

STATES OF JERSEY ORDER PAPER

Tuesday 23rd, Wednesday 24th and Thursday
25th July 2002

SUPPLEMENTARY

D. PRESENTATION OF PAPERS

(a) Papers for information

Matters presented under Standing Order 6A(1)(a)

Overseas Aid Committee: annual report for 2001.

Overseas Aid Committee.

Machinery of Government: proposed departmental structure and transitional arrangements (P.70/2002) - fourth amendments: comments.

Policy and Resources Committee.

Attached.

Machinery of Government: proposed departmental structure and transitional arrangements (P.70/2002) - fifth amendments: comments.

Planning and Environment Committee.

Attached.

Machinery of Government: proposed departmental structure and transitional arrangements (P.70/2002) - fifth amendments: comments.

Policy and Resources Committee.

Attached.

Machinery of Government: proposed
departmental structure and transitional
arrangements (P.70/2002) - seventh
amendments: comments.

Policy and Resources Committee.

Attached.

Agriculture and Fisheries: policy report
2001 (P.115/2002) - comments.

P.115/2002.

Com.(2).

Policy and Resources Committee.

C.M. NEWCOMBE

Greffier of the States

19th July 2002

MACHINERY OF GOVERNMENT: PROPOSED DEPARTMENTAL STRUCTURE AND TRANSITIONAL ARRANGEMENTS (P.70/2002) - FOURTH AMENDMENTS - COMMENTS.

1. The Policy and Resources Committee is sympathetic to the view expressed by the Overseas Aid Committee that there should be special arrangements in place to administer overseas aid once the ministerial system comes into effect. It is generally acknowledged that the Overseas Aid Committee has been successful in the work that it has carried out over the 34 years since its inception, and the Committee notes that this success is due in great measure to the involvement of the wider Island community. Indeed, this is a unique strength of Jersey's overseas aid programme.
2. The Policy and Resources Committee believes that this community involvement must continue to be an important feature of the overseas aid programme. One element of this community involvement is contained in the Committee's proposal that an Advisory Board should be established as soon as the ministerial system comes into effect (see paragraph 4.2.3 of the report accompanying P.70/2002, and paragraph 1.2.2 of Appendix 2).
3. In its discussions with the Overseas Aid Committee, it has been suggested by the Policy and Resources Committee that the Chief Minister could delegate authority to the Advisory Board to carry out work relating to the implementation of the overseas aid programme. This work would consist of all of the activities that are currently the responsibility of the Overseas Aid Committee, e.g. considering and approving applications for grant aid; promoting and encouraging Community Work Projects; and allocating funds towards emergencies and disaster relief. As its name implies, the Advisory Board would also play an important role in advising the Chief Minister on overseas aid policy. It is likely that the Board would be chaired by an assistant minister, with the other members being non-States members, and with the latter being appointed by the States on the nomination of the Chief Minister. The Board would be under the political responsibility of the Chief Minister and would act according to agreed policy guidelines. These guidelines would, of course, take full account of the policies that currently exist on overseas aid, and the guidelines would be formulated by the Chief Minister, in consultation with the Advisory Board, and submitted by the Council of Ministers to the States for approval as part of the strategic policy programme. In other words, the role of the Chief Minister would be to formulate policy for approval by the States, and the Advisory Board would then carry out the executive work associated with the overseas aid programme.
4. In the view of the Policy and Resources Committee, this approach would help to ensure full community involvement in the overseas aid programme, and should also go at least some way to meeting the objections of the Overseas Aid Committee. However, the Committee feels unable to accept the amendment as it stands because it believes that it is at odds with the decision of the States last September to move to a ministerial system of government.
5. One of the principles of ministerial government described in the report accompanying 'Machinery of Government: Proposed Reforms' (P.122/2001) was that there should be a clear division between the executive and scrutiny function. In this way 'those members who would carry out the scrutiny function could then be said to be truly independent, because they would not have a particular stake in any one aspect of the executive' (paragraph 7.4 of P.122/2001). If the amendments of the Overseas Aid Committee are adopted, then this would mean that up to four non-executive members of the States would be carrying out an executive function as members of the proposed Overseas Aid Commission. This would only serve to blur the distinction between the executive and scrutiny functions, and it would also disrupt the balance between executive and non-executive members of the States. There would also be the potential for conflict for those non-executive members of the Commission who might also happen to be on a scrutiny committee examining an overseas aid policy or function.
6. In its report the Overseas Aid Committee refers to the 'bureaucracy' of ministerial government and states that such a government will not necessarily be in a position to respond readily to the demands of the overseas aid programme. The Policy and Resources Committee refutes this argument, and indeed one of the main reasons that it gave in support of the case for a ministerial system was that it is designed to lead to a more effective and efficient system of government.
7. In presenting its proposals for a new departmental structure, the Policy and Resources Committee believes that oversight and direction of the Overseas Aid function should rest with the Chief Minister as it is an important community as well as humanitarian issue. The Island as a whole is justly proud of the overseas aid programme, the unique elements of which are widely recognised in the international development field. The States should rightly vest authority and responsibility for such matters as Overseas Aid in the executive, in this case the Chief Minister, and he or she should not divest himself of that direct responsibility.
8. In conclusion, the Policy and Resources Committee maintains the proposition that responsibility for overseas aid should rest with the Chief Minister's Department, but it accepts that arrangements should be put into place to ensure

