



Scrutiny Management
Committee

Scrutiny Management Committee



2021

Annual Report

States of Guernsey

Scrutiny Management Committee

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1. Introduction

This Annual Report outlines the work of the Scrutiny Management Committee from the election of the new Committee in October 2020, through to the end of 2021. The report also provides the Committee with an opportunity to comment on the overarching parliamentary scrutiny framework in place during this period.

Good parliamentary scrutiny improves the effectiveness of government. A specialist Scrutiny committee can focus in detail on a specific issue and maintain a persistent line of questioning on a given topic. The Scrutiny Management Committee provides structured and co-ordinated scrutiny of policy and services, financial affairs and legislation.

A key focus of the Committee during this term is to conduct as much of its business as practicable in the public domain and hence the Committee has looked to step up the number of public hearings it holds.

This Assembly has a significant number of Members who are new to elected office and to the role and function of Scrutiny within our unique consensus system of government. Therefore, one of the key starting points for this Scrutiny Management Committee has been to explain the role and purpose of the Committee and, perhaps equally importantly, what the Committee does not do. Ensuring a wider understanding of the purpose of parliamentary scrutiny within our unique consensus system is vital if government is to be effectively held to account. To this end in this new political term, the Scrutiny Management Committee has taken steps to include a significantly larger number of elected Members within the scrutiny process than previously, by using a wider selection of eligible Members of the Assembly to sit on its scrutiny panels. Financial scrutiny is undertaken by the Committee's Financial Scrutiny Panel (FSP). The Committee believes 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.

In addition, the Scrutiny Management Committee oversees the work of its Legislation Review Panel (LRP). The role of the LRP is to ensure that drafted legislation accords with the Resolutions agreed by the States Assembly. The LRP has raised many issues with various Committees regarding drafted legislation.

2. The role of the Scrutiny Management Committee

The role of the Scrutiny Management Committee is to ensure all Committees are meeting the policy and financial objectives outlined by the States of Guernsey and that they are delivering their services effectively and efficiently.

This role is in addition and complementary to the collective parliamentary scrutiny process that is fulfilled by individual Members of the States Assembly. Scrutiny in Guernsey can only function effectively in its current form with the full cooperation of States' Members and the public sector. This requires recognition that the work of scrutinising policy, services, financial matters and draft legislation, is a vital function in our system of government.

The Scrutiny Management Committee's mandate also makes it clear that it is not intended to act as an Opposition would under an executive system of government. Nor should the Committee react to every single development or issue within the Government, or in Island life.

3. Membership

The Scrutiny Management Committee Membership consists of a President, a Vice-President and one other States Member. There are also two Non-States Members whose appointment is recommended by the political members of the Committee and ratified by the States Assembly. The Non-States Members have voting rights on the Committee.

Current Scrutiny Management Committee Members

Deputy Yvonne Burford – President

Deputy Simon Fairclough – Vice-President

Deputy John Dyke – Member

Mr John Whittle – Non-States Member

Ms Grace Ruddy – Non-States Member

4. Work undertaken by the Scrutiny Management Committee in the report period

In January 2021 the Scrutiny Management Committee undertook to complete the work started by the previous Committee regarding the suitability of the existing Code of Practice on Access to Public Information. The previous Committee had completed a comprehensive review of the Code and made several recommendations in its report which was released towards the end of the last political term. Following detailed consideration of the Review Report, in June 2021 the current Committee presented a policy letter to the States Assembly in order that the work of the previous Committee was not abandoned, in order to allow the newly elected Assembly to provide direction regarding some of the key recommendations contained in the report¹.

States Members voted to update the existing Code in support of the majority recommendation of the Committee. The changes included the addition of an independent appeals mechanism² and renaming the Code, the 'Freedom of Information Code', in order to improve public understanding of its purpose.

The work to establish the new Freedom of Information Appeals Panel was completed by the end of 2021 in line with the Resolution deadline. The Appeals Panel is an independent sub-committee of the Scrutiny Management Committee with Secretariat support provided by its Office. It comprises five suitably qualified and knowledgeable persons, whose task is to adjudicate on appeals against a refusal to release requested information in accordance with one or more exemptions contained in the Code. Should an appeal be upheld by the Appeals Panel, the relevant Committee or Body will be requested to release the information.

