



**IV  
2016**

# **BILLET D'ÉTAT**

**TUESDAY, 16th FEBRUARY, 2016**

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# BILLET D'ÉTAT

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## TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

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I hereby give notice pursuant to Rule 1(3) of the Rules of Procedure of the States of Deliberation that the items contained in this Billet d'État which have been submitted for debate will be considered at the Meeting of the States of Deliberation already convened for **TUESDAY, the 16th FEBRUARY, 2016.**

R. J. COLLAS  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

12<sup>th</sup> January 2016

## HOME DEPARTMENT

### DUAL FUNCTION APPOINTMENTS AND AUTHORISATION

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

15<sup>th</sup> December 2015

Dear Sir

#### **1. Executive Summary**

- 1.1 This Policy Letter seeks authority from the States of Deliberation for the drafting of legislation to facilitate enhanced collaborative working and interoperability between the Customs & Excise, Immigration & Nationality Service (commonly now known as Guernsey Border Agency) and the Island Police Force. In particular, to enable officers within each of these named Services to be deployed to perform specific functions of other Services, subject to any limitations considered appropriate, by way of dual warranting of those officers, by the Head of Law Enforcement. In law enforcement terms, officers exercising legal powers, including powers of arrest, are referred to as “warranted officers” and have been granted that authority by the Royal Court or by appointment. It must be emphasised that all law enforcement officers have to be trained, qualified and equipped to perform the role which they are being asked to perform and nothing in this proposal will alter that requirement.
- 1.2 This will support the corporate objective to achieve financial savings by increasing the flexibility of existing resources, allowing them to be deployed more effectively. This will enable Law Enforcement to continue to meet the need to develop and increase capabilities and also provide skills to prevent and combat cross-border crime, whilst maintaining current high standards of local policing.
- 1.3 Implementing dual function appointments in this way would allow greater resilience and strength at the border as well as for serious and complex criminal investigations, allowing the organisation the flexibility to direct its existing resources at the areas of greatest business need.

#### **2. Background**

- 2.1 Law Enforcement is currently comprised of three separate services – Customs & Excise, Immigration & Nationality, and the Island Police Force (“the Services”) - which are under the single command of the Head of Law Enforcement. These

Services are required to combat an increasing range of international crime that is continually growing in sophistication and which can be global in extent. The title Head of Law Enforcement is purely administrative with the necessary powers being drawn from the statutory positions of Chief Officer of Police and Chief Revenue Officer.

- 2.2 In order to preserve the safety and security of Islanders, the Department must ensure that Law Enforcement is suitably enabled to respond quickly to developments in criminal activity. The Department is mindful of its responsibility for fiscal prudence and, as such, is conscious that there is a need to optimise the use of existing resources and skills by deploying Officers as flexibly as possible. Enhanced collaboration between the Services can build a robust and agile Law Enforcement team to effectively challenge traditional, as well as emerging, forms of criminality, thereby enhancing the safety and security of the community without increasing staff costs.
- 2.3 An obstacle to the achievement of closer operational collaboration between the services is the fact that many legislative enactments confer functions (“powers and duties”) on officers of one service, but not generally on officers of other services.
- 2.4 A practical example of this current inefficiency is in the case of Police Officers and Customs Officers working in the same department investigating the same matter but having different, and in some cases restrictive, core powers. Customs Officers’ powers of arrest relate to assigned matters only. An “assigned matter” means any matter in relation to which the Chief Revenue Officer is for the time being required in pursuance of any enactment to perform any duties. This can be evidenced within the area of Economic Crime which is staffed jointly with teams of officers from both organisations working together and who are limited in terms of their powers of arrest dependent on the crime being investigated.
- 2.5 Such a development to achieve dual functionality would place local Law Enforcement on a comparable footing to the UK National Crime Agency (NCA) as provided by Section 10 of the Crime & Courts Act 2013 (see Appendix 1).

### **3. Enhancing Operational Collaboration**

- 3.1 In order to achieve the Department’s objectives for more robust and agile law enforcement that optimises resources, new enabling legislation is required which would permit identified officers to perform a dual function for the time that they are working as part of a joint team or to undertake a specific function. This will establish without any doubt the legal authority under which they are acting, exercising powers of arrest and securing evidence.
- 3.2 The facilitation of dual function appointments and authorisations is a key enabler in delivering transformation for Law Enforcement, providing greater efficiencies and resilience between Services without increasing costs or reducing current frontline service provision.

#### **4. Proposals**

- 4.1 Powers and privileges of Police Officers: It is proposed that separate legislation is enacted to specifically empower Customs Officers and Immigration Officers to be designated as having the powers and privileges of Police Officers, in order for such Customs Officers or Immigration Officers to be deployed, subject to any limitations considered appropriate and with the necessary skills and/or training, at the discretion of the Head of Law Enforcement to discharge the functions of Police Officers.
- 4.2 Powers of Customs Officers: It is proposed that separate legislation is enacted to specifically empower Police Officers and Immigration Officers to be designated as having the powers of Customs Officers, in order for such Police Officers and Immigration Officers to be deployed, subject to any limitations considered appropriate and with the necessary skills and/or training, at the discretion of the Head of Law Enforcement to discharge the functions of Customs Officers.
- 4.3 Powers of Immigration Officers: It is proposed that separate legislation is enacted to specifically empower Police Officers to be designated as having the powers of Immigration Officers in order for such Police Officers to be deployed, subject to any limitations considered appropriate and with the necessary skills and/or training, at the discretion of the Head of Law Enforcement to discharge the functions of Immigration Officers.
- 4.4 Evidence of Designation: The Department is conscious of the need to ensure that only duly designated officers can exercise the powers of Police, Customs, or Immigration Officers. It is therefore proposed that designated officers will be required to show evidence of the designation, if requested, when exercising operational powers.
- 4.5 Additional Offences relating to Obstruction of Duties or Impersonation: It is important to prevent designated officers being obstructed in the course of their additional duties. It is therefore proposed that appropriate provisions should be made to create offences of resisting, wilfully obstructing, or assaulting designated officers in the exercise of their operational powers and impersonating a designated officer.
- 4.6 Discipline, Conduct and Performance: Police, Customs, and Immigration Officers who become designated officers will continue to keep their status as Police, Customs, and Immigration Officers respectively, and be dealt with as such under any legislation and/or internal procedures relating to discipline, conduct or performance. This position may be reviewed in the future.

- 4.7 Vicarious liability: In 2012, the Court of Appeal identified constitutional issues in respect of the vicarious liability of the States of Guernsey for the actions of Police and Customs Officers in the performance or purported performance of their law enforcement functions, in the case of *Le Huray v States of Guernsey* (Judgment of 19<sup>th</sup> January 2012). These issues are complex and this Policy Letter does not seek to address them as it will require wider and more fundamental change to primary legislation that will form part of the proposals for new legislation for law enforcement which the Department plans to return with to the States of Deliberation in due course.
- 4.8 Civil Liability: In the meantime, for the purposes of determining civil liability, Police, Customs, and Immigration Officers who become designated officers are to be treated as if they were officers whose powers they are designated with. For example, if a Customs Officer designated with the powers and privileges of Police Officers was to commit a wrongful act in purporting to exercise the powers of a Police Officer, the act should be treated as if it were the act of a Police Officer for the purposes of determining who is liable for that act. Conversely, if a Police Officer designated with the powers of Customs Officers was to commit a wrongful act in purporting to exercise the powers of a Customs Officer, the act should be treated as if it were the act of a Customs Officer for the purposes of determining who is liable for that act.

## **5. Consultation**

- 5.1 The Head of Law Enforcement considers that these proposals are essential in order to enable the effective and efficient use of available resources and directing resources in line with emerging risks. The Law Officers of the Crown have been consulted and have indicated that these proposals would require implementation by a *Projet de Loi*.