meaningful community involvement in the overseas aid programme. It would therefore propose to continue its discussions with the Overseas Aid Committee to agree on a way forward for the establishment of an Advisory Board with the authority to implement overseas aid programmes in accordance with policies that have been approved by the States.

POLICY AND RESOURCES COMMITTEE

MACHINERY OF GOVERNMENT: PROPOSED DEPARTMENTAL STRUCTURE AND TRANSITIONAL ARRANGEMENTS (P.70/2002) - FIFTH AMENDMENTS - COMMENTS.

The Planning and Environment Committee considers that this very late amendment would have very fundamental detrimental effects upon the future of environmental policies for the Island. Successive Planning and Environment Committees have made considerable progress towards achieving the States policy of sustainability, efforts which have been embodied in the Policy and Resources Committee's proposed departmental structure, which puts environment as a prime purpose of government.

The Committee has expressed its opinions to the Policy and Resources Committee and fully endorses the comments issued by that Committee to States Members today.

Members may be interested to hear the views of its newly-appointed Director for the Environment. Although he is yet to take up his post he has offered his opinion to the Committee -

"The proposed amendments to the departmental structure and transitional arrangements made by Agriculture and Fisheries amount to the following -

1. *Retention of environmental responsibilities by other Departments*
2. *Establishment of a small Environment Commission with powers to oversee the environmental performance of all Government Departments against an overarching Environmental Strategy*
3. *No Environment Department and a dispersal of current ESU responsibilities and people.*

Comment

- 1 *The loss of a core environment department would be a severely retrograde step (note that the A&F proposal also advocates the dispersal of the ESU responsibilities). It would fail to achieve the increased and sustained focus that the P&R proposal sought and would put the voice of environment outside Government instead of at Minister level.*
- 2 *In overview this proposal trades the benefits of establishing a unified environment department against a conceptual advantage of separating operational responsibilities from those for regulation and Policy. Within the environment department as proposed by P&R the bulk of the responsibilities are for policy and regulation, there is little that is truly operational and where there is (e.g. monitoring and evaluation) there is no obvious danger of conflict of the “poacher/gamekeeper” type.*
- 3 *In the UK the type of overview and scrutiny that the proposal seeks to establish is achieved through a mechanism of “Green Ministers” – a council committee where each Department has a representative answerable for their environmental performance. This could easily be achieved within Jersey’s machinery of Government at minimal cost and would have far greater teeth than a Commission.*
- 4 *The proposal also suggests that cost savings could be achieved but does not provide any substantiation for this assertion. In practice both arrangements will require similar levels of resources with the difference being in their deployment – retention of expertise in all departments plus a Commission (Ag & F) or centralisation on an Environment Department (P&R). In any model there will be some necessary overlap to ensure that a constructive dialogue can take place (sometimes referred to as an “intelligent client” function), this is wrongly described as “duplication” of work.*
- 5 *The tasks proposed at paragraph 5.1 of the A&F report are useful and should be undertaken by the Environment Department. They will require more regular attention than the occasional monitoring by an external consultant as proposed at paragraph 9.1.*

