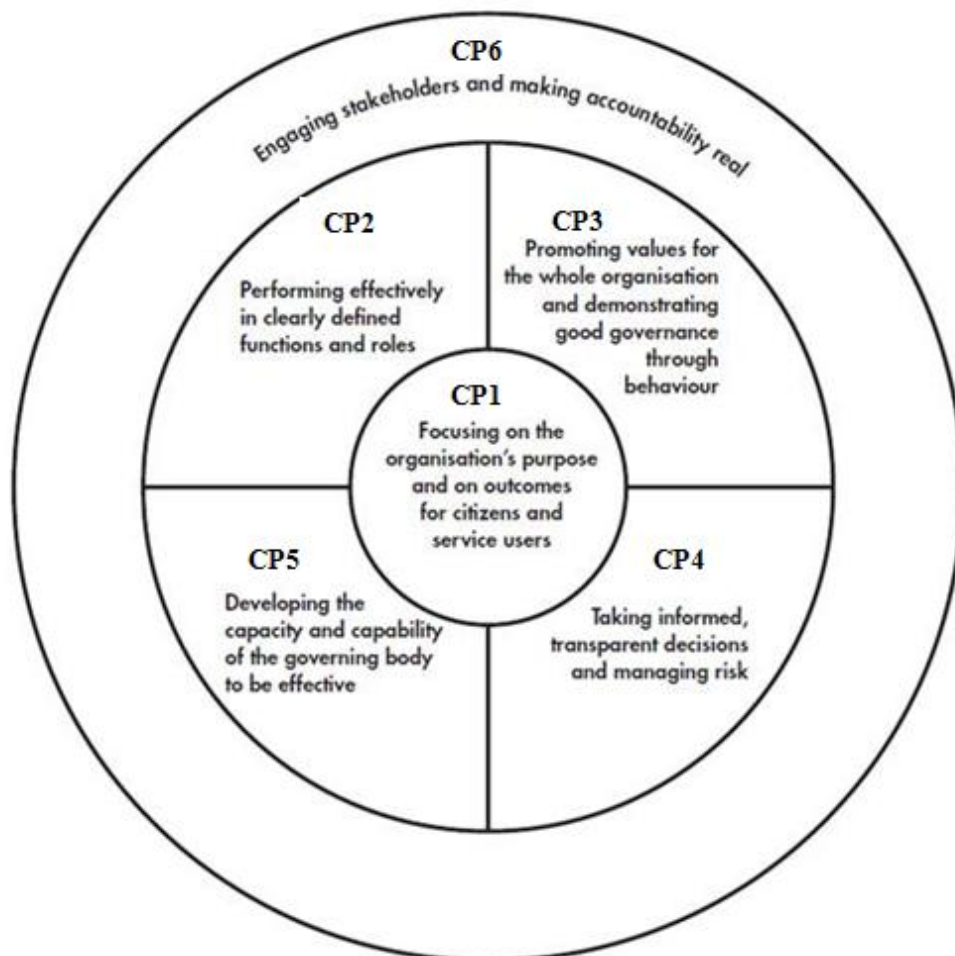




STATES OF GUERNSEY

Improving Governance in the States of Guernsey



**Public Accounts Committee
Scrutiny Committee
States Assembly and Constitution Committee**

January 2012

**PUBLIC ACCOUNTS COMMITTEE
SCRUTINY COMMITTEE
STATES ASSEMBLY AND CONSTITUTION COMMITTEE**

IMPROVING GOVERNANCE IN THE STATES OF GUERNSEY

The Presiding Officer
The Bailiff's Chambers
Royal Court House
St Peter Port
Guernsey

9th January 2012

Dear Sir

Executive Summary

This States report – pursuant to Resolutions of the States of Deliberation in March, 2011 after consideration of Billet d'État IV of that year – is submitted jointly by three Parliamentary Committees: the Public Accounts Committee (PAC), the Scrutiny Committee and the States Assembly and Constitution Committee (SACC) (referred to herein as the Joint Committees).

It includes a package of proposals which, if approved and implemented, will enable the States of Guernsey to:

- meet the highest standards of good governance which they are reasonably able to deliver within the existing system of government by committees and consensus; and
- measure compliance with those standards of good governance.

The Joint Committees are pleased to submit their report for debate at the March 2012 meeting of the States of Deliberation.

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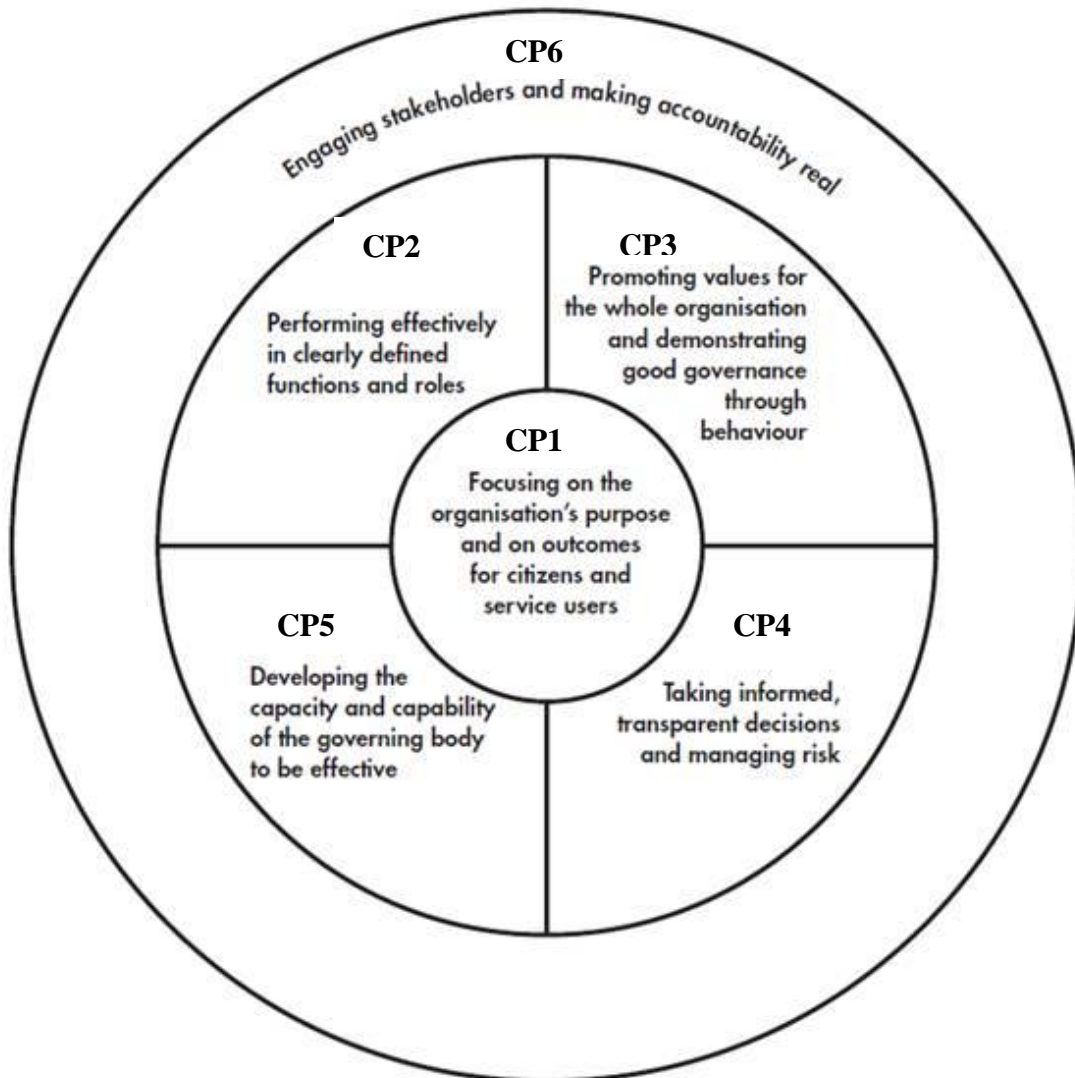
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1. Introduction

States of Guernsey adopt Good Governance Core Principles

- 1.1 At the March, 2011 meeting, following consideration of a report by the PAC¹, the States of Deliberation resolved, inter alia, to adopt six Core Principles of good governance, as determined by the UK Independent Commission on Good Governance in Public Services.

Figure 1 The six Core Principles (The UK Independent Commission on Good Governance in Public Services, 2004)



¹ Public Accounts Committee (2011) *Governance in the States of Guernsey*, Billet d'État IV March 2011

- 1.2 Further to an amendment proposed by Deputy M J Fallaize and seconded by Deputy S L Langlois, the States of Deliberation also resolved:

“To direct the Public Accounts Committee, the Scrutiny Committee and the States Assembly and Constitution Committee, after consultation with the Policy Council, jointly to present to the March 2012 meeting of the States of Deliberation, or sooner if possible, a report containing detailed proposals on how in practical terms the six Core Principles of good governance can be applied, and how compliance with them can be measured, within the context of Guernsey’s system of government by committees and consensus.”²

- 1.3 The PAC, the Scrutiny Committee and SACC (collectively referred to as the Joint Committees for the purposes of this report) met on 18th April, 2011, to determine how they would undertake this work, which resulted in the formation of the Joint Committees’ Working Party (JCWP).

Joint Committees’ Working Party (JCWP)

- 1.4 The JCWP comprised two members from each of the three Committees:

- Chairman: Deputy M J Fallaize (Scrutiny Committee)
- Vice-Chairman: Deputy M M Lowe (SACC)
- Mr M E Best (PAC)
- Deputy L R Gallienne (PAC)
- Deputy S L Langlois (SACC)
- Deputy S J McManus (Scrutiny Committee)

- 1.5 Each Committee also nominated a 'first reserve' member to attend in the absence of one of its principal nominees:

- Deputy T M Le Pelley (SACC)
- Deputy R R Matthews (Scrutiny Committee)
- Deputy B J E Paint (PAC)

- 1.6 The JCWP was directed to report to the Joint Committees with detailed proposals on how the States Resolution might be fulfilled: namely to identify in practical terms how the six Core Principles of good governance can be applied,

² The States Resolutions are shown in full in Appendix 2

and how compliance with them can be measured, within the context of Guernsey's system of government by committees and consensus³.

- 1.7 Responsibility and accountability for this States report rests equally with the Public Accounts, Scrutiny and States Assembly and Constitution Committees. The Joint Committees are pleased to submit it for debate at the March, 2012 meeting of the States of Deliberation.

Methodology

- 1.8 The JCWP reviewed a significant body of material relating to governance with a view to establishing an appropriate base of evidence and a full understanding of the subject matter.
- 1.9 The JCWP wrote to all States members on 6th June providing an update on progress and to invite contributions to the review.
- 1.10 The JCWP identified areas of consensus among its members and areas which required further research and debate.
- 1.11 In September, the JCWP contacted all States members again in order to provide another update on progress and to invite their views. Also in September, Departments' Chief Officers and senior staff were provided with the opportunity to advise of initiatives which were already under way with a view to improving operational governance and to make suggestions for further reform in that regard. The Joint Committees are grateful to those who contributed.
- 1.12 JCWP members undertook to keep their parent Committees fully up to date concerning the work that was on-going and all members of the three parent Committees were invited to contribute points for consideration and specific proposals for reform which they considered appropriate. Minutes of the JCWP were circulated to each Committee.
- 1.13 The draft report was sent to the Policy Council for its comments, which are appended. The Joint Committees consideration of the points raised by the Policy Council is described in Section 11.
- 1.14 At three meetings late in 2011 and early in 2012, the Joint Committees discussed and amended their working party's report. Comments received from the Policy

³The terms of reference for the JCWP are shown in full in Appendix 3

Council and the advice of the Law Officers of the Crown were included in the discussions.

Resource implications

- 1.15 The specific recommendations in this report identify actions that those directed ‘should’ do or ‘should’ consider, rather than directing immediate action. This approach recognises that many of the proposals will have resource requirements that will need to be investigated by those responsible before the workstreams can be progressed. States members are being asked to consider the specific recommendations in principle (*Proposition 1*) and then, if they are approved, it is proposed that the Policy Council, in consultation with Departments and Committees, should present to the States of Deliberation by January, 2013 an implementation plan for the reforms (*Proposition 2*).

Legislative requirements

- 1.16 There are no legislative requirements arising from the propositions of this report. Any legislative requirements arising from the recommendations agreed in principle would be identified when devising an action plan for implementation.

Compliance with Core Principles

- 1.17 Appendix 1 demonstrates how the report recommendations seek to address the Core Principles.

Statement of Dissention

- 1.18 Throughout this report there are references to the views of the “Joint Committees”. This refers to a majority of the members of each of the Joint Committees (save for the exception noted below). Not all members support all of the proposals contained within this Report. Members have therefore indicated that they may speak and vote against some of the proposals in the States of Deliberation and, in respect of the PAC, Deputies may speak on behalf of the non-States Members on that Committee.
- 1.19 In respect of Propositions 1.15 and 1.16 and the relevant section of the report 4.64 – 4.74, relating to the role of non-States members, these matters are

presented only on behalf of the Scrutiny Committee and SACC as a majority of the PAC were opposed to these proposals.

2. Context

What is governance?

- 2.1 The term ‘governance’ has its origin in the Greek verb *kubernân*, which means ‘to pilot or steer’. It is an ancient concept stretching back over two thousand years.
- 2.2 The Joint Committees consider that the following definition of corporate governance as it applies to central government is a credible base upon which to present their report and proposals:

“Corporate governance is the way in which organisations are directed, controlled and led. It defines relationships and the distribution of rights and responsibilities among those who work with and in the organisation, determines the rules and procedures through which the organisation’s objectives are set, and provides the means of attaining those objectives and monitoring performance. Importantly, it defines where accountability lies throughout the organisation.” (Cabinet Office and HM Treasury, 2011)

- 2.3 Aspiring to, and ultimately delivering, good governance is paramount if government is to retain credibility, legitimacy and authority in arranging economic and social affairs⁴.
- 2.4 The Joint Committees noted the advice of the United Nations that “...good governance is an ideal which is difficult to achieve in its totality. Very few countries and societies have come close to achieving good governance in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal with the aim of making it a reality⁵.” With this in mind, the Joint Committees have regarded their challenge as the presentation of proposals capable of enabling the States of Guernsey to meet the highest possible standards of good governance.
- 2.5 In 2009, the Wales Audit Office (WAO) contributed to the understanding of what may be achieved by improving governance arrangements. “Good

⁴ See Pierre, J and Peters, B.G, (2000) *Governance, Politics and the State*, Palgrave Macmillan

⁵ United Nations Economic and Social Commission for Asia and the Pacific (2011?) *What is Good Governance?*

governance is a prerequisite for every public body to deliver sustainable, value for money and quality services in a transparent manner. Good governance involves ensuring that the right things are done, in the right way, for the right people, in an open, honest, inclusive and timely manner⁶.”

- 2.6 In March, 2011 the States of Deliberation resolved to express commitment to good governance by adopting six Core Principles, as determined by the UK Independent Commission on Good Governance in Public Services⁷, which are reproduced at the start of this report.
- 2.7 The Joint Committees, like the States of Deliberation at the meeting where these principles were approved, have taken into account conflicting views about the relevance and applicability of the principles to central governments such as the States of Guernsey.
- 2.8 On the one hand, by adopting these Core Principles, the States of Deliberation have clearly expressed a belief that they could be applied to the States of Guernsey acting as central government: on the other hand, the guidance issued by the UK Independent Commission on Good Governance in Public Services suggests that these principles were designed primarily to apply to public service organisations in receipt of public money and to the governors of such organisations. It is acknowledged that there are other equally relevant principles which the States may have adopted⁸, and therefore the use of the definite article in referring to *the* six principles of good governance should not be interpreted as implying that they are the only such principles available.
- 2.9 The Joint Committees were bound by States Resolution to present proposals capable of fulfilling these six principles, and in any event have found them a perfectly adequate set of simple and straightforward statements around which to construct their recommendations. Certainly the Joint Committees do not propose that the relevance of these principles should be revisited.
- 2.10 Appendix 1 is a table which illustrates how the proposals contained herein relate to the Core Principles.

⁶ Wales Audit Office, (2009), *Review of Good Governance – The States of Guernsey*, commissioned by the Public Accounts Committee and submitted as an appendix to the PAC’s report *Governance in the States of Guernsey* Billet d’État XVI March 2011

⁷ The Independent Commission on Good Governance in Public Services, (2004), *The Good Governance Standard for Public Services*

⁸ Such as the UNDP and World Bank models, shown in Appendix 4

- 2.11 The Joint Committees' report is a package of proposals which, if approved and implemented, will enable the States of Guernsey to:
- meet the highest standards of governance which they are reasonably able to deliver within the existing system of government by committees and consensus; and
 - measure compliance with those standards of governance.

Guernsey's system of government by committees and consensus

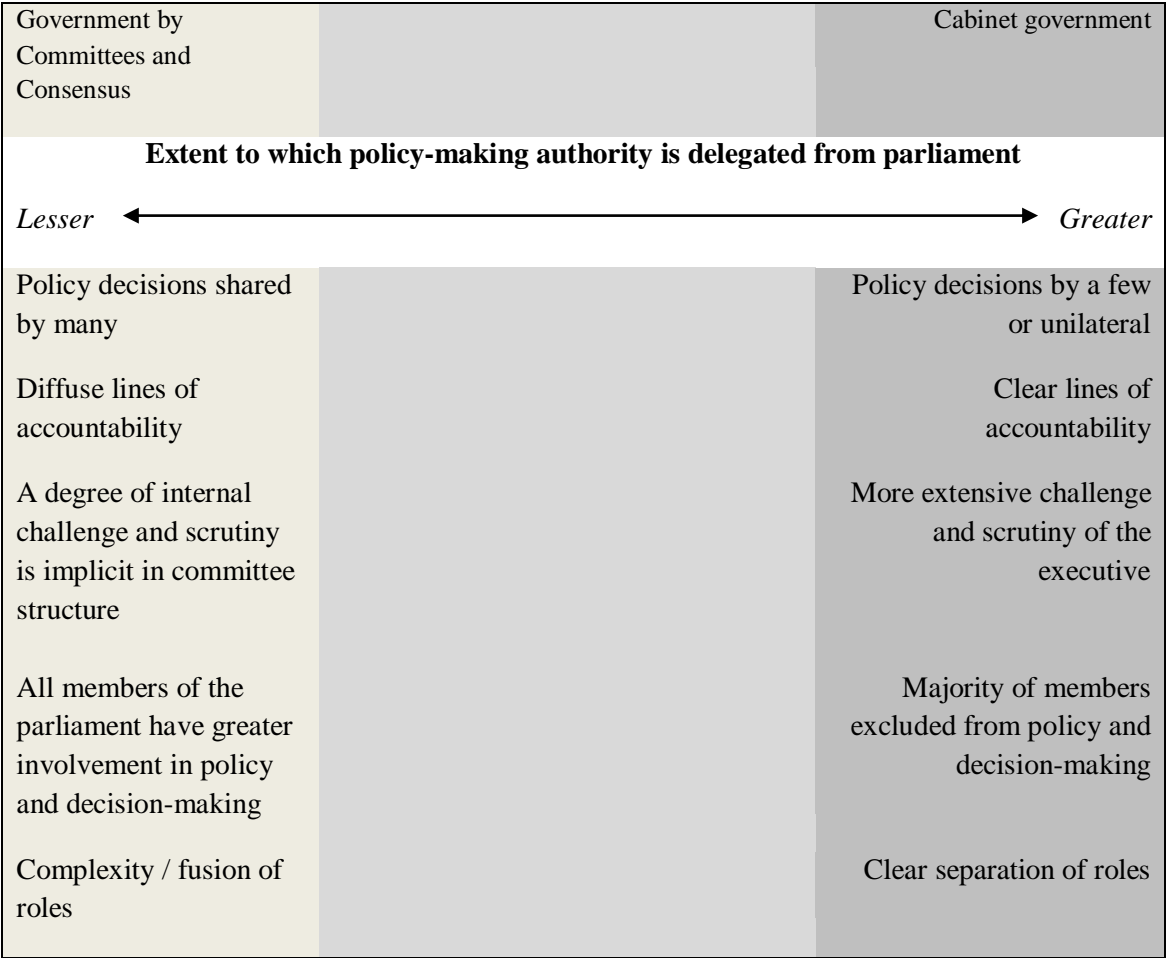
- 2.12 There are two predominant features of 'government by committees and consensus' which must be taken into account when trying to apply good governance in the States of Guernsey.
- 2.13 First, the right to change policy is retained by the parliament, the States of Deliberation, rather than being delegated to an executive in the form of a cabinet or Council of Ministers.
- 2.14 Second, policy formulation and implementation is mandated to several committees⁹ each comprising five People's Deputies, whereas in a cabinet system of government it is the Ministers who assume those responsibilities.
- 2.15 It should also be noted that there is no party political apparatus. Candidates almost always stand for election as independents.
- 2.16 In parliamentary democracies with cabinet systems of government the parliament cedes a great deal of its power, certainly in terms of policy-making, to an executive which generally comprises members of the party¹⁰ which holds the most seats in parliament. This greater concentration of power is balanced by opposition parties and a comprehensive system of scrutiny and oversight. 'Cabinet government' and 'government by committees and consensus' can be thought of as opposite ends of a spectrum of parliamentary democracy. There are various models of government along that spectrum – for instance, Ministers in a cabinet system could be elected by the parliament; or committees could be reduced to just a Minister and a Deputy Minister.

⁹The term 'committees' is generic and includes States Departments

¹⁰ References throughout this report to a governing party can be interpreted also to encompass parties of a coalition government

2.17 As directed by States Resolution, all of the Joint Committees’ recommendations are fully compatible with the existing system of government by committees and consensus. References to alternative forms of government are for illustration to promote an understanding of the Guernsey system (as illustrated in Figure 2).