## **6. Recommendations**

- 6.1 The Department recommends the States:

1. To agree that legislation be introduced in order to:
  - (a) empower the Chief Officer of Police to designate any Customs Officer or Immigration Officer as a person having the powers and privileges of a Police Officer, subject to any limitations considered appropriate by the Head of Law Enforcement;
  - (b) empower the Chief Revenue Officer to designate any Police Officer or Immigration Officer as a person having the powers of a Customs Officer, subject to any limitations considered appropriate by the Head of Law Enforcement;
  - (c) empower the Chief Revenue Officer to designate any Police Officer as a

person having the powers of an Immigration Officer, subject to any limitations considered appropriate by the Head of Law Enforcement;

- (d) require designated officers to produce evidence of the designation if requested in the course of exercising their operational powers;
  - (e) create offences of resisting or wilfully obstructing or assaulting a designated officer in the exercise of their operational powers and an offence of impersonating a designated officer;
  - (f) provide that the Police Complaints (Guernsey) Law, 2008 would continue to apply to Police Officers who are designated with the powers of Customs Officers or Immigration Officers, but a Customs Officer or Immigration Officer who is designated with the powers and privileges of a Police Officer would not be regarded as a Police Officer for the purposes of that Law;
  - (g) provide that where a designated officer is exercising the operational powers of a Police Officer, Customs Officer or Immigration Officer (conferred on the designated officer by the designation), any unlawful conduct of that designated officer is to be regarded as if it were the unlawful conduct of a Police Officer, Customs Officer or Immigration Officer respectively; and
  - (h) enable the States, by Ordinance, to make such provision as the States considers appropriate in consequence of designated officers having the operational powers referred to above; and
2. To direct the preparation of such legislation as may be necessary to give effect to the above recommendation.

Yours faithfully

P L Gillson  
Minister

F W Quin, Deputy Minister  
M J Fallaize  
M M Lowe  
A M Wilkie

Mr A L Ozanne, Non-States Member

## Appendix 1

### **Crime and Courts Act 2013 Section 10**

“ *Operational powers of other National Crime Agency (NCA) officers*

*(1) The Director General may designate any other NCA officer as a person having one or more of the following—*

- (a) the powers and privileges of a constable;*
- (b) the powers of an officer of Revenue and Customs;*
- (c) the powers of an immigration officer.*

*(2) The Director General may not designate an NCA officer under this section as having particular operational powers unless the Director General is satisfied that the officer—*

- (a) is capable of effectively exercising those powers;*
- (b) has received adequate training in respect of the exercise of those powers;*
- and*
- (c) is otherwise a suitable person to exercise those powers.*

*(3) The Director General may modify or withdraw a designation of an NCA officer by giving notice of the modification or withdrawal to the officer.*

*(4) For further provision about designations under this section, see Schedule 5. ”*



**(N.B. The Treasury and Resources Department acknowledges the positive and proactive efforts of the Home Department to improve the efficiency and effectiveness of “The Services” and that implementation of the recommendations in this Policy Letter will result in improved use of existing resources and can deliver financial savings.)**

**(N.B. Deploying officers flexibly to perform multiple functions makes best use of valuable resources and is entirely in line with the objectives of Public Service Reform.**

**Therefore, the Policy Council supports these proposals and is satisfied that they comply with the Principles of Good Governance as defined in Billet d’État IV of 2011.)**

The States are asked to decide:-

I.- Whether, after consideration of the Policy Letter dated 15<sup>th</sup> December, 2015, of the Home Department, they are of the opinion:-

1. To agree that legislation be introduced in order to:
  - (a) empower the Chief Officer of Police to designate any Customs Officer or Immigration Officer as a person having the powers and privileges of a Police Officer, subject to any limitations considered appropriate by the Head of Law Enforcement;
  - (b) empower the Chief Revenue Officer to designate any Police Officer or Immigration Officer as a person having the powers of a Customs Officer, subject to any limitations considered appropriate by the Head of Law Enforcement;
  - (c) empower the Chief Revenue Officer to designate any Police Officer as a person having the powers of an Immigration Officer, subject to any limitations considered appropriate by the Head of Law Enforcement;
  - (d) require designated officers to produce evidence of the designation if requested in the course of exercising their operational powers;
  - (e) create offences of resisting or wilfully obstructing or assaulting a designated officer in the exercise of their operational powers and an offence of impersonating a designated officer;
  - (f) provide that the Police Complaints (Guernsey) Law, 2008 would continue to apply to Police Officers who are designated with the powers of Customs Officers or Immigration Officers, but a Customs Officer or Immigration Officer who is designated with the powers and privileges of a Police Officer

would not be regarded as a Police Officer for the purposes of that Law;

- (g) provide that where a designated officer is exercising the operational powers of a Police Officer, Customs Officer or Immigration Officer (conferred on the designated officer by the designation), any unlawful conduct of that designated officer is to be regarded as if it were the unlawful conduct of a Police Officer, Customs Officer or Immigration Officer respectively; and
  - (h) enable the States, by Ordinance, to make such provision as the States considers appropriate in consequence of designated officers having the operational powers referred to above.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## THE SCRUTINY COMMITTEE AND THE PUBLIC ACCOUNTS COMMITTEE

### THE SCRUTINY MANAGEMENT COMMITTEE – POWERS, RESOURCES AND IMPARTIALITY

The Presiding Officer  
The States of Guernsey  
The Royal Court House  
St. Peter Port

23<sup>rd</sup> December 2015

Dear Sir

#### 1. Executive Summary

- 1.1 This Policy Letter makes recommendations on the powers, resources and impartial management arrangements that will be necessary to enable the transition from the current scrutiny committees - namely, the Scrutiny Committee and the Public Accounts Committee ('the Joint Committees') - to the establishment, from May 2016, of the Scrutiny Management Committee ('the SMC'), in accordance with the Resolutions of the States following debate of the States Review Committee's ('the SRC') second policy letter on the organisation of States' affairs (Billet d'État XII, 7<sup>th</sup> July 2015<sup>1</sup>) (See Appendix 1).
- 1.2 In July 2015, the States resolved to change the structure, membership and operation of scrutiny as part of the newly introduced committee system. The States resolved that, with effect from May 2016, there would be a single Committee responsible to the States for the scrutiny of policy, finances and legislation, and that '*..... the full mandate of the Scrutiny Management Committee shall be based upon the duties and powers set out in section 9 of ... [the SRC's second] Policy Letter*'.<sup>2</sup>
- 1.3 Following consideration of the SRC's third Policy Letter on the organisation of States' affairs (Billet d'État XXI, 25<sup>th</sup> November 2015)<sup>3</sup>, the States agreed the mandate of the SMC as shown in Appendix 2.
- 1.4 As a result of a successful amendment, the States, in July 2015, directed the Joint Committees '*...following examination of the issues, [to] lay recommendations before the States no later than February 2016, in relation to the matters in paragraphs 9.4.3, 9.4.4, 9.4.5 and 9.4.9 of ...[the SRC's second] Policy Letter*.'

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<sup>1</sup>: <http://www.gov.gg/CHttpHandler.ashx?id=98400&p=0>

<sup>2</sup>: <http://www.gov.gg/CHttpHandler.ashx?id=98401&p=0>

<sup>3</sup> <http://www.gov.gg/CHttpHandler.ashx?id=98291&p=0>

(Appendix 2). Specifically, this required the Joint Committees to report back by February 2016 with proposals on the powers, resources and appropriate impartial management arrangements for the proposed SMC.

1.5 As instructed by the States, the Joint Committees have considered the issues and concluded that the following areas require strengthening to ensure that the required scrutiny can be provided by the SMC:

- The power to compel witnesses to attend its hearings and to require the production of documents and information from relevant sources (see paragraphs 2.3 – 2.9);
- Widening the scope of parliamentary scrutiny to other organisations which are in receipt of public funds (see paragraphs 2.10 – 2.14);
- Extending rights of privilege to any person giving evidence to scrutiny reviews (see paragraphs 2.15 – 2.24);
- The appointment of Accounting Officers (see paragraphs 2.25 – 2.28);
- The strengthening of the impartiality of scrutiny (see paragraphs 2.29 – 2.36); and
- The strengthening of resources devoted to scrutiny functions (see paragraphs 2.37 – 2.63).

