

STATES OF JERSEY



MACHINERY OF GOVERNMENT: ESTABLISHMENT OF MINISTERIAL BOARDS AND REVISED SYSTEM OF SCRUTINY

**Lodged au Greffe on 26th August 2010
by Senator A. Breckon**

STATES GREFFE

PROPOSITION

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

- (a) to agree that the current system of government in Jersey should be amended so that a more inclusive system is established with the aim of giving all States members greater opportunities to influence executive decision-making, and that to achieve this aim –
 - (i) the current restriction on the total number of Assistant Ministers should be removed and all Ministers should have a Ministerial Board comprised of a minimum of 3 and a maximum of 5 members of the States;
 - (ii) the members of the Ministerial Boards should be elected and removed from office by the States;
 - (iii) Ministers should continue to be appointed by the States as at present, but the Chief Minister should be given the power to dismiss a Minister with the prior approval of a majority of the other Ministers;
 - (iv) Ministers should be required to consult with their Ministerial Boards at a properly constituted Board meeting before taking significant Ministerial Decisions with the Boards operating in accordance with the procedures set out in Annex 1 to Appendix 1;
 - (v) the current system of 5 Scrutiny Panels with defined remits should be replaced by a more flexible overarching system of Scrutiny as set out in Annex 3 to Appendix 1 where topic Review Panels will be established by a Policy Review Committee to review individual matters of public interest, with all members other than Ministers and members of Ministerial Boards with responsibility for matters that are subject to the review able to participate in such panels;
- (b) to charge the Privileges and Procedures Committee, in consultation with the Council of Ministers, to take the necessary steps to bring forward the necessary legislation to give effect to the changes with a view to introducing the revised system in 2011 after the next ordinary elections.

SENATOR A. BRECKON

REPORT

For some time I have been concerned that the system of government put in place in December 2005 is not working as well as it should and, as a result, I lodged P.70/2010 ('Machinery of Government: amended structure') on 3rd June 2010. The proposition was intended to set out one way forward to create a much more inclusive form of government in the Island, as I believe that many talents are being wasted through the current rigid division between Scrutiny and the Executive. My proposition appeared to be welcomed by many members as a positive way forward and I received many supportive comments. The report that accompanied P.70/2010 is set out at Appendix 2 for information.

I had always intended, as set out in paragraph (b) of P.70/2010, that PPC and the Council of Ministers, in consultation with other members, would need to deal with the detailed implementation of the proposals I was putting forward. I was therefore pleased when I was invited to join a small working party to examine P.70/2010, involving the Chairman and Vice-Chairman of PPC, the Chief Minister and Deputy T.A. Vallois of St. Saviour, who has recently been undertaking a review of the Code of Practice for Scrutiny Panels.

The working party has met on several occasions and examined in depth both P.70/2010 and the amendments put forward by Deputy P.V.F. Le Claire of St. Helier. The working party has perhaps been an excellent example of how members from different parts of the Assembly can work together in a positive and constructive way, and throughout our work there has been almost no disagreement on the best way forward. I am extremely grateful to the members of the working party for all the work they have undertaken in developing these proposals.

The working party has prepared a report setting out our views on P.70/2010 and this revised proposition reflects the conclusions of the working party. I believe that the working party report in Appendix 1 speaks for itself and I urge members to support this revised proposition. I believe that the revised structure being put forward will give all members the opportunity to have a meaningful and satisfying role as part of the Island's government and will overcome many of the problems identified in the recent States Business Organisation Sub-Group Report (R.59/2010) that I quoted in my P.70/2010 report.

Financial and manpower implications

The working party agreed, as set out in its report, that the revised structure being proposed must be managed within existing resources and must not lead to any overall increase in resource requirements for the States. The working party agreed that this could mean the redeployment of some 5 posts and associated financial resources from the current Scrutiny team to provide support for the proposed Ministerial Boards. As set out in P.70/2010, I personally believe that a more inclusive structure of government should, over time, actually lead to significant economies.

APPENDIX 1

MACHINERY OF GOVERNMENT: AMENDED STRUCTURE (P.70/2010)

WORKING PARTY REPORT

Introduction

Following the lodging of P.70/2010 by Senator Breckon it was agreed that a working party should be established to consider the proposition in greater detail with a view to ensuring that a debate on amending the machinery of government in Jersey could take place no later than October 2010.

The members of the working party were –

Connétable J. Gallichan of St. Mary	Chairman of the Privileges and Procedures Committee
Deputy C.H. Egré of St. Peter	Vice-Chairman of PPC and Chairman of the States Business Organisation Sub-Group
Senator T.A. Le Sueur	Chief Minister
Senator A. Breckon	Proposer of P.70/2010
Deputy T.A. Vallois of St. Saviour	Chairman of the Scrutiny Code of Practice Review Working Party

The working party took as its starting point the proposition P.70/2010 lodged by Senator Breckon and assessed whether any amendments were needed to ensure that an improved and more effective system of government could be introduced in Jersey. The working party commented on the various paragraphs of the proposition as follows.

Paragraph (a) of P.70/2010

- (a) to agree that the current system of government in Jersey should be amended so that a more inclusive system is established with the aim of giving all States members greater opportunities to participate in executive decision-making, and that to achieve this aim:**

The working party agreed with the underlying principle in this paragraph, namely that a more inclusive system of government is desirable in Jersey, and the members of the working party felt that there was general consensus among States members that the present system was not working well. There was recognition that many members of the Assembly currently felt “excluded” and many talents were being wasted as a result of this exclusion which could, in turn, lead to negative confrontation taking place. There were, however, examples of members working well together from varying political backgrounds, such as the recent working group that had been established by the Minister for Home Affairs to consider the establishment of a Police Authority and the working party agreed that this was an example of a positive way forward to improve the current system.

The working party recognised that many scrutiny members felt particularly excluded and there was a perception that Scrutiny was not working as effectively as it should in

many areas. Several Scrutiny members had stated that they were disillusioned with the system and the working party noted that only one Scrutiny Panel currently had a full complement of 5 members, with one Panel having 4 members and the other 3 Panels having only 3 members. As 2 members serve on 2 Panels each, this means that only 17 States members are currently sufficiently interested in the work of Scrutiny to be full-time members of Scrutiny Panels to scrutinise the work of the 22 Ministers and Assistant Ministers.

The working party was also concerned that since the 2008 elections, an ever-increasing number of States members have had no experience of working in an executive role and, as a result, there was a growing disconnect between some members and the workings of ministerial departments. There was, as a result, a lack of contact between senior officers and many States members which was leading to some mistrust and which, it was felt, could be overcome by a more inclusive system of government. It was also recognised that if there was greater political input from States members into decision-making, there would be less risk of senior officers having to inadvertently take on the role of political advisers which could jeopardise the political independence of the civil service. It was recognised that, notwithstanding its many shortcomings, the former committee system had engendered a knowledge of the workings of departments as well as allowing a greater engagement for all States members with departments and their staff and with the public. Committee members had been able to attend departmental and public events such as prize-givings, retirements, concerts, etc. as political representatives of the relevant committee and this gave a political 'presence' that was appreciated by staff, users of services and the general public, as well as giving members a better knowledge and understanding of the day-to-day issues facing the department.

In examining the wording of the introductory paragraph (a) in detail, the working party nevertheless recognised that it was necessary to ensure that the terminology was clear. The working party agreed that it was important to stress that P.70/2010 did not represent a return to a system of committee government, as Ministers would still be responsible for taking decisions as corporations sole. There could therefore be confusion with the reference in paragraph (a) to States members being able to "participate" in executive decision-making and it was felt that it would be more appropriate to suggest that all States members would have greater opportunities to "influence" decision-making. This would ensure that there was no confusion over the legal accountability of Ministers to take decisions, although the existing ability for Ministers to delegate functions would, of course, remain.