Figure 2 Features of government on spectrum of retained or delegated authority from parliament



3. Clarity of Purpose

- 3.1 The first part of Core Principle One of the six Core Principles of good governance adopted by the States of Deliberation in 2011 states: “*Good governance means focusing on the organisation’s purpose...*” Plainly, this commitment to focus on its purpose makes it essential that the States of Guernsey as an organisation should understand its purpose very clearly.
- 3.2 At present the States Strategic Plan¹¹ defines an aim as a broad statement of purpose. However, the Joint Committees believe that a distinction needs to be drawn between the purpose of an organisation and its aims and objectives. The aims and objectives of an organisation may describe its strategic direction or the outcomes its actions are intending to achieve at any one time. In contrast, the purpose of an organisation is the reason for its existence.
- 3.3 The aims and objectives of an organisation can be transient and may be contested, but its purpose is likely to be broadly, if not universally, accepted and, above all, enduring. The aims and objectives of an organisation may be challenged or amended without undermining its purpose.
- 3.4 In some jurisdictions a government’s statement of purpose is part of a written constitution, which sets out the inalienable rights of its citizens and the government’s responsibility to secure them. Guernsey, like many other jurisdictions, has adopted a number of International Conventions which secure those fundamental rights for its inhabitants.
- 3.5 The UK Independent Commission’s guidance on the application of the Core Principles is clearly intended to result in a clear purpose at departmental level rather than referring to the constitution. Whilst an understanding of the purpose of government is essential, for the purpose of the practical application of these Core Principles the Joint Committees have focused on the government’s statement of aims and objectives.

¹¹ Policy Council (2011) *States Strategic Plan* Billet d’État XVI October, 2011

Aims and objectives

- 3.6 A government implements its aims and objectives primarily through the legislation or policies it introduces, amends or repeals, in order to confer or withdraw ‘non-fundamental’ rights and freedoms, for example the right to a minimum wage or pre-school education. Below these ‘non-fundamental’ rights there is a range of actions and initiatives which together form a government’s programme.
- 3.7 In most democracies debate on the extent of these ‘non-fundamental’ rights, the competing methods of securing them and other policies takes place, in the main, at party level. The electorate determines through the ballot box which party it wishes to elect to government on the basis of the manifesto it prefers. Governance is concerned with what a government does and how it does it. Therefore it is something which begins once the government has been elected or appointed and commences the implementation of its policies. In Guernsey, in the absence of a party of government, the States of Deliberation have much more flexibility in making policy choices on behalf of the electorate. Governance assumes a broader role incorporating, for example, the process of policy formulation and the allocation of governmental responsibilities.
- 3.8 It is not surprising, therefore, that, unlike in almost all other jurisdictions, political debate in Guernsey is frequently focused on how the States might best arrange the planning, formulation and co-ordination of policy and the allocation of the functions of government.
- 3.9 In recent times the States of Deliberation have developed several corporate policy planning regimes intended to provide unifying aims and objectives for government, including: the Policy and Resource Planning report; the Policy and Resource Plan; the Government Business Plan; and more recently the States Strategic Plan. Section 5 addresses this further.
- 3.10 No discussion of clarity of purpose would be complete without recognising that the term ‘the States’ tends to be used when describing different layers of the States which in practice have quite distinct and diverse functions. ‘The States’ in its most general form is the legitimate governing authority of the island. In order to deliver higher standards of governance, it is important that greater clarity should be established between the functions of the States of Deliberation as

parliament and the States as government¹². The next Section *Organisation, Functions and Roles* seeks to provide greater clarity.

- 3.11 Several of the recommendations contained in this report seek to fulfil Core Principle One, especially those which provide greater clarity of functions and roles and those which address the relationship between government and its stakeholders.

¹²Please note, whilst these are separate functions they are not completely separate entities under Guernsey's system of government. The term 'States of Guernsey' (often referred to as 'the States') can be understood to include members of the States of Deliberation

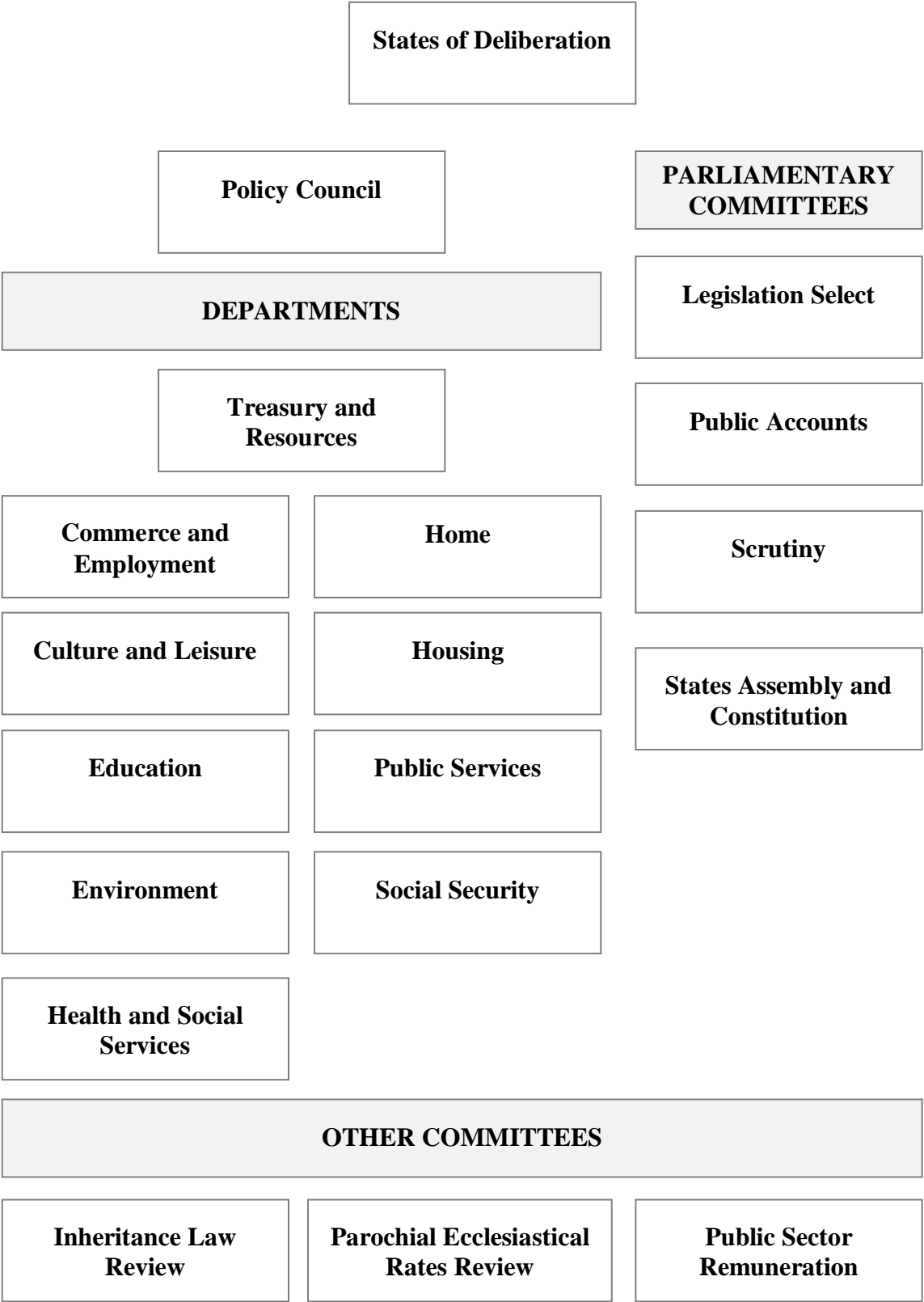
4. Organisation, Functions and Roles

- 4.1 Core Principle Two states that “*good governance means performing effectively in clearly defined functions and roles*”.

“Being clear about one’s own role, and how it relates to that of others, increases the chance of performing the role well. Clarity about roles also helps all stakeholders to understand how the governance system works and who is accountable for what.”
(The UK Independent Commission on Good Governance in Public Services, 2004)

- 4.2 The organisation, functions and roles of, and within, the States of Guernsey are principally organised in accordance with Resolutions of the States of Deliberation made in 2002 and 2003 following debate on the machinery of government. Furthermore, some, but not all, functions and roles, as determined by the States of Deliberation, are codified in a book entitled *Mandates and memberships*, which is issued by the States Assembly and Constitution Committee.
- 4.3 The WAO, having gathered evidence from, among others, politicians and staff within the public sector concluded that functions and roles within the States of Guernsey are often unclear.
- 4.4 There is certainly very little definitive explanation of the organisation, functions and roles of, and within, the States of Guernsey (*Proposition a*). This Section of the States report is not an exhaustive description of every function and role in the States. Rather it seeks to explain the purpose and context of certain key functions and roles and outlines reforms to them which, if approved and applied, would in the opinion of the Joint Committees significantly improve the governance arrangements underpinning public administration in the island.

Figure 3 Government Structure



The States of Deliberation - legislature and executive

- 4.5 The States of Deliberation are first and foremost the island's parliament. They are the legislature. They are also, unusually among parliamentary democracies, a fundamental part of the island's government or executive. Indeed, in Guernsey, in effect the legislature is the government and the government is the legislature. When candidates are successful at a General Election they are elected to the legislature, but in the process they are also elected to the government.
- 4.6 This creates a fusion of powers and responsibilities which is perceived by some people as enabling more democratic control of government and by others as reducing the likelihood of individuals fully understanding their very different roles and fulfilling them effectively. This arrangement can certainly create many overlapping lines of accountability, which can make it less than straightforward to establish precisely who is responsible for what.
- 4.7 As in other parliamentary democracies, the States of Deliberation have acquired the functions of government formerly exercised by other bodies, for example by the Bailiff, the Royal Court and the parishes. Deciding which of those functions to retain, which to allocate and to whom - that is arranging the functions of government - is one of the primary purposes of a parliament. Notwithstanding the points made in 4.5 this applies to the States of Deliberation.
- 4.8 In most democracies the parliament usually allocates the functions of government to representatives of the party which holds the most seats and confers the necessary authority for the formation of an executive. In Guernsey's system of government by committees and consensus, the States of Deliberation allocate, by mandate and legislation, some of the functions of government to a series of Departments and Committees but, crucially, they also retain many of the functions of government. For example, the States of Deliberation control very prescriptively the overall number of States Departments and Committees, their titles and membership.
- 4.9 Of course, the States of Deliberation still carry out functions which are common to parliaments in all parliamentary democracies: for example, to debate, approve or reject proposals to enact, amend or repeal legislation; to debate, approve or reject proposals for taxation and expenditure; to represent the interests of the public; and to scrutinise and hold to account the policies, decisions and administration of those functions of government which they have delegated.

The functions of the States of Deliberation can be summarised as:

- To allocate the functions of government;
- To discharge the functions of government which they have decided to retain;
- To debate and vote upon proposals to enact, amend or repeal legislation;
- To debate and vote upon proposals for taxation and expenditure;
- To scrutinise and hold to account the policies, decisions and administration of those functions of government which they have allocated to States Departments and Committees;
- To represent the interests of the people.

4.10 It is a prerequisite for good governance that the States of Deliberation must be absolutely clear which functions of government they have retained, which functions are delegated and to whom, and by what means they expect to scrutinise and hold to account those delegated responsibilities.

4.11 The legislation, rules and procedures which govern the business and operation of the States in its various forms are currently set out in separate documents and in a somewhat disparate manner, for example in: the Reform (Guernsey) Law, 1948, as amended; the Rules of Procedure of the States of Deliberation; the Constitution and Operation of States Departments and Committees; Mandates and Membership of the Policy Council, Departments and Committees etc. The Joint Committees are of the opinion that these should be drawn together in two documents: a single enactment which would set out the framework for the organisation of the legislature and the machinery of government and, sitting beneath that, one set of standing orders which would lay down the detailed operation of the legislature and government. This is the approach in Jersey with a 2005 States of Jersey Law and then, secondary to that, standing orders of the States (*Proposition b*).

The agenda of the States of Deliberation

4.12 The States of Deliberation must also be clear about the role they are expected to fulfil at every stage of their deliberations (*Proposition c*).

- 4.13 The States of Deliberation recently approved proposals from the States Assembly and Constitution Committee to amend Rule 9 of their Rules of Procedure in order to lay down more prescriptively the order of proceedings in the Assembly. The Joint Committees are of the opinion that Rule 9 should be further amended to provide for a clearer distinction between the different roles the States of Deliberation are required to fulfil each month, e.g. as parliament, legislature, and overarching executive (*Proposition d*).

Policy co-ordination and development

The role of the Policy Council

- 4.14 The Policy Council has two distinct roles. It acts as a quasi-department, assuming responsibility for, inter alia, external relations, overseas aid and corporate human resources. However, the primary purpose envisaged for the Policy Council at the time of its inception in 2004 was overseeing the development of strategic policy and co-ordinating the development of policies between States Departments. Its membership - the Chief Minister and the Ministers of each of the ten Departments - emphasises this strategic, co-ordinating role.

- 4.15 Addressing the matter of the co-ordination of policies between States Departments, the 2003 Machinery of Government report (Billet d'État VII, 2003) stated: *"The Policy Council would be responsible for co-ordinating the work of the departments to ensure their principal focus was on the*

"The principal intention would be to see a move towards a more corporate approach to the business of government within a stronger, more focused, policy based system" (Billet d'État VII, 2003)

priorities of the States as a whole." The intention was that States Departments would present the Policy Council with their policy proposals, other than the most minor, and if necessary those proposals would be debated inside the Policy Council. *"In this way, the departments would be apprised of the Policy Council's views which would enable, if necessary, those departments to further reflect on their policy proposals and where appropriate to reconsider and/or develop them"*.

- 4.16 Addressing the matter of the development of strategic policy, the 2003 report stated: *"...the Policy Council, comprising all of the departments' Ministers and*

under the leadership of the Chief Minister, would be able to...effectively influence and oversee the development of...cross-cutting strategic policy issues.” An example given in the report was the development of a strategic policy on tourism which might have included external transport links, the airport, harbours and internal transport, all delivered by different Departments.

- 4.17 The Policy Council’s mandate allows it to “*requir[e] a Department or Committee to examine and report to the States or to the Policy Council on any matter which falls within the mandate of such a Department or Committee*”. The Policy Council’s predecessor as the senior committee of the States, the Advisory and Finance Committee, was similarly empowered, but it is clear that the authors of the machinery of government reforms which took effect in 2004 envisaged that the Policy Council, comprising Ministers of all Departments, would be able to discharge this key co-ordinating function more effectively.
- 4.18 In the event of a Department or Committee failing to comply satisfactorily with a direction from Ministers to examine an area of policy, the Policy Council, as was the case with the Advisory and Finance Committee, has no recourse other than to take the matter to the States of Deliberation.

Change to mandates

- 4.19 The mandate of the Policy Council was changed in 2008 by a States Resolution arising out of a debate on transferring the Government Business Plan from one States term to another¹³. Until then the Council’s mandate had required it to develop strategic and corporate policy “*together with the relevant department(s)...*” whereas today, that clause in its mandate having been removed, the Policy Council is required to develop strategic and corporate policy via the States Strategic Plan “*through a process of direct consultation with States members and consultation with departments and committees*”.
- 4.20 Each Department’s mandate lists the areas of policy where it is expected “*to advise*” the States. Prior to March, 2008 those lists were followed by a clause stating: “*To develop, present to the States for approval as appropriate, and implement policies on the above matters for the provision of services, introduction of legislation and other measures which contribute to the achievement of strategic and corporate objectives.*”. However, the States approved a change to the mandates in March, 2008 (Billet d’État III) to replace this clause with:

¹³Billet d’État III, 2008, *Government Business Plan – Preparing for the New States Term 2008-2012*, Policy Council, p313

“To contribute to the achievement of strategic and corporate objectives, both departmentally and as part of the wider States organisation, by:

- (i) developing and implementing policies and legislation, as approved by the States, for the provision of services in accordance with this mandate; and*
- (ii) actively supporting and participating in cross-departmental working as part of the Government Business Plan¹⁴ process and ensuring that public resources are used to best advantage, through co-operative and flexible working practices.”*

- 4.21 The inference of these changes is that Departments have less responsibility than they once did for developing policies to be presented to the States of Deliberation, a task undertaken instead by the Policy Council through the States Strategic Plan. It might be interpreted from Department mandates as they read at present that the work of Department Boards should now be restricted to the implementation of policy at an operational level.

Policy Council sub-groups

- 4.22 Policy Council sub-groups have come to play an increasing role in the administration of government. In its March, 2008 States report the Policy Council emphasised the role of its sub-groups as the predominant vehicle for cross-departmental working: *“Since 2004, the Policy Council has used policy steering groups as the main drivers for developing corporate strategy. If the structure of the GBP is further developed during the next States term as envisaged in this report, the role of policy steering groups and other forms of interdepartmental working will become more, rather than less, important and necessary.”*(Billet d’État III, 2008)
- 4.23 It was anticipated by those who designed the present machinery of government that the Policy Council would establish sub-groups to co-ordinate the development of strategic and corporate (i.e. cross-departmental) policy¹⁵.
- 4.24 No attempt was made at the time of the machinery of government reforms to define with any clarity what constituted policy that was ‘strategic and corporate’ as opposed to a subsidiary level of policy for which Departments could be left to

¹⁴In 2011 all references in the mandates to the Government Business Plan (GBP) were amended to refer to the States Strategic Plan (Billet d’État XVI 2011)

¹⁵ Billet d’État VII, 2003

assume responsibility within their mandates. The lack of clarity in the distinction between the two levels of policy is not conducive to good governance.

- 4.25 The 2003 Machinery of Government report envisaged that the Policy Council would establish such cross-departmental sub-groups on a short-term basis where it had identified the need to develop and propose to the States of Deliberation a strategic policy which crossed the mandates of more than one Department, i.e. 'task and finish' groups. The intention was that such cross-departmental sub-groups, or working parties, would comprise the Ministers of Departments which had a relevant interest in the area of policy under development and would also, if appropriate, co-opt representatives from outside the public sector. *"The outcome of the work of the Sub-Group would be referred to the Policy Council for discussion and if agreed for inclusion in the Policy and Resource Planning report for debate by the States. The implementation of the strategic...policy, once agreed by the States, would then rest with the lead department although the Chief Minister may reconvene the Sub-Group periodically to monitor progress and revalidate the policy and to recommend any changes."*
- 4.26 In practice, none of the Policy Council sub-groups include representatives from outside the public sector. In the case of some, membership is delegated to members who are not Ministers, and there is a lack of clarity about their specific task and the timeframe for the completion of their work. Policy Council sub-groups appear to have become permanent features of the machinery of government: virtually standing committees in their own right with a remit to develop strategic policy but without clear lines of accountability.
- 4.27 The Policy Council currently operates eight sub-groups:
- External Relations Group
 - Fiscal and Economic Policy Group
 - Population Policy Group
 - States Strategic Plan Team
 - Strategic Threats Group
 - Energy Policy Group
 - Environmental Policy Group
 - Social Policy Group
- 4.28 These bodies fall into two very distinct categories. The first five referred to in 4.27 are effectively sub-committees operating in areas of policy which have been delegated by the States of Deliberation to the Policy Council. They are no different to the sub-committees established by some States Departments to

concentrate on a specific area of their mandate, e.g. the Treasury and Resources Department has sub-committees for, inter alia, property management and ICT. However, the last three referred to in 4.27 are concerned with the co-ordination of areas of policy which cut across the mandates of two or more States Departments.

- 4.29 The Joint Committees are of the opinion that there should be greater clarity between bodies which are sub-committees of the Policy Council and bodies which are set up to facilitate cross-departmental co-operation.
- 4.30 The Joint Committees are of the view that the Policy Council should consider introducing a few relatively minor reforms which would establish much greater clarity regarding the status, purpose and accountability of those parts of government concerned with the development of cross-departmental or cross-cutting policy.
- 4.31 Early in the next term the Policy Council should draw an explicit distinction between the two separate categories identified in 4.28 (*Proposition e*).
- 4.32 Its sub-committees should be designated as such and operate according to Rule 16 (2) of The Constitution and Operation of States Departments and Committees.
- 4.33 The Policy Council should fully exercise its right to require Departments to examine areas of policy, but where the Policy Council identifies a need to form a body to address an area of policy which is explicitly or implicitly mandated to more than one States Department (i.e. a cross-cutting issue) that body should be designated as a cross-departmental working party and operate broadly as envisaged in the package of reforms made to the machinery of government in 2004. The working party should comprise members (usually Ministers) of the Departments which have a relevant interest in the area of policy under development and, if appropriate, individuals from outside the public sector with relevant skills and experience. The working party should have clear terms of reference, at least an approximate timeframe for completing its work and very clear lines of accountability, i.e. for what and to whom it is accountable. Each working party should have an identifiable lead Department. Having directed the relevant Departments to form a working party, the Policy Council should assume responsibility for ensuring that the working party's terms of reference and membership etc. are made readily available and kept up to date.

Insufficient focus on policy co-ordination

- 4.34 The WAO concluded that the Policy Council did not provide effective co-ordination of the activities of government, which is of concern to the Joint Committees given that this is the Policy Council's primary role.
- 4.35 The Joint Committees recommend that the Policy Council should consider ways of strengthening its focus on its policy co-ordination function, for example: discharging as many of its executive functions as possible through sub-committees and reserving its regular meetings predominantly to fulfil its policy co-ordinating function; and separation of the agenda into a clear delineation of policy co-ordination issues and its executive functions, or even separate meetings (*Proposition f*).