1.6 In addition, in this Policy Letter the Joint Committees also address the following areas:

- Continuity of membership (see paragraphs 3.2 – 3.6);
- The role of Non-States Members (see paragraphs 3.7 – 3.9);
- The publication of Post-implementation Reviews of Capital Projects (see paragraphs 3.10 – 3.15); and
- The disclosure of legal advice in exceptional circumstances (see paragraphs 3.16 – 3.20);
- Arrangements for ongoing financial scrutiny (see paragraphs 3.21 – 3.26);
- The arrangements for the scrutiny of legislation (see paragraphs 3.27 – 3.30);
- The publication of an annual Scrutiny Programme (see paragraphs 3.31 – 3.36).

1.7 The SRC have previously recognised in its second Policy Letter that ‘*potential*’ is not the same as ‘*capacity, powers and resources*’<sup>4</sup>. Therefore, the recommendations made to the States in this Policy Letter provide for a future scrutiny function with greater capacity, powers and resources to ensure Committees and their agents can be routinely held to account by the SMC.

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<sup>4</sup> Billet d’État XII, 7<sup>th</sup> July 2015: <http://www.gov.gg/CHttpHandler.ashx?id=98400&p=0>

## **2. Parliamentary Scrutiny**

- 2.1 Good parliamentary scrutiny will improve the effectiveness of government. Although other channels are available to politicians, because of their ability to focus in detail on a specific issue and to maintain a persistent line of questioning, parliamentary committees are one of the most effective mechanisms used by Parliaments to conduct scrutiny.
- 2.2 The following sections highlight areas where the Joint Committees believe improvement is needed and recommendations are provided to strengthen robustness in these areas.

### ***The Powers to Compel***

- 2.3 The functioning of the SMC should be strengthened by providing it with the powers to compel: (i) witnesses to attend its hearings; and (ii) produce documents and information from relevant sources.
- 2.4 The standard term for this used in Parliaments elsewhere is ‘the power to send for persons, papers and records’. In the Guernsey context, this would mean that the SMC could insist upon the attendance of witnesses and the production of documents and other material, in paper or electronic form. The Joint Committees are therefore recommending that these powers be conferred on the SMC by the States.
- 2.5 However, the Joint Committees consider that the States should also determine how these provisions should be applied, including, where necessary, the imposition of conditions on the exercise of these powers. Accordingly, the Joint Committees recommend that where the SMC intends to exercise its powers of compulsion it should be required to give notice in writing to the body/person of its intention to do so and to set out the proposed extent of such an exercise of its powers. A body/person directed to appear before the SMC should be given reasonable notice of the required date for their attendance, and/or a reasonable period for providing evidence or a document, or otherwise complying with the direction. Those bodies/persons required to attend should also be informed of the broad areas of business that the SMC is currently, or will be, conducting, relating to the formal direction to attend; and the direction should at all times be relevant to the proceedings of the SMC. This will ensure that the SMC uses its powers responsibly and only on matters relevant to its work.
- 2.6 It is hoped that in the vast majority of cases those who are requested to attend proceedings would choose to do so voluntarily; indeed, the experience of Parliaments which have these powers elsewhere indicates that they are rarely used. However, if the SMC is to be given these powers to compel attendance, it is necessary to consider how, in practice, such powers would be exercised. In the view of the Joint Committees, the appropriate legal infrastructure will need to be in place to ensure the enforceability and legality of the proposed approach.

- 2.7 **Accordingly, the Joint Committees recommend that the necessary primary legislation be drafted along the lines set out in the preceding paragraphs.**
- 2.8 The SRC's second policy letter acknowledged that, as a result of the SMC having the powers to compel, there would be a need to review the Code of Conduct for both Members of the States of Deliberation and the Civil Service Code. As noted above, it is envisaged that the vast majority of those persons requested to attend hearings or to provide documentation would do so voluntarily. However, an appropriate strengthening of the respective Codes of Conduct would enhance this notion of voluntary attendance.
- 2.9 **Therefore, the Joint Committees are recommending that the States Assembly and Constitution Committee (the SACC) considers this matter and submit to the States for consideration a revised Code of Conduct for Members of the States of Deliberation. It is also recommending that the Civil Service Code be updated to encompass the requirements of the SMC.**

*Widening the scope of Parliamentary scrutiny*

- 2.10 As a result of a successful amendment to the SRC's third Policy Letter in November 2015, the States resolved that the powers of the SMC be strengthened further by affording it the right to scrutinise, and to call in witnesses and gather evidence from, a greater range of organisations which are in receipt of public funds, or which have been established by legislation, subject to the appropriate legislation being put in place.
- 2.11 Since the scrutiny function was established in 2004, the methods of delivery of government programmes have diversified to encompass third sector organisations, private sector providers and a number of other agents of government.<sup>5</sup> In 2012, the States provided grants and subsidies totalling over £30 million to such organisations in Guernsey.
- 2.12 However, the reviews undertaken by the current Committees have highlighted the problem that agencies and organisations essential to the delivery of government policy or services are beyond the current Committees' ability to review. As a consequence, democratic oversight is curtailed.
- 2.13 The Joint Committees consider that the current mandates of the Scrutiny Committee and the Public Accounts Committee limit the effectiveness of the scrutiny process and, therefore, support the change to the mandate of the SMC to allow the scrutiny of the wider 'agents' of government.

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<sup>5</sup> Where 'agents' are defined as 'organisations created or commissioned by government to undertake functions, or supported by government to supply services'.

- 2.14 A number of agencies have been created to minimise the risk of political interference in certain types of decision-making. Where this is the case, it will not be for the SMC to introduce it. The changes suggested are not intended to limit their autonomy to act independently, or to curtail the commercial freedom of any of these agencies or organisations.

***Extending rights of privilege to any person giving evidence to scrutiny reviews***

- 2.15 The effectiveness of the SMC would be strengthened further by extending the rights of privilege enjoyed by Deputies to any person giving evidence to scrutiny panels and hearings.
- 2.16 Parliamentary privilege in the United Kingdom is a legal immunity enjoyed by Members of both the Houses of Parliament and the House of Lords to ensure that they are able to carry out their duties free from judicial intervention, including by the Courts. Parliamentary privilege has two main components. Firstly, freedom of speech, guaranteed by Article 9 of the Bill of Rights 1689; and secondly, the exclusive cognisance, or sole control, of all aspects of Parliament's affairs because Courts cannot question how Parliament applies its own rules.
- 2.17 This immunity is essential to enable a legislative assembly to perform its functions free of coercion from whatever source. Though different forms of privilege apply across the world, the concept of privilege has its origins at Westminster. A broad distinction however, exists between the Westminster approach of applying privilege to proceedings and the original French approach of giving a broader immunity from prosecution to parliamentarians. This allows Members to debate what they wish without fear of redress by the Courts.
- 2.18 In October 2003 (Billet d'État XXIV, 2003)<sup>6</sup>, the States directed that legislation should be drafted in relation to parliamentary privilege and they further decided, in May 2005 (Billet d'État VI, 2005)<sup>7</sup>, that this legislation should be extended to include those appearing as witnesses before hearings or inquiries held by the Scrutiny Committee or Public Accounts Committee. Subsequently, the States approved the Reform (Guernsey) (Amendment) Law, 2006 which draws a distinction between those giving evidence to Committees and the Deputies who sit on those Committees.
- 2.19 A person attending to give evidence, or producing any document to the Scrutiny Committee or the Public Accounts Committee is entitled, in respect of any evidence given or document produced by them, to the same immunities and privileges as if they were a witness before the Royal Court, whereas a Deputy enjoys absolute privilege.
- 2.20 In the UK, witnesses giving oral evidence, or those submitting written evidence, to a Select Committee (once it has been formally accepted), enjoy absolute

<sup>6</sup> <http://theoldsite.gov.gg/article/5437/2003-October-29th-Billet-XXIII--XXIV>

<sup>7</sup> <http://theoldsite.gov.gg/article/5485/2005-May-25th-Billet-V--VI>

privilege. This protection extends beyond defamation. A witness subject to a Court Order and who breaks it during a parliamentary proceeding would also be protected.

