



States of Jersey

**Report of the
Review Panel on the
Machinery of Government
in Jersey**

December 2000

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Review Panel on the Machinery of Government in Jersey

Membership

Chairman Sir Cecil Clothier, KCB, QC

Sir Kenneth Bloomfield, KCB

Professor Michael Clarke, CBE DL

Mr. John Henwood, MBE

Dr. John Kelleher

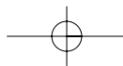
Mr. David Le Quesne

Mrs. Anne Perchard

Mr. Colin Powell, OBE

Sir Maurice Shock

Secretary Mr. George MacRae

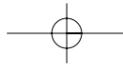




Acknowledgments

We record our gratitude to Mrs. Sarah Thompson who patiently typed various drafts of our Report and numerous amendments to them.

We are even more indebted to our Secretary, Mr. George MacRae. He most skillfully recorded and catalogued the mass of oral and written evidence submitted to us, as well as giving us excellent administrative support in many different ways. We were fortunate indeed to have secured his services.

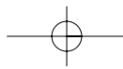




Foreword

*“A state without the means of some change
is without the means of its conservation.”*

Edmund Burke





Terms of Reference

On 2nd March 1999 the States of Jersey approved a proposition to appoint a body to undertake a review of all aspects of the Machinery of Government in Jersey with the following Terms of Reference:-

' to consider whether the present machinery of government in Jersey is appropriate to the task of determining, co-ordinating, effecting and monitoring all States' policies and the delivery of all public services; including -

the composition, operation and effectiveness of the States' Assembly;

the composition, operation and effectiveness of the Committees of the States;

the role and respective responsibilities of the States, the Committees and Departments in achieving an efficient and effective strategic and business planning and resource allocation process;

the role of the Bailiff;

the transparency, accountability and democratic responsiveness of the States' Assembly and Committees of the States;

and

whether the machinery of government is presently subject to checks and balances sufficient to safeguard the public good and the rights of individuals;

but excluding -

the constitutional relationship between the Bailiwick and the United Kingdom;

and

the constitutional relationship between the Bailiwick and the European Union;

and to make recommendations to the Policy and Resources Committee on how the present machinery of government could be improved.'



Introduction

Jersey Yesterday

Those charged with the review of any system should first inform themselves of what has gone before. This we have done. A number of our witnesses, sometimes having held high office in the Island, urged upon us that it would be folly to tamper with institutions which have been tried and tested over the years beyond the possibility of improvement.

Many of the accepted beliefs about the past in Jersey are difficult to sustain with reliable evidence. For example, the belief that King John of England established Jersey's right to autonomy is ill documented. It is true of course that King John managed to retain the Channel Islands when he lost Normandy in 1204 and left them to govern themselves. However, the editors of Balleine's History of Jersey¹, a scholarly work, show that in all probability King John never visited the Island. He certainly left no written charter of rights that its people could rely on. It was more than a century after King John's reign that Edward III in 1341 put his hand to a document which still exists declaring that

“Considering how faithfully the beloved men of our Isles have ever maintained their loyalty towards the King of England, and how much they have suffered in defence of their islands, and of our rights and honour, we concede for ourselves and our heirs that they hold and retain all privileges, liberties, immunities and customs granted by our forbears or of other legal competency, and that they enjoy them freely without molestation by ourselves, our heirs or officers.”

Since those times, Royal Commissions, Committees of the Privy Council, external consultants and Committees of the States have considered how the Island was governed and recommended changes, many of which have been implemented. So the present move towards change in Jersey is by no means revolutionary in character.

We were, therefore, undeterred by those who said that it would be unwise to change anything. Among others, many senior figures who gave evidence to us were in favour of change. The very fact that we were invited by the Policy & Resources Committee to review the present arrangements points in the same direction. Indeed, the history of Jersey's institutions is as much about change as about continuity, some of its institutions dating from as recently as 1948.

¹ History of Jersey by G. R. Balleine, revised and enlarged by Marguerite Syvret and Joan Stevens, Phillimore & Co. Ltd., 1998



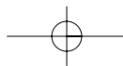
It is necessary to record these reflections because we have considered with care the way in which Jersey's present institutions were arrived at before recommending some quite fundamental changes, which we believe the passage of time demands. Change may be uncomfortable but it is inevitable. The proper attitude to change is not to resist it but to try control its direction.

Jersey Today

On the face of it Jersey is a prosperous and fortunate society. With its economy buoyed up on a tide of revenue driven by a burgeoning financial services industry, the Island is well able to maintain high standards of public services. When most societies around the world are concerned to promote and foster development, Jersey's problem has been to keep such development within bounds. The insular authorities have been able to cope with unforeseen overspends and with ill co-ordinated decision-making because the Island has been driven forward by a favourable wind.

As they evolved over the years the institutions of Jersey were designed to cope, and in other circumstances capable of coping, with a mix of functions comprising matters which almost everywhere are the responsibility of central government together with those more local functions not subject to parish administration.

But the world is changing. Forces from outside the Island - and by no means only in Whitehall - can have a direct bearing on Jersey's future prosperity. The insular authorities clearly need the capacity to act or re-act both rapidly and decisively, as much on external as on internal issues, in a way which is not easy to achieve through consensual mechanisms of government. Lacking a clear centre of governmental authority, 24 Committees provide no machinery for rapid and decisive reaction to the many challenges which Jersey will have to face both in regulating its own internal affairs and in responding to challenges and opportunities flowing from outside influences.

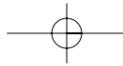




In our endeavours to devise a machinery of government for the Jersey of today, we have tried to preserve as much as possible of the Island's traditional institutions at the same time as prescribing new ones to meet present and future challenges.

Some of the changes we recommend may be painful to some of those at present in positions of authority. But in all our efforts we have focused on what will be best for Jersey in the 21st Century and particularly on the requirement to produce coherence and consistency in governmental decision-making. We have paid the closest attention to what the people of Jersey at all levels have said to us in evidence, preferring the voice of the people to any predilections of our own. What follows in this Report is a response to strong currents of evidence, both spoken and written, which we could not possibly in duty ignore.

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Chapter 1

The Scope of the Review

- 1.1 “Machinery” is a useful metaphor for the processes of government. It calls to mind the smooth and reliable functioning of a mechanism for delivering a wanted product. One would wish this mechanism to be smooth and economical in operation, obedient to its operators, and seldom to require adjustment or maintenance. And it should be easily possible to repair or change some component which is not functioning well. The sole purpose of the machine is to serve the people of Jersey, both present and future.
- 1.2 We emphasise that our terms of reference required us to concern ourselves with the machinery, and not the scope, of government. We have noted from the evidence the extent of the scope of government as it seems to be defined in Jersey. In a period when many jurisdictions have been working to restrict the scope of government and to ensure that as much as possible is done outside its basic structure, in Jersey the tentacles of government seem to extend far into the fabric of society and everyday life. Important though debate about this is for the Island, it is not for this Report.
- 1.3 We recognise that it is not always easy to define the line which divides governmental basic structures from the whole array of semi-independent organisations and agencies which play a part in the supply or delivery of a wide diversity of services and in the regulation of their activities. We do not consider the detailed working of the latter to be within our remit. For us, the machinery we are reviewing is that which is concerned with the essential responsibilities of government, that is to say, the provision of basic public services and the broader business of determining the strategic and policy frameworks within which the activities of the various regulatory and service-providing agencies are conducted. The business of government in a modern society is complex. We have tried to stay with the essentials.
- 1.4 The need for coherence and consistency in government, a requirement we have already noted, leads us to emphasise that our arguments and recommendations are all interlinked and interdependent and so must be looked at as a package rather than a collection of isolated proposals. We hope, therefore, that the temptation to pick out those of our ideas which look simpler and easier to implement will be resisted.
- 1.5 Because we have defined the scope of our review with some precision, our Report may seem to be rather short. This is in part the result of staying close to the essentials, but in part also the result of the deliberate aim to make our Report readable and accessible to every citizen of Jersey.
- 1.6 We are also confident that the reformed machinery which we recommend will be capable of dealing with the consequential details of implementation.

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Chapter 2

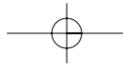
The Electorate

- 2.1 The input end of the Machinery of Government is the electorate and it is here that our review begins. Democracies are born in the hearts of their electorates and unless subsequently cherished will not thrive. We received much evidence to the effect that the electorate of Jersey has become apathetic, disenchanted with, and detached from its government. Electoral disinterest is a common feature of most modern democracies but seems more noticeable in Jersey than elsewhere. The belief of many of our witnesses was that electoral apathy sprang from a lack of confidence that voters could bring about any important change or indeed have any real influence on the way Jersey is governed. An alternative explanation is that the Island is so prosperous and the Machinery of Government so efficient that no one is concerned about it. None of our witnesses seriously offered this alternative.
- 2.2 The detachment of government from governed is dangerous for democracy. The paradox is that Jersey is among those small democracies in the world with a particularly high ratio of representatives to population - one representative for every 1,520 of the people. Yet the electors do not believe that they have any real effect on what happens in the national assembly, the States of Jersey.
- 2.3 We have little to say about the franchise itself. There are some problems for Jersey which arise from a population which includes both immigrant and transitory elements. But these are such as may readily be resolved so as to produce a system in which those who ought to have a vote, get it.
- 2.4 We did, however, receive evidence that the Register of Voters kept by each Parish separately sometimes failed to record people clearly entitled to vote. We **recommend** the appointment by statute of an independent Chief Electoral Officer with appropriate powers and independent status, to be responsible for all matters to do with elections. He should maintain a Central Register of Voters. It would be his or her duty to devise a code of conduct for candidates and to observe and report irregularities to the Royal Court, wherein resides the power to decide on the validity of any election. This Officer could appropriately have the administrative support of the Judicial Greffier's Office. Election expenses should be determined by the States and supervised by him.



- 2.5 Steps should be taken to make it easier to vote. One of the Electoral Officer's duties would be to ensure that there were as few obstacles as possible to the exercising of one's vote. Voting by post must be simple and easy and polling stations should remain open from early morning to late evening.
- 2.6 Some of the apathy of which we have spoken may spring from an electoral system which calls upon voters to record their votes at different times, for various offices, and at irregular intervals. When elections occur too frequently, they cease to be significant occasions in a citizen's life, occasions when he or she is called upon to express an opinion about government.
- 2.7 We **recommend** that the electoral system of Jersey be revised so as to provide that the voters may vote on one day in a General Election for all Members of the States and for their Parish Connétable. This would be an important day in every responsible citizen's calendar and not, as now, just another election. The interval between elections should be not less than four years, nor more than five. This permits a body of opinion amongst government and those governed to take effect, while allowing time enough to consider the consequences.
- 2.8 Since it is the elected members of the States who must provide the personnel for the roles of legislation, accountability and executive control, it seems profoundly unsatisfactory that voters should have so little idea of what those they elect are likely to do. We **recommend** that every candidate for election to the States should be required to submit for publication to the electorate a brief statement of what his or her policies and objectives would be in the next session if they were to be elected, subject to a prescribed maximum length. This would help to reduce the present tendency in Jersey's electorate to vote more for personalities than policies.

