

The Organisation of States' Affairs

States' Review Committee – First Report

Submitted for debate by the States on Tuesday the 8th of July, 2014

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EXECUTIVE SUMMARY

- 1.1 The States' Review Committee was established in 2012 to review the organisation of States' affairs and to make any recommendations for reform which it considered necessary.
- 1.2 The Committee benefited greatly from written and oral submissions made by a considerable number of people with direct experience of the States and from people experienced in the politics and administration of the other Crown Dependencies. The Committee also studied numerous earlier reports relating to the structure and functions of the States.
- 1.3 Based on the many submissions received and its own observations, the Committee found that overall the present structure of the States cannot consistently provide for effective leadership, sound co-ordination of policies and resources and proportionate checks and balances; nor is it sufficiently flexible to adapt if and when circumstances change.
- 1.4 In the opinion of the Committee there are two ways to address these weaknesses: either the present committee system can be substantially improved or a ministerial system can be introduced. Through this first report, the Committee wishes to encourage the States to resolve this binary choice.
- 1.5 The Island and the States are familiar with a committee system and, therefore, it has been possible to set out in some detail how an improved committee system would operate in practice. In contrast, the Island and the States are unfamiliar with a ministerial system and, therefore, the Committee presents a more general description of how a ministerial system would operate in practice, concentrating in the main on the areas where it would differ most from a committee system.
- 1.6 In the past, committees established to undertake reviews of the structure of the States have generally been unable to reach consensus. Significantly, the members of the States' Review Committee are unanimous in recommending to

the States the adoption of an improved committee system based on ten *Key Proposals* set out in *Section 6* of the report.

- 1.7 In no way does the Committee suggest that its proposals are a panacea or are without imperfections and limitations. The Committee is realistic in recognising what can and cannot be achieved through structural and organisational reform alone. The reforms proposed are pragmatic, proportionate and achievable. They respect and seek to build upon existing strengths while addressing the most serious shortcomings in the present arrangements.
- 1.8 The Committee is confident that, if approved by the States, the reforms proposed will provide conditions more conducive to effective leadership, sound co-ordination of policies and resources and proportionate checks and balances as well as ensuring that the structure is sufficiently flexible to adapt if and when circumstances change.
- 1.9 The package of reforms would, if implemented, better support the States in their most important objective: to serve the people of Guernsey now and in the future.

2.1 The States' Review Committee

- 2.1.1 On the 1st of December, 2011 22 States' Members submitted a requête which asserted: *"[m]atters relating to governance have received considerable attention – at both a political and operational level – during the present States' term...it would be expedient in the next term of the States to examine without constraint whether there are any options for reform of the structure and functions of the [States] which might enable the progress made already in respect of good governance to be advanced further."*
- 2.1.2 On the 9th of March, 2012 the States approved the prayer of the requête by 41 votes to one and resolved to establish the States' Review Committee (*the Committee*) to undertake a comprehensive review of the organisation of States' affairs and recommend any reforms considered necessary.
- 2.1.3 The membership of the Committee is as follows: Deputy J P Le Tocq (Chairman), Deputy M J Fallaize (Vice-Chairman), Deputy R Conder, Deputy M H Dorey, Deputy G A St Pier, Mr T A Le Sueur OBE and Mrs C G L Smith¹. The Committee wishes to place on record its thanks to Deputy P A Harwood, who chaired the Committee between May, 2012 and March, 2014 and thereafter kindly agreed to continue attending meetings in an advisory capacity.

¹ Mr Terry Le Sueur OBE was a member of the States of Jersey for 24 years, both before and after the major structural reforms of the States in 2005. Mr Le Sueur served as Jersey's Chief Minister before retiring in 2011. Mrs Claire Smith is a Solicitor and when she joined the Committee she was Senior Associate of Spicer & Partners Guernsey LLP. Mrs Smith is now Principal Associate with Eversheds LLP. She has extensive experience of UK Public Law and the governance arrangements of local government in the UK, including advising on the implementation of the Local Government Act 2000. Mr Le Sueur and Mrs Smith were elected to the Committee by the States.

2.2 Process of Consultation

- 2.2.1 The Committee benefited greatly from interviewing, and reading written submissions from, a considerable number of people with direct experience of the States, including 39 of the 41 States' Members who have not sat on the Committee, former States' Members, former Bailiffs and Law Officers, present and former senior civil servants and other persons who whether through their work or other endeavours have been close observers of the States. Members of the Committee also met separately with 15 other committees of the States.
- 2.2.2 In addition, a great deal was learned from discussions with several elected members and officers experienced in the politics and administration of the other Crown Dependencies - Jersey and the Isle of Man.
- 2.2.3 The Committee studied numerous earlier reports which pointed to the States' strengths and weaknesses and reviewed relevant reports commissioned by the authorities in the other Crown Dependencies.
- 2.2.4 The Committee also took into account public consultations undertaken during previous reviews, including by the Wales Audit Office as part of a review of governance in the States in 2009.
- 2.2.5 The Committee is grateful to all of those persons who have taken part in this first phase of consultation: their interviews and submissions are the foundation of this report.
- 2.2.6 This report is to be debated at a meeting of the States commencing on the 8th of July, 2014.
- 2.2.7 In order to provoke as much public debate as possible and generally to test public opinion about the package of measures being proposed in the report the Committee will, by various means, undertake full public engagement between the date of publication of the report and debate in the States.
- 2.2.8 If the States approve structural reforms the Committee will develop its proposals further and report to the States in the early months of 2015 with further detailed recommendations for the future organisation of States' affairs in line with the States' resolutions made in respect of this first report. The

continuation of the review process would include further consultation with States' Members, officers and the wider public.

2.3 Guernsey's Constitutional Position and Political System

- 2.3.1 Guernsey owes its allegiance to the Crown, as the modern-day successor to the Duke of Normandy. It is a self-governing dependency of the Crown. Her Majesty's Government is responsible for the defence and international representation of the Island. The Crown is represented in the Island by the Lieutenant-Governor. The Crown appoints the Bailiff, who is the senior judge in the Bailiwick of Guernsey. The Bailiff is also *ex officio* the Presiding Officer of the States of Deliberation, the Island's parliament. The origins of the States date back at least as far as 1605 and possibly as far back as the thirteenth century.
- 2.3.2 In almost all other parliamentary democracies the functions of government are allocated to representatives of the party or parties who, alone or in coalition, hold the most seats in parliament and they have the necessary authority for the formation of an executive, or government. Policy is made by the government within a legislative and budgetary framework set by parliament.
- 2.3.3 Guernsey, however, does not have an executive or government in the conventional sense, i.e. as something distinct from, although accountable to, parliament. Instead, parliamentary and governing functions are fused in one body, the States of Deliberation. Therefore, Guernsey, almost uniquely, is governed by its parliament. This is crucial in understanding the Island's political system.
- 2.3.4 In practice, most day-to-day functions are carried out by committees of the States, each of which is independently responsible to the States of Deliberation. Committees of the States – individually or collectively – are in no way analogous to an executive or government.
- 2.3.5 The expression "States of Guernsey" includes the whole undertaking of the committee structure and administration. The States of Guernsey have a legal personality. The States of Deliberation are a parliamentary assembly and have no legal *personae*. Generally committees also have no separate legal *personae*: a committee is in effect an agent of the States of Guernsey exercising functions

conferred on it by resolution of, or legislation approved by, the States of Deliberation.

2.3.6 The States of Deliberation:

- Allocate the functions of government;
- Discharge the functions of government which they have retained - for example policy determination;
- Debate and vote upon proposals to enact, amend or repeal legislation;
- Debate and vote upon proposals for taxation and expenditure;
- Scrutinise and hold to account the policies, decisions and administration of those functions of government which they have allocated to committees or individuals.

2.3.7 The involvement of the States as a parliament in determining policy and making 'executive' decisions results in much political and governmental business being discharged in open debate in public whereas in almost all other jurisdictions it would be dealt with in private by a distinct executive or government. In one respect this contributes positively to democracy, demonstrating open, plural debate and transparent decision-making. On the other hand, it can adversely affect perceptions of good governance and good government.

2.3.8 A further important aspect is that the States undertake functions and provide services which in larger jurisdictions would be found distributed between central, regional and local government or other bodies. This broad range of responsibilities within one body inevitably brings challenges both in terms of strategic planning and service delivery.

2.4 The Development of the Present States' Structure

2.4.1 In 1998, the States established what became generally known as the *Review of the Machinery of Government*, setting up a panel of inquiry (often referred to

as the Harwood Panel) comprised entirely of persons independent of the States and directing two committees (the Joint Committees)² to examine the independent panel's findings and report to the States with recommendations.

2.4.2 In February, 2001 the independent panel issued a statement of views³, which included the following proposal:

"In order to provide political leadership, the [p]anel can see no alternative but to move towards an executive form of government with a [p]olitical [l]eader elected by the [States of Deliberation]...[s]uch person must be held to be politically accountable to the [States of Deliberation] for the development and implementation of the policies of the States...

"...eleven [p]oliticians, together with the Chief Minister, would then form a co-ordinating council or committee in order to assist in the formulation and promulgation of strategic policy and to co-ordinate the policies of individual departments of government, so they can be presented in a manner which is consistent with such overall strategic policy and in a manner which also avoids conflicts between departments. Such a co-ordinating body would therefore require authority, if necessary, to override the political leader of an individual department of government...it would therefore be necessary to impose collective responsibility upon that group of eleven politicians...the [p]anel recommends that the Chief Minister should select from the elected [States' Members] those eleven [p]oliticians...[and] should also retain the power to require the resignation of any one or more of those eleven [p]oliticians."⁴

2.4.3 While understandable in its context, the panel's reference to its proposal as *"...an executive form of government..."* was not strictly accurate. The States of Deliberation would have retained the key function of government: determining major (and, if they wished, not so major) matters of policy. While the States as a parliamentary assembly retain such wide powers over policy, Guernsey cannot have a cabinet or *"executive form of government"* in the conventional sense.

² The Advisory and Finance Committee and the Procedures and Constitution Committee.

³ Appendix 1 of the Joint Committees' policy letter; Billet d'État VII of 2002.

⁴ Billet d'État VII of 2002.

2.4.4 What was actually proposed by the panel was policy formulation by a group of 12 Ministers (out of 42 States' members; the other 30 would have sat on advisory and scrutiny committees) instead of policy formulation by several committees of the States.

2.4.5 The majority of the members of the States' Joint Committees did not look favourably upon the recommendations of the independent panel. The Joint Committees advised:

“Those Members...who do not favour the Harwood Panel’s proposals...fear that a system which relies on Ministers keeping their seats by rigidly toeing the line, and adopting collective responsibility under a single leader who has the power to appoint and dismiss, will lead to: divisiveness; the creation of a permanent opposition; the evolution of a political system based on party lines; a them and us culture within the States; a dampening of the expression of constructive alternative views within the Council of Ministers; an excess of power held by a minority of [States’ Members]; a feeling of being either inside the government or outside it, with a subsequent polarisation within the States, to the detriment of good government; and the possibility that those in government may experience a conflict of conscience, in being required to vote for and publicly support policies with which they do not agree...[t]he principle of collective responsibility within a Ministerial Council could, it is feared, produce a system of patronage, and stifle free expression by those in government. It could rapidly fall apart, with the resultant disintegration of the [I]sland’s system of government.”⁵

2.4.6 In May, 2002 the Joint Committees proposed instead, *inter alia*, a substantial reduction in the number of committees and a senior committee to hold responsibility for the combined States-wide functions of policy co-ordination and the allocation of resources, including finance, upon which would sit five States' Members elected by the States.

⁵ Joint Committees' policy letter; Billet d'État VII of 2002.

- 2.4.7 The Joint Committees stated that this senior committee would “...*provide clear and coordinated leadership. A fundamental requirement would be the provision...to focus the direction of the States’ central resources...[and] the preparation of strategic and corporate policy proposals.*”
- 2.4.8 Two particular observations arise: first, policy co-ordination and the allocation of resources across the States were to be combined in one senior committee; second, there were to be no *ex officio* members of that committee – instead members of that committee were to be elected by the States independently of elections to other committees.
- 2.4.9 The Joint Committees also suggested that in a committee system it was not necessary for policy to be scrutinised through formal standing committees with a fixed membership.
- 2.4.10 When the independent panel’s recommendations for a ministerial system were put to the States by way of an amendment they were rejected overwhelmingly. The States also rejected, albeit by a much narrower margin, certain key aspects of the structure proposed by their own Joint Committees, including the establishment of a senior committee with responsibility for policy co-ordination and resources.
- 2.4.11 Ultimately, the States resolved that with effect from 2004 there would be, *inter alia*: an 11-member Policy Council consisting of Ministers *ex officio* plus a Chief Minister; a separate Treasury & Resources Department chaired by its own Minister; nine other States’ departments each of five States’ Members and chaired by a Minister; a Scrutiny Committee of nine members; a Public Accounts Committee of nine members; a Legislation Select Committee of seven members; a House Committee of five members; reform of electoral boundaries; and a reduction in the number of States’ Members from 57 to 47 by the removal of Douzaine Representatives.

3

THE CASE FOR REFORM

3.1 The Committee's Main Findings

3.1.1 It is clear that some of the reforms of 2004 have been effective and brought about change for the better. In particular, rationalisation in the number of States' Members and committees has removed some of the barriers to co-operation and provided opportunities for the public sector to be organised more efficiently; the broader mandates of some committees have encouraged States' Members to focus more on issues of policy and less on operational matters; and electors have more equal representation in the States. As far as possible these improvements should be protected: the Committee sees no merit in reverting to the unwieldy pre-2004 structure. In any event, change for the sake of change is undesirable and often counter-productive.

3.1.2 Indeed, although this report focuses on areas for improvement and thus in parts may appear to dwell unduly on problems and weaknesses, the Committee wishes to emphasise that in no way does it underestimate the many inherent strengths of the States or the endeavours of elected members and civil servants past and present who have contributed greatly to the Island's reputation, prosperity, stability and resilience.

3.1.3 Nonetheless, a substantial majority of submissions made to the Committee advocated material reform of the structure and operation of the States.

3.1.4 Papers and discussions ranged freely and raised many diverse issues. However, they consistently identified a few particularly significant weaknesses in the present arrangements.

3.2 Leadership and Co-ordination

3.2.1 Not a single respondent to the Committee disputed the need for the States to elect from among their number a group of members to sit as a senior body or senior committee.

- 3.2.2 Most respondents favoured the provision of leadership through a senior, co-ordinating committee. Fewer respondents favoured a cabinet or similar body with authoritative powers over other, subordinate departments or committees.
- 3.2.3 At present, Guernsey has a Chief Minister and a committee of Ministers but neither has any conventional ministerial powers. Constitutionally the Policy Council has no authority over other States' committees. Its membership is similar to what one would expect in a cabinet but it was set up expressly not to be a cabinet and its functions would need to be reformed significantly to act as one.
- 3.2.4 Rather, the Policy Council is a co-ordinating committee of 11 members. It is the largest of all States' committees. Most respondents who expressed a view about the size of committees felt that a committee is likely to function best when it has no fewer than three and no more than between five and seven members. The Committee doubts whether a standing committee of 11 members can be expected to function as a close, coherent senior committee providing leadership and co-ordination.
- 3.2.5 A key observation heard by the Committee in the course of its review was that the planning and co-ordination of policy and resources across the States are in need of considerable improvement.
- 3.2.6 There appear to be two specific concerns: first, the policy planning process is inadequate; second, confidence is low about the prospects for success in policy development where co-ordination is required between States' committees.
- 3.2.7 It is widely felt that the Policy Council is better equipped to undertake its 'executive' functions – such as external relations – than it is to co-ordinate the States' policy agenda and as far as possible ensure consistency between policy and the allocation of resources.
- 3.2.8 The Policy Council's mandate restricts its capacity to co-ordinate the policies and resources of the States because, other than in respect of employment functions, it has no responsibility at all for resources, including finance.
- 3.2.9 Policy and resources have an inextricable relationship: each is wholly dependent on the other. However, the present States' structure militates against effective and co-ordinated policy and resource planning.

3.2.10 The Policy Council is chaired by the Chief Minister. Interestingly for an Island which traditionally has promoted its political stability, Guernsey has had five Chief Ministers in ten years.

3.2.11 There is a paradox in the office of Chief Minister: as with the Policy Council, the separation of policy co-ordination and resources inhibits the capacity for the holder of that office to provide leadership other than by 'strength of personality' and yet it is assumed by many people, perhaps at least partly misled by the title, that the office enjoys considerable political authority. Consequently, there is a wide disconnect between what is generally expected of the Chief Minister and the actual powers of the role.

3.2.12 Generally much of the nomenclature of the States appears to confuse rather than to clarify.

3.3 Clarity of Functions and Roles and Accountability

3.3.1 There is a lack of clarity about other functions and roles too. Indeed, the Committee was struck by the range of interpretations of the political system which were put forward by States' Members and civil servants. There are differences of opinion in particular about the roles of the Policy Council and the Treasury & Resources Department. For example, some submissions indicated that the Treasury & Resources Department is seen *de facto* as the most senior Committee; others perceived the Policy Council in that role.

3.3.2 The lack of clarity about functions and roles extends to those which States' Members are expected to fulfil, e.g. district Deputy, department / committee member, Minister, Deputy Minister, scrutiny member and parliamentarian. While it may not be possible to draw up a conventional job description, States' Members, and potential candidates for election to the States, would benefit from greater clarity about broadly what is expected in the various and very different aforementioned roles.

3.3.3 As referred to in *Section 2*, in other parliamentary democracies government is primarily accountable to parliament whereas in Guernsey governmental and parliamentary functions are fused in one body, the States of Deliberation. This is perceived by many people to provide for more democratic control of the machinery of government in the Island. On the other hand it creates many overlapping lines of accountability and can make it harder to establish precisely who is responsible for what.

- 3.3.4 Ultimately, of course, individual States' Members are held to account by the public through elections.
- 3.3.5 The States of Deliberation can hold to account their committees to the point of dismissal through motions of no confidence, but the lines of accountability are more confused in respect of the Policy Council because members are not elected to the Policy Council as such. Rather, they are elected by the States as political leads of departments and hold a seat on the Policy Council *ex officio*. It is not surprising, therefore, to find that many members of the Policy Council tend to feel more accountable for the policies and services of the departments which they lead than for anything done or not done at the level of the Policy Council.
- 3.3.6 In practice, there is no way to hold the Policy Council to account separately from other committees. The States cannot remove the Policy Council without simultaneously removing every Minister and thereby disrupting every department, most or all of which may have had nothing to do with the events which have provoked the removal of the Policy Council. In a committee system, this cannot be satisfactory.
- 3.3.7 The States of Deliberation appear not to 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, both at political and staff level. This absence of clarity inevitably weakens accountability.
- 3.3.8 A key objective of the Committee is that this review should result in the States making a very clear decision about the most appropriate system for governing Guernsey and then ensuring that all component parts of the States are structured in a way which is consistent with this overarching system.

3.4 Flexibility to Adapt

- 3.4.1 The Committee has concluded that the present States' structure is not sufficiently flexible to adapt as and when circumstances change.
- 3.4.2 The relationship between the constitution of the Policy Council and the number of States' departments is a good example of the rigid nature of the present structure.

- 3.4.3 The central concept underpinning the Policy Council is that each department's Minister is a member. Therefore, either the number of departments is set according to what is considered to be the ideal number of members of the Policy Council, which is not the most rational way of determining the appropriate number of departments, or else the number of members of the Policy Council arises, almost by accident, out of the number of departments.
- 3.4.4 The number of departments cannot be adjusted without also changing the membership of the Policy Council. It is interesting to note that in the ten years since the present structure was established, there has not been a single change in the number or size of States' departments. The Committee doubts whether this is a mere coincidence.
- 3.4.5 Another apparent consequence of the relatively rigid present structure is a tendency to squeeze functions into one of 11 pre-determined bodies – the Policy Council and the ten departments. Thus the department which is responsible for advising the States on air links to and from the Island is also responsible for air transport licensing (Commerce and Employment Department); the department which is responsible, at least in part, for advising the States on land planning policy is also responsible for determining planning applications (Environment Department); and the senior committee, the Policy Council, has been made responsible for a plethora of executive functions – such as legal aid, the policy framework for the regulation of financial services, overseas aid and the Island Archives Service – which are unrelated to strategic policy or policy co-ordination.
- 3.4.6 As circumstances and challenges in the Island change it may well be sensible on occasion to adjust the list of departments / committees and, in the opinion of the Committee, the present structure inhibits such flexibility. The Committee considers it essential that any revised States' structure avoids the inflexibility of the present arrangements.