- 2.21 The Joint Committees believe that extending absolute privilege to those giving evidence (both oral and written) to SMC hearings and panels would increase the likelihood of witnesses being able to speak freely to their elected representatives.
- 2.22 However, this right must be used responsibly and it falls to the Chair of the proceedings to ensure that it is. Therefore, it is recommended that a witness who is in danger of abusing privilege should be directed by the Chair to cease giving evidence, and that witnesses would then lose the protection of absolute privilege in respect of any evidence given after the Chair's direction.
- 2.23 In the case of written evidence, individuals or organisations cannot send material to the SMC on the assumption that, in doing so, they are automatically given the protection of privilege. The SMC has to decide formally to accept a submission as evidence, in order to confer privilege. The Joint Committees consider that the SMC should be able to decide not to accept potentially defamatory written submissions, or submissions from those subject to Court Orders, unless it believes that it is in the public interest to do so. The SMC would avoid breaching a Court Order unless it believed there was a wholly exceptional public interest reason to do so.
- 2.24 **Accordingly, the Joint Committees recommend that secondary legislation be enacted along the lines set out in the preceding paragraphs to provide for the extension of legal privilege to those providing evidence to the SMC hearings and reviews.**

### *Accounting Officers*

- 2.25 The SRC proposals included the new concept for Guernsey of the appointment of 'Accounting Officers' for each of the Principal Committees, who would be identifiably responsible for standards of probity in the management of public funds. This is in line with similar arrangements across UK government, which have been in place for many years.
- 2.26 The Joint Committees support this development and believe that effective government requires good control of finances. The public of Guernsey want assurance that money is not misspent and is handled with high standards of probity. Government needs to know what it is spending, why, and whether there is sufficient benefit to justify the expense. At a time of restrained public finances, this concern is even more pressing.
- 2.27 Accounting officers are central to the system in the UK which has evolved for keeping government spending under control. Accounting for the use of that money to Parliament and the public has always been the central axis of



government accountability. In the UK, that accountability for public money is vested in the Civil Service. The Accounting Officer is almost always the most senior permanent official in a department, either the Permanent Secretary, or, in the case of an Agency, the Chief Executive is the one who is personally accountable to Parliament for the use of public money. These officers must ensure that spending meets the four tests of regularity, propriety, value for money, and, most recently, feasibility. Where it does not, they can be formally instructed to proceed with the action requested by the Minister through a written direction.

- 2.28 The Joint Committees recommend that the Policy and Resources Committee takes the actions required to appoint Accounting Officers for each of the Principal Committees.**

### *Impartiality*

- 2.29 Demonstrating visible impartiality of scrutiny is important. The second SRC report<sup>8</sup> suggested that a pragmatic way of strengthening perceptions of impartiality would be to provide accommodation, facilities and support staff independently from those provided to the Policy and Resources Committee and the Principal Committees.
- 2.30 A key concern in the SRC proposals is to ensure that the SMC staff are free to act in the SMC's best interests and are not subject to undue influence from senior management in the Civil Service. To this end, the SRC recommended removing the line management links between the States' Chief Executive and officers supporting the SMC. Whilst the logic of this aim is clear, it does present practical difficulties in striking a balance between enabling impartiality and providing a career structure that ensures the recruitment and retention of staff, as well as affording them appropriate support.
- 2.31 The new arrangements proposed within this Policy Letter are intended to safeguard the operational independence of the staff charged with undertaking scrutiny activity. Westminster is large enough to have its own parliamentary service distinct from the Civil Service. The scale of this function within the States of Guernsey is insufficient to allow the creation of a separate parliamentary service. Nevertheless, it is essential to have arrangements that allow a truly independent scrutiny management function to operate. This, therefore, requires sufficiently autonomous management arrangements to avoid a scenario where undue influence is placed on scrutiny staff, as it is in the nature of the role that it may encompass (and indeed encourage) asking 'difficult' questions that may not be popular with senior management.
- 2.32 The Joint Committees have, therefore, considered the options to ensure a suitable level of managerial and operational independence for senior staff performing this function.

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<sup>8</sup> Billet d'État XII, 7<sup>th</sup> July 2015: <http://www.gov.gg/CHttpHandler.ashx?id=98400&p=0>

- 2.33 The leadership role of the Principal Scrutiny Officer within the new SMC has no statutory function, but is exercised under delegated authority from the SMC. The Joint Committees consider that the functions of this role are wholly administrative, and for this reason they believe that no level of statutory independence is necessary, or justified.
- 2.34 **Instead, the Joint Committees recommend that a memorandum of understanding should be in place between the post-holder and the Chief Executive of the Civil Service that guarantees the operational independence of the Principal Scrutiny Officer, whilst providing them with the appropriate management support.**
- 2.35 Though not a perfect solution, this would at least be a public acknowledgement of the potential for conflict and provide a statement of intent as to how it can be managed.
- 2.36 To provide the necessary balance, the Principal Scrutiny Officer must ensure that, in line with the Accounting Officer principles now enshrined in these proposals, any review undertaken complies with the SMC mandate, provides value for money, and is in the public interest. Where a review does not meet these tests, in the opinion of the Principal Scrutiny Officer, the Principal Scrutiny Officer can be formally instructed to proceed by the Chairman or a majority of the Committee through a written direction.

### **Resources**

- 2.37 In relation to the resourcing of the SMC, the Joint Committees are conscious of the States Resolution: *‘To agree that, as set out in section 9.4 of that Policy Letter, the Scrutiny Management Committee shall be provided with accommodation, facilities and support staff independently from those provided to the Policy & Resources Committee and the Principal Committees, including removing the line management links between the States’ Chief Executive and officers supporting the Scrutiny Management Committee.’*<sup>9</sup>
- 2.38 Strengthening resources would inevitably necessitate additional expenditure on staff, especially in the field of policy research and financial oversight. The current level of resources available to the Public Accounts Committee and the Scrutiny Committee remains a major issue. Specific concerns exist in the following areas;
- the staff resources available to the SMC;
  - the availability at short notice of appropriate venues for public hearings; and
  - the availability of funds to commission specialist reviews.
- 2.39 It is also clear that the progress that has been made during this term on legislative scrutiny should be continued and this means additional resources to strengthen

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<sup>9</sup> Billet d’État XII, 7<sup>th</sup> July 2015: <http://www.gov.gg/CHttpHandler.ashx?id=98401&p=0>

this essential element of the democratic process. To perform these duties satisfactorily an additional appropriately skilled member of staff will be required. The current situation, with no dedicated staff to support the role of the Legislation Select Committee, is unsustainable if the SMC is to meet the stated aim of the SRC's third Policy Letter, to demonstrate thorough and rigorous legislative scrutiny.

- 2.40 The Joint Committees believe that this lack of resources is a major constraint on their ability to react appropriately to events and to progress reviews in a timely manner. If the responsiveness of the scrutiny process is to be improved then the resource issue does need to be addressed.
  
- 2.41 The level of resources allocated to the scrutiny process has to be a political decision. Historically, it may be that those charged with making this decision were mindful of the potential risks associated with the transparency and good governance agenda. However, in the modern political climate, it is untenable to operate without a sufficiently robust parliamentary scrutiny process. This will require additional resources added to the existing core staff.
  
- 2.42 The value of the SMC will lie in subjecting the policies of Committees and agents of government to the informed judgement and analysis of their peers. The key is in the word 'informed'; scrutiny panels will need advice on questions and where to look for relevant information and, on occasion, this will require suitably qualified and experienced external input.
  
- 2.43 An increase in resources should be provided in terms of additional people and additional budget to access specialist external support. Additional staffing will allow more activities to be undertaken, particularly in terms of staging additional public hearings. However, given the wide range of reviews that may be undertaken, it is perhaps sensible and more efficient to provide limited extra staff alongside the additional financial resources required to purchase specialist external support.
  