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Chapter 3

The States Assembly

- 3.1 Pursuing the analogy of the machine, the States Assembly is or should be the power unit which drives the Island's government and is therefore its most important component. Over and above its primary functions as a national assembly it will have other functions which are internationally recognised. These include:-
- * Making laws;
 - * The determination in debate of major internal and external policies;
 - * The consideration in debate of the management of those essential services which every government must provide;
 - * The public airing of apparent serious failings in the provision of essential services, such as health and education;
 - * The determination of an annual budget and the estimates of expenditure.
- 3.2 A recurring theme in the evidence presented to us was that there were many failings in the present performance of the States and especially the lack of effective use of the time available, partly as a result of:-
- * A tendency for some Members to speak on almost every topic, while others seemed hardly ever to speak or put questions;
 - * A tendency to enjoy debating trivial problems which should be resolved elsewhere, rather than underlying policy issues;
 - * The making of long and discursive speeches, often repeating what had been said by earlier speakers;
 - * An inability to adhere to recent previous decisions and an urge to debate them yet again.
- 3.3 We have attended a debate and seen some of the States' agenda. These confirm the criticism that many a representative feels impelled to raise his or her voice on every topic even if all the words that could sensibly be said about it have already been uttered more than once. It is notoriously easier to speak about a relatively trivial and short-term problem, than to contribute a reasoned and well researched speech on some strategic policy to be pursued in the future. A repeated theme in the evidence we received was that there were far too many of the former kind of speech in the States and too few of the latter. We accept that evidence, borne out as it is by our reading and observation.

3.4 An effective democracy requires not just an executive but the balance of a strong assembly which holds the executive to account and scrutinises its actions as well as contributing to the formation of policy. The evidence we received suggests that the States have not adequately performed either their executive or their critical functions. A number of those who presented evidence to us suggested that the establishment of a central Executive would in effect remove other Members of the States from the political leadership of the Island. We strongly reject this suggestion and would wish to make clear unequivocally that in the structure which we propose there would be an important role for Members who are not part of the Executive. The scrutiny role of Members who are not in the Executive is vital to a balanced machinery of government. It is not necessarily adversarial or destructive and should not be allowed to become so. Further, those who happen to be in the executive side of government will inevitably find it better to seek the assistance and make use of those Members who are not in the Executive than to be at loggerheads with them, if only because, as will be seen later, the executive side will be in the minority.

3.5 Leaving aside the very important role of States Members in representing their constituents and being advocates for their localities, we are emphasising the central, non-executive role of the Assembly as one of scrutiny. In this we embrace a number of different activities which are set out below; we then go on to describe the framework within which they will be carried out. Scrutiny embraces examination of:-

- * The performance of government in discharging its responsibilities and the delivery of services;
- * Expenditure and use of public resources to provide value for money;
- * The budget and other future financial plans;
- * Decisions made by the Executive;
- * Policy issues and ideas, including consideration of draft legislation.

3.6 In considering how the States should fulfil the important function of scrutiny, it is necessary to review the present composition of the States and to consider whether that composition is best suited to the purpose. At present there are three types of States member:- 12 Senators, the 12 Connétables of the Parishes and 29 Deputies. Each Category is elected at a different time and in the case of the Senators for a different term of office. Six out of the 12 Senators are elected every three years for a term of six years. Deputies are elected every three years. Connétables, are elected at irregular intervals for a term of three years. We consider each category separately.²

² We consider the role of the Bailiff in Chapter 8

3.7 The Senators

- 3.7.1 The Senators are a relatively modern introduction into the States. They were created in 1948 when the 12 Jurats, who were and are lay judges, were removed from the legislature on the recommendation of a Committee of the Privy Council. The same Committee recommended the institution of the category of Senator to replace the Jurats. The logic of the recommendation is not very clear. The justification for the introduction of Senators into the States seems to have been that these representatives were to be elected by all the voters of the Island, as had been the Jurats, while the Deputies are elected by the voters only of the relevant district or Parish. This arrangement gives rise to the so-called "Island-wide mandate", as distinct from the Parish mandate. For many years the Senators tended to be senior Members of the States and the Presidents of the major Committees. This is no longer the case. The very title of Senator is inappropriate, suggesting as it does some kind of revising or upper house, such as is found in many other jurisdictions.
- 3.7.2 We received no convincing evidence that there was a significant difference between the nature and content of the Senators' role and that of the Deputies. In an island about 9 miles long and about 5 miles wide, with excellent communications, we found the distinction between Senators and Deputies less than plausible and in practice there is little difference in the contributions to debate of either category of representative. Nor can the Senators do anything which the Deputies cannot also do. They have no special privileges. Moreover, with one General Election and the same tenure of office for all Members of the States, the distinction will become even less sustainable. In an assembly intended to govern the whole island, every topic of debate should be of island-wide interest, not merely parochial, and should be the concern of every Member. But it is sensible that each representative should have a constituency of voters whose opinions may more easily be sampled and judged over a small area than a large one. And, of course, a constituency gives easy access to a representative for every citizen with something to say.
- 3.7.3 We **recommend** the abolition of the category of Senator and the substitution of 12 additional members of the States.



3.8 The Connétables in The States

- 3.8.1 In contrast to the rank of senator, the office of Connétable is indeed an ancient one. The title, as familiar in English as in French, essentially connotes the maintenance of good order. So it is not surprising that the Jersey “Connétable” often begins his public service as a policeman. The Connétable was until very recent times the highest office of the Honorary Police in any Parish. The cursus honorum begins by being appointed a Constable’s Officer, progressing thence to the offices of Vingtenier, Centenier, Chef de Police, and ultimately Connétable. The inclusion of the Connétable of the Parish in the earliest versions of the Island’s Parliament is easily understandable.
- 3.8.2 A few of our witnesses maintained that the Connétables were in the States because their parishioners elected them in the knowledge that this would automatically confer upon them a seat in the States. The concomitant belief was that the Connétables were there to represent the particular interests of their Parishes on any topic coming before the States.
- 3.8.3 Our firm conclusion is that these comfortable beliefs are not borne out by the evidence. In the first place, the election to the office of Connétable is rarely contested. During the period of our review four new Connétables have been elected and a fifth re-elected, all of them unopposed. A respected individual who has held a post in the Parish administration, perhaps in the Honorary Police, emerges and it is not well-regarded in the Parish to oppose his (less frequently her) election.
- 3.8.4 We were impressed by the evidence of many of the Connétables to the effect that they placed their work in the Parishes at the head of their priorities and we were left with the impression that some of them felt somewhat uncomfortable with their position in the States. Indeed, an analysis showed that in general the Connétables asked fewer questions, introduced fewer propositions and spoke on fewer occasions than the Deputies for their respective Parishes.
- 3.8.5 In view of the new structure which we propose for the States the Connétables would, if they were to remain, have a heavier workload in the States than they do at present and might well have difficulty in discharging both offices satisfactorily. Many witnesses told us how busy the Connétables are in their Parishes and how excellent and useful was their work there. We believe that this role could be developed and its dignity enhanced. If it were, and if the position no longer carried with it the requirement to be part of the States Assembly, we believe that more candidates for the post of Connétable could well come forward.





3.8.6 Because they have no role in the States distinguishable from that of the Deputies, we **recommend** that the Connétables should cease to be ex officio members of the States. Of course, those Connétables who have the time and inclination could stand for election to the States, there being no conflict in the dual roles. They would then be truly elected by their parishioners to represent them in the States.

3.8.7 We recommend, however, that those Connétables who are not elected to the States should nevertheless have appropriate access to the States on matters particularly affecting their Parishes. There exists already a Comité des Connétables, which should have a more formal consultative role with the States.

3.9 The Deputies

3.9.1 The 29 Deputies are distributed by reference to the Parishes, some of which are divided into districts. Since some of the Parishes are much smaller in population than others the result is a disproportionate representation of some Parishes. We **recommend** that an Electoral Commission should re-assign the vacant seats of the Senators amongst the Parishes, seeking to even out these discrepancies. While we believe that this reorganisation is an essential requirement of our proposed revision of the Island's assembly, we are anxious to urge that it should on no account be allowed to delay the implementation of the major changes we recommend, as it so easily could be.

3.9.2 The title of "Deputy" seems to us inappropriate and confusing to the outside world with which Jersey must now deal. These members do not deputise for anyone. We **recommend** that a better and more readily understood title would be "Member of the States of Jersey", conveniently abbreviated to "MSJ".

3.9.3 For reasons set out in Chapter 5, we **recommend** an Assembly of between 42 and 44 Members. In fact, an analysis (see Appendix E) shows a possible distribution of seats by Parish, based on a 42-Member House and the 1999 Electoral Register. A 44-Member House could readily be achieved by adding two seats where indicated. This analysis produces a much more even distribution of seats per elector than is achieved by the present system. It also allows for the function of scrutiny which we recommend in Chapter 5.

3.9.4 We recognise that this is a rejection of the argument which was put to us for "Island-wide" elections. Such elections would, however, be characterised by unmanageable hustings and ballots confusing to the electorate and a weakening of the all-important link between members and their constituencies. In our view, a General Election based on the Parishes will have all the island-wide benefits which are so desirable without any of the disadvantages of the alternatives.

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Chapter 4

The Committee Structure

- 4.1 Whilst the States Assembly serves as the Island's legislature, with some executive powers, the day-to-day government of the Island is entrusted by delegation to Executive Committees. Such government by committees is rare in a national jurisdiction. Each of the Committees, and there are 24 of them, has its own responsibilities, although in most cases there is no formal definition of the responsibilities, which in many cases extend to regulatory as well as executive functions. Each is required by Standing Orders to consist of a president and six members. It follows that most of the 53 Members of the States, with an average of three, must be a member of one or more Committees if all are to be fully manned as required. This is very important: it means that every States Member is a member of the executive side of government. Unlike almost every other democratic system, there is nobody elected by the people who has a formal role of audit, criticism or holding to account.
- 4.2 In evidence, complaints about the committee system were recurrent and manifold, and at times even bitter. The main complaints were as follows:-
- 4.2.1 All members of a Committee are equal and there is no formal control vested in a Committee president. Thus the president cannot enforce discipline, for instance over a member who fails to attend meetings or to pull his or her weight, who is disloyal or destructive, or whose political ideology is the opposite of that of the president and perhaps the rest of the Committee, and who refuses to resign on being required so to do by the president. In such cases the president can only use the cumbersome procedure of referring the matter for a vote by the whole House;
- 4.2.2 This lack of effective control leads to Committees wasting much time on trivial matters which should be left to the civil servants in pursuance of a policy laid down for them. The serious consequence of this is that despite the much vaunted democracy in Jersey, policy tends to come not from the elected representative but from the civil servants; the elected representatives are frequently too busy with the details of administration to have time to develop and debate policy;
- 4.2.3 There is no effective doctrine of loyalty or collective responsibility within Committees. Instances were given of obstructive behaviour by one or more members within a Committee, and of Committee members speaking and voting in the States against their own Committees;

