

# STATES OF JERSEY



## MACHINERY OF GOVERNMENT: REVIEW

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Lodged au Greffe on 16th May 2011  
by the Council of Ministers

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to agree that there should be a review of the working of Ministerial Government and the roles and responsibilities of Ministers, public employees and as set out in the Appendix, which would proceed in parallel with the work of the proposed Electoral Commission;
- (b) to agree that the review should be undertaken by a Committee chaired by the Chairman of the Privileges and Procedures Committee and comprising the Chief Minister; Chairman of the Public Accounts Committee; President of the Scrutiny Chairmen's Committee; 2 other Ministers and an Assistant Minister appointed by the Council of Ministers; and 2 States Members (who are not Ministers or Assistant Ministers) appointed by the States;
- (c) to request the Chief Minister, after consultation with the Chairman of the Privileges and Procedures Committee, to present nominations for the 2 States Members as soon as possible.

**COUNCIL OF MINISTERS**

## **REPORT**

### **Introduction**

On 28th September 2001, the States of Jersey took the decision to move from a committee system to a ministerial system of government.

It was intended to create a Ministerial Executive that would be held to account by the remainder of the States by Scrutiny and the Public Accounts Committee. In overall terms the current structure of government that has been enacted by the legislation approved by the States reflects these decisions. However specific elements of the legislation have resulted in some significant differences to the structure that was agreed in 2001.

An additional point is that the decision in 2001 required that the number of States members who are not involved in the Executive would be greater than those who are. The experience of Ministerial government has been that many States members feel frustrated by not being sufficiently involved and perhaps now is the time to review this.

This is the sixth year of the current structure which is nearing the end of the second term of Ministerial government. The States has recently approved the establishment of an Electoral Commission charged with reviewing a number of issues. The Council of Ministers is proposing that in parallel with the work of the Electoral Commission there should be a review of the experience of the working of Ministerial Government in order to identify required improvements and develop proposals to meet them. It is proposed that this review should be undertaken by a Committee consisting of a cross section of States members who would be supported by an independent Chief Officer with sufficient resources to commission appropriate research.

The Council of Ministers is of the view that the review would need to fully engage all States Members and other interested parties. It is proposed that a properly structured process of policy development culminating in green and white papers would be appropriate. If the review commences in 2011 it is expected that the target should be to produce a green paper by September 2012. This would allow sufficient time for any subsequent States decisions to be enacted before the elections in October 2014.

### **The States decisions on 28th September 2001**

In September 2001, the States debated P.122/2001 and agreed far reaching changes to the structure of government. It was agreed that the committee system of government would be replaced by a ministerial system combined with a system of scrutiny.

In relation to the structure of the executive the States decided –

- (a) The States will appoint a Chief Minister of Jersey from among their number, by a process to be agreed, who will nominate a team of Ministers to form the Council of Ministers, with the executive function of government vested in the Chief Minister and the Council of Ministers.
- (b) Not more than 10 departments of government will be established, each headed by a minister, with power to appoint up to 2 other members of the States to assist in his or her executive work, subject to the approval of the Chief

Minister and to the condition set out in (c) below, with such members being able, if appropriate, to be so involved in the work of more than one department.

- (c) The revised structure will be designed to ensure that the number of members of the States who are not involved in the Executive will be greater than those who are by a margin equivalent to at least ten per cent of the total membership of the States, with any resulting fraction of one being regarded as one.
- (d) The Council of Ministers will be supported by a Chief Executive who will be the head of the civil service, which will be unified at senior level; and heads of departments will form a management board under the leadership of the Chief Executive.

It would appear that the intention in 2001 was to create a unified structure of government with the executive function of government vested in the Chief Minister and the Council of Ministers. They would be supported by a Chief Executive who is head of a unified civil service.

### **The current structure of executive government**

Subsequent implementation only partly achieved the intention of P.122/2001. There are three main laws which define the operation and executive structure of the States of Jersey. These are –

- The States of Jersey Law 2005.
- The Public Finances (Jersey) Law 2005.
- The Employment of States of Jersey Employees (Jersey) Law 2005.

They define a complex and not altogether complementary set of arrangements.