3.5 Ownership of Policy

- 3.5.1 Some submissions made to the Committee raised the concept of collective responsibility.
- 3.5.2 Collective responsibility is an integral feature of governments in almost all parliamentary democracies. Once the government has resolved a course of action all of its members are required to endorse that course of action publicly even if privately they have disagreed with it vehemently. Members of the

government who cannot publicly support any action or policy of the government almost always resign or are dismissed by the head of the government (i.e. the Prime Minister or equivalent).

- 3.5.3 One potential advantage of collective responsibility is that it provides – in terms of appearance at least - for united government and strong ownership of policy across government.
- 3.5.4 If unity in government is felt to be a prerequisite of good government in Guernsey, there is little choice but to create a recognisable government distinct from, although accountable to, the States of Deliberation as parliament. Without that, collective responsibility will remain unobtainable.
- 3.5.5 The emergence of dissent within a committee after its proposals have been submitted for debate by the States must be inimical to good governance and must undermine the proper expectation that a committee's proposals are 'owned' by the members of that committee. There is much evidence to suggest that committees are more effective when they are at least broadly united in their policy objectives.
- 3.5.6 Therefore, even if policy development is not to be delegated to a government distinct from parliament and bound by collective responsibility, steps should still be taken to strengthen the ownership of policy by committees.

3.6 Scrutiny and Oversight

- 3.6.1 Many parliamentary democracies allocate responsibility for scrutiny to committees with a membership entirely independent of the executive or government. In Guernsey, where parliamentary and governing functions are not distinct, it cannot be assumed that a model of standing committees with fixed membership will necessarily best serve the purposes of scrutiny in the local context.
- 3.6.2 In 2012, the Policy Council commissioned Ms Belinda Crowe to undertake a review of the States' scrutiny function. Her conclusion was that *"[t]he barriers to effective scrutiny in Guernsey go wider than the functions and operation of the scrutiny committees themselves...[t]he problems are endemic and require systemic change..."*.
- 3.6.3 Much of the evidence presented to the Committee in the course of its review was consistent with Ms Crowe's conclusion of two years ago. There is

considerable enthusiasm to ensure that scrutiny of the policies, finances and legislation of States' departments and committees is made as robust, transparent and credible as possible. However, there are considerable doubts about the ability of the current structure of scrutiny to support this effectively.

- 3.6.4 The resources and profile of scrutiny could certainly be improved. Moreover, the arrangements for scrutiny could be made more flexible in order to make the best use of the political and staff resources available, to respond dynamically to events as they emerge and to facilitate more external challenge, i.e. challenge from people in Guernsey outside of the States.

3.7 Conclusion – Case for Reform

- 3.7.1 Based on the many submissions it has received and its own observations, the Committee found that overall the present structure cannot consistently provide for effective leadership, sound co-ordination of policies and resources and proportionate checks and balances; nor is it sufficiently flexible to adapt if and when circumstances change.
- 3.7.2 With the benefit of hindsight these weaknesses are perhaps not surprising since almost all of the arrangements for leadership, co-ordination and scrutiny which the States established 11 or 12 years ago – and which remain in place today – were not favoured by eight of the ten political members of the Joint Committees which, like the present Committee, spent more than 18 months thoroughly reviewing the structure of the States.

4

REFORM OPTIONS – THE BINARY CHOICE

4.1 Improved Committee System or Ministerial System

- 4.1.1 In the opinion of the Committee there are two ways to address the inherent weaknesses in the present arrangements: either the committee system can be substantially improved or a ministerial system can be introduced.
- 4.1.2 The Committee strongly advises against a hybrid – i.e. where an attempt is made to mix and match immutable features of a ministerial system with those of a committee system – because all of the evidence reviewed suggests that any such fudge is likely significantly to undermine the prospects for effective and competent leadership, accountability and co-ordination of policy and resources.
- 4.1.3 Indeed, it is felt that some of the weaknesses in the present structure identified in *Section 3* have their origin in the apparent attempt to create a hybrid or compromise solution between a ministerial system and a committee system.
- 4.1.4 The Committee has now effectively reached a crossroads and cannot take its work any further without obtaining the direction of the States.
- 4.1.5 Therefore, through this first report, the Committee wishes to encourage the States to make a very clear determination about whether in future the Island should be governed by a committee system or a ministerial system. All other details about the organisation of States' affairs should flow logically and consistently from that initial and fundamental decision. Anything else is likely to produce an outcome which is unclear and incoherent.
- 4.1.6 In this report, and in order to allow the States to make an informed and objective decision about whether in future the Island should be governed by a committee system or a ministerial system, the Committee sets out alternative routes: *Section 5* of the report sets out how the States might be organised should they favour a ministerial system and *Section 6* sets out what in the

opinion of the Committee is the most coherent and effective way of organising the States should they favour a committee system.

- 4.1.7 The Island and the States are familiar with a committee system and, therefore, it has been possible to set out in some detail how an improved committee system would operate in practice. In contrast, the Island and the States are unfamiliar with a ministerial system and, therefore, the Committee presents a more general description of how a ministerial system would operate in practice, concentrating in the main on the areas where it would differ most from a committee system.
- 4.1.8 Whichever reform option is approved by the States in July, the Committee will need to give further consideration to various secondary issues regarding the future organisation of States' affairs before submitting at least one further report to the States. This first report sets out some of those secondary issues so that the Committee's initial thoughts can be tested through debate publicly and in the States.
- 4.1.9 The Committee understands well that Guernsey is unique politically and culturally. While it has been able to draw on the experiences of other jurisdictions, the Committee does not favour simply trying to import what may be perceived to work well elsewhere. No administrative structure can be designed in the abstract. What is being proposed is appropriate for Guernsey.
- 4.1.10 All organisational structures are imperfect: in no way does the Committee seek to suggest otherwise about the reforms it describes in the following sections. Structural reform in itself is no panacea. Organisations are made up of people: their culture, conduct and personal relationships are hugely important in determining the effectiveness of any organisation. Governing effectively requires a combination of people with the right skills operating in a structure which allows them to make the most of those skills. However, without restructuring and organising their affairs more coherently, the conditions will not exist for States' Members and officers to administer the Island as competently and as effectively as possible, which ultimately must be the aim of the exercise.
- 4.1.11 Throughout its review the Committee has recognised that the sole purpose of the States' structure must be to serve the people of Guernsey, both now and in the future. That is the overriding objective of the proposals that follow.

4.1.12 A ministerial system represents more radical change than an improved committee system and is therefore presented first.

5

OPTION FOR REFORM – MINISTERIAL SYSTEM

5.1 Introduction

- 5.1.1 One way of attempting to address the weaknesses identified in *Section 3* would be for the Island to depart from its traditional political system, decouple parliamentary and governing functions and adopt a ministerial system of government. This section explains the possibilities considered by the Committee for reform consistent with a ministerial system of government.
- 5.1.2 The public would still elect people’s deputies to the States of Deliberation. However, once elected, there would need to be a division in the members of the States between those with executive responsibility (e.g. ministers) and those without. Collectively ministers would form an identifiable executive distinct from, although accountable to, the States of Deliberation as the parliamentary assembly. Ministers would determine and execute policy made within a legislative and budgetary framework set by the States of Deliberation.
- 5.1.3 The Committee has examined the case for a ministerial system of government for four reasons: first, it has been the subject of much debate in the Island since the start of the last review of the structure of the States in the 1990s; second, variations on the theme of ministerial government either have evolved or appear to be evolving in the other Crown Dependencies; third, a minority of submissions made to the Committee were positive about at least some features of ministerial government, claiming that it could provide for clear roles and responsibilities, decisive leadership, increased accountability, quicker decisions and improved co-ordination; and fourth, a ministerial system would comply in a purer form with the principle of separating powers between the three branches of government: legislature, executive and judiciary.

5.1.4 This section is set out as follows:

- 5.2 considers a key distinctive feature of a ministerial system – policy determination;
- 5.3 to 5.5 explore potential advantages of a ministerial system;
- 5.6 considers the role and functions of the States of Deliberation in a ministerial system;
- 5.7 deals with options for a minority or majority executive;
- 5.8 and 5.9 consider the Council of Ministers and the position of Junior Minister;
- 5.10 explores the number of States' Members;
- 5.11 considers the importance of the absence of political parties;
- 5.12 deals with the practicality of a ministerial system in the Guernsey context;
- 5.13 explores experiences in other jurisdictions; and
- 5.14 offers the Committee's conclusion.

5.2 Policy Determination

5.2.1 In order to create a ministerial or executive system of government, the power to develop and determine policy would be ceded to a Chief Minister or a Council of Ministers or similar office(s) or body(ies), i.e. to an identifiable executive. This would represent a fundamental departure from the Island's distinctive political system where the power to develop and determine policy is currently vested in the parliamentary assembly, the States of Deliberation.

5.2.2 In a ministerial system of government, the States of Deliberation would become a more conventional parliament and would no longer be the Island's exclusive governing body.

5.3 Leadership

- 5.3.1 In view of the current system for electing People's Deputies in Guernsey, the Committee's opinion is that the States' first task after a General Election in a ministerial system would be to provide for the formation of an executive by electing from among their number a Chief Minister as the Island's political leader.
- 5.3.2 Thereafter the most conventional approach would be for the Chief Minister to appoint a number of other States' Members to form a Council of Ministers. While the election of a Chief Minister would be a matter for the States of Deliberation, the appointment and dismissal of other ministers would be a matter for the Chief Minister and not the States. The Chief Minister would determine the allocation of ministries and the scope of ministers' portfolios (or mandates). Such a process places a significant burden of responsibility on one individual – the Chief Minister.
- 5.3.3 An alternative approach suggested to the Committee would be for the States to retain the power to approve or reject *en bloc* the Chief Minister's ministerial nominations. This may be perceived as less radical and more democratic, but the Committee fears that it might compromise the Chief Minister's scope for political leadership, which is essential to the ministerial system. It is important to recognise the role which patronage plays in ministerial systems in parliamentary democracies elsewhere: the power of the political leader to appoint and dismiss ministers is the glue which holds governments together.
- 5.3.4 Some submissions made to the Committee suggested that what they regarded as a deficit of leadership in the present arrangements could be resolved only with the appointment of a single, identifiable political leader with unambiguous authority who could speak for the Island externally as well as directing the States' domestic policy agenda in conjunction with the ministers whom he or she had selected.

5.4 Co-ordination

- 5.4.1 The co-ordination of policy is a key task of any government. Since at present the functions of government are retained by the States of Deliberation, it is they who are ultimately responsible for policy co-ordination, although for the past several decades there have been influential committees of the States with a responsibility to advise the States on how the activities of the various spheres

of administration might best be co-ordinated. At present that task falls to the Policy Council.

- 5.4.2 In some submissions made to the Committee the Policy Council's lack of authority over other committees was held responsible for perceptions of weakness in policy co-ordination. It was suggested to the Committee that a co-ordinating committee, howsoever constructed, would always be impeded while each committee of the States is independently responsible to the States.
- 5.4.3 In a ministerial system, the States would no longer have the opportunity to arbitrate between departments' competing policy and resource proposals, other than when arising in the course of legislative or budgetary measures submitted for States' approval. The primary task of determining policy and resource proposals would be ceded to the Chief Minister and the Council of Ministers.
- 5.4.4 Although the Council of Ministers would in effect be a co-ordinating committee, it would have the power to require ministers – and by extension their departments – to pursue or not to pursue particular policies or activities. This it would do through application of the principles of collective ministerial responsibility.
- 5.4.5 Collective responsibility is enforced by the power of the political leader – a Prime Minister, Chief Minister or similar – to dismiss ministers who find themselves unable publicly to support the policies or activities of the executive. Policy conflicts between ministers and departments are therefore resolved in private – in theory at least – and ministers who wish to remain in the executive are bound to a common agenda. The risk of ministers openly opposing each other publicly is thus greatly reduced, which according to some submissions made to the Committee would strengthen the reputation of the States.
- 5.4.6 A notable practical effect of collective responsibility is that in the States ministers would be required to vote in favour of policies agreed by the Council of Ministers and in public would be required to support such policies irrespective of their own personal and political opinions. Ministers would lose the right publicly to vote and speak according to their own political judgement and conscience. They would be required always to preserve the unity of the executive. It is, however, common elsewhere for collective responsibility to be suspended and for ministers to be allowed a free vote on moral or ethical matters.

5.4.7 Some submissions made to the Committee advocated collective responsibility, although there was much misunderstanding about how collective responsibility would be imposed and what would be its effects. Some submissions ended up mentioning “*a form of collective responsibility*”, but the Committee is certain that collective responsibility in an effective system of ministerial government in Guernsey must either apply or not apply – it cannot be employed on a casual basis or without an obvious sanction.

5.5 Accountability

5.5.1 In a democracy power must be subject to meaningful checks and balances. In the Island’s present political system checks and balances are provided in several ways, for example: a committee’s range of powers are limited by their mandate or terms of reference determined by the States; members of committees are independent and not bound by collective responsibility; committees’ major policy proposals are laid before the 47 independent members of the States for their approval or otherwise; and some of those members form the three committees of scrutiny which review the policies, expenditure and legislation of other committees.

5.5.2 In a ministerial system all but the last of these checks and balances would disappear once the functions of government – and in particular the power of policy determination – had been ceded by the parliament to a distinct executive led by a Chief Minister. Some submissions received by the Committee advocated that their place could be taken by more effective checks and balances on the basis that the creation of a strong, authoritative executive would spur the creation of robust and dynamic scrutiny of that executive.

5.5.3 In a ministerial system, many States’ Members – perhaps the majority - would have no executive role. One of their key tasks would be to scrutinise and hold to account those members who would be in the executive. Some submissions made to the Committee advocated that lines of accountability would be clearer in a ministerial system. Certainly every member would have no doubt whether he or she was part of the executive or part of the rest of the assembly scrutinising the executive.

5.5.4 The Council of Ministers would be accountable to the States of Deliberation, who could censure ministers and ultimately replace them *en bloc* in the event of a loss of confidence in their ability to govern. At an individual level, ministers

would be responsible first not to the States but to the Chief Minister, whose confidence they would need to retain in order to remain in office.

5.5.5 In a ministerial system the concentration of executive authority must be balanced by effective parliamentary scrutiny which is independent of the executive. Therefore those members of the States who would not be part of the executive would form several committees of scrutiny – perhaps one for each government department, or maybe one between two – to ensure that ministers and their departments were subject to frequent and robust challenge and audit. Doubtless a sizeable pool of officers, independent of the executive, would need to be appointed to support parliamentary and scrutiny functions.

5.6 The Functions of the States of Deliberation

5.6.1 The functions of the States of Deliberation in the Island's present political system are set out at paragraph 2.3.6. These can be compared with the following principal functions of the States of Deliberation in a ministerial system of government which might realistically be created or envisaged for Guernsey:

- To select a political leader who would appoint the executive or government;
- To debate and vote upon proposals to enact, amend or repeal legislation;
- To debate and vote upon proposals for taxation and the executive or government's budget;
- To scrutinise and hold to account the policies and administration of the executive or government.

5.6.2 The key differences, then, are that the States would no longer allocate the functions of government (other than electing a Chief Minister) and would no longer undertake any functions of government, such as policy determination. The States would thus become a more conventional legislature.

5.6.3 As such, executive decisions would be taken almost exclusively by Ministers. Those decisions would of course be susceptible to review by the courts on grounds, for example, of administrative unreasonableness or incompatibility with human rights obligations. The risks of that judicial review would thus be associated with decisions of Ministers rather than those of the States of

Deliberation, which might be considered advantageous in terms of the standing of the States as a parliamentary assembly responsible primarily for making legislative decisions.

5.6.4 The demands on the Presiding Officer could change considerably. The role could become politicised as the parliament sought to assert its distinctive role in holding the executive to account. It may no longer be appropriate for the Bailiff to preside over the States and a 'speaker' might need to be elected or appointed.

5.7 Minority or Majority Executive

5.7.1 A ministerial system of government could operate with a minority or a majority executive – in other words, with an executive comprising either a minority or a majority of the total number of members of the States.

5.7.2 In most parliamentary democracies the executive is a minority of the total number of members of parliament, although the strength of political parties often results in dominant executives, especially in jurisdictions with first-past-the-post electoral systems.

5.7.3 It can reasonably be assumed that in a jurisdiction without political parties the collective strength of ministers would be in direct proportion to their voting power in parliament.

5.7.4 A minority executive, which was advocated by almost all submissions which proposed ministerial government, would provide for the States of Deliberation to exercise a greater check on the authority of ministers, but would be less stable than a majority executive because of the consistent uncertainty about whether ministers would be able to secure parliamentary support for their legislative and budgetary proposals.

5.7.5 A majority executive would have no such uncertainty: it would have sufficient voting strength in parliament to pass its legislative and budgetary proposals even if every member of the States outside the executive voted against them. The parliament would, therefore, be very weak in relation to the executive and there would inevitably be grave doubts about its capacity to provide the necessary checks and balances over ministers; accountability could be, and would almost certainly be perceived to be, very frail indeed. Nevertheless, a majority executive appears to the Committee to be the only realistic way of replicating the solidarity and strength provided by parliamentary majorities

which in turn enable the executive to govern effectively and decisively in jurisdictions with political parties.

- 5.7.6 There is no ready answer to the potential instability of a minority executive, save to make it less of a minority, but that only risks inserting the weaknesses of scrutiny and democratic legitimacy associated with a majority executive.
- 5.7.7 The Committee is of the view that the dominance of a majority executive could be balanced by the establishment of a second legislative chamber or upper house. The role of the second chamber would be to review and revise legislation passed by the lower house. However, a second chamber could significantly slow or disrupt the passage of the ministers' agenda and thereby undermine one of the key perceived advantages of a ministerial system, quicker decision-making.
- 5.7.8 A few submissions made to the Committee included enthusiastic references to a second chamber. It was suggested that a second chamber could be elected by the States and include some States' Members and some members independent of the States. Any second chamber elected by universal suffrage could place in doubt the pre-eminence of the States of Deliberation.
- 5.7.9 The second chamber would need to be of sufficient number robustly to challenge legislation approved by the States of Deliberation, but not so large as to become unwieldy and an inefficient drain on resources. By way of comparison, the Isle of Man has a Legislative Council (often described as the upper chamber of Tynwald) of 11 members.

5.8 Membership of the Council of Ministers

- 5.8.1 In *Section 3* the Committee set out the view of many respondents that beyond a certain size committees become ineffective. Although collective responsibility would help bind ministers, a Council of Ministers beyond a certain size might find it difficult to provide convincing leadership, cohesion and co-ordination in decision-making.
- 5.8.2 As responsibility for departments would be divided among the Council of Ministers, there would be a persuasive reason for keeping the number of departments to a minimum in order to keep the Council of Ministers to a reasonable size.

5.8.3 However, as the burden of departmental responsibilities would fall on individual ministers alone, there would be a counter-argument against departmental rationalisation in order to avoid ministers' responsibilities becoming unmanageable.

5.8.4 In this respect, the Council of Ministers might suffer from the same inflexibility as the Policy Council: the number of departments would be tied to the size of the council and *vice versa*.

5.9 Junior Ministers

5.9.1 Although no longer beholden to a committee, ministers would still require support in the execution of their departmental responsibilities. It would be sensible for each minister to have the right to appoint a deputy or junior minister – the latter title is preferred for now because of the potential conflict between the title *deputy* minister and people's *deputy*.

5.9.2 Junior ministers would not sit on the Council of Ministers if that body were not to grow in size beyond what would be manageable, but they would form part of the executive.