Paragraph (a)(i) of P.70/2010

(a)(i) the current restriction on the total number of Assistant Ministers should be removed and all Ministers should have a minimum of 3 and a maximum of 5 Assistant Ministers.

The working party recognised that the current requirement for those in the executive to be in the minority (often known as the "Troy" rule) would effectively be abolished by this proposal. It should nevertheless be noted, as mentioned above, that even under the current system there are, in practice, less members involved with Scrutiny than the total number of Ministers and Assistant Ministers.

The working party discussed the most appropriate manner in which a number of States members could be involved with the work of each ministerial department. The

proposal as set out in this paragraph that the members should automatically be known as Assistant Ministers was possibly inappropriate.

The working party agreed that it might be more appropriate to create a Ministerial Board structure so that each Minister would work with a Ministerial Board of between 3 and 5 members. The role of the Boards would be to provide a political sounding board for the Minister who would be expected to discuss significant issues relating to the Ministerial department with the members of the Board. Although the Minister and his or her Board would retain flexibility to discuss any issue relating to the work of the department, there would nevertheless be a formal requirement for certain matters to be referred to the Board as a matter of course. These would include all draft legislation in the name of the Minister, major new policy matters and the annual estimates of expenditure (including the department's submission to the Annual Business Plan) to ensure that Board members were engaged in the most significant matters affecting the department.

In addition to their role in assisting and advising the Minister on the development of policy, the Boards would also fulfil an important role to question the Minister on his or her actions and proposals and hold him or her to account as a form of internal challenge. In this way some of the 'scrutiny' of the department that is undertaken by the relevant Scrutiny Panel under the current system would be undertaken by the Board. The working party felt that this could be particularly important in relation to draft legislation where the Board would be required to review and scrutinise the draft in some depth. The working party was conscious that scrutiny of legislation under the current system of government is inadequate and each Board will be well placed to consider in depth draft legislation within its remit. The working party believes that, in practice, this would be a more effective way to ensure that legislation is reviewed rather than establishing a separate Legislation Committee to work in isolation as suggested by Deputy P.V.F. Le Claire in his amendments to P.70/2010. The working party also considered that, in any report accompanying draft legislation lodged for debate, the Minister should be required to include a statement summarising the views of the Board on the draft to indicate whether or not the draft was being lodged with the Board's endorsement.

The working party considered that it was important to stress that the new system was not intended to recreate a formal 'committee' structure as existed prior to the move to ministerial government, and Boards would no doubt operate in a more informal manner than committees prior to 2005, albeit that relevant papers would be provided to members in advance of meetings and a proper record of action points and conclusions would be made after each meeting.

The working party agreed that it was important that the current ability of Ministers to delegate functions should continue and, in these circumstances, the delegate would, in legal terms, take decisions in the name of the Minister. This would ensure greater political engagement and involvement in the work of the department than is currently possible under the present Ministerial system.

A summary of the way in which the working party considered that Ministerial Boards would be appointed and should operate is shown in Annex 1.

The working party agreed that the proposed new system as summarised in Annex 1 would only succeed if there was real and meaningful engagement between Ministers

and their Boards. Members of Board would need to be satisfied that their input into the work of the department concerned was valued and had a real impact on the decisions being made by the Minister. Good communication would be needed to ensure that Board members were kept aware of the on-going work of the department and also of the Minister's work as part of the Council of Ministers. If a Minister did not engage meaningfully with his or her Board the members of that Board would become justifiably frustrated and the whole new system would be undermined.

Although Boards would be a useful forum for Ministers to discuss and develop proposals jointly, it was also recognised by the working party that, as summarised above, they would also have an important role to challenge Ministers and hold them to account for their actions and proposals. It would be likely that members of differing political persuasions would be selected to work with Ministers on their Boards and this was considered to be a good way to ensure challenging and meaningful discussion during Board meetings and allow different political views to be considered.

Paragraph (a)(ii) of P.70/2010

(a)(ii) the current method of appointment of Assistant Ministers should be amended so that they are elected and can be removed from office by the States.

In addition to the particular matter referred to in this paragraph, the working party considered the whole issue of the appointment of members to positions of official responsibility as part of its work.

The working party recognised that concerns have occasionally been expressed since 2005 about the method of appointment and dismissal of Ministers. The current system whereby the States appoint each Minister individually, whilst giving all States members the ability to influence the make-up of the Council of Ministers, means that the Chief Minister cannot be guaranteed to have the team of Ministers that he or she wants and this can impact on the ability of other States members to then hold the Chief Minister accountable for the actions of the Council of Ministers. If a Chief Minister is required to work with a Minister who he or she did not initially nominate but who was appointed by the States, it is not realistic to expect the Chief Minister to then be accountable for that Minister's actions. Although the working party was not aware that any actual difficulties had occurred in relation to this since 2005, there was a theoretical risk that it could happen in the future.

In addition to concerns about the appointment process for Ministers, concerns have also been expressed in relation to the procedures for the dismissal of Ministers, as the current requirement for the Chief Minister to bring a proposition to the States is seen by some as cumbersome and detrimental to the ability of the Chief Minister to lead an effective team of Ministers.

The working party considered whether the present method of appointment of Ministers should be amended in one of the 3 following ways –

- (i) introduce the system originally proposed by the then Policy and Resources Committee in the lead-up to ministerial government whereby the Chief Minister Designate would nominate his or her team of 9 Ministers and the States would vote to accept or reject the proposed team 'en bloc'. In the case of rejection of the team, the Chief Minister would be required to come back to

the States with a revised team, but if the proposed team was rejected on 3 occasions the Chief Minister Designate would step down;

- (ii) introduce a system whereby the Chief Minister Designate would nominate each Minister individually, with the States then having the ability to vote to accept or reject the each nomination in turn but without the ability for members to propose alternatives.
- (iii) give the Chief Minister the power to appoint Ministers without any reference to the States to ensure that he or she could be held fully accountable for the actions of the Ministers he or she selected.

Relevant sections of a paper setting out more detail of the options considered by the working party are reproduced for information at Annex 2.

Although the working party recognised that each of the alternative methods of appointment set out above had certain advantages, it concluded that the current method had worked satisfactorily to date and was the method that gave all States members the greatest possible input into the appointments process. The working party therefore agreed that this outweighed the disadvantage of a lack of accountability for the Chief Minister and agreed that no change to the appointment process for Ministers should be proposed at the present time.

The working party did, however, conclude that a change should be proposed in relation to the dismissal of Ministers. The working party concluded that the current system whereby the Chief Minister was required to bring a proposition to the States was unsatisfactory and could undermine the Chief Minister's ability to lead an effective Council of Ministers. The working party therefore agreed to recommend that the Chief Minister should have the ability to dismiss a Minister, but only after obtaining the agreement of a majority of the other members of the Council of Ministers. In taking this decision, the working party was conscious that, as it was not proposing any change to the current method of appointment of Ministers, the States as a whole would be required to appoint the replacement Minister in these circumstances and there would be nothing to prevent a dismissed Minister from being nominated to fill the vacancy caused by his or her dismissal. This would therefore allow the States to express their collective view on the dismissal. The political consequence of a dismissed Minister being re-appointed as a Minister would, of course, almost certainly be that the Chief Minister would have to tender his or her resignation and this, in itself, would be a sufficient safeguard to ensure that the Chief Minister did not exercise the power of dismissal in an unreasonable way.

The paper in Annex 1 sets out the proposed method of appointment of Ministerial Boards which, in summary, would mirror the process used at present for Committees and Panels and which follows the proposal made in Senator Breckon's proposition that appointments should be made by the States, albeit that the members elected will be known as Board members and not Assistant Ministers. The working party further agreed that Board members should only be able to be removed from a Board by the States as happens at present with committees and Panels.