The Role of Chief Minister and Deputy Chief Minister

- 4.36 The Chief Minister is chairman of, and spokesman for, the Policy Council. It was envisaged that: *"a most important part of his/her role and responsibilities would be encouraging and engendering, both within the Council and the departments, a corporate approach to the work of the States."* It was also considered that the Chief Minister would have a role *"to negotiate and speak politically for the Island, with the authority of the Policy Council, as mandated by the States."* (Billet d'État VII, 2003)
- 4.37 These two primary functions of the Chief Minister - domestic policy co-ordination and representing Guernsey in external affairs - may quite conceivably require very different skills which are difficult to find embodied in one individual. Depending on the personality, experience and skills of the Chief Minister, it is quite possible that one or other of the functions may become his or her main focus and the other may suffer as a result. In no way is this meant as criticism of the incumbent or his predecessors; on the contrary, it is perhaps an unintended consequence of the way in which the present machinery of government was designed.
- 4.38 The Joint Committees note that at staff level the wisdom of separating these functions, at least to some extent, has been recognised: the Chief Executive focuses on external relations and the Deputy Chief Executive more so on the domestic policy agenda.
- 4.39 The Joint Committees are of the opinion that the internal and external duties which are currently expected of the Chief Minister might be discharged more

effectively by reforming the office of Deputy Chief Minister, specifically by removing the need for the Deputy Chief Minister also to hold a departmental Ministerial portfolio.

- 4.40 The Joint Committees do not seek to prescribe which of the Chief Minister or the Deputy Chief Minister should assume responsibility for external relations and which for the domestic policy agenda. Indeed, it may be appropriate for the two individuals concerned, with the support of the Policy Council but without requiring the prescriptive interference of the States of Deliberation, to allocate the dual functions as they see fit. The essential purpose of the reform would simply be to ensure that one of them had the authority of the Policy Council to represent the island in external affairs and the other had the authority of the Policy Council to lead the co-ordination of the domestic policy agenda across government. The Policy Council should review each of the roles to consider the case for their separation (*Proposition g*).
- 4.41 Irrespective of whether such reform is pursued, at the very least the roles, responsibilities and lines of accountability of the Policy Council, Chief Minister and Deputy Chief Minister should be clarified (*Proposition h*).

Clarity of Department mandates

- 4.42 The Joint Committees have identified potential inconsistencies in the mandates of States Departments, for example:
- The Environment Department is legally responsible for recommendations relating to a Waste Disposal Plan, but the States of Deliberation have tasked the Public Services Department to draw up a waste strategy;
 - The Home Department mandate includes responsibility for broadcasting services; however, recent technological advances and other developments have meant that broadcasting matters have to be for all intents and purposes considered jointly with telecommunications matters which are the responsibility of the Commerce and Employment Department and the Office of Utility Regulation. This is exacerbated by the need to work closely with Jersey as a geographical area and the fact that in Jersey all Broadcasting and Telecommunication matters are dealt with by one Department, Economic Development;

- The Home Department currently has mandated responsibility for the compilation of the Electoral Roll, whilst SACC is responsible for the Reform Law and the actual election process.
- 4.43 It has been nine years since the mandates of the Departments were created. The Joint Committees suggest that it would be timely to review these based on experience.
- 4.44 It has already been noted that there is an absence of clarity in the mandates of States Departments in respect of their relationship to the Policy Council and its sub-groups (4.21 refers). Changes which may have had the intention of strengthening the strategic planning process have had an unintended consequence of creating uncertainties about precisely what the States of Deliberation have delegated and to whom, making it difficult for policy development and decision-making to be held to account (*Proposition i*).
- 4.45 There are also inconsistencies in how different Departments interpret the extent of the authority conferred upon them in determining which decisions can be made without reference to the States of Deliberation and which require them to seek direction via a States report. The Joint Committees are of the opinion that this might best be resolved by establishing straightforward schemes of delegation (*Proposition j*).
- 4.46 There is a lack of clarity about precisely which articles of legislation and which States Resolutions confer authority upon Departments, as referenced by the following words in each of their mandates: "*To exercise the powers and duties conferred on it by extant legislation and States resolutions*". The pursuit of better governance requires greater transparency, which could be achieved by the publication of a schedule of extant legislation and States Resolutions which confer authority upon, or further define and explain the mandates of, Departments (*Proposition k*).

Departments - policy and operations

- 4.47 The mandates of States Departments are generally much broader and more policy-focused than the mandates of their predecessor committees. This reflected an intention of the reforms: to introduce a greater measure of separation between policy development and operational delivery, with the former being the responsibility of politicians and the latter the domain of the administrative staff. However, there remains no formal distinction between each Department's Board of members and its administrative bureaucracy (*Proposition l*).

4.48 The WAO report identified a lack of clarity between political and administrative roles and a perception that political members can become too involved in operational matters. It explained the risks of this blurring of responsibilities thus:

- a There is a lack of accountability.*
- b Tensions are created as [people's] deputies and senior civil servants are both involved in operational matters. On the part of civil servants this can lead to a perception of political interference. From [people's] deputies this can lead to a perception of bureaucratic obstructiveness.*
- c [People's] deputies are rarely involved effectively in a strategic context.*
- d Effort is duplicated."*

4.49 Conversely, it must be recognised that there are also risks in political members becoming too far removed from operational matters. Members of Departments retain ultimate responsibility for the financial administration and performance of their Departments not least because they are mandated *"To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Department."*

4.50 Good governance demands a more formal distinction between political and operational functions, specifically by recognising the separate identities of the political Board of a Department and the administrative bureaucracy of a Department. The former is referred to in this report as 'Board' and the latter 'Department'. The Joint Committees propose that the duties of the Board and the duties of the Department, and the relationship between the two, should be codified by the adoption of operating frameworks which should take account, inter alia, of the need to balance the contrasting risks in the interaction between policy and operational delivery referred to above (4.48 - 4.49) (*Proposition m*).

The role of People's Deputies

4.51 The WAO concluded that many People's Deputies were not entirely clear about their various and very different roles. They expressed it thus: *"Whilst many regard their primary role as being to represent islanders within their parishes, [people's] deputies strive to reconcile this with their other roles which may include:*

- a executive roles on departmental Boards and within the States of Deliberation;*
- b scrutiny and challenge roles either on Public Accounts and/or Scrutiny Committees;*

- c membership of the Policy Council; and*
- d collectively determining the strategic direction and corporate priorities of the States.”*

- 4.52 The Joint Committees do not underestimate the considerable challenges which emerge from the diverse responsibilities which the States requires of most members as a result of the fusion of powers between the various functions of public administration, as addressed in 4.5 and 4.6. However, they consider that it would be inappropriate to attempt to codify precisely how members should balance their constituency, parliamentary, scrutiny and executive roles. These are matters for each member to judge, mindful of course that should they seek re-election they will be held to account by their electorate.
- 4.53 The Joint Committees propose that governance arrangements would be strengthened by identifying more clearly the nature of the different roles which States members are required to undertake (*Proposition n*).
- 4.54 In addition, Section 6 considers the support available to members in performing these roles.

The role of Ministers

- 4.55 Until the reforms of 2004, the chairmen of committees were known as ‘Presidents’, e.g. the President of the Board of Administration and the President of the Housing Authority.
- 4.56 Despite rejecting proposals for a Ministerial form of government, the States of Deliberation decided that from 2004 the chairmen of States’ Departments should be known as ‘Ministers’.
- 4.57 Although Ministers chair meetings of their Department Board, they have no formal authority over other members of their Department. They have an original but no casting vote at meetings. Ministers are sometimes given delegated authority by their Board to act on specific issues, for example: speaking publicly on behalf of the Department, approving agendas for meetings, signing correspondence and meeting with staff to make determinations on important operational issues, although the latter are not infrequently put before the full membership of the Department Board.
- 4.58 The Joint Committees believe the titles of ‘Minister’, and indeed ‘Chief Minister’, are not compatible with Guernsey’s system of government. The titles

give the impression that the office carries at least some degree of executive authority. The WAO advised that misleading titles, specifically that of Minister, impair clarity of functions and roles and, therefore, do not further the pursuit of good governance.

- 4.59 However, twice since 2004 the States of Deliberation have debated Ministerial titles and on both occasions has rejected changing them. The Joint Committees respect those decisions of the Assembly.
- 4.60 The ten Department Ministers, together with the Chief Minister, form the Policy Council. Thus a Minister has sectoral responsibilities at a departmental level and corporate responsibilities at the Policy Council level. There is a lack of clarity in the relationship between those two, and on occasion arguably competing, responsibilities.
- 4.61 Read together, the constitution and mandate of the Policy Council could be interpreted as inferring that the role of the Minister when sitting as a member of the Policy Council is not to represent his Department, but the very opposite: to contribute to the development of a corporate approach and then to attempt to ensure that it is promulgated at the level of his Department. The case for this interpretation would be compelling if, for example, the States of Deliberation elected members to the Policy Council but afforded the Chief Minister, or possibly the Policy Council collectively, the right to allocate the various departmental portfolios between the Ministers.
- 4.62 However, the internal election process is quite different: the States of Deliberation elect Ministers to each of the departmental portfolios in turn and those so elected then effectively become ex-officio members of the Policy Council. Ministers can be removed only by the States of Deliberation and so owe no allegiance to the Policy Council, nor does the Policy Council collectively have any formal authority over any Minister. An additional factor to take into account is that when a Minister cannot attend a meeting of the Policy Council, the Department of which he is Minister is required to send an alternate member of its political Board. Rule 3 (5) of the Constitution and Operation of States Departments and Committees states: “Other than in unforeseen circumstances, when a Minister is unable to attend a meeting of the Policy Council, or when there is a vacancy in that office, the Department concerned shall be represented by the Deputy Minister or, if he is unable to attend, or when there is a vacancy in that office, by one of the other voting members of the Department...” These factors tend to conflict with the interpretation proffered in

4.61 and could encourage the opposite interpretation: a Minister's first responsibility within the Policy Council is to represent his Department.

- 4.63 The Joint Committees believe that the Policy Council should report to the States of Deliberation to propose the issuing of written guidance about the dual role of Minister in order to resolve the potential conflicts set out above (*Proposition h*).

The role of non-States members

- 4.64 The precise role of the non-States member is not codified. However, it can be assumed that States Departments who wish to recruit the services of a non-States member are desirous of a degree of experience and expertise from outside the public sector. Non-States members often, although certainly not always, have a background in industry and commerce.

- 4.65 Rule 4(2) of the Constitution and Operation of States Departments and Committees provides that each States Department may be served by up to two non-States members. They do not have a vote at meetings, but in all other respects they are full members of the Department: they are entitled to receive agendas, minutes and other papers, they are entitled to attend all meetings and they are entitled to claim payment for each meeting they attend. Like political members of Departments, non-States members serve for a fixed term of four years and can be removed from office only by Resolution of the States of Deliberation.

- 4.66 The former House Committee, predecessor of the States Assembly and Constitution Committee, considered the discontinuation of the role of non-States member in its 2006 States report entitled *Review of the new system of government - procedural matters* (Billet d'État VII). The Committee raised concerns that it had received from States members, most notably about the criteria for the appointment of some non-States members (at that time Departments could appoint them without the approval of the Assembly) and, moreover, about the accountability of holders of that office. After debate on that report, the States resolved that henceforth non-States members should be elected (or, in effect, ratified) by the Assembly on the nomination of the Department or Committee which wishes to recruit the service of such a member. Unlike in elections for other Department and Committee seats, States members cannot propose alternative candidates to those proposed by the Department or Committee itself.

- 4.67 Currently, one Department has two non-States members, three Departments have one non-States member and the majority of Departments, the other six, have no non-States members.
- 4.68 The States Assembly and Constitution Committee and Scrutiny Committee are not permitted to have non-States members. The Legislation Select Committee and the Public Sector Remuneration Committees each have two such members. The Parochial Ecclesiastical Rates Review Committee has none, although it is permitted to have them.
- 4.69 The status of the non-States members on the PAC and the Inheritance Law Review Committee is different to those of the others: those Committees are required by States Resolution to have non-States members and those non-States members have full voting rights.
- 4.70 The Joint Committees acknowledge the contribution which many non-States members have made, and continue to make, to the public administration of the island. Nonetheless, they are of the opinion that there is a lack of clarity concerning the responsibilities and expectations of those holding the office of non-States member. In addition, the minor reforms of 2006 to the process of electing non-States members have scarcely addressed perceptions of a deficit of accountability. On balance, the Joint Committees take the view that the role of non-States member on Departments of the ‘executive’ as it is presently conceived should be discontinued (*Proposition o*).
- 4.71 This proposal, if approved, does not mean that States Departments should be precluded from engaging the skills and advice of individuals from outside the public sector. On the contrary, Departments would be free to take advice, hear representations or solicit views whenever they consider it appropriate. That may include inviting persons from outside the Department to attend meetings. Such persons would not have the “right” to receive Department papers although Departments would be free to make them available should they wish. The terms of the invitation would be at the discretion of the Department: persons may be invited to attend single or multiple meetings, for a fixed or open period, for specific items in respect of a particular area of the Department’s business, or they may even be invited, should the Department so wish, to attend for the full duration of every meeting held during the Department’s four-year term. Departments may wish to remunerate the individual(s) whose skills and advice they would have sought in accordance with established States’ rules and guidelines governing procurement of services.

- 4.72 Importantly, persons whose skills and advice had been recruited in this way would be directly accountable to the Department Board which had appointed them, in the same way that Department Boards are accountable for all other external advisors and consultants they choose to recruit. Of course, Departments would need to be clear about the terms of appointment of such persons.
- 4.73 The Joint Committees consider that the Policy Council, in consultation with States Departments, should co-ordinate a corporate approach to engaging at Board level skills and expertise from outside the public sector. This should include developing clear written specifications, terms of engagement and lines of accountability for persons whose advice, guidance and skills are recruited. (*Proposition p*).
- 4.74 In respect of the membership of Special States Committees as defined in Rule 18 of the Constitution and Operation of States Departments and Committees, the Joint Committees suggest that the case for change is less strong: unlike Departments, by definition their mandates cover very specific areas of policy and they are effectively ‘task and finish’ bodies rather than permanent or standing features of government. In addition, the Joint Committees consider that the PAC, Public Sector Remuneration Committee and Legislation Select Committee require particular expertise and skills on a permanent basis.

Recommendations

In respect of ‘Organisation, Functions and Roles’, the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- The **Policy Council** and the **States Assembly and Constitution Committee** should provide a guide to the governance arrangements of the States of Guernsey to serve as an overview of the functions and roles of all aspects of public administration, including explaining the relationship between the activities of the legislature and those of the executive (4.4; *Proposition a*);
- The **Policy Council** and the **States Assembly and Constitution Committee** should consider the case for setting out the framework for the organisation of the legislature and the machinery of government in one article of legislation supported by one set of standing orders (4.11; *Proposition b*);
- The **Policy Council** and the **States Assembly and Constitution Committee** should develop proposals to categorise States reports more clearly and have them include a statement of purpose and a statement clarifying the role that the States of Deliberation are being asked to fulfil in debating and approving the propositions (4.12; *Proposition c*);
- The **States Assembly and Constitution Committee** should propose amendments to Rule 9 of the Rules of Procedure of the States of Deliberation to provide for a clearer distinction in Billets d’État and at meetings of the States of Deliberation between the functions of the States of Deliberation as parliament, legislature and overarching executive (4.13; *Proposition d*);
- The **Policy Council** should make an explicit distinction between: a) sub-committees to which it has resolved to delegate particular activities which fall wholly within its mandate, and b) cross-departmental working parties which it has resolved to establish in accordance with its responsibility to co-ordinate the policy development of the States. The Policy Council should ensure that cross-departmental working parties have clear terms of reference, at least an approximate timeframe for completing their work and very clear lines of accountability (4.31 – 4.33; *Proposition e*);
- The **Policy Council** should consider ways of strengthening its focus on its policy co-ordination function (4.34 – 4.35; *Proposition f*);

- The **Policy Council** should consider the case for removing the requirement for the Deputy Chief Minister also to hold a departmental portfolio and the case for dividing external and domestic policy functions between the Chief Minister and the Deputy Chief Minister (4.40; *Proposition g*);
- The **Policy Council** should clarify the roles, responsibilities and lines of accountability of the Policy Council, Chief Minister and Deputy Chief Minister, including clarifying the relationship between the role of Ministers in heading States Departments and their role in sitting as members of the Policy Council (4.41 and 4.63; *Proposition h*);
- The **Policy Council**, in conjunction with **States Departments**, should review the layout and content of the mandates of the Policy Council itself and States Departments to ensure that they are as precise, clear and coherent as possible and to ensure that they articulate adequately the relationship between the Policy Council and the Departments (4.44; *Proposition i*);
- The **Policy Council**, in conjunction with **States Departments**, should examine the case for developing schemes of delegation which would clarify the criteria governing which decisions may be taken without, and which decisions require, the approval of the States of Deliberation (4.45; *Proposition j*);
- The **Policy Council**, in conjunction with **States Departments**, should publish a schedule of extant legislation and States Resolutions which confer authority upon, or further define and explain the mandates of, the Policy Council and Departments (4.46; *Proposition k*);
- The **States Assembly and Constitution Committee** should make proposals to amend the Rules of Procedure of the States of Deliberation and the Constitution and Operation of States Departments and Committees to provide for a distinction to be made between political Boards of Departments and the administrative staff of the Departments (4.47; *Proposition l*);
- The **Policy Council**, in conjunction with **States Departments**, should develop operating frameworks for political Boards of Departments, which should include setting out the relationship between the policy and the operation of the Department (4.50; *Proposition m*);
- The **States Assembly and Constitution Committee**, in conjunction with the **Policy Council**, should consider publishing guidance clearly to identify the different roles which States members may be required to undertake as members

of the legislature, members of the executive, members of scrutiny and oversight bodies and representatives of their electorate (4.53; *Proposition n*);

- The **States Assembly and Constitution Committee** should make proposals to provide for the discontinuation of the role of non-States member of Departments as it is presently conceived in Rule 4(2) of the Rules relating to the *Constitution and Operation of States Departments and Committees* (4.70; *Proposition o*);
- The **Policy Council**, in consultation with **States Departments**, should co-ordinate a corporate approach to engaging at Board level skills and expertise from outside the public sector. This should include developing clear written specifications, terms of engagement and lines of accountability for persons whose advice, guidance and skills are recruited (4.73; *Proposition p*).

5. Policy-making, Policy-planning and Decision-making

5.1 In this Section of their report, the Joint Committees set out their thoughts on how the States approaches, and in the future might be able to improve its approach, to:

- Policy making: the discipline of generating and developing policy in order to convert political objectives into actions and outcomes;
- Policy planning: the integration of policies across different sections of government and the reconciliation of policy objectives with the allocation of resources to provide a co-ordinated programme for government;
- Decision making: the processes by which competing options are evaluated and then judgements made, communicated and implemented.

Policy Making

5.2 Policy making can be defined as: *“The process by which governments translate their political vision into programmes and actions to deliver outcomes – desired changes in the real world”* (UK Government’s 1999 *Modernising Government* White Paper).

5.3 As noted in 3.7, in other jurisdictions a great deal of the generation and development of policy is carried out inside political parties whereas in Guernsey, in the absence of political parties, the vast bulk of policy is developed only after the legislature and the government have been elected. In the absence of special advisors, party researchers, party managers etc. this role is carried out either by States members, working as Board members or independents, senior civil servants or by the two working in conjunction. In Section 4 of this report the Joint Committees propose that the States should endeavour to clarify the relationship between politicians and their administrative staff.

5.4 The Joint Committees are of the view that as a consequence of these circumstances, in Guernsey the institutions of government have an obligation to

ensure that politicians have the tools necessary to act as responsive, practical and competent policy-makers.

- 5.5 There are useful precedents from elsewhere of governments reviewing, and as a consequence changing, the processes and culture of policy-making. For example, in 1999 the UK government published a ‘Modernising Government White Paper’ which set out the case for changing the approach to policy-making in the 21st century. A follow-up report by the Cabinet Office aimed to “*examine what professional modernised policy making should look like, provide a snapshot of current good practice as a high-level indication of areas where policy making is, and suggest possible levers for change to help bring about the White Paper vision for policy making*”¹⁶.
- 5.6 The Cabinet Office report concluded that a combination of changes in working practices and the development of skills among policy makers were the factors which would contribute to ‘modernising’ policy development. It set out the characteristics of ‘modernised’ policy as being:
- Strategic – looks ahead and contributes to long term government goals;
 - Outcomes focused – aims to deliver desired changes in the real world;
 - Joined up (if necessary) – works across organisational boundaries;
 - Inclusive – is fair and takes account of the interests of all;
 - Flexible and innovative – tackles causes, not symptoms and is not afraid of experimentation;
 - Robust – stands the test of time and works in practice from the start.
- 5.7 It is perhaps inevitable that in a relatively small community the process of policy-making and the dynamics between elected officials and professional staff will be quite different to what is expected in much larger, more populous jurisdictions.
- 5.8 Nonetheless, policy-making is at the root of politics everywhere and in a sense, along with service delivery, it is what a government ‘does’. Therefore, the Joint Committees are of the opinion that there would be merit in examining more closely, perhaps with the assistance of an external agency with relevant experience of policy-making in the public sector elsewhere, the way in which policy is generated, developed and promulgated across the States of Guernsey. Such a review should include an assessment of the role played in policy-making by both elected politicians and professional administrators in order to understand

¹⁶ Cabinet Office (September, 1999)

better whether the two sides are contributing in the right way and at the right time (*Proposition q*).

5.9 The purpose of such a review, and the motivation for implementing any recommended changes arising from it, would be to ensure that policy-making in Guernsey was as professional as possible: a key ingredient in establishing the best possible governance arrangements in the States of Guernsey.

5.10 Section 6 *Capacity and Capability* considers further the capacity of the States of Guernsey to support policy-making.

Policy Planning

5.11 Good governance demands that a government should articulate its vision and objectives and a series of actions and initiatives to deliver them (the government's programme).

5.12 The Harwood Panel¹⁷ suggested that, if a committee system was to be retained, one of the recommended amendments would be to require "*each of the Strategic States Committees to submit for debate within a stated period of time after each General Election, a statement of policy which must first be endorsed by the Advisory and Finance Committee and which, once adopted, must be adhered to for the term of that States. Once adopted that statement of policy would then form part of the Island's Strategic Plan*"

5.13 In practice, the responsibility for presentation of strategic policy to the States of Deliberation rests with the Policy Council, delivered through its policy sub-groups (as described in Section 4). Strategic policies are incorporated into the States Strategic Plan rather than being developed by departments for separate debate.