- 2.44 In Jersey, the office of Comptroller and Auditor General ('the C&AG') was established in 2005. Its remit includes the audit of financial statements and the wider consideration of public funds, including internal financial control, value for money and corporate governance. The C&AG provides the States with independent assurance that the public finances of Jersey are being regulated, controlled, supervised and accounted for in accordance with the relevant legislation. The Jersey Public Accounts Committee's role is to receive reports from the Comptroller and Auditor General and to report to the States on any significant issues arising therefrom. It also assesses whether public funds have been applied for the purpose intended.
  
- 2.45 In the UK, the National Audit Office ('the NAO') scrutinises public spending for Parliament and helps hold government to account. Its work has two main aims: (i) to report audit results to Parliament; and (ii) to help to hold government

departments and other bodies to account for how they use public money. In addition, through their value-for-money work, they report on whether departments and other bodies have used public money efficiently, effectively and with economy. They provide the Committee of Public Accounts with a range of reports, as well as briefings and analysis, to support its inquiries. The NAO do not question government policies but examine objectively and independently the value for money with which departments and other bodies implement those policies.

- 2.46 Guernsey does not have an equivalent to the NAO in the UK, or the C&AG in Jersey. Therefore, financial scrutiny in Guernsey is undertaken from a different starting point, specifically in terms of supporting structures and the level of resources directed to this area. Whilst the Joint Committees are not minded to recommend the creation of comparable arrangements in Guernsey to support financial scrutiny, it is clear that significant additional resources should be directed to this area, albeit at a significantly lower cost than in comparable jurisdictions. The Joint Committees believe that moving to a higher level of financial scrutiny will allow best practice to be shared, and help to ensure resources are used efficiently and effectively.
- 2.47 The Joint Committees, therefore, believe that the addition of three staff members, plus an additional £150,000 per annum dedicated to purchase specialist external support, will allow the Committee to undertake a significant level of additional activity. In addition, the Joint Committees believe that it may be possible to second appropriately skilled staff from elsewhere within the States, to assist on suitable projects in order to avoid additional expenditure. This resource would be applied to urgent and specialist reviews across financial, legislative and policy scrutiny.
- 2.48 Specifically in terms of urgent reviews, this would allow the SMC to hold at least two 'urgent business reviews' during a year, in addition to the existing in-depth planned business reviews that are currently undertaken. These 'urgent business reviews' would be expected to take the form of inviting selected witnesses to attend a public hearing, or hearings, as soon as practicable to address matters of topical political and public concern. Thereafter, a short publicly available report would be produced.
- 2.49 It is intended that additional resources will mainly focus on increasing the amount of dynamic scrutiny activity that is undertaken. Specifically, this will enable short-term reviews of matters of immediate political concern utilising the newly acquired ability to call on a wider pool of political and external resources in the form of elected Members and Non-States Members.
- 2.50 It should be noted that, in the experience of the current and previous Joint Committees, expenditure on scrutiny activities is not evenly dispersed over a 4-year States' term. In the earlier part of the term there can be an 'underspend' of allocated resources, whilst the latter period is when the majority of expenditure is

incurred. This has created a perverse situation whereby the Public Accounts Committee had to request funding from the Treasury and Resources Department, for a review into that Department during this term.

- 2.51 The additional resources and funding referred to in this Policy Letter would also allow more specialist areas to be reviewed using appropriately qualified external assistance. These resources would work alongside the existing permanent staff to increase the breadth of topics that could reasonably be addressed. In the view of the Joint Committees, the widening of the mandate of the SMC must be supported by appropriately qualified external resources, especially where matters of technical complexity are to be reviewed. This happens regularly within the Public Accounts Committee model and, to a limited extent, within the existing Scrutiny Committee.
- 2.52 The Joint Committees considered whether a 'Review Fund' covering the 4-year political term should be provided, such that the Committee could access this fund at its discretion to cover the cost of external expertise when required. However, this was not considered practicable.
- 2.53 Instead, the Joint Committees believe that the SMC should be allowed to retain its unspent (non-pay) general revenue balances from one year to the next up to, but not beyond, its 4-year term. This would provide the additional flexibility required.
- 2.54 Staffing and budget are not the only resource constraints; there also needs to be a system in place which permits a public hearing to be called at short notice. In order to achieve this, the SMC will need access to a suitable meeting venue together with the availability of a suitable transcription service.
- 2.55 If all these elements are in place, as they are in Westminster, Jersey and other jurisdictions elsewhere, the new SMC will be able to react quickly to events and undertake urgent reviews as required. If the States wishes this to be the form of future parliamentary scrutiny, it will need to ensure that these facilities are available.
- 2.56 Taking all the above into account, the Joint Committees are requesting additional general revenue funding of £366,000 per annum. The Joint Committees acknowledge that this is a significant budgetary increase but believe in the strongest terms that these additional resources will permit the new SMC to undertake its mandated responsibilities and duties.
- 2.57 **Accordingly, the Joint Committees recommend that the Treasury and Resources Department approve a maximum annual revenue expenditure of £936,000 for the SMC.**

- 2.58 In addition, the Joint Committees recommend that the Treasury and Resources Department agree that the SMC should be allowed to retain unspent (non-pay) general revenue balances from one year to the next up to, but not beyond, its 4-year-term.
- 2.59 Furthermore, the Joint Committees recommend that the Policy and Resources Committee provide the offices and meeting rooms required for implementation of the new SMC arrangements.
- 2.60 An analysis of the proposed budget is given below, together with a comparison with the combined budgets of the Scrutiny Committee and the Public Accounts Committee:

|                         | Joint<br>Committees<br>Budget 2016 <sup>10</sup> | Additional<br>Resource<br>Requirement | Proposed SMC<br>Annual<br>Budget <sup>11</sup> |
|-------------------------|--|---------------------------------------|--|
|                         | £'000s   | £'000s                                | £'000s   |
| Pay Costs               | <u>420</u>                                       | <u>210</u>                            | <u>630</u>                                     |
| Non-Pay costs           |  |                                       |  |
| <i>Staff Non-Pay</i>    |  |                                       |  |
| <i>costs</i>            | 14   | 6                                     | 20   |
| <i>Support Services</i> | 104  | 150                                   | 254  |
| <i>Premises</i>         | 2  | 0                                     | 2  |
| <i>Supplies &amp;</i>   |  |                                       |  |
| <i>Services</i>         | 30   | 0                                     | 30   |
|                         | <u>150</u>                                       | <u>156</u>                            | <u>306</u>                                     |
|                         | <u>570</u>                                       | <u>366</u> <sup>12</sup>              | <u>936</u>                                     |

- 2.61 This revenue allocation would provide the budget for the permanent staff detailed below, together with funds for the SMC to commission appropriate external support as required.

<sup>10</sup> Based on the 2016 combined budget allocation for the Scrutiny Committee and the Public Accounts Committee.

<sup>11</sup> It is assumed that 'normal' uplifts to the budget would apply and that the funds would be appropriately apportioned to the SMC from May – Dec 2016 and annually in full thereafter.

<sup>12</sup> This is an uplift from the Joint Committees' 2016 budgets to the SMC 2016 budget of £244,000 (after 1<sup>st</sup> May 2016); and £366,000 per annum thereafter.

| <b>Current Staff Structure</b>    | <b>SMC Staff Structure</b>             |
|-----------------------------------|--|
| <b>Principal Officer</b>          | Principal Officer                      |
| <b>Scrutiny Officer (Finance)</b> | Scrutiny Officer (Finance)             |
| <b>Scrutiny Officer</b>           | Scrutiny Officer                       |
| <b>Scrutiny Officer</b>           | Scrutiny Officer                       |
|                                   | <b>Scrutiny Officer*</b>               |
|                                   | <b>Scrutiny Officer (Legislation)*</b> |
| <b>Scrutiny Executive Officer</b> | Scrutiny Executive                     |
|                                   | <b>Scrutiny Executive*</b>             |
| <b>Executive Assistant</b>        | Executive Assistant                    |

\* 3 additional FTEs

### 3. Additional Issues

- 3.1 The Members of the current scrutiny committees have now been in place for nearly four years and during this period they have accumulated significant experience of undertaking this role in Guernsey and how scrutiny can be most effective. The following section outlines some of their main findings.