¹ [Billet d'Etat XIII Volume 3 - SMC Policy Letter - Freedom of Information - June 21](#)

² [Billet d'Etat No XIII - Resolutions](#)

The Appeals Panel provides an independent appeal process which is accessible to all and offers a fair and transparent determination of an appeal. It is important to note that the Appeals Panel does not possess the legal powers required to challenge a refusal to comply with its decision. Under this system, should the relevant Committee or Body fail to comply with the direction of the Appeals Panel, it would in effect be exercising a veto. The Scrutiny Management Committee will carefully monitor the number of such vetoes, if any.

5. Public Hearings

In 2021, the Scrutiny Management Committee conducted public hearings with the Policy & Resources Committee and three of the Principal Committees. The Committee intends to increase the number of hearings held in 2022.

Public hearings are an important tool in ensuring effective Parliamentary scrutiny takes place and has significant advantages over 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; both politicians and senior officers can be questioned; and there can be an inquisitorial approach to Committee Presidents with a level of challenge that is neither discourteous nor timid allowing additional information to be extracted about States' affairs than was known previously in the public domain.

In this political term the Scrutiny Management Committee has introduced several developments regarding the use of public hearings. Specifically, the Committee has looked to include a wider number of elected Members within the scrutiny process by using eligible Members of the Assembly in addition to Members of the Scrutiny Management Committee to sit on its scrutiny panels. The Committee believes that it is important that a wide range of elected Members can play a fuller role in formal parliamentary scrutiny. Members of the community have also been invited to sit on these panels. These actions help fulfil the Committee's mandated responsibility *"to promote and facilitate the participation in scrutiny of the widest possible range of States' members and persons independent of the States"*.

In January 2022 the Committee livestreamed two public hearings on YouTube. Initially this step was taken due to the impact of COVID-19 pandemic limitations on public attendance, however having considered feedback received, the Committee is committed to continuing with this approach wherever possible to make the hearings more accessible, to increase public and political awareness of key policy areas and to add to the level of transparency of government.

6. Government Work Plan Scrutiny Panel

Following on from the States Assembly's decision in July to delegate financial authority for the entire Capital Portfolio workstream for this political term to the Policy & Resources Committee - a delegated authority in excess of half a billion pounds - the Scrutiny Management Committee decided that an additional Scrutiny response was needed. Therefore, a dedicated panel has been created in order to specifically scrutinise this change. The Government Work Plan Scrutiny Panel intends to hold between three and four public hearings a year with the Policy & Resources Committee on this crucial matter as well as seeking information by other methods.

7. Financial Scrutiny

The Committee has formed a permanent Financial Scrutiny Panel which meets on a regular basis with additional financial input from Mrs Gill Morris. The Panel's role includes reviewing the annual Accounts and Budget of the States of Guernsey to determine any areas requiring further investigation. It also includes monitoring progress made by previous Public Accounts Committee, Scrutiny Committee and Scrutiny Management Committee investigations and recommendations to ensure that such recommendations have been properly considered. The Panel also reviews the significant number of reports produced by the Internal Audit service and seeks to identify, via this process, areas that may require additional scrutiny. This work by its very nature tends to be done outside of the public gaze but forms a vital element of ongoing financial scrutiny.

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.

It is important that the States of Guernsey acknowledges and supports 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.

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. As an example, in Jersey the Comptroller and Auditor General provides their States with independent assurance that their public finances are being regulated, controlled, supervised and accounted for in accordance with the Law. No equivalent role exists within the Guernsey system.

The Scrutiny Management Committee considers, through its experience gained to date, that opportunities exist to strengthen financial scrutiny and it understands that this will be considered as part of the Reshaping Government priority in the Government Work Plan.

8. Legislative Scrutiny

The Legislative Review Panel (LRP) has continued to review, approve and direct that legislation is transmitted to the States for consideration as appropriate. The Panel has reviewed forty-one pieces of legislation which are detailed in appendix 2.

The role of the LRP is to ensure that drafted legislation is in accordance with Resolutions agreed by the States Assembly. The Panel has raised several issues with various Committees regarding drafted legislation, in particular the Charities etc. (Guernsey and Alderney) Ordinance, 2020 and the Abortion (Guernsey) (Amendment) Law, 2021. Unlike other jurisdictions such as Jersey, the Isle of Man or in Westminster where the process for scrutinising proposed legislation is completed in several stages, the LRP is the only body checking proposed legislation before being presented in the States Assembly for approval, therefore, it plays a vital and important role.