- 4.2.4 Each Committee is a virtual law unto itself, with no obligation to ensure that its decisions are consistent with a policy already agreed upon by the States or by other Committees. Responsibility for some matters may rest with more than one Committee, yet those Committees may have different views about those matters and their actions are often ill-considered. Proper government is not possible if there is no requirement for Committees to follow policies or guidelines already agreed;
- 4.2.5 The independence of every Committee from every other Committee can result in matters affecting more than one Committee being bounced back and forth between Committees, causing inordinate delay;
- 4.2.6 One of the most striking defects of the committee system occurs when it is called upon to handle international issues. Frequently international issues are referred to the Island by the Home Office requiring a response at fairly short notice; failure to respond within the given time would mean that the Island's views would not properly be taken into account or presented. To cope with this problem an efficient system has evolved which sidesteps the time-consuming process of Committees sending comments and draft answers to and fro between themselves. Typically this system involves the decision being taken by a senior civil servant and one or two senior Members of the States. Although this may be efficient, it by-passes the democratically elected members of the States;
- 4.2.7 It was clear that currently many decisions are taken by a small number of Committee members, perhaps only the president, or by the chief officer under delegated powers, and that the other members are passengers, perhaps voluntarily, or perhaps because they are starved of the information necessary for them to make informed decisions, or perhaps because they are overwhelmed by the masses of paperwork prepared for their meetings;
- 4.2.8 When an executive Committee consists of seven persons each with a vote, and no one Committee has any obligation towards the other there is a wide fragmentation of power and a wide fragmentation of accountability. It is not easy to locate where the power of decision actually lies and, therefore, it is not easy to call that power to account. The only way to do this is for there to be a vote in the States of no confidence in the Committee, but this is an unnecessarily cumbersome way of simply auditing the management of some government function.
- 4.3 These complaints are all symptomatic of the central problem referred to at the beginning of this chapter. Good government calls for an assembly in which there is a division between those who exercise executive power and those who are in government but not in the executive. The role of the latter is to scrutinise and hold to account those members of government who are in the executive. We identify the lack of this role as the central flaw of the present system in Jersey and from it flows, directly or indirectly, much of the criticism and frustration of which we have heard.

- 4.4 As a result of the problems described above, a management review of the government of Jersey was carried out by an independent firm of Accountants and Management Consultants in 1987. This resulted in the creation of the Policy & Resources Committee, whose intended function was to draw together the various Committees and regulate their interaction. This has not proved to be a cure for the ills in the system because the P & R Committee do not have the authority which is necessary and so cannot require Committees to follow established policy. Even if the president of a Committee happens also to be a member of P & R and votes in favour of a particular measure, he cannot make his own Committee follow the line adopted by the P & R Committee. There remains, therefore, an incoherence in government which is the cause of many of the problems which were heard in evidence. The supposition that cross-membership of Committees provides a form of co-ordination has not been borne out in practice.
- 4.5 When a Committee has made a decision on a matter of substance, approval for it must be sought from the States. In the ensuing debate it may transpire that one or more members of the Committee did not agree with the Committee's decision anyway and may vote against it in the States. This formula for delay and indecisiveness needs no further comment.
- 4.6 Virtually everything we heard pointed us towards the removal of the committee system. To achieve this will call for some sacrifice on the part of existing Members. We have often heard Members declare with obvious sincerity that in all they do they have in mind only the interests of the Island which they love. Some may need to back those words with some sacrifice if change is to be brought about.
- 4.7 Putting concepts into Greek enriches our language but contributes little to the clarity of the concepts. Democracy, rule by the people, cannot mean that all the people rule. Such a fragmentation of power would result in no one person, or even group of persons, having enough power to get anything done. For the opposite of democracy, the Greeks produced autocracy, where all the power resides in one person who, as has so often been remarked, may eventually be corrupted by it. Presumably the trick, the most difficult in human affairs, is to find the point of balance between the extremes of authoritarianism and the wholesale decentralisation of power. The human race is constantly trying and often failing to balance on this invisible point. In the spectrum of democracy, we believe on the evidence that Jersey has gone too far in the direction of distributing power with the results to which we have referred.

- 4.8 We have remarked on the tendency to prolixity and to a determination to be involved in minor decisions which ought to be taken by civil servants pursuing a policy laid down for them. This tendency is a legacy of a once small island population with a small economy. There must in bygone days have been enough time and a small enough workload of government for everyone to get engaged in everything. We believe that that time has long passed. But to bring about change in this direction calls for a cultural shift which we as a review panel cannot impose.
- 4.9 Another recurring theme in the evidence presented to us was a complaint of lack of leadership. Those who raised this complaint often said in the same breath that the notion of “party” was obnoxious to Jersey. Yet a leader with no followers is a contradiction in terms. We wondered whether those advancing this complaint really knew what they wanted. What they must really have been complaining about was a lack of clarity in policy-making by those in executive power. Too wide a distribution of power in any organisation, governmental or industrial, is the antithesis of leadership. The vast majority of effective and successful organisations of any kind have a very distinct hierarchy and structure of leaders who, if they fail to give satisfaction, stand to be replaced by others. But for leadership to be established there has to be a willingness in a community to be led by some respected persons who must then be allowed a reasonable measure of control, subject to continuing accountability, until such time as the electorate expresses its wish to replace them.
- 4.10 Political leadership is usually associated with a party system. Jersey people regard it as a great virtue that the Island has no party politics. We understand the attractions of government without parties, associated as parties are with discipline and some loss of individual political freedom. But in fact over the centuries Jersey has had many parties, by which one means only a coming together of like minds to achieve a particular objective. Once achieved, the binding purpose has disappeared and the group pursuing it has dissolved. Such a grouping is not a true political party because it lacks the cement of a common philosophy of government, having only a narrow objective to hold it together until the objective is either attained or lost.
- 4.11 The existence of party however is not necessary to the concept of audit or scrutiny. What is absolutely necessary is that there should exist in any assembly a sufficient number of members not actually in executive office and therefore free to observe with a critical eye those who are. Moreover those uncommitted members should have the ability, the facilities and the resources to study some particular aspect of government, to research it and so be able to audit effectively the conduct of government by those in charge and to participate in the formulation of policy. This is what is meant by the commonly used, but ill-defined expression “checks and balances”. It is clear enough what is meant - the prevention of the uncontrolled exercise of power by a few powerful people.



- 4.12 In the party system familiar in Westminster the accepted duty of those not in power is to constitute a formal opposition to the government in being. This tends to become a ritual duty to oppose everything that is done, which therefore does little to change the course of government action in any constructive way. But a formal opposition is by no means the only, nor necessarily the most effective, way of providing that scrutiny of government which constitutes a check on the abuse of power. Political parties will only develop if this is what the people want and not otherwise. This is how it should be and we are content to leave the matter there.
- 4.13 In many modern legislatures the device of the Select Committee, made up of members of all parties and charged with scrutinising some particular area of government, is more effective than formal opposition for providing the checks and balances on the executive. Such committees usually have extensive powers to summon ministers and civil servants to account for their stewardship. They can call for papers and persons and command the services of research workers and expert advisers. This enables the committee to conduct a well informed audit of any area of executive action in which it decides to take an interest. This scrutiny of government need be neither acrimonious nor unconstructive. Indeed, it can and should help a government in the creation of policy. It should not be allowed to result in scrutiny members being imperceptibly drawn into the executive.
- 4.14 No such restraint on the activities of the executive Committees exists in Jersey, for the reasons already set out. Individual members' questions do not have the weight or command of information to produce any real effect on the way things are done. In any reconstruction of the central component of Jersey's machinery of government the provision of effective scrutiny seems to us essential. Numerous complaints were made to us in evidence that in the absence of audit or scrutiny, schemes of major capital investment in the Island were allowed to run out of control to an extent which could seriously damage the Island's economy were it not for the present prosperity which enables budgetary overspends to be accommodated. A continuous monitoring of expenditure by a properly informed body of members, not themselves holding executive office, should impose a firmer discipline on public spending. This will be an important function for those Members of a reconstructed States of Jersey who are not in executive posts. We recommend the setting-up of 3 or 4 Scrutiny Committees to cover between them the whole range of government functions.
- 4.15 These considerations all point to an Assembly in which a clear majority of members are not holders of executive office but are numerous enough to constitute a number of bodies sufficiently detached from the business of government to provide an independent scrutiny. Such a balance of members would be bound to include some who aspire to take the places of those whose work they are scrutinising, offering in effect some alternative. We believe that this would lead to vigorous and constructive political debate.

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Chapter 5

An Improved Structure

- 5.1 In the previous chapter we identified many defects in the existing structure and functioning of the States and its Committees. There is a need to create a new and clearer structure for government as well as a strengthened assembly. There is no optimum number of members for any assembly. We do not consider that the present 53 Members is too many in absolute terms, if that were the number required to perform the legislative and executive functions of the States. But in fact we believe that a more effective assembly would result from the States being fewer in number and more concentrated in function. 24 Committees are far too many and we **recommend** that they should be reduced to a much smaller number of portfolios consisting of groups of executive function having some mutual relevance. We **recommend** that there be substituted a number of departments, which could be as few as seven. These would constitute the major departments of government. We have considered the many groupings which could be made and at Appendix D below we show a possible re-arrangement of the present Committees into departments. There are many ways of doing this and we feel we should leave the ultimate solution to the States.
- 5.2 We further **recommend** that the political direction of each department should be the responsibility of a Minister and one or two other members. These small teams should work together to produce policies for their Departments which would be subject to the approval of a Council of Ministers presided over by a Chairman of the Council, who would be elected by the States to be the "Chief Minister" of the Island's government. The Chief Minister would choose his or her team of Ministers which he would present to the States for approval. Should that approval not be forthcoming the Chief Minister would submit a revised team of Ministers. These would choose the member or members they wished to assist them, subject to the approval of the Chief Minister. The latter should have the power to dismiss Ministers, but the substitute Ministers should be subject to States approval. We **recommend** that the Council of Ministers should be invested with sufficient powers to be able to give directions to the individual Departments if that became necessary. We would expect so compact an executive structure to have neither time nor inclination to become involved in the details of administration. The responsibility for external relations should be the province of the Chief Minister and his or her Department.

- 5.3 It will have been noticed that we have now abandoned the word “President” adopting instead “Minister”. Several of our witnesses, including some of those closely involved in representing the Island abroad, commented on the awkwardness created by referring to the “President”, meaning the chairman of some committee or other. “President” is a well used and familiar title in many countries and bears no connotation abroad to the chairmanship of an executive committee. While we fully understand the natural affection of people in Jersey for their familiar titles, some of which are ancient, we consider that such is Jersey’s involvement in global affairs today, that it can no longer afford the indulgence of being in all respects different from everyone else. The choice of alternatives is bound to be restricted and only “Minister” comes readily to mind. Such a title however is well understood in almost every country with a modern government, having major departments such as we propose for Jersey.
- 5.4 The reader will already have sensed that we are recommending something approximating to a cabinet-style of government. Some of our more conservative witnesses expressed themselves as strongly opposed to any notion of a cabinet for Jersey. But only a few moments of reflection will recall that “cabinet” means no more than a private room where people may deliberate, and that the current P & R Committee are in practice a cabinet although perhaps not a sufficiently authoritative one. Merely labelling part of an organisation with one name rather than another does nothing to alter or clarify its function. But if the mere word “cabinet” is obnoxious, then a “Council of Ministers” would be a good alternative appellation. Some people think of a cabinet as an elected dictatorship in which a chief minister with his supporters decides everything. But what we recommend is a Council of Ministers which will be subject to careful scrutiny by the balance of Members to which we have referred.
- 5.5 Having reached these decisions in principle, we thought it would be prudent to visit a jurisdiction where government by ministers had been tried out. We were aware that, beginning more than ten years ago, the Parliament of the Isle of Man, Tynwald, has restructured that Island’s government quite radically by moving to a ministerial system. The Manx Government had previously discharged its executive functions through more than 20 Boards, corresponding closely to the Committees of the States of Jersey. Tynwald had experienced all the disadvantages and frustrations of which our witnesses had spoken so feelingly in respect of Jersey’s Committees. We concluded that the Isle of Man’s solution was not free from fault, but that the transition had on the whole been a success compared with what had gone before.