The working party considered the appropriate order in which appointments should be made after each election under the proposed new system. The working party recognised in particular that the role of Chairman of the proposed new Policy Review

Committee described in detail below was a very significant one and agreed that this appointment should be made after the appointment of the Chief Minister and before the appointment of the Ministers and other officeholders. The proposed order of appointment would therefore be as follows –

- (i) Chief Minister
- (ii) Chairman of Policy Review Committee
- (iii) Ministers
- (iv) Chairman of PPC
- (v) Chairman of PAC
- (vi) Members of Policy Review Committee
- (vii) Members of Boards
- (viii) Members of PPC
- (ix) Members of PAC.

Paragraph (a)(iii) of P.70/2010

(a)(iii) Ministers should be required to consult with their Assistant Ministers at a properly constituted departmental meeting before taking significant ministerial decisions.

The proposal in this paragraph was supported by the working party through the proposed system of Ministerial Boards set out above and described in more detail in Annex 1.

Paragraph (a)(iv) of P.70/2010

(a)(iv) the current system of 5 Scrutiny Panels with defined remits should be replaced by a more flexible overarching system of Scrutiny where ad hoc Panels could be established to review individual matters of public interest, with all members other than Ministers able to participate in such Panels and with the Panels also able to co-opt persons who are not members of the States to participate in reviews.

The working party recognised that abolishing the current structure of 5 Scrutiny Panels would mean that the current demarcation by department would be abolished and a much more flexible system of Scrutiny could be established (the working party believed that it would be better to refer to ‘topic-based reviews’ rather than ‘ad hoc’ Scrutiny which could carry an implication of a disorganised or unstructured function).

The working party noted that after nearly 5 years of operation of the full Scrutiny system, no definitive ‘definition’ of Scrutiny has ever been established, although the working party noted and concurred with the following definition recently given by one Scrutiny Panel member –

“Scrutiny is an overarching, impartial look at policy and legislation through the gathering and consideration of evidence and public views. Scrutiny must be totally free of political and personal agendas whether or not those agendas support or otherwise what is found out. Scrutiny prepares impartial reports which reflect that evidence and recommendations for Ministerial action based on the evidence, which are presented to the States.”

The working party agreed that this proposed new system could have advantages as the current Scrutiny structure prevented Panels from reviewing topics outside their own remit, and a more flexible system would allow reviews to be focussed on one cross-cutting topic such as elderly care or youth crime which might involve the work of several Ministerial departments. The new system would also have the advantage that topic-based Review Panels would be focussed entirely on the review itself and would not have to deal with the administrative matters that can often fill Panel agendas under the present system.

The working party accepted that under the proposed new topic-based Scrutiny system, a robust formal structure would be needed as it would be impossible to manage a system without proper codes of practice. The working party agreed that a new Policy Review Committee should be established to oversee and manage the new system and this would be a very important Committee to ensure the proper operation of Scrutiny.

The working party agreed that it was likely to be difficult to assess in advance how much time members would be willing to dedicate to Scrutiny work, and this might only become apparent once the new system was operational and the workload of members in serving on Boards and in exercising delegated functions was known. If members were actively engaged in meaningful and worthwhile work as members of Boards, they might have less time to dedicate to Scrutiny reviews, although the working party agreed that to ensure proper ministerial accountability it would be necessary for an effective Scrutiny function to remain as part of the new system.

The working party recognised that an excellent team of skilled Scrutiny staff had been established since the advent of ministerial government, and it was important to build on that expertise and not undermine the work that had been undertaken to create the team. The working party was nevertheless aware of the need to ensure that the new system did not involve any increase in overall resource requirements for the States at a time when all departments were being asked to make significant savings. The working party therefore agreed that the combined resource requirements of the new Board structure and the revised Scrutiny system had to be accommodated within existing resources. The working party believed that, in practice, the establishment of Ministerial Boards would undoubtedly impact on the amount of time that members would be able to dedicate to the Scrutiny function and this, combined with the fact that topic-based Review Panels will not have to deal with other administrative matters as mentioned above, means that a slightly smaller team of Scrutiny staff will be needed, allowing resources to be transferred to support the new Ministerial Board structure.

The working party agreed that the Public Accounts Committee (PAC) should continue under the revised system because of the particular nature of its work, although the working party also believed that the remit of PAC should be reviewed in due course as there was some clearly overlap at present between the work undertaken by Scrutiny Panels and the work undertaken by PAC, and it would be necessary to assess the relationship between PAC and the new topic-based Scrutiny function under the new system.

A summary of the way in which the working party believed that the new Scrutiny system could operate is set out in Annex 3.

Amendments lodged by Deputy P.V.F. Le Claire of St. Helier (P.70/2010 Amd)

The working party considered the amendments of Deputy Le Claire to P.70/2010. These can be summarised as follows –

- (i) The Chief Minister should have 2 Deputy Chief Ministers appointed by the States.
- (ii) Assistant Ministers should not be able to participate in Scrutiny reviews on topics related to their own ministerial department.
- (iii) There should be a new Legislation Committee to scrutinise all draft legislation.

The working party commented as follows on the amendments.

- (i) The working party did not consider that it was appropriate for 2 Deputy Chief Ministers to be appointed as suggested in the amendment. If a Deputy Chief Minister is to be responsible for the Chief Minister's functions in his or her absence, it is important that the person appointed is of sufficient seniority, and the working party considered that it is more appropriate for the role to be undertaken by another Minister as at present. It was not clear to the working party what the role of the Deputy Chief Ministers as proposed by Deputy Le Claire could be when the Chief Minister was not absent. In addition, the working party noted that the Chief Minister would have a Ministerial Board in common with other Ministers.
- (ii) The working party agreed with this proposal (albeit that Assistant Ministers will be known as Board members) and the revised proposition reflects the change proposed.
- (iii) The working party agreed wholeheartedly with the principle underlying this part of Deputy Le Claire's amendment, namely that legislation requires much greater scrutiny than is possible under the current system. The working party did not, however, believe that the best way to achieve this was to set up a dedicated Legislation Committee. In practice it might be difficult to find enough members who would be sufficiently interested in this task to undertake the work, and there would clearly be associated additional resource requirements to service the Committee (even though Deputy Le Claire states in his report that he does not believe there would be any additional resource requirements). The working party has recommended that all legislation should be reviewed as a matter of course by the relevant Ministerial Board, which will hopefully have the necessary knowledge to undertake this review in a meaningful way and spread the workload between a large number of bodies. There are some 70 new pieces of legislation lodged for debate every year, and it would be almost impossible for one Committee to review them all thoroughly.

Conclusion

The working party was conscious that there is currently significant dissatisfaction among many members in relation to the operation of the current system established in December 2005. The working party believes that the people of Jersey would be better served by a revised system that is more inclusive and believes that the principles set out by Senator Breckon in P.70/2010, as refined by the proposals in this report, provide a sensible and workable way forward. The working party agreed that the proposition should be revised and that the amended version should then be lodged by Senator Breckon as a replacement for P.70/2010.

The most logical time to introduce a revised system would be immediately after elections when the new States are reconstituted and new members join the Assembly. As a result the working party is conscious that, if a new system is to be introduced in November 2011, there is a very tight timescale for proposals to be approved in principle by the States and then converted into the necessary amendments to legislation. The working party nevertheless believes that every effort should be made to achieve that objective so that the necessary changes can be made and an improved system introduced in 2011 after the elections.

Ministerial Board Structure & Arrangements

Constitution

Under proposals for the revised structure of government, each Minister would be supported by, and accountable to, a Board. The Board should be comprised of a minimum of 3 and a maximum of 5 States members.