5.9.3 Some submissions made to the Committee which favoured ministerial government suggested that junior ministers might be required to support only those proposals being pursued by their own minister, but in the opinion of the Committee such an arrangement would greatly blur the crucial distinction between the executive and the parliament and, in addition, a minister obliged publicly to support another minister's policy with which privately he or she disagreed could quickly be undermined if their junior minister were to speak in opposition to the policy.

5.9.4 Therefore, in a ministerial system, the Committee can see no option but for junior ministers to be bound by collective responsibility in the same way as ministers.

5.9.5 In view of the increased responsibilities that would fall to fewer elected members, it might be that more authority would have to be devolved to non-governmental bodies, non-elected appointees and the civil service. It is clear from submissions made to the Committee that some people would regard that as a positive delegation of operational matters and that others would perceive it as narrowing democracy by constraining the influence of elected members.

5.10 Number of States' Members

5.10.1 The total number of States' Members would need to be determined by adding the number considered necessary to govern the Island to the number in non-ministerial roles required to populate independent parliamentary and scrutiny committees.

5.10.2 In the minority executive model, in which the number of members outside the executive must be greater – and perhaps quite substantially greater – than the number of ministers and junior ministers, it is unlikely that the total number of States' Members could be reduced from 47. A smaller States would be easier to achieve in a majority executive model, although any reduction in the size of the States of Deliberation may be offset by the probable need for a second chamber.

5.11 The Absence of Political Parties

5.11.1 Many submissions made to the Committee suggested that a ministerial system of government went hand-in-hand with political parties but was anathema in a jurisdiction, such as Guernsey, with no political parties.

5.11.2 This was explained well in one written submission made to the Committee, in which it was stated:

“Increasing the concentration of political power, by whatever means, tends to lead to greater efficiencies but it obviously also has its dangers. The main safeguard in a democracy is ensuring genuine accountability to the electorate.

“Political parties allow the concentration of power in the form of a cabinet to be balanced by accountability. The parties issue manifestos and the majority party can [form] a cabinet to fulfil its manifesto promises. The party manifesto is thus a direct link between the electorate and the executive. Should the electorate decide at the following election that the majority party has ignored its manifesto, or finds another party's manifesto more attractive, the ruling party can be dismissed.

“In Guernsey...any cabinet elected by the assembly [or appointed by a chief minister] would simply be a miniature version of the States – that is a coalition of individuals, but with even less accountability to the electorate as a whole.

“Deputies only have a mandate, based on their individual manifesto, from a single electoral district. Therefore the assembly does not have any kind of mandate from the electorate to pursue a set of policies and neither would any cabinet elected by the assembly [or appointed by a chief minister].”

5.11.3 Some submissions made to the Committee suggested that in Guernsey, and as a consequence of what is described in the foregoing paragraph, a ministerial system of government would not be sufficiently democratic. At present, because legislative and governing functions are fused in the States of Deliberation, the electorate in effect elects its government as well as its legislature – whereas in a ministerial system members of the legislature would still be elected by the public but many of those members would not become members of the executive or government. In the absence of parties, there would be no direct link between the ballot box and the executive.

5.11.4 The first report of the independent panel of inquiry set up in the 1990s stated that *“[a] principal objection...to the introduction of any form of executive government [included that it]...would inevitably lead to party politics”*.⁶

5.11.5 This may have been to consider the question from the wrong end. The more important question is whether a satisfactory executive or ministerial system of government, which is properly accountable to the electorate, can be established in the absence of political parties.

5.11.6 The presence or absence of political parties is not, of course, a matter for the States and even less a matter for the Committee, albeit that a very small number of submissions made to the Committee suggested that ministerial government might usefully be introduced in the hope of provoking the formation of political parties. In the Committee’s view, political parties will develop only if that is what the people of Guernsey want and not otherwise; their formation would clearly represent a significant departure from the Island’s political heritage and culture. However, if political parties should

⁶ 2000, November: Independent Panel, *Review of the Machinery of Government in Guernsey “The Harwood Report”*

develop in time, it is likely that the balance of the arguments would shift: indeed, it is difficult to see how the committee system could survive for long in a States dominated by members representing various political parties.

5.12 The Practicality of Ministerial Government in Guernsey

- 5.12.1 Although the Committee is certain that it would be more difficult to sustain a ministerial system of government in the absence of political parties, the potential advantages of such a system, as set out in paragraphs 5.3 to 5.5, are sufficiently powerful to warrant further examination of the extent to which in practice they would likely be fulfilled in Guernsey. This is especially so since some submissions which advocated ministerial government held that political parties were not a prerequisite for such a system.
- 5.12.2 Attributing the responsibility of government to a single, identifiable political leader could realistically only strengthen political leadership in the Island, provided that he or she was leading a majority executive or something close to a majority executive.
- 5.12.3 In the present system, leadership is exercised through influence and persuasion. In a ministerial system where the executive was in a majority, leadership would be exercised through the formal authority of a Chief Minister to determine the policy agenda and speak decisively for the executive. The same may not be true for a Chief Minister in a minority executive, particularly if the size of the executive was capped at something around, say, one-third of the total membership of the States, an arrangement which was favoured by some respondents who advocated ministerial government. In such circumstances, the Chief Minister and the rest of the executive could not always be confident of securing a sufficient number of votes in the States on major legislative or budgetary proposals. A Chief Minister who could not make policy commitments because of the very real prospect of associated legislation or financing being defeated in the States may be in not such a dissimilar position to the Chief Minister or a departmental Minister in the present system.
- 5.12.4 It was suggested to the Committee that a ministerial system would inevitably be unstable because of the formal concentration of executive authority in the office of Chief Minister and a small number of Ministers. Recent history may give credence to this concern: in two of the three States' terms since the office of Chief Minister was created, the holder of the office has been replaced mid-term. Had the same circumstances applied in a ministerial system, Guernsey

would have experienced five governments in less than 10 years. In addition, the need emphatically to divide members into executive and scrutiny roles may in time encourage the latter to crystallise into something close to an organised opposition. The Island's 'consensual' political culture may change considerably, no doubt with some advantages and some disadvantages.

5.12.5 Concerns were expressed to the Committee about the calibre of leadership which would undoubtedly be required in a ministerial system. The Island is small and there are comparatively few politicians or potential politicians from whom to select an executive with authoritative decision-making powers. Equally, the quality of members assuming scrutiny roles would be critical in ensuring robust and credible challenge of the stronger, more authoritative executive. There is a widespread view that the tendency for the present system to disperse decision-making powers is healthy in a small jurisdiction.

5.12.6 Some submissions received by the Committee doubted whether collective responsibility could be made to work effectively without political parties. Candidates elected to the States as independents on their own distinctive manifestos who found themselves appointed to the executive would be free privately inside the Council of Ministers to articulate their political views and challenge the views of their ministerial colleagues but, if their views were in a minority, publicly they would need to be prepared (and indeed would be obliged) to suppress the expression of those views to protect the unity and integrity of the executive. The Committee wonders how long a Chief Minister could hold together the unity and public unanimity of a coalition of between, say, 12 and 18 independent members with very different political views. It could be argued that the Chief Minister would need to appoint broadly like-minded Ministers who could pursue a single political agenda harmoniously, but that may only ensure that the Council of Ministers would fail to represent the broad spectrum of opinion in the parliament.

5.12.7 A further consideration which the Committee wishes to emphasise concerns the way in which the role of the States of Deliberation may evolve in a ministerial system of government.

5.12.8 In the present system, the States have vested in them final authority over both legislation and policy. As a consequence, there is little need or incentive for the States to legislate, except where the ability to do things simply in exercise of the States' policy powers is clearly lacking. In contrast, a ministerial system, in which the States would have ceded their authority over policy to the executive,

may encourage the assembly to require more and more of what today is dealt with as policy to be addressed by legislative measures in order for them to assert a greater degree of control over the executive. In any event, proposals laid before the assembly would mostly be in the form of Projets and draft Ordinances rather than policy letters or States' Reports. It seems likely, therefore, that a ministerial system of government would require more legislative resources.

- 5.12.9 However, it might be that the States of Deliberation would seek to influence the executive in other ways, for example by challenging executive decisions through scrutiny reviews or continuing to debate contentious matters of policy which are expressly the responsibility of the executive (e.g. school closures, changes to healthcare provision and public transport arrangements) and expressing a majority opinion on such matters.
- 5.12.10 The executive would not be obliged to follow the majority opinion of the parliament, but it might be assumed that an executive which consistently failed to take account of parliamentary opinion would not for long retain the confidence of the parliament, upon which it would depend in order to remain in office. An assertive States of Deliberation could contribute greatly to the necessary checks and balances in a ministerial system; equally, taken too far, their exercising *de facto* influence over matters of policy would call into question the whole basis of the separation of legislative and executive powers upon which the ministerial system would be founded.
- 5.12.11 It is acknowledged that some of the issues raised in the foregoing paragraphs would apply only to the minority executive model.
- 5.12.12 There is a very real possibility that a majority executive would be effective but scarcely accountable and ultimately even undemocratic; and that a minority executive would be democratic and accountable but much less effective.

5.13 Experiences in Other Jurisdictions

5.13.1 Guernsey is unique. Any reforms must be suitable for the local context. However, the Committee would have been remiss not to have examined political systems elsewhere.

5.13.2 In 2005, Jersey abolished its traditional committee system. There is a Chief Minister and a Council of Ministers but ministers are not currently bound by collective responsibility and the Council of Ministers has no authority over

individual ministers⁷; policy formulation is the responsibility of ministers but many governing functions, including the determination of a great deal of policy, are retained by the whole States Assembly; members who are neither ministers nor assistant ministers – and such non-ministerial members are required to be in the majority in the Assembly – serve on various scrutiny committees and they remain part of ‘government’. Guernsey retained its committee system but overlaid it with several features more common to ministerial government; Jersey did the opposite. The two Islands now have hybrid systems which are perhaps less different than is often suggested.

5.13.3 A report published in 2013 by a sub-committee of the Privileges and Procedures Committee, which has been reviewing Jersey’s reforms of 2005, associated them with some positive changes, including an improved focus on strategic policy and promotion of the island’s interests externally. The report recalled how at the time of the 2005 reforms the ministerial system promised *“better decisions quicker”* – and stated that *“a narrow majority of [States’] members share the view that this promise has been delivered to some extent, if not in full”*.

5.13.4 However, it advised: *“There is a clear consensus that two issues need addressing with relative urgency: blurred lines of accountability and a prevailing silo mentality.”* It identified a further four issues with the existing structure: *“Insufficient inclusivity, insufficient use of States’ Members talents and expertise, ineffective lines of communication and a civil service that potentially wields too much power.”*

5.13.5 Although the report recommended against returning to a committee system, it also stated:

“We should place on record that several of our number remain concerned that the strengths of ministerial government or variants thereof may always be outweighed by a number of weaknesses. There is a view that ministerial

⁷ In May, 2014 the States of Jersey resolved that in their next Assembly the Council of Ministers should be bound by collective responsibility and the Chief Minister should have the power of dismissal – though not the power of appointment – over other Ministers. Collective responsibility will also apply to an Assistant Minister in relation to the Minister that he or she assists, but not in relation to the other Ministers bound by collective responsibility.

government needs political parties to function properly, but that our Island's population may simply be too small to allow for the development of stable parties. Some Members are given to wonder whether the States were too quick to discount the various refinements to the longstanding committee system that were made in its final years. We are satisfied, for now, that those calling for a return to the committee system remain in the minority. Nevertheless, should it become readily apparent within the next decade that our ministerial system is fundamentally flawed in the Jersey context and/or cannot function without the emergence of credible political parties, we consider that the States should surely give the most serious consideration to the reintroduction of a committee system of government, albeit one with further suitable refinements made to reflect the modern age."

- 5.13.6 A more distinct ministerial system developed in the Isle of Man in the mid-1980s. In 2006, *A Review of the Scope and Structure of Government in the Isle of Man*, an independent report to the Council of Ministers, was positive about some aspects of the ministerial system but stated: *"One of the most frequently voiced concerns presented...related to the silo mentality that allegedly exists within government...each government body (and, sometimes, each division of each body) tends to exist in isolation from the rest of government, communicating with the rest of government with insufficient frequency and inadequately. This problem was sometimes...addressed as a lack of joined-up government."*
- 5.13.7 In the UK, there has been much debate at local government level about the comparable merits of the committee system and the ministerial or cabinet system.
- 5.13.8 In 1990, a report written by the Audit Commission criticised the committee system for being *"un-strategic, complicated and slow"*. In 2000, legislation was approved which resulted in most councils adopting a cabinet system or something similar. The present coalition government has given councils more freedom to determine their own structural arrangements and some, though

only a small minority overall, have abolished their short-lived cabinet systems and returned to committee systems.⁸

5.13.9 In 2012, Dr. Coulson of the Institute for Local Government Studies at the University of Birmingham wrote:

“...as they [some councils] see it, committees are much more inclusive than any other form of governance. They give a voice to all elected councillors and potentially bring to the table all their talents. They make it harder to take decisions in secret. They give councillors a means of putting into effect the commitments they make when they stand for election...[t]hey develop leadership – many strong leaders emerged over the years from the committee system.

“This is not to say that committees were perfect or are inevitably the best solution. They can [be], and often were, criticised – for being slow to make decisions, leaving it unclear who was responsible for decisions, and for sustaining silos...which at times seemed to have little involvement with other parts of the council. The criticisms can be answered. The committee system can be fast, and keep confidences, when it matters. With a cabinet, or indeed an elected mayor, leadership is still distributed – with chief executives or chief officers often the real leaders. Silos can be broken down if there is the political will to do so. But none of this is easy, and there were plenty of disillusioned and frustrated councillors and officers in the past. All we can say with confidence is that no system is perfect and that each council needs to work out what is best for its own purposes.

“There have to be means of dealing with cross-cutting issues, urgent business between meetings, the size of committees and sub-committees, how often they meet, systems of councillors’ allowances, and policy review, to take but some of the issues of detail that must be addressed. Scrutiny will for most councils

⁸ Centre for Public Scrutiny: *Musical Chairs – Practical issues for local authorities in moving to a committee system*; April, 2012.

remain a function that needs to be done, and there are different ways of integrating it into a committee system.”⁹

5.13.10 However, the Centre for Public Scrutiny has dismissed claims that the committee system is inherently more democratic and has suggested that notions of leadership, accountability, scrutiny, democracy and co-ordination in government have more to do with behaviour and culture than with structure.

5.13.11 At the level of national government, there are few democratic jurisdictions where the executive – and the Prime Minister in particular – is more dominant than in the United Kingdom. However, problems of co-ordination remain. The Institute for Government has observed:

“Whitehall is not a unitary entity but a federation of departments: it is designed predominantly along departmental lines for the purposes of budget allocation, accountability and career development...[t]his means that vital, cross-cutting issues...can fall through the gaps. The resulting duplication of efforts can waste resources, and citizens can suffer from fragmented public services...[t]he civil servants we interviewed told us that while government is getting better at joining up, there remains a long way to go.”¹⁰

5.14 Conclusion – Ministerial Option

5.14.1 The Committee does not lightly dismiss the potential advantages of a ministerial system of government outlined in paragraphs 5.3 to 5.5. Indeed, in principle, the majority of the members of the Committee were initially inclined towards a ministerial system and all members of the Committee appreciate that there is a body of opinion inside and outside the States which remains supportive of such a system. Should the States resolve to adopt a ministerial system, the Committee will work diligently to return to the States as expeditiously as possible with the detailed recommendations necessary to establish such a system.

⁹ <http://inlogov.wordpress.com/2012/05/02/committees-talent-councillors/>

¹⁰ Institute for Government *Shaping Up: A Whitehall for the future*, January, 2010.

5.14.2 However, following more than 18 months of investigation, the Committee has reached the following conclusions about ministerial government:

- Political parties are likely to be required in order to make a ministerial system effective and accountable and provide for democratic legitimacy;
- It is unlikely that the potential advantages of a ministerial system would be realised in Guernsey;
- While the committee system has disadvantages and faces challenges, a ministerial system would create new disadvantages and challenges which may well be no less significant.

5.14.3 It should be noted, too, that adopting a ministerial system would require a significant and potentially not inexpensive departure from the Island's traditional political system. The Committee believes the States should set off on such a journey only if the benefits are demonstrably apparent, which, in the opinion of the Committee, they are not.

5.14.4 The Committee is, therefore, unanimous in being unable to recommend the adoption of a ministerial system of government in Guernsey.

6

RECOMMENDED OPTION FOR REFORM – IMPROVED COMMITTEE SYSTEM

6.1 Introduction

6.1.1 In the past, committees established to undertake reviews of the structure of the States have generally been unable to reach consensus.

6.1.2 **Significantly, the members of the States’ Review Committee are unanimous in recommending to the States the adoption of the improved committee system set out in this section of the report.**

6.1.3 The reforms proposed are pragmatic, proportionate and achievable. They seek to build on existing strengths while addressing the most serious shortcomings identified in the present structure and operation of the States.

6.1.4 The Committee is confident that the reorganisation it is proposing can be implemented efficiently and in good time to coincide with the 2016 General Election.

6.1.5 In these proposals, parliamentary and governing functions would be retained by the States of Deliberation with most day-to-day functions being delegated to committees, as at present; but the committee system would be reformed substantially in order to provide conditions more conducive to effective leadership, sound co-ordination of policies and resources and proportionate checks and balances and to ensure that the structure is sufficiently flexible to adapt if and when circumstances change. Therefore, if adopted, these reforms would better support the States in their most important objective: to serve the people of Guernsey now and in the future.

6.1.6 At present the States act through various departments, councils and committees. Despite the variety of appellations, legally they are all *committees of the States*. As will by now be clear, the proposed improved system is emphatically a committee system of administration – it is based upon the Island being governed by the States through their committees. Hence reference

in the reforms proposed in this section, wherever the context so permits, to the generic term *committee* rather than any of the potential alternatives.

6.1.7 The Committee makes ten *Key Proposals*, each of which is set out separately but which together are a package of reforms forming the basis of the improved committee system. If the States feel able to support the ten *Key Proposals* the Committee will then be able to draw up recommendations for the detailed amendments to legislation, rules etc. which will be necessary in order to give effect to the reorganisation of the committee system.

6.1.8 The proposals in this section are set out as follows:

- 6.2 and 6.3 deal with leadership and the planning and co-ordination of policy and resources through the creation of a Policy & Resources Committee;
- 6.4 sets out the membership of the Policy & Resources Committee;
- 6.5 sets out the role of the Island's senior political office – President of the Policy & Resources Committee;
- 6.6 addresses responsibility for external relations;
- 6.7 and 6.8 deal with the States' policymaking, regulatory and public service functions through the creation of Principal Committees;
- 6.9 to 6.17 consider scrutiny in the States' through the creation of a Scrutiny Management Committee and associated scrutiny panels;
- 6.18 considers the issue of the number of States' Members within the proposed restructuring;
- 6.19 offers the Committee's conclusion.

6.2 Leadership through the Planning and Co-ordination of Policy and Resources

6.2.1 An essential feature of leadership, especially in a committee system, is the effective planning and co-ordination of policy and resources across the States.

6.2.2 An important observation heard by the Committee in the course of its review was that the planning and co-ordination of policy and resources across the

States are in need of considerable improvement. This is consistent with what has been identified in previous internal and external reviews of the States undertaken in recent years.

6.2.3 The Committee encountered much criticism of the States' repeated attempts to establish a credible States-wide process for planning and co-ordinating policy and resources. Since the structural changes of 2004 there have been at least four attempts.

6.2.4 In addition, while respondents were generally positive about policy development where only one committee is involved, there was little confidence about the prospects for success in policy development where co-ordination between various committees is required.

6.3 Combining Responsibility for Policy and Resources

6.3.1 Policy and resources have an inextricable relationship: each is wholly dependent on the other. However, the present States' structure militates against effective and co-ordinated policy and resource planning.

6.3.2 In a committee system of administration, in which ultimately each committee is independently responsible to the States, the complex task of planning and co-ordinating policy and resources across the States is likely to remain especially formidable while responsibility for policy co-ordination rests with one committee (Policy Council) and responsibility for resources, including finance, rests with another committee (Treasury & Resources).