- 5.6 We visited the Isle of Man and were generously received and greatly helped by senior figures in government. A further benefit of the comparisons we were able to make arose from Tynwald's appointment in February 1998 of a Select Committee "to consider and evaluate the operation of ministerial government and report". The resultant document contains a full account of the changes made, and, most importantly, concludes that whatever may be the disadvantages of a ministerial style of government it is to be preferred to the previous structure.
- 5.7 Of the Select Committee's Report on the Isle of Man's new government, the most significant paragraph in our view is 8.2 where the Committee writes as follows:-

"It is important in a small jurisdiction that the time and abilities of Members are used to further the general well-being of the Island and that structures are not created which either dissipate these assets or create inappropriate institutional tension. However, systematic and effective scrutiny of the Executive is a fundamental attribute of a parliamentary democracy and must be adequately accommodated, particularly in this jurisdiction which prides itself on its parliamentary heritage. One approach may therefore be to reduce the number of Members appointed to posts in the Isle of Man Government in order to release members to provide enhanced scrutiny of government policy and administration."

We think these observations to be appropriate to any parliamentary democracy.

- 5.8 It was while we were in the Isle of Man that we observed the excellent facilities provided there for members of their assembly. These included offices, telephones, facsimile machines and the like. Importantly, there was a comprehensive library with two librarians to help members with research. By comparison, facilities in Jersey are virtually non-existent and we **recommend** that something must be done urgently. We were surprised also to learn that the States of Jersey is technically only a tenant of the chamber it occupies, and so has limited ability to control the extent and development of its premises. There must be some better arrangement than this. We **recommend** that a Committee of Members, chaired by the Speaker, should be charged with the task of providing proper facilities and accommodation for all Members and to take over the responsibility of the present House Committee.
- 5.9 Furthermore, we noted that even many small jurisdictions have a full Hansard-type of transcript of their proceedings. This is of great help to those who must act as auditors of the executive. We recommend that Jersey too should provide this facility. As well as being of value to the Members, this will provide some freedom of information to the public.

- 5.10 Policy and resources have long been identified as the two major considerations of government of any kind. "Policy is money", it has correctly been remarked. In any rearrangement of Jersey's central structure, the existence of a Treasury Department by whatever name it is called, will be essential. The relationship between that Department and the Council of Ministers will be a very delicate one. That Department will be responsible for key decisions about manpower and financial resources. Yet it will not be tolerable for the Treasury Department to determine the feasibility and priority of other Departments' policies. The Council of Ministers, advised by the Treasury on financial matters, must have the last word in deciding what proposals to lay before the States. This relationship between those devising policies and those managing the resources with which to carry them out will prove to be one of the problems to which attention must be given.
- 5.11 We considered whether to include the Treasury function within the Chief Minister's area of responsibility. We concluded that it was preferable to avoid immersing the Chief Minister in detail. We felt, too, that in the interests of maintaining checks and balances within the system it was desirable that he should be at some distance from the debate between the Treasury and the departments so that he might be better able to act as an arbiter when necessary. We also examined the personnel function. We concluded that it was a subordinate function and should be absorbed into the Treasury with the exception of appointments to the most senior positions which should be the responsibility of the Chief Minister's office assisted by the personnel function. It will be for the Treasury Department to produce an annual budget which would be presented to, and debated in, the States after approval by the Council of Ministers.
- 5.12 A further consequence of refining the executive function and concentrating it into more effective formations is that the issue of collective ministerial responsibility must also be resolved. Other jurisdictions have experienced problems in this area also and are considering a variety of options for the calling to account either of individual ministers for the management of their departments or for the calling to account of an entire Council of Ministers for their conduct of government. If Jersey is to adopt the more concentrated structure of central government which we envisage and recommend, it too will have to consider how to deal with this issue.

- 5.13 The structure we have recommended in paragraphs 5.1 and 5.2 above would call for the employment in executive government of some 15 to 20 Members of the States. The omission of the ex officio Connétables would still leave sufficient members not engaged in government, to form three or four Scrutiny Committees to carry out appropriate functions as set out in para. 3.5. We **recommend** that the Chairmen of these Scrutiny Committees should combine with one other member of the States to form a Public Accounts Committee to oversee and scrutinize public expenditure with powers sufficient for those purposes. This Public Accounts Committee should have the right to co-opt appropriate persons, not being Members of the States, to assist them, bearing in mind that elected members should always be in the majority. The Council of Ministers should always be given the opportunity to respond to a report of the Public Accounts Committee before the subject matter is debated in the States. We recommend the institution of the post of Auditor-General as an Officer of the States with powers to provide the Public Accounts Committee with an investigative capacity.
- 5.14 An early opportunity should also be taken to define what should be the powers and duties of the Chief Minister, the Ministers at the head of departments and the Scrutiny Committees.
- 5.15 The Scrutiny Committees should have the work of the several departments we have recommended divided between them so as to provide scrutiny of all Government activity. The members of these Committees should be chosen by the non-executive members of the States.
- 5.16 We **recommend** that the first business of a reconstituted Assembly would be the election of a Speaker, and then of a Chief Minister. The next step would be the construction by the Chief Minister of an Administration of Ministers whose appointments would need to be approved by the States. The opportunity should be taken to draw up a Code of Conduct for Ministers.
- 5.17 Several parliamentary devices occur to us as desirable in any parliament, but lacking in the States. We **recommend** that provision be made in the rules of procedure for Written Answers to Members' Questions and for something like the procedure of the "Adjournment Debate"³ to be introduced. A larger number of signatures should be required for any Proposition to be accepted by the Greffe and put before the States, save perhaps in a matter of the utmost urgency. Consideration should be given to a system of simultaneous voting.

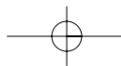
³ The half-hour Adjournment Debate at close of business in the House of Commons gives a Member the opportunity to raise a topic which may be specific to his constituency or more general. As long as the topic raised is a Government responsibility, there must then be an immediate ministerial response.



5.18 In connection with the revised assembly we envisage, we noted that Sir Clifford Boulton's report of April 1996 expressed in urgent terms the need to overhaul the Standing Orders of The States. So far as we can ascertain no action has been taken on this recommendation. It certainly should be.

5.19 The weaknesses we have found in the function and structure of the States are in our opinion serious. It is the weakness of a national assembly, the members of which are so divided amongst themselves that they have difficulty in arriving at and maintaining any decision, which permits the balance of power to pass into the hands of a very few people. This is an unhealthy development in any society, however honourable and well intentioned those few may be. It is clear to us from the evidence we heard that for many years there has in reality been government by a small number of States Members, not so much by design as by the accident of the strong and clever rising naturally to the top. The informal or ad hoc nature of this political reality meant that there was neither the accountability nor the scrutiny which such a system needs. In contrast, whilst we have designed a system in which the executive power lies with a small number of States Members, we have built into that design the scrutiny and accountability which will provide the necessary checks and balances.

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Chapter 6

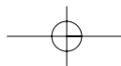
The Business of Administration

- 6.1 An important part of the machinery of any government is the service which manages the day-to-day business of administration. In doing so, civil servants should follow guidelines laid down by Ministers who derive their authority from the Island's assembly. By contrast, as we remarked in paragraph 4.2.2, the vacuum at the centre of the machinery of government in Jersey has resulted in many important decisions of policy being taken by civil servants, while the politicians occupy themselves with the details of administration. This is unsatisfactory.
- 6.2 We received little direct evidence about the internal structure of the various Departments. It was assumed, rightly we think, that any revised structure would be bound to reflect any changes which might be proposed for the much-criticised Committees. In the new structures we recommend departmental administration must be directed to implementing the policy decisions of Ministers and to the provision and management of the services for which each Minister is responsible.
- 6.3 We did, however, receive evidence about the executive support which a Chief Minister and a Council of Ministers, if such were to be instituted, would require. We believe that the Executive supporting the Chief Minister and the proposed Council of Ministers, could be drawn from the present Policy & Resources Department. This could be called "The Chief Minister's Secretariat".
- 6.4 The Secretariat should be headed by a Chief Secretary. He or she should be appointed by the States, which would give this position an important degree of authority and independence. The Chief Secretary should be the Head of the Civil Service and able to call other Chief Executives to account for their carrying out of corporate and strategic policies. This officer would also be head of a management team composed of all the departmental chief officers and empowered to require their attendance at meetings of the team. Disciplinary and appraisal procedures, together with career development, should also be part of the officer's duties. Additionally, the Chief Secretary would have the concomitant power to deploy senior officers as he deemed necessary for providing an efficient service.
- 6.5 We **recommend** that there should be an Appointments Commission, which could include some non-States Members and of which the Chief Secretary would also be a member, to ensure that all senior appointments are properly made and free from undue political influence.



- 6.6 One of the undesirable consequences of the committee system of government in Jersey has been that executive staffs of the present departments have tended to work in isolation from one another, there being no adequate co-ordinating centre to bring them together. The position of Chief Secretary and his relationship to the Chief Officers of the Departments we have recommended should help to remedy this defect.
- 6.7 One of the results of these new structures will be a shift of administrative decision-making from the Committees to the Civil Service, thus establishing that policy-making is the business of politicians and implementation the business of Civil Servants. But some of the decisions, for example those relating to planning, may have a quasi-judicial quality and may also have some political involvement. There should be the fullest delegation by Ministers to their officers, so releasing the former to concentrate on their political role. However, those decisions should not be left exclusively in the hands of Civil Servants. We **recommend** the setting-up of mechanisms both for appealing against the merits of those decisions and for dealing with planning problems of an exceptional kind.
- 6.8 The Scrutiny Committees must have an adequate staff to help their members in such matters as summoning witnesses, sending for and preparing papers, recording their proceedings and generally supporting them in their important work.

