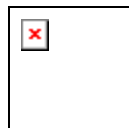


**MACHINERY OF GOVERNMENT: PROPOSED REFORMS (P.122/2001) - AMENDMENTS**

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**Lodged au Greffe on 28th August 2001  
by Senator C.G.P. Lakeman**

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**STATES OF JERSEY**

**STATES GREFFE**

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MACHINERY OF GOVERNMENT: PROPOSED REFORMS (P.122/2001) - AMENDMENTS

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*In paragraph (a) -*

- (1) *in sub-paragraph (iv) -*
  - (i) *after the words form a insert the words Privileges and;*
  - (ii) *after the word arrangements insert the words , facilities, remuneration, services for members of the States;*
  - (iii) *at the end of the sub-paragraph substitute the words members of the States by the word members;*
- (2) *in sub-paragraph (v) -*
  - (i) *after the words drawn up by the insert the words Privileges and;*
  - (ii) *after the words scrutinise legislation insert the words (including subordinate legislation);*
- (3) *in sub-paragraph (ix) -*
  - (i) *delete the words civil service;*
  - (ii) *after the word appointments insert the words to the civil service and autonomous and quasi-autonomous public bodies;*
- (4) *for the existing sub-paragraph (x) substitute the following sub-paragraph -*
  - “(x) the Policy and Resources Committee, after consultation with the Comité des Connétables, will bring forward for approval by the States proposals on the future relationship between the Parishes and the other areas of public administration and, in particular -
    - (i) the provision of services;
    - (ii) resource allocation and financing;
    - (iii) a review of the Parish institutions; and
    - (iv) the position of the Parish of St. Helier;

SENATOR C.G.P. LAKEMAN

## REPORT

I am proposing these amendments to enhance those parts of the recommendations of the Review Panel adopted and proposed by the Committee. Taking each in turn -

### (iv) Privileges and Procedure Committee

I support the re-establishment of a Committee responsible for procedural matters.

My amendment is not merely concerned with semantics. The Committee, once established, must champion the interests of the members of the Assembly. Included in this must be two key elements on which members have heard me speak in the past -

(a) facilities for members - meeting rooms and a library, to take two examples;

(b) remuneration - to ensure that any new system allows **any** person to take a full role in the government of the Island.

### (v) Scrutiny

More and more, Committees of the States are making subordinate legislation. This power to make Orders could rest (as it does elsewhere) with one person. A complete system of scrutiny must therefore include an adequate mechanism for review of this type of legislation.

By way of illustration, and with kind permission of the publisher Appendix One contains a statement of the procedure in England from "Governing by Numbers", a recently published book by Dr. E.C. Page of the University of Hull.

### (ix) Appointments

I welcome the creation of a Commission. I see this as the logical outcome of (P.85/2001) of Deputy R.G. Le Hérisssier. I would wish to extend it to include "quangos", to ensure there is a clear procedure and criteria for selection, advertising posts, selection process and so on.

### (x) A Review of the Relationship Between the States and the Parishes

The proposal of the Committee is welcome but does not go far enough. Recently the States and the Parishes have had to consider -

a new rating law;  
the possibility of equalisation of welfare;  
the possibility of the public paying rates on buildings.

The Review Panel envisaged the delegation of at least the delivery of services to the Parishes but many will ask 'who will pay?' Whilst there have been reports and discussions on many of these issues, I perceive no willingness on the part of the twelve parishes to move together, in many cases for understandable reasons. The important message of the Report of the Review Panel must be taken up but it is essential -

to have data on which to proceed;  
to engage in dialogue with the Parishes and the parishioners;  
to assess what degree of agreement might be possible;  
to reform the Parish institutions, to enable them to meet a new and enhanced rôle.

For convenience I have set out in Appendix 2 how the proposition would read if my amendments were accepted. The amendments have no additional financial or manpower implications for the States over and above those arising from the proposition of the Committee.