#### *Continuity*

- 3.2 A key resource for the scrutiny function is the skills brought and then developed by the Members of the current Scrutiny Committee and Public Accounts Committee. The current model enables Members to develop their inquisitorial skills as the term progresses, supported by training, active learning and staff support.
- 3.3 The existing process where skills are acquired throughout the political term is potentially threatened through the short-term use of 'task and finish' panels as proposed in the second SRC report<sup>13</sup> comprising members recruited for the purpose from inside and outside the States.
- 3.4 It is not clear whether this process of skills development would work as effectively with ad-hoc panels of 'short-term' Members. If the revised arrangements are adopted, then training and development for *ad hoc* Committee Members needs to be fully addressed.
- 3.5 Secondly, given the unpredictable composition of any future Assembly, it is likely that only a relatively small number of the newly elected Members will have the experience, capacity and interest to serve on the SMC in its role as a financial watchdog. With this in mind, the Joint Committees consider that this function would benefit from a degree of continuity due to the specific nature of the work undertaken.

<sup>13</sup> Billet d'État XII, 7<sup>th</sup> July 2015 <http://www.gov.gg/CHttpHandler.ashx?id=98401&p=0>

- 3.6 Accordingly, the Joint Committees considers that the current Non-States Members ('NSMs') on the Public Accounts Committee should be invited to provide that continuity.

### ***Non-States Members***

- 3.7 The new SMC will consist of '*... as set out in section 9.2 of ... [the SRC's second] Policy Letter... three States' members and two members independent of the States*'<sup>14</sup> (i.e. NSMs).
- 3.8 The experience which NSMs bring to current Boards and Committees should not be under-estimated. The right NSMs bring a wealth of knowledge from the commercial, legal or financial worlds, which is invaluable to the States of Guernsey and in particular to the scrutiny of the States' financial dealings.
- 3.9 However, there is currently no formal induction or training in place for NSMs, which the Joint Committees recommend is addressed States-wide, prior to the new government arrangements coming into force.
- 3.10 The Joint Committees also recommend that the remuneration of those NSMs serving on the SMC be provided for within its budget, as the SMC will take responsibility for their induction, training and remuneration.

### ***Post-implementation Reviews of major Capital Projects***

- 3.11 In addition to its value for money reviews and financial scrutiny, the Public Accounts Committee reviews capital projects in order to identify whether funds were applied for the purposes intended, and to ensure that the highest standards are being achieved, in particular in project management.
- 3.12 The current Public Accounts Committee was hopeful that many of the 'lessons to be learnt' from the past had been implemented throughout the States, and that the cases of the same issues re-occurring would have diminished. However, whilst a few projects reviewed showed some good practices, a number of issues do continue to recur.
- 3.13 The Joint Committees believe that Post-implementation Reviews ('the PIRs') can provide invaluable insight into the ways in which the whole States can learn from, and improve the operation of, future projects, but the dissemination of lessons learnt is still not effective as it should be. This is particularly the case between Departments that would normally undertake high value construction projects.
- 3.14 It seems fundamental that if these issues are to be addressed, any Department looking to undertake a substantial capital project should be able to look back at

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<sup>14</sup> Billet d'État XII, 7<sup>th</sup> July 2015: <http://www.gov.gg/CHttpHandler.ashx?id=98401&p=0>



the findings from relevant previous projects, to ensure that any lessons to be learnt can be taken on board prior to a new project commencing.

- 3.15 In addition, the Joint Committees believe that the publication of these reports would improve public confidence in the ability of the States to execute capital projects effectively.
- 3.16 **Accordingly, the Joint Committees recommend that the Policy and Resources Committee fully considers the advantages of releasing all the PIR reports into the public domain.**

*Disclosure of legal advice in exceptional circumstances*

- 3.17 In the view of the Joint Committees, a key omission from the SRC proposals is the ability, in certain contexts, to be able to review the internal legal advice provided to Departments/Committees. This can be a complex area.
- 3.18 Legal advice given to States Departments and Committees is primarily provided by the Law Officers of the Crown and lawyers working under their direction at the Law Officers Chambers. It is acknowledged that, as in the UK, such advice is given: (a) under legal professional privilege (whether litigation privilege or legal advice privilege); and (b) on a confidential basis. This allows clearer and more straightforward advice to be given with the intention of producing the best decision in the public interest. Where advice is given by a lawyer to a private or commercial client, that client could decide to 'waive' privilege at their discretion and disclose the contents of the advice. However, different considerations arise in relation to advice given by, or on behalf of, a Law Officer to Departments, Committees and other public office holders.
- 3.19 The current position is that where advice is given by either the Law Officers or the lawyers working for them, that advice cannot be disclosed without the permission of the Law Officers. This approach is similar to that in England and Wales where even the fact of having taken advice from the Law Officers cannot be disclosed without their agreement. In support of this longstanding convention, the current UK Attorney General (Jeremy Wright, QC, MP) stated that '*it is not about being awkward; it is about trying to maintain some principles of good government and enabling legal advice to be given in the fullest and frankest way, which in my view improves the product at the end of it*'<sup>15</sup>. However, as was demonstrated in the disclosure of Lord Goldsmith's advice on the legality of the war in Iraq and of Jeremy Wright's own recent advice on the legality of RAF drone strikes on British ISIL targets, there are 'exceptional' circumstances when at least

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<sup>15</sup> Paragraph 36 of the Justice Committee session on the Work of the Attorney General on 15<sup>th</sup> September 2015

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-attorney-general/oral/21698.html>

the fact of giving advice is disclosed<sup>16</sup>. For the reasons set out above, it is suggested that the situation in Guernsey should mirror that described in England and Wales.

- 3.20 **It is, therefore, proposed that: (a) the States acknowledge that the convention in Guernsey is that, in ordinary circumstances, advice of the Law Officers (and of their staff) is not disclosed; but that: (b) the Policy and Resources Committee be directed to consider developing appropriate procedures to allow the SMC, in exceptional circumstances and with the Law Officers' consent, to examine legal advice provided to Departments, Committees and other public office holders by the Law Officers and their staff.**

### *Ongoing Financial Scrutiny*

- 3.21 Since its inception in 2004, the Public Accounts Committee has carried out a large amount of routine financial scrutiny. Due to the confidential nature of much of this work it is not seen by many Members of the Assembly or the general public.
- 3.22 These activities include: undertaking the tender process for the 5-year external audit contract; recommending to the States the appointment of the States External Auditors and their remuneration (this role will be undertaken by the Policy and Resources Committee from May 2016); considering the annual External Audit Strategy, monitoring the audit and liaising with the external auditors throughout, and undertaking an annual departmental based assessment of the work of the external auditors.
- 3.23 **As a result of the decision to transfer the appointment of the external auditors to the Policy and Resources Committee from May 2016, the Joint Committees recommend that the SMC be given the right to scrutinise actively the annual external audit process.**
- 3.24 In addition, the Public Accounts Committee also reviews the annual Budget and Accounts of the States of Guernsey to determine any areas requiring further investigation; reviews PIRs for capital projects; works closely with the Internal Audit Unit in order to review the reports of that Unit with regard to value for money issues; and monitors the progress made against the Unit's recommendations on those issues.
- 3.25 Much of this work is essential and will need to continue under the SMC. Accordingly, the joint Committees strongly recommend that the SMC creates a standing Audit Panel under the new arrangements, to provide the necessary ongoing financial scrutiny as outlined above.

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<sup>16</sup> Paragraphs 29, 32 and 36 of the Justice Committee session on the Work of the Attorney General on 15<sup>th</sup> September 2015

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-attorney-general/oral/21698.html>

- 3.26 Furthermore, to enable this role to be effectively undertaken, the new SMC will require early sight of proposals on matters of significant financial impact, such as the Budget and the States Accounts.