Legislation Review Panel Membership

Deputy John Dyke (Chair)

Deputy Simon Fairclough (Vice-Chair)

Deputy David De Lisle

Deputy John Gollop

Deputy Aidan Matthews

Non-States Member - Advocate Simon Howitt

Non-States Member - Advocate William Simpson

9. Public Engagement

Public Hearings held during 2021

April	The Policy & Resources Committee – Government Work Plan
June	Committee <i>for</i> Home Affairs – Government Work Plan
October	Committee <i>for</i> Health & Social Care – Government Work Plan
November	Committee <i>for</i> Economic Development – Government Work Plan

10. Member & Staff Personal Development

Due to the constraints placed on all islanders due to the COVID-19 pandemic Members and Staff have been unable to travel off-island to attend meetings or conferences. However, a number of meetings and several learning activities with similar oversight function within other domains have taken place via Microsoft Teams which has proved invaluable during the lockdown periods and the restrictions regarding off-island travel.

11. Conclusion

Inevitably, and especially when there is a significant turnover of States Deputies at an election, it takes time for a newly formed States Committee to get up to speed. The Scrutiny Management Committee has a broad programme of work scheduled for 2022, and together with its regular public hearings, this will see the pace of work accelerate. This will feature ongoing scrutiny of the significantly enhanced role and responsibility granted to the Policy & Resources Committee by the States Assembly in this political term.

The Scrutiny Management Committee will also engage with the Policy & Resources Committee and its subgroup in respect of the Reshaping of Government priority, in order to inform actions relating to the overall parliamentary scrutiny function.

Appendix 1 - Legislation Reviewed in 2021

The Legislation Review Panel (Legislation Review Panel) has reviewed, approved and directed the following legislation be transmitted to the States for consideration. The Panel also reviewed emergency legislation to be transmitted to the Policy & Resources Committee for enactment under provisions of Article 66A (1) of the Reform (Guernsey) Law, 1948.

January

1. Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2021
2. Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021
3. Police Force (Bailiwick of Guernsey) (Amendment) Law, 2021

February

1. Income Tax (Charitable Donations) (Guernsey) (Amendment) Ordinance, 2021
2. Copyright (Bailiwick of Guernsey) (Amendment) Ordinance, 2021
3. Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021
4. Charities etc. (Guernsey and Alderney) Ordinance, 2020

March

1. Land Planning and Development (Emergency Procedures) Ordinance, 2021 - to follow
2. Ordinance to be made by the Policy & Resources Committee
3. Companies (Guernsey) Law, 2008 (Miscellaneous Amendments) Ordinance, 2021
4. Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Amendment) Ordinance, 2021
5. Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (Amendment) Ordinance, 2021
6. Ordinance to be made by the Policy & Resources Committee
7. Gambling (Channel Island Lottery) (Bailiwick of Guernsey) (Amendment) Ordinance, 2021

April

1. Income Tax (Guernsey) (Amendment) Ordinance, 2021
2. Long-term Care Insurance (Guernsey) (Rates) (Amendment) Ordinance, 2021
3. Public Functions (Transfer and Performance) (Bailiwick of Guernsey) (Amendment) Law, 2021

May

1. Income Tax (Guernsey) (Amendment) Ordinance, 2021

2. Health and Safety at Work (Equality Provisions) Ordinance 2021
3. Public Thoroughfares (Guernsey) (Amendment) Law, 2021
4. Abortion (Guernsey) (Amendment) Law, 2021
5. Machinery of Government (Transfer of Functions) Ordinance, 2021

June

1. Court of Appeal (Guernsey) (Amendment) Law, 2021
2. Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2021
3. Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2021
4. Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Commencement) Ordinance, 2021
5. Protection of Investors (Bailiwick of Guernsey) (Commencement) Ordinance, 2021
6. Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) (Commencement) Ordinance, 2021
7. Banking Supervision (Bailiwick of Guernsey) (Commencement) Ordinance, 2021

August

1. Housing (Standards and Regulation) (Enabling Provisions) (Guernsey) Law, 2021
2. Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law (Amendment) Ordinance, 2021

September

1. Social Insurance (Rates of Contributions and Benefits etc.) Ordinance, 2021
2. Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2021