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Chapter 7

The Parishes

- 7.1 Jersey has twelve Parishes. They vary considerably in size, St. Helier obviously being the largest. Each is presided over by a Connétable, for whom every voter in the Parish is entitled to vote in an election which is held every three years or whenever the office becomes vacant. The elections are thus held at irregular intervals. But in practice elections are rare. If the sitting Connétable wishes to continue in office, it would be very unusual and indeed unpopular to stand against him or her. In most parishes, candidates for the office usually emerge by an invisible process from the senior ranks of the Honorary Police or posts in the Parish, from one of which the Connétables will almost always have been chosen.
- 7.2 The Connétable has a considerable task of local administration in the Parish. He or she, with the concurrence of the Parish Assembly (consisting of all the ratepayers and electors of the Parish who wish to attend), decides what to do about such matters as parish welfare, local rates, road maintenance, licensing, firearms, and so forth. There is a considerable diversity here between the Parish of St. Helier and the other Parishes to which we will refer later. The Connétable is assisted in his administrative responsibilities by a small staff accommodated in the Parish Hall, except in St. Helier which has a significant staff establishment.
- 7.3 The Connétable is also regarded as “The Father of the Parish”. In this capacity he is called upon to make himself available to all his parishioners for advice on almost any problem they may have, business, domestic or other.
- 7.4 Those Connétables who are diligent in the discharge of all these duties may be extremely busy and may have to devote much of their time to Parish business. It is a form of local government and as such useful and practical. We would not wish to recommend any fundamental change in the way this system works. On the contrary, we believe that the opportunity of a revised Machinery of Government should be taken to expand its remit with a view to reducing the workload of the States. There is a tendency in the States to spend too much time on matters of only local importance, at the expense of more demanding considerations affecting Jersey as a whole. It should be open to the States to commit to the Parishes some, or part of some, of the public services. We would also like to see the Connétables taking steps to co-ordinate amongst themselves the various services over which they preside.



7.5 We would, however, recommend a more formal structure for the Parish Assembly. Its present composition and membership are somewhat uncertain and the list of those entitled to vote on Parish matters should form part of the Central Register which we recommended above. (see paragraph 2.4)

7.6 Particular attention should we think be given to the Parish of St. Helier, where one-third of the Island's Parish business is run by one person - the Connétable. The Parish of St. Helier also has the largest budget of any and attention must be given to whether the administration of the Parish should be differently arranged.

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Chapter 8

The Bailiff

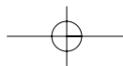
- 8.1 We come now to the very important issue which we have been asked to consider, the future of the high and honourable office of Bailiff. The office of Bailiff is a distinctive feature of the present Machinery of Government in Jersey and many of our previous considerations build up to it.
- 8.2 The word 'bail', French in derivation, now has many connotations in English, all involving some notion of trust. In ancient times the Bailiffs of Jersey and Guernsey played a significant part in the government of their bailiwicks. In view of their isolation in those early days, the Bailiffs must have both declared and administered the law to their peoples. As time passed the Bailiffs of Jersey came to be supported by 12 trusted persons, prominent in the community, and sworn to assist the Bailiffs in government - the Jurats. Thus was the Jersey parliament born. Over the centuries the assembly came to incorporate three estates: the clergy, the Jurats and the Connétables, and thus to acquire the title of "The States of Jersey". The Island's assembly developed over the years to the extent that power has in theory, though not entirely in practice, passed from the Bailiff to the people.
- 8.3 It has seemed to us that of all the historic titles in Jersey, protected over centuries by the Island's autonomy, that of the 'Bailiff' is the most ancient and respected and the most worthy to be preserved no matter what rearrangements the passage of time may require. But while the title must remain, the function needs to be modified.
- 8.4 There are three reasons of principle for saying that the Bailiff should not have a role, both in the States and as Chief Judge in the Royal Court:-
- * The first is that no one should hold or exercise political power or influence unless elected by the people so to do. It is impossible for the Bailiff to be entirely non-political so long as he remains also Speaker of the States. A Speaker is the servant of an assembly, not its master and can be removed from office if unsatisfactory. The Bailiff, appointed by the Queen's Letters Patent to a high and ancient office, should not hold a post subservient to the States.
 - * The second reason is that the principle of separation of powers rightly holds that no one who is involved in making the laws should also be involved judicially in a dispute based upon them.



- * The third reason is that the Bailiff in his role as Speaker of the States, makes decisions about who may or may not be allowed to speak, or put questions in the States, or about the propriety of a member's conduct. Such decisions may well be challenged in the Royal Court on grounds of illegality but, of course, the Bailiff cannot sit to hear and determine those challenges to his own actions.

We now consider these reasons further.

- 8.5 The duality in the Bailiff's present function has been the subject of widespread debate in recent years. There is additionally the complication that the Bailiff plays a significant role in the executive area of government, principally but not exclusively, as the direct link to the Home Office. English constitutional law scarcely exists save as a collection of conventions, more or less observed, in this respect differing from the many modern democracies with written constitutions. However, a general consensus seems to have been established that it is undesirable for those who make the laws also to adjudicate upon them. The underlying thought must be that a judge who interprets his own laws is liable to make them mean what he would like them to mean on an occasion, as opposed to what he has previously written and promulgated to the people. Many in Jersey have said that this perception of constitutional propriety is over-delicate and does little justice to the modern judicial temperament or the capacity for independence of successive Bailiffs.
- 8.6 A number of our witnesses asserted that such was the tradition of impartiality and integrity in successive Bailiffs that the supposed conflict between legislative and judicial functions was merely one of theory and perception. We fully accept all that has been said about the honourable and correct conduct of Jersey's long succession of Bailiffs. It is, however, impossible to say that the conflict is unlikely ever to arise when it has in fact arisen in very recent times.
- 8.7 The Bailiff recently found reason to suspend a Member of the States from sitting and that ruling was challenged as unlawful in the only place where such a challenge could be heard, namely the Royal Court. The Bailiff is the senior Judge and would have been expected to sit in judgement himself on so important and contentious a matter. But of course he could not. A Judge of the Channel Islands Court of Appeal was summoned to hear the complaint and ruled that the Bailiff had the power to act as he did and that every assembly is entitled to regulate and control its own proceedings.



- 8.8 It might be argued by some that episodes of conflict are isolated coincidences and that the Bailiff has never before been challenged in his function as Speaker, or at any rate not on record. But we live in times, however little we may like them, when challenges to authority are ever more frequent and determined. Furthermore, the introduction of Human Rights legislation is likely to lead to more such challenges. See, for example, the complaint of one McGonnell in Guernsey which he took to the European Court of Human Rights.
- 8.9 Naturally, some of our witnesses drew comparisons between the so-called “duality” of the Bailiff’s office and that of the Lord Chancellor at Westminster. In fact the decision-making power of the Lord Chancellor is not, in our opinion, anything like as extensive as that of the Bailiff. As a member of the Cabinet, the Lord Chancellor must carry the other members with him in any important decision he has to make. But even were it our business to judge the constitutional propriety of the office of Lord Chancellor of England and find it lacking, it is hardly sensible to follow one bad example with another.
- 8.10 The two examples cited above show that the conflict between roles in the legislature and the judiciary is not merely one of theory and perception, but occasionally has practical manifestations. It is easy, of course, to say that the conflict can always be circumvented by the selection of a suitable judge to try any case in which the conflict appears to arise. We do not accept that such an ad hoc remedy should form the permanent basis of a proper constitution. Indeed, it is only in Jersey and Guernsey that one finds this most unusual arrangement whereby the Speaker of the Island Assembly and the Chief Justice are one and the same person.
- 8.11 The notion that the legislature, the executive and the judiciary are three separate estates in any constitution is intellectually satisfying but practically inaccurate. Jersey’s constitutional arrangements, in line with those of the United Kingdom, have their origins in the mediaeval doctrine of the authority of the Crown which encompassed all three powers of government: executive, legislative and judicial. Some 300 years ago that was challenged by the view that, as a defence against tyranny, the three powers should be kept separate. What evolved in almost all democratic countries, however, including for all practical purposes the United Kingdom, was a fusion of the executive and legislative powers in membership of a national assembly, but with an independent judiciary. In the assembly some held office and some did not. What we believe to be essential is that there should be some form of audit of the former by the latter, whether a party system exists or not, and that on no account should a majority of the members hold executive office.



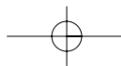
8.12 The task of the judiciary is to apply the laws which will most commonly have been proposed by the executive and endorsed by the legislature. It is now recognised almost everywhere that this requires that the judiciary should form a separate estate which is truly independent. The complexity and scope of modern legislation and the extent of executive action to which they have given rise have made both the reality and perception of such independence even more imperative.

8.13 Neither the underlying principles nor the volume of evidence can in our opinion be ignored any longer. For these reasons, we **recommend** that the Bailiff should cease to act as the president of the States or to take any political part in the Island's government and that the States should elect their own Speaker. It follows that he should cease to be the principal link with the Home Office. He should be liberated to do what all Bailiffs of recent times have been especially qualified and trained to do, namely be the Island's Chief Justice. There was never a time when the volume, scope and complexity of litigation in the Royal Court of Jersey were more demanding than they are today.

8.14 It is the inevitable consequence of our recommendation that the Chief Minister, rather than the Bailiff, would henceforward be the direct link to the Home Office in London. This does not mean that the Home Office might not communicate directly with the Bailiff on any matter where it seemed appropriate to seek his advice.

8.15 We **recommend**, however, that the ancient office of Bailiff should continue to be accorded the respect in which the office has been held for so long. It would be appropriate for the Bailiff to swear in Ministers in his Court and present them with their seals of office. Just as in England the Lord Chancellor takes precedence over the Prime Minister, so should the office of Bailiff continue to be the highest in the Island on all occasions when the order of precedence is observed.

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Chapter 9

An Ombudsman for Jersey?

- 9.1 In most modern democracies provision is made for the citizen to complain about maladministration of his or her affairs by the various departments of government. The accepted device for doing this is nowadays the Ombudsman, a word borrowed from Sweden, where in 1809 the Sovereign appointed Baron Mannerheim to hear and determine complaints against his civil servants in his absence. The argument in favour of an Ombudsman for Jersey is strengthened by the proposal to shift more of the administrative decision-making in the system to the Civil Service. The function of an Ombudsman would help to relieve the States of many minor matters of complaint, at present often the subject of lengthy debate
- 9.2 Edmund Burke to whom we owe our foreword, remarked that in any civilised state the citizen's complaint must be listened to, adjudicated upon and a remedy supplied if the complaint is well founded.⁴ It should be understood that an Ombudsman is concerned only with dilatory, incompetent or discourteous dealings with the citizens' affairs. An Ombudsman who tries to review the discretionary decisions of government, properly arrived at, is not merely risking his own appointment but endangering the institution of the Ombudsman.
- 9.3 In Jersey complaints of this character are supposed to be considered by an Administrative Appeals Board, composed of senior figures, some of whom have been prominent in government in earlier days. They cannot consider any complaint unless it has first been investigated and judged worthy of consideration by the States Greffier in his or her sole discretion. The investigative staff and powers available for this purpose seem to us to be very limited which explains why the consideration of complaints is very slow indeed. But, of course, the Greffier's first priority is to serve the States and it seems to us unreasonable to expect him or her to undertake this burdensome task without substantial additional staff. If a complaint reaches the Board and is upheld, there is no satisfactory sanction which can be applied to the errant administrator or committee to oblige them to make amends.
- 9.4 We consider these arrangements to be quite unsatisfactory. We **recommend** the institution of a proper Ombudsman to hear complaints of maladministration by Government Departments. This would be a matter of little difficulty and no great expense. The Ombudsman should be an independent person and endowed with powers to order the production of papers and files and to command the attendance of witnesses. If a finding is

⁴ Those readers with the time and inclination might find it instructive to read Burke's "Thoughts on the Cause of the Present Discontents", 1770, wherein they will find many reverberations in the Jersey of today.