The States of Jersey Law 2005 defines the roles of the Chief Minister, Council of Ministers, Ministers and Chief Officers as follows –

1. There shall be a Council of Ministers whose members shall be the Chief Minister and 9 Ministers.
2. The functions of the Council of Ministers shall be –
  - (a) co-ordinating the policies and administration for which they are responsible as Ministers;
  - (b) discussing and agreeing policy which affects 2 or more of them;
  - (c) discussing and agreeing their common policy regarding external relations;
  - (d) prioritising executive and legislative proposals.
3. The functions of the Chief Minister shall include –

- (a) co-ordinating through the Council of Ministers, the discharge of the common functions described in Article 18;
  - (b) conducting external relations in accordance with the common policy agreed by the Council of Ministers.
4. Each Minister shall be a corporation sole having the senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction.

The Public Finances (Jersey) Law 2005 makes Chief Officers Accounting Officers who are individually and personally accountable for the proper financial management of their department, including economy, efficiency and effectiveness. This Law does not refer to the Chief Executive nor does it give either the Chief Executive or the Treasurer overall responsibility for management of the States finances.

The Employment of States of Jersey Employees (Jersey) Law 2005 makes the States a corporate body in employment terms, but it is the States Employment Board which is the corporate body, not the Council of Ministers.

The role of Chief Executive Officer is defined as follows –

1. There shall be a Chief Executive Officer.
2. The Chief Executive Officer shall be the person employed under this Law as the Chief Executive to the Council of Ministers and Head of the Public Service.
3. The Chief Executive Officer shall be responsible for the administration and general management of the public service.

Thus in summary the interaction of the 3 Laws has created a lack of clarity in the current structure of Ministerial Government.

In employment terms the States is a corporate body, but it is the States Employment Board which holds this function, not the Council of Ministers. In terms of policy and finance it is individual Ministers or Chief Officers who hold primacy. The Council of Ministers and the Chief Minister have a co-ordinating function with no direct responsibility or accountability for overall performance. At a political and official level there is thus no one person who is accountable for overall performance or financial management.

### **Public Accounts Committee Report**

The Public Accounts Committee has now completed their review of the States Accounts for 2009, and published an update of their original report on 16th March 2011. Their report identifies that the States decisions on the implementation of Clothier resulted in basic fundamental controls and checks and balances being either removed or altered at implementation. They state that “under the current system there is no possibility of a strong Executive; the Chief Minister’s powers are limited, Ministers can operate with few controls, the Chief Executive has no power over Chief Officers to ensure collective implementation, and Departments are geared to operate in

their own best interests rather than take collective responsibility for the good of the Island”.

Whilst the PAC report is a correct commentary on the actual current structure, the Council of Ministers does work as a team and has endeavoured to ensure that there is a joined up approach to the delivery of government services. The Chief Executive and Corporate Management Board has mirrored this approach. Therefore there has been a determined attempt to remedy the deficiencies of the current structures and act as a unified executive. However, such an approach is dependent upon the good will of Ministers and Chief Officers which is not a sensible or sustainable basis for ensuring good government into the future.

The PAC believes that the deficiencies highlighted in its report should be addressed as a matter of urgency.

### **Proposed Review**

It is clear that the current structure of roles and responsibilities of the Chief Minister, Ministers and Chief Officers are significantly different to those originally envisaged in 2001.

The Council of Ministers does work as a team and has endeavoured to ensure that there is a joined up approach to the delivery of government services. However the current structure operates by goodwill and a shared endeavour to try and maximise efficiency, effectiveness and economy. Unfortunately the natural tendency of any structurally fragmented system is towards a lack of consistency, potential duplication of resources and less than optimum efficiency. At a time when the States has committed to achieving £65 million savings with the likely requirement to increase this in future it would seem imperative to maximise efficiency.

Whilst it is easy to identify the deficiencies in the way the States implemented Clothier the potential remedies could require a significant realignment of roles and responsibilities. Any changes must enhance performance and accountability whilst respecting the primacy of the States Assembly. It is for this reason that it is proposed that the review should consider how Scrutiny holds the Executive to account.