Members should be appointed to Boards by the States Assembly. The appointment process would be similar to that used currently for committees and Panels, namely that the Minister would, at a special States meeting several days after the ministerial appointments, propose the number of members that he or she wished to serve on the Board and nominate his or her preferred candidates. Other nominations could be made from the floor and, if that happened, a ballot would be held to determine the membership. Ministers would need to agree their proposed nominees with the Chief Minister and in practice it would almost certainly be necessary for Ministers to meet after their appointment to discuss possible membership of Boards, with all States members having been asked after the elections to express their preferences.

Members would be eligible to serve on no more than 2 Ministerial Boards at any one time and Ministers would not be able to serve on other Ministerial Boards or on scrutiny Review Panels.

Although the Chief Minister would still appoint another Minister to the important role of Deputy Chief Minister, each other Minister would appoint one member of his or her Board to act as Deputy Minister for the department concerned. The Deputy Minister would provide support to the Minister for all matters assigned to him or her on grounds of his or her office, including full delegation of Ministerial functions in the Minister's absence.

The Role of Ministerial Boards

Ministerial Boards should provide advice and make recommendations to the Minister on significant matters related to the department. The Minister would be expected to consult the Board before taking any major or contentious decisions. All draft legislation within the Minister's remit would be referred to the Board for review as a matter of course. The Boards should, in general, have the following functions –

- (a) review the policies and priorities of the department and ensure they are within the strategic direction of the States;
- (b) provide advice to the Minister on departmental policies and initiatives;
- (c) make recommendations on policy issues identified as being priorities and which merit the attention of the Minister;
- (d) oversee the delivery of planned results by monitoring performance.

The Boards should fulfil an important role in holding the Minister to account for policy development, implementation and departmental use of resources, as well as providing a forum for discussion. Members should therefore make a full contribution

to the work of the Board and contribute to its independent advice and judgement. Board members would, of course, develop a close working relationship with departmental officers and would also, undoubtedly, identify policy matters relating to the department that they wished to investigate themselves or bring to the attention of the whole Board for consideration. Boards would, however, make the final decision as to what might be investigated and prioritise this work within the resources available.

The Role of Ministers in relation to their Ministerial Board

Ministers should recognise the role of Ministerial Boards to provide advice and make recommendations on departmental affairs. In fulfilling his or her duty to the Board, the Minister should meet with the Board to –

- (a) consult them on major or contentious issues;
- (b) keep the Board advised of issues that concern him or her in the exercise of ministerial responsibilities;
- (c) ensure that significant matters such as draft legislation, new policies and departmental expenditure plans are brought to the attention of the Board as a matter of course;
- (d) seek policy direction and advice from the Board in specific instances;
- (e) monitor the activities of the Board to ensure that it is fulfilling its responsibilities.

The Boards should provide Ministers with a valuable opportunity to discuss and develop policy proposals jointly. Ministers will be expected to give appropriate consideration to issues and concerns brought to their attention by the Boards. Ministers will, however, remain legally and politically responsible for their decisions.

Ministers will therefore be responsible for determining policy and monitoring its implementation. The Ministerial Decision template will record the advice given to Ministers by their Boards, and draft legislation lodged for debate by the States would also include a statement in the accompanying report giving the views of the Board on the draft.

Administrative arrangements and support

Ministerial Boards should meet at regular intervals and action points of the meetings should record the conclusions reached, including the reasons for those conclusions and, where appropriate, views of individual Board Members. The frequency will be no less than monthly and will in most instances be more frequent.

It should also be ensured that, when taking up their appointment to Boards, members are fully briefed on the terms of their appointment and their duties, rights and responsibilities. Members should be encouraged to attend an induction course on the duties of Board members and on the work of the department concerned. This generic training would mirror the type of training given to all Scrutiny members at present.

The Boards will be supported by a specific officer working as part of a team of such officers managed centrally from the Chief Minister's Department. Officers will work

closely with relevant departmental officers, as there will clearly be significant overlap between the papers prepared for consideration by the Minister and papers considered by the Board and a similar overlap between conclusions of the Board and subsequent Ministerial Decisions made by the Minister. Officers supporting the Boards will collate relevant papers for discussion, record actions points and conclusions arising from each meeting, and support specific lines of interest in terms of administrative and research functions. Each officer would be able to service more than one Board. Each individual Department, when required, will be expected to provide all other support, including professional, technical or other assistance to the Board on behalf of the Minister.

Delegation of functions

Ministers will maintain responsibility for their statutory functions, but it is appropriate that Ministers should also continue to delegate functions where the delegation will enhance the effectiveness and efficiency of the department. This should also ensure that Board members have greater political engagement and involvement in the work of the department ensuring that their involvement is seen to be worthwhile and satisfying.

Each Minister (with the exception of the Chief Minister who will continue to appoint another Minister as Deputy Chief Minister) will appoint a Deputy Minister from the Board who can be delegated responsibility to fulfil certain administrative and legislative functions which support the Minister in the exercise of his or her powers. The Deputy Minister would be authorised to exercise any functions in the Minister's absence.

The Minister would have full discretion to choose which functions are delegated to which Board Member and the scope of those delegations. The Minister would be encouraged to delegate specific responsibilities to their Deputy Minister and individual Board members, which may, for instance, mean that the Minister for Economic Development could delegate to Board members responsibility for agriculture or the Harbours and Airport. The Minister for Education, Sport and Culture may, for instance, ask different Board members to serve on the Board of Governors of one or more schools, which would give a closer relationship between States members and individual schools.

Nonetheless, the delegation of functions would not, as at present, diminish the legal responsibility of a Minister for the way in which the delegation is exercised. It would therefore be essential that the Minister had full confidence in the member to whom he or she was delegating functions. The delegation of functions would consequently not have to be a decision made immediately on appointment, but instead the Minister could, if necessary, take time before delegating functions to members, so that he or she had time to consider and assess the knowledge, experience and abilities of the members concerned.

The Minister would continue as now to delegate operational functions to the Chief Officer and other key senior staff.

Conclusion

The proposals for Ministerial Boards will only succeed if there is meaningful engagement between Ministers and their Boards. Whilst the relationship between a Minister and his or her Board members will depend on the personalities of those members involved, it is important that the relationship be positive and effective. The Chief Minister and the Council of Ministers will be expected to maintain a general oversight of the operation of Boards to ensure that each Minister is engaging in a meaningful way with his or her Board.

The proposed Board structure should provide a more inclusive system of government, which will involve Ministers and members working together and openly sharing information in their respective roles.

**Ministerial Appointment Process
(Options paper considered by the working party)**

Introduction:

The Machinery of Government Working Party is asked to consider the following options for the appointment and dismissal processes for Ministers and Assistant Ministers, which would be incorporated into proposals for the revised system of Government.

Appointment of Ministers:

The Draft States of Jersey Law 200- originally provided that the States Assembly must accept or reject the Chief Minister's nominations for 9 Ministers 'en bloc' and that it would not be possible for alternative names to be proposed by other members. Subsequent amendments changed this proposal to provide that the Chief Minister designate shall nominate candidates individually and, furthermore, any elected member can be nominated for appointment as a Minister.

In order to assist the Working Party, a number of options to reform the method of appointment for Ministers are proposed –

1. Ministers should be appointed 'en bloc' replicating the original proposed method of appointment. The Chief Minister designate would propose 9 Ministers and the States Assembly would take a single vote to appoint them. The States could accept or reject the nominations but would not be able to amend or accept them in part only. Should the proposed ministerial choices be rejected, the Chief Minister would have two further opportunities to present a revised set of Ministers to the Assembly, at which time, if rejected on the third occasion, that person would cease to be Chief Minister designate, having failed to present an acceptable ministerial team.

