

MACHINERY OF GOVERNMENT: FREEDOM OF REPRESENTATION

**Lodged au Greffe on 24th September 2002
by Senator S. Syvret**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

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

to refer to their Act dated 28th September 2001 in which they approved proposed reforms to the machinery of government and -

- (a) to agree that upon the introduction of a ministerial system of government all members of the Council of Ministers shall retain the freedom to express their own views publicly, to record their dissent in proceedings and to lodge propositions 'au Greffe' and that these three freedoms shall not be compromised by rules of collective responsibility;
- (b) to rescind their decision on collective responsibility as set out in the report of the Policy and Resources Committee dated 26th July 2001 approved as part of the Act of 28th September 2001.

SENATOR S. SYVRET

In accordance with Standing Order 18C the following members signed the proposition -

1. Senator W. Kinnard
2. Deputy A. Breckon of St. Saviour
3. Deputy of St. Ouen

The reason for moving this proposition is set out in detail in the accompanying report

Note: The references to collective responsibility are found in paragraph 6.7 (page 19), in the list of the roles and responsibilities of the Council of Ministers (page 61) and of the Chief Minister (page 63) of the report of the Policy and Resources Committee dated 26th July 2001 accompanying P.122/2001 which was referred to in the Act of 28th September 2001.

REPORT

The effect of this proposition is to save for all members of the Council of Ministers the three freedoms, namely to express their own views publicly, to record their dissent in proceedings and to lodge propositions 'au Greffe', and for these three freedoms to not be compromised by rules of 'collective responsibility'.

This was the purpose and object of both P.25/2002 and of P.142/2002. However, this purpose and object was fatally undermined on both occasions by amendments which, if approved, would have defeated the objective of the original propositions. I include for members' ease of reference an Appendix B which contains the text of the two previous versions of the proposition and the relevant amendments, one in the name of Senator Horsfall and one in the name of the Policy and Resources Committee.

I will not rehearse here all the arguments against the imposition of the 'doctrine of collective responsibility' upon independently elected States members, save to say that I believe it to be wholly unworkable and insupportable. A detailed case against the doctrine is explained in the report originally accompanying P.25/2002 and P.142/2002, which is reproduced at Appendix A.

Since that report was written, the Policy and Resources Committee have published a summary of 'exceptions' to the 'doctrine of collective responsibility'. Amongst this list of exceptions are a prior 'declared position' and 'constituency matters'. In the context of independently elected politicians - who will have a variety of 'declared positions' and 'constituency matters' - these exceptions will be manifestly unworkable.

MACHINERY OF GOVERNMENT: FREEDOM OF REPRESENTATION (P.142/2002)

REPORT**Freedom of Representation**

This proposition is concerned with the right of States members to freely represent their constituents.

At the moment States members are free to speak and vote as they see fit. There is currently no pressure, control or sanction upon that freedom. Members of the States owe their loyalty to the community they are elected to represent, not a Council of Ministers, Chief Ministers or party hierarchy.

The Clothier Panel and, subsequently, the Policy and Resources Committee, are of the view that the freedom of individual States members to represent their electorate according to the terms upon which they sought election, should be surrendered if those States members form part of the executive. The severe restriction upon the freedom of members forming the executive is euphemistically known as the “doctrine of collective responsibility”, a phrase that may appear positive upon first sight, but in fact masks an uncompromising intolerance of dissent.

A political party, especially one which goes on to form a government, may claim both the need and legitimacy to employ a strict discipline upon its members if it is to deliver the manifesto of policies upon which it sought power. The need for a party to present a “united front” is deemed to override the individual member’s freedom of expression.

In Jersey we elect our representatives in the expectation that they will have the freedom to speak and vote as individuals, according to their best judgement. We also have a reasonable right to expect that when our States members speak they are expressing a view that they actually agree with. These expectations may not be met in respect of members of the new Council of Ministers. States members who form part of this executive will be able to argue for their true views behind the closed doors of the Council, but when the decision is made, even if they are in disagreement with it, the “doctrine of collective responsibility” will apply.

In plain English this means that a States member who becomes part of the executive must support and not criticise Council decisions, even if he or she disagrees with them, and regardless of whether he or she took no part in the decision. This will be the case even if he or she was elected for political views different to those of their Council colleagues.

The proposals are stark. A States member who has been elected for a particular set of views may face an intolerable “choice”: dishonour your electoral commitments, or be excluded from the executive. As is clear from the Policy and Resources Committee Implementation Plan, there is no place for honourably held minority views in their Council of Ministers. Subjugation or exclusion, that is the choice facing minority members.

Co-operation, teamwork and consensus can only be achieved in a climate of tolerance and in a system that accepts the human fact of occasional disagreements and public debate. A better government cannot and will not be achieved through duress, intimidation and exclusion.

If the bond of accountability between the electorate and States members is to be broken and removed, it is incumbent upon those advocating the “doctrine of collective responsibility” to demonstrate openly the reasoning for this radical change.

