



Scrutiny Management
Committee

Scrutiny Management Committee

Annual Report

2020

1. Introduction

- 1.1 Good parliamentary scrutiny improves the effectiveness of government. A specialist scrutiny committee has the ability to focus in detail on a specific issue and to maintain a persistent line of questioning on a given topic. This approach is one of the most effective mechanisms used by Parliaments to conduct meaningful scrutiny.
- 1.2 The Scrutiny Management Committee has undertaken some interesting and important work in this political term. This has been the first term of the Scrutiny Management Committee, a combination of the former Scrutiny, Public Accounts and Legislation Select Committees to provide co-ordinated scrutiny of policy and services, financial affairs and legislation.
- 1.3 A key focus of the Scrutiny Management Committee has been to conduct as much of its business as practicable within the public domain, hence the very significant increase in the number of public hearings when compared to previous terms. The Scrutiny Management Committee has also sought to comment publicly on a number of key areas of government policy, hence the publication of a significant number of letters of comment within this term.
- 1.4 The Scrutiny Management Committee believes that its mandate covering finance, legislation and policy is an improvement on the pre 2016 arrangements. This change has ensured that it is possible to undertake scrutiny of a given issue which involves policy, financial and legislative elements. It has also enhanced the capability to address complex matters, which is an improvement on the previous position where this type of review was often problematic. However, this change in mandate also coincided with the reduction of the Scrutiny Management Committee's number of both political and Non-States Members which it believes has diluted the effectiveness and capacity of the scrutiny process as a whole.
- 1.5 In general terms, the effectiveness of any proposed parliamentary scrutiny function is principally reliant on the resources and the powers available to that function. However, the individuals within that structure are also extremely important. The Scrutiny Management Committee has reflected upon the current structure and is of the view that the significantly decreased number of political Members has resulted in a reduction in its effectiveness. Whilst every effort has been made to utilise additional States Members as part of the Scrutiny Management Committee's task and finish panels (and the Scrutiny Management Committee is grateful for those who have engaged and brought their expertise to the process), overall the take up has been very limited. The Scrutiny Management Committee believes it is vital that lessons learnt from previous terms must be taken into account when future functions and structures are considered, as strong and productive working relationships are essential for effective scrutiny within a committee system.

- 1.6 The Scrutiny Management Committee has had two changes in membership this term. Deputy Peter Roffey resigned in March 2018 to become a Member of the Committee for Education, Sport & Culture, Deputy Jennifer Merrett was elected onto the Scrutiny Management Committee and Deputy Laurie Queripel was elected as Vice-President. Non-States Member Mr Richard Digard also resigned from the Scrutiny Management Committee in February 2017 and Advocate Peter Harwood was elected as his replacement as a Non-States Member.

2. What the Scrutiny Management Committee has achieved

- 2.1 The Scrutiny Management Committee provides structured and co-ordinated scrutiny of policy and services, financial affairs and legislation¹. We believe that, since formation in 2016, it has had a direct influence on shaping existing and future government policy. In addition the increased transparency that has been provided by regular public hearings has substantially contributed to an improved public understanding of the work of the Government locally.

2.2 Public Hearings

In this political term the Scrutiny Management Committee has introduced a number of changes in the scrutiny approach such as increasing the number and frequency of public hearings. We believe that this has increased public and political awareness of key policy areas and added to the level of transparency of Government. Public hearings have a number of advantages in terms of delivering effective scrutiny when compared to States' debates and parliamentary questions posed in States' meetings. Questioning is of a type which allows a specific line of inquiry to be pursued for longer and in greater detail. In this way the Scrutiny Management Committee believes that public hearings are complimentary to the other mechanisms available.

The Scrutiny Management Committee has conducted nineteen public hearings with Presidents and relevant senior public servants from all the Principal Committees and the Policy & Resources Committee. During 2016 and 2017 the hearings focused on progress being made on policy and in 2018 and 2019 were based around the transformation agenda and how that related to the Policy & Resource Plan (now known as the 'Future Guernsey Plan').