6.3.3 The Policy Council is clearly meant to be the senior committee. However, separating responsibility for resources and policy has in effect created two centres of leadership and co-ordination, which cannot possibly be conducive to the effective administration of the Island.

6.3.4 One example of this which arose during the course of the Committee's review concerned the proposal for a Government Service Plan, the objective of which was to link policy planning and resources. However, political responsibility for the leadership of the Plan was inevitably divided and confused, falling between the Policy Council and the Treasury & Resources Department. Indeed, the Committee learned that the Policy Council's contribution to the development of the Plan was extremely limited, despite the Policy Council being expressly responsible for co-ordinating the activities of the States.

- 6.3.5 A further example which arose during the course of the Committee's review concerned proposals to reorganise the management of States' property. These proposals were driven by the Policy Council and were seen by members of the Treasury & Resources Department shortly before going to print, despite that Department being responsible for States' resources, including explicitly States-wide property services.
- 6.3.6 The evolution of fiscal policy provides another example: in the previous States' term a review of company taxation was undertaken by the Policy Council and scarcely engaged the members of the Treasury & Resources Department, whereas in the present States' term a review of personal taxation (and benefits) is being undertaken by the Treasury & Resources Department (in conjunction with the Social Security Department) and has involved the Policy Council hardly at all.
- 6.3.7 The inevitable problems arising from a separation of policy and resources were recognised by the States' Joint Committees in 2002 when during the last review, as referred to in *Section 2*, they proposed a single senior committee to "*provide clear and co-ordinated leadership*" – specifically by giving it responsibility for the States-wide planning and co-ordination of policy and resources, including finance.
- 6.3.8 The Committee reaches the same conclusion today: there is need for a single committee with responsibility for the combined functions of policy co-ordination and the allocation and management of resources, including finance and human resources.
- 6.3.9 The Island's political system requires the States of Deliberation when allocating resources to compare and judge competing policies and priorities proposed by their various committees. The committees report and are directly accountable to the States: a difference of opinion on a substantial matter of policy ultimately falls to be resolved by the States. The Committee proposes no change in that regard. Nonetheless the Committee believes it is essential that the States should be advised and supported in that task by a single senior committee established expressly for that purpose.
- 6.3.10 Denying the senior committee responsibility for the States' budgetary matters, as is the case today, greatly reduces the likelihood of it fulfilling the important role of leadership through co-ordination.

6.3.11 Of course the committee would need to develop its political standing and earn the respect of the States, but it would start with several advantages: it would have responsibility for both component parts of the planning and co-ordination process – policy and resources; its mandate would be more tightly focused on those primary functions; and, as explored later in this section, its members need not be diverted by other major committee responsibilities and there is the potential for it to have to co-ordinate the work of fewer other major committees.

6.3.12 This committee would embrace and develop the main responsibilities for policy co-ordination and resource allocation which are currently divided between two committees (Policy Council and Treasury & Resources), including, for reasons set out later in the report, external relations and constitutional affairs. Essentially the committee would have the same role and functions which were envisaged for the (albeit somewhat mistitled) *Chief Minister's Department* in the Joint Committees' proposals of 2002.

KEY PROPOSAL 1

In order to provide clear leadership through the co-ordination of policy and resources, there shall be a single senior committee – designated the Policy & Resources Committee – with the following main functions:

- Policy co-ordination, including leading the policy planning process;
- Allocation and management of resources, including the States' budget;
- Facilitating cross-committee policy development.

6.4 Membership of the Policy & Resources Committee

6.4.1 Many submissions received drew the Committee's attention to the size of the Policy Council. At 11 members it is the largest States' committee and has more than twice as many members as most States' committees. The Policy Council has more members than any major committee in the 200-year history of Guernsey's committee system.

- 6.4.2 It was suggested to the Committee – and the Committee agrees – that a committee of 11 members is likely to function less effectively than a committee of, say, five members. Indeed, of respondents who expressed an opinion about the size of committees, all except one or two held the view that committees tended to cease functioning effectively once the number of members exceeded five or, at the absolute maximum, seven. It is evident that under the present States’ structure the senior committee has too many members to function effectively as a close, coherent body.
- 6.4.3 Based on the preponderance of submissions it has received and what is known generally about the functioning of committees, the Committee recommends that the Policy & Resources Committee should comprise five members led by the holder of the Island’s senior political office.
- 6.4.4 In respect of the members of the Policy & Resources Committee, the Committee does not recommend reserving seats *ex officio* for the heads of other committees.
- 6.4.5 The Committee puts forward six arguments against the present *ex officio* constitution of today’s senior committee, the Policy Council.
- 6.4.6 First, in order for the political heads of all Principal Committees¹¹ also to be members of a Policy & Resources Committee of five members it would be necessary to reduce the number of Principal Committees from ten today (i.e. the ten departments) to just four, which in the opinion of the Committee is simply not workable.
- 6.4.7 Second, at present the *ex officio* membership of the Policy Council is inherently inflexible: the number or range of functions of departments cannot be adjusted without also changing the size of the membership of the senior committee.
- 6.4.8 The central concept underpinning the Policy Council is that each department’s minister is a member. Therefore, either the number of departments is set according to what is considered to be the ideal number of members of the Policy Council, which is far from the most rational way of determining the

¹¹ The proposals for Principal Committees are at paragraphs 6.7 and 6.8.

appropriate number of departments, or else the number of members of the Policy Council arises, almost by accident, out of the number of departments. In the opinion of the Committee this rigid arrangement is an inherent weakness of the present States' structure. As circumstances and challenges in the Island change it may well be necessary on occasion for the States to adjust their list of departments or committees and in the opinion of the Committee that task should be undertaken entirely on its own merits and not be influenced by the effect it would have on the size or profile of the membership of the Policy & Resources Committee.

6.4.9 Third, the Committee received many submissions pointing to the lack of clarity in the role of a Policy Council member today. The constitution and mandate of the Policy Council could be interpreted as implying that the role of the minister when sitting as a member of the Policy Council is not to represent his or her department, but the very opposite: to contribute to the development of a States-wide approach and then attempt to ensure that it is promulgated at the level of his or her department. However, there are other factors which conflict with that interpretation: first, the internal election process requires the States to elect ministers to each department in turn and those so elected sit on the Policy Council *ex officio*; second, the Policy Council collectively has no authority over any minister; and third, when a minister is absent from a meeting of the Policy Council the relevant department must be represented at the Policy Council by another of its members, which member, in the absence of collective responsibility, may have a totally different political outlook to the minister. Unsurprisingly, some present and former members of the Policy Council advised that this conflict in the role of member of the Policy Council was problematic and required the Committee's attention.

6.4.10 Fourth, for the last of the reasons described above, attendance at meetings of the Policy Council is constantly changing. In the six months ending the 31st of October, 2013 the Policy Council met on 16 occasions. Five of the 11 ministers were absent from at least 25% of all meetings. On average, at every meeting there were 2.6 ministers absent. Meetings were attended by 12 alternate members; in total, 23 States' Members – half the entire Assembly – attended meetings of the Policy Council in the six-month period.

6.4.11 The Committee doubts that these are conditions conducive to developing strategic policy and leading the co-ordination of all States' activities and is aware that several present and former ministers have expressed similar concerns. *Prima facie* a solution might be to remove the provision for alternate

members to attend the Policy Council, but this would undermine the very concept of the Policy Council as a forum for all departments to be represented.

- 6.4.12 Fifth, ministers, especially those leading the larger departments, are always likely to be among the busiest members of the States. The Committee received representations questioning whether it was reasonable to expect – indeed, to require – ministers to be able to combine the role of departmental head with the role of member of the Policy Council responsible for policy co-ordination. Undoubtedly membership of the Policy & Resources Committee would require considerable commitment and, in the opinion of the Committee, such commitment cannot reasonably be expected – at least not on a consistent basis – of political heads of other major committees. On the other hand, arranging the membership of the Policy & Resources Committee in the way proposed will ensure that its members do not need to have a workload which is more onerous than that of members of the Policy Council today.
- 6.4.13 Sixth, quite apart from the burden of work and responsibility attaching to ministers' dual roles, it is clear that the two roles – department / committee head on the one hand and policy co-ordinator on the other hand – require very different skills and interests. In a small island it cannot always be assumed that there will be an unlimited pool of politicians well-equipped to serve simultaneously as head of (by Guernsey standards) a large department / committee and policy co-ordinator.
- 6.4.14 In recommending that the membership of the Policy & Resources Committee should be determined not *ex officio* but rather on its own merits, the Committee is mindful of the potential risk, not unfamiliar to the States, of the senior committee including the heads of some key committees but excluding the heads of others. Indeed, having reviewed carefully the genesis of the '2004 structure', the Committee is inclined to believe that this risk was a key reason for the States of the time resolving, very much against the advice of their own Joint Committees, to reject the proposition for a small, cohesive senior committee and instead to give some (though not all) of its proposed functions to the Policy Council, which was originally conceived as an occasional forum for ministers.
- 6.4.15 The conclusion which the Committee draws from the evidence it has gathered and set out in the foregoing paragraphs is that the five members of the Policy & Resources Committee, the creation of which it recommends in *Key Proposal 1*,

should, once elected by the States, not sit on other Principal States' Committees.

- 6.4.16 The Committee agrees that a senior committee with responsibility for resources (including the States' budget) and policy co-ordination across the States could quickly lose the confidence of other committees if there was a perception that it was overly influenced by particular sectoral interests by including among its membership the political heads of some of the committees and not others. The Committee strongly advises against such an outcome.
- 6.4.17 The Committee believes that the efforts of the Policy & Resources Committee to manage States' finances and other resources, co-ordinate policy across the States and take responsibility for external relations would be aided greatly by its members being independent of the Principal (spending) Committees and therefore able genuinely to stand above sectoral interests and take, and be seen to be taking, a States-wide view.
- 6.4.18 This approach would also allow the members of the Policy & Resources Committee to focus fully on the particular responsibilities of that committee rather than perpetuating the unclear dual function which members of the Policy Council are required to fulfil today.
- 6.4.19 Some of the submissions made to the Committee indicated that the need to strengthen accountability was particularly strong in the case of the senior committee today (the Policy Council).
- 6.4.20 When electing ministers today the States may take into account the mandate of the Policy Council, but essentially they are electing the political heads of each department in turn. It is not surprising, therefore, to find members of the Policy Council tending to feel more accountable for the policies and services of the departments which they lead than for anything done or not done at the level of the Policy Council.
- 6.4.21 There is no way to hold the Policy Council to account separately from States' departments. For example, the States cannot remove the Policy Council without simultaneously removing every department Minister and thereby disrupting departments which may have had nothing to do with the events which provoked the removal of the Policy Council. In a committee system, this cannot be satisfactory.

6.4.22 The Committee is of the opinion that accountability in the Policy & Resources Committee – and, as importantly, its own sense of accountability to the States – would be stronger if its members were elected to be responsible for the mandate of that committee only rather than becoming members of it on an *ex officio* basis through their responsibilities heading other committees.

KEY PROPOSAL 2

The Policy & Resources Committee shall comprise five States' Members, none of whom shall be members of the Principal Committees.

6.5 The Island's Senior Political Office

6.5.1 The Committee understands well that, while governing functions remain with the States of Deliberation and the Island has no identifiable executive distinct from parliament, the holder of the office which is currently designated *Chief Minister* is a very different role to that of Prime Minister or Chief Minister at the head of a conventional cabinet government.

6.5.2 However, the Committee is not persuaded by the small number of submissions it received suggesting that the Island did not require an identifiable senior political office. Arguably there has been an identifiable and permanent senior political office in the Island for decades.

6.5.3 In Guernsey the office-holder cannot rely on the exercise of formal constitutional powers (especially the right of appointment and dismissal over other members of the government) but can still be regarded as first among equals and, if the role is reformed along the lines proposed in this report, can provide leadership, which the Committee regards as an essential component of any competent system of administration.

6.5.4 Allowing the holder of the Island's senior political office to lead a senior committee with responsibility for the planning and co-ordination of policy, the allocation of resources and external relations would enhance the capacity of the office-holder to provide leadership.

6.5.5 There is a paradox in the office of Chief Minister today: the separation of policy co-ordination and resources inhibits the capacity for the holder of that office to provide leadership other than by 'strength of personality' and yet the title

implies that the office enjoys considerable political authority. Consequently, there is a wide disconnect between what is generally expected of the Chief Minister and the actual powers of the role.

- 6.5.6 The Committee's view is that the holder of the office should have the tools necessary to undertake the role expected of him or her and a title which genuinely reflects that role. Indeed, the Committee can think of no other rational basis for designating the senior-most role in the States.
- 6.5.7 The Committee has a general and clear view regarding appellations: if the States adopt a ministerial system of government the titles *Minister* and *Chief Minister* are entirely appropriate, but if the States reject a ministerial system of government and wish to maintain a committee system the titles *Minister* and *Chief Minister* cannot be anything other than misleading and unhelpful.
- 6.5.8 Therefore, in the improved committee system which is the subject of this section of the report, the Committee proposes that the Island's senior political office should be designated *President of the Policy & Resources Committee*. Unlike *chairman* or *chair*, *president* has a very long political heritage in Guernsey and is not gender specific. *President* also accurately describes the presiding role expected of the political heads of committees.
- 6.5.9 However, it has always been accepted that what works in Guernsey may not always work for Guernsey outside of the Island. For example, the title *Chief Minister* cannot readily be translated into French and therefore is of no great use when dealing with the Island's nearest large neighbour. In another example, albeit non-political, when away from the Island Her Majesty's Procureur and Her Majesty's Comptroller sometimes use the titles *Attorney-General* and *Solicitor-General* respectively because they are more readily understood. Irrespective of whether the Island is to have a ministerial or committee system of administration, in the opinion of the Committee the States must be prepared to place sufficient trust in their office-holders, including the holder of the proposed office of *President of the Policy & Resources Committee*, to accept that they will need to adapt nomenclature and appellations if and when the circumstances of external relations business so require. The Committee wishes to return to this matter in the second stage of its review.

KEY PROPOSAL 3

President of the Policy & Resources Committee shall be the Island's senior political office.

6.6 External Relations

- 6.6.1 In the opinion of many submissions received by the Committee external relations is an area of activity which has for a number of years been discharged very competently. The Policy Council has exercised an oversight role, largely through a sub-committee, and the policy agenda has been driven by a small number of elected members supported by a small team of advisors.
- 6.6.2 The nature of Guernsey's economy and the increasing inter-dependence of the modern world mean that the need for the States to apply resources – both time and money – to the Island's relations with other jurisdictions is likely to grow rather than diminish. The vast majority of submissions to the Committee which made reference to external relations recognised that they are an essential area of States' activity if the Island's economic prosperity and self-government are to be maintained and strengthened.
- 6.6.3 The Committee sees no merit in recommending the creation of a separate States' committee for external relations. The Committee believes that external relations must sit at the heart of whatever organisational structure the States adopt.
- 6.6.4 Nor does the Committee see any merit in recommending the creation of an office, independent of other offices and committees, to which would be elected a single individual member to assume responsibility for external relations on behalf of the States. This would be contrary to the committee system which is the basis of these proposals and would leave the Island's external relations at risk in the event of the office holder being indisposed.
- 6.6.5 The Committee has concluded that the most appropriate arrangement is for responsibility for external relations to sit with the Policy & Resources Committee and for that Committee to designate its President or one of its members to be the lead member for external relations.

6.6.6 The Committee proposes that the member so designated should be able to take advantage of the sort of flexibility to adapt nomenclature and appellations which is referred to in paragraph 6.5.9.

6.6.7 The proposed arrangement has the following benefits:

- Responsibility for external relations policy, developed on behalf of the States and in accordance with States' resolutions, would sit at the centre of the proposed new structure;
- One member of the Policy & Resources Committee, though still able to contribute to all other parts of the committee's mandate, would be able at all times to afford priority to the Island's external relations;
- The Policy & Resources Committee would designate as lead member whichever of its members it considers to have the skills and interests best-suited to dealing with external relations;
- If the member with designated responsibility for political leadership of external relations was indisposed, another member of the Policy & Resources Committee would be able to deputise and, therefore, the States' capacity for external relations would be resilient;
- More recently a collegiate approach has been developed to external relations. The proposal of the Committee would allow that to be maintained should the Policy & Resources Committee determine that to be in the Island's best interests. The member with designated responsibility for external relations would be free to call upon colleagues – e.g. other members of the Policy & Resources Committee or the political heads of the Principal Committees – to take the lead or assist whenever particular circumstances required.

6.6.8 There is a close relationship between external relations and constitutional affairs. In referring to constitutional affairs, the Committee includes the Island's much-valued relations with the other Islands of the Bailiwick. There seems every likelihood that in the years ahead the importance of these relations, too, will grow rather than diminish and it is considered essential that responsibility for them should sit, as with external relations, at the heart of any new States' structure.

KEY PROPOSAL 4

The Policy & Resources Committee shall have responsibility for external relations and constitutional affairs and the Committee shall designate its President or one of its members as the States' lead member for external relations and constitutional affairs.

6.7 Principal Committees: Number and Function

- 6.7.1 For the purposes of this first report, and because what is being recommended is emphatically a committee system, it is proposed that most of the policy-making, regulatory and public service functions of the States should be delegated to *Principal Committees*.
- 6.7.2 At present most policy-making, regulatory and public service functions are delegated to ten such committees of the States: Commerce & Employment, Culture & Leisure, Education, Environment, Health & Social Services, Home, Housing, Public Services, Social Security and Treasury & Resources.
- 6.7.3 Some have a rather narrow range of functions and others have extremely wide-ranging mandates. Consequently there is considerable variance in their budgets. Three – Education, Health & Social Services and Social Security – spend between them around £400million per year while three others – Culture & Leisure, Environment and Housing – spend between them around £20million per year, albeit that in the case of the latter in particular there are periods of quite substantial capital expenditure.
- 6.7.4 Nonetheless, each one, irrespective of its range of functions or level of expenditure, is represented by one member and has one vote on the Policy Council.
- 6.7.5 The improved committee system proposed in this section of the report provides far greater flexibility in setting the number of committees simply because the matter can be determined on its own merits without having any bearing on the size of the senior committee.
- 6.7.6 The proposed system *could* function effectively whether the States now or in the future wish to retain the same number of Principal Committees, rationalise

their functions and reduce the number of Principal Committees or increase the number to provide for greater specialisation.

6.7.7 Therefore, the Committee is bound to point out that the decision about the number of Principal Committees is less critical than the fundamental question about whether in future the Island is to be governed within a ministerial system or within an improved committee system.

6.7.8 However, the number, functions and membership of committees is not unimportant and the Committee also acknowledges that there is considerable appetite to debate the matter as soon as possible and has therefore decided that attached to this first report there should be a proposition to facilitate such debate.

6.7.9 The Committee received a range of submissions regarding the overall number of Principal Committees.

6.7.10 A small number of submissions proposed increasing their number. Of the arguments put forward in support of such a suggestion, the Committee found that only one was persuasive: fewer committees reduces the number of committees on which each States' Member can sit and there must be some advantage in States' Members serving on a cross-section of committees in order to gain an understanding of the broadest possible range of States' functions. The Committee has endeavoured to take account of that argument in framing its proposed options for reform, especially in some of the arrangements suggested in *Section 7*.

6.7.11 However, many submissions which expressed an opinion on the matter favoured further rationalisation of the number of Principal Committees with a view to encouraging focus on policy-making, aiding co-ordination between committees and obtaining efficiencies in bureaucracy.

6.7.12 The Committee is well aware of the competing arguments: adding to the number of Principal Committees would be likely to inhibit the objective of better co-ordination whereas amalgamating functions and rationalising committees too far would probably create bodies with mandates too broad to manage effectively.

6.7.13 Based on the preponderance of submissions it received and its own initial consideration of the issues, the Committee – on balance – has a general presumption in favour of rationalisation, but it wishes to use the second stage

of its review to consider more fully how best to allocate at committee level the myriad functions undertaken by the States. In so doing, the consideration which the Committee wishes to place above all others is how the functions of the States can best be allocated in order to provide as efficiently as possible the services and facilities required by the people of Guernsey: what matters most is what works for the users of services and taxpayers.