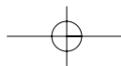
made in favour of the citizen, and the responsible Department does not volunteer to remedy the grievance, the power of compulsion should lie in the States, to whom the Ombudsman reports and whose officer he is. The States should jealously guard the authority of the Ombudsman if they find his report acceptable.

9.5 The arrangements for access to the Ombudsman vary from country to country. In France and England the citizen must first apply to his Member of Parliament, who should and usually does put the complaint to the relevant Department. If the response does not satisfy the complainant, he may then apply to the Ombudsman. In smaller countries access to the Ombudsman is usually direct.

9.6 There are, therefore, several options for Jersey. It would be reasonable to provide that the complainant must first approach the relevant Department and then, if not satisfied, have direct access to the Ombudsman. Alternatively, he or she could be required to go through an MSJ but with the ultimate right to put the complaint before the Ombudsman if still not satisfied. If what is complained of amounts to a wrong which is recognised by law, as opposed to mere maladministration, most systems require the citizen to exercise his or her judicial rights.

9.7 The workload of a Jersey Ombudsman could not in the nature of things be great and could be discharged by a part-time appointment. There could even be an ombudsman chosen not only by Jersey but by others of the Channel Islands, just as there is a Channel Islands Court of Appeal for legal matters. We leave the choice to the States, remarking however that the agreement of Guernsey is not a pre-requisite to the creation of the office of Ombudsman in Jersey.

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Chapter 10

Towards a more Open Democracy

- 10.1 It is of the greatest importance that the moves we recommend towards a clearer distinction between “executive” and “parliamentary” responsibility should not have as a consequence a reduction in the democratic influence of individual citizens and voters. We have already noted fears about creating an “elective dictatorship” under which an assembly and the public during the lifetime of a government, surrender to the members of that government undue power and influence. This is, perhaps, an extreme view, since as we have remarked Scrutiny Committees (and in particular a Public Accounts Committee) can be effective forums for accountability, particularly where members have no rigid party positions and can consider issues on their merits. Nevertheless we believe that if a Council of Ministers is to be constituted in Jersey, composed of men and women in whom the States have confidence, we need to ensure that members of the States occupying executive office enable and encourage “back-benchers” and the public not merely to scrutinise and if necessary criticise policy and executive action after the event, but also to be partners with Jersey’s Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens.
- 10.2 For this pattern of democratic partnership to flourish, there must be a preference for transparency and dialogue as opposed to secrecy and governmental dogmatism. One mechanism increasingly used in other jurisdictions around the world is a Freedom of Information Act, and no doubt the Jersey institutions will wish to consider the extent to which they rely upon this device. It is, however, inevitable that certain information has to be held in confidence, particularly to allow a debate about policy options designed to produce a conclusion acceptable to all. People in ministerial office ought to be able to argue a case amongst their colleagues with vigour, and without fear of embarrassment to those colleagues or themselves. We have already pointed out that if a Council of Ministers is to be established in Jersey, one of the early items on its agenda should be to decide whether, and to what extent, to observe a convention of collective responsibility.
- 10.3 While we do not think it would be feasible or desirable for a Council of Ministers to meet in public or to publish a detailed account of the exchanges between its members, we could see real benefit in making available immediately after a meeting a brief summary of the business under discussion and any decisions made. If consideration of a particular issue is conducted in total secrecy until the announcement of a firm government decision, other opinions can only be expressed after the die is cast. It is an



observable characteristic of governments everywhere that they are extremely reluctant to be diverted from firm policy already announced.

- 10.4 Unless the determination of policy is a matter of demonstrable urgency, we recommend regular use of consultative or discussion papers (often referred to elsewhere as “Green Papers”) which fully present relevant data and underlying arguments and set out options for discussion and debate. On the basis of such papers, the relevant scrutiny committee of the States could summon and hear evidence from Ministers and officials, invite views from the wider public and prepare reports which should be given due weight by Jersey’s Ministers in the final determination of policy.
- 10.5 Because of its post-War development as a modern financial services centre, Jersey today has amongst its population an unusually high proportion of very well-qualified business and professional people. In most cases the nature and extent of their other commitments would deter them from seeking election to the States, but the more open pattern of policy determination we envisage here would afford them a better opportunity to contribute if they wished to the development of public policy, through the submission of evidence or even as special advisors to Scrutiny Committees. Following the withdrawal of the Connétables from the States, the Comité des Connétables would have an important continuing role to play where States policy affects Parish interests. So that Committee also would be afforded an appropriate opportunity to comment by a more extensive use of discussion papers.
- 10.6 There could, indeed, be a number of stages prior to legislative procedures in the States: discussion or “Green Paper”; statement of policy or “White Paper”; and publication of draft legislation for comment prior to consideration by the States. It would not be possible or desirable to go through all these prior stages in every case, but the underlying ethos should be strongly consultative and consensual.
- 10.7 As for Scrutiny Committees of the States themselves, we are firmly of the view that the conduct of proceedings should normally be in public. Having said this, it would no doubt be necessary on rare occasions to meet in private, but this should be done most sparingly. These Committees will need a small secretariat, whose members should be Officers of the States.
- 10.8 In the scheme of things we have recommended, there would for the first time be “back-bench” members of the States. They should not be characterised as “the opposition”, since governments will not be constituted on the basis of party, and the pitfalls of factionalism and knee-jerk opposition should be avoided. However, the distinction between executive



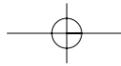


and non-executive responsibility would have clear implications for the conduct of the States' business. The Council of Ministers could not be left in complete control of the business and timetable of the States. An elected Speaker would have to see himself or herself as the guardian of the rights and privileges of individual States Members, ensuring that time would be set aside to permit the ventilation of issues of interest to members not holding ministerial office. There should be a regular opportunity to question the Chief Minister.

10.9 In their turn, the States need to accept an obligation to keep citizens of the Island much better informed about their activities. It is totally unacceptable that no "Hansard" or Official Report should be available. Today Jersey joins in regular encounter with the other political communities within the British Isles, and each jurisdiction should be well informed about, and able to learn from, the others. Both Council of Ministers and States should regularly publish relevant and up-to-date material on the internet. In the States, the fullest facilities should be accorded to the writing and broadcasting media.

10.10 We believe that Jersey, small in size and population but endowed with much wholesome tradition, could become a shining example of a true modern democracy, in which the issues vital to the Island's future are honestly presented, widely debated and clearly understood. That special responsibility we recommend for members of a Council of Ministers can and should be exercised in a true partnership with the people of Jersey and those they choose to represent them.

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Chapter 11

Summary of Recommendations

Chapter 2 **The Electorate** Paragraph

1. A Chief Electoral Officer should be appointed [2.4](#)
2. There should be a Central Register of Voters [2.4](#)
3. Election expenses should be determined by the States [2.4](#)
4. Polling Stations to remain open from early morning till late evening [2.5](#)
5. One General election only for all Members of the States and for the 12 Parish Constables [2.7](#)
6. Every candidate to produce a policy statement [2.8](#)

Chapter 3 **The States Assembly Today**

7. The role of Senator should be abolished [3.7.3](#)
8. Connétables should cease to be ex officio Members of the States [3.8.6](#)
9. Comité des Connétables to be consulted whenever their Parish is particularly affected [3.8.7](#)
10. An Electoral Commission to re-assign the vacant seats amongst the Parishes [3.9.1](#)
11. All Members of the States to enjoy the same title, "Member of the States of Jersey" (MSJ) [3.9.2](#)
12. There should be an assembly of between 42 and 44 Members [3.9.3](#)

Chapter 4 **The Committee Structure**

13. There must be a majority of Members of the States not in executive office to provide scrutiny of those who are, by means of 3 or 4 Scrutiny Committees [4.14](#)
[4.15](#)

Chapter 5 **An Improved Structure**

14. Seven departments should be substituted for the 24 Committees [5.1](#)

- | | |
|--|------|
| 15. Each Department to have one Minister and two members | 5.2 |
| 16. Ministers from each Department to form the Council of Ministers | 5.2 |
| 17. There should be a Chairman of the Council who would be the Chief Minister of the Island | 5.4 |
| 18. The Council of Ministers should have power to give directions to the Departments | 5.2 |
| 19. Chief Minister to have the power to dismiss Ministers | 5.2 |
| 20. The States to have the right to approve the appointment of Ministers and substitute Ministers nominated by the Chief Minister | 5.2 |
| 21. External Relations to be in the province of the Chief Minister | 5.2 |
| 22. The title "President" to be abandoned and replaced by "Minister" | 5.3 |
| 23. The Council of Ministers to be subject to careful scrutiny by the balance of Members of the States | 5.4 |
| 24. Proper facilities for communications and research should be provided for Members | 5.8 |
| 25. The proceedings of the States to be taken down and printed | 5.9 |
| 26. There should be a Treasury Department responsible for producing the annual budget and for personnel | 5.10 |
| 27. A small number of Scrutiny Committees to be formed from among non-executive Members of the States and elected by the States as a whole | 5.11 |
| 28. The Chairmen of the Scrutiny Committees with one other Member of the States to form a Public Accounts Committee to examine and control expenditure | 5.13 |
| 29. There should be created the post of "Auditor General" to assist the Public Accounts Committee | 5.13 |
| 30. The first task of a new States of Jersey must be to elect its Speaker and then a Chief Minister | 5.16 |
| 31. Provision should be made for Written Answers to Members' Questions and for Adjournment Debates | 5.17 |



Chapter 6 **The Business of Administration**

- 32. The Chief Minister and Council of Ministers should have a Chief Secretary who would be Head of the Civil Service 6.4
- 33. There should be an Appointments Commission for senior appointments in the Civil Service 6.5
- 34. There must be an appellate mechanism for the challenge of quasi-judicial administrative decisions and a mechanism for dealing with planning problems of an exceptional kind 6.7

Chapter 7 **The Parishes**

- 35. There should be a more formal structure for the Parish Assembly 7.5
- 36. Special attention should be given to the Parish of St. Helier 7.6

Chapter 8 **The Bailiff**

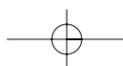
- 37. The Bailiff should cease to act as president of the States or to take any political part in the Island's government and the States should elect their own Speaker 8.13
- 38. The Chief Minister should be the direct link to the Home Office in London 8.14
- 39. The office of Bailiff should continue to be the highest in the Island on all occasions when the order of precedence is observed 8.15

Chapter 9 **An Ombudsman for Jersey?**

- 40. An Ombudsman should be appointed to hear and determine complaints of maladministration by Departments 9.4

Chapter 10 **Towards a more Open Democracy**

- 41. There should be regular use of consultative or discussion papers 10.4
- 42. The proceedings of Scrutiny Committees should normally be in public 10.7
- 43. There should be regular opportunities for members to question the Chief Minister 10.8
- 44. The States should ensure that the fullest facilities are given to the writing and broadcasting media. 10.9





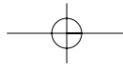


Epilogue

As we remarked at the outset of this Report, change is uncomfortable. Yet our recommendations amount to a comprehensive plan for the revision of the Machinery of Government in Jersey. We hope that the plan will be implemented as a whole, rather than piecemeal. Employing for the last time the metaphor of machinery, it is no use assembling some parts only of a machine and expecting it to work well. In any case we would urge all those concerned to devise a programme for change and not to let it slip due to what an American judge once described as “the comforts of further inertia” as opposed to “the irksomeness of action”.