5.14 The WAO report found that "*the States of Guernsey does not have a clear strategic direction or agreement on its strategic objectives and desired outcomes*" and that they are "*...lacking a clear corporate identity and an overall strategic approach.*" It concluded that States members are unclear about the outcomes that the States are trying to achieve.

¹⁷ Section 8 32(vii) of the report produced by the Harwood Panel on the review of the machinery of government in Guernsey (2000).

- 5.15 The WAO also identified a lack *“of mechanism to determine priorities and allocate resources...there are no effective mechanisms in place to determine corporate priorities and to allocate resources accordingly”* and *“[t]here is no effective corporate prioritisation of the use of resources...”*
- 5.16 The States Strategic Plan has sought to address this deficit and produce a co-ordinated programme for government that would *“express the political consensus within the States in a form that would set a clearer direction for government action.”*¹⁸:

“The objective has been to create a line of authority or “golden thread” from the definition of the corporate objectives of the States, through long-term Policy and Resource planning, to a costed and prioritised work programme, to performance monitoring to ensure that the States is achieving its goals.”

Deputy C N K Parkinson, Chairman, States Strategic Plan Team

- 5.17 The PAC acknowledged in its March, 2011 report that the States Strategic Plan was still a work in progress and, if successful, could address the perceived weaknesses in strategic policy planning identified by the WAO. The Committee did not therefore make any specific recommendations for improvement, instead recognising that the development of the States Strategic Plan would need to be monitored and its effectiveness assessed at a later date.
- 5.18 The Joint Committees note that, at the time of writing, the remaining sections of the States Strategic Plan yet to be delivered, namely the Population Management Plan and Energy Plan, are intended to be submitted for debate by the States of Deliberation before the end of this term of office (i.e. by March, 2012)¹⁹.
- 5.19 The Joint Committees welcome the intention to move to a longer planning cycle, with interim debates on progress made against the Plan.
- 5.20 The States Strategic Plan needs to evolve further to build upon the good work of the past three years. The Joint Committees recognise that the States Strategic Plan is a living process and in its current form, if adapted in the light of recognised weaknesses, can continue to improve the planning and delivery of government for the benefit of the island.

¹⁸ States Strategic Plan 2011, Billet d’État XVI

¹⁹ The Policy Council report *Guiding Principles for the Development of a Population Management Regime* was published in Billet d’État XXIV 2011 for debate on 25th January 2012

- 5.21 The Joint Committees consider that the States Strategic Plan and the planning process have yet to resolve the following deficiencies:
- a) The disconnect between policy planning and the allocation of resources;
 - b) The disconnect between policy making at the corporate and departmental levels;
 - c) The lack of ownership and ‘buy in’ to the policy planning process among States members;
 - d) The lack of public engagement with the government’s programme.
- 5.22 The Joint Committees do not consider the States Strategic Plan and policy planning process have yet achieved the stated objectives of delivering a co-ordinated programme for government. They are pleased to note the Policy Council has recognised the weaknesses that will need to be addressed²⁰.

Policy planning and resource allocation

- 5.23 The headline strategic objectives and policy priorities should be the drivers of public sector expenditure. It is paramount therefore that the focus should be on debating and determining those priorities and how effectively services relate to them.
- 5.24 Instead, debate has tended to focus on how to spend previously unallocated money which has been anticipated (but by no means certain) to arise as savings out of the Fundamental Spending Review (in 2010 this was £1.7m; in 2011 it was £1.8m).
- 5.25 The corporate policy planning process should be inseparable from the corporate financial planning process. Policy and financial planning at the departmental level should be similarly co-ordinated and integrated and Departments could be afforded greater scope to manage their finances over a full term of government instead of annually via the traditional budget process.
- 5.26 The Policy Council clearly intends to resolve this issue and create a unified and co-ordinated process:

“...the SSP[States Strategic Plan] has introduced the concept of rolling 5-year financial plans, which in due course will lead to multi-year as opposed to annual budgets and the financial prioritisation techniques pioneered, in

²⁰ Billet d’État XVI October 2011 *States Strategic Plan*, Policy Council, p1879

Guernsey, in the first Capital Programme have been refined and applied to choices about revenue spending. These same techniques can be applied across the whole of the States' expenditure, and will therefore pave the way for zero-cost-base budgeting"²¹.

Link between corporate and departmental policy-making

- 5.27 The September, 2011 iteration of the States Strategic Plan noted the concerns the Policy Council had been made aware of regarding a perceived disconnect between strategic and departmental policy and the inability adequately to debate the latter. Rather than proceeding with the original suggestion of having a series of policy planning debates each spring which, on reflection, was seen as *"unduly time-consuming and cumbersome"*, the Policy Council recommended that Department and Committee Policy Plan Summaries should in future be published in an appendix to the States Strategic Plan Billet.
- 5.28 The Joint Committees consider that appending departmental plans to the States Strategic Plan does not create the desired link between corporate and departmental policy-making. While the departmental plans have been re-titled 'Policy Plans', instead of the 'Operational Plans' that formed an appendix to the 2010 States Strategic Plan, they are no clearer on the division of responsibility for strategic policy, departmental policy and operational delivery or the 'golden thread' between the three.
- 5.29 The need to develop ownership and accountability for the States Strategic Plan has been recognised: *"For the future, the principal issues that remain to be addressed are the clarity of States corporate objectives as an expression of what the majority of States members want government to achieve; the development of political accountability for the objectives and of public sector responsibility for efficient, cost-effective delivery."*²²
- 5.30 The WAO commented that: *"Many States' [members] told us that they felt little or no ownership of the Strategic Plan and considered that it was remote from their responsibilities...."*
- 5.31 As the WAO report identifies, *"lack of clear strategic direction has led to [people's] deputies attempting to create meaningful roles for themselves at the departmental level"*, but the majority of the Department Board are not included on Policy Council sub-groups and consequently take less ownership of strategic

²¹ Billet d'État XVI October 2011 *States Strategic Plan*, Policy Council, p1879

²² Billet d'État XVI October 2011 *States Strategic Plan*, Policy Council, p1880

policy. Responsibility also remains at arm's length from the Policy Council, which makes it harder for the States of Deliberation to hold to account those responsible for the development of key strategic policies. Much responsibility rests with sub-groups which are not directly accountable to the States of Deliberation (4.22- 4.33). This is very unsatisfactory and clearly impedes the pursuit of good governance.

- 5.32 The Joint Committees concur with the conclusion of the PAC that *“it will be valuable if the States hold structured debates to discuss and secure greater ownership and support for the SSP from States members.”*²³
- 5.33 The primary executive role carried out by Deputies is sitting on Department Boards. Therefore, until Department Boards are afforded more opportunity to shape the content of the States Strategic Plan, it is unlikely that there will be a strong sense of ownership of policy development across the States.

Public choice of policy

- 5.34 Policy formulation in most jurisdictions is developed by parties (or in small jurisdictions imported by parties from party counterparts elsewhere and adapted to the local context) and therefore the electorate has a voice in choosing what manifesto of policy proposals they wish to vote for. The party of government can then be held to account against its manifesto commitments. In Guernsey, in the absence of political parties, there is arguably a lack of democratic voice in choosing between competing policy proposals, which are developed after elections and not before. Once policies are developed, responsibility for them is diffuse and there is no clear mechanism for the electorate to hold to account elected representatives or, through voting, to have any influence on policy direction.
- 5.35 As the States Strategic Plan cycle becomes more established, it should seek to incorporate mechanisms for public engagement on policy objectives and their implementation. This may be facilitated through the scrutiny process, which would encourage debate and challenge of the government's programme in a public forum (*Proposition r*).
- 5.36 The Joint Committees consider that the Policy Council should report to the States of Deliberation as soon as possible setting out proposals for how in the 2012 – 16 term the States' corporate policy planning process will address the

²³ Billet d'État March 2011, *Governance in the States of Guernsey*, Public Accounts Committee, p253

challenges outlined above, having taken into account the observations and suggestions contained herein (*Propositions*).

Decision Making

5.37 The WAO concluded that: “*decision making...often...lacks transparency*”. They noted that stakeholders, including staff and especially the public, find it difficult to find out what decisions have been made and under what criteria, and who is making them. The WAO warned of the potential for reputational damage to the States as a result of this lack of transparency, as stakeholders and observers could conclude that decisions are not made on an objective basis.

5.38 Some of the recommendations contained in other Sections of this report respond to the above observations made by the WAO:

- The communication of decisions and activities of the States is discussed in Section 8 *Stakeholders, Consultation and Engagement*;
- Developing capacity and capability in respect of decision-making is considered in Section 6;
- Establishing clearer lines of accountability for decisions is considered in Sections 4 *Organisation, Functions and Roles* and 7 *Accountability and Oversight*;
- The development of a co-ordinated programme for government, as discussed above, would provide transparency of the strategic context for decision-making (5.11 - 5.36).

Decisions of the States of Deliberation

5.39 The decisions of the States of Deliberation and the reasons for making them should be apparent from the States reports contained within the Billets d'État and the resulting States Resolutions. However, the wording of propositions contained in States reports is not always clear.

5.40 The Scrutiny Committee has identified and commented upon occasions when it felt propositions in States reports would not result in a clear direction. In early 2012, the Committee will be drafting a specification and costs for a centralised record of Resolutions of the States of Deliberation, which would provide a

public searchable database of States Resolutions, including progress reports on their implementation. The Committee intends to publish a 'Monitoring States Resolutions' interim report by late March, 2012 which will provide a summary of the research gathered to date by the Committee.

- 5.41 A key 'test' of the standard of governance in the parliament is the reliability, breadth and cogency of the information made available to members when they are required to make decisions. Much has been done already to improve the quality of information underpinning many of the more substantive proposals put before the Assembly and, if approved, some of the recommendations contained in this report will assist further. Making political choices is not an exact science and decision-making in a parliament cannot be made formulaic; however, the better the quality of information contained in States reports, the more likely it is that decisions will be rational and objective. States reports should include all of the information necessary for a decision to be made and Departments should not rely on presentations or communications with States members outside of the Assembly to impart any new information that might inform decisions.

Green papers

- 5.42 It has been suggested in more than one report presented to the States that establishing additional stages in the Assembly's decision-making process would provide better governance. For example, the WAO suggested "*[t]o speed up the decision-making process whilst allowing enough time to consider the information, the States could implement a system of green and white papers to introduce more discipline to the decision-making process, allowing full consideration of information in two formal stages before final decisions are taken.*" Consequently, the PAC suggested that "*the States Assembly and Constitution Committee should give serious consideration to a process not dissimilar to the use of 'white' and 'green' papers in the United Kingdom, thereby dividing decision making into two formal stages. This would provide the opportunity to explore and challenge decisions at an early stage, could reduce the need for Requêtees and could prove cost effective by reducing abortive work in preparing detailed proposals, which are subsequently rejected by the States.*"
- 5.43 A series of 'green papers' were also used during the capital prioritisation process starting in 2009. Such reports are submitted under Rule 12(4) of the Rules of Procedure and by convention are used to gain acceptance in principle for particular proposals. The provision of this rule gives discretion to the Department to determine if a staged debate is appropriate and was created in response to the intent signalled in the States reports on the machinery of

government to encourage States Departments to issue consultation papers and 'green papers' in advance of major policy items while not being too prescriptive.

- 5.44 Potentially there are two material disadvantages of compelling policy proposals from States Departments and Committees to pass through additional stages of the decision-making process of the States of Deliberation. First, it could make decision-making more protracted and cumbersome and as a consequence cause additional expenditure. Second, it could result in the Assembly endorsing proposals 'in principle' at the first stage of the process when they may not be in receipt of comprehensive information about the implications of such proposals, only for the detailed proposals which emerge at the second stage of the process to be scrutinised inadequately because of the assumption that they had already been approved 'in principle'.
- 5.45 However, the Joint Committees do not wish to dismiss the potential advantages (as set out by the machinery of government reports, WAO and PAC) of adding another stage to the decision-making process. The Joint Committees consider that it may be possible to draft a reasonable framework which guards against incurring the potential disadvantages explored above in the case of major or particularly expensive policy proposals put before the States of Deliberation. The Joint Committees recommend that the States Assembly and Constitution Committee report to the States of Deliberation setting out the advantages and disadvantages of requiring major policy proposals from States Departments and Committees to pass through an additional decision-making stage in the States of Deliberation (*Proposition t*).
- 5.46 Irrespective of whether a more formal two-stage process is considered, the Joint Committees are of the opinion that Rule 12 (4) requires reform.
- 5.47 The two key elements of Rule 12 (4) are: a) that a Department or Committee is of the opinion that its proposals concern general policy, and b) that such proposals cannot be amended by the States of Deliberation. However, there is nothing in the Rules of Procedure which qualifies what is meant by 'general policy'. Therefore there is the possibility that Departments and Committees could submit propositions to the States of Deliberation which are quite far-reaching without the Assembly having any opportunity to consider amendments.
- 5.48 The Joint Committees consider that Rule 12 (4) should be revised to prevent the risk of it being misapplied.

- 5.49 The Joint Committees also note the concerns raised by the Policy Council to the States Assembly and Constitution Committee about the limitations of Rule 12 (4) in enabling Departments to establish States members' views.
- 5.50 The Joint Committees support the suggestion of the Policy Council in a letter to the States Assembly and Constitution Committee that the latter should present proposals for the revision of Rule 12 (4) to enable Departments and Committees to obtain a clearer direction from the States in progressing policy matters, whilst retaining flexibility to make adjustments to detailed proposals at a subsequent date (*Proposition u*).

Reversing decisions

- 5.51 The WAO had suggested amendments should be passed only if approved by a $\frac{3}{4}$ majority of the States of Deliberation. If decisions had far reaching implications it was considered problematic that they could be overturned, perhaps by a narrow majority.
- 5.52 However, under Rule 13 of the Rules of Procedure, proposed amendments must be considered to be within the scope of the proposition being debated. It is reasonable to assume that a Department bringing forward proposals should be prepared with the information required to evidence the case for or against the proposed amendment. Or, if an amendment is challenged and considered to be outside of the scope of the propositions, it will not be debated unless debate is supported by two-thirds of the members of the States of Deliberation.
- 5.53 Furthermore, as noted by the PAC²⁴, a new Rule of Procedure, 15(2), was introduced in September, 2010 to deter new service developments being proposed in isolation in a way which might divert resources from agreed priorities without proper consideration of how they would be funded. This has meant that such amendments are now less likely.

Decisions of Departments or other States' agencies

- 5.54 Decisions which are delegated from the States of Deliberation to States Departments are predominantly taken in private meetings and so therefore may lack transparency. The Joint Committees have recommended adopting schemes of delegation which would set out the criteria which permit the Policy Council and States Departments to make decisions and take actions without requiring the approval of the States of Deliberation (*Proposition j*) and supports publication of

²⁴ Billet d'État March 2011, p251

the criteria which permit staff to make decisions and take actions without requiring the approval of their Board members (8.6).

- 5.55 The Joint Committees further recommend that where policy decisions are taken at a level beneath the States of Deliberation they should be published in a timely and accessible manner in a ‘decisions list’. Examples might include the Education Department changing criteria for out of catchment area placements or the Commerce and Employment Department changing details of the Farm Loan Scheme. These should explain the decision, including setting out the criteria or guidance against which the decision was made (*Proposition v*).

Recommendations

In respect of ‘Policy-making, Policy-planning and Decision-making’, the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- The **Policy Council** should consider the formation of a joint political/staff level steering group, if necessary having engaged the advice of an external agency with relevant experience, to examine the way in which policy is generated, developed and promulgated across the States of Guernsey, with a view to producing guidance for Departments on effective policy-making (5.8 - 5.9; *Proposition q*);
- The **Public Accounts Committee** and **Scrutiny Committee** should encourage the development of processes within the corporate policy planning cycle to assess performance and hold the Policy Council and Departments to account more effectively (5.35; *Proposition r*);
- The **Policy Council** should report to the States of Deliberation setting out proposals for how in the 2012-16 term the States’ corporate policy planning process will address the following challenges, having taken into account in particular the observations and suggestions contained in paragraphs 5.11 to 5.36 of this report:
 - i. The disconnect between policy planning and the allocation of resources;
 - ii. The disconnect between policy making at the corporate and departmental levels;
 - iii. The lack of ownership and ‘buy in’ to the policy planning process among States members;
 - iv. The lack of public engagement with the government’s programme (5.36; *Proposition s*);
- The **States Assembly and Constitution Committee** should report to the States of Deliberation setting out the advantages and disadvantages of requiring major policy proposals from States Departments and Committees to pass through an additional decision-making stage in the States of Deliberation (5.45; *Proposition t*);
- The **States Assembly and Constitution Committee** should bring proposals for the revision of Rule 12 (4) to enable Departments and Committees to obtain a

clearer direction from the States in progressing policy matters, whilst retaining flexibility to make adjustments to detailed proposals at a subsequent date (5.50; *Proposition u*);

- **States Departments** should publish in a timely and accessible manner a ‘decisions list’ in respect of policy decisions, explaining each decision and setting out the criteria or guidance against which the decision was made (5.55 *Proposition v*).

6. Capacity and Capability – Resources and Skills

- 6.1 Core Principle Five of the six Core Principles of good governance adopted by the States of Deliberation in 2011 states: “*Good governance means developing the capacity and capability of the governing body to be effective.*”
- 6.2 The Joint Committees have sought to identify, and make recommendations to put right, deficiencies in the capacity and capability of the States of Guernsey, which at least to some extent at present impair the effectiveness and credibility of the organisation as the governing body or governing authority of the island. This Section addresses these perceived deficiencies at a political level. Operational issues are further considered in Section 9.
- 6.3 Inevitably, this section of the States report relates very closely to other sections of the report. For example, the values, behaviour and culture of individuals and various parts of the organisation are likely to have an impact on their actual and perceived capability and capacity (Section 6). The way in which people, as a resource, are arranged and expected to carry out their roles will have an impact on the capacity and capability of the organisation (Section 4 *Organisation, Functions and Roles*).
- 6.4 The Joint Committees reached the view that in this context the term ‘capacity’ was related to the organisation as a whole whereas the term ‘capability’ was related more to the individuals operating within it.
- 6.5 The UK Independent Commission on Good Governance in Public Services makes a range of suggestions about how a governing body might develop its capacity and capability. Where possible, the Joint Committees have set such suggestions in the local context and made recommendations for reform accordingly, or else have explained why not.

Capability

Quality and diversity of States members

- 6.6 The quality and diversity of members of the States of Deliberation are a frequent feature of political discourse in Guernsey. That is hardly surprising given that the strength of any organisation is, at least in part, dependent on the skills and commitment of its people. Any efforts to improve the quality and diversity of membership of the States are to be commended.
- 6.7 In most jurisdictions the existence of political parties provides a significant ‘filter’ between individuals who wish to become politicians and those individuals having a realistic chance of being elected to parliament. A political party, and especially those with significant national support, will endeavour to field only candidates whom they consider sufficiently capable of representing their causes and interests in a persuasive and professional manner.
- 6.8 In modern times Guernsey has no tradition of political parties and, although there is nothing to preclude any group of individuals from forming a party, it is outside of the scope of this report to consider the merits and demerits of a party political system. And even if the case were made that such a system would invariably improve the quality and diversity of the States, it is not for a government or a parliament to establish competing political parties; rather, they would need to be developed organically by groups of individuals with common political interests who choose of their own volition to form a party or parties.
- 6.9 Indeed, the Joint Committees agreed that their making proposals concerning the quality and diversity of membership of the States would inevitably be perceived as unhealthy interference in the democratic right of citizens to stand for election and of the electorate freely to determine its parliamentary representatives.

Performance Review

- 6.10 States members are elected by, and directly accountable to, their electorate. Members who wish to remain in office must submit every four years to the definitive performance review: a General Election. Indeed, an election is the only credible mechanism available for the performance of a politician to be reviewed by his or her public.

- 6.11 Of course, the performance of government – in Guernsey’s case, Departments of the States – is reviewed by the parliament, or States of Deliberation, and their various bodies, such as scrutiny committees. Third parties, such as the media, also play a role.
- 6.12 The Joint Committees have given considerable attention to the question of how to strengthen the capacity of the States of Deliberation and their members to oversee, challenge and hold to account the performance of States Departments in a more transparent manner on behalf of the electorate. This is considered in more detail below in terms of the support available to States members in their parliamentary roles and is developed further in Section 7.

Developing States members’ skills

- 6.13 In its March, 2011 report on governance, the PAC proposed that Core Principle Five could be fulfilled in part by improving the programme of induction for States members. The States Assembly and Constitution Committee is mandated, inter alia, to *“review and bring forward proposals for the States to consider in connection with induction training and ongoing support for States members”*, although it is recognised that the Committee does not necessarily have the responsibility, nor indeed the resources, to deliver such support.
- 6.14 In the summer of 2011, the Committee established the 2012 Induction Working Party to develop a more extensive and coherent induction programme for People’s Deputies elected at the 2012 General Election.
- 6.15 It is intended to deliver a series of events in the period from election to the first States meeting with the aim of introducing members to their new roles and responsibilities. The Working Party is co-ordinating and directing the appropriate content of the induction programme with support from the Presiding Officer, the Law Officers of the Crown, the Policy Council and Departmental staff. Events will include introduction to the Rules of Procedure and the operation of the States of Deliberation, the Code of Conduct, policy planning process, the roles of States Departments and Committees, the internal election process, the machinery of government and governance arrangements etc. There will be a briefing for deputies with representation from all Departments and Committees to assist members’ understanding of their roles and functions and an opportunity for one-to-one meetings with Chief Officers.
- 6.16 It may also be possible for the programme to incorporate some thoughts about policy development in the States and effecting continuity or change in policies,

the evolving relationship between the Assembly and government in its various forms and ongoing training and support for members throughout the States term 2012-16. It is not expected to end up with a perfect or finished product in time for the 2012 elections, but it is intended to serve as a new model for induction programmes to follow General Elections of the future.