6.7.14 Of course the Committee's proposal to combine responsibility for resources and policy co-ordination would automatically lead to the merger of the functions of two existing committees – Policy Council and Treasury & Resources – thus reducing the number of Principal Committees from ten to nine.

6.7.15 At this stage the Committee is proposing that there should be no more than nine Principal Committees and is seeking direction about whether – and, if so, to what extent – there is any appetite for further rationalisation beyond that.

KEY PROPOSAL 5

Most of the policy-making, regulatory and public service functions of the States shall be delegated to no more than nine Principal Committees, but when considering the precise allocation of such functions there shall be a general presumption in favour of rationalisation of committees where practicable.

6.8 Membership of Principal Committees

6.8.1 A very small number of submissions received by the Committee proposed that all Principal Committees should comprise seven States' Members.

6.8.2 A slightly larger number of submissions, though still a small minority of total submissions, proposed that some or all Principal Committees should comprise only three States' Members.

6.8.3 The preponderance of submissions, however, proposed that Principal Committees should comprise five States' Members. In many submissions it was held that three members would not provide for a sufficiently diverse range of opinion, seven members would be an unnecessary expansion and four or six members would create the possibility of tied votes.

- 6.8.4 Later in this report the Committee proposes that when determining the size of the States of Deliberation the primary consideration should be the number of members required to fulfil the States' full range of functions in a way which balances democracy and efficiency. The Committee holds a similar view in respect of the size of the membership of committees, which should be determined with reference to the committee's range of functions, the workload and the likely number of sub-committees.
- 6.8.5 There is no reason for all committees necessarily to comprise the same number of members. It could be argued that the 'equality' in the size of departments today, despite their vastly different range of functions, is another example of the rigidity and inflexibility of the present structure.
- 6.8.6 If the States are minded not to reduce the number of Principal Committees to fewer than nine, it is possible that in the second stage of its review the Committee may wish to recommend that Principal Committees with broad mandates should comprise more members than Principal Committees with narrower mandates.
- 6.8.7 However, if the Principal Committees have similarly broad mandates, the Committee believes they should each comprise five States' Members.
- 6.8.8 The Committee received hardly any representations regarding the role of non-States' Members and at this stage sees no reason to propose changing the present arrangements. For clarification, the Committee envisages no seats for non-States' Members on the Policy & Resources Committee.
- 6.8.9 As noted in paragraph 6.5.7, the Committee has a general and clear view regarding appellations: if the States adopt a ministerial system of government the titles *Minister* and *Chief Minister* are entirely appropriate, but if the States reject a ministerial system of government and wish to maintain a committee system the titles *Minister* and *Chief Minister* cannot be anything other than misleading and unhelpful. At paragraph 6.5.8 it is stated: "[u]nlike chairman or chair, president has a very long political heritage in Guernsey and is not gender specific. President also accurately describes the presiding role expected of the political heads of committees". It is therefore proposed that the political heads of Principal Committees should be titled *President*.

KEY PROPOSAL 6

Each Principal Committee shall be led by a President of the Committee and the number of other members shall be determined with reference to the range of functions, the workload and the likely number of sub-committees, but there shall be a presumption in favour of Principal Committees containing five States' Members unless there is a wide variance in the breadth of mandates among the Principal Committees.

6.9 Scrutiny Overview

6.9.1 In 2004, the States established two standing committees, Public Accounts and Scrutiny, to provide scrutiny of financial affairs and policy respectively. A third committee, Legislation Select, was reconstituted and provides scrutiny of legislation. Together they are sometimes referred to as *parliamentary committees*, but this is misleading insofar as it suggests a separation of parliamentary and governmental functions. The States of Deliberation are a parliament and therefore all of their committees are in a sense parliamentary committees.

6.9.2 Scrutiny, oversight and accountability were recurring themes in submissions made to the Committee and a wide range of views were proffered about the possibility of reform of the three committees.

6.9.3 In 2012, the Policy Council commissioned Ms Belinda Crowe, an independent consultant and a former civil servant at the UK Ministry of Justice, to undertake a review of the States' scrutiny functions. In considering the origins of the scrutiny committees, she wrote in her report:

"...the widely held view is that the three scrutiny committees were designed for a different system of government and little attention was paid to scrutiny at the time the [States'] reforms were introduced in 2004."

6.9.4 It is perhaps wise, therefore, before considering any changes which might be made to the structure and operation of the scrutiny committees, to ask: what is the nature and purpose of scrutiny in Guernsey's political system?

6.10 Scrutiny in Guernsey's Political System

6.10.1 As in all parliamentary democracies, members who wish to remain in the States submit themselves to the most direct form of scrutiny and accountability when they seek re-election before the public.

6.10.2 In addition, because Guernsey is a small community, elected representatives are generally in very close proximity to their electorate and it is quite straightforward to contact them with questions, challenge their performance or lobby them with regard to a matter coming before the States or even a committee.

6.10.3 A free media also have a role to play in scrutinising members and holding them to account. For a community of circa 63,000 coverage of politics in Guernsey is quite vibrant and frequently robust.

6.10.4 Taking into account all of these factors it is clear that the accountability of individual members of the States to their electorate is generally as strong in Guernsey as in other parliamentary democracies.

6.10.5 Of course what makes scrutiny and accountability so different in Guernsey is the overriding characteristic of the Island's political system: the fusion of parliamentary and governing functions in one body, the States of Deliberation.

6.10.6 In almost all other parliamentary democracies, following a general election, members of the parliament are divided between those who sit in the executive or government and those who do not. The government is scrutinised, challenged and held to account by those members of the parliament who are not in government. Ultimately, the parliament can defeat the government.

6.10.7 In 1946, in evidence to a Committee of the Privy Council, Sir John Leale, President of the States' Controlling Committee during the Occupation, said:

"...The governing body of the island is the States...[i]t is in that Assembly that major decisions are taken, and that policy is laid down...[t]he 'government' in this island indeed cannot be defeated, for the 'government' is the States [and they] cannot defeat [themselves]."

His description remains as valid in 2014 as it was in 1946.

6.10.8 Some submissions made to the Committee eagerly identified perceived limitations and weaknesses of the States' scrutiny functions, but this was

perhaps to consider the question from the wrong end. The strength and powers of scrutiny are likely, at least to some extent, to be a function or consequence of the strength and powers of the executive or government under scrutiny. Parliaments elsewhere have developed scrutiny functions to try to keep their governments in check, but in Guernsey there is no separate government for the parliament to keep in check.

- 6.10.9 Many policy decisions which in other jurisdictions the government would make in private are in Guernsey made in public on the floor of the Assembly (the States of Deliberation), often after considerable debate. In many submissions made to the Committee this was held to be the cornerstone of the Island's democracy.
- 6.10.10 Those governing functions which are delegated in the main fall to be carried out by committees of the States, whose powers are subject to a range of limitations, checks and balances. For example, the sphere of administration over which any committee has influence is limited by the mandate prescribed to it by States' resolution; members of committees are independent and not bound by collective responsibility; there are few restrictions on written and oral questions which may be asked of committees by other States' Members; and in most cases committees lay before the States policy proposals of even moderate significance and the States are free to approve, amend, delay or reject them.
- 6.10.11 This was articulated well in a paper penned by a former Bailiff, Sir Charles Frossard, who in 1992 wrote that the legislature in Guernsey *"...is not divided into government and opposition groups. One result is that there is no guaranteed majority for any proposal placed before the States; government is therefore conducted by consensus rather than confrontation."*
- 6.10.12 He went on to characterise the system as being one which *"...enables all members of the States to share in the responsibilities of government by sitting on one or more 'executive' committees and members are free to criticise the performance of, or oppose the proposals put to the States by, any other committee."*
- 6.10.13 He indicated that the elaborate checks and balances intended to define and limit the powers of the legislative and executive branches have been achieved *"...not by conscious planning, but as a natural consequence of a legislature without parties, in which 'executive' functions are delegated to a wide range of*

standing committees each of which are independently responsible to parliament.”

- 6.10.14 It is perhaps unsurprising, therefore, that some submissions received by the Committee argued that the Island’s political system provides much ‘in-built’ (or what has been referred to as ‘real-time’) scrutiny irrespective of any role played by formal, standing scrutiny committees.
- 6.10.15 This does not mean, however, that a dedicated scrutiny function is superfluous.
- 6.10.16 Since on a day-to-day basis many of the governing functions of the States are delegated to committees it seems perfectly logical that the States should also delegate to a committee or committees some of their day-to-day parliamentary, legislative and scrutiny functions.
- 6.10.17 If the principles of good governance are to be fulfilled, committees which make policy, spend public money and sponsor legislation must be open to scrutiny which is seen to be independent, transparent and credible.
- 6.10.18 This is not a task which can reasonably be left to States’ Members acting alone or to the States sitting as a parliamentary assembly perhaps no more than 30 or 40 days a year. Something more structured is required.
- 6.10.19 This view is consistent with many submissions made to the Committee. Indeed, it is clear that many members – including but not limited to those who have at one time or another been members of the scrutiny committees – feel strongly about scrutiny and wish to see its status and influence in the States strengthened.
- 6.10.20 The Committee was fortified in this view by Ms Crowe’s report, which stated:

“It has been put to this review that it is difficult, if not impossible, to have effective scrutiny in Guernsey under the current system...that is, without a system of executive government. However, this review concludes that it is just as valid and vital to scrutinise the way [committees] fulfil the responsibilities delegated to them by the States as it is to scrutinise ministers or the executive in a different form of government: no system of government guarantees effective scrutiny, and without the proper culture, organisation, systems and processes in place scrutiny will not be effective in any form of government. It is also the case that no jurisdiction’s scrutiny function is without its challenges, and most are continually seeking better ways to meet those challenges.”

6.10.21 Nonetheless, Ms Crowe's report left no doubt of the scale of the challenge in Guernsey. She concluded that:

"[t]he barriers to effective scrutiny in Guernsey go wider than the functions and operation of the scrutiny committees themselves...[t]he problems are endemic and require systemic change..."

6.10.22 Most respondents who submitted views on scrutiny were supportive of many of Ms Crowe's main recommendations, especially the following: amalgamating the functions of the three scrutiny committees into a single committee; providing more flexibility for a greater range of persons – both from inside and outside the States – to participate in scrutiny reviews or projects; and improving the resources available to the States' scrutiny functions.

6.10.23 The evidence reviewed by the Committee leads it to support those objectives. Some of the specific reforms which the Committee proposes in order to realise those objectives are in line with recommendations made by Ms Crowe; others vary from Ms Crowe's recommendations because of the Committee's understanding of what would and what would not work *in practice* in Guernsey.

6.11 Combining and Co-ordinating Scrutiny

6.11.1 In 2004 the two new committees of scrutiny (Public Accounts and Scrutiny) were established in the same way as all other committees – standing committees with fixed membership, which was also very large by committee standards: nine members sit on each committee.

6.11.2 To the extent that the operation of the committees was considered at all, the expectation seems to have been that they would sit as conventional committees, but with mandates to scrutinise rather than develop policy and provide services.

6.11.3 In this area of its review the primary conclusion of the Committee is that the present arrangements are too rigid and inflexible and that the States will not make the most of scrutiny until they recognise that it is not undertaken best through conventional standing States' committees with fixed membership.

6.11.4 The Committee proposes that the scrutiny functions which currently sit in three committees should be overseen and directed by a single and smaller committee of scrutiny. The Committee proposes that the new Scrutiny Management Committee should consist of three members and that the task of

actually scrutinising the policies, expenditure and services of States' committees and of legislation should be carried out through scrutiny panels with the membership of such panels determined with reference to the task in hand.

- 6.11.5 The central tasks of the small, three-member Scrutiny Management Committee would be to: represent scrutiny in the States and publicly; ensure that the scrutiny of policy, finances and expenditure and legislation is co-ordinated; plan and publish an annual scrutiny programme; take responsibility for a combined budget for scrutiny; convene panels to undertake specific tasks and projects scrutinising policy, finances and expenditure and legislation; and assure the quality of the reports of such scrutiny panels.
- 6.11.6 Scrutiny panels would not report directly to the States but to the Scrutiny Management Committee, which would be elected by the States and fully accountable to them for everything done within the scrutiny set-up.
- 6.11.7 The proposal for a Scrutiny Management Committee is in line with Ms Crowe's recommendations. It is also based on the same premise as the Committee's *Key Proposal 1*, the creation of a Policy & Resources Committee, i.e. that combining interdependent functions in a single committee is likely to improve co-ordination and output.

KEY PROPOSAL 7

There shall be a single Scrutiny Management Committee responsible to the States of Deliberation for the scrutiny of policy, finances and expenditure and legislation.

6.12 Membership of the Scrutiny Management Committee

- 6.12.1 Ms Crowe recommended that the Scrutiny Management Committee should comprise two States' members who would not be members of what under the Committee's proposals would be the senior and Principal Committees of the States and one non-States' member with expertise in financial affairs. The Committee agrees fully in respect of the role for a non-States' member. In principle, the Committee can also see merit in precluding members of the senior and Principal Committees from serving in formal scrutiny roles because it may strengthen the perception of impartiality in the members charged with

scrutinising and may also enable those members to champion the scrutiny process more strongly free of other major committee commitments.

6.12.2 However, it should be noted that at present none of the three committees of scrutiny are chaired by a member who does not also sit on a Principal Committee (department). Indeed, if such a restriction were in place at present, 40 of the 45 people's deputies would be disqualified from standing for a seat on the Scrutiny Management Committee. Therefore, the Committee cannot discount that in practice imposing such a restriction could prove counter-productive and deny the Scrutiny Management Committee valuable and active members and consequently deny it the best chance of succeeding in any new States' structure.

6.12.3 In addition, precluding members of the senior and Principal Committees from serving in formal scrutiny roles would in no way alter the fact that while the States retain both parliamentary and governing functions even members who do not sit on any States' committees are still in no way outside or independent of 'government'.

6.12.4 The Committee will study these arguments further in the second stage of its review before deciding whether to recommend that members of the senior and Principal Committees should be precluded from sitting on the Scrutiny Management Committee.

6.12.5 Either way, the Committee envisages that, alongside the independent member leading in the scrutiny of financial affairs, one of the two States' members on the Scrutiny Management Committee would lead in the scrutiny of policy and services and the other would lead in the scrutiny of legislation. The members of the Scrutiny Management Committee would thus not just manage the process of scrutiny, but would also be actively involved in scrutinising – chairing or sitting on reviews.

KEY PROPOSAL 8

The States shall elect to the Scrutiny Management Committee two States' Members and one member independent of the States whose background and expertise is particularly well-suited to the scrutiny of financial affairs.

6.13 Scrutiny Panels

- 6.13.1 Although the whole scrutiny function is best *managed* through a single, small, focused group of members, the Committee's discussions with the present three committees of scrutiny and others have led it to the conclusion that each of the three component parts of scrutiny – policy and services; finance and expenditure; and legislation – need to be undertaken slightly differently. The proposals of the Committee are sufficiently flexible to recognise those differences.
- 6.13.2 In her review Ms Crowe recommended the scrutiny of policy and services, finance and expenditure and legislation being undertaken by 'task and finish' panels. The Committee fully agrees with that recommendation.
- 6.13.3 However, the Committee's proposals vary from Ms Crowe's by providing for a more flexible, less restrictive arrangement in the persons (and particularly States' Members) from whom members of panels may be drawn.

6.14 Scrutiny of Policy and Services

- 6.14.1 The scrutiny of policy is an inherently political task and should, therefore, ideally fall in the main to politicians, i.e. elected members of the States, but there should be scope for persons independent of the States also to contribute to the scrutiny of policy.
- 6.14.2 The Committee is of the opinion that when the Scrutiny Management Committee identifies the need to undertake a review or examination of policy or public services, it should appoint a 'task and finish' panel comprising in the main States' Members suited to the scrutiny of that particular area of policy or service but who have no seats on any of the Principal Committees to come under scrutiny, supplemented if felt appropriate by persons independent of the States.
- 6.14.3 This arrangement would permit States' Members to become involved in specific scrutiny projects of interest without requiring them to sit on a conventional States' committee for a four-year term of office.
- 6.14.4 It is acknowledged that at first members may need to be encouraged to sit on such 'task and finish' panels for a review lasting between, say, a few weeks and three or four months. Ultimately, if members do not embrace the work of scrutiny in sufficient number, the Scrutiny Management Committee would have

to recruit to its panels more persons independent of the States. Either way, the Committee's proposal is flexible enough to adapt.

6.15 Scrutiny of Finances and Expenditure

6.15.1 The Committee considers that, unlike the scrutiny of policy, the scrutiny of finances and expenditure is not necessarily a political task; indeed, it may well benefit from being seen as a largely apolitical task.

6.15.2 This is borne out by the appointment in some jurisdictions of a statutory Auditor General. In her review Ms Crowe cautioned against appointing an Auditor General, which she wrote:

"...is normally a sizeable and expensive post which, without a significant level of staff support or funding, is unlikely to produce much more by way of independent reviews...[h]owever, the benefits achieved by the role of Auditor General are vital for Guernsey and this review considers that the credibility of the scrutiny function would be enhanced, and similar benefits achieved, by appointing an experienced independent financial expert as a key member of a new scrutiny structure."

6.15.3 Hence the recommendation in *Key Proposal 8* that one of the three members of the Scrutiny Management Committee should be *"a person independent of the States whose background and expertise is particularly well-suited to the scrutiny of financial affairs"*.

6.15.4 However, the Committee believes that the independence of the scrutiny of States' committees' finances and expenditure should extend beyond merely the appointment of one, albeit important, member of the combined parent Scrutiny Management Committee.

6.15.5 At the same time the Committee does not feel that it is necessary in all circumstances to exclude States' Members from participating in the scrutiny of financial matters, not least because it acknowledges the valuable contribution made in this area in recent years by several political members of past and present Public Accounts Committees.

6.15.6 The Committee believes that the most pragmatic and effective arrangement in respect of the scrutiny of finances and expenditure is for the Scrutiny Management Committee to maintain a panel of members independent of the States who are especially suited to the scrutiny of financial affairs and for the

Scrutiny Management Committee, when it identifies the need to undertake a review or examination of a financial matter, to appoint a 'task and finish' panel drawn in the main from among the panel of members, supplemented if felt appropriate by States' Members unconnected to the matters under scrutiny.

6.16 Scrutiny of Legislation

6.16.1 When detailed legislation is put before the States it is usually because the States have directed its preparation pursuant to an earlier decision to approve a policy, and often there will have been considerable debate at the policy stage.

6.16.2 There is also a significant check on the States' law-making powers in that primary legislation (Projets de Loi) made by the States is subject to Royal Sanction through the Privy Council, which in the opinion of some submissions made to the Committee contributes to the demonstration of good governance to the outside world.

6.16.3 Nonetheless, it is notable that the States spend relatively little time debating proposals to enact, amend or repeal legislation. A study of the activities of the States in 2010 revealed that the 15 Projets de Loi and 48 Ordinances put before them in that year provoked only two hours and 45 minutes of debate, less than 2% of the time during which the States sat. Notwithstanding the foregoing paragraphs, this underlines the importance of scrutinising legislation in advance of it being presented to the States.

6.16.4 Since 2004 this task has been undertaken by the Legislation Select Committee as successor (in name) to the Legislation Committee, which had discharged the function of legislative scrutiny since 1948. The Legislation Select Committee reviews and revises every Projet de Loi and Ordinance presented to it by a Law Officer *"...for the purpose of ensuring that the same is in accordance with and will effectually carry into effect any [States'] resolution...and to transmit the same to the States for the consideration and for the decision...of the States"*.

6.16.5 In her report Ms Crowe advised that the present arrangement for the scrutiny of legislation at committee level *"...falls well short of providing a scrutiny function which can provide the States with the assurance it needs to satisfy its members that the draft legislation delivers the outcomes it wants."*

6.16.6 The Committee wishes to use the second stage of its review to consider the merit of various detailed modifications to the functions, powers and resources of any successor to the Legislation Select Committee, some of which have been

suggested by Ms Crowe and the Legislation Select Committee itself. These include, but are not necessarily limited to: establishing a process of pre- and post-legislative scrutiny; requiring the scrutiny of legislation to include consideration of the likely impact (e.g. financial cost) of the legislation; reorganising the legal resources available to support members in their scrutiny of legislation; and consideration of who in the future should be responsible for recommending and promoting any changes to legislation which are considered necessary.