## “Governing by Numbers”

Dr. E.C. Page (Hart Publishing 2001)

### HOW SIs ARE MADE: THE FORMALITIES

In order to become law, Statutory Instruments do not have to pass through the same sets of parliamentary procedures as Acts of Parliament, but almost all SIs are subject to some form of parliamentary control. These procedures are generally grouped into three types: affirmative procedures, negative procedures and ‘other’ procedures. Which procedure any one particular SI has to follow is a matter stipulated in the parent primary legislation.<sup>[1]</sup> Statutory Instruments subject to *affirmative procedures* require positive parliamentary approval - 10 per cent of SIs made between 1991 and 1999 were affirmative SIs. These affirmative procedures fall into three different types. One type involves the laying of the SI in draft before Parliament before it is made. It can then be made only if it is approved by Parliament. Usually it has to be laid before the House of Commons alone, but can require the approval of both Houses. A second type of affirmative procedure involves the laying of the instrument after it has been made, but it cannot come into effect until it has been approved by Parliament. According to a third type of affirmative procedure, the instrument is made and laid before Parliament, and may come into effect immediately, but cannot remain in force after a specified period (often 28 days but also sometimes 40 days or one month unless approved within that time).

When subject to *negative procedures* an SI will reach the statute book unless Parliament resolves to vote against it. 68 per cent of SIs made between 1991 and 1998 were negative SIs. There are two types of negative procedures. According to one set of procedures, the SI is laid in draft and cannot be made if, within 40 days, Parliament votes its disapproval. The other procedure involves the laying of the instrument after it is made, and the instrument can remain in effect if Parliament passes no negative resolution within 40 days. In the case of both negative and positive resolutions, the differences among sub-types lies in the distinction between making legislation and coming into effect. The draft procedure (positive and negative) requires parliamentary approval in order that the legislation can be *made*; the other procedures (positive and negative, with some exceptions) require parliamentary approval or acquiescence so that the legislation can *come into effect*, although in practice there is little difference between draft and non-draft procedures in this respect (Boulton 1989: 546).

There is a third variety of SI - those that require no parliamentary approval, active or passive, either because they do not need to be laid (19 per cent of SIs made between 1991 and 1999), or because once they are laid, there is no specification of any type of parliamentary approval procedure (2 per cent of SIs).

Many but not all Statutory Instruments have to be laid before Parliament (on laying see Campbell 1987). The Joint Committee on Statutory Instruments and (less frequently) the Commons Select Committee on Statutory Instruments play a key role in the parliamentary scrutiny of Statutory Instruments (Boulton 1989). The Joint Committee is composed of seven members from the House of Lords and seven from the House of Commons, chaired by a member of the opposition party. The function of the Joint Committee is to scrutinise those SIs that require positive or tacit approval of both Houses and to draw to the attention of Parliament those SIs which are problematic on one or more of several grounds including defective drafting, unexpected use of powers, *ultra vires*, or being unjustifiably delayed before presentation to Parliament.

The Joint Committee examines the SI for largely *technical* defects, ‘not on the merits of or policy behind the instrument’ (Boulton 1989: 552). Moreover, the ‘drawing to attention’ by the Committee does not imply any further action by either House. Of the 703 items of delegated legislation reported by either the Joint or the Select Committee between 1973 and 1983, 574 or 82 per cent were not debated (Hayhurst and Wallington 1988: 564). Where the SI requires only the active or tacit approval of the House of Commons, the seven MPs on the Joint Committee form the Select Committee on Statutory Instruments and draw those instruments to the attention of the House of Commons on the basis of the same criteria as are employed by the Joint Committee. The House of Lords can consider an SI only after the Joint Committee has reported; the House of Commons can consider the SI at any time. Where there is a pressing issue, the Government may ask the House of Commons to approve an SI before the Select Committee has met to discuss it. Motions to approve or object to SIs ‘prayers’ are debated between 10.00 a.m. and 11.30 a.m. in the House of Commons, and in the House of Lords debates on SIs can be initiated by various devices: prayers (as in the House of Commons), motions, and ‘unstarred questions’ (i.e. questions to the Government).