This proposed method of appointment assigns the Chief Minister the ability to choose an appropriate Council of Ministers and retain accountability for its performance, having already gained the confidence of the Assembly. This method is a very good one for holding the Chief Minister to account at a later date, as he or she alone will be responsible for the choice of Ministers and can therefore be held to account for their subsequent performance. Under the current system, where Ministers that the Chief Minister has not nominated can be appointed by the States against the Chief Minister's wishes, it would be unreasonable for the Chief Minister to be held accountable for the performance of these Ministers.

It is accepted, however, that under this process it may be difficult for the Chief Minister to know why the proposed membership of the Council had been rejected, the reasons of which may vary between members. Nonetheless, a person who is able to command sufficient support to be elected as Chief Minister should be able to take informal soundings and judge what Council of Ministers would be acceptable to the States.

Moreover, there is concern that the system of 3 rejections could result in a position whereby the Chief Minister designate, particularly if he or she had been subject to a series of ballots before being chosen, would find him or herself vulnerable to members voting against any proposed Council of Ministers 3 times, in an attempt to re-run the election of Chief Minister. If there were also a series of rejections, and the Chief Minister election were to be re-run, the Island would be without a Council of Ministers for several days or a number of weeks. Conversely, the appointment of Ministers 'en bloc' could favour compromise, and members may overall be minded to accept the Chief Minister's choices if their disagreement to the appointment of one Minister were not so fundamental that the whole Council should be rejected.

2. The Chief Minister designate should nominate candidates individually for appointment to specific ministerial office, and the States would be asked to vote on each nomination separately. No alternative nominations would be possible. This proposal could be combined with a system similar to the one above, namely that should the nomination for a particular office be rejected by the States, after 3 attempts, the Chief Minister designate would cease to be such and the process for electing a new Chief Minister and Ministers would recommence.

Voting for Ministers individually would provide for greater transparency, as States members would be able to express their preferences in relation to each candidate and it would be shown that each Minister had the confidence of the majority of members. It would avoid one problem identified with Option 1 above, namely that under that option the Chief Minister would have no way of knowing which Minister or Ministers were not acceptable to members as the whole 'team' would be rejected 'en bloc'. Equally, however, a series of individual votes would expose the strength of feeling towards each Minister and emphasise the difference received in votes by Ministers – one Minister may, for instance, be supported by 40 to 13 votes whereas another had only been appointed by 27 to 26 votes. (This is, of course, already a feature of the current system where votes on each Minister can take place.)

3. The Chief Minister could be given authority to appoint and dismiss his or her team of Ministers without any States involvement as happens, for example, for Ministers in the United Kingdom. Although it is recognised that this would be a very radical change and could be politically unacceptable, the Chief Minister would have more accountability over the decisions and actions of the Council of Ministers as in Option 1 above.
4. The existing process of appointment for Ministers could be maintained, by which all elected members are eligible to stand for appointment to ministerial office. The Chief Minister would nominate a preferred member for position as a Minister, but alternative nominees could also be proposed by States members, the final decision being taken by the Assembly. This system provides States members with greater choice as to their preference for each candidate and their suitability for office, but would not be recommended as it may deprive the Chief Minister of his or her preferred team of ministers and impact upon their ability to have accountability for decisions made by Ministers not of their choosing.

Process of Dismissal:

The authority to dismiss a Minister is a power currently reserved to the States Assembly. Under the existing statutory requirements, the Chief Minister is limited in his or her powers over other Ministers, and can only recommend the dismissal of a Minister for the States to decide. Within a revised system of government, this dismissal process could be maintained or, alternatively, the Chief Minister could be given the authority to dismiss Ministers. The Chief Minister would thus be empowered to remove a Minister should dismissal be felt necessary, without prior States approval; the dismissal would, however, still require approval by a majority of the Council of Ministers, but it would provide the Chief Minister with greater accountability for the actions of Ministers.

Conclusion

The issue to be considered is whether a mix of appointment processes will enable the States Assembly to ensure that the Chief Minister is responsible for the effective work of his/her Council of Ministers, whilst ensuring that effective Boards ensure greater engagement, transparency and accountability of each Minister.

Revised Scrutiny structure: proposed working practices

A. Scrutiny: strength

Scrutiny must be, and must be considered to be, a vital and robust part of the revised machinery of government notwithstanding the fact that Members serving on topic-based Review Panels could also serve on up to 2 Ministerial Boards.

B. Policy Review Committee (PRC)

1. Position of Policy Review Committee Chairman

The Policy Review Committee will be responsible for the management and organisation of the revised Scrutiny function.

Under the revised Scrutiny system –

- there would be an elected Chairman of this Committee;
- this would be a prestigious and extremely important rôle with the appointment of the Chairman by the States taking place immediately after the appointment of the Chief Minister;
- the Chairman would need to be fully independent and he or she would not be able to sit on Ministerial Boards;
- it would be preferable for the Chairman to have had some experience of Scrutiny and thereby know, understand and accept the rôle and process;
- the Committee Chairman would have overall responsibility for the Scrutiny function but despite this heavy workload he or she could also serve on individual Review Panels to ensure that he or she took an active part in actual review work and gained a practical working knowledge of the work of Review Panels.

2. Position of Committee Members

Under the revised system –

- members of the Policy Review Committee (no more than 4 others) would be proposed to the Assembly by the Chairman;
- members of the Committee would be able to sit on one Ministerial Board (given the likelihood that the remit of the PRC would be large);
- if a Committee Member had a position on a Board, he or she would be expected to withdraw from all discussions of possible reviews into all matters relating to that Ministerial Department;
- a Member of the Committee would not be precluded from working on a Review Panel, provided the review was not considering any Board matters on which that Member served.

3. Remit of PRC

In light of many criticisms of the current and former Chairmen's Committees that they have not taken the necessary actions in overseeing Scrutiny, and the fact that Chairmen's Committee currently is an overseeing body with no powers, it will be important for the new Policy Review Committee to have sufficient status and authority to undertake its task.

The Policy Review Committee will have a very important rôle and a potentially very large remit as follows –

1. Maintain close contact with the Chief Minister (hold quarterly meeting/hearings with the Chief Minister about the work of the Council of Ministers);
2. Maintain an overview of Ministerial work;
3. Receive review topic suggestions from States Members, members of the public and stakeholder groups;
4. Aim to ensure that overarching States matters such as the Strategic Plan and Annual Business Plan are scrutinised;
5. Assess the above to decide whether a review should take place – this may include seeking background information prior to scoping, etc.;
6. Subsequent to 5 above, be responsible for the formation of Review Panels to review specific topics, having sought expressions of interest from members with the following in mind –
 - (i) that no Ministerial conflict of interest exists, i.e. a Deputy Minister or Board Member sitting on a Review Panel looking into areas that the Board on which he or she is involved with;
 - (ii) that no pecuniary conflict of interest exists;
 - (iii) that there is no perception of conflict of interest which could compromise the individual Member, the work of the review or the Scrutiny process as a whole;
 - (iv) there is a balance in the membership of the review Panel.
7. A Review Panel would comprise no fewer than 3 and no more than 5 States Members;
8. Determine the Terms of Reference, the project outline with target deadlines for review completion and estimated budget allocation in conjunction with the proposed Review Panel;
9. Monitor the progress of all reviews, receiving updates as appropriate;
10. Follow up on Review Panel report recommendations in consultation with the members of the Review Panel;

11. Ensure that one aspect of Executive policy is not overly scrutinised to the detriment of others;
12. Ensure opportunities are provided to all Members eligible and willing to undertake Scrutiny;
13. Ensure a minimum and maximum number of reviews occurring at one time;
14. Manage the Scrutiny budget and have responsibility for all expenditure: approving estimated review budgets and budgets for fact-finding visits, use of advisers, etc.;
15. Ensure the revised Code of Practice for Scrutiny Panels and the PAC (see D2 below) is followed and take action whenever this is breached (some official authority and sanctions would be enacted);
16. Prepare an Annual Report on the work of the PRC and Review Panels.