### ***Legislation***

- 3.27 The new SMC will encompass the responsibilities currently undertaken by the Legislation Select Committee.
- 3.28 The effective scrutiny of legislation is an important component of the Island's reputation for stable and respectable government. Therefore, the Joint Committees must appoint<sup>17</sup> a standing Legislation Review Panel to bring together States' Members and persons independent of the States with backgrounds and skills especially suited to the scrutiny of legislation.
- 3.29 In its second Policy Letter, the SRC acknowledged that legislative scrutiny cannot be addressed in quite the same way as scrutiny of policy and finances, and noted that '*the scrutiny of legislation is itself a legislative function and the demonstration of thorough and rigorous scrutiny in committee is important*'. The Joint Committees fully support this assertion.
- 3.30 Additionally, the States resolved<sup>18</sup> that '*the Legislation Review Panel should, wherever possible, meet in public and have the power, explicitly expressed, to call in the President of a Principal Committee (or his or her representative) whose proposed legislation is under scrutiny*'. Once again, the Joint Committees fully support this desire to raise the importance of the process of scrutinising legislation. The present Legislation Select Committee has already (in this current term) moved to call in Ministers or those best placed to explain queries regarding their proposed legislation, and it is envisaged that the level of this type of scrutiny will continue to develop if some of the additional resources requested for the SMC are directed to this area.

### ***Publishing an Annual Scrutiny Programme***

- 3.31 The SRC's second Policy Letter includes reference to the possible inclusion within the mandate of the Committee of a requirement to publish an annual scrutiny programme. The Joint Committees have, therefore, considered the potential advantages and disadvantages of publishing an annual scrutiny programme.
- 3.32 Whereas it is simple to put in place a plan that identifies a programme of activities that are predictable, it is more difficult to identify a plan that captures a work programme that reacts quickly to matters of public and political concern, one of

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<sup>17</sup> Article 66(3) of the Reform (Guernsey) Law, 1948) shall be transferred to the Scrutiny Management Committee with the intent that the functions arising under Articles 66(1) and (2) of the Reform (Guernsey) Law, 1948 shall be discharged by a standing Legislation Review Panel

<sup>18</sup> Billet d'État XII, 7<sup>th</sup> July 2015: <http://www.gov.gg/CHttpHandler.ashx?id=98401&p=0>

the key aims of these proposals. Therefore, it should be noted that any programme of this type would be largely intended to provide an outline of possible work.

- 3.33 Clearly, by identifying a particular area of proposed scrutiny activity, it is possible that this will initiate positive actions from those arms of government with responsibilities in that area. However, while there can be a tendency among the public, the media and some elected Members to focus on reports which are the most frequent output from inquiries, it is often the process of conducting an inquiry that has as much, if not more, positive impact.
- 3.34 The very fact that an inquiry has been initiated will raise the profile of an issue within the States, because of the need to produce written evidence and, often, for Ministers and Civil Servants, to give oral evidence to hearings. This process has a similar level of impact on the individuals concerned, as the scrutinising body's final report. Indeed, external observers (including those in the States), frequently reference the higher-profile evidence sessions, rather than the final reports.
- 3.35 It is, therefore, essential to focus on the purpose of parliamentary scrutiny – which is primarily to influence government actions and policy - when deciding how to plan the SMC's activities. Any annual programme would thus need to be structured to allow for the emergence of matters of public and political concern that will require to be addressed quickly.
- 3.36 The Joint Committees therefore propose that the SMC should maintain an ongoing programme of scrutiny activities that is updated as required on a quarterly basis and made publicly available.

#### **4. Resources**

- 4.1 In section 2, the Joint Committees have, in response to the resolutions of the SRC's second Policy Letter, detailed the additional resources required, which total £366,000 per annum.

#### **5. Consultation with the Law Officers**

- 5.1 The Law Officers have been consulted on this Policy Letter.

#### **6. Principles of Good Governance**

- 6.1 The Joint Committees believe that they have fully complied with the six principles of good governance in the preparation of this Report (set out in Billet d'État IV, 2011 submitted jointly by the Public Accounts Committee, the Scrutiny Committee and the States Assembly and Constitution Committee).

## **7. Recommendations**

The Scrutiny Committee and Public Accounts Committee jointly recommend:

1. To direct that legislation be drafted:
  - a) making provision for the Scrutiny Management Committee to have the power to send for persons, papers and records (paragraph 2.7); and
  - b) extending legal privilege to those providing evidence to the Scrutiny Management Committee's hearings and reviews (paragraph 2.24);
2. To direct the States Assembly and Constitution Committee to review and report to the States with a revised Code of Conduct for Members of the States of Deliberation to encompass the requirements of the Scrutiny Management Committee as set out in (paragraph 2.9) this Policy Letter;
3. To direct the Policy and Resources Committee to take the actions required to appoint Accounting Officers for each of the Principal Committees (paragraph 2.28);
4. To direct the Treasury and Resources Department to approve a maximum annual revenue expenditure of £936,000 for the Scrutiny Management Committee (paragraph 2.57);
5. To agree that that the Scrutiny Management Committee should be allowed to retain unspent (non-pay) general revenue balances from one year to the next up to, but not beyond, its 4-year-term (paragraph 2.58);
6. To direct the Policy and Resources Committee to provide the offices and meeting rooms required for implementation of the new Scrutiny Management Committee arrangements (paragraph 2.59);
7. To direct the Policy and Resources Committee to consider fully the advantages of releasing all Post-implementation Review reports on capital projects into the public domain (paragraph 3.16);
8. To direct the Policy and Resources Committee to investigate the procedures required to enable the Scrutiny Management Committee, in exceptional and appropriate cases, to examine, with the Law Officers' consent, the legal advice provided to Departments, Committees and other public office holders by the Law Officers and their staff (paragraph 3.20);
9. To agree that the Scrutiny Management Committee shall have the right to scrutinise actively the annual external audit process (paragraph 3.23).

**Appendix 1 –****Extract of the relevant Resolutions arising from the SRC's second Policy Letter  
(Billet d'État XII, 7<sup>th</sup> July 2015)**

25. To agree that the full mandate of the Scrutiny Management Committee shall be based upon the duties and powers set out in section 9 of that Policy Letter.
26. To agree that, as set out in section 9.2 of that Policy Letter, the States shall elect to the Scrutiny Management Committee three States' members and two members independent of the States.
27. To agree that the arrangements in respect of precluding or not precluding members of the Scrutiny Management Committee from sitting on other States' committee shall be as set out in section 9.2 of that Policy Letter.
28. To agree, as set out in section 9.3 of that Policy Letter, that the Legislation Select Committee shall be dissolved; that the functions of the Legislation Select Committee (other than those arising under Article 66(3) of the Reform (Guernsey) Law, 1948) shall be transferred to the Scrutiny Management Committee with the intent that the functions arising under Articles 66(1) and (2) of the Reform (Guernsey) Law, 1948 shall be discharged by a standing Legislation Review Panel, as set out in paragraph 9.3.10 of that Policy Letter, for and on behalf of the Scrutiny Management Committee; and that the functions of the Legislation Select Committee arising under Article 66(3) of the Reform (Guernsey) Law, 1948 shall be transferred to the Policy & Resources Committee.
29. To agree that the Scrutiny and Public Accounts Committees shall, following examination of the issues, lay recommendations before the States no later than February 2016, in relation to the matters in paragraphs 9.4.3, 9.4.4, 9.4.5 and 9.4.9 of that Policy Letter.
30. To agree that, as set out in section 9.4 of that Policy Letter, the Scrutiny Management Committee shall be provided with accommodation, facilities and support staff independently from those provided to the Policy & Resources Committee and the Principal Committees, including removing the line management links between the States' Chief Executive and officers supporting the Scrutiny Management Committee.

## **Appendix 2 –**

### **Scrutiny Management Committee Mandate Extract of the SRC's Third Policy Letter (Billet d'État XXI, 24<sup>th</sup> November 2015)**

Constituted as a committee of the States with effect from the 1<sup>st</sup> of May 2016 by resolutions of the States of the 9<sup>th</sup> of July, 2015 and the 30<sup>th</sup> of November, 2015.