We have been conscious of the importance of continuity with the past. In particular, our central concern throughout has been to make the States, in the next phase of a long history, a body which will create an effective and democratic system of government in Jersey to serve the interests of all its people.

We are grateful to all those who took time and trouble either to give oral evidence to us or to send us thoughtful written submissions. We were very struck in all we heard and read by the preponderance of the desire for change in the way in which Jersey is governed. We believe that what we have recommended gives clear expression to that weight of evidence and will benefit all of the Island’s people.



Appendix A

List of Witnesses who gave Evidence to the Panel

	made written submission	met panel
Connétable Frank Amy	x	x
Mr. R. Anthony	x	
Mr. Richard & Mrs. Janice Astridge		x
Senator Mrs. Ann Bailhache	x	
Baliff of Jersey, Sir Philip Bailache		x
HM Attorney General, Mr. William J. Bailhache, QC	x	x
Mr. George Baird	x	x
Mr. James Barker	x	
Deputy Bailiff, Mr. Michael St. J. Birt QC	x	x
Deputy Alan Breckon	x	
Deputy Gerard Baudains	x	
Deputy Henry H. Baudains	x	x
Deputy Mrs. Shirley Baudains	x	x
Deputy Ms. Jennifer Bridge	x	x
BBC Radio Jersey	x	
Mr. Denzyl Dudley		x
Mr. Mervyn R. Billot	x	
Mr. Bernard Binnington OBE	x	x
Mr. Ian Black, States Treasurer	x	
Mr. Robert Brown	x	x
Connétable Roy Cabot	x	x
Caesarean Group	x	
Mr. John Boothman		x
Mr. Greg Branch		x
Mr. Robert Christensen		x
Mr. Adrian Garner		x
Mr. Geoffrey Grime		x
Mr. Ron Mitchell		x
Mr. Jonathan White		x
Channel Television	x	
Mr. John Jacques		x
Mr. Michael Lucas		x

	made written submission	met panel
Chief Officers' Policy Group	x	
Mrs. Ann Esterson - Employment & Social Security		x
Mr. John Pinel - Jersey Post		x
Mr. John Young - Planning and Environment		x
Mr. Tony Renouf - Customs		x
Mr. Mike Lanyon - Airport		x
Mr. A. Clarke	x	
Comite des Connétables	x	
Concern	x	
Mr. Craig Leach		x
Mr. Cyd Le Bail		x
Mr. Barrie R. Cooper	x	
Mr. Geoffrey Coppock, States Greffier	x	x
Corporation of London		
Miss Judith Mayhew		x
Mr. Simon Murrells		x
Mr. Tom Simmons		x
Connétable Henry Coutanche		x
Deputy David Crespel and Mr. Mick Pinel		x
Sir Peter Crill KBE	x	x
Mr. G. R. De Carteret	x	
Mrs. Sue R. de Gruchy	x	
Deputy Jerry Dorey	x	x
Advocate Tom Dorey	x	x
Mr. Peter C. D'Orleans	x	
Deputy Maurice Dubras	x	x
Deputy Rob Duhamel	x	x
Mr. Michael Dunn	x	
Mr. Don Filleul OBE	x	x
Mr. Roger A. Garnham	x	
Connétable Edwin Le G. Godel	x	x
Mr. George & Mrs. Anne Gothard	x	
Mr. C. Gouyette	x	
Advocate William Grace	x	x
Mr. Peter Griffiths	x	x
Deputy Robin Hacquoil	x	x
Mrs. Mary Hair	x	x
Mr. John Hair	x	
Mrs. Isobel Haydon	x	x

	made written submission	met panel
Mr. Francis Haydon	x	x
Deputy Bob Hill, B.E.M.	x	x
Connétable Carl Hinault	x	x
Senator Pierre Horsfall, O.B.E	x	x
Mr. Brian Hotton	x	
Deputy Jacqui Huet	x	
Mr. Frederick I. Ibbotson	x	
Institute of Public Finance	x	
Mr. Noel Hepworth		x
Industry Organising Committee	x	
Mr. Bevan Anthony		x
Deputy Maurice Dubras		x
Mr. John King		x
The Island Tenants Association	x	
Jersey Audit Commission	x	
Mr. Martin Bralsford		x
Ms. Pat Carter		x
Mr. Tim Dunningham		x
Mr. Peter Fergusson		x
Advocate Chris Lakeman		x
Mrs. Janet Marshall		x
Jersey Chamber of Commerce	x	
Mr. Tim Dunningham		x
Mr. Seamus Morvan		x
Jersey Civil Service Joint Council	x	
Jersey Evening Post	x	
Mr. Chris Bright		x
Mr. Philip Falle		x
Mr. Rob Shipley		x
Jersey Farmers' Union	x	
Jersey Hospitality Association	x	
Mr. Gerald Fletcher		x
Mr. David Seymour		x
Jersey Institute of Directors	x	
Mr. Ben Bendelow		x
Mr. Peter Pitcher		x
Mr. Norman Robson		x
Jersey Rights Association	x	
Mr. Rui De Abreu		x

	made written submission	met panel
Mr. Russell Butler		x
Mr. Robert Weston		x
Mr. Reg Jeune CBE	x	x
The Jurats	x	
Jurat Mrs. Barbara Myles		x
Jurat John Tibbo		x
Jurat John de Veulle		x
Revd. Tony Keogh	x	
Mrs. Astrid Kisch	x	
Dr. Robert A. Kisch	x	
Deputy Alastair Layzell	x	x
Senator Chris Lakeman	x	x
Connétable Robert Le Brocq	x	x
Senator Paul Le Claire and Mr. Peter Pearce	x	x
Connétable Stan Le Cornu	x	x
Lt Bailiff Philip Le Cras	x	x
Deputy Margaret & Mr. Brian Le Geyt	x	
Connétable Mrs. Iris Le Feuvre	x	x
Mr. John Le Fondre	x	
Deputy Roy Le Herissier	x	x
Senator Jean Le Maistre	x	x
Mr. Roger & Mrs. Catherine Le Roy	x	
Senator Terry Le Sueur	x	x
Mr. John Le Rendu	x	x
Mr. Luke Le Rendu	x	x
Sir Martin Le Quesne KCMG	x	x
Mr. Adrian Lee	x	
Advocate Raoul Lempriere	x	x
Deputy Derek Maltwood	x	x
Mr. John Mills	x	x
Mr. Austin Mitchell MP and Professor Prem Sikka	x	x
Miss Mary Newcombe		x
HM Solicitor General, Miss Stephanie Nicolle, Q.C.	x	x
Mr. E. J. Noel	x	
Senator Len Norman	x	x
Mr. Leslie Norman	x	
Ogier & Le Masurier	x	
Advocate Tim Le Cocq		x
Advocate Jonathan White		x

	made written submission	met panel
Connétable Philip Ozouf	x	x
Deputy Philip Ozouf	x	x
Mr. Charles Parlett	x	
Mr. Richard Pirouet	x	x
Mr. Robin Pittman	x	x
Connétable Mac Pollard	x	x
Jurat Edward Potter ISO		x
Mrs. Enid Quenault	x	x
Mr. Peter J. Queree	x	
Mr. John Rice	x	
Mr. Anley Richardson	x	
Mrs. Mary A. Richardson	x	
Dr. Mike Romeril	x	x
Deputy Philip J. Rondel	x	
Mr. Bill Sarre	x	
Advocate Philip Sinel	x	x
Deputy Celia Scott Warren	x	x
Senator Mrs. Corrie Stein	x	x
Senator Dick Shenton, O.B.E.		x
Mr. P. W. S. Shirley	x	x
Mr. Ron B. Skinner	x	
Standing Conference of Women's Organisations	x	
Mrs. Marisha Carter		x
Mrs. Jill Corbin		x
Alina Esnouf		x
Mrs. Angela Le Sueur		x
Anne Mariette		x
Mrs. Enid Quenault		x
Margaret Stone		x
Eve Tredant		x
Mrs. Dawn Whitford		x
Air Marshal Sir John Sutton KCB	x	x
Deputy Ken Syvret, M.B.E.		x
Mr. Richard Syvret	x	x
Senator Stuart Syvret	x	x
Connétable Ken Vibert	x	x
Deputy Mike Vibert	x	x
Mr. Ralph Vibert, O.B.E.	x	x
Senator Frank Walker	x	x

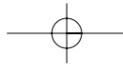


	made written submission	met panel
Mr. Adrian Walton	x	x
Miss Barbara Ward	x	
Deputy Mike Wavell		x
Mr. Chris Whitworth	x	
HE the Lieutenant-Governor Sir Michael Wilkes KCB CBE		x
Mr. Daniel Wimberley	x	



Footnote:

At the time they communicated with the Panel, the above-named persons held the positions and titles shown.





Appendix B

Method of Working

In all we heard 132 witnesses and received 161 written submissions. This Report is our distillation from that large body of evidence of what machinery of government will be best for Jersey in the foreseeable future. We acknowledge also the great help given to us by organisations all over the world who sent us relevant material.

We met always in private. A very few outside observers have criticised us for so doing. But which witness from a small community would be willing to stand up in public and denounce as wrong-headed someone whom he must meet or rub shoulders with every day of his life? And who would write a submission to us, candidly stating his or her opinion of colleagues and the way in which they discharge public office, knowing that their writings will be published and read by all and sundry?

Those who demand this degree of openness must have very little knowledge of, or feeling for, human susceptibilities - perhaps even little compassion for those who are doing their best. It is not practicable to deliberate ideas in public, or as some seem to believe, to think publicly.

We listened attentively to every witness and asked him or her penetrating questions. After a while, candid answers were forthcoming which have been immensely valuable to us. And we have read every written submission and taken it into account. We met for approximately 200 hours in all, in addition to the time spent at home in private reading and consideration of the evidence. We had meetings with those concerned in government in the Isle of Man and with the review panel from Guernsey. We held a public meeting in St. Helier, advertised extensively for evidence and sampled public opinion by polling,⁵ all in an attempt to be sure that we knew what the people of Jersey wanted.

⁵ See Appendix C: Summary of Findings by Mori Social research





Appendix C

Summary of Findings by Mori Social Research

Key Themes

A number of key themes emerge from this research:-

- * There is a general dissatisfaction with the current machinery of government in Jersey: most residents think the States lack leadership, take too long to make decisions and have too many Committees.
- * Attitudes are broadly consistent for all demographic sub-groups, regardless of social class and length of residence on the Island.
- * There is little awareness of the work of the Review Panel but most residents feel they are well informed about the way the Island is governed and very few did not express their views in response to this survey.
- * Half of residents would like to see the number of States' Members reduced (and virtually no one would like to see an increase), focusing particularly on deputies.
- * Most residents would prefer a single general election for all Members and half think that all members should be elected on an Island-wide basis.
- * One-third of residents would like to see one Committee having authority over other States' Committees, while half think that all Committees should continue to have equal status.