C. Topic Review Panels

The Review Panels, once formed by the PRC with the terms of reference, project outline, target date and estimated budget agreed between the 2 parties, would initially operate within the framework of a revised Code of Practice (see D2 below). Review Panels would normally review significant topics of strategic importance to the States as a whole and would not be established to review minor issues or issues that are not of importance to other States members or the public unless there were very specific reasons to do so. Review Panels would be disbanded once their final report had been published, although the PRC would liaise with the members of the relevant Review Panel once the Ministerial Response to the report was available to ensure that the response was considered to be adequate.

D. Scrutiny Framework: Training and Code of Practice for Scrutiny Panels and PAC

1. Training

It will be imperative for all Members who would be available to be involved in Scrutiny to undertake initial training in the rôle of Scrutiny, the terms of the Code of Practice, the processes involved to undertake a Scrutiny review, how to chair a meeting, and how to ask pertinent and appropriate questions.

2. Code of Practice for Scrutiny Panels and the PAC (CoP)

A robust Code of Practice for Scrutiny Panels and the PAC would still be required. There is a need for the PRC to have such a framework to assist it with what is and what is not appropriate for review and the manner in which reviews would be undertaken. This should echo the current CoP in relation to the 4 main areas of Scrutiny together with topic selection and rejection.

E. Members of the public being co-opted onto Review Panels

In order to bring a valuable contribution to a Review Panel, members of the community must –

- (a) have relevant knowledge and experience of the subject matter;
- (b) be objective and free from personal views;
- (c) be expected to demonstrate the above prior to being co-opted.

Review Panels should be able to select co-optees with the agreement of the PRC. A structure for the selection of members of the community as co-optees would be required. Ideally, such a structure should not be laborious nor delay the start of a review. However, in order to give opportunities to all, the position would need to be advertised in several ways and an interview process undertaken. A co-optee would not become, on selection, a Member of a Review Panel and would not, therefore, have a vote and could only ask questions of witnesses who are not States Members in line with Regulations for advisers to current Scrutiny Panels.

F. Policy Review Committee and Review Panels officer support

An impartial and objective officer base, independent of the Executive, needs to be retained in the States Greffe to support both the PRC and the individual Review Panels.

The PRC would be supported by the Scrutiny Manager in much the same way as the current Chairmen's Committee is supported, although it is recognised that the status of the PRC and its workload would be considerably greater than that of the Chairmen's Committee in the existing structure and it may therefore require greater support.

The Scrutiny Manager would be responsible for the allocation of Scrutiny Officers to the Review Panels. It will be essential to be able to provide support for up to a maximum of 5 reviews (excluding PAC) bearing in mind leave entitlements, sickness absence, training and for "last minute" reviews. The Scrutiny Manager would explore a variety of ways of providing the necessary support for Review Panels and it could open up opportunities for creative and innovative ways of working.

However, before any Review Panel could be established, the PRC, in conjunction with the Scrutiny Manager, would need to assess the potential size of the review so that the staffing needs and availability were identified prior to a review being launched.

It is estimated that the maximum number of reviews at one time, albeit it they may be at different stages, would be no more than 5 (excluding PAC). On a positive note, with officers focussing solely on the review topic, unlike the current system, it may mean that reviews are undertaken more speedily and as a consequence more reviews could occur.

G. Scrutiny Public Engagement

A large amount of work has been undertaken in recent years in developing the public engagement aspect of Scrutiny, and the Scrutiny team have developed a range of skills which have enabled them to support various public engagement initiatives: in general terms matters such as the Scrutiny Matters newsletter, Home Life Exhibitions, devising, maintaining and revising a Scrutiny website, use of social media and in Panel terms: exhibitions, various press releases and broadcasting strategies and techniques. It will be important for the PRC and the individual Review Panels to continue to consider public engagement as a matter of importance.

**ORIGINAL ACCOMPANYING REPORT FROM P.70/2010
'Machinery of Government: amended structure'**

It was with great expectations that as part of a root-and-branch reform of the "machinery of government" with Ministerial areas of responsibility replacing the Committee system being heralded as the new (and perceived by some as the only) "business-like" way to proceed, that a former States Assembly voted by a majority to move to a Ministerial system of government – with, of course, appropriate checks and balances in place. So although no politicians have or had mandate from the electorate they were to forge ahead anyway into this brave new business-like manner that the people were crying out for – greater decisiveness and accountability, speedier decision-making, etc.

So the proof, as they say, is in the pudding, so what has actually happened?

From my memory recall there were 4 main strands to the effective change from Committees to Ministers –

- (1) Some Committees would merge together into fewer Departments/Ministries.
- (2) Ministers in general terms would assume the role and responsibilities of a former Committee.
- (3) Scrutineers would provide the checks and balances.

Accompanied by –

- (4) Easy access to information supplied by Ministers, with greater transparency and supported by a Freedom of Information Law.

The reason why the above was carried out and why we are where we are today flows from the Report and Recommendations of 19th December 2000 of the Review Panel on the Machinery of Government in Jersey, more commonly known as the "Clothier Report."

Setting aside other issues touched upon in the Clothier Report, such as – who should sit in the States, for how long and what they should be called – and staying with the move to Ministers from Committees the Report made a number of comments.

To set the general scene the Report said this –

“Jersey Today

On the face of it Jersey is a prosperous and fortunate society. With its economy buoyed up on a tide of revenue driven by a burgeoning financial services industry, the Island is well able to maintain high standards of public services. When most societies around the world are concerned to promote and foster development, Jersey's problem has been to keep such development within bounds. The insular authorities have been able to cope with unforeseen overspends and with ill co-ordinated decision-making because the Island has been driven forward by a favourable wind.”

This is probably a polite way of saying that we had money coming out of our ears and any fool could run the place!

The Report goes on to suggest that the forming of an Executive could diminish the role of other Members, but suggests a “strong Assembly” may be a remedy for this – “which holds the executive to account.” Interestingly quite recently some Members, including Ministers, find this a bit bothersome when they could be off somewhere being a bit more important! Why should they waste their time listening to back-benchers or answering boring questions?

Clothier had this to say at paragraph 3.4 –

“3.4 *An Effective democracy requires not just an executive but the balance of a strong assembly which holds the executive to account and scrutinises its actions as well as contributing to the formation of policy. The evidence we received suggests that the States have not adequately performed either their executive or their critical functions. A number of those who presented evidence to us suggested that the establishment of a central Executive would in effect remove other Members of the States from the political leadership of the Island.”*

So has this in fact happened – how precious has the Council of Ministers become? Set out below is an “AGENDA” from the Council of Ministers’ meeting of Thursday 27th May 2010.

Clothier had a view that States Members would be “contributing to the formation of policy”: as can be seen below, any information is being virtually censored, even something as cutting-edge as a “traffic and transport strategy” is kept under wraps in case anyone gets too excited about the content.

COUNCIL OF MINISTERS

Meeting to be held at 9.30am on Thursday 27th May 2010 in the 9th Floor Meeting Room, Cyril Le Marquand House, The Parade, St. Helier.

AGENDA

Part A – OPEN

A1 TRANSFER OF ITEMS TO THE ‘A’ AGENDA

Part B – Confidential

The part ‘b’ agenda includes the following 5 items of business –

- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)

- Censored Exemption 3.2.1(a)(xiv)
- Censored Exemption 3.2.1(a)(xiv)

Is this what the public were promised or what they thought they were getting?

What happened to inclusive Government with transparency and reasonable access to information whilst respecting situations that merit a degree of privacy?