Members of the States do, on surprisingly rare occasions, speak and vote against their committees. This rarely causes any real political difficulty. Such public dissent is accepted as a concomitant of electing independent members. Neither Clothier nor the Policy and Resources Committee have even remotely demonstrated that dissent is such a problem as to justify the uncompromising restriction upon the freedom of members of the executive described in the Policy and Resources Committee’s Machinery of Government Implementation Plan.

Guernsey has undertaken a review of the machinery of government. This led to the production in November 2000 of the ‘Harwood report’, which contained options for change to Guernsey’s machinery of government. In March 2001 the Harwood Panel produced a ‘Statement of Views’, which made specific recommendations. Two important States of Guernsey committees, Advisory and Finance and Procedure and Constitution, have produced a Joint Committees’ Consultation Document on the Harwood recommendations. The introduction to the Consultation Document contains the following observations on an executive system operating to the “doctrine of collective responsibility”:

- “7. They are concerned that a system which relies on Ministers keeping their seats by rigidly toeing the line and adopting collective responsibility under a single leader who has the power to appoint and dismiss, will lead to divisiveness and a system based on patronage, the creation of a permanent opposition, the evolution of a political system based on party lines, a ‘them and us’ culture within the States, and a dampening of the expression of constructive alternative views within the senior committee.
8. Notwithstanding the panel’s proposals for scrutiny committees, the Joint Committees fear that an executive system would result in an excess of power held by a minority of States members, a feeling of being either inside the government or outside it, with a subsequent polarisation within the States, to the detriment of good government. There is some doubt that the principle of collective responsibility would hold in practice.”

The Joint Committees’ Consultation Document is equally unambiguous concerning the freedom of Ministers. The following paragraphs are taken from part ‘B. The form of government:’ -

- “5. Ministers and Members of the Chief Ministers Department would meet as a ‘Policy Council’ to facilitate the co-ordination of policy, under the chairmanship of the Chief Minister. The Council would not be bound by collective responsibility; individual Ministers could dissent from Council decisions.
6. If a minister wished to propose policy which was not approved by the Chief Minister’s department, then he or she could raise the matter in the Policy Council. In the absence of approval by the Policy Council, however, the Minister could still submit the policy to the States for approval.”

The Guernsey Joint Committees have rightly identified a central issue that goes to the heart of the matter. States members elected as independent individuals must, in the final analysis, retain the freedom and ability to act as such. The imposition of a Government-style party whip is simply impossible unless the people forming that Government sought election, and received public endorsement, on a collective, party political basis.

Freedom of representation **OR** the “doctrine of collective responsibility”: this debate - which is of major political and philosophical significance - ought to be at the very centre of our deliberations. Yet this central subject has not been accorded the considered attention it deserves. A review of the documentation reveals an object lesson in how certain proposals can come upon us unwittingly, only revealing their true nature and magnitude when almost too late, without the full implications being understood and without sufficient time being allowed for proper scrutiny and reflection.

The Clothier report remarks in several paragraphs upon the absence of the “doctrine of collective responsibility” in States committees, and goes on to portray this absence of a party whip style restriction upon the free expression of views by members as though it were a significant problem. Interestingly, we search in vain for the evidence; apart from a few lines of rhetorical assertion, the report offers none.

Nevertheless, the report obviously attaches great significance to this subject. The “doctrine of collective responsibility” unavoidably runs counter to the freedom of representation presently enjoyed by States members elected as individual, independent candidates. This is a major conflict. What then does the Clothier Report offer by way of disquisition; one or two chapters, perhaps, dealing with the philosophical and practical implications of its aversion to freedom of representation? No; a couple of paragraphs recommend that the newly created executive give consideration to what extent the “doctrine of collective responsibility” is observed.

With such a powerful executive - operating to the “doctrine of collective responsibility” - there is a very real danger that a disregard will develop for the States Assembly. It is now widely acknowledged by commentators across the political spectrum that the activities of the House of Commons are little more than a charade, with the executive doing largely as it pleases.

In P.122/2001 the States were asked to approve a new system of government “as set out in the report of the Policy and Resources Committee dated 26th July 2001”. That report, whilst mentioning the “doctrine of collective responsibility”, contained little detailed explanation of how it was to be applied.

As Clothier recommended, members of the Policy and Resources Committee have now considered the subject of “collective responsibility”. The extremity of their collective view is nothing less than astonishing.

Page 97 of the Policy and Resources Committee’s Implementation Plan contains the following paragraph -

“In the strict constitutional sense, the process by which the Ministers reach a decision - the expression of fears or reservations, the arguments and counter-arguments, the movement towards a general consensus - is irrelevant once

that decision has been reached. For that reason no Minister can properly be recorded in the conclusions as having dissented from a decision, since assent to Council decisions is the essence of remaining a Minister under the doctrine of collective responsibility.”