Minor points

1. *Arguments that relate to the prosecution of Government Departments need to be grounded in what is legally possible. I suspect that it may not be possible for any one to actually prosecute a Department, however they may be subject to a judicial review for improperly discharging their functions. A green Ministers forum may be a way of exposing poor environmental performance in a manner open to public scrutiny.*
2. *The introduction of the term “natural environment” by A&F should not go unchallenged. It may be an attempt to limit the scope of environment to nature conservation. The P&R proposal clearly envisages a scope that includes for example air quality, waste and land use.”*

(Chris Newton - 17th July 2002)

PLANNING AND ENVIRONMENT COMMITTEE

MACHINERY OF GOVERNMENT: PROPOSED DEPARTMENTAL STRUCTURE AND TRANSITIONAL ARRANGEMENTS (P.70/2002) - FIFTH AMENDMENTS - COMMENTS

Summary

The departmental structure as proposed by the Policy and Resources Committee highlights the environment as a prime purpose of Government. The Agriculture and Fisheries Committee's amendment relegates the environment to a secondary role within separate departments, and thus maintains the status quo. It is a status quo which has so far failed to deliver. Environment has to move into the mainstream and rank in equal importance to all other purposes. The Agriculture and Fisheries Committee's proposal is driven by the need for regulation. It would be the regulatory tail wagging the policy dog. It is old-fashioned thinking which has been largely discredited elsewhere.

The Policy and Resources Committee believes there should be an Environmental Minister as a member of the Council of Ministers responsible for all States policy and legislation on environmental matters.

The transitional committee will draw up the boundaries of separate policy, regulation and operational functions. The amendment of the Agriculture and Fisheries Committee fails to achieve its own objective. It fails to achieve sustainability, holistic policy setting and integration. In reality it is a proposal to reinvent the Agriculture and Fisheries Committee into a countryside department modelled on the DEFRA model in the United Kingdom, which does not fit local circumstances.

Rather than save money it will perpetuate inefficiencies. In short, it is not a constructive alternative to the Machinery of Government proposal. Constructive discussions can take place on the role of a regulatory body since this has a considerable body of support. However, this needs to be further explored within the context of approval to the substantive proposal.

Whilst the principle embodied in paragraph 1(i) of the Amendment is, in part, acceptable, it takes one of the three guiding principles which are clearly set out in paragraph 2.4 of the Policy and Resources Committee's report (P.70/2002) entirely out of context and, as such, the amendment should be rejected as a whole.

The following paragraphs explain these conclusions in more detail.

Introduction

1. The Agriculture and Fisheries Committee has submitted at the eleventh hour a proposal which, if approved by the States, would damage the integrity and balance of the reform structure proposed by the Policy and Resources Committee. It would achieve the opposite of its claims of ensuring that the Island's framework for environmental policy and practice is enhanced to the level required to achieve international best practice.
2. The Agriculture and Fisheries Committee has failed to make sound business arguments against the reform plans. It has provided no comparative analysis of local circumstances against other jurisdictions, the fundamental effects on the potential for achieving holistic and sustainable environmental policy, the practical issues and the fundamental question of accountability for policy development and implementation.
3. A systematic process has been followed by the Policy and Resources Committee's proposals to embrace the achievement of sustainable policies, the environmental charter, the recommendations of the Service Review and the Machinery of Government review. This is in sharp contrast to the approach of the Agriculture and Fisheries Committee. Not a single contribution has been made by that Committee to either the Planning and Environment Committee's Service Review or the work on the machinery of government reforms. At the request of the Agriculture and Fisheries Committee (in an Act dated 20th May 2002), a meeting was held between presidents of several committees to discuss the future place of the agriculture and fisheries industries. At this meeting on 18th June there was agreement between the Presidents of Agriculture and Fisheries, Public Services and Planning and Environment Committees, and the Vice-President of the Finance and Economics Committee, that attention to improved regulation would ensure an adequate separation between poacher and gamekeeper. This would follow the States' approval of the reformed structure.

