set. But the amendment would be a recipe for delay in the States debating the whole programme, and thus for undermining the Council's position at the outset of its term of office.

In some areas the strategic policy programme may simply set out the broad direction of policy, as well as proposals for specific policies, programmes and draft legislation, with a view to seeking States endorsement prior to further development. The time for formal scrutiny on particular issues and aspects of the programme would come after it had been endorsed by the States.

If the amendment were to be accepted, the potential for delay is immense, and one could envisage a situation in which the strategic policy programme might not be presented to the States for many months after the Council of Ministers had taken office. Although it is proposed that the strategic policy programme must be lodged within four months of the Council's election, it is quite possible that one or more of the scrutiny committees would say that they needed more time in which to consider the implications of the Council's proposals, both before and after the strategic policy programme had been lodged 'au Greffe'.

The requirement for the Council to bring forward a programme within four months of taking office should not be regarded as a restriction on the scrutiny function - the executive has a duty to the electorate to come forward to the States with its

programme within a reasonable period of taking office, and it is reasonable to expect the States to debate that programme quite promptly once it has had proper time in which to consider the proposals. It is customary for the more major items of public business to be lodged for at least four weeks prior to debate by the States, and it is envisaged that the same practice would apply in relation to the strategic policy programme.

It is important to take a balanced approach when considering the roles of the executive and scrutiny functions. Once the strategic policy programme has been approved by the States, it is not envisaged that there will be any restrictions on the areas that may be investigated by the scrutiny committees. In its First Report, presented to the States on 22nd October 2002, the Privileges and Procedures Committee recommends that the scrutiny committees should be able to carry out 'such ad hoc reviews as are agreed upon' (para. 2.63). This is very much in line with the Policy and Resources Committee's proposals, as set out in P.122/2001 that the scrutiny function is to be regarded as an integral part of the new system of government.

The amendment also proposes that the word 'public' should be inserted before the word 'consultation' in paragraph 3.1 'Consultation' means 'public' consultation, for that is what 'consultation' is by its very nature, and the proposed addition of the word 'public' is unobjectionable but unnecessary. In any event the amendment as a whole is opposed for the reasons given in the preceding paragraphs.

Amendment 2(ii)

This amendment to Appendix 3.2 would remove the Chief Minister's specific responsibility to determine the Council's agenda, and place and time of meeting, and make her or him responsible for these matters 'in cooperation with' other Ministers.

The Chief Minister will not last long if he or she does not work cooperatively with other Ministers - that is what collective responsibility is all about. But he or she must be free, and thus properly authorised, to take the lead on preparing agendas and setting meetings. That is a key leadership role for the Chief Minister. Someone - he or she - must be in charge, and that is the purpose of having a Chief Minister. It is a question of political leadership, and no different generally from present practice regarding Committee presidents. Under the current arrangements, a Committee President generally agrees, in consultation with his or her chief officer and committee members, on the agendas and schedules for committee meetings, and the proposed arrangement is no different from the current practice.

Amendment 2(iii)

This would require the States Greffe to prepare the minutes of the Council of Ministers' meetings, with all States members having access to them.

The approach specifically recommended by the Policy and Resources Committee, and adopted by the States, has been to focus the Greffe on its work as a provider of services to the States Assembly, including the provision of executive and administrative support to the scrutiny committees, the Public Accounts Committee, and the Privileges and Procedures Committee, and thus it will lie outside the structure of ministerial departments. The position of the States Greffe as a department outside the Executive was identified in the Implementation Plan last November, and this position was endorsed by the States on 24th July 2002 when it approved the 'Machinery of Government: Proposed Departmental Structure and Transitional Arrangements' (P.70/2002, as amended).

The States also agreed on that occasion that the Chief Minister's Department should be the department responsible for providing support to the Council of Ministers.