- 6.17 The Joint Committees welcome the initiative being taken to improve the induction of States members and would like to see this extended in due course to include the production of guidance material to accompany the induction programme and the structured provision of ongoing training and support.
- 6.18 There is currently no coherent, published programme of ongoing training or guidance. At the discretion of the States Assembly and Constitution Committee, this might include things such as media training; public speaking in different forums; diversity and equality training; and the policy and financial planning processes. The Joint Committees are of the opinion that in every States term, the States Assembly and Constitution Committee should publish within nine months of the General Election, after consultation with States members, a report to include:
- a) A review of the induction programme incorporating an analysis of the success or otherwise of each part of that programme and any changes to the programme which it would be considered desirable to put into effect for the following States term; and
 - b) Details of a programme of ongoing training which shall be offered to all States members during that States term (*Proposition w*).
- 6.19 A reasonable period of time before each General Election, the States Assembly and Constitution Committee, in conjunction with the Policy Council, should publish for the assistance of potential candidates for election a guide to the States to include an explanation of: the General Election process; the various roles and responsibilities of a States member, such as the constituency, parliamentary, executive and scrutiny functions; the internal election process; and the functions of the different layers of the legislature and the government. If considered necessary, the Policy Council should propose a minor extension to the mandate of the States Assembly and Constitution Committee to incorporate this matter (*Proposition x*).

Capacity

Parliamentary support

- 6.20 Challenging the policies and holding to account the performance of States Departments are important aspects of the parliamentary role of a People's Deputy. However, traditionally they have been expected to discharge these duties without additional resources or support, such as research or administrative assistance. A potential strength of this tradition is that it may encourage some States members to make a significant commitment of effort and time to their parliamentary role. However, it may also mean that there are occasions when policy is not challenged as robustly as it may deserve, for example due to the absence of sufficient supporting evidence. Invariably, relatively well-resourced States Departments start with a considerable advantage when being challenged or scrutinised by independent and under-resourced States members. This imbalance arguably impairs the capacity of States members as individuals, in their parliamentary role, to hold to account States Departments as the executive.
- 6.21 The Joint Committees wish to draw attention again to Rule 15(2) of the Rules of Procedure of the States of Deliberation. This obliges States Departments and Committees to provide information and assistance to States members in respect of the preparation of a formal proposition which may increase expenditure. The Joint Committees believe that the equivalent support should also be provided in respect of any matter which might properly interest a States member, irrespective of whether or not it has resource implications. However, it is recognised that there would need to be safeguards in place to prevent spurious requests and provide for proportionate use of resources (*Proposition y*).
- 6.22 Some of the recommendations contained in Section 7 in support of accountability and oversight would also help to improve the capacity of States members to undertake the parliamentary aspect of their role.
- 6.23 In addition, the Joint Committees believe that there is potentially a need for States members to have access to dedicated secretarial and research assistance in support of their parliamentary and constituency roles. The general facilities available to States members are also in need of review (*Proposition z*).
- 6.24 Part of the solution may be to establish a distinct office of Parliamentary Secretariat, which would be concerned exclusively with supporting Parliamentary Committees and the activities of the States of Deliberation,

including the publication of agendas, motions and Resolutions etc. (*Proposition aa*).

Communications to States members

- 6.25 States members were asked for their views in late 2010 on their preference between being sent all press releases from all Departments; or to ask Departments to use their discretion to issue only those press releases that have political significance, are strategically important or may contain controversial information with the proviso that all releases can be found on the States website. The majority of respondents opted for the latter.
- 6.26 The Policy Council decided that States members should be able to choose their preferred communications and created two separate distribution lists for those members who opted to receive all press releases and those who opted only to receive those deemed to have political significance. This was in respect of Policy Council press releases only, although it was suggested that other Departments may wish to take the same approach.
- 6.27 The Joint Committees consider that there should be a corporate approach to ensuring that States members are adequately informed about significant government initiatives. When Departments know it is likely that announcements concerning policy will appear in the media, they should provide an explanatory note to States members. Furthermore, when Departments reply to media queries which concern matters of policy they should copy responses to all States members (*Proposition bb*).

Supporting policy-making and decision-making

- 6.28 The Joint Committees consider that there may be a gap in the resources available to support politicians in policy-making and decision-making.
- 6.29 The Joint Committees believe that there may be insufficient resources available to Departments for the development of policy under their mandates, thus impairing their capacity to prioritise development of strategic issues alongside the demands and pressures of providing operational services. For example, the Environment Department has little resource for the development of environmental policy.

- 6.30 Resources might be located permanently within specific Departments, ‘on loan’ to Departments from a central resource, or outsourced, or there could be a combination of such options. However, the Joint Committees consider that the capacity for policy development should be assessed and any deficiencies addressed (*Proposition cc*).
- 6.31 There is little consistency in the approach to information presented to political members as a basis for decision-making. It was considered desirable that there should be guidance on the production of effective political briefings, for example these should always include adequate appraisal of options and assessment of risks.
- 6.32 In particular, the Joint Committees noted variations in the approach of Department Boards to monitoring performance. Some political Boards receive a wealth of management information, while some receive hardly any. While performance information will be Department specific, the Joint Committees consider that there should be more consistency and guidance provided on the content and frequency of reporting on performance information and statistics (*Proposition dd*).
- 6.33 There is a training course and some guidance available to civil servants on how to write effective States reports, for example in order to provide consistency of appearance. However, the Joint Committees consider this could be expanded to provide a ‘writing for government’ course and guidance material provided on political briefings in the form of a ‘toolkit’ (*Proposition ee*).
- 6.34 It is noted that the inconsistent approach to measuring performance is likely to indicate a problem with the capacity of the States of Guernsey to collect a full range of data and information rather than it simply not being presented appropriately to policymakers. The Joint Committees note that the recently approved project to enhance the SAP system should make data more accessible and manageable. The Joint Committees recommend that during the next term the Policy Council should demonstrate that there is adequate capacity and capability to provide all information necessary to support decision-making (*Proposition ff*).

Continuity and Renewal of Membership

- 6.35 Continuity or change of membership of the States of Deliberation is put into effect by General Election every four years. Immediately after a General Election, Boards of States Departments and Committees are elected by the States of Deliberation, also for a term of four years.

- 6.36 In 2006 the States of Deliberation considered whether to introduce a mechanism (most likely mid-term elections two years into the present four-year term or biennial General Elections) that would enable States members to move between Departments and Committees during each term and, moreover, afford the Assembly an opportunity to substitute all or some members of Boards and Committees if it considered that their performance warranted such action. The States of Deliberation concurred with a recommendation of the then House Committee (the predecessor of the States Assembly and Constitution Committee) that such a mechanism should not be introduced at that time because it may not provide for sufficient stability and continuity within Departments and Committees, but that in the spring of the second year following every General Election the Committee should write to States members in order to ascertain whether members wished to relinquish any offices.
- 6.37 The Joint Committees tend to the view that a more frequent turnover of members would likely inhibit the capacity of a political Board to take ownership of the agenda of their Department or Committee. On balance, the Joint Committees concur with the view taken by the States of Deliberation in 2006 that there is no compelling case for introducing additional provisions to address the need to balance continuity and renewal within the membership of the States and its Departments and Committees.

The relationship between the public and private sectors

- 6.38 Whilst the Treasury and Resources Department has developed comprehensive directives and guidance on the procurement of contracts, there is little corporate governance guidance in place for the performance monitoring of third parties providing government services.
- 6.39 It should be noted that where external agencies are used directly to provide services, the role of the States changes to that of overseer/regulator rather than service provider. The relationship with those private partners must provide for good governance.
- 6.40 The Joint Committees consider that it would be useful to develop overarching principles and guidance on the circumstances in which it might be appropriate to engage the private or third sectors and when it might be appropriate to develop capacity internally. It is understood that there is an intention to address this within the Financial Transformation Programme (*Proposition gg.*)

Recommendations

In respect of ‘Capacity and Capability – Resources and Skills’, the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- In every States term, the **States Assembly and Constitution Committee** should publish within nine months of the General Election, after consultation with States members, a report to include:
 - i. A review of the induction programme incorporating an analysis of the success or otherwise of each part of that programme and any changes to the programme which it would be considered desirable to put into effect for the following States term; and
 - ii. Details of a programme of ongoing training which shall be offered to all States members during that States term (6.18; *Proposition w*);
- A reasonable period of time before each General Election the **States Assembly and Constitution Committee**, in conjunction with the **Policy Council**, should publish for the assistance of potential candidates for election a guide to the States to include an explanation of: the General Election process; the various roles and responsibilities of a States member, such as the constituency, parliamentary, executive and scrutiny functions; the internal election process; and the functions of the different layers of the legislature and the government. If it is considered necessary, the **Policy Council** should propose a minor extension to the mandate of the States Assembly and Constitution Committee to incorporate this matter (6.19; *Proposition x*);
- The **States Assembly and Constitution Committee** should make proposals to ensure that States members have a right to obtain information and assistance, equivalent to that provided for in 15(2) of the Rules of Procedure of the States of Deliberation, whether or not that member is seeking it in the preparation of a formal proposition which may increase expenditure. The States Assembly and Constitution Committee should take into account the need to have in place safeguards to prevent requests which would place excessive or disproportionate demands on the resources of Departments and Committees (6.21; *Proposition y*);

- The **States Assembly and Constitution Committee** should give consideration to assessing the need for research and administrative assistance for States members to enable them to discharge their parliamentary and constituency duties as effectively as possible. The **States Assembly and Constitution Committee** should also review and, if considered necessary, make recommendations to improve, the facilities available to States members in the discharge of their parliamentary and constituency duties (6.23; *Proposition z*);
- The **States Assembly and Constitution Committee** in conjunction with the Presiding Officer and HM Greffier, should examine the case to establish a distinct office of Parliamentary Secretariat, which would be concerned exclusively with supporting Parliamentary Committees and the activities of the States of Deliberation, including the publication of agendas, motions and Resolutions etc. (6.24; *Proposition aa*);
- The **Policy Council** and **States Departments** should consider a corporate approach to ensuring that People's Deputies are adequately informed about significant government initiatives and media interest. When Departments know it is likely that announcements concerning policy will appear in the media, they should provide an explanatory note to States members. Furthermore, when Departments reply to media queries they should copy responses to all States members (6.27; *Proposition bb*);
- The **Policy Council**, in conjunction with **States Departments**, should review the capacity of the States as an organisation to develop policy in response to the needs of the community and the objectives of government (6.30; *Proposition cc*);
- The **Policy Council** should review what measures could be put in place to ensure that there is greater uniformity and consistency of approach across all parts of government in respect of how information and evidence is presented to policy-makers and decision-makers (6.32; *Proposition dd*);
- The **Policy Council** should ensure that best practice in the briefing of politicians and the writing of policy options and recommendations for the consideration of politicians is included as an integral part of the professional development offered to senior staff across government (6.33; *Proposition ee*);
- The **Policy Council** should demonstrate that there is adequate capacity and capability in the availability of performance information to support decision-making. (6.34; *Proposition ff*);

- The **Treasury and Resources Department** should publish guidance criteria to enable States Departments and Committees and States members to understand better when it might be appropriate to engage the private or third sector and alternatively when it might be better to develop capacity internally to assist in the development of policy or the delivery of services (6.40; *Proposition gg*).

7. Accountability and Oversight

7.1 In this Section the Joint Committees are concerned primarily with:

- the accountability of politicians and the government to the electorate;
- the accountability of Departments of the government to the parliament;
- ethical accountability, which concerns the behaviour of elected officials.

7.2 In its 2011 report on governance, the PAC stated that: *“It should be clear to all those involved in the States to whom they are accountable and for what.”* Section 4 seeks to address clarity of roles and responsibilities. Section 5 sets out recommendations concerning the policy-making and decision-making. Section 8 adds recommendations for increasing transparency and improving communication.

7.3 Accountability is described by The World Bank in the following terms: *“Accountability exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, are subject to another’s oversight, direction or request that they provide information or justification for their actions. Therefore, the concept of accountability involves two distinct stages: answerability and enforcement. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour. As such, different institutions of accountability might be responsible for either or both of these stages.”*²⁵

Accountability to the electorate

7.4 As in all parliamentary democracies, People’s Deputies who wish to remain members of the legislature submit themselves to the ultimate form of political accountability when they seek re-election in their electoral district at a General Election.

²⁵ World Bank *Accountability in Governance*

- 7.5 In one sense, there is a considerable degree of accountability in Guernsey's electoral system because it is based on multi-member electoral districts. Each elector in Guernsey can vote for almost 15% of the total number of members of the legislature, the States of Deliberation. In the UK's electoral system of single-member constituencies, each elector can vote for only one representative among 650 members of the House of Commons, around 0.15% of the total.
- 7.6 On the other hand, whereas in jurisdictions with political parties a General Election provides an opportunity for the public to hold to account the party of government, in Guernsey's non-party system there can be no such direct link between the performance of the government and its fortunes at the ballot box.
- 7.7 Between General Elections the public have means of questioning and challenging their elected representatives and a free media can also make a contribution to that form of scrutiny.

Accountability to parliament

- 7.8 In almost all other parliamentary democracies, following a General Election those whom the public have elected to the legislature are almost immediately divided between those who sit in the executive (the government) and those who do not. The executive is scrutinised, challenged and held to account by those members of the legislature who sit outside the executive.
- 7.9 In his evidence to the Chuter-Ede Committee in 1946, Sir John Leale, speaking on behalf of the States, said: "...*The governing body of the island is the States itself. It is in that Assembly that major decisions are taken, and that policy is laid down...The government in this island indeed cannot be defeated, for the government is the States, which cannot defeat itself.*"²⁶ His description of the nature of government in Guernsey remains as valid in 2012 as it was in 1946.
- 7.10 In Guernsey, because in practice there is no distinction between the legislature and the executive, the scrutiny of government relies on one part of the executive holding to account other parts of the executive. This in turn depends upon the independence of States members and features of the system of government such as the absence of collective responsibility within Department Boards and the freedom of members to lay amendments, sursis and requêtes.

²⁶ As quoted in Section 8, Harwood Panel Report, November 2000

- 7.11 If the principles of good governance are to be fulfilled while retaining the considerable fusion of powers between the legislature and the government, the formal scrutiny of States Departments must be especially rigorous and seen to be, if not wholly independent of government, at least open, transparent and credible.
- 7.12 The States of Deliberation has established two Committees specifically responsible for providing co-ordinated political scrutiny, primarily of, although in the case of the PAC not limited to, States Departments:
- The PAC investigates whether the management of States assets, expenditure and revenue is economic, efficient and effective;
 - The Scrutiny Committee investigates whether policy development, implementation and service delivery is appropriate and effective.
- 7.13 There are generally two models for parliamentary scrutiny committees: a series of permanent committees, or a single permanent committee with the right to set up temporary committees to investigate and report on particular issues. Guernsey has a hybrid model: the Committees are permanent but are generalist rather than shadowing specific Departments or scrutinising, and developing expertise in, distinct areas of policy.
- 7.14 Political members elected to these Committees may also sit as members of States Departments as well as fulfilling their executive responsibilities as members of the island's overarching executive, the States of Deliberation. Both Committees work on the basis that a members absent himself when the Committees scrutinise matters relating to a Department of which he is a member.
- 7.15 It should also be noted that many people hold the view that within Guernsey's system of government there is an element of scrutiny 'built-in' to policy development and decision-making on States Departments. Political members of Departments are not bound by collective responsibility and may represent alternative views within the Department and publicly if their views are in conflict with their departmental colleagues.
- 7.16 Nonetheless, the Joint Committees acknowledge that permitting members to sit on States Departments and scrutiny committees at the same time may create the impression that scrutiny and oversight is insufficiently robust.

- 7.17 An apparently straightforward solution might be to preclude members of States Departments from sitting as members of the scrutiny committees. Of course, such members would remain part of the overarching executive, that is the States of Deliberation, and therefore arguably complete separation between the executive and scrutiny is not possible. However, there may be particular risks in pursuing this apparently straightforward solution while the basic structure of government remains unaltered with 50 departmental seats and 14 scrutiny seats to be allocated among 47 States members.
- 7.18 There is an enduring perception that membership of a Department is superior to membership of a scrutiny committee. Eliminating the possibility of dual membership of a States Department and a scrutiny committee may further discourage States members from serving on the scrutiny committees and therefore paradoxically weaken the credibility and competence of scrutiny and oversight in the States. It would also mean that, in effect, two-thirds of States members would be in the executive and only one third outside of the executive, creating an inappropriate balance in favour of the executive.
- 7.19 An alternative option may be to reduce the number of members of the Scrutiny Committee to, say, three but allow the Committee temporarily to recruit any other members of the States to form ad hoc ‘task and finish’ committees of inquiry to investigate specific areas of policy or service delivery. The PAC could be retained in its present form or merged with the smaller, more focused Scrutiny Committee (which might be renamed the Scrutiny Management Committee with ‘task and finish’ scrutiny committees in support). Either way the States would be free to appoint an Auditor General who potentially could bring additional independence and professional expertise to the scrutiny of States’ financial matters.
- 7.20 Under this option, the Joint Committees are of the opinion that the chairman, and possibly all of the members, of a Scrutiny Management Committee (given that there would be three of them only) could be precluded from sitting on States Departments, and therefore at least to some extent separated from the executive, without necessarily further diminishing the status of the scrutiny function or undermining the system of government by committees and consensus, or further strengthening the relative power of the executive departments at the expense of scrutiny and oversight.
- 7.21 Concurrent with the Joint Committees’ review of governance, the Policy Council has commissioned a review of scrutiny in the States in order to re-examine the constitution, powers, resources and mandates of the Public Accounts,

Legislation Select and Scrutiny Committees and “*make recommendations for improving the formal scrutiny processes available to the States of Deliberation to hold its departments, committees and other government service providers to account for their performance in providing effective legislation, value for money, service delivery, policy formulation and implementation*”. That review is due to be published ahead of the 2012 General Election but not in time for it to be submitted for debate by the current States of Deliberation.

- 7.22 As the scrutiny committees have now been operating in their present form for eight years, the Joint Committees agree that a review of their effectiveness is required and look forward to the publication of the review report. The Joint Committees hope that the reviewer will take the above observations into account (*Proposition hh*).
- 7.23 The Joint Committees are of the opinion that irrespective of the outcome of the review referred to in 7.21, some changes to the working practices of the scrutiny committees would assist them in holding States Departments to account.
- 7.24 The scrutiny committees should ensure that they provide co-ordinated scrutiny of every Department on a regular basis and hold public hearings. Ideally each Department should appear before such a hearing several times and as a minimum at least once during the four-year States’ term (*Proposition ii and kk*).
- 7.25 The States of Deliberation expresses its decisions by means of States Resolutions. Frequently, States Resolutions are in effect directions for the Policy Council or a States Department or Committee to take a particular action or adopt a certain policy. It is a key task of both the States of Deliberation and the scrutiny committees on their behalf to hold to account the Policy Council, Departments and Committees for actions taken pursuant to States Resolutions. However, initial research undertaken by the Scrutiny Committee during this term of the States has suggested that there is no readily-accessible database of extant States Resolutions nor any mechanism in place for Departments and Committees to inform the scrutiny committees or the public of progress against States Resolutions.
- 7.26 The Joint Committees are of the opinion that the absence of a credible framework for monitoring States Resolutions impairs the capacity of the States of Deliberation, their scrutiny committees and the public to hold to account States Departments and Committees. The Joint Committees recommend that as soon as possible in the next term of the States the Scrutiny Committee should submit to the Assembly a review on their monitoring of States Resolutions (see

paragraph 5.40) and make proposals which will enable the States of Deliberation, their scrutiny committees and the public more easily to monitor progress against States Resolutions (*Proposition jj*).

- 7.27 The PAC currently holds its hearings in private. In the interest of providing public, transparent challenge to government performance, the Joint Committees recommend that the Committee give consideration, where appropriate, to holding review hearings in a public forum (*Proposition kk*).

Publication of Rule 5 and 6 Questions

- 7.28 Rule 5 and 6 of the Rules of Procedure of the States of Deliberation provides that States members may submit questions to Ministers or Chairmen and require them to be answered orally in the Assembly or in writing respectively. The Joint Committees recommend that, to improve transparency, these questions and responses should be published on the States website and the notice board at the Royal Court (*Proposition ll*).

Scrutiny of legislation

- 7.29 Very little time is spent by the States of Deliberation considering proposals to enact, amend or repeal legislation. For example, for the approval of legislation, in 2010 15 Projets de Loi and 48 Ordinances were put before the States of Deliberation: the total length of time spent debating the 57 items was 2 hours 45 minutes and only four amendments were proposed. Only 1.9% of the time of the States of Deliberation was dedicated to debating legislation in 2010.
- 7.30 Frequently the Assembly is required to debate and vote upon changes to legislation months or even years after taking the in-principle policy decisions which initially provoked the requirement for those legislative changes. On occasion the two stages of this process occur during different States terms. In addition, Billets d'État, together with the brochure of proposed changes to legislation which usually accompany them, tend not to apprise the Assembly of the reasons that changes to legislation are considered necessary or explain clearly how the proposed changes fit into the context of the legislation overall.
- 7.31 The Joint Committees recommend that proposals to enact, amend or repeal legislation which are put before the States of Deliberation should be accompanied by an explanatory memorandum which sets out in clear and simple terms the effect of the legislation (*Proposition mm*).

- 7.32 The Joint Committees would also wish legislation, wherever practicable, to be put to the Assembly in sections rather than en bloc, other than perhaps in the case of the most minor proposals to change legislation (*Proposition nn*).
- 7.33 The scrutiny provided by the Legislation Select Committee is limited to “*review and revise*” every *Projet de Loi* “*for the purpose of ensuring that the same is in accordance with and will effectually carry into effect any Resolution of the States designed to be implemented thereby*”.
- 7.34 The Joint Committees do not consider that sufficient scrutiny is currently afforded to legislation. It is suggested consideration be given to the introduction of a formal series of reading debates, possibly authorising the Legislation Select Committee to carry out a stage. States members should be provided with the opportunity to make representations to the Committee and possibly to attend at the meeting of the Legislation Select Committee when the *Projet* is considered (*Proposition oo*).