The meeting agreed that the over-arching principles set out in the Policy and Resources Committee's proposals require that the transitional Committees resolve these matters.

4. The Agriculture and Fisheries Committee argues that this fundamental principle (which is embodied in the Policy and Resources Committee's report) requires the changes they propose to be made now. The Policy and Resources Committee does not accept there are insurmountable problems in the framework which it proposes in P.70/2002.

5. The key issues which arise from the amendment are -
- the need to ensure that responsibility for policy making remains political;
 - the loss of opportunity to integrate environmental policy and practice;
 - the workability of the separation of regulation and operations;
 - the practicality of establishing a viable and successful Environment Commission in Jersey.

Policy implications

6. The creation of an independent body entirely outside the States' framework to develop public policy would fail a test of accountability and scrutiny. Any proposal which has this effect does not sit comfortably compared with the improvements planned for the development of States policies in the future where a systematic process of Issues Reports, Draft Consultation Reports and Scrutiny Committee hearings would ensure that policy proposals are adequately tested for robustness before reaching the States Chamber.
7. The amendment refers specifically to the "natural" environment of the Island. It makes no reference to the urban or built environment. The amendment would, in effect, separate out the countryside policies which will become the responsibility of the Commission, leaving urban policies within the Planning Department. However, the same proposal also leaves the existing functions of the Environmental Services Unit within the Planning Department. Transport policy is included in the remit of the proposed Commission, but land-use planning remains without. (Although land-use is referred to in para. (ii) of the amendment it is understood that this is intended to relate only to the regulatory role carried out by the Committee of Agriculture). All this is inconsistent and confused. If the Agriculture Committee intends to confine the purpose of the Commission to regulation, the wording indicates otherwise.
8. The allocation of responsibilities set out in the amendment ignores the close integration of land use planning policies and environmental policies which are in-built throughout the entire 150 plus policies of the Island Plan. States' endorsement of the Island Plan is clear evidence of the importance of integrating all environmental policy and practice within one organisation. It is not sensible to try to manage the environment of Jersey without recognising that the urban and countryside policies are intimately connected. Jersey has the opportunity to become a model of international best practice showing just how sustainability can be achieved. The proposals of the Policy and Resources Committee will help to achieve this. They are not uneconomic, they are not wasteful of resources (as the Agriculture and Fisheries Committee suggests), and they will enable efficient, effective and economic environmental improvements to be achieved. The proposal submitted by the Agriculture and Fisheries Committee would, in practice, render impossible the integration of environmental functions ensuring that a holistic approach to environmental policy would be no longer possible. Sustainability could not be achieved and the benefits of the integration of planning and environmental functions within policy setting would be lost. This would be a remarkable result considering the success of the new Island Plan in integrating the very policies which the successive Planning and Environment Committees have spent years developing.

Integration of Environmental Policy and Practice

9. By contrast, the Policy and Resources Committee proposals draw upon the lessons of the work carried out over the last ten years towards achieving sustainability, work which would be set aside if the amendment were carried in its draft form. In the early 1990s the Policy and Resources Committee identified the need for an integrated approach towards environmental policy. In 1993 it recommended to the States that the Island Development Committee should be given strategic and co-ordinating responsibilities for all environmental policies. In approving this Proposition P.60/1993 on 25th May the States set the framework for the existing organisation.
10. In 1994 (P.84/1994) the States approved the Island Development Committee's report on its organisation to achieve this responsibility. The Committee was re-named the Planning and Environment Committee and a transition from the rigidity of separate committee working towards a truly co-operative arrangement was proposed. At the time the States believed that such integration could happen without structural changes in government.
11. During 1998 the Policy and Resources Committee authorised the Service Review, which included a strategic review of all States environmental functions. ERM completed its report to the Policy and Resources Committee in October 1999. The report was published and a consensus agreed at a meeting of all States Members in September 2000. The report acknowledged that a substantial base of research and scientific expertise had been built up which

will aid future policy setting. Fundamental changes are required in the way Jersey manages the environment ensuring an integrated approach for environmental policy and protection.