November

1. Guernsey Revenue Service Tribunal Ordinance, 2021
2. Health Service Benefit (Amendment and Commencement) Ordinance, 2021
3. Severe Disability Benefit and Carer's Allowance (No. 2) Ordinance, 2021
4. Income Support (Implementation) (Amendment) (No. 3) Ordinance, 2021
5. Family Allowances (Guernsey) (Amendment etc.) Ordinance, 2021
6. Pilotage (Amendment) Ordinance, 2022
7. Land Planning and Development (Visitor Accommodation) (Amendment) Ordinance, 2022

8. Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022

Appendix 2 - Scrutiny Management Committee Mandate

Constituted as a committee of the States with effect from the 1st of May 2016 by resolutions of the States of the 9th of July, 2015 and the 27th of November, 2015.

- **Constitution**

A President who shall be a member of the States: provided that the President of the Scrutiny Management Committee shall not be the President or a member of the Policy & Resources Committee or the President or a member of any of the six Principal Committees; and two members who shall be members of the States: provided that a member of the Scrutiny Management Committee shall not be the President or a member of the Policy & Resources Committee or the President or a member of more than one of the six Principal Committees; and two voting members who shall not be members of the States and who shall be elected by the States.

- **Duties & Powers**

To lead and co-ordinate the scrutiny of committees of the States and those organisations which are in receipt of public funds, or which have been established by legislation, by reviewing and examining legislation, policies, services and the use of monies and other resources.

As far as is reasonably practicable, to appoint scrutiny panels (whether task and finish or standing panels) to carry out the work of reviewing and scrutinising committees' policies and services and their management of monies and other resources entrusted to them: provided that neither the President nor the members of the Policy & Resources Committee shall serve on such scrutiny panels and also provided that the Committee retains the power, if it so wishes, to carry out any review itself rather than through an appointed panel and also provided that the Committee shall at all times be responsible, and accountable to the States, for everything done by the Committee and any panels it has appointed, including the content of any report issued under its name.

To appoint a Legislation Review Panel to carry out the functions of legislative scrutiny in Article 66 of the Reform Law and also to recommend any changes to legislation from which it believes the Island may benefit: provided that the Committee shall at all times be responsible, and accountable to the States, for everything done by the Legislation Review Panel; and to constitute the Legislation Review Panel as follows: a President who shall be a member of the Scrutiny Management Committee and also a member of the States, a minimum of four other States' members, a minimum of two non-voting members who shall not be members of the States, and any number of additional and occasional non-voting members as the Scrutiny Management Committee sees fit for the purposes of review of any item of legislation or any other matter: provided that such additional and occasional non-voting members may or may not be members of the States and also provided that neither the President nor the members of the Policy & Resources Committee shall serve on the Legislation Review Panel.

To scrutinise any matter contained in a policy letter which has been referred to the Committee by resolution of the States in accordance with any terms set out in the resolution and to submit to the

States its findings thereon within a period of time set out in the resolution, which findings, together with the original matter, shall be laid before the States.

To promote and facilitate the participation in scrutiny of the widest possible range of States' members and persons independent of the States.

When determining the subject of its reviews and examinations, to pay particular attention to the performance of committees in contributing to States' objectives and policy plans and to matters which are of substantial importance or of significant public interest.

To recognise that the carrying out of scrutiny in public where possible is likely to contribute positively to public perceptions of scrutiny.

To submit a report to the States annually which reviews the work of the Committee and its panels over the previous 12 months, and which sets out the Committee's objectives and, to the extent that it is possible while retaining a flexible and responsive approach to scrutiny, an indicative programme of work over the next 12 months.

To represent the work of scrutiny in the States, and publicly to promote and champion the value of scrutiny.

To advise the States if and when in its opinion circumstances justify the establishment of a Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended.

To exercise powers and perform duties conferred on the Committee by extant States' resolutions, including those resolutions or parts of resolutions which relate to matters for the time being within the mandate of the Scrutiny Management Committee and which conferred functions on the former Legislation Select Committee, Public Accounts Committee and Scrutiny Committee.

To fulfil the responsibilities set out in Annex One to the mandates of committees of the States.

- **Operational Functions**

To deliver or oversee the delivery of, and to be accountable to the States for, any operational functions conferred on the Committee by way of extant legislation or resolutions of the States or which may be allocated to the Committee in Annex Two to the mandates of committees of the State.