Individual behaviour – values and culture

- 7.35 The Joint Committees acknowledge that values, behaviour and culture are crucial to good governance. The Joint Committees are aware that when most people are asked about governance, or failures in governance, they will tend to refer to examples of particular behaviours and organisational culture to which earlier parts of this Section refer. The Joint Committees would suggest that the principal underlying concern is one of ensuring appropriate accountability.
- 7.36 There is significant crossover between all of the Core Principles, but Core Principle Three, ‘*Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour*’, in particular is both an outcome (demonstrating behaviour) and an enabler (promoting values) of the other Core Principles, rather than a stand-alone principle. The Joint Committees consider that implementation of the package of proposals contained within this report would serve to give life to this principle by encouraging and reinforcing a culture of adherence to good governance.

Individual Behaviour - Code of Conduct²⁷

- 7.37 The States Assembly and Constitution Committee is responsible for advising the States of Deliberation on, amongst other things, “*matters relating to the propriety and conduct of States members*”. The Committee is the keeper of a mandatory code of conduct for States members and an associated mechanism for investigating complaints regarding behaviour against the code.
- 7.38 The UK Independent Commission suggests that the conduct of members should be based on the Nolan Principles. These are already set out in extenso in paragraph 6 of the Code. Sanctions currently available through the Code of Conduct are caution, reprimand, suspension and expulsion.
- 7.39 The States Assembly and Constitution Committee is in the process of reviewing the Code of Conduct. This is currently on hold pending the outcome of a substantial review of the Westminster Code of Conduct currently under way. At the time of writing it was intended that the UK review would be published imminently, after which the Committee will continue with its review locally.
- 7.40 It is not the intention of the Joint Committees to duplicate work already in train or to pre-empt the results of that review. However, the Joint Committees would like to offer the following comments for the States Assembly and Constitution Committee to take into account as part of its review.
- 7.41 The Joint Committees contend that the perceived weaknesses in the States’ ability to deal effectively with poor conduct are not through the absence of an appropriate mechanism but through a reluctance to impose discipline and sanctions. Furthermore, the research carried out by the WAO suggested a lack of awareness of the Code of Conduct and its provisions. Therefore, the States Assembly and Constitution Committee should give consideration to how the Code of Conduct might be promoted to ensure that it is understood, easily accessible and transparent (*Proposition ppi*).
- 7.42 In particular, the Joint Committees believe that all complaints referred to the States Members’ Conduct Panel, including those dismissed by the Chairman or not upheld by the Panel, should be reported to the States Assembly and Constitution Committee and made a matter of public record (*Proposition ppb*).

²⁷ approved by Resolution of the States on the 28th September, 2006, 30th September 2009 and 27th May 2011, pursuant to article 20F(1) of The Reform (Guernsey) Law, 1948, as amended

Recommendations

In respect of ‘Accountability and Oversight’, the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- When considering the findings of the review of the scrutiny function it has commissioned, the **Policy Council** should also take account of the observations made in this report in paragraphs 7.12 to 7.34 (7.22; *Proposition hh*);
- The **Scrutiny Committee** should hold regular public hearings and ensure that each Department appears before such hearings at least once during the four-year States term (7.24; *Proposition ii*);
- The **Scrutiny Committee** should make proposals for the introduction of mechanisms which would enable the States of Deliberation, their scrutiny committees and the public to monitor more easily progress against States Resolutions (7.26; *Proposition jj*);
- The **Public Accounts Committee** should consider, where appropriate, holding its review hearings in a public forum (7.24 and 7.27; *Propositions ii and kk*);
- The **States Assembly and Constitution Committee** should make proposals for the publication of Rule 5 and 6 questions on the States website and on the notice board at the Royal Court (7.28; *Proposition ll*);
- The **States Assembly and Constitution Committee** should propose amendments to the Rules of Procedure of the States of Deliberation to provide that proposals to enact, amend or repeal legislation which are put before the States of Deliberation should be accompanied by an explanatory memorandum which sets out in clear and simple terms the effect of the legislation (7.31; *Proposition mm*);
- The **States Assembly and Constitution Committee** should discuss with the Presiding Officer the desirability of legislation being put to the States of Deliberation, in sections rather than en bloc, other than perhaps in the case of the most minor proposals to change legislation (7.32; *Proposition nn*);

- The **Policy Council** and the **States Assembly and Constitution Committee**, in consultation with the **Legislation Select Committee**, should give consideration to the introduction of a formal series of reading debates, possibly authorising the Legislation Select Committee to carry out a stage, and should give consideration to affording States members an opportunity to make representations to, and attend meetings of, the Legislation Select Committee when it is considering legislation (7.34; *Proposition oo*);
- The **States Assembly and Constitution Committee**, as part of its review of the Code of Conduct provisions, to consider:
 - i. How the Code of Conduct might better be promoted to ensure that it is easily accessible and transparent (7.41);
 - ii. Whether the Code of Conduct Panel should report to the Committee on all complaints referred to the Panel, including those dismissed by the Chairman or not upheld by the Panel, and for such reports to be made a matter of public record (7.42; *Proposition pp*).

8. Stakeholders, Consultation and Engagement

- 8.1 Core Principle One connects purpose with outcomes for citizens and service users. As the WAO stated: *“The States of Guernsey exists to serve islanders. The States should therefore have the needs of Islanders at the heart of its decision-making processes.”*²⁸ Core Principle Six states that *“good governance means engaging stakeholders and making accountability real.”*
- 8.2 A definition of a stakeholder might be *“any group or individual who can affect or is affected by the achievement of the organization's objectives”* (Freeman 1984, p.46). Core Principle One identifies the core ‘customers’ of government, whereas Core Principle Six encompasses other external stakeholders and internal stakeholders. Failure adequately to address stakeholders’ needs risks incurring reputational damage and the loss of effectiveness and political legitimacy.
- 8.3 The WAO found a perceived lack of transparency of States’ decisions and poor communications with the public. It concluded that *“the arrangements to engage and involve others in the decision-making process are limited.”*
- 8.4 The Joint Committees noted the following developments in support of improving engagement with stakeholders:
- **Development of Information Strategy**
Further to a States Resolution directing it to set out *“options for improving open government and transparency and establishing a corporate policy on freedom of information and open government”*²⁹, the Policy Council commissioned a review, the aim of which was to develop an Information Strategy for the States of Guernsey. A discussion paper outlining options and recommendations for the development of the strategy was published in September, 2011. This paper intended to set out *“a potential direction of travel for the States in order to further increase the openness and accountability of Guernsey’s public bodies. It sets out high level principles and considers information from the perspective of government with its responsibility as custodians of the information; Guernsey residents, who need knowledge and information to access services, engage with*

²⁸ Wales Audit Office, *Review of Good Governance The States of Guernsey*, 4 September 2009

²⁹ Billet d’État XIX, September 2010

*government and hold it to account; and the staff working in public authorities who need the right information at the right time to deliver efficient and effective services. It does not set out to transpose the UK freedom of information model into Guernsey.”*³⁰ The Policy Council is drafting a more detailed States report on how to take the Information Strategy forward based on the findings of the discussion paper. As part of this work, the Policy Council staff is seeking to develop and promote best practices in communications.

- **Hansard**

The States of Deliberation approved proposals for the introduction of Hansard, which is due to be implemented by 1st May, 2012³¹.

- **New Website**

The States of Guernsey website www.gov.gg is being updated and re-designed with the intention of making it more user-friendly. At the same time, those developing the new website are seeking to unify corporate branding and identity.

- **Scrutiny Public Engagement Review**

The Scrutiny Committee has developed its own Public Engagement Strategy, which has been published and is available to other Departments and Committees to adapt for their own use. At the time of writing it is finalising a report on public engagement across the States.

8.5 Measures to improve transparency of decision-making and strengthen accountability are considered further in Sections 5 and 7.

8.6 The Joint Committees support:

- The development of an Information Strategy which should be adopted by all States Departments and Committees;
- The development of resources, co-ordinated centrally, to provide a consistent approach to government communication;
- A standard framework for public consultation on major policy issues;
- The introduction of shared services, for example to: maintain lists of stakeholders and contacts; provide expertise in designing and undertaking

³⁰ <http://www.gov.gg/ccm/general/information-strategy-discussion-paper-published.en>

³¹ Billet d'État XVI October 2011 *States Strategic Plan*, Policy Council, p1879

engagement/consultation exercises; provide facilitators; and centrally co-ordinate the administration and analysis of results of engagement/consultation exercises;

- The publication by States Departments of schemes of delegated authority for material administrative decisions made under their mandates in order to provide for greater transparency (a good example is the Environment Department's Approved Scheme of Delegation).

8.7 The Joint Committees consider that, when developing an Information Strategy for the States of Guernsey, the Policy Council should take into account the findings and recommendations of this report and the report from the Scrutiny Committee on Public Engagement (*Proposition qq*).

Complaints and appeals against Departments' decisions

8.8 In 2005, the Scrutiny Committee identified that many Departments did not have in place well-developed arrangements for handling complaints against them from members of the public. In 2007, the Committee produced a follow-up report which indicated little improvement from the position two years earlier. There remains no corporate approach to the handling of complaints, and while that is the case standards between Departments are likely to vary considerably, which is not satisfactory.

8.9 The legality, reasonableness and procedural propriety of States Departments may be subject to Judicial Review by the Royal Court. For administrative decisions where there is no formal appeals provisions contained in legislation administered by specific Departments and where departmental complaints procedures have been exhausted by a complainant, decisions may be referred to a Review Board established under the Administrative Decisions (Review) (Guernsey) Law, 1986.

8.10 After consideration of the Advisory and Finance Committee's Policy and Resource Plan of 2002, the States of Deliberation resolved: "*To approve the establishment of a Tribunals Service, as set out in Sections 2.3.20 - 2.3.26 of that report, and to direct the preparation of such legislation as may be necessary to give effect to this proposition.*"

8.11 The Joint Committees noted that this Resolution remains unfulfilled. The Policy Council has stated that it is undertaking work to assess the appeals tribunals in operation across the States of Guernsey, including how they are governed, how often they occur and how they are resourced in order to obtain an up-to-date

picture of current practice and assess the merits of a Centralised Tribunal Service.

- 8.12 In light of the limited use of the Administrative Decisions Review Board and the need already identified for a formal body to investigate complaints made against those to whom the States of Deliberation has delegated executive decision-making functions, the Joint Committees believe that it is imperative that the work undertaken on whether to create a Centralised Tribunal Service should be concluded promptly.
- 8.13 The Joint Committees believe that this workstream should also revisit creating the role of an Ombudsman to adjudicate any complaints that government Departments or agencies have not acted properly or fairly or have provided a poor service. The merits of both options (a Centralised Tribunal Service and an Ombudsman) could then be assessed and the most cost-effective and appropriate body introduced (*Proposition rr*).

Recommendations

In respect of ‘Stakeholders, Consultation and Engagement’, the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- The **Policy Council** should take into account the findings and recommendations of this report and the report from the Scrutiny Committee on *Public Engagement*, in taking forward the development and implementation of an Information Strategy for the States of Guernsey (8.7; *Proposition qq*);
- The **Policy Council** should redouble its efforts to present proposals for the establishment of appropriate processes for hearing complaints and appeals against States Departments and Committees, having set out the merits or otherwise of a Centralised Tribunal Service and an Ombudsman (8.12 - 8.13; *Proposition rr*).

9. Operational Governance

- 9.1 The Joint Committees have focused primarily on how the core principles of good governance can be applied at a political level. However, they recognise that good governance is no less important at the administrative level. Indeed, ‘political’ and ‘operational’ governance are inter-dependent. For example, the quality of decision-making in government and the effective implementation of those decisions depend in part upon the capacity and capability of the civil service and public sector as a whole.
- 9.2 As noted in 4.49, ultimately political members of Departments and Committees are accountable for day-to-day operational performance. As identified by the WAO, inadequate governance arrangements at the operational level are likely to create strategic, financial and reputational risks to the States of Guernsey.
- 9.3 The distinction between political and operational governance is not always entirely clear. That is especially the case in Guernsey, where, as identified previously in this report, a fusion of roles and responsibilities is a prevailing characteristic of the system of government. But in this brief section of the report, operational governance is assumed to mean the areas of governance where the role of political members is typically limited to overseeing the public sector.
- 9.4 Substantial efforts are already under way (and indeed have been for some time) to strengthen the capacity and capability of the public sector, most especially, though not exclusively, through the Financial Transformation Programme. For example, there is an FTP project to address the lack of corporate purpose and identity across the organisation. There is another to centralise basic administrative functions of government, including human resources, finance, information technology, procurement and asset management, with the intention of spreading best practice and reducing duplication.
- 9.5 However, the Joint Committees note that there is scope to improve corporate direction, rules and procedures in several areas of administration.
- 9.6 Departments have considerable autonomy in risk management. This disparate approach itself presents risk. Good practice needs to be identified and then adopted across all Departments. The Joint Committees are pleased to note that the Public Accounts Committee has commissioned a follow-up review of risk management across Departments. It is hoped that any recommendations for reform emerging from that review will be addressed as a priority.

- 9.7 There is limited internal guidance on arrangements for protecting data, in addition to that provided by the Data Protection Commissioner. It is likely that a more uniform approach across Departments would become essential in the event of the introduction of an information strategy.
- 9.8 There is no central guidance available on taking minutes and notes of meetings and discussions. The Joint Committees are aware that practices differ considerably between Departments and Committees and believe there would be merit in all parts of the States taking and presenting minutes in a more consistent manner.
- 9.9 The WAO identified that inter- and intra-departmental communication was too often weak. It is clear that good governance demands effective communication between all parts of the States and the Joint Committees would suggest that the matter be addressed with some urgency, albeit while acknowledging that recent developments in the intranet and implementing some of the proposals in this report concerning the identification of stakeholders may improve communication considerably.
- 9.10 As noted in Sections 5 and 6, there are weaknesses in the performance information available to support decision-makers. This may be improved by better co-ordination between Departments in the production and monitoring of meaningful data and its integration with the States Strategic Monitoring Report. If not, other means of improvement will need to be pursued. Much may be learned from initiatives taken by Departments in the absence of a States-wide approach. For example, the Home Department has implemented a corporate management tool for developing and monitoring key performance indicators associated with the criminal justice strategy.

Proposal for a Code of Operational Governance

- 9.11 The Joint Committees are of the opinion that there should be a Code of Operational Governance which would outline what is expected across the public sector. It should be compulsory for Departments to adhere to the provisions of such a Code (*Proposition ss*).
- 9.12 The Code should sit beneath the States Strategic Plan and enable the public sector to achieve the objectives and policies determined by elected politicians. The Code, taken in its entirety, would be expected to address the shortcomings identified in this Report and other weaknesses identified elsewhere as well as

being flexible enough to adapt as the expectations and demands of good governance evolve.

- 9.13 The Chief Executive of the States should have responsibility for the Code. It should be reviewed at least annually. Responsibilities for implementing provisions of the Code should be delegated very clearly and those persons with delegated authority should be held to account through performance appraisals and internal audit and possibly externally (i.e. publicly) through scrutiny review.
- 9.14 The Code and underlying guidance may include, inter alia:
- Management of the programme of change;
 - Financial planning;
 - Human resource planning;
 - Corporate risk management;
 - Inter- and intra-departmental projects;
 - Communications;
 - Emerging issues.
- 9.15 Any corporate directives and guidance issued would need to be consistent with achieving the objectives of the Code and would need to be co-ordinated centrally (*Proposition tt*).
- 9.16 At present, improvements in operational governance are being driven largely as by-products of the FTP, which is time-limited, essentially a temporary ‘bolt-on’ to the public sector. It is envisaged that establishing a Code across the States, and committing resources to the implementation of such a Code, would form the basis of a well-resourced and permanent programme of continuous improvement in operational governance within the public sector.

Accountability of Civil Servants

- 9.17 There are now clearer lines of accountability between departmental Chief Officers and the Chief Executive of the States. The performance of Chief Officers can now be meaningfully appraised by the Chief Executive as their line manager. A ‘Balanced Scorecard’ approach has been adopted recently to assess the performance of Chief Officers. In addition, senior officers, including the Chief Executive and Deputy Chief Executive, are undergoing a development

programme which includes 360 degree feedback³². However, the Joint Committees consider that there needs to be a more formal mechanism to review the performance of the Chief Executive (*Proposition uu*).

- 9.18 The Joint Committees see no particular reason for the lines of accountability in the administrative side of the States to mirror those of the political structure. For example, Guernsey's more de-centralised, bottom-up political structure could be served by a bureaucracy with stronger direction centrally. Certainly, given that it is within the Policy Council's mandate to fulfil the role of employer of established staff and to appoint Chief Officers and other senior civil servants, it is appropriate that the Chief Executive should assume responsibility for managing their performance. However, the lines of accountability remain blurred: for example, there is uncertainty about the extent to which Chief Officers are accountable, if at all, to their Department's political board. The Joint Committees consider that all such lines of accountability need to be clarified and understood more widely across the organisation (*Proposition vv*).

³² 360 degree feedback is gathering anonymous feedback on the person's performance from a range of stakeholders including subordinates, peers and supervisors and sometimes external suppliers or customers ("360" refers to the [360 degrees](#) in a circle with an individual figuratively in the centre of the circle.)

Recommendations

In respect of ‘Operational Governance’, the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- The **Policy Council** should develop a Code of Operational Governance, under the leadership of the Chief Executive of the States of Guernsey, which would outline what is expected across the public sector. The Code should sit beneath the States Strategic Plan and enable the public sector to achieve the objectives and policies determined by elected politicians. The Code, taken in its entirety, would be expected to address the shortcomings identified in this report and other weaknesses identified elsewhere as well as being flexible enough to adapt as the expectations and demands of good governance evolve (9.11; *Proposition ss*);
- The **Policy Council** should centrally co-ordinate corporate directives and guidance in line with achieving the objectives of the Governance Code. Consideration should be given to establishing a dedicated resource with corporate governance expertise to co-ordinate and oversee the development, delivery and monitoring of corporate governance initiatives including, among other things, developing corporate guidance on the retention of data, minute-taking, and risk management (9.15; *Proposition tt*);
- The **Policy Council** should give consideration to the introduction of a more formal mechanism to review the performance of the States Chief Executive (9.17; *Proposition uu*);
- The **Policy Council** should clarify lines of accountability between Chief Officers of States Departments and Boards and the States Chief Executive (9.18; *Proposition vv*).

10.Next Steps:

Measuring Compliance & Governance in the 2012-16 term

- 10.1 The WAO report of 2009, *Review of Good Governance - The States of Guernsey*, commissioned by the PAC, began a discussion on how governance arrangements might be improved. This was further promoted in the PAC's report of March, 2011 the result of which was the States of Deliberation adopting six Core Principles of Good Governance and resolving to consider further how these might best be implemented in practical terms. The Joint Committees were directed by States Resolution to make recommendations which would enable the six Core Principles to be applied in practical terms within Guernsey's existing system of government. This report fulfils that Resolution and represents another significant step on the journey of improving governance in the States of Guernsey. The pursuit of good governance is not a one-off initiative, but a continuous programme of improvement. The recommendations contained in this report should enable the States to pursue further improvements in the 2012-16 term and beyond.
- 10.2 In its role as the coordinator of strategic policy, the Policy Council is entitled to consider every States Report submitted for debate by a States Department and to append to such reports letters of comment advising the States of Deliberation on, inter alia, the extent to which the Department's proposals comply with the corporate policies of the States. In addition, in March, 2011, the States of Deliberation resolved that: "*the Policy Council shall include in its statement appended to each Report submitted by a States Department or Committee or group of members in the case of a Requête for inclusion in a Billet D'État in accordance with Rule 2(1)(a) of the Rules of Procedure of the States of Deliberation such assessment as the Policy Council considers necessary relating to the extent to which the Report conforms to the six Core Principles of good governance.*" This additional obligation was to remain in place until the States of Deliberation had considered the Joint Committees' report (i.e. this report). The Joint Committees are of the opinion that this States Resolution should be modified to require the Policy Council to assess, as necessary, the extent to which a Report does not conform to the six Core Principles of good governance (*Propositions ww and xx*).

- 10.3 The Joint Committees are inviting the States of Deliberation to consider each of their recommendations separately and at this stage in principle. Reforms contained in any recommendations which are rejected will, of course, not be pursued. In respect of those recommendations which the States of Deliberation approves, the Joint Committees propose that early in the life of the next States term the Policy Council should draw up a plan of action in order to ensure that such recommendations for reform are implemented in a timely and appropriate manner (*Proposition 2*). It is recognised that the implementation of such reforms will be influenced by, inter alia, the resources available and the priorities determined by the next government. For that reason, the Joint Committees are of the opinion that the implementation plan should be drawn up only after widespread consultation and then debated by the States of Deliberation.
- 10.4 The Joint Committees, mindful of the direction to them to consider how compliance with the principles of good governance might be measured, also propose that:
- During the second half of the next term of government, the Public Accounts and Scrutiny Committees should report to the States of Deliberation setting out the extent to which by that stage the States is complying with the principles of good governance (*Proposition 3*);
 - The Policy Council should propose an amendment to the mandates of the Public Accounts and Scrutiny Committees to make them explicitly responsible for “the promotion and monitoring of good governance” (*Proposition 4*);
 - In the first six months of the 2016-20 term of government, the Policy Council should commission an independent review of the standards of governance in the States of Guernsey (*Proposition 5*).