There were also five area-specific public hearings held on the following topics: the Waste Strategy; progress made on the implementation of the Disability & Inclusion Strategy; issues relating to the States of Guernsey's Bond; Good Corporate Governance; and on the recommendations made in Her Majesty's Inspectorate of Constabulary Fire and Rescue Service (HMICFRS) Report on Bailiwick Law Enforcement. A follow up

¹ <https://gov.gg/scrutiny>

hearing on progress made regarding the recommendations in the HMICFRS' report was also held in February 2020.

2.3 **Reviews**

There have been six substantive reviews initiated during the political term. These were conducted by 'task and finish' panels, which consisted of a mixture of Scrutiny Management Committee Members, other States Deputies and Non-States Members who were experienced and/or experts in the particular field. The six reviews are listed below:

1. The States of Guernsey Bond Review;
2. In-Work Poverty Review;
3. Aurigny Air Services Efficiency & Benchmarking Review (jointly with the STSB);
4. Access to Public Information;
5. Capital Allocation Process Review;
6. Independent Review into the appointment of the Head of Curriculum and Standards*.

It is intended that all reviews will be completed and published before the end of the current term. (*The Scrutiny Management Committee subsequently suspended the Independent Review listed at number 6. above and proposed to the States Assembly the matter be taken forward via a Tribunal of Inquiry pursuant to the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended.)

2.4 **Letters of Comment**

The Scrutiny Management Committee under The Rules of Procedure of the States of Deliberation and their Committees, 2015 s3(19) was given the right to submit letters of comment and has submitted four during this political term;

1. Transforming Education Programme & Putting into effect the Policy Decisions made by the States in 2018²;
2. The Review of the Fiscal Policy Framework & Fiscal Pressures, 2019³;
3. The Policy & Resource Plan 2017, Review and 2018 Update⁴; and
4. The Policy & Resource Plan 2018, Review and 2019 Update⁵.

This parliamentary mechanism has importantly allowed the Scrutiny Management Committee to make timely comment on certain policy matters presented to the States of Deliberation when it believed it was appropriate to do so.

² [Scrutiny Management Committee - Letter of Comment - Education](#)

³ [Scrutiny Management Committee - Letter of Comment - Fiscal Policy](#)

⁴ [Scrutiny Management Committee - Letter of Comment - P&R Plan 2018](#)

⁵ [Scrutiny Management Committee - Letter of Comment - P&R Plan 2019](#)

3. Financial Scrutiny

- 3.1 In any complex public service organisation, financial scrutiny is an essential part of the assurance process and should occur across the organisation as a fundamental task. There should be specific resources dedicated to the task of ensuring that taxes levied on the population and on local business is spent wisely and provides value for money in the delivery of essential services. This is the role of the Scrutiny Management Committee's Financial Scrutiny Panel.
- 3.2 The States of Guernsey needs to acknowledge the legitimacy and independence of this role as an important contribution to overall financial management and assurance and a key part of the demonstrable accountability of public services to the general public. The Scrutiny Management Committee believes that this is currently being undermined by the lack of understanding of its role.
- 3.3 At present, overall financial scrutiny in Guernsey is limited in comparison with similar jurisdictions and it is clear that the current approach applies less challenge and oversight than was applied under Guernsey's pre 2016 structure of government or in comparative jurisdictions.
- 3.4 The Scrutiny Management Committee considers through its experience gained to date, that the post 2016 system of government is failing to allow sufficient scrutiny of financial matters. It is our collective opinion that the pre 2016 structure of government which featured an independent and separate Public Accounts Committee, had greater strength in its ability to appropriately examine States' financial matters and hold those responsible for the public purse to account; for example, by appointing and closely monitoring the work of the external auditors.
- 3.5 One of the Resolutions from the Joint Committees Report at the States Meeting on 16th February 2016 was, *"To agree that the Scrutiny Management Committee shall have the right to scrutinise actively the annual external audit process as set out in paragraph 3.23 of that Policy Letter."* Unfortunately, that was not included in the mandate of the newly formed Scrutiny Management Committee, which has limited its scrutiny of that process.
- 3.6 The Scrutiny Management Committee strongly agrees with the signatories of the recent Machinery of Government Requête⁶ that scrutiny of government finances is a political task and duty; one that is highly valued and seen as an essential function of effective government across the world. The Scrutiny Management Committee considers this to be an area of weakness in the current system of government that should be addressed.