#### **Constitution**

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

#### **Duties & Powers**

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

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

To appoint a Legislation Review Panel to carry out the functions of legislative scrutiny in Article 66 of the Reform Law and also to recommend any changes to legislation from which it believes the Island may benefit: provided that the Committee shall at all times be responsible, and accountable to the States, for everything done by the Legislation Review Panel; and to constitute the Legislation Review Panel as follows: a President who shall be a member of the Scrutiny Management Committee and also a member of the States, a minimum of four other States' members, a minimum of two non-voting members who shall not be members of the States, and any number of additional and occasional non-voting members as the Scrutiny Management Committee sees fit for the purposes of review of any item of legislation or any other matter: provided that such additional and occasional non-voting members may or may not be members of the States and also

provided that neither the President nor the members of the Policy & Resources Committee shall serve on the Legislation Review Panel.

To scrutinise any matter contained in a policy letter which has been referred to the Committee by resolution of the States in accordance with any terms set out in the resolution and to submit to the States its findings thereon within a period of time set out in the resolution, which findings, together with the original matter, shall be laid before the States.

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

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

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

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

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

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

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

### **Operational Functions**

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



### **Scrutiny Management Committee – Operational Functions**

The **Scrutiny Management Committee** shall deliver or oversee the delivery of those operational functions which immediately before the 1<sup>st</sup> of May, 2016 were delivered by:

- (a) the **Public Accounts Committee**, except that the following operational functions will transfer: to the **Policy & Resources Committee**

Advice and support in relation to the appointment of external auditors and their remuneration

- (b) the **Scrutiny Committee**,

- (c) the **Legislation Select Committee**, except that the following operational functions will transfer to the **Policy & Resources Committee**

Advice and support in relation to legislative functions studying and reporting on Schemes for the application of certain General Synod measures.

### **Appendix 3 –**

#### **Extract of the relevant Resolutions from the SRC's third Policy Letter (Billet d'État XXI, 25<sup>th</sup> November 2015)**

1. To agree the main part of Appendix A to that Policy Letter, entitled 'Mandates of Committees of the States with effect from the 1<sup>st</sup> of May, 2016', in relation to the final wording of the mandates of the following committees of the States and non-governmental bodies:
  - k) Scrutiny Management Committee, except to replace the first sentence under the heading 'Duties & Powers' (page 3204 of the Billet) with the following:
 

*'To lead and co-ordinate the scrutiny of committees of the States and those organisations which are in receipt of public funds, or which have been established by legislation, by reviewing and examining legislation, policies, services and the use of monies and other resources.'*
2. To agree Annex One to the 'Mandates of Committees of the States with effect from the 1<sup>st</sup> of May, 2016' Appendix, in that Policy Letter, in relation to committees' general responsibilities.
3. To agree Annex Two to the 'Mandates of Committees of the States with effect from the 1<sup>st</sup> of May, 2016' Appendix, in that Policy Letter, in relation to the operational functions of the following committees of the States:
  - k) Scrutiny Management Committee, but adding the following text in paragraph (c) of the Operational Functions after *'advice and support in relation to legislative functions'*
    - o 'Studying and reporting on Schemes for the application of certain General Synod measures'.

**(N.B. The Treasury and Resources Department notes that the report of the States Review Committee considered by the Assembly in July 2015 gave assurance that *‘overall, States’ revenue expenditure would not need to be increased as a result of the introduction of the improved committee system agreed by the States last year and developed further in this policy letter.***

**The Scrutiny and Public Accounts Committees are now seeking additional funding for the new Scrutiny Management Committee of £366,000 per annum, which represents a 64% increase on the current combined budget of the Scrutiny and Public Accounts Committee.**

**The Treasury and Resources Department has repeatedly stated that it is not possible to provide for real terms increases in funding for any Department or Committee without a corresponding real terms reduction elsewhere to compensate. The funding of the Scrutiny Management Committee is no exception and it would be necessary, should the States consider this additional funding to be of the highest priority, to reduce the cash limits of other Departments in order to make this funding available.**

**The Treasury and Resources Department considers that, given the number of requests for additional funding which have arisen in the recent past that the Policy and Resources Committee should be allowed to develop and present to the States a system for prioritising service developments, new services and current services before any further allocations are granted.**

**In addition to the additional funding sought, the Treasury and Resources Department considers that many of the other proposals contained within this Policy Letter are likely to have resource implications which are, as yet, not properly understood. For example:**

- **The report does not identify the legislative drafting resources required for the legislation that it is recommended be prepared;**
- **The report does not identify what additional expenses may be required in compelling witnesses to provide evidence, notably where they may not be Members, employees or agents of the States or not based in the Island;**
- **It is not possible to determine the impact of extending the scope of parliamentary scrutiny to all bodies in receipt of public funding;**
- **There is no assessment of the offices and meeting room requirements that it is recommended the Policy and Resources Committee will be required to provide for the implementation of the new arrangements; and,**
- **It is not possible to determine how the figure of £150,000 that it is recommended should be provided for the purchase of specialist external support has been established.**

**The Department notes that the Committees are recommending that the Scrutiny Management Committee should be given the right to scrutinise actively the annual external audit process. It is conscious that, after considering the States Review**

**Committee's third report on the Organisation of States Affairs, the States decided that the Policy and Resources Committee should be responsible for the appointment of the external auditors and specifically rejected a proposal that this should fall within the mandate of the Scrutiny Management Committee. The Department would therefore seek an assurance from the Joint Committees that it is not their intention to seek to manage the actual external audit process and the work of the independent external auditors and that their principal concern relates to scrutiny of the States' Annual Accounts.**

**The Committees are also seeking the flexibility to carry forward unspent non-pay balances across the four year electoral cycle. The Treasury and Resources Department understands the reasons why this is being requested but does not consider there to be a strong case for doing so uniquely for the Scrutiny Management Committee and not all other Committees. In addition, such flexibility is extremely difficult to manage within the current fiscal policies and given the one year budgeting cycle. The Treasury and Resources Department therefore recommends that this be considered as work to develop multi-year budgeting progresses and, until such time as that is implemented, the Scrutiny Management Committee should be able to access any previous years' underspends through the in-year Budget Reserve.)**

The States are asked to decide:-

II.- Whether, after consideration of the Policy Letter dated 23<sup>rd</sup> December, 2015, of the Scrutiny Committee and the Public Accounts Committee, they are of the opinion:-

1. To agree that legislation be drafted:
  - (a) making provision for the Scrutiny Management Committee to have the power to send for persons, papers and records as set out in paragraphs 2.3 to 2.6 of that Policy Letter; and
  - (b) extending legal privilege to those providing evidence to the Scrutiny Management Committee's hearings and reviews as set out in paragraph 2.24 of that Policy Letter.
2. To direct the States Assembly and Constitution Committee to review and report to the States with a revised Code of Conduct for Members of the States of Deliberation to encompass the requirements of the Scrutiny Management Committee as set out in paragraphs 2.8 to 2.9 of that Policy Letter.
3. To direct the Policy and Resources Committee to take the actions required to appoint Accounting Officers for each of the Principal Committees as set out in paragraph 2.28 of that Policy Letter.

4. To direct the Treasury and Resources Department to approve a maximum annual revenue expenditure of £936,000 for the Scrutiny Management Committee as set out in paragraph 2.57 of that Policy Letter.
5. To agree that that the Scrutiny Management Committee should be allowed to retain unspent (non-pay) general revenue balances from one year to the next up to, but not beyond, its 4-year-term as set out in paragraph 2.58 of that Policy Letter.
6. To direct the Policy and Resources Committee to provide the offices and meeting rooms required for implementation of the new Scrutiny Management Committee arrangements as set out in paragraph 2.59 of that Policy Letter.
7. To direct the Policy and Resources Committee to consider fully the advantages of releasing all Post-Implementation Review reports on capital projects into the public domain as set out in paragraph 3.16 of that Policy Letter.
8. To direct the Policy and Resources Committee to investigate the procedures required to enable the Scrutiny Management Committee, in exceptional and appropriate cases, to examine, with the Law Officers' consent, the legal advice provided to Departments, Committees and other public office holders by the Law Officers and their staff as set out in paragraph 3.20 of that Policy Letter.
9. To agree that the Scrutiny Management Committee shall have the right to scrutinise actively the annual external audit process as set out in paragraph 3.23 of that Policy Letter.