The solutions to the issues that have been identified are not immediately obvious and would need a thorough debate and discussion with States Members and the public. Whilst the PAC has clearly identified some of the shortcomings the first step would be to ensure wider acceptance of the need for change. During the debate on the Electoral Commission (P.15/2011) these sorts of questions were aired and it would seem sensible to undertake a thorough review in parallel with the work of an Electoral Commission, perhaps sharing some of the resources.

Draft terms of reference for such a review are attached at the Appendix. Whilst it would be contained to the Ministerial and Civil Service structures, it would be very far reaching. If such a review is to be effective and command wide ranging support it not only needs to be properly resourced but to be allowed sufficient time to engage a very wide range of interests and build a lasting consensus in support of any changes. It is proposed that the review should be owned and led by a cross section of States Members who would be supported by a Senior Officer of Chief Officer status.

## **Resource Implications**

It is proposed that the review would be undertaken by a Committee of the States and supported by its own Chief Officer. The Committee should be small enough to be able to work effectively but large enough to ensure balanced representation from States members. It is therefore proposed that it would consist of nine members of chaired by the Chairman of the Privileges and Procedures Committee. The remaining 8 members could then comprise 4 members of the executive and 4 other States members as follows:

### Executive Members

Chief Minister  
Two other Ministers  
One Assistant Minister

### Non Executive Members

President of the Scrutiny Chairmen's Committee  
Chairman of the Public Accounts Committee  
Two other States Members

The Committee would require its own Chief Officer and a budget to commission research. The senior officer post and funding to support the review would be met from within existing resources.

## APPENDIX

### **A REVIEW OF THE EXPERIENCE OF THE WORKING OF MINISTERIAL GOVERNMENT IN ORDER TO IDENTIFY REQUIRED IMPROVEMENTS AND DEVELOP PROPOSALS**

- A. The Review should consider the extent to which the current allocation of roles and responsibilities ensures that –
- (a) Plans and policies are developed in the most effective manner to meet the needs of the Island, and ensure the States delivers unified solutions across all Departments.
  - (b) All States Members have the opportunity to be engaged in the process of government.
  - (c) Value for money is achieved and resources are used efficiently and economically to deliver the agreed plans and policies.
  - (d) Financial management and all forms of governance are effective in maintaining standards of performance.
  - (e) All parts of the States and related contracts and organisations are subject to appropriate accountability to States Members and the Public. This will necessitate considering the effectiveness of Scrutiny in this role.
- B. The review will therefore consider –
- 1. The roles of the Council of Ministers, the Chief Minister, Ministers and the States Employment Board.
  - 2. The relationship between the Ministerial structures and the Civil Service structures in relation to policy development, implementation and operational management.
  - 3. The roles and responsibilities of the Chief Executive, Treasurer, Chief Officers and the Corporate Management Board.
  - 4. The Accounting Officer structure and their respective roles and responsibilities, including the non-executive departments.
  - 5. The roles and responsibilities of Assistant Ministers.
  - 6. How each of the above should be held to account for performance in the most effective and transparent manner.
  - 7. How Scrutiny and the Public Accounts Committee could most effectively hold the Executive to account.



8. Whether the current Ministerial portfolios and departments remain appropriate or whether there is an alternative structure which will deliver greater effectiveness and value for money.
- C. It is proposed that the review would be undertaken by a broad based Committee composed of a cross section of States Members supported by an expert panel.

The Committee would be advised by a Chief Officer responsible for managing the review who could command support and trust across the States and who would have a good understanding of the working of the States.

- D. It is expected that the Committee would commission research into current structures and performance in Jersey and elsewhere. They would also take evidence in open hearings from the public, States Members and any other interested parties.
- E. The Committee would then publish a green paper setting out their findings and identifying options. Following a period of consultation and consideration a White Paper would be published and presented to the States for debate.

#### **Timescale and Resources**

At this stage it is not possible to be definitive, but it is likely that allowing for elections a green paper could be published by the third quarter of 2012 with a States debate early in 2013. This would allow time for subsequent law changes with a view to implementing changes in 2014 or earlier.

In terms of resources it would be necessary to appoint the Chief Officer with a support structure and a budget to commission research. An initial research budget of £100k should be sufficient.