⁶ [Scrutiny Management Committee -Letter of Comment - Requete. pg.36](#)

4. Legislative Scrutiny

- 4.1 The Legislation Review Panel has continued to review, approve and direct legislation be transmitted to the States for consideration as appropriate. Proposed legislation has to be considered extremely promptly (usually within a 4 week period). The absence of a 'committee' stage or the opportunity for detailed review from a second parliamentary chamber places a significant burden on Members of the Legislation Review Panel.
- 4.2 The Legislation Review Panel has reviewed over two hundred pieces of legislation in this political term. There have also been several pieces of legislation drafted and a great deal of work undertaken by the Law Officers of the Crown in preparing the Islands laws for the implementation of the United Kingdom's withdrawal from the European Union.
- 4.3 The current Members, whilst providing due consideration of legislation presented to the Panel, are frustrated by the limitations of the current system of legislative scrutiny. They collectively believe additional priority should be given to legislative scrutiny by the States of Guernsey. Members have also expressed concern that on occasion the correct process for agreeing draft legislation via the Legislation Review Panel is not being followed. In view of this it created two flowcharts setting out the approval process to be followed for both new Guernsey Laws and Ordinances and are available at gov.gg⁷.
- 4.4 The Scrutiny Management Committee has overseen the work of the Legislation Review Panel which has sought, within the limited resources available and the constraints of its mandate, to consider the ongoing legislative programme. The current Members are frustrated by the limitations of the legislative scrutiny role as set out under the Reform Law 1948, as amended and believe that a review should be conducted to examine legislative scrutiny within the States of Guernsey in the near future.

5. Challenges Faced

- 5.1 The Scrutiny Management Committee is not convinced that the restructuring of the formal scrutiny function arrangements in 2016 has "addressed the weaknesses of the previous structure". Whilst its mandate covering finance and policy has ensured that the current scrutiny function works in a much more collaborative fashion than previously, the reduction in the number of both Political and Non-States Members has diluted the effectiveness and capacity of the scrutiny process as a whole.
- 5.2 The Scrutiny Management Committee has become increasingly frustrated during the current term at the reluctance of some Committees to share with the Scrutiny Management Committee information and documents when requested. The Scrutiny Management Committee has found that information is either not provided; not provided in full; is provided but is heavily redacted; and/or it takes an inordinate amount of time to be submitted. This has been a major obstacle for the Scrutiny

⁷ <https://gov.gg/newlegislation>

Management Committee in being able to undertake its mandated work and effective completion of its reviews. It is therefore hoped that new legislation on 'Powers, Resources and Impartiality of the Scrutiny Management Committee' will enable more effective working in the future.

- 5.3 In August 2019 the Scrutiny Management Committee submitted to the States Assembly its justification to establish a Tribunal of Inquiry surrounding the recruitment process relating to the appointment to the role of Head of Curriculum and Standards, employed by the States of Guernsey at the Committee *for* Education, Sport & Culture. This was in made pursuant to the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended. The recruitment process had attracted significant media and public interest resulting in substantial comment of a highly critical nature with allegations of political interference and poor governance, which in the opinion of the Scrutiny Management Committee had undermined public trust and confidence in their government.
- 5.4 The States Assembly voted against the proposal and the Scrutiny Management Committee then proceeded in September 2019 to commission an independent review from an external reviewer. However, after several months of attempting unsuccessfully to take the review forward, it was realised that undertaking a review in these circumstances was not going to be productive or cost effective. Specifically, legal concerns regarding data protection resulting in the inability to publish a full and frank report or to undertake an effective public hearing on this matter were key considerations.
- 5.5 After deliberation the Scrutiny Management Committee resolved to return to the States Assembly to reiterate its unanimous opinion that the only course of action for an effective resolution to this issue was to establish a Tribunal of Inquiry. The Policy Letter presenting full justification for the establishment of a Tribunal will be presented at the States Meeting on 26th February 2020.