This amendment would be contrary to the decision of the States. It is important to maintain the procedural separation between the Council of Ministers and the States, as already set out and agreed. The Council having its own secretariat is a key aspect of that separation, as is the Greffe's being able to focus its attention upon serving the States Assembly. At the moment the States Greffe provides a service to both executive and non-executive functions, whereas under the new arrangements it will be able to concentrate on its role as a provider of parliamentary services, including the provision of enhanced advisory and administrative services to States members.

One of the main benefits of the reforms to the machinery of government is that they are designed to bring greater clarity to the various functions of government, whether these should be of an executive, scrutiny, parliamentary or judicial nature.

In this connection it is useful to draw a comparison with the Parliamentary Office in the Isle of Man. In a similar manner to the States Greffe, the Manx Parliamentary Office provides a wide range of services to the Island's parliament. The Parliamentary Office does not, however, prepare the minutes of the Council of Ministers, and it would be seen as completely inappropriate for the Office to carry out such a function on behalf of the Executive.

With regard to the proposed granting to States members of access to the record of decisions made by the Council, the Policy and Resources Committee is of the opinion that this will need to be as open as possible. The arrangements for access will need to be in accordance with the eventual outcome of the Privileges and Procedures Committee's current deliberations on freedom of information and the system of scrutiny. There may well be exemptions to access in the future arrangements, as at present.

Amendment 2(iv)

This amendment would completely undermine the basis on which the new structure has been founded: a corporate structure in the civil service where there is authority vested in a single person as Head of Service to lead across the whole scene in order to ensure good management and give effect to the corporate approach embodied in the concept of the Council of Ministers.

The amendment would have this effect by requiring that the Chief Executive should only 'cooperate with heads of departments to ensure the efficient management and implementation of Council of Ministers functions responsibilities and decisions' (sic). This would be a continuation of current arrangement where no-one in the civil service has leadership responsibility formally ascribed to her or him, which lack is at the root of so much of what is unsatisfactory in the organisation at present and of our failure to be able to operate in a "joined up" manner.

The report accompanying the proposed amendment argues that heads of departments being subject to the 'direction' of the Chief Executive is at odds with the legal responsibility of Ministers and would create a conflict of loyalty on the part of heads of departments. This is to a degree disingenuous. It fails to describe the basis of the relationship between the Chief Executive and Heads of Departments as it is defined in the job description for the Chief Executive -

> *'Lead and direct the work of the Corporate Management Board, with responsibility for its procedures, agendas and business, and direct and coordinate the work of senior colleagues, exercising authority over them, and holding them to account where necessary, to ensure good corporate policy-making and the efficient management and execution of government business in line with the Council of Ministers' functions, responsibilities and decisions; and the good management of the public service.'*

The key phrases are "where necessary" and "…. to ensure good corporate policy-making and the efficient management and executive of government business….". This is not about interfering, as it were, in day-to-day departmental business, but about exercising authority, under the aegis of the Council of Ministers (which is the corporate body for all the departmental Ministers) in order to ensure that the collective purpose of government is progressed. This is about ensuring good government and moving away from the current arrangement where corporate policy, and civil service efficiency, is hampered by the autonomy of committees and the staff serving them. It represents a fundamental change of culture and is at the heart of the argument for establishing a ministerial system.

The Chief Executive's role is to exercise corporate leadership, and this is reflected in the job description where it states that one of the postholder's key roles will be '*to ensure that policy objectives set by the Chief Minister and the Council of Ministers are met and that the executive government of the Island is discharged efficiently and effectively…'*

This reflects the position set out in P.122/2001, as adopted by the States, where it is stated that Chief Executive will be head of the Public Service, and will lead the management board (part (a)(viii) of the proposition, and para. 6.21 of the report). A Head of Service must have the authority to exercise managerial leadership across the whole organisation in order to establish a viable structure for the proper pursuit of corporate government objectives based on, indeed derived from, the decision making process of the Council of Ministers, which in turn derives its authority from the States.