6.16.7 As far as the structure of legislative scrutiny is concerned, the Committee does not believe it can reasonably be undertaken by the sort of ‘task and finish’ panels recommended for the scrutiny of policy and services and finances and expenditure. Nonetheless, as with the scrutiny of policy and services and the scrutiny of finances and expenditure, the Committee wants the scrutiny of legislation to benefit from the involvement of a greater range of persons, both from within and outside the States.

6.16.8 The Committee proposes that the Scrutiny Management Committee should appoint a standing Legislation Review Panel to be chaired by the member of the Scrutiny Management Committee who leads in the scrutiny of legislation and with a membership which brings together a number of other States’ Members and a number of persons independent of the States with backgrounds and skills especially suited to the scrutiny of legislation.

6.16.9 The Legislation Review Panel – under delegated authority of the Scrutiny Management Committee - would absorb most of the tasks currently undertaken by the Legislation Select Committee with the possible exception of the making of emergency legislation, which the Committee believes should be assumed by the Policy & Resources Committee because it is plainly not a scrutiny function.

KEY PROPOSAL 9

The Scrutiny Management Committee shall provide for structured and co-ordinated scrutiny of policy and services, financial affairs and expenditure and legislation by convening Scrutiny Panels along the following lines:

- When the Scrutiny Management Committee identifies the need to undertake a review or examination of policy or services, it shall appoint a 'task and finish' group comprising in the main States' Members especially suited to the scrutiny of that particular area of policy or service but who have no seats on any of the Principal Committees likely to come under scrutiny, supplemented if felt appropriate by persons independent of the States;
- When the Scrutiny Management Committee identifies the need to undertake a review or examination of a financial matter, it shall appoint a 'task and finish' group drawn in the main from among a panel of members independent of the States who are especially suited to the scrutiny of financial affairs, supplemented if felt appropriate by States' Members unconnected to the matters under scrutiny;
- The Scrutiny Management Committee shall appoint a standing Legislation Review Panel to be chaired by the member of the Scrutiny Management Committee who leads in the scrutiny of legislation and with a membership which brings together a number of other States' Members and a number of persons independent of the States with backgrounds and skills especially suited to the scrutiny of legislation.

6.17 Advantages of the Proposed Reforms of Scrutiny

6.17.1 In the opinion of the Committee reorganising the scrutiny function of the States along the lines described above would provide for scrutiny which is focused, proportionate to the Island and sufficiently flexible to respond appropriately and, if necessary, promptly as and when matters arise which require some form of review or examination. It would also make the best use of any time members are prepared to afford to scrutiny and permit the States to benefit from the

involvement in the scrutiny process of a greater number of persons independent of the States. In the opinion of the Committee, such reforms would undoubtedly strengthen the States' scrutiny function and enable it to serve the people of Guernsey as effectively as possible.

6.18 Number of States' Members

6.18.1 There are 47 voting members of the States of Deliberation: 45 people's deputies elected in seven districts in Guernsey and two Alderney Representatives.

6.18.2 A frequent observation made to the Committee was that the number of States' Members might usefully be reduced.

6.18.3 This opinion appears to be associated with a view that many more members than was the case in the past are attending to States' work on something at least approaching a full-time basis. There is a view, quite widespread, that a reduction in the number of States' Members would permit the business of the States to be discharged more efficiently, encourage members to focus on policy and strategy and discourage members from focusing on the minutiae of administration.

6.18.4 On the other hand, some respondents cautioned the Committee against recommending a reduction in the number of States' Members. It was even suggested that any reduction at all would inevitably weaken democracy. Few convincing arguments were adduced to explain why that should be so if the States maintain a committee system in which no member is bound by collective responsibility and there is no distinction between policy-making executive and scrutinising opposition, although it is readily accepted that a radical reduction in the number of members could distort the democratic balance with unforeseen consequences.

6.18.5 A study of six other jurisdictions of a size comparable to Guernsey reveals that on average each member of parliament represents around 1,900 voters. In Guernsey, the figure is around 1,400. If the figure in Guernsey was in line with the average in the other jurisdictions, there would be around 33 States' Members.

6.18.6 However, voter representation in other comparable jurisdictions is by no means the only, nor indeed the most important, factor to take into account when seeking to determine the most appropriate size of the States of

Deliberation, not least because most of those other jurisdictions have political parties or bicameral parliaments (i.e. an upper house and a lower house). Additionally, most other jurisdictions have more than one tier of government.

- 6.18.7 The primary consideration should be the number of members required to fulfil the States' full range of functions in a way which balances democracy and efficiency. The number of members should be determined by the structure of the States and not the other way around.
- 6.18.8 The Committee is of the view that in the improved committee system it is proposing at *Key Proposals 1 to 9* fewer than 47 Members would be required to fulfil the full range of States' functions in a way which would properly balance democracy and efficiency. Therefore, the potential exists for at least a measure of reduction.
- 6.18.9 However, before recommending a specific number of members, the Committee would need to examine the issue more closely in the second stage of its review, especially in light of the views expressed in debate on this first report – and in particular in regard to the States' decisions in respect of the constitution of committees - because clearly there is a relationship between the number and size of committees and the total number of States' Members.
- 6.18.10 At this stage the Committee is asking the States to agree that in the improved committee system it is proposing, the number of States' Members should be determined with reference only to the need to fulfil the full range of States' functions in a way which would properly balance democracy and efficiency, but that there should be a presumption in favour of at least some reduction.

KEY PROPOSAL 10

The number of States' Members shall be determined with reference only to the need to fulfil the full range of States' functions in a way which would properly balance democracy and efficiency, but when considering the precise number of States' Members there shall be a general presumption in favour of some reduction.

6.19 Conclusion – Recommended Option – Improved Committee System

- 6.19.1 The Committee is unanimous in recommending to the States the adoption of the improved committee system based on *Key Proposals 1 to 10* set out in this section of the report, including the creation of a Policy & Resources Committee, no more than nine Principal Committees and a Scrutiny Management Committee to lead scrutiny in the States through a series of scrutiny panels.
- 6.19.2 At the start of the Committee's review, none of the members of the Committee anticipated that their proposals would take this shape and form and each member of the Committee had a quite different expectation of the recommendations which might emerge. The unanimous proposals of the Committee emerged only after, and directly in response to, the consideration of the many diverse written and oral submissions made to the Committee.
- 6.19.3 In no way does the Committee suggest that its proposals are a panacea or are without imperfections and limitations. The Committee is realistic in recognising what can and cannot be achieved through structural and organisational reform alone. The reforms proposed are pragmatic, proportionate and achievable. They respect and seek to build upon existing strengths while addressing the most serious shortcomings identified in the present structure and operation of the States.
- 6.19.4 The Committee is confident that, if approved by the States, the reforms proposed will provide conditions more conducive to effective leadership, sound co-ordination of policies and resources and proportionate checks and balances as well as ensuring that the structure is sufficiently flexible to adapt if and when circumstances change.
- 6.19.5 The Committee is confident that the reorganisation it is proposing can be implemented efficiently and in good time to coincide with the 2016 general election.

7

IMPROVED COMMITTEE SYSTEM – SECONDARY ISSUES

7.1 Introduction

7.1.1 In this section the Committee sets out its preliminary thinking on a range of secondary issues which would need to be addressed as part of the improved committee system which is recommended for adoption with effect from 2016.

7.1.2 They are considered secondary issues not because they are unimportant – indeed some of them would have a significant bearing on the advantages which the improved committee system could yield in the years ahead – but because in this first report they are presented not as firm recommendations but instead in order to advise of the Committee’s current thinking and, moreover, to provoke further debate publicly and in the States before further detailed proposals are drawn up by the Committee.

7.1.3 The structure of this section of the report is as follows:

- 7.2 and 7.3 consider in more detail the possible roles and functions of the Policy & Resources Committee;
- 7.4 and 7.5 examine matters relating to the development and planning of policy across the States;
- 7.6 and 7.7 consider some of the practical arrangements which might apply to committees;
- 7.8 refers to other issues relating to scrutiny in the States;
- 7.9 and 7.10 consider the accommodation of States’ meetings in the Royal Court Chamber and the role of the Bailiff as Presiding Officer;
- 7.11 discusses which other bodies and committees may be required to undertake States’ functions which would not sit comfortably with any of the Policy & Resources, Principal or Scrutiny Management Committees;

- 7.12 and 7.13 consider the various roles of States' Members and the civil service.

7.2 The Policy & Resources Committee: Co-ordinating Functions

- 7.2.1 The role of the Policy & Resources Committee would be expressed formally in three ways: through leading the policy planning process; preparing the States' budget and safeguarding assets; and advising the States on all proposals – or at least all significant proposals – submitted for debate by the Principal Committees.
- 7.2.2 As noted in *Section 6*, the Policy & Resources Committee would start with a few advantages: its mandate would be more tightly focused on those primary functions; its members would not be diverted by other major committee responsibilities; it would have responsibility for both component parts of the process – policy and resources; and there is the potential for it to have to co-ordinate the work of fewer Principal Committees.
- 7.2.3 Clearly, a most important component of the improved committee system proposed in this report would be the relationship between the Policy & Resources Committee and the Principal Committees. The Policy & Resources Committee would be able to fulfil its primary responsibilities domestically only by working co-operatively and cohesively with the Principal Committees. It would be incumbent upon the President of the Policy & Resources Committee in particular – the holder of the Island's senior political office – to take the initiative in this respect. Effective planning and co-ordination would doubtless require frequent dialogue between the Presidents of the Policy & Resources Committee and the Principal Committees.
- 7.2.4 The Committee is of the opinion that the President of the Policy & Resources Committee may also wish to establish a more formal arrangement along the lines of a consultative forum for the President and members of the Policy & Resources Committee and the presidents of the Principal Committees to work towards co-operation and discuss forward planning and other matters of common interest.
- 7.2.5 The Policy & Resources Committee would lead the States' policy planning process. *Policy planning* is the integration of policies across the States and the reconciliation of policy objectives with the allocation of resources. The Committee envisages a States-wide policy and resource planning process which

is reasonably straightforward, flexible and un-bureaucratic, which is focused on significant policy matters and which assists Principal Committees in the setting of their priorities within a framework of overall policy assumptions, including financial constraints. Of course, the States would remain preeminent in determining policy.

7.2.6 The functions of the Policy & Resources Committee might include responsibility to work towards resolving any disputes or tension between other committees in the course of the development or execution of policy.

7.2.7 The Committee is most concerned that at present the Policy Council sometimes appears to have insufficient time carefully to reflect upon and discuss proposals submitted by other committees before having to write a letter of comment for publication in a Billet d'État. The Committee will consider how the States' agenda could be reformed in order to provide for the Policy & Resources Committee carefully to reflect upon and discuss especially the more substantial proposals submitted by other committees.

7.2.8 In order properly to co-ordinate the work of the States, the Policy & Resources Committee should assume responsibility for prioritising the States' legislative programme.

7.3 Policy & Resources Committee: Other Functions

7.3.1 Some submissions received by the Committee raised the matter of urgent decisions which are necessary in the public interest but which it might not be practicable to refer to the States or even to make within the normal run of business in the committee system.

7.3.2 One such example in recent years concerned the purchase of fuel tankers, which is generally considered to have been a very sound decision well executed, but which nevertheless on a strict interpretation of rules and procedures necessitated the Policy Council acting outside its mandate. Clearly there are occasions, albeit probably quite infrequent, when the Island needs to be able to act or react rapidly and decisively, most especially perhaps in response to pressures which originate outside the Island.

7.3.3 The Committee considers that there may be some value in making express provision for the Policy & Resources Committee to be afforded more flexibility in this area, although it is fully understood that the States would wish to be assured that any such powers were properly qualified and codified.

7.3.4 Although it is common throughout the world for functions to be divided between departments or committees, it is impossible when drafting mandates to take account of every eventuality and, in time, *lacunae* are bound to emerge. In the opinion of the Committee the Policy & Resources Committee is probably best placed to take responsibility for promptly addressing any such gaps and making proposals for any reallocation of other committees' functions which may be necessary.

7.3.5 Another important matter is that the States should be able to demonstrate progress against agreed policy. Most policy, or at least most substantial policy, is expressed in States' resolutions.

7.3.6 In 2012, the Scrutiny Committee published a discussion document entitled *Monitoring States' Resolutions*. It stated:

"A States' resolution is an important part of the democratic process. It is...an expression of the political will of the States [of Deliberation]."

"States' resolutions can therefore be used to hold departments to account. However, to do so they must be clear, unambiguous and accessible to all interested parties within and outside the States."

"The Scrutiny Committee has found that States' resolutions are frequently falling short of these criteria. In particular, there has not been any clear mechanism for ensuring that they are implemented."

7.3.7 Monitoring States' resolutions and the scrutiny of policy have the same objectives: strengthening accountability and improving performance. However, they are distinct tasks: while scrutiny should be held at least somewhat at arm's length from those being scrutinised, the monitoring of States' resolutions should be integrated into the States' policy and resource planning process to be led by the Policy & Resources Committee.

7.3.8 Therefore, the Policy & Resources Committee might usefully have included in its mandate specific responsibility for monitoring States' resolutions and holding to account committees' actions to fulfil resolutions.

7.4 Policy Development: the Guernsey Context

- 7.4.1 *Policy development* and *policy-making* are terms used to describe the discipline of generating policy in order to convert political objectives into actions and outcomes.
- 7.4.2 The development and implementation of policy are, in every sense, influenced by the absence of political parties and deputies being elected independently without committing themselves to party-based political manifestos. After an election policy-making committees of the States are elected by their peers in parliament without a clear political mandate from the electorate. This is fundamental to the way in which Guernsey is governed and policy developed. In most western democracies politics is party-based and at an election the electorate votes for a slate of policies offered by political parties and is, in many cases, also voting, at least at its inception, for the senior figures within a government. Thus upon its formation a government can claim a high degree of electoral legitimacy for the policies that it seeks to introduce.
- 7.4.3 In contrast, in Guernsey, policy-making committees are created after an election and in most cases disparate groups of individuals are brought together to populate committees without any clear determination of their political views or anticipated programmes. The vast bulk of policy can be developed only after States' Members have been elected. This could be considered to be lacking in democratic legitimacy given that the electorate has had no say in appointing individuals to positions on committees and neither has it had any say in devising or approving policy. That apparent democratic deficit is largely overcome by public engagement through consultation during the development of policy; the close day-to-day contact between elected representatives and the electorate; and the consequent ability of the electorate, post an election, to engage with and influence their elected representatives who will ultimately vote on and approve or not approve policies brought forward to the States by their policy-making committees. This close relationship between the States and the electorate they represent and the close scrutiny of proposed policies by the States as a parliamentary assembly are unusual features of Guernsey's political system.
- 7.4.4 Policy is normally developed by committees. Routine policy is implemented by committees without reference to the States and more material policy is submitted to the States for their approval or otherwise and whatever is approved is then implemented by the relevant committee(s). Sometimes policy

is developed by a member or group of members acting outside committees by laying amendments to proposals submitted by committees or bringing requêtes.

7.4.5 Development of material policy by committees comprising several members followed by policy determination by the States tends to provide for a very wide range of views to be taken into account. Many submissions received by the Committee held this to be a great strength of the Island's political system, first because diffusing decision-making guards against the risks of a concentration of power in the hands of a few, and second because it tends to encourage policy which satisfies the 'middle ground' of opinion and therefore discourages radicalism and preserves the Island's reputation for stability.

7.4.6 However, in 2012, a report presented jointly by the Public Accounts, Scrutiny and States Assembly and Constitution Committees suggested 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."

7.4.7 Based on the submissions it has received, the Committee is inclined to agree with that assessment. If the States approve the improved committee system proposed in the foregoing sections of this report, the Committee believes that the new Policy & Resources Committee should undertake a thorough review of the States' capacity to support policy-making and research.

7.4.8 A conventional solution may be for every Principal Committee to be supported by a small policy unit. However, apart from the costs more than likely prohibiting such an approach, it must be acknowledged that the policy-making demands upon States' committees fluctuate: there are periods of higher activity and periods of lower activity.

7.4.9 A more pragmatic and economical approach, therefore, may be for the Policy & Resources Committee to oversee a much-enhanced policy and research unit as a centre of excellence, from which resources could be loaned to Principal Committees to support them during periods of high policy-making activity. This does not need necessarily to imply a net increase in resources across the States: it is possible that much could be achieved through reorganisation.

7.5 Four Categories of Policy Development

7.5.1 The Committee has identified four categories of policy developed by the States:

- States-wide policy
- Single-committee policy
- Inter-committee policy
- Extra-committee policy

7.5.2 *States-wide policy* is likely to engage, or at least to some extent affect, the mandates of all the Principal Committees and have a substantial effect on the economic *and* social *and* environmental character of the Island. Examples include population policy and climate change.

7.5.3 Submissions received by the Committee indicated a lack of clarity about responsibility for States-wide policy. Some submissions suggested that States-wide policy is generally the responsibility of the Policy Council; other submissions suggested that most States-wide policy is at least led at the departmental level.

7.5.4 This lack of clarity is borne out in practice. In recent years the Policy Council has been involved in reviewing or developing many policies which, though important, are not truly States-wide or strategic in nature. Examples include civil partnerships, the concept of a living wage, land access rights and the Island's time zone. The Policy Council has also been developing an infrastructure plan, which clearly does have a States-wide dimension, but in so doing accountability has been somewhat obscured because it is the elected members of the Public Services Department who are accountable for *"advis[ing] the States on matters relating to [t]he management of publicly-owned infrastructure..."*. On the other hand, at political level the Policy Council has played hardly any role in developing some policies which do have a strategic dimension – for example, the comprehensive review of personal taxation and benefits and the long-term vision for education policy. The 2020 Vision – a long-term framework for the development of health and social care – provides yet another example: initially it was presented to the States by the Health & Social Services Department, but two years later an update report was presented by the Policy Council, thereby somewhat obscuring policy ownership and accountability.

- 7.5.5 The crux of the problem may well be the Policy Council's mandate. It includes: "To advise the States on matters relating to the formulation and implementation of economic, fiscal, human resource, environmental and social strategic and corporate policies to meet objectives agreed by the States" and "to be responsible for...[ensuring] appropriate responses to strategic issues which confront the Island...", but so far as the Committee can ascertain at no time since the changes to the structure of the States in 2004 has any attempt been made either to define more clearly what is and what is not "strategic and corporate policy" or to resolve whether the Policy Council's task "[t]o advise the States on matters relating to the formulation and implementation of...strategic and corporate policies" means actually developing such policies itself or merely advising on, and attempting to co-ordinate, such policies developed by other committees.
- 7.5.6 Clearly, in the improved committee system proposed, policy which is truly States-wide and obviously does not fall into the mandate of one or other committee should fall to be developed by the Policy & Resources Committee. However, at this point, and pending more detailed examination in the second stage of its review, the Committee is inclined to the view that much policy which is today loosely regarded as States-wide or strategic could quite reasonably be developed by one or more Principal Committees with the Policy & Resources Committee focusing on its role of policy co-ordination and the allocation of resources.
- 7.5.7 Arguably no policy is ever so narrow as to engage only one small part of the States, but clearly much policy would fall overwhelmingly into the mandate of only one Principal Committee. This is what is meant by *single-committee policy*. Examples might include policies in respect of schools, road transport, social housing and policing. In the improved committee system proposed, single-committee policy would still be developed and presented to the States by the relevant Principal Committee – the Policy & Resources Committee would have an advisory and co-ordinating role.
- 7.5.8 It seems to the Committee that a corollary of a committee system of administration is that policy which clearly engages the mandates of, say, two or three Principal Committees – in other words, *inter-committee policy* – is addressed best not by emasculating the roles of those Principal Committees, but rather by those Principal Committees working jointly on the matter. During the course of its review the Committee received submissions from ministers and chief officers which indicated that in some areas of policy there is

considerable duplication between sub-committees of the Policy Council and departments, which compromises the ownership of, and accountability for, policy development.