The Clothier Report at Chapter 10 –

“Towards a more Open Democracy

10.1 *It is of the greatest importance that the moves we recommend towards a clearer distinction between “executive” and “parliamentary” responsibility should not have as a consequence a reduction in the democratic influence of individual citizens and voters. We have already noted fears about creating an “elective dictatorship” under which an assembly and the public during the lifetime of a government, surrender to the members of that government undue power and influence. (my emphasis) This is, perhaps, an extreme view, since as we have remarked Scrutiny Committees (and in particular a Public Accounts Committee) can be effective forums for accountability, particularly where members have no rigid party positions and can consider issues on their merits. Nevertheless we believe that if a Council of Ministers is to be constituted in Jersey, composed of men and women whom the States have confidence, we need to ensure that members of the States occupying executive office enable and encourage “back-benchers” and the public not merely to scrutinise and if necessary criticise policy and executive action after the event, but also to be partners with Jersey’s Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens. (my emphasis)*

10.2 *For this pattern of democratic partnership to flourish, there must be a preference for transparency and dialogue as opposed to secrecy and governmental dogmatism.(my emphasis) One mechanism increasingly used in other jurisdictions around the world is a Freedom of Information Act, and no doubt the Jersey institutions will wish to consider the extent to which they rely upon this device. It is, however, inevitable that certain information has to be held in confidence, particularly to allow a debate about policy options designed to produce a conclusion acceptable to all. People in ministerial office ought to be able to argue a case amongst their colleagues with vigour, and without embarrassment of those colleagues or themselves. We have already pointed out that if a Council of Ministers is to be established in Jersey, one of the early items on its agenda should be to decide whether, and to what extent, to observe a convention of collective responsibility.”*

One of the perceived benefits of those that were gung-ho about Ministerial Government was basically that a group of people will sit in a room – decide to do

something – then come out and get on with it – this off course is not either how it is or how it works, or indeed how it should be.

10.3 *“While we do not think it would be feasible or desirable for a Council of Ministers to meet in public or to publish a detailed account of the exchanges between its members, we could see real benefit in making available immediately after the meeting a brief summary of the business under discussion and any decisions made. If consideration of a particular issue is conducted in total secrecy until the announcement of a firm government decision, other opinions can only be expressed after the die is cast. It is an observable characteristic of governments everywhere that they are extremely reluctant to be diverted from the firm policy already announced.”*
(my emphasis)

I wonder if this is ringing any bells, alarms or otherwise – something like the Council of Ministers have considered all the options and this is the best, indeed only way forward – dismissing other options for say taxation – in secrecy.

10.4 *“Unless the determination of policy is a matter of demonstrable urgency, we recommend regular use of consultative or discussion papers (often referred to elsewhere as “Green Papers”) which fully present relevant data and underlying arguments and set out options for discussion and debate. On the basis of such papers, the relevant scrutiny committee of the States could summon and hear evidence from Ministers and officials, invite views from the wider public and prepare reports which should be given due weight by Jersey’s Ministers in the final determination of policy.”*

There are a number of tensions in the above paragraphs –

- (1) As can be demonstrated by the Council of Ministers’ Agenda, they are very precious with sharing information – virtually everything is ‘policy in development’ and therefore secret.
- (2) Only tea and biscuits are on an ‘A’ Agenda.
- (3) Ministerial Decisions compound the above with secrecy – coming in under the radar with no clear reporting structure.
- (4) The ability to encourage “back-benchers” and the public not merely to scrutinise, and if necessary criticise, policy and executive action is not apparent and in any case is happening after the event. Also to be partners with Jersey’s Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens is not happening – the public are not engaged – but are kept in the dark most of the time along with most States Members – except when perhaps “comfort consultation” is required or can be used as a convenient stalling mechanism.

In October 2005 under the (then) Policy and Resources Committee, a publication was produced that was widely distributed.

“A guide to Ministerial government in Jersey

In December 2005 a new system of government will be established in Jersey. The introduction of Ministerial system is the most important change in the Island's government for many years.

The States of Jersey has produced this leaflet to explain how this new style of government will work. The leaflet does not cover other issues that will be looked at, such as the question of whether there should be any changes to the make up and election of the States Assembly.

Why change?

In July 2000 the Clothier Review Panel commissioned a survey of attitudes to the Island's government.*

Many people expressed the following views about the States:

- *Too big – too many States Members*
- *Too slow at making decisions*
- *Not sufficiently accountable*
- *No clear leadership*
- *Doesn't listen to voters' views*

Since 2000, the States have introduced a number of measures to address many of these concerns. The single most important one is the introduction of Ministerial government, combined with a Scrutiny system.

Benefits of change

The reorganisation of Jersey's government should make its structure more logical and easier to understand. It should speed up decision-making, improve communication and co-ordination between different departments and provide the best possible value for money. The aim is to create a more efficient and more effective government for the Island. (My emphasis)

So this is all very laudable to “create a more efficient and more effective government for the Island” – but what is the reality – where is the evidence? What has actually happened, and are Ministers actively managing their areas of responsibility or has political influence disappeared overtaken by an increase in officer input without proper accountability?

Evidence suggests that Ministers' portfolios are too big; and that effective and engaging contact with the public has been lost. Large areas of responsibility, e.g. Health and Education, are not well-served without active political involvement and this cannot be achieved by 2 or 3 people. Having more politicians involved will lead to greater accountability, better service delivery to the public and better links with staff and the public.

Examples with the Incinerator Contract, in Health, Police, with Court and Case Costs, Property Management, Waterfront Enterprise Board, have more than a suggestion that

situations have got out of control and more importantly no-one seems accountable; but that's alright then – we can “move on” – as some may say – but at what cost?

Who really did decide (in an election year) to scrap prescription charges and do the States have an office strategy? If we do – who is responsible for it and where is it? I believe that on occasions someone politically really needs to be on the case otherwise things just do NOT happen.

Another glaring example of inertia and procrastination.

Do we have a joined-up population, migration plan or strategy – it looks pretty fragmented to me, demonstrating a total lack of up-to-date statistical information on which to base future policies for health, housing, education, planning, employment, elderly care, etc., etc., etc. Surely this is a massive failure for Ministerial Government – not joined-up and working together.

At a hearing of the:

**“Health, Social Security and Housing Scrutiny Panel on Tuesday 13th
APRIL 2010**

The Chief Minister: Said this

I have not brought any other officers because I think this is really cross-departmental. I could have brought 10 or 20 but that does not seem a particularly good use of our time and I think we need to focus, for a start, on why I am here appearing before Health, Social Security and Housing scrutiny panel when as Chief Minister I normally have dealings with the Corporate Services scrutiny panel. My interpretation was that there are certain issues which cut across various different departments and in that context the Chief Minister is not the puppeteer but holds the strings between the different departments and performs that sort of continuity. So I think there may be times when I will say this is not really a matter for me, this is something for a particular department, and if we focus on matters which are cross-departmental issues I think we will get better use out of the time.”

Members can make their own mind up about whether this is joined-up Government.

Within the document earlier referred to circulated in October 2005 it stated –

“How the Ministerial system will work

Each Minister will be legally and politically accountable for their area of government. There will be up to a further 13 Assistant Ministers, each with an area of political responsibility, but they will not be part of the Council of Ministers.” (My Emphasis)

Here, I believe we have a very grey area – Assistant Ministers – they are appointed by Ministers with the approval of the Chief Minister, but not elected by the States. There is no recognised structure for them to work in – there are no terms of reference for their role. The information booklet in 2005 clearly stated that “they will not be part of the Council of Ministers” – however, on many occasions they clearly are – so why is

this? They are not elected or accountable to the States, so how democratic or inclusive is this? So what are the qualifications to be an Assistant Minister – is it about what you know or who you know? My reason for stating that is I do not know the answer.

There fore I believe that the role of Assistant Minister should become a more integral part of the democratic process.

Scrutiny Review

Much good work has been done by a number of different Panels; however, the results have met with varying responses from Ministers and Departments. Some have received widespread acclaim and been acted upon; others have been virtually ignored.