Consequent upon previous States decisions, work is in hand to recruit a person to fill the role of Chief Executive, and the job description for this post complies with the States decisions on P.122/2001 and P.70/2002 regarding the corporate responsibilities involved. A decision by the States to accept this amendment would be a very significant departure from what has already been agreed, as it would remove the line responsibility of the Chief Executive for the departmental heads, and would thus perpetuate the current fragmented approach.

The Committee is of the opinion that this amendment would make it very difficult to recruit to this post, as the Chief Executive would not have the authority that he or she will need to carry out his or her responsibilities.

Additionally, the advice received by the Committee is that the recruitment process presently under way would have to be abandoned if this amendment is accepted.

Amendment 2(v)

The same issue regarding the Greffe arises here as in 2(iii) above.

As agreed by the States in P.122/2001, the Corporate Management Board will consist of the heads of the departments of the executive, and the Board will report through the Chief Executive to the Council of Ministers. As with the Council of Ministers, it would be inappropriate for the States Greffe to be charged with preparing minutes on behalf of the Board because this would be carrying out a function on behalf of the executive, and the States has agreed that the States Greffe should lie outside the executive. In future the States Greffe should be able to concentrate on its role as a provider of parliamentary services, and this role would be compromised if it were to be drawn back into working on behalf of the executive.

There is a further objection to the amendment in that it fails to take account of the nature of the work that will be undertaken by the Management Board. The Board will be responsible, through the Chief Executive, to the Council of Ministers, which is where the policy decisions will be taken. The Board will be concerned with the process of getting to those decisions, including analysis of policy options and the pros and cons of different approaches to particular issues, plus relevant civil service management issues.

Amendment 3(i)

The effect of this amendment will be to take the decision for the appointment of the Deputy Chief Minister away from the Chief Minister and to give it to the Council of Ministers as a whole. This would be contrary to the principle that the Chief Minister is responsible for selecting a team of people to work together on the Council of Ministers. In this capacity the Chief Minister needs to take account of the skills and aptitudes of the team members, and to decide on who should take charge in his or her absence.

The Chief Minister will be taking on a major role in the Island's government, and he or she will be held accountable for the performance of that government. In accepting this major responsibility, it is only reasonable that he or she should be able to select a deputy from the members of the Council of Ministers who will be able to act in his or her absence. In practice, one would expect the Chief Minister to consult with his or her colleagues on the Council before making an appointment, but the Chief Minister should be free to make this decision.

Amendment 3(ii)

The effect of this would be to vary the States decision of 28th September 2001 to approve Deputy Troy's amendment to the 'Machinery of Government: Proposed Reforms' (P.122/2001, as amended), an amendment which was supported by the Policy and Resources Committee and which maintains a margin of at least ten per cent between the non-executive and executive members of the States. In accordance with this States decision, the maximum number of members who can serve in the executive will be 23. As noted at the time by Deputy Troy, it is important that there should be a differential in numbers between the executive and the non-executive functions, and the States accepted that a ten per cent differential would be reasonable.

Once again, Senator Syvret is seeking to vary a decision that was taken by the States. If the amendment were accepted, the maximum number in the executive would be 18 (i.e. ten ministers plus eight assistant ministers), whilst there would be at least 35 non-executive members. It may well be that in the new system the executive will consist of about 18-20 members, but it would be unreasonable at this stage to restrict the executive in this way. A maximum of eight assistant ministers would have to be distributed between ten departments, but it is quite possible that some departments will want more than one assistant minister. It is also possible that two of the ten departments would be without assistant ministers at all, or would have to share an assistant minister with another potentially very demanding department.

The amendment is also opposed because the Chief Minister would no longer have a say in the appointment of assistant ministers, even if he or she felt that the person being considered was totally unsuitable for this position. The States have already agreed, in approving P.122/2001, that the appointment of assistant ministers would be subject to approval by the Chief Minister. Under the arrangements agreed by the States, the responsibility for selecting a potential assistant minister would still rest with the minister, who would then discuss the matter with the Chief Minister.