7.5.9 Inter-committee policy would doubtless on occasion be facilitated or required by the Policy & Resources Committee in its co-ordinating role. As such it is felt that the Policy & Resources Committee should have the power to require a committee or committees to examine and report to the States or to the Policy & Resources Committee on any matter which falls within the mandate of that committee or those committees. Nevertheless, there remains a major difference between on the one hand requiring another committee to investigate an area of policy and report its findings and on the other hand taking over the task from that other committee.

7.5.10 *Extra-committee policy* – i.e. policy which falls outside, or is undertaken in addition to, the standing committee structure – includes work such as the recent review of inheritance laws and the present review of the organisation of States' affairs. In the opinion of the Committee such work is best undertaken by what today are known as *Special States' Committees* and which are in effect 'task and finish' committees with narrow mandates and a self-limiting life expectancy. The Committee envisages that there may be an increased role for such specialist, time-limited committees, although their total number is always likely to be restricted because the number of extra-committee policies under review or development at any one time is necessarily constrained by the finite resources of the States.

7.5.11 Paragraph 6.7.10 acknowledges that there is one strong argument – among several weak ones – for retaining a high number of committees: “...*fewer committees reduces the number of committees on which each States' member can sit and, all things being equal, there must be some advantage in States' Members serving on a cross-section of committees in order to gain an understanding of the broadest possible range of States' functions...*”.

7.5.12 The Committee envisages that its initial thoughts in the foregoing paragraphs about how inter- and extra-committee policy might best be developed in the improved committee system it is proposing would help support the sound objective of affording States' Members opportunities to be engaged in a broad range of policy areas while at the same time providing for only a reasonably small number of Principal Committees in order to discourage fragmentation and aid policy co-ordination, especially in respect of the major States' policies.

7.6 Delegation Within Committees

- 7.6.1 Constitutionally, whatever their appellation, the political heads of committees have no authority above and beyond the authority of the whole committee. While this generally operates satisfactorily when decisions are being made in formal meetings or when policy is being developed over several meetings, some submissions received by the Committee doubted whether it reflected good practice – or even current practice – on a day-to-day basis.
- 7.6.2 From time to time the political head of a committee is inevitably required to speak for his or her committee without it necessarily being practicable on every such occasion to consult every other member of the committee. Examples might include when answering questions in the States (especially supplementary questions), handling media inquiries, attending at scrutiny hearings, replying to correspondence and setting meeting agendas.
- 7.6.3 In the opinion of the Committee it is no exaggeration to say that a committee system of administration would disintegrate if it could not find ways of facilitating delegation to its senior members.
- 7.6.4 From concerns expressed in submissions it has received the Committee is not content that there are the necessary effective schemes of delegation in place across the States. What the Committee envisages is the development of simple schemes of delegation which over time could promote a culture in which committees focus on setting strategy and policy and holding their officers to account for its implementation and delegate to their political head reasonably broad powers of operational oversight of staff and the services for which the committee is responsible to the States.
- 7.6.5 It might also be useful for committees to pursue the concept of ‘lead member’ for particular sections of their mandates. For example, a committee with responsibility for education might appoint one of their members to be the identifiable lead member for, say, the primary phase of education and do the same for, say, the secondary phase of education, higher and further education and lifelong learning. There is no reason for members not to assume lead member status for several sections of a committee’s mandate. While the full Committee would at all times retain responsibility for everything which falls within its mandate, the concept of lead member would provide for a degree of specialisation among members, for the work of the committee to be divided

between members and for the States and the public to have an identifiable point of contact for each of the major areas of the committee's activities.

7.7 Election of Members to Committees

7.7.1 Since 2004, the election of a Chief Minister has taken place approximately ten days after the general election; followed approximately a week later by the election of ministers and chairmen; followed approximately two or three days later by the election of members of committees.

7.7.2 In the course of its review the Committee encountered much criticism of the procedures for electing committees. Many submissions held that the procedures often militate against finding the right members for the right roles. Such observations were particularly marked among members who gave evidence to the Committee having been elected to the States for the first time in 2012, although some longer-serving members held similar views.

7.7.3 The Committee can see two ways of addressing the shortcomings of the present arrangements.

7.7.4 The States could cease the practice of electing all members of committees within a few days of each other and instead reinstate the former practice of staggered elections to committees. The terms of office of members of committees would not run concurrently and every, say, two years a committee would have two or three seats up for re-election. The Committee received submissions advocating such a process.

7.7.5 It would certainly have some advantages: it would allow for more frequent opportunities for renewal in membership of committees; could, perhaps counter-intuitively, promote greater stability and continuity from one States' term to another because members re-elected at a general election would retain their committee seats too; and it would avoid the 'big bang' of internal elections just a few days into every four-year States' term.

7.7.6 On the other hand the Committee received submissions cautioning against staggered elections to committees, largely on the grounds that they could be disruptive and prevent committees from properly developing a policy agenda and beginning to implement material sections of it. On balance the Committee tends to share these reservations.

- 7.7.7 The other way which the Committee can see of addressing the shortcomings of the present arrangements is to extend the period during which committees are elected immediately after each quadrennial general election. The present arrangements are perhaps especially inadequate in respect of the election of ordinary members of committees: once elected, political heads of committees typically have only two or three days to arrange nominations for more than 65 seats.
- 7.7.8 Some observers may caution against extending the internal election process and lengthening the period between the date of a general election and the date(s) of constituting States' committees because it would self-evidently take any new States longer to begin the business of governing through their committees. However, the Committee believes that adequate measures could be put in place to address a slightly longer interregnum, and in any event in the opinion of the Committee the one possible disadvantage may well be outweighed by the potential advantages of the States taking their time properly to find the right members for the right roles.
- 7.7.9 Such changes may well also be consistent with reforms regarding the timing of future General Elections which the Committee understands are likely to be proposed in due course by the States' Assembly and Constitution Committee.
- 7.7.10 The concept of mid-term elections, i.e. all members of committees serving two-year rather than four-year terms, was raised in several submissions made to the Committee. Those submissions held that mid-term elections would strengthen the accountability of committees and provide opportunities for a healthy degree of renewal or affirmation of the membership of committees during a States' term.
- 7.7.11 Other submissions cautioned against mid-term elections, suggesting that they could be disruptive and, moreover, that terms of two years would be too short to permit a committee to establish and drive forward a policy agenda.
- 7.7.12 However, it could be argued, and indeed was, that where all of the members of a committee wish to remain in office and where that committee retains the confidence of the States there would be no disruption or instability because the whole committee would be re-elected.
- 7.7.13 Some submissions made to the Committee proposed that presidents of committees should have sole nomination rights for candidates in respect of all other seats on their committees. In other words, for every seat on a committee

only the president of that committee would be permitted to nominate a candidate. It was suggested that such a change would strengthen the accountability of presidents of committees. However, the Committee is concerned that distancing the States in any way from the constitution of their committees could in practice prove inimical to Guernsey's political system.

7.7.14 In terms of the order of elections, the Committee is minded in the second stage of its review to propose that the States would first elect a President of the Policy & Resources Committee and then – in recognition of that Committee's status – elect the other members of the Policy & Resources Committee. The Policy & Resources Committee would then nominate its preferred candidates for the presidencies of the Principal Committees, who once elected would then nominate their preferred candidates to serve as committee members. It is envisaged that, as at present, States' Members would be able to propose alternative candidates for all positions.

7.7.15 The Committee received representations that there should be a more formal mechanism for committees to seek to remove an under-performing or disruptive member. The Committee has mixed views about such a proposal.

7.7.16 In the absence of collective responsibility, differences of opinion between members of the same committee on matters of policy, which sometimes become public, are inevitable and need to be tolerated and managed. Policy differences are one thing; it is another thing if the members of a committee feel completely unable to work with one of their colleagues in a constructive, respectful and professional manner. However, trying to distinguish between the two could be extremely difficult.

7.8 Other Considerations Relating to Scrutiny

7.8.1 The Committee is of the opinion that if the States approve the recommendation for a Scrutiny Management Committee, early in its life that Committee should review the legal resources available to the States in support of their task of scrutinising legislation and consider the case for any reforms. Generally the task of raising the profile and importance of the States' role as a legislature must continue.

7.8.2 Openness and transparency are essential components of a credible scrutiny process and at this stage the Committee is inclined to suggest that scrutiny panels should usually meet in public, include public evidence sessions and be recorded and published as part of the 'Hansard' series.

- 7.8.3 The Committee also believes that the Scrutiny Management Committee might usefully have a specific responsibility to advise the States if and when in their opinion circumstances arise which justify the establishment of a Tribunal of Inquiry¹².
- 7.8.4 In addition to any reports laid before the States pursuant to projects and reviews undertaken by any scrutiny panel, it would most probably be necessary to require the Scrutiny Management Committee to submit for debate by the States a comprehensive annual report on their past and planned future activities.
- 7.8.5 The experience of many persons who are or have been connected with the scrutiny of legislation is that there is little sense of ownership of legislation from sponsoring committees. It is felt that the scrutiny of legislation ought properly to include questioning committee presidents. However, it is debatable whether strengthening political scrutiny of legislation would invariably provoke stronger ownership of it by sponsoring committees or whether the latter needs to evolve as a prerequisite of the former.

7.9 The Royal Court Chamber

- 7.9.1 Over many years the States have very gradually established an identity distinct from that of the Royal Court, although they still meet in the Royal Court Chamber and the Bailiff, who is appointed to be the head of the judiciary, still presides over their meetings.
- 7.9.2 Among a few submissions received by the Committee there was some enthusiasm for the States to meet somewhere other than in the Royal Court Chamber.
- 7.9.3 The Committee understands well that the physical co-location of the judicial and legislative 'branches' does not promote the principle of separation of powers. However, without some express direction from the States, the Committee cannot reasonably propose what could well be expensive proposals

¹² In accordance with the *Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended*

for relocating meetings of the States when there is absolutely no evidence that doing so would improve the structure and operation of the States.

7.9.4 Nevertheless, the seating arrangements for States' meetings will need to be considered once the States have resolved their future structure after consideration of this report.

7.10 The Bailiff

7.10.1 Until the early part of this century the Bailiff sat on some committees of the States and had a casting vote in the States. Today his role is restricted to presiding over meetings of the States and seeing that good order and the rules of debate are maintained. In Jersey, an independent report led by Lord Carswell published in 2010 concluded that the Jersey Bailiff's dual role as President of the States and chief judge needed to be separated. Despite the States in Jersey recently rejecting a proposition for such reform, debate there remains lively about the possibility of replacing the Bailiff as President with an elected or appointed speaker.

7.10.2 Such demands are understandable: clearly the present arrangement is not entirely consistent with the theory of the separation of powers. In addition, it must be acknowledged that the time spent by the Bailiff presiding over the States is time when he is not available to undertake his principal, judicial functions.

7.10.3 However, opinion canvassed by the Committee revealed almost no enthusiasm to amend the current arrangements in Guernsey: the prevailing view is that the States benefit from having a Presiding Officer with a strong presence and detailed knowledge of the machinery of the States who holds a position greatly respected in the community and who is politically impartial and that all of the alternative arrangements hitherto suggested are probably less desirable. It is doubtful that removing the Bailiff from the States would yield much in the way of practical advantages, although it is possible that this could change in the event of a marked increase in the number of days on which the States sit in the course of a normal year.

7.10.4 When tested in the European Court of Human Rights in the case of *McGonnell v. United Kingdom* (8.2.00) it was affirmed that there is no legal basis for contending that there should be separation of the judicial and parliamentary roles of the Bailiff. In addition, there is no doubt that the Island generally regards the Bailiff as 'first citizen', but that may not endure should the Bailiff be

removed from his role presiding over the States – and that may be an unforeseen consequence of change which the Island would come to regret.

7.11 Other States' Functions

7.11.1 Whichever political system the States believe is most appropriate for the Island, there will always be some functions of government which it is neither desirable nor practicable to allocate to what might be termed the 'core structure', by which is meant today the Policy Council and the ten departments, in a ministerial system the Council of Ministers and the ministerial departments, and in the improved committee system proposed in this report the Policy & Resources Committee and the nine or fewer Principal Committees. The following are a few such examples.

7.11.2 At present, in an emergency, the Civil Contingencies Authority can take steps to secure the well-being of the Island. The Authority may, as a last resort, declare a state of emergency and make regulations in response to the emergency. The Committee does not envisage recommending any substantive changes to this arrangement.

7.11.3 Nor does the Committee foresee any less need of a committee responsible for the rules of procedure, the constitution and practical functioning of the States, elections to the office of People's Deputy etc.

7.11.4 The Policy Council's mandate includes: "The provision of corporate research programmes and the maintenance of corporate statistics including responsibility for population data." The Committee places great weight on the requirement for statistics and research issued by the States not only to be, but also to be seen to be, entirely free of political influence. This objective may be assisted by removing responsibility for this function from the senior committee and instead appointing a States' Statistician as a statutory official.

7.11.5 Certain other such functions are allocated rather awkwardly to departments such that circumstances have arisen where departments have felt unable to advise the States in areas of policy for which they have delegated responsibility out of a fear of compromising perceptions of objectivity - for example, the department which is responsible for advising the States on air links to and from the Island is also responsible for determining airline licence applications and the department which is responsible, at least in part, for advising the States on land planning policy is also responsible for determining planning applications.

7.11.6 The Committee is minded to recommend that policy responsibility for air links should sit with a Principal Committee but that the determination of individual airline licence applications should be delegated to a passenger transport licensing authority; and that policy responsibility for land planning should sit with a Principal Committee but the determination of individual planning applications should be delegated to a planning authority. The population management regime currently being developed may benefit from being dealt with in a similar way.

7.11.7 Some submissions received by the Committee raised matters relating to the parochial authorities, primarily in the context of suggesting that their range of functions and responsibilities might be extended in future years. The Committee's mandate does not extend to examining the role of the parishes, although the Committee freely acknowledges that they play an historic and vital role in the administration of the Island. The Committee's mandate does extend to considering which committee might be best-placed to advise the States on matters relating to the parishes, a responsibility which rests at present with the Policy Council. At this stage the Committee has no firm views, but it does believe that when allocating responsibility for matters relating to the parishes it should afford the greatest possible weight to the prevailing views of the parishes themselves and therefore the Committee would consult the parochial authorities accordingly.

7.11.8 Finally, the Committee believes that provision must remain for the States to establish 'task and finish' committees (which today are known as Special States' Committees) to carry out particular but temporary pieces of work, such as that being undertaken now in respect of social welfare benefits (by the Social Welfare Benefits Investigation Committee) and the Island's constitutional position (by the Constitutional Investigation Committee).

7.12 Roles of States' Members

7.12.1 There is a lack of clarity about the various roles which States' Members are expected to fulfil, e.g. district deputy, committee member, policymaker, scrutineer and parliamentarian.

7.12.2 While it may not be possible to draw up a conventional job description, States' Members, and just as importantly potential candidates for election to the States, would benefit from greater clarity about broadly what is expected in the

various and very different aforementioned roles. The Committee wishes to develop its thinking on this further in the second stage of its review.

7.12.3 As well as considering how greater clarity might be provided about members' various roles, the Committee is minded to recommend a more structured approach to developing members' skills.

7.12.4 In Guernsey, candidates do not need to have secured the support of a political party to stand a chance of being elected. Once elected, they have no party researchers or policy advisors or assistants and yet they immediately become members not only of a parliament or of scrutiny committees but also members of the body which governs the Island, the States, and as such they are responsible not only for making legislation which regulates the activities and choices of people and businesses but also for spending hundreds of millions of pounds of public money every year.

7.12.5 The Committee believes that in the absence of parties the States need to assume some responsibility for ensuring that elected members at least have access to any support or additional training they might need relating to, for example, audit and financial reporting, governance, performance management, risk, internal controls, the media and casework.

7.12.6 In a different financial climate, the Committee might have been persuaded to recommend the creation, perhaps on an experimental basis, of a small unit removed from the rest of the civil service and dedicated to providing members with research assistance, but in the current financial climate the Committee cannot sensibly make such a proposal. At the very least, though, further consideration should be afforded to Members' facilities and supporting resources.

7.12.7 The Committee notes that the Policy Council is obliged by States' resolution to commission a review of the remuneration of States' Members.

7.13 Roles of the Civil Service

7.13.1 In the absence of political parties, senior civil servants in particular play an important role in advising States' committees on developing policy. In many ways senior civil servants fill the void that in some other jurisdictions would be filled by party researchers, political advisors and policy units. Of course the civil service also still undertakes the more conventional public sector role of executing policies determined by the political body and providing public

services. Thus the senior-most civil servant serving each of the major committees is at one and the same time chief executive, administrator, manager and political advisor. In view of this the relationship between the political body and the civil service is absolutely vital.

7.13.2 The business of the States is becoming no less complex, financial constraints remain considerable throughout the public sector and, rightly, the demands only grow for the States to become more service-oriented and customer-focused.

7.13.3 The Committee is confident that its proposals for an improved committee system provide a sound basis upon which to facilitate the continued evolution of a public sector which is modern, flexible and professional. If the proposals are approved, in the second stage of its review the Committee will work with the States' Chief Executive to ensure that the structure and operation of the civil service are able properly to support the improved committee system from the moment of its inception in 2016. While developing its thinking further the Committee would also continue to take into account a 2013 States' resolution which directed it to *"make proposals designed to ensure that the structure of the civil service and the titles of officers (such as Chief Executive or States' Supervisor) are consistent with the organisation of States' affairs which the Committee will recommend be adopted with effect from 2016."*

8.1 Legislative Implications

- 8.1.1 The Committee has obtained the following advice from the Law Officers of the Crown in respect of the legislative implications of its proposals.
- 8.1.2 If the States adopt the improved committee system as recommended in the report, many of the envisaged revisions could be implemented by means of appropriate resolutions made by the States. For example, the constitution and operation of the envisaged Policy & Resources Committee could be provided for by resolution. The new political office of President of the Policy & Resources Committee could be established and governed by amendments, made by way of resolution, to the Rules governing the Constitution and Operation of States Departments and Committees. Proposals to establish new Principal Committees and for the election or appointment of members to those committees could also be implemented by way of resolution.
- 8.1.3 Other changes envisaged for an improved committee system would, however, involve enactment of some legislation. For example, relevant extant statutory functions would need to be re-allocated to any newly constituted Principal Committees by way of an Ordinance made under the Public Functions (Transfer and Performance)(Bailiwick of Guernsey) Law 1991.
- 8.1.4 An amendment to the Reform Law by *Projet de Loi* would be necessary in any event in order to effect any agreed reduction in the number of People's Deputies. That amendment would consist of a simple substitution of a number in Article 1(1)(c). Other possibly more complex amendments to the Reform Law might also be necessary in order to implement any proposed revised arrangements for carrying out the scrutiny functions described in the Report. The three current scrutiny committees (the Public Accounts Committee, the Scrutiny Committee and the Legislation Select Committee) are all specifically referred to in the Reform Law. In addition, the Legislation Select Committee has its functions conferred on it by the Reform Law. Whilst those functions might be capable of being transferred by Ordinance under the 1991 Law to the Scrutiny Management Committee, which is proposed as *Key Proposal 7*, and the constitution and operation of the new Committee determined by way of

resolution, it may still be appropriate and/or necessary to make some amendment to the Reform Law itself.

- 8.1.5 Based on the proposals set out in this report, it is envisaged that any legislative changes required could be implemented in good time for the 2016 General Election, provided that decisions are made on the further details of reform in early 2015.

8.2 Resource Implications

- 8.2.1 Clearly any reforms agreed by the States will require implementation. The Committee is confident that its proposed improved committee system can be implemented efficiently and in good time to coincide with the 2016 General Election without requiring the commitment of substantial resources or in any way challenging the fiscal policy of the States not to increase aggregate revenue expenditure.

- 8.2.2 The Committee believes that in the long term its package of ten *key proposals*, if implemented, would be revenue-neutral at worst. They should provide opportunities for expenditure savings by rationalising the committee structure and slightly reducing the number of States' Members.

- 8.2.3 The Committee would of course continue to consider resource implications of reform in the second stage of its review before reporting to the States in the early months of 2015.