Recommendations

In respect of ‘Next Steps: Measuring Compliance & Governance in the 2012-16 term’ the Joint Committees set out the following recommendations to enable the application in practical terms of the six Core Principles of good governance adopted by the States in March, 2011:

- The **Policy Council** should include in its statement appended to each States report from Departments an assessment, as necessary, the extent to which a Report does not conform to the six Core Principles of good governance (10.2; *Proposition ww*);
- The **Policy Council** should provide Departments with guidance on how States reports will be judged to comply or otherwise with the Core Principles (10.2; *Proposition xx*);
- The **Policy Council**, after consultation with States Departments and Committees, should present to the States of Deliberation by no later than January, 2013 a plan of action for the implementation of the recommendations approved in principle (10.3; *Proposition 2*);
- The **Public Accounts Committee** and **Scrutiny Committee** should report to the States of Deliberation during 2015 setting out the extent to which by that stage the States is complying with the principles of good governance (10.4; *Proposition 3*);
- The **Policy Council** should propose an amendment to the mandates of the Public Accounts Committee and Scrutiny Committee to make them explicitly responsible for “the promotion and monitoring of good governance” (10.4 *Proposition 4*);
- In the first six months of the 2016-20 term of government, the **Policy Council** should commission an independent review of the standards of governance in the States of Guernsey (10.4; *Proposition 5*).

11.The Joint Committees' View on Comments from the Policy Council

- 11.1 The Policy Council were sent a draft report on 29th November, 2011 and a further draft report on 14th December with a request for formal comments by 30th December.
- 11.2 The Policy Council, in a letter appended to this report, expresses concerns regarding the length of time which it was afforded to consider the recommendations contained herein. Although the intention had been to engage with the Policy Council over a longer period of time, and while the Joint Committees regret that this was not achieved, it is hoped that members will appreciate that producing a report of this nature and obtaining consensus for the recommendations from among the members of three separate Committees was very time-consuming. The Joint Committees were mindful throughout of the tight timeline which the States of Deliberation had set them for reporting back.
- 11.3 However – especially since the States of Deliberation is being invited to approve the recommendations in principle with the intention that the next States will draw up a plan of action for implementing what has been approved – the Joint Committees consider that the Policy Council has been afforded a reasonable opportunity to comment upon the report and inform the framing of the recommendations.
- 11.4 In addition, the recommendations set out a generous timeframe for the Policy Council, in conjunction with others, identifying which reforms can realistically be progressed over the next term of the States and beyond.
- 11.5 Deputy Fallaize and 21 other members of the States have submitted a Requête entitled: *Proposal for a Comprehensive Review of the Structure and Functions of the Legislature and the Government in Guernsey*. The prayer of the Requête proposes, inter alia, the establishment of a States Review Committee “...to examine the extent to which the structure and functions of the legislature and the government in Guernsey are capable of fulfilling expectations of good governance...and, if considered necessary, to make recommendations on any reforms of the structure and functions of the legislature and the government in

Guernsey which would be likely better to provide for the highest possible standards of good governance...”.

- 11.6 The Requête is scheduled to be debated by the States of Deliberation after, but at the same meeting as, this report from the Joint Committees is debated.
- 11.7 Essentially the difference between this report and any report provoked by the Requête, if it is approved, would be that whereas the Joint Committees were limited to considering how governance arrangements could be improved within the present system of government, the States Review Committee proposed in the Requête would have no such limitation placed upon it.
- 11.8 Deputy Fallaize is the Vice-Chairman of the Scrutiny Committee and a member of the States Assembly and Constitution Committee, two of the three Committees which formed the Joint Committees which have produced this report. He also chaired the working party which the Joint Committees set up to undertake the review of governance which has culminated in this report. In addition, four of the five political members of the working party, 10 of the 17 political members of the three Committees and a majority of both the Scrutiny Committee and the States Assembly and Constitution Committee are signatories to the Requête, albeit they have submitted it as independent members and not on behalf of Committees of which they are members. It is not surprising, therefore, that although the Joint Committees formally take no view on the prayer of the Requête, they are adamant that their report and the Requête are not mutually exclusive.
- 11.9 This report makes recommendations for improving governance which, if approved, in many cases would be implemented in the next term of the States (2012-16) whereas any recommendations arising from the Requête would almost certainly not take effect until the 2016-20 term at the earliest. In addition, while all of the recommendations in this report are strictly compatible with the present system of government, many of them would be equally applicable to other systems of government, and therefore they would not become redundant should the States at some point determine to make changes to the island's system of government.
- 11.10 The Joint Committees also wish to re-emphasise that they are proposing that the reforms contained in this report, if agreed in principle by the States of Deliberation, should then be included in an implementation plan. Clearly, if the Fallaize Requête is approved, that would be taken into account when producing the implementation plan for the reforms contained in this report.

11.11 Therefore, while recognising the relationship between this report and the Requête, the Joint Committees are of the opinion that it would be perfectly viable for the States of Deliberation to reject both, approve one and not the other, or approve both.

12. Recommendations to the States

1. To approve in principle that:
 - a. The **Policy Council** and the **States Assembly and Constitution Committee** should provide a guide to the governance arrangements of the States of Guernsey to serve as an overview of the functions and roles of all aspects of public administration, including explaining the relationship between the activities of the legislature and those of the executive (refers to paragraph 4.4);
 - b. The **Policy Council** and the **States Assembly and Constitution Committee** should consider the case for setting out the framework for the organisation of the legislature and the machinery of government in one article of legislation supported by one set of standing orders (4.11);
 - c. The **Policy Council** and the **States Assembly and Constitution Committee** should develop proposals to categorise States reports more clearly and have them include a statement of purpose and a statement clarifying the role that the States of Deliberation are being asked to fulfil in debating and approving the propositions (4.12);
 - d. The **States Assembly and Constitution Committee** should propose amendments to Rule 9 of the Rules of Procedure of the States of Deliberation to provide for a clearer distinction in Billets d'État and at meetings of the States of Deliberation between the functions of the States of Deliberation as parliament, legislature and overarching executive (4.13);
 - e. The **Policy Council** should make an explicit distinction between: a) sub-committees to which it has resolved to delegate particular activities which fall wholly within its mandate, and b) cross-departmental working parties which it has resolved to establish in accordance with its responsibility to co-ordinate the policy development of the States. The Policy Council should ensure that cross-departmental working parties have clear terms of reference, at least an approximate timeframe for completing their work and very clear lines of accountability (4.31);

- f. The **Policy Council** should consider ways of strengthening its focus on its policy co-ordination function. (4.35 – 4.35);
- g. The **Policy Council** should consider the case for removing the requirement for the Deputy Chief Minister also to hold a departmental portfolio and the case for dividing external and domestic policy functions between the Chief Minister and the Deputy Chief Minister (4.40);
- h. The **Policy Council** should clarify the roles, responsibilities and lines of accountability of members of the Policy Council, Chief Minister and Deputy Chief Minister, including clarifying the relationship between the role of ministers in heading States Departments and their role in sitting as members of the Policy Council (4.41 and 4.63);
- i. The **Policy Council**, in conjunction with **States Departments**, should review the layout and content of the mandates of the Policy Council itself and States Departments to ensure that they are as precise, clear and coherent as possible and to ensure that they articulate adequately the relationship between the Policy Council and the Departments (4.43);
- j. The **Policy Council**, in conjunction with **States Departments**, should examine the case for developing schemes of delegation which would clarify the criteria governing which decisions may be taken without, and which decisions require, the approval of the States of Deliberation (4.44);
- k. The **Policy Council**, in conjunction with **States Departments**, should publish a schedule of extant legislation and States Resolutions which confer authority upon, or further define and explain the mandates of, the Policy Council and Departments (4.46);
- l. The **States Assembly and Constitution Committee** should make proposals to amend the Rules of Procedure of the States of Deliberation and the Constitution and Operation of States Departments and Committees to provide for a distinction to be made between political Boards of Departments and the administrative staff of the Departments (4.47);
- m. The **Policy Council**, in conjunction with **States Departments**, should develop operating frameworks for political Boards of Departments, which should include setting out the relationship between the policy and the operation of the Department (4.50);

- n. The **States Assembly and Constitution Committee**, in conjunction with the **Policy Council**, should consider publishing guidance clearly to identify the different roles which States members may be required to undertake as members of the legislature, members of the executive, members of scrutiny and oversight bodies and representatives of their electorate (4.53);
- o. The **States Assembly and Constitution Committee** should make proposals to provide for the discontinuation of the role of non-States member of Departments as it is presently conceived in Rule 4(2) of the *Rules relating to the Constitution and Operation of States Departments and Committees* (4.70);
- p. The **Policy Council**, in consultation with **States Departments**, should co-ordinate a corporate approach to engaging at Board level skills and expertise from outside the public sector. This should include developing clear written specifications, terms of engagement and lines of accountability for persons whose advice, guidance and skills are recruited (4.72);
- q. The **Policy Council** should consider the formation of a joint political/staff level steering group, if necessary having engaged the advice of an external agency with relevant experience, to examine the way in which policy is generated, developed and promulgated across the States of Guernsey with a view to producing guidance for Departments on effective policy-making (5.8 - 5.9);
- r. The **Public Accounts Committee** and **Scrutiny Committee** should encourage the development of processes within the corporate policy planning cycle to assess performance and hold the Policy Council and Departments to account more effectively (5.35);
- s. The **Policy Council** should report to the States of Deliberation setting out proposals for how in the 2012-16 term the States' corporate policy planning process will address the following challenges, having taken into account in particular the observations and suggestions contained in paragraphs 5.11 to 5.36 of this report:
 - i. The disconnect between policy planning and the allocation of resources;

- ii. The disconnect between policy making at the corporate and departmental levels;
 - iii. The lack of ownership and ‘buy in’ to the policy planning process among States members;
 - iv. The lack of public engagement with the government’s programme (5.36);
- t. The **States Assembly and Constitution Committee** should report to the States of Deliberation setting out the advantages and disadvantages of requiring major policy proposals from States Departments and Committees to pass through an additional decision-making stage in the States of Deliberation (5.45);
- u. The **States Assembly and Constitution Committee** should bring proposals for the revision of Rule 12 (4) to enable Departments and Committees to obtain a clearer direction from the States in progressing policy matters, whilst retaining flexibility to make adjustments to detailed proposals at a subsequent date (5.50);
- v. **States Departments** should publish in a timely and accessible manner a ‘decisions list’ in respect of policy decisions, explaining each decision and setting out the criteria or guidance against which the decision was made (5.55);
- w. In every States term, the **States Assembly and Constitution Committee** should publish within nine months of the General Election, after consultation with States members, a report to include;
 - i. A review of the induction programme incorporating an analysis of the success or otherwise of each part of that programme and any changes to the programme which it would be considered desirable to put into effect for the following States term; and
 - ii. Details of a programme of ongoing training which shall be offered to all States members during that States term (6.18);
- x. A reasonable period of time before each General Election, the **States Assembly and Constitution Committee**, in conjunction with the **Policy Council**, should publish for the assistance of potential candidates for election a guide to the States to include an explanation of: the General

Election process; the various roles and responsibilities of a States member, such as the constituency, parliamentary, executive and scrutiny functions; the internal election process; and the functions of the different layers of the legislature and the government. If considered necessary, the **Policy Council** should propose a minor extension to the mandate of the States Assembly and Constitution Committee to incorporate this matter (6.19);

- y. The **States Assembly and Constitution Committee** should make proposals to ensure that States members have a right to obtain information and assistance, equivalent to that provided for in 15(2) of the Rules of Procedure of the States of Deliberation, whether or not that member is seeking it in the preparation of a formal proposition which may increase expenditure. The States Assembly and Constitution Committee should take into account the need to have in place safeguards to prevent requests which would place excessive or disproportionate demands on the resources of Departments and Committees (6.21);
- z. The **States Assembly and Constitution Committee** should give consideration to assessing the need for research and administrative assistance for States members to enable them to discharge their parliamentary and constituency duties as effectively as possible. The **States Assembly and Constitution Committee** should also review and, if considered necessary, make recommendations to improve the facilities available to States members in the discharge of their parliamentary and constituency duties (6.23);
- aa. The **States Assembly and Constitution Committee**, in conjunction with the Presiding Officer and HM Greffier, should examine the case to establish a distinct Parliamentary Secretariat, which would be concerned exclusively with supporting Parliamentary Committees and the activities of the States of Deliberation, including the publication of agendas, motions and Resolutions etc. (6.24);
- bb. The **Policy Council** and **States Departments** should consider a corporate approach to ensuring that People's Deputies are adequately informed about significant government initiatives and media interest. When Departments know it is likely that announcements concerning policy will appear in the media, they should provide an explanatory note to States members. Furthermore, when Departments reply to media queries they should copy responses to all States members (6.27);

- cc. The **Policy Council**, in conjunction with **States Departments**, should review the capacity of the States as an organisation to develop policy in response to the needs of the community and the objectives of government (6.30);
- dd. The **Policy Council** should review what measures could be put in place to ensure that there is greater uniformity and consistency of approach across all parts of government in respect of how information and evidence is presented to policy-makers and decision-makers (6.32);
- ee. The **Policy Council** should ensure that best practice in the briefing of politicians and the writing of policy options and recommendations for the consideration of politicians is included as an integral part of the professional development offered to senior staff across government (6.33);
- ff. The **Policy Council** should demonstrate that there is adequate capacity and capability in the availability of performance information to support decision-making (6.34);
- gg. The **Treasury and Resources Department** should publish guidance criteria to enable States Departments and Committees and States Members to understand better when it might be appropriate to engage the private or third sector and alternatively when it might be better to develop capacity internally to assist in the development of policy or the delivery of services (6.39);
- hh. When considering the findings of the review of the scrutiny function it has commissioned, the **Policy Council** should also take account of the observations made in this report in paragraphs 7.2 to 7.29 (7.21);
- ii. The **Scrutiny Committee** should hold regular public hearings and ensure that each Department appears before such hearings at least once during the four-year States term (7.24);
- jj. The **Scrutiny Committee** should make proposals for the introduction of mechanisms which would enable the States of Deliberation, their scrutiny committees and the public to monitor more easily progress against States Resolutions (7.26);
- kk. The **Public Accounts Committee** should consider, where appropriate, holding its review hearings in a public forum (7.24; 7.27);

- ll. The **States Assembly and Constitution Committee** should make proposals for the publication of Rule 5 and 6 questions on the States website and on the notice board at the Royal Court (7.28);
- mm. The **States Assembly and Constitution Committee** should propose amendments to the Rules of Procedure of the States of Deliberation to provide that proposals to enact, amend or repeal legislation which are put before the States of Deliberation should be accompanied by an explanatory memorandum which sets out in clear and simple terms the effect of the legislation (7.31);
- nn. The **States Assembly and Constitution Committee** should discuss with the Presiding Officer the desirability of legislation being put to the States of Deliberation in sections rather than en bloc, other than perhaps in the case of the most minor proposals to change legislation (7.32);
- oo. The **Policy Council** and the **States Assembly and Constitution Committee**, in consultation with the **Legislation Select Committee**, should give consideration to the introduction of a series of reading debates, possibly authorising the Legislation Select Committee to carry out a stage, and should give consideration to affording States members an opportunity to make representations to, and attend meetings of, the Legislation Select Committee when it is considering legislation (7.34);
- pp. The **States Assembly and Constitution Committee**, as part of its review of the Code of Conduct, should consider:
 - i. How the Code of Conduct might better be promoted to ensure that it is easily accessible and transparent (7.41);
 - ii. Whether the Code of Conduct Panel should report to the Committee on all complaints referred to the Panel, including those dismissed by the Chairman or not upheld by the Panel, and for such reports to be made a matter of public record (7.42);
- qq. The **Policy Council** should take into account the findings and recommendations of this report, and the report from the Scrutiny Committee on *Public Engagement*, in taking forward the development and implementation of an Information Strategy for the States of Guernsey (8.6);

- rr. The **Policy Council** should redouble its efforts to present proposals for the establishment of appropriate processes for hearing complaints and appeals against States Departments and Committees, having set out the merits or otherwise of a Centralised Tribunal Service and an Ombudsman (8.12 - 8.13);
 - ss. The **Policy Council** should develop a Code of Operational Governance, under the leadership of the Chief Executive of the States of Guernsey, which would outline what is expected across the public sector. The Code should sit beneath the States Strategic Plan and enable the public sector to achieve the objectives and policies determined by elected politicians. The Code, taken in its entirety, would be expected to address the shortcomings identified in this report and other weaknesses identified elsewhere as well as being flexible enough to adapt as the expectations and demands of good governance evolve (9.9 – 9.12);
 - tt. The **Policy Council** should centrally co-ordinate corporate directives and guidance in line with achieving the objectives of the Governance Code. Consideration should be given to establishing a dedicated resource with corporate governance expertise to co-ordinate and oversee the development, delivery and monitoring of corporate governance initiatives including, among other things, developing corporate guidance on the retention of data, minute-taking, and risk management (9.13 – 9.15);
 - uu. The Policy Council should give consideration to the introduction of a more formal mechanism to review the performance of the States Chief Executive (9.18);
 - vv. The Policy Council should clarify lines of accountability between Chief Officers of States Departments and Boards and the States Chief Executive (9.19);
 - ww. In its statement appended to each States report from Departments, the **Policy Council** should assess as necessary the extent to which the report does not conform to the six Core Principles of good governance (10.2).
 - xx. The **Policy Council** should provide Departments with guidance on how States reports will be judged to comply or otherwise with the Core Principles (10.2);
2. The **Policy Council**, after consultation with States Departments and Committees, should present to the States of Deliberation by no later than

January, 2013 a plan of action for the implementation of the recommendations approved above (10.3);

3. The **Public Accounts Committee** and **Scrutiny Committee** should report to the States of Deliberation during 2015 setting out the extent to which by that stage the States is complying with the principles of good governance (10.4);
4. The **Policy Council** should propose an amendment to the mandates of the Public Accounts Committee and Scrutiny Committee to make them explicitly responsible for “the promotion and monitoring of good governance (10.4);
5. In the first six months of the 2016-20 term of government, the **Policy Council** should commission an independent review of the standards of governance in the States of Guernsey (10.4).

Yours faithfully

Deputy L R Gallienne
Chairman
Public Accounts
Committee

Deputy B L Brehaut
Chairman
Scrutiny Committee

Deputy I F Rihoy
Chairman
States Assembly and
Constitution Committee

Other Members of the Committees are:

Public Accounts Committee

Deputy B J E Paint (Vice Chairman)
Deputy M G G Garrett
Deputy T J Stephens
Deputy M J Storey
Mr M E Best
Mr C H Bradshaw
Advocate M A J Helyar
Mr J E Thomas

Scrutiny Committee

Deputy M J Fallaize (Vice Chairman)
Deputy M G G Garrett
Deputy J A B Gollop
Deputy J Kuttelwascher
Deputy R R Matthews
Deputy S J McManus
Deputy M P J Hadley

Deputy D de G De Lisle

States Assembly and Constitution Committee

Deputy M M Lowe (Vice Chairman)

Deputy M J Fallaize

Deputy S L Langlois

Deputy T M Le Pelley

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14. Appendices

1	Cross-referencing of recommendations to the six Core Principles
2	March, 2011 States Resolutions
3	JCWP Terms of Reference
4	Comparison of UNDP and World Bank good governance indicators
5	Letter of comment from the Policy Council dated 23 rd December, 2011

Appendix 1: Cross-referencing of recommendations to the Six Core Principles

Prop	CP1 Purpose and Outcomes	CP2 Functions and Roles	CP3 Values and Behaviour	CP4 Decision-making	CP5 Capacity and Capability	CP6 Engaging Stakeholders and Accountability
Organisation, Functions and Roles						
a.	✓	✓	✓	✓	✓	✓
b.		✓				
c.	✓	✓		✓		
d.		✓				
e.	✓	✓				✓
f.	✓	✓				
g.		✓			✓	
h.		✓				
i.	✓	✓				✓
j.	✓	✓		✓		✓
k.	✓	✓				✓

Prop	CP1 Purpose and Outcomes	CP2 Functions and Roles	CP3 Values and Behaviour	CP4 Decision-making	CP5 Capacity and Capability	CP6 Engaging Stakeholders and Accountability
l.		✓				
m.	✓	✓				
n.	✓	✓	✓	✓	✓	✓
o.		✓				✓
p.		✓			✓	
Policy-making, Policy-planning and Decision-making						
q.		✓		✓	✓	
r.						✓
s.	✓	✓	✓	✓		✓
t.	✓	✓		✓		✓
u.		✓		✓		
v.				✓		✓

Capacity and Capability – Resources and Skills						
w.					✓	
x.	✓	✓	✓	✓	✓	✓
y.					✓	
z.					✓	
aa.					✓	
bb.					✓	✓
cc.	✓			✓	✓	✓
dd.				✓	✓	✓
ee.				✓	✓	
ff.				✓	✓	
gg.		✓		✓		✓
Accountability and Oversight						
hh.						✓

ii.						✓
jj.					✓	✓
kk.			✓			✓
ll.			✓			✓
mm.					✓	
nn.				✓	✓	
oo.				✓		
pp.			✓			
Stakeholders, Consultation and Engagement						
qq.						✓
rr.			✓			✓
Operational Governance						
ss.	✓	✓			✓	✓
tt.		✓	✓		✓	
uu.		✓	✓		✓	✓

vv.		✓	✓			✓
Next Steps: Measuring Compliance & Governance in the 2012-16 term						
ww.	✓	✓				✓
xx.		✓	✓			

Appendix 2: March 2011 States Resolutions

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 31ST DAY OF MARCH, 2011

(Meeting adjourned from 30th March, 2011)

The States resolved as follows concerning Billet d'État No IV
dated 18th February 2011

PUBLIC ACCOUNTS COMMITTEE

GOVERNANCE IN THE STATES OF GUERNSEY

VI.- After consideration of the Report, dated 24th January, 2011, of the Public Accounts Committee:-

1. To adopt the six Core Principles of good governance as determined by the UK Independent Commission on Good Governance in Public Services.
2. To note the content of Appendices 1 to 5 of that Report.
3. To direct the Public Accounts Committee, the Scrutiny Committee and the States Assembly & Constitution Committee, after consultation with the Policy Council, jointly to present to the March, 2012 meeting of the States of Deliberation, or sooner if possible, a report containing detailed proposals on how in practical terms the six Core Principles of good governance can be applied, and how compliance with them can be measured, within the context of Guernsey's system of government by committees and consensus.
4. [To direct that until consideration by the States of Deliberation of the report referred to in proposition 3 above:
 - (a) the Policy Council and Departments and Committees of the States shall give consideration to the suggestions set out in the sections in that Report headed 'Way Forward' in respect of each of the six Core Principles of good governance as they relate to them respectively; and
 - (b) the Policy Council shall include in its statement appended to each Report submitted by a States Department or Committee or group of members in the case of a Requête for inclusion in a Billet d'État in accordance with Rule 2(1)(a) of the Rules of Procedure of the States of Deliberation such assessment as the Policy Council considers necessary relating to the extent to which the Report conforms to the six Core Principles of good governance.
5. To direct the Policy Council to incorporate into the States Strategic Plan clear references to the six Core Principles of good governance and the ways in which they are being, or are to be, developed and given effect in order to support the States objectives and the underlying Plans.