12. ERM's fundamental conclusion was that "*there needs to be a commitment to the progressive integration of environmental policy and practice across the States under a single organisation*". Their analysis showed that existing fragmentation had the following effects.

- Inflexibility to use available resources and inefficiency
- Boundaries uncertain
- Strategic planning and integrated environmental management not possible
- Duplication, overlaps and gaps in service provision
- Gap between the resources available and the tasks required.

13. The Policy and Resources Committee agreed to the progressive integration of environmental policy and practice under a single organisation.

Following the Clothier review, the Policy and Resources Committee re-addressed ERM's recommendations in the context of fewer executive bodies (Ministers), each served by a single large executive department and with existing fragmented functions re-grouped around the single departments. A corporate structure operating at a strategic level would be aided by effective political co-ordination, a Council of Ministers and departments being organised around clear aims and objectives. These factors strongly favoured maintaining political control over environmental policy by proposing an Environment Minister as a member of the Council of Ministers with a single Department of the Environment. In reaching this conclusion, the committees were absolutely firm that policy decisions should remain within the direct control of politicians.

14. The Agriculture and Fisheries Committee may argue that its draft amendment does not propose that policy setting is delegated to the "independent agency". Not only is this inconsistent with the words used in the amendment, but clearly the result of the change would be loss of political control. It is recognised that there would be tensions. The present disjointed policy-making would continue. Experience within the States shows such avoidable tensions to be unhelpful. **It is simply not realistic to create an entirely independent body outside political control to establish an "over-arching strategy"** for part of the Island (only the countryside in which part of the population lives) and expect the Council of Ministers to adopt it.

Separation of Regulation

15. It is fully recognised that the issue of poacher/gamekeeper in environment regulation is fundamental and that the principle of separation needs to be achieved. It is however essential that, if separate arms-length bodies are created for whatever purpose, (either regulatory or operational) such "agencies" should be appointed and be removable by the States. They would need to be subject to service level agreements setting out what is required of them, the service standards, performance measures and funding arrangements. It is an inherent part of the Policy and Resources Committee's proposals that, in the case of the Environment Department, the necessary divisions of functions will be drawn up in detail by the transitional committee for presentation to the States prior to 2005. This arises because of the need to make pragmatic decisions since the functions in Jersey are small-scale. In practice, experienced professionals employed by the States in many specialist areas divide their time between both policy advice and regulation. Divisions are, therefore, not easy to draw and will take time to establish.

16. The Committee of Agriculture may argue that setting up a regulatory body which is accountable to a Minister is not possible because of reasons of "independence", issues which arise under Human Rights legislation. The Policy and Resources Committee has received preliminary legal advice that, in the case of environmental regulation, the approach taken in setting up the Planning and Building Appeals Commission with full jurisdiction will overcome these problems, as will the alternative of providing an appeal to the Royal Court.

Practicality of a Commission

17. An Environmental Commission would lead to unnecessary conflicts with government departments, brought about by overlapping roles. There would be significant set-up costs. Finding well qualified people who would be prepared to commit sufficient time to serve as members of the Commission could be difficult.

18. Members may then ask where the knowledgeable and expert commissioners would come from. The proposals in the amendment clearly draw on experiences elsewhere. In the United Kingdom the Environment Agency serves different ministries - DEFRA (Department of Environment, Food and Rural Affairs) which deals with countryside

policies, and the separate Department recently transferred to the Office of the Deputy Prime Minister which deals with urban and land policies. This structure is able to benefit from many expert bodies which are staffed by professional scientists. Such bodies can do monitoring and environmental work under agency arrangements very effectively and can contribute fully. Unfortunately, within the Island no such structures exist. Whilst there are many committed local people there are no comparable bodies.