Quality of life in Jersey

Over eight in ten residents (81%) are satisfied with the Island as a place to live. But there appears to have been a reduction in satisfaction since MORI last undertook a survey on the Island in 1998, when 95% were satisfied with their neighbourhood.

Attitudes to the States

Residents generally feel well informed about the way that the States work, two-thirds (64%) knowing a 'great deal' or a 'fair amount'. Most also feel well informed about the number of Committees and what they do (48%), and the name of their local Deputy (55%) and Constable (65%).



Almost half the residents (47%) are dissatisfied with the way that the States run the Island, compared with only 38% who are satisfied. Dissatisfaction is particularly focused on those who are dissatisfied with the Island as a place to live and (to a lesser extent) those who feel well informed about governance on the Island.

The States generally have a poor image - two-thirds feel that they do not make decisions efficiently or effectively, that they do not usually make the right decisions, that they do not involve the public in decision-making, and that States' Committees do not work well together. Two-thirds also feel that the States are out of touch (68%), are not sufficiently accountable when things go wrong (70%) and lack leadership (64%). Over four in five (81%) feel that the States take too long to make decisions.

Residents are far more likely to think that there are too many members than too few. Half of residents (45%) feel that the States has too many Members while only 3% think that there are too few. If reductions are to be made, residents focus on Deputies (mentioned by 44%) more than Parish Constables (31%) and Senators (20%). Two-thirds (67%) also think that there are too many Committees, with virtually no one (1%) thinking that there are too few.

There is a general wish for the electoral arrangements to be simplified. Two-thirds (62%) would prefer a simple general election election for all members, while half (46%) would prefer members to be elected on an Island-wide basis. Were elections for all Members to take place on the same day, there is an inclination towards them taking place every three years (preferred by 46%), rather than every four years (23%) or five years (25%).

One-third of residents (33%) would like to see one Committee having authority over the other Committees, while half (50%) think that all Committees should continue to have equal status.

In summary, there is a clear dissatisfaction on the Island, held by all sections of the society, with the machinery of government. There are also some clearly held views about improvements which could be made - relating to the number and type of members, the electoral arrangements, and the number and role of committees.

Appendix D

A Possible Assignment of Committees to Departments

New Departments	Former Committees/Functions
Chief Minister (Council of Ministers)	Policy & Resources External Relations Legislation Overseas Aid (1)
Finance & Manpower	Finance & Economics Human Resources Property Services
Home Affairs	Home Affairs Etat Civil
Social Services	Health & Social Services Social Security Housing/Cottage Homes
Industries	Industries Finance Industry Tourism Agriculture & Fisheries Employment Jersey Transport Authority Gambling Control Harbours & Airport (2) Telecoms and Postal (3)
Education & Leisure	Education Sport, Leisure & Recreation Culture - Arts/Heritage
Environment	Planning & Environment Public Services Housing - Development
House Committee (4)	

NOTE - There would be appointed 3 or 4 Scrutiny Committees to oversee the work of the Departments, plus an "umbrella" Public Accounts Committee on which the Chairmen of the Scrutiny Committees would sit.

- (1) Overseas Aid - possibly as a separate trust.
- (2) Harbours & Airport - possibly separate trusts.
- (3) Telecoms and Postal - incorporated and separately regulated.
- (4) The present House Committee to be replaced by a Speaker's Committee.
(See para 5.8)

Appendix E

Analysis of Distribution of Seats in The States

The following analysis shows a possible distribution of seats by Parish, based on a 42-member House and the 1999 electoral register. A 44-member House could be readily achieved by adding two seats where indicated.

The analysis produces a more even distribution of seats per elector that is achieved by the present system.

Parish	Electors	Present House 29 Deputies	Electors per seat Including Constables	42 member house	Electors per seat
St Brelade	6,025	3 (2 districts)	1,506	5	1,205
St Clement	4,759	2	1,586	4	1,189
Grouville	2,925	1	1,462	2	1,462
St Helier	15,636	10 (3 districts)	1,421	13	1,202
St John	1,706	1	853	1 (+1?)	1,706
St Lawrence	2,902	2	967	2	1,451
St Martin	2,396	1	1,198	2	1,198
St Mary	1,060	1	530	1	1,060
St Ouen	2,307	1	1,153	2	1,153
St Peter	2,543	1	1,271	2	1,271
St Saviour	7,504	5 (3 districts)	1,250	7	1,250
Trinity	1,651	1	825	1 (+1?)	1,651
Total electors	51,414			Average	1,224

Appendix F

Bibliography

During the course of the review we examined reports and publications, some of which were recommended to us, covering a wide range of subjects considered to be relevant to the Machinery of Government in Jersey, including:

A. Publications: States of Jersey

1. Committees of the States: Reorganisation:
Report of the Policy & Resources Committee - July 1996
2. Strategic Policy Review and Action Plan (P129/06):
Amendment (P143/96)
Comments presented to the States by the
Policy & Resources Committee - 8th October 1996
3. Committees of the States: Reorganisation - July 1996; August 1996; June 1998
4. Judgement of Michael Beloff QC in connection with the action brought against
the Bailiff by Senator Syvret - 25th April 1998
5. Jersey in the new Millennium: a sustainable future:
framework consultation document:
Policy & Resources Committee - October 1998
6. Industries Organising Committee:
Report of the Policy & Resources Committee - December 1998
7. Policy & Resources Committee: resource Plan - 1999
8. Function and Role of the Bailiff:
Report of the Policy & Resources Committee - February 1993
9. Strategic and Corporate Management of the States:
Report of the Policy & Resources Committee - July 1998
10. Machinery of Government: Independent review:
Report of the Finance & Economics Committee
(requesting approval for review) - April 1987
11. States of Jersey - Review of the personnel function:
Final Report and Recommendations - November 1996
12. The States Greffe report to the States
of the Working Party appointed to review the administrative services
provided by the States Greffe RC 11 - 30th April 1996

13. States' Members income support and expense allowance:
Report to the States RC 42 - 30th December 1997
14. Bailiff's Consultative Panel: States Nominees - 18th April 1997
15. States of Jersey Law 1996, as amended: delegation of Functions - 1996
16. States of Jersey Order Papers

B. Other Jersey Publications

1. 'States of Jersey: A review of the machinery of government':
KPMG Peat Marwick McLintock - December 1987
2. The capture of the State in Jersey's Offshore Finance Centre:
John Christensen and Mark Hampton - September 1998
3. The proper conduct of Government: States Audit Commission:
Report no. 10 - July 1999
4. Parish of St. Martin: Rates List - 1998
5. Machinery of Government: proposals for Independent Review - 21st April 1987
6. 'Some aspects of government':
extract from the Edwards Report - 1998
7. Report of the Committee of the Privy Council on proposed reforms in the
Channel Islands: Home Office - 1947
8. Members' briefing papers of key issues arising from service reviews of
corporate functions:
Deloitte & Touche/Price Waterhouse - January 1998
9. The Edwards Report - 1998
10. States of Jersey Cultural Strategy - June 2000
11. The Channel islands under Tudor Government, 1485 to 1642:
A. J. Eagleton
12. The Parish of St. Helier - February 2000.
13. MORI - The Machinery of Government in Jersey - June 2000
14. Parish of St. Helier: Estimates of Expenditure and Income 2000/2001
15. Evidence given before the Privy Council Committee on proposed reforms in
the Channel Islands: Jersey - September 1946
16. Building Consensus: Jersey's local agenda 21:
Environment and Society research Unit (undated)
17. The cry for constitutional reform - a perspective from the Office of Bailiff
- October 1999



18. Balleine's History of Jersey - revised 1998
19. Government On-Line:
Jersey Information Society Commission - 2000
20. Notre Ile: A Charter for Change - 1993
21. Building a Better Future: The way ahead for Jersey: One World Week - 1998

C. Statistical Data

1. The Committees of the States and their portfolios - 2000
2. Responses to MORI Opinion Poll - 1995
3. States of Jersey Order Paper - July 1999; September 1999
4. States of Jersey Minutes - July 1999
5. States of Jersey: Analysis of speakers at sittings of the States - 1999
6. States of Jersey: Analysis of attendance at roll call - 1999
7. Selection of Committee agendas
8. Elected representatives per head of population: other jurisdictions

D. Other publications

1. The Choice: either change the system or polish the fruit:
creating productive workplaces - 1994
2. 'The Politics of the Judiciary': J. A. G. Griffith - 1997
3. 'Political Power and Democratic Control in Britain:
Stuart Weir and David Beetham - 1999
4. Government in Transition
The Commonwealth Association for Public Administration and Management
- 18th August 1994

E. Publications: Other Jurisdictions: United Kingdom and Isles

1. People and Government - Questions for Northern Ireland - 1998
2. Local Leadership, Local Choice: Local Government (UK)
Organisation and Standards (Department of Environment - 1999)
3. Local Government Commission for England: Council size - 6th August 1999
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paper 'the council of ministers': paper - untitled (an opposing view):
Tynwald Court proceedings 17th January 1995



5. The judicial functions of the House of Lords - May 1999
6. Isle of Man: Report of the Select Committee on Ministerial Government - 1998
7. Council of Europe: European Court of Human Rights:
case of McGonnell v. The United Kingdom:
Judgement - 8th February 2000
8. Isle of Man: Contemporary experience of the Isle of Man:
The Clerk of Tynwald - 9th April 2000
9. Standards in Public Life - October 1998
10. The City of London: The global powerhouse - 2000
11. The work of the Corporation of London - 2000
12. The Isle of Man Policy Review (2 volumes) - 1999
13. Isle of Man: The Council of Ministers:
Notes for Ministers - October 1996
14. Isle of Man: Organisation Charts:
departmental terms of reference and other documents
15. Isle of man: The Legislative Council - 1999
16. The Corporation of London: Policy Plan 2000/2001
17. U.K. Local Government Bill: New Constitutions - 1999
18. States of Guernsey: States Committees: Constitution and Operation:
Mandates: Membership - August 1999
19. The Constitution and Law of Guernsey - Sir Peter Loveridge

F. Publications: Other Jurisdictions: International

1. Transforming government in the 21st century:
goals and initiatives of current government reforms in various countries - 2000
2. How Canadians Govern Themselves - 2000
3. Spirit of reform: managing the New Zealand State Sector in a Time of Change
- August 1996
4. Current good practices and developments in public service management:
the Commonwealth portfolio: Commonwealth Secretariat - 1996
5. Public Administration Reform: the case of Norway - 1997
6. Issues and developments in public management:
OECD Survey - 1996/1997



7. Managing across levels of government:
OECD Survey - 1997
8. 'The ALTHINGI' Government in Iceland - 1996
9. Welcome to the Riksdag: The Swedish Parliament - 12th August 1999
10. New Zealand Parliament - 2000
11. Constitution of Ireland - 23rd June 1999
12. Overview of the Constitution of the Republic of Cyprus - 2000
13. The Constitution of the Cook Islands - 2000
14. Law, Government and Politics in the Pacific Island States:
Institute of Pacific Studies: University of South Pacific - 1988
15. The Legislative Assembly Åland - 5th June 2000
16. The Faroes Parliament - 1999
17. The Swiss Federal Council - 1999

G. The Jersey Media

118 items published during the review concerning aspects of
government in Jersey