Appendix 3: JCWP Terms of Reference

JOINT COMMITTEES' WORKING PARTY ON GOVERNANCE

Established by the Public Accounts, Scrutiny and States Assembly and Constitution Committees ("the Joint Committees") at their meeting held on 18th April, 2011

At its March, 2011 meeting, the States of Deliberation resolved, inter alia:

"To adopt the six Core Principles of good governance as determined by the UK Independent Commission on Good Governance in Public Services...

"To direct the Public Accounts Committee, the Scrutiny Committee and the States Assembly & Constitution Committee, after consultation with the Policy Council, jointly to present to the March, 2012 meeting of the States of Deliberation, or sooner if possible, a report containing detailed proposals on how in practical terms the six Core Principles of good governance can be applied, and how compliance with them can be measured, within the context of Guernsey's system of government by committees and consensus."

On 18th April, 2011, and in order to fulfil the States Resolutions above, the Public Accounts, Scrutiny and States Assembly and Constitution Committees established a working party ["the Joint Committees' Working Party on Governance"] to draft a report containing detailed proposals on how in practical terms the six Core Principles of good governance can be applied, and how compliance with them can be measured, within the context of Guernsey's system of government by committees and consensus. Their report shall be presented to the three full Committees in good time for it to be considered by those Committees in order that they can jointly present a States Report by no later than the March, 2012 meeting of the States of Deliberation.

The Joint Committees' Working Party shall draw its legitimacy exclusively from the three full Committees. It shall at all times remain accountable to the three full Committees. The three full Committees shall at all times retain ultimate political ownership of the work being undertaken while respecting that the Joint Committees' Working Party must be afforded a reasonable degree of space and independence to write their report and formulate their detailed proposals. The Joint Committees' Working Party shall regularly provide the three full Committees with updates on their work, including minutes of all of their meetings.

The Joint Committees' Working Party shall comprise six members – two from each of the Public Accounts, Scrutiny and States Assembly and Constitution Committee. Each of those three Committees shall also appoint a reserve member who shall attend meetings in the absence of one of that Committee's sitting members. In the event that one or both of a Committee's sitting members and reserve member are unavailable to attend a meeting, that

Committee shall have the right to send to the meeting one of their other members. One member of the Joint Committees shall be elected chairman.

It is fully accepted that each of the three Committees must be afforded an equal opportunity to shape the report and formulate the policy proposals contained therein. Therefore, the Joint Committees' Working Party shall have a quorum of four members, to include at least one from each of the three full Committees.

The work of the Joint Committees' Working Party shall be capable of fulfilling all parts of the States Resolutions above, including consultation with the Policy Council. The scope of their work shall not extend beyond the matters addressed by the States Resolutions above and the Joint Committees' Working Party shall be dissolved upon the final submission of the States Report to be considered at or before the March, 2012 meeting of the States of Deliberation.

The Joint Committees' Working Party must demonstrate consistent observation of the six Core Principles of good governance adopted by the States of Deliberation at its March, 2011 meeting.

Appendix 4: Comparison of UNDP and World Bank good governance indicators

ICGGPS SIX CORE PRINCIPLES OF GOOD GOVERNANCE (as adopted by the States of Guernsey, March 2011)		UNITED NATIONS 8 CHARACTERISTICS³³	WORLD BANK INDICATORS³⁴
			<ul style="list-style-type: none"> Political Stability and Absence of Violence
		<ul style="list-style-type: none"> Following the Rule of Law 	<ul style="list-style-type: none"> Rule of Law
CP1	Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users	<ul style="list-style-type: none"> Responsive 	
CP2	Good governance means performing effectively in clearly defined functions and roles		
CP3	Good governance means promoting good values for the whole organisation and demonstrating the values of good governance through behaviour		<ul style="list-style-type: none"> Control of Corruption
CP4	Good governance means taking informed, transparent decisions and managing risk	<ul style="list-style-type: none"> Transparent 	
CP5	Good governance means developing the capacity and capability of the governing body to be effective	<ul style="list-style-type: none"> Effective and Efficient 	<ul style="list-style-type: none"> Government Effectiveness
CP6	Good governance means engaging stakeholders and making accountability real	<ul style="list-style-type: none"> Consensus Oriented Participatory Accountable Equitable and Inclusive 	<ul style="list-style-type: none"> Voice and Accountability Regulatory Quality

³³ <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

³⁴ <http://info.worldbank.org/governance/wgi/index.asp>

Appendix 5: Letter of comment from the Policy Council dated 23rd December 2011



POLICY COUNCIL
THE STATES OF GUERNSEY

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C/o Scrutiny Committee
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23 December 2011

Dear Deputy Fallaize

DRAFT REPORT IMPROVING GOVERNANCE IN THE STATES OF GUERNSEY

Thank you for your letter of the 29th November 2011 enclosing a draft report on the above subject and the further revised draft sent to the Policy Council on the 14th December.

The report was considered by the Policy Council at its meeting held on the 19th December 2011 when Ministers recognised the considerable energy and effort that has gone into its preparation. However, the Policy Council is extremely disappointed that although the Working Party has been preparing its recommendations for some nine months it is only now at the eleventh hour, and close to the submission deadlines for the March 2012 Billet, that Policy Council comments are sought on a substantial and far reaching report in order to fulfil the States requirements that the Joint Committees conclude their work "*after consultation with the Policy Council*".

In these circumstances Ministers do not believe that they have been given sufficient time to properly digest the proposals and to comment in detail on some fifty recommendations. It is against this background that the Policy Council will restrict its comments to:

- Setting this report in a wider context.
- Expressing a view about the relative priority of the proposed follow on work if the report is accepted, and

Setting the report in a wider context

The Policy Council fully appreciates that the Joint Committees have been obliged by the Terms of Reference to work "within the context of Guernsey's system of Government by Committees and consensus". As such the Committees have to assume that the status quo remains.

The Policy Council also recognises that essentially governance is about the relationships between the constituent parts of government and between individuals whether Politicians, public servants or members of the public. It follows therefore, that if significant changes are likely to take place to the structure or machinery of government then it may well be that the governance arrangements set out in the report may no longer be appropriate.

In this respect the Policy Council is mindful that:

- Work has just commenced on the Independent Review of the scrutiny committees which could propose a new approach and structure.
- A review of financial scrutiny commissioned by the PAC could also prompt change but, in particular
- The Requête signed by twenty two Members seeking a “comprehensive review of the structure and functions of the legislature and the government in Guernsey” may well, if approved, have implications for governance.

In this respect while the Policy Council cannot anticipate the outcome of the debate on the Requête with any certainty, nevertheless, it believes that the concept of creating a Special States Committee to undertake such a review might well receive majority support. While a number of the suggestions that the Joint Committees have made could be developed regardless of any changes to the machinery of government, the Policy Council would not wish to devote scarce resources to following through some fifty detailed recommendations before the Special Review Committee has reported.

Prioritising resources

There can be no doubt that in these times of financial restraint where Departments are making every effort to achieve savings and to reduce staff, resources for new initiatives are at a premium.

If accepted by the States the Joint Committees proposals could ultimately require the Policy Council to lead some thirty workstreams and engage in a number of others. It will require dedicated resources to spend substantial amounts of time producing codes and guidelines, working with external agencies (which come at a cost), and reforming our approach to policy development. It will require additional resources on the strategic communications front, an expectation that the Policy Council will fast track the review of the Tribunal Services.

Having said this, the Policy Council recognises that many of the workstreams proposed, if taken through to their conclusion, will undoubtedly add value to the way in which governance is exercised in the States of Guernsey. However, at this time the Policy Council is acutely conscious that it, and Departments, have other calls on the very limited number of policy and advisory staff at our disposal.

Currently the Policy Council’s priorities are to:

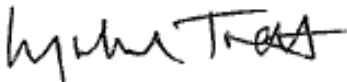
- Resource the ongoing work on developing a Population Management Regime which, subject to States approval of a report at the January 2012 meeting will intensify in order to meet an ambitious timetable for reporting to the States early in 2013
- Respond to the ongoing challenges to the economy in a very uncertain world
- Develop the corporate tax strategy
- Progress critical fiscal, social and economic policies and so on.

Unless and until the States signals that pursuing the above agenda should take second place to the proposals contained in the Joint Working Parties report, the Policy Council does not see itself able to prioritise work on the Joint Committees ambitious work programme at this stage.

Conclusion

The Policy Council, while recognising the amount of work that has gone into this report and acknowledging that it contains a number of recommendations that could in time lead to improved governance, nevertheless for all the reasons set out above believes that it would be premature for the States to debate and vote on the report at this time.

Yours sincerely



L.S. Trott
Chief Minister

(NB The Treasury and Resources Department supports improving governance in the States of Guernsey. Such additional resources as will be required to investigate and implement the recommendations contained in this Report will need to be considered within the existing corporate governance framework, through the mechanism of the States Strategic Plan, for prioritising service developments.)

The States are asked to decide:-

XVI.- Whether, after consideration of the joint Report dated 9th January 2011, of the Public Accounts Committee, Scrutiny Committee, States Assembly and Constitution Committee, they are of the opinion:-

1. To approve in principle that:
 - a. The Policy Council and the States Assembly and Constitution Committee should provide a guide to the governance arrangements of the States of Guernsey to serve as an overview of the functions and roles of all aspects of public administration, including explaining the relationship between the activities of the legislature and those of the executive;
 - b. The Policy Council and the States Assembly and Constitution Committee should consider the case for setting out the framework for the organisation of the legislature and the machinery of government in one article of legislation supported by one set of standing orders;
 - c. The Policy Council and the States Assembly and Constitution Committee should develop proposals to categorise States reports more clearly and have them include a statement of purpose and a statement clarifying the role that the States of Deliberation are being asked to fulfil in debating and approving the propositions;
 - d. The States Assembly and Constitution Committee should propose amendments to Rule 9 of the Rules of Procedure of the States of Deliberation to provide for a clearer distinction in Billets d'État and at meetings of the States of Deliberation between the functions of the States of Deliberation as parliament, legislature and overarching executive;
 - e. The Policy Council should make an explicit distinction between: a) sub-committees to which it has resolved to delegate particular activities which fall wholly within its mandate, and b) cross-departmental working parties which it has resolved to establish in accordance with its responsibility to co-ordinate the policy development of the States. The Policy Council should ensure that cross-departmental working parties have clear terms of reference, at least an approximate timeframe for completing their work and very clear lines of accountability;

- f. The Policy Council should consider ways of strengthening its focus on its policy co-ordination function;
- g. The Policy Council should consider the case for removing the requirement for the Deputy Chief Minister also to hold a departmental portfolio and the case for dividing external and domestic policy functions between the Chief Minister and the Deputy Chief Minister;
- h. The Policy Council should clarify the roles, responsibilities and lines of accountability of members of the Policy Council, Chief Minister and Deputy Chief Minister, including clarifying the relationship between the role of ministers in heading States Departments and their role in sitting as members of the Policy Council;
- i. The Policy Council, in conjunction with States Departments, should review the layout and content of the mandates of the Policy Council itself and States Departments to ensure that they are as precise, clear and coherent as possible and to ensure that they articulate adequately the relationship between the Policy Council and the Departments;
- j. The Policy Council, in conjunction with States Departments, should examine the case for developing schemes of delegation which would clarify the criteria governing which decisions may be taken without, and which decisions require, the approval of the States of Deliberation;
- k. The Policy Council, in conjunction with States Departments, should publish a schedule of extant legislation and States Resolutions which confer authority upon, or further define and explain the mandates of, the Policy Council and Departments;
- l. The States Assembly and Constitution Committee should make proposals to amend the Rules of Procedure of the States of Deliberation and the Constitution and Operation of States Departments and Committees to provide for a distinction to be made between political Boards of Departments and the administrative staff of the Departments;

- m. The Policy Council, in conjunction with States Departments, should develop operating frameworks for political Boards of Departments, which should include setting out the relationship between the policy and the operation of the Department;
- n. The States Assembly and Constitution Committee, in conjunction with the Policy Council, should consider publishing guidance clearly to identify the different roles which States members may be required to undertake as members of the legislature, members of the executive, members of scrutiny and oversight bodies and representatives of their electorate;
- o. The States Assembly and Constitution Committee should make proposals to provide for the discontinuation of the role of non-States member of Departments as it is presently conceived in Rule 4(2) of the Rules relating to the Constitution and Operation of States Departments and Committees;
- p. The Policy Council, in consultation with States Departments, should co-ordinate a corporate approach to engaging at Board level skills and expertise from outside the public sector. This should include developing clear written specifications, terms of engagement and lines of accountability for persons whose advice, guidance and skills are recruited;
- q. The Policy Council should consider the formation of a joint political/staff level steering group, if necessary having engaged the advice of an external agency with relevant experience, to examine the way in which policy is generated, developed and promulgated across the States of Guernsey with a view to producing guidance for Departments on effective policy-making;
- r. The Public Accounts Committee and Scrutiny Committee should encourage the development of processes within the corporate policy planning cycle to assess performance and hold the Policy Council and Departments to account more effectively;
- s. The Policy Council should report to the States of Deliberation setting out proposals for how in the 2012-16 term the States' corporate policy planning process will address the following challenges, having taken into account in particular the observations and suggestions contained in paragraphs 5.11 to 5.36 of that report:

- i. The disconnect between policy planning and the allocation of resources;
 - ii. The disconnect between policy making at the corporate and departmental levels;
 - iii. The lack of ownership and ‘buy in’ to the policy planning process among States members;
 - iv. The lack of public engagement with the government’s programme;
- t. The States Assembly and Constitution Committee should report to the States of Deliberation setting out the advantages and disadvantages of requiring major policy proposals from States Departments and Committees to pass through an additional decision-making stage in the States of Deliberation;
- u. The States Assembly and Constitution Committee should bring proposals for the revision of Rule 12 (4) to enable Departments and Committees to obtain a clearer direction from the States in progressing policy matters, whilst retaining flexibility to make adjustments to detailed proposals at a subsequent date;
- v. States Departments should publish in a timely and accessible manner a ‘decisions list’ in respect of policy decisions, explaining each decision and setting out the criteria or guidance against which the decision was made;
- w. In every States term, the States Assembly and Constitution Committee should publish within nine months of the General Election, after consultation with States members, a report to include;
 - i. A review of the induction programme incorporating an analysis of the success or otherwise of each part of that programme and any changes to the programme which it would be considered desirable to put into effect for the following States term; and

- ii. Details of a programme of ongoing training which shall be offered to all States members during that States term (6.18);
- x. A reasonable period of time before each General Election, the States Assembly and Constitution Committee, in conjunction with the Policy Council, should publish for the assistance of potential candidates for election a guide to the States to include an explanation of: the General Election process; the various roles and responsibilities of a States member, such as the constituency, parliamentary, executive and scrutiny functions; the internal election process; and the functions of the different layers of the legislature and the government. If considered necessary, the Policy Council should propose a minor extension to the mandate of the States Assembly and Constitution Committee to incorporate this matter;
- y. The States Assembly and Constitution Committee should make proposals to ensure that States members have a right to obtain information and assistance, equivalent to that provided for in 15(2) of the Rules of Procedure of the States of Deliberation, whether or not that member is seeking it in the preparation of a formal proposition which may increase expenditure. The States Assembly and Constitution Committee should take into account the need to have in place safeguards to prevent requests which would place excessive or disproportionate demands on the resources of Departments and Committees;
- z. The States Assembly and Constitution Committee should give consideration to assessing the need for research and administrative assistance for States members to enable them to discharge their parliamentary and constituency duties as effectively as possible. The States Assembly and Constitution Committee should also review and, if considered necessary, make recommendations to improve the facilities available to States members in the discharge of their parliamentary and constituency duties;
- aa. The States Assembly and Constitution Committee, in conjunction with the Presiding Officer and HM Greffier, should examine the case to establish a distinct Parliamentary Secretariat, which would be concerned exclusively with supporting Parliamentary Committees and the activities of the States of Deliberation, including the publication of agendas, motions and Resolutions etc.;

- bb. The Policy Council and States Departments should consider a corporate approach to ensuring that People's Deputies are adequately informed about significant government initiatives and media interest. When Departments know it is likely that announcements concerning policy will appear in the media, they should provide an explanatory note to States members. Furthermore, when Departments reply to media queries they should copy responses to all States members;
- cc. The Policy Council, in conjunction with States Departments, should review the capacity of the States as an organisation to develop policy in response to the needs of the community and the objectives of government;
- dd. The Policy Council should review what measures could be put in place to ensure that there is greater uniformity and consistency of approach across all parts of government in respect of how information and evidence is presented to policy-makers and decision-makers;
- ee. The Policy Council should ensure that best practice in the briefing of politicians and the writing of policy options and recommendations for the consideration of politicians is included as an integral part of the professional development offered to senior staff across government;
- ff. The Policy Council should demonstrate that there is adequate capacity and capability in the availability of performance information to support decision-making;
- gg. The Treasury and Resources Department should publish guidance criteria to enable States Departments and Committees and States Members to understand better when it might be appropriate to engage the private or third sector and alternatively when it might be better to develop capacity internally to assist in the development of policy or the delivery of services;
- hh. When considering the findings of the review of the scrutiny function it has commissioned, the Policy Council should also take account of the observations made in this report in paragraphs 7.2 to 7.29;

- ii. The Scrutiny Committee should hold regular public hearings and ensure that each Department appears before such hearings at least once during the four-year States term;
- jj. The Scrutiny Committee should make proposals for the introduction of mechanisms which would enable the States of Deliberation, their scrutiny committees and the public to monitor more easily progress against States Resolutions;
- kk. The Public Accounts Committee should consider, where appropriate, holding its review hearings in a public forum;
- ll. The States Assembly and Constitution Committee should make proposals for the publication of Rule 5 and 6 questions on the States website and on the notice board at the Royal Court;
- mm. The States Assembly and Constitution Committee should propose amendments to the Rules of Procedure of the States of Deliberation to provide that proposals to enact, amend or repeal legislation which are put before the States of Deliberation should be accompanied by an explanatory memorandum which sets out in clear and simple terms the effect of the legislation;
- nn. The States Assembly and Constitution Committee should discuss with the Presiding Officer the desirability of legislation being put to the States of Deliberation in sections rather than en bloc, other than perhaps in the case of the most minor proposals to change legislation;
- oo. The Policy Council and the States Assembly and Constitution Committee, in consultation with the Legislation Select Committee, should give consideration to the introduction of a series of reading debates, possibly authorising the Legislation Select Committee to carry out a stage, and should give consideration to affording States members an opportunity to make representations to, and attend meetings of, the Legislation Select Committee when it is considering legislation;
- pp. The States Assembly and Constitution Committee, as part of its review of the Code of Conduct, should consider:

- i. How the Code of Conduct might better be promoted to ensure that it is easily accessible and transparent;
 - ii. Whether the Code of Conduct Panel should report to the Committee on all complaints referred to the Panel, including those dismissed by the Chairman or not upheld by the Panel, and for such reports to be made a matter of public record;
- qq. The Policy Council should take into account the findings and recommendations of this report, and the report from the Scrutiny Committee on Public Engagement, in taking forward the development and implementation of an Information Strategy for the States of Guernsey;
- rr. The Policy Council should redouble its efforts to present proposals for the establishment of appropriate processes for hearing complaints and appeals against States Departments and Committees, having set out the merits or otherwise of a Centralised Tribunal Service and an Ombudsman;
- ss. The Policy Council should develop a Code of Operational Governance, under the leadership of the Chief Executive of the States of Guernsey, which would outline what is expected across the public sector. The Code should sit beneath the States Strategic Plan and enable the public sector to achieve the objectives and policies determined by elected politicians. The Code, taken in its entirety, would be expected to address the shortcomings identified in this report and other weaknesses identified elsewhere as well as being flexible enough to adapt as the expectations and demands of good governance evolve;
- tt. The Policy Council should centrally co-ordinate corporate directives and guidance in line with achieving the objectives of the Governance Code. Consideration should be given to establishing a dedicated resource with corporate governance expertise to co-ordinate and oversee the development, delivery and monitoring of corporate governance initiatives including, among other things, developing corporate guidance on the retention of data, minute-taking, and risk management;
- uu. The Policy Council should give consideration to the introduction of a more formal mechanism to review the performance of the States Chief Executive;

- vv. The Policy Council should clarify lines of accountability between Chief Officers of States Departments and Boards and the States Chief Executive;
 - ww. In its statement appended to each States report from Departments, the Policy Council should assess as necessary the extent to which the report does not conform to the six Core Principles of good governance;
 - xx. The Policy Council should provide Departments with guidance on how States reports will be judged to comply or otherwise with the Core Principles.
-
- 2. That the Policy Council, after consultation with States Departments and Committees, present to the States of Deliberation by no later than January, 2013 a plan of action for the implementation of the recommendations approved above.
 - 3. That the Public Accounts Committee and Scrutiny Committee report to the States of Deliberation during 2015 setting out the extent to which by that stage the States is complying with the principles of good governance.
 - 4. That the Policy Council proposes an amendment to the mandates of the Public Accounts Committee and Scrutiny Committee to make them explicitly responsible for “the promotion and monitoring of good governance.
 - 5. That in the first six months of the 2016-20 term of government, the Policy Council commissions an independent review of the standards of governance in the States of Guernsey.