A great deal of dedication, time, effort and energy has been required to produce individual reports, however, I am of opinion, having had first-hand experience for nearly 5 years, that the Scrutiny function would be better served under one umbrella – with reviews carried out by topic rather than a defined area – for example elderly care could go into areas of Health, Social Security, Housing, Planning and Treasury without restriction and be more beneficial than having demarcation lines.

Panel Members could be drawn from all Members of the States – except for Ministers. Membership of Panels should include people from the community – this is a tremendous asset that could provide a great public benefit. I believe there are many people who are willing to give up their time and effort on behalf of others on a particular project.

To my knowledge School Governors and the Public Accounts Committee benefit from the interest and contribution of lay Members and some Scrutiny Panels have also benefited. I believe this is a resource from the community we should not ignore.

The recent Report

STATES BUSINESS ORGANISATION SUB-GROUP: REPORT (R.59/2010)

Presented to the States on 24th May 2010 by the Privileges and Procedures Committee.

“Foreword (Page 2)

In November 2009 the Privileges and Procedures Committee established a small Sub-Group to look at the organisation of States business. The decision to set up the group came in response to concerns about the significant increase in the number of States meetings during 2009, and the associated increase in the number of questions and the length of debates.

On 18th May 2010 the Sub-Group presented its Report to the Privileges and Procedures Committee.

The Sub-Group’s Report indicates very clearly that in its view the current system of government established in December 2005 should be reviewed and that the matters that gave rise to concern during 2009 such as the rise in the number of Questions or the length of States Sittings are, in fact merely, symptoms of a wider problem.”

“Ministerial Government (Pages 18 & 19)

During the Sub-Group’s review, comparisons were drawn between the current ministerial system of government and the former Committee system. While a diverse group of members would participate in each Committee, it was noted that fewer members were involved in each piece of work under ministerial government. This had resulted in the discussion and information-gathering stages of the Committee system being transported into the States Chamber, with questions, repetition and misunderstanding the Chamber being perceived as time-wasting. It was accordingly suggested that the design of ministerial government was more suited to a party political structure: “I feel that a lot of the efficiency is wasted – if you see it as being wasted – in the design of the ministerial structure. Because I feel perhaps it was more designed towards a party-political structure rather than a system where you officially have independent members” (Deputy Jeremy Maçon)

This view has echoed by Senator B.E Shenton: “Part of the problem is Ministerial Government. This ill-conceived proposal was not intelligently thought through and it has a number of what are likely to be terminal failings. In this case the splitting of the Chamber into ‘executive’ and the ‘non-executive’ was always going to be adversarial and only an idealistic dreamer would argue otherwise. No doubt we will persist in trying to make this concept work but eventually all the sticking plasters in the world won’t keep it together” Senator Shenton suggested that the structure of Ministerial government was flawed, in that the Chamber was divided, causing unnecessary friction and duplicating both work and costs. “Consultants are hired by both the Executive and Scrutiny to examine the same policy, Scrutiny members do not feel part of the Government and are frustrated by the lack of power, and the position of Minister lacks the checks and balances necessary for such a powerful role.”

Problems were also cited in respect of the role of Ministers. “Because of lack of understanding of their portfolios I do feel that, to a certain extent Ministers do get led by the nose ... I think that perhaps there is a case whereby there’s a perception that Ministers seem to be led by the civil servants and don’t necessarily have as much understanding as they should.” (Deputy Maçon)

“When you attain the position of Minister you often rely on the advice of your Chief Officer and feel very isolated if you have concerns regarding their recommendations. There is no one to discuss the matter with, no one to input an alternative view, no one to provide some form of checks and balances. If we had a party system the party would help keep the Minister in line by ensuring that he sticks to agreed policy... By electing independents into the role, in effect a party of one, there is no structure to keep the Minister in line or tie the whole Council of Ministers together.”

Deputy P.V.F. Le Claire considered that the move to Ministerial government had cut off the flow of information and had left some members without a function. He considered that the Council of Ministers did not run on collective responsibility and suggested that a smaller Committee-system would have

been involved in the decision-making process, resulting in fewer questions and great levels of trust between members.”

“Senator Shenton suggested that a revised system be introduced as follows –

- Each Minister has a Deputy Minister and 3 Assistant Ministers*
- Ministerial Decisions have to be signed by the Minister and at least to Assistant Ministers*
- Any dissent from signing by any Assistant Minister would have to be reported*
- A person may hold a maximum of 2 Assistant Minister positions*
- Assistant Ministers may also sit on Scrutiny Panels providing this does not conflict with any Assistant Minister positions held*
- Assistant Ministers would not be able to chair Scrutiny Panels or the Public Accounts Committee”*

“Findings (Pages 20 & 21)

The Sub-Group does not consider that making small adjustments around the number of propositions that may be lodged, time limits on speeches, the number of questions – to mention a few items – will make any appreciable difference without looking more deeply at why the increases in questions and individual members’ propositions is occurring.

The Sub-Group is of the view that the exclusivity of the ministerial system of government, which provides that only a small number of people have real insight into government, means that most do not have access to the decision-making process or to the information on which it is based. Consequently, contrary to the expectations of the public, few members of the States are able to answer their queries on the many issues that concern them.

The Sub-Group believes that the number of questions has increased so much because members, and Scrutiny, are unable to access the information in a timely fashion, in any other way. In addition, given that many decisions are being made in relation to States activity by just 10 people out of 53 members, asking questions gives an opportunity to members to bring checks and balances to the decisions made and to hold the Ministers to account. The Group felt that Ministers might also be overwhelmed by the amount of business within the department, the complexity and depth of the detail, and, realistically, would be unable to interrogate and verify the draft proposals put to them by officers. Such a situation leads to the supposition that senior civil servants are ‘running the show’.

The Sub-Group also considers that the reason why the number of propositions proposed by individual members has increased is because this is the only way in which members are able to influence policy and ensure that their suggestions are adopted, in a climate where Ministers are reluctant to be diverted from their own programmes and plans.

By contrast, in the former Committee system of government, draft policy was thrashed out by up to 7 people on a Committee, and they were able together to think through in more depth all the proposals and recommendations. That element of discussion or even ‘thinking aloud’, while mulling over the best

way forward, has disappeared. Members on a Committee might each have taken an area of specialism from the department, and developed a greater understanding of that area, with the ability to lead discussions on that item. While some Assistant Ministers have specialised areas of responsibility, there is no evidence that this occurs in all departments, and there is still a lot of ground to cover between 2 or 3 members.

The Group is of the view that there are fundamental questions about the ministerial system of government that require review, as the new system of government, which may be good in parts, is not working as a whole as it was intended. Members of the Group received many comments from the members, both formally and informally, indicating that the theoretical benefits of the ministerial system as set out by the Clothier Panel were not being realised in practice because many members felt totally unable to make the positive contribution to government in the Island that they had hoped to make when elected. The Sub-Group was particularly struck by the following extract from a submission made by Senator B.E. Shenton – “When Members are elected they are, in the eyes of the public and themselves, members of Government. They expect to have influence in the decisions of State and the fascinating mixture of political views in the Chamber should provide a diverse and encompassing Government. The weakness of the system is that the Troy rule divides the Chamber, causes unnecessary friction, and duplicates both work and costs. Consultants are hired by both the Executive and Scrutiny to examine the same policy, Scrutiny members do not feel part of the Government and are frustrated by a lack of power, and the position of Minister lacks the checks and balances necessary for such a powerful role.” ”

I think some of those comments from colleagues speak for themselves – they share my concern for the way Executive Government is NOT working for the benefit of the people.

Financial and manpower implications

I believe that there are significant economies that will flow from a more joined-up system of Government.

The adoption of this Proposition will not require any additional manpower in my opinion.