8.3 Next Steps

- 8.3.1 If the States approve structural reforms the Committee will develop its proposals further and report to the States in the early months of 2015 with detailed recommendations for the future organisation of States' affairs in line with the States' resolutions made in respect of this first report.

- 8.3.2 The continuation of the review process will include further consultation with States' Members, officers and the wider public.

9

RECOMMENDATIONS

9.1 The Committee is putting the following recommendations to the States:

1. In order to provide clear leadership through the co-ordination of policy and resources, there shall be a single senior committee – designated the Policy & Resources Committee – with the following main functions:
 - Policy co-ordination, including leading the policy planning process;
 - Allocation and management of resources, including the States’ budget;
 - Facilitating cross-committee policy development.
2. The Policy & Resources Committee shall comprise five States’ Members, none of whom shall be members of the Principal Committees.
3. President of the Policy & Resources Committee shall be the Island’s senior political office.
4. The Policy & Resources Committee shall have responsibility for external relations and constitutional affairs and the Committee shall designate its President or one of its members as the States’ lead member for external relations and constitutional affairs.
5. Most of the policy-making, regulatory and public service functions of the States shall be delegated to no more than nine Principal Committees, but when considering the precise allocation of such functions there shall be a general presumption in favour of rationalisation of committees where practicable.
6. Each Principal Committee shall be led by a President of the Committee and the number of other members shall be determined with reference to the range of functions, the workload and the likely number of sub-committees, but there shall be a presumption in favour of Principal Committees

containing five States' Members unless there is a wide variance in the breadth of mandates among the Principal Committees.

7. There shall be a single Scrutiny Management Committee responsible to the States of Deliberation for the scrutiny of policy, finances and expenditure and legislation.
8. The States shall elect to the Scrutiny Management Committee two States' Members and one member independent of the States whose background and expertise is particularly well-suited to the scrutiny of financial affairs.
9. The Scrutiny Management Committee shall provide for structured and co-ordinated scrutiny of policy and services, financial affairs and expenditure and legislation by convening Scrutiny Panels along the following lines:
 - When the Scrutiny Management Committee identifies the need to undertake a review or examination of policy or services, it shall appoint a 'task and finish' group comprising in the main States' Members especially suited to the scrutiny of that particular area of policy or service but who have no seats on any of the Principal Committees likely to come under scrutiny, supplemented if felt appropriate by persons independent of the States;
 - When the Scrutiny Management Committee identifies the need to undertake a review or examination of a financial matter, it shall appoint a 'task and finish' group drawn in the main from among a panel of members independent of the States who are especially suited to the scrutiny of financial affairs, supplemented if felt appropriate by States' Members unconnected to the matters under scrutiny;
 - The Scrutiny Management Committee shall appoint a standing Legislation Review Panel to be chaired by the member of the Scrutiny Management Committee who leads in the scrutiny of legislation and with a membership which brings together a number of other States' Members and a number of persons independent of the States with backgrounds and skills especially suited to the scrutiny of legislation.
10. The number of States' Members shall be determined with reference only to the need to fulfil the full range of States' functions in a way which would

properly balance democracy and efficiency, but when considering the precise number of States' Members there shall be a general presumption in favour of some reduction.

11. To direct the States' Review Committee to report to the States early in 2015 with the detailed recommendations necessary in order for the improved committee system to be introduced to coincide with the 2016 General Election; and
12. To note that the continuation of the review process will include further consultation with States' Members, officers and the wider public.

Yours faithfully

Deputy J P Le Tocq
Chairman
23rd May 2014

Deputy R Conder
Deputy M H Dorey
Deputy M J Fallaize
Mr T A Le Sueur
Mrs C G L Smith
Deputy G A St Pier

APPENDIX

LIST OF REPRESENTATIONS AND SUBMISSIONS

Part A

Schedule of those persons who made written submissions to the Committee

Deputy Roger Perrot
Mr Shane Langlois
Mrs Gloria Dudley-Owen
Mr Peter Roffey
Mr Graham Guille
Deputy David De Lisle
Mr Roger Dadd
Deputy Roger Domaille
Mrs Jane Stephens
Mr Stuart Falla MBE
Deputy David Jones
Deputy Michael O'Hara
Sir de Vic Carey
Deputy Paul Luxon
Mr Brian de Jersey
Deputy Mary Lowe
Deputy Peter Gillson
Deputy Martin Storey
Ms Carla McNulty Bauer
Mr Anthony Webber
Deputy Hunter Adam
Deputy Darren Duquemin
Mr Ron Le Moignan
Deputy Yvonne Burford
Deputy Al Brouard
Deputy John Gollop
Mr Mike Best
Deputy Scott Ogier
Deputy Allister Langlois
Alderney Representative Paul Arditti
Deputy Michelle Le Clerc
Deputy Peter Sherbourne

Deputy Paul Le Pelley
Deputy Laurie Queripel
Deputy Elis Bebb
Deputy Jonathan Le Tocq
Deputy Barry Brehaut
Mr Richard Digard
Deputy Andrew Le Lièvre
Deputy Heidi Soulsby
Alderney Representative Louis Jean
Deputy Lester Queripel
Deputy Christopher Green
Mr John Hollis
Mr Nik Van Leuven
Sir Geoffrey Rowland

Part B

Schedule of those persons who gave oral evidence to the Committee

Deputy Roger Perrot
Mr Shane Langlois
Mr Peter Roffey
Mr Graham Guille
Mr Roger Dadd
Deputy Roger Domaille
Mrs Jane Stephens
Mr Stuart Falla MBE
Deputy David Jones
Deputy Michael O'Hara
Sir de Vic Carey
Deputy Paul Luxon
Mr Brian de Jersey
Deputy Mary Lowe
Deputy Peter Gillson
Deputy Martin Storey
Ms Carla McNulty Bauer
Mr Anthony Webber
Deputy Hunter Adam
Deputy Darren Duquemin

Mr Ron Le Moignan
Deputy Al Brouard
Deputy John Gollop
Mr Mike Best
Deputy Scott Ogier
Deputy Allister Langlois
Alderney Representative Paul Arditti
Deputy Michelle Le Clerc
Deputy Peter Sherbourne
Deputy Paul Le Pelley
Deputy Laurie Queripel
Deputy Elis Bebb
Deputy Jonathan Le Tocq
Deputy Barry Brehaut
Mr Richard Digard
Deputy Andrew Le Lièvre
Deputy Heidi Soulsby
Alderney Representative Louis Jean
Deputy Lester Queripel
Deputy Christopher Green
Mr Nik Van Leuven

Part C

Schedule of States' committees which gave oral evidence to the Committee

Members who were also members of the States' Review Committee at the time of meeting are shown in italics

Home Department	Deputy Jonathan Le Tocq Deputy Francis Quin Deputy Michelle Le Clerc Mr Andrew Ozanne
Treasury & Resources Department	Deputy Jan Kuttelwascher Deputy Tony Spruce Deputy Roger Perrot Deputy Hunter Adam Mr John Hollis

Education Department

Deputy Robert Sillars
Deputy Richard Conder
Deputy Christopher Green
Deputy Peter Sherbourne
Deputy Andrew Le Lievre
Mr Denis Mulkerrin CBE

Commerce & Employment
Department

Deputy Kevin Stewart
Deputy David De Lisle
Deputy Heidi Soulsby
Advocate Thomas Carey

Health & Social Services Department

Deputy Mark Dorey
Deputy Elis Bebb
Deputy Barry Brehaut
Deputy Sandra James MBE
Deputy Martin Storey

Housing Department

Deputy David Jones
Deputy Martin Storey
Deputy Mike Hadley
Mr Dudley Jehan

Environment Department

Deputy Roger Domaille
Deputy Tony Spruce
Deputy Yvonne Burford

Culture & Leisure Department

Deputy Michael O'Hara
Deputy Francis Quin
Deputy Paul Le Pelley
Deputy Darren Duquemin
Deputy David Inglis

Scrutiny Committee

Deputy Robert Jones
Deputy Heidi Soulsby
Deputy Barry Paint
Deputy Scott Ogier
Deputy Lester Queripel
Deputy Laurie Queripel

Deputy Peter Sherbourne

Social Security Department

Deputy Allister Langlois
Deputy Sandra James MBE
Deputy John Gollop
Deputy Christopher Green
Deputy Michelle Le Clerc
Mr Michael Brown
Mrs Susan Andrade

Public Services Department

Deputy Paul Luxon
Deputy Scott Ogier
Deputy Yvonne Burford
Deputy Darren Duquemin
Deputy Robert Jones

States Assembly and Constitution
Committee

Deputy Matt Fallaize
Deputy Peter Gillson
Deputy Elis Bebb
Deputy Hunter Adam

Public Accounts Committee

Deputy Heidi Soulsby
Deputy Michelle Le Clerc
Alderney Representative Paul Arditti
Deputy Sandra James MBE
Deputy Peter Sherbourne
Mr Paul Hodgson
Mr John Dyke
Mrs Gill Morris

Legislation Select Committee

Deputy Robert Jones
Deputy John Gollop
Deputy Laurie Queripel
Deputy Elis Bebb
Deputy David De Lisle
Advocate Simon Howitt

Policy Council

Deputy Peter Harwood
Deputy Jonathan Le Tocq
Deputy Roger Domaille
Deputy Mark Dorey
Deputy David Jones
Deputy Allister Langlois
Deputy Paul Luxon
Deputy Michael O'Hara
Deputy Robert Sillars
Deputy Gavin St Pier
Deputy Kevin Stewart

Part D

Schedule of oral evidence made to the Committee during meetings in Jersey

Former Members of the Clothier Panel, which reviewed the structure and functions of the States in Jersey and reported in 2000:

Mr Colin Powell CBE
Mr John Henwood
Mr George Macrae
Dr John Kelleher
Mr David Le Quesne

Former Members of the States of Jersey:

Mr Derek Gray
Mr Maurice Dubras
Mr Reg Jeune OBE

The Chief Minister, Deputy Chief Minister and Assistant Chief Minister:

Senator Ian Gorst

Senator Ian Le Marquand

Senator Paul Routier MBE

Members of the Jersey Electoral Commission:

Mr Colin Storm (Vice Chairman)

Connétable Juliette Gallichan

Deputy James Baker

Members of the Scrutiny Chairmen's Committee:

Deputy Tracey Vallois (President)

Deputy Steve Luce (Vice- President)

Senator Sarah Ferguson

Deputy Jeremy Macon

Deputy John Young

Deputy Kristina Moore

Members of the Privileges and Procedures Committee:

Connétable Simon Crowcroft (Chairman)

Deputy Montfort Tadier (Chairman of the Machinery of Government Review Sub-Committee)

Greffier of the States:

Mr Michael De La Haye

Part E

Schedule of other oral evidence made to the Committee

The Committee met with Mr Mike Brown (States' Supervisor / Chief Executive, 1993-2014), Mr Nigel Lewis (States' Deputy Chief Executive, 2007-2013) and Mr Simon Elliott

(States Chief Corporate Resources Officer), and the Committee's Principal Officer interviewed 14 other senior officers. The Committee also met with Dr Darryl Ogier, States' Archivist, who provided a brief history of the States.

The Committee's Principal Officer visited Tynwald in the Isle of Man in November, 2013 and met with persons with knowledge and experience of politics and administration in that Island, including:

The Hon. Clare Christian, The President of Tynwald

The Hon. Steve Rodan, The Speaker of the House of Keys

Roger Phillips, Clerk of Tynwald

Jonathan King, Deputy Clerk of Tynwald

Will Greenhow, Chief Secretary

Della Fletcher, Director of External Relations

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2003, May: Advisory and Finance Committee: *The Future Machinery of Government in Guernsey*; [Billet d'État VII](#)

2003, May: Procedures and Constitution Committee: *Machinery of Government Reforms*; [Billet d'État VII](#)

2006, March: Policy Council: *Review of the New System of Government*; Article 1, [Billet d'État VII](#)

2011, March: Public Accounts Committee: *Governance in the States of Guernsey*; [Billet d'État IV](#)

2012, March: Joint Committees (Public Accounts Committee, Scrutiny Committee and States Assembly and Constitution Committee): *Improving Governance in the States of Guernsey*; Article 16, [Billet d'État V](#)

2012, March: *Requete: Governance in The States of Guernsey: Proposal for a Comprehensive Review of the Structure and Functions of the Legislature and the Government in Guernsey*; Article 21, [Billet d'État V](#)

2013, June: Policy Council: *Improving Governance in the States of Guernsey, Implementation Plan*; Article 4, [Billet d'État XII](#)

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[2000, November: Independent Panel: *Review of the Machinery of Government in Guernsey \(The Harwood Report\)*](#)

[2012, March: Crowe, Belinda: *The Scrutiny Committees of the States of Guernsey*](#)

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Reports Relating to Reforms in Jersey and the Isle of Man

2000, December: *Report of the Review Panel on the Machinery of Government in Jersey*

2001, November: *Review of the Machinery of Government: Implementation Plan (Jersey)*

2006, September: *A Review of the Scope and Structure of Government in the Isle of Man – An Independent Report to the Council of Ministers*

2007, November: *Machinery of Government Review (Jersey)*

2010, December: *The Review of the Roles of the Crown Officers (Jersey)*

2011, January: *Select Committee of Tynwald on the Committee System*

2011, October: *Internal Review Into Second Term of Scrutiny In Ministerial Government: December 2008 to August 2011 (Jersey)*

2013, April: *Machinery of Government Review Sub-Committee: Interim Report (Jersey)*

2013, September: *Machinery of Government Review Sub-Committee: Final Report (Jersey)*

Other Reports and Publications

2004: The Independent Commission on Good Governance in Public Services *The Good Governance Standard for Public Services*

2007, October: UK Department for Communities and Local Government: *The New Council Constitutions – The Outcomes and Impact of the Local Government Act 2000*

2007, October: Anthony Staddon *Holding the Executive to Account? The Accountability Function of the UK Parliament*

2010, January: Institute for Government *Shaping Up: A Whitehall for the future*

2010, April: Centre for Public Scrutiny *Accountability Works*

2012, April: Centre for Public Scrutiny *Musical Chairs – Practical issues for local authorities in moving to a committee system*

2012: <http://inlogov.wordpress.com/2012/05/02/committees-talent-councillors/>

Books

2013, Ogier, Dr. Darryl: *The Government and Law of Guernsey*, 2nd ed.

(NB In accordance with its mandate, the Treasury and Resources Department is commenting only on the resource implications of this States Report.

The States Review Committee has a budget allocation for 2014 and this should cover the costs of preparing the States Report planned for early 2015.

It is noted that, as set out in Section 8.2 of the States Report, the States Review Committee does not anticipate at this stage any requirement for additional resources in either the short-term implementation of its recommendations or in the longer-term operation. Furthermore, it is noted that the States Review Committee believes that its proposals will provide opportunities for resource savings and be revenue-neutral at worst with, inter alia, the potential for the increased cost of non-States Members carrying out Scrutiny functions being offset by a reduction in the number of States Members.

Whilst it is acknowledged in the Report that any reforms will require short-term resources for implementation and managing change, it is also stated that the Committee does not anticipate that there will be any additional resources required for delivering the recommendations. However, the Treasury and Resources Department anticipates that there may be some costs of change in addition to staff resources being diverted away from other work, which will need to be identified during the next phase of work.

The Report outlines the need for sufficient resources to enable sound policy development in order to fully obtain the benefits of any reform. The Committee estimates that this will likely require either an investment in new or a re-organisation of existing staff resources. The Treasury and Resources Department supports the suggested thorough review of the States' existing capacity to support policy-making and research in order to assess the need. However in Members' view, this will be required irrespective of the system of government adopted

The Treasury and Resources Department will, of course, carefully consider the proposals contained in the States Review Committee's Report planned for early 2015 and comment fully on any resulting resource implications.)

(NB The Policy Council commends the States Review Committee on a clearly written, well- argued report, which sets out proposals designed to address the weaknesses in our governmental structure, which have been identified through extensive dialogue and consultation within the States and with the wider community.

Of particular note is that, having weighed all the evidence and the arguments for and against different models, a political consensus has been reached that Guernsey will be best served by the continuation of a committee system,

albeit in an amended format, rather than a ministerial system of government. The Policy Council itself unanimously supports that conclusion.

The Policy Council also agrees with the conclusion reached by the Committee that a crossroads has been reached and that further work to develop its proposals in detail might prove fruitless, without the States giving clear direction at this juncture on the way forward. Nonetheless, the Policy Council is mindful that the devil is in that detail and that an effective mechanism needs to be found to enable States Members and the wider community to contribute to the further development of the framework for reform outlined by the Committee.

Of particular interest to the Policy Council is the relationship between the proposed new Policy and Resources Committee and the Principal Committees, particularly in the field of policy making. If the States is so minded to adopt the Review Committee's proposals, the Policy Council asks the Review Committee, in its next phase of work, to give careful consideration to avoiding the risk of creating a political elite through its proposals for the membership and operation of the senior committee.

Finally, while the Policy Council notes that the Review Committee is confident that it can implement the revised system of government before the 2016 General Election and without the need for additional resources, it will be essential, in its next report, for the Review Committee to be able substantiate these statements more fully.)

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 23rd May 2014, of the States Review Committee, they are of the opinion:-

1. To agree that in order to provide clear leadership through the co-ordination of policy and resources, there shall be a single senior committee, designated the Policy & Resources Committee, with the following main functions:
 - a) policy co-ordination, including leading the policy planning process;
 - b) allocation and management of resources, including the States' budget;
 - c) facilitating cross-committee policy development.
2. To agree that the Policy & Resources Committee shall comprise five States' Members, none of whom shall be members of the Principal Committees.
3. To agree that President of the Policy & Resources Committee shall be the Island's senior political office.

4. To agree that the Policy & Resources Committee shall have responsibility for external relations and constitutional affairs and the Committee shall designate its President or one of its members as the States' lead member for external relations and constitutional affairs.
5. To agree that most of the policy-making, regulatory and public service functions of the States shall be delegated to no more than nine Principal Committees, but when considering the precise allocation of such functions there shall be a general presumption in favour of rationalisation of committees where practicable.
6. To agree that each Principal Committee shall be led by a President of the Committee and the number of other members shall be determined with reference to the range of functions, the workload and the likely number of sub-committees, but there shall be a presumption in favour of Principal Committees containing five States' Members unless there is a wide variance in the breadth of mandates among the Principal Committees.
7. To agree that there shall be a single Scrutiny Management Committee responsible to the States of Deliberation for the scrutiny of policy, finances and expenditure and legislation.
8. To agree that the States shall elect to the Scrutiny Management Committee two States' Members and one member independent of the States whose background and expertise is particularly well-suited to the scrutiny of financial affairs.
9. To agree that the Scrutiny Management Committee shall provide for structured and co-ordinated scrutiny of policy and services, financial affairs and expenditure and legislation by convening Scrutiny Panels along the following lines:
 - a) when the Scrutiny Management Committee identifies the need to undertake a review or examination of policy or services, it shall appoint a 'task and finish' group comprising in the main States' Members especially suited to the scrutiny of that particular area of policy or service but who have no seats on any of the Principal Committees likely to come under scrutiny, supplemented if felt appropriate by persons independent of the States;
 - b) when the Scrutiny Management Committee identifies the need to undertake a review or examination of a financial matter, it shall appoint a 'task and finish' group drawn in the main from among a panel of members independent of the States who are especially suited to the scrutiny of financial affairs, supplemented if felt appropriate by States' Members unconnected to the matters under scrutiny;

- c) the Scrutiny Management Committee shall appoint a standing Legislation Review Panel to be chaired by the member of the Scrutiny Management Committee who leads in the scrutiny of legislation and with a membership which brings together a number of other States' Members and a number of persons independent of the States with backgrounds and skills especially suited to the scrutiny of legislation.
10. To agree that the number of States' Members shall be determined with reference only to the need to fulfil the full range of States' functions in a way which would properly balance democracy and efficiency, but when considering the precise number of States' Members there shall be a general presumption in favour of some reduction.
11. To direct the States' Review Committee to report to the States early in 2015 with the detailed recommendations necessary in order for the improved committee system to be introduced to coincide with the 2016 General Election.
12. To note that the continuation of the review process will include further consultation with States' Members, officers and the wider public.