19. It is argued in the Agriculture and Fisheries Committee's report that its proposal would render unnecessary the creation of the proposed new Environment Department so avoiding extra costs. There are bound to be set-up costs whatever type of body is created, whether it is a Commission or Department. The very purpose of integration and change is to squeeze out or release economies and efficiency of resource and offset the extra costs arising from environmental improvements. Rather than save money the amendment will incur extra costs. It will prevent savings being realised from the integration of complementary functions.

20. The Committee believe the States may wish to know the views of its Environmental Adviser on the amendment. Dr. Romeril, who although recuperating following illness, has kindly reviewed the proposal and offered the Committee the following advice -

"At one time I tended to favour the Commission model within the existing political system but now reject the idea. I held that view before the Clothier Report and the Machinery of Government changes now being proposed. My concern at the time was the need to raise the profile and status of environmental policy in the Island.

However, the MOG changes now in train provide, in my view, the ideal opportunity to place the environment at the centre of States policy deliberations as never before and, equally importantly, to remove the fragmentation, inefficiency and duplication that has dogged environmental work in the past. The environment is one of the three key pillars of sustainability. Sustainability is States Policy, strongly reinforced in the newly approved Island Plan, and therefore it is absolutely logical to create an environment department reporting through its own Minister.

I believe that those proposals will do nothing to solve existing problems. Duplication will still be the order of the day since the States would still need to retain an environmental workforce as its own "check and balance". The Island is too small, and lacking in appropriate professional people not already engaged in the public service, to pursue the Commission idea. It should, instead, be seeking to use the changes to create a unique "Jersey" answer in its approach to environmental policy challenges."

(Dr. M. Romeril, Environmental Adviser to the Policy and Resources Committee- 18th July 2002)

POLICY AND RESOURCES COMMITTEE

MACHINERY OF GOVERNMENT: PROPOSED DEPARTMENTAL STRUCTURE AND TRANSITIONAL ARRANGEMENTS (P.70/2002) - SEVENTH AMENDMENTS - COMMENTS.

1. The Policy and Resources opposes this amendment.
2. The Statistics Unit in the Policy and Resources Department has complete professional independence. The States have specifically safeguarded this through the creation in 1999 of the Statistics Users Group (P.142/99). This body is charged by the States with ensuring sound statistical methodologies, that all statistical work is free from political interference, and that a fair balance is struck between satisfying the legitimate needs of users and making reasonable demands on the providers of information.
3. Through P.140/2000 the States appointed one of the UK's most eminent statisticians, Professor Tim Holt CB, former head of the Office of National Statistics and the UK Government Statistical Service, as Chairman of the Statistics Users Group. This appointment runs, in the first instance, until September 2003. It was recommended to the States after advice had been taken from the Royal Statistical Society.
4. To help ensure independence, the States endorsed the Committee's recommendation that the Chairman should be neither a States Member nor an officer, but an eminent professional of high repute. Hence Professor Holt's appointment. He has made a valuable contribution over the last two years, with the Group, on taking forward the remit in paragraph 2 above.
5. As well as fulfilling a function in Jersey akin to that of the Office of National Statistics (ONS) in the UK - that is, compiling statistical series such as the RPI and average earnings - the Statistics Unit also provides an important function of government in giving advice across the whole States organisation as necessary on statistical matters. This is comparable with the function of members of the UK Government Statistical Service based in individual UK government departments as apposed to the ONS. The Unit also endeavours to meet all reasonable requests for information from States Members and the public, and inputs generally to the policy debate. Its position in the centre of the organisation is valuable in this regard, and would be lost in the model proposed in the amendment.
6. It would be quite wrong - indeed, a compromise to the Statistics Unit's independence as currently ensured by States decision - for the statistical function to be 'supervised' by a Board of States Members, as the amendment proposes. This would not guarantee independence but, rather, create the conditions for potential political interference. It would also compromise the trust placed by the States in Professor Holt.
7. More generally, a supervisory board comprising States Members would go against not only the principles of independence and freedom from political interference but also the principle established under the machinery of government reforms whereby those States Members who are not in the Executive exercise a scrutiny not an executive role. The Committee believes that this is a fundamental tenet of the new government structure agreed by the States which must not be undermined by an instance such as that proposed by the amendment.

POLICY AND RESOURCES COMMITTEE