Page 106 of the Implementation Plan goes on to say -

“It would, of course, be wholly unrealistic to imagine that all Ministers are equally enthusiastic about every Council decision. They accept, however, the need to support the collective will on issues, because they also accept the need for unity and coherence in the work and policies of the government as a whole. Of course, if a Minister feels so strongly about a decision reached in Council that s/he considers s/he must criticise it publicly, s/he has no option but to offer his/her resignation.”

If this was not extreme enough, at page 107 of the Implementation Plan we read the following, quite extraordinary passage-

“Moreover, Council decisions bind Assistant Ministers even though they may not know anything about a problem affecting a department other than their own until a decision has been reached and announced.

Collective responsibility also binds members of the executive in relation to the exercise of a Minister’s legitimate discretion, without specific recourse to the Council. Under their powers, Ministers will be required to take decisions day in and day out; it would be impossible to obtain Council sanction for all of these, but intolerable if they were to be publicly criticised by other members of the executive.”

These three passages clearly reveal the dramatic surrender of independent thought and action that will be expected of those States members who are invited by the Chief Minister to join the executive. So extreme are these proposals that Ministers will even be forbidden - on pain of resignation - from criticising decisions taken by other members of the executive, decisions which they will have had no opportunity to discuss.

Let us make no mistake. The three passages quoted above mean nothing less, for minority opinions, than subjugation within - or exclusion from - the executive. It is an approach that cannot, for one moment, be regarded as remotely democratically legitimate or even possible in a non-party political environment. It simply cannot be done.

Teamwork, consensus and co-operation cannot be brought about through duress. It is both shocking and revealing that the Policy and Resources Committee should believe otherwise.

So obfuscated has the governmental reform process become with managerial/mechanistic questions, that fundamental political and philosophical issues have been virtually forgotten - or studiously avoided. One such central issue is the imposition of a de facto party whip upon members whose democratic ‘contract’ with the electorate is that of an individual - an individual who seeks election upon his or her political philosophy, manifesto of policies and personal attributes.

If the Council of Ministers is allowed to impose the “doctrine of collective responsibility”, its members would surrender their right to speak publicly; their first loyalty would lie with the cabinet. It is difficult, if not impossible, to imagine how a States member could retain any democratic credibility by agreeing to be bound by the decisions of other members who may have been elected for expounding very different political views. If elected as an individual, such a member would be agreeing to the electorate being usurped and their rightful place being taken by a few politicians whose views he may not share.

MACHINERY OF GOVERNMENT: FREEDOM OF REPRESENTATION (P.25/2002)

PROPOSITION

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

to refer to their Act dated 28th September 2001 in which they approved proposed reforms to the machinery of government and -

- (a) to agree that, upon the introduction of a ministerial system of government, all members of the States shall retain the freedom to express their own views publicly, to record their dissent in proceedings and to lodge propositions 'au Greffe'; and
- (b) to rescind their decision on collective responsibility as set out in the report of the Policy and Resources Committee dated 26th July 2001 approved as part of the Act of 28th September 2001.

SENATOR S. SYVRET

In accordance with Standing Order 18C the following members signed the proposition -

- 1. Senator W. Kinnard
- 2. Deputy A. Breckon of St. Saviour
- 3. Deputy of St. Ouen

The reason for moving this proposition is set out in detail in the accompanying report

Note: The references to collective responsibility are found in paragraph 6.7 (page 19), in the list of the roles and responsibilities of the Council of Ministers (page 61) and of the Chief Minister (page 63) of the report of the Policy and Resources Committee dated 26th July 2001 accompanying P.122/2001 which was referred to in the Act of 28th September 2001.

MACHINERY OF GOVERNMENT: FREEDOM OF REPRESENTATION (P.25/2002) - AMENDMENT

In paragraph (a) of the proposition after the words 'au Greffe' insert the words -

“except that a Minister shall not be permitted to present to the States a private member’s proposition challenging a decision made by the Council of Ministers without first resigning from the Council”.

SENATOR P.F. HORSFALL

PROPOSITION

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

to refer to their Act dated 28th September 2001 in which they approved proposed reforms to the machinery of government and -

- (a) to agree that upon the introduction of a ministerial system of government all elected members of the States, regardless of any position they may hold within the Island's machinery of government, shall retain the freedom to express their own views publicly, to record their dissent in proceedings and to lodge propositions 'au Greffe', and
- (b) to rescind their decision on collective responsibility as set out in the report of the Policy and Resources Committee dated 26th July 2001 approved as part of the Act of 28th September 2001.

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MACHINERY OF GOVERNMENT: FREEDOM OF REPRESENTATION (P.142/2002) - AMENDMENT

In paragraph (a) of the proposition after the words 'au Greffe' insert the words -

“except that all members of the Council of Ministers shall be bound by any rules on collective responsibility which may be agreed by the States”.

POLICY AND RESOURCES COMMITTEE