Amendment 4

The Committee has already stated in paragraph 5.9 of its report that the States will have the opportunity to fully scrutinise the reasons for the dismissal of a minister. In the event of such dismissal, there will be a presumption in favour of an open discussion on any matter concerning the dismissal, and the States will remain the master of the situation because it retains the

power to appoint new ministers.

However, there may be exceptional circumstances involving confidential matters that would preclude the discussion of all the matters relating to the dismissal. For example, these may involve issues affecting the Island's international or security interests, or matters of a personal nature.

These are exceptional circumstances, but the effect of accepting the amendment would be to give the Assembly the right to discuss literally any matter concerning a dismissal, regardless of the considerations referred to above.

The amendment is accordingly opposed.

It is noted that this matter will of course again be considered by the States when it considers the Privileges and Procedures Committee's proposals for Standing Orders.

Amendment 5(i)

This amendment relates to the number of assistant ministers and is consequential on amendment 3(ii). It is opposed on the same grounds as amendment 3(ii).

Amendment 5(ii)

Meetings of the Council of Ministers will normally be attended by the Chief Minister and ministers, and in the event of the absence of a minister the Policy and Resources Committee is proposing that the minister concerned will ask another minister to present the item.

The amendment fails to acknowledge that the Chief Minister's duty is to exercise a leadership role in the Council of Ministers. In this respect he or she must have the authority to determine the agenda, set meeting dates, and decide whether or not it would be appropriate for an assistant minister to attend in the absence of a minister. Of course the Chief Minister will have to take account of the views of ministers in determining the arrangements and the agenda for Council meetings, but somebody needs to be in charge, and this needs to be the responsibility of the Chief Minister. As noted in the comments on Amendment 2(ii), this is similar to the current situation, in which Presidents generally decide on the agendas for committee meetings in consultation with their chief officers. Should the issue arise, the President also decides on who should attend meetings.

The starting point, it must be remembered, is a group of individuals making up the Council of Ministers, motivated by the need to work as a team and to allow the Chief Minister to get on with her or his leadership role. This will not be a confrontational body as appears to be assumed by the proposer of this amendment.

The amendment is accordingly opposed.

Amendment 6

In this amendment it is proposed that the following sentence should be deleted from the end of the third bullet point of paragraph 7.2, i.e. *'The programme will be a development of the strategic policies in place at that time'*. Senator Syvret has taken this sentence entirely out of context, and claims that a 'new government will 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 statement is completely without foundation, and the Committee rejects as totally spurious the claim that it is trying to act in an undemocratic or anti-democratic manner.

Any new government will be entirely free to develop its own programme of policy proposals for consideration by the States. In paragraph 7.2 the Policy and Resources Committee has noted that '*it is probable that this programme will be developed in conjunction with other States members and will reflect a consensual approach to solving the issues of the day, and will no doubt draw upon the election manifestos of those elected members'*. It would be wholly unrealistic for the strategic policy programme to be developed in a complete vacuum, and the Council of Ministers will have to have regard to existing strategic policies that are in place at the time. Indeed, until the Council's policies are approved, the only policies that will have the approval of the States are those that are already in existence. In some cases the new Council of Ministers may decide to that it wishes to maintain these policies, but in other cases it may want to highlight areas for change. It will of course be free to oppose all of the policies that are in place at the time, although this seems unlikely. This is what the Policy and Resources Committee means by saying that the programme will be a development of the policies in place at that time, and it accordingly opposes the amendment.

Conclusion

The Policy and Resources Committee considers that these Amendments, if adopted, would seriously undermine the efficacy of the new system of government, both at a political and a departmental level. Having embarked upon a programme of significant change, it is extremely important that the States does not make retrograde decisions at this late stage.

The Amendments should be rejected.