6. Next Steps

6.1 Powers, Resources and Impartiality

In pursuance of the Resolutions of the 18th February 2016⁸, and after consideration of the Policy Letter dated 23rd December 2015⁹, submitted by the Scrutiny Committee and the Public Accounts Committee, it was agreed that legislation be drafted;

- (a) making provision for the Scrutiny Management Committee to have the power to send for persons, papers and records as set out in paragraphs 2.3 to 2.6 of that Policy Letter and;

⁸ [Billet d'État No IV, 12 January 2016](#)

⁹ [Billet d'État IV 16 February 2016](#)

(b) extending legal privilege to those providing evidence to the Scrutiny Management Committee's hearings and reviews as set out in paragraph 2.24 of that Policy Letter.

The legislation was presented and agreed by the States of Deliberation on 25th September 2019 (Billet d'État XVIII) and when implemented will enable the Scrutiny Management Committee to undertake its work more effectively and efficiently by having access to all the relevant information it requires and compelling evidence from the most appropriate people. The proposed legislation¹⁰ provides the Scrutiny Management Committee with the powers to undertake its work in an open and transparent manner without hindrance.

6.2 Governance of Committees

During this political term the Policy & Resources Committee commissioned as part of the Public Sector Reform programme an independent reviewer to undertake 'good governance' reviews of the Principal Committees. The Scrutiny Management Committee considers that the Policy & Resources Committee is not best placed to commission this type of review and that it would be more appropriate from a governance perspective if the Scrutiny Management Committee undertook the commissioning role. This potential change to governance reviews being commissioned independently by the Scrutiny Management Committee is a strong recommendation for change in the next political term.

7. Conclusions

- 7.1 The Scrutiny Management Committee believes that during this political term it has played a significant role in scrutinising key areas of government policy and spending. It has done so through increasing the number and frequency of public hearings as well as undertaking formal substantive reviews and submitting letters of comment. The effort to raise the public profile of the formal scrutiny process was a deliberate choice by the Scrutiny Management Committee and it is pleased by the positive feedback it has received from Members of the States and the wider community.
- 7.2 The Scrutiny Management Committee believes that additional financial scrutiny should take place in future to ensure that the significant resources of the Government are managed effectively. The current approach is cost effective but it is arguably not proportionate to the current level of government spending. It is also clear that the current approach applies less challenge and oversight than was applied under the pre 2016 system of government in Guernsey or in comparative jurisdictions. It is important that the reality of the current position in this regard is understood.
- 7.3 The Scrutiny Management Committee is frustrated by the limitations of the current system of legislative scrutiny and its Members collectively believe additional

¹⁰ [The Reform \(Guernsey\) \(Amendment\) \(No 2\) Law, 2019](#)

importance and priority should be given to legislative scrutiny by the States of Guernsey.

- 7.4 The expectations that are placed by some on the Scrutiny Management Committee within the current system of government will continue to be unrealistic unless they are accompanied by further powers and resources. The Scrutiny Management Committee believes the implementation of new legislation will strengthen powers available. The Scrutiny Management Committee expects its successors to build upon the strong 'scrutiny' foundations laid during this political term and hope that the scrutiny function continues to be increasingly effective moving forward. The current Scrutiny Management Committee suggests the new Committee that takes office in July 2020 should give real consideration at the very beginning of its term to developing its capacity and capability for expanding the number of so called 'task and finish' panel reviews within the time available; and also to consider whether the public interest will continue to be served by significant formal 'Scrutiny' activity taking place in the public domain rather than in private.

Yours faithfully,

C J Green
President