In addition, the House of Lords Delegated Powers Scrutiny Committee, established in 1992, has the responsibility of looking at Bills before Parliament which contain clauses delegating powers to ministers and is to report ‘whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny’ (see Himsworth 1995). There is no equivalent House of Commons committee looking at proposed ministerial delegation contained in bills. Since 1994 both Houses of Parliament have had additional

functions with respect to delegated legislation under the Deregulation and Contracting Out Act 1994 (Page 1995). This legislation was passed as part of the Conservative Government's long-expressed desire to get government 'off the back' of industry by removing unnecessary regulations. It gives any minister the power to make orders which would repeal legislation deemed to be superfluous and burdensome. Since this was in many cases likely to involve repealing primary legislation by delegated legislation, the government made special provision for the parliamentary consideration of secondary legislation issued under such a 'Henry VIII' clause. The legislation led to the creation of the House of Commons Deregulation Committee specifically to look at SIs issued under this Act. In the House of Lords this function is exercised by the Delegated Powers Scrutiny Committee.

If the amendments were adopted the proposition would read as follows -

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

- (a) to agree that the Island's present committee system of government should be replaced by a ministerial system, combined with a system of scrutiny, as set out in the report of the Policy and Resources Committee dated 26th July 2001 and that this objective should be achieved in the following manner -
- (i) the committee system of government will be abolished;
  - (ii) the States will appoint a Chief Minister of Jersey from among their number, by a process to be agreed, who will nominate a team of ministers to form the Council of Ministers, with the executive function of government vested in the Chief Minister and the Council of Ministers;
  - (iii) not more than ten departments of government will be established, each headed by a minister, with power to appoint up to two other members of the States to assist in his or her executive work, subject to the approval of the Chief Minister and to the condition set out in paragraph (vii) below, with such members being able, if appropriate, to be so involved in the work of more than one department;
  - (iv) the States will form a Privileges and Procedure Committee to be responsible to the States for all aspects of Assembly procedure including, in particular, scrutiny arrangements, facilities, remuneration, services for members of the States and an appropriate code of conduct for all members ;
  - (v) the States will establish, upon the basis of conditions and terms of reference to be drawn up by the Privileges and Procedure Committee, a small number of scrutiny committees, comprised of members of the States not involved in the Executive, the function of such committees being, in support of the overriding role of the States Assembly in such matters, to contribute to the development of policy, to scrutinise legislation (including subordinate legislation), and to examine the performance of government;
  - (vi) the States will establish a Public Accounts Committee, comprised of the chairmen of the scrutiny committees together with at least one other member of the States not involved in the Executive, charged with the scrutiny of public expenditure and supported by an Auditor General accountable directly to the States Assembly;
  - (vii) the revised structure will be designed to ensure that the number of members of the States who are not involved in the Executive will be greater than those who are;
  - (viii) the Council of Ministers will be supported by a Chief Executive who will be the head of the civil service, which will be unified at senior level; and heads of departments will form a management board under the leadership of the Chief Executive;
  - (ix) the States will establish an independent Appointments Commission, comprising persons who are not members of the States, with responsibility for ensuring that senior ( ) appointments to the civil service and autonomous and quasi-autonomous public bodies are properly made, and which as its first task will recommend to the States a person for appointment as Chief Executive;
  - (x) the Policy and Resources Committee, after consultation with the Comité des Connétables, will bring forward for approval by the States proposals on the future relationship between the Parishes and other areas of public administration , and in particular -
    - (i) the provision of services;
    - (ii) resource allocation and financing;
    - (iii) a review of the Parish institutions; and
    - (iv) the position of the Parish of St. Helier;
- (b) to request the Policy and Resources Committee to present to the States, before the end of November 2001, an

implementation plan showing how and when these changes should be brought into effect.

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<sup>[1]</sup> Statutory Instruments passed under authority of section 2(2) of the European Communities Act 1992 can use either affirmative or negative procedures.